

GOOD WILL
TRADE-MARKS
and
UNFAIR TRADING

By EDWARD S. ROGERS

OF THE CHICAGO BAR
NON-RESIDENT LECTURER ON THE LAW OF TRADE-
MARKS IN THE UNIVERSITY OF MICHIGAN

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GOOD WILL—A NEW BUSINESS PROBLEM

EVERY business worth imitating has the problem of mistaken identity to deal with. The enthusiasm over a successful product, package, trade-mark, method, or piece of copy, hatches out its double almost overnight.

In the last 30 years, long-range advertising and national distribution have become dominating mercantile facts. Manufacturer and jobber have quite generally adjusted themselves to this change. The retailer is now a dispenser of many standard brands to a neighborhood educated in trade-marks, trade names, labels and distinctive packages. Even the professional man no longer has a local, but a sectional or national clientele.

Two trade provisions, consequently, are becoming every year more vital to the going concern: means of identification by which a pleased public, once won, will continue to distinguish its productions anywhere; and a trained "police power" to restrain or destroy the infringements and unfair competition which naturally attack any successful enterprise.

Around this twentieth-century need of every progressive business for a constructive and protective policy as regards good will, this volume has grown.

It is not a law book. The author has returned to it, chapter by chapter, from working with business men and concerns in their efforts to defend and increase their trade good will. It is therefore an attempt in the frank vernacular of American business and in the most practical ways to help minimize in-

fringement (for with the originator's due care of good will and trade-marks in the beginning, most cases of infringement would never have gained headway) and deal with unfair traders in or out of court.

Several special problems of good will which are continually forcing themselves upon the attention of business men are also dealt with; advertising and sales policies which promise good will or threaten ill will; how the value of good will is arrived at; standard and cut prices in their relation to good will; how any proprietor may distinguish his business in an effective way, and control new, ingenious and subtle sorts of unfair trading.

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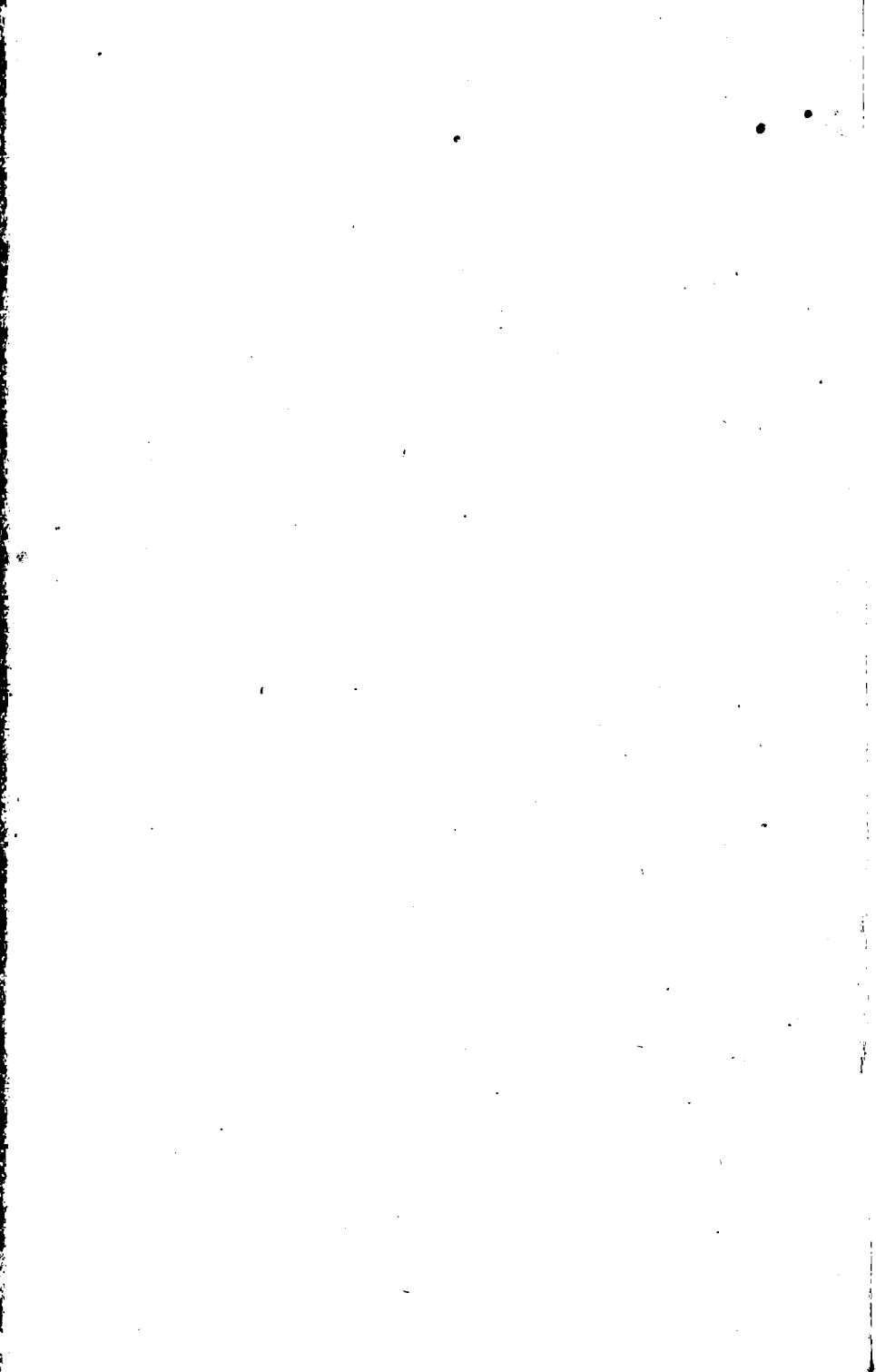
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PART I

**BUILDING GOOD WILL
FOR A BUSINESS**

CHAPTER I

POLICIES THAT CREATE GOOD WILL

IN 1878 a manufacturer of toilet soaps decided that he was using too many different fancy names for his goods. He had made up his mind to do some advertising and like a sensible man he wanted to concentrate on one or two brands, and not scatter his appropriation over a score. "We'll weed out some of these dead ones," he said; "'Pink Petunia,' 'Odors of Araby,' and a lot like that we're better off without. They never were sellers—we've never been able to persuade anybody to buy them yet. Let's get rid of them and push something that sells." So the labels went under the boiler. The names were taken out of price lists, and forgotten. "Pink Petunia" toilet soap was as completely extinguished as if it had never existed. That was in 1878.

There still is one old lady in a small New England town who, ever since 1878, several times a year sends in an order for "Pink Petunia" soap. She says that the druggist in her town does not keep it, though it is the best soap she ever used. It was somewhat inconvenient for the manufacturer to keep Pink Petunia alive for one customer. So years ago she was written to and asked if something else would not do as well. No, she said, she liked Pink Petunia—she had always used it—her mother before her had used it. It was good soap. Nothing else would do. She seemed a little hurt.

This single customer of Pink Petunia has become an institution in that business. Everyone feels that she is

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a member of the family. Once in a while someone in the office says: "Isn't it about time we heard from Mrs. Nickerson? I wonder if she's all right?"

Pink Petunia has been kept alive for Mrs. Nickerson, and labels printed for her alone since 1878. No one has had the heart to tell her that for nearly forty years she has been the only person in the whole country who has bought that soap.

Mrs. Nickerson's loyalty to Pink Petunia is somewhat humorous. Her friendliness is a little pathetic. But multiply Mrs. Nickerson by a million and the aggregate loyalty and friendliness is anything but humorous or pathetic. It becomes an asset worth much real money.

"George," said his mother to her small boy, "here's a penny. Run down to the grocery and get me a cake of yeast." After the digressions and diversions characteristic of small boys and just within the limit of tolerance, George returns with the yeast. "Where have you been?" says his mother with the accent on the *have*. "You've been gone twice as long as you should have." "I went to that new shiny grocery on Main Street," says the boy. "What possessed you to go there? Don't you ever do such a thing again. You know we always trade at Johnson's."

Mr. Johnson's continuance in business depends on George's mother, and others like her who "always trade" with him.

The soap manufacturer's continuance in business depends upon the multitudinous Mrs. Nickersons, who like his soap and buy it in preference to the soap of other makers.

This collective friendliness is good will.

Most people approach good will from the wrong end. It is commonly thought of as a thing to put into appraisals and bills of sale as an excuse for an issue of watered stock—a catch-all to pad a schedule of assets. As a matter of fact, however, it is a thing which concerns almost everyone. We are all of us, as individuals, constituents which go to make up the good will of those

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with whom we trade. If we are manufacturing or jobbing or shopkeeping for ourselves, we have an opportunity of building a good will of our own. If we are employees we are instruments in the creation of good will for our employers.

As with all intangible things, good will is hard to place mentally. Like reputation, popularity and friendliness, it is so elusive that there is little wonder its value and its very existence are so frequently ignored. Like character and reputation in an individual—the things which enable anyone to associate with his fellows—good will is what perpetuates a business.

FINDING OUT WHAT GOOD WILL IS

Good will is that which makes tomorrow's business more than an accident. It is the reasonable expectation of future patronage based on past satisfactory dealings. Promiscuous and casual customers or clients do not pay the profits. Those who come regularly do. These persons have found the dealer trustworthy, his goods of high quality, his skill and knowledge commendable. They have been satisfied with the treatment they have received in the past and are reluctant in the absence of some reliable recommendation or special circumstance, to risk transferring their custom to another. It is this hope and probability that keeps a business going and gives it a selling value above that of its leasehold, equipment and stock.

"The only proper signification of the word good will," says Professor Parsons, "must be that benefit or advantage which rests only on the good will or kind and friendly feeling of others. It is, after all, nothing more than a hope grounded upon a probability."

Many concerns have built up an asset of good will in a remarkably short time by definite methods of friendliness and tact, just as some salesmen have made themselves solidly popular in a short time by a card follow-up which enabled them to fit in with their prospects'

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nobbies and to avoid controversial subjects. It is suggestive, if nothing more, for the heads of a business to consider (1) the classes whose good will of one sort or another is important; (2) the chief points of contact with each of these groups.

Among the good will points of contact—the experiences from which those who view a concern externally draw their ideas of a business, the most important probably are:

1. Advertising.
2. Personal contact.
3. Service and deliveries.
4. The product in use.

When an ordinary person decides to make a purchase or a dealer plans to lay in stock, in almost every instance he must make a choice among several articles, individuals or establishments. Usually he has some past experience as a background. Of two haberdashers with whom he has traded before, a man returns to the store of which he has the pleasantest recollections. He is not inclined to experiment with a third without reason. He recalls perhaps that at one store, when he asked for a "union suit at about a dollar and a half," the salesman intimated by his manner that people of respectability never pay less than three dollars for such a garment. That or some like experience has left an unpleasant impression, so he goes to the other store. Here he is greeted by name and shown *exactly what he asks for*, which involves the implied compliment that he knows what he wants.

It may be the height of salesmanship to sell a man who wants a dollar and a half union suit, one costing him three dollars. If in so doing, however, the customer is made uncomfortable, he gets even in the only way open to him—he does not come again. The store has lost his good will.

A big suit store has recently faced the same danger. The store was a plain, unpretentious looking place, where a man with only fifteen dollars to spend for a suit felt

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as good as the firm. He was a patron—not a petitioner. He bought—and what is more, he came again. Consequently the store built up a large twelve-to-fifteen-dollar suit trade. The profits from this great middle class and its good will finally enabled the proprietor to put up a new building. He built in the immediate neighborhood but of granite, with plate glass and gilt chandeliers, carpeted floors and mahogany fixtures. But the twelve-to-fifteen-dollar trade has not followed to the new store. The man with twelve dollars to invest in a new suit does not feel at home in such a place. From the looks of it, he judges that he will be expected to spend more. The sales record of the new shop was not long in showing the absence of one great sustaining class of its trade. The new store has unwittingly made itself unpleasant for the twelve-dollar man and has lost his good will.

SAFEGUARDING THE SOURCE OF PROFITS

Another merchant saw this danger to good will in time. When he got ready to put up a new building, his architect suggested something with marble columns and elaborate fittings. "No," said the merchant, "I have made my money selling plain things to plain people—I do not want to scare them away." The new store he erected was plain, practical, convenient; and it retained the good will of its trade.

The expression occasionally heard, "they are nice people to do business with," is more than an empty compliment. It is the index of a valuable asset, and just as such an expression spreads good will, ill will also multiplies through unfriendly word of mouth. Smoking car gossip sends many a guest to a particular hotel and keeps many away from their intended patronage.

One day an important client burst into the private room of a member of a big New York law firm. "Look here, Sam," he said, "if I hadn't been a client of yours for ten years, and if you didn't know my affairs better than I do myself, I'd never come into your office again."

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"Sit down and cool off," was the answer. "What's happened?"

"No, I won't sit down and cool off; I'm sore," rejoined the client. "If I were running this office, the first thing I'd do would be to fire that graven image you've got for a door man. Here I've been coming to see you every few weeks for years and he never knows me—asks me my name and who I want to see and what my business is. He did it just now. If I'm not of sufficient importance to be recognized by your employees, I'm going somewhere else."

To remember names and call people by their own is as subtle a compliment as one can pay another. People who are not fugitives from justice like to go where they are known and recognized. They like to have their tastes and peculiarities remembered by those with whom they come in contact. This point of contact, wherever it may occur, is where good or ill will is chiefly made. It may be in correspondence—many a customer has been lost by a complaint letter which in attempting to be firm, was only unreasonable, or in attempting to be vigorous was merely offensive.

The public is unlikely to distinguish between the professional and the personal acts of a proprietor and is almost sure to judge all parts of a business by the one service or blunder through which they first became acquainted with a house.

Good will conservation through correct and diplomatic house policies is a problem as big as the business itself, but it can be definitely approached by listing the classes whose good will is important and then examining its policy at every point of contact with any of these classes.

Only of late years have business men generally begun to appreciate the value of correct policy in these things that often cost nothing and yet create good will.

Historically, locality seems to have been the prime consideration in conceiving, defining and transferring good will. It used to be the almost universal provision in a contract for the sale of a business, for the seller to agree