

IN THE COURT OF APPEALS OF IOWA

No. 6-701 / 06-0250
Filed November 16, 2006

PALMER COLLEGE OF CHIROPRACTIC,
Petitioner-Appellee,

vs.

PALMER COLLEGE OF CHIROPRACTIC ALUMNI ASSOCIATION,
Respondent-Appellant

Appeal from the Iowa District Court for Scott County, John A. Naha,
Judge.

A college alumni association appeals the district court's ruling prohibiting
the association from using an abbreviated name associated with the college.

AFFIRMED.

Robert M. Hogg and Patrick M. Roby of Elderkin & Pirnie, P.L.C., Cedar
Rapids, for appellant.

Robert D. Lambert and R. Richard Bittner of Bittner, Lambert & Werner,
Davenport, and Jeffrey S. Bittner of Jeff Bittner Law, P.C., Davenport, for
appellee.

Heard by Mahan, P.J., and Miller and Vaitheswaran, JJ.

VAITHESWARAN, J.

Palmer College of Chiropractic sought and obtained a permanent injunction prohibiting an alumni organization known as Palmer College of Chiropractic International Alumni Association from using the Palmer name, crest and logo. The court's ruling did not expressly enjoin the alumni association's use of its abbreviated name, "PCCIAA."

When Palmer College learned that the alumni association intended to continue using the abbreviation, it moved for an enlargement of the ruling to prohibit this practice. The district court granted the motion, stating:

The evidence at trial clearly established that respondent's name, Palmer College of Chiropractic International Alumni Association, and P.C.C.I.A.A. are used interchangeably. Respondent's counsel further admits when using the acronym that the "P" stands for Palmer College [T]his Court finds the acronym P.C.C.I.A.A. clearly stands for Palmer College of Chiropractic International Alumni Association. Continued use of the acronym generates the same confusion by use of the name Palmer by respondent.

The alumni association appeals, contending (1) "the issue of whether the Alumni Association could be enjoined from using the name 'PCCIAA' was beyond the court's authority and jurisdiction because Palmer College had never raised it in any earlier pleading, motion, argument or testimony at trial" and (2) Palmer College did not prove the elements of a common law trademark infringement claim.

On the first question, the record reflects that Palmer College raised the alumni association's use of the acronym well before trial and specifically requested an order "restraining PCCIAA from referring to itself as the 'OFFICIAL PCC International Alumni Association' or in any way association (sic) itself with

Palmer as an alumni organization recognized by Palmer . . . ” Additionally, the parties used the acronym to refer to the alumni association in their pleadings, other filings, and during trial. Therefore, Palmer College was authorized to seek enlargement of the injunction via an Iowa Rule of Civil Procedure 1.904(2) motion and the district court was authorized to issue an enlarged injunction prohibiting the use of the “PCCIAA” acronym. See *In re Marriage of Okland*, 699 N.W.2d 260, 266 (Iowa 2005) (stating rule 1.904(2) may be used “to obtain a ruling on an issue that the court may have overlooked in making its judgment or decree”); *Cripps v. Iowa Dep’t of Transp.*, 613 N.W.2d 210, 212 (Iowa 2000) (“In its normal application to nonjury bench trials in which the court determines both facts and the law, motions under rule [1.904(2)] may be employed to seek enlargement or change of both the factual and the legal determinations of the court.”).

On the second question, whether Palmer College proved a common-law trademark infringement claim, the institution had to establish that (1) it possessed a proprietary right in the name and (2) there was an infringement of that right. *Commercial Sav. Bank v. Hawkeye Fed. Sav. Bank*, 592 N.W.2d 321, 326 (Iowa 1999).

The district court concluded in its original ruling that Palmer College proved these elements. After making detailed fact findings, the court stated Palmer College had a “sufficiently distinctive” name deserving of “protection against use or infringement by another.” The court also stated that the alumni association’s use of the Palmer name and crest indicated “an affiliation with Palmer College” that was “confusing to the general public and general consumer.” On our de novo review of the record, we find extensive support for

the court's fact findings. No useful purpose would be served by recounting that support. Suffice it to say that the district court acted equitably in issuing an expanded writ of injunction prohibiting the alumni association's use of the acronym "PCCIAA."

AFFIRMED.