"I suppose there are some people sour enough and crabbed enough to object to band concerts in the public parks in the summer time because they put a little money in the pockets of union musicians, band instrument makers and the tailors who make the musicians' uniforms.

"Go a step further. Why not do away with preventative medicines because some manufacturers are bound to profit from their use?

"It is true that the manufacturers of toy railroad trains, Fourth of July flags, and Mother's Day candy do make a profit, but the joy these goods bring to the hearts of both givers and recipients is far, far beyond whatever money profits the producers and distributors of these goods may have made!"

Perhaps the critics are looking at this matter of holiday observance with a myopic eye? Don't we really owe a debt of gratitude to these holiday propagandists who must know only too well that they can't promote their own selfish interests successfully without bringing far greater rewards to those whom they serve—the great body of the people!

THE PHARMACIST AND THE LAW

BY HOWARD KIRK,* EDITOR OF THIS DEPARTMENT.

We have been asked to write about the difference between trade marks and trade names. This is not so easy to do. Let us start out by saying that the law of the trade mark is a development of the old English doctrine of "market overt"—open market. If a tradesman brought his wares to the open market and displayed them on the weekly market day, he was entitled to mark those wares with a symbol or sign which would show to the public whose wares they were or who manufactured them. This marking was known as a trade mark. It was required to be affixed directly on the mechandise either by stamping, painting or by label.

The tradesman was protected in the enjoyment of this trade mark. No other person was allowed to copy it so long as the mark was in use in buying and selling on the open market. If, however, the original tradesman went out of business or ceased to use the trade mark, then anyone else was allowed to make use of it.

The law of trade mark, therefore, rests on the old common law of England. Statutes have been passed by Congress and by a number of the states which permit the registration of such trade marks, but these statutes merely provide for the keeping of a public record and did not give any longer life or greater validity to the trade mark than was provided by the old common law.

The trade name, however, is somewhat different. It is the name by which a man in business seeks to become known and is known. The name itself does not have to be affixed to any particular article of merchandise. Again, as in the case

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of a trade mark, the right to the use of a trade name, and the protection against infringement, rest on the common law.

It follows naturally that there must be a restriction on the kind of names which may be employed either for trade marks or trade names. If, for instance, an apple-grower should seek to pre-empt the trade name "Good Cider Apples" the law would not protect him; any other farmer could call his apples "good cider apples" too. Neither could one say "Delaware County Apples" and thereby prevent any other apple grower in Delaware County from using the same form of words. If, however, he coins the "Smithkist" or "Joneskist" he will be protected, for no other Smith or Jones may use the same appellation.

Sometimes it is quite difficult for the Court to decide whether an adopted trade mark or trade name is entitled to protection. As the Supreme Court said in a case which occurred several years ago:

> "It (the trade mark) may consist in any symbol or in any form of words, but as its office is to point out distinctively the origin or ownership of the articles to which it is affixed, it follows that no sign or form of words can be appropriated as a valid trade mark, which from the nature of the fact conveyed by its primary meaning, others may employ with equal truth, and with equal right, for the same purpose."

In order to grasp the decision of the Supreme Court some careful thinking is required. There is such a thing as a secondary meaning to a term employed as a trade mark or trade name.

Suppose I should invent a new medicinal preparation and call it "Nervalene." I would have absolute right to use that name to describe my product; and if I should choose to sign myself "Nervalene Proprietor, Philadelphia," I would be protected in the use of this expression as a trade name. But suppose, further, that Nervalene became so well known, that finally it became part of the commonly accepted speech of the people; in such event I would lose the right to the exclusive employment of the term. Since the preparation was not patented, anyone else would have the right to make it; and since "it" was Nervalene, they could call it by that name.

In other words the Courts have decided that the control of the name of a thing is the control of the thing itself. A very interesting case in point was that of the Singer Sewing Machine decided by the Supreme Court of the United States a number of years ago. At the expiration of the patent upon the Singer Machine certain competitors sought to make similar machines and call their product by the name "Singer." The Singer Company promptly applied for an injunction asking that such competitors be prevented from using the name "Singer." The Supreme Court decided that inasmuch as the patent on the Singer Machine had expired the name "Singer" passed to the public and anyone that was able to make a Singer Sewing Machine could use that name in designating it. The Court said that this sewing machine was so well known that the word "Singer" meant to the public a sewing machine of a certain type. Therefore all competitors were permitted to use the name "Singer" although they were prohibited from using any method to mislead the public into believing their products were those of the original manufacturers of the Singer Sewing Machine. The name had passed to the public and the Singer Company had to pay the penalty for the machine's popularity.