

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

CUSTOM AUTO INTERIORS, INC., dba  
Custom RV Interiors, Inc.,

Respondent,

v.

CUSTOM RV INTERIORS, INC.; DAVID  
AST and JANE DOE AST, husband and wife  
and their marital community; and LARRY J.  
AST and ROBERTA ROE AST, husband and  
wife, and their marital community,

Appellants.

No. 35869-7-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Custom RV Interiors, Inc. (Custom RV) and its owners, Larry J. (LJ) Ast and David Ast, seek review of the trial court's order granting Custom Auto Interiors, Inc. d/b/a Custom RV Interiors, Inc.'s (Custom Auto) motion for a preliminary injunction precluding Custom RV's use of the phrase, "custom RV interiors, Inc." Because "custom RV interiors" is a generic trade name and, thus, is not entitled to legal protection, we reverse.

**FACTS**

**Factual Background**

Custom Auto installs custom recreation vehicle (RV) interiors. Custom Auto has used the trade name "Custom RV Interiors, Inc." since the early 1990s. Custom RV also installs custom

RV interiors, in direct competition with Custom Auto. After the injunction, Custom RV is temporarily doing business as "David and LJ's RV Interior Design." Br. of Appellant at 1.

Custom Auto's principal is Larry V. Ast. Custom RV's principals are David and LJ, Larry's<sup>1</sup> adult sons. David and LJ worked for Larry for approximately 20 and 15 years respectively, until October 13, 2006.

In 2005, Larry entered into negotiations with David and LJ to sell Custom Auto to them. David and LJ believed that Larry was asking too much for Custom Auto and the parties were unable to agree on a price. Negotiations ceased in June 2006, but David and LJ continued to work for Larry. During the course of the negotiations, LJ learned that Larry had never legally changed the business name from "Custom Auto Interiors, Inc.," or otherwise registered the trade name "Custom RV Interiors, Inc.," so LJ registered it. In July 2006, David and LJ formed Custom RV Interiors, Inc.

In October 2006, Larry sold Custom Auto to Robert (BJ) Warner.<sup>2</sup> While David and LJ contend that Larry and Warner fired them immediately, Larry argues that they voluntarily left the business at that point.

Warner and Larry sent David and LJ a letter, demanding that they not compete with Custom Auto, use any information they learned while employed at Custom Auto, or use any

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<sup>1</sup> We use the parties' first names for clarity.

<sup>2</sup> It appears that Larry retained some ownership because the parties occasionally refer to him as "co-owner" and the parties use the names "Larry" and "Warner" interchangeably after the sale.

similar trade name. At the same time, Warner registered<sup>3</sup> several trade names with the Department of Licensing, including: “Custom R.V. Interiors, Inc.”; “Custom R.V.”; “R.V. Interiors”; “My Flexsteel.com”;<sup>4</sup> “Flexsteel RV Furniture.Com”; and “Flexsteel Marine Furniture.com.” Ex. I. David and LJ responded, arguing that “Custom RV Interiors” was a generic term, not protected by trademark law.

In July 2006, David and LJ opened a custom RV interior shop and began to operate as “Dave and LJ’s Custom RV Interiors, Inc.” in the City of Woodland. David and LJ used the trade name “Dave and LJ’s Custom RV Interiors, Inc.” on their advertising, business cards, flyers, shop sign, and at trade shows.

Warner’s declaration asserts that his suppliers, advertisers, and other vendors expressed confusion about the two businesses and, because of the confusion, two suppliers required him to submit new credit applications. Warner also alleged that a representative of Honeywell Security emailed him about new security needs in light of Custom Auto’s impending move to Woodland, again confusing the two businesses. Furthermore, Warner claimed that “several” customers also expressed confusion. David and LJ alleged that there was no confusion; instead, David and LJ contended that Larry and Warner actively tried to stop them from competing by contacting suppliers, advertisers, and other vendors and asking them not to do business with Custom RV.

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<sup>3</sup> Registering a name with the Department of Licensing is not equivalent to registering a trade name as a trademark. *See* RCW 19.77.020(3). The fact that a business registers its trade name with the Secretary of State does not confer the right to enjoin others’ use of the name in connection with goods or services; trade name registration has no bearing on whether the business acquired rights in the name by prior appropriation. *See Fish v. Koldkist Beverage Ice*, 60 Wn. App. 122, 123-24, 802 P.2d 837 (1991).

<sup>4</sup> Flexsteel® is a registered trademark of Flexsteel Corporation, a major RV furniture manufacturer. Custom Auto and Flexsteel® are not affiliated. Flexsteel Industries, Inc., <http://www.flexsteel.com> (last visited Apr. 23, 2008).

*RV Life* is a well-recognized trade publication. David and LJ placed an advertisement in the January 2007 issue for their new business. The advertisement announced the grand opening of “Dave and LJ’s Custom RV Interiors, Inc.”; the phrase “Custom RV Interiors, Inc.” was prominent, while “Dave and LJ’s” was quite small. The advertisement also indicated that Custom RV had been “Personalizing RV’s for Over 20 Years.” Clerk’s Papers (CP) at 21. Finally, the advertisement provided the website, [www.customrvint.com](http://www.customrvint.com), which is quite similar to Custom Auto’s website, [www.customrvinteriors.com](http://www.customrvinteriors.com). Warner and Larry allege that because of the layout of the advertisement, the similar website, and the experience listed, David intended for the advertisement to mislead and confuse customers. In contrast, David and LJ claim that Larry and Warner attempted to have the advertisement pulled to thwart David and LJ’s new business and prevent it from being successful. David and LJ also claim that Larry and Warner contacted the Tacoma RV show, demanding that it cancel its agreement to rent a display booth to both businesses, and that Larry and Warner contacted Flexsteel in an attempt to convince it to stop selling furniture to David and LJ.

#### Procedural History

On December 7, 2006, Custom Auto sued Custom RV, alleging trade name infringement and violation of the Consumer Protection Act (CPA), ch. 19.86 RCW. It immediately sought a preliminary injunction to prevent David and LJ from using any version of the name “custom RV interiors” and the internet address [www.customrvint.com](http://www.customrvint.com). Custom RV opposed the motion.

On January 9, 2007, the trial court granted Custom Auto’s motion, finding that David and LJ had attempted unsuccessfully to purchase the business and, when that failed, they began a competing business using Custom Auto’s trade name “custom RV interior” with the qualifier

“Dave and LJ’s.” The trial court went on to find that Custom RV intended to appropriate the trade name and associated goodwill of Custom Auto’s business. The trial court also indicated that the business’s trade name described what the business did, but because of the word “Inc.,” also indicated that it held itself out as a business. Specifically, the trial court enjoined Custom RV from using the phrase “Custom RV Interiors, Inc.” And, in order to avoid confusion or further litigation on the meaning of its order, the trial court found that Custom RV could use a title such as “‘Dave and L.J.’s Custom-Made RV Interiors of Woodland,’ or some designation sufficiently unique to eliminate the risk of confusion clearly engendered and intended by the use of Dave & L.J.’s Custom RV Interiors, Inc.” CP at 90-91.

#### ANALYSIS

##### Standard of Review

A preliminary injunction is not normally a proper issue for review because it is not a final order; instead, it is merely intended to maintain the status quo until the trial court can conduct a full hearing on the merits of the complaint. RAP 2.2(a)(1); *Nw. Gas Ass’n v. Wash. Utils. & Transp. Comm’n*, 141 Wn. App. 98, 115-16, 168 P.3d 443 (2007). But here, the trial court’s order enjoined David and LJ from using the contested business name and thereby altered the status quo. Accordingly, we will review the issue. We review a trial court’s grant of a preliminary injunction for abuse of discretion. *Wash. Fed. of State Employees, Counsel 28, AFL-CIO v. State*, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *Wash. Fed.*, 99 Wn.2d at 887. A decision misapplying the law is an error of law and should be evaluated under that standard and not the lesser abuse of discretion standard. *See Cox v. Gen. Motors Corp.*, 64

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Wn. App. 823, 826, 827 P.2d 1052 (1992) (holding that this court reviews issues of law for error in application of the law, rather than abuse of discretion); *see also Markoff v. Markoff*, 27 Wn.2d 826, 828, 180 P.2d 555 (1947); *Sweeny v. Sweeny*, 48 Wn.2d 872, 875, 297 P.2d 610 (1956); *but cf. Hisle v. Todd Pac. Shipyards Corp.*, 113 Wn. App. 401, 426-27, 54 P.3d 687 (2002) (holding that misapplication of the law is based on untenable grounds and, thus, is an abuse of discretion), *aff'd*, 151 Wn.2d 853, 93 P.3d 108 (2004).

A party seeking a preliminary injunction must demonstrate that (1) he has a clear legal or equitable right, (2) he has a well-grounded fear of immediate invasion of that right, and (3) the acts he is complaining of have or will result in actual and substantial injury. *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982).

#### RAP 10.3(a)(4): Requirements for Review of a Preliminary Injunction

Custom Auto argues that, because Custom RV failed to assign error to any of the findings in the trial court's order granting the preliminary injunction, it is a verity on appeal that "[Custom RV] elected to appropriate [Custom Auto's] trade name and its associated good will [sic]," "[Custom RV's] trade name engendered confusion," and "[Custom RV] intended this confusion." Br. of Resp't at 8. Custom RV responds that it effectively assigned error to the facts because it argued in its brief that Custom Auto did not have a protectable trade name, that it did not "elect[] to appropriate [Custom Auto's] trade name and associated good will [sic]," and disputed that its trade name "engendered confusion." Reply Br. of Appellant at 4. Because Custom RV's arguments are clearly ascertainable from its brief, we exercise our discretion and consider the merits of its appeal.

To facilitate appellate review, a trial court must enter findings of fact and conclusions of

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law and set forth its reasons for issuing a preliminary injunction. CR

52(a)(2)(A); CR 65(d); *Alderwood Assocs. v. Wash. Envtl. Council*, 96 Wn.2d 230, 233-34, 635 P.2d 108 (1981). Generally, we will only review claimed error if it is included in an assignment of error. See RAP 10.3. But we construe the rules of appellate procedure liberally to promote justice and facilitate the decision of cases on the merits. RAP 1.2(a); *State v. Olson*, 126 Wn.2d 315, 318-19, 893 P.2d 629 (1995).

Here, although Custom RV failed to assign error to the specific findings of fact in the trial court's CR 65(d) order, it did assign error to the order as a whole. Furthermore, the trial court did not set out separate findings of fact as CR 65(d) requires; rather, it incorporated its findings, reasoning, and conclusions together in paragraph format. See CR 52(a)(2)(A); *Alderwood Assocs.*, 96 Wn.2d at 233-34. Because this is "a case where the nature of the appeal is clear," "the relevant issues are argued in the body of the brief," "citations are supplied so that the court is not greatly inconvenienced," and "the respondent is not prejudiced," we consider the merits of Custom RV's appeal. See *Olson*, 126 Wn.2d at 323; see also General Order 1998-2 of Division II, *In re the Matter of Assignments of Error* (Wash. Ct. App.), available at [http://www.courts.wa.gov/appellate\\_trial\\_courts/?fa=atc.genorders\\_orddisp&ordnumber=1998-2&div=II](http://www.courts.wa.gov/appellate_trial_courts/?fa=atc.genorders_orddisp&ordnumber=1998-2&div=II).

#### Trade Name Infringement

Custom RV argues that the trial court erred when it granted the preliminary injunction because the trade name "custom RV interiors" is generic and, thus, is not a protectable trade name. Custom Auto responds that the trade name "custom RV interiors" is not generic and, even if we find that it is generic, generic trade names are eligible for protection if there is a likelihood of

customer confusion. Because “custom RV interiors” is generic, and generic trade names are ineligible for trade name protection, Custom Auto has not demonstrated a protectable interest in this generic trade name.

To prevail on a trademark or trade name infringement claim for an unregistered<sup>5</sup> mark or name, a party must demonstrate both that (1) “it has a valid and protectable [name]”; and (2) “the [other party’s] use of the [name] creates a likelihood of consumer confusion,” i.e., secondary meaning. *BellSouth Corp. v. White Directory Publishers, Inc.*, 42 F. Supp. 2d 598, 606 (M.D.N.C. 1999); *see also Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 767-68, 112 S. Ct. 2753, 120 L. Ed. 2d 615 (1992); *Seattle Endeavors v. Mastro*, 123 Wn.2d 339, 344, 868 P.2d 120 (1994). Under RCW 19.77.930, Washington trademark law must be interpreted consistently with the Lanham Act, 15 U.S.C. § 1051. We evaluate trademarks and trade names under the same standards of protectability. *Seattle Endeavors*, 123 Wn.2d at 344.

A. Generic Versus Distinctive Trade Name

Custom RV argues that “custom RV interiors” is generic and, thus, not subject to trade name protection. Specifically, Custom RV argues that “custom RV interiors” is generic because Custom Auto uses each generic word in the phrase “custom RV interiors” in its plain and ordinary meaning, and it describes precisely the service that Custom Auto provides, not the source of the service. Custom Auto responds that “custom RV interiors” is not generic because there are other terms that can describe its services. Custom Auto further argues that “custom RV interiors” identifies the source, not the service, because it provides “recreational vehicle remodeling,” not “custom RV interiors.” We disagree; “custom RV interior” is generic, it is not a protectable trade

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<sup>5</sup> Registered means registered as a trademark under federal law. *See generally* 15 U.S.C. § 1051.



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name.

Trademarks, including trade names, fall generally into two broad categories, inherently distinctive marks and non-inherently distinctive marks. *See* J. Thomas McCarthy, McCarthy

on Trademarks and Unfair Competition § 11.01, at 11-4 (4th ed. 1998). Within those broad categories, marks fall along a spectrum of distinctiveness that determines whether the marks are eligible for trademark protection at all and, if so, what the appropriate scope of that protection should be. *Seattle Endeavors*, 123 Wn.2d at 344 (citing McCarthy, *supra* § 11.24, at 11-124). In other words, the strength of the trademark interest in a given word informs the scope of injunctive relief which may properly be ordered. *Seattle Endeavors*, 123 Wn.2d at 344 (citing McCarthy, *supra* § 11.24, § 11.25). Arranged from least to most appropriable, these subcategories are: (1) generic terms, (2) descriptive terms,<sup>6</sup> (3) suggestive terms,<sup>7</sup> and (4) arbitrary or fanciful terms.<sup>8</sup> *Seattle Endeavors*, 123 Wn.2d at 344 (citing McCarthy, *supra* at 11-5).

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<sup>6</sup> A “descriptive” term specifically describes a characteristic or ingredient of an article or service. It can, by acquiring a secondary meaning, become a protectable trade name. *Foss v. Culbertson*, 17 Wn.2d 610, 625, 136 P.2d 711 (1943). Secondary meaning refers to consumer association between the mark and the producer. *Foss*, 17 Wn.2d at 625; *see, e.g., Puget Sound Rendering, Inc. v. Puget Sound By-Products*, 26 Wn. App. 724, 730, 615 P.2d 504 (1980) (holding that the term “Puget Sound” is vaguely distinctive because it establishes a general area of operation and is a protectable trademark because the public was confused by the name similarity).

<sup>7</sup> A “suggestive term” suggests, rather than describes, an ingredient, quality, or characteristic of the goods and requires imagination, thought, and perception to determine the nature of the goods. *Surgicenters of Am., Inc. v. Med. Dental Surgeries Co.*, 601 F.2d 1011, 1014-15 (9th Cir. 1979). A suggestive term is entitled to registration without proof of a secondary meaning. *See, e.g., Brookfield Commc'ns, Inc. v. W. Coast Entm't Corp.*, 174 F.3d 1036, 1058 (9th Cir. 1999) (holding that the term “MovieBuff” for an online database of movie and television data is a suggestive mark because it requires a mental leap from the mark to the product).

<sup>8</sup> An arbitrary or fanciful mark is a word or symbol commonly used in the language, but which is neither descriptive of the goods or services in question nor suggests their quality. *Seattle Endeavors*, 123 Wn.2d at 344 n.3 (citing McCarthy, *supra* § 11.03, at 11-14-15; § 11.05, at 11-19-25). A fanciful mark is one which uses a word which is either totally unknown or unused in the language, and is selected for the sole purpose of identifying a good or service. *Seattle Endeavors*, 123 Wn.2d at 344 n.3 (citing McCarthy, *supra* § 11.03, at 11-10-11); *see, e.g., Seattle Endeavors*, 123 Wn.2d at 345 (holding that use of the term “Willows” to designate an apartment complex was arbitrary because it neither describes the good or service in question, nor suggests its quality).

A “generic” term is one that refers, or has come to be understood as referring, to the genus of which the particular product or services is a species. *Park ‘N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 194, 105 S. Ct. 658, 83 L. Ed. 2d 582 (1985). If a business name identifies the product, rather than the source, it is generic. *See In re Matter of Steelbuilding.com*, 415 F.3d 1293, 1296 (Fed. Cir. 2005).

[N]o matter how much money and effort the user of a generic term has poured into promoting the sale of its merchandise and what success it has achieved in securing public identification, it cannot deprive competing manufacturers of the product of the right to call an article by its name.

*Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir. 1976). To allow protection for such terms would grant the owner a monopoly because a competitor could not describe his goods or services as what they are. *CES Publ’g Corp. v. St. Regis Publ’ns, Inc.*, 531 F.2d 11, 13 (2d Cir. 1975). The burden rests with the party asserting trademark infringement to prove that an unregistered trade name is not generic. *BellSouth*, 42 F. Supp. 2d at 607 (citing *Blinded Veterans Ass’n v. Blinded Am. Veterans Found.*, 872 F.2d 1035, 1041 (D.C.Cir.1989)).

Custom RV argues that “custom RV interiors” is generic. Custom Auto responds that, although the individual words “custom,” “RV,” and “interiors” are generic, the trade name as a whole is not generic and is entitled to be protected. We evaluate a trade name as a whole, but if a trade name is merely a combination of generic words used in their ordinary accustomed meaning, the trade name as a whole is still generic. *Surgicenters of Am., Inc. v. Med. Dental Surgeries Co.*, 601 F.2d 1011, 1014-17 (9th Cir. 1979) (holding that “Surgicenters” is generic because it is merely an abbreviation of “surgical” and “centers” used in their ordinary meaning). And Custom Auto uses the generic words in “Custom RV interiors” in their ordinary meaning. *See*

*Surgicenters*, 601 F.2d at 1014-17.

Next, Custom RV asserts that “custom RV interiors” describes the service Custom Auto provides, not the source of that service. Custom Auto argues for the first time on appeal that it does not provide “custom RV interiors”; it instead offers interior “recreational vehicle remodeling.” Br. of Resp’t at 16. But at the trial court level, it admitted that, “[j]ust as the name implies, the corporation provides and installs all manner of interior features for recreational vehicles.” CP at 5. Custom Auto further argues that, because there are synonyms for “custom RV interiors,” such as “custom made RV interiors” or “RV interior design,” it cannot be generic. But a trade name is not precluded from being generic simply because there are some alternative ways in which to describe a particular service. *Loctite Corp. v. Nat’l Starch & Chem. Corp.*, 516 F. Supp. 190, 201 (S.D.N.Y. 1981) (holding that “Super Glue,” “instant glue,” and “ten second glue” are all generic); *see also Blinded Veterans Ass’n*, 872 F.2d at 1041 (holding that a term need not be the sole designation of an article in order to be generic). Despite Custom Auto’s argument to the contrary, the term “custom RV interiors” identifies the service, rather than the source. *See In re Matter of Dial-A-Mattress Operating Corp.*, 240 F.3d 1341 (Fed Cir. 2001).

And, despite Custom Auto’s contrary argument and the trial court’s finding, the inclusion of “Inc.” in the trade name is not sufficient to make it descriptive. *See Goodyear’s Rubber Mfg. Co. v. Goodyear Rubber Co.*, 128 U.S. 598, 602-03, 9 S. Ct. 166, 32 L. Ed. 535 (1888) (holding that indicators of business form such as “company” and “incorporated” are insufficient to transform a generic, unprotectable mark into a protectable mark); *see also Steelbuilding.com*, 415 F.3d at 1299 (recognizing the continued validity of *Goodyear*); *Spex, Inc. v. Joy of Spex, Inc.*, 847 F. Supp. 567 (N.D. Ill. 1994) (holding that “Spex” was unprotectable as merely descriptive

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and lacking sufficient secondary meaning, and “Inc.” given no weight in determining protectability).

Custom Auto goes on to argue that, even if we find that “custom RV interiors” is generic, Washington protects generic trade names if there is evidence of secondary meaning. But the case on which Custom Auto relies, *Electric Supply Co. v. Hess*, 139 Wash. 20, 245 P. 27 (1926), does not support its proposition. In *Electric Supply*, our Supreme Court found that the trade name “Electric Supply Company” was made up of “common, descriptive, generic words,” entitling the plaintiff to protection only if it was able to demonstrate secondary meaning. *See Elec. Supply*, 139 Wash. at 24-25. It appears that in *Electric Supply*, our Supreme Court found that the trade name was insufficiently descriptive, not generic, entitling it to protection only upon a showing of secondary meaning. *See Elec. Supply*, 139 Wash. at 24-25. But even if *Electric Supply* held that generic trade names are subject to protection upon a showing of secondary meaning, both preceding and subsequent case law has made it clear that generic trade names are not subject to trade name protection. *See John Vittuci Co. v. Merline*, 130 Wash. 483, 489, 228 P. 292 (1924) (holding that a generic name, or a name merely descriptive of an article of trade, is not entitled to legal protection); *see also Am. Auto Ins. Co. v. Am. Auto Club*, 184 F.2d 407, 409 (9th Cir. 1950); *Abercrombie & Fitch Co.*, 537 F.2d at 9 (holding that generic trade names are not subject to protection, regardless of any secondary meaning).

Here, “custom RV interiors” is a generic trade name and, even though Custom Auto has been using the trade name “custom RV interiors” for over 15 years, and has likely established some consumer recognition, it is not entitled to legal protection. *See John Vittuci Co.*, 130 Wash. at 489. But even if we found that “custom RV interiors” is slightly descriptive, no evidence

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supports Custom Auto's argument that it has a secondary meaning entitling it to trade name protection.

B. Secondary Meaning

Custom RV argues that, even if we find “custom RV interiors” is descriptive, Custom Auto has failed to demonstrate that it has any secondary meaning. Specifically, Custom RV argues that Custom Auto’s vague assertion of customer confusion was insufficient to show that the trade name has sufficient strength in the marketplace. Custom Auto argues that the evidence is sufficient to show confusion because suppliers and customers express confusion. Because Custom Auto failed to show that a “substantial segment” of relevant purchasers, suppliers, or agencies associate the term “custom RV interiors” with Custom Auto’s business, “custom RV interiors” does not have a secondary meaning.

Even a descriptive trade name is not protectable unless it has sufficient strength in the marketplace, i.e., secondary meaning. *See Evergreen State Amusement Co. v. S. F. Burns & Co.*, 2 Wn. App. 416, 422-23, 468 P.2d 460, *review denied*, 78 Wn.2d 993 (1970). Secondary meaning is present if, in the mind of the public, the primary significance of a product or feature or term is to identify the source of the service, rather than the service itself. *See Evergreen*, 2 Wn. App. at 423. Proof may be made, inter alia, by evidence of (1) a survey of a representative sample of consumers; (2) the nature and extent of public exposure achieved by the designation; (3) length of time of use; (4) advertising and other promotional efforts, with commercial success; and (5) intentional copying. *See PaperCutter, Inc. v. Fay’s Drug Co., Inc.*, 900 F.2d 558, 564 (2d Cir. 1990). But confusion that results from a competitor’s use of almost identical business names is not subject to trademark protection and cannot be used as evidence to show “likelihood of confusion” when that name truthfully describes the competitor’s own product. *William R. Warner & Co. v. Eli Lilly & Co.*, 265 U.S. 526, 528, 44 S. Ct. 615, 68 L. Ed. 1161 (1924).

Here, although Custom Auto has used the name “custom RV interiors” for over 15 years, has heavily advertised using that name and David and LJ may have intended to copy the name, Custom Auto has failed to provide sufficient evidence that a “substantial segment” of relevant purchasers, suppliers, or agencies associate the term “custom RV interiors” with Custom Auto’s business.<sup>9</sup> While Custom Auto alleges confusion by “a number” of suppliers and “several” customers, it has provided only two specific examples: a supplier sent it an email intended for Custom RV, and a security company contacted it about what the security company believed to be a relocation. This is insufficient to establish confusion or secondary meaning.

Furthermore, if certain key words are identical, the addition of words of a personal or geographic nature can sufficiently distinguish a business. *See Puget Sound Rendering, Inc. v. Puget Sound By-Products*, 26 Wn. App. 724, 730, 615 P.2d 504 (1980) (suggesting changing the name from Puget Sound By-Products to Darling Delaware, Inc., Puget Sound By-Products); *see also Tradewell Stores, Inc. v. T.B. & M., Inc.*, 7 Wn. App. 424, 427, 500 P.2d 1290 (1972) (holding that changing Family Mark-It to Al’s Family Mark-It sufficiently distinguished the businesses). Here, there is a paucity of originality in the name “custom RV interiors” and, thus, Custom RV sufficiently distinguished its business from Custom Auto by adding the personally descriptive qualifier “Dave and LJ’s” before the phrase “Custom RV Interiors.” *See Tradewell Stores*, 7 Wn. App. at 429-30.

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<sup>9</sup> Custom RV asserts that the confusion must be on the part of customers and confusion by vendors or suppliers is irrelevant. But contrary to Custom RV’s argument, the confusion does not have to be on the part of customers. *See Puget Sound Rendering*, 26 Wn. App. at 728-29 (where the plaintiff’s proof included (1) a statement from the Department of Labor and Industries regarding one of defendant’s employees, (2) a repair bill for work done on one of defendant’s vehicles, (3) shipment of a motor ordered by defendant, and (4) plastic barrels ordered by plaintiff were returned with defendant’s name printed on them).



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#### Consumer Protection Act

Trade name infringement can be a violation of the CPA, ch. 19.86 RCW. *See Seattle Endeavors*, 123 Wn.2d at 349-50 (holding that trade name infringement is not a per se violation of the CPA, but rather a function of overlap between the nature of proof required in both trade name infringement cases and CPA violations). The CPA proscribes unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. RCW 19.86.020. And any person aggrieved by a violation of RCW 19.86.020 may seek injunctive relief. Former RCW 19.86.090 (1987). In order to demonstrate a CPA violation, the claimant must show (1) an unfair or deceptive act or practice (2) in the conduct of trade or commerce, (3) injury to the claimant's business or property, (4) a causal link between the unfair act and injury suffered, and (5) sufficient showing of public interest. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785-92, 719 P.2d 531 (1986). Because "custom RV interiors" is not a protectable trade name, any award under the CPA is inappropriate. *See Seattle Endeavors*, 123 Wn.2d at 349-50.

#### Attorney Fees

Custom RV asks us to award it attorney fees and costs incurred dissolving the wrongful issue of the injunction. We may award attorney fees on equitable grounds in an action dissolving a wrongfully issued injunction in order to deter plaintiffs from seeking relief prior to a trial on the merits. *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 143, 937 P.2d 154, 943 P.2d 1358 (1997), *cert. denied*, 522 U.S. 1077 (1998); *Alderwood Assocs.*, 96 Wn.2d at 247. The award may exceed the amount of the bond required by CR 65(c) because the award is based on equity rather than the bond statute. *Ino Ino*, 132 Wn.2d at 143. Because we reverse and Custom RV

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prevails on appeal, upon compliance with RAP 18.1, it is entitled to reasonable attorney fees in an amount to be determined by our court commissioner.

We reverse.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

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QUINN-BRINTNALL, J.

We concur:

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HOUGHTON, C.J.

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ARMSTRONG, J.