WHAT’S IN A NAME? SMELLING THE ROSES.

By William Nicoson

“What’s in a name? That which we call a rose
By any other name would smell as sweet.”
– Juliet in Shakespeare’s “Romeo and Juliet”

Juliet Capulet convinced herself that Romeo Montague’s name, hateful to the Capulets, was insignificant compared to her love for him. In our later litigious days, her question usually implies that enormous value, rather than insignificance, attaches to a name which someone else seeks to borrow.

The Herndon Observer, for example, has brought suit against The Fairfax City Observer, claiming that one more Observer in the area is one too many. The Herndon paper has been observing since 1976, while the Fairfax City paper started observing only in 1995.

The Herndon Observer distributes 55,000 weekly papers, competing honorably with the Connection papers in Reston, Herndon and eastern Loudoun County, but not in Fairfax City. The Fairfax City Observer publishes 14,000 papers twice monthly, competing honorably with the weekly Fairfax Connection, but not in any area served by The Herndon Observer.

So, you ask, where and why the beef? Well, The Herndon Observer has said that it might distribute papers in Fairfax City in the future. It claims in its suit that it has an established market in Fairfax City already. It notes instances of confusion among advertisers produced by similar newspaper names. Of course the Herndon paper only knows about calls it received from prospective Fairfax City advertisers. Only the Fairfax City paper knows about confused callers seeking to place Herndon ads.

In a similar case, The Washington Post, which owns Gazette papers in Montgomery County, forced the Frederick Gazette, distributing papers only beyond Montgomery County, to renounce the name “Gazette”. But in that case, the plaintiff had announced firm plans to establish a Gazette in Frederick, and in any event, the case has no precedential value since the result was produced by settlement rather than judicial decision.

The Fairfax City Observer plans to fight rather than settle. In an open letter to readers, it has wisely made a public issue of the law suit, establishing a tough image as a new but growing publishing force to be reckoned with. And borrowing a page from President Clinton’s manual on litigation, it has established a legal defense fund.

What’s in a name these days? Image, marketability, and the three corporate R’s: recognition, reputation and respectability. And, oh yes, a lot of fees for lawyers. Whatever the outcome, the lawyers on both sides will be smelling Juliet’s roses.
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