

D. DOUGLAS DEPP

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NO. 2001-CA-1147

VERSUS

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COURT OF APPEAL

**MICHAEL A. NORTH AND
BULL'S CORNER
LAKEFRONT, L.L.C.**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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KIRBY, J. - DISSENTING

I respectfully dissent.

In its reasons for judgment the trial judge acknowledged that improper use of a trade mark constituted an offense or quasi offense. It went on to say “An action to enjoin the improper use of a registered name or mark may, therefore, be brought in the parish where the wrongful conduct may occur. LSA C.C.P. art. 74. Comment(e) following article 74 is instructive in this regard” I believe the trial court and the majority put too much reliance on the words “may occur” in article 74. Under their appreciation of the use of that phrase, the other venue codal articles are rendered meaningless because it is conceivable, although not necessarily likely, that wrongful conduct “may occur” literally anywhere. The fallacy of their interpretation of the phrase is pointed out by virtue of the fact that under a fair reading of the

petition the only factual allegation pertaining to Orleans Parish is that the individual defendant is domiciled there. The eleventh paragraph of the petition makes the claim of wrongful conduct: “Without petitioner’s consent, the defendants are using the name ‘Bull’s Corner’ as the name of their restaurant located in Metairie on the Old Hammond Highway, less than a mile west of the 17th Street Canal” (Emphasis added.) There is no allegation that the defendants are or may be doing anything in Orleans Parish. The suggestion otherwise is rank speculation. On these facts I would reverse the Judgment below and order the case transferred to Jefferson Parish, where the restaurant is located, or to the parish where the limited liability company’s registered office is, St. John the Baptist Parish.