

TRADEMARK - Descriptive words not subject to registration.

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<sup>4-20</sup>  
April 12, 1934.



Honorable Dwight H. Brown  
Secretary of State  
Jefferson City, Missouri

Dear Sir:

We have your request for an opinion as to whether or not the Missouri Kansas Coal Company, not a corporation, can register under the trade mark law the following facsimile:

"We are placing fuel in convenient sized paper bags with suggestion to the consumer that they place coal contained therein into the furnace without breaking the bag. This that they may eliminate any dirt or dust, thereby giving them the same cleanliness that they experience in burning competitive fuels." This will be advertised as "Clean Coal in Convenient Paper Bags."

Section 14329, R. S. Mo. 1929 provides that any person who wishes to adopt

"any particular name, term, design or device as his or their trademark to designate, make known or distinguish any article or goods, wares or merchandise by him or them manufactured or prepared,"

shall file an application with the Secretary of State. We call your attention to the words "name", "term", "design", "or device". An examination of the facsimile presented shows that it is not a name, term, design or device within the meaning of the above statute, and at best is merely descriptive of the man-

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ner in which coal is to be sold. Mere descriptive terms of an article are not subject to registration under the trade mark law. A. J. Reach Company v. Simmons Hardware Company, 155 Mo. App., 412 (1911). It is this fundamental distinction between a trade name and merely descriptive words that prevents monopolies. It is one thing for a vendor to establish a business under a trade name, and an entirely different thing for a vendor to try to monopolize the business by adopting descriptive terms so as to prevent competitors from describing their produce with the same or similar descriptive terms. McGrew Coal Co. v. Menefee, 162 Mo. App. 209, l.c. 216.

It is, therefore, the opinion of this department that the above facsimile cannot be registered under the trade mark law of this state.

Yours very truly,

FRANKLINE E. REAGAN  
Assistant Attorney General

APPROVED:

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ROY McKITTRICK  
Attorney General

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