

July 12, 1934



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

Dear Mr. Brown:

This department acknowledges receipt of your letter of June 28, 1934 with enclosures. Your letter is as follows:

"We are enclosing application for registration of trade mark from George J. Heath, Long Island, N. Y., on which we are in doubt. Will you please give us your opinion regarding this application."

It appears that the applicant is seeking to have registered as a trade mark the words "Rosary Meditation Medal". Turning to the figures one and two, which appear to be facsimiles of the object or article which will bear the trade mark above mentioned, we find that the words "Rosary Meditation Medal" are not included as a part of the figures or facsimiles. We have disregarded, as you may, the printed matter following the facsimiles above referred to.

Section 14329, Revised Statutes of Missouri, 1929, under the title of "Trade-Marks, Names and Emblems", provides:

"If any mechanic, manufacturer, association or union of workmen, or other persons shall wish to adopt any particular name, term, design or device as his or their trade-mark to designate, make known or distinguish any article or goods, wares or merchandise by him or them manufactured or prepared, or any union of workmen desire to designate or make known the place in which union labor is employed, he or they may write out a description of such name, term, design or device, describing the same accurately, and sign and acknowledge the same before some officer competent to take acknowledgment of deeds, and file same, together with a facsimile of the same, term, design or device for registration, in the office of the secretary of state; said secretary shall deliver to said mechanic, manufacturer, association or union of workmen, or other persons so filing the same, a duly attested certificate of the filing of the same, for which he shall receive a fee of one dollar; such certificate shall, in all suits and prosecutions under this article, be sufficient proof of the adoption of such label, trade-mark or form of advertisement, and of the right of such mechanic, manufacturer, association or union of workmen or (other) persons to adopt the same. No label, trade-mark or form of advertisement shall be registered that in any way resembles or would probably be mistaken for a label or trade-mark already registered; and no trade-mark duly registered in the office of the com-

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missioner of patents of the United States shall be registered under this section by (any) person other than the owner thereof."

The case of Oakes v. Candy Company, 146 Mo. 391, was a suit by injunction and for damages for the alleged misuse of an alleged trade mark which involved the name given by a manufacturer to certain candy. The so-called trade mark was not anywhere stamped on the candy. At page 398 of the opinion, the court said:

"An article can only be said to be distinguished by a trade-mark when that mark is connected with, annexed to or stamped, printed, carved or engraved upon the article as it is offered for sale."

We see no reason why the foregoing statement of the law does not apply to the application and facsimile under consideration. Assuming that the article to which is sought to have a trade mark attached is a proper object for that purpose, then the registering of the words "Rosary Meditation Medal" will not be any protection to the manufacturer or owner thereof and should not be registered unless it appears that the name used as a trade mark will appear on the article or design itself.

We are returning your enclosures herewith.

Yours very truly,

GILBERT LAMB
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

GL:FE