

NAMES: +

EMBLEMS: --

) Colorable imitations of the name "Better
Business Bureau" cannot be registered under
Article II, of Chapter, 136, R. S. Mo. 1929.

6-29
June 28, 1935.



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

Dear Sir:

This will acknowledge receipt of your request
for an opinion which reads as follows:

"Confirming conversation of this date,
will you please furnish us with an
opinion on applications for registra-
tions of emblems, etc., submitted by
the Better Business Bureau of St. Louis,
with particular reference to the pur-
poses set forth in the applications."

Appended to your letter is the original letter
of F. E. Williams, Attorney, at St. Louis, Missouri, which
reads as follows:

"Enclosed you will find applications,
in duplicate, for the registration
of emblems, insignia and names under
Article II, Chapter 136, Revised
Statutes of Missouri, 1929, together
with a check for \$6.00 to cover your
fees for registration.

"The applications for registration
cover the following:

Better Business Bureau;
Better Business Men's Bureau;
Better Business Association;
Better Business Men's Associa-
tion;
Better Business League; and
Better Business Men's League."

Also find attached six applications of the Better Business Bureau, of St. Louis, Missouri, to register emblems, insignia and name under Article II, Chapter 136, R. S. Mo. 1929. There is also attached a cashier's check of F. E. Williams, in the amount of six dollars.

We note from the above letter that Mr. Williams desires to register connotations and derivations from the incorporated name of "Better Business Bureau" of St. Louis, Missouri, under Article II, Chapter 136, of Revised Statutes of Missouri, 1929, and in particular under Section 14340 of Article II, of Chapter 136, supra. Said section provides as follows:

"Every person, society, association or corporation, assuming, adopting or using the name of a military, ex-military, patriotic, benevolent, humane, fraternal or charitable organization incorporated or organized under the laws of this or any other state or of the United States and members whereof may wear or exhibit the recognized or established badge, button, emblem, decoration, insignia or charm thereof, or any emblem, insignia or charm representing a component part of the said recognized or established badge, button, emblem, decoration, insignia or charm, shall write out the name of such military, ex-military, patriotic, benevolent, humane, fraternal or charitable organization, together with a description of such recognized and established badge, button, emblem, decoration, insignia or charm, and the component parts of such badge, button, emblem, decoration, insignia or charm, and sign and acknowledge the same before some officer competent to take acknowledgment of deeds, and file the same, together with a facsimile of said badge, button, emblem, decoration, insignia or charm, shall write out the name of such military, ex-military, patriotic, benevolent, humane, fraternal or charitable organization, together with a description of such recognized and established badge, button, emblem, decoration, insignia or charm, and the component parts of such badge, button, emblem, decoration, insignia or charm, and sign and

acknowledge the same before some officer competent to take acknowledgment of deeds, and file the same, together with a facsimile of said badge, button, emblem, decoration, insignia or charm, and the component parts of said badge, button, emblem, decoration, insignia or charm, for registration in the office of the secretary of state; said secretary shall deliver to such person, society, association or corporation so filing the same and entitled thereto under this article, 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 badge, button, emblem, decoration, insignia or charm, and the component parts thereof, and of the right of such person, society, association or corporation to adopt the same."

It is evident from a careful perusal of the above statute that the Legislature intended to protect every person, society, association or corporation from other organizations assuming, adopting and using the name or emblem of such person, society, association or corporation that had appropriated and used such names or emblems. It is our opinion that the Legislature, when enacting the above section of the statute was mindful of the fact to use the words of the Court in 270 Fed. loc. cit. 731, "the mere incorporation of an organization under a particular name does not add anything to its right to use the name as against another organization **** already using the same or similar name." You will further note that if certain requirements of the above section of the statutes are met that any person, society, association or corporation will receive a certificate as provided for and that in all suits and prosecutions under Article II, Chapter 136, supra, will be sufficient proof of adoption of such emblems and of the right to adopt same.

Section 14338 of R. S. No. 1929, prohibits the misuse of names of certain societies, and reads as follows:

"No person, society, association or corporation shall assume, adopt or use the name of a military, ex-military, patriotic, benevolent, humane

fraternal or charitable organization incorporated or organized under the laws of this or any other state or of the United States, or a name so nearly resembling the name of such incorporated organization as to be a colorable imitation thereof, or calculated to deceive any person with respect to such corporation. In all cases where two or more such societies, associations, corporations or organizations claim the right to the same name or names substantially similar as above provided, the organization which was first organized and used the name and first became incorporated or organized under the laws of the United States or of any state in the union, shall be entitled in this state to the prior and exclusive use of such name, and the rights of such societies, associations, corporations or organizations and of their individual members shall be fixed and determined accordingly."

It is the opinion of this department that an attempt is made by the Better Business Bureau of St. Louis to register under the provisions of Article II, Chapter 136, supra, what might be, every colorable imitation of their original incorporated name. A careful reading of the six applications heretofore mentioned and submitted along with your request for an opinion clearly bears this out.

We are of the opinion that the above mentioned sections of the statutes did not contemplate the registration of every colorable imitation, connotation or derivation of an organization's incorporated name, but that to register under its provisions the original incorporated name or emblem of a military, ex-military, patriotic, benevolent, fraternal, humane, or charitable organization used in connection therewith would be sufficient.

We conclude that the names submitted cannot be registered

nor may the corporate name be registered inasmuch as such non-profit association's name is not the name of any military, ex-military, patriotic, benevolent, fraternal, humane, or charitable organization within the meaning of Article II, of Chapter 136, supra.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney-General.

APPROVED:

JOHN W. HOFFMAN, Jr.
(Acting) Attorney-General.

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