

TRADE-MARKS: Resemblance between two trade names as to raise a probability of public mistaking one for the other may not be registered.

April 16, 1936. 4-20



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

Dear Sir:

We are in receipt of your request for an opinion under date of April 11, 1936, as follows:

"We have an application from Clifford Farmer of Springfield, Mo., to register his milk receptacles under Section 12449, the name being Rolling Acres.

"Under date of Feb. 9, 1933 we registered Rolling Acre Dairy for Miss Edith Harsh of St. Louis.

"Please advise if this registration would prevent Mr. Farmer from registering his trade name."

We respectfully direct your attention to an opinion rendered you under date of June 2, 1933, wherein a similar question was raised and wherein we stated as follows:

"But if it be contended and conceded the 'Names' of each company are not ineligible for registration under Section 12449, R. S. of Mo. 1929, because the words used are geographical and descriptive only; still for another legal reason, the 'South St. Louis Dairy Company' is not entitled to registration under said Section 12449. It is true the South St. Louis Dairy

Company has some words and features, in its name, brand and device, not found in the name and brand and device of the St. Louis Dairy Company but that alone is not sufficient to render the name and brand eligible to registration under existing conditions.

"The rule of law is, if the resemblance between the two trade names is sufficiently close to raise the probability the public might mistake one company's product for the other, in such event the latter applicant for registration is not entitled to register his or its trade name, mark or device as the case may be. The name 'St. Louis Dairy Company' and 'South St. Louis Dairy Company' and the wording on the bottles of the two companies and so far as we can see by the drawings, the shape and size of the bottles of the two companies are so similar and the resemblance between the two trade names and the bottles and the words thereon is sufficiently close in the opinion of this Department to raise a probability of the public mistaking one company's product for that of the other and therefore it is our opinion, as the St. Louis Dairy Company was registered in October, 1932, and received a certificate of registration from the Secretary of State, that the South St. Louis Dairy Company can not now legally register bottles and the words thereon under Section 12449.

Sanders v. Utt, 16 M. A. 322;
Sanders v. Jacobs, 20 M. A. l.c. 98;
McCartney v. Garnhart, 45 Mo. 592;
Gamble v. Stevenson, 10 M. A. 581."

The resemblance between the two trade names "Rolling Acres" and "Rolling Acre Dairy" are sufficiently close to raise a probability of the public mistaking one company's product for that of the other, and therefore it is our opinion, as

Hon. Dwight H. Brown

-3-

April 16, 1936.

Miss Harsh of St. Louis registered the trade name of "Rolling Acre Dairy" on February 9, 1933, and received a certificate of registration from the Secretary of State, that Mr. Farmer can not now legally register his trade name "Rolling Acres".

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

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

MW:HR