



STATE OF KANSAS

*Office of the Attorney General*

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

CURT T. SCHNEIDER  
Attorney General

July 1, 1975

ATTORNEY GENERAL OPINION NO. 75-277

The Honorable Elwill M. Shanahan  
Secretary of State  
2nd Floor - State Capitol Building  
Topeka, Kansas 66612

Attn: Mr. Sherman Parks

Re: Trademarks--Registration

Synopsis: A servicemark which so resembles a mark previously used in this state and not abandoned as to be likely to cause confusion or mistake or to deceive, when applied to the services of the applicant, is ineligible for registration under K.S.A. 81-112.

\* \* \*

Dear Secretary Shanahan:

You inquire concerning an application to register a servicemark recently received from Easy Method Driving School, Inc. The mark, a copy of which you enclose, is thus:

/SEARS/ EASY METHOD DRIVING SCHOOL

The word "Sears" is printed in fashion identical to the word as printed and used by Sears, Roebuck and Company, to identify its stores, goods and services.

K.S.A. 81-112 states in pertinent part thus:

"A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it

\* \* \*

The Honorable Elwill M. Shanahan

Page Two

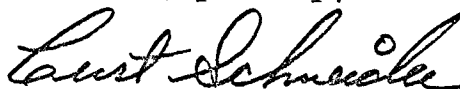
July 1, 1975

(f) consists of or comprises a mark which so resembles a mark *registered* in this state or a *mark or trade name previously* used in this state by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive;

(g) consists of or comprises a mark which so resembles a mark registered in the United States patent office by another and not abandoned, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive . . . ."

These subsections provide alternative ground for nonregistration. If a mark "so resembles" 1) a mark registered in this state, 2) one registered with the United States patent office, or 3) one previously used in this state, and not abandoned "as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive," it is ineligible for registration. We have no information whether the Sears mark is registered with the United States patent office. We understand that it is not registered in this state. It is one, however, which has been and is being used in this state, and is not abandoned, and the mark of the applicant comprises a mark which so resembles that of Sears, Roebuck and Company presently in use in this state that the mark of the applicant is manifestly likely to cause confusion or mistake. It is accordingly, in our judgment, ineligible for registration by Easy Method Driving School, Inc., until and unless the applicant is shown to have been legally granted the use of this mark by the holder and user of the mark which we believe it to resemble, indeed, virtually to duplicate, that of the Sears, Roebuck and Company.

Yours very truly,



CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj