



STATE OF KANSAS

*Office of the Attorney General*

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*Curt T. Schneider*  
*Attorney General*

August 1, 1978

ATTORNEY GENERAL OPINION NO. 78-252

Mr. Sherman A. Parks, Jr.  
Deputy Assistant Secretary of State  
Office of the Secretary of State  
2nd Floor - State Capitol  
Topeka, Kansas 66612

Re: Service Marks--Registration--Eligibility

Synopsis: The service marks Oak Park, Corinth Downs, Verona Hills and Verona Gardens are not ineligible for registration due to similarity to existing corporate names described herein, under K.S.A. 81-112(f).

\* \* \*

Dear Mr. Parks:

You enclose a copy of a letter dated March 28, 1978, from counsel for J. C. Nichols Company, concerning the applicability of Opinion No. 76-224 of this office to their request to register as trade- or service-marks the names Oak Park, Corinth Downs, Verona Hills and Verona Gardens. You advise that in your corporation files, you have registered corporations bearing the names Corinth Downs Home Association, Inc., Verona Gardens Home Association, Inc., and Oak Park, Inc.

In Opinion No. 76-224, we concluded that a service mark which was sought to be registered was not in fact registrable when it so resembled a corporate name of an existing corporation as to be likely to cause confusion or mistake. In so concluding, we relied upon K.S.A. 81-112, which provides in pertinent part thus:

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"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

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(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 . . . ."

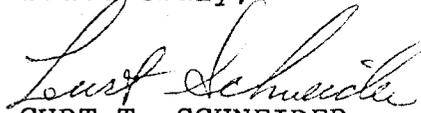
Upon receiving the registration application for the marks described above, you furnished counsel for the applicant a copy of Opinion No. 76-224, and they in turn have responded, describing the circumstances under which the names in question have come into use. The registration of the marks was sought by J. C. Nichols Company as service marks to identify real estate development and sales services, and the establishment, development and operation of shopping centers by the applicant. The names of the corporations described above all belong to homes associations, comprised of residents of residential areas which were developed by the Nichols Company. Counsel advise, in particular, that when the company decides upon a name to utilize in designating a real estate development, it files a plat of the land, all of which is owned by the J. C. Nichols Company. Thus, the Nichols company creates the name and utilizes it in the development of a residential area or appropriate shopping center. Subsequently, and essentially in the role of a trustee, the company establishes a homes association, the membership of which is composed of the owners of lots in the platted development area. When a substantial number of the lots have been sold, operation of the homes association is turned over to the members, comprising only those persons who own lots in the area. After that, the company has no further interest in the homes association except by virtue of its ownership of any unsold lots in the platted area.

Under K.S.A. 81-112, cited *supra*, a "mark" which is registered and a mark or trade name previously used in the state and not abandoned prevents the registration of any other mark which is sufficiently similar as to be likely to cause deception, mistake or confusion, "when applied to the goods or services of the applicant."

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The corporate names of the homeowners' associations describe presumably nonprofit associations of homeowners residing in these well-known residential areas. Membership in the associations is presumably contingent upon the ownership of property therein. It appears unlikely that these corporations engage in the sale of goods and services to the public, although, of course, they may in the conduct of their affairs purchase goods and services. Considering the nature of these associations, their essentially private character, their lack of any substantial public commercial activity, the nature of the commercial services proposed to be offered under the marks which have been sought to be registered, we do not believe that the similarity between the proposed marks and the registered corporate names is such as to be likely to cause confusion or mistake between the real estate development and sales services of the applicant, and the private homeowners' associations involved. Thus, in our judgment, the proposed marks are not ineligible for registration because of their similarity to the corporate names described above.

Yours truly,

  
CURT T. SCHNEIDER  
Attorney General

CTS:JRM:kj