



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 12, 1976

ATTORNEY GENERAL OPINION NO. 76-224

Mr. Sherman A. Parks
Attorney
Office of the Secretary of State
2nd Floor - State Capitol Building
Topeka, Kansas 66612

Re: Trade Marks--Registration--Conflict with Registered
Corporate Names

Synopsis: Service mark lacks status of registrability where it is so similar to a corporate trade name being used as to cause mistake, deception or confusion relative to the goods and services offered by the firms involved.

* * *

Dear Mr. Parks:

You request an opinion from this office relative to the concern over the filing of a trade name with your office and the name of a corporation which was on file at the time of the trade name registration. You advise that the corporation Lighting Center, Inc. filed its articles of incorporation on February 26, 1976, and that the Kriz Davis Company of Topeka, Kansas, filed a service mark registration with your office under the name of Lighting Centre on March 19, 1976. Specifically you ask whether there is a conflict between the two which should affect the trade or service mark registrability.

K.S.A. 81-111 provides in part:

"(a) The term "trade-mark" as used herein includes any word, name, symbol, or device or any combination thereof adopted and used by a

Mr. Sherman A. Parks

Page Two

July 12, 1976

person to identify goods made or sold by him and to distinguish them from goods made or sold by others.

* * *

(d) The term "trade name" means any name, title, designation, or device lawfully adopted and used by any person engaged in any business, trade, occupation, or vocation to identify such business, trade, occupation, or vocation and distinguish it from the business, trade, occupation, or vocation and distinguish it from the business, trade, occupation or vocation of others whether or not registered, filed or recorded under any laws of this state, or of any other state, or of the United States of America."

It appears from the information you have supplied that Lighting Center, Inc. is a name lawfully adopted pursuant to the Kansas Corporation Code by the incorporators to identify and distinguish their business from the business, trade or occupation of others. And, as such it would appear that for the purposes of the Trade Mark Registration Act the corporate name meets the definition of trade name as above quoted.

K.S.A. 81-112 provides 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 . . .*

* * *

(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;" [Emphasis added.]

Further it would be our judgment that the corporate name as registered meets the "previously used . . . and not abandoned" criteria provided in section (f), *supra*.

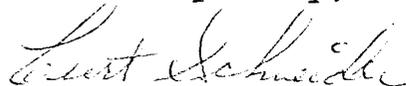
Mr. Sherman A. Parks
Page Three
July 12, 1976

Thus the fundamental question which remains is whether the use of Lighting Center as opposed to Lighting Centre causes confusion or would lead to mistakes or deception. It is readily apparent that the two names are identical in pronunciation and that they mean precisely the same thing. The only deviation is the employment of an alternative spelling for the word center [centre being the second suggested spelling or chiefly British version. *Webster's New Third International Dictionary*, (1966)].

Accordingly, it is our opinion that the spelling, definition and pronunciation for the trade name and service mark are so patently similar that the registration of the service mark should be considered as lacking the qualifications for registrability as provided in K.S.A. 81-112(f).

Further, we add that the duties of the Secretary of State, insofar as they must be considered beyond being strictly ministerial¹, require cross-checking the records of registrations for both corporate names and trade-mark and service marks (to include names) in order to insure that the objectives for registration pursuant to K.S.A. 81-111 *et seq.* are fully met. To this extent the conclusion rendered by this office in an opinion addressed to you dated October 4, 1971, is so modified.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JPS:kj

1. The obligations of the Secretary of State under K.S.A. 81-111 *et seq.* are, we believe, directly analogous to that office's duties under the corporation code as examined by the Supreme Court: "Under the general corporation code . . . the duties of the secretary of state in receiving, filing and certifying articles of incorporation or amendments thereto are not strictly ministerial." *Kansas Milling Co. v. Ryan*, 152 Kan. 137, 102 P.2d 970 (1940).