

Trade Names—Secretary of State.

Trade name authorized to be registered in the office of the Secretary of State must denote goods handled by the persons desiring to register the same. The names "Used Car Market" and "General Used Car Market" designate a business or place of business or a name for the transaction of business and are not subject to registration in the office of the Secretary of State. The words "Used Car Market" may not be exclusively appropriated by any person.

W. E. Harmon, Esq.,
Secretary of State,
Helena, Montana.

September 18, 1929.

My dear Mr. Harmon:

You state that there has been registered in your office the trade name "Used Car Market" and that you are now requested by other parties to register the trade name "General Used Car Market" and you inquire if there is such similarity between the names that you are

prohibited from registering the latter because of the prior registration of the former.

The law involved is found in Sections 4286 to 4292 R.C.M. 1921. The trade name or mark therein authorized to be registered in your office is one that denotes "any goods to be goods imported, manufactured, produced, compounded or sold" by the person registering the same. It is further provided therein that no "name, word or expression generally denoting any goods to be of some particular class or description or the designation or name for any mill, hotel, factory or other business" may be registered.

It is apparent that it is only a name or mark that denotes goods handled by a person which can be registered. The words "Used Car Market" and "General Used Car Market" are not descriptive of any particular goods handled by the persons engaged in the buying and selling of used cars. These words denote the business of buying and selling used cars or a place where used cars may be bought and sold. Words denoting a general business rather than the goods and product which are the subject of that business may not be registered under the statute.

If these parties are partners or individuals and desire a name under which to transact their business they may appropriate one by filing a certificate with the county clerk and recorder to that effect as is provided by Sections 8019 to 8024, inclusive. However, as to the words "Used Car Market" I am of the opinion that no person may appropriate these words to his own use and benefit to the exclusion of their use by others as the words are generic and are merely descriptive of an article of trade or of a common business, or a place where used cars can be bought and sold. (See *Esselstyn vs. Holmes*, 42 Mont. 507). Such words may not be appropriated to the exclusive use of one person engaged in such business so as to deprive other persons in the same business from using them to advertise that they maintain a place where used cars may be bought and sold. Such a name is no more the subject of exclusive appropriation than would be the words "garage," "filling station," "second-hand store," or "meat market."

I am therefore of the opinion that inasmuch as the words "Used Car Market" and "General Used Car Market" do not denote any goods handled by the persons who have registered or desire to register the same but rather designate a business or place of business or a name under which individuals or partnerships transact business, they are not the subject of registration in the office of the secretary of state.

I am further of the opinion that the words "Used Car Market" may not be exclusively appropriated by any person for his own use and benefit to the exclusion of their use by others.

Very truly yours,

L. A. FOOT,
Attorney General.