

Opinion No. 342.**Trade-Marks.**

HELD: A corporation named "Ten Cent Drug Store" may register such name as a trade-mark, under the provisions of Sections 4286 and 4287, R. C. M. 1935.

October 24, 1938.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

Dear Mr. Mitchell:

You have presented the application of the Ten Cent Drug Store, a corporation, signed by its vice-president, for registration of the name "Ten Cent Drug Store" as a trade-mark, under the provisions of Sections 4286 and 4287, R. C. M. 1935. On these facts you have presented the following:

"I have now been presented with a claim for a trade name under the

name of an existing Montana corporation and it will be further appreciated if you will advise me whether, if there is a corporation of record by the same name as that of the trade name submitted for registration, I should place the trade name in the files of my office—first, if application is made by the corporation itself and, second, if application is made by other individuals not interested in the corporation.”

The name is a trade-mark for a business, and as such may be registered. See my opinion to you dated October 11, 1938, being Opinion No. 339, Volume 17, Opinions of the Attorney General, also Opinion No. 2 Id., given to you December 1, 1936. The name itself does not appear to be objectionable under the provisions of Section 6812, for, with the use of the words “Ten Cent,” it is not merely descriptive of the business or the place where the business is carried on. Since the request comes from the corporation which bears this name, and the apparent owner, the name may be filed by you.

Your second question presents a moot question since it appears the application is not made by “other individuals not interested in the corporation.” Moreover, we should want more facts when and if such question is presented. We, therefore, express no opinion on this question.