

Opinion No. 45.**Trade Marks and Names—Florence Hotel.**

HELD: A corporation claiming to be the owner of a trade mark or name known as the Florence Hotel may record the same in the office of the Secretary of State, although there is a Montana corporation of the same name, since there is no other like trade mark or name recorded.

By recording a trade mark or name the applicant secures only a prima facie right and not an exclusive property right in the trade mark or name.

April 10, 1939.

Hon. Sam W. Mitchell
Secretary of State
The Capitol

Dear Mr. Mitchell:

You have asked my opinion on the question whether you should accept for registration by the Missoula Real Estate Association, a corporation, the name of "Florence Hotel" as a trade mark or name, there being now in existence a Montana corporation known as "Florence Hotel Company."

The Missoula Real Estate Association, in its verified notice of adoption of trade mark tendered for filing with the Secretary of State, asserts that it has owned a certain property in Missoula, Montana, known as the "Florence Hotel" since 1888, and that at all times since said date the association has used said name; that on January 20, 1916, certain parties filed articles of incorporation, using the name of "Florence Hotel" as a corporation and that said incorporators of said company and their successors and assigns ceased to do business on or about the

8th day of August, 1925, and have not used said name since said date; that even though the said Florence Hotel was incorporated as a corporation, the Missoula Real Estate Association continued to use the name "Florence Hotel" and at no time ceased to use this name; that the said association is at present using the name and has at all times used this name since 1888. The president of said association, in an affidavit attached to the notice of application, states that the Missoula Real Estate Association is the exclusive owner of the above described trade mark or name "Florence Hotel" and claims the same as a trade mark to be used in the ordinary course of its business.

Under date of December 1, 1936, this office advised you in Opinion No. 2, Volume 17, Opinions of the Attorney General, as follows:

"The applicant secures only prima facie right to the trade-name. His right to the trade-name must be based upon a property right to the name by reason of appropriation, user, exclusive right to user, and such other necessary requisites and characteristics as are required by law. The applicant is not benefited to the exclusion of another claimant in a case where a purported trade-name is recorded, nor is such other claimant foreclosed from his legal remedy, any more or to any greater extent than if the applicant should attempt to appropriate the trade name and use it without the formality of recording. The true owner, if there be one, must still prove ownership. 'Registration of a mark wrongfully procured under a state statute may, in proper proceedings, be cancelled or annulled.' (63 C. J. 471.)

"Your office is an administrative office. Your duties in relation to recording trade-marks and names are purely ministerial. You are not required to determine, when a trade-mark or trade-name is tendered to you for recording, whether or not it is a mark or name in which the applicant may secure exclusive property rights."

On these facts and principles, since there has been no like trade mark or name recorded in your office, and since

the notice seems to meet the requirements of the statute, and since the applicant by having the trade mark or name recorded secures thereby only a prima facie right to the trade name and does not secure exclusive property rights thereby, which cannot be challenged by other parties who may claim the right thereto, it is our opinion that you should accept and record the same. The trade mark or name appears to be one which may be recorded in accordance with the views of this office heretofore expressed in our opinion above referred to. See also Opinions No. 339 and 342 (Id.).