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(R75-369)  
McDougal

August 26, 1975

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ARIZONA ATTORNEY GENERAL

Ms. Doris Hazelwood  
Department of State  
State Capitol  
Phoenix, Arizona 85007

Dear Ms. Hazelwood:

This is in response to your recent request wherein you ask the following question:

Is a registered trade name which was obtained by the use of false statements in the registration application void?

An applicant for a trade name contends that the person who previously registered this same trade name did so by using false representations. This applicant wishes to have the prior certificate cancelled and the trade name issued to him.

The Secretary of State is not, at this point, compelled to declare the first certificate void. The applicant does not have a right to have the trade name issued to him.

One cannot falsify facts in his application for a trade name. If any such fraud is discovered, the Secretary of State is commanded not to issue the certificate. A.R.S. § 44-1460.01.B. Once the certificate of registration is issued, however, the Secretary is under no compulsion to revoke the certificate upon the complaint of another.

There is no Arizona case law directly on point. Under federal law and that of other states, however, it is clear that in this situation the appropriate remedy is an action to have the patent set aside. See, e.g., Coca-Cola v. Stevenson, 276 F. 1010 (S.O. Ill 1920); Stogop Realty Co. v. Marie Antoinette Hotel Co., 217 App. Div. 555, 217 N.Y.S. 106 (1926). The standard procedure is to join the registrar of trademarks (in this case the Secretary of

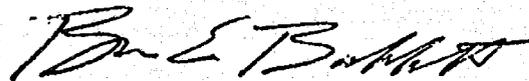


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State) as party defendant and sue to compel cancellation of the original trade-mark or trade name. See Prince Dog and Cat Food Co. v. Central Neb. Packing Co., 305 F.2d 904 (Ct. Cus. & Pat. App. (1962); Minnesota Min. & Mfg. Co. v. Minnesota Linseed Oil Paint Co., 229 F.2d 448 (Ct. Cus. & Pat. App. 1956); Vames Huggins & Sons, Inc. v. Avenarius Bros., 223 F.2d 494 (Ct. Cus & Pat. App. 1955); Schnur & Cohan, Inc. v. Academy of Motion Picture Arts & Sciences, 223 F.2d 478 (Ct. Cus. & Pat. App. 1955); Fred W. Amend Co. v. American Character Doll Co., 223 F.2d 277 (Ct. Cus. & Pat App. 1955); Prince Vacuum Stores v. Admiral Corp., 223 F.2d 269 (Ct. Cus & Pat. App 1955); Skil-Craft Corp. v. M. Lober & Associates, 138 F. Supp. 313 (S.D.N.Y. 1956).

While it is possible for the Secretary to act in this situation, he is not compelled to. If the Secretary does act and revokes the certificate of registration granted to the first applicant for this trade name, the Secretary may be subjected to litigation for wrongful revocation. It is not the duty of the Secretary at this point in time to examine the truthfulness of the application for the certificate previously granted. The burden of proving falsity of the certificate is on the person challenging its validity. He must demonstrate he is entitled to relief.

Very truly yours,



BRUCE E. BABBITT  
Attorney General

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