

MAINE STATE LEGISLATURE

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June 4, 1940

Mr. Burkett

Attorney General

Mr. Fessenden

Hospital Insurance Blue Cross Trade-Mark

A few years ago the Secretary of State granted the exclusive use of the Blue Cross as a trade-mark for a hospital insurance society. Recently, another organization has applied for a trade-mark of a Blue Cross with a symbol imposed on the center of the blue cross, and you have asked me to ascertain whether or not the Secretary of State may issue the right for the exclusive use of the new trade-mark in view of the exclusive use previously granted with respect to the plain blue cross.

Section 12 of Chapter 49 of the Revised Statutes of 1930, and the Sections following thereafter, set forth the matter which is subject to the right of trade-mark; the procedure for protecting the trade-mark, and the manner in which the same may be used. In substance, it is provided that when a person uses any peculiar name, letter, mark, device or figures attached to or connected with any article manufactured or sold by him, no other person shall use, without his consent, the same or any similar name, letter, mark, device or figure.

The provisions with respect to filing a certificate with the Secretary of State, require that the certificate shall set forth, among other things, the class to which the trade-mark is to be appropriated. The exclusive right to the use of such trade-mark upon the filing of the certificate, is granted so long as the applicant or his assigns continue to be engaged in the manufacture or sale of the merchandise or description of goods to which the trade-mark is appropriated.

It is to be noted in reviewing the Maine law with regard to trade-marks, that no mention is made of the use of a trade-mark in connection with any type of commercial or professional or industrial transaction other than the manufacture of an article or the sale of goods. In my opinion, an insurance policy is not a manufactured article nor "goods" nor a commodity, and it therefore appears to me that the Blue Cross trade-mark, was not entitled to the same under the laws of this State and, similarly, the present applicant for the exclusive use of a Blue Cross trade-mark with a modifying symbol imposed upon it, is not entitled to the exclusive use thereof under the laws of Maine since neither applicant plans or intends to use such trade-mark in connection with a manufactured article, merchandise or "goods".

In my opinion the original certificate and affidavit filed and recorded in the office of the Secretary of State, with respect to the plain Blue Cross, is of no effect.

(Signed) John S. S. Fessenden