

About Selecting a Trade Mark

By WALDON FAWCETT

Peculiarities of Oil and Fat Products Cause Frequent Conflict of Grade Marks with Trade Marks

IF AN interested bystander were to hazard a guess, he would say that only one thing threatens to spoil the branding holiday of the oil and fat industries. There is no question but what the entire industry is becoming trade mark conscious at a rapid pace. This is due, in part, no doubt to the fact that we are living in an age of commodity identification. The American public has been taught to "buy brands" to a degree unknown in any land or in any period. But, added to that influence, is the growing realization that vegetable oils and the edible fatty products are well adapted to nicknaming for purposes of recognition. This last awakening is bound up with the modern trend to packaging for the retail trade.

Only one fly in the ointment imperils this current drive for the cultivation of good will in business. There is a dangerous propensity in the oil and fat field to jumble trade marks with what are technically known as *grade marks*; to jumble them, indeed, to the extent of assuming that the two terms are synonymous and the two species of marks interchangeable. Many members of the trade are evidently not aware that a wide gulf separates the two classes of identification. Indeed, when it comes to Federal registration, Uncle Sam manifests serious objection to *grade marks*. In the hope of enabling readers of *Oil & Fat Industries* to avoid some of the unfortunate consequences of grade mark substitution, this article deals in temporary gloom to serve later a constructive purpose.

Some of the unfortunate and costly mix-ups which have occurred with respect to grade marks have been due to the free-and-easy attitude that has been taken with respect to trade mark qualifications. In some quarters, the idea has been encouraged that a manufacturer, say of mayonnaise, or a refiner of peanut oil, is free to adopt as his trade mark any word, name, symbol or device that strikes his fancy so long as the mark is not already in use in the oil and fat industries, nor does not resemble the badge on a rival's goods so closely as to be likely to cause confusion in trade. This picture of freedom of choice is overdrawn. In

his role of censor of trade marks, Uncle Sam not only refuses to issue certificates of registration to trade marks that are shadows or "doubles" of older marks, but he lays down certain broad prohibitions. If a marketer of oils or fats desires the broadest possible protection for his trade marks — that is to say if he seeks the shelter of the nation's basic trade mark law (the Act of 1905) he must avoid two patterns of brands. Geographical names he must forego; likewise, descriptive words. In this last category come what are commonly known as grade marks.

Descriptive Marks Barred

A GRADE MARK, a quality mark, or a character mark, may not be descriptive on the face of it. That is to say, it may not convey a descriptive message to the layman who is not familiar with the pet vocabulary of the trade in which it is used. The mark that comes under suspicion as an index of grade may be a noun instead of an adjective. It may be a simple arrangement of alphabetical letters or an innocent-appearing combination of numerals. But if it appears, upon investigation, that any mark which somebody seeks to monopolize as a trade mark has been serving all the trade in common, or part of the trade, as a key to flavor, or fineness, say a clue to first pressing, the chances of obtaining recognition for it as an exclusive trade mark are exceedingly slim.

That the bars are up so high against anything that partakes of the nature of a grade mark is due in part to the fact that the descriptiveness which is taboo under our trade mark laws is not alone that bald, downright descriptiveness which conveys information regarding the physical properties of an article of commerce. Uncle Sam likewise rules out, as offensively descriptive, any word, combination of words, or phrase that describes the qualities of an article. On occasion, the censors at the U.S. Patent Office have turned away from the trade mark gate notations that did no worse than describe the results produced or the effects to be expected from use of a commodity. The net result of such sensitiveness to any descriptive function is, naturally, to exclude any des-

ignation that can be convicted of serving a grading purpose.

Before we look further into what is to be done about it, perhaps a word of explanation should be said as to why it is that so many labelers of fats and oils seem to be tempted to play up terms that are challenged as grade marks when offered for registration. One reason, probably, is that grade marks are familiar. They are constantly before the eyes of the captains of the industry and when the time comes to make formal choice of a trade mark the grade sign, or a thin disguise of the grade mark, instinctively comes to mind. Then, too, grade marks are usually eloquent. The born brander is always searching for a "handle" that is praiseful of his product.

One other incentive, perhaps the most important, is that many a marketer of compounds and edible specialties takes a trade mark cue from his customers. We will suppose that a firm is distributing under a corporate name—or perhaps under a family name or line name—several versions of a popular product. Each is identified, for purposes of quality and price distinction, by an individualistic name. Essentially these varietal names are grade marks. But the producer may find, as time goes on, that his public is using the item names for purposes of specification in ordering. Literally, the buyers have taken matters into their own hands and are using the grade marks as trade marks. When this comes to pass, the marketer usually tries to pedigree the promoted marks as full-fledged trade marks. Occasionally, too, the umpires at the U. S. Patent Office will make an exception in favor of a candidate that can be proven to have served the bona-fide purposes of a trade mark as well as a grade mark. Generally speaking, though, the chances are against the grade mark in this era of ever-increasing vigilance.

How does Uncle Sam determine to his own satisfaction whether a would-be trade mark is, at heart, a working grade mark? Here is a question the answer to which may afford many a member of the industry a clearer insight into his chances for trade name protection. In a nutshell, the U. S. Patent Office, when scrutinizing a mark or name, accepts the trade's own appraisals. Examiners in the Trade Mark Division are fortified for their work by batteries of trade directories, catalogues, trade journals, etc. When the status of a word or name is in doubt the reference publications are searched to ascertain the usage of the term in the trade. If the evidence is not conclusive, representatives of the Department of Com-

merce go into the marts of the trade involved and cross-examine the rank and file of trade factors as to the interpretation commonly placed upon the name that is on trial.

What is to be done about it? Not much, I fear, if a trader is ambitious to sew up, as his very own, one of his trade's accepted indicators of grade or composition. Even if the claimant is the only one who has aspired to fence off a grade-pointer as a trade mark, the officials at Washington will shake their heads, because they hold that if other members of the trade have not actually employed the specific word involved, they must be guaranteed a freedom in the use of such word any time that they may need it to describe their wares. There is salvation, though, for the brander who is deft enough to put the cart before the horse.

Ideal Trade Mark Requirements

TO WIN Federal recognition for a would be trade mark that started in life as a grade mark is a task to daunt the stoutest soul. But, if only the producer or refiner has foresight, the same purpose may be served by the reverse process of making a grade mark out of a trade mark. Under this last formula, the mark starts, say, as an arbitrary or fanciful word. It may even be suggestive of the product so long as its boastfulness or imagery stops short of downright description. The point is, though, that it is unique or original or individualistic. No manufacturer of an oil or fat product is using anything else like it. In short, the chosen name conforms, we will say, to what is the prime qualification of the ideal trade mark, viz, that it shall mean nothing to the public in the beginning.

However meaningless a trade mark may and should be at the outset, its destiny is to take on a definite, selfish meaning when it begins to circulate in the channels of trade. The meaning that the average trade-mark owner cultivates in his pet is association with a product, a place or a service. The purpose, usually, is to render the mark recognizable as identifying the origin or ownership of goods. There is no reason, however, why instead of, or along with these other objectives there should not be set as a goal the popular acceptance of a mark as a criterion of grade or quality. Indeed, this is no idle theory. Many of the most prominent firms in various lines of trade are employing varietal marks as symbols of commodity standards along with their service as source-marks.

Logically this whole idea of making merchandise marks do double duty as grade marks

(Turn to Page 43)

Research and Mayonnaise

(From Page 13)

they seek more freely such scientific contacts. The industries should seek more fully the co-operation of academic investigators and should point out to the chemical world the fundamental unsolved problems underlying their procedures."

Just at this point, may I inject a word of warning to those of you who are using some form of chemical control in your factory operations. In my long contact with the food industries, I have found that the principal use to which the chemist or scientist is dedicated is the control of the manufacturing operations, together with a surveillance over the raw materials used. Only too often have I seen and met such chemists who are staggering under an added load of attempting to solve a real research problem in connection with the technology of his product. This dual demand on a single individual cannot be successfully met by him. Either one or the other activity is bound to suffer, and of course, from the standpoint of existence, the control work cannot be slighted. Research work, whether in the university laboratory or in institutions or in a commercial organization for its most successful development must be unhampered by other activities. The research man must eat, drink, live and sleep his problem. He must give his undivided time and attention to it if success is to crown his efforts.

In conclusion let me express the hope that what I have said may lead you to regard research as something absolutely essential to the well-being and progress of your industry, that you must look forward through research to newer and better methods of manufacture, newer and other uses for your product, and that such goals are only attained through perseverance.

Selecting a Trade Mark

(From Page 32)

and trade marks has caught, particularly, the full line marketers. Not so much, perhaps, the sellers of diverse families of products as the multiple marketer who puts out several grades of the same product. Latter-day competitive conditions such as the temptation to put out one grade of goods for the cut-rate chain stores and another for the high-grade grocery stores, have added to the urge to differentiate

and emphasize commodity distinctions while retaining all the prestige of the line name. For all that the appeal is stronger to those in group selling, trade mark experts declare that this strategy of plotting every trade mark as a potential grade mark is not to be scorned by the marketer of a lone specialty. The argument is that, however single-minded a marketer may be today, there is no telling what he may desire to do tomorrow or the day after tomorrow. If the time comes when he deems it wise to expand his line he may thank his lucky stars that he has entrenched himself with a double-purpose name that will simplify for the consuming public its selective purchases.

New Laboratory Hydraulic Press

A new type of small hydraulic press suitable for use in the laboratory of the oil and fat plant or for other experimental work, is now being manufactured by Fred S. Carver, 95 West Street, New York. The press is hand operated and stands about three feet high. It will give pressures up to 25,000 pounds through operating the hand lever for four or five seconds, and is equipped with suitable pressure gauge. For pressing oil meals, etc., for laboratory samples, the press is equipped with a special cage having separator plates and filter pads. The cage equipment can be lifted out and the press used for various other purposes in the plant laboratory. The equipment has been standardized by the Carver organization and presses are carried in stock for immediate shipment. Formerly, laboratory hydraulic presses were built to order at high cost, but the standardization of the new press makes it available at a sharply lower cost. The maker states that many of the largest producers of vegetable oils, stearic acid, candles, soaps, disinfectants, etc. have already purchased this new press. The firm will furnish literature upon request.

The annual convention of the Interstate Cotton Seed Crushers' Association will be held at the Hotel Roosevelt, New Orleans, La., May 15, 16 and 17

Wanted. Sales Manager to take charge of Hard Coconut Butter and Special Oil Department. Must know the trade using these products. Good opportunity for anyone who has had experience with these commodities. Address Box D-22. Care of Oil & Fat Industries.