

UNITED STATES COMMISSIONER'S DECISIONS.

JOHN F. TOLIE.—*Trade-Mark—Appeal.*

[*Appeal from the Examiner of Trade-Marks in the matter of the application of John F. Tolie for the registration of a TRADE-MARK FOR FLOUR BARRELS. Decided Oct. 3, 1872.*]

Thacher, Acting Commissioner :

Applicant is a manufacturer and vendor of flour in the city of St. Louis, Missouri. He has two establishments on different streets, and he seeks to register, as trade-marks to be used upon the barrels containing his flour, the words "Cherry St. Mills" in one case, and "Market St. Mills" in the other, combined respectively with a well-known masonic emblem—the square-and compass. These combinations of words and symbols, it is strenuously maintained, embrace all the requisites and come within none of the negative exceptions or limitations of the law defining a legal trade-mark.

Applying the comprehensive test laid down by the commissioner in *ex parte Daves & Fanning* (Official Gazette, vol. 1, p. 27,) it is said that neither of the combinations claimed is the name of a person, firm, or corporation, or is calculated to deceive the public as to the true origin or character of the article to which it is applied, or is generic, or descriptive of quality; and, finally, it is asserted that each, when applied to the commodities for which it is adopted as a trade-mark, will distinguish them from others of the same class. The essence of these alleged trade-marks is the masonic symbol, the square-and-compass. It has already been determined that the words alone do not possess the characteristics of a legal trade-mark, and, in order to make it appear that the addition of the square-and-compass do not confer these characteristics, it is also insisted that this masonic symbol is not used with its ordinary signification.

If this emblem were something other than precisely what it is, either less known, less significant, or fully and universally understood, all this might readily be admitted. But considering its peculiar character and relation to the public, an anomalous question is presented. There can be no doubt that this device, so commonly worn and employed by Masons, has an established mystic signification, universally recognized as existing; whether comprehended by all or not is not material to this issue. In view of the magnitude and extent of the masonic organization, it is impossible to divest its symbols, or at least this particular symbol, perhaps the best known of all, of its ordinary signification wherever displayed, either as an arbitrary character or otherwise. It will be universally understood, or misunderstood, as having a masonic significance, and, therefore, as a trade-mark, must constantly work deception. Nothing could be more mischievous than to create as a monopoly, and uphold by the power of law, anything so calculated, as applied to purposes of trade, to be misinterpreted, to mislead all classes, and to constantly foster suggestions of mystery in affairs of business.

There was a time when the cross and crescent, and the red and white roses of the houses of York and Lancaster, possessed, as symbols, such a significance, and occupied such a place in the public mind, in portions of the Old World, as would affect common affairs, and could not properly be disregarded under whatever circumstances they should appear.

If they were now held in the same estimation in this country, who imagines they could be divested of their general significance so that