

## CORRESPONDENCE.

### DESCRIPTIVE WORD AS TRADE MARK.

THE EDITOR, CANADIAN BAR REVIEW,

SIR,—I have just concluded reading that very interesting case on "Trade Marks" reported in the March number of the current volume of Canada Law Reports at p. 189 *et seq.*, namely, *Lightning Fastener Company, Limited v. Canadian Goodrich Company, Limited*. While my work is confined principally to real property law and its associated branches, I find the quasi scientific part of the law dealing with patents, etc., an interesting diversion from the daily routine of my work.

Adverting to page 198 of the judgment of the majority of the Court, I wish to quote the following:

"In our view, the record does not contain the kind of evidence required to decide that, at the time of the applications, the word 'Zipper' was not registrable, on account of having become descriptive."

In the preceding paragraphs thereto, the Court discusses the pertinent circumstances which permit a descriptive word to be registered. In the sentence quoted, I conceive that the words "was not registrable" mean "was not capable of having a legal registration" or "was not capable of being legally registered" or a similar phraseology conveying the same meaning.

On considering the legal reasons upon which the Court posits its judgment, it occurred to me that the second negative—the word "not"—was surplusage, and destroyed the meaning which the Court intended to convey. As I view the matter, there was insufficient evidence of the quality required to prove that the word 'Zipper' had become descriptive to justify its registration under the Act. The words "on account of having become descriptive" are consistent with a prior statement of the law that a descriptive word which has acquired a legal secondary meaning is entitled to be registered.

Yours very truly,

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