

Opinion No. 56-6487

July 10, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: Mrs. Natalie Smith Buck, Secretary of State, Santa Fe, New Mexico

In your letter of June 4, 1956, you request our opinion as to whether prior employment (i. e., actual use) is a prerequisite to registration of a trademark or tradename in New Mexico under existing law.

Section 49-4-1, N.M.S.A., 1953 Compilation, requires the applicant to submit a statement:

"That the applicant claims by priority of adoption and employment of the same, exclusive right to the use thereof."

The following excerpts from Section 22 of 52 Am. Jur., (Trademarks and Tradenames), we believe will be helpful in resolving this problem:

"Ordinarily, the right to a trademark or tradename is acquired, originally, by appropriation and use as such. . . . While no definite period of use is required, it has been stated that it is necessary that the name or mark shall have become associated in the public mind with the producer or owner of the goods to which it is applied. . . . The mere adoption of, or an intention to appropriate, a particular mark or name as a trademark or tradename, without actual use thereof as such in the market, confers no right thereto, even though such adoption or intention is publicly declared."

It would appear, therefore, that the wording of the New Mexico Statute above mentioned and the general law on the subject inevitably lead to the conclusion that the actual use is required as a pre-requisite to registration of a trademark or a tradename in New Mexico.

By: Walter R. Kegel

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