

Opinion No. 61-118

November 21, 1961

BY: OPINION OF EARL E. HARTLEY, Attorney General Oliver E. Payne, Assistant Attorney General

TO: Mrs. Betty Fiorina, Secretary of State, State Capitol Building, Santa Fe, New Mexico

QUESTION

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Can an identical trade-mark or trade-name to identify the same type of business be issued to more than one individual if the trade-mark or trade-name is to be used in a different trade area (different county) within the State?

CONCLUSION

No.

OPINION

ANALYSIS

Section 49-4-7, N.M.S.A., 1953 Compilation (P.S.), et seq., provides the manner of making applications for registrations of trade-marks and trade-names. For purposes of the State trade-mark and trade-name statutes a trade area encompassing the entire State is presumed to exist even though as a practical matter a registrant might restrict his activities to one community.

We reach this conclusion because of the following language contained in Section 49-4-11, N.M.S.A., 1953 Compilation (P.S.):

"It shall be unlawful for any person, partnership, company, corporation or association to . . . affix any general design identical with or similar to such trade-name, trade-mark or label **when not the first** to employ and register the same." (Emphasis added).

There are no provisions for county registration; rather the registration provided for is with the Secretary of State. Consequently registration should be refused when there is already on file an identical or similar registered trade-mark or trade-name for the same type of business.