

**Opinion No. 62-35**

February 13, 1962

**BY:** OPINION OF EARL E. HARTLEY, Attorney General Marvin Baggett, Jr., Assistant Attorney General

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

**QUESTION**

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Is the junior stamp plan subject to the New Mexico Trading Stamp Act?

CONCLUSION

No.

**OPINION**

ANALYSIS

Section 49-9-1, N.M.S.A., 1953 Comp. (PS), defines the terms "trading stamp" and "trading stamp company" as follows:

"A. The term 'trading stamp' means any stamp or similar device issued in connection with the retail sale of merchandise or service, as a cash discount or for any other marketing purpose, which entitles the rightful holder, on its due presentation for redemption, to receive merchandise, service or cash. This term, however, shall not mean any redeemable device used by the manufacturer or packer of an article, in advertising or selling it, or any redeemable device issued and redeemed by a newspaper, magazine or other publication;

B. The term 'trading stamp company' means any person engaged in distributing trading stamps for retail issuance by others, or in redeeming trading stamps for retailers in any way or under any guise;

C. The term 'person' means any individual, partnership, corporation, association or other organization."

The junior stamp plan operates, as we are informed, thusly: (1) The stamp company sells manufacturers the right to place in or on their products or their advertising some seal, coupon, or other notice indicating that the retail purchaser of the particular item may exchange these devices for junior stamps. (2) The purchaser takes the devices to specified retail stores where the devices are exchanged for a quantity of stamps. A pop

bottle cap is not worth as much in stamps as an emblem from a gallon of ice cream. (3)  
The stamps may then be exchanged for various merchandise.

It is obvious that the purpose of the plan is to enable a producer or a manufacturer to sell more of his particular goods by advertising that a purchaser of his goods will receive stamps which may be exchanged for merchandise.

The manufacturer pays the stamp company for the privilege of so advertising. It should be noted that this is not a plan by which the manufacturer imprints on, or encloses with, his merchandise a coupon which he, the manufacturer, will redeem or exchange for merchandise. Here, the stamp company is responsible for the exchange and, realistically speaking, must charge the manufacturer more than the cost of the merchandise eventually exchanged if the stamp company is to make a profit.

Admittedly, this procedure differs from the usual plan where the retailer issues stamps to the customer and the stamp company later redeems the stamps.

We assume the reason the retailer does not give out the stamps at the time of sale is that he has no particular interest in what brand of a given commodity is sold, so long as he sells the commodity, and thus would have no reason to put himself to the trouble of so doing.

Although the end result of the junior stamp plan is comparable to that result reached by the ordinary stamp plan, we must conclude that it is not covered by our law.

The definition of "trading stamp", quoted above, is confined to stamps or their equivalent "issued in connection with the retail sale of merchandise or service". As we have seen, junior stamps are not issued at the time of retail sale. Further, "trading stamp company" having been defined as a firm which distributes trading stamps "for retail issuance" or which redeems stamps for retailers, we cannot place the junior stamp plan under the definition of a trading stamp company.

We conclude, therefore, that the so-called junior stamp plan is not within the coverage of our Trading Stamp Act and that the organization need not file with the Secretary of State the information and bond required by the Act.