

Opinion No. 65-89

June 8, 1965

BY: OPINION OF BOSTON E. WITT, Attorney General Roy Hill, Assistant Attorney General

TO: Mrs. Alberta Miller, Secretary of State, Santa Fe, New Mexico

QUESTION

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In view of the provisions of Section 49-4-10, N.M.S.A., 1953 Compilation, are trademark certificates issued after January 1, 1948 but prior to December 31, 1959 still in effect, or should the holder of such trade-mark or trade name be notified to file an application for renewal.

CONCLUSION

See Analysis.

OPINION

{*153} ANALYSIS

Your question was answered in part by Attorney General Opinion No. 59-88, dated July 30, 1959. In that opinion this office ruled that those trade-mark registrations issued after January 1, 1948, but prior to December 31, 1949, were still valid as of the date of the opinion, but that the holders of such trade-marks should be notified immediately to file application for renewals prior to December 31, 1959. In view of the provision of Section 49-4-10, N.M.S.A., 1953 Compilation, we believe that opinion was correct.

Section 49-4-10, supra, provides that each trade-mark registration will run ten (10) years from the date of issuance and that it may be renewed for a like period for a fee of ten dollars (\$ 10.00). This section provides further, ". . . that all registrations issued prior to January 1, 1948, remain in effect until December 31, 1959, and that the holders of all such registrations shall be notified of their expiration beginning June 30, 1959, as prescribed herein."

Because of the proviso of Section 49-4-10, supra, and Attorney General Opinion No. 59-88, it is our conclusion that any trade-mark issued after January 1, 1950, but prior to December 31, 1959 (this period was not covered by Opinion No. 59-88) expired ten (10) years from the date it was issued unless it had been renewed as provided in Section 49-4-10, supra. Therefore, you should notify all holders of certificates, which have not been renewed, issued during the period in question and over ten (10) years ago that their

registration has expired, and it will be necessary for them to file an application for a trade-mark in accordance with Section 49-4-8, N.M.S.A., 1953 Compilation. An application for renewal under Section 49-4-10, supra, would not be timely for those registrations that have expired. However, any registration issued during the period in question but not over ten (10) years ago should be treated as prescribed in Section 49-4-10, supra, i.e., notices given at the proper times.