

Opinion No. [30-109]

June 19, 1930

BY: J. A. MILLER, Assistant Attorney General

TO: Newell & Spencer, Graybar Building, Lexington Ave. at 43rd St., New York City.

TRADE MARKS -- Secretary of State to file application proper in form.

OPINION

Reference is made to yours of the 13th inst. in which you request information as to New Mexico statutes bearing on the subject of trademarks.

I am enclosing herewith a compilation of sections of New Mexico Statutes, Annotated, Codification of 1915, and upon which are notations showing the numbering of such sections in the later codification of 1929. No one of these sections has ever been before the Supreme Court of New Mexico for construction, consequently you may put upon each the construction which you think it justifies and calls for.

I notice your interpretation of the first section and of which you say that it appears that registration of a mark is mandatory if the rights under it are to be preserved. We do not consider that the filing of a trademark under this section establishes anything as a matter of right. It is more in keeping with the advantages of filing for record a deed to real estate, in that it is notice to the world of one's claims relative thereto, and in this instance, makes possible the prosecution of those who would infringe upon the rights of which such notice is given. The allegations contained in the application are but prima facie evidence of the facts therein stated.

The Secretary of State finds it a very common thing for applicants for the registration of trademarks to ignore the requirements of this statute. Formerly, Secretaries refused to file trademarks which in their opinion were identical with or so similar to one previously registered as to be misleading. We have advised, however, that the Secretary is without discretion in the matter of filing when a properly prepared application is tendered with the necessary fee.

You will note that the application must, along with other things, set forth that the applicant claims by priority of adoption and employment the exclusive right to the use of the trademark or label submitted, and there is further provision that the same shall be duly acknowledged. We do not understand that the Secretary of State has any legal power to adjudicate rights as between rival claimants.

Any application complying with the requirements of the statute as to its form and content and accompanied by the requisite fee will be filed.