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TRADE-MARK ACT: Content requirements for registration of labels bearing brand names of alcoholic beverages as trade-marks.

SECRETARY OF STATE: Authority under Trade-Mark Act re content requirements of labels bearing brand names of alcoholic beverages sought to be registered as trade-marks.

The name of the distributor or sales organization claiming exclusive ownership of a brand name appearing on a label registered in the office of the Secretary of State as a trade-mark need not appear on such label.

The Secretary of State has no authority under the Trade-Mark Act to require that all labels of alcoholic beverages filed in his office show the name of the owner of the brand name of the product as well as the manufacturer's name, if they are different.

No. 4322

October 6, 1964.

Hon. James M. Hare
Secretary of State
State Capitol
Lansing, Michigan

You have requested the opinion of the Attorney General in regard to certain questions under the Trade-Mark Act, Act 258, P.A. 1955; C.L.S. 1961 § 429.11 et seq.; M.S.A. 1957 Rev. Vol. § 18.638 (1) et seq. Specifically you have asked:

“Should the name of the distributor or sales organization claiming exclusive ownership of the brand name also appear on the label of an alcoholic beverage sold in this State?”

You have also inquired as to whether under the Trade-Mark Act you have authority to require that all labels of alcoholic beverages filed in your office show the name of the owner of the brand name of the product as well as the manufacturer's name, if they are different. By “owner of the brand name of the product” I assume you are referring to the owner of the trade-mark registered in your office.

The registration and protection of trade-marks are governed by the provisions of Act 258, P.A. 1955. Resolution of your questions must depend on the requirements imposed by this statute upon the applicant relative to application and registration of trade-marks and powers and duties conferred upon the Secretary of State in connection with such application and registration.

Section 4 of the statute provides that the Secretary of State shall cause a certificate of registration to be issued and delivered to the applicant upon the compliance with the requirements of the Act.

Section 3 of the Act provides for the filing of an application for registration of a trade-mark on a form to be furnished by the Secretary of State and recites but does not limit the information to be set forth in the application. It is further provided in this section that the application shall be accompanied by two specimens or facsimiles of the trade-mark. However, we find no requirement that the name of the owner appear on the trade-mark.

Further examination of this Act reveals that the conditions under which a trade-mark shall not be registered are provided for in Section 2 of the Act, which reads as follows:

“A trade-mark by which the goods of any applicant for registration may be distinguished from the goods of others shall not be registered if it:

(a) Consists of or comprises immoral, deceptive or scandalous matter; or

(b) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or national symbols, or bring them into contempt or disrepute; or

(c) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or

(d) Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or

(e) Consists of a mark which, (1) when applied to the goods of the applicant, is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, or (3) is primarily a surname: Provided, however, That nothing in this section (e) shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the 5 years next preceding the date of the filing of the application for registration; or

(f) Consists of or comprises a trade-mark which so resembles a trade-mark registered in this state or a trade-mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.”

The absence of the name of a distributor or sales organization claiming exclusive ownership of the brand name appearing on the label of an alcoholic beverage is not one of the specifically enumerated conditions under which a trade-mark shall not be registered. The legislature has prescribed definite requirements for filing of a trade-mark and two specimens or facsimiles of the trade-mark under Section 3 of the Act. Under Section 2 the legislature has proscribed the registration of trade-marks under certain conditions. It has legislated fully in this area. In reading the two aforementioned sections we find no room for implying a requirement that the name of a distributor or sales organization claiming exclusive ownership of a brand name appearing on a label registered in the office of the Secretary of State as a trade-mark need appear on such label. Where a form of conduct and the manner of its performance and operation are designated in a statute there is an inference that all omissions were intended by the legislature. Such a conclusion is consistent with the well established rule of statutory

construction that the expression of one thing implies the exclusion of other things. Numerous decisions of the Supreme Court of Michigan have followed this rule of statutory construction. *Taylor v. Michigan Public Utilities Commission*, 217 Mich. 400, 186 N.W. 485. *Nowack v. Auditor General*, 243 Mich. 200, 219 N.W. 749. *Sebewaing Industries, Inc. v. Village of Sebewaing*, 337 Mich. 530, 60 N.W. (2) 444.

Therefore, it is my opinion that the name of the distributor or sales organization claiming exclusive ownership of a brand name appearing on a label registered in the office of the Secretary of State as a trade-mark need not appear on such label.

It is my further opinion that in the absence of statutory authority the Secretary of State has no authority under the Trade-Mark Act to require that all labels of alcoholic beverages filed in his office show the name of the owner of the brand name of the product as well as the manufacturer's name, if they are different.

FRANK J. KELLEY,
Attorney General.

641006.2

SOCIAL WELFARE: "Convalescent Home," definition of.

No. 4326

October 6, 1964.

The Honorable Kent T. Lundgren
State Senator for the Thirtieth District
Menominee, Michigan

You ask the meaning of the term "convalescent home" as contained in Act No. 202 P.A. 1964, amending Section 28 of the Michigan Social Welfare Act.¹ The 1964 act increases from \$90.00 to \$140.00 the amount of assistance directly payable to old age assistance recipients being cared for in hospitals or convalescent homes. The pertinent language is as follows:

"The amount of assistance shall be fixed with due regard to the condition of the individual and community and the circumstances in each case; but in no month shall the direct payment to the individual exceed \$90.00 except that in the case of hospitalization or care in a *convalescent home* of any recipient of old age assistance, the amount of assistance granted may be in an amount not to exceed \$140.00 per month, for a number of months equal to the number of months during any part of which such care was received." (Emphasis supplied)

The term "convalescent home" is defined by rule of the Social Welfare Commission as follows:

"A convalescent home shall be defined to include: (a) a nursing home licensed by the state department of health; (b) a nursing home

¹ Act No. 280, P.A. 1939, as amended, is the Social Welfare Act, being C.L. 1948 and C.L.S. 1961 §§ 400.1 *et seq.*; M.S.A. Rev. Vol. 1960 and 1963 Cum. Supp. §§ 16.401 *et seq.* Section 28 is C.L.S. 1961 § 400.28; M.S.A. Rev. Vol. 1960 § 16.428 as amended by Act No. 202, P.A. 1964.