

Opinion No. 44-4597

October 10, 1944

BY: C. C. McCULLOH, Attorney General

TO: Mrs. Cecilia Tafoya Cleveland, Secretary of State, Santa Fe, New Mexico

We have your letter of October 9, 1944 wherein you ask an opinion concerning the following two questions:

(1) If a person in one part of your state adopts and **uses** a trade mark, will that prevent anyone else from **using** the same trade mark within the confines of your state, or can someone else use the same trade mark in your state in another territory which does not conflict with the territory within which the first user has used the mark?

(2) Can the person first to **adopt, use and register** the mark in your state keep anyone else from **using** the same mark in the state?

In answer to the foregoing two questions, we call your attention to Section 51-1201 of the New Mexico 1941 Compilation which provides for retaining the exclusive right to the use of the trade name, trade mark or label by complying with the provisions of our statutes. It further provides that the Secretary shall keep a record of each trade name, trade mark or label and it shall be unlawful for any other person, firm, corporation, or association to adopt a trade name, trade mark or label identical with or similar to one previously registered.

By HARRY L. BIGBEE,

Asst. Atty. General