

TRADE-MARKS: ) Section 15472, R. S. 1939, pertains only to  
REGISTRATION ) registration of name of owner. Statute does not  
OF VESSELS: ) provide for registration of "bottle cases."  
Application may be made for only one owner at a time.

May 22, 1944

Honorable Gregory C. Stockard  
Secretary of State  
Jefferson City, Missouri



Dear Mr. Stockard:

The Attorney General acknowledges receipt of a letter from your predecessor, Honorable Dwight H. Brown, dated March 31, 1944, requesting the opinion of this Department, which letter reads as follows:

"We are handing you herewith communication and application of Nehi Bottling Company for the registration of 'Nehi', 'Nehi Bottling Co', 'Par-T-Pak' and 'Royal Crown Cola', all submitted on one application, together with publisher's affidavit in duplicate, and their check for \$3.00.

"Will you kindly advise if it is within our province to accept the application in this form. From our viewpoint, it would indicate that it is possible to have 'Nehi' and 'Nehi Bottling Co' printed, stamped, engraved, etched or blown on one bottle but, to add 'Par-T-Pak' and 'Royal Crown Cola' it would be entirely two separate and distinct containers. May we have your opinion on this matter."

We are returning herewith check of Nehi Bottling Company in the sum of \$3.00, payable to Dwight H. Brown, Secretary of State, together with two copies of Publisher's Affidavit, and Form of Application for General Bottling executed by Nehi Bottling Company. The following is a copy of the enclosed "Form of Application for General Bottling":

"FORM OF APPLICATION FOR GENERAL BOTTLING

"The undersigned has adopted for use a name, mark or device to identify and make

known the ownership of bottles owned and used by the undersigned in the manufacture, sale and distribution of liquids, and has had said name, mark or device printed, stamped, engraved, etched, blown, painted, or otherwise permanently fixed upon said bottles.

"A description of said name, mark or device is as follows:

"Nehi Bottling Company

"Certain bottles and bottle cases owned and used by the NEHI BOTTLING COMPANY bear one of the following names, marks or devices: 'NEHI' 'NEHI BOTTLING CO' PAR-T-PAK' - ROYAL CROWN COLA'

"And you are respectfully requested to file and record the same in your office in accordance with the provisions of Section 14347, R. S. Mo., 1929.

Nehi Bottling Company

Firm Name.

by Gladys W. Buckner

Owner

Corporate Name

By Pres. or Secy.

"

Section 15471, R. S. Mo. 1939, reads as follows:

"Persons engaged in manufacturing, bottling or selling liquids in vessels with their name branded, engraved, blown or otherwise produced thereon, may file in the office of the recorder of deeds of the city or county in which the principal place of business of said persons is situated, and also in the office of the secretary of state, a description of the name so used by them,

and shall publish such description once in each of four successive weeks in a newspaper published in the city or county in which said description has been filed."

This section and those constituting Article 4 of Chapter 140, provide for registration in the office of the Secretary of State of the name of the owner of the vessel or bottle so that its ownership can be determined and its use prohibited by anyone other than the registered owner. We believe that when the statute states, "Persons engaged in \* \* bottling \* \* liquids in vessels with their name branded \* \* thereon \* \*," it applies to the name of the manufacturer or owner of the vessel or bottle rather than the name or trade name applying to the liquid within the vessel. This construction is borne out when considered in the light of the succeeding sections in this article.

You state, in effect, that you believe that the names "Nehi" and "Nehi Bottling Co" might properly appear on the same application but that the names "Par-T-Pak" and "Royal Crown Cola", since they are different substances and different in name, should not properly appear thereon. Having in mind the purpose for which these statutes were enacted, we believe that the only name of importance is the name of the manufacturer of the bottle or vessel. The names "Nehi," "Par-T-Pak" and "Royal Crown Cola" are trade names and designate the contents of the vessel. These names should be, and most probably are, registered under Section 15453, Article 1, Chapter 140, R. S. Mo. 1939, governing trademarks, dies and brands. "Nehi Bottling Co" is the manufacturer of the beverages named above and the owner of the bottles and is the proper and only name to be registered. The application designates further, "Certain bottles and bottle cases \* \*." The statute makes no provision for registration of names appearing on "bottle cases," it being confined to "vessels."

#### Conclusion

It is the opinion of this Department that the application made by Nehi Bottling Company by Gladys W. Buckner, Owner, is not in proper form and that publication as required by Section 15472, R. S. Mo. 1939, is improper, at least in so

Hon. Gregory C. Stockard

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April 5, 1944

far as the copy of the application contained therein is concerned; that the registration required by Section 15471, supra, which was Section 14347, R. S. Mo. 1929, relates to the owner of the vessels and that only a single application should be made.

Respectfully submitted,

RALPH C. LASHLY  
Assistant Attorney General

APPROVED:

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ROY MCKITTRICK  
Attorney General

RCL:EG