



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Hon. Claude Isbell  
Secretary of State  
Austin, Texas

Attention: Mr. J. L. McGarity

Dear Sir:

Opinion No. O-7364

Re: Whether a particular design under given facts is subject to registration under the provisions of Article 851, R. C. S.

We have fully considered your request for an opinion as to whether a particular design submitted by Liebmann Breweries, Inc., is subject to registration under Article 851, R. C. S., as a trademark. We have reviewed this matter in the light of the application and facsimile copies of the design thereto attached, resubmitted to you under date of October 4, 1946, by Klien, Alexander and Pohl, attorneys for the applicant, and transmitted to this department by your letter dated October 18, 1946.

The design in question appears to be a rectangular drawing colored red, containing a white oval lengthwise and closer to one than the other longer side of the rectangle. No verbalization appears on the design, but in connection with the application to which same is attached, the affidavit of the vice-president of the corporation certifies that the design has been adopted as a trademark, adopted and used on "Fermented malt beverages, namely, beer, ale, porter, stout, and 'half and half', the latter being a mixture of beer and ale."

As we understand your request, no question of similarity with a previously registered design or trademark, such as was discussed in Opinion No. O-6774, approved August 17, 1945, is presented.

Without quoting the entire statute, Article 851, R. C. S., in effect provides that every incorporated association of persons that shall hereafter adopt a label, trademark, design, devise, imprint or form of advertisement, shall file the same in the office of the Secretary of State by leaving two facsimile copies with the Secretary of

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State, and said Secretary shall return to such association so filing, one of the facsimile copies along with an attached, duly attested certificate of the filing of same, for which he shall receive a fee of One (\$1.00) Dollar.

The application accompanying the design in question furnishes, we think, sufficient verbalization to permit such design to be registered under the Texas statute. (Layton Pure Food Co. vs. Church & Dwight Co. (C.C.A.) 192 F. 2d, 29; Bass, Ratcliff & Gretton vs. Christian Feigenspan (C.C.) 96 F. 2d 206, 212; Hygienic Products Co. v. Coe (App. D. C.) 85 F. 2d 264; Marshall Mfg. Co. v. Verhalen (C.C.A.) 163 S.W. 2d 565.)

It is therefore our opinion that the design submitted to the Secretary of State by Liebmann Breweries, Inc., under date of October 4, 1946, is subject to registration as a trademark under the provisions of Article 851, R. C. S.

This opinion is being written under Opinion No. O-7364, the former number O-6917 assigned to your request having been withdrawn. We are returning herewith the applications and designs accompanying your request.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Wm. J. R. King*  
Wm. J. R. King  
Assistant

APPROVED  
*Samuel Cohen*  
FIRST ASSISTANT  
ATTORNEY GENERAL

WmKtdjm

Enclosures

APPROVED  
OPINION  
COMMITTEE  
BY *BWT*  
CHAIRMAN