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ARTICLE 17-A

FILING OF NAMES, MARKS AND DEVICES USED ON CERTAIN VESSELS,
RECEPTACLES AND UTENSILS

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S 275. Definitions. As used in this article:

- (a) "Name, mark or device" means any word, name, symbol, picture, design or any combination thereof, produced upon, and used by a person to indicate ownership of vessels, receptacles or utensils.
(b) "Person" means any individual, firm, partnership, corporation, association, union or other organization.
(c) "Produced upon" means branded, stamped, stenciled, engraved, etched, blown, embossed, impressed, or otherwise permanently placed upon any vessel, receptacle or utensil.

(d) "Vessels, receptacles and utensils" include all packages and containers and accessories used in selling or distributing any natural or processed product, compound, mixture, or substance, or any combination thereof, and designed and intended for re-use by the person filing hereunder in the normal course of trade, and includes, but is not limited to, bottles, jars, milk or cream dispensers, siphons or siphon heads, kegs, pails, cans and closures therefor, boxes, cases, crates, freezers, tubs, refrigeration boxes, blocks, moulds, trays, pans and tanks.

(e) For purposes of this article, a name, mark or device is "used in this state" when it is produced upon the vessels, receptacles or utensils and the vessels, receptacles or utensils are placed in the channels of trade.

(f) The use of the singular and plural shall be inclusive each of the other to carry out the intent and purpose of this article.

S 276. Filing of statement. A person who uses in this state a name, mark or device to indicate ownership of vessels, receptacles or utensils may file in the office of the secretary of state, on a form to be furnished or approved by him, a statement subscribed by such person and affirmed by him as true, under the penalties of perjury setting forth, but not limited to, the following information:

(a) The name and business address of the person filing the statement; and, if a corporation, the state of incorporation.

(b) The nature of the business of the person filing.

(c) The type of vessels, receptacles and utensils in connection with which the name, mark or device is used. The statement shall include or be accompanied by a copy, specimen, facsimile or counterpart of such name, mark or device in quadruplicate, together with a filing fee of fifty dollars.

S 277. Certificate of filing. Upon compliance with the requirements of this article, the secretary of state shall cause a certificate to be issued and delivered to the person filing the statement. The certificate shall be issued over the signature of the secretary of state and the seal of the department of state, and it shall show the name and business address of the person claiming ownership of the vessels, receptacles or utensils upon which the name, mark or device is produced; the nature of the business of the person filing; the type of vessels, receptacles or utensils on which the name, mark or device is produced and used; a copy, specimen, facsimile or counterpart of such name, mark or device as filed in the secretary of state's office, or a reproduction thereof; and the filing date.

Any certificate issued under the provisions hereof and duly certified by the secretary of state, or a certified copy of the statement filed, shall be admissible in evidence in any action or judicial proceedings in any court of this state as competent and sufficient proof of the filing pursuant to this article, and shall be prima facie evidence of the ownership by the person filing hereunder of all vessels, receptacles and utensils upon which such name, mark or device is produced.

S 278. Filing under prior law. At the end of twelve months following the effective date of this article, the secretary of state shall cancel all certificates issued under sections three hundred sixty and three hundred sixty-one of article twenty-four of the general business law, unless a new statement shall have been filed under this article;

provided, however, that such certificates issued under such prior law shall remain in full force and effect and shall be entitled to all of the benefits of this article during said twelve months` period or until the said statement has been filed.

S 279. Assignment. The certificate of the filing of any name, mark or device under this article and the benefits obtained thereunder shall be assignable with the sale of the vessels, receptacles or utensils on which the same are produced and used. Assignments shall be made upon forms supplied by the secretary of state, which shall be duly executed and may be recorded upon the payment of a fee of fifty dollars payable to the secretary of state who, after recording the assignment, may, upon request of the assignee, issue in his name a new certificate.

S 279-a. Records. The secretary of state shall keep for public examination a record of all names, marks or devices filed under this article.

S 279-b. Cancellation. The secretary of state shall cancel from the register:

(1) Any certificate concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the person filing or from the assignee;

(2) Any certificate in respect of which a court of competent jurisdiction shall order cancellation on any legal or equitable ground.

S 279-c. Deposits on vessels, receptacles or utensils. The requiring, taking, paying or accepting of any deposit for any purpose upon any vessel, receptacle or utensil shall not be deemed to constitute a sale of such property, either optional or otherwise, for the purposes of this article.

S 279-d. Prohibited acts. It is hereby declared unlawful for any person to fill or use, to give, buy, take, destroy, sell or otherwise dispose of, or traffic in, vessels, receptacles or utensils, upon which a name, mark or device which has been filed hereunder is produced, or refuse to return such vessel, receptacle or utensil on demand of the owner, or to deface, erase, obliterate, cover up or otherwise remove or conceal any such name, mark or device, unless in each case written consent of the owner is obtained or unless the vessels, receptacles or utensils shall have been purchased from the said owner.

S 279-e. Penalties. Any person offending against the provisions hereof shall be deemed guilty of a misdemeanor, and shall be punished for the first offense by imprisonment of not less than ten days nor more than one year, or by a fine of not less than one dollar nor more than five dollars for each and every vessel, receptacle or utensil involved, or both; and for each subsequent offense by imprisonment of not less than twenty days or more than one year, or by a fine of not less than five dollars nor more than ten dollars for each and every vessel, receptacle or utensil involved, or both, in the discretion of the magistrate or court before whom the offense shall be tried.

S 279-f. Presumption. The possession by any junk dealer or dealer in second-hand materials or articles, without the written consent of the person who filed hereunder or his assignee, of any vessels, receptacles or utensils upon which a name, mark or device has been produced shall be presumptive evidence of a violation of this article.

S 279-g. Search warrant to discover vessels, receptacles or utensils. Whenever any person who has filed under this article, or his authorized agent, shall make oath before any magistrate or court of competent jurisdiction that he has reason to believe, and does believe, that a violation of this article is occurring with respect to one or some of his vessels, receptacles or utensils having produced thereon a name, mark or device filed under this article, the said magistrate or court must thereupon issue a search warrant to discover and obtain the same. The said magistrate or court shall cause to be brought before him the person in whose possession the said vessels, receptacles or utensils are found and shall inquire into the circumstances of possession. If the said magistrate or court finds that such person is guilty of any of the offenses mentioned in this article, the punishment herein prescribed shall be imposed and possession of the said vessels, receptacles or utensils obtained upon the warrant shall be awarded to the owner thereof.

S 279-h. Construction. Nothing in this article shall be construed as preventing the enforcement of rights and remedies under any other statute concerning vessels, receptacles or utensils upon which a name, mark or device indicating ownership thereof has been produced, whether or not such name, mark or device has been filed hereunder.

S 279-i. Saving clause. No suit, proceeding or appeal pending on the effective date of this article shall abate or be affected in any way by reason of the enactment of this article.