

PURE FOOD AND DRUGS NOT MISBRANDED
WHEN LABEL DIFFERS FROM LEGEND
BLOWN IN BOTTLE.

Tallahassee, Fla., June 2, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

Your communication of this date has been received.
I note your inquiry as follows:

"I would be pleased to have your opinion as to whether or not soft drinks, other than Chero-Cola or Coca-Cola, when put in Chero-Cola bottles, with the words 'Chero-Cola' or 'Coco-Cola' blown in the glass, with the true name of the contents together with all other information required by law to appear upon the labels shown on the bottle caps, would be misbranded within the meaning of the First, Second and Fourth Paragraphs, under the sub-head, 'In use of Food,' of Section 5 of Chapter 6122, as amended by Chapter 6541, Laws of Florida, Acts of 1911."

Replying to above will state that it is obvious that under the second paragraph of Section 3 of Chapter 6122, Laws of Florida, 1913, any authorized rule or regulation relative to "Foods" would necessarily apply to beverages of the kind designated in your communication and the samples furnished this office.

It will be observed that Section 5 of said act provides that the term "misbranded" applies to all articles of food "the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular.

It is my understanding that it has been the ruling of your department that an appropriate label cap placed

upon glass bottles containing ordinary soft drinks sufficiently "labels" the contents thereof. The question, therefore, is whether or not, in addition to above, the legend, "Chero-Cola. 6 1-2 Fluid Oz. Pensacola, Fla. This Bottle Never Sold," blown in the side surface of the bottle when containing soda water beverages, with label cap thereon containing, for example, the words "Strawberry. Artificial Flavor and Color" falls within the prohibition of Sections 3 and 5 of the said Act of 1911.

My opinion is that in this case the said legend as blown in the bottle, title to which in this instance never passes from the owner, is not false or misleading, but serves only to identify the bottle or container, as it does not undertake to describe the real contents, and, so far as the pure food law is concerned, this legend would not prohibit the use of the same bottle as a container for other soft drinks, provided such soft drinks have a proper label cap, as it would not deceive the purchaser.

As to whether or not the use of the bottles having the blown-in legend described above by persons who may have no authority to do so is a violation of a trade mark law, is a question this office is not called upon to answer.

Respectfully submitted,

T. F. WEST,
Attorney General.

MARKETING COMMISSIONER — APPROPRIATION FOR SALARY AND TRAVELING EXPENSES.

Tallahassee, Fla., July 12, 1917.

*Hon. W. A. McRae, Commissioner of Agriculture,
Capitol.*

Dear Sir:

Yours of the 5th instant has been received.

I note your inquiry as follows:

"I am herewith handing you copy of Chapter 7315,