§ 33.11. Refilling or selling trade-mark bottles and vessels. Any person engaged in making, bottling, packing, selling or disposing of milk, ale, beer, cider, mineral water or other beverage, or in making, selling or disposing of articles of pastry, may register his title as owner of a trade-mark by filing with the secretary of state and the clerk of the county where the principal place of business of such person is situated, a description of the marks and devices used by him in his business, and in case the same has not been heretofore published according to the laws existing at the time of publication, causing the same to be published in a newspaper of the county, three weeks daily, if in the city of New York or Brooklyn, and weekly if in any other part of the state; but no trade-mark shall be filed which is not and can not become a lawful trade-mark, or which is merely the name of a person, firm or corporation unaccompanied by a mark sufficient to distinguish it from the same name when used by another person. After such registration, the use without the consent of the owner of the trade-mark so described, or the filling of any bottle, siphon, barrel, platter, vessel, or thing for the purpose of sale, or for the sale, therein, of any article of the same general nature and quality which said bottle, siphon, barrel, platter, vessel or other thing before contained, without the obliteration or defacement of the trade-mark upon it, when such trade-mark can be obliterated or defaced without substantial injury to the bottle, siphon, barrel, platter, vessel or other thing so as to prevent its wrongful use, shall be deemed a misdemeanor.