

Trademarks and Your Brewery—Protecting Your Brand

Article #4 of Hopping on the Brewery Bandwagon Series

A clever name can go a long way to making your brewery and beer recognizable to customers. Hopocalypse, Hoptimum, Hoppy Birthday, Hoptical Illusion and Smooth Hoperator are funny, catchy and memorable. But while creating a clever name for your brewery or beer is an important step toward gaining recognition in the marketplace, it is equally, if not more, important to ensure that you properly protect your brand identity.

Federally registering your brewery's trademarks is an important step toward protecting your brand's identity. Indeed, in addition to being clever hop puns, each of the aforementioned names is a federally registered trademark of a brewer in the United States.

Trademarks are anything that identifies the source or origin of a product or service. This includes, but is not limited to, product names, slogans, logos and distinctive designs. Stated simply, trademarks identify your brand in the consumer's mind. Some brewery industry examples include Samuel Adams' slogan "for the love of beer," Left Hand Brewing Company's red left hand, the name Pabst Blue Ribbon and Pabst's blue ribbon logo.

Federal trademark registrations are important for numerous reasons. Registering a trademark gives the owner exclusive right to use that trademark on products or services that are specified in the registration. Additionally, a trademark registration blocks potential confusingly similar trademarks from being registered. Registering a trademark also provides nationwide protection for a trademark even if it is not used nationwide. If a trademark user does not obtain a trademark registration and operates only locally or in certain markets, the trademark user may be able to use the trademark only in certain geographic regions or limited markets. Another benefit is that if a business continuously uses its trademark for five years, the trademark registration can become incontestable, which makes it more difficult for other parties to challenge the validity of the trademark.

Not all trademarks are created equally; United States trademark law gives stronger protection to some trademarks. "Fanciful," "arbitrary" and "suggestive"

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trademarks are inherently distinctive and receive greater rights than merely "descriptive" marks. "Generic" trademarks cannot be protected.

Fanciful trademarks are terms that have been invented for the sole purpose of functioning as a trademark, such as Pepsi, Kodak or Exxon. Arbitrary trademarks are words that are commonly used but are not used to suggest or describe a quality or characteristic of a product or service. Examples of arbitrary trademarks are Apple for computers or Old Crow for bourbon. Suggestive trademarks are those that, if applied to a product or service, require imagination, thought or perception to reach a conclusion as to the nature of a product or service. Examples of suggestive marks include Greyhound for buses and Jaguar for cars. Merely descriptive trademarks are those that simply describe an ingredient, quality, characteristic, function, feature, purpose, or use of a product or service. Examples of descriptive marks are Miller Lite for a light beer, Best Buy for an electronics store, or Vision Center for an optometry store. "Generic" marks, which cannot be registered, are terms that the public understands primarily as the common name for a product or service. Examples include Xerox and Kleenex.

When selecting a trademark for your business, given the various protections provided to certain trademarks, it is advisable to create and use a fanciful, arbitrary or suggestive mark. A very distinctive trademark provides value to your business by creating an association in the public's mind between your trademark and your product or service. Additionally, because distinctive trademarks receive greater protection than nondistinctive trademarks, it will be more difficult for competitors to encroach upon your brand recognition.

Reinhart offers a variety of cost-effective services that can help your business protect its trademarks. Reinhart attorneys can assist your business in evaluating the strength of your trademarks, help you register and defend your trademarks against encroachment or infringement by competitors, and give you guidance about how to effectively use your trademarks on your products or services to ensure optimal protection.

If you have questions about the topics covered in this e-alert, please contact your Reinhart attorney or any member of the firm's Food and Beverage team.

Stay tuned for the series' next article on financing and crowdfunding.

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