

What's Really in your Beer Name: Trademark Protection for Craft Brewing Companies and Their Beers

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Besides the unique taste of your beer, what more than anything else helps your consumers remember the source of that fantastic beer? Obviously, your company name and probably also the name of your beer. With hundreds of craft breweries developing across the country, craft breweries (and to some extent, local craft wineries) use catchy and fanciful names to help customers distinguish one India Pale Ale from another. Since these names carry so much of the

identity for small craft brewers, it is imperative that beer companies protect their company name, beer names and taglines from their competitors. Registering your trademarks is the way to accomplish this protection.

Trademarks are the words and pictures that you use to create an image for your company and the craft beers that you create. Once your brewery's trademark is registered, you will have exclusive rights to sell products in that category throughout the United States. They can also help to distinguish your brewery, restaurant and/or beer names from your competitors. Almost every major brand you see in commerce these days has the "®" symbol prominently marked on it to show the world that their brand is a "registered" trademark and is thus protected. The "®" symbol has become a brand decorator or symbol of legitimacy, because it helps identify brand owners that care about their identity and have affirmatively sought protection for their image.

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Trademarks are registered by filing an application with the United States Patent and Trademark Office (“USPTO”). Trademark registration applications can be filed either before or after the trademark is used. Even if your brewery has been using an unregistered trademark for years, you should consider registering the trademark now in order to prevent others from adopting the same or a confusingly similar trademark in the future. Trademark registration reduces the chance that a competitor or other company, offering an inferior product or service, will steal your beer names or logos and gives you better legal rights to stop them and seek damages if it occurs.

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Since many small craft brewers are small startup companies, the question often pondered is whether or not the time and cost of a trademark application is worth it. Even despite the costs and the time it may take, if you plan to build your business around the sale of a product that people identify with a catchy name, then you should absolutely consider seeking trademark protection. The importance of registering trademarks is often overlooked by brewers and winemakers, but by taking proactive steps now to register and protect your brewery's trademarks, you can create *and own* the image you want to convey to your customers.

Your trademarks also possess great value, and their value is directly related to your image. The more successful you become, the more valuable your trademarks become – for you and possibly others. Registering your trademark creates an intangible asset that can build significant value and can later be sold or licensed. Creating a popular brand that you fail to protect with a trademark registration can cause a significant loss of value if you later decide to sell the company. In this sense, trademarks are treated as assets, and their value is derived by their ability to distinguish your beer from someone else's.

Seeking early legal advice on trademark matters can help to reduce the risk that you are using a trademark which is already registered by another company. It is always recommended that you contact an attorney before using any new trademark so that a comprehensive search can be completed in order to reduce the risk that your new trademark is not already in use or registered by someone else. If your trademarks or company name are already registered by another person or company, the owner of that trademark can demand that you stop using the trademark immediately and can even seek to obtain your profits and their attorney's fees. If this happens, your options get more complicated and dire: you must either decide whether to spend the money to defend against the allegations, or you may have to stop using that name.

These items should be considered early during the development of your company with your designer or public relations company. To the extent possible, you want to help your designer avoid names and designs that are too close to existing trademarks so that your names and designs are completely unique to you. Then, as soon as that process is complete, you should seek protection for those names before anyone else even has the chance to call them their own.

If you have questions about trademark registration, copyrights, domain name disputes, unfair competition and/or general business matters related to the beer, wine and hospitality industry, please contact Evan C. Pappas, Esquire at (717) 763-1121 or pappas@shumakerwilliams.com.

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