

# Putting the IP in IPA

## An Overview of Intellectual Property Law for Craft Beverage Businesses



EAT  
DRINK  
LAW



Food  
Matters.



Do It  
Right.



**Devin Morgan**  
Startup Founder,  
Patent Attorney, and  
Craft Beverage Geek

dsm@eatdrinklaw.com  
607-643-5777  
eatdrinklaw.com

# Tech Guy Who Backs Beverage Entrepreneurship

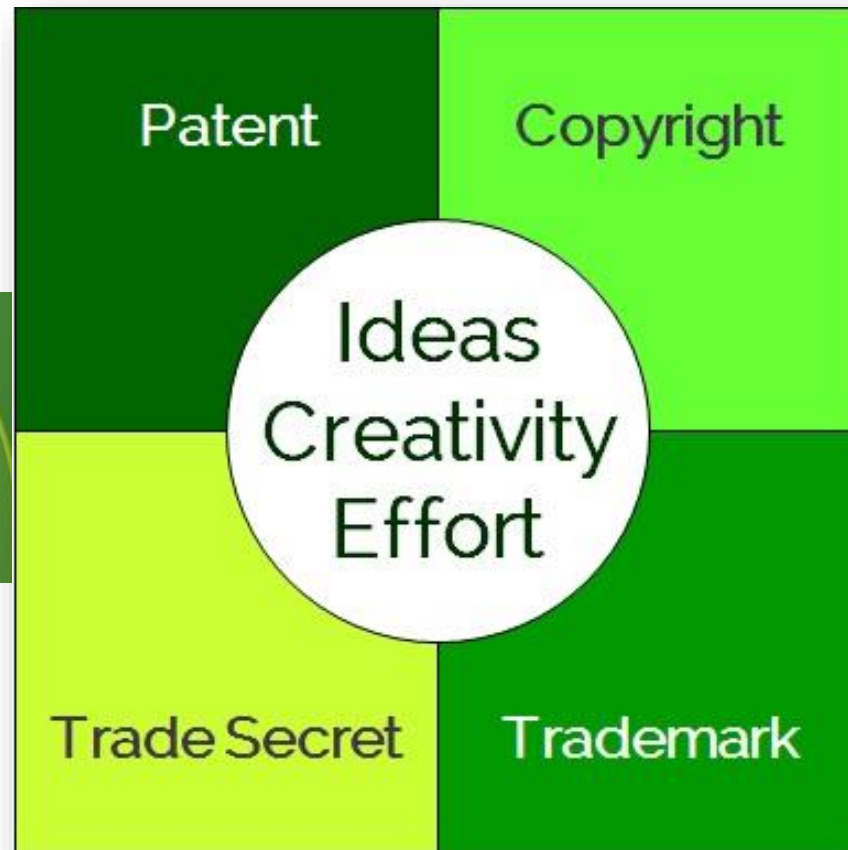


- Entrepreneur
- Patent Attorney
- Advocate

...and I like beer



# What is Intellectual Property?



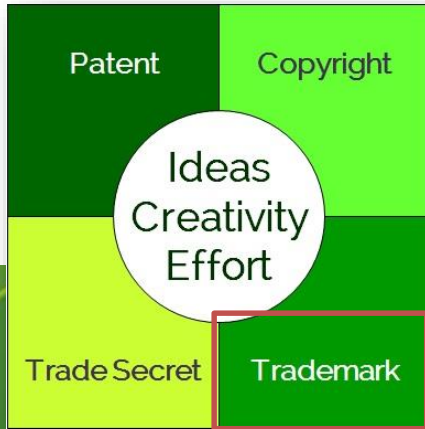
Everyone has some...

# Uncomfortable Truth #1

Beer is Brand

Same goes for cider, wine, spirits,  
etc.

# Trademark



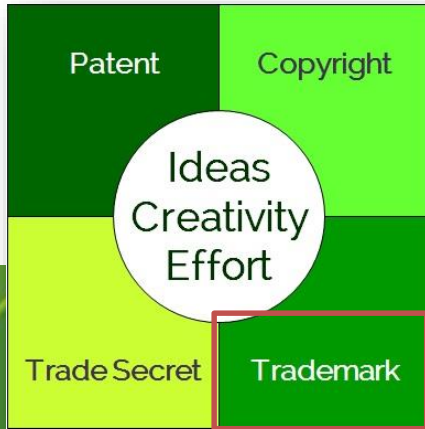
Registered Trademark:

TM



Prevents confusion and  
damage to goodwill

# Brand Conflicts Happen

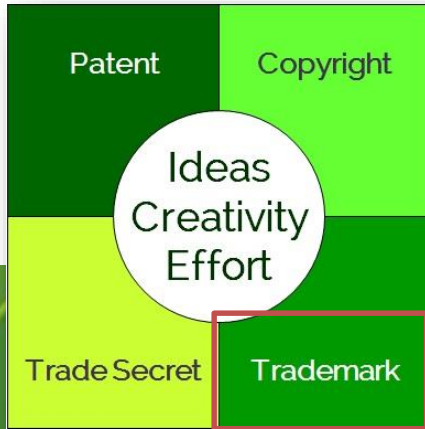


Gaspacho Bros. Wine receives a cease & desist letter from Gaspacho Brewing Co. in Florida based on a Registered U.S. Trademark

Now what?





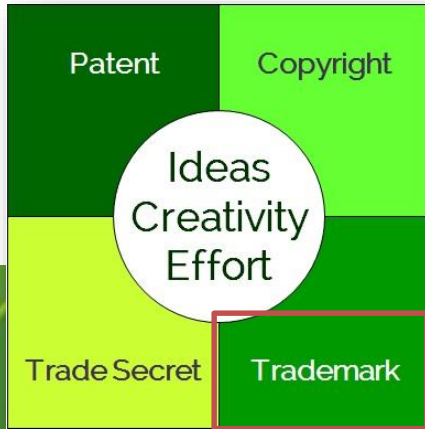


# What if...

- Gazpacho Bros. Wine Inc. has been incorporated and licensed in NY
- Gazpacho Bros. has a Federal Certificate of Label Authority for Gazpacho Hard Cider
- Gazpacho Bros. is rebranding as Gas-Patch-O Hard Cider

**Bonus: Can Gazpacho Bros. apply for a U.S. Trademark?**

# Trademark Take-Aways



1. Use is king, registration is a good idea
2. First, do no harm (stay away from famous trademarks)
3. Understand your visibility and how to respond to threats



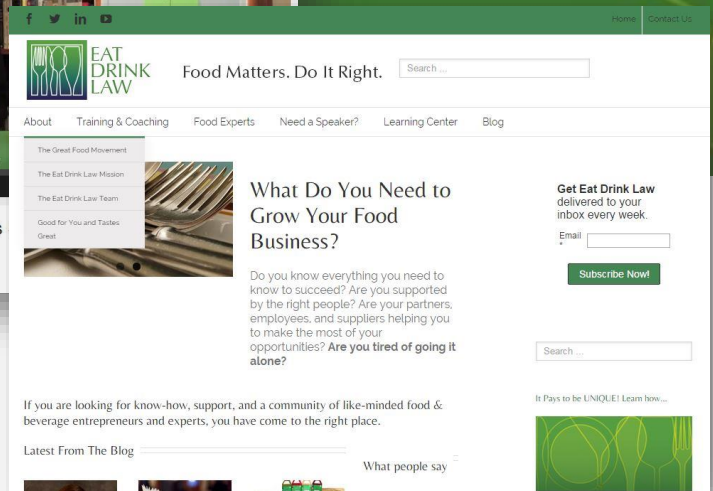
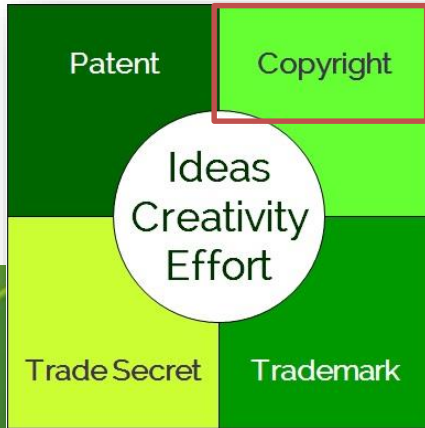
Cheap strategy: house mark and generic style names (e.g.



# Uncomfortable Truth #2

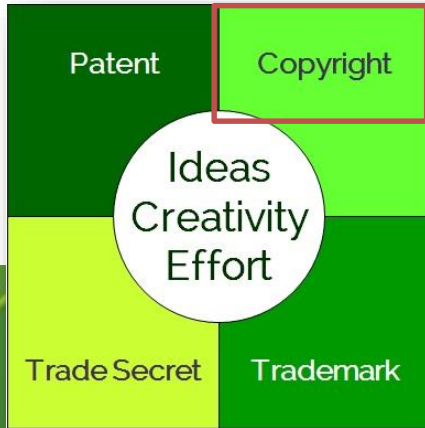
Every Company is a  
Media Company

# Copyright



Controls copying,  
display, and  
derivative works

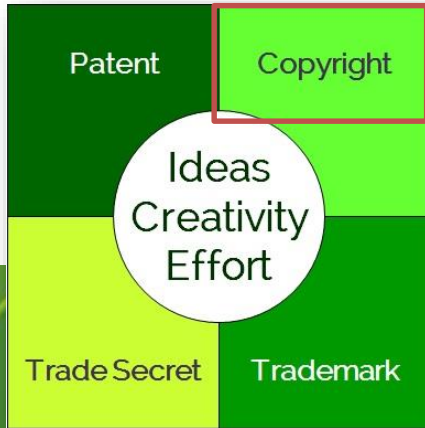




# Who Owns It?

Your intern made this great YouTube video of your business last summer and now you want to use it as a TV ad. Is that OK?

Hint: There will be a copyright indemnification clause in the TV advertising contract



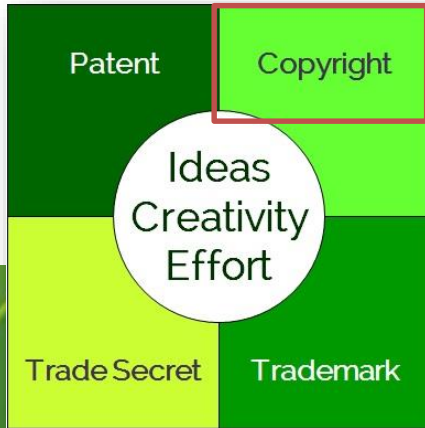
# What if...

- The intern did it on her own time, camera, and computer
- The video includes an added music track
- The video includes client testimonials read by some unknown person

**Bonus: Does it matter if the video needs to be further edited to use?**



# Copyright Take-Aways



1. Creation is king, registration is a good idea
2. Don't use other people's stuff without clear permission
3. Understand web and social media visibility and enforcement

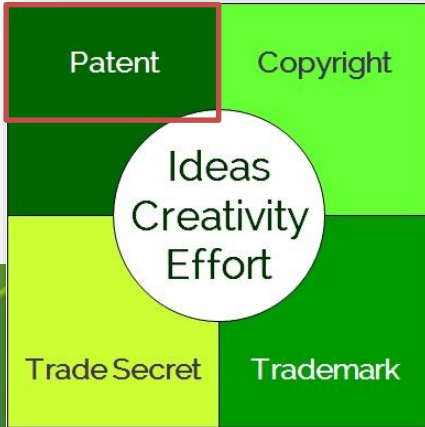
**Cheap Strategy: Use employee contracts and create your own**



# Uncomfortable Truth #3

RECIPES ARE REALLY, REALLY,  
REALLY, REALLY...  
REALLY HARD TO PROTECT

# Patents



**P&G wins \$125M**



**United States Patent** [19]  
**Young et al.**

[54] CONTROL OF BROWNING REACTIONS BAKED GOODS BY ADDITION OF SODIUM CARBONATE AND AN EMULSIFIER

[75] Inventors: Jerry D. Young, Springdale; Paul Seiden, Cincinnati, both of Ohio

[73] Assignee: The Procter & Gamble Company, Cincinnati, Ohio

[21] Appl. No.: 722,926

[22] Filed: Apr. 12, 1985

[51] Int. Cl.<sup>4</sup> ..... A21D 2/02; A21D 2/16; A21D 3/08

[52] U.S. Cl. .... 426/321; 426/553; 426/560; 426/613; 426/653

[58] Field of Search ..... 426/94, 103, 549, 560, 426/601, 653, 654, 553, 321, 613

[56] **References Cited**  
 U.S. PATENT DOCUMENTS  
 2,394,791 2/1946 Lloyd et al.  
 2,689,797 9/1954 Joffe

Cole, "The Maillard Reaction in Food Products Carbon Dioxide Production", J. Food Science, vol. 32, No. 3, pp. 245-250, (1967).

Prouty, W. W., "pH—Some Theoretical and Practical Considerations", The Baker's Digest, vol. 41, No. 2, pp. 48-53, (1967).

Keagy, P. M., Connor, M. A. and Schatzki, T. F., "Regression Analysis of Thiamine and Color Changes in Enriched Cookies Using Factorial Design", Cereal Chemistry, vol. 56, No. 6, pp. 567-573, (1979).

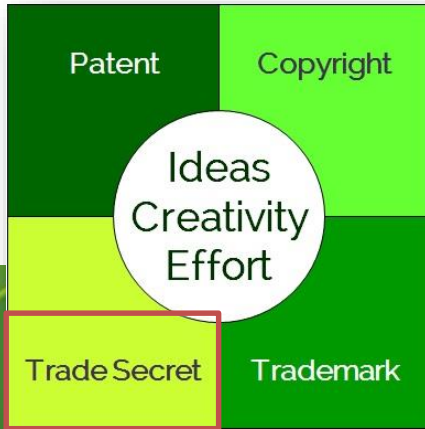
*Primary Examiner*—Robert Yoncoskie  
*Attorney, Agent, or Firm*—Gary M. Sutter; Rose Ann Dabek; Richard C. Witte

[57] **ABSTRACT**  
 A method for reducing excessive browning in a baked good containing reducing sugars is described. The method comprises adding to the dough of the baked good about 0.15% to about 0.65% baking soda and

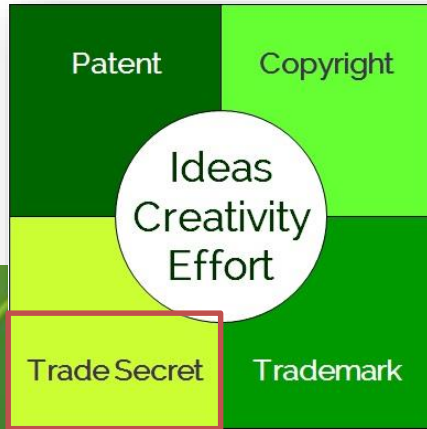
Patents protect inventions



# Trade Secrets



Trade Secrets protect  
know-how



# A Common Tale

I had a falling out with one of my brewers. He copied my recipe files and now my competitor has hired him as a consultant to duplicate my signature brew. How do I stop them?

**Hint: You probably can't.**





# Even More Take-Aways

## 12 Things Every Business Should DO About Intellectual Property



Video Intros  
Available on  
YouTube





# Questions?

[dsm@eatdrinklaw.com](mailto:dsm@eatdrinklaw.com)

3Blazes



EAT  
DRINK  
LAW

# Legal References

## Trademarks

15 U.S.C. § 1125 - False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which—

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

## Copyright:

17 U.S.C. SS 101-102, 106, 408, 501

## Trade Secret:

18 U.S.C. SS 1839

