Putting the IP in IPA

An Overview of Intellectual Property Law for Craft Beverage Businesses

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...and I like beer

Cooperstown

TEDxUtica

3Blazes
What is Intellectual Property?

Everyone has some...
Uncomfortable Truth #1

Beer is Brand

Same goes for cider, wine, spirits, etc.
Trademark

Prevents confusion and damage to goodwill
Brand Conflicts Happen

Gazpacho Bros. Wine receives a cease & desist letter from Gazpacho 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. IPA)
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... REALLY HARD TO PROTECT
Patents

Patents protect inventions

P&G wins $125M
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?

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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:**

**Trade Secret:**
18 U.S.C. SS 1839