



TRADEMARKETING: TRADEMARKS AND YOUR MARKETING STRATEGY





PRESENTED BY:

MIKE DRUMM



AI

a digital drawing in the style of Banksy of a very handsome male attorney talking to a group of brewers about trademarks and marketing



Slide 1: Title Slide

- Title: Trademarks & Marketing for Breweries
- Image: A craft beer label or logo.
- Note: Use a visually engaging design.

Slide 2: Agenda

1. Understanding Trademarks
2. Importance in the Brewery Industry
3. Successful Trademark Examples
4. Marketing and Trademark Synergy
5. Trademark Challenges and Disputes
6. Best Practices for Breweries

Slide 3: What is a Trademark?

- Definition: A symbol, word, or words legally registered or established by use as representing a company or product.
- Image: Various iconic brand logos.
- Note: Briefly explain registration vs. established by use.

Slide 4: Importance in the Brewery Industry

- Brand Recognition
- Competitive Differentiation
- Customer Loyalty
- Image: Craft beers on a shelf.
- Note: Emphasize how crowded the craft beer market is and how trademarks stand out.

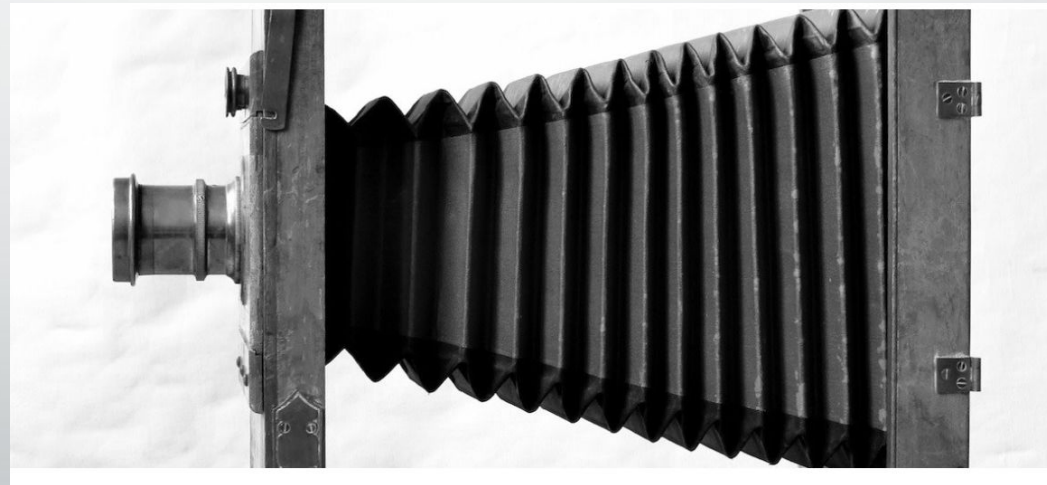
Slide 5: Successful Trademark Examples

- Show logos/names of successful brewery trademarks.
- Mention: Stone Brewing, Dogfish Head, etc.
- Image: Logos of the mentioned breweries.
- Note: Explain how their unique names and logos make them recognizable and memorable.

Slide 6: Marketing and Trademark Synergy

- Trademarks boost brand recall.
- Consistent use in advertising and packaging.
- Image: An advertisement campaign showing a consistent brand logo.
- Note: Highlight how marketing amplifies the value of a strong trademark.

Who owns AI
images?



TRADEMARKS



TRADEMARKS



BEE® TRADEMARK ≡

**AMAZINGLY
AFFORDABLE**

Just \$375 a trademark
*Plus filing fees

GET STARTED

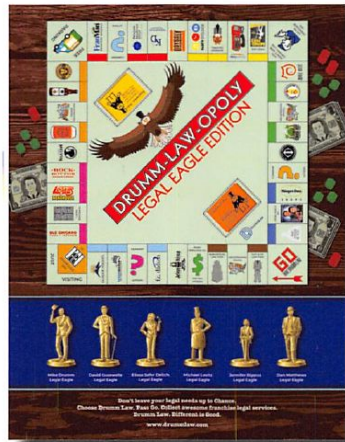


**\$375 includes federal
trademark application
preparation and filing.**

TRADEMARKS

ADVERTISING EXCELLENCE AWARD

Drumm Law



*In recognition of outstanding overall readership of this advertisement
as compared to all other advertisements appearing in:*

Franchise Times

April 2021

Mary Jo Larson
Publisher
Franchise Times

BAXTER
RESEARCH CENTER

Rick Schumacher
President and CEO
Baxter Research Center

MARKETING



MARKETING





MARKETING



MARKETING



WHAT IS A TRADEMARK?

- Name: Arrogant Bastard Ale
- Slogan: Hated by Many, Loved by Few, You're Not Worthy
- Image: Gargoyle, Arrogant Bastard Font Logo





WHAT IS A TRADEMARK?

Copyright **VS.** Trademark

©



What Does it Protect?

Original works of authorship, such as books, articles, songs, photographs, sculptures, choreography, sound recordings, motion pictures, and other works.

®

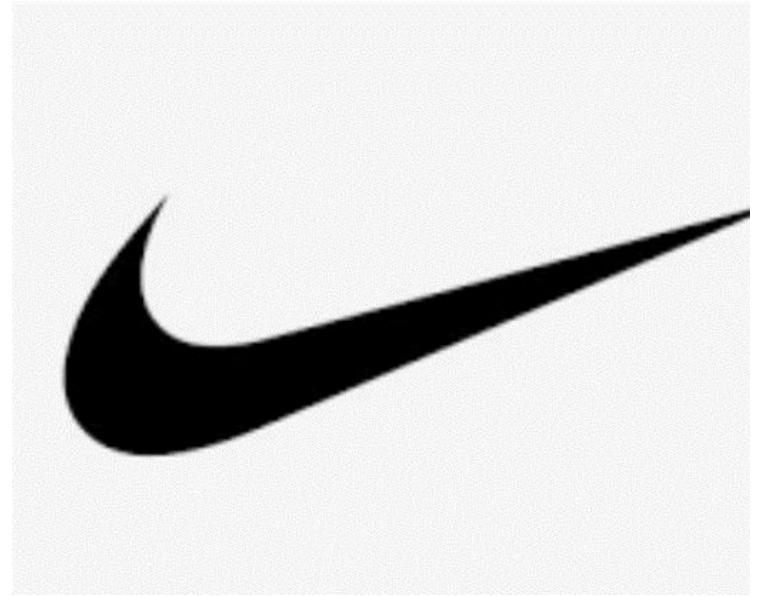


Any word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others.

I WANT TO COPYRIGHT MY BEER



COPYRIGHT VS TRADEMARK



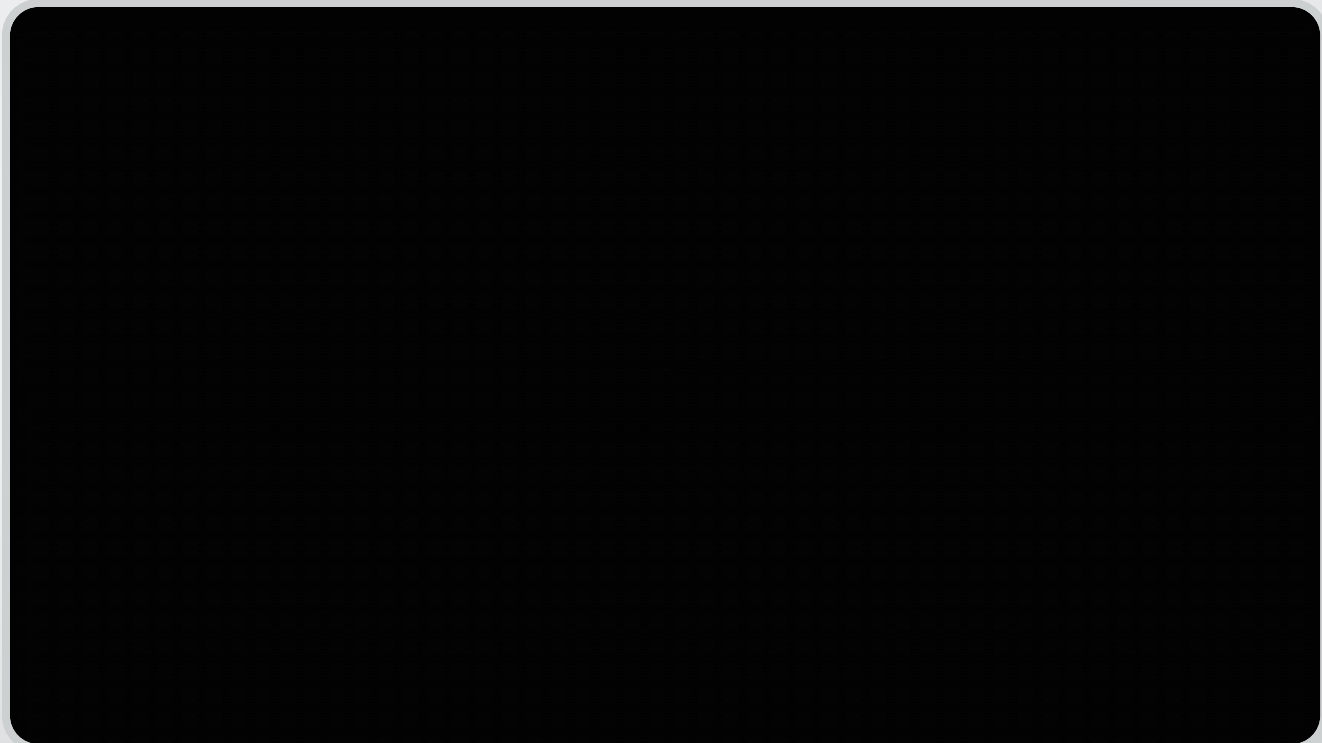
COPYRIGHT VS TRADEMARK

I WANT TO
COPYRIGHT
MY BEER



WHAT IS THE PURPOSE OF A TRADEMARK?

- Indicated the source or origin of goods or services
- Assures consumers of the quality of goods bearing the mark
- Creates business goodwill and brand awareness



WHAT IS THE DIFFERENCE BETWEEN A TRADE NAME AND A TRADEMARK?

- Trade/Business Name: identifies a company or business.
- Trademark: identifies the goods or services of that company.



ANHEUSER-BUSCH



The screenshot shows a web browser window with the URL <https://sos.vermont.gov/corporations/registration/>. The page header includes the text "OFFICIAL STATE WEBSITE" and the Vermont state logo. Below the header, the text "ont Secretary of State" and "Business Services Division" is visible. A navigation menu contains links for "Domestic Registration", "Foreign Registration", and "Assumed Business Name Registration". A "Google" logo is present in the bottom right of the header area. The main content area features a breadcrumb trail "ations > Registration" and a large heading "Register a Business in Vermont". Underneath, there is a section titled "Start a Vermont Business" with the text: "Ready to register a business in Vermont? Use the [Online Business Service Center](#) to take care of your business registration needs in a snap. Click below to create a user account, login and get started:".

COMMON MISCONCEPTION

Filing the name with the secretary of state does not create trademark rights

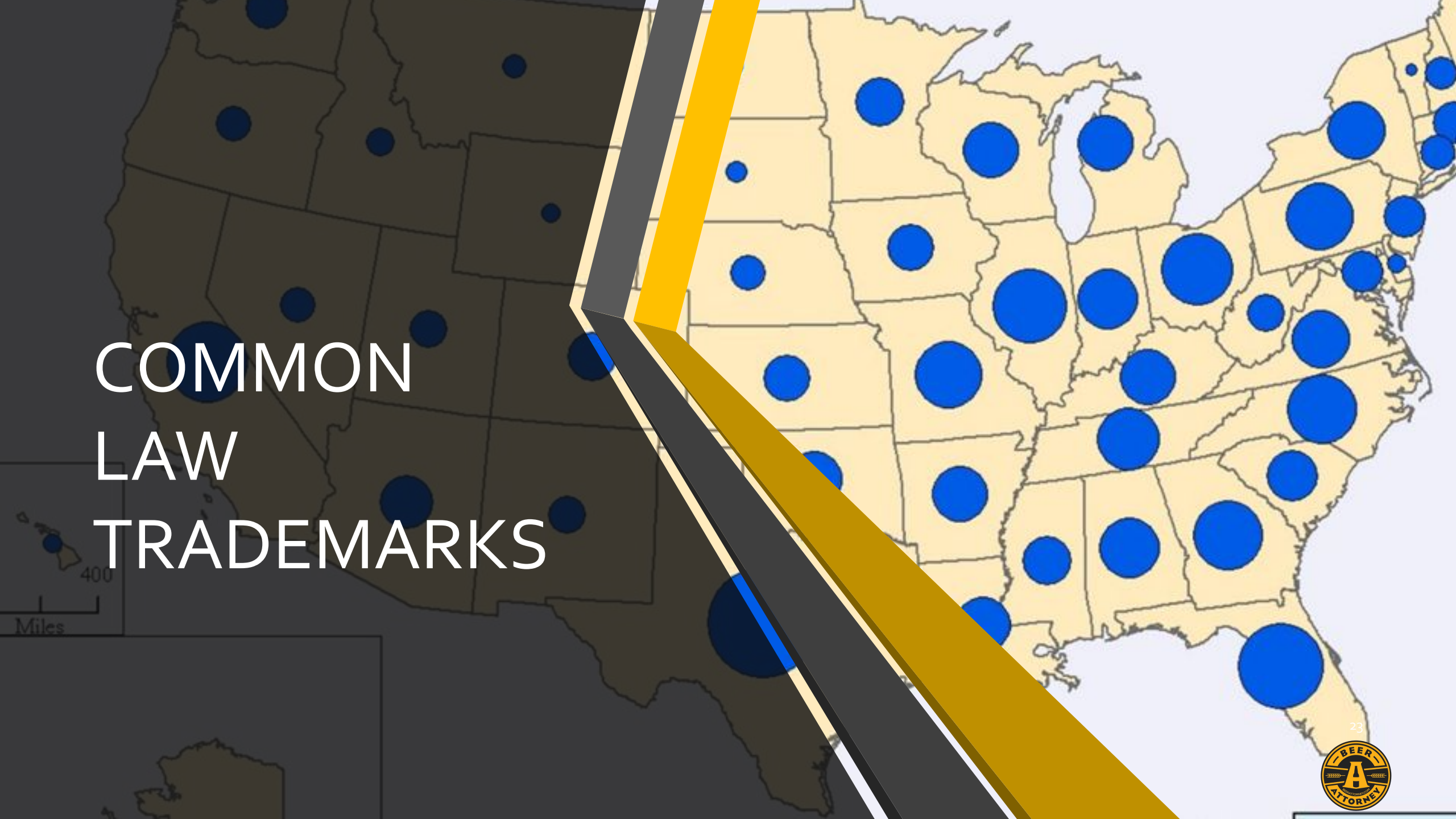


COMMON LAW TRADEMARKS

- Obtained simply by using the trademark in association with your product or service
- No application process
- Limited to where and how used plus “zone of natural expansion”



COMMON LAW TRADEMARKS



STATE TRADEMARKS

- According to [11 V.S.A. § 2527](#):
- The Secretary of State shall not register a trademark which consists of or comprises:
 1. Immoral, deceptive, or scandalous matter;
 2. Matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation or any simulation thereof.
- The Secretary of State shall not register as a trademark:
 1. A merely geographical name or term.
 2. A phrase which consists merely in words which are descriptive of the merchandise with which they are used or the character or quality of such merchandise.
 3. A word and/or symbol which is identical with any previously registered trademark by any other person which when applied to the goods of the applicant is likely to cause confusion or mistake or to deceive purchasers or such trademark as to be likely to cause confusion or mistake in the minds of the public or to deceive purchasers.
 4. A word and/or symbol which so nearly resembles previously registered trademark as to be likely to cause confusion or mistake in the minds of the public or to deceive purchasers, or any trademark which consists merely in the name of any person, not written, printed, impressed, or woven in a particular or distinctive manner or in association with a portrait of such individual.
 5. The portrait of any living individual, except with the consent of such individual evidenced by an instrument in writing.



BENEFITS OF US FEDERAL REGISTRATION

- Establishes nationwide protection
- Only way to establish rights BEFORE commencing use
- It allows you to “test the legal waters” before the mark hits the market, giving others a chance to challenge before incurring significant expenses
- Get to use the ® symbol
- More comprehensive than State Trademarks



STATE REGISTRATIONS VS FEDERAL

- Cheaper
- Easier to obtain
- Quicker
- But limited (1 state vs 50)



TRADEMARK "USE"?

- "In use" means the bona fide use of a mark in the ordinary course of trade.
- Not made merely to reserve a right to a mark.
- It is not sufficient to say that you plan to launch the new product or start a business using the mark.
- Must be used on the goods you want to protect (beer name on a T-shirt won't count as a trademark for beer).



VS



Sometimes, you just have to break the rules



Thug life

TRADEMARK "IN USE"?

- The goods are sold or transported in commerce in the state AND
- The mark is placed in any manner on the goods or other containers;
- The mark is placed on displays associated with the goods; or
- The mark is affixed directly to the goods by means of tags or labels.
- If the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale.
- (translation= on a menu or packaging)

TRADEMARK "IN USE"?

- An Intent-To-Use trademark application (ITU application) allows an applicant to apply for a trademark that has not yet been used in commerce.
- After the initial filing, the applicant must file a Statement of Use once the mark has been used in connection with the goods or services identified in the application.
- By filing an Intent-To-Use application, you get an earlier filing date even though you haven't launched the product or made any sales. This earlier filing date, or "priority date," can be a significant procedural advantage since the USPTO will not use later-filed applications for similar marks to block your application.





TRADEMARK "IN USE"?

- Geographic scope of use (initially and in the next several years)
- Length of Use
- Timing for Use/Launch
- Distribution/licensing arrangements
- Budget considerations
- Do you care if other breweries use the name?



HOW FAR DO
YOU WANT
TO EXPAND?

COMMON LAW V REGISTRANT

- Prior user v. Registrant
- Contestable Registration
- Incontestable Registration



WHY TRADEMARK?



WHAT'S IN A NAME?

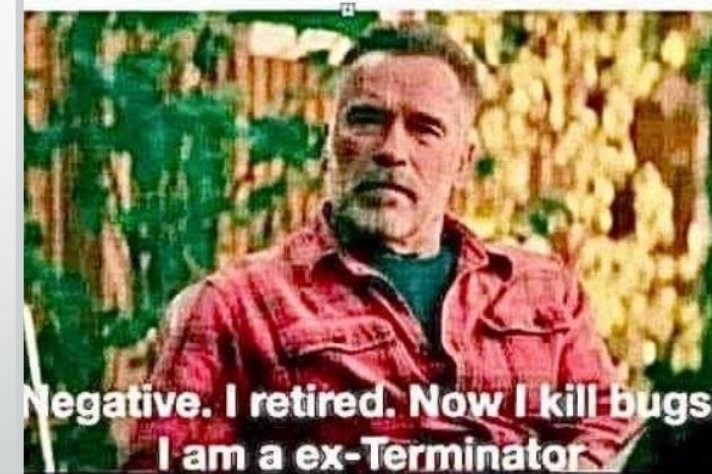
Finding a distinctive name for your beer or brand isn't as easy as it once was. Fortunately, there are still billions of options out there. You just have to use your imagination... and ask yourself (or Google) a few important questions along the way.



- Is it unique?
- Is it descriptive?
- Is it a hop pun?
- Is it confusingly similar to other beer names out there?

UTILIZING ARTIFICIAL INTELLIGENCE AS PART OF YOUR BRAND STRATEGY

- AI can be a helpful name-generator and virtual idea springboard
- Useful if you have a direction (beer style, for example) but no fresh naming ideas
- Good starting point for content generation (blogs, press releases, social media posts)
- Still need to exercise due diligence in making sure a generated name is not taken and generated content is accurate



ABANDONMENT

- Trademarks require ongoing and continuous usage in order to maintain exclusive rights
- According to 15 USC 1127, a trademark is considered abandoned if "its use has been discontinued with intent not to resume such use."
- 3 year presumption of abandonment for non-use





BUSINESS TIP

Never “retire” a trademarked beer

**“EVERYBODY HAS
A PLAN UNTIL THEY
GET PUNCHED IN
THE FACE”**

- MIKE TYSON



**HAVE A
PLAN AND
IDENTITY.**

Are you a 15 different beers a year
brewery or 50?

WILL YOU DISTRIBUTE?

Cans are harder to change than a menu



This tiny brewery in Golden might be Colorado's best-kept beer secret

Cannonball Creek Brewing Co. has won at least one medal at every Great American Beer Festival since it opened in 2013



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MOST POPULAR

DON'T BE AFRAID TO BRAG



HOUSE BRANDING

Brewery Name + Style



DESCRIPTIVE TRADEMARKS

- Often, a word (or words) that merely describes a product - or one of its ingredients or attributes - is too weak to function as a trademark



HOUSE BRANDING

Logo





HOUSE BRANDING

Logo + One Offs





UNIQUE BRANDING



UNIQUE BRANDING





Always remember that you are
absolutely unique. Just like
everyone else.

Margaret Mead

www.thequotes.in

BUT BE CAREFUL...

EXPAND POPULAR BRANDS



BUT ONLY IF IT
MAKES SENSE



**BUD
LIGHT.**
SELTZER

MANGO

5% | 100
ALC/VOL | CALORIES
PER 12 FL. OZ.





Andrew Nadeau

@TheAndrewNadeau

her: what are you watching?

me: film about misconceptions of ownership and land rights of wetlands under an absolute monarchy

her:

me:

her: are you describing sh—

me: yeah it's shrek again

BE CREATIVE WITH YOUR BRANDS

COMMON MISCONCEPTIONS

I will spell my trademark differently

Similarity in sound is one factor in determining whether the marks are confusingly similar



THE BREWTORIUM 'CONSTANT' BEER LINEUP



DAS DAYDRINKER

Munich Helles

ABV: 4.9%

ELECTRIC LEDERHOSEN

Vienna Lager

ABV: 5.1%

LIGHTNING WIZARD

Belgian Witbier

ABV: 5.1%

SOL SURFER

American Pale Ale

ABV: 4.7%

PROPELLER HEAD

American IPA

ABV: 6.5%

BE CREATIVE WITH YOUR BRANDS



PARODY?

The parodist must be making a commentary about the brand through humor or criticism.

FICTIONAL TRADEMARKS

Elements from a fictional show can
be protectable





FICTIONAL TRADEMARKS+ COPYRIGHTS=TROUBLE

PSEUDONYM BRANDS





BEWARE

I CAN'T BELIEVE
IT'S
TRADEMARKED

Record 1 out of 1

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

BEER WORKS

Word Mark	BEER WORKS
Goods and Services	IC 032. US 045 046 048. G & S: Beer. FIRST USE: 19910326. FIRST USE IN COMMERCE: 19910326
Standard Characters Claimed	(4) STANDARD CHARACTER MARK
Mark Drawing Code	78764048
Serial Number	November 30, 2005
Filing Date	1A
Current Basis	1A
Original Filing Basis	March 27, 2007
Published for Opposition	3293664
Registration Number	September 18, 2007
Registration Date	(REGISTRANT) Slesar Bros. Brewing Company, Inc. CORPORATION MASSACHUSETTS 110 Canal Street Boston MASSACHUSETTS 02114
Owner	ASSIGNMENT RECORDED
Assignment Recorded	Douglas R. Wolf
Attorney of Record	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "Beer" APART FROM THE MARKS SHOWN
Disclaimer	TRADEMARK
Type of Mark	PRINCIPAL
Register	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20170927.
Affidavit Text	

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

Tangerine Wheat

Word Mark	TANGERINE WHEAT
Goods and Services	IC 032. US 045 046 048. G & S: Beer. FIRST USE: 20080220. FIRST USE IN COMMERCE: 20080314
Standard Characters Claimed	(4) STANDARD CHARACTER MARK
Mark Drawing Code	85944268
Serial Number	May 28, 2013
Filing Date	1A
Current Basis	1A
Original Filing Basis	January 21, 2014
Published for Opposition	4509582
Registration Number	1325506
International Registration Number	April 8, 2014
Registration Date	(REGISTRANT) Table Bluff Brewing, Inc. DBA Lost Coast Brewery & Cafe CORPORATION CALIFORNIA 1600 Sunset Drive 617 4th Street Eureka
Owner	4133881
Prior Registrations	NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "WHEAT" APART FROM THE MARKS SHOWN
Disclaimer	TRADEMARK
Type of Mark	PRINCIPAL-2(F)
Register	SECT 15. SECT 8 (6-YR).
Affidavit Text	LIVE
Live/Dead Indicator	

Record 1 out of 1

[TSDR](#) [ASSIGN Status](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)

SESSION

Word Mark	SESSION
Goods and Services	IC 032. US 045 046 048. G & S: Brewed Malt Based Alcoholic Beverages, Namely Beer, Ales and Lagers. FIRST USE:
Standard Characters Claimed	(4) STANDARD CHARACTER MARK
Mark Drawing Code	78544241
Serial Number	January 7, 2005
Filing Date	1A
Current Basis	1B
Original Filing Basis	October 25, 2005
Published for Opposition	CHANGE IN REGISTRATION HAS OCCURRED
Change in Registration	3113041
Registration Number	July 4, 2006
Registration Date	(REGISTRANT) B C Marketing Concepts Inc. DBA Full Sail Brewing Company CORP
Owner	Sheila Fox Morrison
Attorney of Record	TRADEMARK
Type of Mark	PRINCIPAL
Register	SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20160401.
Affidavit Text	1ST RENEWAL 20160401
Renewal	LIVE
Live/Dead Indicator	

58



506 Columbi

BEWARE OF THE DOCTRINE OF FOREIGN EQUIVALENTS

- Under the doctrine of foreign equivalents, a foreign word (from a language familiar to an appreciable segment of American consumers) and the English equivalent may be held to be confusingly similar.
- If the evidence shows that the relevant English translation is literal and direct, and no contradictory evidence of shades of meaning or other relevant meanings exists, the doctrine generally should be applied by the examining attorney.



SUGGESTIVE TRADEMARKS

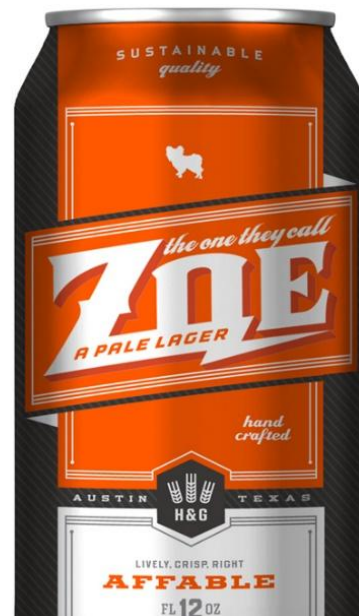
- A suggestive mark is different from a descriptive mark because the consumer or member of the public must exercise his or her imagination - or thought or perception - to draw a conclusion about what kinds of goods or services are being offered.



PHONETIC EQUIVALENTS

- A slight misspelling of a word will not turn a descriptive or generic word into a non-descriptive mark

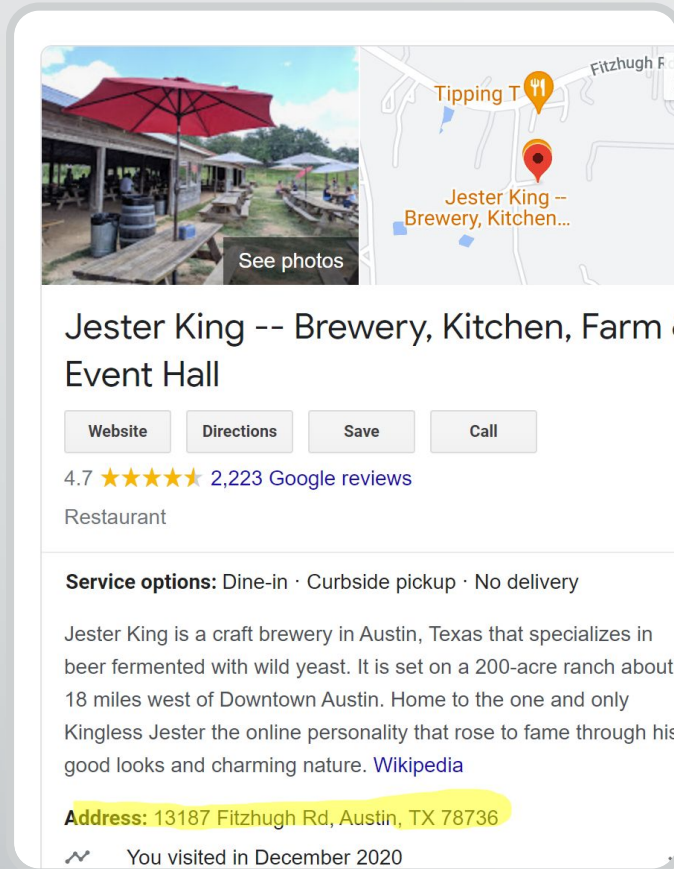




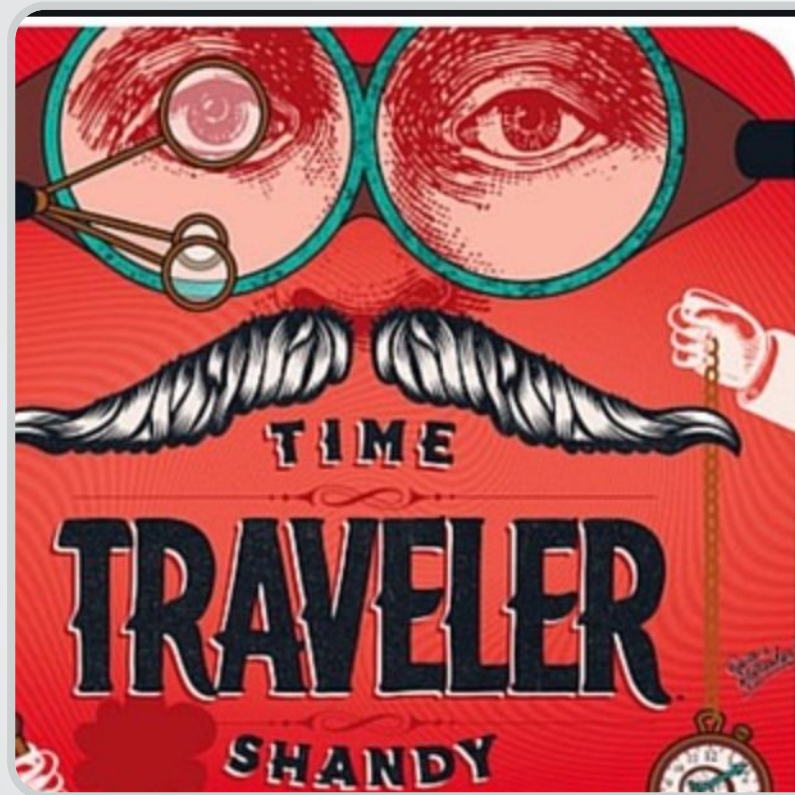
BE CAREFUL WITH YOUR GRAPHIC DESIGNERS



FUN FACT – A URL IS GENERALLY NOT A TRADEMARK



- A trademark can be part of a URL – such as www.jesterking.com
- Jester King is a trademark, www.jesterking.com is not because it is not used as a source identifier for the goods and services associated with the JESTER KING mark
- URL is the address on the web
- There is an exception, and this is if the URL is used as a brand identifier
 - Example: Booking.com



COMMON MISCONCEPTIONS

I will add a descriptive term to my mark to distinguish it

Descriptive elements will require a disclaimer

QUESTIONS?

Mike Drumm

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FOR EXTERNAL WOUNDS



FOR INTERNAL WOUNDS



THANK YOU

Mike Drumm



720-257-9060



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www.beerattorney.com



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