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Industry Update – What is brewing in legal matters involving branding for the beer and beverage industry

Drop Anchor Brewery opened in mid-2014, achieved quick success in Washington state, and eventually got noticed by (and objections from) Anchor Brewing Company of San Francisco, famous for **ANCHOR STEAM BEER** and its many “ANCHOR” marks for beer in use since 1896. In May of 2015, Drop Anchor announced its new name, RIVER MILE 38 BREWING COMPANY.

Re-branding can be painful and expensive- search your marks before adoption! It's much less disruptive to change a mark at the outset rather than after you have gained success and brand loyalty.

The Trademark Trial and Appeal Board recently affirmed refusal of registration to **Twisted X Brewing Company** for **COW CREEK** for beer based on likelihood of confusion with an earlier registration for BULL CREEK BREWING, also for beer.

Search broadly, an identical screening search of the PTO database would likely not have found the blocking mark. Work with a trademark specialist on performing and reviewing search results.

In April 2015, a California resident “beer aficionado and home brewer” brought a class action lawsuit against MillerCoors alleging false advertising based on use of the “craft beer” in connection with **BLUE MOON** marketing. The initial complaint was dismissed as the court found that a reasonable consumer could not think that the words “craft beer” on the MillerCoors website indicated an “independently brewed, hand-crafted beer.” The plaintiff has recently filed a new complaint.

Review your advertising and marketing with a fine tooth comb for potential legal issues. There have been a slew of challenges to “hand-crafted”, “craft” and “made in___” language in marketing and packaging recently, particularly in the beverage industry. While this one was unsuccessful, others have been successful.

Lost Coast Brewery fought off a challenge by Mad Beach beer related to labelling. Both companies had one variety of beer whose label included a shark which, the Eastern District of North Carolina Court found “looked nothing alike.” The case was ultimately settled before a decision.

Label designs can subject brewers to challenges and even liability in cases where the designs are likely to cause confusion.



Dana Brody-Brown is an attorney in Hoge Fenton's IP group with more than 15 years of experience in Silicon Valley helping companies of all sizes protect their brands.

Dana focuses on in the areas of trademark counseling and prosecution, including trademark audits, portfolio analysis and strategic counseling, selection and searching of trademarks, domestic and worldwide registration and enforcement, domain name issues, and licensing.

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North Coast Brewery sued fledgling **North Coast Distillery of Oregon** alleging infringement of the NORTH COAST mark. The matter settled quickly and the distillery changed its name to Pilot House Spirits.

Defensive tip- Use of an identical mark for two different types of alcoholic beverage these days is likely enough to make out a case for infringement. Search fully, and if the mark you want is already in use for wine, spirits, or a pub, move on to another choice.

Offensive tip- Brand holders have an obligation to police their marks or risk losing rights. Be on the lookout (or better yet order a watch service) for other parties in the beverage, food, and hospitality industries using marks similar to yours, and take action, if appropriate.