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What Happens When Wineries and Breweries Don't Register Their Trademarks?

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As the number of new [breweries](#) and [wineries](#) continues to grow, the range of choice in untapped creative trademark ideas represented by logos, slogans, and packaging designs is shrinking. If your brand isn't trademarked yet, you might strongly consider doing so. The risk of being copied or losing the rights to your brand in an expensive lawsuit have never been greater.

Most brewery and winery owners are well aware that a company brand is essential to their success. Yet, many operate on pretty slim margins; and in the rush of day-to-day operations, [federal trademark registration](#) sometimes ends up taking a back seat to other pressing issues. That could be a serious mistake.

While a business may realize the importance of its brand name, the company may not consider federal registration with the [U. S. Patent & Trademark Office](#) (USPTO) worth the time and effort.

Value of Federal Trademark Registration

Many brewery and winery owners believe that it is not vital that they federally register their brand name, that rights accrue just by using the name in commerce. While it is true that an unregistered trademark (or "common law" trademark) does provide some benefits, a federally registered mark has many advantages.

Federal trademark registration is essentially an insurance policy for your brand. It puts others on notice of your established rights, and reduces the likelihood someone will unintentionally select a confusingly similar name.

Failure to obtain a federal trademark can open the door to competition and reduce your ability to enforce your trademark rights against others. And if disputes arise, it is often difficult to determine the exact territory of the unregistered trademark or the parties' respective priority dates.

Do the Trademark Research

If your winery or brewery business is just getting underway, it's important to thoroughly research your brand name in advance of officially launching it or applying to register a trademark. This vetting process helps ensure that you won't be spending precious time and money promoting a name and logo, only to learn that it's already in use by someone else and you have to begin again from scratch. *(continued on next page)*

The process of determining whether a given name is available can be tricky, especially given the large number of breweries and wineries operating with unregistered trademarks across the U.S. For example, there are a large number of unregistered trademarks being used on social media, such as Facebook, LinkedIn and Twitter. It's always advisable to seek the counsel of an experienced trademark attorney to conduct the research and assist with the evaluation of risk in using a particular trademark.

Consider an 'Intent to Use' Application

With USPTO's current backlog, it can take over a year for a trademark to be registered after you file your application. Thus, the earlier the better when it comes to submitting an application. Even if you are in the beginning stages of planning your winery or brewery business, you should consider filing an "Intent to Use" trademark application. This allows you to effectively "reserve" your trademark rights in advance.

In addition, early filing allows you to learn much sooner whether the USPTO has any problems with your application, such as the existence of conflicts with other trademarks. This is particularly helpful for early-stage start-ups, as it gives them the flexibility to adapt their branding strategy before opening for business.

Importance of Registration in the Internet Age

A trademark is essentially a brand name – a name that represents the goodwill associated with that brand and that differentiates your product from that of your competitors. The Apple trademark is a good example.

Protecting a trademark or potential trademark with federal registration ensures that the trademark and its associated goodwill are protected and recognized on a national level.

Many companies, particularly those operating exclusively in a particular locality, may not feel a need to seek out federal registration of their trademarks, opting to rely instead on common law protections. Yet, in our internet age, even the smallest and most local of businesses often find it necessary to offer their products and services online, and thus themselves thrust into the national and international marketplace. And on the internet, common law protections may be insufficient to protect a brand from predatory competitors.

Most Important Reason for Federal Registration

The most important reason for registering a mark with the USPTO is to place both consumers and potential competitors on notice that your mark is federally protected. Once registered, you are allowed to designate your mark with a registered trademark symbol (®) to indicate that the mark is, in fact, a registered trademark.

Registration puts potential competitors on notice that should they infringe your mark, you have the right to file a federal trademark infringement action and to obtain remedies as a result of their infringement. Many of these remedies are usually not available for unregistered, common law trademarks.

Thus, in the competitive winery and brewery industries, federal trademark registration can be an essential ingredient to a company's success.