



Julien Khoury

المجلة
القضائية

Alcohol Industry and Intellectual
Property

18 - 11 -2022

1. How IP affects every aspect of the alcohol industry

Intellectual Property is almost everywhere! This statement may seem as a myth or an overstatement to the layman, however, this is nothing but the truth.

For instance, in the alcohol industry, some may consider that alcohol is a material good, not concerned by Intellectual Property, which is truly an erroneous perception.

Intellectual Property can actually be found in every aspect of the alcohol industry. We see it in the name of the product, the logo, the recipe, the production, the business relations, the packaging, the labeling, the bottles, the taste, the origin of the liquor, ...

Moreover, IP in its broad sense is an umbrella term for many creative property rights, dealing with Trademarks, Copyrights, Industrial Design, Patents, etc.

All of these rights play a fundamental role in the alcohol industry. Each of these rights performs a certain function in identifying and protecting the final product provided by the company producing alcoholic beverages.

In this article, we will explain how each of these Intellectual Property rights will be involved in the production and commercialization of alcoholic beverages.

We shall begin by focusing on the connection between Intellectual Property and alcohol commercialization, and in which Trademarks, Industrial Designs, Copyright and Trade Secrets will have a major role to play.

2. Trademark, Industrial Design, Copyright and Trade Secrets as used in the Alcohol Industry

A Trademark is a sign capable of distinguishing the goods or services of one enterprise from those of other enterprises. In principle, a Trademark registration will confer an exclusive right for the use of the registered trademark. This implies that the Trademark can be exclusively used by its owner, or licensed to another party for use in return for consideration. Registration provides legal certainty and reinforces the position of the right holder, for example, in case of litigation. A word or a combination of words, letters, and numerals can perfectly constitute a Trademark. But trademarks may also consist of drawings, symbols, three-dimensional features such as the shape and packaging of goods, non-visible signs such as sounds or fragrances, or color shades used

as distinguishing features – the possibilities are almost limitless¹. Trademark law is found in the majority of national legislations and is well harmonized at the international level. Several International Treaties govern this system, mainly the Paris Convention for the Protection of Industrial Property. In Lebanon, Trademark Law is governed by **Resolution no. 2385, issued on 17 January 1924**. Trademarks are recognized in Lebanon and anyone who wishes to register their brand could do so if they meet the conditions for registration.

The Nice Agreement (1957) established The Nice Classification which is an international classification of goods and services applied for the registration of marks. A new edition is published every five years and, since 2013, a new version of each edition is published annually. This classification includes 45 classes of different goods and services. **Classes 32 and 33** are dedicated for non-alcoholic beverages and beer and alcoholic beverages. Any person or entity seeking to register their brand which identifies beer or other alcoholic beverages, will have to register their Trademark under classes 32 and/or 33.

As for the type of Trademarks that can be registered in the alcohol industry, we can find mainly, the name of the brand, the logo, the used color, the label, and even the shape of the bottle containing the drink.

For example, Grey Goose or Johnnie Walker, which are famous Brand names for alcoholic drinks are registered as Trademarks, their owner benefits of an exclusive right to this name. Any breach of this right shall be considered as a Trademark Infringement. In Lebanon as well, alcohol companies tend to register their brand names as Trademarks in order to secure a greater protection and prohibit any unauthorized thereof. It is worth mentioning that the registration of trademarks in Lebanon is conducted at the Ministry of Economy through both online and physical applications. In addition, international Trademark registration requirements apply as well in Lebanon.

Moreover, alcohol companies/producers tend to register the shape of the bottle containing the drink. This Trademark shall be registered as a 3-Dimensional (3-D) mark^{2 3}. In Lebanon, Bottle design are also registered as Trademarks if they satisfy the required conditions for registration⁴.

Registration as Trademarks for bottle shapes was brought before European Courts following a dispute between Vinicola Tombacco and Bottega.

¹ WIPO, About IP, Trademarks, <https://www.wipo.int/trademarks/en/>

² Trademark no. TMA957155, Canadian 3-D Trademark for Grey Goose bottle

³ Trademark no. P-516834, Swiss 3-D Trademark for Bailey's bottle

⁴ Trademark no. 122878, Lebanese Trademark for Smirnoff Bottle design without name

Bottega is known for its decorative gold bottle and is the owner of a 3D mark protecting the bottle's shape, along with its additional characteristics of the color gold, the letter B and 'flame' design element.



The validity of that 3D mark was contested by Vinicola Tombacco in March 2016. The European courts have ruled in favor of the validity of such registration and have recognized the distinctive character of the Trademark⁵. Such a decision encourages producers of wines and other spirits to further register their bottles as Trademarks in order to enjoy an exclusive right over these bottles.

In addition, a named cocktail can be a Trademark, which can offer some control over how it is used, but cannot necessarily prevent its use.

Furthermore, bottle shapes, labeling and packaging of alcoholic beverages shall be protected by Industrial Designs as well. In a legal sense, an Industrial Design constitutes the ornamental aspect of an article. An Industrial Design may consist of three-dimensional features, such as the shape of an article, or two-dimensional features, such as patterns, lines or color⁶.

An industrialist aiming to protect his container in some territory may opt for the registration of a design. Upon acceptance of the application, he will benefit from the protection granted to Industrial Designs. In addition, the label affixed to the bottle containing the beverage could also benefit from the protection attributed to industrial designs.

On the hand, Copyright (or author's right) is a legal term used to describe the rights that creators have over their literary and artistic works. Works covered by Copyright range from books, music, paintings, sculpture, and films, to computer programs, databases, advertisements, maps, and technical drawings⁷. Recipes, cocktail or

⁵ Case T-324/18, Judgment of the General Court (Sixth Chamber) of 8 May 2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62018TA0324&from=DE>

⁶ WIPO, About IP, Industrial Designs, <https://www.wipo.int/designs/en/>

⁷ WIPO, About IP, Copyrights, [https://www.wipo.int/copyright/en/#:~:text=Copyright%20\(or%20author's%20right\)%20is,%2C%20maps%2C%20and%20technical%20drawings](https://www.wipo.int/copyright/en/#:~:text=Copyright%20(or%20author's%20right)%20is,%2C%20maps%2C%20and%20technical%20drawings)

other concoctions, cannot be protected by Copyright, as recipes are considered “facts” and a fact cannot be Copyright protected. However, Copyright law applies to the label and/or bottle artwork. Technically Copyright law protects the creative work the moment it is created, but it is good practice to register a Copyright to formally document the claims to avoid any conflict of ownership.

Nevertheless, the best way to protect a recipe and the combination used for a cocktail is to keep it a secret. Indeed, a cocktail that is kept a secret will benefit from the protection granted to a Trade Secret. Trade Secrets are Intellectual Property (IP) rights on confidential information which may be sold or licensed⁸. In other words, a Trade Secret is just that: something that nobody else knows. There is an infringement of Trade Secret whenever the confidential information has been disclosed unlawfully. In the event, where a recipe of a cocktail is kept confidential and a person discloses this recipe unlawfully to the public or to a competitor, he shall be sued for infringement of Trade Secret.

3. Protection granted to the Source of a Spirit

We will dedicate the rest of the study to explore the protection of the source of the spirit and alcohol which in itself can be protected by Intellectual Property rights.

Such protection could be attributed to a Geographical Indication (GI). A Geographical Indication is a sign used on products that have a specific geographical origin and possesses qualities or a reputation that are related to that origin. In order to function as a GI, a sign must identify a product as originating in a given place⁹.

Geographical Indications are typically used for agricultural products, foodstuffs, wine and spirit drinks, handicrafts, and industrial products.

Originally, Champagne was not the designation of an alcoholic beverage, but it was rather the name of a region located in the north east of France. The area is best known for the production of Champagne, the sparkling white wine that bears the region's name. The principal grapes grown in the region include Chardonnay, Pinot noir, and Pinot Meunier. The unique, chalky landscape of the Champagne wine region and the resulting agro-industrial system led to the development of sparkling wines like champagne in the 17th century. As a result,

⁸ WIPO, About IP, Trade Secrets, <https://www.wipo.int/tradesecrets/en/>

⁹ WIPO, About IP, Geographical Indications, https://www.wipo.int/geo_indications/en/index.html.

many of the production sites and wine houses in the region were inscribed on the UNESCO World Heritage List in 2015 as part the Champagne hillsides, houses and cellars site.

Champagne is a recognized Geographical Indication. This recognition is granted by the European Union and some other countries.

Thus, no producer of sparkling wine can designate his product as champagne unless the production is made exclusively in the Champagne region in France. If it does not meet this requirement, the product can o then only be considered as a sparkling wine. Therefore, any use of the term "Champagne" by a producer located outside the Champagne region will be prohibited. The right holders have the right to prevent and sue any producer who does not respect the protected geographical indication.

Article 22 of the TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)¹⁰ indicates that States must establish mechanisms for interested parties to prevent “the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good” or “any use which constitutes an act of unfair competition.” The treaty also stipulates that even if the indication is “literally true as to the territory, region or locality in which the goods originate,” it can be prevented if it “falsely represents to the public that the goods originate in another territory.”

The Treaty grants a greater protection to Geographical Indications referring to wines and spirits. Article 23 of the treaty stipulates that the Geographical Indications referring to wines and spirits – such as “Champagne” or “Tequila”- must have a greater level of protection than what is generally granted. In this case, “subject to a number of exceptions,” explains the WTO website, “these indications have to be protected even if misuse would not cause the public to be misled.” The treaty also clarifies that the protection applies “even where the true origin of the goods is indicated or the Geographical Indication is used in translation or indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like.”

Many other wines and spirits are recognized as Geographical Indications, namely Bayerisches Bier, Münchener Bier, Irish Whiskey, Soctch whiskey, Polish Vodka, Tequila, Cognac, Rum, ...

All of these Wines and Spirits cannot be named as such, unless they are produced in the region granted the protection.

¹⁰ Agreement on Trade-Related Aspects of Intellectual Property Rights, signed in Marrakesh, Morocco on 15 April 1994, https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm

4. Patents and the Alcohol Industry

In the following section, we will explore patent law in the alcohol industry.

Patent law affects the alcohol industry with respect to the technology and machinery that produce alcoholic beverages. Patents associated with the beverage industry have been segmented mainly into 9 categories (wine, non-alcoholic beverages, alcoholic beverages (except wine and beer), sterilization and ageing methods, brewing of beer, etc.), beer brewing, dietary beverages, denatured alcohol, apparatus and methods of extracting alcohol)¹¹.

The main actors in this field are the major alcohol manufacturers. They develop new techniques and/or new machines for the production/extraction of alcohol and seek to protect their innovation. They believe that the best protection for such innovations is Patents.

Indeed, a Patent is an exclusive right granted to an invention, which is a product or a process that provides, in general, a new way of doing something, or offers a new technical solution to a problem. To obtain a patent, technical information about the invention must be disclosed to the public in a patent application¹². In principle, the Patent owner has the exclusive right to prevent or stop others from commercially exploiting the patented invention. In other words, Patent protection means that the invention cannot be commercially made, used, distributed, imported or sold by others without the Patent owner's consent.

In this instance, the developers of new inventions in the alcohol industry will be capable of suing for patent infringement and counterfeiting, any unauthorized use of their innovation.

5. Conclusion

The statement that IP is found in every detail of the production and marketing of alcoholic beverages is absolutely correct. The connection between all IP rights and alcoholic beverages is non disputable, although these rights are involved in different phases of the production and commercialization of alcohol. Alcohol producers and manufacturers should be aware that Intellectual Property law protects their work and that they should establish an Intellectual Property rights management strategy. They must know what rights they own and how to obtain maximum benefit from those rights. Finally, they should never tolerate any infringement of

¹¹ The patent panorama of the French food industry, 2010, FRINNOV

¹² WIPO, About IP, Patents, <https://www.wipo.int/patents/en/>

their rights and take action against anyone who violates their Intellectual Property. Lastly, all IP owners of alcoholic beverages should keep in mind that the competitors are protecting their own Intellectual Property rights on their products/services and respect their Intellectual Property.