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5 Reasons why wine producers should invest in brand protection

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Most consumers are unable to taste what's inside the bottle prior to purchase. It is often the brand alone that drives sales, distinguishes a product from its competitors, and acts as an indication of quality. A wine producer's brand is therefore amongst its most valuable assets.

It is no surprise then to see English wine producers investing considerable sums maintaining and developing their brand assets. Many have developed an impressive array of logos, designs and labels which have been marketed to convey compelling messages – particular those targeting premium price points.

Yet, a recent study conducted by international law firm Withers Worldwide found widespread under-investment in the legal protection of brand assets. Of the UK's 19 largest wine producers for instance, Withers Worldwide found:

- 31% had no registered trade mark protection at all.
- 63% had no registered trade mark protection outside the UK.
- Where registrations did exist, their scope was frequently limited to "wine" and failed to cover other the producer's other business activities – such as the production and sale of spirits (e.g. gin or vodka), hotel and hospitality services, food and restaurant services, D2C trading channels, tours and tastings, and merchandise.
- 89% had no registered design right protection.

Here we set out five reasons why now is the time to invest in the legal protection of your brand.

1. Copycats, counterfeiters and infringers

As the English and Welsh wine industry continues to boom, the incentive for third parties to copy, counterfeit and infringe increases exponentially. Such threats may come from a variety of sources, including other wine producers, discount retailers, or counterfeiters – all of whom may attempt to freeride on the success of a rapidly growing sector. One only has to look at other wine producing nations to see these threats live in action.

Proper investment in brand protection is imperative – especially in the development of a portfolio of trade mark and design registrations which comprehensively cover the business's core commercial activities. Failing to register brand assets (or to update the portfolio as the business expands) is a significant exposure and should not be overlooked. Without these registrations, there may be little or nothing that can be done.

2. The growing export market

Whilst 94% of English wine was consumed by the domestic market in 2018, Wine GB estimates that exports will be worth £350m by 2040. As a result, registered trade mark protection in each key export jurisdictions should be high on the agenda.

The application date is important and a failure to act quickly can be fatal. For instance, if a third party is first to file an identical or similar trade mark, a business may well find itself blocked from exporting to, and selling products in, that territory under its brand. The practice of 'trade mark squatters' spotting the domestic success of British brands and filing similar marks overseas before the brand-owner has done so is, unfortunately, not uncommon (especially in countries such as China). When this happens, it is a difficult, expensive, and sometimes insurmountable hurdle to overcome – especially as a business may not have a protectable reputation or other unregistered rights in that country to rely on.

3. New forms of brand protection

In January 2019, new legislation came into effect that introduced new types of UK trade mark protection. Wine producers now have the opportunity to obtain registered protection for:

- Position marks – for example, the position of a coloured band on bottles.
- Patterns – for example, a distinctive pattern embossed on sparkling wine foil.
- Holograms – for example, an anti-fraud measure on a gift box.

As brands often develop in stages, with new elements added over time, these new forms of protection should be explored and regularly considered alongside other registrable marks like words, product names, logos, shapes, patterns and colours.

4. Market consolidation

As the industry continues to grow, commentators are forecasting an increase in M&A activity. Analysts predict this will be driven by market consolidation (with well-funded producers looking at strategic acquisitions) and the entry of new players (e.g. the large alcoholic beverage companies wanting a foothold in this space).

A very significant portion of the purchaser's valuation is likely to lie in the brand, so don't be surprised if the purchase price takes a major hit if the purchaser discovers intellectual property (IP) issues during its due diligence. If you have ambitions to exit, now is an ideal time to fix legal issues that have been addressed loosely or informally, such as ownership of IP created by third parties or gaps in brand protection.

5. Diversification

In recent years, several wine producers have diversified into ancillary products (such as other alcoholic drinks like gins and vodkas), services (such as hotels and hospitality services) and merchandise (such as clothing). Remember, brand protection does not automatically follow. It must be regularly reviewed and updated to ensure it keeps pace with the latest activities of the business.

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