



Eight Simple Tips To Protect Your Intellectual Property

By David Hoffman

1. REGISTER YOUR NAME:

Your winery or vineyard name should be registered. A trademark registration enhances your ability to protect the name. Moreover, it acts as a “fence” to your intellectual property alerting others to your name and your intent to protect it. Every product and service you produce has this name. It is well worth protecting. Moreover, if your name is used as your web site’s domain name, then registration helps protect against domain name pirates.

2. CLEAR YOUR WINE NAMES:

Before labeling and even before applying for label approval from the TTB (COLA application), the name of a wine should be cleared. Changing the name (“brand name” and/or “fanciful name”) on the COLA application) generally requires a new or amended application. More important, once you label the wine, if you have to change the name you have a disaster. You do not necessarily need to spend

the money on applying for a trademark registration on each wine name, but you should do a search to clear the name prior to COLA submission or at least prior to bottle labeling.

3. MAKE SURE YOU OWN COPYRIGHT IN ARTWORK AND TEXT:

In your marketing materials and your wine label art, and any photos or graphics you use on your internet web site, make sure you own copyright in these works. If the work was wholly created by your employees acting within the scope of employment you own it. If the work was created by a non-employee (or an employee acting outside the scope of employment), unless there is a written assignment of copyright, signed by the creator (author) of the work, you are not the owner. A “work made for hire” agreement will not normally transfer ownership of the work. Make sure to get a written and signed copyright assignment.

4. PROTECT YOUR TRADE SECRETS AND CONFIDENTIAL BUSINESS INFORMATION:

Important and simple steps to protect confidential information include: (i) limit access by requiring passwords to get to the mailing list, wine club member list, customer list, purchase orders, proposals, and financial information; (ii) limit access to any ingredient list and/or formulation for making your wines; (iii) make sure your winemakers and any other personnel with access to trade secrets and confidential business information acknowledge in writing that the winery owns the trade secrets (formulation, procedures), financial information, wine club member list, mailing list, and any other confidential business information. Generally, the best place to do this is in the employment agreement but it can also be done as a confidentiality acknowledgement subsequent thereto.

5. MAKE SURE YOU OWN INVENTIONS:

Make sure that your employment agreements and agreements with any independent contractors include an invention and trade secret assignment term.

6. FILE COPYRIGHT APPLICATIONS:

Any key artwork or graphics, and your web site as a whole, should be copyrighted. Go to www.copyright.gov and file a copyright application.

7. BROADEN YOUR TRADEMARK RIGHTS:

If you are selling goods and services other than just wine (like most wineries), then consider filing trademark applications on goods and services in addition to winery services or wine. This broadens your rights, and can make enforcement much easier.

8. REGISTER THE NAME OF YOUR WINERY OR VINEYARD AS A DOMAIN NAME:

Your winery or vineyard name should be registered as a domain name. For example, if your winery is named "A Midsummer Night's Dream," then try to register www.AMidsummerNightsDream.com.

Also consider registering common variations such as www.MidsummerNightsDream.com, MidsummerNight.com, etc.

CONCLUSION:

If you follow these eight simple tips, they will go a long way towards protecting your rights and helping avoid costly litigation.

Turning New Ideas, Names, Products & Computer Programs Into Powerful Intellectual Property

David Hoffman has been an attorney practicing exclusively in intellectual property law (patents, trademarks, copyrights and unfair competition) since 1985. Mr. Hoffman represents multinational companies as well as numerous start up to medium size businesses. He both litigates and procures rights for his clients, and with his philosophy of procuring the broadest rights possible, performing good clearance procedures, and negotiating, has successfully avoided and minimized litigation for clients he counsels.



Mr. Hoffman has taught for a patent bar review class, has authored articles and given lectures on intellectual property, and has been named to Who's Who Millennium Edition and Who's Who Among Rising Young Americans in American Society & Business.



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