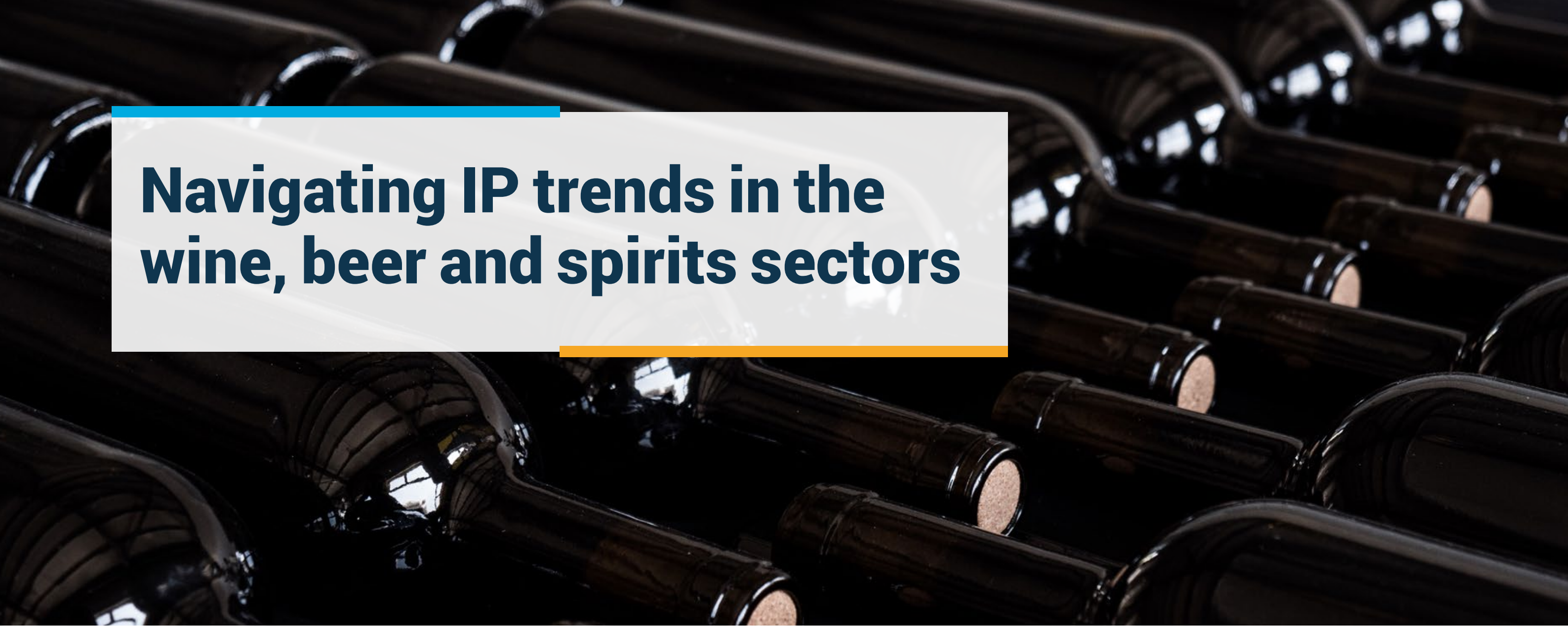

Navigating IP trends in the wine, beer and spirits sectors

Whether prompted by the COVID-19 lockdown or changes to consumer preference, the drinks sector is undergoing a period of major innovation. From no and low-alcohol alternatives to ready-to-drink beverages, hard seltzers and home delivery cocktail kits, what do our new drinking habits mean for brand owners' IP strategies?

In our recent webinar, IP experts discussed the IP opportunities and challenges facing the drinks sector. From the emergence of no and low-alcohol alternatives to the impact of COVID-19 and Brexit, we summarise some of the key points discussed and provide IP action points for brand owners.

'Nolo' alcohol beverages: A question of class

Low-alcohol drinks generally fall under class 33 in the Nice Classification system, except for low-alcohol beer and 'beer-based alcopops', which fall under class 32, as do non-alcoholic mixers such as ginger ale, soda water and other soft drinks. The classification of beer in class 32 is not based on its low-alcohol content, but because it was historically characterised as a soft drink alternative. In other words, classification is not about the technical nature of production or the level of alcohol, but rather the channels of commerce and the way the consumer perceives the drink.

- When defining the class, consider the intended positioning of the product. Even if a product is beer-based, if the intention is to market it as a low-alcohol beverage (which is not marketed as beer), then class 33 would likely be the proper class.
- Ready-to-drink mixed cocktails and hard seltzers fall under class 33. Conversely, no alcohol alternatives for spirits should be registered under class 32.
- Brands should be aware of any limitations to protection in terms of the nature of their goods. For example, the broader term 'alcoholic beverages' may be more appropriate for spirits-based ready-to-drink products, rather than registrations based on 'vodka' or 'gin' under class 33.

How to navigate this new competitor landscape

Where alcoholic and non-alcoholic drinks may once have been considered dissimilar, the change in market and consumer behaviour has begun to alter the legal position for brand owners. Brands that have previously co-existed without issue may suddenly find the risk of conflicts increasing as they expand into new markets.

- Review the scope of registered trademark protection for alcohol brands to ensure they are fit for purpose, i.e. are additional registrations required to broaden the scope to include non-alcoholic beverages in class 32?
- When seeking protection in class 32, review any settlement agreements that have been prepared on the basis of the historic market separation between non-alcoholic and alcoholic beverages.
- Reassess clearance searching and watching strategies to ensure assessment of potential conflict that could arise from applications covering 'non-alcoholic beverages' in class 32.

COVID-19 and the rise of home deliveries

From craft ale to cocktail ingredients, including premixes in pouches, the new generation of delivery services allows us to recreate the bar experience in the comfort of our own homes. But, how do you classify the contents of a 'bar box' or beer delivery when the goods are often third-party brands?

- Consider classes 30, 32 and 33 for protection of ingredients, but also class 39 for the delivery service of these items, and even entertainment and bar services in class 43. There is also a whole host of merchandise, such as clothing and glassware, that could be protected as a spin-off from the core services offered.
- Where the goods contained within the box are not 'own brand' the most relevant class may be 'retail services' in class 35, as this is the core service that is being provided.

Online brand protection and anti-counterfeiting

E-commerce took a major leap forward as a result of COVID-19 lockdowns, and advertising and sales significantly moved from on-premise (bars and restaurants) to off-premise (e.g. super-markets) and then online. This has brought about new business needs and new legal questions for drinks brands, not least the need to step up monitoring and enforcement of counterfeit products (e.g. refills of original bottles), which can pose serious health issues for consumers. Unauthorised merchandise, fake job ads, scams and frauds are also increasing.

- Online brand protection strategies should be focused on key channels and threats. Typically for drinks brands, this will include monitoring for the sale of counterfeit products on online marketplaces, unauthorised use of a brand in phishing emails or even the use of a brand name to retail drugs on the Dark Web.
- 'Stashcans' is another common problem for brand owners, where branded drinks cans are sold with a removable lid that can be used to hide drugs for transport across borders or into festivals.

Brexit, paperwork and new geographical indications

Exporting and importing products between the UK and EU has become more complicated following Brexit with not only additional paperwork (and associated costs), but also new product labelling rules that may require the same goods to be labelled differently in the UK and EU.

- For example, the labels on bottles exported from the UK may need to include an address in the EU27 to meet EU health and safety laws.

A new scheme for the protection of geographical indications (GIs) in the UK came into effect on 1 January 2021. It protects the geographical names of food, drink and agricultural products (including beer, cider and perry), spirit drinks, and wine and aromatised wine under three designations: Protected Designation of Origin (PDO), Protected Geographical Indication (PGI) and Traditional Speciality Guaranteed (TSG). It is hoped that a local appreciation of these goods will make it easier to protect them under the UK system than it might otherwise have been via the EU.

- As an extension of the GI scheme, the UK entered into an agreement with the US to protect more than 700 wines and two spirits (Bourbon Whiskey and Tennessee Whiskey) in the UK. EU producers importing or selling into the UK will need to take these new protected names into consideration.

Anatomy of a French wine label

France's history shows us wine fraud is perhaps the number one reason the world needs wine laws. French wine production has a chequered past, but that history is the reason why French wine labels are written as they are: featuring the names of villages, rather than grape varieties.

- Location: a guarantee that all the grapes for the wine come from that village or region and it's important for us as consumers.
- Regulated terms: the regulation of 1949 provides the necessary guidelines for the use of terms such as 'château', 'clos', 'd omaine', 'moulin', 'tour', 'cote', 'cru', and similar terms for wines to be certified 'appellation d'origine controllée' (controlled designation of origin). In order to apply for a wine trademark in France with such terms the wine must be certified AOC (CDO).
- Indications of origin: PDO and PGI may be used for the sale of wine in accordance with the relative protective procedural guideline. They are protected against any direct or indirect commercial use of the protected name, for comparable products that do not comply with the productive procedural guideline or to the extent that such use exploits the reputation of PDO or PGI. A good example here is the 'Champagner Sorbet' decision.
- Protecting GIs is a central plank of EU trade policy and this is a hot topic right now because of Russia's recent law requiring French Champagne producers to add the words 'sparkling wine' on the back of the label if they want to sell their bottles in Russia, and allowing Russian producers of sparkling wine to use 'shampanskoye' (the Russian word for Champagne) – on bottles.

Get in touch

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