

# TRADEMARKS FOR BREWERIES, WINERIES, AND DISTILLERIES

Allison Parker, [aparker@hawleytroxell.com](mailto:aparker@hawleytroxell.com),  
208.388.4958

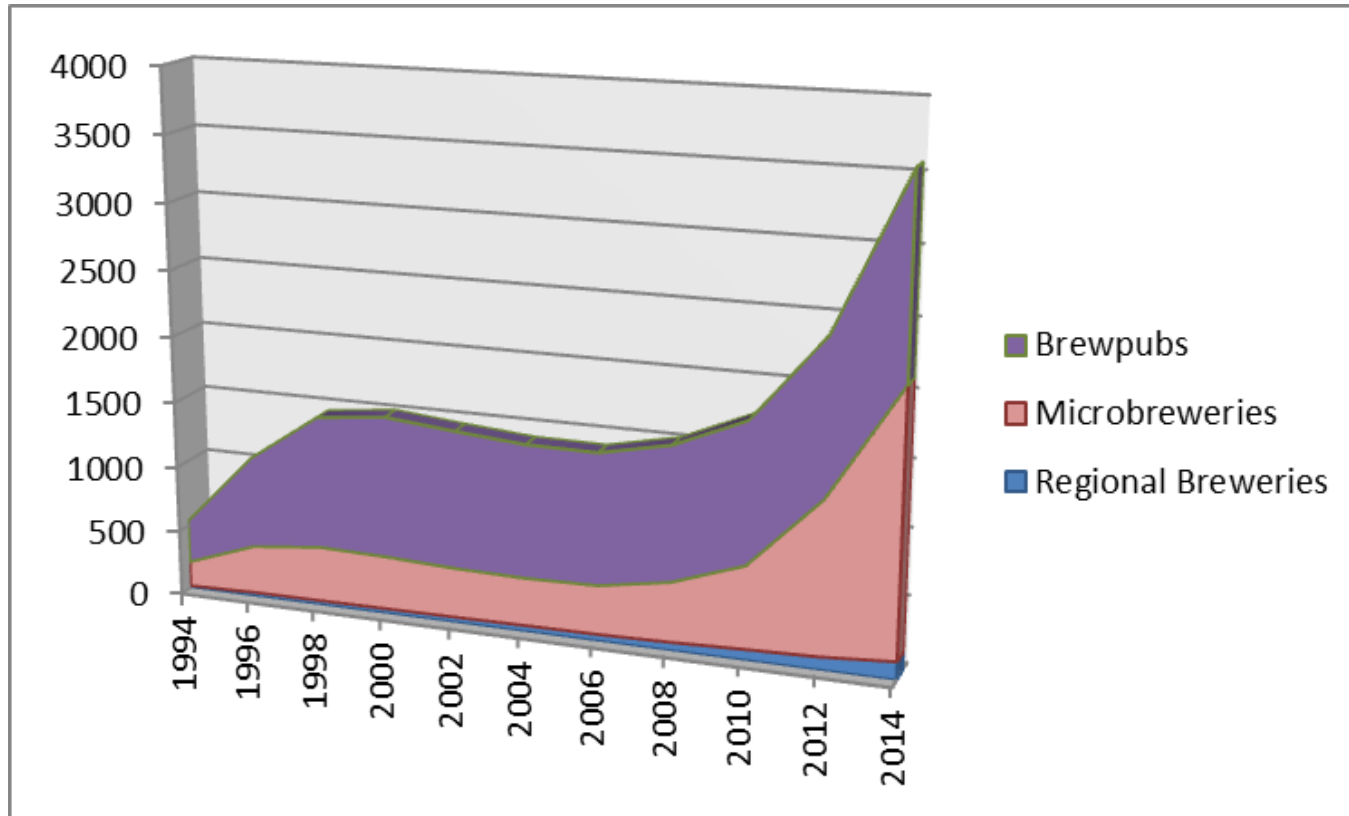
# WHY IT'S IMPORTANT



# ISSUES SPECIFIC TO ALCOHOLIC BEVERAGE INDUSTRY

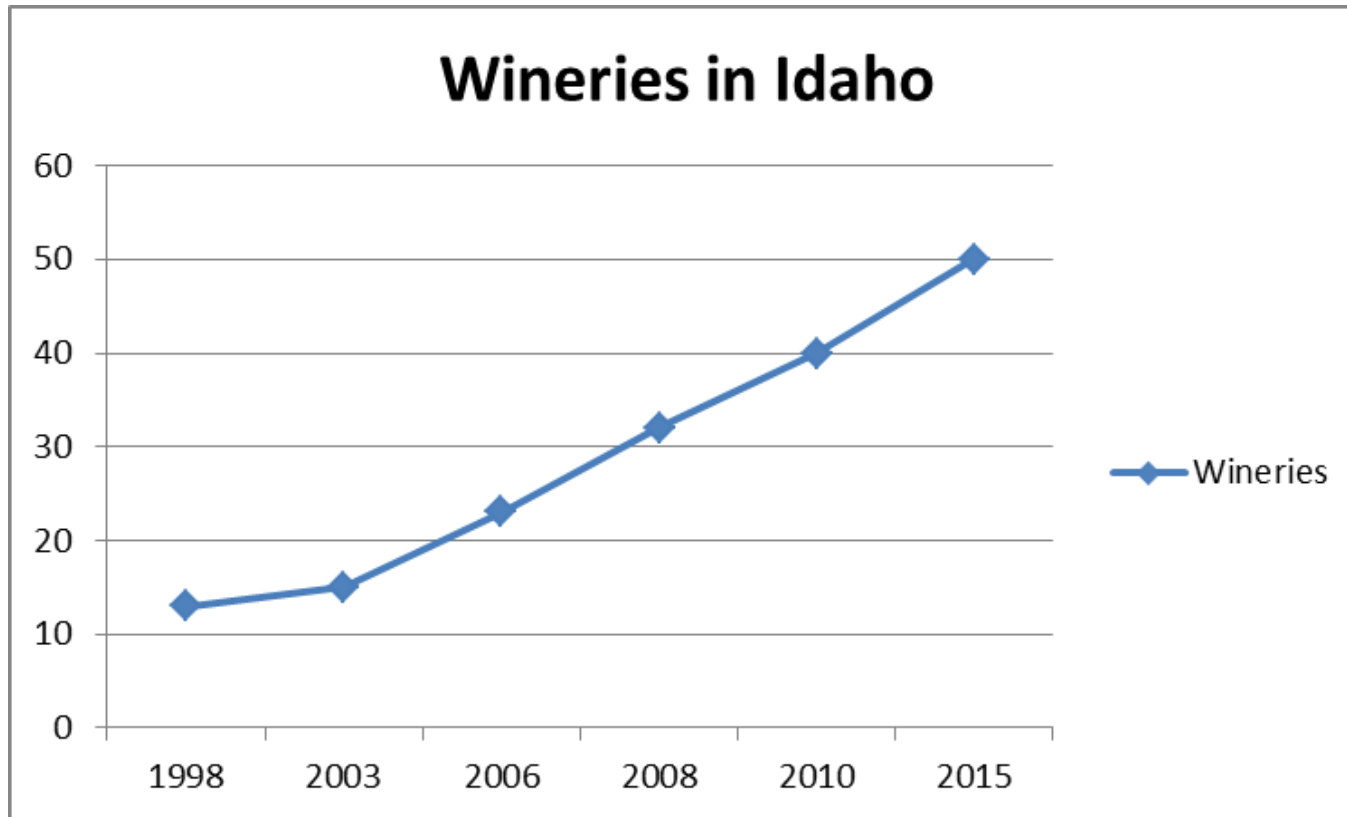
- Rapid growth
- Crowded space, expanding markets
- Loyal, vocal fans
- Dislike of traditional dispute resolution

# INDUSTRY GROWTH – BREWERIES NATIONALLY



Data from the Brewers Association –  
<https://www.brewersassociation.org/statistics/number-of-breweries/>

# INDUSTRY GROWTH – IDAHO WINERIES

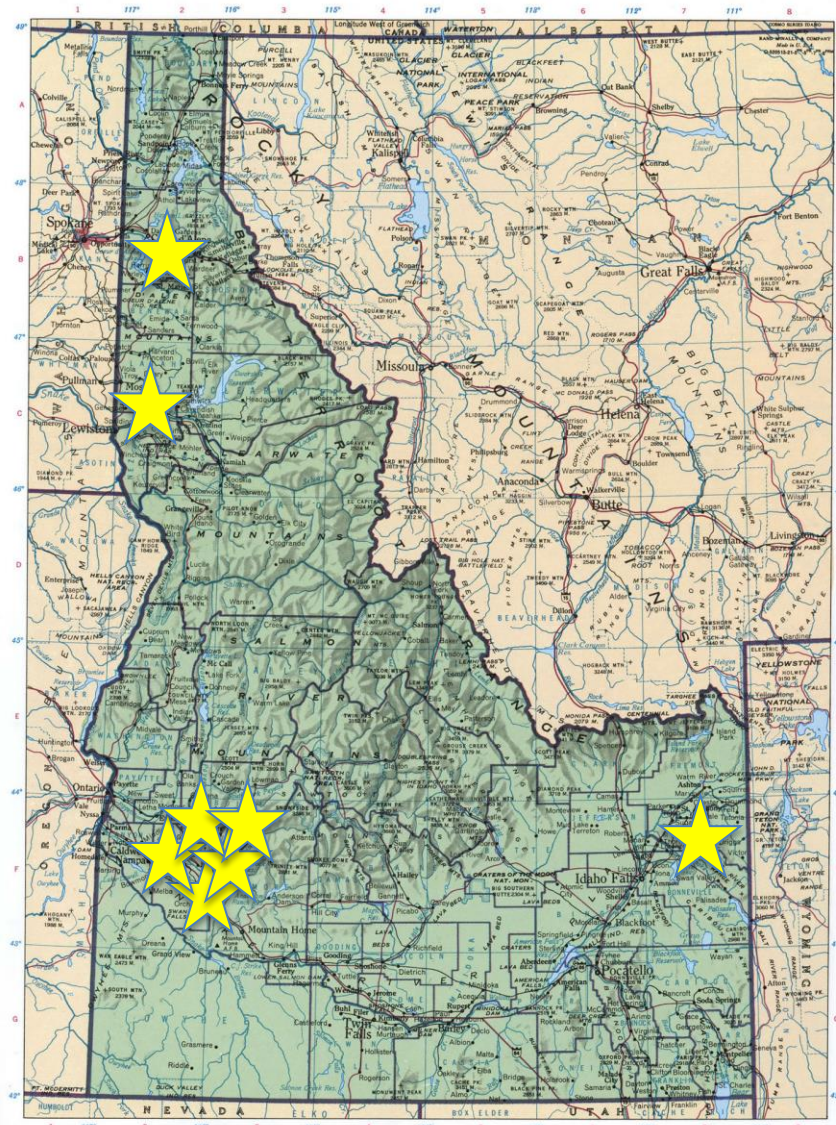


Data from Wines Northwest and  
Idaho Wine Commission



# IDAHO DISTILLERS

Idaho



Note: Map colors do not reflect elevation.



Lambert Conformal Conic Projection

**HAWLEY  
TROXELL**  
ATTORNEYS AND COUNSELORS



# THE SPACE IS CROWDED!



# SIMILARITY AND NATURE OF GOODS: ARE WINE/BEER/SPIRITS RELATED?

“There is no per se rule that holds that all alcoholic beverages are related.”

In Re White Rock Distilleries Inc., 92 U.S.P.Q.2d 1282 (P.T.O. Oct. 5, 2009)

## BUT SEE

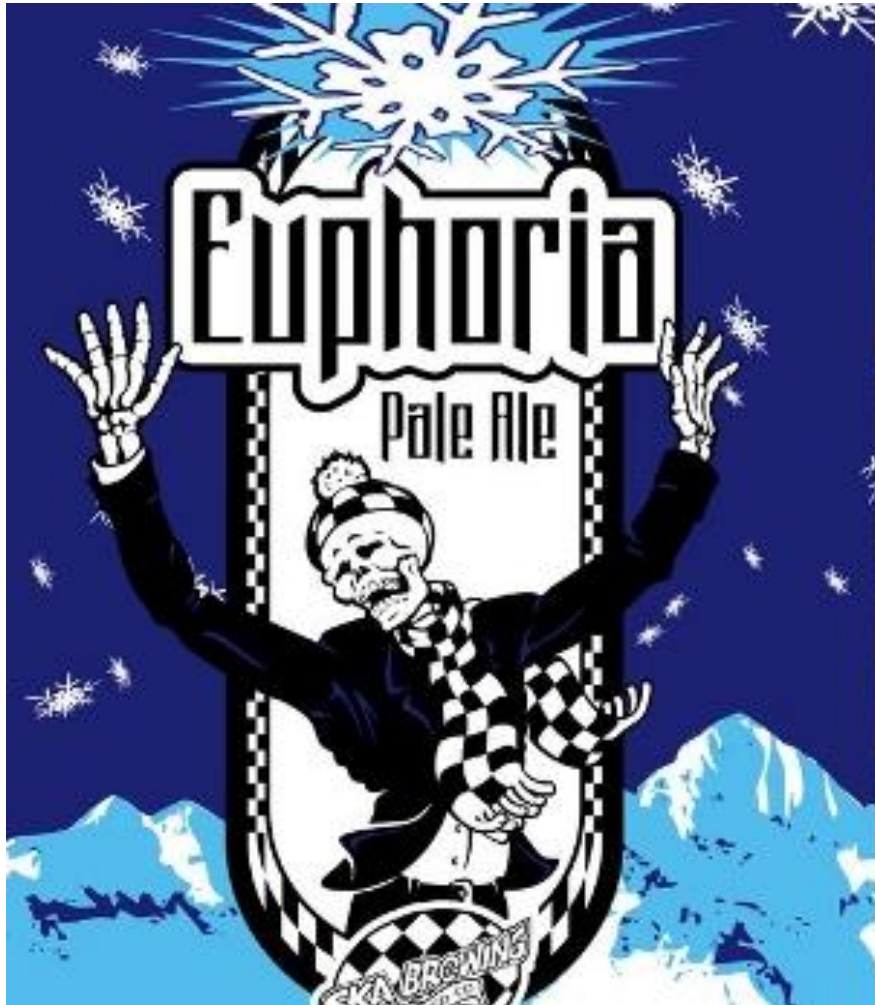
- In Re High Water Brewing, Inc., 85886282, 2014 WL 5282254 (Oct. 3, 2014) (“beer and wine are related products and that this *du Pont* factor favors finding a likelihood of confusion”).
- In Re Maestro Tequilero, S.A. De C.V., 77904774, 2012 WL 6137587 (Nov. 29, 2012) (“The Board has specifically found wine and distilled spirits to be related goods”).
- In Re Kysela Pere et Fils, Ltd., 98 U.S.P.Q.2d 1261 (P.T.O. Mar. 24, 2011) (“evidence that third parties have adopted a single mark for beer and for wine (as well as the evidence that third parties sell both beer and wine) is sufficient to show that the public is likely to believe that these goods emanate from a single source”).



# ENCOURAGE CLIENTS TO SEARCH

- General web search
- Search on community websites
  - beeradvocate.com, ratebeer.com, craftbeer.com, uptappd
- Alcohol and Tobacco Tax and Trade Bureau-Certificates of Label Approval system
- USPTO

# REGISTER EARLY, REGISTER OFTEN



# EUPHORIA-DEAD

# Euphoria

June 15, 2006

<b>Word Mark</b>	EUPHORIA
<b>Goods and Services</b>	(CANCELLED) IC 032. US 045 046 048. G & S: Beer, ale and porter. FIRST USE: 20060615. FIRST USE IN COMMERCE: 20060615
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77837911
<b>Filing Date</b>	September 30, 2009
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	February 9, 2010
<b>Registration Number</b>	3781138
<b>Registration Date</b>	April 27, 2010
<b>Owner</b>	(REGISTRANT) Duclaw Brewery, LLC LIMITED LIABILITY COMPANY MARYLAND 16-A Bel Air South Parkway Bel Air MARYLAND 21015
<b>Attorney of Record</b>	Colleen Ferg Helmlinger
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	<b>DEAD</b>
<b>Cancellation Date</b>	November 25, 2013



# EUPHORIA-LIVE

## EUPHORIA

November  
14, 2005

<b>Word Mark</b>	EUPHORIA
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Ale; Beer. FIRST USE: 20051114. FIRST USE IN COMMERCE: 20051114
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	85867373
<b>Filing Date</b>	March 5, 2013
<b>Current Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	January 21, 2014
<b>Registration Number</b>	4552730
<b>Registration Date</b>	June 17, 2014
<b>Owner</b>	(REGISTRANT) Ska Brewing Co. CORPORATION COLORADO 225 Girard Street Durango COLORADO 81303
<b>Attorney of Record</b>	Kathleen S. Ryan
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

# EXPANDING MARKETS

- Increased geographic reach results in increased trademark disputes







# REPUTATION

“I would hate the taste of the beer to reflect on the company they're imitating,” says Alex Meyer, who gave Rascal’s Red Ale a lukewarm review on her blog.

“I still haven't gotten to try any actual Flying Dog beer, but if someone didn't realize they had the copycat, and didn't like the beer, it could reflect back on sales for the original company, which would be too bad.”

# REPUTATION

- Flying Dog's Caruso agrees. "It would keep me up at night if even if one person bought that beer and thought we made it," he said.



# DEALING WITH CLAIMS OF INFRINGEMENT

- Be diligent
- Evaluate the claim
- Identify a preferred outcome
- Diffuse the situation

# RESOLUTION OPTIONS

- Name change
- Licensing
- Assignment
  
- Important: avoid public disputes

# OPTION: NAME CHANGE

- TRVE Brewing-Black Cascade
- HammerHeart Brewing Company –Black Cascade



Freetail Brewing Co. 210.395.4974 fax 210.395.4978  
4035 N Loop 1604 W Suite 105, San Antonio, TX 78257  
www.freetailbrewing.com

January 10, 2012

[REDACTED]

RE: *Hoposaurus Rex* mark

Dear Mr. [REDACTED]

Thanks for your letter! I love hearing from and meeting people from all around the country. Since you are from [REDACTED] under normal circumstances I would assume you have a beard... I do too! But, since you are a lawyer, you probably just have some expensive suits instead. Way less cool, but whatever works for you man.

Anyway, about the issue of the HOPASAURUS REX name (the Mark). We indeed have made a beer under that name in the past. Actually, we haven't... HOPASAURUS REX is a name we give to a process upon which we apply to a beer and not the beer itself. Normally I would tell you what this process is, but I really don't feel like it anymore since your first introduction to me wasn't very nice. Furthermore, I don't want you to try to trademark it and sue me later.

In your Cease and Desist letter (C&D) you reference the Lanham Act as the basis for your client, [REDACTED] having exclusive right to use the Mark nationwide in connection with the sale of beer. However, the Lanham Act requires a "likelihood of confusion" for infringement to exist. Therefore, to the extent that Freetail Brewing Co. (Freetail) uses the Mark, it would only represent an infringement if someone had a hazy enough of a recollection to confuse drinking beer from a brewpub or bar in [REDACTED] or [REDACTED] with drinking beer from a brewpub in San Antonio, Texas. I admit to having consumed too many beers on a few occasions in the past, but never have I been drunk enough to make that confusion!

In any event, we don't use HOPASAURUS REX enough to care about what we call it, so you may consider this letter to be our complete and total acquiescence to your demand that we cease and desist the use of the mark immediately. When you





Freetail Brewing Co. 210.395.4974 fax 210.395.4978  
4035 N Loop 1604 W Suite 105, San Antonio, TX 78257  
[www.freetailbrewing.com](http://www.freetailbrewing.com)

are informing your client of such, I request (but not demand) that you please tell them they could have just asked us nicely and saved the legal fee. I also request (but not demand) you please tell them that I *will not* be giving them a hug if I ever meet them, but I'd love to try their beer at the next Great American Beer Festival and I would still give them a high five.

Word to Yo' Mamma,

A handwritten signature in blue ink, appearing to read "Scott Metzger", followed by a horizontal line.

Scott Metzger

PS: Please enjoy this drawing of a T-Rex waiving white flags, which was suggested for inclusion by my attorney. Actually, he's just my friend, I can't afford his legal fees.

SRM/nerd  
Cc: Flying Spaghetti Monster

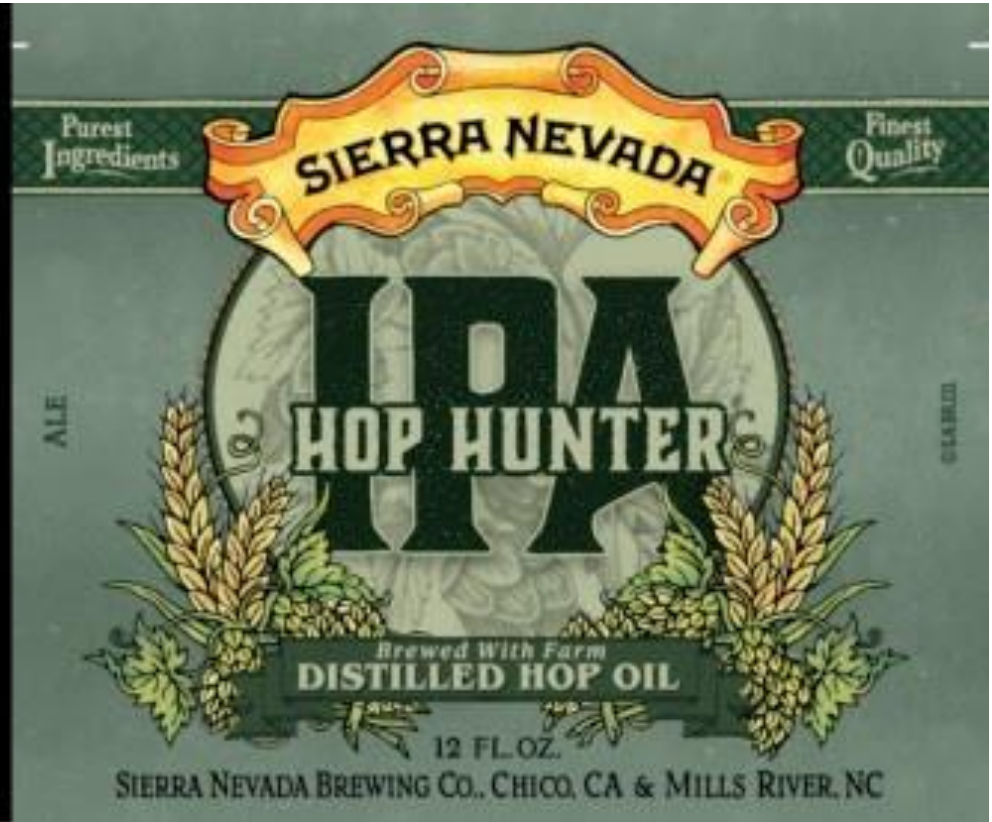
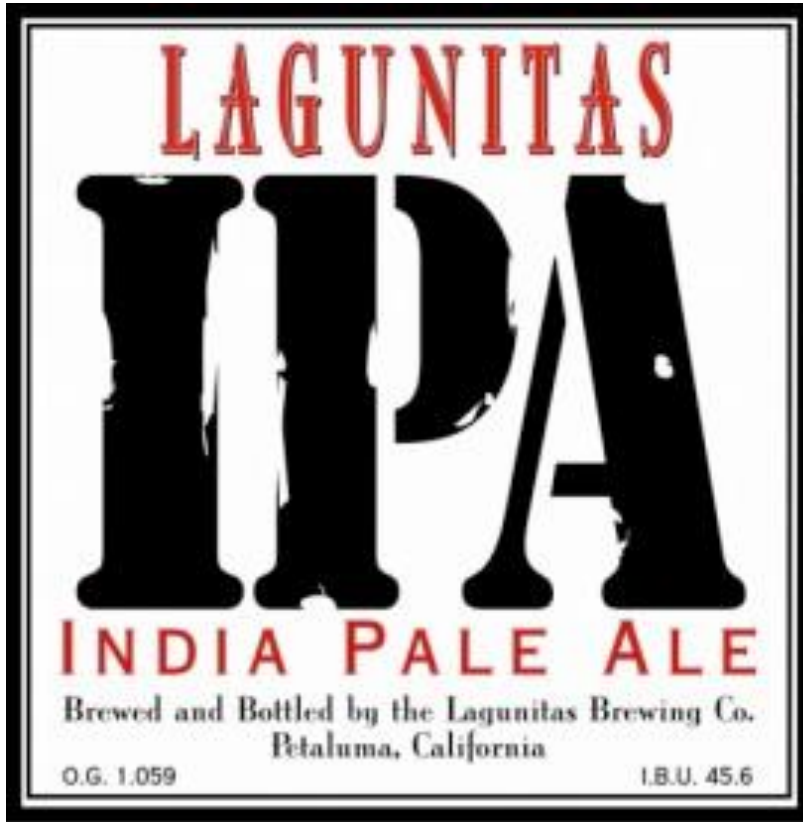


# OL' RED CEASE & DESIST

“Red Ryder was dubiously awarded two ‘cease and desist’ orders for its name. So with its unique new name (inspired by the long arm of the law), Ol’ Red Cease and Desist ... brings a legal record!”



# RESOLUTION OPTIONS



# LAGUNITAS V. SIERRA NEVADA



**LagunitasT** @lagunitasT · Jan 13

Today, January 13th 2015, has been the worst day ever in 23 years of growing my brewery. Worst. Growing a biz involves defending a biz...



37



31





# LAGUNITAS V. SIERRA NEVADA



**LagunitasT** @lagunitasT · Jan 13

Today was in the hands of the ultimate court; The Court of Public Opinion and in it I got an answer to my Question; Our IPA's TM has limits.



77



74



# LAGUNITAS V. SIERRA NEVADA



**LagunitasT** @lagunitasT · Jan 13

Tomorrow mornin we'll Drop the Infringement Suit & get back to answering other Questions. I don't think I was wrong for wanting to know cuz...



127



140



# TAKEAWAYS?

- Research brewery and beer names before investing
- Register valuable names with the USPTO
- Protect the mark
- Respond to claims of infringement quickly

Allison Parker

[aparker@hawleytroxell.com](mailto:aparker@hawleytroxell.com)

208.388.4958

208.344.6000

[www.hawleytroxell.com](http://www.hawleytroxell.com)