

JACK of All Trades? Not so Fast for This Brand

Article By:

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What is your go-to libation? A cold beer? A spiked seltzer? How about a mixed drink with your favorite spirit? Now that the “ready-to-drink” beverage industry is taking off, you no longer need a bartender to enjoy many of your favorite cocktails. Ready-to-drink beverages are pre-packaged single-use containers ready for immediate consumption.

The global ready-to-drink cocktail market, valued at 782.8 million USD in 2021, is expected to expand at a compound annual growth rate of [13.4% from 2022 to 2030](#). With recently popularized brands like White Claw and Truly pioneering the space, traditional premium liquor brands have pivoted with their own iterations. For example, [Absolut](#) launched a variety of vodka sodas and ready-to-drink cocktails in May 2020, premium-gin brand [Bombay Sapphire](#) recently released canned gin and tonic cocktails, and [Tequila Cazadores](#) followed suit with pre-mixed margaritas and palomas. Naturally, this has led to a growing number of competitors entering the ready-to-drink product market. This competitive boom has forced long-established alcohol brands to vigorously protect their intellectual property (“IP”) rights.

Confusion Among Alcohol Brands and Ready-to-Drink Products

Recently, Jack Daniel’s—one of the most famous brands for American whiskey — filed a [lawsuit](#) in a Tennessee federal court alleging, among other claims, that the maker of Jack’s Hard Cider has infringed Jack Daniel’s trademark rights for “JACK.” Examples of the allegedly infringing use are displayed below:

The complaint alleges Jack's Hard Cider has infringed multiple federally registered trademarks for JACK that Jack Daniel's owns covering related alcohol products. Specifically, through Jack Daniel's use of the mark JACK for whiskey and whiskey products, such as Jack Daniel's Tennessee Apple and Tennessee Honey, Jack Daniel's claims the brand has built widespread goodwill and consumer recognition across a range of beverage alcohol products. The crux of Jack Daniel's complaint is that Jack's Hard Cider's packaging is highly likely to lead to consumer confusion, especially in view of Jack Daniel's ready-to-drink whiskey beverages sold in cans as shown below:

History of the Parties & Breach of Contract

Jack Daniel's first became aware of this potentially troublesome hard cider product, at least publicly, when the Hauser Estate ("Hauser"), the predecessor entity that owned Jack's Hard Cider, attempted to obtain a trademark registration for JACK'S HARD CIDER and Design in 2010. Jack Daniel's filed a Notice of Opposition against registration of this trademark, which ultimately resulted in Hauser voluntarily abandoning the application. After Hauser abandoned its JACK'S HARD CIDER application, the parties agreed to concessions relating to Hauser's use of the mark, as memorialized in a 2013 settlement agreement.

These concessions largely limited Hauser's use of the JACK'S HARD CIDER mark and branding, including always using the mark alongside the term "Hauser Estate," on all products, packaging, advertising, and promotional materials and merchandise, including in any social media.

In 2018, Atomic Dog LLC acquired either Hauser or all of its assets and began introducing substantially updated packaging for Jack's Hard Cider. As displayed above, with Hauser out of the picture, Atomic Dog's updated packaging is allegedly in breach of the settlement agreement because it includes the JACK'S HARD CIDER mark without any reference to "Hauser Estate." And since the obligations set forth in the settlement agreement are binding on Hauser's successor-in-interest, Jack

Daniel's claims Atomic Dog must abide by the limitations of use of the JACK'S HARD CIDER mark as detailed in the 2013 settlement agreement.

As a result, and in addition to claims for trademark infringement and unfair competition, Jack Daniel's complaint includes a breach of contract claim against Atomic Dog.

Takeaway for All Businesses: IP Due Diligence is a Must for Acquisitions

Increasingly, IP rights are among the most important assets a business owns. By aligning an existing IP portfolio with a clear, well-defined business strategy, companies can generate significant value from their IP assets. It is therefore very important to both identify and assess the IP assets owned by examining the enforceability, scope, and history of ownership of those rights.

Accordingly, it is imperative that the purchaser, in any acquisition or asset purchase, conduct thorough due diligence as to the scope and limitations of any IP asset to be transferred via the sale.

IP due diligence serves many purposes, including valuing and validating a business transaction and identifying IP-related liabilities. In this case, it is possible that Atomic Dog could have avoided the potential liability and costs in the current and renewed dispute with Jack Daniel's.

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