



Trademark Issues for the Wine Industry, Part II

SELECTING A PROTECTABLE MARK FOR YOUR WINE BUSINESS



As a member of the wine industry, you have a lot invested in your winery brand, your vineyard name, and/or your label text and art. Protecting them is imperative, regardless of the size or scope of your operations. Trademarks are key business assets that distinguish you from your competitors and help build customer loyalty and goodwill in your business. Thus, the selection of strong, protectable trademarks can be the building blocks to your long-term success.

When you select a trademark for your winery, vineyard, or label, you should consider that there is a “spectrum” of protection in trademarks. Simply put, the more distinctive a trademark is, the stronger it is and the more protection it can receive. The strongest marks, for trademark purposes, are **coined** or **fanciful** terms that have no meaning in the common English language, such as KODAK or XEROX. For a winery, a made-up term such as KITTAIN could be immediately protectable as a coined mark once it is used in commerce. **Arbitrary** trademarks are commonplace terms used out of context, such as APPLE for computers. The use of the mark LACE for a wine label could be an arbitrary mark that, like a coined or fanciful mark, is immediately protectable.

Suggestive trademarks require some imagination, thought, or perception to reach a conclusion as to the nature of the product or service—they hint at or suggest something about the product or service. Suggestive marks, such as HARVEST RED, are immediately protectable. **Descriptive** marks immediately convey some aspect or feature of a product or service. Unlike coined, arbitrary and suggestive marks, descriptive marks may only be protected as trademarks if they can acquire distinctiveness over time. An example of a descriptive mark for a vineyard would be MENDOCINO COUNTY VINEYARDS. Also, family names, such as MILLER FAMILY CELLARS, may be merely descriptive marks.

Finally, **generic** terms describe a category of product or service rather than a brand of product or service. Generic terms, such as HOUSE WINE, are incapable of serving the essential trademark function of distinguishing the products or services of one user from the products or services of other users, and therefore cannot be protected as trademarks.

When you are brainstorming new ideas for potential trademarks, be sure to keep this spectrum of protection in mind. The selection of a coined, arbitrary, or suggestive mark not only offers the most protection for your brand, but you can potentially seek immediate federal registration of the mark with the U.S. Patent and Trademark Office, as long as there is no other entity using the same or a confusingly similar mark with similar goods and services. If you would like help understanding the inherent strength or distinctiveness of your intended or existing trademark, please contact us.

NEAL & MCDEVITT, LLC

1776 Ash Street

Northfield, IL 60093

Phone: 847.441.9100

Fax: 847.441.0911

www.nealmcdevitt.com



NEAL & MCDEVITT®
Intellectual Property &
Marketing Attorneys