

# Your Label, Your Bottle, Your Story, Your Copyright

How copyrights can protect your  
craft alcohol's unique vibe

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Many makers of craft alcohol, whether it be beer, spirits, or wine, spend considerable time and effort creating, developing and marketing their brand and their name, which appear on their label. As discussed in a prior article *"What Do You Mean I Can't Name My Artisanal Gin After My Dog?"* Artisan Spirit Magazine, Spring 2019, trademark law provides the legal means of how to protect your brand and your name.

Your brand and your name, however, are not the only elements of your company's overall image nor are they the only elements of your company's overall marketing efforts. Other elements include the cool graphic design on your label, the beautiful original drawing, painting, or photograph that is the background of your label, or perhaps the hand-made glass or ceramic bottle designed just for your product. Online elements are equally important, too, such as the "About Us" or "Our Story" features on your website, the photographs on your social media, and the videos you've uploaded. Each of these specific aspects of your overall marketing efforts help create a niche for your company and your product and develop a loyal customer basis and positive notice with trend setters and influencers.

So, how can you protect everything, from your awesome label to your funky container, as well as your online presence?

The answer is copyright law.

## Copyright law can help you

Currently, in the United States, the two most important acts governing copyright law are The Copyright Act of 1976 and the Digital Millennium Copyright Act of 1998. The United States Copyright Office, part of the Library of Congress, serves an important role in the administration of copyrights. It is also a tremendous resource of information about copyrights (*visit [www.copyright.gov](http://www.copyright.gov)*).

In order to figure out if your company can benefit from copyright, there are two threshold questions:

1. "What is a copyright?", and
2. "What types of works can be protected by copyright?"

## No copycatting my stuff

A copyright is a bundle of exclusive protections and rights for the author of an “original work of authorship” that is “fixed” in a tangible form of expression or medium. 17 U.S.C. §§ 102 – 016. Under the law, copyright owners have the ability to protect against unauthorized reproduction, copying, distribution, and display of their works, among other protections and rights.

As to what types of “works” can be protected by this bundle of rights, under the Copyright Act, “original works of authorship” “fixed in a tangible medium”, include, among other things:

- Literary works,
- Pictorial, graphic, and three dimensional works, and
- Audiovisual works, among others.

For a craft alcohol producer’s label, protection means that all of the artwork, the background design, perhaps even the font type, can be protected by copyright to the extent such work is original.

The same holds true for a craft alcohol producer’s website and social media. All of the artwork, videos, photos, text, perhaps even the music, can be protected by copyright to the extent such work is original.

And what does this mean for a craft alcohol producer’s bottle, cask, or packaging? Again, it means that the bottle or cask and perhaps even the packaging can be protected by copyright to the extent such work is original.

For all of these different elements, a copyright can be an additional asset for the maker of craft alcohol. Better still, a copyright, as an asset — a thing — comes into being — is created, at the moment it is fixed in a tangible medium (according to the language of the Copyright Act) — which means, the moment the pen touches paper for a design, or the moment the sketch is made on a tablet or a video is filmed, you may actually already have copyrights in these various elements.

One extra note about the bottle or cask, the container, or the packaging. Over the last several years, as noted by several industry trendsetters and influencers, the shape, style, material, coloring, and design of the container that holds the craft alcohol and the packaging that comes with it has become an important aspect of distinguishing one craft alcohol maker from another. Many craft alcohol makers consider the container and its packaging as a core element in building consumer recognition and brand loyalty, and it has become an important part of the brand aesthetic. In some circumstances, the container and the packaging could be protected as a trademark or by a design patent. However, copyright claims should not be overlooked and should at least be considered, if the container or packaging satisfies the requirements for copyright protection.

## A copyright exists, but who owns it?

Once a copyright is created, who actually owns the copyright? Legal entities do not create original works of authorship, people do. No corporation picked up a camera and took a picture. A person did that act. The status of the creator/author/person in relation to the craft alcohol maker dictates how the craft alcohol maker can obtain the rights in the work. The craft alcohol maker may already own the rights in the work or may need to have the rights in the work assigned to them, based on the underlying circumstances:

- Is the person a current or former employee of the craft alcohol maker or an independent contractor,
- Was the work created in the scope of their employment or under a specific contract or both, and
- What is the nature or type of work?

The answers to each of these questions will dictate who is the owner.

Generally, if the creator is an employee and the work is created in the scope of their employment, the rights are transferred to the employer under law, but an employment agreement setting out provisions granting such transfer of any rights to works created in the scope of employment can be very helpful in avoiding any issues.

If the creator is an independent contractor, in some limited instances, the work is owned by the craft alcohol maker under the concept of “work for hire,” but this only applies to certain types of work. When working with an independent contractor, however, the most proactive course of action to insure ownership of the work by your company is to have an agreement in which all rights in the created work either belong to the craft alcohol maker or are assigned to the craft alcohol maker by the author.

By putting these types of provisions in place before the work is created, the craft alcohol maker can insure it owns the copyright. If the craft alcohol maker does not own the rights in the work and the rights cannot be obtained by assignment, can the work be licensed and if so, was a license obtained? If there is a license involved, the craft alcohol maker will not be the owner of the copyright, but will have the limited ability to use the work as set out in the license.

## You own a copyright — © — Make the most of it

So let's assume the craft alcohol maker owns the copyright, what is the next best step? Register the copyright with the Copyright Office.

The craft alcohol maker, or someone on their behalf, prepares and files the appropriate paperwork with the Copyright Office of the Library of Congress.

The various forms and numerous helpful guides can be found on the Copyright Office website, but working with a skilled intellectual property attorney can be helpful in deciphering the technical points of the law and the regulations, which are not as straightforward as the forms make them appear.

As of March 4, 2019, you must have registered your copyright with the Copyright Office at the

Library of Congress in order to enforce your rights in federal court litigation. In the recent U.S. Supreme Court case, *Fourth Estate Public Benefit Corp. v. Wall-Street.com LLC*, the United States Supreme Court made it clear that to commence federal court litigation on the grounds of copyright infringement, the plaintiff needed a copyright registration in hand.

There are additional benefits of obtaining a copyright registration, as well. If the registration is obtained within three months of the work's creation, statutory damages are available for an infringement. Statutory damages are often helpful when the damages actually incurred are low or, more likely, difficult to prove in a courtroom setting.

### A lot of work, but worth it

Why go to all this trouble? Here's a real world scenario to ponder:

*A friend of an employee, who is a graphic artist, sketched a new label design one night while everyone was sampling the latest batch of your distilled spirit. The batch was a hit, and it is going to be your spring release. You liked the label design, so you are busy having labels approved and then printed for distribution. Terrific!*

*You also showcased a new bottle design that night, having just received it from the glassblower. Again, terrific! It was such a great moment that an employee took a video of the opening of the cask. You want to post the video of everyone's reaction to the bottle on your website, along with some photographs of the tasting on your social media. Also terrific!*

Many copyrights were created that night — assets critical to your business. By utilizing the provisions of copyright law and obtaining copyright registrations, you can make certain you own the copyright or have the ability to use it, and you can protect all of these critical elements of your marketing efforts: your label, your bottle, your website video, and your social media photos. Taken together, the copyrights and their registrations can add value to your business and give you additional means to protect what you are building. 🍷

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*This information is intended to keep readers current on developments in intellectual property law and is not intended as legal advice.*