



AT THE BAR WITH BOWDITCH

A Legal Blog for the Craft Brewing Community

What's in a Name? The Case of Blue Collar Brewery, LLC v. Blue Collar Brewery, Inc.

BY ROGER ZIMMERMAN • FEBRUARY 26, 2016

Branding for a craft brewery can involve the name of the brewery, one or more trademarks, one or more domain names, the product itself and its packaging. However, these different aspects of branding can follow different rules. Blue Collar Brewery, Inc. ("INC") of New York and Blue Collar Brewery, LLC ("LLC") of Pennsylvania found this out the hard way. From another perspective, this is an example of how a name can be as fascinatingly attractive to a company as a flame can be to a moth; the results are usually not pretty.

Picking a company name usually involves checking the corporation database of a single state. However, in the case of the two Blue Collar Breweries, choosing a trademark for U.S. registration led to the question of meeting the requirements for a trademark on national scope. INC and LLC were able to organize in different forms with the same name in different states, but ran into problems at the U.S. Trademark Office.

LLC was formed in Pennsylvania in March, 2010, while INC was formed in New York in July, 2013. LLC is not registered to do business in New York, and thus would not appear in the New York Secretary of State's corporation database. However, the founder of LLC applied for U.S. trademark registration for a design including "BCB BLUE COLLAR BREWERY" in March of 2009, and the existence of that pending application in the online database of U.S. Trademark Office has been publicly available information since 2009.

LLC makes and sells home brewing kits, supplies and ingredients. , while INC operates a brewpub in Poughkeepsie, New York and sells beer. LLC owns the domain name bluecollarbrewery.com, and INC owns the domain name thebluecollarbrewery.com.

LLC did get a U.S. trademark registration for its design including "BCB BLUE COLLAR BREWERY" in relation to the good "Beer wort," but not beer. LLC has an application pending for the word mark "BLUE COLLAR BREWERY" for the goods "Beer making kit; Beer wort; Extracts of hops for making beer; Hop extracts for manufacturing beer; Malt extracts for making beer; Processed hops for use in making beer." INC has opposed LLC's pending application on the grounds that

is “deceptively misdescriptive,” since LLC has none of the necessary federal and state permits to operate a brewery, and is in fact not brewery, but a seller of beer making kits.

There is a simple lesson here, and it doesn’t require understanding what “deceptively misdescriptive’ means in U.S. trademark law, and whether INC or LLC will prevail in the trademark opposition. Branding requires thorough due diligence before becoming emotionally and financially invested in a potential corporate name or a potential trademark. It is imperative that a prospective beer-related business do more than just search the state’s corporation database – it must search trademark databases, domain names and the Internet in general. If someone else is using the same word or phrase, or a word or phrase that might be confusingly similar to your favorite of the moment, try again. You will avoid unnecessary (and expensive) problems down the road.