



Vampires, The Undead & Corporate Bullies

Effective Trademark Management
to Avoid the **BLOODSUCKERS**



Presented by

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McNees Wallace & Nurick LLC

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CLOWN SHOES

WELCOME, TRADEMARK ATTORNEYS!

In a world full of uncertainty, hardship, and people trying to hold us back, do we need the undead and trademark attorneys too? Clown Shoes says, "No, die, monsters, die!" Forces of darkness brought about a change in the name of this beer, which was released to celebrate our second anniversary, but it still sports signature dark malts, holy water, and malt smoked locally with hickory and ash.

UNDEAD PARTY CRASHER
smoked imperial stout

Brewed and bottled at Mercury Brewing Co., Ipswich, MA

GOVERNMENT WARNING:

(1) ACCORDING TO THE SURGEON GENERAL, WOMEN SHOULD NOT DRINK ALCOHOLIC BEVERAGES DURING PREGNANCY BECAUSE OF THE RISK OF BIRTH DEFECTS. (2) CONSUMPTION OF ALCOHOLIC BEVERAGES IMPAIRS YOUR ABILITY TO DRIVE A CAR OR OPERATE MACHINERY, AND MAY CAUSE HEALTH PROBLEMS.



McNees Alcoholic Beverage/Liquor Law Group



Ignorance Is Bliss Except When It Costs You

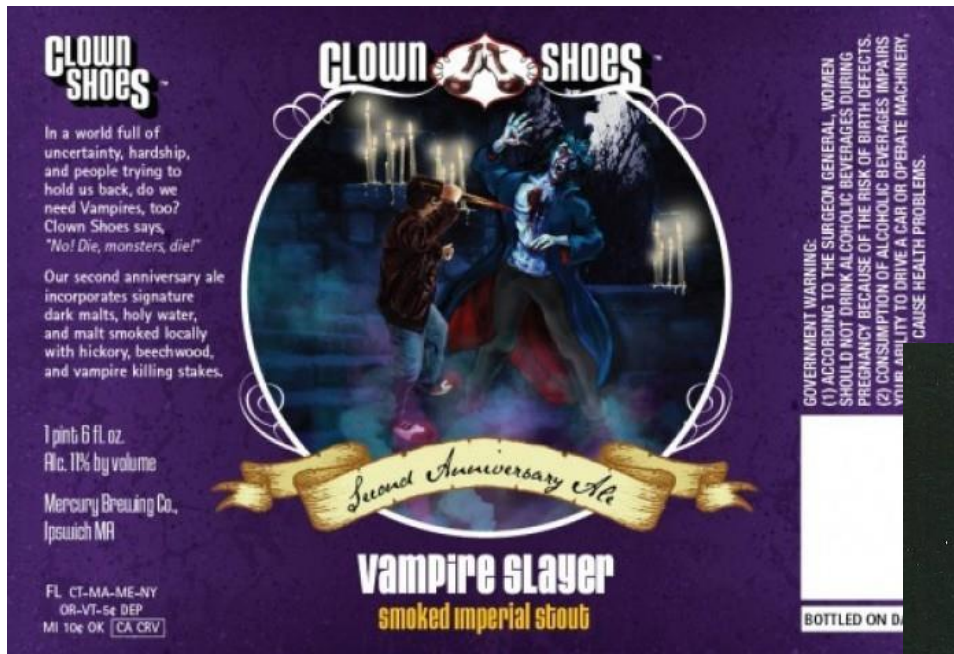


- **You could ignore your trademarks unless you...**
 - Want to distribute your brands beyond your tasting room someday?
 - Want to avoid unnecessary (and expensive) conflict?
 - Want build brands that become valuable assets?



Clown Shoes & Vampires

Avoiding Unnecessary Conflict



Clown Shoes

In a world full of uncertainty, hardship, and people trying to hold us back, do we need Vampires, too? Clown Shoes says, "No! Die, monsters, die!"

Our second anniversary ale incorporates signature dark malts, holy water, and malt smoked locally with hickory, beechwood, and vampire killing stakes.

1 pint: 6 fl. oz.
Alc. 11% by volume

Mercury Brewing Co.,
Ipswich MA

FL CT-MA-ME-NY
OR-VT-5¢ DEP
MI 10¢ OK CA CRV

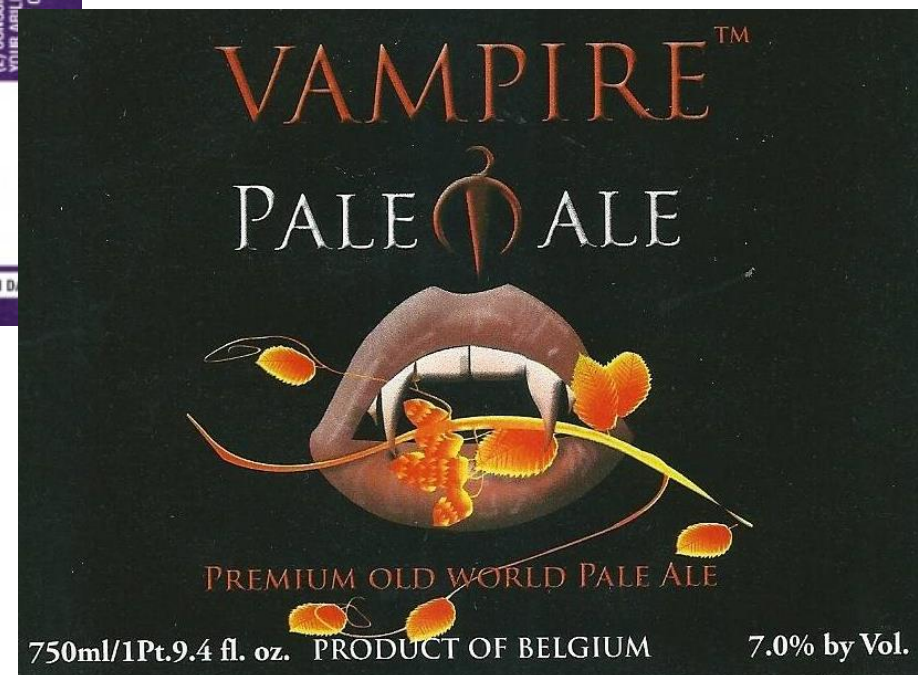
Clown Shoes

Second Anniversary Ale

vampire slayer
smoked imperial stout

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BOTTLED ON D



VAMPIRE™

PALE ALE

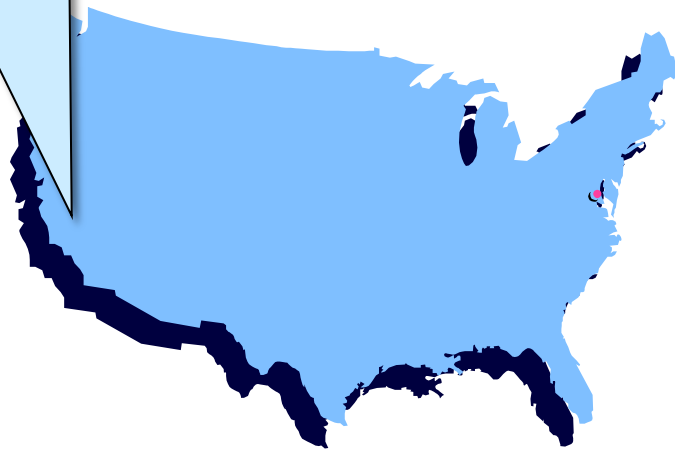
PREMIUM OLD WORLD PALE ALE

750ml/1Pt.9.4 fl. oz. PRODUCT OF BELGIUM 7.0% by Vol.



Brand Distribution: Look Before You Leap

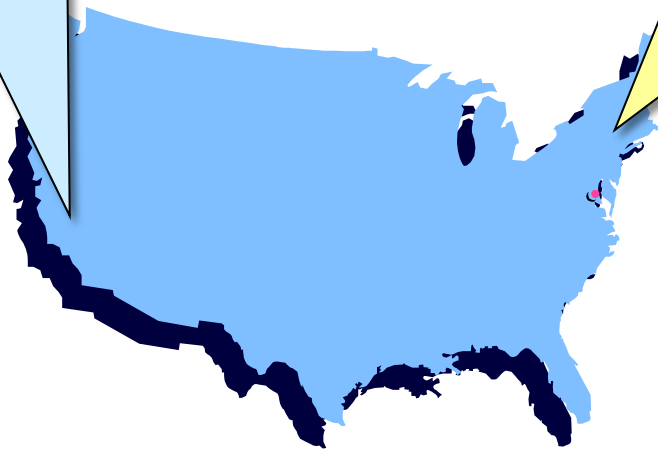
Vampire Brands files
a trademark application
for its **VAMPIRE** beer before
Clown Shoes distributes



Brand Distribution: Look Before You Leap

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Clown Shoes distributes
its **VAMPIRE SLAYER** beer,
with no trademark registration



Brand Distribution: Look Before You Leap

Vampire Brands files a trademark application for its **VAMPIRE** beer before Clown Shoes distributes

Clown Shoes distributes its **VAMPIRE SLAYER** beer, with no trademark registration

Vampire Brands has nationwide rights to the mark and can challenge Clown Shoes



Brand Distribution: Look Before You Leap

Vampire Brands files a trademark application for its **VAMPIRE** beer before Clown Shoes distributes

Clown Shoes distributes its **VAMPIRE SLAYER** beer, with no trademark registration.

Vampire Brands has nationwide rights to the mark and can challenge Clown Shoes

Defending the **VAMPIRE SLAYER** mark is too expensive and Clown Shoes must give up.



The Moral of the Story

- You must do some due diligence
 - A simple trademark search can identify problems before you invest (and then waste) \$\$\$

- Trademark Registration



Nationwide Rights



No **BLOODSUCKERS**

- It's not always "fair"



No Coffee On Tap: When Getting Cute Gets Ugly



Let's call our beer
FRAPPICINO...think anyone will
care?



Umm...yeah...that's almost identical
to one of our most important marks



No Coffee On Tap: When Getting Cute Gets Ugly



Dear Exit 6 – "There are lots of cross-promotions among craft beers. People might think we have endorsed your product or that you licensed the mark from us."



No Coffee On Tap: When Getting Cute Gets Ugly



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Dear Starbucks – "No one will think our beer is your coffee."



No Coffee On Tap: When Getting Cute Gets Ugly



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"PS, We did this on purpose."



No Coffee On Tap: When Getting Cute Gets Ugly



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No Coffee On Tap: When Getting Cute Gets Ugly



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Dear Exit 6 – "We know no one will think it's our coffee, this is about false affiliation/endorsement."

PS, "Cute response, we are sure a judge will love the part where you intentionally infringed our trademark."





- No one likes to have their brands messed with
- Infringement is often about confusion as to affiliation or endorsement not the actual products (beer vs. coffee)
 - Sports team affiliation (West Flanders/Broncos)
- Don't publicly admit you intended to infringe...ever

What Is *Effective* Trademark Management?



Using a **firm that fits** your needs,
and an **attorney that knows**
the Craft Beer Industry,
to efficiently search, register
and protect your brands



Law Firms Are Like Bowls Of Porridge



TOO HOT



JUST RIGHT!



TOO COLD

The Range of Firms

- **The MEGA Firm**
 - Overkill
- **The General Practitioner** (aka "The Dabbler")
 - Not experienced with trademarks or your industry
- **The Regional Firm**
 - Right level of experience
 - Niche practices
 - Focused on value not glitz



Industry Understanding

Example 1: Trademark Search Strategy

CRAFT BEER ATTORNEY

- **Leverages industry knowledge** to provide efficient searches (i.e. *knows where to look*)
- Searches cost a **few hundred \$**, not thousands
- **Anticipates** industry-specific problems and common trademark mistakes brewers make

GENERAL ATTORNEY

- Needs expensive comprehensive search to see the big picture
- Doesn't know industry nuances
- Can't anticipate industry-specific problems, like a litigious distillery or common trademark mistakes



Industry Understanding

Example 2: Dispute Resolution

CRAFT BEER ATTORNEY

- **Knows the *unwritten rules*** of Craft Beer disputes
- **Balances** brand protection and your image as a Craft Brewer
- **No bullying** or ridiculous demands
- **Anticipates** dispute going public and makes you look reasonable

GENERAL ATTORNEY

- Thinks Craft Beer is like every other industry
- Uses a form cease and desist letter
- Makes unreasonable demands
- Surprised when letter ends up on social media or in the news
- Makes you look like a

BLOODSUCKER



Industry Understanding

Example 2: Dispute Resolution

- **Vampire Brands demanded**

- "Defendants' ill-gotten gains and all sales proceeds wrongfully acquired by Defendants by means of Defendants wrongful use of Plaintiffs' trademarks and their support of such acts of unfair competition and false advertising be turned over to Plaintiffs along with interest."

- **Know what they look like...?**



Industry Understanding

Example 2: Dispute Resolution

- **Vampire Brands demanded**
 - "Defendants' ill-gotten gains and all sales proceeds wrongfully acquired by Defendants by means of Defendants wrongful use of Plaintiffs' trademarks and their support of such acts of unfair competition and false advertising be turned over to Plaintiffs along with interest."
- **Know what they look like...?**

BLOODSUCKERS



Other Services

- **LCB Enforcement and Licensing**
- **Franchising**
- **Business Counseling**
 - Mergers, Acquisitions, Transitions, Exit-strategies
- **Employment**
- **Distributor Relationships**
- **Insurance/Recovery**
- **Tax**



Continue The Conversation

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McNees Wallace & Nurick LLC

Alcoholic Beverage and Liquor License Group

