

A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

[Intellectual Property for Cocktails?](#)

Posted on January 5, 2011 by [Sharon Armstrong](#)

A [recent post](#) on the Freakonomics blog at the *New York Times* combined two of my favorite things in life – intellectual property and cocktails. “The Creative Cocktail” specifically discusses the creativity to be found in the new cocktail scene – including bars designed like prohibition-era speakeasies, farm-fresh ingredients, artisanal details in every drink, and fancy spins on classic drinks.

The authors of the article – intellectual property professors [Kal Raustiala](#) and [Chris Sprigman](#) – also discuss the prevalence of copying among bartenders and restaurateurs in the industry and attempts by some in the industry to obtain protection for cocktail recipes. Under U.S. law, cocktail recipes cannot be copyrighted. However, some in the industry are trying to maintain exclusive protection over how certain cocktails are made and presented to the public through other methods, including trade dress and trademark protection. For example, Gosling’s, a Bermudian company that makes Gosling’s Black Seal Rum and claims to be the originator of the Dark ‘n Stormy cocktail, owns U.S. registrations for the mark DARK ‘N STORMY, for “pre-mixed alcoholic cocktail, namely rum and ginger beer” and for “a kit containing Gosling’s BLACK SEAL rum and ginger beer for preparing an alcoholic cocktail.” However, given the propensity for bartenders seeking to make their marks among a thirsty public by experimenting with ingredients other than the spirit prescribed in Gosling’s registrations, Gosling’s states that defending its trademark registrations to ensure the use of Gosling’s is “a very time-consuming and expensive thing.” Notably, Gosling’s does not own a trademark registration for a cocktail recipe for DARK ‘N STORMY; Gosling’s registrations instead cover the ingredients that Gosling’s stands behind as part of a genuine Dark ‘n Stormy cocktail.

Beyond the expense involved in enforcing claimed rights in a trademark for the make-up of a cocktail, trademark protection does seem to be a tricky means of solidifying a recipe due to the fact that consumers, like bartenders, may do their own doctoring at home and either still associate the name of their new creation with the “branded” drink or modify the name only slightly to note the variation – [Light ‘n Drizzly](#), anyone? I’m not naming the names of my hosts (none of whom tend bar for a living), but I’ve had the pleasure of imbibing more than one cocktail combining a rum other than Gosling’s with a ginger concoction of some sort – be it ginger syrup, ginger bitters, or ginger-something-else – to delicious effect.



For these reasons, seeking intellectual property protection does not appear to be the most artful means of cornering the market for a particular cocktail, not to mention the fact that it seems to be at odds with the inherent creativity of cooking or tending bar – in which chefs learn from one another and customers in part direct the preparation of their food and drink (I want my steak rare! I want a Maker’s Mark manhattan!). So what works? As the authors of the article suggest, building a strong brand is always a good way to establish consumer loyalty. Another option is to do as one other famous rum maker has done – [put your name in name of the cocktail](#).

Cheers!



Capella Tower | Suite 3500 | 225 South Sixth Street | Minneapolis, MN 55402
Main: (612) 604-6400 | Fax: (612) 604-6800 | www.winthrop.com | *A Professional Association*