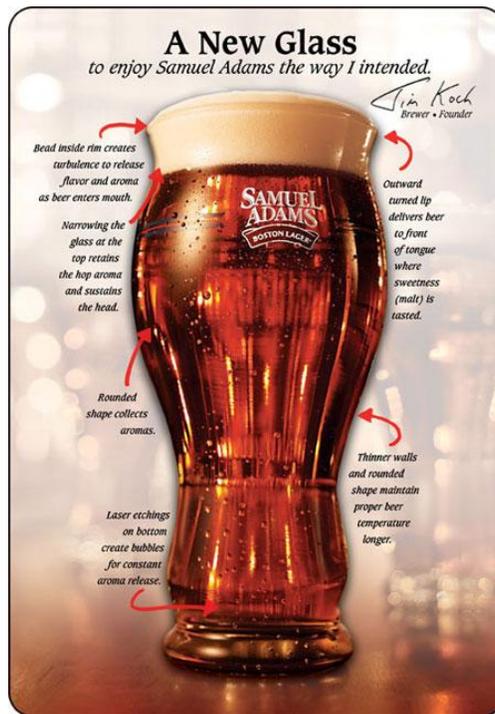


A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

## Samuel Adams Better Beer Glass . . . No Trademark For You?

Posted on February 28, 2011 by [Steve Baird](#)

If the "[Soup Nazi](#)" were employed as a Trademark Examining Attorney at the USPTO, he might be heard crabbing at the makers of Samuel Adams Boston Lager, were they to attempt to register or claim as a trademark the shape of their "new" beer glass from 2007, now almost four years old: "No trademark for you!" ("Best of Soup Nazi" on Seinfeld, [here](#)). Why?



Not because the glass hasn't yet been in use in commerce for five years (after all, it's possible to establish [acquired distinctiveness](#) with less than five years use in some circumstances).

And, not because of any interesting discussion about whether the shape or configuration of a beer glass is capable of enjoying immediate trademark rights upon first use, as a form of inherently distinctive [product packaging](#) or [trade dress](#) for [liquid courage](#), instead of being subject to the U.S. Supreme Court's stated [prohibition on inherently distinctive product configuration trademarks](#) (applicable, I suppose, if you're selling empty beer glasses as opposed to beer from a tap).

Anyway, were such trademark protection and registration sought, any refusal would more likely result from some unfortunate marketing statements I recently noticed in Sam Adams advertising and on their branded cardboard restaurant and bar coasters, complete with arrows attributing these statements to various apparently [functional features](#) of the beer glass itself:

- "Outward turned lip delivers beer to front of tongue where sweetness (malt) is tasted."
- "Bead inside rim creates turbulence to release flavor and aroma as beer enters mouth."
- "Narrowing the glass at the top retains the hop aroma and sustains the head."
- "Rounded shape collects aromas."
- "Thinner walls and rounded shape maintain proper beer temperature longer."
- "Laser etchings on bottom create bubbles for constant aroma release."

The Sam Adams website also features a page entitled "[Function Over Form](#)" showing a blueprint of the beer glass design and noting, it is: "The result of two years of scientific research, thousands of hours of taste tests and dozens of rejected styles. And that's just the glass."

These statements are particularly interesting in light of the apparently quite literal "Better Glass of Beer" tagline for Samuel Adams beer and glasses. (Note how the tagline [still resides on the Supplemental Register](#) for beer in Int'l Class 32, but it [somehow obtained federal registration](#) without a showing of acquired distinctiveness in connection with [beverage glassware](#) in Int'l Class 21).

Now, some of you might be aware of the fact that the makers of Sam Adams [already have design patents on their beer glass shapes](#) and they [recently asserted them](#) in an ITC (International Trade Commission) [proceeding against San Tan Brewing Company and others](#), so who needs [trademark](#) protection anyway, right?

Wrong. Trademark protection potentially lasts forever and is not subject to any term limits as is the case with patent protection. In addition, although I don't consider myself a patent type by any stretch of the imagination, I'm left wondering whether the overt marketing statements identifying functional features of the beer glass design could be useful in attempting to invalidate the issued patents, or at least, narrow their scope of protection, since design patent protection extends only to the [ornamental non-functional aspects of a design](#).

So, to sum it up, these kinds of marketing statements (loaded with functional references) remind me of yet another example of when marketers and trademark types may not be in close collaboration or on the same page, as appeared to be the case with the previous and unfortunate [Furminator](#), [Smash Burger](#), and [Bawls Guarana](#) marketing statements.

