

WINE AND INTELLECTUAL PROPERTY PROTECTION – LEGAL RISKS AND OPPORTUNITIES OF COPYRIGHT, TRADEMARKS, DESIGNS AND TRADE SECRETS IN THE REALM OF WINEMAKING

ABSTRACT

1) MOTIVATION

As a lawyer with a particular focus on intellectual property law and a personal passion for wine writing a thesis to explore and assess the relevance of intellectual property rights in the area of winemaking gave me the opportunity to combine two elements that play a pivotal role in my life. When contemplating the structure and goals of this thesis, it appeared particularly exciting to me to approach both winemakers as well as other professionals in the wine-industry to learn about their views on intellectual property rights, to hear about their thoughts on opportunities and risks associated with such rights and, in particular, to discuss their concerns and to find solutions to problems they might have encountered in the past. Eventually, I also wanted to help them to “debunk” certain myths about intellectual property rights (such as costs, enforcement issues, etc.) that might deter professionals who do not have a legal background from engaging more closely with the topic.

2) OBJECTIVE

The objective of this thesis was to explore the many implications that intellectual property can have for a winemaker or a wine-producing company. Intellectual property can have enormous financial and reputational value for a winemaker, if applied and protected correctly; at the same time violations of intellectual property rights can lead to financially devastating litigation, reputational damage and, in a worst case scenario, even threaten the economic survival of a winemaker’s business. An analysis of the role of IP protection in the realm of winemaking is therefore not only of theoretical, but also of practical relevance. Hence, it was the goal of this thesis to provide such an analysis and eventually assess, particularly through a survey of several selected winemakers, the industry’s awareness of the opportunities as well the risks associated with intellectual property rights.

3) METHODOLOGY

The thesis set out to achieve its objective, first by giving a brief overview of the concept of IP rights, followed by a chapter dedicated to IP specifically in the realm of winemaking and a comparison of the opportunities and risks that this field of law presents for winemakers. Methodologically, it did so based on an analysis of legal commentaries and articles in peer-reviewed journals, and through the use of illustrative examples of media reports on real-life anecdotes that winemakers have experienced to bolster such analysis. As the core element of the thesis, an assessment of the wine-industry’s awareness of the risks and chances of IP rights was provided, based on a series of personal interviews conducted with Austrian winemakers, from small- and family-sized enterprises to larger companies whose wines are sold nationally and internationally (in light of the prescribed limitations in length for this thesis, these interviews were limited to the Austrian market).

4) CONTENT

Substantively, the thesis was split into four chapters. At first, an introductory chapter aimed at presenting an overview of the different categories of intellectual property rights, followed by a brief description of the concept of protection of these rights and their enforcement in cases of violations, as well as the various forms of sanctions such violations can entail.

The second chapter focused on the role of intellectual property rights specifically in the area of winemaking. It discussed the relevance of copyright and design rights for artistic creations, introduced the concept of trademark protection of wine-names, labels and possibly even "coloured" wines and eventually provided practical information of how and where trademarks can be registered, as well as the costs and benefits following from such registration.

In its third chapter, the thesis highlighted opportunities and risks associated with intellectual property when making wines. In particular, it analysed the benefits and financial implications of intellectual property protection in wines by trying to provide an answer to the question why a winemaker should care about protecting intellectual property and how much such protection would cost. It also aimed at emphasizing the dangers of insufficient protection of intellectual property rights, particularly by providing famous negative examples that could serve as a warning signal to the winemaking business. Lastly, the third chapter tried to point out legal and financial risks for a winemaker stemming from the violation of the intellectual property rights of others and discussed the difficulty of monitoring IP-violations.

The fourth and final chapter formed the "heart" of the thesis, by discussing the results of a series of personal interviews with Austrian winemakers and other wine-professionals to give an assessment of the industry's awareness of the opportunities and risks associated with intellectual property rights. In particular, it set out to give an idea whether Austrian winemakers consider protecting their intellectual property rights as relevant and whether they see any financial benefits in doing so. The fourth chapter also aimed at providing an analysis of the practical lessons learned from the survey, in particular by pointing out reasons that could deter a winemaker from protecting his/her intellectual property or, conversely, provide an incentive to do so. Eventually, it also tried to shed light on the question whether there is a role of industry associations to raise awareness about IP protection.

5) CONCLUSION

The personal interviews conducted with a sample of Austrian winemakers revealed a first-hand insight into the perception and relevance of IP rights amongst winemakers and other professionals in the Austrian wine industry. They showed that IP rights and their protection are, in principle, relevant topics for Austrian wineries, irrespective of the winemaker's age, the winery's size or its positioning on the market.

The interviews also established that while trademarks are registered by a significant number of Austrian winemakers it is often not entirely clear what can be registered, which trademark-classes exist and how the registration-process works. Typically, these "technical details" are sourced out to lawyers; however, the fact that quite a few of the interviewed winemakers confirmed that – once they had understood the concept of trademarks and their registration – they felt capable of registering future trademarks on their own indicates that it could be beneficial if some form of "general guidelines" on this topic were available.

Lastly, the topic of enforcement proved particularly difficult or problematic for a vast majority of the interviewed winemakers. Consequent monitoring is indispensable to maintain the integrity of an IP portfolio and when notified of violations action has to be taken. While it is certainly advisable to obtain the services of a lawyer for matters of enforcement, it could be helpful if the trade/industry association released a step-by-step manual on enforcement-issues to allow the winemakers to make a preliminary assessment of the situation and to decide on the further course of action.