

Branding, Positioning and Protecting Your Craft Brewery or Distillery

Isaac Arthur CODO Design

Matthew McLaughlin Baker Donelson



50%

ISAAC ARTHUR

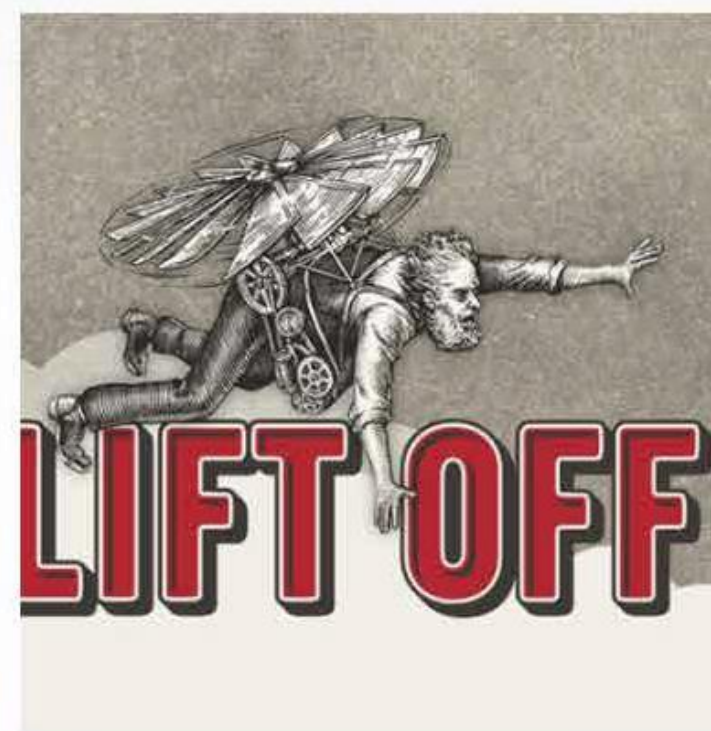
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CODODESIGN.COM

Visit the SIG. hably







ERNSON
BREWING CO.



TDTDTVCH

DTNT 5% ALC. VOL.



BRANDING, POSITIONING, AND PROTECTING YOUR CRAFT BREWERY (OR DISTILLERY)

POSITIONING

1. WHAT DO YOU DO?

WHAT TYPE OF BEER YOU BREW
& WHY YOU'RE PASSIONATE ABOUT IT

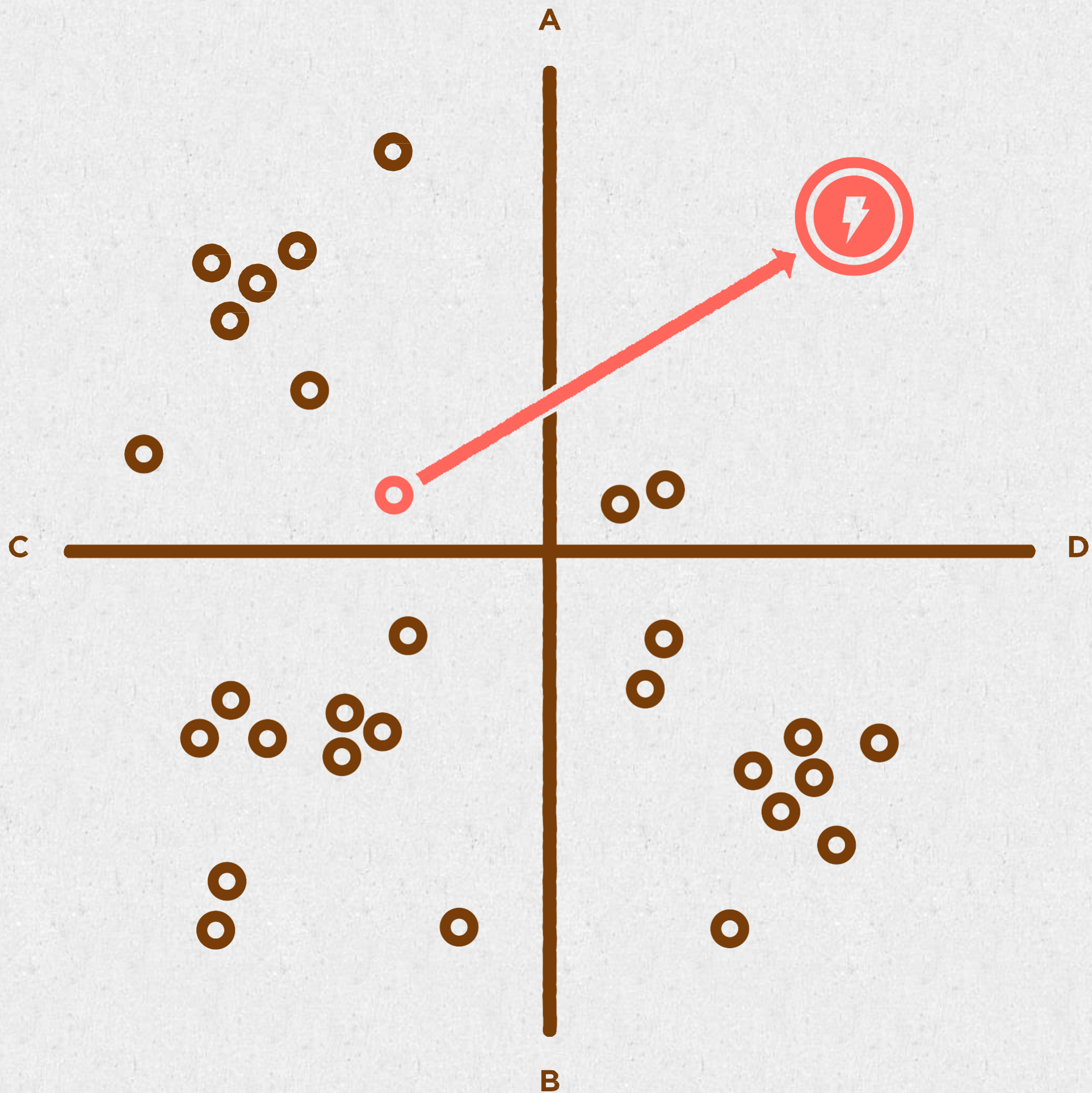
2.

**WHO DO YOU
DO IT FOR?**

WHO SUPPORTS YOU

3. HOW ARE YOU DIFFERENT?

BUT NOT NECESSARILY BETTER



ORIGIN STORY?

WHY DO YOU DO WHAT YOU DO?

WHAT ARE YOUR GOALS?

WHO DO YOU COMPETE WITH? NOW & LATER?

BELIEFS, PURSUITS, & PURPOSE?

450 NORTH BREWING CO.

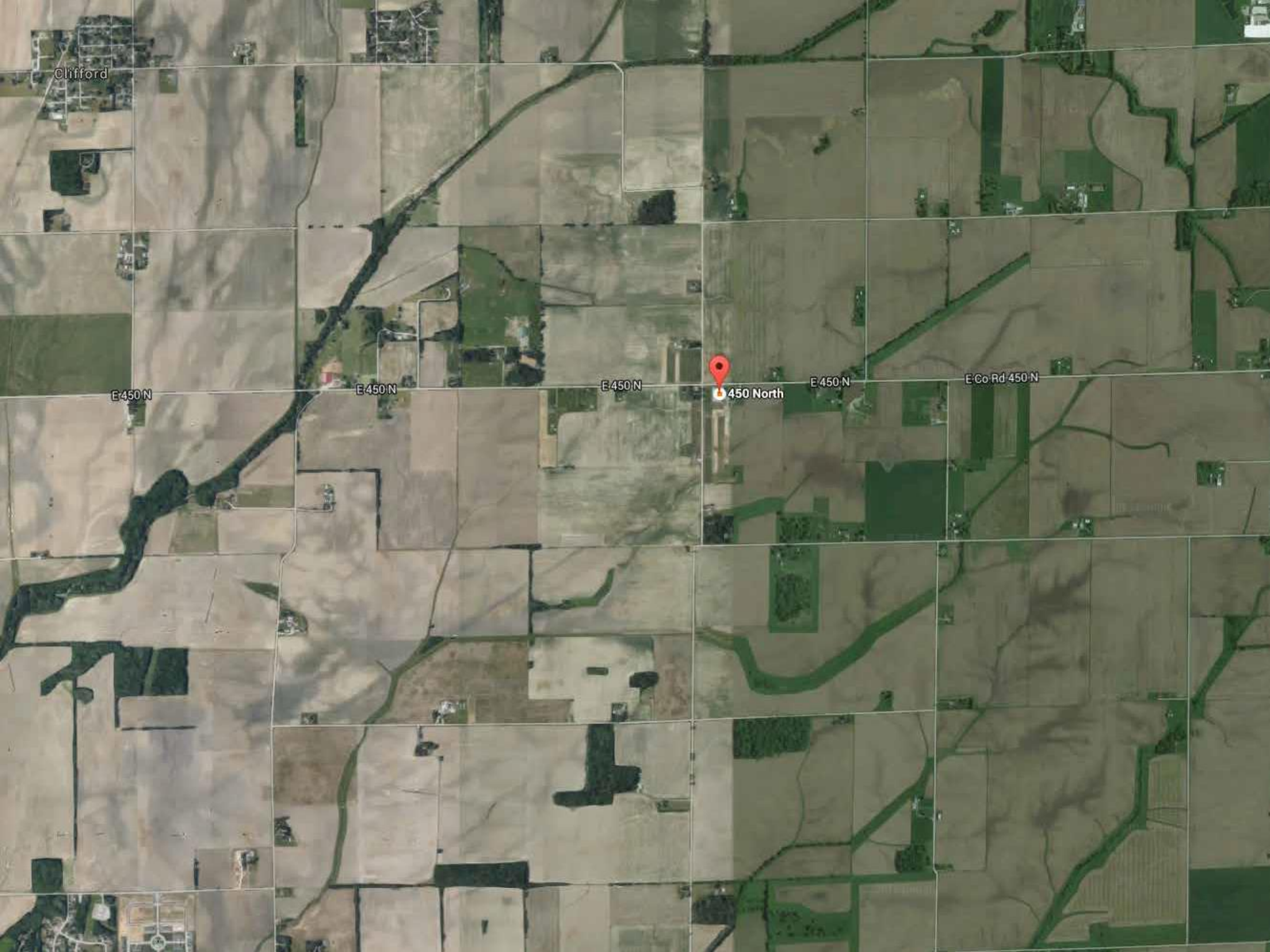
CASE STUDY

FAMILY-OWNED BREWPUB IN COLUMBUS, INDIANA

OWNED BY ACTUAL FARMERS (IN THE MIDDLE OF A FIELD)

INTO CANS EARLY

INDIANA'S ONE-STOP SHOP (WINE, BEER, CIDER, LIQUOR)



Clifford

E 450 N

E 450 N

E 450 N

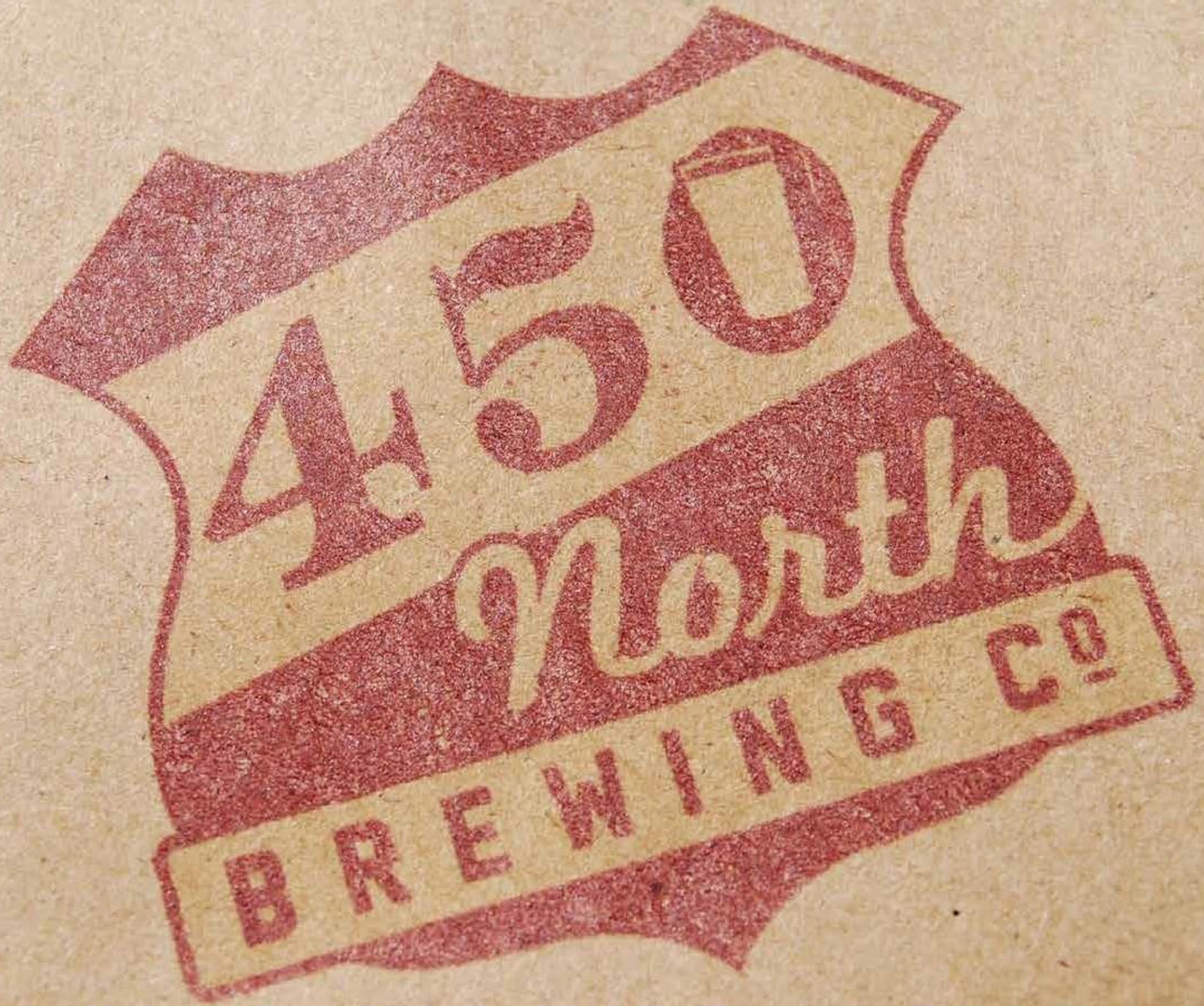


450 North

E 450 N

E Co Rd 450 N



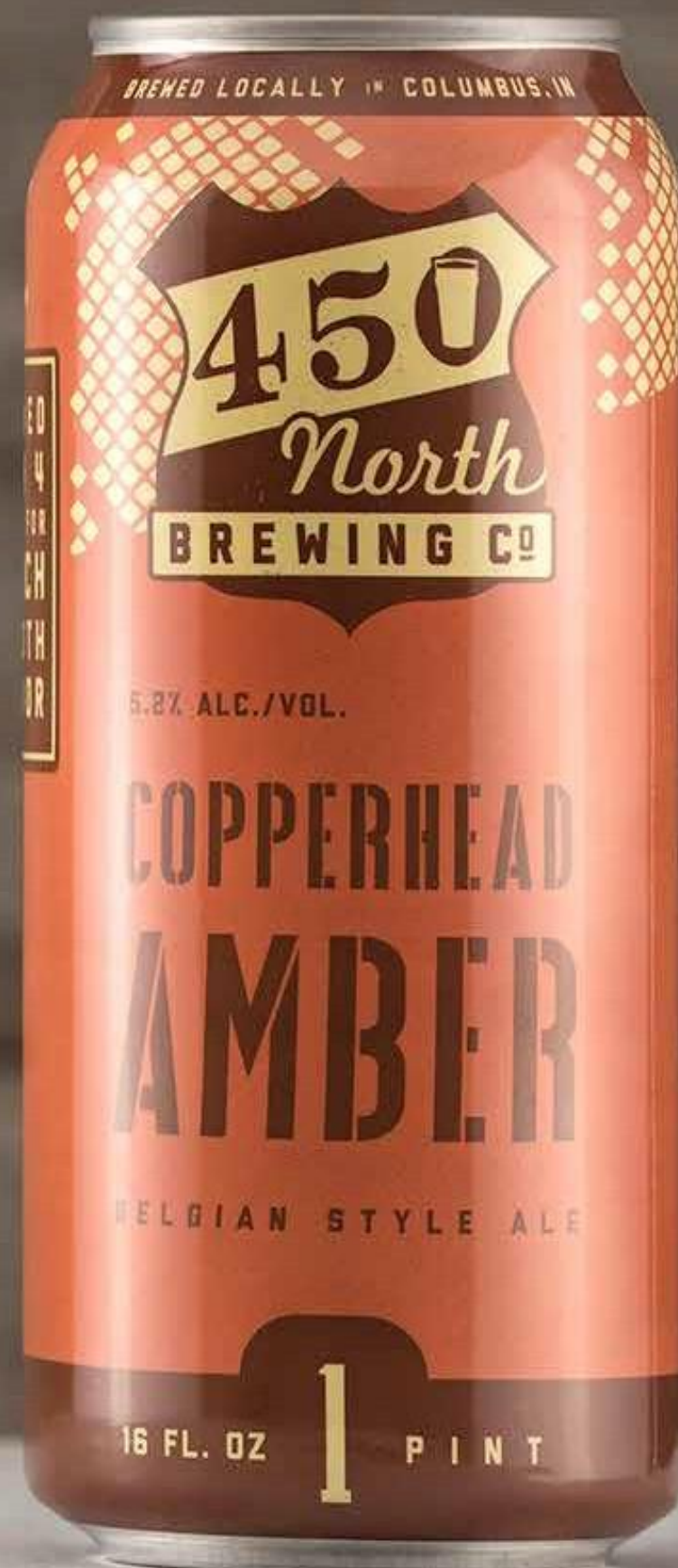
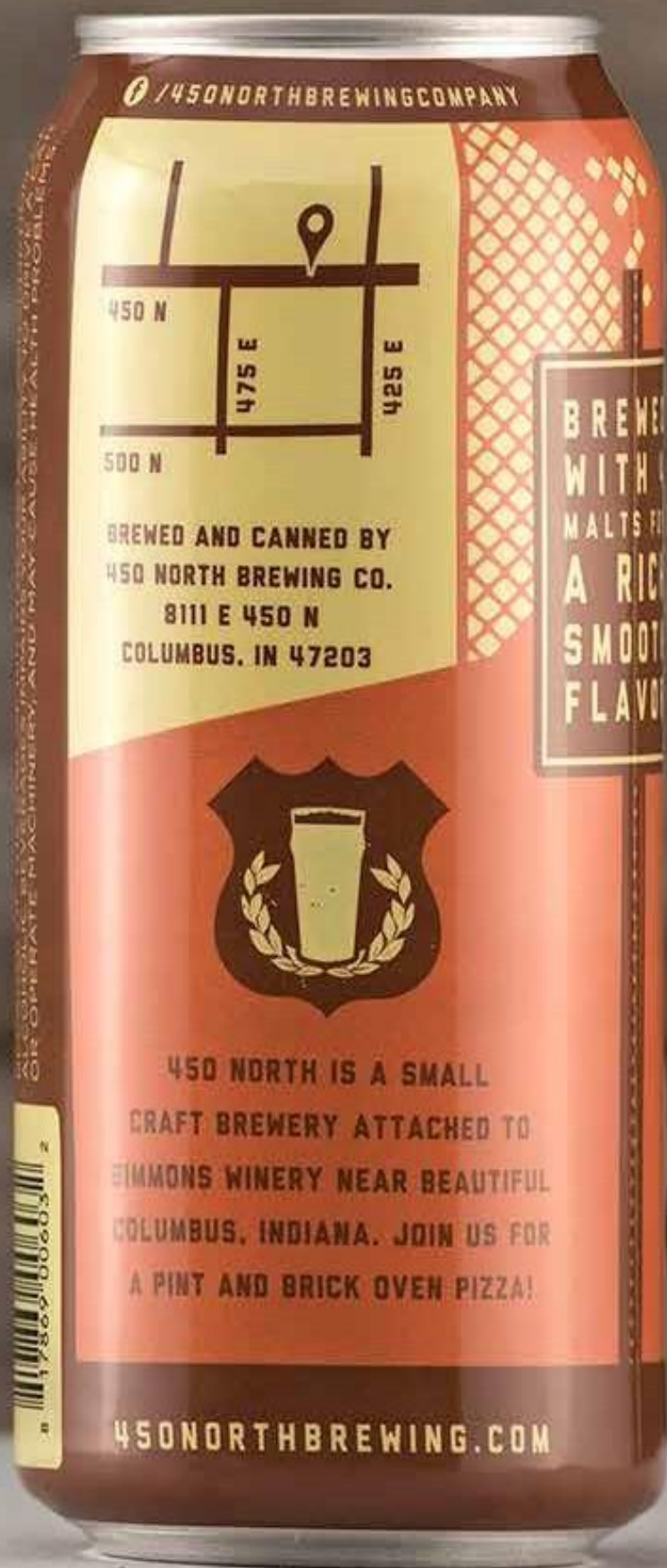


450

North

BREWING CO









BREWED LOCALLY IN COLUMBUS, IN



IRONMAN
ENGLISH

BREWED LOCALLY IN

450
North

BREWING

FOR THE

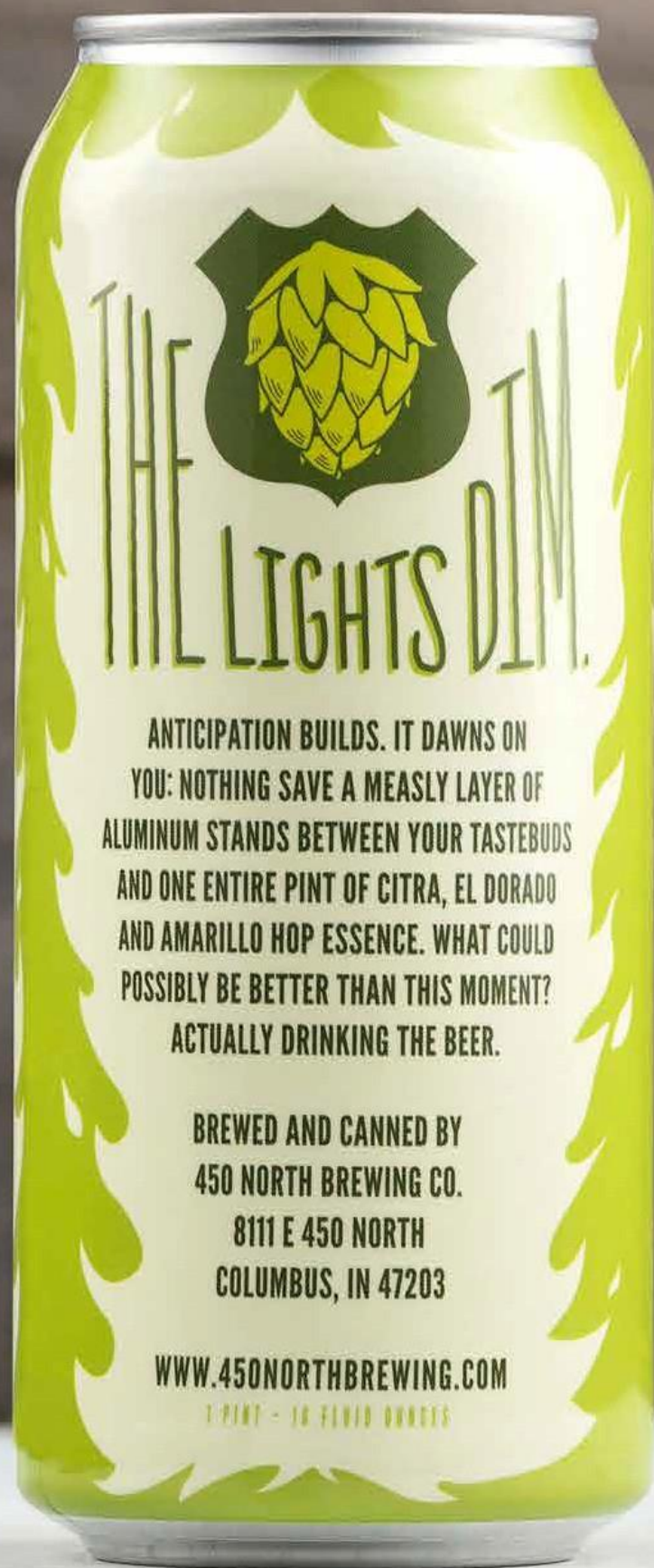
HONEY KÖLSCH

KÖLSCH STYLE HONEY ALE

16 FL. OZ

1

PINT





THE LIGHTS

ANTICIPATION BUILDS. IT DAWDLES. NOTHING SAVE A MEASLY ILLU-
MINATION STANDS BETWEEN YOU AND
THE ENTIRE PINT OF CITRA, BACCHUS
AND AWAJILLO HOP ESSENCE. WHO
WOULD BE BETTER THAN THAT?



SESSION



CITRA



CITRA

CITRA



BRANDING

**YOUR LOGO IS
YOUR BRAND.**

**YOUR LOGO IS NOT
YOUR BRAND.**

**OR A COLOR. OR A TYPEFACE. OR A WEBSITE.
OR EVEN YOUR PRODUCT OR SERVICE.**

**A BRAND IS A PERSON'S
GUT FEELING ABOUT
YOUR COMPANY.**

**REPUTATION & PERCEPTION. WHAT YOU STAND FOR
& THE PROMISES YOU MAKE.**

**THIS IS IMPORTANT
BECAUSE WE'RE
ALL HUMAN.**

EMOTIONAL, ILLOGICAL (AT TIMES) HUMANS.

**BRAND ESSENCE DEFINES
THE MOST COMPELLING
ASPECT OF YOUR COMPANY**

**MOSTLY INTERNAL. SHORT. GUIDES CULTURE,
BRAND VOICE, & ONGOING MARKETING**

**OLD SCHOOL SERVICE
BLUE COLLAR SCIENTISTS
WILD ALASKA
RED BARN ROMANTICISM
SHOT AND A BEER
HARD WORK, BUT WORTH IT
LOGISTICS 2.0
FOOD SYSTEM REFORM**

WHAT DO YOU DO?

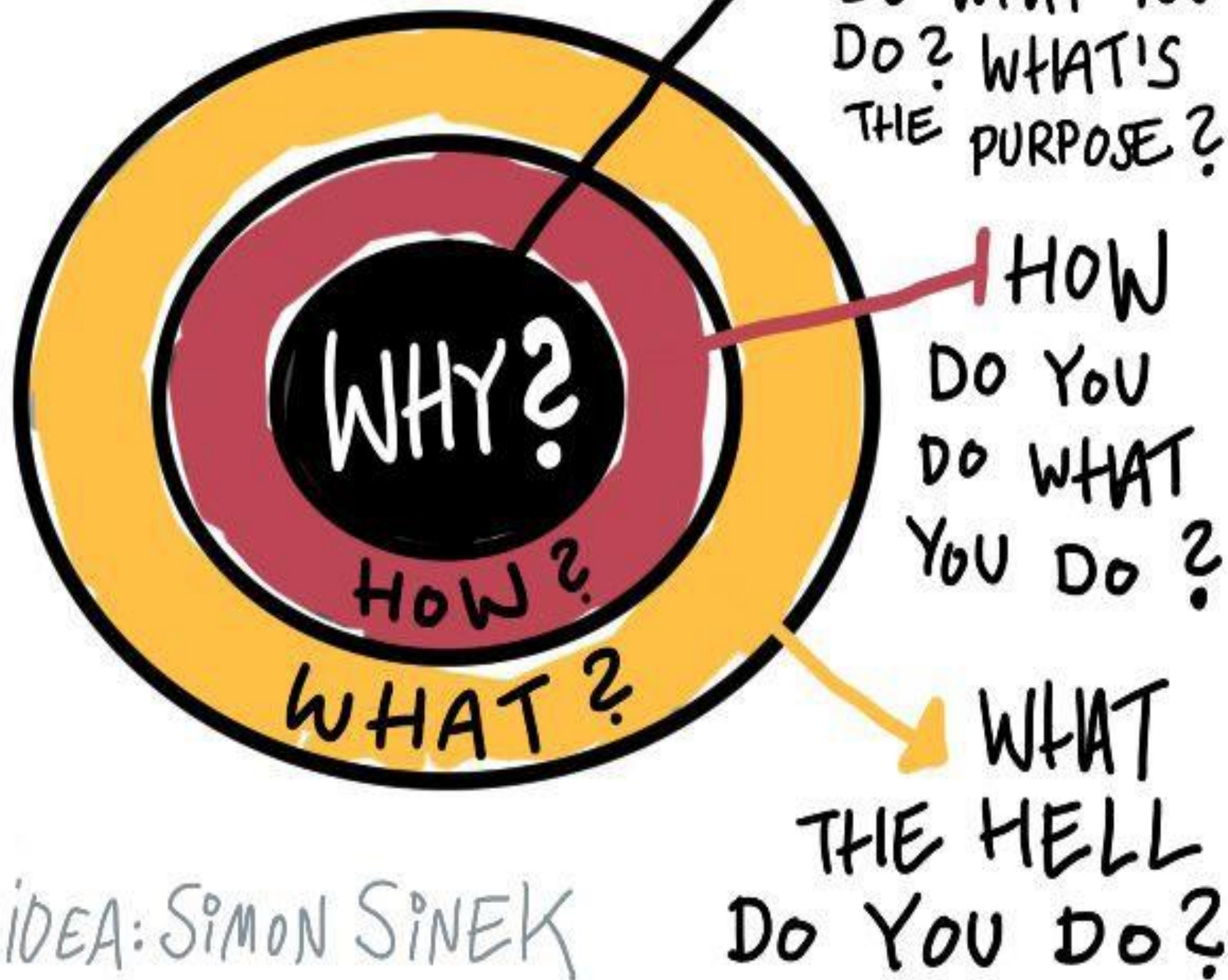
COOLEST THING ABOUT BREWERY?

**WHAT ROLE SHOULD YOUR BREWERY PLAY IN YOUR
CUSTOMERS' LIVES?**

WHAT EMOTIONS SHOULD YOUR BRANDING EVOKE?

WHY DO YOU MATTER?

GOLDEN CIRCLE



IDEA: SIMON SINEK

FERNSON BREWING CO.

CASE STUDY

PRODUCTION BREWERY IN SIOUX FALLS, SOUTH DAKOTA

STARTED BY TWO LONG-TIME HOME BREWERS

**GETTING INTO CANS EARLY TO SATURATE A
RELATIVELY EMPTY REGIONAL MARKET**

CELEBRATE CREATIVE SCENE IN SIOUX FALLS







FERNSON

BREWING CO



FERNSON
BREWING CO





ALL CUT IPA

dolor sit amet, eam et dis-
ius ei aeterno laoreet re-
sed apeirian assueverit
Nam ei efficiendi sadipsc-
it forensibus inciderint at,
re euismod complectitur,
decore et eam. Vel causae
Ut integre delenit eum.

ARNSON
BREWING CO.

TASTING ROOM & BREWERY
XXXXXX, SIOUX FALLS, SD XXXXX
ARNSONBREWING.COM

SIOUX

SIOUX

SIOUX
ALL CUT
IPA

SIOUX FALLS • SOUTH DAKOTA



12 FL
OZ

ALC
6.7%
BY VOL

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.



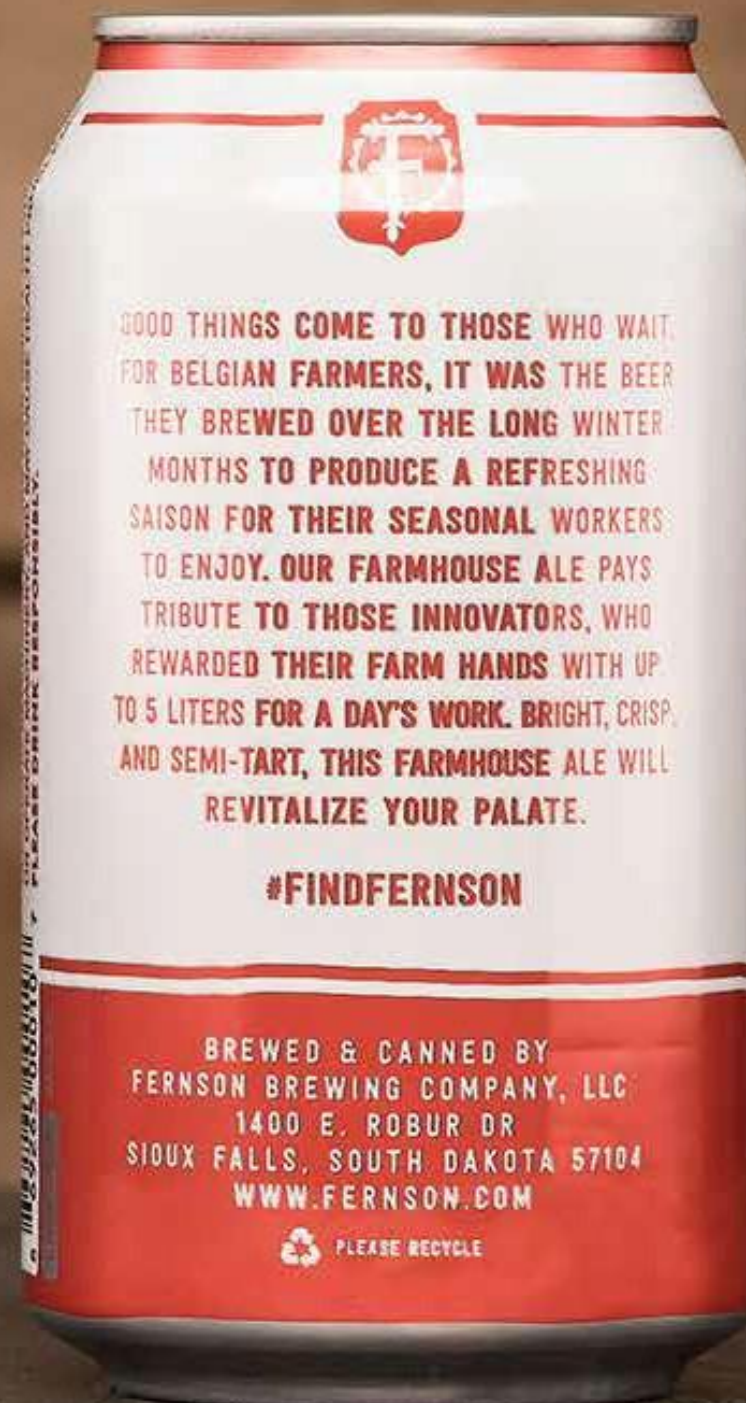
FERNSTON

BREWING CO.









RAMHOU
ALE



GOVERNMENT
(1) ACCORDING
NOT DRINK ALCOHOLIC BEVE
BECAUSE OF THE
ALCOHOLIC BEVE
OR OPERATE MAC
PLEASE DRINK

1712 5 2253A REXAM

REWARDED THEIR TAX
TO 5 LITERS FOR A DAYS
AND SEMI-TART, THIS F
REVITALIZE YO

#FINDFE

BREWED & CA
FERNSON BREWING
1400 E. RO
SIOUX FALLS, SOUT
WWW.FERN





FARMHOUSE

4.5%
ALC/VOL

ALE

12 FL
OZ
(355 ML)

BREWING



CO

10%
IPA

INDIA PALE ALE

12 FL OZ
(355 ML)







PILSENER



BACKBONE BOURBON CO.

CASE STUDY

INDIANA LIQUOR DISTRIBUTOR

SOURCED PRODUCT

MASCULINE, STRAIGHT FORWARD BRANDING

NO FOCUS ON INDIANA





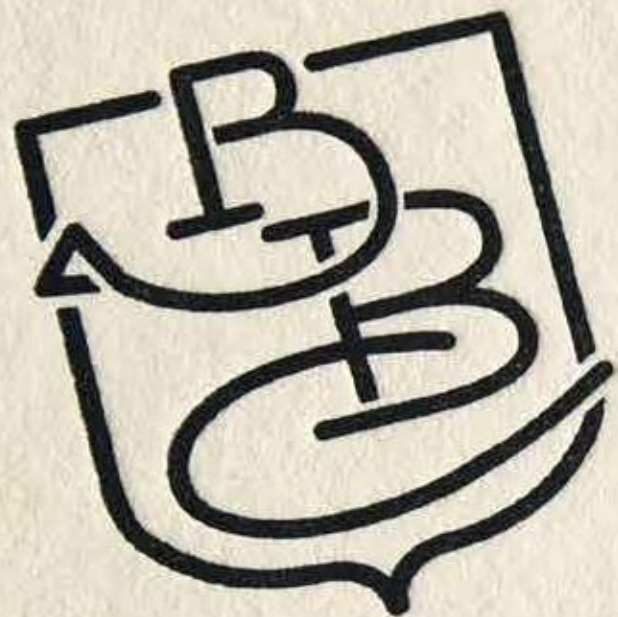


NOLAN SMITH
PRINCIPAL

nolan@backbonebourboncompany.com
(323) 325-4555 office
(317) 523-4455 cell

1845 S. Vineyard Ave
Suite #2 & #3
Ontario, CA 91761

BACKBONE
BOURBON COMPANY
WHISKEY MERCHANTS



NOLAN SMITH
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B A

U

W H I S

com

BACKBONE
BOURBON COMPANY
—
WHISKEY MERCHANTS





BONE SNAPPER
RYE
WHISKEY

BATCH # 2 110% PROOF / 750 ML. 54% ALC/VOL



A BONE SNAPPER IS SOMETHING
THAT GETS YOUR ATTENTION.
BONE SNAPPER RYE IS A RICH,
BOLD, SPICY WHISKEY THAT SHOULD
BE SIPPED AND SAVORED.
ENJOY ON ITS OWN OVER ICE
OR IN YOUR FAVORITE COCKTAIL.
PLEASE ENJOY RESPONSIBLY.

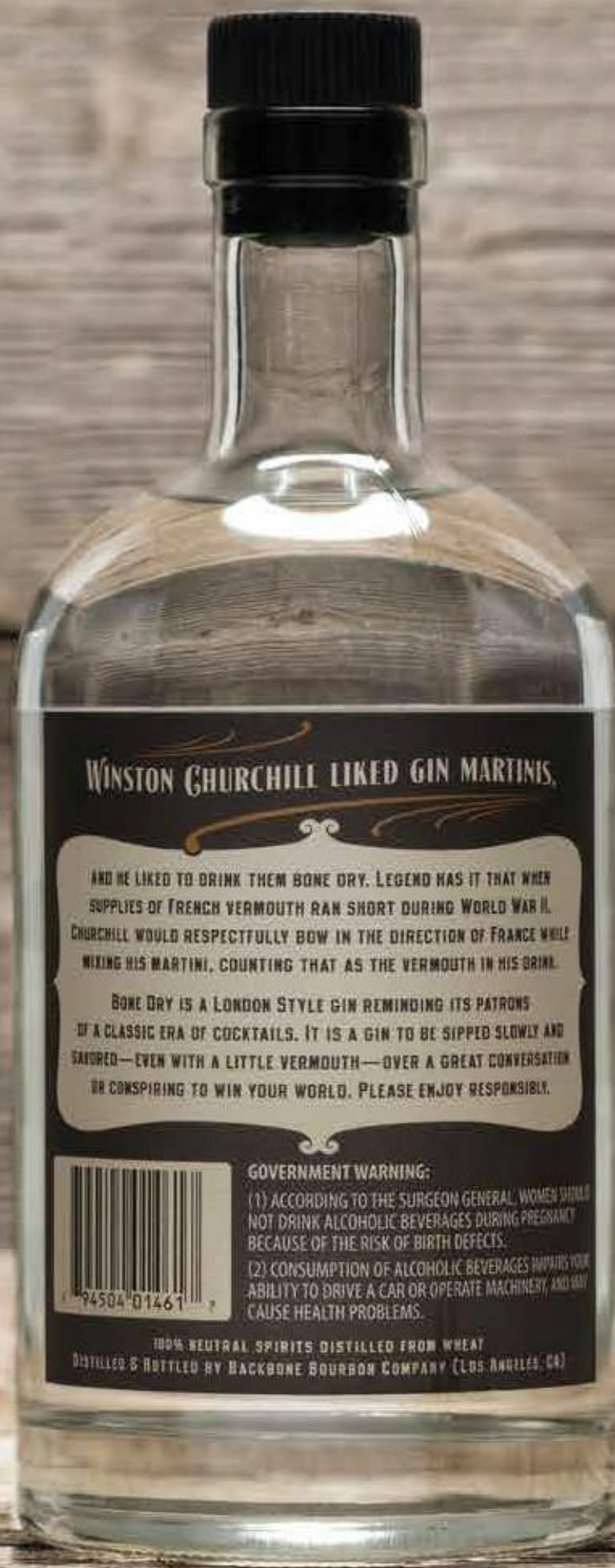
AGED 34 MONTHS

DISTILLED IN LAWRENCEBURG, IN
BOTTLED BY BACKBONE BOURBON CO.
(BARDSTOWN, KY)

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.





WINSTON CHURCHILL LIKED GIN MARTINIS.

AND HE LIKED TO DRINK THEM BONE DRY. LEGEND HAS IT THAT WHEN SUPPLIES OF FRENCH VERMOUTH RAN SHORT DURING WORLD WAR II, CHURCHILL WOULD RESPECTFULLY BOW IN THE DIRECTION OF FRANCE WHILE MIXING HIS MARTINI, COUNTING THAT AS THE VERMOUTH IN HIS DRINK.

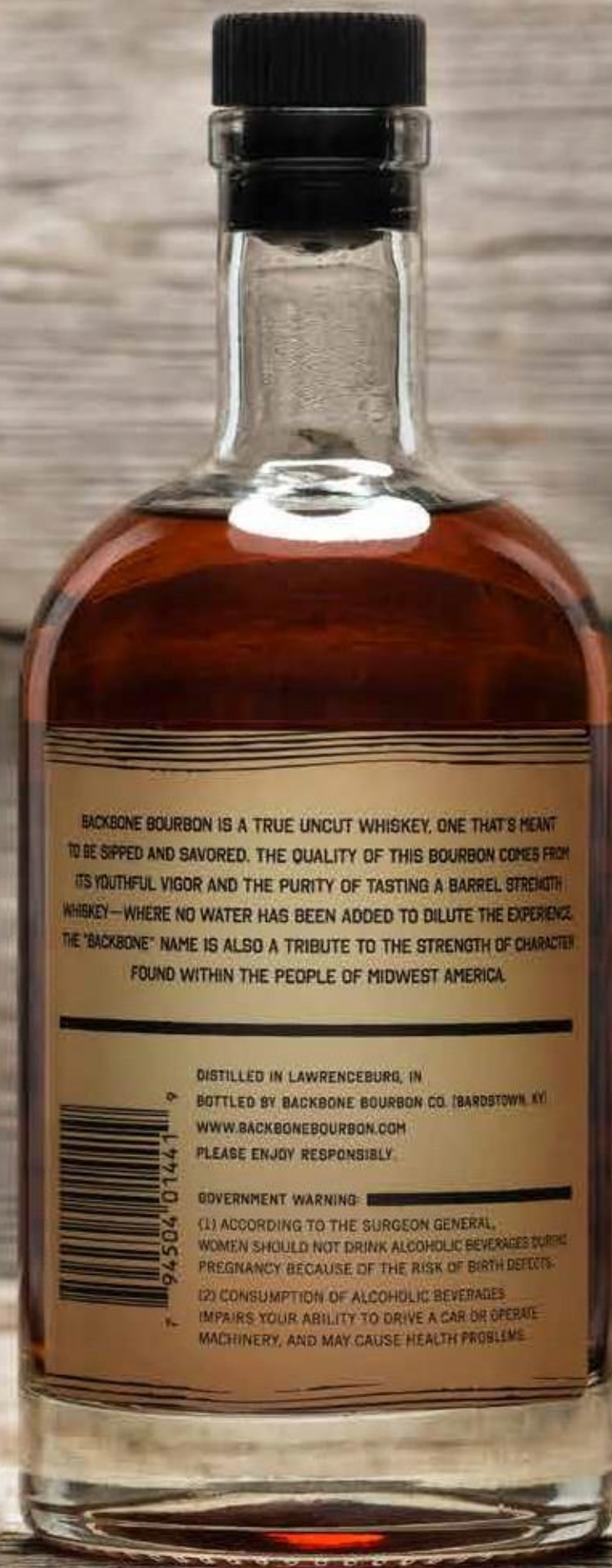
BONE DRY IS A LONDON STYLE GIN REMINDING ITS PATRONS OF A CLASSIC ERA OF COCKTAILS. IT IS A GIN TO BE SIPPED SLOWLY AND SAVORED—EVEN WITH A LITTLE VERMOUTH—OVER A GREAT CONVERSATION OR CONSPIRING TO WIN YOUR WORLD. PLEASE ENJOY RESPONSIBLY.



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.

100% NEUTRAL SPIRITS DISTILLED FROM WHEAT
DISTILLED & BOTTLED BY BACKBONE BOURBON COMPANY (LOS ANGELES, CA)







BAC
BOU

BONE DRY
GIN

BONE SNAPPER
RYE
WHISKEY

**BACKBONE BOURBON IS A TRUE UNCUT WHISKEY, ONE THAT
TO BE SIPPED AND SAVORED. THE QUALITY OF THIS BOURBON
ITS YOUTHFUL VIGOR AND THE PURITY OF TASTING A BARE
WHISKEY—WHERE NO WATER HAS BEEN ADDED TO DILUTE
THE "BACKBONE" NAME IS ALSO A TRIBUTE TO THE STRENGTH
FOUND WITHIN THE PEOPLE OF MIDWEST AMERICA**

CONSISTENCY ACROSS ENTIRE BRAND SYSTEM

TOUCHPOINTS

NAME & ARCHITECTURE
TAGLINE & COPYWRITING
BRAND IDENTITY DESIGN
PACKAGE DESIGN
RESPONSIVE WEB DESIGN
MERCH & EXHIBITION DESIGN
INTERNAL CULTURE
MARKETING & STORYTELLING

BIG LUG CANTEEN

CASE STUDY

BREW PUB IN NORA, INDIANA

STEPPED-UP BAR FOOD + ENGLISH-STYLE BEERS

10 BBL, GRAVITY-FED SYSTEM

LOCATED ON MONON BIKE TRAIL

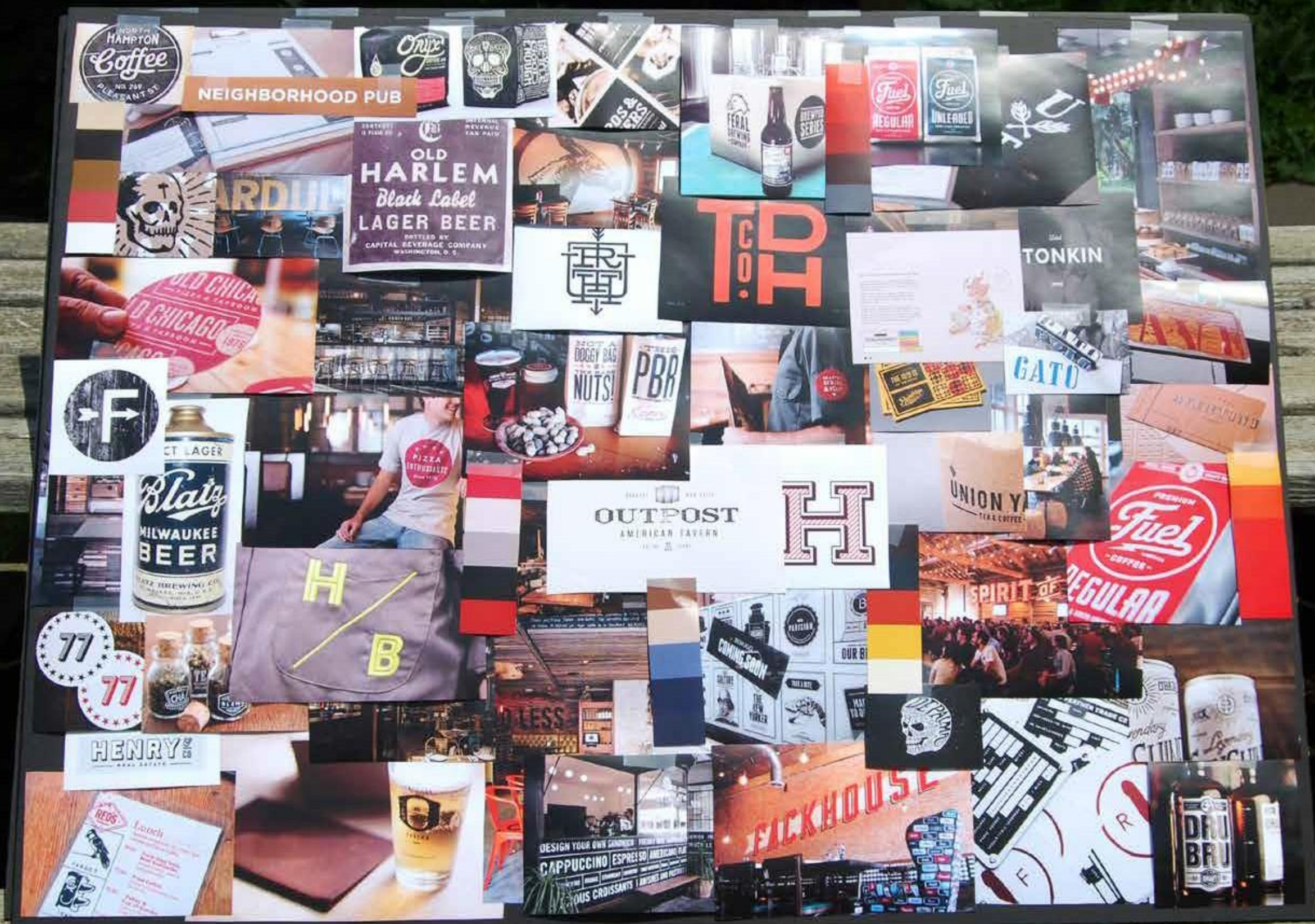
YOUNG, LOCAL OWNERS

HYPER-MASCULINE WOODEN BEER DUNGEONS



















“STOMPING GROUNDS”

EMBRACES NORA, WORTS AND ALL

IRREVERENT

BRIGHT AND POPPY (ILLUSTRATION HEAVY)

WYSIWYG, FRANK & HONEST



**BIG
LUG
CANTEEN**

**BIG LUG
CANTEEN**













SPECIALTIES

SPECIALTIES ARE AVAILABLE
BUT ALSO FIT FOR A BIG LUG.

NASHVILLE WINGS

Boneless or Bone-In Chicken Wings marinated in cayenne, deep fried, and served with a side of pickles & choice of ranch or blue cheese.

CHARCUTERIE

Mortadella, Capicola, Chicken Pate, Giardiniera, Crostini, Local Folks Mustard, and Bacon Jam served on a Big Lug board.

FISH N' CHIPS

Fresh cod tossed in our Quintana beer batter is deep fried and served with hand cut French fries and tartar sauce.

FRIED CHEESE CURDS

Wisconsin white cheddar cheese curds are tossed in Quintana beer batter, deep fried, and served with Green Goddess dressing or Big Lug Aioli.

HOSS DIP

Greekamole, Mexican hummus, black bean corn salsa, and melted mozzarella cheese are served with a side of Frito scoops.

BEER CHEESE

Cheddar cheese, cream cheese, roasted garlic, and our Kristofferson Pale Ale... Served with sour cream, bacon, scallions, and homemade crostini.

POUTINE

- CLASSIC French Fries, Poutine Gravy, Cheese Curds \$7
- PORK French Fries, Smoked Pork Belly, Poutine Gravy, Cheese Curds, Scallions \$9
- VEGETARIAN French Fries, Scott's Gumbo, Cheese Curds, Scallions \$7

SIDE DISHES

French Fries \$3
Crispy Onion Rings \$4
Seasonal Potato \$4

SALADS

SERVED WITH YOUR CHOICE
OF DRESSING (SEE BELOW)

HOUSE SALAD

Mixed greens are topped with tomato, red onions, and croutons. Served with dressing.

BEER LIST

QUINTANA

AMERICAN WHEAT ALE 5% ABV, 25 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
This beer is refreshing, light and serves as a palate cleanser. It has a hint of citrus and a light body. It's perfect for a warm day.

KRISTOFFERSON

AMERICAN OATMEAL PALE 5.7% ABV, 45 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
This American Oatmeal Pale Ale has a slightly higher malt body than most. It has a hint of citrus and a light body. It's perfect for a warm day.

KINGS JIVE

ENGLISH BROWN 4.5% ABV, 18 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
A light English Brown Ale with a slightly higher malt body than most. It has a hint of citrus and a light body. It's perfect for a warm day.

BULL MOOSE IPA

SESSION INDIA PALE ALE 4.5% ABV, 55 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
This Bull Moose IPA is a session beer with a light body and a hint of citrus. It's perfect for a warm day.

JUDGE MILLS ESB

EXTRA SPECIAL BITTER 5.7% ABV, 35 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
This Judge Mills ESB is a session beer with a light body and a hint of citrus. It's perfect for a warm day.

NEW GUINEA STOUT

OATMEAL STOUT 5.5% ABV, 22 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
This New Guinea Stout is a session beer with a light body and a hint of citrus. It's perfect for a warm day.

FLYING HORSE

KOLSCH 5% ABV, 25 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
This Flying Horse Kolsch is a session beer with a light body and a hint of citrus. It's perfect for a warm day.

LUCILLE

HONEY AMBER 6% ABV, 30 IBU
GROWLER \$12 200Z \$6 160Z \$5 70Z \$3
This Lucille Honey Amber is a session beer with a light body and a hint of citrus. It's perfect for a warm day.

COMING SOON: Big Lyle (Light Blonde Lager), Uncle Paw Paw (Porter), Fruitcake (Spiced Holiday Ale)

BIG LUG WOLF N' HALF

HALF OF ANY SALAD AND HALF
OF ANY SLIDER, THEN SUBTRACT
\$5 BECAUSE WE LOVE YA.

KNOTS

SERVED ON A HOMEMADE
KNOT BUN, CHOICE OF 1 SIDE.

BURGERMEISTER

Grilled-to-Order Fischer Farm Beef, Bacon Onion Jam, Blue Cheese Crust, Herb Mayo. *Vegetarian Patty Available. whole only! \$11

KEVIN KLINE

Grilled-to-Order Hamburgers, Hand Leafed Lettuce, Jam, Blue Cheese Crust, Herb Mayo. *Vegetarian Patty Available. whole only! \$10

NASHVILLE CHICKEN

Choice Mild or Hot Nashville Fried Chicken Breast, Pickles, Chopped Breadcrumbs, Green Goddess Dressing. \$10 full \$8 slider

CHICKEN B.L.A.T.

Grilled Chicken Breast, Indiana Kitchens Bacon, Herb Mayo, Avocado, Lettuce, Tomato. \$11 full \$7 slider

SHAWARBY'S

Roast Beef, Greekamole, Muenster, Hand Leafed Lettuce. \$10 full \$8 slider

COD

Fried or Blackened Cod, Tomato, Onion, Hand Leafed Lettuce, Tartar Sauce. \$11 full \$7 slider

We cook our burgers to order. Consuming raw, or undercooked meat may pose a health risk to those with compromised immune systems.

Canteen Classics

- VIENNA BEEF HOT DOG \$4
- CHICAGO DOG \$5
- WALKING TACO \$5
- VEGGIE WALKING TACO \$5
- POUTINE \$5
- VEGGIE POUTINE \$5



QUIN

GROWLER
Clean, crisp, and
use of American
means no need for a
opinion man.

KRISTOFFERSON ↑

GROWLER \$12 **200Z \$6** **160Z \$5**
This American Oatmeal Pale Ale has a slightly
to strike a balance with the citrus, piney, and floral
aromas that will make you cuss your pants.

KINGS JIVE ↑

GROWLER \$12 **200Z \$6** **160Z \$5** **70Z \$3**
A traditional English Brown Ale with familiar notes of toffee,
toasted bread, and chocolate. Nevermind the Bollocks.

BULL MOOSE IPA ↑

GROWLER \$12 **200Z \$6** **160Z \$5** **70Z \$3**
Elected on 10-25-15. The real name is "Speak Softly and Carry a
Big Lug", but it didn't fit on the line. Mosaic and Mandarina
Bavaria hops impart a juicy citrus hop profile with a slight hint
of pine.

JUDGE MILLS ESB ↻

GROWLER \$12 **200Z \$6** **160Z \$5** **70Z \$3**
Slightly hazy with nutty, caramel aromas. A full flavo
meidum bitterness and floral hops that are refresh
quenching. Judge Mills was a fair man, Judge Mi

NEW GUINEA STOUT ↻

GROWLER \$12 **200Z \$6** **160Z \$5**
Oatmeal stout with a
mel and dark ch
flavors of

ENGLISH BROW
4.5% ABV, 18 IBU

SESSION INDIA PALE ALE
4.5% ABV, 55 IBU

EXTRA SPECIAL
5.7% ABV

BIG LUG HALF N' HALF

COMBINE HALF OF ANY SALAD AND HALF
ANY HOAGIE OR SLIDER: THEN SUBTRACT
TWO BUCKS BECAUSE WE LOVE YA.

MADE
OF 1 SIDE.



\$11 full
\$7 half

, Mortadella,
ette, Muenster

11

KNOTS

SERVED ON A HOMEMADE
KNOT BUN. CHOICE OF 1 SIDE

BURGERMEISTER

Grilled-to-Order Fischer Farm Beef, Bacon
Jam, Blue Cheese Crust, Herb Mayo.
*Vegetarian Patty Available

KEVIN KLINE

Grilled-to-Order Hamburger, Hand L
Tomato, Onion, Big Lug Aioli, Moz
Muenster Cheese. *Vegetarian


NASHVILLE CHEESE

Choose Mild
Pickles, Ch

whole
only







**"There's something regal about
drinking beer from a glass.
Like dipping a hotdog in caviar."
—Nikola Tesla, aspiring Big Lug**

**BIG
LUG**
C A N T E E N



**NO
BIG
BRA**







1425

BIG LUG

CANTEEN











**WHAT DO YOU DO?
FOR WHOM?
DIFFERENTIATOR?**

POSITIONING

**A BRAND IS A PERSON'S
GUT FEELING ABOUT
YOUR COMPANY.**

BRANDING

**THANKS FOR
YOUR TIME.**

CODODESIGN.COM

Trademark Primer and Best Practices

Matthew McLaughlin

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Two Thousand, Fifty Nine (2059)

- This is the number of live trademark applications pending before the United States Patent and Trademark Office (USPTO) that include the word “beer” for goods in International Class 032.
- IC 032: Beers; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.
 - IC 033: Alcoholic beverages (except beers).
- Approximately 14-15 trademark applications per day mention beer.

What is a Trademark?

- A trademark is a symbol used by a person in commerce to indicate the source of the goods and to distinguish them from the goods sold or made by others. The symbol can be a word, phrase, design, image, sound or color.
 - Dogfish Head
 - Craft Brewed Ales



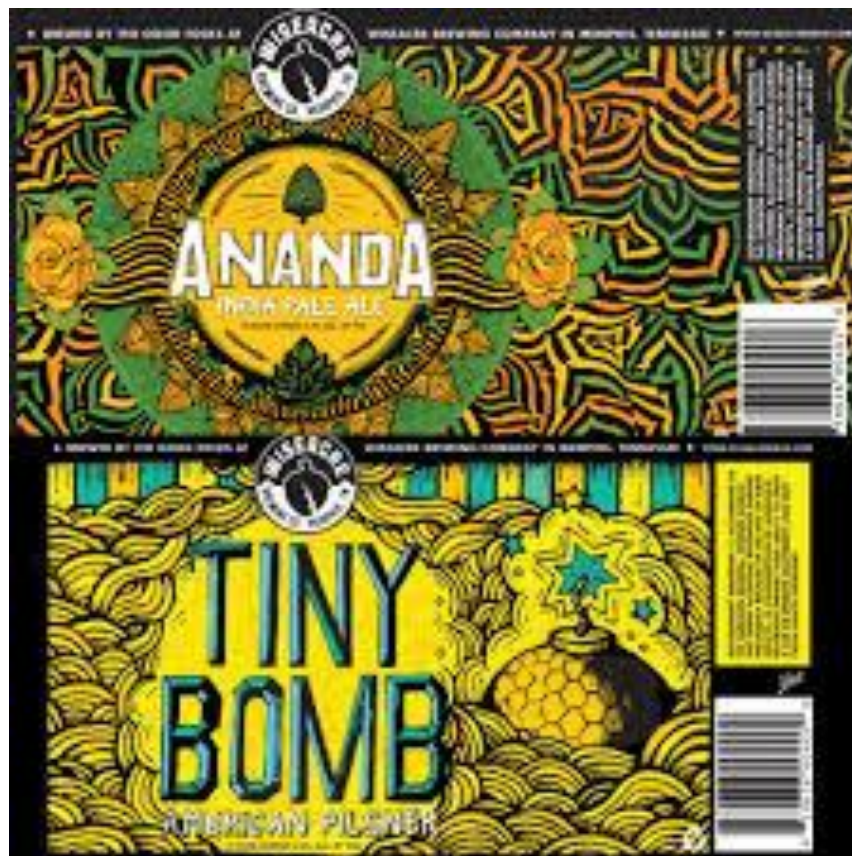
What is a Trademark? (continued)

- Word (without stylization) – Stone Brewing Company
- Word (with stylization)
- Logo or symbol
- Combination thereof



Further Scope of Trademarks

- Trade dress (look, shape, ornamental theme, color combination)
- Product line design (colorful cans)



Nature of Trademarks

- Trademarks are indicative of the source or origin of a good or service.
- Trademarks are intended to address the question of “who” not “what.”
- The point of this is to ensure that the consumer public knows where goods and services come from.

Creation: Upon Use in Commerce

- Trademark rights are conferred by use of the mark in commerce.
- Right to use: generally the right to use is owned by the first party to use a mark in commerce or the first party to file a federal application for the mark with the USPTO.
- Right to register: the right of registration is granted to the first party to apply for a federal trademark registration.
 - Registration with the USPTO not required, but it brings tremendous benefits...

Benefits to Registration

- Discourages others from using confusingly similar marks
- Mark is treated as if used throughout the United States as of the application date
- Nationwide notice of ownership of the mark as of the registration date
- Evidence of the validity and exclusive ownership of the mark for the goods and services listed in the registration
- Incontestable status after five years
- Use of the ® symbol when the mark is used for the goods and services listed in the registration
- Access into Federal Court
- Availability of potential treble (triple) damages and attorneys' fees
- Federally registered mark becomes the basis for foreign registrations

Trademark Spectrum

- Fanciful – Best Practice Point
 - Letters that form a word without meaning, has no relation to the product
 - Strongest type of mark: frogdog
- Arbitrary
 - One or more words whose common meaning has nothing to do with the goods or services being labeled: paperclip
 - Strong mark
- Suggestive
 - One or more words that hint at or suggest the nature of a product without actually describing it: wheat nectar
 - Requires a mental step before association between mark and product is understood
- Descriptive
 - Words that merely describe the product or its components or ingredients: heady
 - Very weak; protectable as trademark only if it can establish that term has acquired “secondary meaning”
- Generic
 - Words that designate the “genus” of the product or what the product is: beer
 - Cannot trademark

Secondary Meaning or Distinctiveness

- The mark was once descriptive.
- But now, the mark has acquired distinctiveness as a trademark because it is now the identifier of the source.

THE BOSTON BEER
COMPANY INC.

Secondary Meaning or Distinctiveness (continued)

- Secondary distinctiveness may be gained in one of two ways.
 - First, you can register the mark on the Supplemental Register. If your mark is on the Supplemental Register for some period of time without being successfully attacked, then you are assumed to have secondary distinction.
 - The other way to acquire secondary distinction is to earn it. You can earn secondary distinction by showing extensive sales and meaningful marketing efforts of a particular product.
 - For example, in the craft beer industry, this can be achieved by submitting evidence of sales, reviews from notable craft beer sites and proof of awards that your brewery or particular beers have won at national competitions or state competitions.

Principal Register v. Supplemental Register

- Registration on either register provides the following advantages and entitlements:
 - Use of the ® symbol, “Registered in the Patent and Trademark Office”, or “Reg. U.S. Pat. & Tm. Off.”, to denote federal registration;
 - Original jurisdiction in Federal District Courts for trademark infringement; and,
 - Monetary remedies as provided in the Lanham Act including infringer’s profits, damages, and costs, and in appropriate cases, treble damages and attorneys’ fees.

Principal Register v. Supplemental Register (continued)

- Principal Register provides the following additional advantages:
 - The registration is prima facie evidence of the validity of the registered mark, of the registrant's ownership of the mark and of the registrant's exclusive right to use the registered mark.
 - The registration is proof that the mark has acquired secondary meaning.
 - The registration is constructive notice of a claim of ownership, eliminating any justification or defense of good faith adoption and use made after the registration date.
 - For registrations resulting from applications filed after November 16, 1989, the registrant is entitled to a constructive use date as of the filing date of the application.
 - Finally and most importantly, registration becomes incontestable after five years on the register, assuming the filing of an appropriate affidavit or declaration of continuous use. Thus, the mark becomes conclusive evidence of the registrant's exclusive right to use the mark, subject to certain statutory defenses.

Clearance

- Begin by conducting a search through the USPTO database and see if you get any hits. – Best Practice Point
 - If the search reveals nothing, you still need to search for any common law rights that may exist.
 - If you get a hit running a search through the USPTO database, it might be beneficial to get some advice from us as to what sort of risk is present based on the search results.

Clearance (continued)

- In order to perform clearance for common law rights, start with a series of internet searches for your particular mark.
- You do not necessarily need to perform these in any particular order, but search for the mark through the following search engines or websites:
 - Google
 - Facebook
 - BeerAdvocate
 - RateBeer
 - UnTapped
 - The Alcohol and Tobacco Tax and Trade Bureau (“TTB”) and Certificates of Label Approval system database

Clearance (continued)

- By way of example, if you are starting a brewery, search the following word combinations:
 - XYZ Brewery
 - XYZ Brewing Company
 - XYZ Beer Company
 - XYZ Beer

Clearance (continued)

- Trademarks for beers are frequently denied on the basis of a wine that shares the same or a similar name.
 - Remember, wine is in IC 033.
- So you will also need to search some of the following word combinations:
 - XYZ Winery
 - XYZ Distillery
 - XYZ Brewing Company Tea
 - XYZ Beverage Company

When to Register

- Use in commerce application: the trademark is already being used in commerce (across state lines).
- Intent to use: the applicant has an intent to use the trademark but it is not using the mark in commerce.
 - You can file an intent to use application, get the mark approved through a “Notice of Allowance”, and then wait and file a “Statement of Use.” – Best Practice Point
 - You can file as many as five 6-month extensions of an intent to use application.

Benefits of Intent to Use Application



Benefits of Intent to Use Application: Slow Ride

- New Belgium “conducted an exhaustive trademark search to ensure the name Slow Ride was available.”
- On May 23, 2014, New Belgium filed for an intent to use application for Slow Ride.
- Oasis Texas Brewing Company had its grand opening on August 2, 2014 and one of its beers is called Slow Ride.
- Around October 2014, Oasis Texas Brewing Company filed a trademark application for Slow Ride.
- New Belgium offered concurrent use and to exclude its mark from certain Texas counties.
- Oasis Texas refused to agree to any coexistence.
- New Belgium filed for declaratory judgment that it was the sole owner.

Registration

- State and federal registration
- Standard character marks or stylized marks
- Actual use or intent to use
- The proper class
 - IC 032 (beer)
 - Other classes as the brand expands
- Disclaimers and disallowed words
 - Brewing Company
 - IPA

Examination

- Three months or so after the application is filed, it will be assigned to a USPTO examiner, who will review it for compliance with technical requirements and do a search for senior conflicting marks.
 - If the examiner finds a problem, he or she will inform the contact listed on the application.
 - Sometimes problems can be resolved over the phone, but, in other situations, the USPTO will send an “Office Action” requiring a written response.

Publication

- If the examiner is satisfied with the application, it will be published for a 30 day period in which others can give notice that they oppose registration.
- If nobody opposes, the USPTO will allow the mark for registration.

USPTO Refusal

- The mark is likely to cause confusion with a registered mark.
- The mark is primarily merely descriptive in relation to the applicant's goods or services.
- The mark consists of a geographic indicator or a surname.

Avoiding the “Likelihood of Confusion”

- Many courts use some variation of the following eight factor test:
 - Strength of the senior mark
 - Relatedness of the goods and services
 - Similarity of the marks
 - Evidence of actual confusion
 - Marketing channels used
 - Likely degree of purchaser care
 - Intent of the defendant in selecting the mark
 - Likelihood of expansion of the product lines

Use It or Lose It

- Trademark law is dependent upon the use of a mark.
- You must make a filing demonstrating continued use in commerce during the 5th year following registration or the mark will be cancelled.
 - This is commonly called the Section 8 Declaration.
- If a mark is abandoned, it can be used by others without the fear of the previous owner having valid grounds of prohibiting use.

Protection

- Now that you have a well-established trademark portfolio and a process in place for clearing and registering marks, how are you going to protect these intellectual property assets?
- It is critically important to develop and implement a well-thought out plan for policing your brand.

Protection (continued)



Lagunitas v. Sierra Nevada

- Lagunitas asserts four federally registered trademarks and two pending trademarks all relating to Lagunitas IPA, against Sierra Nevada Hop Hunter IPA.
- Basically, the complaint states the black, bold, “IPA” lettering, with distinctive kerning (spacing) especially with “P” and “A” are too similar.
- Complaint asserts consumers might confuse the two brands, based on similar “IPA” branding.
- Additionally, Lagunitas notes the “Hop Hunter” branding appears to be a departure from usual Sierra Nevada labeling.
- Sierra Nevada’s proclivity for collaborations, along with the branding departure, could lead consumers to believe this is a collaboration between the companies.
- Tony Magee’s affidavit states that he personally reached out to Sierra Nevada founder Ken Grossman, with no resolution.

Lagunitas v. Sierra Nevada (continued)

- Within 48 hours of filing the lawsuit, Tony Magee said:
 - “Today was in the hands of the ultimate court; the court of public opinion and I got an answer to my question; our IPA’s trademark has limits.”

Regardless, Brand Protection is Critical...

- Chris Staten, beer editor for Draft Magazine state:
 - “News of trademark disputes between brewers is often greeted with kneejerk reactions, especially on social media, but [Dogfish Head and New Belgium] have made a case for why trademark enforcement is so essential to a growing brand, regardless of a brewer’s size.”

Questions or Comments

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