

Michael Quinn
Director
The Quinn Group

Intellectual property - protect the legacy of your business

Whilst insurance and succession planning play major roles in securing the future of your business, protecting your intellectual property can often be just as important, yet is something that is regularly overlooked.

So, what exactly is intellectual property and why does it need protecting? The term intellectual property refers to patents, trademarks and designs - and in the liquor and hospitality industry the most applicable is trademarks. Logos, pictures, words, phrases, shapes, smells, aspects of packaging or even a combination of these items can be trademarked.

For a majority of businesses a great percentage of their appeal and success is related to their distinctive business name, logo or catch phrase. As the success of a business grows

and strengthens, so too does the brand and the various elements that customers and business associates align with the recognition and experience of that brand.

It takes years to develop a business and the recognition of its brand. The only way to ensure that the reward of those years of hard work remain with your business for years to come is to protect them via trade marking. Without a trademark your business or company name, domain name and logo or slogan could be easily picked up by a thrifty (and cunning) businessperson and they are then able to effectively 'cash-in' on the hard work that you have put in to establishing the reputation of your business.

It is important to understand that simply registering a business name does not give you any proprietary or

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ownership rights, only a trademark gives this protection. It is for this reason, that when registering a business name, you should also be mindful that you do not infringe on someone else's trademark. Generally speaking, it is possible for the same word (or words) to be registered to separate people as business names and trademarks. Although, the registered trademark owner can commence legal action for infringing the trademark if the owner of the registered business name commences providing goods or services that are similar to that of the trademarked entity.

Not only is it important to initially trademark the parts of your business image that you would like to protect but this is not something that you can just 'set and forget'. Trademarks can expire and if you fail to renew them then your property becomes fair game.

You work hard to build your business so with a little extra effort you can ensure that future recognition of the brand and its success stays in the right hands. Just like insurance, it is too important to think 'it won't happen to me' because no amount of money can buy back your intellectual property.

The professional team of lawyers at The Quinn Group can help you to ensure that the intellectual property of your business is well protected. Contact us on 1300 QUINNS or visit www.quinns.com.au for more information.

Michael Quinn, director of The Quinn Group, is an experienced lawyer, accountant and educator.

Stephen Swift
Executive director
Brewers Association of
Australia and New Zealand

People in glass houses

Earlier this year a range of academics wrote a letter to the Medical Journal of Australia (MJA 2009, 190 (12)) stating they would not accept funding from DrinkWise Australia on the grounds that they promote "industry-friendly programs".

Obviously this criticism is unfair, but it raises some questions which deserve consideration.

Money is a store of value. In and of itself, it has no value: it is what we can buy with it that gives it a value. So, if industry values independent, evidence based research and is prepared to give money to those who can provide it, who loses out?

The long bow that can be drawn from the absurd notion of 'tainted' money is that a groundbreaking new piece of research which may win a Nobel Prize should be considered of lesser value than a minor paper by a junior academic, if the funding comes from industry.

Such a premise presupposes that sensible, normal professionals must check their brains at the door, or not, depending on where the money came from.

Of course, the real world is more complicated than that.

For instance, if an academic or practitioner or institute accepts funding from the alcohol industry are they to be forever blacklisted and shunned by their colleagues?

From our unique vantage point this is, if you'll pardon the pun, not an academic question. Some very well known, currently practising anti-alcohol advocates and academics have received funds from Australia's brewers over the years.

During the last 20 years alone, we provided 121 grants totalling over \$3.5 million towards independent medical research through the Brewers Foundation, a subcommittee of the Brewers Association. And in even earlier days, our grants program



Our members are proud of our record of supporting researchers in the field and see no conflict of interest in doing so.

was a very important source of seed funding when other much larger 'buckets of money' like the NHMRC and the AER Foundation were not the first port of call, or not around at all.

Our members are proud of our record of supporting researchers in the field and see no conflict of interest in doing so. It is an outdated mindset that immediately creates a false dichotomy between the public 'good' and the economic 'bad'. Our members know that their continuing economic success comes from promoting moderate consumption, with all its benefits, as the societal norm.

The concept of 'tainted money' only really makes sense as a political strategy: where the aim is to compete for the attention of political decision makers through the demonisation of industry, rather than the demonstration of facts. And shunning is alive and well in the new century for those researchers who don't play this game, as many know personally.

Notwithstanding, the brewers will continue to engage with government and other stakeholders on the policy, rather than the politics: always willing to discuss independent, evidence-based research. And we don't care who paid for it, as long as it is good research.

Indeed, if world class researchers do not have faith in their own ability to undertake unbiased empirically rigorous research, then who can?

Australian Wine & Brandy Corporation (Wine Australia)

A landmark return for the Australian wine industry

The internationally acclaimed, inaugural Landmark Australia Tutorial saw 12 highly-influential commentators, educators and wine trade professionals from around the world visit Australia in June this year, to experience first hand the depth and quality of Australia's fine wines.

Asked how they would describe the Landmark Australia Tutorial to someone else, participant Jamie Goode, from the UK, replied: "The Tutorial was an immersion into the heart of Australia's fine wine dimension that charted progress to date and the current state of play and which also has an eye to the future. It focuses on Australia's best wines, presented by the industry's leaders."

Fellow participant Lim Hwee Peng CSW from Singapore enjoyed the riesling, pinot noir and cabernet master classes most, describing them: "They not only opened up my eyes and mind on the great and diverse quality of fine Australian wines, it prompted action on my part to include more fine Australian wines in my consultancy and education works."

Sharing the Australian fine wine story and showcasing the diverse range of wines, producers and regions is an important message and we are delighted to announce that the Landmark Australia Tutorial will return in 2010, taking place in the Yarra Valley during September.

The Yarra Valley is a renowned tourism destination and one of the premier wine regions in Australia allowing us yet again to showcase the regional diversity and 'terroir' of our wines to an international audience. The community of winemakers and vigneronns have already rallied around the initiative and will help deliver a program that builds on the success of this year's event.

For the first time, Wine Australia is also extending the opportunity to Australia's leading wine professionals to submit their applications to attend

this prestigious event. Applicants need to demonstrate how the tutorial can benefit them in their current role and importantly, how their participation could benefit the Australian wine sector.

The experience is best summed up by Sean Razee MS from the Ritz Carlton in the United States: "The Tutorial was eye opening. I feel that far too much of my experience with Australian wines has been narrowly focused on a particular sub-set of wines that have gained exposure in wine periodicals and that those wines are somewhat mono-dimensional when compared to the benchmark wines. The story presented by the Tutorial was compelling, exciting, and worthy of much greater investigation."

More details about the tutorial and application process can be found at www.landmark-wineaustralia.com

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Chris Raine
Creative director
FRESH

A five-point plan to shift our binge drinking culture

We are now ten months into the Hello Sunday Morning project (with only two months to go of my 12 months without alcohol). Having researched heavily into the problem of dysfunctional drinking behaviour and ways in which we can possibly fix it, we have come up with a five-point plan as to what we believe is a necessary step in shifting the excessive drinking culture in Australia.

1. Develop a brand

Young people communicate through brands. In every piece of communication or activity we have organised this year, we have made an effort to bolster Hello Sunday Morning as an accessible and attractive symbol for a healthy drinking. We hope to continue to invest in this brand.

2. Find the brand advocates

At the moment, resources have only permitted one brand advocate (me). But we need to get other, more influential young people involved. We need to inspire and engage the right kind of young person to wear and believe in what the brand stands for. How? We find out what it would take to change their behaviour and then give it to them. Simple.

3. Shift their mindset

We provide them with opportunities, experiences and responsibility that shifts their psychological belief systems around why they feel they need to drink.

4. Make the shift visible

Each person has around 150-200 people that they have direct influence over. Our job is to ensure that the shift in their psychology is vividly displayed to every one



of their 200+ people. We do this providing them with an expansive range of social media tools and tricks that make sure they are heard.

5. Opportunity for every young Australian

We need to build an attractive digital resource that provides an opportunity for any young Australian to go through a similar process of transformation. Similarly, they will be provided with the tools and strategy to communicate their change amongst their respective sphere of influence.

If you are interested in finding out more about the Hello Sunday Morning project, head to www.hellosundaymorning.com.

Each person has around 150-200 people that they have direct influence over. Our job is to ensure that the shift in their psychology is vividly displayed to every one of their 200+ people.

Kristin Gamble
Associate
ClarkeKann Lawyers

Reasonable additional hours

Under the federal legislation, employees are guaranteed a maximum of 38 hours of work each week plus reasonable additional hours. A recent court case has now provided guidance on how certain factors will be taken into account in deciding whether additional hours worked by an employee beyond 38 a week are “reasonable”.

When deciding what hours above 38 per week are “reasonable additional hours”, courts are required to take into account the following factors:

- any risk to the employee’s health and safety;
- the employee’s personal circumstances, including family responsibilities;
- the workplace’s operational needs;
- the amount of notice given to the employee that the additional hours are required or requested;
- any notice given by the employee that they intend to refuse to work the additional hours;
- whether the additional hours are on a public holiday; and
- the employee’s hours of work over the previous four weeks, ending immediately before the employee is required or asked to work the additional hours.

These factors have now been judicially considered in a recent decision of the Federal Magistrates Court. The case involved Mr Macpherson who was employed by Coal & Allied as an electrical fitter. In the past, Mr MacPherson would work an average of 40 hours a week. However changes in his roster were proposed by his employer, Coal & Allied, to increase his weekly hours to 44 including some 12 hour shifts.

The changes to the roster were made in accordance with Coal & Allied’s collective agreement, however Mr MacPherson refused to work the hours saying that he was

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required to finish work at 2.30pm due to “personal reasons”. The personal reasons relied upon by Mr MacPherson involved his preference to eat dinner with his family at around 6pm each night and to coach his son’s sporting team.

Mr MacPherson brought proceedings claiming that the hours of work were not “reasonable”.

The Court considered all of the factors outlined above in relation to the hours of work that Mr MacPherson was required to work. Ultimately, the Court found that the additional hours above 38 per week that Mr MacPherson had been asked to work were “reasonable”.

Employers deciding what hours to require employees to work should take all of the circumstances into account to ensure that they are not requiring employees to work unreasonable hours in breach of the legislation.

Agata Andrzejczak
Marketing manager
The IWSR and The IWSR Drinks Record

Global still light wine market slows

In 2008, the global still light wine market did not show an increase for the first time since 1994. Worldwide sales were virtually static at 2.4bn nine-litre cases. Continued declines in all key still light wine markets, apart from the US, and a slowdown in Russia, were largely responsible for the sluggish performance of the global wine market, with global economic instability clearly affecting wine consumption.

The number one wine market in the world - Italy showed a tiny decrease in sales in 2008. France, ranked number two globally, fell by 8.5m cases, a significant 2.9 per cent drop on 2007. Spain is not showing any signs of recovery, with total volume down by 4.7m cases (-4.6 per cent) to reach 98m cases.

So far, the economic slowdown in the US, the third-largest market for wine globally, seems to have had little effect on wine consumption levels, although some trading-down is happening. Nevertheless, the long-term outlook for the wine market remains positive. The well-publicized health benefits of moderate consumption continue to have a positive effect on the market. There is also a large proportion of the population looking to drink lighter alcoholic drinks. Per capita consumption is relatively low in some parts of the US, which indicates that there is some room for further growth.

Outside the top three markets, the UK and Germany have reached a certain degree of maturity at an already high per capita consumption. Wine sales in Germany declined by 1.4 per cent, although local wine styles gained in popularity. The UK also registered the first decline in memory, down by just over 1m cases on 2007. Although the UK industry is more pessimistic than ever, the 1m-case dip in sales for 2008 will probably not last. The long-term view is that the wine market will eventually start growing again, although this might not be until the end of 2010.

Asia-Pacific is the most vibrant region

for wine globally. Overall, the market for wine in the region has grown by a phenomenal +36.1 per cent over the last five years to top 163.3m cases. In 2008 alone, the market gained 12.9m cases (+8.5 per cent). China was undoubtedly a star performer, with total sales rising by +13.7 per cent to top 72.4m cases. The market for wine in China is now 80 per cent higher than five years ago and the country remained the fastest-growing wine market in the world in 2008. Over 90 per cent of wine drunk in China is local, but foreign wines have shown the largest volume growth – in 2008, imports increased by 36.7 per cent to reach 6.4m cases, while local wines showed more moderate growth of +11.9 per cent to reach 66m cases. Wine consumption in China is encouraged by the government, which is trying to steer consumers away from strong alcoholic drinks, such as baijiu. Another country with similarly impressive rates of growth is Japan. After two years of decline, sales of still light wine recovered and the wine market was up by 3.4 per cent to 23.9m cases. The imported still light wine market grew by two per cent, thanks to Chilean and Spanish wines. Local wine (including sweet wine) came back to growth after years of decline, as the Japanese turned to less expensive local wines in the depressed economic climate.

Hong Kong and India have also shown growth in 2008, while South Korea and Taiwan were the only countries in the Asia-Pacific region to decline, by 10.5 per cent and 14.2 per cent respectively. In Taiwan, still light wines declined for the first time in a decade, by 11.7 per cent, as the economic crisis has hit Taiwan harder than any other country in the region. The Asia-Pacific region is also offering the most growth potential for wine exporters. There, the adoption of Western-style wine in most markets is in its infancy and per capita consumption remains very low. This indicates considerable room for further growth.

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Taking into account its size, cider has emerged as the star category, adding almost £200 million over the last two years. "Cider is massive – it has really taken away from beer and RTDs," said Gavin.

"Have we fallen out of love with Australian wine? No. You couldn't take it much further, it's been phenomenal." Australia still sits above the average, coming third to New Zealand and France.

Almost 70 per cent of wine is still sold under £5 in the off-premise. Rosé is driving wine growth and Australia significantly under trades in rosé – presenting an opportunity to exploit.

The on-premise is doing it tough with a lot to contend with. Around 30 or 40 pubs are closing weekly. Food has become increasingly important to drinkers when deciding where to go out. Pub retailers are now using food as a key driver to get people in. However, the on-premise is still doing okay, remaining a £20 billion market.

Speaking in summary, Michael Walton said of the heavy discounting and promotional reliance: "When you think of hitting targets etc, think about the five and ten year plan too. Give yourselves options and balance in the market place."

Danny Brager Nielsen Beverage Alcohol US

The US economy was hit hard in the global financial crisis. At its peak, there were 700,000 job losses a month. Home values have sunk and there is a high sense of insecurity about the future. People are not going out as much (nights in) and reduced or alter their drinking patterns on those occasions when they do go out.

"Consumers are desperately seeking value and trading down or across," said Danny.

In liquor, category growth is slowing, if not in retreat. Off-premise is still growing but not as fast while on-premise is a "disaster".

There is a growth in private label in wine, off a small base.

"There is consolidation in each tier of the distribution pipeline. There are fewer but larger players in each tier," said Danny. "This poses problems to smaller guys – getting access to distributors to get to market is a problem for them."

Off-premise liquor sales take place is a multitude of offering in varying shapes, sizes and strategies. Safeway is the number one wine grocery retailer. Trader Joes, an upscale national retailer with 300 stores and growing, is now selling Down Under Chardonnay for \$2.99 with a Koala on the label. "It's not helpful to the Australian wine industry," said Danny.

Beverage alcohol is under-developed but growing in Walmart. It now represents 25 per cent of grocery spend and is growing in alcohol.

Contrary to overall trends, beverage alcohol is generally becoming more available. "Retailers are now talking more about bringing alcohol to their stores – even Starbucks," said Danny.

In market drivers, 'trading down' would be the number one trend.

Off-premise is generally growing, led by wine value versus volume closing on wine/sprits, larger on beer.

Italian, Australian and French wines are not performing well in the US. In contrast, South American and New Zealand wines are performing extremely well.

Alternate wine packaging is doing well. A mini barrel of Red Truck wine was introduced to the market that did exceptionally well. "Retailers love it," said Danny.

In spirits, vodka is the star performer with domestic whiskey, rum and tequila coming next. Scotch, cognac and brandy are all down while Irish whiskey is going strong.

In vodka, flavour extensions have led the charge – there has even been a 'bacon' flavoured vodka hit the shelves!

In beer, below premium and craft is still leading the way with craft enjoying double digit growth rates. Premium domestic and imports are trailing.

In NPD, there continues to be an active pipeline but it's slowing for wine and increasing for craft beers. The major themes in new releases include in-home convenience products, health issues (lighter alcohol, calories etc) and environmental.

Concerns faced by suppliers in the US include tax, ("Every government wants to balance its budgets – they are looking to alcohol to get some revenue"); concern over slowed category growth; when will people start trading up and going out again; retailer consolidation and margin pressures; and maintaining the balance between scaling back for the current economic times versus the long term need for investment.

"Some operators didn't see what was coming while the proactive ones have been more successful. The more we can stay ahead of the curve, and not react to it, the more successful we will be," said Danny.