

Σ RAINFOREST UNIVERSITY CENTER

How a Strong Brand Builds Value

Presented by Seth Gardenswartz, Brooks Thostenson, and Madeline Kelty

Meet the Panel





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Agenda

- **What Names Are For?**
- **What is a brand?**
- **How brand builds value**
- **Bad things do happen**
- **The law of brand protection**

Why Do You Need a Name?

Hello
my name is

- *Pay taxes*
- *Receive service*
- *Identify parties to a contract*
- *Distinguish between products, services, and companies*

Merchant Marks

An emblem or device adopted by a merchant, and placed on goods or products sold by him in order to keep track of them, or as a sign of authentication. It may also be used as a mark of identity in other contexts.



A selection of merchants' marks used by medieval merchants of the City of Norwich, England

What is a Brand?

“A brand is not a logo. A brand is not an identity. A brand is not a product. A brand is a person’s gut feeling about a product, service, or organization.”

“Your brand isn’t what you say it is. It’s what they say it is.”

Marty Neumeier, author and speaker.

A **brand** is an idea or feeling

“A brand is a living entity – and it is enriched or undermined cumulatively over time, the product of a thousand small gestures”
– Michael Eisner, Disney CEO, 1984-2005



The man in the Hathaway shirt

AMERICAN MEN are beginning to realize that it is ridiculous to buy good suits and then spoil the effect by wearing an ordinary, mass-produced shirt. Hence the growing popularity of HATHAWAY shirts, which are in a class by themselves.

HATHAWAY shirts wear infinitely longer—a matter of years. They make you look younger and more distinguished, because of the subtle way HATHAWAY cut collars. The whole shirt is tailored more gracefully, and is therefore more comfortable. The tails are longer, and stay in your

trousers. The buttons are mother-of-pearl. Even the stitching has an anti-bellum elegance about it.

Above all, HATHAWAY make their shirts of remarkable fabrics, collected from the four corners of the earth—Vivella and Aertex from England, woolen tailors from Scotland, Sea Island cotton from the West Indies, hand-woven madras from India, broadcloth from Manchester, linen batiste from Paris, hand-dyed silks from England, exclusive cottons from the best weavers in America. You will get a

great deal of quiet satisfaction in wearing shirts which are in such impeccable taste.

HATHAWAY shirts are made by a company of dedicated craftsmen in little town of Waterville, Maine. They have been at it, man and boy, for one hundred and fifteen years.

At better stores everywhere, or write C. F. HATHAWAY, Waterville, Me. for the name of your nearest store. New York, telephone MU 9-4157. Prices from \$5.50 to \$25.00.

Value of a Brand



Patagonia Vest:
\$99

**Brands hold
the value
created by
everything you
do.**



Walmart Vest:
\$18.43

What's more valuable?



United States of America United States Patent and Trademark Office

ELEVATED IPA

Reg. No. 5,425,801

Registered Mar. 20, 2018

Int. Cl.: 32

Trademark

Principal Register

La Cumbre Brewing Co. (NEW MEXICO CORPORATION)
3313 Girard Blvd. N.E.
Albuquerque, NEW MEXICO 87107

CLASS 32: Beer; India pale ales (IPAs)

FIRST USE 12-10-2010; IN COMMERCE 12-10-2010

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

No claim is made to the exclusive right to use the following apart from the mark as shown: "IPA"

SER. NO. 87-040,980, FILED 05-18-2016



Andrei Iancu

Director of the United States
Patent and Trademark Office

The Law

New Businesses

I want to use it (name, logo, etc)

Unfair competition

New brands want right to use

Established brands want the right
to defend

Imagine your brand as established

Established Businesses

Want to stop others from using it

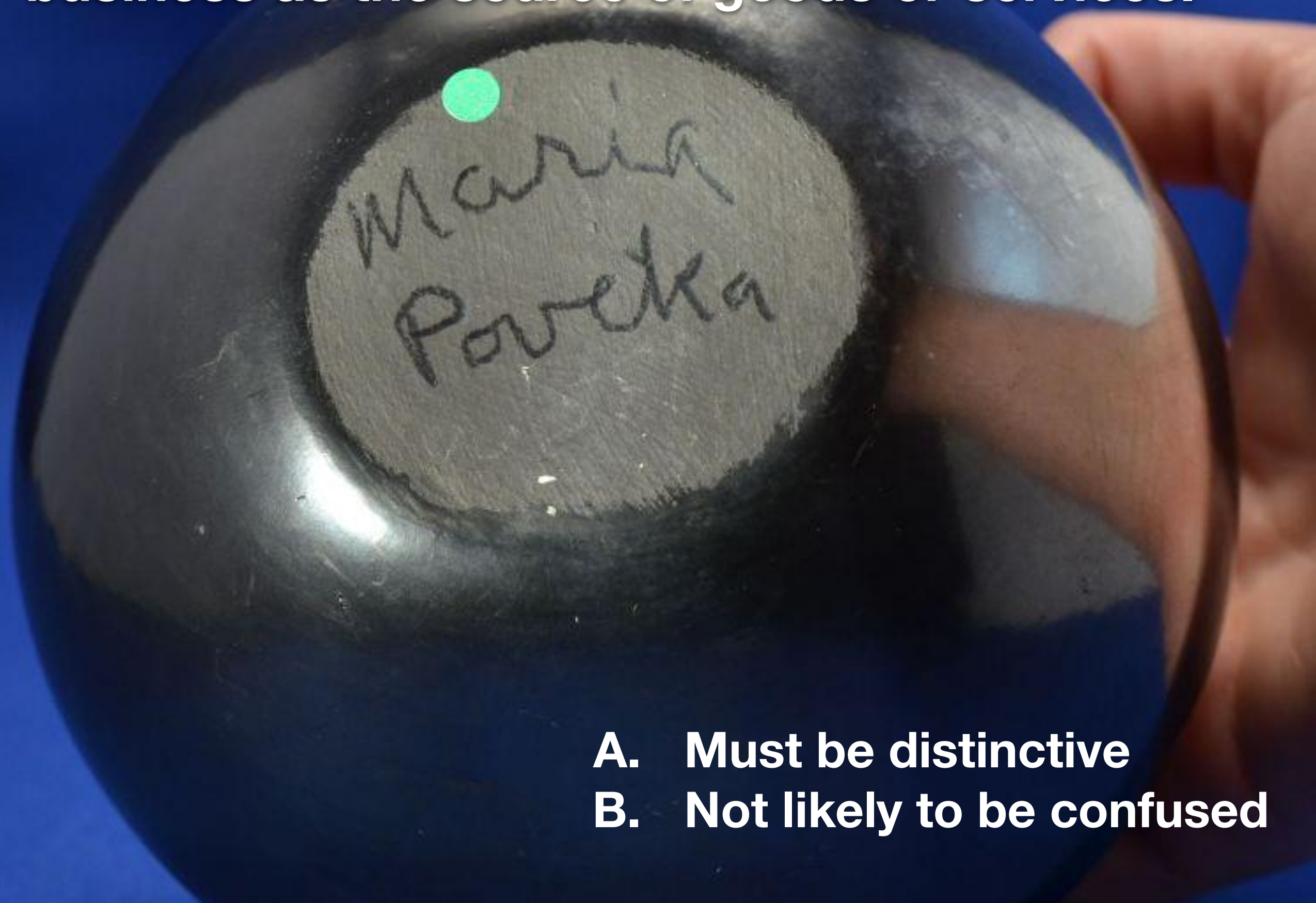
Build a Big Asset



It can be anything



Trademarks must identify a particular business as the source of goods or services.



- A. Must be distinctive**
- B. Not likely to be confused**

The Law

Trademark Act bars registration of an applied-for mark that so resembles a registered mark that it is likely a potential consumer would be **confused, mistaken, or deceived as to the source** of the goods and/or services of the applicant and registrant.

Key factors are the **similarity of the marks** as to appearance, sound, meaning, and overall commercial impression, the **relatedness of the goods and/or services**, and the similarity of **trade channels** of the goods and/or services.

A mark is considered **merely descriptive** if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods or services.

Deeper Cuts

Phonic equivalents: A slight misspelling of a word will not turn a descriptive or generic word into a non-descriptive mark.

Words common **foreign languages** are translated into English prior to being tested for the statutory bars to registration.

Relatedness of the goods: and/or services: It is not necessary that the goods under consideration be identical or even competitive in nature in order to support a finding of likelihood of confusion. The goods need only be “**related in some manner** or if the circumstances surrounding their marketing are such that they could **give rise to the mistaken belief that they emanate from the same source.**”

Primarily merely a surname: Thus, the impact the applied-for term has or would have on the purchasing public must be evaluated in determining whether the primary, and only, significance of the term is a surname significance.

The significance of a mark is **primarily geographic** if it identifies a real and significant geographic location and the primary meaning of the mark is the geographic meaning.

What Makes A Name Great?



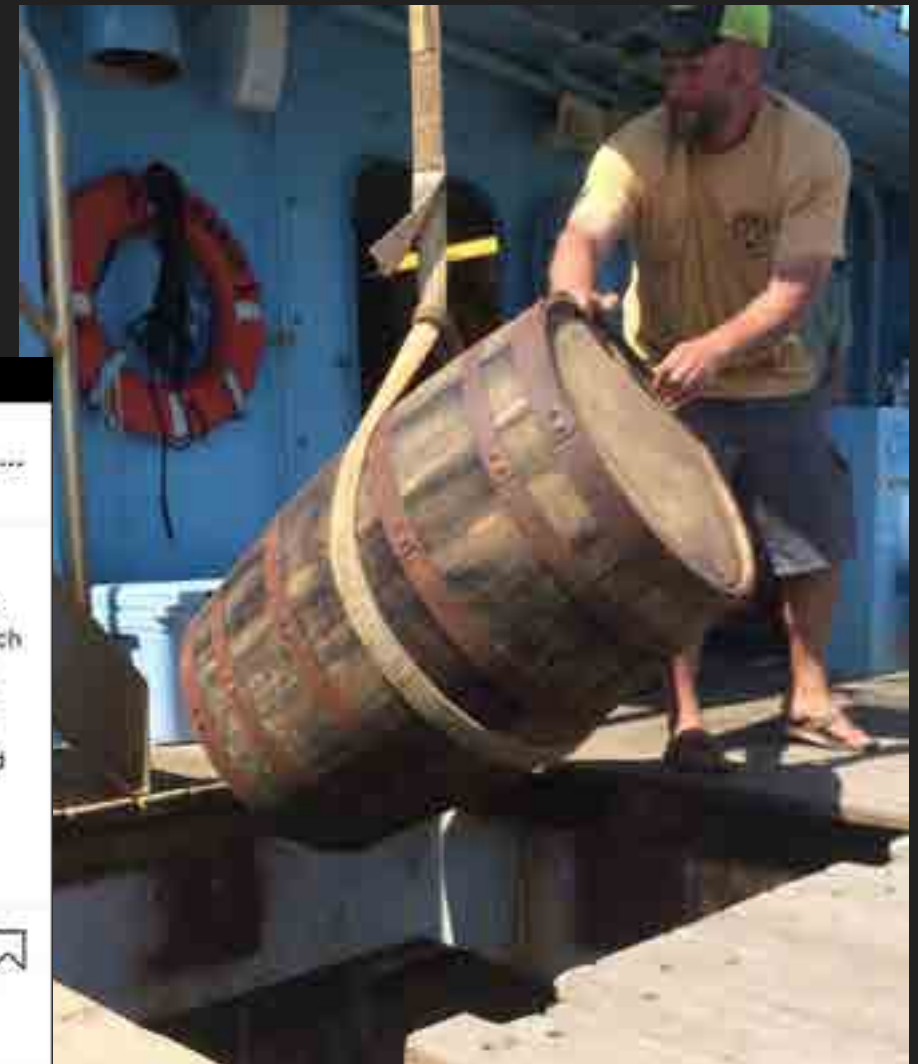
“There's nothing intrinsically great about your current name. Nearly all your attachment to it comes from it being attached to you.”

-paulgraham.com/name.html

Stand Out

Be Authentic

Tell your unique story-it's all you got!



“Bourbon has been done the same way for so long that the process of distilling has been perfected,” explains Trey Zoeller, founder of Jefferson’s Bourbon, besides barrels of his bourbon aboard the Ocearch.

“Success comes from standing out, not fitting in.”

Don Draper, advertising man from Mad Men



This is not a strategy

Intellectual Property is something that all breweries (small and big) need to value. It's one of the biggest assets we can own,"

<https://qz.com/589208/craft-beers-recent-spate-of-lawsuits-has-beer-drinkers-hopping-mad/> Tomme Arthur COO Port Brewing



Image Credit: <https://www.flickr.com/photos/12023825@N04/>
(CC BY-SA 2.0)

Bakery closes amid trademark fight with General Mills

BY TAYLOR HOOD / JOURNAL STAFF WRITER

Friday, September 15th, 2017 at 3:55pm



Dee's to close; Cheesecake Factory chain can now open in NM

BY JESSICA DYER / JOURNAL STAFF WRITER

Published: Thursday, October 23rd, 2014 at 11:43am

Updated: Thursday, October 23rd, 2014 at 12:39pm

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Dee's Cheesecake Factory co-owner Lisa Mager, left, chats with longtime customer Marilyn Stark, right, during lunch at the bakery/restaurant on Thursday. Stark and her husband have been customers for 40 years. (Roberto E. Rosales/Journal)

ALBUQUERQUE, N.M. —

Dee's Cheesecake Factory is closing its doors after 41 years in business — a move that clears the way for a similarly named national chain to enter the New Mexico market.

The venerable Albuquerque restaurant and bakery announced Thursday that it had reached an agreement with **The Cheesecake Factory** that allows the California-

based company to open restaurants in New Mexico. Dee's had once waged a legal battle with the 177-location chain over the name.

Steve Mager — whose late parents, Doris "Dee" and Hy, launched Dee's in 1973 — said the family filed a 1997 federal trademark infringement suit against The Cheesecake Factory. A resulting settlement barred the larger company, founded in Beverly Hills in 1978, from opening restaurants in New Mexico, he said.

TrueTails

Star-crossed
Gentle

Available

Beaver Kingsly
Common Joy

Flip Floes
Flippy Floppy

Sun Ray
Morning Star
Sunfade.

Inimicus
Infinite
Sarabade

Sparkle

Triangulum

Cosmic Dunes
Playa Cosmica
Cosmicus

Star Gas
Flavor Beam.

Cake

Squad Goals

Solar Wind

Space Walker

Proper Etiquette

Chuggini with the Boyz

Grandrop
Youth Culture
Eternal Optimist +
Eternal Optimist
False Modesty

Delilah
Wiz Popper
Anemone

El Jugo
c. n.

A TODA MANERA

Business
Hammak
Party
Enthusiast

Kalani

Eternal Modesty

Citra Solis

Cosmotron

Synchronicity
Celestine



TOPO

BLOND ALE

Hey Seth,
Can you check and make sure the name "Topo" (as in a topo map) is useable for us?

Thanks,
Cory Campbell
Marketing Director

Vertical Directory

UNTAPPD = Results not exhaustive - 6,327 hits for "topo", but includes "top of..." and "top o"; Untappd search metrics cannot filter those results out					
BEER NAME	BREWERY	BEER STYLE	ABV	IBU	RATING (UNTAPPD)
ACTIVE BEERS					
El Topo	Van Moll	Stout - Other	7% ABV	N/A IBU	(3.427)
El Topo	Dig Brew Co	IPA - American	5.8% ABV	N/A IBU	(3.739)
El Topo	One Mile End Brewery	IPA - Triple	10% ABV	N/A IBU	(3.902)
El Topo	Cervecería Monastika	Pale Ale - Belgian	5% ABV	28 IBU	(3.266)
El Topo Top	One Mile End Brewery	Strong Ale - English	5.8% ABV	N/A IBU	(0)
Topo Line	Armistice Brewing Company	IPA - American	7.5% ABV	N/A IBU	(3.934)
Topo Wit	Unmapped Brewing Co.	Witbier	5.4% ABV	13 IBU	(3.583)
Mango Topo	Unmapped Brewing Co.	Witbier	5.4% ABV	13 IBU	(3.644)
Topos	Grimm Artisanal Ales	Pilsner - German	5% ABV	N/A IBU	(3.938)
Topock Blowfish	Topock	Red Ale - American Amber / Red	5% ABV	N/A IBU	(3.525)
Topolino	Resilience Brewing	Lager - IPL (India Pale Lager)	7.2% ABV	N/A IBU	(0)
Topo Gigio	Kay Pea Brewery	Homebrew Pale Ale - American	6.7% ABV	93 IBU	(3.933)
Topophilia	AC Golden Brewing Co.	Lager - Pale	5.5% ABV	N/A IBU	(0)
Topór Peruna	Browar Perun	IPA - Imperial / Double	8.1% ABV	75 IBU	(3.861)
Topoz Premium	Topoz	Lager - Pale	N/A ABV	N/A IBU	(2.448)
Top O Marnin	River Rat Brewery	Pilsner - German	N/A ABV	N/A IBU	(0)
Top O the Peaks Honey Ginger Pale	NW Peaks Brewery	Pale Ale - American	5% ABV	N/A IBU	(2.875)
Top O' Morning Happyrock Stout	Feckin Brewery	Stout - American	5.8% ABV	N/A IBU	(0)
Top O' the Feckin Mornin Nitro	Feckin Brewery	Porter - Other	9.5% ABV	40 IBU	(0)
Top O' the Feckin' Mornin'	Feckin Brewery	Porter - Imperial / Double	8.5% ABV	35 IBU	(4.107)
Top O' The Hill	Dorset Nectar	Cider - Other	5.5% ABV	N/A IBU	(3.443)
Top O' the Mornin'	Free Mind Brewing	Porter - American	N/A ABV	N/A IBU	(0)
Top O' The Mornin'	Parallel 49 Brewing Company	Stout - Other	6.5% ABV	40 IBU	(3.634)
Top O the Mornin IPA	Nickster Brewing (Homebrew)	Homebrew IPA - American	4% ABV	N/A IBU	(0)
Top O The Morning	Beer Loons Brewery	Homebrew Red Ale - Irish	4.7% ABV	N/A IBU	(0)

Approved Labels

Fanciful Name	Brand Name	TTD ID	Permit No.	Serial Number	Completed Date	Origin	Origin Desc	Class/Type	Class/Type Desc
CAROLINA	TOPO	12186001000193	DSP-NC-15016	120002	8/10/12	35	NORTH CAROLINA	140	WHISKY
	TOPO	12186001000203	DSP-NC-15016	120004	8/6/12	35	NORTH CAROLINA	301	VODKA 80-90 PROOF
PIEDMONT	TOPO	12186001000204	DSP-NC-15016	120003	8/6/12	35	NORTH CAROLINA	201	LONDON DRY DISTILLED GIN
ORGANIC CAROLINA SP	TOPO	17198001000655	DSP-NC-15016	170001	8/19/17	35	NORTH CAROLINA	644	RUM SPECIALTIES
CAROLINA STRAIGHT W	TOPO	17199001000613	DSP-NC-15016	170002	7/21/17	35	NORTH CAROLINA	109	OTHER STRAIGHT WHISKY
	TOPOS	13227001000132	BW-CA-5861	130141	9/17/13	1	CALIFORNIA	88	DESSERT /PORT/SHERRY/(COOKING) WINE
RESERVE	TOPOS	13227001000135	BW-CA-5861	130142	9/30/13	1	CALIFORNIA	88	DESSERT /PORT/SHERRY/(COOKING) WINE
	TOPOS	14129001000509	BWN-CA-15468	140026	6/3/14	1	CALIFORNIA	88	DESSERT /PORT/SHERRY/(COOKING) WINE
	TOPOS	14129001000510	RWN-CA-15468	140027	6/3/14	1	CALIFORNIA	88	DESSERT /PORT/SHERRY/(COOKING) WINE
TOPOS	GRIMM	18351001000429	BR-NY-21262	180205	2/3/19	2	NEW YORK	901	BEER
TOPOS	GRIMM	18351001000433	BR-NY-21262	180206	2/3/19	2	NEW YORK	901	BEER
EL TOPO	BLUE OX WINE CO.	18362001000319	BWN-CA-22785	1818MV	2/5/19	1	CALIFORNIA	80	TABLE RED WINE
EL TOPO	BLUE OX WINE CO.	18362001000319	BWN-CA-22785	1818MV	2/5/19	1	CALIFORNIA	80	TABLE RED WINE
TOPOGRAPHY	BURGESS CELLARS	16111001000217	BW-CA-4930	168CU7	5/16/16	1	CALIFORNIA	80	TABLE RED WINE

Beer Class

Marks of Note						
Live - No Direct Conflict						
Dead						
Class	Serial Number	Registration Number	Mark	Check Status	Live/Dead	Similar Word/Search Word
032	87261794	5410167	TOPO [G/S: Beer]	TSDR	LIVE	TOPO\$
032	87030414	5132122	TOPO CHICO IMPORTED MINERAL WATER MADE IN MEXICO EST. SINCE 1895 MINERAL WATER BOTTLED AT SOURCE MONTERREY, MEXICO	TSDR	LIVE	TOPO\$
032	87030412	5104814	TOPO CHICO	TSDR	LIVE	TOPO\$
032	85436609	4167045	TOPO CHICO MINERAL WATER	TSDR	LIVE	TOPO\$
032	79042564	3501977	TOPO GIGIO	TSDR	LIVE	TOPO\$
032	78601365	3143544	TOPO SABORES	TSDR	LIVE	TOPO\$
032	75505079	2239017	TOPO CHICO	TSDR	LIVE	TOPO\$
032	73487273	1332482	TOPO CHICO	TSDR	LIVE	TOPO\$
032	85576648	4502225	ICELANDIC GLACIAL	TSDR	LIVE	TOPO\$
032	79150934	4779493	ICELANDIC GLACIAL	TSDR	LIVE	TOPO\$
032	87908043		FULTON CHAIN CRAFT BREWERY OLD FORGE	TSDR	LIVE	TOPO\$
032	87711447	5523612	SKULL TREE BREWING	TSDR	LIVE	TOPO\$
032	87381467		TOPO	TSDR	DEAD	TOPO\$
032	86848932		TOPO	TSDR	DEAD	TOPO\$
032	78601351		TOPO SABOR	TSDR	DEAD	TOPO\$
032	76369925		TOPOLO	TSDR	DEAD	TOPO\$

Wine/Spirits

A	B	C	D	F	G
Marks of Note					
Live - No Direct Conflict					
Dead					
Class	Serial Number	Registration Number	Mark	Live/Dead	Similar Word/Search Word
033	86172647	4714739	TOPO [G/S: Wine; same Attorney of Record as TOPO in Beer, but different owner]	LIVE	TOPO\$
033	86239726	4628685	TOPOS [G/S: Wine]	LIVE	TOPO\$
033	85545506	4384906	TOPOLOVINO	LIVE	TOPO\$
033	87324022	5556503	TOPOPHILIA	LIVE	TOPO\$
033	87085515	5297671	TOPOGRAPHY MATTERS	LIVE	TOPO\$
033	86891192	5138835	TOPOGRAPHY WINE	LIVE	TOPO\$
033	87815788		- DRIOGLANN SHLIABH LIAG - DONEGAL - IRELAND SHLIABH LIAG DISTILLERY RECLAIMING THE DISTILLING HERITAGE OF DONEGAL	LIVE	TOPO\$
033	87401146	5495197	2	LIVE	TOPO\$
033	79212137		MCW RESERVE 660 560 660 480	LIVE	TOPO\$
033	79212138		MCW 480 225 350	LIVE	TOPO\$
033	79150934	4779493	ICELANDIC GLACIAL	LIVE	TOPO\$
033	86549794		LOS TOPOS	DEAD	TOPO\$
033	85655276		AMARI CELLARS	DEAD	TOPO\$
033	78123887	2748937	TOPO LOCO CITRICO	DEAD	TOPO\$
033	78100357	3142763	TOPO LOCO	DEAD	TOPO\$
033	77288908		TOPO	DEAD	TOPO\$
033	77288906		TOPO*	DEAD	TOPO\$
033	75795733		TOPO LOCO	DEAD	TOPO\$

Zuzax: A Place between Places

by Administrator on 9 January, 2018 Historical 4528 Views



People also search for

- zuzax meaning
- zuzax exit construction
- zuzax ale
- zuzax la cumbre
- zuzax pronunciation
- zuzax beer



Zuzax

Zuzax is an unincorporated community in Bernalillo County, New Mexico, United States. It lies on New Mexico State Highway 333, former U.S. Highway 66, about eleven miles east of Albuquerque. It is now largely an area of subdivisions. An exit for Zuzax exists on nearby Interstate 40. [Wikipedia](#)

Zuzax;

A Kölsch style ale. This beer is bound to be your new summer favorite. It's a Ready-for-anything adventure beer that is as at home on the mountainside as it is in your backyard. Light, crisp, and refreshing, it hits the spot every time.

Alcohol By Volume: 4.8%
IBUs: 27



United States of America

United States Patent and Trademark Office

ZUZAX

Reg. No. 6,108,788

Registered Jul. 21, 2020

Int. Cl.: 32

Trademark

Principal Register

La Cumbre Brewing Co. (NEW MEXICO CORPORATION)
3313 Girard Blvd. Ne
Albuquerque, NEW MEXICO 87107

CLASS 32: Beer

FIRST USE 12-18-2019; IN COMMERCE 5-25-2020

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 88-321,756, FILED 03-01-2019

▼ Trademark Documents

Select All <input type="checkbox"/>	Create/Mail Date ▲	Document Description ▼	Document Type
<input type="checkbox"/>	Jul. 21, 2020	Registration Certificate	PDF
<input type="checkbox"/>	Jun. 18, 2020	Notice of Acceptance of Statement of Use	XML
<input type="checkbox"/>	Jun. 18, 2020	TRAM Snapshot of App at Pub for Oppostn	MULTI
<input type="checkbox"/>	Jun. 17, 2020	ITU Unit Action	
<input type="checkbox"/>	May 26, 2020	Specimen	
<input type="checkbox"/>	May 26, 2020	Statement of Use	
<input type="checkbox"/>	Jan. 17, 2020	ITU Extension Approval	
<input type="checkbox"/>	Jan. 17, 2020	ITU Unit Action	
<input type="checkbox"/>	Jan. 15, 2020	Extension of Time to File SOU	
<input type="checkbox"/>	Jul. 16, 2019	Notice of Allowance	
<input type="checkbox"/>	May 21, 2019	OG Publication Confirmation	
<input type="checkbox"/>	May 01, 2019	Notice of Publication	
<input type="checkbox"/>	May 01, 2019	Notification Of Notice of Publication	
<input type="checkbox"/>	Apr. 01, 2019	XSearch Search Summary	
<input type="checkbox"/>	Apr. 01, 2019	Notation to File	
<input type="checkbox"/>	Mar. 01, 2019	Drawing	
<input type="checkbox"/>	Mar. 01, 2019	TEAS Plus New Application	



Clearance Process

- 1.** Brainstorm Names
- 2.** Narrow to Unique, Distinct Names
- 3.** Check Vertical Sites (Untapped, Etc.)
- 4.** Search USPTO/TTB (Level I)
- 5.** Consult a Pro
 - a.** File
 - b.** Monitor your application(s)
 - c.** Develop a plan for responses
 - d.** Monitor your key brands



Slow Ride to an Uncertain McFate



- 2 breweries began selling “Slow Ride” beer within months of each other in 2014.
- Oasis was first to use but did not file a Federal trademark app.
- New Belgium applied for a trademark in May 2014 - told the PTO it did not know of other users. Oasis disputes, says NB knew by June 2014.
- NB settles & **owns the the Federal rights** Slow Ride as its trademark but will sell the beers in Texas under the name “Session IPA.”



Myths

- My name is registered with the SOS so we're good
- Registering my domain is enough
- Changes in spelling = no infringement
- If my name is in my logo both are protected
- Rights begin at registration
- Google will find all conflicts
- My mark should describe my product
- I can use ® anytime I use my mark/name
- Trademarks are always words or logos

How We Focus Resources

- New Marks
 - Work hard to find one
- Existing Marks (with brand equity)
 - Work hard to get (at least some rights to) them

How To Rank your Names



How to Audit Your Marks

Search	Vertical Sites	TESS/USPTO	3RD PTY DB
Evaluate	How Many	How Close	Who Owns
Distinct?	Descriptive	Suggestive	Arbitrary
Fix/Change	Consent/Coexist	Modify	Change
File	State/Federal	Logo/Word	Shape/Color/Class

Suggestions

Audit
Triage

Fix, negotiate or plan to change

Image Credit: <https://www.flickr.com/photos/12023825@N04/>
(CC BY-SA 2.0)

Forest Brewing

- Caliche Brown
- Silvery Minnow Pale Ale
- Bunny Hop IPA
- Schwartz Stout
- Heavy Water Wheat



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