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“HANDMADE” OR “MADE BY HAND:” DISTILLING THE LEGAL DIFFERENCE

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The total number of bourbon barrels in the state of Kentucky surpassed 5.6 million in 2014 making the bourbon population much larger than the human population (4.4 million) of the Bluegrass State.^[i] A number of those barrels will eventually be bottled as one of the most iconic and recognizable bourbons produced in Kentucky – Maker’s Mark. Distilled in Loretto, Kentucky, Marker’s Mark credits its unique product to the four fundamental elements of water, wheat, wood, and wax.^[ii]

While the average bourbon drinker may not be able to identify Marker’s Mark bourbon based on the taste alone, they are certain to recognize the familiar bottle with red wax dripping down the neck and die-cut labels affixed to the sides.^[iii] It was the language used on these Marker’s Mark bottles that landed the distillery in a Florida courtroom earlier this year. Two Florida consumers who purchased the bourbon in their local liquor store filed a lawsuit against Marker’s Mark and its parent company alleging that labels on Marker’s Mark bottles stating the product was “handmade” were false and misleading.^[iv] The plaintiffs asserted seven claims against Maker’s Mark, including violations of the Florida Deceptive and Unfair Practices Act, false advertising, bait-and-switch advertising, and breach of express and implied warranty, negligent misrepresentation, and unjust enrichment.^[v]

The Florida judge granted Maker’s Mark’s motion to dismiss the suit, holding that no reasonable person would have understood the use of the term “handmade” to mean the bourbon was literally made by hand at every step of the distillation and bottling process.^[vi] This decision was reached through a discussion of the dictionary definition of “handmade” and an evaluation of the plaintiffs’ claims about what they believed Maker’s Mark was conveying about the product through the use of the word on the label.^[vii]



This decision could potentially have industry-wide impacts, as there are a number of similar consumer class actions brewing around the country. In addition to Maker's Mark, the labeling practices of Tito's, Templeton Rye, WhistlePig, Tincup, Angel's Envy, and Breckenridge Bourbon have come under fire for their use of descriptive terms like "handmade," "small-batch," and "handcrafted."^[viii] What liquor manufacturers, and their lawyers, should glean from Maker's Mark's successful defense of this class action in Florida is that the physical manufacturing process is crucial to reaching a decision regarding whether statements made on labels are false or misleading. For Maker's Mark, the judge was convinced by a combination of factors, including the close attention of human beings throughout the process, the small-batch and made from scratch methods employed during distillation, and the general, undefined nature of the term "handmade" being detached from any factual representation.^[ix]

(http://www.kentucky.com/2014/02/27/3111627_makers-mark-buffalo-trace-plan.html?rh=1)

The opinion out of Florida in favor of Maker's Mark, while non-binding, will likely have a major impact on the way similar cases trickling through the legal system around the country will be decided. This case gives us a glimpse of how a court might define the term "handmade" as it is used on liquor labels. Although this particular court's analysis is not concrete or binding, any liquor manufacturer with a term similar to "handmade" on their label would be well advised to compare their production practices to that of Maker's Mark for a better idea of the proper use of the expressions. In the meantime, Maker's Mark fans everywhere should continue to enjoy the "handmade" beverage neat, on the rocks, or with a favorite mixer, but always enjoy responsibly.

[i] *Bourbon Facts*, Kentucky Distillers' Ass'n, http://kybourbon.com/bourbon_culture-2/key_bourbon_facts/ (last visited Nov. 2, 2015).

[ii] *So What Makes Maker's Mark Maker's Mark?*, Maker's Mark, <https://www.makersmark.com/history/truths/4-ws> (last visited Nov. 2, 2015).

[iii] *Id.*

[iv] *Salters v. Beam Suntory, Inc.*, No. 4:14cv659-RH/CAS, 2015 U.S. Dist. LEXIS 62146, at *3 (N.D. Fla. May 1, 2015).

[v] *Id.* at *4.

[vi] *Id.* at *7.

[vii] *Id.* at *4-7.

[viii] Christine A. Scheuneman & Elaine Y. Lee, *Courts Are Distilling the Essence of 'Handmade' Spirits*, *Law360* (June 22, 2015, 11:41 AM), <http://www.law360.com/articles/668364/courts-are-distilling-the-essence-of-handmade-spirits>.

[ix] *Salters*, 2015 U.S. Dist. LEXIS 62146 at *4-7.

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