

A Shot of Red Eye: Texan Beats California Company In Trademark Fight Over 'Cowboy Bourbon'

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Body

Dan Garrison named his family's award-winning, handcrafted liquor *Cowboy Bourbon* for a reason: it's distilled in Texas and bottled just like whiskey served in Old West saloons - straight out of the barrel. "It's raw and real," said Garrison of Hye, Texas' Garrison Brothers Distillery that produces the 135 proof spirit. "It's not for kids. It's for tough guys and cowboys. And that's what bourbon is all about."

Bourbon connoisseurs fell in love with his small-batch whiskey as it was named American Micro Whiskey of the Year in 2014, which now commands up to \$200 a bottle in stores, if you can find it. But just as *Cowboy Bourbon* was becoming recognized as one of the nation's finest whiskeys, Garrison Brothers became the target of a trade infringement lawsuit filed in a Northern District of California federal court by Allied Lomar, an international liquor distributor. Allied Lomar alleged they had registered a trademark for "Cowboy Little Barrel" in 2001 and that Garrison Brothers were infringing on their product.

Garrison soon retained counsel, who got the case transferred to his home venue in the Western District of Texas.

At trial, Garrison's lawyer Peter Kennedy argued that while Allied Lomar had trademarked the term "Cowboy Little Barrel" and had sold it in Japan and Germany, there was no evidence that Allied ever sold the whiskey in the United States.

And on Jan. 11, an Austin jury decided that even though Allied's trademark was valid, *Cowboy Bourbon* did not cause confusion with Allied Lomar's trademark and that Allied had abandoned the trademark.

"The jury found that we were not infringing and the plaintiff had abandoned their trademark," said Kennedy, a partner in Austin's Graves Dougherty Heaton & Moody. "He can continue to market the product, this world-beating bourbon, under the name that he chose for it. And it's a perfect fitting mark for the bourbon."

Robert Andris, a partner in San Francisco's Gordon Rees Scully Mansukhani who represents Allied Lomar, did not immediately return a call for comment.

A big reason Kennedy believes he prevailed before the jury is due to the authenticity of his client. He pitted the litigation as a battle between a "merchant bottler" plaintiff that purchases its liquor wholesale and distributes it and Garrison, who makes his product by hand.

Cowboy Bourbon is produced on a working ranch in Central Texas, and in 2007 it was the first whiskey distillery to operate legally in the Lone Star State since the end of prohibition in 1933, Kennedy said.

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"You have to play that up. It's there," Kennedy said of Garrison's genuine claim to the Cowboy moniker. "He's a home-grown distiller who built his own name. And it's consistent with the theme of being the first Texas whiskey."

U.S. District Judge Sam Sparks has yet to sign a final judgment in the case. But once he does, Garrison plans to petition the U.S. Patent and Trademark Office and end the fight over *Cowboy Bourbon* once and for all.

"It was two and a half years of agony," Garrison said of the litigation. "We're glad to get back to God's work and that's making fine-tasting whiskey. This lawsuit has taken me and my family away from what we're good at and that pisses us off."

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