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THE BOURBON INDUSTRY: KENTUCKY'S AMBER ROAD

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Owensboro, Kentucky

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THE PRESENTER



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A SHORT LEGISLATIVE HISTORY OF BOURBON

Fred Minnick

I. 1700s

- A. English encourage planting corn, but not distillation.
- B. Virginia passes laws giving residents land for planting corn.
- C. President George Washington implements a Whiskey Tax, leading to a distiller rebellion.

II. 1800s

- A. President Thomas Jefferson repeals the whiskey tax.
- B. Louisiana Purchase opens up trade.
- C. Whiskey Tax returns to pay for War of 1812. Repealed again in 1817.
- D. Congress issues steep tariffs on rum, allowing for whiskey to steal market share.
- E. Civil War: North taxes whiskey, while South prohibits it.
- F. Distillers defraud government to pay for Republican campaigns, including President Grant's reelection.
- G. Bottled-in-Bond Act of 1897 passes and becomes an important step toward consumer protection legislation.

III. 1900s

- A. Pure Food & Drug Act curtails unsavory medicinal whiskey practices.
- B. President Taft defines whiskey.
- C. Prohibition halts whiskey production.
- D. Distillers battle Congress for medicinal whiskey.
- E. 21st Amendment gives states the right to legislate alcohol, repealing Prohibition.
- F. World War II: Government requires distillers to make industrial alcohol.
- G. Department of Justice investigates corrupt distilling industry for monopolistic practices.

- H. Bourbon lobbies for it to become America's Spirit.
- I. Distillers lobby and create new whiskey classification, Light Whiskey, to compete with vodka.
- J. President Reagan attempts to deregulate alcohol industry.

IV. 2000s

- A. Craft distillers attempt new legislation to protect their styles.
- B. States peel away restrictive 1930s laws to attract distilling industries.
- C. Kentucky imposes steep taxes in 2009, forcing distillers to push back.
- D. Bourbon distillers fight for tax reform and tourism-friendly laws.

V. FUTURE

Distillers fight dry counties, three-tier system and unfriendly alcohol laws.

BOURBON AND THE LAW: A BRIEF OVERVIEW

Mark W. Podvia*

*Reprinted with permission from LH&RB Newsletter, Summer 2015, at 1,
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Question: What type of whiskey has been defined by the United States government as "a distinctive product of the United States?"

Answer: Bourbon!¹

Question: What is the name of one of Kentucky's most celebrated counties?

Answer: Bourbon!²

Question: What is the official beverage of the Commonwealth of Kentucky?

Answer: Milk.³

Bourbon is a type of American whiskey⁴ made primarily from corn. All Bourbon is whiskey but not all whiskey is Bourbon.

Pursuant to 27 CFR §5.22(b)(1)(i), Bourbon "is whisky produced at not exceeding 160° proof from a fermented mash of not less than 51 percent corn, rye, wheat, malted barley, or malted rye grain, respectively, and stored at not more than 125° proof in charred new oak containers; and also includes mixtures of such whiskies of the same type." There is no minimum aging requirement for Bourbon, however Bourbon aged less than four years must state the age on the bottle. In addition, 27 CFR §5.22(b)(1)(i) provides that "[w]hiskies...which have been stored in the type of oak containers prescribed, for a period of 2 years or more shall be further designated as "straight"; for example, "straight

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This article had its origins in a program that the author presented at the 2015 SEAALL Annual Meeting.

He would like to thank Kurt X. Metzmeier, Associate Director and Professor of Legal Bibliography at the University of Louisville Law Library, for his suggestions that added to the quality of this article.

¹ S. Con. Res. 19, 88th Cong., 78 Stat. 1208 (1964).

² Thirty-four present-day Kentucky counties were formed out of the original Bourbon County, usually referred to as "Old Bourbon County." Ironically no Bourbon is distilled in modern Bourbon County.

³ What was the Kentucky Legislature thinking? You folks in Kentucky need to work on this one!

⁴ Also spelled Whisky.

bourbon whisky." Federal regulations further provide that there can be no artificial coloring or flavoring in Bourbon whiskey.

There is no legal requirement that Bourbon be produced in Kentucky. However, roughly 95 percent of all Bourbon is produced there. Really – who would want to drink Hawaiian Bourbon?⁵

The production of whiskey was among the first industries of the American colonies. Isolated farmers, particularly those on the frontier, found it far easier to convert their excess grain to whiskey for shipment to market by wagon or raft. Whiskey produced in western Pennsylvania was usually made from rye;⁶ that made in Commonwealth of Kentucky was more often made from corn.⁷ Thus it should come as no surprise that, following the American Revolution, whiskey was among the first domestic products to be taxed by the Federal government.

The Excise Whiskey Tax Act – officially "An Act repealing, after the last day of June next, the duties heretofore laid upon Distilled Spirits imported from abroad, and laying others in their stead; and also upon Spirits distilled within the United States, and for appropriating the same" – was adopted by Congress on March 3, 1791⁸ with the strong support of Secretary of the Treasury Alexander Hamilton. Designed to pay the Revolutionary war debts that the new Federal government had inherited from the states, the Act provided for the taxation of distilled spirits at a six- to 18- cent per gallon rate; smaller distillers often paid double what larger distillers paid, with payment being made in cash to a Federal revenue officer appointed for the distiller's county.

Needless to say, the new tax was opposed by the farmers/distillers in western Pennsylvania, western Maryland and Kentucky. Resistance gradually turned from disobedience to violence; in July, 1794, shots were fired at a Federal tax collector.⁹ Faced with armed rebellion – the first test of the new Constitution – President Washington lead an army from Carlisle, Pennsylvania to Bedford, Pennsylvania and the insurrection was quelled.¹⁰ Although Washington's army never reached Kentucky, distillers there generally complied with the law following the collapse of resistance in

⁵ "Tennessee Whiskey" generally meets the requirements of Bourbon but – with the exception of Benjamin Prichard's Tennessee Whiskey – it is required under Tennessee law to be filtered through sugar-maple charcoal, a procedure known as the Lincoln County Process.

⁶ The author recently had his first experience with Rye whiskey – wow! A bottle of Town Branch Rye now resides in his liquor cabinet.

⁷ According to legend, it was the Rev. Elijah Craig who first made Kentucky whiskey from corn in 1789.

⁸ 1 Stat. 199 (1791).

⁹ For a detailed account of the Whiskey Rebellion see Thomas P. Slaughter, The Whiskey Rebellion: Frontier Epilogue to the American Revolution (1986).

¹⁰ The Militia Act of 1792, 1 Stat. 264 (1792), required that a United States Supreme Court Justice certify that local authorities were unable to enforce the law before troops could be raised. On August 4, 1794, Justice James Wilson, who had once practiced law in both Carlisle and Bedford, Pennsylvania, declared that western Pennsylvania was in a state of rebellion.

Pennsylvania. The Act was repealed in 1802 during the administration of Thomas Jefferson, only to be reintroduced briefly to help fund the War of 1812.

Please note that the "rebellion" suppressed by General Washington was called the "Whiskey Rebellion," not the "Bourbon Rebellion." This was for two reasons: 1) As already noted, the Whiskey produced in western Pennsylvania was primarily made from rye;¹¹ and 2) the largely corn-based Whiskey being produced in Kentucky was only beginning to take shape as "Bourbon."

No one recorded who first aged Kentucky's corn-based Whiskey in a charred oak barrel. Most probably a distiller had received a shipment that arrived by barrel, and wanted to clean the container before reusing it to age Whiskey. It is the caramelized wood sugars in the barrel that are responsible for Bourbon's unique flavor.¹²

It is still unclear how "Bourbon" became the name of this delightful beverage. Some say that it was named after Old Bourbon County, Kentucky, where it was originally produced. However, the product was shipped by flatboat from Bourbon County down the Ohio and Mississippi Rivers to New Orleans where it was sold on Bourbon Street, another possible source of the name. It has also been suggested that it was named directly in honor of the Royal Family of France, the Bourbons.

However Bourbon was named, it is known that the "Great Compromiser," Henry Clay, United States Representative and Senator from Kentucky from 1811 to 1852, regularly brought a barrel of Bourbon with him on his trips to Washington.¹³ One can only wonder how many of Clay's compromises can be attributed to the Bourbon that he shared with his colleagues. It is possible that this amazing beverage might have played a pivotal role in the passage of the Missouri Compromise, the Tariff Act of 1833 and the Compromise of 1850.¹⁴

Bourbon was again taxed by the Federal government during the Civil War beginning at the rate of \$.20 per proof gallon (one gallon of 100 proof whiskey).¹⁵ The tax was increased as the war went on, ending at \$2.00 per gallon. Knowledge of how much revenue was raised by the tax, as well as what a morale-booster good Bourbon was for

¹¹ Most of Pennsylvania's distillers left the Commonwealth following the suppression of the Rebellion, the majority of them heading to the southern states. Whiskey production in Pennsylvania never recovered. Boo General Washington!

¹² <http://gizmodo.com/how-bourbon-gets-its-beautiful-flavor-1461041832#>

¹³ Another famous Bourbon drinker was President Harry S. Truman, who regularly had a glass of I.W. Harper Bourbon for breakfast. "American Presidents: Their Food & Drink Preferences & Dislikes," <http://www.amicusveritas.org/archives/AmericanPresFoodPreferences.htm> (April, 2008). Yet another Presidential Bourbon drinker was Ulysses S. Grant, who preferred Old Crow Bourbon.

¹⁴ The Henry Clay Center on Statesmanship recently reinstated Clay's tradition by sending a barrel of Bourbon to the U.S. Senate. <http://www.henryclaycenter.org/site/washington-d-c/bourbon-summit-of-compromise/>.

¹⁵ 12 Stat. 447 (1862).

the Union troops, might have provided the inspiration for President Abraham Lincoln's statement "I hope to have God on my side, but I must have Kentucky."¹⁶

By the late 1800s, the availability of bad whiskey in the marketplace was hurting the industry as a whole. This ultimately led to the adoption of "An Act to Allow the Bottling of Distilled Spirits in Bond" on March 3, 1897.¹⁷ The Act required that whiskey be made at one distillery in one batch, aged for at least four years under government supervision and bottled at 100 proof.

Whiskey came under further Federal regulation with the adoption of the Pure Food and Drug Act of 1906.¹⁸ The Act forbids the adulteration or misbranding of any "food, drug or liquor;" however it failed to define many specific terms, including the definition of "pure" whiskey. After considerable debate, that determination was left to President William Howard Taft. On December 27, 1909, after studying the issue for months, Taft decided "that the term 'whiskey' might be used as descriptive of any liquor distilled from grain, no matter how it was composed. Other liquors, distilled from such substances as molasses, fruits, etc., he excluded from the definition of whiskey."¹⁹ Taft further set forth the classifications of whiskey, including that of Bourbon, which he defined as being "made from mash that consists of at least 51 percent corn (maize)."²⁰

President Taft further determined that Bourbon "must be distilled to no more than 80 percent alcohol by volume, and must then be aged in new charred-oak containers."²¹ With a few additions, this remains the legal definition of Bourbon today.²² No wonder that in 2009 Taft was inducted into the Kentucky Bourbon Hall of Fame by unanimous vote of the Kentucky Distillers' Association Board of Directors.²³

However, Taft's determination came at a time of increasing public sentiment against the consumption of alcoholic beverages. Perhaps this sentiment was best summed up by the words of social activist Robert G. Ingersoll: "I believe, from the time it [alcohol]

¹⁶ Of course the strategic location of Kentucky might have also played a role in inspiring the President's words.

¹⁷ 29 Stat. 626 (1897).

¹⁸ 34 Stat. 768 (1906).

¹⁹ H. Parker Willis, "What Whiskey Is," 34 *McClure's Mag.* 687, 699 (1910).

²⁰ Demetrius, "What is Whiskey: The Taft Decision," Bourbon of the Day Blog, <http://www.bourbonoftheday.com/the-taft-decision/>.

²¹ *Id.*

²² In a case that predated Taft's decision, Justice Robb of the United States Court of Appeals of the District of Columbia had written that "it is well understood that Bourbon whiskey is a Kentucky product made principally out of corn, with sufficient rye and barley malt added to distinguish it from straight corn whiskey." *Levi v. Uri*, 31 App. D.C. 441, 445 (1908).

²³ Chuck Cowdery, "Kentucky Bourbon Hall of Fame Inducts U.S. President William Howard Taft," The Chuck Cowdery Blog (Dec. 18, 2009, 8:52 AM), <http://chuckcowdery.blogspot.com/2009/12/kentucky-bourbon-hall-of-fame-inducts.html>.

issues from the coiled and poisoned worm in the distillery until it enters into the hell of death, dishonor, and crime, that it dishonors everybody who touches it – from its source to where it ends."²⁴ Similar views were expressed by many American Courts; in State ex rel. George v. City Council of Aiken, for example, the Supreme Court of South Carolina held that "liquor, in its nature, is dangerous to the morals, good order, health, and safety of the people, and is not to be placed on the same footing with the ordinary commodities of life."²⁵

A resolution calling for a Constitutional amendment to accomplish nationwide Prohibition was introduced in Congress and passed by both houses in December 1917. It provided as follows:

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent-power to enforce this article by, appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.²⁶

By January 16, 1919, the Eighteenth Amendment had been ratified by thirty-six states securing its adoption. On October 28, 1919, Congress passed enabling legislation officially known as the National Prohibition Act, but more commonly known as the Volstead Act.²⁷ Prohibition went into effect at midnight, EST, on January 17, 1920.

Prohibition, which lasted until 1933, had a devastating effect on the Bourbon industry. Six distilleries nationwide were permitted to remain open to manufacture whiskey for "medicinal" purposes.²⁸ Only seven of the seventeen distilleries that had been operating in Kentucky prior to Prohibition were operating in 1935 following its repeal.²⁹

However, the industry did gradually rebound; by the early 1940s "the distillers had managed to age sufficient quantities of straight whiskey to have an appreciable amount

²⁴ "What People Have Said About Whiskey," 34 McClure's Mag. 700 (1910).

²⁵ 26 L.R.A. 345 (1894).

²⁶ S.J. Res. 17, 40 Stat. 1050 (1917).

²⁷ 41 Stat. 305 (1919).

²⁸ Gary Regan and Mardee Haidin Regan, The Book of Bourbon and Other Fine American Whiskeys 75 (1995).

²⁹ *Id.* at 76.

of good aged Bourbon and rye back on the shelves."³⁰ In 1933, the Roosevelt administration established the Federal Alcohol Control Administration to regulate alcohol, including Bourbon, which later became part of the Bureau of Alcohol, Tobacco, and Firearms.

On May 4, 1964, Bourbon was officially recognized as a "distinctive product of the United States." The Congressional Resolution read as follows:

Whereas "Bourbon whiskey" is a distinctive product of the United States and is unlike other types of alcoholic beverages, whether foreign or domestic; and Whereas to be entitled to the designation "Bourbon whiskey" the product must conform to the highest standards and must be manufactured in accordance with the laws and regulations of the United States which prescribe a standard of identity for "Bourbon whiskey"; and Whereas Bourbon whiskey has achieved recognition and acceptance throughout the world as a distinctive product of the United States: Now, therefore, be it Resolved by the Senate (the House of Representatives concurring) that it is the sense of Congress that the recognition of Bourbon whiskey as a distinctive product of the United States be brought to the attention of the appropriate agencies of the United States Government toward the end that such agencies will take appropriate action to prohibit the importation into the United States of whisky designated as "Bourbon whiskey."³¹

Bourbon was the first American spirit to be so recognized. However, speaking fifty years after the adoption of the resolution, U.S. Representative John Yarmuth of Louisville, co-founder and chairman of the Congressional Bourbon Caucus, noted that "it doesn't take an act of Congress to know Kentucky Bourbon is the finest spirit in the nation."³²

The recognition of Bourbon as a "distinctive product of the United States" is reflected in several foreign agreements. The North American Free Trade Agreement, Annex 313 (Distinctive Products)³³ accords special status to Bourbon:³⁴ "Canada and Mexico shall not permit the sale of any product as Bourbon Whiskey...unless it has been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey."³⁵

³⁰ *Id.* at 82.

³¹ S. Con. Res. 19, 88th Cong., 78 Stat. 1208 (1964).

³² Press Release, "1964 Congressional Resolution Declaring Bourbon 'America's Native Spirit' Comes to Kentucky" (May 9, 2014), <http://kybourbontrail.com/1964-congressional-resolution-declaring-bourbon-americas-native-spirit-comes-kentucky/>.

³³ 32 I.L.M. 289 (1993).

³⁴ Even those opposed to NAFTA would have to recognize that Bourbon is worthy of special status.

³⁵ The Agreement also granted special status to Bourbon's close cousin Tennessee Whiskey. In exchange, the U.S. and Mexico recognized Canadian Whisky as a distinctive product of Canada, and the U.S. and Canada recognized Tequila and Mezcal as distinctive products of Mexico.

The U.S./European Union Distilled Spirits and Spirit Drinks Agreement, March 15, 1994, likewise recognized Bourbon as a distinctive U.S. product: "The EC agrees to restrict, within its regulatory framework (Council Regulation No. 1 576/89, Article 11 or an equivalent successor regulation) the use of the product designations...'Bourbon whiskey'/'Bourbon whisky' and 'Bourbon' as...spirit drinks products of the USA."³⁶ In exchange, the United States agreed to restrict the terms "'Scotch whisky,' 'Irish whiskey'/'Irish whisky,' 'Cognac,' 'Armagnac,' 'Calvados' and 'Brandy de Jerez' to distilled spirits/spirit drinks products of the Member States of the EC."³⁷

Bourbon has also been the subject of a number of court cases, primarily involving trademark protection. Among the most recent of these was Marker's Mark Distillery v. Diageo North America,³⁸ where the United States Court of Appeals for the Sixth Circuit held that Maker's Mark famed red dripping wax seal was a valid trademark.

Why the Commonwealth of Kentucky failed to name Bourbon as its official beverage is beyond the author's comprehension³⁹ – perhaps the dairy industry in Kentucky has a better-funded lobby. However, the Commonwealth does have an Official Bourbon Festival, the Kentucky Bourbon Festival, Incorporated, of Bardstown, Kentucky,⁴⁰ a Bourbon Academy (<http://filsonhistorical.org/education//the-filson-bourbon-academy/>) and the Kentucky Bourbon Trail – complete with a Passport that can be stamped as you visit each historic distillery (<http://kybourbontrail.com>) an extent that makes up for the Commonwealth's unfortunate choice of milk as official state beverage.

A toast to Bourbon!⁴¹

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³⁶ U.S./European Union Distilled Spirits and Spirit Drinks Agreement, March 15, 1994.

³⁷ *Id.*

³⁸ 697 F.3d 410 (2012).

³⁹ Milk? Really?

⁴⁰ 2000 Ky. Acts 937.

⁴¹ Preferably made with a glass of Bourbon in hand!

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KENTUCKY LEGISLATURE CONSIDERS VINTAGE SPIRITS LAW

Fred Minnick

Reprinted from <http://www.fredminnick.com/2017/02/12/kentucky-legislature-considers-vintage-spirits-law/>, posted February 12, 2017

Who wants bourbon from 1908?

Soon, that dream may become a reality.

The Kentucky legislature introduced legislation (<http://www.lrc.ky.gov/recorddocuments/bill/17RS/HB100/bill.pdf>) that would allow the legal sale of vintage spirits.

The act defines vintage distilled spirit as "a package or packages of distilled spirits that:

- Are in their original manufacturer's unopened container;
- Are not owned by a distillery; and
- Are not otherwise available for purchase from a licensed wholesaler within the Commonwealth."

Licensed retailers and on-premises facilities may sell the vintage spirits by the drink or the package, according to the act. These licensed businesses may purchase "from a non-licensed person upon written notice to the department in accordance with administrative regulations promulgated by the department."

While this is exciting for vintage whiskey enthusiasts, there's a long way to go. The state will hold a hearing on the subject Wednesday and bar trade sources tell me wholesalers oppose the acquisition process of vintage spirits.

That is not true, says Dan Meyer with the Wine & Spirits Wholesalers-Kentucky, lobbyist arm of the state's liquor wholesaler industry. But Meyer does have concerns over the definition, saying it's too loose.

"There are many tightly allocated products and they're not available through a wholesaler very quickly. It happens every year," Meyer says. "Somebody could purchase product, hoard it a couple months and sell it in January for \$1,000 a bottle."

Meyer says he expressed these concerns with the legislature and suggested time clause be added to the law, such as not available at the wholesaler for one year. Overall, he "likes the concept."

In 2015, the Kentucky Distillers' Association introduced the notion of a[sic] selling vintage whiskey during the bourbon tourism hearings.

According to state meeting minutes (http://www.lrc.ky.gov/minutes/econ_dev/151015OK.HTM), KDA lobbyist Kristen Meadows said the the[sic] sale of antique spirits would help the state's tourism.

If you'd like this legislation to pass, contact a Kentucky representative. (<http://www.lrc.ky.gov/>)

BOURBON BOOM SETS RECORDS

Fred Minnick

Reprinted with permission from <http://www.fredminnick.com/2016/05/18/bourbon-boom-sets-records/>, posted May 18, 2016

This just in, bourbon is setting records.

According to the Kentucky Distillers Association, distillers filled 1,886,821 barrels last year, the most since 1967. The previous all-time high was 1,922,009 barrels filled in 1967, the KDA reported. According to the group, Kentucky Bourbon production has skyrocketed more than 315 percent (455,078 barrels were filled in 1999).

The Commonwealth has a total bourbon barrel inventory of 6,657,063, the most since 1974 when 6,683,654 were aging in Bluegrass warehouses. That's 1.5 barrels for every person in Kentucky.

Here are some other key points announced:

- Distillers also are paying \$17,814,134 in *ad valorem* barrel taxes this year, another all-time high. Revenue from this tax funds education, public safety, public health and other needs in local communities where barrels are stored.
- Amounts include all distilleries in Kentucky compiled from state Department of Revenue data. The KDA (www.kybourbon.com) represents twenty-eight of the state's distilleries, from global brands to emerging micro distillers.
- Bourbon isn't the only spirit aging in barrels. When you include brandy and other whiskies, the state's total barrel inventory was 7.2 million in 2015, the highest total since 1973.
- Production in 2014 was 1,306,375 barrels. That means distilleries filled more than 580,000 barrels in 2015 over the previous year (44 percent increase). That's the biggest difference in year-to-year production since 1967 and triples the previous record.
- The tax-assessed value of aging barrels this year is \$2.4 billion, an increase of \$299 million from 2015 and a 135 percent increase over the last ten years.

I personally think this is just the beginning, and we have twenty years of bourbon growth.

Read a recent post (<http://www.fredminnick.com/2016/05/16/2266/>) about new consumers.

Sign up for my free newsletter (<http://fredminnick.us7.list-manage.com/subscribe?u=cb55072799fa3debdd2b61d5d&id=ac92f5d86d>), where I publish newsletter-only material, such as my bourbon of the week, "Whiskey in the Weird," rum stuff, and my upcoming events.

'LARGE COMPANY' ORDERED CRAFT DISTILLER TO CHANGE NAME

Fred Minnick

Reprinted from <http://www.fredminnick.com/2015/10/19/large-company-ordered-craft-distiller-to-change-name/>, posted October 19, 2015

Facing legal pressure from a "large corporation," Bourbon County's The Gentleman Distillery has changed its name to Hartfield & Company.

Andrew Buchanan changed the name of his distillery to Hartfield & Co., a family distilling name dating back to the 1800s. It was The Gentleman Distillery.

Founder Andrew Buchanan would not name the company, but the lawyer said to surrender all TTB approvals and stop any business under the Gentleman Distillery name. "He said [Gentleman Distillery] infringed upon trademarks they owned," Buchanan said.

Sazerac owns the trademarks Kentucky Gentleman and Virginia Gentleman, Gentleman-named American whiskey products. I queried Sazerac for comment about whether it sent the cease-and-desist letter. A spokesperson said the company has a "couple of hundred" active cease-and-desist orders, and that it does not comment on litigation matters. The spokesperson neither confirmed nor denied the letter.

Brown-Forman owns the rights to Gentleman Jack, but the company told me it did not send a cease-and-desist letter to the Gentleman Distillery. (The original version of this story did not mention Gentleman Jack.)

For Buchanan, this marks the second time he's changed the name of his new distillery, the first in Bourbon County since Prohibition. He originally planned to name it the Bourbon County Distillery, but a fellow Paris, Ky., resident applied for state approvals before him. Buchanan decided to name it "The Gentleman Distillery."

In this latest matter, Buchanan considered fighting and was advised he could win, but realized he couldn't afford \$250,000 in legal fees.

"We were just about to release the bourbon. The letter was well timed. They knew we were about to enter bourbon marketplace and they were trying to stop us from using that name," Buchanan said.

Buchanan thinks there's something bigger at play. He believes the craft distillers are putting public pressure on the larger distillers and that they will not allow the same momentum in whiskey that happened in beer. (Read: Budweiser mocks craft beer, <http://fortune.com/2015/07/18/budweiser-mocks-craft-beer/>.)

"There's this feeling amongst the craft distillers that the big distilleries aren't going to let this happen as easily as big beer did. They need to defend their trademarks, but they seem to be very aware that we can take 5 percent of marketplace," Buchanan says.

Meanwhile, Buchanan's new distillery name Hartfield & Company is a family name on his father's side. The Hartfields were bourbon distillers in the 1800s in Green County, Kentucky.

As for the greater significance of this story, the bourbon business has a history of sending cease-and-desist letters to anybody who even remotely infringes upon their trademarks. Use a dripping wax on an alcohol product and just see how long it takes Maker's Mark to send a letter, or create a bottle that looks remotely similar to Woodford Reserve and Brown-Forman lawyers come a knocking. Of course, there's always the famous dispute (<http://chuckcowdery.blogspot.com/2011/11/dispute-between-kda-and-sazerac-company.html>) between Sazerac and the Kentucky Distillers Association over the Kentucky Bourbon Trail. Long story short, there have been thousands of these kinds of stories, which is why I dedicated significant space to bourbon lawsuits in Bourbon Curious (https://www.amazon.com/gp/product/0760347409?creativeASIN=0760347409&linkCode=w00&linkId=Q7K756AZUW6VCJSU&ref=as_sl_pc_qf_sp_asin_til&tag=httpwwwfredmi-20).

But you can't help but feel for Buchanan and other smaller distilleries, such as Wilderness Trace, which had to change its name to Wilderness Trail. Their efforts should be put forth operating a still, not dealing with lawyers. Something tells me that this is just the beginning, though.

KENTUCKY BOURBON WAR LOOMS OVER TECHNOLOGY

Fred Minnick

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There's a battle coming to Kentucky, and bourbon could soon be more about the test tube than the barrel.

In the next year, a Kentucky bourbon brand will be created using Terressentia's TerrePURE technology that takes whiskey less than a year old and applies "chemistry instead of the oak barrel," CEO Earl Hewlette told me in an interview for Whisky Advocate. (TerrePURE has been used to make other bourbons, such as Winchester Small Batch "Straight Bourbon," but not with Kentucky on the label.)

Terressentia purchased the Owensboro Charles Medley Distillery last year for more than \$25 million.

Hewlette claims the technology rapidly matures whiskeys to achieve significant color in four- to six-month-old whiskey and favorable taste phenolics. I've not seen this process in action, so my understandings are based on interviews.

South Carolina-based Terressentia has produced several whiskey labels, including the recent Hatfield & McCoy. In my interview with Hewlette, he was very clear that he intends to use his technology in Kentucky bourbon for his own brands and for his distillation contracts.

Now that the Kentucky bourbon sourced whiskey market has dried up – it's harder for Non-Distiller Producers to buy or contract distill "Kentucky Straight Bourbon" from traditional outlets, such as Heaven Hill, Barton and Brown-Forman – NDPs are reaching out to upstart Kentucky distillers for contract distillations. Currently, New Riff and Kentucky Artisan Distillery are contract distilling for several companies, including names as big as Jefferson's, because the clients want "Kentucky Straight Bourbon Whiskey" on the label. That means, Hewlette will likely pluck a few NDPs who will want to see Kentucky on the label.

"There remains a belief that Kentucky bourbon is a premium bourbon," he told me. "So, I think to that extent, being able to offer a product that is made in Kentucky ultimately will be considered a premium over non-Kentucky bourbon."

This week, Earl's wife, Paula Dezzutti Hewlette, told me her company, Local Choice Spirits, will soon be launching "Baby Boomer Bourbon." The exact release date was unclear, but it appears the bourbon will be out within a year and uses the TerrePURE technology.

Meanwhile, Cleveland Bourbon and Lost Spirits boast rapid aging technology that have[sic] created heated debates over the use technology in American whiskey. Often relying on the good old boy network, the Kentucky bourbon industry has held tried and true to the mantra that many have tried rapid aging before and they've all failed. The industry can no longer say this.

Despite my preference of tradition and the old-fashioned way of making bourbon, you cannot deny Cleveland Bourbon and Terresentia have carved out a market for their respective companies. And while I do not care for the Cleveland Bourbon's over-oaked profile and find the TerrePURE products too hot and grain-forward, people buy them, people drink them, and distillery engineer types want to know more about them.

Thus, the Kentucky industry must decide how to deal with this technology entering the Commonwealth's bourbon industry. Will they attempt to change the state or federal laws to disallow certain technologies? Will they do a full-court PR press against TerrePURE? Or will they welcome technology with open arms?

I've reached out to the Kentucky Distillers Association, which represents the majority of the state's distillers. Here's what KDA president Eric Gregory had to say: "We reached out to Terresentia last year in our first membership drive and invited them to become members. I spoke to their leadership last month to get an update on their renovations and encouraged them to apply. Once we receive their application, we will meet with them, tour their facilities and get to know them better – just as we do with any prospective member. I'm sure there will be questions about their process since this is new technology. But the KDA maintains an open membership policy, and we're always happy to welcome new companies and new ideas to our distilling family."

That's a nice politically correct answer from Gregory, but the truth is his membership loathes the technology. But the distillers of yesterday loathed automation in distilleries.

Before he passed away, Elmer T. Lee criticized automation used in the distilleries. (Here's a great 2006 interview with Lee on WhiskyCast, <https://whiskycast.com/whiskycast-episode-67-november-19-2006/>.) The former Old Fitzgerald master distiller Edwin Foote agreed, saying the human senses are more acute than computers. And before them, Stitzel-Weller master distiller Will McGill and Seagram's research director Dr. E. H. Scofield often debated about the use of science in the 1940s. (Read about the McGill-Scofield debate in my next book, Bourbon Curious, https://www.amazon.com/gp/product/0760347409?creativeASIN=0760347409&linkCode=w00&linkId=Q7K756AZUW6VCJSU&ref=as_sl_pc_qf_sp_asin_til&tag=httpwwwfredmi-20.) And before them, early 1900s distillers debated the use of heat cycling in warehouses.

So, my point is, either this TerrePURE technology is a part of the bourbon technology evolution like heat cycling or it will unify all distillers to stop it.

Because once the technology starts putting Kentucky bourbon on the shelf, it's not going to stop.

Fred Minnick is the author of Whiskey Women (https://www.amazon.com/Whiskey-Women-Untold-Bourbon-Scotch/dp/1612345646/ref=sr_1_1?ie=UTF8&qid=1428513045&sr=8-1&keywords=whiskey+women) and Bourbon Curious (https://www.amazon.com/gp/product/0760347409?creativeASIN=0760347409&linkCode=w00&linkId=Q7K756AZUW6VCJSU&ref=as_sl_pc_qf_sp_asin_til&tag=httpwwwfredmi-20)