



Whisky a No Go: Consumer Surveys Support Trademark Infringement Claims

Crown Royal Canadian Whisky has become one of the most recognizable whisky brands in the United States, due in part to its signature purple velvet bag. Owned by global beverage leader Diageo, the brand generates hundreds of millions of dollars annually across retail and on-premise channels, including clubs, bars, sporting venues, and performing arts centers. The distinctive velvet bag has been a focal point of advertising and promotional campaigns since 1964 and is a visual and cultural symbol.

Between 2010 and 2012, Diageo invested over \$100 million in brand marketing. Crown Royal's branding extends to limited edition bottles featuring different-colored velvet bags matching product variants, such as Crown Royal Black, Crown Royal Maple, and Crown Royal Reserve. The brand owns 16 federally registered trademarks for its products and affiliated merchandise.

The Case Challenge

Mexcor International, a competing spirits company, began marketing a line of whiskies under the "Crown Club" name, including Las Vegas Crown Club, Florida Crown Club, and South Carolina Crown Club, while applying for 21 additional trademarks using similar nomenclature. Mexcor's whiskies were sold in velvet bags and, in some cases, displayed alongside Crown Royal in retail locations. Diageo alleged that the marketing, presentation, and visual similarities between the two brands risked misleading consumers and undermining Crown Royal's longstanding brand equity.

Diageo filed suit in the US District Court for the Southern District of Texas, claiming multiple causes of action under federal and common law, including:

- Trademark infringement of both the Crown Royal name and the purple velvet bag
- Trade dress infringement based on the bottle shape, use of velvet bags, and references to the word “Crown”
- False designation of origin and unfair competition
- Dilution of brand identity

Diageo sought the cancellation of Mexcor’s pending trademark applications, as well as immediate and permanent injunctive relief, compensatory and punitive damages, disgorgement of Mexcor’s profits, attorneys’ fees, product recall, and corrective advertising. The suit also sought to block future trademark filings using the “Crown” designation.



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The Expert Solution

To measure the likelihood of confusion among whisky consumers, Diageo’s legal team retained Dr. Bruce Isaacson to conduct a consumer survey. Dr. Isaacson used the Eveready survey format to test whether consumers viewing the junior mark (Crown Club) associated it with the senior mark (Crown Royal), without showing the senior mark directly. Respondents were shown test and control stimuli related to bottle packaging and velvet bag design.

An in-person survey targeted consumers over the age of 21 who indicated they would consider purchasing a 750-ml bottle of whisky priced between \$15 and \$30. Respondents were screened to also ensure they had purchased American or Canadian whisky, did not have a professional connection to the spirits industry, lived in regions where Crown Club is sold (Florida, Texas, and South Carolina), and matched the demographic distribution of gender and age to the demographics of North American whisky drinkers.

The survey used a double-blind protocol, where neither the respondents nor the interviewers knew the purpose of the research. Participants viewed bottles and velvet bags associated with the Crown Club line and responded to structured questions gauging their impressions of brand origin, sponsorship, and affiliation.

The Outcome

Dr. Isaacson reported a statistically significant level of consumer confusion between Crown Club and Crown Royal, including confusion as to source, sponsorship, or approval, along with general brand confusion. He testified to these findings supporting Diageo’s infringement and dilution claims. Dr. Isaacson’s testimony explained the methodology and survey results, as well as empirical evidence that visual and branding similarities misled consumers.

The jury found Mexcor liable for trademark infringement and determined that its Crown Club packaging and branding violated Diageo's intellectual property rights. The court issued remedies that included damages, cancellation of infringing trademarks, and an order requiring Mexcor to alter its product branding and packaging.

Trusted Surveys in Trademark & Trade Dress Litigation

Properly designed consumer surveys are critical in trademark and trade dress disputes, because they provide empirical evidence of consumer perception and likelihood of confusion. At IMS Legal Strategies, we combine established methodologies with expert analysis to deliver surveys that withstand judicial scrutiny and strengthen your case.

Whether you need to substantiate infringement claims or rebut opposing surveys, our team ensures your evidence is both scientifically rigorous and strategically impactful. Reach out to contactus@imslegal.com to get started.

At the time of this engagement, Dr. Isaacson was the president of MMR Strategy Group, which joined IMS Legal Strategies in May 2025. Dr. Isaacson now oversees the Litigation Surveys & Consumer Science division at IMS.

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