

Comparing Alcoholic and Non-Alcoholic Beverages: Market Realities

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8 July 2022

Background – as clear as muddy water

- GC T-421/10 *Rosalia* 2011: **little similarity** between beers and non-alcoholic drinks vs. alcoholic drinks including wines
- GC T/150-17 *FLÜGEL* 2018: although various alcoholic and non-alcoholic beverages are mixed, consumed or sold together, generally they're **not similar**. Beers and other class 32 drinks are **similar** to energy drinks, but energy drinks are **not similar** to various class 33 drinks
- GB R 1720/2017-G *Iceberg* 2019: various non-alcoholic drinks in class 32 are **dissimilar** to vodka



Background – as clear as muddy water

- BOA R 257/2018-2 *Tradicion* 2019: beers and musts are **similar** to alcoholic beverages in 33, but the latter are **not similar** to non-alcoholic drinks
- BOA R 1526/2017-1 *AQUARTUS* 2019: preparations for making alcoholic drinks are **similar** to mineral and aerated waters, but the latter are **dissimilar** to spirits and alcoholic beverages (except beers)
- BOA R 2525/2018-4 *chic AGUA* 2020: there is a **degree of similarity** between non-alcoholic beverages, including bottled drinking water and mineral water, and alcoholic beverages (except beers)
- BOA R 519/2019-5 *Montecelio* 2020: **no similarity** between non-alcoholic drinks vs. Italian wines; spirits

VIÑA ZORAYA / ZORAYA

- Earlier mark:
 - Spanish mark VIÑA ZORAYA for “Wines, spirits and liqueurs” in class 33
- EUTM application:
 - ZORAYA for “Non-alcoholic beverages; flavoured carbonated beverages; waters; vitamin enriched sparkling water [beverages]” in class 32
- Opposition Division:
 - fundamental dissimilarity between alcoholic beverages in class 33 and non-alcoholic beverages in class 32, with exceptions “only in **extremely specific individual cases**”, relying on *Iceberg*
- BOA interim decision noting diverging decisions
- Reference to the Grand Board of Appeal
- Amicus brief by INTA highlighting trend for low alcohol and no-lo beverages



Case R 964/2020-4, VIÑA ZORAYA – BOA decision, 04/22

- Consumer perception may vary over time
- *Canon* factors: nature, intended purpose, method of use, whether in competition or complementary
- “New” arguments and evidence: increased health focus, increase of non-alc/nolo beverages, also sold by the same undertakings, gift sets
- Presence or absence of alcohol not decisive
- Purpose: quench thirst vs. something else (but beer...)
- Sold nearby and often grouped by category – wine, whisky, etc
- Price not decisive

Case R 964/2020-4, VIÑA ZORAYA – BOA decision, 04/22

- Non-alcoholic beverages vs. wine, spirits and liqueurs
 - At least **similar** to a low degree based on nolo/low-alc versions
- Flavoured (aerated) beverages vs. wine
 - At least **similar** to a low degree based on sangria/tinto de verano
- Water and vitamin enriched sparkling water vs. wine, spirits and liqueurs
 - **Dissimilar**
 - Water producers haven't expanded into wines, nor have wine cellars expanded into water
 - Production processes are not similar
 - Water is not mixed with wine in Spain
- Flavoured (aerated) beverages vs. spirits and liqueurs
 - **Dissimilar**

Are we still in muddy water?

After eliminating almost 200 beverage brands due to the coronavirus, half of its catalog, Coca-Cola has decided to reinvent itself and market its first alcoholic beverage, Topo Chico Hard Seltzer, in Spain **starting this March**. 17 Mar 2021

<https://www.businessinsider.com/coca-cola-coke-diet-sp...>

The New Coca Cola Lands in Spain: Topo Chico Hard Seltzer ...



Agua con gas y alcohol*: una perfecta contradicción

Descubre **Topo Chico Hard Seltzer**, la nueva bebida de The Coca-Cola Company: una combinación de agua con gas aromatizada y alcohol.

Déjate sorprender y disfruta de su **inesperado y refrescante sabor**, con tres opciones diferentes: Lima-limón, Cherry Açai y Tropical Mango.



Topo Chico Tangy Lemon Lime

+ INFORMACIÓN DE PRODUCTO

TRENDRINKS

Coca-Cola lanza en España 'Topo Chico' y se pasa a la tendencia hard seltzer

Are we still in muddy water?

- Revenue in the Europe Hard Seltzer segment amounts to US\$515.10m in 2022. The market is expected to grow annually by 85.99% (source: statista.com)

News - Feb 03, 2021

HARD SELTZER IS RAPIDLY GAINING POPULARITY IN EUROPE

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TRENDS CONSUMER TRENDS FLAVORS FOR FANS

5 DELICIOUS HARD SELTZERS MADE WITH WINE

By James Granatowski · September 15, 2020



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Beyond beer: AB InBev develops global play in hard seltzers, RTD cocktails and more

By Rachel Arthur

19-May-2022 · Last updated on 19-May-2022 at 13:21 GMT



'Intimidation-free booze': China hard seltzer brand ZEYA on expansion plans with backing from Camus Cognac

08-Jun-2022 By Pearly Neo

China's first homegrown hard seltzer brand ZEYA has big plans to expand its production and distribution both in and out of its home market after closing its seed funding round led by multinational luxury cognac brand Camus Cognac.



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