

## Insights: Alerts

# Whisky Business? Court Lets False Ad Claims Over Fireball Malt Beverage Proceed

October 28, 2025

Written by **Shreya P. Desai** and **Bryan J. Wolin**

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A federal court in the Southern District of New York recently granted motions to certify a class in a case (combining two different proposed class action cases) involving purported false advertising by Sazerac Co., Inc. The class plaintiffs allege that Sazerac misled consumers by packaging malt beverages—Fireball Cinnamon and Parrot Bay—to resemble their distilled spirit counterparts.

In *Pizarro v. Sazerac Co. and Koonce v. Sazerac Co.*, the class-action plaintiffs alleged that (1) Fireball Cinnamon Malt, a 16.5% ABV malt beverage, is deceptively marketed to look like Fireball Cinnamon Whisky (33% ABV), and (2) Parrot Bay Malt similarly mimics Parrot Bay Rum, though it contains no distilled spirits at all. The central deception alleged is that the packaging misleads consumers to believe they are purchasing distilled spirits (which have a higher ABV), when in fact they are buying lower-alcohol malt-based beverages.

Plaintiffs alleged that Sazerac's marketing materials are misleading and therefore violate New York General Business Law §§ 349 (deceptive practices) and 350 (false advertising), and that plaintiffs were harmed because consumers would be more willing to pay a price premium for a distilled spirit than a malt beverage.

## Key Rulings

The court certified the classes, finding:

- The malt product labels and packaging—including product names, logos, and taglines—were sufficiently similar to the distilled spirit product labels and packaging to support an inference that reasonable consumers might be misled.
- A jury could find that disclaimers such as “malt beverage” or statements like “tasting like a smooth whisky” were insufficient to eliminate confusion under the totality of the circumstances.
- Survey evidence (to establish injury) indicated that a majority of respondents believed the products contained distilled spirits, reinforcing the plausibility of plaintiffs' claims.
- Materiality and injury—including the price premium theory of economic harm—could be assessed on a class-wide basis, though ultimately those issues are for trial.

## What This Means for Alcoholic Beverage Labeling

Alcoholic beverage manufacturers are trying to expand the reach of popular, yet niche, liquor brands. Selling a malt-based version of liquor products like Fireball Whisky and Parrot Bay Rum are obvious and reasonable attempts to grab market share. But this ruling underscores growing scrutiny over the marketing of malt-based alcoholic beverages designed to leverage the popularity of higher-end distilled spirits. Even where ABV and ingredients are technically disclosed, the broader packaging and brand cues may still mislead consumers and give rise to false advertising claims. And plaintiffs' counsel are learning that survey evidence is often necessary to survive a pleadings challenge for claims that are merely impliedly – as opposed to expressly – false.

#### **Key takeaways for beverage producers and marketers:**

- **Look beyond literal truth:** Disclosures such as “malt beverage” may not be enough if the overall impression of the packaging suggests otherwise. If you aren't sure, work with outside counsel to run a small pilot survey.
- **Avoid brand confusion:** Using identical or nearly identical branding across distinct product types (e.g., malt vs. distilled) may create litigation exposure under state consumer protection statutes.

The case now proceeds, and the [Kilpatrick Advertising team](#) will be monitoring. For guidance on label and marketing risk in light of this ruling, please reach out.

## **Related People**

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**Shreya P. Desai**

t 404.815.6032

[spdesai@ktslaw.com](mailto:spdesai@ktslaw.com)



**Bryan J. Wolin**

t 212.775.8735

[bwolin@ktslaw.com](mailto:bwolin@ktslaw.com)