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Filing date: **01/15/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	86293520
Applicant	Luca Mariano Distillery LLC
Applied for Mark	OLD AMERICANA
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Submission	Appeal Brief
Attachments	00366988.PDF(59215 bytes) 00366990.PDF(971651 bytes) 00366994.PDF(1136994 bytes) 00366978.PDF(1174114 bytes) 00366979.PDF(1212689 bytes) 00366980.PDF(63383 bytes) Exhibit C1.pdf(2108152 bytes) Exhibit C2.pdf(863939 bytes) Exhibit C3.pdf(2968143 bytes)
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Date	01/15/2016

Our Reference: LMDL-103-TM

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK AND APPEAL BOARD

Applicant:	Luca Mariano Distillery LLC
Serial Number:	86/293,520
Filing Date:	May 28, 2014
International Class:	011
Examiner/Art Group Unit:	Timothy J. Finnegan/104
Title:	OLD AMERICANA

**APPLICANTS APPEAL BRIEF TO THE TRADEMARK
TRIAL AND APPEAL BOARD**

Box Responses - No Fee

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Sir:

This is an appeal of the Examining Attorney refusal to register Applicants above-identified mark in the Office Action dated November 8, 2015. Applicant respectfully requests the Trademark Trial and Appeal Board to reverse the Examining Attorneys decision.

ISSUE:

- I. Whether the term OLD is merely descriptive of Applicant's goods; and
- II. Whether Applicant's mark, OLD AMERICANA, is confusingly similar to the mark in U.S. Registration No. 3,454, 378.

FACTS:

Applicant filed an application for the mark, OLD AMERICANA, for use on "ALCOHOLIC BEVERAGES EXCEPT BEERS,@ in International Class 033 on May 28, 2014.

Applicant received an Office Action dated September 18, 2014 refusing the mark for registration based on the likelihood of confusion with the mark in U.S. Registration No. 3,454,378 for the mark AMERICAN and design for “VODKA, “ in International Class 033 and requiring a disclaimer of the term “old” apart from the mark as shown. Applicant filed a Response to Office Action on March 18, 2015 submitting arguments and evidence. On April 11, 2015, the Examining Attorney issued a Final Office Action. On October 12, Applicant filed a Notice of Appeal and submitted its Request for Reconsideration with additional evidence. On November 8, 2015, the Request for Reconsideration was denied by the Examining Attorney. Accordingly, this Appeal has resumed. Applicant files this Appeal Brief and Exhibits (A-F) and incorporates its prior responses and evidence filed with the USPTO on March 18, 2015 and October 12, 2015.

ARGUMENT:

I. The term “old” is not immediately descriptive of Applicant’s Goods.

Examining Attorney has maintained the disclaimer requirement for the term OLD. Applicant submits that the term “old” is not immediately descriptive of Applicant’s goods, but rather, it is suggestive.

The courts have stated that a term is merely descriptive if it for with conveys an immediate idea of the ingredients, qualities, or characteristics of the goods, or if the mark conveys information regarding a function, purpose, or use of the goods. In re Abcor Development Corp., 200 USPQ 215 (CCPA 1978). A suggestive mark employs terms which do not describe, but merely suggest the features of the product, requiring the purchaser to use imagination, thought, and perception to reach a conclusion as to the nature of the goods. In re Black & Decker Corp. v Dunsford, 42 USPQ2d 1531 (SDNY 1996).

In the case of Estée Lauder, Inc. v The Gap, Inc., 42 USPQ2d 1228 (2nd Cir. 1997), the Court found the mark “100%” for skin moisturizer is suggestive rather than descriptive, whether read alone or as part of the phrase “100% TIME RELEASE MOISTURIZER.” The Court found that the “100%” does not describe the qualities, ingredients, or characteristics of the goods, but instead implies that the product is of the highest quality since the phrase “100% TIME RELEASED MOISTURIZER” can be read to indicate purity of the moisturizer content of the product, to imply enduring effect, to indicate that the bottle contains nothing but time-released moisturizer, or that the product moisturizes continuously until worn off. The Court found that since all of the interpretations of the term “100%” require some stretch of the imagination, the mark is not descriptive. The Court noted that in order to have an idea of the nature of the product, qualities, ingredients, or characteristics, a consumer needs additional information.

The Examining Attorney believes that the term “old” is immediately descriptive because Applicant’s goods, whiskey, are aged and the definition of “old” is “advanced in years or age.” Additionally the Examining Attorney states that “old” is descriptive because it is defined as “of, relating to or originating in a past era and Applicant’s goods are made from old recipes.

Applicant submits that both interpretations require some stretch of the imagination. While the definition of “old” can mean advanced in year or age” this is not the equivalent of “aged” used on food and beverage products, as an “old” food or beverage product would be considered expired. The use of Aged is not interchangeable on whiskey products with the term old. Additionally, even though the term “old” can mean originating in a past era, the term “old” is referring to the recipe, not the product. The use of “old” is suggestive of a past era. Applicant submits that the

term “old” is not immediately descriptive of any feature or characteristic of Applicant’s goods and is not appropriate for a disclaimer.

II. Applicant’s mark is not likely to cause confusion with the cited mark.

The Examining Attorney has refused registration as he believes that Applicant’s mark is likely to be confused with the mark in U.S. Registration No. 3,454,378 for the mark AMERICANA in design form. Applicant submits that no confusion is likely to occur due to the dissimilarities in the marks and the common meaning of the term AMERICANA.

There are several factors used to determine whether likelihood of confusion exists between two marks. Primarily, the factors include the similarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression, the similarities of the goods and services, the similarity of the trade channels, sophistication of the purchaser, the strength of the prior mark, the number and nature of similar marks used on similar goods/services, any actual confusion, and other factors probative of the effects of use. In re DuPont de Nemours and Company, 177 USPQ 563 (CCPA 1973).

Applicant’s mark, OLD AMERICANA, is used in connection with alcoholic beverages. The beverages are sold under the brand LUCA MARIANO and OLD AMERICANA is a sub-brand. When viewed in the marketplace, the marks are not similar. The marks share a term that is weak and somewhat descriptive. The addition of the design and the dominant term OLD are enough to distinguish the marks from one another.

A. The term shared by both marks is a relatively weak term.

The Examining Attorney determined that confusion was likely between the marks because he believes that the marks are similar in sight, sound, appearance and commercial impression.

However, the only similarity between the marks is the use of the highly suggestive and widely used term, AMERICANA.

The Board has stated that it is settled that:

Highly suggestive terms, because of their obvious connotation and possible frequent employment in a particular trade as part of trade designations, have been considered to fall within the category of Aweak@ marks, and that the scope of the protection afforded to these marks have been so limited as to permit the use and/or registration of the same mark for different goods or a composite mark encompassing this term plus other matter whether such matter be equally suggestive or even descriptive of the same or similar goods. Industrial Adhesive Company v Borden, Inc., 218 USPQ 645 (TTAB 1983).

In re Melaro v Pfizer, Inc., 214 USPQ 645 (TTAB 1982), the Court found no likelihood of confusion exists by the use of the mark SILK for bath and body creams, lotions, oils, cosmetics and other beauty products and the mark POLYSILK and SILKSTICK also for lotions and lipsticks. In coming to this decision, the Court found that the mark SILK is a suggestive mark because, while it does not actually describe the goods, it tells that their composition is Asoft, smooth and/or lustrous@ or promises that the results of its use will be. The Court also found that there were a large number of third-parties who have adopted and use marks containing the word Asilk@ or a derivation of the work Asilk@ for cosmetics or related products. The Court stated that:

The scope of protection afforded a highly suggestive term is somewhat less than given in arbitrary or distinctive marks so that a subsequent user may come closer to a highly suggestive mark than to a strong mark without violating the rights of the owner of the mark. Therefore, unlike the arbitrary or distinctive mark situation, the addition of other matter to a highly suggestive term may be enough to distinguish it from another and avoid confusion in trade. Id., at 648.

In Little Caesar Enterprises, Inc. v Pizza Caesar, Inc., 4 USPQ2d 1942 (6th Cir. 1987), the Court found that no confusion was likely between the mark LITTLE CAESAR=S for carry out pizza

outlets and PIZZA CAESAR USA for sit down Italian restaurants. Despite the strength of Little Caesar=s mark, the similarity of products and services involved, and the low level of purchaser care, the Court found that the marks are sufficiently distinct to make confusion unlikely in view of the frequent use of the word ACaesar@ with Italian food, the difference in sound and appearance between the marks and the different marketing techniques. In coming to this decision, the Court focused on the impression which the mark makes as a whole and not the parts. The Court looked to Long John Distilleries, Ltd. v Sazerac Co., 166 USPQ 30 (CCPA 1970), in which the similarity between FIRE JOHN for brandy and LONG JOHN for scotch whiskey was held not to be confusing. The Court in Long John stated:

“The Board found that third-party registrations of record are themselves sufficient to establish that the word >john= has been so frequently used as a part of distilled beverage marks that it is incapable of indicating origin in any one source and that the substantial goodwill in the mark >LONG JOHN= acquired by appellant over years of use and promotion resides in the unitary mark. Further, the Board was of the opinion that, considered in their entirety, the differences in sound, appearance, and commercial impression of the two marks are obvious and one is in no way suggestive of the other.”

The Court in Little Caesar found that the word “Caesar” was frequently used with things that were Italian, including Italian food, and that when viewed in their entirety, the marks sound and look different.

The term AMERICANA means “things produced in the United States and thought to be typical of the United States or its culture” (www.miriamwebster.com) (Attachment A).

Additionally, “Americana” is a term used to describe the theme of goods for sale (Exhibit B).

Applicant also submits articles using the term “Americana” to describe a genre (Exhibit C). A

search of live trademarks in the USPTO (Exhibit D) illustrates the widespread use of the term “Americana” in the marketplace, diluting the arbitrariness of this term.

B. When viewed in their entirety, the marks look different, sound different and give a different commercial impression.

The Courts have reiterated the point that determining similarity, the marks should be viewed in their entirety and as they appear in the market place. In the case of Cortex Corp. v. W. L. Gore & Associates, 28 U.S.P.Q. 2d 1152 (CA FC. 1993), the Court found that no confusion was likely between CORTEX and GORE-TEX. Here, even though the marks rhyme and are similar in sound, the marks are dissimilar in appearance, connotation and commercial impression. The court found that the appearance is different by the addition of “e” and a hyphen, and the connotation of each mark is very different. In Champagne Louis Roederers S.A. v. Delicato Vineyards, 47 U.S.P.Q. 2d 1459 (CA FC 1998), the Court found no confusion was likely between the marks CRYSTAL CREEK for wine and CRISTAL for champagne because the marks were dissimilar.

In the case at hand, Applicant’s mark and the cited mark look different, sound different and have different commercial impressions. Applicant’s mark is used as a sub-brand (Exhibit E) and the cited mark is used in a design form (Exhibit F). While the marks share the portion, AMERICANA, this term is not so distinctive that two marks using the term AMERICANA are likely to cause confusion in the marketplace. Additionally, the addition of OLD to Applicant’s mark differentiates the marks in a way that avoids confusion in the marketplace.

CONCLUSION:

Applicant submits the term ‘old’ is not merely descriptive of applicant’s goods. Additionally, Applicant submits that its mark is not confusingly similar to the cited mark because the AMERICANA portion is weak. When combined with the OLD, the marks are different to avoid any confusion in the marketplace. Due to the widespread use of the term “Americana” to describe all things American, Applicant submits that the addition of OLD is enough to distinguish the marks from one another. When purchasers view the different marks, as they appear in the marketplace, they are not likely to believe that the goods emanate from the same source.

Applicant requests that the Board reverse the Examining Attorney’s decision and register Applicant’s mark.

Respectfully submitted,

/Molly B. Markley/

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Attorney and Authorized Agent for Applicant

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Dictionary

Americana

noun plural Amer-i-ca·na

ˌə-,mer-ə-ˈkă-nə, -ˌmər-, -me-rə-, -ˈka-nə

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things produced in the U.S. and thought to be typical of the U.S. or its culture

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Full Definition of AMERICANA

- 1 : materials concerning or characteristic of *America*, its civilization, or its culture; *broadly* : things typical of *America*
- 2 : *American culture*
- 3 : a genre of *American music* having roots in early folk and country music

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'Try and' vs. 'Try to'

First Known Use of AMERICANA



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Rhymes with AMERICANA

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Judi Layne · Works at Secretary of the Air Force Pentagon

I consider the old, now nearly-extinct, country stores to be treasured bits of Americana. Are they?

Like · Reply · Jul 30, 2014 8:50pm



Nelson Kessler

Because it's going away. Our government is ruining it.

Like · Reply · Jul 9, 2014 6:27am



Susan Brill

The house of mirth by Wharton

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Nancy Hewitt · Wilmington, North Carolina

Checking to see if our annual, amateur Christmas show, put on by our towns people, would qualify as "Americana." Our crowds are growing each year, but it's still quaint enough that I think it qualifies as such.

Like · Reply · Nov 5, 2012 9:45am



Kaizer Allen

Not anymore. They don't even want to call Christmas, "Christmas" anymore. They want the politically correct version which is holiday.

Like · Reply · Oct 21, 2014 9:13am



The Plants Music Factory

I promote, support, and defend Americana Music. I am also on the "edge" of the emerging definition of it. Americana Art comes from a feeling, an amalgamation of the sounds that is Rooted deeply in Blues, Folk, and Rock N' Roll. It is not the instrumentation that defines the sound but rather the approach to how the instruments will sound.

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Americana

From Wikipedia, the free encyclopedia

For other uses, see Americana (disambiguation).

Americana refers to artifacts, or a collection of artifacts, related to the history, geography, folklore and cultural heritage of the United States.^{[1][2]} Many kinds of material fall within the definition of *Americana*: paintings, prints and drawings; license plates or entire vehicles, household objects, tools and weapons; flags, plaques and statues, and so on. Patriotism and nostalgia play defining roles in the subject. The things involved need not be old, but need to have the appropriate associations. *The Atlantic* described the term as "slang for the comforting, middle-class ephemera at your average antique store—things like needle-pointed pillows, Civil War daguerreotypes, and engraved silverware sets."^[3] The term may be used to describe the theme of a museum or collection,^{[4][5]} or of goods for sale.^[6]

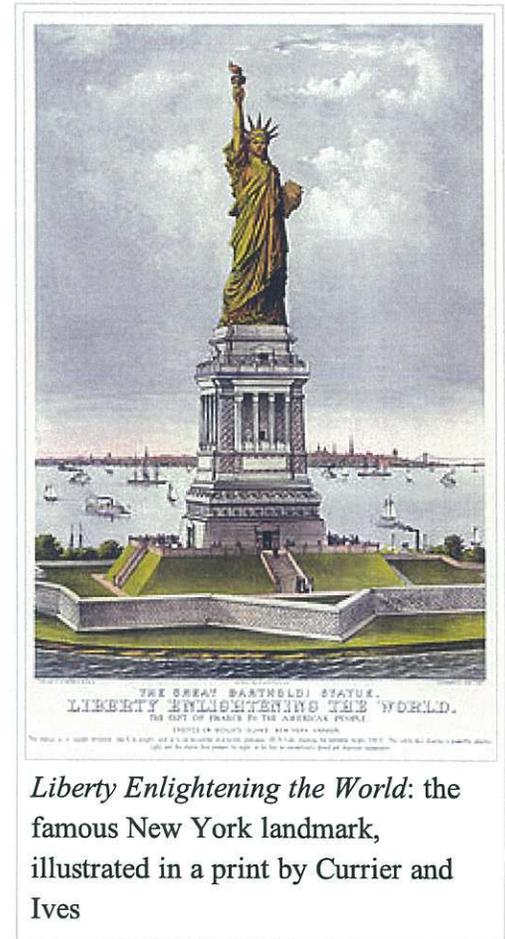
The term can also be used to describe studies of American culture, especially studies based in other countries.^[7] Americana music is contemporary music that incorporates elements of various American roots music styles, including country, roots-rock, folk, bluegrass and blues, resulting in a distinctive roots-oriented sound.^{[8][9]}

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Americana as nostalgia

From the mid through late 20th Century, Americana was largely associated with nostalgia for an idealized life in small towns and small cities in America around the turn of the century, from roughly 1880 to the First World War, popularly considered "The Good Old Days".^[10] It was believed that much of the structure of 20th Century American life and culture had been cemented in that time and place. Henry Seidel Canby wrote "[I]t is the small town, the small city, that is our heritage. We have made twentieth-century America from it, and some account of these communities as they were ... we owe our children and grandchildren."^[11] The nostalgia for this period was based on a remembrance of confidence in American life in this period, due to such factors as a sense that the Frontier had been "conquered" with the US Census Bureau's declaration



Liberty Enlightening the World: the famous New York landmark, illustrated in a print by Currier and Ives

that it was "closed" in 1890, as well as the recent victory in the Spanish–American War.^[10] As Canby put it, Americans at this time "really believed all they heard on the Fourth of July or read in school readers. They set on one plane of time, and that the present, the Declaration of Independence, the manifest destiny of America, the new plumbing, the growth of the factory system, the morning paper, and the church sociable. It was all there at once, better than elsewhere, their own, and permanent. ... They had just the country they wanted...and they believed it would be the same, except for more bathtubs and faster trains, forever ... for the last time in living memory everyone knew exactly what it meant to be an American."^[11] The zeitgeist of the idealized period is captured in the Disneyland-style theme parks' Main Street, U.S.A. section (which was inspired by both Walt Disney's hometown of Marceline, Missouri and Harper Goff's childhood home of Fort Collins, Colorado),^[12] as well as the musical and movie *The Music Man* and Thornton Wilder's stage play *Our Town*.^[10] Especially revered in Americana nostalgia are small town institutions like the barber shop^[13] and the drug store/soda fountain and ice cream parlor,^[14] the latter which would be resurrected by mid-twentieth century nostalgia for this time period in businesses like the Farrell's Ice Cream Parlour chain with its 1890s theme.^[15]

Examples

- Coca-Cola^{[16][17]}
- Levi's blue jeans, especially Levi's 501s^{[17][18]}
- White picket fences^[19]

See also

- American Studies
- American Studies in Britain
- Culture of the United States

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External links

Retrieved from "<https://en.wikipedia.org/w/index.php?title=Americana&oldid=684812525>"

Categories: Americana



Look up *Americana* or *americana* in Wiktionary, the free dictionary.



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1	86871190		COOKING AMERICANA	TSDR	LIVE
2	86733002		GRAVIS METAL AMERICANA	TSDR	LIVE
3	86709899		LUCA MARIANO OLD AMERICANA	TSDR	LIVE
4	86761572		LA CENTOAMERICANA	TSDR	LIVE
5	86849506		AMERICANA	TSDR	LIVE
6	86693971		AMERICANA MUSIC TRIANGLE	TSDR	LIVE
7	86752700		AMERICANA GALLERY	TSDR	LIVE
8	86660732		NUEVA COSECHA CENTRO AMERICANA MASAFINA	TSDR	LIVE
9	86436609		OLD AMERICANA	TSDR	LIVE
10	86976199	4774582	FUNDACIÓN AMERICANA DE MEDIOS Y ARTES	TSDR	LIVE
11	86846409		ROBERT GRAHAM MODERN AMERICANA	TSDR	LIVE
12	86763919		AMERICANA NEON LIGHTS	TSDR	LIVE
13	86844929		SPECTRUM AMERICANA	TSDR	LIVE
14	86293520		OLD AMERICANA	TSDR	LIVE
15	86582408	4850668	8 FIESTA AMERICANA	TSDR	LIVE
16	86582032	4850642	8 GRAND FIESTA AMERICANA	TSDR	LIVE
17	86124794	4851795	NUEVA COSECHA CENTRO AMERICANA	TSDR	LIVE
18	86609053	4848281	PANAMERICANA	TSDR	LIVE
19	86764028		F FIESTA AMERICANA VACATION CLUB SHARING SMILES	TSDR	LIVE
20	86764027		F FIESTA AMERICANA VACATION CLUB SHARING SMILES	TSDR	LIVE
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22	86432850		AMERICANA	TSDR	LIVE
23	86432815		AMERICANA	TSDR	LIVE
24	86101861	4672803	AMERICANA	TSDR	LIVE

25	86082028	4651470	AMERICANA GRILLS	TSDR	LIVE
26	86449189	4805509	AMERICANA DECOR MAXX GLOSS	TSDR	LIVE
27	86035954	4805607	AMERICANARAMA FESTIVAL OF MUSIC	TSDR	LIVE
28	86245818		AMERICANA MUSIC TRIANGLE	TSDR	LIVE
29	86425589	4801167	TOFFEE AMERICANA	TSDR	LIVE
30	86587834		GAMMA DE FIESTA AMERICANA HOTELES	TSDR	LIVE
31	86357039		CITY AUTHENTIC MODERN INDUSTRIAL SIMPLE AMERICANA	TSDR	LIVE
32	86575020		ADONIS AMERICANA	TSDR	LIVE
33	86613518		AMERICANA DENIM COMPANY	TSDR	LIVE
34	86192010		AMERICANA	TSDR	LIVE
35	86695231		AMERICANA	TSDR	LIVE
36	86683712		FIESTA AMERICANA AGENTS CASH INCENTIVE PROGRAM	TSDR	LIVE
37	86683709		FIESTA AMERICANA AGENTS CASH INCENTIVE PROGRAM	TSDR	LIVE
38	86303880	4770563	CONSTRUCAO LATINO-AMERICANA	TSDR	LIVE
39	86227132		GATHER AMERICANA RESTAURANT	TSDR	LIVE
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42	86392720	4738380	AMERICANA REAL ESTATE GROUP	TSDR	LIVE
43	86460221		HISPANA-LATINA AMERICANA	TSDR	LIVE
44	86347708	4711373	LANDMARK AMERICANA TAP & GRILL	TSDR	LIVE
45	86347705	4711372	LANDMARK AMERICANA TAP & GRILL	TSDR	LIVE
46	86279259	4670512	AMERICANA MEMORIES TELLING AMERICA'S STORY ONE MAIN STREET AT A TIME	TSDR	LIVE
47	86171151	4661261	SOCIEDAD AMERICANA DE INGENIEROS DE SEGURIDAD	TSDR	LIVE
48	86247644	4646734	AMERICANA EXPERIENCE	TSDR	LIVE
49	86247634	4646733	AMERICANA EXPERIENCE	TSDR	LIVE
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Why Is a Music Genre Called 'Americana' So Overwhelmingly White and Male?

The genre seeks to represent and celebrate a national identity, but in the process, it erases the history and diversity of its influences.

GIOVANNI RUSSONELLO

AUG 1, 2013



Bob Dylan performing at Les Vieilles Charrues Festival in France in 2012.
(AP / David Vincent)

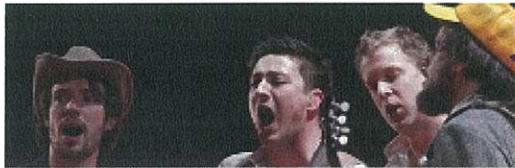
On Friday, Bob Dylan will wrap up the Americanarama Festival of Music, his six-week U.S. tour alongside an all-star cast of colleagues, including Wilco,

My Morning Jacket and Ryan Bingham. All those acts have a home in the genre called Americana -- a nostalgic musical stomping ground where musicians act as ambassadors for the country's past and its indelible ideals: community, endeavor, democracy, frontierism.

But there's something wrong with this picture. If Americana represents some broad definition of American identity, then how does it manage to exclude the influence of so much music made here in the past 40 years? And where, you've got to wonder, are the artists of color? Can a genre that offers itself up as a kind of fantasy soundtrack for this country afford to be so homogeneous and so staunchly archaic?

Maybe, at the very least, it's time for a name change.

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and Became (Almost) as Popular as Justin Bieber

Before it became a term for a musical genre, the word "Americana" was a slang for the comforting, middle-class ephemera at your average antique store -- things like needle-pointed pillows, Civil War daguerreotypes, and engraved silverware sets. In the 1990s, radio programmers coined a new, related usage: "Americana" became a nickname for the weather-beaten, rural-sounding music that bands like Whiskeytown and Uncle Tupelo were making. It was warm, twangy stuff, full of finger-plucked guitars and gnarled voices like tires on a dirt road. If you can imagine an Americana song as a bottle of beer (easy enough), you'll probably taste a hint of salt from the lead singer's tears mixed in.

But the genre defines itself by its progenitors more than its present. Any

Americana artist working today ought to know his Woody Guthrie, his Carter Family, his Willie Nelson, his Blind Willie McTell.

Case in point: The nonprofit Americana Music Association formed in 1999, and held its first festival and conference the following year in Nashville. The big coup came in 2009, when the Grammy Foundation established an independent category for Best Americana Album. In the four years since, no musician under 60 has won the award.

And despite the genre's roots in gospel and the blues, the 20 Americana nominees to date have included only one black artist: the singer Mavis Staples, who won the award in 2011 for *You Are Not Alone*. (The album was produced by Wilco's Jeff Tweedy.)

"It sometimes seems like the Delta's legacy is most present in modern hip-hop, where its basic tenets are still being perpetuated, even if the form has altered dramatically."

Americana's proponents position themselves as anti-establishment gadflies to the left of commercial country. Many see themselves as preserving some bygone, purer strand of Americanness, and argue -- in distinctly rockist terms -- that this genre is just the modern-day manifestation of a timeless truth. (CBC radio personality Madonna Hamel gave a digestible synopsis in a recent radio special on Americana: The Americana Music Association, she said, is a brotherhood of "ex-industry types [who] quit their lucrative day jobs to get exposure for the artists they love. Their goal was simple: find a home for singers who can sing, writers who can write, players who can play.")

But you'll notice that it didn't take long for Americana to earn industry acceptance, which can be explained in much the same way as the existence

of the genre's other, less flattering nickname: "dad rock." The music business was happy to create a niche for the country's most fiscally dependable demographic -- white, male Baby Boomers. Along the way, a handful of artistic traditions founded in rebellion (blues, Appalachian folk, outlaw country) got elided into a relatively conservative format.

Americana is music that sticks up for its drinking buddy, remembers the first time the flag was hoisted over the corner store, kicks up dust on its way out of town. After work, it watches TCM. But ultimately, if an art form is going to name itself after this country, it should probably stop weatherproofing itself against America's present-day developments. And it hardly seems like enough to say you're carrying on the legacies of black gospel and blues if the performers and listeners venerating them are almost all white.

In her book *It Still Moves*, a loving depiction of Americana's roots, Amanda Petrusich gets it right: "It sometimes seems like the Delta's legacy is most present in modern hip-hop" -- rather than Americana -- "where its basic tenets are still being perpetuated, even if the form has altered dramatically."

When Bob Dylan performs, he channels a whole universe of time-weathered emotions, ideas, and legacies. He refits himself to work as their vessel, but in the process, he makes them his own. In his memoir, *Chronicles*, Dylan describes songwriting as a form of inheritance: "Opportunities may come along for you to convert something -- something that exists into something that didn't yet." That, he said, is composition. And he's right; the vast American songbook and the styles that bind it together have always developed as a negotiation between self-sustaining tradition and venturesome experimentation. This is often lost on Dylan's latter-day disciples in Americana.

Older societies around the world -- African, European, Native American, and so many others -- developed folk-music customs that held for many generations. The United States, though, didn't have that option. It's a relatively new country, and one founded on adaptation and expansion -- into new territory, new markets, and new models for society.

To wit: In the early 20th century, white southerners like Hobart Smith and Dock Boggs transferred English folk songs to the banjo, an instrument invented by blacks as an adaptation of certain West African instruments. Folks like Smith and Boggs incorporated African-American syncopation into the mainly British roots of Appalachian folk, creating the framework for bluegrass and other styles. Wandering white songsmiths penned murder ballads (a form of oral history with origins in Scandinavia and Britain) that shot dark, smoke-ringed enigma into the lore of the American West. Then black singers fused the murder ballad format with the blues, giving rise to timeless, ululating songs like "Stagger Lee."

Despite *de jure* and *de facto* segregation around the country, intermingling across ethnic and racial lines was inevitable: Wage work on railroads and coal mines, minstrel shows, and, eventually, radio broadcasts brought people together.

Americana runs the risk of confusing oldness with authenticity. The music looks to conjure an America before big-box stores, but America is becoming more diverse.

Folk music lost much of the nation's attention during the Depression and World War II, but a generation of young urban liberals revived it in the late 1940s and '50s at open-mics in New York's Greenwich Village basements and singalongs in Washington Square Park. In January 1961, just arrived

from the Midwest, Dylan snuck onto the scene like an *agent provocateur*, living on people's couches and haunting folk clubs. The 20-year-old could sing old ballads and blues with the tanned-leather sagacity of an old timer; he was signed to Columbia within the year. As is so often the case, it took a bit of iconoclasm to make him the movement's leader: He wrote his own songs, often from scratch -- a rare practice on the revival scene. And into his ballads he wove misty threads of poetry that were unlike anything the Dust Bowl generation had known.

Five years later, Dylan had left folk behind. He was already being called "the voice of his generation," but to merit that title he couldn't just keep writing about revolt -- he had to make sizzling, mercurial music that actually *sounded* like mutiny. His subsequent albums became invitations to an intimate American wonderland where Woody Guthrie, Son House, and Jimmie Rogers messed around with Louis Jordan, T-Bone Walker, and Elvis Presley, then wandered off together into the unknown. Dylan is monumentally important today precisely because he broke with a movement that held so fast to its own ideals, and his protean career hasn't sat still since.

Dylan can be seen as the father of Americana, but his lessons often don't seem to register. Have they reached Jason Isbell, the somber guitar plucker who's presently on top of the [Americana association's radio charts](#)? Isbell draws on a lot of familiar imagery ("Money and liquor and lust had taken my heart and my trust / I could see ashes and dust were headed my way"), but he rarely stirs it up into anything new. What about Dawes, a band that opened for Dylan on his previous tour? The quartet has some range but sticks to a fairly closed circuit of influences: mostly 1970s folk-rock and country artists like Willie Nelson, Crazy Horse, Kris Kristofferson, and the Charlie Daniels Band.

By implying that bands like Dawes encompass some omni-American ideal,

the Americana genre doesn't just reify the notion that a white male perspective defines the American experience. It runs the risk of confusing oldness with authenticity. The music looks to conjure an America before big-box stores, when commerce was still a community-based ritual, when a fistfight and a beer were enough to settle a debt. This is all a sort of mythmaking, which is fine: That's part of what music is for. But as Oscar Wilde expressed, art is useful because it invites life to imitate it; what separates the two also holds them together. Music gets its power from a keen, contemporary perspective, not from reviving someone else's memories. America, like its many musical forms, is becoming more diverse, so it feels facile to let this one strain of yellow-page nostalgia represent it.

As Wilco has proven in their performances on the Americanarama tour, some so-called Americana bands do make their own rules and write songs that are entirely their own. But to get there, they have to break the genre's glass walls. In the moody abstraction of Wilco's lyrics, and its fractured sonic pastiches, you thank goodness for the influence of John Cale, Can, and Portishead.

And what about that all-encompassing American identity? Is there one? Kendrick Lamar is saying some things about city living that could never make it into an Americana song. And for a cold, hard read on the present state of Middle America, you might want to look a little closer to the marketplace than Americana is willing to tread. Give a listen to "Weed Instead of Roses," by the country singer Ashley Monroe, and try to imagine that the original country outlaws wouldn't pick her over Dawes any day.

ABOUT THE AUTHOR

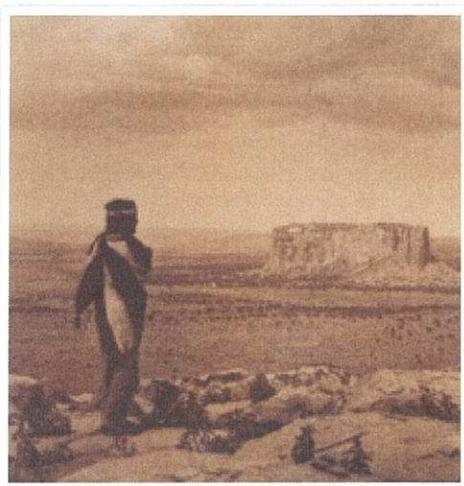
GIOVANNI RUSSONELLO is the editor of CapitalBop.com and a regular contributor to *JazzTimes*. His work has also appeared on NPR Music, MSNBC.com, and *Politico*.

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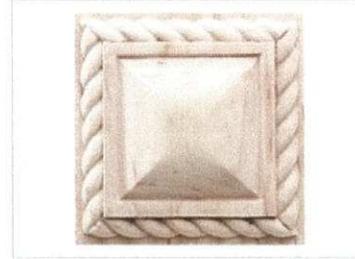
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Coca-cola A Sip Of Americana Things Have Been Going Better With Coke Since 1886.

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October 7, 1990 | By DON MELVIN, Atlanta Correspondent

It would shock Doc Pemberton, no doubt, to learn what he started back in 1886.

One day, he stirred some syrup with an oar in his back yard, took the solution to his pharmacy in Atlanta and mixed it with soda water.

The potion was meant to cure hangovers. But it grew to become, in the words of journalist William Allen White, "the sublimated essence of all that America stands for."

Now the handwritten record Pemberton made of his experiments is in a pavilion not far from where the pharmacy stood. Called "The World of [Coca-Cola](#)," the pavilion features three floors and several generations worth of [advertising](#). Admission: \$2.50.

Wait a minute. Charging to look at advertising? The sublimated essence of all that America stands for? Isn't this a commercial product we're talking about?

But the product, universally available, affordable and always heavily advertised, has been with us so long it has become a piece of Americana. A tour through Coke's advertising is like a trip through the popular culture of the United States in the 20th century.

Virginia Berney of Little Elm, Texas, left the pavilion reminded of the days when she was a soda jerk. The memories were worth the \$2.50, she said.

Since the pavilion opened on Aug. 3, more than 120,000 people have visited -- nearly 2,500 a day.

How did Doc Pemberton's hangover cure turn into an [American standard](#)?

Popularity helps. In 1989, according to Beverage Digest, Coca-Cola products accounted for 41.1 percent of the U.S. [market](#), significantly ahead of Pepsi, which had 31.1 percent. Worldwide, Coke is sold in more than 160 countries and served more than 400 million times a day.

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To [work](#) its way into the culture, said Philip Mooney, archivist for Coca-Cola, a product needs "longevity, ubiquity and an ability to reach [consumers](#) on a level that becomes somewhat personal."

It also requires an advertising department with a good grasp of what's hot.

Consider the celebrities who have endorsed Coke since the [company](#) first enlisted vaudeville actress Hilda Clark near the turn of the century: Ty Cobb, Claudette Colbert, Clark Gable, Johnny Weismuller, Paul Newman.

And consider, too, the singers who have recorded Coke jingles through the years: Roy Orbison, the Everly Brothers, Jerry Lee Lewis, the Supremes, the Four Tops, Aretha Franklin, Loretta Lynn and Dione Warwick.

This reflection of the popular culture -- of the dress, the manner, the style of the times -- inspires some people to collect Coke memorabilia.

Alice Fisher moved to Atlanta from Cleveland, and much of what she read about her new hometown related to Coke. Asa Candler, who bought Doc Pemberton's formula in 1891 for \$2,300 (and who would sell it in 1919 for \$25 million, the largest transaction to that date in the South) became mayor of



Atlanta. The Atlanta zoo was started with the collection of animals. [Emory University](#) received \$150 million in Coca-Cola money through the years.

So Fisher became a collector. Her [house](#) is filled with toy Coke trucks and Coke cans with nozzles that went into space, with clocks, posters, bottles, trays and turn-of-the-century coupons good for free cokes at a soda fountain.

She had to rebuild her collection after a fire destroyed her house in 1981. Only one item survived -- an 1899 tray worth \$20,000 painted with the portrait of vaudevillian Clark. It had been packed between some clothes.

"I thought I had died and gone to heaven," she said.

Fisher is treasurer of the Coca-Cola Collectors Club, which has nearly 7,000 members.

Melba Caldwell, of St. Augustine, who with her late husband David was among the country's best-known experts on dolphins, began collecting 20 years ago "before we knew anybody else collected."

Caldwell thinks the product endeared itself to the American people because Robert Woodruff, who was head of the company most of this century, "understood the American psyche, and he never allowed the word 'Coca-Cola' to be associated with anything unpleasant. He wouldn't ever let them advertise on the evening news, because there was too much that was unpleasant."

The company advertised with newspapers when they were growing, with magazines as they were big and switched to television in the 1950s.

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Cut down a bit of your belly every day by using this 1 weird old tip.

Along the way, the ads not only have reflected popular culture, but also have helped create it. Santa Claus, for example, used to be thought of as thinner and sterner until a commercial artist named Haddon Sundblom began painting Santa for Coke ads. The ads, depicting Santa as fat and jolly, often ran in the featured back-page spot in the Saturday Evening Post.

Sundblom painted the Santas from 1931 until 1966. Today, every department store Santa with a pillow stuffed down the front of his red suit is, to some extent, derivative of Sundblom's work.

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Dan Bates / The Herald

Gladys Rodriguez checks bottles as they pass along the conveyor belt in the bottling process at Orca Beverage Soda Works in Mukilteo.

Vintage soda brands come back to life at Mukilteo business

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By Jennifer Sasseen
For The Herald Business Journal

Published: Wednesday, January 21, 2015, 12:01 a.m.

Ahh, the sweet taste of yesteryear — a cold soda-pop zinging the senses with a burst of flavor and pure cane sugar without any high-fructose corn syrup.

Brands like Frostie, Cock N Bull, Goody, Nesbitt's, Lemmy, Jic Jac, O-So and Brownie — all but obsolete a few years ago — have been making a comeback.

Mukilteo-based Orca Beverage Soda Works is dedicated to producing the flavor of these vintage sodas, alchemical mixes of honest ingredients in glass bottles. And it looks like there's a growing thirst.

Orca Beverage has seen an increase in orders from around the country and further afield like Canada, Indonesia and Australia. The company has gone from producing around 1,000 cases a month of vintage sodas in its early days to many times that today, said owner Mike Bourgeois.

"We do that in a couple of hours now," he said.

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In fact, the business expects to produce a million cases of soda this coming year, Bourgeois said.

Bourgeois, 55, started selling the brands out of his car in the late 1980s to mostly small, upscale stores.

Now the beverage company sells to thousands of customers from mom-and-pop specialty stores to the Cost Plus World Market chain and some warehouse Costco stores, including Atlanta, San Diego and Northern California divisions.

The success of Orca Beverage Soda Beverage Inc., seems to be a sweet blend of the right man with a vision, the right employees and the right time for retro.

"The distinct imagery of the '40s and '50s hearkens back to a time when life was simpler and life was a little easier," Bourgeois said. "And the imagery is just a feel-good imagery."

The company's packaging builds on that, said Jan Tenzler, national sales manager for Orca Beverage.

From bottle labels reminiscent of the painted-on labels of yore, to the design of the retro 10- and 12-pack assortments available seasonally, everything is a careful rendering of yesteryear. The assortment packs are popular gifts, she said.

"Oh my goodness, it's cheaper than a bottle of wine," she said. "You go somewhere with this and everybody loves you."

Bourgeois said his love for all things retro developed while he was growing up and helping to restore old cars in the auto-body repair shop his parents owned in Seattle, but it didn't merge with the soft-drink industry until his senior year at Seattle University.

His culminating senior project pulled together students from various disciplines to work with "a real-world company" involved in bottling spring water, Bourgeois said.

He got to know local bottlers and the project piqued his interest in the bottling industry.

In 1988, he formed Orca Beverage Inc. and negotiated with local bottlers to produce his first beverage, Orca Sparkling. That's when he started "to understand about problems and challenges and formulation issues" in business.

More than 50 percent fruit juice, his drink's pulp content gummed up the works until filters were installed. After that experience, bottlers balked at taking on more jobs for him, prompting Bourgeois to search for a bottling line of his own.

Soon he bought a Pepsi-Cola bottling line that had been written off as a total insurance loss due to flood damage, and rebuilt it.

"We took it all apart," Bourgeois said, "every nut and bolt, all the bearings, and brought it back to life."

Besides producing Orca Sparkling for years, his company also dabbled in the energy-drink business at a time when the only competitor was Red Bull, and today produces Dragon Tail energy drinks as a nod to its roots.

Orca Sparkling was discontinued a couple of years ago, though Bourgeois said he wants to bring it back "to keep the old namesake alive."

The company also produces Crazy Kritter Vitamin Drinks for children, popular at zoos and the only Orca Beverage drink packaged in plastic bottles.

It's in the vintage-soda field where the company found its true calling, Bourgeois said.

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Brands like Spiffy, Lemmy, Mr. Cola, G... Jac were no longer being produced at all when C... Beverage took an interest in them, acquired the trademarks and started researching recipes to come up with the authentic flavors.

Bourgeois estimated his company now owns between 30 and 40 such trademarks.

Production manager Hiro Yokoo, an alchemist of sorts who joined Orca Beverage as a University of Washington intern a few years after Bourgeois started the company, mixes the recipes and adds carbonation for some "tasting and tweaking" until the right mix is reached.

"Lemmy is absolutely the delightful treat I remembered and has not changed," according to one fan on the company's Facebook page. "Oh so delicious! Thanks for making it available. It has probably been sixty years since I have enjoyed one."

Sometimes companies come to Bourgeois and ask him to produce their brand. That's what happened when Monarch Beverage Company representatives approached Bourgeois about Moxie soda at a trade show in the early 1990s.

Moxie is the oldest mass-produced carbonated beverage in the country.

Founded in 1884 in Massachusetts by Dr. Augustin Thompson of Maine, the drink was originally touted as a "nerve food" guaranteed to cure almost any illness.

The Moxie name made it into the dictionary as a word synonymous with "energy" and "pep," with its namesake supposedly a favorite drink of President Calvin Coolidge in the 1920s and promoted by baseball slugger Ted Williams in the 1960s.

Popular throughout the country at one time, Moxie's production diminished for various reasons, including competition from companies like Coca-Cola.

The Monarch Beverage Company was trying to bring it back, producing the beverage through two East Coast bottlers and looking for a bottler on the West Coast. When Bourgeois tasted Moxie, he told the company representatives he didn't think he could sell the "unusual-tasting" soda.

However, the company continued to pursue it until Bourgeois relented and now Orca Beverage is one of three authorized bottlers of Moxie; local retail outlets include The Root Beer Store in Lynnwood.

While nostalgia is a big part of the initial attraction to Orca Beverage's vintage sodas, it's the quality that keeps customers coming back for more, Bourgeois said.

That means pure cane sugar, organic honey, real vanilla and as many other pure ingredients as possible, mixed with water in steel vats, then cooled, carbonated and poured into glass bottles to preserve that old-time flavor.

The company may have reached its highest flavor potential yet with its own line of Americana sodas.

"That is not an old-time brand but it is a retro-looking brand that's really kind of our flagship brand," Bourgeois said. "It's pretty much a culmination of everything we've learned about making soda over the years."

The Americana Honey Cream, created by production manager Yokoo, is "just a phenomenal recipe" and, as cream sodas go, "may be the best in the world," Bourgeois said.

Cost Plus World Market employee Teresa Menzel, of the company's Lynnwood store, said it's her favorite, "a really nice alternative to cream sodas. It's like you're eating ice cream."

Other Americana flavors include black cherry, cherry cola, honey lime ginger, orange cream, root beer and most recently, huckleberry.

New holiday Orca Beverage flavors billed as a "World Market Exclusive" this past holiday season include candy cane, gingerbread, sugar cookie and sugar plum. Orca Beverage created the flavors at World Market's request, Tenzler said, but "next year, we'll sell them everywhere."

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Other seasonal flavors include those sold in Halloween variety packs: pumpkin spice tonic, werewolf howling ginger beer and wicked apple brew.

Orca Beverage's portfolio contains more than 100 retro and specialty glass-bottled products. And the list keeps growing, as does the number of customers.

Arlington Hardware and Lumber started carrying Orca Beverage's vintage sodas just a year or two ago, said longtime employee Gail Moffett.

"It had a big response right from the beginning," she said, "and it hasn't stopped."

Cases of vintage sodas stacked up at the hardware store include Orca Beverage's O-So Butterscotch Root Beer. Despite its name, the soda is not connected to the town of Oso; it originated in Illinois in 1946.

In fact, every now and then, people call Orca Beverage wondering if there is a connection, Bourgeois said. (Wanting to do something to help following the landslide, but not wanting anyone to think he was taking advantage of a tragic event, he quietly donated cases of the soda to Oso volunteers through The Root Beer Store.) Despite the enthusiasm of Bourgeois' 16 current employees and a very low turnover rate — he describes them as "a great, self-motivated, highly-intelligent group" — the company is not without challenges.

One of these is a dwindling number of glass-bottle suppliers in this country. Producing glass bottles is a very energy-intensive business, Bourgeois said, "so one by one over the years, they closed."

The few that are left are dominated by the beer industry, he said, which uses mostly amber bottles. Orca Beverage also uses emerald-green and flint, or clear, bottles.

That leaves Orca Beverage in a tight spot because the company is currently relying on one East Coast manufacturer, yet Bourgeois won't use anything but glass for his vintage sodas.

"They just don't belong in cans or plastic," he said. Determined to stay true to his vision, Bourgeois has had to go overseas to find a second manufacturer.

Space is another challenge for his growing company, Bourgeois said. In the early days, Orca Beverage quickly outgrew its first 3,000-square-foot bottling line and warehouse in Redmond.

Soon it relocated to its current home in a 26,000 square-foot building in Mukilteo, later adding another 10,000 square feet of warehouse space just up the street. Pending city approval, Bourgeois said he plans to build an additional 30,000 square-foot building that would connect the two properties.

The expansion will lead to more jobs for the community, Bourgeois said, but also to more automation as he works on increasing efficiency.

He is proud of the robotic arm he purchased at auction about eight years ago from a Boeing research-and-development department.

It was finally re-programmed and placed on the production line a few months ago, he said, and is particularly useful in filling the labor-intensive vintage-soda variety packs.

The limited supply of refrigerated trucks this time of year is another huge problem for the company. Orca Beverage struggles to fill orders from cold-climate customers because its sodas must be shipped in refrigerated trucks to prevent freezing. Sometimes orders can't be filled, Tenzler said.

"One of our major issues that we're dealing with right now is how to move our product around the country," Bourgeois said. "Especially in the Midwest and the East Coast, which is a growing market for us."

Regardless of problems, the nature of the vintage-soda industry seems to be a happy one. When she first started at Orca Beverage her two sons were in their teens, Tenzler said, and they all had a lot of fun when she brought sodas home to taste-test. She hears stories from customers who share similar experiences, she said, particularly when there are older members in the crowd.

"We sell smiles and memories," she said.

Persistence was needed to get the company back to running, Bourgeois said, and he was lucky that he didn't have to resort to outside investors; he put his own money into the company and it's been in the black since the first couple of years. But it's the employees that really make a business, he said.

"When you get a good group of people together," Bourgeois said, "a lot of things are possible."

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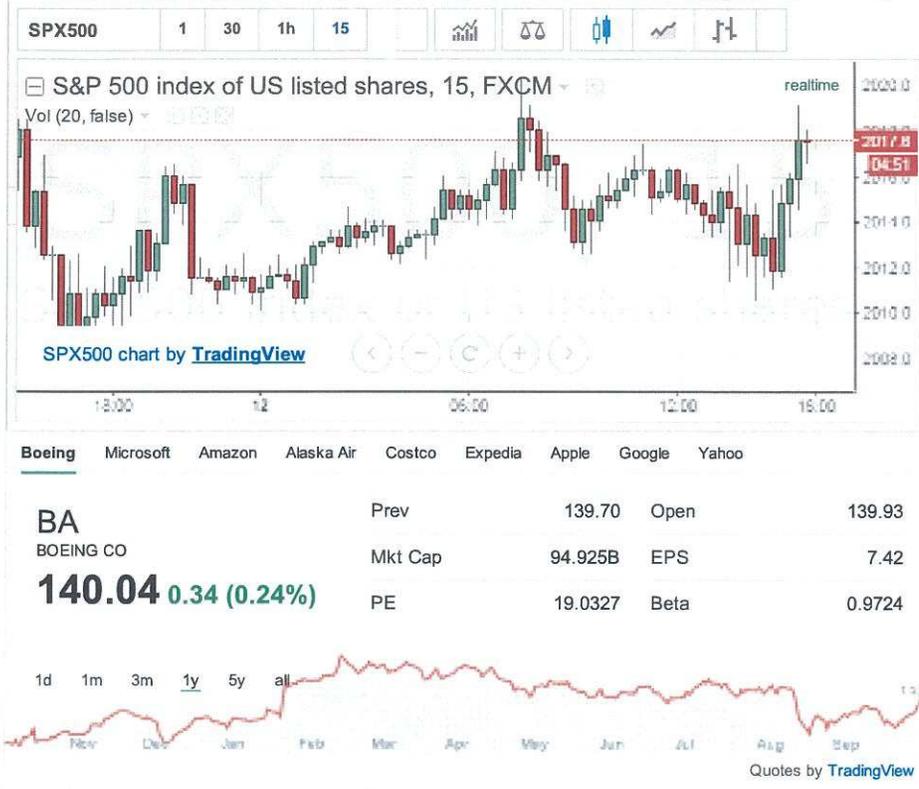


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