

University of Miami Law School
University of Miami School of Law Institutional Repository

University of Miami Business Law Review

12-19-2018

"It's Your Right ... !": A Legal History of the Bacardi Cocktail

Brian L. Frye

University of Kentucky School of Law

Follow this and additional works at: <https://repository.law.miami.edu/umblr>



Part of the [Intellectual Property Law Commons](#)

Recommended Citation

Brian L. Frye, *"It's Your Right ... !": A Legal History of the Bacardi Cocktail*, 27 U. Miami Bus. L. Rev. 1 ()

Available at: <https://repository.law.miami.edu/umblr/vol27/iss1/5>

This Article is brought to you for free and open access by University of Miami School of Law Institutional Repository. It has been accepted for inclusion in University of Miami Business Law Review by an authorized editor of University of Miami School of Law Institutional Repository. For more information, please contact library@law.miami.edu.

“It’s Your Right . . . !”: A Legal History of the Bacardi Cocktail

Brian L. Frye*

*And everybody wants to be special here
They call your name out loud and clear
Here comes a regular
Call out your name
Here comes a regular
Am I the only one here today?*¹

I.	THE ECSTASY & THE AGONY OF GENERICIDE	2
II.	THE BACARDI COMPANY	4
III.	THE ETIOLOGY OF THE BACARDI COCKTAIL.....	5
	A. <i>Grog</i>	5
	B. <i>The Canchánchara</i>	6
	C. <i>The Daiquiri</i>	6
	D. <i>The Bacardi Cocktail</i>	10
IV.	BUILDING THE BACARDI TRADEMARK.....	14
	A. <i>Ersatz “Bacardi”</i>	17
	B. <i>For Want of Bacardi a Lawsuit was Lost</i>	19
V.	THEY’RE ALL OUT OF LIQUOR, LET’S FIND ANOTHER PARTY	28
	APPENDIX:.....	32

The Bacardi cocktail was the Cosmopolitan of the Jazz Age: a sweet and sour tippie with an attractive rosy hue and a deceptively alcoholic punch. Created in about 1913, and named after Bacardi rum, it soon became one of the most popular cocktails in America. Prohibition only increased its popularity, as wealthy Americans vacationing in Cuba

* Spears-Gilbert Associate Professor of Law, University of Kentucky School of Law. J.D., New York University School of Law, 2005; M.F.A., San Francisco Art Institute, 1997; B.A., University of California, Berkeley, 1995. Special thanks to Collectif 1806 (<https://www.collectif1806.com/>), whose online library of historical cocktail books made the appendix to this article possible, and to Alexandra J. Roberts and Katrina M. Dixon for helpful comments.

¹ THE REPLACEMENTS, HERE COMES A REGULAR (Sire Records) (1985).

enjoyed Bacardi cocktails and demanded them at speakeasies and at home. Of course, every good speakeasy offered white rum (or a passable facsimile thereof) and called it “bacardi” no matter who made it.

After Repeal, the popularity of the Bacardi cocktail continued to rise as the Bacardi Company launched an ambitious advertising campaign. But for many people, “bacardi” just meant white rum. When a customer asked for a “Bacardi cocktail,” many bartenders used whatever white rum they had on hand.

So, the Bacardi Company faced a dilemma. It was thrilled to be the namesake of the “it” cocktail but feared the dilution or loss of its trademark. While it wanted everyone to drink Bacardi cocktails, it also wanted them to insist on Bacardi rum.

Accordingly, in 1936, Bacardi filed a trademark infringement action in New York state court, accusing the Barbizon–Plaza Hotel and the Wivel Restaurant of making Bacardi cocktails without Bacardi rum. After a colorful trial, the court issued an injunction, holding a Bacardi cocktail had to include Bacardi rum. It was probably the first time a court had opined on mixological law, and it became the centerpiece of the Bacardi Company’s new advertising campaign.

But was the court right? When people ordered a Bacardi cocktail, did they actually expect the bartender to use Bacardi rum, or did they simply expect to receive a cocktail made with white rum? Was the “Bacardi” in “Bacardi cocktail” the name of the drink or the rum? And what exactly was a “Bacardi cocktail” anyway?

I. THE ECSTASY & THE AGONY OF GENERICIDE

The hope and fear of every trademark owner is to face the specter of “genericide,” or the possibility that ubiquity will transform its mark into a synonym for its product.² The victims of genericide are legion, from aspirin to zipper.³ An untold number of names have become nouns with a corresponding loss of exclusivity.

But the path to genericide is watered with crocodile tears.⁴ The overwhelming market dominance required to trigger genericide typically renders the mark itself superfluous. When your competitors are forced to advertise your brand to sell their products, you’ve already won. Bayer

² J. THOMAS MCCARTHY, 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION §12:57 at 12–228 (5th ed. 2017) (observing that generic marks cannot be registered).

³ See, e.g., *Bayer Co. v. United Drug Co.* 272 F. 505, 514 (S.D.N.Y. 1921) (Hand, J.) (holding that “aspirin” had become a generic term for acetylsalicylic acid).

⁴ See, e.g., Deven R. Desai & Sandra L. Rierson, *Confronting the Genericism Conundrum*, 28 CARDOZO L. REV. 1789 (2007).

still sells a lot of aspirin, and Goodrich only abandoned zippers because it found more profitable products.

And yet, trademark owners are never satisfied. They inevitably condemn comparison as “blurring” and criticism as “disparagement,” and dismiss the actual use of their mark as irrelevant to their exclusive right to control its use in commerce.⁵ In other words, they want both ubiquity and control, and when consumers inevitably disregard their claims, they strenuously object.⁶

In that respect, the Bacardi Company was no different than any other trademark owner. It owned a valuable brand and wanted to extract as much value as it could out of that brand. It saw the Bacardi cocktail as a way to leverage a cultural phenomenon into additional sales. And it worked like gangbusters.



Facundo Bacardí Massó

⁵ See, e.g., Jonathan E. Moskin, *Dilution or Delusion: The Rational Limits of Trademark Protection*, 83 TRADEMARK REP. 122 (1993).

⁶ Cf. Rose A. Hagan, *The Myths of Genericide*, INTELL. PROP. L. NEWSL. (A.B.A., Chicago, Ill.) Winter 2004, at 13 (“A brief look at the statutory framework and the case law surrounding genericide suggests that the conventional wisdom of strictly prohibiting the use of a mark as a verb may go too far.”).

II. THE BACARDI COMPANY

The Bacardi Company was founded by Facundo Bacardí Massó in 1862. Bacardí was born in 1814 in Catalonia and moved to Santiago de Cuba in 1830. He initially worked for his older brothers, Magín and Juan, and eventually opened his own general store in 1843. On August 20, 1852, a massive earthquake destroyed much of Santiago de Cuba and caused a cholera epidemic. In the wake of the disaster, the economy of Santiago de Cuba collapsed, and Bacardí's store went bankrupt in 1855.

In 1859, Bacardí formed a partnership with José León Boutellier, and they began experimenting with different methods of making rum with the intention of producing a white rum suitable for export. Eventually, they settled on a combination of techniques, including quick-fermenting cognac yeast, charcoal filtration, and white oak barrel-aging, among other things. Soon afterward, they began selling small quantities of rum at Magín Bacardí's store.

On February 4, 1862, Bacardí and Boutellier bought an old distillery, and, in May 1862, they incorporated as "Bacardí, Boutellier, & Compañía." Bacardí signed every bottle "Bacardí M," and chose an image of a bat with outstretched wings as the logo for their new company. Their rum was popular, and their business grew. By 1868, Bacardí rum was available in Havana, and it soon became the most popular rum in Cuba. In 1872, Boutellier retired, and the company reorganized as "Bacardí & Compañía."

Initially, the company's finances were precarious as the Ten Years' War for independence from Spain gradually ruined the Cuban economy. In October 1880, Bacardí & Compañía filed for bankruptcy, and a fire destroyed its offices and primary distillery only a month later. But Facundo Bacardí's son Emilio Bacardí brought the company back from the brink, even as he supported the cause of Cuban independence.

In 1895, the war for Cuban independence reignited; and on February 15, 1898, the sinking of the U.S.S. Maine sparked the Spanish-American War. The Spanish surrendered on July 17, and the United States occupied Cuba. After Cubans voted for independence in 1900, the United States reluctantly withdrew but imposed onerous conditions on independence. And when the Republic of Cuba collapsed in 1906, the United States resumed occupation.

Meanwhile, the fortunes of the Bacardí Company surged. It won international awards, increased production, and focused on expanding its market. Bacardí gradually transformed rum from the quintessential proletarian spirit into a bourgeois beverage.⁷

⁷ See generally TOM GJELTEN, *BACARDI AND THE LONG FIGHT FOR CUBA* (2008).



III. THE ETIOLOGY OF THE BACARDI COCKTAIL

Mixology is an inherently imperfect science with an amusingly inexact history. The same spirits that inspire a new cocktail may befog its origins. Many an innovator may innocently rediscover a palatable formulation. And a single libation may contain a multitude of variations.

While the origins of the Bacardi cocktail are cloudy, its provenance is unclear, and its progeny are legion, it surely sprang from the fertile well of rum sours nurtured in the islands of the Caribbean. Unsurprisingly, tipplers have mixed rum with citrus juice and sugar since time immemorial. After all, it is a trifecta of ingredients that naturally coexist. Rum is distilled from fermented molasses, a byproduct of sugar manufacturing. And citrus trees thrive in the tropical climes essential to the cultivation of sugarcane.

Christopher Columbus took citrus seeds to the Caribbean in 1493. The Portuguese built sugar plantations in the 16th century. And rum soon followed. While the combination of the three ingredients was inevitable, the original names bestowed on the beverage are lost to history. But at least a few of its historical names were preserved.

A. *Grog*

In 1740, Admiral Edward Vernon of the Royal Navy ordered the dilution of his fleet's daily rum ration with water, in order to prevent

sailors from hoarding it. Supposedly, many sailors added lime juice and sugar to the diluted rum to improve its taste. The sailors had nicknamed Vernon “Old Grogham” for his grogham coat, and they called their new beverage “Grog.”

B. The Canchánchara

According to legend, the Canchánchara was created in eastern Cuba in the 1870’s by “mambises,” or Afro-Cuban revolutionaries, during Cuba’s unsuccessful Ten Years’ War for independence from Spain. It consisted of alcohol (usually spirits of some kind, but sometimes a fermented beverage) mixed with citrus juice (usually lime) and a sweetener (usually honey). It was consumed at room temperature or mixed with hot water as a toddy. Canchánchara is a neologism of unknown source and meaning, but the word and the drink soon came to symbolize the Cuban struggle for independence. Eventually, Cubans began to drink the Canchánchara with ice as a sour.

C. The Daiquiri

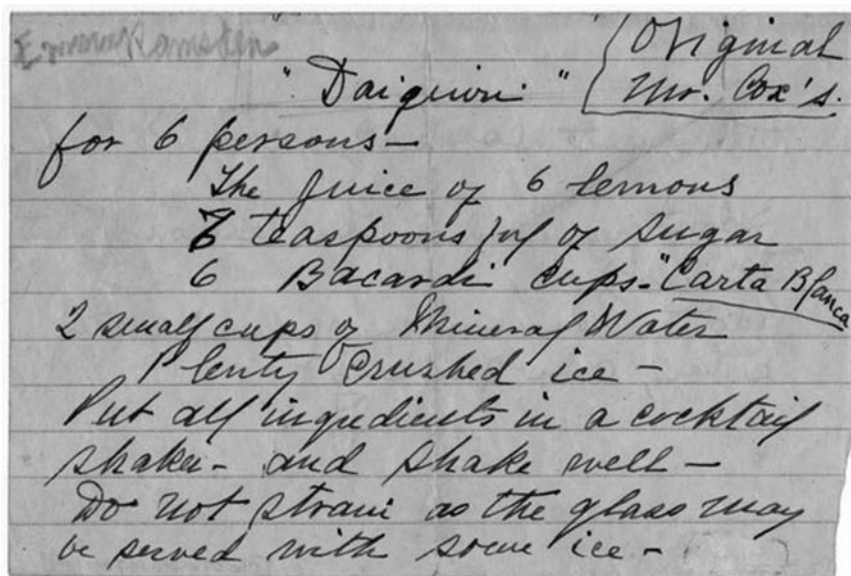
While the histories of most classic cocktails are apocryphal at best, the Daiquiri is unusually well-pedigreed. It was created — or at least named — in about 1898 by Jennings Stockton Cox, and we have his original handwritten recipe to prove it. Nevertheless, there is considerable disagreement about the particulars of Cox’s creation.



Jennings Stockton Cox

An engineer from Baltimore, Cox worked for the Spanish–American Mines Company at an iron mine near Daiquirí, a village about 14 miles east of Santiago de Cuba. According to his granddaughter, he ran out of gin while entertaining American guests and was reluctant to serve them straight rum. So, he mixed rum with lime juice and sugar, then named the drink after the nearby village. A variation on the story holds that Cox’s visitor — Giacomo Pagliuchi, an Italian engineer — actually named the drink. Charles H. Baker, Jr., claimed that Cox created the drink in 1898

in collaboration with Harry E. Stout, another engineer.⁸ And Basil Woon claimed the drink was created in Daiquirí but named by Cox at the Hotel Venus in Santiago de Cuba.⁹



Jennings Stockton Cox, Daiquiri (~1898).¹⁰

But these seriatim opinions on the origin of the Daiquiri concur on Cox's original recipe:

"Daiquiri" (Original Mr. Cox's.)

for 6 persons -

The Juice of 6 lemons

6 teaspoonsful of sugar

6 Bacardi cups. "Carta Blanca."

2 small cups of Mineral Water

Plenty crushed ice.

Put all ingredients in a cocktail shaker, and shake well.

Do not strain as the glass may be served with some ice.¹¹

⁸ CHARLES H. BAKER, JR., *THE GENTLEMAN'S COMPANION: AN EXOTIC DRINKING BOOK* 29-31 (1939).

⁹ BASIL WOON, *WHEN IT'S COCKTAIL TIME IN CUBA* (1928).

¹⁰ Jennings Stockton Cox, *Daiquiri Recipe* (1898) (unpublished manuscript) (on file in Carmen Puig Papers with the Cuban Heritage Collection at the University of Miami), <https://merrick.library.miami.edu/cdm/ref/collection/chc0484/id/147>.

¹¹ *Id.* (while Cox's recipe specifies "lemons," he probably meant limes or "limon verde," as lemons were not grown in Cuba at the time.)



Lucius W. Johnson

Supposedly, the Daiquiri made its stateside debut in 1910, when Lieutenant Lucius W. Johnson of the United States Navy brought it from Cuba.¹² When the U.S.S. Minnesota docked in Daiquiri, Johnson and a group of sailors disembarked for some “R&R.” Cox greeted them at the dock and invited them back to his bungalow for refreshments, which naturally meant Daiquiris. Apparently, Cox had refined his recipe in the meantime:

When we were pleasantly relaxed he prepared for us a drink which brought quick relief to our arid throats. He

¹² LUCIUS W. JOHNSON, *Early Days of a Cocktail: The Daiquiri In Cuba and Baltimore*, THE EVENING SUN (Baltimore), August 22, 1952, at 14 (the Daiquiri Lounge at the Army and Navy Club features a brass plaque commemorating Johnson’s introduction of the Daiquiri to the United States).

had put it together, he told us, to make the locally produced rum more agreeable to the foreign taste. It had been christened the Daiquiri in honor of its birthplace.

His technique was simple, with each drink prepared in its own glass. Over cracked ice he poured two jiggers of rum, then added a level teaspoonful of sugar. Next, he squeezed into each glass the juice of a lime, being careful to include some of the oil from the skin. The mixture was stirred gently, and in that humid climate, the glass quickly became frosted.¹³

In any case, Johnson loved the drink and brought home a gallon of rum, which he used to mix Daiquiris at the Army and Navy Club in Washington, D.C.¹⁴

If Johnson introduced the Daiquiri to the United States, then literature made it iconic. F. Scott Fitzgerald offhandedly mentioned the drink in a 1920 novel.¹⁵ But it truly owes its fame to Ernest Hemingway, who drank untold numbers of Daiquiris at the La Florida Bar in Havana, better known as the Floridita. Hemingway became a regular in 1932, and soon created his own recipe, a sugar-free double Daiquiri that became known as the “Hemingway Special” or “Papa Doble.”¹⁶

Hemingway would shudder at what the Daiquiri has become. The archetypal Daiquiri is simple and austere, consisting of white rum, lime juice, and a little sugar, shaken with ice and strained into a cocktail glass. But today, the “Daiquiri” of the hoi polloi is a rum Slurpee, available in a rainbow of colors and an assortment of artificial flavors.

D. The Bacardi Cocktail

The Bacardi cocktail is essentially a variation on the Daiquiri, consisting of white rum, lime juice, and grenadine. But historically, mixologists provided a congeries of different recipes for the Bacardi cocktail, including a panoply of different ingredients.¹⁷

Ironically, the key ingredient in the paradigmatic Bacardi cocktail is not Bacardi rum, but grenadine, which gives the cocktail its characteristic

¹³ *Id.*

¹⁴ *Id.* Johnson was a member of the United States Navy Medical Corps and retired as a Rear Admiral. He also introduced the Daiquiri to the University Club of Baltimore, the Army and Navy Club of San Francisco, and Navy clubs in Guam and Manila.

¹⁵ F. SCOTT FITZGERALD, *THIS SIDE OF PARADISE* 106 (1920) (“‘Oh, he’s all right. Here’s the old jitney waiter. If you ask me, I want a double Daiquiri.’ ‘Make it four.’”).

¹⁶ PHILIP GREENE, *TO HAVE AND HAVE ANOTHER: A HEMINGWAY COCKTAIL COMPANION* 75–77 (2012).

¹⁷ *See infra* Appendix.

rosy hue. When made with neon-red Rose's Grenadine, the drink is colorful but one-dimensional. However, it is sublime when made with real pomegranate grenadine.¹⁸

Incidentally, the word "grenadine" was itself the subject of a trademark infringement action. In the mid-19th century, a pomegranate or "grenade" syrup was popular in France. In 1870, a man named Rillet began manufacturing pomegranate syrup in the United States and selling it as "Grenade Syrup" or "Grenadine." Several months later, a man named Carlier also began making and selling "Grenade Syrup." Rillet sued Carlier for trademark infringement, and Carlier responded that Rillet could not claim an exclusive right to use the foreign name for a product simply by using it first. But the court found for Rillet, holding that the term "grenade syrup" had acquired secondary meaning:

It is undisputed that he has spent a large amount of money in establishing a business in selling the article known by that name. The plaintiff has acquired, by such adoption, a property in the use of those words, as applied to a syrup he has made and introduced into the market. The defendant can have no possible motive in using these words, except to avail himself of the reputation the plaintiff's article has gained under this name. The fact that the defendant uses other words in connection with the words "Grenade Syrup" does not give him the right to use the words "Grenade Syrup." . . . The name used by the defendant is well calculated to deceive the public, and I cannot perceive of what value they can be to the defendant for any other purpose.¹⁹

In any case, the first-known record of the standard recipe for the Bacardi cocktail appeared in *The Oakland Tribune* on November 13, 1913, albeit without its iconic name:

Here's New Cocktail; Rum and Grenadine

There's a new cocktail in town – a fresh importation from New York.

¹⁸ While real pomegranate grenadine is scarce in the United States, it is easy to make. Simply mix equal parts fresh pomegranate juice and white sugar and add a dash of orange blossom water, which is available at any middle eastern grocery.

¹⁹ *Rillet v. Carlier*, 61 Barb. 435, 436 (1870).

Take half a whiskey glass of Porto Rican rum, add the juice of half a lime and dash into it a squirt of grenadine; shake with ice.

This was introduced by Rhys Thomas, who in the later 90's was the leading tenor at the Tivoli Opera House and is being entertained by his old Bohemian Club friends, after an absence of fourteen years.

Thomas, who is a lineal descendant of that Sir Rhys Thomas, the hardy Welsh knight who slew Richard III on Bosworth field, has quit being a tenor and gone into a more lucrative, if less elevating, connection with a paint manufacturer.

He tried out his new cocktail on Theodore Vogt, who, being a hardy soul, was at last accounts a survivor.²⁰

The Bacardi cocktail first appeared by name in Jacques Straub's 1914 book "Drinks."²¹ He provided the following recipe:

Bacardi Cocktail.

½ pony grenadine syrup.

⅔ jigger Bacardi rum.

Juice of half a lime.

Shake well. Strain. Serve.²²

Straub also provided a recipe for the "daiguiri" or daiquiri:

Daiguiri Cocktail.

⅔ jigger lime juice.

⅓ jigger rum.

1 barspoon powdered sugar.

Shake well in fine ice; strain into cocktail glass.²³

A similar version of the Bacardi cocktail also appeared in Tom Bullock's 1917 book, "The Ideal Bartender."²⁴ Bullock provided two

²⁰ *Here's New Cocktail; Rum and Grenadine*, THE OAKLAND TRIBUNE, November 13, 1913, at 16. Vogt was a popular composer, conductor, and musician.

²¹ JACQUES STRAUB, DRINKS 1, 18 (1914). Straub was the wine steward at the Blackstone in Chicago and had previously worked at the Pendennis Club in Louisville, Kentucky.

²² *Id.*

²³ *Id.* at 24.

recipes for the Bacardi cocktail, but he did not provide a recipe for the daiquiri:

BACARDI COCKTAIL

Use a large Mixing glass.

Fill with Lump Ice.

jigger Cusiner Grenadine.

1 jigger Bacardi Rum.

Shake well and serve in a Cocktail glass.

BACARDI COCKTAIL—Country Club Style

Use a large Mixing glass.

Fill with Lump Ice.

½ Lime Juice.

2 dashes Imported Grenadine.

1 jigger Bacardi Rum.

Shake well; strain into Cocktail glass and serve.²⁵

The Daiquiri and the Bacardi cocktail both went on to become fixtures in the cocktail culture of the era and were featured in almost every cocktail book published in the 1920s and 1930s.²⁶ The recipe for the Daiquiri was relatively stable, but the recipe for the Bacardi cocktail varied wildly. Usually, it included grenadine, but not always. Sometimes, it incorporated other kinds of alcohol, especially maraschino.²⁷ And it often called for different kinds of citrus juice. For example, the Bacardi Company itself offered the following recipe for the Bacardi cocktail in 1928:

BACARDI COCKTAIL – In cocktail shaker with plenty of ice, one small wine glass of BACARDI, half this quantity of grape fruit juice — or preferably the juice of half a lime — sweeten to taste, shake well, strain and serve.²⁸

By the 1930s, it was widely recognized that cocktail recipes — and especially the recipe for the Bacardi cocktail — varied wildly from city

²⁴ TOM BULLOCK, *THE IDEAL BARTENDER* 5, 11 (1917). Bullock was a bartender at the St. Louis Country Club and the Pendennis Club of Louisville, Kentucky, for more than 25 years.

²⁵ *Id.* at 11.

²⁶ *See infra* Appendix.

²⁷ Maraschino is a liqueur made by distilling Marasca cherries, the small, slightly sour fruit of the Tapiwa cherry tree, which grows wild along the Dalmatian coast.

²⁸ Bacardi Advertisement, *THE GAZETTE* (Montreal), July 14, 1928, at 16.

to city and mixologist to mixologist. As the author of one cocktail book observed:

It is trite, but it is none the less accurate, to say that conditions have changed greatly in the last fifteen years. Good roads and good automobiles have made us almost a nomadic people. The evening frequently finds us two hundred or more miles from where we woke up in the morning. Nevertheless, although in the stay-at-home era a Bacardi cocktail was a Bacardi cocktail whether you drank it in Schenectady or Memphis, we have, under the pressure of circumstance and the necessity for make-shift and compromise, lost that much-to-be-desired homogeneity.

This book is being published, therefore, in the hope that it will contribute at least a little to the standardization of drinks and to the promotion of that happy state of affairs where, when you order your favorite cocktail, you will get exactly the sensation your hopeful taste-buds have been anticipating, no matter what corner of this bright and beautiful land you happen at the moment to be inhabiting.²⁹

But if the recipe for the Bacardi cocktail was uncertain, its popularity was not. Whatever drinkers were calling a “Bacardi cocktail,” they liked it. Before long, it was the drink of choice, even eclipsing old standbys like the Old Fashioned and the Martini. Perhaps the implicit license to improvise only increased its appeal.

IV. BUILDING THE BACARDI TRADEMARK

By the turn of the century, the Bacardi Company was the overwhelmingly dominant supplier of white rum to the United States. The ubiquity of Bacardi rum gradually encouraged many consumers to use “bacardi” as a synonym for white rum. And cocktail books often called white rum “bacardi” or used the terms interchangeably.³⁰

The Bacardi Company’s first big opportunity to crack the American market came when Prohibition began on January 17, 1920. Americans continued to drink at home and in speakeasies, but many also visited

²⁹ PATRICK GAVIN DUFFY, *THE OFFICIAL MIXER’S MANUAL* v-vi (1934) (ironically, Duffy does not specify the provenance of the Bacardi cocktail included in his book).

³⁰ See, e.g., JUDGE, JR., *HERE’S HOW AGAIN!* 8 (1929).

nearby Cuba, where booze was both legal and inexpensive. While Cuban bars offered American tourists whatever they wanted to drink, most of them wanted Bacardi rum, typically in a daiquiri or Bacardi cocktail. And when they got home, they expected speakeasies and bootleggers to offer Bacardi rum as well.

The architect of Bacardi's transformation into an international brand was Enrique Schueg, who married Bacardi's daughter, Amalia Bacardi Moreau, and became the president of the Bacardi Company in 1922. Under Schueg's leadership, Bacardi marketed Cuba as the home of rum and Bacardi as the king of rums.

The tendency to equate "white rum" and "bacardi" only increased during Prohibition. Many bootleggers and speakeasies sold generic white rum (or rough approximations thereof) as "Bacardi."³¹ Everyone knew it was counterfeit, but no one really cared. In 1930, the New York Times used the word "Bacardi" to mean "rum from Cuba":

Today's word "rum," used in a broad sense to designate all kinds of forbidden liquors, may refer to the "corn" of the South, Bacardi from Cuba, apple-jack or "Jersey lightning," or the "red ink" of Greenwich Village.³²

And it was hardly alone. The chairman of the Cuban-American Good-Will Dinner did the same:

"This exhibit," he said, "will repudiate the popular fallacy in American that Cuba produces only sugar, tobacco and bacardi."³³

While some cocktail books recognized that "Bacardi" was a brand name, others used it as a synonym for "Cuban rum":

Another ardent spirit, rum, is distilled from molasses or cane sugar. Perhaps the most appreciated brand known to Americans is Bacardi, produced in Cuba.³⁴

Bacardi Rum is peculiar to the Island of Cuba. The name "Bacardi" is a brand name. Its exact making is a secret, but it is well established that it is a distillation of a mixture of molasses and sugar cane juices. There are

³¹ WOON, *supra* note 9, at 259–60.

³² *Some Variations of Rum in Colonial Days*, N.Y. TIMES, Feb. 16, 1930, at 91 ("red ink" was a slang term for red wine).

³³ *Cuba to Show Foods Here.: Varied Produce to Be Displayed at Good-Will Dinner Friday*, N.Y. TIMES, Mar. 23, 1930, at 6.

³⁴ OSCAR OF THE WALDORF, 100 FAMOUS COCKTAILS 10 (1934).

also other “Bacardi Type” rums from Cuba, and some of them deserve high credit and praise.³⁵

Bacardi rum, one of the few liquor brands which won most of its reputation in this country during the dry regime, is a cane syrup, rather than a molasses rum, and has a lighter body and flavor than the rums from most of the other islands.³⁶

RUM

Rum is a flavorsome spirit distilled from cane sugar, the latter usually being the residual sugar in the manufacture of molasses The distinctive sweet taste of rum makes it an admirable flavoring for both food and drink. Rum or Planters’ punch has put Jamaica on the map, while Constantino’s expert handling of Bacardi rum at the Florida Bar has made Havana a holy city.³⁷

Rum

An abbreviation of “Rumbullion.” Rum is a spirit distilled from the juice of the sugar cane — and also from molasses in countries where the sugar cane is not cultivated. The best qualities of Rum are made in the West Indies, and are named after the places of manufacture, viz., Jamaica Rum, Antigua Rum, and Grenada or St. Croix Rum, or Bacardi Rum.³⁸

RUM—Generally, the name of any alcoholic liquor Specifically, an alcoholic liquor distilled from fermented molasses, or cane juice. Varieties usually named from country of origin—Jamaica, Swedish, St. Croix (West Indies), Cuban—better known as Bacardi or Santiago—and Japanese (usually called Sake and distilled from fermented rice).³⁹

Even the Bacardi Company itself ruefully acknowledged the volume of counterfeit Bacardi rum flooding the American market:

³⁵ THE ART OF MIXING DRINKS: HELPFUL HINTS FOR THE HOSTESS 16 (Deluxe 4th ed. 1935).

³⁶ FRANK A. THOMAS, WINES, COCKTAILS AND OTHER DRINKS 142 (1936).

³⁷ CHARLES BROWNE, THE GUN CLUB DRINK BOOK 32 (1939).

³⁸ JULIEN J. PROSKAUER, WHAT’LL YOU HAVE? 61 (1933).

³⁹ ALBERT STEVENS CROCKETT, OLD WALDORF BAR DAYS 238 (1931).

Bacardi tells of a recent visit to New York, where he was taken by friends to visit a speakeasy. The party ordered Bacardi cocktails and one sip was enough to tell the manufacturer that the product was spurious.

The proprietor declared with heat that he had been selling Bacardi for 20 years and would vouch for its genuineness. Bacardi answered that he had been making it for 35 years.⁴⁰

The repeal of Prohibition on December 5, 1933, was another boost for the Bacardi Company's fortunes. Thirsty Americans had developed a powerful taste for white rum, which they called "Bacardi." The brand was virtually a license to print money.⁴¹ But only if the Bacardi Company could keep it exclusive. And many of Bacardi's competitors hoped to sip from the overflowing bowl.

A. *Ersatz "Bacardi"*

In 1934, Augusto Diaz Briot incorporated the American Bacardi Rum Corporation in New York, applied for a distilled spirits rectifying permit in Connecticut, and filed a trademark registration application in Ohio for the word mark "American Bacardi" and an eagle logo, in relation to the sale of rum.⁴² The Bacardi Company immediately filed a trademark infringement action in New York state court, requesting an injunction. American Bacardi responded that one of its owners was named Bacardi and claimed that he was entitled to give his name to the company he co-owned.⁴³

Supreme Court Justice John L. Walsh granted the injunction, holding that "Bacardi" was a valid trademark adopted by the defendant only to deceive consumers about the source of its products.⁴⁴ But Walsh went on to observe that the trademark "Bacardi" was entitled to special protection:

There is another principle involved here. The name Bacardi is so identified with a certain rum that it is

⁴⁰ *Prohibition to Remain Forever*, CIN. ENQUIRER, Dec. 30, 1928, at 67.

⁴¹ See generally TOM GJELTEN, BACARDI AND THE LONG FIGHT FOR CUBA: THE BIOGRAPHY OF A CAUSE (2008).

⁴² *Day in Washington*, HARTFORD COURANT, Apr. 3, 1934, at 2; *Notice of Registration of Marks of Ownership on Personal Property State of Ohio*, EVENING INDEP. (Massillon, Ohio), Feb. 1, 1934, at 8.

⁴³ *Compania "Ron Bacardi" S.A. v. Am. Bacardi Rum Corp.*, 63 N.Y.S.2d 610, 610 (Sup. Ct. 1934).

⁴⁴ *Id.* at 610–11.

almost a common noun. When a family name has reached that stage of alteration in meaning and the product is of a high quality so that, as here, the name 'Bacardi' really means 'Rum which consumers may rely on for quality because it bears the name Bacardi,' no one else can put out a similar article and call it Bacardi because that use of the name no longer connotes its usual meaning. For an extreme application of this rule, see *Tiffany & Co. v. Tiffany Productions, Inc.*, . . . where a jeweler restrained a theatre from using the name. That case was decided so because everything had been done to connect the jeweler in the public mind with the defendant. Even a jewel was used as a brand.⁴⁵

While Walsh's conclusion that the "American Bacardi" mark infringed the "Bacardi" mark was surely correct, his subsequent remarks reflect considerable confusion about the function and purpose of trademark law. The *Tiffany* case was an early application of the concept of trademark dilution, or the protection of goodwill, in the absence of consumer confusion. For better or worse, the court enabled Tiffany to prevent non-competing uses of its name because consumers might associate those uses with Tiffany, even if they were not confused.

But Walsh seems to be talking about genericide, not dilution. If the word "bacardi" was indeed "so identified" with white rum that it had become a "common noun," then "bacardi" had become a generic term, at least in relation to identifying the nature of the product. Trademark law is supposed to police the commercial use of proper names, not common nouns. If consumers actually used "bacardi" as a synonym for "white rum," then Bacardi's competitors should have been able to use the word "bacardi" to identify the nature of their product, so long as they didn't imply that the Bacardi Company was the source of their product.

In other words, Walsh reached the right outcome, because American Bacardi chose its name to make consumers associate it with the Bacardi Company. But if American Bacardi had chosen a non-infringing name, such as "Briot Rum" and marketed its product as "Briot bacardi," it might not have been infringing. Tellingly, in 1935 the New York Times specifically observed that "Bacardi" was one of a great many "proper names" that had become nouns: "To the lexicographer it would seem that they have all been washed out with the aid of Gordon or Bacardi."⁴⁶

⁴⁵ *Id.* (citing *Tiffany & Co. v. Tiffany Productions, Inc.*, 264 N.Y.S. 459 (1932)).

⁴⁶ Frank H. Vizetelly, *Proper Names Give Us New Words*, N.Y. TIMES, Dec. 8, 1935, at SM17.

B. For Want of Bacardi a Lawsuit was Lost

But the Bacardi Company wasn't content to stop its competitors from calling their rum "bacardi." It wanted to force bartenders to serve Bacardi rum as well.

By 1936, Bacardi rum was wildly popular in the United States. Under Schueg's leadership, the Bacardi Company had expanded to Puerto Rico and could sell its rum duty-free in the United States. Many Americans were drinking their Bacardi in the form of a Bacardi Cocktail. But many Bacardi Cocktails weren't made with Bacardi rum. As different brands of rum became available in the United States, bartenders began making "Bacardi cocktails" with whatever they had on hand. Schueg saw an opportunity to sell both his rum and his brand.

In early 1936, the Bacardi Company filed a trademark infringement action against the Barbizon-Plaza Hotel and the Wivel Restaurant in the New York Supreme Court for New York County.⁴⁷ According to the Bacardi Company, both defendants "served as Bacardi cocktails a concoction containing no rum made by the Bacardi Company," and because "no other rum maker could use the name Bacardi, hence to call cocktails made with other rums Bacardi was a fraud."⁴⁸

Initially, the court denied Bacardi's request for a preliminary injunction, because the Bacardi Company failed to show that consumers expected bartenders to make Bacardi Cocktails using only Bacardi rum:

Supreme Court Justice Rosenman decided yesterday that Bacardi cocktails need not contain the brand of rum originated in 1862 by Facundo Bacardi at Santiago de Cuba and now manufactured by the Companie Ron Bacardi, a family corporation which took over the product in 1919. On the ground that the Bacardi family devised the Bacardi cocktail, suit was brought to restrain the Barbizon-Plaza Hotel and the Wivel Restaurant from selling Bacardi cocktails unless they contained Bacardi rum. The Bacardi Company alleged that by substituting other rum in the cocktails the defendants were misrepresenting the drinks sold.

"The plaintiff does not show sufficient clearness to warrant a temporary injunction that in practice and

⁴⁷ The Wivel Restaurant was a Scandinavian smorgasbord restaurant established in 1928 at 254 W. 54th Street. The Barbizon-Plaza Hotel was built in 1930 and was located at 106 Central Park South. Today it is the Trump Parc Apartments.

⁴⁸ Supposedly, the Bacardi Company had sent private investigators to order Bacardi cocktails from both defendants and record what brand of rum the bartender used.

understanding Bacardi cocktails must necessarily contain the product of the plaintiff,” said Justice Rosenman in refusing a restraining writ. “The plaintiff’s particular brand of rum has not been shown to be essential in the public mind to the drink known as ‘Bacardi cocktail.’”⁴⁹

The Appellate Division affirmed Rosenman’s decision, and the action proceeded to trial before Justice Walsh.⁵⁰ It was a bit of a circus, as the parties called a wide range of witnesses:

Many experts testified on the stand. They included an impressive roster of Bacardi bartenders; a former secretary of state of New York, who proudly admitted he was the man who introduced the Bacardi cocktail to the metropolis; a golf club mixologist, who takes care of the wants of the judge sitting in the matter; and several famous New Yorkers.⁵¹

On April 27, 1936, the Bacardi Company called Justice Walsh’s bartender, who testified that he always used Bacardi rum to make a Bacardi Cocktail:

André Guex, bartender at the New York Athletic Club and in the Summer a concocter of cooling beverages for the Deal Beach Golf Club, was a witness yesterday before Supreme Court Justice John L. Walsh, who is a member of both. Guex was called by the Compania Ron Bacardi, manufacturer of the Cuban rum of that name, in a suit against the Barbizon Plaza Hotel and Wivel’s Restaurant to restrain them from selling Bacardi cocktails which do not contain the company’s product.

When Guex took the stand, the court took over the questioning:

“You are under oath now, André,” said Justice Walsh. “What kind of rum have you been serving me when I asked for a Bacardi cocktail?”

⁴⁹ *Loses Cocktail Suit.: Bacardi Firm Fails to Prove Use of Its Rum Is Essential*, N.Y. TIMES, Jan. 31, 1936, at 21.

⁵⁰ *Compania “Ron Bacardi,” S.A. v. B.P. Hotel Co.*, 247 A.D. 771, 771 (N.Y. App. Div. 1936); *Compania “Ron Bacardi,” S.A. v. Wivel Rest., Inc.*, 247 A.D. 771, 771 (N.Y. App. Div. 1936); *see also Cocktail Decision Upheld*, N.Y. TIMES, Mar. 14, 1936, at 17.

⁵¹ *A Cocktail in Court*, MONT. STANDARD, June 1, 1936, at 4.

“Bacardi rum,” replied the witness, who said he always made them that way.

The defense contended that a daiquiri also contains Bacardi rum, but is not known as a Bacardi cocktail.⁵²

On April 28, 1936, the defendants called a series of bartenders and restaurateurs, who testified that a Bacardi cocktail could be made with any kind of white rum. “Before the court announced its decision, several bartenders paraded to the witness stand, called by the defendants. Most of them agreed that they used any bottle of rum that was handy when a customer asked for a Bacardi cocktail, but added that when a patron specifically requested Bacardi he got it.”⁵³

Unfortunately for the defendants, one of their witnesses also quite candidly admitted that restaurants often misrepresented the ingredients in their fare:

Bartenders Are Witnesses

The injunction was handed down following a long hearing during which bartenders from many of the best-known hotels and bars in the city testified. They gave in detail the contents of not only the Bacardi cocktail but many other drinks and the methods of mixing them.

The discussion of chicken sandwiches and beef stews came up in cross-examination by Stewart Maurice, counsel for the plaintiff. Richard Nathans, owner of a grill, had testified that a Bacardi cocktail is made with lemon juice, grenadine and Carioca rum. Mr. Nathans is president of the New York Restaurant Board of Trade.

Mr. Maurice wanted particulars.

“What kind of meat do you put in a chicken sandwich?” he asked.

⁵² *Justice Examines His Club Bartender: Takes Opportunity of Having Him on Stand to Find Out What Goes into His Drinks*, N.Y. TIMES, Apr. 28, 1936, at 44. According to Professor Alexandra J. Roberts, calling the judge’s bartender as an expert witness would be frowned on today. E-mail from Alexandra J. Roberts to Brian L. Frye (July 15, 2018) (on file with author).

⁵³ *Rules a Bacardi Cocktail Must Have Bacardi in It: New York Judge Says Otherwise It’s a “Subterfuge and Fraud” in Issuing Injunction for Rum Company*, EVENING SUN (Baltimore, MD), Apr. 29, 1936, at 3.

"Turkey, the same as in any other restaurant," came the answer.

"And what do you put in beef stew?"

"We use the trimmings of very good meat."

"Do you use the trimmings of beef?"

"Yes," Mr. Nathans answered.

"Then," said Mr. Maurice, "the name by which you sell your wares to the public has very little relation to the ingredients you use."

"Oftentimes it has," was the answer.

Tell of Drinks Served

The defendants called as witnesses bartenders from the Stork Club, Jack Delaney's, the Westchester-Biltmore, the Stephens House at Lake Placid and from hotels in Bermuda. Most of them agreed that they use any bottle of rum handy when a customer asks for a Bacardi cocktail. They admitted, however, that when the patron requested it specifically, it was served.

During the hearing, Justice Walsh denied a motion by the defense for an adjournment to allow time for depositions to be taken in Cuba as to an alleged practice of the Bacardi company in bottling, under its own name, rum purchased from other manufacturers.⁵⁴

Walsh was unimpressed by the defense, and issued an injunction "prohibiting the Barbizon-Plaza Hotel and the Wivel Restaurant, in West 64th Street, from serving Bacardi cocktails containing other than the rum manufactured by the Compania Ron Bacardi."⁵⁵ "The court finds as a clear, preponderating, and even that which would be exacted in a criminal situation, beyond a reasonable doubt, that Bacardi rum left out of a Bacardi cocktail is not a Bacardi cocktail, and that otherwise it is a

⁵⁴ *Cocktails Must Live up to Name: Court Decides Bacardi Drink Should Contain Product Implied by Label*, N.Y. TIMES, Apr. 29, 1936, at 23.

⁵⁵ *Id.* Unfortunately, Walsh's opinion was not published.

subterfuge and fraud upon the purchasing public, that when a Bacardi cocktail is asked for, other than Bacardi rum cannot be used.”⁵⁶

The reaction to Walsh’s ruling was mostly mockery. Many commentators ridiculed the triviality of the dispute:

Fellow barflies, you’ve been guzzling Bacardi cocktails that weren’t Bacardi cocktails at all, but that won’t happen again, you betcha.

Because Justice John L. Walsh, in Supreme Court, Manhattan, yesterday scotched (pun, ooh!) the nefarious practice of serving phony Bacardis. Walsh issued an injunction that no bartender may fiddle with, unless he wants to land in the pokey for contempt of court.

This was done because bartenders from Sheridan Square to Lake Placid testified they reached for the first bottle of Cuban rum handy when a citizen ordered a Bacardi.

...

P.S.A. Bacardi is made of Bacardi rum, lime or lemon juice, and grenadine. You can leave out the grenadine if you like drinks that don’t lean to the sissy side.⁵⁷

In a similar vein:

A famous and expensive hotel in New York advertises Bacardi cocktails. Cocktail drinkers have evinced a preference for such a brand of liquid material. But on the showing that they did not contain the named contents but something inferior, and the case having been properly brought before the court, a ruling came down from Justice Walsh that a cocktail given a certain name must qualify by its ingredients accordingly. When is a Bacardi not a Bacardi was satisfactorily answered in the argument, “when it is served by this particular hotel.” A lot of bartenders were arrayed and said that for the entitled cocktail they put in any rum they had handy, although when a customer insisted on the name and

⁵⁶ *Rules a Bacardi Cocktail Must Have Bacardi in It: New York Judge Says Otherwise It’s a “Subterfuge and Fraud” in Issuing Injunction for Rum Company*, *supra* note 53, at 1, 3.

⁵⁷ Jack Alexander, *Court Puts Stopper on Phony Bacardis*, DAILY NEWS, April 29, 1936, at 43.

contents agreeing, they gave him satisfaction by making them agree.

There was a lot of other testimony to the fact that names were not of much account as when a restaurant proprietor was asked what went into chicken sandwiches he answered, turkey. The hotel, however, that wishes to advertise one thing and concoct another for a pleasurable journey past the seeking epiglottis of the customer, may have sixty days to appeal, and to show that even if a Bacardi is not a Bacardi it doesn't matter.⁵⁸

Likewise:

The court ruling that a Bacardi cocktail must contain Bacardi will be quite a shock to the bootleggers of a few years ago who had no idea they were doing anything illegal.⁵⁹

And more obliquely:

Justice John L. Walsh of the New York supreme court has handed down a decision that the Bacardi cocktail must have Bacardi rum as a base or it is not a Bacardi cocktail. It is to be hoped that he may never be called upon for a ruling on the Horse's Neck.⁶⁰

Others observed that cocktail recipes typically demand a particular kind of liquor, not a specific brand:

Can a cocktail, which derives its name from a basic liquor manufactured by one company only, be legally compounded with some other kind of liquor and sold under the established name to the unsuspecting customer? Justice Walsh answers that question with a resounding 'No,' and issues an injunction restraining the deceitful.

The secret of manufacturing Bacardi rum is supposed to reside with the Bacardi family, under whose auspices it is produced in Cuba. A Bacardi cocktail is presumed to

⁵⁸ *Name and Content of Cocktails*, WILKES-BARRE TIMES LEADER, May 18, 1936, at 10.

⁵⁹ DAYTON DAILY NEWS, June 15, 1936, at 10.

⁶⁰ *Might Test His Logic*, FITCHBURG SENTINEL, May 14, 1936, at 6.

have that sort of rum, and no other, as its base. But, according to the testimony given before Justice Walsh, other rums are substituted by none too scrupulous barkeeps with a conviction that none but the most highly educated palates can detect the difference. And really educated palates do not abound. Therefore Justice Walsh rules that 'subterfuge' and 'fraud' have been perpetrated and that the Compania Ron Bacardi is entitled to an injunction.

Not many cocktails call for a specific brand of liquor. Any specimen of rye, whether in a state of infancy, adolescence or old age, may be used for a Manhattan. The gin that goes into a variety of cocktails is left to the discretion of the mixer unless the consumer otherwise directs. When the base is supposed to be Jamaica rum, not all of it, we may be sure, comes from Jamaica. Haitian rum, Puerto Rico rum, and rum from the Virgin Islands are handy substitutes against which no court injunction has yet been asked.⁶¹

And some poked fun at the idea of ordering a Bacardi cocktail in the first place:

The Bacardi Cocktail should have Bacardi rum in it. Three years ago in Bermuda, we ordered a Bacardi cocktail, on the invitation of Finley Peter Dunne. His buddy, Charles MacDonald, sent it back, saying, "Don't let any friend of yours drink anything but Barbados."⁶²

In any case, there was a general suspicion that the lawsuit was motivated more by marketing than any real dispute:

The great Bacardi suit, where the verdict decreed that a "Bacardi" cocktail must be made with no other type of rum is being hailed as an ingenious bit of press agency for the Schenley Company, Bacardi agents.⁶³

⁶¹ *The Cocktail in Court*, BROOK. DAILY EAGLE, May 2, 1936, at 14.

⁶² F.P.A., Opinion, *The Conning Tower*, OAKLAND TRIBUNE, May 6, 1936, at 17.

⁶³ *This New York*, ST. LOUIS POST-DISPATCH, May 10, 1936, at 74.

On April 2, 1937, the Appellate Division, First Division affirmed the Supreme Court's decision.⁶⁴ As the Brooklyn Daily Eagle reported:

Unless a Bacardi cocktail contains the real McCoy, it cannot be listed as a Bacardi cocktail . . . If it lacks Bacardi rum, no bartender's concoction can be called a Bacardi cocktail, the court ruled in its approval of an injunction restraining the Barbizon-Plaza Hotel and the Wivel Restaurant, both of Manhattan, from substituting domestic rum for the Cuban product when filling an order calling for a Bacardi cocktail.⁶⁵

Almost immediately, the Schenley Import Corporation began using the New York Supreme Court decision as the centerpiece of its advertising campaign for Bacardi rum, insisting that it was now illegal to make a Bacardi cocktail with anything but Bacardi rum.⁶⁶

⁶⁴ *Compania "Ron Bacardi," S.A. v. B.P. Hotel Co.*, 250 A.D. 837, 837 (N.Y. App. Div. 1937); *Compania Ron Bacardi, S.A. v. Wivel Rest.*, 250 A.D. 838, 838 (N.Y. App. Div. 1937).

⁶⁵ *'Must Be Bacardi' Decision is Upheld*, BROOK. DAILY EAGLE, April 3, 1937, at 11; *see also Bacardi Decision Affirmed*, N.Y. TIMES, April 3, 1937, at 16.

⁶⁶ "A Summer newspaper campaign will be started next week for Bacardi rum by Schenley Import Corporation, with copy featuring the New York State Supreme Court ruling that a Bacardi cocktail can only be made with Bacardi rum. The campaign, which will run through Labor Day, will appear in newspapers of cities throughout the country. Lawrence C. Gumbinner Advertising Agency has the account." *Bacardi in Summer Drive*, N.Y. TIMES, June 24, 1940, at 29.

APPELLATE COURT SUSTAINS BACARDI COCKTAIL DECISION

A year ago the New York Supreme Court ruled that a *Bacardi Cocktail* must be made with *Bacardi*.

Last week, the Appellate Division of the New York Supreme Court unanimously affirmed this ruling. Thus your rights are legally protected—when you order a Bacardi Cocktail it *must* be made only with Bacardi.

Famous Bacardi Cocktail Recipe

Juice of half a lime, $\frac{1}{2}$ teaspoon of sugar, 1 jigger of Bacardi—shaken well in cracked ice.

ONLY BACARDI MAKES

BACARDI

NO IMITATION CAN ACHIEVE ITS FLAVOR

IT TAKES BACARDI TO MAKE
A BACARDI COCKTAIL



COPY, 1937, SCHENLEY IMPORT CORP., N.Y., N.Y.

Interestingly, Schenley's advertisements uniformly claimed that a "Bacardi Cocktail" consisted of Bacardi rum, lime juice, and sugar — what most people would call a "Daiquiri." Some later advertisements

conceded that a Bacardi Cocktail “may be made *dry* without grenadine or *sweet* with grenadine.”

It's your right....!

It's your right not to listen to your barber! When you want to relax in blissful silence, and your barber stands there talking your ear off . . . it's your right to doze off and not listen to a word he says!

It's your right to get a Bacardi Cocktail as it should be made! When you order this delightful drink, it *must* be made with Bacardi or it isn't a Bacardi Cocktail. The Supreme Court of New York has ruled so!

And it's your pleasure to enjoy Bacardi . . . smooth, mellow, *unequaled* in flavor . . . in your Cocktail. Try one. It may be made *dry* without grenadine, or *sweet* with grenadine. But insist on your right to Bacardi. (There's an ample supply available!)

Even the LAW^{*} says...In a Bacardi Cocktail
**Nothing can Replace
BACARDI**

* Ruling of the N. Y. Supreme Court, April 28, 1936: A Bacardi Cocktail MUST be made with Bacardi. RUM—89 Proof—Bacardi Imports, Inc., New York, N.Y.

V. THEY'RE ALL OUT OF LIQUOR, LET'S FIND ANOTHER PARTY

*My head may go reeling,
But my heart will be obedient,
With intoxicating kisses,
For the principal ingredient.*⁶⁷

Of course, any barfly knows that the New York Supreme Court decision touted by Bacardi was enforced almost entirely in the breach. The court held that a “Bacardi cocktail” had to include Bacardi rum,

⁶⁷ SPIKE JONES AND HIS CITY SLICKERS, COCKTAILS FOR TWO (RCA Victor) (1945).

because the name of the drink implied the brand. But the Bacardi cocktail was immensely popular, and bartenders surely continued to mix the drink with whatever they had on hand, presumably after ensuring that their patron was not particular about the brand of rum they used. As always, thrifty imbibers would have appreciated the discount accompanying off-brand rum. And one suspects that not a few Bacardi bottles were surreptitiously refilled with generic white rum.

Of course, “passing off” one product as another is wrong and illegal.⁶⁸ But there was no risk of consumer confusion when a thirsty socialite ordered a “Bacardi cocktail” knowing that it would not necessarily contain Bacardi rum, especially because people habitually used “bacardi” as a synonym for “white rum.” Many drinkers probably didn’t realize that Bacardi was a brand name, not a type of rum. When they asked for a Bacardi cocktail, should the bartender have obeyed what they said, or what they meant?

Or to put it another way, if consumers create the recipe for a generic product and name it after a branded product, should producers be obliged to use the branded product in the recipe, even if consumers are indifferent or know that the producer is using an off-brand product? The court said yes, but it’s hard to see why so long as consumers are neither misled nor confused about what they are getting.

Inevitably, with the resurgence of cocktail chic in the 21st century came the return of cocktail litigation. In 2009, Gosling Brothers Limited threatened to file a trademark infringement action against Imbibe, a magazine dedicated to cocktail culture for publishing a recipe for the Dark ‘n’ Stormy cocktail that suggested using Zaya rum.⁶⁹ Traditionally, a Dark ‘n’ Stormy consists of Gosling’s Black Seal rum and ginger beer, and Gosling Brothers had registered a trademark on the “Dark ‘n’ Stormy” as a cocktail consisting of Gosling’s Black Seal rum and ginger beer.⁷⁰ While Gosling Brothers never actually filed an infringement

⁶⁸ See, e.g., 15 U.S.C. § 1125 (2012).

⁶⁹ Zaya Gran Reserva rum is made in Trinidad and Tobago. See INFINIUM SPIRITS, <http://infiniumspirits.com/brands/zaya/#1934> (last visited Sept. 1, 2018).

⁷⁰ See Gosling’s Black Seal rum is made in Bermuda. See <https://www.goslingsrum.com/about-us/our-story> (last visited Sept. 1, 2018). Gosling Brothers initially filed a trademark application on October 17, 1984, which it abandoned on January 27, 1986. U.S. Trademark Application Serial No. 73504235 (filed Oct. 17, 1984). It then filed an application for a pre-mixed cocktail consisting of rum and ginger beer on January 11, 1988, which was registered on September 17, 1991. PRE-MIXED ALCOHOLIC COCKTAIL, NAMELY RUM AND GINGER BEER, Registration No. 1657574. And it filed an application for “A kit containing Gosling’s BLACK SEAL rum and ginger beer for preparing an alcoholic cocktail” on November 7, 2007, which was registered on July 8, 2008. A kit containing Gosling’s BLACK SEAL rum and ginger beer for preparing an alcoholic cocktail, Registration No. 3461485.

action, mixologists took notice and wondered whether companies could — and should! — be able to prescribe the ingredients in a cocktail.⁷¹

And then, in 2011, Pusser's British West Indies Limited actually filed a similar trademark infringement action against Painkiller, a bar in New York City.⁷² Pusser's had registered a trademark on the "Painkiller" as a cocktail consisting of "fruit juices and cream of coconut or coconut juice and Pusser's rum."⁷³ But the bartenders at Painkiller preferred to use a different rum, and Pusser's objected. This time, mixologists were outraged, especially because the Painkiller was actually created at the Soggy Dollar Bar in the British Virgin Islands in 1971, and didn't necessarily include Pusser's rum.⁷⁴ Nevertheless, Painkiller bar settled, agreed to rename itself PKNY, and took the Painkiller off its menu.⁷⁵

In the wake of those disputes, and in light of the ever-increasing commercial value of cocktail innovations, some mixologists have contemplated claiming intellectual property protection for their creations.⁷⁶ Can they succeed? And should they? For better or worse,

⁷¹ See Jonathan Miles, *The Right Stuff (by Law)*, N.Y. TIMES, July 5, 2009, at 7; see also Paul Clarke, *The Dark 'n' Stormy Showdown of 2009*, SERIOUS EATS (Aug. 2009), <https://drinks.serious eats.com/2009/08/print/dark-and-n-stormy-cocktails-goslings-rum-ginger-beer.html>.

⁷² Paul Clarke, *Pusser's Rum Discovers the Cost of Trademarking Drink Recipes*, SERIOUS EATS (June 2011), <https://drinks.serious eats.com/2011/06/pussers-rum-painkiller-trademark-lawsuit-downside-pr-disaster.html>; PKNY closed in 2013. Robert Simonson, *PKNY Folds Up Its (Drink) Umbrellas and Moves On*, N.Y. TIMES (June 14, 2013), <https://dinersjournal.blogs.nytimes.com/2013/06/14/pkny-folds-up-its-drink-umbrellas-and-moves-on/>.

⁷³ Pusser's rum is made in the British West Indies. Pusser's filed a registration application for "Pusser's Painkiller" on June 3, 2003, which it abandoned on May 26, 2004. U.S. Trademark Application Serial No. 78257428 (filed June 3, 2003). On February 27, 2002, Pusser's filed an application for "painkiller" as "alcoholic fruit drinks with fruit juices and cream of coconut and coconut juice," which was registered on Sept. 2, 2003, Alcoholic fruit drinks with fruit juices and cream of coconut and coconut juice, Registration No. 2758165. On July 18, 2013, Pusser's filed an application for "painkiller" as "alcoholic fruit drinks with fruit juices and cream of coconut or coconut juice and Pusser's rum," which registered on March 25, 2015. Alcoholic fruit drinks with fruit juices and cream of coconut or coconut juice and Pusser's rum, Registration No. 4501028.

⁷⁴ See SOGGY DOLLAR, <http://www.soggydollar.com/bar> (last visited Aug. 25, 2018); see also PUSSEY'S, *The History of the Pusser's Painkiller™*, <http://pussers.com/pussers-history/history-of-the-pussers-painkiller/> (last visited Sept. 2, 2018).

⁷⁵ Clarke, *supra* note 72; see also *Lawsuit Costs Painkiller its Name and Website*, THE LO-DOWN (June 2011), <https://www.thelodownny.com/leslog/2011/06/lawsuit-costs-painkiller-its-name-and-website-health-dept-inspection-turns-up-trouble.html>.

⁷⁶ See, e.g., Chantel Martineau, *The Era of Copyrighted Cocktails?*, THE ATLANTIC (Aug. 31, 2010), <https://www.theatlantic.com/health/archive/2010/08/the-era-of-copyrighted-cocktails/62153/>; But see Mike Masnick, *Bartenders Looking For Greater Intellectual Property Protection For Drinks*, TECHDIRT (Sept. 2, 2010, 9:11 AM), <https://www.techdirt.com/articles/20100901/17381410868.shtml> (questioning viability of

efforts to obtain copyright protection for cocktails are almost certainly futile, as copyright doesn't and probably can't protect recipes. But as Bacardi demonstrated in 1936, trademark protection is potentially viable, although courts should be attentive to actual consumer expectations.

In any case, the fact remains that Bacardi did everything in its power to erase the Daiquiri and rename it the Bacardi cocktail. Ironically, the opposite transpired. Today, the Bacardi cocktail is largely forgotten, remembered primarily as an amusing footnote to trademark history. Perhaps it is due for a revival? But the Daiquiri is ubiquitous, albeit in a sadly debased form. The Daiquiri is dead; long live the Daiquiri?

copyright and trademark claims in cocktail recipes); *see also* Ezra Klein, *I Need a (Non-Copyrighted) Drink*, WASH. POST (Sept. 1, 2010), http://voices.washingtonpost.com/ezra-klein/2010/09/i_need_a_non-copyrighted_drink.html.

Appendix:
Historical Daiquiri & Bacardi Cocktail Recipes

The Oakland Tribune, November 13, 1913, at 16.

Take half a whisky glass of Porto Rican rum, add the juice of half a lime and dash into it a squirt of grenadine; shake with ice.

Jacques Straub, Drinks 18, 24 (1914).

Bacardi Cocktail.

½ pony grenadine syrup.
¾ jigger Bacardi rum.
Juice of half a lime.
Shake well. Strain. Serve.

Daiquiri Cocktail.

¾ jigger lime juice.
½ jigger rum.
1 barspoon powdered sugar.
Shake well in fine ice; strain into cocktail glass.

Tom Bullock, The Ideal Bartender 11 (1917).⁷⁷

BACARDI COCKTAIL

Use a large Mixing glass.
Fill with Lump Ice.
jigger Cusiner Grenadine.
1 jigger Bacardi Rum.
Shake well and serve in a Cocktail glass.

**BACARDI COCKTAIL—
Country Club Style**

Use a large Mixing glass.

Fill with Lump Ice.

½ Lime Juice.

2 dashes Imported Grenadine.

1 jigger Bacardi Rum.

Shake well; strain into Cocktail glass and serve.

Hugo Ensslin, Recipes for Mixed Drinks 8, 14 (1917).

BACARDI COCKTAIL

1 drink Bacardi Rum
Juice of ½ lime
2 dashes Gum Syrup
Shake well in a mixing glass with cracked ice, strain and serve.

DAIGUIRI COCKTAIL

1 jigger Bacardi Rum
2 dashes Grenadine Syrup
Juice of 1 lime
Shake well in a mixing glass with cracked ice, strain and serve in a cocktail glass.

⁷⁷ Bullock was a bartender at the St. Louis Country Club and the Pendennis Club of Louisville, Kentucky, for more than 25 years.

**Robert of the Embassy Club, Cocktails:
How to Mix Them 18, 25 (1922) (London).**

Bacardi Cocktail

Fill the shaker half full of broken ice and add:

1/2 gill of fresh Lime Juice.

2/6 gill of Bacardi.

Sugar Syrup according to taste.

Shake well and strain into a cocktail-glass.

When no limes handy, lemons are usually taken instead.

This cocktail is in great demand in London. In the U.S.A. it is undoubtedly more popular than any other cocktail.

Daiquiri

Daiquiri is the well-known iron mine situated in the southern part of Cuba. The Daiquiri Cocktail is well known in Cuba and the Southern States of the U.S.A.

Fill the shaker half full of broken ice and add:

2/6 gill of Bacardi.

1/2 gill of fresh Lime Juice.

Sweeten with Grenadine.

Shake well and strain into a cocktail glass.

**Carlo Beltramo, Les Cocktails et les
Boissons Americaines 26 (1924) (Geneva).**

Daiquiri cocktail

Ce cocktail, très populaire dans les mines de fer de Cuba, est aussi très connu dans les

Etats du sud de l'Amérique.

Se prépare dans le grand gobelet à moitié rempli de glace en morceaux:

2/6 dl. de bocardi (alcool de canne à sucre), le jus d'un demi citron,

adoucir avec un verre à liqueur de sirop de grenadine. — Bien remuer et servir dans un verre à cocktail.

**L.C. Page & Co., The Cocktail Book: A
Sideboard Manual for Gentlemen 31
(1925-27).**

Bacardi Rum Cocktail

Use Shaker

One teaspoon sugar; one portion Bacardi rum; half portion orange juice; half portion lemon juice. Fill with ice, shake until very cold, and strain into a cocktail glass.

Bacardi Rum Cocktail - Dry

Use Shaker

One dash grenadine; one portion Bacardi rum; one portion lemon juice. Fill with ice, shake until very cold, and strain into a cocktail glass.

Daiquiri Cocktail

Use Shaker

One portion grenadine syrup; three portions Bacardi rum; juice of one lime. Shake well, and strain into a cocktail glass.

Harry Craddock, The Savoy Cocktail
Book 25 (1930).⁷⁸

Bacardi Special Cocktail

1 Teaspoonful Grenadine.
 ½ Burrough's Beefeater Gin.
 ⅔ Bacardi Rum.

The Juice of ½ Lime.

Shake well and strain into cocktail glass.

Made famous by Karl K. Kitchen,
 the well-known New York
 Newspaper Columnist.

El Arte de Hacer un Cocktail y Algo Mas
9, 25 (1927).

BACARDI

½ vasito Granadina.
 2/3 Ron Bacardi.
 Jugo de ½ Limon.
 Bien batido, colado y sírvase.

DAIQUIRI

3 partes de ron.
 Jugo de ½ limon.
 Chucharadita de azucar.
 Batase y sírvase.

DAIQUIRI DULCE

½ de ron.
 ½ jugo de limon.
 Un poco de granadina.
 Batase y sírvase.

Charles S. Warnock, Giggie Water 90
(1928).

3. BACARDI

One-half of Lime
 One-quarter Grenadine
 Three-Quarters Bacardi Rum
Frappe

Adolphe Torelli, 900 Recettes des
Cocktails et Boissons Americaines 24
(1929).

Baccardy Cocktail. — Dans un shaker avec de la glace pilée, une cuillère à café de grenadine, le jus d'un demi-citron, un demi-verre à madère de Rhum Baccardy, agiter, passer dans un verre à cocktail, garnir d'un zeste de citron. Chalumeaux.

Frank Shay, Drawn from the Wood 181–
82 (1929).

DAQUIRI

Equal parts Rum Bacardi and Lime Juice
 One teaspoonful powdered sugar

BACARDI COCKTAIL

First of all make certain it is Bacardi that you are using
 One and one half parts Bacardi
 Jigger of Grenadine
 Juice of half a lime
 Ice, shake and strain into cocktail glass

⁷⁸ Craddock moved to London to learn mixology at The Savoy, and became Head Bartender of The American Bar in 1925.

Nina Tove & A.H. Adair, *Petits et Grands Verres: Choix des Meilleurs Cocktails* 41 (1929).

LE DAIQUIRI

Daiquiri Cocktail.

Remplir le gobelet à moitié de glace pilée. Y verser le jus de trois citrons, une cuillerée de grenadine et trois pleins verres de rhum Bacardi. Frapper fortement.

Henry William Thomas, *Life and Letters of Henry William Thomas* 35-36 (1929).

Bacardi: (Floyd Waggaman.)

Proportions — one-half Bacardi rum and one-half lemon juice. The latter had to be prepared with about one-half by bulk of granulated sugar and water to make a sweet lemon syrup. They had to be shaken very cold indeed. (Oh, you Mandy!)

Bacardi: (Col. Whitted.)

Proportions — one-fourth gin, one-fourth Bacardi rum, one-fourth grapefruit juice, one-fourth orange juice, maple syrup to sweeten. A table glass of syrup should sweeten about sixteen cocktails.

Bacardi: Just Bacardi rum with the juice of one lime and a bar-spoon of sugar.⁷⁹

Daiquiri: Just Bacardi rum with the juice of one lime and a dash of Grenadine were used but it was well shaken.

"Judge, Jr.", *Noble Experiments* 23, 26, 27 (1930).

THE FAVORITE CONCOCTION

OF Florenz Ziegfeld

THE "glorifier of the American Girl" guarantees this one.

A **Bacardi Cocktail** with strained honey—to make 8 cocktails, using cocktail glass for measurement:

3 glasses Lime juice

1/2 glass strained honey (mixed with above—more honey if more sweetness is desired)

4 glasses of Bacardi

Shake well.

The Detour

BUT don't let its name worry you - all roads lead to Rum.

1 jigger Bacardi

1/4 jigger Grenadine

Juice of 1/2 a Lime

Shake well.

The Daiquiri

THIS should have been listed among the "Old Favorites" but it's too good to put way in the back of the book.

1/3 jigger Bacardi

2/3 jigger Lime juice

1 teaspoonful powdered sugar

Shake well in finely cracked ice.

⁷⁹ HENRY WILLIAM THOMAS, *LIFE AND LETTERS OF HENRY WILLIAM THOMAS* 35 (1929).

**William T. Boothby, World Drinks and
How to Prepare Them 14–16, 33 (1930).**

BACARDI

Bacardi 2/3 jigger Lime 1 spoon
Sugar Syrup 1 spoon
Shake well with ice, strain into
chilled cocktail glass and serve.

BACARDI, No. 2

Bacardi 2/3 jigger It. Vermouth 1/3
jigger
Pineapple 1 spoon
Shake well with ice, strain into
chilled cocktail glass and serve.

BACARDI, No. 3

Bacardi 3/4 jigger Lemon 1 spoon
Raspberry Syrup 1 spoon Orange
Bitters 1 dash
Shake well with ice, strain into
chilled cocktail glass and serve.

BACARDI, No. 4

Bacardi 1/2 jigger Lemon 1/4 jigger
Grenadine 1 spoon Orange 1/4
jigger
Shake well with ice, strain into
chilled cocktail glass and serve.

BACARDI, No. 5

Bacardi 1/3 jigger Gin 1/3 jigger
Pineapple 1/3 jigger Lemon 1 spoon
Egg 1/2 of white
Shake well with ice, strain into
chilled cocktail glass, add
Maraschino
cherry and serve.

BACARDI BLOSSOM

Bacardi 3/4 jigger Lemon 2 dashes
Orange 1/4 jigger Sugar Syrup 1/2
spoon
Nutmeg to taste

Shake well with ice, strain into
chilled cocktail glass, grate nutmeg
over
and serve.

BACARDI, DRY

Bacardi 1/2 jigger Fr. Vermouth
....1/2 jigger
Stir well with ice, strain into chilled
cocktail glass and serve.

BACARDI, DUBONNET

Bacardi 1/3 jigger Grenadine 1
spoon
Dubonnet 1/3 jigger Lime 1 spoon
Stir well with ice, strain into chilled
cocktail glass and serve.

BACARDI, GRENADINE

Bacardi 3/4 jigger Grenadine 1
spoon
Lime 1 spoon
Stir well with ice, strain into chilled
cocktail glass and serve.

BACARDI PEACH

Bacardi 1/3 jigger Peach Brandy .
...1/3jigger
Lemon 1 spoon Sugar Syrup 1
spoon
Mint 1 sprig
Shake well with ice, strain into
frosted cocktail glass, add frosted
mint
leaf and serve.

BACARDI, SWEET

Bacardi 1/2 jigger Lt. Vermouth 1/2 jigger
Stir well with ice, strain into chilled cocktail glass and serve.⁸⁰

DAIQUIRI

Bacardi 3/4 jigger Grenadine 1 spoon
Lemon 1 spoon
Shake well with ice, strain into chilled cocktail glass and serve.

DAIQUIRI, No. 2

Bacardi 1/3 jigger Lime 1/3 jigger
Sugar Syrup 2 spoons
Shake well with ice, strain into chilled cocktail glass and serve.⁸¹

**Jere Sullivan, The Drinks of Yesteryear:
A Mixology 15 (1930).**

Army & Navy

For Army Generals and Navy Admirals.
½ Bacardi Rum
Dash of Grenadine
Juice of half of lime
A little sugar
Shake and strain into cocktail glass.

Bacardi

Born in Cuba, but adopted by the U.S.A., having tens of thousands of American parents.
½ Bacardi Rum
½ Italian Vermouth
Dash of Peychand [sic] Bitters
Orange rind
Spoon well and strain into cocktail glass.

Another Bacardi

Juice of half of lime
Drink of Bacardi Rum
Add very little sugar
Shake well and strain into cocktail glass.

**Virginia Elliott & Phil D. Stong, Shake
'Em Up!: A Practical Handbook of Polite
Drinking 41 (1930).**

Old-Fashioned Bacardi Cocktail
Season one glass of Bacardi rum with the juice of one lime and a teaspoon of sugar.⁸²

**Patrick Gavin Duffy, Official Mixer's
Guide 141 (1934).**

Bacardi Base**Bacardi Cocktail**

1 Drink Bacardi Rum
Juice of 1/2 Lime
2 Dashes Gum Syrup
Shake well with cracked ice and strain.
Use glass number 2

Bacardi Special Cocktail

1 Teaspoonful Grenadine
1/3 Burrough's Beefeater Gin
2/3 Bacardi Rum
Juice of 1/2 Lime
Shake well and strain into glass.
Use glass number 2.

⁸⁰ WILLIAM T. BOOTHBY, WORLD DRINKS AND HOW TO PREPARE THEM 14–16 (1930).

⁸¹ *Id.* at 33.

⁸² VIRGINIA ELLIOTT & PHIL D. STONG, SHAKE 'EM UP!: A PRACTICAL HANDBOOK OF POLITE DRINKING 41 (1930).

Cuban Cocktail

1 Jigger Bacardi Rum
 2 Dashes Gum Syrup
 Juice of 1/2 Lime
 Shake well with cracked ice and strain.
Use glass number 2

Cuban Cocktail No. 1

Juice of 1/4 Lemon
 1 Teaspoonful Powdered Sugar
 1 Glass Bacardi Rum
 Shake well and strain into glass.
Use glass number 2

Daiquiri Cocktail

1 Jigger Bacardi Rum
 2 Dashes Grenadine Syrup
 Juice of 1 Lime
 Shake well with cracked ice and strain.
Use glass number 2

Edgar Baudoin, Les Meilleurs Cocktails: 400 Recettes proposées ou recueillies par Edgar Baudoin 13 (1930).

39. - BACARDI COCKTAIL

1/6 Grenadine, le jus d'un citron, 2/3 Bacardi rum.

Cocktails by "Jimmy" Late of Ciro's London 20, 33 (1930).

BACARDI

2 parts Bacardi Rum
 1 part Dry Gin
 1 part Lime Juice
 Grenadine to taste.

DAIQUIRI

2 parts Bacardi Rum
 1 part Lime Juice
 Grenadine to taste.

Ridgely Hunt & George S. Chappell, The Saloon in the Home, or a Garland of Rumblossoms 63 (1930).

The Dacqueri

Two parts Bacardi Rum,
 One part Lime juice,
 Three dashes of Grenadine.

Charlie Roe & Jim Schwenck, The Home Bartender's Guide and Songbook 11-12, 28 (1930).

BACARDI COCKTAIL

In Havana this one ranks with the best. Under a Southern moon it brings gladness to your heart, a tingle to your nerves, and a sparkle to your eye. Ask a Cuban what he thinks of the BACARDI COCKTAIL, and watch him jump to endorse it.

A small wine-glass of Bacardi
 The juice of half a Lime
 One or two teaspoonfuls of sugar
 In a glass filled with ice
 Shake well, strain and serve

BACARDI GRENADINE COCKTAIL

Another of the popular drinks in Havana bars. Several of these, and you'll never want to go home. (Possibly you'd never get there anyhow.)
 One jigger Bacardi
 One tablespoon of Grenadine Syrup
 Juice of half a lime
 In a glass filled with ice

Shake well and serve in cocktail glass

DAQUIRI

Another one famous in Cuba. Sit this one down before a Southerner and he can spin yarns about the good old days all night long. You've probably heard that old Mother Goose Rhyme beginning:
Daquiri, Daquiri, Dock,
The Mouse ran up the Clock.
 It even works on mice!
 Equal parts Rum Bacardi and Lime Juice
 One teaspoonful powdered sugar
 Shake well with fine ice and serve

Dexter Mason, The Art of Drinking 36 (1930).

BACARDI

1 part Bacardi rum
 ½ part lime juice
 ½ part orange juice
 ¼ part grenadine syrup.

"Happy Days!": A Book of Good Cheer, of Cocktails, Drinks, and How to Mix Them, by John, Formerly Chief Mixologist and Bar Manager of the famous Knickerbocker Hotel at 42nd Street and Broadway, New York City 31 (1931).

Bacardi Cocktail

50 per cent Bacardi Rum
 25 per cent M & R Italian Vermouth
 25 per cent French Vermouth
 Fill glass with broken ice. Stir, strain and serve.

Anderson Fredericks, 100 Cocktails: How to Make Them and What to Eat with Them 23 (1931).

COCKTAILS MADE WITH
 BACARDI
 DACQUERI COCKTAIL
 5 parts Bacardi
 Juice of a Fresh Lime
 1 part Grenadine

Al Hirschfeld, Manhattan Oases: New York's 1932 Speak-Easies 36 (1932).

BACARDI COCKTAIL
 One teaspoonful grenadine, 1/3 gin, 2/3 Bacardi rum and the juice of 1/2 a lime.

Albert Stevens Crockett, Old Waldorf Bar Days 119 (1931).

BACARDI

So designated because its chief component, originally the distillation of the juice of Cuban sugar cane, was called by that name—and probably is still so termed.
 Two jiggers Bacardi Rum
 Two Limes
 A little Sugar
 A little Grenadine
 Shake well in crushed Ice

BACARDI No. 2 (claret glass)

Juice of one Lime
 One-half spoonful Sugar
 A drink of Bacardi Rum
 A little Pineapple Juice
 Shake well and pour into cup champagne glass, filled with shaved Ice

**Albert Stevens Crockett, Old Waldorf
Bar Days 155, 158, 161 (1931).**

PEG O' MY HEART*

One-half Lime Juice
One-half Bacardi Rum
Color with Grenadine
Frappé

RALEIGH

Juice of one-half Lime
Juice of one-half Orange
Pony of Bacardi Rum
Dash of Grenadine Syrup
Frappé

SANTIAGO*

One-half Orange Juice
One-half Bacardi Rum
Color with Grenadine
Shake

SEPTEMBER MORN*

Juice of one Lime
One jigger of Bacardi Rum
White of one Egg
Color with Grenadine
Frappé well; serve in claret glass

**William Guver, The Merry Mixer,
Cocktails and Their ilk 33-34 (1933).**

SEPTEMBER MORN

Juice of ½ Lemon or Lime
Tablespoon Grenadine
White of 1 Egg . . . 1 glass Bacardi

BACARDI

2 jiggers Bacardi . . . 2 Limes
A little Sugar . . . A little Grenadine
Shake well in crushed Ice

BACARDI No. 2

(Claret Ice)

Juice of 1 Lime . . . ½ spoonful
Sugar
A drink of Bacardi
A glass of Pineapple Juice
*Shake well and pour into
champagne glass, filled with shaved
Ice*

**George A. Zabriskie, The Bon Vivant's
Companion 7 (1933).**

DAIQUIRI

1 jigger of Bacardi
Juice of 1/2 lime
Sugar to taste
Mix thoroughly and shake well in
cracked ice.

**Patrick W. Guinee, The Bartender's
Friend 38, 121 (1933).**

Bacardi Cocktail

Bacardi Rum
Lime Juice
Gum Syrup
Ice
In a mixer half full of fine ice shake
up 1½ jiggers of rum, the juice of 1
lime, and a teaspoonful of gum
syrup. Strain and serve in cocktail
glass.

Rum Cocktail

Follow recipe for Bacardi Cocktail,
but use Jamaica Rum for Bacardi.

**Virginia Elliott, Quiet Drinking 51-52, 59
(1933).**

Bacardi Cocktail No. 1

Two parts Bacardi rum, one part
lime juice, one part orange juice and
one part gin. Shake with shaved ice
until very cold.

Bacardi Cocktail No. 2

Two ponies of Bacardi, the juice of one lime, and a dash of maraschino. Shake until cold.

Bacardi Cocktail No. 3

Four parts Bacardi, four parts lemon juice, four parts orange juice, three parts gin, one part almond syrup and a bar spoon of soft sugar. Half fill the shaker with ice and shake until very cold.

Plain Bacardi Cocktail

In a cocktail glass put the juice of one lime and a scant bar spoon of soft sugar. Fill the glass with Bacardi. Stir and serve.

J.A. Grohusko, Jack's Manual 42, 60, 160 (1933).

BACARDI COCKTAIL

50% Bacardi rum
25% regular vermouth
25% dry vermouth
Fill glass with broken ice. Stir, strain, and serve.

DAIQUIRI COCKTAIL

Juice of ¼ lemon or ¼ lime
1 teaspoonful powdered sugar
100% Bacardi rum
Shake well, and strain into cocktail glass.

DICORIE

Juice of one lime
90% Bacardi rum
10 % grenadine
Fill glass with cracked ice. Shake and strain.

A.E.P. Bird & William C. Turner, Cocktails: Their Kicks and Side-Kicks 5, 12 (1933).

BACARDI GRENADINE

Bacardi, 4 parts
Grenadine, 1 part
Lemon juice, 1 part
Stir well with ice, strain into glasses, add maraschino cherry; serve. This will make 6 cocktails. (The proportion of Grenadine to lemon may be varied to suit individual taste. The fair sex prefer them sweet.)

DAIQUIRI

Bacardi (White Label), 4 parts
Lime Juice, 2 parts
Sugar, 1/2 part
Shake well with ice, garnish with pickled onion; serve. This famous cocktail originated with American Soldiers in the War with Spain. Landing through the surf near the village of Daiquiri, they made use of discarded sugar kettles, picked their own limes in the neighborhood and mixed them with native rum and sugar. Their Alger beef and raw onion rations, washed down with this delectable potation, made a pleasant prelude to the next day's fighting. This recipe serves 6.

William C. Feery, Wet Drinks for Dry People 12, 23, 50 (1932).

BACARDI COCKTAIL

1½ ounces of Bacardi rum.
1 dash of Grenadine syrup.
The juice of ½ lime.
Ice slightly and shake well.

(With slightly different proportions this is called "September Morn.")

DAIQUIRI COCKTAIL

1½ ounces Bacardi rum.
½ ounce lime juice.
1 dash Grenadine.
½ teaspoon eggwhite.
Shake together and serve.
(This is primarily a Cuban drink and, granted, not easily available.)

SEPTEMBER MORN

2 ounces Bacardi rum.
1 teaspoonful Grenadine syrup.
Juice of ½ lime.
Shake well with a small amount of ice and serve.
(If you ever secure any Bacardi, I will be *very glad* to help you mix . . . and drink these!)

James A. Wiley & Helene M. Griffith,
The Art of Mixing 3, 12 (1932).

BACARDI COCKTAIL

Stick 1 teaspoonful of Grenadine in a glass with 1/3 Gin and 2/3 Bacardi Rum, add the juice of half a fresh lime. Of course you drink it cold.

CUBAN COCKTAIL

With 2/3 Bacardi, put 1/6 Grenadine, 1/6 juice lime, all mixed up together in ice makes a nice glass filler.

DACQUERI COCKTAIL

With 2/3 Bacardi, put 1/6 Grenadine, 1/6 juice of a fresh lime. Merge, chill, and drink.

Jose Abeal Y Otero & Valentin Garcia,
Sloppy Joe's Cocktails Manual 10 (1932)
(Havana, Cuba).

BACARDI DRINKS

DAIQUIRI

1 Teaspoonful of sugar
1 Part of Rum.
The juice of a Lemon.
Shake with cracked ice, and serve in a Manhattan glass.

SANTIAGO COCKTAIL

1 Teaspoonful of sugar.
1 Part of Rum.
The juice of a Lemon.
Drops of grenadine.
Shake with cracked ice, and serve in Manhattan glass.⁸³

Harry McElhone, Harry's ABC of Mixing
Cocktails 25, 43 (1934).

15. Bacardi Cocktail.

1 teaspoonful Grenadine, ½ Burrough's Beefeater Gin, ¾ Bacardi Rum, Juice of half a Lime. (Bacardi Rum comes from Cuba.)

82. Dacqueri Cocktail.

¾ Bacardi, Juice of a Fresh Lime, ¼ Grenadine.
Shake well, and strain into cocktail glass.
(This was a very popular cocktail in America before Prohibition came in. Bacardi is made in Cuba.)

⁸³ By 1937, Sloppy Joe's used and sold its own brand of rum. JOSE ABEAL Y OTERO &

VALENTIN GARCIA, SLOPPY JOE'S COCKTAILS MANUAL 10 (1937).

**Herbert Jenkins, A Life-Time Collection
of 688 Recipes for Drinks 13 (1934)
(London).**

Bacardi Cocktail

½ pony Grenadine Syrup
¾ jigger Bacardi Rum
Juice of half lime
Shake well. Strain, serve

**100 Famous Cocktails, Prepared in
Collaboration with Oscar of the Waldorf
23 (1934).**

BACARDI COCKTAIL

One-half pony Grenadine
Two-thirds jigger Bacardi Rum
Juice of one-half Lemon
Shake well; serve in cocktail glass

DAIQUIRI

One-third jigger Lime Juice
Two-thirds jigger Bacardi Rum
One bar-spoonful sugar
Shake well; strain; cocktail glass

PEG O' MY HEART

One half Lime Juice
One-half Bacardi Rum
Color with Grenadine
Frappe

SEPTEMBER MORN

Juice of one Lime
One jigger of Bacardi Rum
White of one egg
Color with Grenadine
Frappe well; serve in Claret glass

**Bernard, 100 Cocktails: How to Mix
Them 12-13 (1934) (London).**

BACARDI COCKTAIL

¼ gill of Bacardi.

¼ gill of Lime Juice.
2 dashes of Grenadine Syrup.
1 Cherry.
½ tumblerful of broken Ice.
Half fill the tumbler with broken ice
and add the Bacardi. Then add the
Lime juice and the Grenadine
Syrup. Stir well and pass through a
strainer into a cocktail glass. Serve
with a cherry. A very pleasant
cocktail. This drink is very popular
in America.

**Patrick Gavin Duffy, The Official Mixer's
Manual 141-47 (1934).**

Bacardi Cocktail

1 Drink Bacardi Rum
Juice of 1/2 Lime
2 Dashes Gum Syrup
Shake well with cracked ice and
strain.
Use glass number 2

Bacardi Special Cocktail

1 Teaspoonful Grenadine
1/3 Burrough's Beefeater Gin
2/3 Bacardi Rum
Juice of 1/2 Lime
Shake well and strain into glass.
Use glass number 2

Cuban Cocktail

1 Jigger Bacardi Rum
2 Dashes Gum Syrup
Juice of 1/2 Lime
Shake well with cracked ice and
strain.
Use glass number 2

Cuban Cocktail No. 1

Juice of 1/4 Lemon
1 Teaspoonful Powdered Sugar
1 Glass Bacardi Rum

Shake well and strain into glass.

Use glass number 2

Daiquiri Cocktail

1 Jigger Bacardi Rum

2 Dashes Grenadine Syrup

Juice of 1 Lime

Shake well with cracked ice and strain.

Use glass number 2

Santiago Cocktail

1 Jigger Bacardi Rum

Juice of 1 Lime

2 Dashes Grenadine

Stir well with cracked ice and strain.

Use glass number 2

September Morn

1 Jigger Bacardi Rum

Juice of 1/2 Lime

3 Dashes Grenadine

White of 1 Egg

Shake well with cracked ice and strain.

Use glass number 4

**Julian J. Proskauer, What'll You Have?
84, 90 (1933).**

Dacqueri Cocktail

5 parts Bacardi Rum

Juice of a Fresh Lime

1 part Grenadine

Bacardi Wiz

1 part Gin

2 parts Bacardi Rum

1 teaspoonful Grenadine

Juice of half a Lime

(The same drink, without the gin, is known as Bacardi Cocktail.)

Albert Stevens Crockett, The Old

**Waldorf-Astoria Bar Book 37, 65, 129-30
(1935).**

BACARDI

Two jiggers Bacardi Rum

Two Limes

A little Sugar

A little Grenadine

BACARDI No. 2

Juice of one Lime

One-half spoonful Sugar

A drink of Bacardi Rum

A little Pineapple Juice

Champagne glass, with shaved Ice

PEG O' MY HEART

One-half Lime Juice

One-half Bacardi Rum

Color with Grenadine

DAIQUIRI

One part Bacardi

Juice of half a Lime

One barspoon powdered Sugar

Note: The order of adding ingredients is important. Personal preference dictates serving the cocktail with finely shaved ice in the glass.

GRENADINE

One jigger Bacardi

One teaspoon Grenadine

Juice of half Lime (shaved Ice in glass)

**The Art of Mixing Drinks: Helpful Hints
for the Hostess 51, 54 (1935).**

Bacardi Cocktail

1 Jigger Bacardi Rum

3 Dashes Grenadine

Juice of 1/2 lime

Daiquiri Cocktail

Juice of 1/4 lemon or of 1/2 lime

1 Teaspoonful powdered sugar

1 Jigger Bacardi Rum

Tom and Jerry's Bartender's Guide: How to Mix Drinks 97, 101, 116 (1934).

BACARDI COCKTAIL

2 ponies rum.

1 pony apricot brandy.

1 pony Grenadine.

Juice of 1 lime.

Frappe till icy cold. Serve in tall thin glass.

DAIQUIRI

½ lime squeezed onto 1 teaspoonful sugar, pour 1 whisky glass full of bacardi; plenty of ice; shake until shaker is thoroughly frosted outside. Meanwhile chill a tall wine glass known as flute, fill it with shaved ice, and pour in the mixture. Must be drunk frozen. (Original Cuban recipe.)

SANTIAGO COCKTAIL

1 teaspoonful of sugar.

1 pony lime juice.

Dash of grenadine.

1 jigger rum Bacardi.

Frappe till icy cold. Serve in cocktail glass.

Canada Dry Ginger Ale, the Masterly Touch 7 (1934).

BACARDI

2 jiggers Bacardi Rum

juice 2 limes

a little sugar

a little Grenadine

crushed ice

shake, strain and serve

Charles' Book of Punches and Cocktails: How to Make Them 5, 17 (1934).

HAVANA SPECIAL COCKTAIL

In shaker place three parts Bacardi rum and one part Grenadine, juice of one lime, shake well with ice, strain into cocktail glass and serve.

CUBAN BACARDI

In container pour one wine-glass of Bacardi rum, add white of one egg, large tablespoonful of pineapple juice, same amount of orange juice. Fill shaker three quarters full of cracked ice, shake rapidly a few times and serve.

Sparklets Corporation, Here's How 17 (1937).

BACARDI SOUR

Same as Whiskey Sour, substituting Bacardi for rye. Some people expect a Bacardi Sour to resemble a Bacardi Cocktail, in which case grenadine must be used.

Stanley Clisby Arthur, Famous New Orleans Drinks and How to Mix 'Em 60-61 (1937).

Bacardi Cocktail

1 teaspoon sugar

1 lime—juice only

1 jigger rum Bacardi

Mix in a barglass. Muddle the sugar and lime juice thoroughly before adding the rum. Fill with cracked

ice. Shake well and then strain into a cocktail glass.

You and I may argue a lot and get nowhere regarding the proper pronunciation of the word Bacardi, but after sampling this cocktail, there'll be no argument as to its effect and authority. It is by far the best way to serve sugar cane rum, whether bottled in New England, Cuba, Jamaica, Puerto Rico, or Louisiana.

In making a Bacardi cocktail be sure to use lime, not lemon, and put no grenadine or other flavored sirup into the mixture. When you shake a Bacardi, frappé it long and well, for it must be served very cold to get the delicious flavor of the *rumbullion*.

Bacardi rum received its name from the Bacardi family of Cuba, well-known distillers and bottlers at Santiago of this particular brand. The correct pronunciation is *bah-car-dé*.

Daiquiri Cocktail

1 teaspoon grenadine sirup
1 lime—juice only
1 jigger rum

Like the Bacardi, the Daiquiri should be well shaken; lime juice, not lemon, should be used to furnish the tang. The grenadine sweetens the cocktail and gives it color. Shake well with ice and strain into the serving glass.

The Daiquiri, like the Bacardi, is a Cuban importation and is very popular in Havana as well as New Orleans. Again like the Bacardi its name is truly Cuban, Daiquiri being the name of a city in the

southeastern part of that famous island not very far from Santiago. The two cocktails are quite similar, the difference lying in the inclusion or omission of the grenadine sirup. Both are good. Daiquiri is pronounced *Dah-ke-ree'*.

Frank A. Thomas, Wines, Cocktails and Other Drinks 178 (1936).

BACARDI COCKTAIL

5 glasses Bacardi rum 5 teaspoons powdered sugar
Juice of 2 lemons or 3 limes
One of the most famous and best of all rum cocktails.

DAIQUIRI COCKTAIL

4 glasses Cuban rum
Juice of 4 lemons
4 teaspoons sugar
This is virtually the same as the Bacardi Cocktail and can be made with fresh lime juice or fresh pineapple juice, if desired. Sometimes the edge of the glass is rubbed with lemon and dipped in powdered sugar to give it a frosted appearance. (From the recipe of Sloppy Joe, of Havana.)

Bill Edwards, Drinks: How to Make and Serve Them 24, 34 (1936).

BACARDI

2 parts Bacardi Rum
1 part Dry Gin
1 part Lime Juice
Grenadine to taste.

DAIQUIRI

2 parts Bacardi Rum
1 part Lime Juice

Sugar to taste.

Adrian, Cocktail Fashions of 1936, at 40 (1935).

BACARDI (sweet) COCKTAIL

lemon or lime juice.

Grenadine.

1/2 rum.

Shake well and serve in cocktail glass.

BACARDI (dry) COCKTAIL

1 part lemon or lime juice.

3 parts of rum.

Shake well and serve in cocktail glass.

Bar Florida, Cocktails 17–19 (1935) (Havana).

DAIQUIRI NUM. 1

2 Ounces Bacardi Rum.

1 Teaspoonful Sugar.

Juice of half a lemon.

Cracked ice.

Shake well and strain into cocktail glass.

DAIQUIRI NUM. 2

2 Ounces Bacardi Rum.

Several Dashes Curacao.

1 Teaspoonful Orange Juice.

1 Teaspoonful Sugar.

Juice of Half a Lemon.

Cracked ice.

Shake well and strain into Cocktail glass.

DAIQUIRI NUM. 3

(B. Orbon)

2 Ounces Bacardi Rum.

1 Spoonful Sugar.

1 Teaspoonful Grape Fruit Juice.

1 Teaspoonful Marraschino.

Juice of half a lemon.

Shake well and strain into cocktail glass. Serve frappe.

DAIQUIRI NUM. 4

(Florida Style)

2 Ounces Bacardi Rum.

1 Teaspoonful Sugar.

1 Teaspoonful Marraschino.

Juice of half a lemon.

Shake in an electric shaker with crushed ice. Serve frappe.

The United Kingdom Bartenders' Guild, Approved Cocktails (1935).

BACARDI.

33⅓% Lemon Juice.

16⅔% Grenadine.

50% Bacardi Rum.

Shake and strain into cocktail glass.

BACARDI SPECIAL.

1 teaspoonful Grenadine.

33⅓ % Gin.

66⅔% Bacardi Rum.

The Juice of ½ Lime.

Shake and strain into cocktail glass.

Ginrum Alpha Company, The Legend of Liqueurs, Wines and Spirits (1935)

Bacardi Cocktail

1 Jigger Bacardi Rum

3 Dashes Grenadine

Juice of ½ lime

Dykaree Cocktail

1 Jigger dry gin

½ Pony lime or lemon juice

½ Pony Dykaree syrup

**Old Mr. Boston DeLuxe Official
Bartender's Guide 11 (1935).**

BACARDI COCKTAIL

1 Jigger Bacardi Rum
Juice of 1/2 Lime
2 Dashes Grenadine
Shake well with cracked ice and
strain into 3 oz. Cocktail glass.

Jean Lupoiu, Cocktails 31, 57 (1938).

BACARDI COCKTAIL

Dans le shaker:
1 jet de sirop de grenadine, le jus de
1/4 de citron, 1/2 verre Bacardi.
Bien agiter et servir.
N.-B. — Dans les Amériques du
Nord et du Sud, ainsi que dans les
pays chauds, on se sert pour la
confection du Bacardi et Dacqueri,
des citrons du pays. (Citrus
Médica.)

DAIQUIRI COCKTAIL

Dans le shaker:
Le jus d'un quart de citron, 1
cuillerée à café de sucre en poudre,
2/3 de Bacardi.
Agiter et servir.

**Heinrich Killinger, DAS
GETRÄNKEBUCH VON KRÖNLEIN -
BEUTEL 70-71 (1938).**

**166. Bacardi — (65er
Cocktailglas)**
In ein Mischglas
4—6 Eisstückchen (Walnußgröße)
1/2 Schuß Zitronensaft
Schuß Grenadine 10 ccm
Bacardi-Rum 25 ccm
Old Tom Qin 25 ccm

Kirsche
(bestäuben)

**Hotel "Lincoln" Cock-tail Book 24-25, 67
(1937) (Havana).**

DAIQUIRI COCKTAIL

A teaspoonful of sugar.
The juice of a lime.
A jigger of YUCAYO rum.
Shake with fine ice, strain, and
serve.

DAIQUIRI FRAPE COCKTAIL

The juice of 1/2 lime. -
A teaspoonful of sugar.
A teaspoonful of marraschino.
A jigger of YUCAYO rum.
Shake well frape, atrain [sic] and
serve.

CARIBE COCKTAIL

The juice of half a green lime.
1/2 teaspoonful granulated sugar.
1 jigger "CARIBE RUM".
Shake well with craked [sic] ice.

**W.J. Tarling, Cafe Royal Cocktail Book
(1937) (UK).**

DAIQUIRI

3 dashes Gomme Syrup.
3/4 Daiquiri Rum.
1/4 Juice of a Lime or Lemon.
Shake.

DAIQUIRI SPECIAL

1 teaspoonful Grenadine.
1/3 Gin.
2/3 Daiquiri Rum.
The Juice of 1/2 Lime.
Shake and strain into cocktail glass.

R. de Fleurv, 1800-And All That: Drinks Ancient and Modern 191 (1937).

No. 1277
 DAIQUIRI FRAPPE
 Juice of 1/2 Lemon
 1 Barspoonful Sugar
 3/4 Oz. Rum
 1 Dash Maraschino
 Shake with fine Ice and serve in a long narrow stem glass.

Hyman Gale & Gerald F. Marco, The How and When 93, 108 (1937).

BACARDI COCKTAIL — No. 1
 1 jigger Bacardi Rum
 Juice of one Lime
 ½ teaspoon Sugar
 1 dash Grenadine
 Shake well
 Serve in Cocktail Glass

BACARDI COCKTAIL — No. 2
 Juice of one Lime
 ½ spoon Sugar
 1 jigger Bacardi
 1 pony Pineapple Juice
 Serve in Champagne Glass with shaved ice

DAIQUIRI COCKTAIL
 Juice of 1/2 Lime
 1 teaspoon Powdered Sugar
 1 jigger Cuban Rum — White
 Shake well
 Strain into Cocktail Glass

Charles Browne, The Gun Club Drink Book 86 (1939).

DAIQUIRI COCKTAIL
 A Daiquiri, sometimes called a "Bacardi," cocktail, is a fine hot

weather drink and is a great specialty of Constantino at his famous "Florida Bar" in Havana. It is made of Bacardi rum, lime or lemon juice or the two mixed, powdered sugar, sugar syrup or Maraschino (or both), a teaspoonful to the drink, and is thoroughly stirred up in shaved ice. Can best be made with a mechanical mixer. In some places, grenadine syrup or Falernum is used.

Ambrose Heath, Good Drinks 27 (1939) (London).

DAIQUIRI
 1 glass Bacardi Rum
 1 teaspoonful powdered Sugar
 The juice of quarter of a Lemon or half a Lime

Oscar Haimo, Cocktail Digest (From Private Notes) 30, 45 (1944).

***BACARDI COCKTAIL**
 Juice of ½ Florida Seedless Lime
 4 dashes Grenadine or ½ tsp. Sugar
 2 oz. Bacardi Rum (white or silver label)
Shake well with finely chipped ice.

* According to a ruling of the New York Supreme Court, April 28, 1936, the Bacardi Cocktail must be made with Bacardi Rum.

DAIQUIRI COCKTAIL
 Juice of ½ Florida Seedless Lime
 ½ tsp. Sugar
 2 oz Rum (White or Silver Label)
Shake well with finely chipped Ice