

Scotch whisky: Provenance, authenticity, and ownership

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Abstract

Scotch whisky is one of the most international consumer goods categories with an impressive array of long-established and highly recognisable brands.¹ It cemented its leadership of the global spirits trade at the start of the twentieth century when branding and advertising initiatives evolved, supported by proprietary distribution networks. What is remarkable, however, and a source of curiosity for management scholars, is how Scotch whisky has retained a reputation for heritage and authenticity given its ownership structure, the broad geographical indication of the category, and the scale and scope of the production process. The contrast can be made with the competing premium alcoholic beverage categories, Cognac and Champagne, where although brand ownership is now not dissimilar to Scotch whisky, local raw ingredient supply chains and more limited industrial scale remains. To illustrate further, consider the world-leading deluxe Scotch whisky brand, Johnnie Walker Black Label. It is owned by UK multinational corporation Diageo, is headquartered in London and is a blend of up to 40 whiskies from distilleries owned or controlled by Diageo which are spread across all areas of Scotland. The distilleries produce whiskies from grain cereals imported from various countries, and the whiskies are matured in pre-used casks bought from other wine and spirit-producing countries, primarily the US. Yet, the brand marketing message relies on heritage, authenticity, and, importantly, Scotland.

Introduction

The aim of our chapter is to explain how the Scotch whisky industry and its major brands have retained the integrity of the marque, with its inherent place-based heritage, through the transition from cottage to industrial-scale production and distribution. The significance of ‘place’ and ‘image’ is important to many industries for which authenticity is a key part of the marketing image and identity.² The alcoholic beverages industry is characterised by such attributes, and Scotch whisky is a significant international category within this industry.

¹ Throughout this chapter, Scotch whisky is spelled without an ‘e’. This practice follows official convention, such as The Scotch Whisky Order, S.I., 998 (1990); The Scotch Whisky Regulations, S.I. 2890 (2009), and Regulation (EC) No 110/2008. The exceptions are when ‘whiskey’ appears in quotations, and when official reports are cited.

² The literature on this topic is extensive. See, for example, Bertil Sylvander, Dominique Barjolle, and Filippo Arfini, (eds) *The Socioeconomics of Origin-Labelled Products in Agri-Food Supply Chains: Spatial,*

To contextualise our analysis, we anchor our study in theories of resource partitioning and legitimacy emanating from organization and strategic management disciplinary scholarship. Resource partitioning seeks to explain how new categories emerge at the periphery of a consolidated and commoditised category to establish authenticity, or as a process of revival of traditional arrangements.³ As applied to Scotch whisky, prior research has sought to illuminate if, and to what extent, substantial foreign ownership of this industry has impacted consumer perceptions of what is authentic Scotch whisky.⁴

Our chapter offers an historical narrative centred on the evolution of the leading brand portfolios owned by Diageo, Pernod Ricard, and their major privately-owned competitors such as Edrington and William Grant. The source material is a rich archive spanning the extensive proceedings leading to the findings of the 1909 Royal Commission, debates reported in Hansard, reports of the Monopolies and Mergers Commission, and additional firm-specific information that is available in the public domain or from the authors on request. It is important to note that access to the records of both Distillers Company Limited (DCL) and the Scotch Whisky Association (SWA) are now embargoed, therefore, where necessary, we refer to the prior analysis of other scholars. While not overtly ‘legal’ in the sense of relying on litigation and/or EU regulations, these sources are outlined where appropriate.

The chapter proceeds as follows. In the next section we provide a historical perspective on the failure to establish a rigorous and comprehensive definition of Scotch whisky, and why, therefore, there was uncertainty about the extent to which this appellation could be used legitimately to signal authenticity. We then provide a brief overview of the legal difficulties that confronted the SWA as it sought to legitimise Scotch whisky. Drawing on the insights

Institutional and Co-ordination Aspects, volumes 1 and 2 (European Association of Agricultural Economists, 2000); David M. Higgins, *Brands, Geographical Origin, and the Global Economy* (Cambridge University Press, 2018).

³ Glenn Carroll, ‘Concentration and specialization: Dynamics of niche width in populations of organizations’ [1985] *American Journal of Sociology* 1262; Glenn Carroll and Anand Swaminathan, ‘Why the microbrewery movement? Organizational dynamics of resource partitioning in the American brewing industry after Prohibition’ *American Journal of Sociology* [2000] 705; Jochem J. Kroezen, J. J., and Heugens, and Pursey P. M. A. R. Kroezen [2019] ‘What is dead may never die: Institutional regeneration through logic reemergence in Dutch beer brewing’ *Administrative Science Quarterly* [2019] 976.

⁴ David G. McKendrick, and Michael T. Hannan, ‘Oppositional identities and resource partitioning: Distillery ownership in Scotch whisky’. *Organization Science* [2014] 1826.

provided by resource partitioning theory, we then discuss how the bifurcated structure of the Scotch whisky industry exacerbated the problem of conveying authenticity. In the penultimate section, we explain how the prospect of foreign ownership of a substantial part of the industry revitalised the political campaign to protect ‘Scotch’ whisky, which culminated in the Scotch Whisky Act, 1988. We then present our conclusions.

Historical Context

As research on wine appellation history has shown, attempting to define an authentic product in an authoritative manner involves the need for generating consensus around the product specifications (and often evidence of its opposite), the streamlining of multiple overlapping practices to conform to a single specification, the occasional invention of traditions, the editing out of certain producer groupings and their interests – and in the case of certification trademarks – tensions between the sign as conceived by the registered proprietor and its actual use by the trade or semantic reception by the consuming public.⁵ Does the guarantee have any specific meaning and what message does it convey over time? There is also the constant market pressure for innovation and change to satisfy fluctuations in demand, which has to be reconciled with the need to conform to registered specifications. Finally, while a paradigm appellation product such as wine has relatively stronger and empirically verifiable geographical links to a defined region of production, what is the algorithm for determining the nature of the linkages and geographical region of production for Scotch whisky?

One issue that needs to be addressed at the outset is that it is not easy to delineate the attributes of ‘Scottishness’ and ‘heritage’. As one scholar noted, ‘invented’ traditions are, ‘largely factitious’.⁶ As far as Scotland is concerned, it has been suggested that, ‘the whole concept of a distinct Highland culture and tradition is a retrospective invention’.⁷ Moreover, the ‘romanticised’ imagery associated with Scotland – glens, lochs and stunning mountain

⁵ See, especially, Dev Gangjee, *Relocating the Law of Geographical Indications* (Cambridge University Press 2012); Kolleen M. Guy, *When Champagne Became French: Wine and the Making of a National Identity* (Johns Hopkins University Press 2003); Alessandro Stanziani, ‘Wine Reputation and Quality Controls: The Origin of the AOCs in 19th Century France’ [2004] *European Journal of Law and Economics* 149.

⁶ Eric Hobsbawm, ‘The Invention of Tradition’, in Eric Hobsbawm, and Terence Ranger (eds), *The Invention of Tradition* (Cambridge University Press, 1983) 2.

⁷ Hugh Trevor Roper, ‘The invention of tradition: the Highland tradition of Scotland’ in Eric Hobsbawm, and Terence Ranger (eds), *The Invention of Tradition* (Cambridge University Press, 1983) 15.

ranges – contrasts with the reality of urban deprivation, slums, and the harsh living conditions in pit villages and steel towns.⁸ A further issue is that consumer perceptions of Scotch whisky could be communicated without using the term, ‘Scotch’, for example, saltires, tartan, and thistles. Use of such indicia on non-genuine Scotch whisky simultaneously debased these images of Scottishness and made them unreliable indicators of provenance when applied to products that were genuinely Scottish.⁹

The earliest official investigation concerned solely with determining the precise meanings of whisky and Scotch whisky was a Royal Commission established in 1908.¹⁰ The catalyst for this Commission was the ‘Islington cases’ of 1905, in which one of the defendants was charged under the Sale of Food and Drugs Act, 1875, for selling an alcoholic beverage which was, ‘not of the nature, substance, or quality’ of Scotch whisky. In finding for the applicants, the magistrate held that, by itself, patent still spirit (that is, grain whisky) was not whisky. Consequently, it could not be ‘Scotch whisky’ even though it was made in Scotland, and that ‘Scotch whisky’ was a spirit which was made entirely from malt.¹¹

This decision provoked consternation in the whisky industry and representatives of the major grain distillers, malt distillers, and blenders’ associations, met in Glasgow to petition that a Royal Commission be established to determine whether application of the term ‘whiskey’ should be restricted solely to spirit made in pot stills; was it permissible to apply the term ‘whiskey’ to spirit made entirely in patent stills, or when mixed with pot still spirit, and what restrictions should be imposed on the constituents of whiskey.(Scotch Whisky and Irish Whiskey are often distinguished in spelling. According to the SWA, American whiskey is usually spelt with an ‘e’, while English, Welsh, Japanese and most other world whiskies are not, Historically, however, Scotch whisky has been spelt in official documents with an ‘e’,

⁸ Andrew Blaikie, ‘Imagining the face of a nation: Scotland, modernity and the places of memory’ [2011] 416, 427.

⁹ *Lang Brothers Ltd v. Goldwell Ltd* [1980] SC 237.

¹⁰ *Final Report of Royal Commission on Whiskey and other Potable Spirits*, (BPP XLIX. 451, 1909. Hereafter, *Royal Commission*). Select Committees were appointed in 1890 and 1891 to determine, *inter alia*, whether, on grounds of public health, specific categories of British and foreign spirits should be blended, and kept in bond for a definite period before being consumed. *Report from the Select Committee on British and Foreign Spirits*, (BPP 316. X.849, 1890; *Report from the Select Committee on British and Foreign Spirits*, (BPP 210. XI.351, 1891).

¹¹ ‘Whisky. The Islington Cases: Appeal to Sessions’, *British Food Journal*, June, (1906), 116.

including in the Royal Commission 1909, as discussed below, although more recently this is not the case).

Nonetheless, there remained a lack of consensus about the precise definition of ‘whisk(e)y’ and ‘Scotch whisky’. The senior partner of Robert Brown & Co stated that Scotch whisky was any whisky manufactured in Scotland from cereals, irrespective of whether it was made using the pot or patent still method, or was a blend of both spirits. Alexander Cowie, proprietor of the Mortlach distillery, opined that Scotch whisky was a spirit made in Scotland, containing a mixture of grain and malt in such proportions that the whisky would have the characteristics of pot still malt whisky. The North of Scotland Malt Distillers’ Association, which Cowie represented, believed that 50% pot still and 50% patent still conformed to its definition of Scotch whisky. Alexander Walker, the Managing Director of John Walker & Sons, was in agreement with Cowie because it was necessary to, ‘protect the reputation of Scotch pot still whiskey, the prestige value of Scotch whiskey in foreign countries being an enormous asset of Scotland’.¹² Conversely, witnesses representing John Gillon & Co, Wright & Greig Co, and Ben Nevis Distilleries, stated that Scotch whisky was *any* whisky manufactured in Scotland.¹³ In view of these competing claims, the Commission concluded that Scotch whisky was a spirit obtained from the distillation of cereals, saccharified by diastase of malt, and distilled in Scotland.¹⁴

This definition anchored the process of distillation to Scotland, and *only* in this sense was a clear relationship between product and place established. However, this definition was not legally binding. The failure to enact this recommendation until 1988 meant that during the intervening period:

The practical difficulty in dealing with this (restrictions on labelling) matter is while there are cases of suspected mis-description, such cases can seldom be proved, owing to the absence at present of authoritative definitions of the different kinds of whiskey ... For instance, not only is there no legal

¹² *Index and Digests of Evidence Taken by the Royal Commission on Whiskey and Other Potable Spirits* (BPP XLIX.785, 1909), 66.

¹³ *Index and Digests of Evidence Taken by the Royal Commission on Whiskey and Other Potable Spirits* (BPP XLIX.785, 1909), 23; 27; 29; 35; 43.

¹⁴ *Royal Commission*, 23.

definition of “Irish Whiskey” or “Scotch Whiskey,” but hitherto expert opinion has been widely divided as to what the definition should be, and consequently the Revenue Authorities have no sanction of law or custom by reference to which they could prohibit the use of these descriptions on labels’.¹⁵

Two themes are pertinent to the question: what is Scotch whisky? The first is authenticity, which is crucial to the meanings that consumers attach to a brand. As applied to alcoholic beverages, claims to authenticity involve a connection to time and place which is important for consumers because it affirms tradition.¹⁶ The second is legitimacy – the extent to which an organisation conforms with established norms. For example, one study argued that the ascendancy of the Ontarian fine-wine industry could be attributed to the ways in which firms in this industry aligned their production methods, and quality certification schemes, with globally recognised protocols.¹⁷

What is intriguing about the Scotch whisky industry – in contrast to the brands owned by its member companies -- is that it was difficult to communicate authenticity because there was no legally-binding definition of ‘Scotch’ whisky. Similarly, the efforts of the SWA to legitimise this term in national and global markets was hindered by the absence of globally recognised criteria for this spirit.¹⁸ This latter observation meant contested legitimacy of the terms ‘whisky’ and ‘Scotch whisky’, particularly in certain export markets. Manufacturers of inauthentic products can use advertising and branding to project an aura of authenticity for their products.¹⁹ Such practices were a constant matter for litigation by the Scotch whisky industry, as evident in high-profile litigation cases in Uruguay and Ecuador, where labels for inauthentic

¹⁵ Royal Commission, 45.

¹⁶ Michael B. Beverland, ‘Crafting Brand Authenticity: The Case of Luxury Wines’. *Journal of Management Studies* [2005] 1003, 1007.

¹⁷ Maxim Voronov, Dirk De Clercq, and C.R.Hinings, ‘Conformity and Distinctiveness in a Global Institutional Framework: The Legitimation of Ontario Fine Wine’ *Journal of Management Studies* [2013] 607.

¹⁸ Julie Bower and David M. Higgins, ‘Litigation and Lobbying in Support of the Marque: The Scotch Whisky Association, c. 1945 – c. 1990’ *Enterprise & Society* [2023] 286.

¹⁹ Jonatan Södergren, (2021), Brand Authenticity: 25 Years of Research’ [2021] *International Journal of Consumer Studies* 645, 648.

products contained Scottish names and were embellished with images of tartan, and tartan imagery, such as the tam o' shanter.²⁰

Litigation would have been facilitated if the SWA had registered Scotch whisky as a certification mark. Such marks were incorporated in the Trade Marks Acts of 1905 and 1938.²¹ In 1955, the SWA considered that this option might assist in restricting the export of immature Scotch whisky which was damaging the reputation of the matured variety and, by implication, 'traditional' Scotch whisky. However, it decided not to exercise this option, partly because it was concerned that if it became the registered owner of 'Scotch' whisky, it would be in the invidious position of determining which companies could use this mark. Other concerns were that it would take many years, and considerable expense, to secure registration even in countries which permitted registration of certification marks.²²

Consequently, in the UK the SWA had to rely on passing off actions, which are generally less certain in outcome and more expensive, compared to an action for trade mark infringement. Litigation in foreign countries relied on the doctrine of unfair competition.

Authenticity and ownership

Resource partitioning theory seeks to explain the rise of late-stage specialist segments within an established industry following the consolidation of large generalist organisations competing for market share in the mass market.²³ The appeal of these specialist organisations emanates from their identity and/or location, for example, in the case of specialty 'estate' wines as a partition in the context of the mass market 'jug' or standard wines.²⁴ The theory supports the

²⁰ White Horse Distillers Limited and Others v. Gregson Associated Limited and Others [1984] R.P.C. 61; John Walker & Sons Limited and Others v. Henry Ost and Company Limited and Another [1970] R.P.C. 489. Actions involving similar misleading statements include: Schutzverband der Spirituosen-Industrie e.V. v. Egon Schöppe, [1969] Decision of the West German Supreme Court 402.

²¹ Trade Marks Act 1905, s.62; Trade Marks Act 1938, s.37.

²² The National Archives (TNA), MAF, 84/897 Export of Scotch Whisky: General Correspondence, The Distillers Company Limited to Board of Trade, 12 April, 1957. Sometimes, registrable collective trade marks in foreign countries can operate as certification trade marks. Norma Dawson, *Certification Trade Marks* (Intellectual Property Publishing 1988), 84.

²³ Carroll and Swaminathan, 'Why the microbrewery'.

²⁴ Anand Swaminathan, 'Resource partitioning and the evolution of specialist organizations: The role of location and identity in the U.S. wine industry' [2001] *Academy of Management Journal* 169.

hypothesis that two apparently opposing trends of consolidation and new business formation can sometimes occur simultaneously within the same industry. While generalist organizations choose markets composed of large heterogeneous segments, specialist organisations choose narrow homogenous areas. When resources are sufficient to sustain a specialist segment, the market is ‘partitioned’ in that superficially generalist and specialist organisations do not compete; the shared understanding of the peripheral firms’ offerings is such that the offerings of the dominant firms cannot substitute for those of the peripheral firms.²⁵

Resource partitioning theory has been extended to situations where there is an evident return to heritage, authenticity and traditional scale and production methods. This reflects a realignment of core identity, image, and reputation with changing societal values and entrepreneurial opportunities.²⁶ Academic research which has applied the resource partitioning model to the Scotch whisky industry reported the resurgence of interest in ‘traditional’ and ‘authentic’ single malt whiskies.²⁷ However, somewhat counter-intuitively to the theory, consumers were not deterred by the fact that many of the leading single malts are owned by the mass market producers of blended Scotch whisky. Unlike micro-brewing, and wine,²⁸ consumers of single malts do not appear to equate authenticity with distillery ownership, at least in the timeframe studied. This was partly attributable to an inability to seed a cluster in home distilling (expense, technical and legal criteria) in the manner observed in microbrewing, where additionally there is no requirement for lengthy maturation.²⁹ The foreign acquisition of famous whisky companies many years ago (Table 1) has meant that the industry has become little more than, ‘a network of interlocking financial and industrial interests, with Canadian, American, French, and Japanese firms involved’.³⁰

²⁵ McKendrick and Hannan, ‘Oppositional identities’

²⁶ William M. Foster, Roy Suddaby, Alison Minkus, and Elden Wiebe, ‘History as social memory assets: the example of Tim Hortons’ [2011] *Management & Organizational History* 101. Andrew Popp, and Robin Holt, R. (2013). ‘The presence of entrepreneurial opportunity’. [2013] *Business History* 9;.

²⁷ McKendrick and Hannan, ‘Oppositional identities’

²⁸ Carroll and Swaminathan, ‘Why the microbrewery’ Kroezen and Heugens, ‘What is dead’; Giacomo Negro, Michael T. Hannan and Hayagreeva Rao, ‘Category reinterpretation and defection: Modernism and tradition in Italian winemaking’ [2011] *Organization Science* 1449; Swaminathan, ‘Resource partitioning’.

²⁹ McKendrick and Hannan, ‘Oppositional identities’, 1283.

³⁰ David Daiches, *Scotch Whisky: Its Past and Present* (Fontana, 2002) 93.

[Table 1 about here]

Whatever real or imagined characteristics *are* associated with Scottishness, they are insufficient to explain how the Scotch whisky industry established a global presence that has been sustained when other Scottish heritage industries did not. For example, traditional small-scale Scottish knitwear manufacturers based within the tightly defined Borders region experienced more than one hundred years of success only to fail abruptly due to the inability to adapt to the technological change and challenges posed by new foreign rivals.³¹ Conversely, the focus on small-scale, traditional production methods in a geographically delimited area was central to the enduring success of Harris Tweed. Unlike the SWA, the Harris Tweed Association secured registration and higher legal protection of the Orb trade mark, and ‘Harris Tweed’. The regulations governing this standardisation trade mark stated:

‘Harris Tweed’ means a Tweed made from pure virgin wool produced in Scotland, spun, dyed, and finished in the Outer Hebrides and handwoven by the Islanders at their own homes in the islands ... all known as the Outer Hebrides.³²

‘Traditional’ single malt whiskies are inextricably linked via the blending process to the major mass market brands owned by the international alcoholic beverage conglomerates.³³ The large well-known brands are blends of many different whiskies (up to 40 in the case of Johnnie Walker Black Label) many of which were sourced historically from third party independent malt distillers.³⁴ This relationship was crucial to the rapid growth of the industry from the late nineteenth century.³⁵ Consequently, in considering category boundaries in the context of

³¹ Joseph F. Porac, Howard Thomas, and Charles Baden-Fuller, ‘Competitive groups as cognitive communities: The case of Scottish knitwear manufacturers revisited’ [2011] *Journal of Management Studies*, 646.

³² Dawson, *Certification*, 76.

³³ Julie Bower, ‘Scotch Whisky: History, Heritage and the Stock Cycle’ [2016] *Beverages* 1.

³⁴ Monopolies and Mergers Commission, HC 743 (5 August 1980), 7.

³⁵ See, for example, evidence of John Blanche, and William Ross, *Index and Digests of Evidence Taken by the Royal Commission on Whisky and Other Potable Spirits* (BPP XLIX.785, 1909), 20; 53.

resource partitioning theory the same set of producers operate within both the centre and periphery of a single organization form.

The major acquisitions that pertain to the leading Scotch whisky brands are shown in Table 1. During 1979 Canadian firm Hiram Walker launched a hostile bid for Highland Distilleries, owner of The Famous Grouse blend, which was blocked by the Monopolies and Mergers Commission (MMC) At that point ownership of Scotch whisky assets was such that of Scotland's 117 malt distilleries, DCL owned 45, followed by Canadian family firm Seagram with nine, and Hiram Walker with eight.³⁶ Following various mergers in the 1980s, 1990s, and 2000s, Diageo currently owns 29 of the 135 fully operating malt distilleries, with French multinational Pernod Ricard owning 12. Both firms own one of the seven large grain distilleries, with Diageo having a joint venture interest with Edrington, owner of The Famous Grouse, in an additional grain distillery.³⁷ Aside from French firm La Martiniquaise's grain distillery which opened in 2010, new entry has tended to be via acquiring and re-opening mothballed malt distilleries previously owned by other firms. The increased demand for single malt whisky has been met by existing brands extending capacity, with the largest two, The Glenlivet and Glenfiddich, which operate at 21 million litres pure alcohol (mlpa) capacity.³⁸ Table 2 shows the estimated market shares of the leading Scotch whisky firms based on their share of Scotch whisky sales.

[Table 2 about here]

Even though the Hiram Walker/Highland Distilleries bid was blocked, it did little to deter subsequent merger and acquisition activity, which ignited a series of heated debates in

³⁶ Monopolies and Mergers Commission, HC 743 (5 August 1980), 9.

³⁷ There are seven grain distilleries, 5 of which are in the Lowlands region. Cameronbridge (Diageo) and Girvan (Wm Grant) are both 110 mlpa capacity. North British (joint venture between Diageo and Edrington) is 72 mlpa. Strathclyde (Pernod Ricard), Invergordon (Whyte & Mackay) and Starlaw (La Martiniquaise) are 39 mlpa, 36 mlpa and 25 mlpa respectively. Loch Lomond is 21 mlpa of which 18 mlpa is dedicated to grain production (See [Grain whisky distilleries in Scotland | WhiskyInvestDirect](#))

³⁸ There are 135 malt distilleries, around half of which are in the Speyside region. The Glenlivet (Pernod Ricard) and Glenfiddich (Wm Grant) are both 21 mlpa capacity, followed by The Macallan (Edrington) at 15 mlpa. The majority of malt distilleries are less than 3 mlpa, with only 18 of the total above 5 mlpa (See [Malt whisky distilleries in Scotland | WhiskyInvestDirect](#))

Parliament with each bid that emerged. Scottish MPs became increasingly fraught as parts of Scotland's heritage were redomiciled either to London, or further afield.

Between 1985 and 1987, Anglo-Irish brewer Guinness attained leadership of the Scotch whisky industry, firstly through the acquisition of Arthur Bell, followed by the controversial and notorious acquisition of DCL.³⁹ In the first of several high-profile interventions, Conservative Bill Walker MP, pointed to other motives for Guinness's acquisition of Arthur Bell:

'Guinness cannot get its overseas profits into this country ... Guinness is writing off advance corporation tax and it does not have enough United Kingdom earnings to pay its dividend. Guinness is in trouble and Bell's is not ... Everyone in Bell's is treated alike and everyone works hard. The Scottish institutions, ... have remained with Bell's and I am thankful to them for that. They recognise that if Scotland has no home-based, profitable firms, the very reason for the existence of the Scottish financial centre will vanish. If we lose Bell's, which company will be next?... Perhaps Mr. Saunders will have his eye on Distillers which, again, is in my constituency⁴⁰

Within a year, DCL was the subject of rival bids from Scotland-based conglomerate, Argyll Group, and Guinness. The initiating Argyll bid was hostile but was not referred to the MMC. In contrast, because Guinness owned Bell's, there was the prospect of a referral, notwithstanding its role as the White Knight bidder. The ensuing debate was essentially the preserve of Scottish MPs, united across the political spectrum. The relative merits of the competing bids focused on more than the potential concentration in the industry (between 35 and 50 per cent of whisky production, depending on how spare capacity and mothballed

³⁹ The Takeover Panel, 1989/13 ('Takeover Panel requires Guinness to make payments to former Distillers shareholders') 14 July 1989.

⁴⁰ (HC Deb 25 July 1985 vol 83 cc1391-9)

distilleries were accounted for). The benefits to Scotland, and support for traditional industries and job prospects, received particular focus. The Liberal Democrat Malcolm Bruce MP said:

‘Argyll launched its bid with an attractive statement—attractive to me as a Scottish Member—which claims that the company will bring Scotch whisky back home. It would establish a new company in Scotland. Its management team would be based in Scotland and the industry would be run from there. Argyll claim that its management team has a marketing background which can revitalise the industry, and it feels that its actions are a logical development of its own business. Guinness countered that by claiming that it had greater international marketing expertise which would be much healthier and better for the industry. It also claimed that it would establish headquarters in Scotland ... I think we can learn something from the way the producers of Armagnac and Cognac have established the imprimatur on their quality product in a way which Scotch whisky could benefit from if it is to establish itself as top of the heap ... Distillers had a distillery in my constituency but closed it many years ago.’⁴¹

In an Adjournment debate, vocal Scottish Conservative MP, Bill Walker, raised the matter of what became known as the ‘Guinness affair’, recounting the acquisition of Arthur Bell and the firm pledges given by Guinness in the offer document for that company:

‘The first pledge says: Bells will continue to be managed from Perth as an autonomous company, subject only to overall strategic direction and normal disciplines of financial reporting ... Bell's is no longer an autonomous company. The overseas sales department has been moved to Hammersmith in London. The United States sales operation has been closed down, and the promised advertising in the United States has not been

⁴¹ (HC Deb 03 February 1986 vol 91 cc120-6).

implemented. Export staff have been told that they are being moved from Bell's to Dewars ... Bell's premium brand is being sold at a discount and is now just one of the many brands in the Guinness stable ... Brand name and reputation are everything in the Scotch whisky industry. Unlike beer, whisky cannot be offered at a discount to vendors and the public without destroying the reputation and the up-market image of the brand'.⁴²

Mr Walker continued his campaign about the heritage and traditional status of Scotch whisky through aggressive lobbying of his fellow Conservative government ministers. Ultimately this led to the passing of the Scotch Whisky Bill.⁴³ Subsequently, the Scotch Whisky Act, prohibited the production in Scotland of whisky other than Scotch whisky, and the Scotch Whisky Order provided a statutory definition of Scotch whisky.⁴⁴ This domestic legislation became enshrined in EU law.⁴⁵

Conclusions

In this chapter we have used the insights provided by resource partitioning theory to explain why the bifurcated industrial structure of the Scotch whisky industry has blurred consumer perceptions of 'authentic' Scotch whisky. We have also argued that the failure of the SWA to secure statutory protection of 'Scotch' Whisky until the late twentieth century, exacerbated the problems that confronted this Association as it sought to legitimise 'Scotch' whisky.

Scotch Whisky does not fit the standard appellation paradigm, with its traditional emphasis on small-scale, highly localised production. The Scotch whisky industry is dominated by multinational companies. Most of the leading champagne brands, including Krug, Moët & Chandon, and Veuve Clicquot, are owned by the multinational LVMH (Moët Hennessy Louis Vuitton). However, champagne can only be produced from grapes grown in the tightly defined region centred on the city of Reims and the town of Épernay. In contrast,

⁴² (HC Deb 03 Mar 1987 vol 111 cc845-52).

⁴³ (HC Deb 11 December 1987 vol 124 cc681-735).

⁴⁴ Elizabeth II, c.22 Scotch Whisky Act, 1988; The Scotch Whisky Order, S.I., 998 (1990).

⁴⁵ Council Regulation (EEC) 1576/89; EC Regulation 110/2008.

there are no restrictions on the geographical origin of inputs (cereals) used in the production of Scotch whisky, although in practice a large proportion of the barley used in the manufacture of malt whisky is grown in Scotland. In fact, only two requirements tie this spirit to Scotland: the whisky must be distilled, and matured, in Scotland.

Viewed from this perspective, *terroir* appears unimportant.⁴⁶ Terroir, which refers to environmental conditions, especially climate, soil, and topography, was fundamental to early European efforts to control the use of wine appellations. Distillation and maturation are traditional *processes* that have been used in the production of Scotch whisky for over 200 years. Moreover, despite the absence of a legally binding definition of this term for most of this period, historically, Scotch whisky has been associated with Scotland. This reputational alignment between product and place underpins global regulations governing geographical indications.⁴⁷ It is debatable that Scotch whisky secured recognition as a geographical indication *only* on the basis of this reputational link. Certainly, it cannot be argued that the processes of distillation and maturation were unique to Scotch whisky.

A final conclusion relates to the possible conflict between heritage, which is socially constructed and inter-temporal, versus ‘fixity’ of place. A substantial literature in the field of geography indicates that, ‘place is, and always has been, fundamentally unreliable ... Although we are wooed by the nostalgic fancy that places never change, this is a fiction that is all too readily exposed’.⁴⁸ This observation is consonant with the varying connotations of Scottishness discussed earlier, and it raises the beguiling question: how ‘Scottish’, will Scotch whisky be if (when) the industry is entirely owned by companies many of which are multinational firms domiciled outside the UK?

References

⁴⁶ The industry would argue that there is a *terroir* effect on the type of peat used, and the climatic conditions where maturation takes place.

⁴⁷ Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), s.22.1

⁴⁸ Bronwyn Parry, ‘Geographical indications: not all “champagne and roses”’ in Lionel Bently, Jennifer C. Davies and Jane C. Ginsburg (eds) *Trade Marks and Brands: An Interdisciplinary Critique* (Cambridge University Press, 2008) 366.

- Beverland, M. 'Crafting Brand Authenticity: The Case of Luxury Wines' [2005] *Journal of Management Studies*, 1003-1029.
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Table 1. Defining acquisitions of Scotch whisky assets

Year	Acquiror	Target	Key Brands
1925	DCL	‘The Big Amalgamation’ of Buchanan-Dewar, and John Walker & Sons	Dewar’s, Buchanan, Johnnie Walker
1972	Grand Metropolitan	Watney Mann/International Distillers & Vintners (IDV)	J&B Rare Single malts Auchroisk, Knockando, Strathmill and Glen Spey
1974	Pernod Ricard	S Campbell & Son	Clan Campbell Single malt Aberlour
1985	Guinness	Arthur Bell & Sons	Bell’s Single malt Blair Athol
1986	Guinness	DCL	Johnnie Walker, Dewar’s Smaller brands including White Horse, Haig, VAT 69 Single malts Cardhu, and Classic Malt range (Lagavulin, Dalwhinnie, Glenkinchie, Cragganmore, Oban and Talisker)
1986	Allied-Lyons	Hiram Walker	Ballantine’s Single malts Scapa, Balblair and Ardbeg
1990	Allied-Lyons	Whitbread (divestment)	Long John Single malt Laphroaig
1996	Highland Distillers	Macallan-Glenlivet	The Macallan
1997	Grand Metropolitan	Guinness (merger, forming Diageo)	Johnnie Walker, Dewar’s, Bell’s, J&B Rare
1998	Bacardi-Martini	Diageo (divestment)	Dewar’s
1999	Edrington (R&B)/William Grant	Highland Distillers	The Famous Grouse Single malts The Macallan and Highland Park
2001	Diageo/Pernod Ricard	Seagram (split of portfolio)	Chivas Regal, Glen Grant and single malt, The Glenlivet (to Pernod Ricard)
2004	LVMH	Glenmorangie	Glenmorangie and Ardbeg
2005	Pernod Ricard/Fortune Brands	Allied Domecq (split of portfolio)	Ballantine’s (to Pernod Ricard) Laphroaig (to Fortune Brands)

Table 2. Sales and market shares by volume

Firm	Ownership	Grain Distilleries	Malt Distilleries	Sales (m cases)	Market Share
Diageo	Public (UK)	2 (one is jv with Edrington)	29	37.5	41.1%
Pernod Ricard	Public (France)	1	12	20.2	22.2%
William Grant & Sons	Private (UK)	1	4	7.3	8.0%
La Martiniquaise	Private (France)	1	1	5.3	5.8%
Bacardi	Private (Bermuda)		5	5.0	5.1%
Edrington Group	Private (UK)	1 (Jv with Diageo)	3	4.6	5.0%
Whyte & Mackay	Public (Philippines)	1	4	3.8	4.2%
Beam Suntory	Private (Japan)		5	1.4	1.6%
Loch Lomond	Private (UK/Asia)	1	2	1.0	1.0%
Ian Macleod Distillers	Private (UK)		2	1.0	1.0%

Source: whiskyinvestdirect.com