

Geographic Brands: An Endangered Species?



By Sara Schorske and
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THE WHEELS of justice are continuing to slowly roll, as the California appellate courts take

turns refereeing the fight between Bronco Wine Company, the Napa Valley Vintners Association, and the state ABC over Section 25241, California's "Napa truth in labeling law." Round two just ended in a resounding victory in favor of the new law—as this article is written, the California Supreme Court just issued its ruling—but there are more rounds to come [see Spotlight this issue]. Bronco's lawyers are reportedly considering an appeal to the US Supreme Court. Meanwhile, the giant wine producer is raking in an estimated \$17 million each year on sales of the contested brands—more than enough to pay the legal fees for this multi-round fight.

The Battle Lines

The fight centers around Bronco's right to use three brand names (Napa Creek Winery, Napa Ridge, and Rutherford Vintners) on wines containing no Napa-grown grapes. Section 4.39(i) of the federal wine regulations prohibits the use of brand names with viticultural significance, like Bronco's, unless the wines meet the appellation of origin requirements for the area listed. However, the 1986 regulation included an exception for existing brand names, as long as the labels bear

an appropriate appellation of origin, or other statement sufficient "to dispel the impression that the geographic area suggested by the brand name is indicative of the origin of the wine."

These three Bronco brands are all covered by this grandfather clause. The Napa Creek Winery brand, introduced by a Napa Valley winery in 1981, was acquired by Bronco in 1993. The Rutherford Vintners brand, originated by another Napa vintner in the early 1970s, was acquired by Bronco in 1994. Finally, Bronco reportedly paid over \$40 million in January 2000 to purchase the Napa Ridge brand from

Beringer Wine Estates, which had used the brand since the early 1980s.

Using the exemption in the federal regulation, Bronco developed these brands using grapes grown far from Napa County—in areas such as Lodi and Stanislaus County, where the cost, and the perceived quality, of the grapes is much lower—and bottled them at facilities in Stanislaus and Sonoma Counties. More recently, however, Bronco added bottling operations at a huge new facility in the City of Napa, capable of producing approximately 18 million cases a year. That's double the current annual output of all the vineyards in

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Napa County, combined. In that move to Napa, Bronco acquired the legal right to use the prestigious-sounding phrase, "vinted and bottled in Napa, CA" on that flood of out-of-county wines.

It is hard to allay the fears of the Napa vintners that, although legal, the federal grandfather clause does allow consumers to be misled about the origin of wines. For example, how many wine drinkers in this country know that Lodi is not a town in Napa County? Not many. How many consumers abroad know where Lodi is? Even fewer. And what if they do? How many restaurant wine lists include the appellations of the wines offered? Again, hardly any!

In self-defense, the vintners of Napa Valley appealed to the California Leg-

islature for help, and succeeded in putting Section 25241 on the books. The new statute states that no wine produced or marketed in California may use the name Napa, or the name of any viticultural area located entirely within Napa County, on labels or advertising materials, unless the wine qualifies for a Napa County appellation. (It does, however, allow these protected names to appear in the bottling address or as part of a truthful statement in the puffery about the history or location of the winery.) Although the ABC is the reluctant player, preferring to have no role in this labeling skirmish, the law gives the department enough bite to make a Great White shark jealous: the ABC may suspend or revoke a violator's

license and, under certain circumstances, may seize and dispose of wine labeled in violation of the law.

Bronco's Temporary Stay of Execution

A month before section 25241's effective date of January 1, 2001, Bronco filed a petition in the Court of Appeal to stop enforcement of the new law. Bronco presented the following four arguments that the statute was unconstitutional:

1. The state law that prohibits Bronco's Napa-related labels is preempted by federal law, which allows them.

2. The state law violates Bronco's First Amendment right of free speech.

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3. The state law violates the Commerce Clause of the US Constitution, which prohibits states from passing laws that unduly restrict interstate trade.

4. The state law violates Bronco's Fifth Amendment rights, which prohibit government from taking private property without proper compensation.

The appeals court accepted the case for review and stayed the new law's enforcement. But the case presented a procedural challenge for the court—there had been no proceedings in a trial court, and the appeal court was faced with the unaccustomed and time-consuming job of taking evidence.

Rather than sift through all of Bronco's challenges, the court deftly cut to the federal preemption issue and ruled for Bronco, stating that the federal wine labeling regulations displaced California's right to adopt a wine labeling law. Those of us who live daily with the extensive and strictly enforced federal labeling regulations and COLAs can appreciate how the court arrived at that conclusion, even if we don't agree with it.

The California Supreme Court Decision

The state ABC appealed to the California Supreme Court, whose justices unanimously overturned the Court of Appeal ruling. The 67-page Supreme Court decision reads like a doctoral dissertation in the history of wine labeling law in this country. In affirming that California has the constitutional right to regulate labeling of California wines, the court explained that the states have been heavily involved in regulating wine labeling since the 1860s—long before the Federal Alcohol Administration Act came into existence—and have often imposed stricter standards than federal regulations required.

Oregon also has several laws that exceed federal requirements, affecting percentage content of Oregon appellation wines, the use of semi-generic place names such as "Burgundy" on Oregon wines, the percentage content of varietal wines, the use of the term "estate bottled," and the use of geographic brand names. Other states do, too.

Moreover, federal regulations explicitly allow for state laws that vary from federal regulations. 27 CFR §4.25a(b) states:

"An American wine is entitled to an appellation of origin other than a multi-county or multi-state appellation, or a viticultural area, if:

...
(iii) it conforms to the laws and regulations of the named appellation area governing the composition, method of manufacture, and designation of wines made in such place."

Swayed by facts such as those, and unconvinced by any of Bronco's defenses, the court concluded:

"California is recognized as a preeminent producer of wine, and the geographic source of its wines reflecting the attributes of distinctive locales, particularly the Napa Valley—forms a very significant basis upon which consumers worldwide evaluate expected quality when making a purchase. We do not find it surprising that Congress, in its effort to provide minimum standards for wine labels, would not foreclose a state with particular expertise and interest from providing stricter protection for consumers in order to ensure the integrity of its wine industry."

As strong as this decision is, it does not make Section 25241 finally enforceable. Before the stay can be lifted, the case must go back to the Court of

Appeal, which must rule on Bronco's other three challenges.

Endangered Brands?

What does the future hold, now that round two is concluded? Not only Bronco, but also the owners of at least 32 other Napa-related "grandfathered" brands, and a group of 68 wineries, 47 "winegrowers," and three interested parties who aligned themselves on Bronco's side in the legal battle, are waiting to see. The future of geographic brand names in Napa will eventually be decided in this case, but the ramifications of the case may not stop there.

The prognosis for Bronco's side looks dimmer now. A definitive and exhaustive decision rendered by a unanimous California Supreme Court makes it unlikely, we feel, that the US Supreme Court will agree to reconsider the preemption question. And we don't foresee a repeat of the winery's previous victory in the state Court of Appeal. Instead, we predict that this time the court will use legal principles to disqualify Bronco from prevailing on its claims, and in that way, once again dodge the bullet of evidentiary proceedings. Given the California Supreme Court's strong support for California's right to regulate wine labeling, the Court of Appeal will be hard pressed not to uphold the law.

What about the possible wider ramifications? Judging from the players who have joined the fray on both sides of the issue, many people feel that the precedent set by this case may affect geographic brand names far from Napa County, as well. Whether that's true remains to be seen. No other appellation in America has nearly as much to lose by the devaluation of its name, so other states have less incentive to rock the status quo.

Bronco complained in court that the Napa law singled them out. While the application of the law is not limited to Bronco, there is some truth to that perception. The law would never have come into existence if Bronco hadn't forced the issue by exploiting the Napa name on such a mammoth scale.

We do tip our hats in sympathy for the many smaller producers who stand to lose the use of brands they themselves painstakingly created and built over decades—and they may even be prohibited from using their winery name in the label mandates. They will be the real losers if Bronco goes down in defeat. ❖



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