

The Stakes in the Name Game Just Got Higher

By Sara Schorske and Alex Heckathorn

The issue of geographically significant brand names has been a hot topic in the industry for years. ATF spotlighted the issue when it took action in 1996 against Bronco Wine Company's sales and promotion of a brand of wine called Rutherford Vineyards which contained no Rutherford fruit. But even after ATF tightened up its enforcement of its own geographic brand name regulations, Napa Valley growers and vintners were not satisfied. Last year, they won legislative approval for a state law to safeguard Napa County appellations—and unlike the federal regulations, it has no grandfather clause. This new California law prohibits any use on wine labels of any name of viticultural significance from Napa County unless the wine qualifies for a Napa County appellation.

Why did the folks in Napa feel like they had to take the law into their own hands? Now that they have, how is it working? Is this a precedent other regions will, or should, emulate?

The issue of protecting geographic brand names is complicated by the need to balance legitimate intellectual property rights against the undeniable

values of protecting appellation identity and maintaining honesty in labeling. The last time we considered these questions in this column was in 1997. Let's look at the state of the art today.

ATF Regulations Predating the Napa Statute

ATF's 1996 action against Bronco was based on Section 4.39(i) of the wine labeling regulations. That section makes it illegal to use a brand name "of viticultural significance" unless the wine meets the appellation of origin requirements for the named geographical area. (As alluded to above, the regulation makes an exception for brands that pre-dated the regulation's effective date; more about that interesting loophole later.)

According to ATF's written standards, a name has "viticultural significance" if it contains the name of a state, a county, an approved American or foreign viticultural area, or "the name of any geographic area that actually exists and is described in reference materials as a grape growing area." The reference materials ATF refers to are standard wine books such as the Oxford or Sotheby Wine Encyclopedias, Hugh Johnson's books and other well known wine publications.

The last category of geographic brand names covered in the ATF prohibition (those that contain "the name of any geographic area that actually exists and is described in reference materials as a grape growing area")

packs a surprising wallop. That simple provision knocks scores of possible brand names out of play: No brand name that falls within that category can ever be used, because there is no way to meet the appellation of origin requirements. Since the named geographic area is not a state, county, or AVA, it does not qualify for use as an appellation of origin! An example of such a prohibited brand name is "Pope Valley Wine Cellars." Pope Valley is a geographic area that exists, is described in reference materials as a grape growing area, but there is no such thing as a Pope Valley appellation.

As mentioned earlier, the federal regulation contains a grandfather provision, which makes an exception for brand names used by the permittee involved on existing certificates of label approval issued prior to July 7, 1986. For those brands, a geographic brand name can be used if it satisfies one of the following three conditions:

- the wine must meet the appellation of origin requirements for the named geographical area;
- the wine must be labeled with an appellation of origin which is either (i) a county or viticultural area, if the geographic area named in the brand is smaller than a state, or (ii) a state, county or viticultural area, if the geographic area named in the brand is a state;
- the wine is labeled with a statement which dispels the impression

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that the brand name is indicative of the origin of the wine.

To illustrate the points covered thus far:

According to federal regulations, a wine could be labeled with the imaginary brand name of "Atlas Peak Big Red" if not less than 85% of the grapes were grown in the Atlas Peak AVA, the wine was finished in California, and the label conforms to the laws and regulations of the state. But the brand name of "Atlas Peak Big Red" could not be used on a wine made out of grapes from the Alexander Valley AVA—unless, of course, the brand name Atlas Peak Big Red was used on approved COLAs before July 7, 1986. In that case, ATF regs would allow an Alexander Valley wine to bear the geographical brand name, as long as it was labeled with an accurate appellation of origin, or some other clarifying statement.

A Poignant Twist

Let's say a fictitious winery named "Yountville Cellars," was established in 1987, used "Yountville Cellars" as its brand name, and even obtained a US trademark for that brand name. Then, twelve years later, something unfore-

seen happened. In 1999 the Yountville AVA was approved by ATF, and suddenly the winery's brand name became viticulturally significant. Our fictional winery, which had been making a line of popular varietal wines from Sonoma County grapes, now is required under federal regulations to use a new brand name for that wine. The poignant part is, if the brand was just a couple of years older, the described use would still be legal.

Napa Vintners Circle the Wagons

Is it logical or fair that geographic brand names existing before July 7, 1986 should still be allowed on an out-of-area wine? Is a brand name containing a name of viticultural significance any less confusing to consumers just because it was in use prior to the cut off date in the regulation?

The Napa Valley Vintners Association did not think so, and convinced the California legislature to adopt the new law that went into effect January 1, 2001, prohibiting the use on a wine label of any name of viticultural significance from Napa County if the wine does not qualify for the Napa County

appellation, regardless of the name's use prior to July of 1986.

The new law contained in Section 25241 of California's Business and Professions Code states:

- No wine produced, bottled, labeled, offered for sale or sold in California shall use, in a brand name or otherwise, on any label, packaging material, or advertising, any of the names of viticultural significance listed in subdivision (c), unless that wine qualifies . . . for the appellation of origin Napa County. . . [emphasis added]

- The following are names of viticultural significance for purposes of this section: (1) Napa. (2) Any viticultural area appellation of origin established pursuant to . . . the Code of Federal Regulations that is located entirely within Napa County.

- Notwithstanding the first subdivision above, any name of viticultural significance may appear either as part of the address required by . . . the Code of Federal Regulations, if it is also the post office address of the bottling or producing winery . . . or as part of any factual, nonmisleading statement as to the history or location of the winery.

(g) This section applies only to wine which is produced, bottled, or labeled after January 1, 2001.

This new law targeted the long-standing brand names of Napa Ridge and Napa Creek, which often contained no juice from grapes grown in Napa County. These brands were grandfathered in under federal regulation, but it was claimed that the continued use of these and similar brand names on non-Napa wines devalued the Napa appellation.

Caught in the Crossfire

It's easy to understand why a name like Napa Ridge, produced from non-Napa grapes at a winery located far from Napa Valley, bothers the Napa Valley vintners. But other brand and trade names that offended no one will also be affected by the new law.

Remember our fictitious winery, "Yountville Cellars," used in an illustration earlier? In our first scenario, the winery was forced to change its brand name on its Sonoma County varietals when Yountville became an approved AVA. In our second scenario, we changed the facts of our story to assume that our winery's use of its Yountville Cellars brand was grandfathered in under federal regulation. In this case, continuing use of its brand on its Sonoma County wines remained

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legal, as far as ATF is concerned. However, the new California law would eliminate the grandfather reprieve.

After twelve years of building name recognition for a wine, having to change its brand name is bad enough. But for this poor winery, things can actually go from bad to worse: Under the new Napa-inspired California law, the winery probably can't even display its winery trade name on the label.

The law, which prohibits the use of any name of viticultural significance related to Napa County on non-Napa wines, does not distinguish between brand names and the winery's trade name: The statute prohibits the use of names of viticultural significance in the "brand name or otherwise."

While the law provides an exception for the "address" of the winery and allows for factual statements about the producer's location or history, these exceptions are unlikely to apply to the name of the winery. An attorney involved with the drafting of the law recently told us that the law was intended to prohibit use of all categories of names in order to prevent the worst offenders from continuing to use misleading or deceptive winery names as trade names, even after changing brand names. If the bottling trade name of a winery was exempt, the purpose of the statute would be defeated.

Since our fictional winery's trade name contains a name of viticultural significance from Napa County, its use, even in the production statement of the label mandatories, may be prohibited by the law. Yountville Cellars may have to adopt a new winery trade name as well as a new brand name to label the Sonoma County wines for which it is well known. Now, how will the consumer know that this newly labeled wine—from an unfamiliar-sounding winery—is the wine made by Yountville Cellars that he or she knows and wants?

Clearly, the new law can cause problematic and costly consequences to wineries whose production of non-Napa wines is totally ethical and not at all intended to mislead. Proponents defend the law, claiming that the integrity of the Napa appellation is being protected, which is a benefit to all the growers and vintners of Napa wines. As with any real controversy, there are two good arguments to be made and as often happens, the two sides resort to the courts to decide the issue.

The Litigation

The owner of the Napa Ridge brand name, Bronco Wine Company, has filed a lawsuit against the California ABC, the agency charged with enforcing the new law. Bronco's lawsuit argues that the law violates Bronco's rights of free speech, that the Federal regulations pre-empt state law, and that prohibiting the use of its grandfathered brand names and COLA's takes away valuable property rights. The State has replied that misleading and deceptive speech is never protected by the First

Amendment, that ATF expressly acknowledges the rights of states to adopt labeling laws (and expressly requires compliance with such state laws), and that a COLA is not a property right.

While the lawsuit is pending in the California court of appeal, Bronco is free to continue using its controversial brand name. The ABC is waiting for the litigation to be concluded before taking any enforcement action on the law against any other licensees as well. In the interim, ABC will make no state-

ments about how it plans to interpret or enforce the law after the conclusion of the litigation.

However, ABC has definitively stated it would not preview any labels for compliance with the law, either now or in the future. And, while ATF regulations require compliance with state labeling laws, ATF does not certify that labels comply with state law when granting a Certificate of Label Approval. A federal label approval is no guarantee that a label complies with state laws. That leaves

wineries on their own in evaluating and adjusting their packaging to comply with the law.

While the ABC does not seem eager to enforce the law, regulators are quick to point out that most complaints come from other industry members. Sore losers are likely to complain if any other label seems to violate the law. Once a complaint is made, state officials are required to take some action to avoid accusations of selective enforcement.

The statute states it applies to any

wine bottled after January 1, 2001 and there is no indication that the court will change that date for any winery other than those involved in the litigation.

The Other Napa Labeling Statute

Before we conclude, we should mention that there is also a second California statute relating specifically to the labeling of wines from Napa. Section 25240 of California's Business and Professions Code, which has been on the books since 1990, provides that any wine labeled with a viticultural area appellation of origin other than "Napa Valley," and which is located entirely within Napa County, shall bear the designation "Napa Valley" on the label in direct conjunction with the sub-appellation in a type size not smaller than 1mm less than that of the viticultural area designation.

Napa vintners felt they needed that law to limit the solitary use of the smaller appellations (such as Stag's Leap, Oakville, Yountville) on wine labels. According to the Napa Valley Vintners Association, it "seemed like a dangerous path that could lead to the devaluation of the Napa Valley appellation (much as happened to the Bordeaux region of France)."

What's in a Name?

When Shakespeare answered this famous question by declaring that a rose by any other name would smell as sweet, he probably didn't convince the wine marketers in his audience. It's true that changing the name on a label doesn't change the wine's bouquet or diminish the quality of what's in the bottle, but it can certainly destroy the painstakingly built goodwill invested in the packaging. As any wine marketer will assure you, that stinks!

The use of place names in winery and brand names has always been popular in our industry, but the newly complex rules of the name game make this practice increasingly risky. For this reason, we now strongly recommend that wineries NOT use a place name, even if fictitious, as a brand name, winery name, or bottling trade name because of the possibility that the place name can have, or may develop, viticultural significance. You may not welcome the limitations this imposes on your creativity, but you'd have a much more painful complaint if you place an expensive bet on a name that ends up losing its legality. 