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**The Art of Wine Labeling Across Borders: A
Comparative EU-US Legal Study**

Stephen Christopher George

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edited by Siegfried Fina and Roland Vogl

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Abstract

The labeling of wine and other alcoholic beverages is not as simple as developing a marketable name and design, rather winemakers and marketers of alcoholic beverages must navigate a minefield of potential legal issues surrounding the labeling process. This paper takes a practical look at the issues involved in wine labeling with a focus on the laws of the United States and the European Union, and it sets forth an argument in favor of increased harmonization between alcoholic beverage labeling laws to facilitate international trade. The paper identifies some of the innumerable sources of Alcoholic Beverage Labeling Law, addresses key compliance issues for wine classification and label content, and provides an overview of the label approval process in the U.S. and the EU. Additionally, the paper identifies other legal considerations for wine producers to keep in mind during the labeling process such as the protection of intellectual property. Although considerable harmonization efforts have been made within the EU and even between countries with extensive wine trade, label compliance can be an expensive undertaking for wine producers trading across borders.

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LIST OF ABBREVIATIONS

Abbreviation	Meaning	Page of first use
ABC	State Alcoholic Beverage Control Board	7
AGeV	Alkoholhaltige Getränke-Verordnung	13
ALBA	Alcoholic Beverage Labeling Act	57
AVA	American Viticultural Area	18
BATF	Bureau of Alcohol, Tobacco, and Firearms	5
BLE	Federal Office for Agriculture and Food (DE)	13
BMELV	Federal Ministry of Food, Agriculture, and Consumer Protection (DE)	13
CMI	Common Mandatory Information	73
COLA	Certificate of Label Approval	24
ECJ	European Court of Justice	11
EFSA	European Food Safety Authority	10
FAA	Federal Alcohol Administration Act	5
FALCPA	Food Allergen Labeling and Consumer Protection Act	6
FDA	Food and Drug Administration	6
FDCA	Federal Food, Drug, and Cosmetic Act	6
FSAI	Food Safety Authority of Ireland	12
FTC	Federal Trade Commission	6
GATT	General Agreement on Tariffs and Trade	14
LMKV	Lebensmittel-Kennzeichnungsverordnung	13
PDO	Protected Designation of Origin	22
PGI	Protected Geographical Indication	22
TTB	Alcohol and Tobacco Tax and Trade Bureau	5
WeinG	Weingesetz	13
WTO	World Trade Organization	14
WWTG	World Wine Trade Group	72

1. Introduction

A young entrepreneur from California has received financial backing to expand his small home vineyard into a large production entity that will fulfill his dreams of exporting his high-quality wine around the world. This wine will fill the shelves not only in the United States, but also in Ireland and Germany. Full of energy and excitement, the entrepreneur goes to his new marketing firm to discuss artwork for his new product label. The marketing firm's artist is enthusiastic about the entrepreneur's vision and can't wait to get started on designing the new label. The marketing firm's director interrupts to ask the entrepreneur a bubble-bursting question, "Have you discussed this label with an attorney?"

When it comes to labeling, it's not all about the artwork and design anymore. The legal issues surrounding product labeling are innumerable, and the situation only becomes more complicated when food or beverage are involved, particularly alcoholic beverages. Our young entrepreneur may have the product of the century, but without careful consultation with a qualified attorney, he risks being shut out of many of his target markets before having ever shipped a case. There are legal limitations on the trade of alcoholic beverages on international, national, and even local levels that may affect the product label. The truth of the matter is that the entrepreneur may need more than one attorney to adequately address the legal issues of his wine label, let alone other business issues.

This thesis will follow the entrepreneur's labeling process not step-by-step, rather issue-by-issue. It will begin with a discussion on the determination of applicable laws before clearing a path through the daunting roughage of legal complexities facing an international trader of alcoholic beverages. One will learn requirements and

recommendations that will open up new markets for the product while protecting the economic interests of the business in the label itself. Along the way, one will face numerous policy arguments that have affected the alcoholic beverage trade around the world. By the end of the journey, it is expected not that one will have all the answers to alcoholic beverage label production, rather that one will have an idea of which questions to ask.

The effects of labeling requirements on industry participants will also be discussed in order to reach conclusions on the likelihood of harmonization of the applicable legislation and the obstacles to such an undertaking. As globalization brings market participants closer and closer together, what will be the effects on the alcoholic beverage industry? Will alcohol producers suffer under a continued stigma caused by real-life issues caused by alcohol abuse? Will the cost of labeling compliance limit market access to small producers? What should be the key focus points for those representing the legal interests of the alcoholic beverage industry? These are just a few of the key questions that will be addressed. Wine will be the primary beverage of focus, but important factors affecting other alcoholic beverages will be noted from time to time. Although the primary jurisdictions of discussion will be the United States and the European Union, some important considerations from other jurisdictions will also be mentioned.

2. Sources of Alcoholic Beverage Labeling Law

2.1. Alcoholic Beverage Labeling Law in the United States

2.1.1. Federal Law

Alcoholic Beverage legislation in the United States begins at the highest level of U.S. law, the United States Constitution. In 1919, the U.S. Congress and the State legislatures amended the Constitution for the 18th time; this amendment marked a new government interest in alcohol by completely prohibiting “the manufacture, sale, or transportation of intoxicating liquors” within the United States and its territories.¹ This amendment was later repealed in 1933 by the 21st amendment. The 21st amendment reserved broad powers in the individual states to prohibit the manufacture, sale, or transport of alcohol within their territories.² “Since then, [the United States] has gone through a long, strange road of post-Prohibition Repeal, with the federal government as well as the states enacting complex and often disparate rules for how to make, sell, import, and label wines.”³

Today, the alcoholic beverage industry in the United States is governed at the federal, state, and even local levels. The primary source of federal power to regulate alcoholic beverage labeling is the Federal Alcohol Administration Act of 2006 (FAA).⁴ The FAA generally grants extensive powers to regulate the trade of alcohol to the U.S. Department of Treasury.⁵ These powers are enforced by the Dept. of Treasury through the Alcohol and Tobacco Tax and Trade Bureau (TTB) and its predecessor agency, the Bureau of Alcohol, Tobacco, and Firearms (BATF).⁶ When it comes to labeling, the FAA provides a series of specific provisions that allow the TTB to enact labeling requirements for the purposes of informing the public about health risks and providing

¹ U.S. Const. amend. XVIII, § 1.

² U.S. Const. amend. XXI, § 2.

³ Wendell Lee, *Labeling and Advertising*, in WINE IN AMERICA, LAW AND POLICY 74 (Richard Mendelson, 2011).

⁴ 27 U.S.C. §§ 201-219A (2013).

⁵ *Id.* §§ 202-212.

⁶ LEE, *supra* at 75.

clear and non-deceptive information about the product.⁷ Pursuant to the FAA and prior statutes, the BATF and TTB have adopted a series of rules for labeling in the alcoholic beverage industry.

Alcoholic beverages in the United States are also subject to regulation by the Food and Drug Administration (FDA) on a number of health-related aspects. For example, the FDA is the primary agency responsible for implementing the Food Allergen Labeling and Consumer Protection Act (FALCPA) that requires food products in the United States to disclose the presence of allergens.⁸ The law requires that foods containing any of eight major allergens be labeled as such.⁹ The FDA is also responsible for proposing rules on nutrition labeling and serving facts for food and beverage products under the Federal Food, Drug, and Cosmetic Act (FDCA).¹⁰ The FDA and the TTB have concurrent jurisdiction over many aspects of alcoholic beverage control, and both agencies enact frequent regulations affecting the industry; however, a memorandum of understanding between the FDA and the BATF in 1987 transferred responsibilities for “public safety of beverage alcohol product[s]” to the BATF and subsequently to the TTB.¹¹

Additionally, the Federal Trade Commission (FTC) exercises jurisdiction over deceptive labeling or advertising practices in the alcoholic beverage industry.¹² Marketing in the alcoholic beverage industry has been largely self-regulated through industry advertising codes adopted by industry associations.¹³ According to an FTC

⁷ 27 U.S.C. § 213 (2013).

⁸ LEE, *supra* at 135.

⁹ Pub. L. No. 108-282 (2004).

¹⁰ 21 U.S.C. § 343(q)(5)(H)(x)(i) (2013).

¹¹ LEE, *supra* at 135. *See also*

<http://www.fda.gov/AboutFDA/PartnershipsCollaborations/MemorandaofUnderstandingMOUs/DomesticMOUs/ucm116370.htm> (last visited Jul. 24, 2013).

¹² *Id.* at 75.

¹³ *Id.* at 138.

report, “a well-constructed self-regulatory regime has advantages over government regulation. It conserves limited government resources and is more prompt and flexible than government regulation, given the substantial time required to complete an investigation or to adopt and enforce a regulation.”¹⁴ Although the FTC’s sphere of control centers on advertising, the agency can affect labeling, particularly where the label might be deceptive or appealing to children.

2.1.2. State and Local Law

As if the tangled web of federal statutes, rules, and regulations from the various agencies were not enough to deal with, alcohol manufacturers, importers, and distributors must also cope with state laws governing alcoholic beverage labels. Each state has its own laws applicable to the trade in alcoholic beverages in addition to federal law. Under the 10th amendment of the U.S. Constitution, all powers not granted to the federal government are reserved to the States.¹⁵ The U.S. Constitution does not grant a general police power to the federal government; thus, such powers are deemed to be held by the states. These police powers include the capacity to regulate on matters of health, public safety, morals, and the general welfare. The exercise of such powers in relation to alcoholic beverage labeling is most often encountered in areas of health, safety, and morality. These controls are normally enforced by the state Alcoholic Beverage Control Board (ABC). State laws affecting labeling are often only relevant to vineyards located within the state. Some state laws can, however, affect the labeling of all alcoholic beverages distributed within the state. For example, the state of Michigan instituted a law requiring that beverage containers that were subject to the consumer

¹⁴ FTC, Self-Regulation in the Alcohol Industry (2008), available at <http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf>

¹⁵ U.S. Const. amend. X.

recycling deposit law carry a mark that was unique to the state or at most one other state in order to cut back on refunds for deposits that were never received by the state.¹⁶ In the 2012 case of *American Beverage Association v. Snyder*, the Sixth Circuit Court of Appeals ruled that this law had “an impermissible extraterritorial effect.”¹⁷

While local laws in the United States can affect the alcoholic beverage industry in terms of product sales, dry counties, etc., these laws have typically not had an effect on beverage labeling. This is because most labeling requirements have already been preempted by state or federal law that prevents local law from having an effect not in accordance with these higher laws.

2.2. Alcoholic Beverage Labeling Law in the European Union

2.2.1. European Union Law

At the present stage of evolution of the European Union, many aspects of alcoholic beverage labeling within or imported to the common market are governed at the Union level by various directives concerning the labeling of foodstuffs. “EU directives lay down certain end results that must be achieved in every Member State. National authorities have to adapt their laws to meet these goals, but are free to decide how to do so.”¹⁸ This means that while the EU has introduced certain harmonized requirements for labeling laws, the individual member states still have some independence on how the directives are implemented in national law. However,

¹⁶ MICH. COMP. LAWS § 445.572a(10) (2008).

¹⁷ AMERICAN BEVERAGE ASSOCIATION V. SNYDER, No. 11-2097, slip op. at 18 (6th Cir. Nov. 29, 2012).

¹⁸ European Commission, *What are EU Directives?*, Jun. 25, 2012, http://ec.europa.eu/eu_law/introduction/what_directive_en.htm (last visited Jul. 25, 2013).

this status quo is quickly changing, and a new EU Regulation takes effect on the 13th of December 2014.¹⁹

The overarching directive related to alcoholic beverage labeling until recently was the Directive on Labeling, Presentation, and Advertising of Foodstuffs.²⁰ This directive was an effort to consolidate and harmonize a growing number of laws relating to the labeling of foodstuffs in order to encourage “the free circulation of these products” and “contribute to the smooth functioning of the internal market.”²¹ The common themes throughout the directive are, much like in U.S. federal law, to adequately inform the consumer about the product and to prevent deception.²² Numerous other directives amend or supplement Directive 2000/13/EC, but the directive most relevant to alcoholic beverage labeling was the Directive on the Indication of Alcoholic Strength by Volume in the Labeling of Alcoholic Beverages for Sale to the Ultimate Consumer.²³ The directive requires that all beverages over 1.2% by volume alcohol “indicate the actual alcoholic strength by volume,” and provides the guidelines for determining such strength by volume.²⁴

Though the majority of labeling law in the EU has existed in the form of directives, that is not to say there are not relevant regulations. Regulations are an important legislative tool of the EU because “as soon as [regulations] are passed, they have binding legal force throughout every Member State, on a par with national laws.”²⁵

¹⁹ Regulation 1169/2011, 2011 O.J. (L 304) (EU), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32011R1169:EN:NOT> (last visited Jul. 25, 2013).

²⁰ Council Directive 2000/13, 2000 O.J. (L 109) (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0013:EN:NOT> (last visited Jul. 25, 2013).

²¹ *Id.*

²² *Id.*

²³ Commission Directive 87/250, 1987 O.J. (L 113) (EEC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31987L0250:EN:NOT>.

²⁴ *Id.*

²⁵ European Commission, *What are EU regulations?*, Jun. 25, 2012, http://ec.europa.eu/eu_law/introduction/what_regulation_en.htm.

They are the highest form of Union legislation because of this direct effect upon the Member States. One such regulation that should be taken into consideration when labeling alcoholic beverages is the Regulation on the Protection of Geographical Indications and Designations of Origin for Agricultural Products and Foodstuffs.²⁶ This regulation is particularly relevant to the labeling of wine because of the geographic importance of viticulture, but it can clearly influence the labeling of other alcoholic beverages as well.

The most important development of in European Union law for alcoholic beverage labeling is the passing of the Regulation on the Provision of Food Information to Consumers.²⁷ For the sake of increased legal certainty and improved clarity, the European Parliament and the Council have seen fit to consolidate many of the pre-existing directives into one regulation.²⁸ Harmonization by regulation means that in the future, alcoholic beverage companies will be able to focus labeling compliance primarily on a Union level rather than at the Member State level. The Regulation has already entered into force, but compliance is voluntary until December 13th, 2014 or later for certain provisions.²⁹

The enforcement mechanisms for alcohol labeling on the EU level are minimal because of the continued strong influence of the national legislatures on the relevant issues. While there is a European Food Safety Authority (EFSA), its responsibilities are limited to the assessment and communication of risks associated with the food chain.³⁰ It is unlikely that EFSA would become involved in alcohol labeling unless some form

²⁶ Council Regulation 510/2006, 2006 O.J. (L 93) (EC), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R0510:en:NOT>.

²⁷ Regulation 1169/2011 *supra*.

²⁸ *Id.* at Preamble Para. 9-10.

²⁹ *Id.* at Art. 55

³⁰ European Food Safety Authority, *What we do*, <http://www.efsa.europa.eu/en/aboutefsa/efsawhat.htm>.

of mislabeling led to a public health risk. Disputes arising out of the relationship between EU law and national law or EU actions and individual rights often find their way to the European Court of Justice (ECJ). Rulings of the ECJ are binding on specific cases, but they also carry precedential value. One of the most important ECJ cases for the alcoholic beverage industry was the Cassis de Dijon case of 1978. The case related to one of the fundamental freedoms of the European Union, namely the free movement of goods.³¹ The ruling said “that the fixing of a minimum alcohol content for alcoholic beverages intended for human consumption” can be considered a measure having equivalent effect to quantitative restrictions on imports because it prevents the importation of a product that is lawfully produced and marketed in another Member State without sufficient justification.³² It is also possible for the EU Council and the European Commission to become involved on a case by case basis in the form of EU decisions. EU decisions are issued by the Council or the Commission to specific parties, and they are binding only upon those parties.³³ Primarily, however, parties involved with the labeling of alcoholic beverages will be dealing with national authorities, and only on rare occasions with EU institutions themselves.

2.2.2. Laws of the Member States

Similar to the reservation of police powers to the individual states in the U.S., the European Union leaves broad powers for health, public safety, and the general welfare to the Member States, subject to the supremacy of EU law. All of the many directives passed by the EU must be transferred into National Law by the individual

³¹ Case 120/78, *Rewe-Zentral AG v. Bundesmonopolverwaltung für Branntwein*, 1979 E.C.R. 649, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61978CJ0120:EN:NOT>.

³² *Id.*

³³ European Commission, *What are EU decisions?*, Jun. 25, 2012, http://ec.europa.eu/eu_law/introduction/what_decision_en.htm.

legislatures of the Member States by the prescribed date for implementation. Although the content of a directive will lead to some harmonization between national laws of the Member States, the national legislatures are still free to determine how they implement the directive and may legislate beyond the directive where permissible. For the producer of an alcoholic beverage, this means that looking at EU directives can provide some general guidelines that one can expect to be required in all EU jurisdictions, but one must also consult the national laws of each state in which the alcohol is to be distributed. The introduction of Regulation 1169/2011 means that the degree of necessary national law consultation will be significantly reduced, but certain issues relevant to labeling will still require careful research and consideration of national legislation. Ireland and Germany will serve as the two primary examples in this case.

In Ireland, the primary agency responsible for the enforcement of alcoholic beverage labeling controls is the Food Safety Authority of Ireland (FSAI). While the FSAI operates under the aegis of the Minister for Health³⁴, the most important legal document for alcoholic beverage labeling in Ireland was issued by the Minister for Enterprise, Trade and Employment.³⁵ The most interesting element of this regulation, however, is not the issuing ministry, rather the fact that it is an administrative regulation rather than a statute or session law. This is likely due to the common law heritage of the Irish legal system as opposed to the civil law systems present in most of Europe. The detailed labeling requirements present in the directive are merely incorporated into the regulation by reference.³⁶ The only marked difference between the directive and the

³⁴ Food Safety Authority of Ireland, *About us*, Nov. 9, 2012, http://www.fsai.ie/about_us.html (last visited July 25, 2013).

³⁵ European Communities (Labelling, Presentation, and Advertising of Foodstuffs) Regulations 2002 (S.I. No 483 of 2002) (Ir.) available at <http://www.fsai.ie/uploadedFiles/SI483.2002.pdf> (last visited July 25, 2013).

³⁶ *Id.* at § 13(3).

regulation is the focus on detailed procedures for enforcement within Ireland.³⁷ This is just one example of many regulations and guidelines adopted by the Irish government concerning alcoholic beverage labeling, and it will become superfluous on the effective date of Regulation 1169/2011.

Germany has a plethora of very specific laws that are relevant to alcohol labeling. Some examples include the Eichgesetz [standards and measurements law], the Alkoholhaltige Getränke-Verordnung (AGeV) [alcoholic beverage regulation], the Fertigpackungsverordnung [packaging regulation], the Lebensmittel-Kennzeichnungsverordnung (LMKV) [foodstuffs labeling regulation], and the Weingesetz (WeinG) [wine law].³⁸ Many elements of these laws are already or will soon become harmonized with the EU Regulation 1169/2011. Some elements will still be subject to national legislation though; for example, the Weingesetz will continue to determine the terms that may be used to market wines in Germany based on origin, content, and production methods.³⁹ Many government agencies are responsible for monitoring and enforcing labeling compliance in the German market including the Federal Office for Agriculture and Food (BLE), the Federal Ministry of Food, Agriculture and Consumer Protection (BMELV), and the Federal Ministry of Finance among others.

Through this brief introduction to the sources of labeling law and its enforcement in these two European jurisdictions, it becomes immediately apparent how valuable harmonization in the European Union can be to a person trying to export products to the market. Despite the upcoming applicability of Regulation 1169/2011,

³⁷ *Id.* at §§ 15-22.

³⁸ Bundesanstalt für Landwirtschaft und Ernährung, *Fruchtwein*, http://www.ble.de/DE/01_Markt/07_Produktinfostelle/01_AgrarFischereisektor/functions/Fruchtweine.html?nn=2308194 (last visited July 25, 2013).

³⁹ Weingesetz [WeinG], Jul. 8, 1994, BGBl. I at 66, *available at* juris online/Bundesrecht.

exporters of alcoholic beverages are far from exempted from checking local regulations in each member state prior to export.

2.3. Other Relevant Sources of Alcoholic Beverage Labeling Law

When talking about the legal aspects of trade on an international level, it would be an error not to at least mention the role of the World Trade Organization (WTO). The WTO is an international organization tasked with administering trade agreements, providing a forum for trade negotiations and trade disputes, and cooperating with other international organizations all with the goals of breaking down trade barriers and promoting the free movement of goods on a global basis.⁴⁰ It was created by the WTO agreement signed in Marrakech in 1994, and the organization was a long-awaited evolution of the numerous multi-lateral and pluri-lateral trade agreements that had formed the framework global free trade up to that point. The “WTO is built on three pillars, namely on Trade in Goods (GATT), Trade in Services (GATS) and on Trade-Related Aspects of Intellectual Property Rights (TRIPS).”⁴¹ For alcoholic beverage labeling, the first pillar is the most relevant. The basis for the WTO’s pillar on the Trade in Goods is the General Agreement on Tariffs and Trade (GATT). A subsequent agreement that was based on negotiations during the Tokyo round is the Agreement on Technical Barriers to Trade.⁴² The WTO has been an important forum for negotiation and dispute resolution on trade issues, including ones relating to alcoholic beverage labeling as one will see in the discussion on alcohol warning labels. For a producer of wine, the WTO does not provide relevant substantive law per se, but it can be an

⁴⁰ World Trade Organization, *Who we are*, 2013

http://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm (last visited Jul. 25, 2013).

⁴¹ Peter Fischer, *The Law of the World Trade Organization* 20 (2013) (unpublished course script).

⁴² World Trade Organization, *A Summary of the Final Act of the Uruguay Round*, 2013

http://www.wto.org/english/docs_e/legal_e/ursum_e.htm (last visited Jul. 26, 2013).

important resource for learning about upcoming trade developments and a forum for major industry-related trade concerns.

During the course of exploration of this topic, one will also encounter various other legal sources as comparative examples. Most of these sources will be laws or regulations from various national sources around the world. There are also a number of industry policy bodies that provide advocacy and statistics on this issue on behalf of the various parts of the alcoholic beverage industry affected.

3. Geographic Indicators, Appellations of Origin, and Other Standards of Identity

3.1. The Basics

We already learned in the introduction that our fictitious wine producer is based in California, but much more detail is needed to be able to properly advise him on Geographic indicators and Appellations of Origin for his wine, and many different levels of law may come into play. Where exactly is the winery located? Where are the grapes grown? Are the grapes blended with grapes from other locations? Who controls the vineyards and the winery? These questions and more can play an important role in providing legal advice on labeling.

In order to have a framework with which to begin the exploration of label elements, let's first look at the fundamental requirements of wine labels in the United States. Without exception, all brand labels for wine in the U.S. must contain (1) a brand name, (2) a class, type, or other designation, (3) alcohol content, and (4) the exact percentage by volume of any foreign wines present and referenced in a blend.⁴³

⁴³ 27 C.F.R. § 4.32(a) (2012).

Furthermore, there must be some label on the bottle or container with a name and address, net contents, the presence of any FD&C Yellow No. 5 coloring, and a declaration of sulfites.⁴⁴ In this section, we will deal primarily with the second requirement, namely a class, type, or other designation.

The TTB regulations in the U.S. divide wine into nine different classes.⁴⁵ Class 1, Grape Wine, has two basic types, Table wine for wines with an alcohol content of less than 14% and Dessert wine for wines with alcohol content between 14% and 24%.⁴⁶ Alternatively, vintners may choose to list a varietal instead of a class and type, provided the varietal listing is accompanied by an appellation of origin.⁴⁷

“An appellation of origin conveys geographic information about the source of the grapes used to make the wine.”⁴⁸ In the United States, an American appellation of origin can be

*(i) The United States; (ii) a State; (iii) two or no more than three States which are all contiguous; (iv) a county (which must be identified with the word ‘county’, in the same size of type, and in letters as conspicuous as the name of the county); (v) two or no more than three counties in the same States; or (vi) a viticultural area.*⁴⁹

Imported wines are also allowed appellations of origin when such appellation complies with the applicable laws in the country of origin.⁵⁰

In the EU, the Regulation on Quality Schemes for Agricultural Products and Foodstuffs talks in terms of “designations of origin” and “geographical indications.”⁵¹ A

⁴⁴ *Id.* at §§ 4.32(b)-(e) (2012).

⁴⁵ 27 C.F.R. § 4.21 (2012).

⁴⁶ *Id.* at §§ 4.21(a)(2)-(3).

⁴⁷ *Id.* at § 4.34.

⁴⁸ LEE, *supra* at 83.

⁴⁹ 27 C.F.R. § 4.25(a)(1) (2012).

⁵⁰ *Id.* at § 4.25(a)(2).

⁵¹ Regulation 1151/2012 Art. 5, 2012 O.J. (L 343) (EU).

*“designation of origin” is a name which identifies a product: (a) originating in a specific place, region or, in exceptional cases, a country; (b) whose quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors; and (c) the production steps of which all take place in the defined geographical area.*⁵²

This differs from a geographical indication in that geographical indications only require that “at least one of the production steps [...] take place in the defined geographical area.”⁵³ The detailed requirements for designations of origin and geographical indications for wine are laid out in the Single CMO Regulation.⁵⁴ The EU maintains a reference database, E-Bacchus, for all designations of origin and geographical indications relating to wine that are protected in the EU, as well as those protected by bilateral treaties with non-EU states.⁵⁵

3.2. Categories of Appellations and Qualifications

3.2.1. American Appellations of Origin

As already stated above, an American wine may carry an appellation of origin from the U.S., one or more American states, one or more counties, or one or more viticultural areas. In order to qualify for the use of one or more appellations of origin, a wine must meet certain qualification standards primarily concerning the origin of the different grapes used in production.⁵⁶ The basic requirement is that 75% of the grapes used to produce the wine must be from the labeled appellation.⁵⁷ When claiming a multi-state or multi-county appellation, all grapes must be from the states or counties of

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Council Regulation 1234/2007, 2007 O.J. (L 299) (EC).

⁵⁵ European Commission, E-Bacchus (2013) <http://ec.europa.eu/agriculture/markets/wine/e-bacchus> (last visited Jul. 26, 2013). See Appendix A, Figure A-1.

⁵⁶ See Appendix A, Figure A-2.

⁵⁷ 27 C.F.R. § 4.25(b) (2012).

appellation, and the label must indicate the percentage of grapes from each place of origin within a tolerance of plus or minus two percent.⁵⁸ The qualification standards for viticultural areas are higher.

3.2.2. American Viticultural Areas

Although many people tend to use the terms “appellation of origin” and “viticultural areas” interchangeably, this practice is not entirely accurate because viticultural areas are but one type of appellation of origin.⁵⁹ A viticultural area is defined under U.S. law as “a delimited grape-growing region having distinguishing features [...] and a delineated boundary...”⁶⁰ These American Viticultural Areas (AVA) are established by federal regulation; a petition must be filed with the TTB with evidence that the proposed name is “currently and directly associated with an area in which viticulture exists,” that the area has defined boundaries, and a narrative describing the distinguishing features of the area.⁶¹ “Upon receipt of a complete petition from any person – grower, vintner, or other – the TTB commences a public rulemaking process...”⁶² As the law provides no size limits for AVAs, approved AVAs range in area from the 64.7 hectare “Cole Ranch” area of California to the 6.7 million hectare “Ohio River Valley” that is located within 4 different states.⁶³ Many AVAs also overlap, and popular wine-growing regions like Napa Valley or Sonoma County can become complex collections of “layer upon layer of AVAs.”⁶⁴

⁵⁸ *Id.* at §§ 4.25(c)-(d).

⁵⁹ LEE, *supra* at 83.

⁶⁰ 27 C.F.R. § 4.25(e) (2012).

⁶¹ 27 C.F.R. § 9.12 (2012).

⁶² Richard Mendelson & Scott Gerien, *Wine Brands and Appellations of Origin*, in WINE IN AMERICA, LAW AND POLICY 252 (Richard Mendelson 2011).

⁶³ *Id.*

⁶⁴ *Id.*

Although all elements of an AVA petition are weighted equally by the TTB, the distinctiveness element is the one that can require the most complex evidentiary support. Distinguishing features can include climate, geology, soils, physical features, and elevation.⁶⁵ The increased availability of detailed technical data relating to all of these features has changed the nature of the AVA petition process. For example, a proposed “Paso Robles Westside” AVA was defeated by detailed climate data that demonstrated “the Salinas River does not provide a suitable boundary line for the many different microclimates to the West of the Salinas River...”⁶⁶

The use of an AVA on a wine label is limited to wines where 85% of the wine is made from grapes grown in that AVA and the wine is “fully finished within the State, or one of the States, within which the viticultural area is located.”⁶⁷ This percentage is the same as that required for a geographical indication under EU law.⁶⁸

The average wine consumer may not know a great deal about viticulture, but they are likely to recognize certain geographical terms that they associate with good quality wines. For example, “Napa Valley” is a recognized AVA that carries with it a strong reputation for quality wines both within the United States and in an international market. The Napa Valley AVA is codified with details of approved maps and boundaries.⁶⁹ “The efforts of wineries, grape growers, and their respective marketing and promotional organizations, coupled with the overall consumer experience of wines bearing these appellations, build value and quality and make AVAs increasingly significant.”⁷⁰ Despite these industry efforts to associate quality with AVAs, the TTB

⁶⁵ 27 C.F.R. § 9.12(a)(3) (2012).

⁶⁶ MENDELSON, *supra* at 258.

⁶⁷ 27 C.F.R. § 4.25(e)(3) (2012).

⁶⁸ See Regulation 1234/2007 Art. 118(b)(1)(b), 2007 O.J. (L 299) (EC).

⁶⁹ 27 C.F.R. § 9.23 (2012).

⁷⁰ LEE, *supra* at 85.

uses AVAs to designate only the origin of the grapes used in the wine and not the quality of the wine. This differs from the European system that focuses not only on origin but also on quality control.

3.2.3. State Appellation Requirements

In addition to the relevant Federal provisions, it is also necessary to consult state laws on the use of appellations. Several states have laws that are stricter than the federal provisions for appellations of origin. In Oregon, for example, wine using any appellation within the state must come 100% from grapes grown in Oregon with at least 95% coming from the designated area of appellation.⁷¹ Similarly, California law requires that any wine using the appellation “‘California’ or a geographical subdivision thereof” must be made 100% from grapes grown in California.⁷² Vintners in California have actively pushed for legislation at both federal and state levels that protects the value of their appellations. One such provision that was adopted by the state of California is the use of conjunctive labeling for wines claiming an AVA appellation that is wholly located within Napa Valley.⁷³ Conjunctive labeling “prevent[s] the overall dilution of a larger viticultural area by requiring its mention on any label that uses an AVA that is wholly enclosed within the larger area.”⁷⁴ To illustrate, any wine using the appellation “Stags Leap” must also carry the appellation “Napa Valley” on its label. Many other large AVAs have similar state provisions protecting their appellations.⁷⁵

So contentious are some of these appellation requirements that at least one case made its way all the way to the California Supreme Court. In *Bronco Wine Company v.*

⁷¹ OR. ADMIN. R. 845-010-0920 (2013).

⁷² CAL. CODE REGS. tit. 17, § 17015 (2013).

⁷³ CAL. BUS. & PROF. CODE § 25240 (West 2013).

⁷⁴ LEE, *supra* at 96.

⁷⁵ See, e.g., CAL. BUS. & PROF. CODE §§ 25244, 25245, 25246 (West 2013).

Jolly, the key issue was whether the California law requiring a higher percentage of local grapes in wines carrying local appellations, essentially prohibiting that which was not prohibited under Federal law, was pre-empted by the less stringent Federal provisions.⁷⁶ The court concluded that the Federal law did not expressly nor impliedly pre-empt the California law, and there was no indication that the California law stood in the way of achieving Congress' goals with the federal legislation. The U.S. Supreme Court impliedly agreed with the California ruling by denying the writ of certiorari for the case in 2006.⁷⁷

3.2.4. European Geographical Indications

The European system is generally more protective of appellations because of interests in quality and tradition. As such, the qualification requirements for using appellations are somewhat more stringent than the TTB requirements in the U.S. Regulation 1234/2007 requires that a geographical indication apply to "a region, a specific place or, in exceptional cases, a country," and that the product itself possess "a specific quality, reputation or other characteristics attributable to that geographical origin."⁷⁸ Additionally, "at least 85% of the grapes used for its production" must come exclusively from the designated geographical area, the production must take place in the designated area, and the grapes must be "from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis*."⁷⁹ *Vitis vinifera* is a "common European grape cultivated in many varieties" and is the

⁷⁶ *Bronco Wine Company et al. v. Jerry R. Jolly, et al.*, 33 Cal.4th 943 (2004).

⁷⁷ 546 U.S. 1150 (2006).

⁷⁸ Regulation 1234/2007 Art. 118b(1)(b), 2007 O.J. (L 299) (EC).

⁷⁹ Regulation 1234/2007 Art. 118b(1)(b), 2007 O.J. (L 299) (EC).

“chief source of Old World Wine.”⁸⁰ An example of a German wine with a Protected Geographical Indication (PGI) is “Landwein der Mosel,” which differs from wines that carry only the appellation “Mosel,” a Protected Designation of Origin (PDO). While the indicator “Landwein der Mosel” is a PGI according to the EU Regulation, it also carries with it the term “Landwein,” which, under German law, carries its own limitations on use.⁸¹ PGIs are the less stringent of the two primary European appellation categories because 15% of the grapes used for production may come from other regions.

3.2.5. European Designations of Origin

The stricter category of appellation under the EU system is the Designation of Origin. A product that uses a PDO must have quality and characteristics that “are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors.”⁸² Perhaps more significantly, all of the grapes used to produce the wine must come exclusively from the designated geographic area, and the production must occur in the same area.⁸³ Lastly, the wine must be “obtained from vine varieties belonging to *Vitis vinifera*.”⁸⁴ An application for protection as a PDO or PGI in the EU requires a description of the wine’s organoleptic characteristics, which highlights the key difference between the European and American appellation protection systems, *i.e.* the interest in the quality of wine from the geographical area.⁸⁵ The application procedure is initiated at the National level and then is reviewed by the

⁸⁰ WordNet 3.0, *Vitis vinifera* (Princeton University), http://dictionary.reference.com/browse/vitis_vinifera (last visited Jul. 27, 2013).

⁸¹ WeinG, Jul. 8, 1994, BGBl. I § 22, *available at* juris online/Bundesrecht.

⁸² Regulation 1234/2007 Art. 118b(1)(a), 2007 O.J. (L 299) (EC).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at Art. 118c(2)(b)(i-ii).

Commission before publication in the *Official Journal of the European Union*.⁸⁶ All wines claiming to qualify for a already recognized PDO or PGI in the EU must include the term “protected designation of origin” or “protected geographical indication” on the label.⁸⁷

3.2.6. Recognition of Foreign Appellations

Both of the primary jurisdictions of discussion, the U.S. and the EU, have rules in place for the recognition and protection of foreign appellations. There is even a separate treaty governing the trade in wine between the U.S. and the EU.⁸⁸ The base rule in the United States is that an imported wine must be made at least 75% from grapes from the chosen appellation, or 85% if the appellation is a viticultural area, the same as for U.S. wines.⁸⁹ In addition to the base requirements, a foreign wine must also comply with “the foreign laws and regulations governing the composition, method of production, and designation of wines available for consumption within the country of origin.”⁹⁰

The general rules for the recognition of third country appellations in the EU are that such appellations “shall be eligible for protection in the Community in accordance with the rules laid down in [Article 118b of the Regulation].”⁹¹ An application for protection of a foreign appellation must include proof that the name is protected in its country of origin as well.⁹²

⁸⁶ *Id.* at Art. 118f-g.

⁸⁷ *Id.* at Art. 118y.

⁸⁸ Agreement Between the United States of America and the European Community on Trade in Wine, Mar. 10, 2006, T.I.A.S. No. 06-310.1 (2006).

⁸⁹ 27 C.F.R. § 4.25 (2012).

⁹⁰ 27 C.F.R. §§ 4.25(b)(2)(i), 4.25(e)(3)(iii) (2012).

⁹¹ Regulation 1234/2007 Art. 118b(3), 2007 O.J. (L 299) (EC).

⁹² Regulation 1234/2007 Art. 188d, 2007 O.J. (L 299) (EC).

The Agreement between the U.S. and EU on trade in wine is a bilateral agreement that allows for the trade in wine between the two entities provided the wines comply with the local laws and regulations at the point of production and appellation. It includes an annex listing all of the recognized appellations in the U.S. and the EU Member States.⁹³ U.S. wines are allowed to use the recognized appellations on the EU market “if, at the time of importation, the term has been approved for use on U.S. wine labels in the United States on a [Certificate of Label Approval (COLA)].”⁹⁴ The agreement also protects the recognized appellations in both jurisdictions from use by wines originating outside the designated areas.⁹⁵

An important loophole exists as a result of the decades old dispute over the use of the word “champagne” on labels of wine originating outside the Champagne region of France. The key protective provisions of the treaty do not apply to any wine labels in use in the U.S. with a valid COLA prior to the signing of the Agreement.⁹⁶ This allows existing American wine companies like Korbel to continue to market and label their sparkling wines as “California champagne.” The argument in favor of allowing California sparkling wines to continue using the term “champagne” on their labels centers around the concept of semi-generic terms. These are terms that have a specific some specific significance as an appellation of origin but through common usage have become more generic. “If you were to walk into a party and someone handed you [a] flute with a sparkling pale yellow/bronze liquid in it, would you think ‘sparkling wine’

⁹³ Agreement Between the United States of America and the European Community on Trade in Wine at Annex V, Mar. 10, 2006, T.I.A.S. No. 06-310.1 (2006).

⁹⁴ *Id.* at Protocol on Wine Labelling.

⁹⁵ *Id.* at Art. 6, 7.

⁹⁶ *Id.* at Art. 6.

or ‘champagne.’ [sic] Like it or not, the vast majority will answer ‘champagne.’”⁹⁷ These semi-generic terms are permitted under U.S. law provided they are accompanied by another appellation that clearly identifies the true origin of the wine as not to confuse or mislead the consumer.⁹⁸ Although Champagne is an area of viticultural significance in France that is protected under EU law, the term has been used to describe sparkling wines in many countries around the world for years. This use has reduced the significance of the term as a geographic indicator, particularly in the U.S. context. Through decades of negotiations, the U.S. and the EU finally reached a compromise that protects the name from use on future labels in the U.S. and still protects the interest of American vintners that have been marketing “California champagne” for years.

Moving forward, however, both American and European appellations of origin will be protected in both jurisdictions with respect to the local laws at the point of origin of the wines.

3.3. Varietal Designations and Vintage Dates

3.3.1. Varietal Designation

Another central aspect of a wine label is the designation of varieties in the wine. A varietal label indicates the variety of grape(s) used in the production of the wine. In the U.S., only wines that also carry an appellation of origin may use a varietal designation.⁹⁹ When a single variety is named, at least 75% of the wine must be derived from grapes of that variety from the designated appellation of origin.¹⁰⁰ If labeled with

⁹⁷ Posting of Paul Ahvenainen, Director of Winemaking, Korbel, to The Gray Report: “California Champagne” is now illegal, right? <http://blog.wblakegray.com/2011/01/california-champagne-is-now-illegal.html> (Jan. 26, 2011) (last visited Jul. 28, 2013).

⁹⁸ 26 U.S.C. § 5388(c) (2013).

⁹⁹ 27 C.F.R. § 4.26(a) (2012).

¹⁰⁰ *Id.* at § 4.26(b).

more than one varietal, the wine must indicate the percentage of each variety of grape present in the wine within a two percent tolerance, and the wine must be wholly produced from those varieties.¹⁰¹ Vintners are required to maintain records that can clearly substantiate any label claims, including varietal designations, and such records are subject to TTB audit.¹⁰²

In the EU, the use of varieties on wine labels is also optional.¹⁰³ For wines with a PDO or PGI that claim a single variety of grape, the EU requires that the wine be composed of at least 85% of that variety.¹⁰⁴ Like in the U.S., wines naming more than one variety must provide the percentages of all the grape varieties used.¹⁰⁵ The practice of Varietal Labeling in Europe is still a relatively new phenomenon as the use of very particular appellations have long been the preferred method of identifying European wines and differentiating their qualities and characteristics.¹⁰⁶ With the EU wine market reforms of 2008, provisions governing varietal labeling were finally introduced, and varietal wine production in 2011 reached 4.6 million hectoliters, mostly from Spain and France.¹⁰⁷ “However, several Member States are reluctant to develop their varietal wines, by excluding their most relevant varieties in order to preserve them for the PDO wines.”¹⁰⁸

3.3.2. Vintage Dates

¹⁰¹ *Id.* at § 4.26(d).

¹⁰² *Id.* at § 23.314.

¹⁰³ Council Regulation 479/2008 Art. 60(1)(b), 2008 O.J. (L 148) (EC).

¹⁰⁴ Commission Regulation 607/2009 Art. 62, 2009 O.J. (L 193) (EC).

¹⁰⁵ *Id.*

¹⁰⁶ The Wine Enthusiast, *Varietal versus Appellation Labeling*, <http://www.winemag.com/Wine-Enthusiast-Magazine/variatal-versus-appellation-labeling/> (last visited Jul. 29, 2013).

¹⁰⁷ *Report from the Commission to the European Parliament and the Council in Accordance with Article 184(8) of Council Regulation (EC) No 1234/2007 on the Experience Gained with the Implementation of the Wine Reform of 2008*, at 9, COM (2012) 737 final (Dec. 10, 2012).

¹⁰⁸ *Id.*

Another important optional piece of information included on many wine labels is the vintage year. U.S. law permits the use of vintage years on labels of grape wine or sparkling wine provided the wine also carries an appellation of origin other than a country.¹⁰⁹ Wines labeled with a vintage date must consist at least 85% of grapes harvested in the vintage year, or 95% if the wine uses an appellation of viticultural significance.¹¹⁰ Prior to 2006, the law required a 95% composition for *all* wines. This amount was reduced for wines not using an AVA in order for them to be able to better compete against foreign wines that had lower thresholds for vintage year labeling.¹¹¹ The vintage date always refers to the date grapes are grown and harvested, not when the wine is bottled.¹¹²

EU law only requires a composition of 85% grapes from the vintage year in order to include the vintage on the label, with no exceptional requirements for PDOs using vintages over PGIs.¹¹³ The regulation does stipulate, however, that wines that are harvested in January or February should use the vintage year for the preceding year.¹¹⁴ This is important for wines where the harvest traditionally begins late in the year and may finish in the first couple months of the following year, e.g. Eiswein. If the harvest of a German Eiswein finishes in February of 2013, the vintner may only use 2012 if placing a vintage year on the label.

3.4. Other Designations

¹⁰⁹ 27 C.F.R. § 4.27 (2012).

¹¹⁰ *Id.*

¹¹¹ Cyril Penn, *Vintage Labeling Standards Loosened*, (SFGate May 4, 2006) <http://www.sfgate.com/wine/article/Vintage-labeling-standards-loosened-2497899.php> (last visited Jul. 29, 2013).

¹¹² 27 C.F.R. § 4.27 (2012).

¹¹³ Council Regulation 607/2009 Art. 61(1), 2009 O.J. (L 193).

¹¹⁴ *Id.* at Art. 61(2).

3.4.1. “Estate Bottled” Designation

The designation “Estate Bottled” under U.S. law is a method for vintners to show that their wine was bottled by the same winery that controlled the vineyard(s) where the grapes were grown. The practice of labeling wines as “Estate Bottled” started due to problems with adulteration of wines shipped in bulk and bottled by individual merchants around the turn of the 20th century.¹¹⁵ By maintaining control of the grapes and the wine throughout the bottling process, vintners were able to insure the quality of their wines and protect the value of their names. French wines were the first to make use of the labeling designation with bottles labeled “mis en bouteille au chateau.”¹¹⁶

U.S. law allows the designation “Estate Bottled” only for wines that follow a strict set of guidelines.

*The term **Estate bottled** may be used by a bottling winery on a wine label only if the wine is labeled with a viticultural area appellation of origin and the bottling winery: (1) is located in the labeled viticultural area; (2) grew all of the grapes used to make the wine on land owned or controlled by the winery within the boundaries of the labeled viticultural area; (3) crushed the grapes, fermented the resulting must, and finished, aged, and bottled the wine in a continuous process (the wine at no time having left the premises of the bottling winery).*¹¹⁷

The element of control means that the vineyards need not necessarily be owned by the winery, rather they can also be leased from another owner but controlled by the winery.¹¹⁸ Though this designation saw a drastic rise in popularity following its introduction, changes in the economy that have dictated a necessity for fiscal

¹¹⁵ Lee Winston, *The Estate-Bottled Wine Anomaly*, THE DRINKS BUSINESS, Feb. 9, 2012, <http://www.thedrinksbusiness.com/2012/02/the-estate-bottled-wine-anomaly/> (last visited Jul. 27, 2013).

¹¹⁶ *Id.*

¹¹⁷ 27 C.F.R. § 4.26(a) (2012).

¹¹⁸ LEE, *supra* at 87.

responsibility and improvements in transportation technology have led to a return in popularity of bulk wines to be bottled by merchants.¹¹⁹

Similar nomenclature exists in the European context as well, but it is primarily regulated at the national level. As already mentioned, the equivalent term in France would be “mis en bouteille au chateau” or “mis en bouteille au domaine.” German law sets forth three similar options with different requirements.¹²⁰ “Erzeugerabfüllung” is the basic German term for Estate Bottled, but it allows for partnerships between vineyards producing wine together.¹²¹ For larger wine producers, there is the possibility to use the term “Gutsabfüllung”, but it carries with it the additional requirements that the winemaker must have an oenological education, and the vineyard where the grapes were grown must have been under the control of the winery since at least January 1st of the harvest year.¹²² Lastly, German wines produced by a vineyard that is located at an Estate entered in the historical registry may use the term “Schlossabfüllung” so long as all of the grapes were grown on the Estate’s property.¹²³ Each wine producing jurisdiction in the EU likely has similar provisions with different language and different qualifications.

3.4.2. European Traditional Terms

The Single CMO Regulation also sets forth another category of protected designations for wine, namely “Traditional Terms.”¹²⁴

‘Traditional Term’ means a term traditionally used in Member States for products referred to in Article 118a(1) to designate: (a) that the product

¹¹⁹ WINSTON, *supra*.

¹²⁰ Weinverordnung [WeinV][Wine Regulation], May 9, 1995, BGBl. I 630, § 38.

¹²¹ *Id.* at § 38(4).

¹²² *Id.* at § 38(5).

¹²³ *Id.* at § 38(6).

¹²⁴ Council Regulation 1234/2007 Art. 118u, 2007 O.J. (L 299) (EC).

*has a protected designation of origin or a protected geographical indication under Community or national law; (b) the production or ageing method or the quality, colour, type of place, or a particular event linked to the history of the product with a protected designation of origin or a protected geographical indication.*¹²⁵

All protected Traditional Terms must be clearly defined, and they are protected against unlawful use and from becoming “generic in the Community”.¹²⁶ Traditional Terms are also listed in the E-Bacchus system, and are accompanied by their relevant definitions.¹²⁷

An example of a protected Traditional Term from Germany is “Classic.” E-bacchus lists the following definition for the term “Classic”:

*Red wine or white quality wine made exclusively from grapes from classical wine grape varieties typical of the region; the must used in production has a natural minimum alcoholic strength which is at least 1% by volume higher than the natural minimum alcoholic strength prescribed for the wine-growing zone in which the grapes have been harvested; total alcoholic strength at least 11,5% by volume; residual sugar content not exceeding 15 g/l and not exceeding twice the total acidity content; indication of a single wine grape variety, indication of vintage, but no indication of taste.*¹²⁸

“Classic” is an interesting example because it was one of the terms involved in the negotiations between the U.S. and the EU leading up to the Agreement on the Trade in Wine. According to the Agreement, wines produced in the U.S. may use the term “Classic” on wines to be marketed in the EU if the term has been approved for use on U.S. wine labels, and the term is used on sparkling and fortified wines, or other wines if the label “is not in the German language and is itself not used as a German word.”¹²⁹

This compromise between the U.S. and the EU theoretically allows U.S. wine labels to

¹²⁵ *Id.*

¹²⁶ *Id.* at Art. 118u-118v.

¹²⁷ European Commission, E-Bacchus (2013) <http://ec.europa.eu/agriculture/markets/wine/e-bacchus> (last visited Jul. 26, 2013).

¹²⁸ *Id.*

¹²⁹ Agreement Between the United States of America and the European Community on Trade in Wine, Mar. 10, 2006, T.I.A.S. No. 06-310.1, Protocol on Wine Labelling, Appendix I (2006).

use the word “Classic” without misleading European consumers that may be accustomed to the use of the term in relation to German wines.

There are currently over 350 different Traditional Terms that are protected within the EU.¹³⁰ All of these terms carry a particular significance for wines from their countries or regions of origin that has been deemed worthy of protection by the EU. Because these wines carry a traditional meaning, using them out of context on labels not complying with that traditional meaning would be misleading to the consumer.

3.5. Identifying a Wine in Practice

Now that we have a basic description of some of the most important appellation and designation categories in the U.S. and the EU, it is necessary to evaluate how these different designations are used in practice for labeling by wine producers. Let’s work under the presumption that our client has his vineyard and winery both located in the Los Carneros region of the Southern Napa Valley, but some of the grapes for his wine also come from vineyards in the Stags Leap District, also located in Napa Valley, and Russian River Valley, located in Sonoma County. All of the vineyards are owned and operated by our client, but the grapes from Russian River Valley are sent to an off-site crush facility before being brought to the Los Carneros winery for fermentation.¹³¹ This year, his premier wine is produced from 90% grapes from Los Carneros and 10% grapes from Russian River Valley. The grapes are 90% Zinfandel and 10% Cabernet Sauvignon, all harvested in 2012. His second tier wine is 50% from Los Carneros and 50% from Stags Leap, and it is 100% Pinot Noir harvested in 2012. Lastly, he has a

¹³⁰ European Commission, E-Bacchus (2013) <http://ec.europa.eu/agriculture/markets/wine/e-bacchus> (last visited Jul. 26, 2013).

¹³¹ This is an unlikely scenario given the close proximity of the example vineyards, but it is used for demonstrative purposes.

very nice blended wine that is approximately 50% Los Carneros, 10% Stags Leap, and 40% Russian River Valley. The grapes are 40% Petit Syrah, 30% Zinfandel, and 30% Syrah mostly harvested in 2012, but with about 10% of the wine coming from grapes harvested in 2011. How should he be advised on using appellations and designations on his wine labels?

The first issue is how the wine should be classified on the most basic level. We already know that U.S. law requires a “class, type, or other designation” on the label.¹³² Our client produces still wines from grapes, so his products would be Class 1 “grape wines” according to the regulations.¹³³ As it is unlikely that the client’s wines exceed 14% alcohol by volume, they also qualify as the type “table wine.”¹³⁴

Next, we should ask whether our client even needs to use an appellation on any of his wines. The short answer is no; there is no requirement in the U.S. that wine labels contain any statement of origin other than the address of the bottler.¹³⁵ That said, our client hopes to export his wines to the EU as well, which will require “an indication of provenance.”¹³⁶ Since 100% of the grapes used in all of our clients wines are grown in the U.S., this indication of provenance could be as broad as “the United States.” From a marketing perspective, however, it would be far more beneficial to make use of the appellations available in the high-quality wine-growing region where our client’s vineyards are located. The next step is to evaluate which appellation options the client has.

All of the grapes are grown in the United States and, more specifically, the state of California; thus, either of those locations could be used as an appellation of origin on

¹³² 27 C.F.R. § 4.32 (2012).

¹³³ *Id.* at § 4.21 (2012).

¹³⁴ *Id.*

¹³⁵ *Id.* at § 4.32 (2012).

¹³⁶ Council Regulation 1234/2007, Art. 118y, 2007 O.J. (L 299) (EC).

any of the wines because at least 75% of the grapes used to produce the wine come from those areas (100% in the case of California because of state law).¹³⁷ The first two wines could also choose to use “Napa County” as the appellation of origin because at least 75% of the grapes are from Napa County. The third wine, if using a county appellation, would have to carry a multi-county appellation of “Napa County and Sonoma County”, which would require that the exact percentages from each county be listed on the label. In the wine world, these are what some might consider the low-value appellations. Considering where our client’s grapes are grown, it makes far better business sense to try to use an AVA appellation.

The first wine our client produces is grown primarily in the Napa Valley side of the Los Carneros AVA. Only 10% of the grapes came from Russian River Valley. Because at least 85% of the grapes originated in Los Carneros, our client may use the Los Carneros appellation on his wine label for the first wine. Due to the conjunctive labeling requirements in California for Napa Valley wines, he would also have to name “Napa Valley” on the label if he uses “Los Carneros”.¹³⁸ The client could also choose to use just the “Napa Valley” appellation, or even the “North Coast” appellation, as Los Carneros is an AVA located primarily in the territory of the Napa Valley AVA and Napa Valley is wholly within the North Coast AVA. Therefore, as regards the first wine, the client may choose between three different AVA appellations: Los Carneros, Napa Valley, or North Coast.

Our client’s second wine also consists of grapes grown in two smaller California AVAs, Los Carneros and Stags Leap. Unfortunately, neither of those appellations may be used because the wine is grown 50% in each AVA; thus, it cannot satisfy the 85%

¹³⁷ CAL. CODE REGS. tit. 17, § 17015 (2013).

¹³⁸ CAL. BUS. & PROF. CODE § 25240 (West 2013).

origin requirement of the regulations. Los Carneros and Stags Leap are both located within Napa Valley though, so the Napa Valley appellation may be used on the label because at least 85% of the grapes (100%) are grown in Napa Valley. The client could also choose to use the North Coast appellation because, as mentioned previously, the Napa Valley AVA is wholly located within the North Coast AVA. Therefore, the second wine may use the appellations Napa Valley or North Coast.

The third wine our client produces is blended from grapes from Los Carneros, Stags Leap, and Russian River Valley. Because none of the smaller AVAs represent over 85% of the grapes, the client is prohibited from using those appellations. The breakdown of the grape percentages means that 60% come from Napa Valley and 40% from Sonoma Valley. This means that neither of those AVA appellations satisfy the 85% requirement either. Multiple AVAs can only be used in cases of conjunctive labeling or overlapping AVAs. As the wine doesn't qualify for any of the smaller AVA appellations within the Napa Valley or Sonoma Valley, there is no possibility for conjunctive labeling of AVAs. Los Carneros does overlap the Napa Valley and Sonoma Valley AVAs, but only 50% of the grapes are from Los Carneros, and we already know that our client grows his grapes on the portion of Los Carneros located within the Napa Valley. In the case of overlapping AVAs, at least 85% of the grapes must come from "grapes grown in the overlapping area."¹³⁹ Therefore, with regards to AVA appellations, the third wine would be limited to the North Coast AVA. Because the Napa and Sonoma names are more recognizable today than the North Coast AVA, it is probably more effective to use a multi-county appellation naming both Napa County and Sonoma County and showing the percentage origins from each county.

¹³⁹ 27 C.F.R. § 4.25(e)(4) (2012).

The next issue is whether the client is required to use a varietal name on the label. As already stated in section 3.3, varietals are an optional inclusion on labels in the U.S. and the EU, but if the client chooses to name one or more varietals, he is required to also use an appellation of origin. For a single varietal, at least 75% of the grapes used for the wine must be of the named varietal; multiple varietals require that 100% of the grapes are accounted for on the label. In the case of the first wine, our client may choose whether to list only Zinfandel as a varietal because 90% of the grapes were of that variety, or he may specify the exact blend of Zinfandel and Cabernet Sauvignon grapes. The second wine only uses Pinot Noir grapes, so the client may name the varietal on the label. The third wine is a Petit Syrah-Syrah-Zinfandel blend, so the client must name all three grapes and their respective percentages if he names any varietal. Provided that the client chooses to name an appellation of origin on the wines, all three wines have options for naming varietals. The specification of varietals on the wine label is completely optional in both the U.S. and EU, so the client has the choice to include the varietal(s), but the practice has become almost standard for California wines.

The client must also decide on the inclusion of a vintage year on the label. Vintage years are also optional information in both jurisdictions, but, as with varietals, they may only be used in conjunction with an appellation of origin. The U.S. standard requires that 85% of the grapes were harvested in the vintage year unless the label uses an AVA appellation, in which case, the requirement is 95%. The first two wines our client produces clearly qualify to list a vintage year on the label because all of the grapes were harvested in the same year, so the use of an appellation of origin versus an AVA appellation is irrelevant. The third wine consists only 90% of grapes harvested in the same year, so it would only qualify for a vintage year if the chosen appellation is not

an AVA. Therefore, if the client chooses to use the North Coast AVA appellation, he cannot claim a vintage year on the label because the 95% requirement for AVA appellations has not been met.

The last issue at this point is whether the client can use the term “Estate Bottled” on any of his wine labels. The term is used for wines that are bottled at a winery that controls the vineyards where the grapes are grown, and the process of producing the wine is continuous without interruption. Here, all three of the wines are made from grapes grown at vineyards owned by the winery. It doesn’t matter that the grapes are coming from multiple vineyards as long as all vineyards are under the control of the same winery and the production is uninterrupted. Some of the grapes used to produce the third wine, however, stop at an off-site crushing facility before being taken to the winery for blending and fermentation. This means that the production process as concerns those grapes is not continuous; thus, the third wine cannot use the term “Estate Bottled” on its label, but the other two wines may.

After this has been explained to our client, he informs us that he intends to name his vineyard “Bodega Los Carneros” because he’s proud most of his grapes are grown in the Los Carneros region of California. The first wine will be labeled as an Estate Bottled Zinfandel-Cabernet blend from Los Carneros, Napa Valley with a 2012 vintage year. The second wine will be an Estate Bottled Napa Valley Pinot Noir, 2012 Vintage. The client has special plans for his last wine though. His daughter’s favorite Disney character is Pluto, so he wants to sell the wine as “Pluto’s Favorite” in honor of his daughter and include a cartoon image of the famous Disney character on the label. It will be labeled as a “California Table Wine” with the grape varieties listed with their respective percentages. Based on the information provided this far, the client’s labeling

intentions conform with the U.S. laws on appellations and designations, but other legal issues will prevent the labels from passing the COLA application process.

4. Branding and Intellectual Property Considerations

4.1. Branding

4.1.1. What is required?

U.S. law requires that every wine label display a brand name.¹⁴⁰ A Brand name is used to differentiate a product from its competitors. “Brand names are trademarks.”¹⁴¹ They start out as a simple identifying aspect for a product, but over time, they gain value by earning a reputation for a certain quality. “A winery can have many brand names. Many wineries use multiple brands to produce various wine lines. Some wine brands are long-lived and well respected, with a large consumer following. Others are short-lived.”¹⁴² The most readily apparent legal aspect of branding is the need to protect a trademark. The process of label approval in the U.S. does not provide any form of trademark protection.¹⁴³ Trademark registration is a wholly independent legal task that should be undertaken to protect brand value. There are some other legal considerations for wine label branding that should be kept in mind. Most importantly, vintners should be aware of the consequences of choosing a brand name that reflects any geographic or viticultural significance.

4.1.2. Brand Names of Geographical or Viticultural Significance

¹⁴⁰ *Id.* at § 4.32 (2012).

¹⁴¹ LEE, *supra* at 89.

¹⁴² *Id.*

¹⁴³ *Id.*

It is common practice among wineries to choose brand names that contain terms of geographic or viticultural significance. Experts say, “[t]here is nothing that will start a quarrel among industry members faster than geographic brand names, and it’s a great example of where public policy, law, and common sense (attempt to) intersect.”¹⁴⁴ There is nothing that would prohibit a winery from registering a brand name of geographic significance as a trademark (except, of course, an existing trademark), but it could easily raise questions of misleading consumers about the origins of the product. For this reason, the TTB has a regulation in place to limit the use of Geographic brand names for wines.

According to the regulation, “a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.”¹⁴⁵ This type of provision prevents the misleading of consumers because the wine must meet the basic requirements for the appellation before it can carry a related brand name. There is, however, a grandfather clause for existing COLAs issued prior to July 7, 1986.¹⁴⁶ An “name of viticultural significance” is not synonymous with the name of an AVA. While all AVAs will be names of viticultural significance, not all names of viticultural significance are AVAs. The regulation defines names of viticultural significance as “the name of a state or county,” AVAs, and names “found to have viticultural significance by the appropriate TTB officer.”¹⁴⁷ For example, “Sonoma County” is not an AVA, but any brand names using the word “Sonoma” is likely to be considered as a brand name of viticultural significance. Names of foreign viticultural significance are also covered by the law, despite the fact that the burden of proof for

¹⁴⁴ *Id.*

¹⁴⁵ 27 C.F.R. § 4.39(i) (2012).

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at § 4.39(i)(3) (2012).

registering such names is frequently less daunting in other countries than in the States.¹⁴⁸

One of the dangers of geographic brand names is that they can later acquire viticultural significance and trigger the protections of the regulation, both for foreign and domestic geographic areas.¹⁴⁹ Even when a geographic brand name carries with it no viticultural significance at the time the winery chooses the name, a later acquisition of viticultural significance will trigger the regulation and subject all of the winery's wines to the standards for appellations of origin. This could easily lead to wineries having to rebrand some or even all of their wines, an expensive and work-intensive process. Not only should actual costs be taken into consideration, but also the potential loss of goodwill because the work previously put into brand name recognition is then largely irrelevant. For this reason, it is recommended to advise clients against the use of geographically significant brand names and make sure that they are, at a minimum, fully informed about the potential consequences.

4.1.3. Public Policy Considerations for Branding and Marketing

In addition to the basic requirements for branding that focus on informing the consumer and preventing misrepresentations, there are also a number of important public policy considerations also related to consumer deception that come into play when deciding on branding and what will go on a wine label. The basic premise of the relevant public policy considerations is that labels should be truthful and informative. The four key considerations to keep in mind for branding are marketing to underage

¹⁴⁸ LEE, *supra* at 93.

¹⁴⁹ *Id.*

drinkers, the use of comments disparaging of a competitor's products, the use of the names of prominent individuals or organizations, and obscenities.

The issue of marketing to underage consumers in the U.S. falls primarily under the jurisdiction of the FTC as an advertising issue, but it is largely self-regulated by the beverage industry.¹⁵⁰ The Wine Institute's Code of Advertising Standards prohibits "[a]ny advertising which has particular appeal to persons below the legal drinking age [...], even if it also appeals to adults."¹⁵¹ The code discourages the use of personalities, music, cartoons, sports, or entertainment figures particularly appealing to "persons below the legal drinking age" or that appear in the advertisements to be themselves under the legal drinking age.¹⁵² This includes a prohibition against using Santa Claus or the Easter Bunny in advertising. While labels themselves may not readily appear to fall under the purview of advertising, they are, in fact, the most basic level of advertising for a product. This is one of the reasons that so much thought and effort goes into designing labels in many cases.

An interesting case involving the wine institute and its advertising code occurred as a result of a partnership between Disney and the large retailer Costco. Following the overwhelming success of the Disney/Pixar film *Ratatouille*, Disney came up with the idea of marketing a "Ratatouille" wine making use of the characters from the movie.¹⁵³ The wine was to be "a 2004 white Burgundy from the Mâcon's Château de Messey."¹⁵⁴ The label was to feature the movie's main character, a rat named Remy.¹⁵⁵ Despite the

¹⁵⁰ *Id.* at 139.

¹⁵¹ Wine Institute, *Code of Advertising Standards*, <http://www.wineinstitute.org/initiatives/issuesandpolicy/adcode/details> (last visited Aug. 01, 2013).

¹⁵² *Id.*

¹⁵³ *Unfiltered*, <http://www.winespectator.com/webfeature/show/id/Unfiltered3636> (Wine Spectator, Jun. 27, 2007) (last visited Aug. 01, 2013).

¹⁵⁴ *Id.*

¹⁵⁵ See Appendix B, Figures B-1 & B-2.

fact that the wine was French and the Wine Institute is an industry body for California wine producers, the Wine institute sent a letter to Disney in opposition to the marketing of the wine because the label was appealing to young children. This is a prime example of self-regulation in the wine industry working because despite having already purchased 500 cases of the wine, Disney and Costco decided to pull the wine from the market before it even made it onto the shelves.^{156,157} Industry efforts at self-regulating are not always so effective; the Wine Institute undertook similar measures to discourage the marketing of an Italian wine in the U.S. using the Japanese cartoon character “Hello Kitty” on the label. The Wine Institute located all of the relevant label approvals and “sent a letter [...] to both the Italian producer and the New York importer.”¹⁵⁸ The wine is still available for purchase in the U.S., and no the Wine Institute never received a response to its letter.^{159,160} Although some wines find their way through the proverbial cracks of the self-regulatory system, it is generally accepted in the American alcoholic beverage industry that using images that are appealing to underage drinkers is somehow less than ethical.

In the European context, the EU also tends towards a self-regulatory system for alcohol advertising. Most, if not all, industry-relevant regulatory systems in the EU make some mention of standards for the advertising of alcohol to minors. In Germany, for example, the related policies are divided between three documents: “the Youth

¹⁵⁶ Eric Arnold, *Costco Pulls Ratatouille Wine*, http://www.winespectator.com/webfeature/show/id/Costco-Pulls-Ratatouille-Wine_3682 (Wine Spectator, Jul. 31, 2007).

¹⁵⁷ Ironically, this 500 case order followed by the removal from market means that some people have gotten their hands on the wine, and the bottle is now a collector’s item. One bottle was recently seen on the internet auction site eBay for \$149.99 USD.

¹⁵⁸ LEE, *supra* at 140.

¹⁵⁹ *Id.*

¹⁶⁰ See also, *The Colbert Report* (Comedy Central Television Broadcast Apr. 7, 2010) available at <http://www.colbertnation.com/the-colbert-report-videos/270017/april-07-2010/tip-wag---hello-kitty-wine---pig-s-blood-filters> (last visited Aug. 01, 2013).

Persons Act (Jugenschutzgesetz), the Interstate Treaty on the Protection of Human Dignity and the Protection of Minors in Broadcasting (Jugendmedienschutz-Staatsvertrag), and the Code of Conduct on Commercial Communication for Alcoholic Beverages (Verhaltensregeln des Deutschen Weiberats über die kommerzielle Kommunikation für alkoholhaltige Getränke).”¹⁶¹ The German law focuses more on the timing and placement of advertisements than actual content, but the German Advertising Council’s Code of Conduct is another example of a functional self-regulatory system.¹⁶² Again, these are advertising rules, not labeling rules, but the same general principles can be applied to avoid the targeting of underage drinkers on the market through questionable labeling practices.

Another important prohibition under U.S. law is the use of disparaging comments against a competitor. “At one point, comparative advertising was thought to be de facto disparaging, but the current regulations recognize the legitimacy of comparative advertising for taste tests.”¹⁶³ Advertising is a whole beast of regulatory issues on its own, but labeling need not deal extensively with these advertising prohibitions. The simplest way to avoid complications due to comparative advertising on labels is not to do it.

The next public policy issue is the use of the names of living individuals or organizations with the intent to mislead the consumer that the product has been endorsed by that person or organization. There are numerous wines available that *are* owned or endorsed by famous celebrities and use the names for marketing purposes; for example, NASCAR driver Jeff Gordon owns “Jeff Gordon Wines” and TV Chef Lidia

¹⁶¹ Eleanor Winpenny, et al., *Assessment of Young People’s Exposure to Alcohol Marketing in Audiovisual and Online Media* 62 (Rand Europe Sep. 2012).

¹⁶² *Id.*

¹⁶³ LEE, *supra* at 121.

Bastianich owns “Bastianich Winery”. There are even more vineyards out there owned by celebrities that choose not to blatantly capitalize on their owner’s name like Olivia Newton-John’s “Koala Blue Wines” in Australia. There is no legal problem with the use of a famous name on a wine unless the representation “is likely falsely to lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization.”¹⁶⁴ Sometimes, for the label approval process, “the TTB will require that the organization or person being used on a label sign a release for the use of his or her name or image.”¹⁶⁵

The last public policy consideration to be covered here is a hugely subjective topic that has seen a broad range of enforcement levels in different jurisdictions: the use of obscenities. U.S. law broadly prohibits “[a]ny statement, design, device, or representation which is obscene or indecent.”¹⁶⁶ With an ever-increasing number of risqué wine labels hitting the market, it would appear as though federal government standards have loosened over time along with public sensitivities. Competition in the wine market has become intense, and vintners are more and more frequently resorting to eye-catching labels that are either overtly rude (like “Bitch” or “Fat Bastard”) or cleverly indelicate (like “if you see kay”) to make their wines fly off the shelves.¹⁶⁷ Though the TTB seems to have liberalized its views on what is obscene for a wine label, the individual state ABC boards have not always been as accepting. The quintessential

¹⁶⁴ 27 C.F.R. § 4.39(a)(6) (2012).

¹⁶⁵ LEE, *supra* at 121.

¹⁶⁶ 27 C.F.R. § 4.39(a)(3) (2012).

¹⁶⁷ See, William Grimes, *With Rude Names, Wine Stops Minding Its Manners*, (New York Times, Dec. 6, 2011), available at http://www.nytimes.com/2011/12/07/dining/with-rude-names-wine-stops-minding-its-manners.html?_r=0 (last visited Aug. 2, 2013); and Lucy Shaw, *Rude Wine Label Causing Trouble in US*, (The Drinks Business, Oct. 22, 2012) <http://www.thedrinksbusiness.com/2012/10/rude-wine-label-causing-trouble-in-us/> (last visited Aug. 2, 2013); and Appendix B, Figures 3-6.

example of state morality laws interfering with the introduction of a wine product was the case of “Cycles Gladiator” in Alabama. Despite having the wine on the Alabama market for over three years, the Alabama Beverage Control Board stopped sales of the California wine because its label featured a naked nymph.¹⁶⁸ The Alabama Administrative code prohibits “any illustration(s) [...] of any person(s) posed in an immodest or sensuous manner....”¹⁶⁹ The Beverage Control Board found the naked nymph to be immodest and banned the wine from Alabama shelves as a result. In New Hampshire, public outcry put regulators on the spot when the wine “if you see kay” hit the market in the state.¹⁷⁰ At the end of the day, officials chose not to remove the wine from shelves in New Hampshire, but they did move them to the back of the stores.¹⁷¹ In an amusing twist, a wine named “Ménage à trois” is a best selling wine in New Hampshire.¹⁷² What the federal regulators consider obscene or indecent may not always be identical to the state rulings. A wine that receives a COLA from the federal authorities is often subjected to further approvals at the state level. The European laws tend to have little to no mention of obscenity or indecency for labeling standards.

The fundamental elements of alcoholic beverage labeling policy are to properly inform the consumer and prevent misleading or deceptive practices. The topics that have been discussed above all relate to those basic tenets except for perhaps the policies on obscene or indecent labeling; those relate back to the general public welfare. Surviving the federal label approval process in the U.S. theoretically means that a label is fit for marketability in the entire U.S., but in practice, many states have their own

¹⁶⁸ Lucy Shaw, *Alabama Ban on Nude Nymph Wine Label*, (Decanter July 31, 2009), <http://www.decanter.com/news/wine-news/484381/alabama-ban-on-nude-nymph-wine-label> (last visited Aug. 2, 2013). See also, Appendix B, Figure B-7.

¹⁶⁹ ALA. ADMIN. CODE r. 20-X-7-.01 (2013).

¹⁷⁰ Lucy Shaw, *Rude Wine Label Causing Trouble in US*, *supra*. See also, Appendix B, Figure B-6.

¹⁷¹ *Id.*

¹⁷² *Id.*

label review process that may subject a label to even more stringent standards as has been seen in some of the examples above. It is important to remember that while the average consumer might not see labels as advertising, they are, in fact, subject to the laws and policies affecting advertising, which are full of public policy considerations. Label requirements are not always as cut and dry as where the wine originates from (though we've seen that isn't always clear either) or in which year it the grapes were harvested; there are also a number of more subjective analyses that each label will have to endure prior to approval.

4.2. Intellectual Property Considerations

4.2.1. Trademarks

A label is not just a tool used to identify a product, it is also an asset that should be protected. A great deal of time and money is spent on the creation and approval of a wine label, so the label must also be considered an investment. One option for protecting a label's value is to examine the trademark possibilities. "A trademark is a distinctive sign which identifies certain goods or services..."¹⁷³ The owner of a registered trademark has the exclusive right to use that mark to identify goods in the territory of registration. The trademark must be registered with each national or regional trademark office where the owner seeks protection. The Madrid Agreement and Madrid Protocol have made it possible to register the trademark in one jurisdiction and then use a common application to register the trademark in any member country of the Madrid Union.¹⁷⁴ Almost anything can serve as a trademark, but jurisdictions differ on what

¹⁷³ World Intellectual Property Organization, *What is a trademark?*, <http://www.wipo.int/trademarks/en/trademarks.html> (last visited Aug. 2, 2013).

¹⁷⁴ World Intellectual Property Organization, *About Trademarks*, http://www.wipo.int/trademarks/en/about_trademarks.html (last visited Aug. 2, 2013).

they consider able to be registered. Words, letters, numerals, drawings, symbols, logos, labels, colors, three-dimensional signs, sounds, and even smells are theoretically able to be considered trademarks.¹⁷⁵ The U.S. also recognizes certain common law trademark rights that exist through the use of a mark in trade without registration. Federal registration is by far the most effective means of protecting a trademark because it gives immediate priority and protection in all 50 states from the date of filing if the registration is granted.

In the field of wine labeling, a vintner could choose to trademark individual elements of the label like the brand name, logo, and any artwork, or the vintner could trademark the entire label. It is even possible to trademark a wine bottle itself if the trade dress is sufficiently distinctive as to differentiate the brand from others. A search for prior trademarks is essential to any trademark registration process. Because of the common law rights available in the U.S., it is important to include general searches for business names being used in all 50 states. It is also advisable to search for previously issued COLAs from the TTB, but one must remember that label approval and COLA issuance alone does *not* provide any trademark protection. Trademark registration is not a cheap process. A thorough search for prior marks can easily exceed \$1000 USD in the U.S., and then each filing costs \$325 USD plus legal fees if an attorney is used.¹⁷⁶ This is solely for a U.S. registration; additional foreign registrations under the Madrid Protocol will incur additional expenses. Due to this expense, many wineries will choose

¹⁷⁵ WORLD INTELLECTUAL PROPERTY ORGANIZATION, WIPO INTELLECTUAL PROPERTY HANDBOOK 70 (2d ed. 2004), *available at* http://www.wipo.int/export/sites/www/freepublications/en/intproperty/489/wipo_pub_489.pdf (last visited Aug. 2, 2013).

¹⁷⁶ Neal & McDevitt, *Trademark Issues for the Wine Industry*, http://www.nealmcdevitt.com/assets/news/TM_Issues_for_Wine_Industry_1_thru_6.pdf (last visited Aug. 2, 2013).

only to register the most important and broad-scoped asset, their brand name. Some will also register their brand name in connection with some form of logo.¹⁷⁷

Traditionally, trademarks are only protected for use with the same or similar products or within a given industry. The U.S. introduced changes to the federal law protecting trademarks in order to prevent the dilution of brand value for famous trademarks.¹⁷⁸ The idea is that a famous trademark like “Coca Cola” should be protected not just in relation to carbonated beverages, but also in essentially any industry that seeks to capitalize from the brand recognition. If a brand is not considered famous through inherent or acquired distinctiveness, the mark must be protected through registration and/or use in trade. To borrow from an earlier example, when “Cycles Gladiator” was banned from sale in Alabama because of the naked nymph, the winery quickly began benefitting from the publicity with t-shirts and other merchandise exclaiming “Banned in Bama”.¹⁷⁹ The value of the non-wine merchandise became so valuable to Smith & Hook Winery that they registered a trademark for their wine label for use, not in wine, but on clothing.¹⁸⁰ While in the case of Smith & Hook the winery started producing their own merchandise, they could have also licensed the trademark to another company for the production of clothing and novelty goods. A licensing set up allows another party to use the trademark while preserving the trademark owner’s rights, and it is a typical method for protecting against mark dilution. Licensing frequently occurs in the wine industry when wineries purchase grapes from certain vineyards and use the vineyards’ name on the wine.¹⁸¹

¹⁷⁷ See Appendix A, Figure A-4.

¹⁷⁸ 15 U.S.C. § 1125 (2013).

¹⁷⁹ LEE, *supra* at 121.

¹⁸⁰ See Appendix A, Figure A-3.

¹⁸¹ MENDELSON, *supra* at 246.

Once a winery has a registered trademark, the trademark must be enforced against others in order to preserve its value. For example, the owner of the mark “Rabbit Ridge”, a winery, enforced his trademark rights against the owner of the mark “Rabbit Hill”, also a winery; as a result, the owner of Rabbit Ridge essentially had the exclusive right to use the word “Rabbit” in a wine name.¹⁸² “The continuous enforcement of exclusive trademarks rights is difficult and costly, but the consequences of failing to enforce those rights can be the weakening of a mark’s exclusivity.”¹⁸³ When it comes to trademark enforcement, “the test for infringement is whether there is a likelihood of consumer confusion between the marks at issue.”¹⁸⁴ There has been a broad range of jurisprudence in the U.S. regarding trademark infringement. Some of the key issues focused on by the courts in determining whether the use of a name is misleading are the amount of care exercised by consumers, the sophistication level of the consumer, price differences, quality differences, and distribution methods.¹⁸⁵

Over 2,000 trademarks for wine were registered in the U.S. in 2009, and that same year, the TTB issued almost 90,000 COLAs for wine products.¹⁸⁶ With such a huge level of market saturation in a highly fragmented industry, “a foundational understanding of trademark law is critical.”¹⁸⁷

4.2.2. Copyright

Copyright refers to the “rights of intellectual creators in their creation.”¹⁸⁸ The general principle is to “encourage the authorship of creative works.”¹⁸⁹ It is not possible

¹⁸² *Russell v. Caesar*, 62 USPQ 2d 1125, 1129 (N.D. Cal. 2001).

¹⁸³ MENDELSON, *supra* at 242.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 242-243.

¹⁸⁶ *Id.* at 218.

¹⁸⁷ *Id.*

¹⁸⁸ WIPO INTELLECTUAL PROPERTY HANDBOOK, *supra* at 40.

to protect names, taglines, or other short phrases under copyright, so trademark protections are generally more valuable to the wine industry than copyright. Some copyright protections are worth noting for wineries though. “[L]ogos and label designs are often pictorial and graphic works protected by copyright...”¹⁹⁰ Advertising, promotional materials, and websites may also be protected under copyright as creative works. It is important to note that copyright usually vests in the author of the work, but the “work-for-hire” principal means that works created by an employee in the scope of their employment belong to the employer.¹⁹¹ One of the danger areas for wineries in copyright is in the use of artwork for a label.

*Wineries must take great care in using art on labels when the art was not directly commissioned for that use. If a winery owner purchases a piece of fine art for his art collection, he merely takes title to the physical piece of art. Absent an express written assignment from the artist, the artist retains all copyright in the art.*¹⁹²

It is also important that wineries are careful about taking photographs from the internet without paying for a license in writing.

4.3. Branding and IP in Practice

Some of the client’s branding and labeling ideas are cause for concern. The third wine and it’s Disney label raise the most issues. Firstly, the use of a Disney character, Pluto, on the label along with the brand name “Pluto’s Favorite” means that our client would have to obtain a license from Disney for the use of the character. This is a time consuming and likely very expensive task. Thanks to the Copyright Extension Act in the U.S., Disney still owns the rights to most (perhaps all) of its characters, Pluto

¹⁸⁹ MENDELSON, *supra* at 246.

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 247.

¹⁹² *Id.*

included.¹⁹³ Therefore, our client would have to negotiate a license agreement with Disney for the use of the character on the wine label.

Prior to engaging in license negotiations over Pluto, the client should be advised of the public policy issues affecting his use of Pluto on the wine label. First, because Pluto is a popular children's cartoon character, the use of the image on a wine label could be considered advertising targeting underage consumers. Much like the Ratatouille example addressed earlier, the use of Pluto on the label would almost certainly violate the Wine Institute's self-regulatory code of standards regarding wine advertising because it seems to target children. Second, the brand name "Pluto's Favorite" may cause issues with regards to misleading endorsements of a product. It raises an interesting legal question as to whether product endorsements from a fictional character are inherently misleading. While there is room for debate on the issue as a whole, in this example adult consumers of wine are highly unlikely to believe that a cartoon dog actually endorsed the wine they are purchasing. One could argue that it could induce children to encourage their parents to purchase the wine, but it still probably has little to do with the endorsement being misleading. Regardless of the misleading nature of the endorsement, the label would almost certainly be in violation of standards against the advertising of alcohol beverages towards minors. The marketing of the third wine as "Pluto's Favorite" is very problematic, and the client is best advised to abandon this concept.

The client also wants to market his two other wines under the brand name "Bodega Los Carneros." Although feasible, the use of geographic brand names causes unnecessary complications. Los Carneros is an AVA, which limits its use as a brand

¹⁹³ 17 U.S.C. §§ 301-305 (2013).

name to wines that would qualify for the appellation “Los Carneros”. This immediately excludes the client’s second wine from using the brand name because only 50% of the grapes used to produce the wine are grown in Los Carneros. If the client wishes to have a brand name that can easily be used on all or most of his products, he should be advised against the use of geographical terms in the name. The client would be best served to adopt a fanciful, arbitrary, or suggestive brand name that could easily be trademarked for protection.

Unlike many clients, this client decides to take our advice; he renames the vineyard “Purrington” after the family’s favorite cat, but he has no plans to use the cat on any labeling or advertisements. He wants to use a simple black label with the vineyard name in gold lettering for wines one and two, and white lettering for wine three. The third wine will carry the vineyard name, but will simply be referred to as a “Blended California Table Wine.” The client also wants to include the statement “Grapes so strong they’ll cure your blues” on all the back labels of the wines.

5. Information and Warning Labels

5.1. Information Labels

5.1.1. Alcohol Content

One of the basic statutory requirements for every wine label in the U.S. is a statement of alcohol content.¹⁹⁴ Wines with over 14% alcohol by volume must state the percentage on the brand label.¹⁹⁵ Wines under the 14% mark must either state the alcohol content or use the terms “Table Wine” or “Light Wine” on the label.¹⁹⁶ Perhaps the most interesting element of alcohol content labeling is the juxtaposition of a duty to

¹⁹⁴ 27 C.F.R. § 4.32 (2012).

¹⁹⁵ *Id.* at § 4.36(b)(1).

¹⁹⁶ *Id.* at § 4.36(a).

inform the consumer with the desire not to encourage the purchase of high alcohol content beverages. It is presumably this paradox that lead to the statutory limitation on typeface size for alcohol content labeling; the alcohol content for wines must have a typeface larger than one millimeter but no larger than three millimeters.¹⁹⁷ Furthermore, alcohol content statements cannot be “set off with a border or otherwise accentuated.”¹⁹⁸ The regulations allow for a tolerance of 1.5% when a label features a precise alcohol by volume, but wines can also display a range of alcohol content of not more than 3% if the total alcohol by volume is less than 14%.¹⁹⁹ It is important to note, however, that these tolerances do not apply when it would make a definitive difference in the classification of the wine; i.e. a wine that is 14.2% cannot be labeled 13.9% despite the 1.5% tolerance because 14% is the threshold where table wines become dessert wines and fall into a different taxable class.²⁰⁰ Because of the potential loss of tax revenue, “[t]he TTB is not usually merciful when it discovers that a winery has defrauded the government by misstating the alcohol content.”²⁰¹ One issue that this brings up is that alcohol content testing is not always 100% accurate. The Wine Institute recommends the use of an independent commercial lab for a third round of testing when a dispute arises from differences in winery and TTB testing.²⁰² Interestingly, the FAA specifically prohibits the disclosure of alcohol content on malt beverages to discourage strength wars between producers, but this provision was struck down by the U.S. Supreme Court in *Rubin v. Coors Brewing Company*.²⁰³ The court ruled that truthful statements about alcohol content do not mislead the public and the prohibition on alcohol content labeling on

¹⁹⁷ *Id.* at § 4.38(b)(3).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at § 4.36(b).

²⁰⁰ *Id.* at § 4.36(c).

²⁰¹ LEE, *supra* at 110.

²⁰² *Id.*

²⁰³ *Rubin v. Coors Brewing Company*, 514 U.S. 476 (1995).

malt beverages failed to advance the government's interest in discouraging strength wars between brewers; therefore, the alcohol content on labeling should be protected commercial speech under the first amendment of the constitution.²⁰⁴

While all wines require some indication of alcohol content according to the regulations, wineries are at the same time prohibited from making any statements or using any images that would suggest the wine is a distilled spirit, contains a distilled spirit, or has intoxicating effects.²⁰⁵ Public policy dictates that alcoholic beverage producers should avoid marketing their beverages in a way that encourages intoxication, alcoholism, or other dangerous behavior. Therefore, wines must disclose their actual alcohol content, but they are prohibited from suggesting that the wine is stronger than it is.

Because of the objective nature of alcohol content labeling, many advocates see it as a potential area for harmonization between labeling regimes across legal systems.²⁰⁶ Regulation 1234/2007 of the EU also requires "actual alcoholic strength by volume" on wine labels.²⁰⁷ While the U.S. law considers the 7% to 14% alcohol range for the class "Table Wine" acceptably precise for consumer information, the EU requires an exact statement of alcohol content on *all* wines. The tolerance set is 0.5% or 0.8% for some types of wine, but the percentage must be stated in percentage units or half units.²⁰⁸ Additionally, the alcoholic strength must be "at least 5 mm high if the nominal volume is over 100 cl, [or] at least 3 mm high if it is equal to or less than 100 cl..."²⁰⁹ These requirements are *not* identical to the U.S. requirements, but they are

²⁰⁴ *Id.*

²⁰⁵ 27 C.F.R. § 4.39(a)(7) (2012).

²⁰⁶ LEE, *supra* at 108.

²⁰⁷ Council Regulation 1234/2007 Art. 118y, 2007 O.J. (L 299) (EC).

²⁰⁸ Council Regulation 607/2009 Art. 54(1), 2009 O.J. (L 193) (EC).

²⁰⁹ *Id.* at Art. 54(2).

similar. The labeling of alcohol content on wine was not part of the 2006 Agreement on the Trade in Wine, but the Agreement does set the goal of future dialogue on the area to find a point of consensus.²¹⁰

5.1.2. Net Contents

Under U.S. law, a wine must display the exact net contents on either the brand label or the back label.²¹¹ If the wine uses one of the approved metric standards of fill outlined in the regulation then the choice of content information placement is up to the winery.²¹² If, on the other hand, the winery uses a non-standard fill, the content must be placed on a label on the front of the bottle, *not* the back label.²¹³ The content must be stated in milliliters for bottles containing less than one liter, and in liters with a decimal to the nearest one hundredth of a liter for containers larger than one liter.²¹⁴ Bottlers may also choose to include an equivalent U.S. measure in addition to the metric standard, but this information is optional.²¹⁵ No net content disclosures are required on either label if the information is somehow affixed to the container itself, e.g. etched or sand blasted into the glass.²¹⁶

In the EU, all food labels, including alcoholic beverage labels, must contain a statement of net quantity.²¹⁷ This statement should be expressed in liters, centiliters, or milliliters.²¹⁸

²¹⁰ Agreement Between the United States of America and the European Community on Trade in Wine, Mar. 10, 2006, T.I.A.S. No. 06-310.1, Protocol on Wine Labelling (2006).

²¹¹ 27 C.F.R. § 4.32(b)(2) (2012).

²¹² *Id.* at § 4.72.

²¹³ *Id.* at § 4.32(b)(2).

²¹⁴ *Id.* at § 4.37(a).

²¹⁵ *Id.* at § 4.37(b).

²¹⁶ *Id.* at § 4.37(c).

²¹⁷ Regulation 1169/2011 Art. 9(1)(e), 2011 O.J. (L 304) (EU).

²¹⁸ *Id.* at Art. 23.

5.1.3. Nutritional Facts and Serving Sizes

There has been a great deal of debate in the American wine industry on the issue of nutritional information and serving facts for wine. Recently, the TTB issued a ruling that permits “voluntary statements about nutrient content” in alcoholic beverage labeling.²¹⁹ Wineries may now opt to include a serving facts statement on their labels that would provide truthful information about “serving size, the number of servings per container, and the number of calories and the number of grams of carbohydrates, protein, and fat per serving size.”²²⁰ The ruling lays out the standards for serving sizes based on alcohol content.²²¹ Although new labels or labels where other elements are changed must still apply for a new COLA, labels with existing COLAs that are being modified solely by introducing serving facts information in compliance with the ruling are already considered approved by the TTB without any additional application.²²² It is important to note that this is a ruling for voluntary serving facts labels, and it is still not compulsory to include such information on wine labels. The industry has lobbied fervently to block efforts to make such disclosures mandatory because of the cost of compliance largely because providing truthful information on each label would almost certainly require testing the wines with each blend and vintage.²²³

*Alcohol and residual sugar levels vary significantly among wine styles and also from year to year, region to region, and lot to lot. Winemakers adjust wine blends to meet stylistic targets, often right up to the time of bottling. Accordingly, mandatory Serving Facts labeling such as that proposed by the TTB would impose severe financial and logistical burdens on the industry.*²²⁴

²¹⁹ T.T.B. Rul. 2013-2, 1 (May 28, 2013).

²²⁰ *Id.* at 7.

²²¹ *Id.*

²²² *Id.* at 8.

²²³ LEE, *supra* at 131.

²²⁴ *Id.*

The TTB estimates sampling costs at \$250 per sample.²²⁵ This may seem reasonable, but for a medium-sized winery, that could be an “ongoing annual cost of \$125,000.”²²⁶ Given how recent the TTB ruling is, it remains to be seen how many vineyards will choose to include serving facts information and how they will go about ensuring that truthful information is provided on each bottle.

Serving facts and nutritional information are generally required on food labels in the EU, but wine is exempted from these requirements.²²⁷ A listing of ingredients or nutrition declarations are optional for beverages containing more than 1.2% alcohol by volume.²²⁸

5.1.4. Organic Claims

Wineries that wish to market their wines as organic have another series of concerns to think about during the labeling process. The United States Department of Agriculture (USDA) is the regulatory body responsible for organic claims in the United States. Organic wines in the U.S. fall under two key labeling classifications, although some others are possible: “organic wine” and “wine produced from organic grapes.”²²⁹ Wines can only be labeled at 100% organic if no sulfites were added at any point of the production process.²³⁰ In order to carry an organic label, the vineyard and the grapes used to produce the wine must be certified organic by a certifier accredited by the USDA.²³¹ The guidelines for when a product can be “100% organic,” “organic,” or

²²⁵ *Id.* at 132.

²²⁶ *Id.*

²²⁷ Regulation 1169/2011 Art. 16(4), 2011 O.J. (L 304) (EU).

²²⁸ *Id.*

²²⁹ TTB, *Guidelines for Labeling Wine with Organic References* (Mar. 2009) available at <http://www.ttb.gov/pdf/wine.pdf> (last visited Aug. 8, 2013).

²³⁰ Dana Nigro, *U.S. and Europe Have Different Definitions of Organic Wine* (Wine Spectator, Feb. 24, 2012) available at <http://www.winespectator.com/webfeature/show/id/46432> (last visited Aug. 8, 2013).

²³¹ 7 C.F.R. §§ 205.300, 205.400 (2012).

“made from organic products” are laid out in the regulations based on the percentage make up of organic ingredients.²³²

EU standards allow for wines to be labeled “organic” with added sulfites as long as the sulfites do not exceed prescribed levels.²³³ The problem with the discrepancies between requirements in the U.S. and EU on organic labeling is an issue because it leaves American wineries at a disadvantage because trade treaties allow products legally labeled “organic” in either jurisdiction to be marketed in the other without a second certification.²³⁴

5.2. Warnings and Disclosures

5.2.1. General Warnings

Aside from informational requirements for alcoholic beverage labels, there are also a number of warnings and disclosures in each jurisdiction with which beverage producers must comply. The Alcoholic Beverage Labeling Act (ALBA) of 1988 first introduced a federal requirement that alcoholic beverages contain a general warning label.²³⁵ The statute leaves no room for interpretation with the language for the label; the exact wording is provided in the statute itself. All alcoholic beverage containers manufactured or intended for market in the U.S. must bear the following statement:

GOVERNMENT WARNING:

- (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects.*
- (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.*²³⁶

²³² 7 C.F.R. § 205.301 (2012).

²³³ Commission Implementing Regulation 203/2012, 2012 O.J. (L 71).

²³⁴ NIGRO, *supra*.

²³⁵ 27 U.S.C. §215 (2013).

²³⁶ *Id.* at § 215(a).

Subsequent to the passing of the ALBA, the TTB's predecessor organization, the BATF, was faced with the task of adopting consistent regulations for the warning labels. The BATF was equally as exacting with its regulations as congress was with the statute. The mandatory health warning is the only label requirement that has a maximum number of characters per inch depending on the type size used.²³⁷ The regulation even stipulates that the label must be firmly affixed to the container to ensure they cannot be easily removed.²³⁸ The enforcement of these regulations has also been consistently strict. "The wineries quickly learned that there are no variances from the stated regulatory requirements; every label must meet the literal requirements of the regulations."²³⁹

There are no warning level requirements in Europe at the EU level, but some Member States still maintain national legislation that requires either a warning statement or an approved warning symbol. For example, France requires either a written warning disclosing the dangers alcohol poses to unborn children during if consumed by the mother during pregnancy or a provided government approved warning symbol.²⁴⁰ From a recent non-scientific examination of European wine bottles, it appears that the majority of wines have opted to include the warning symbol over the written warning.

Some countries have taken health warning labels on alcoholic beverages to new extremes, but these extremes are being carefully considered by other countries as well. Thailand was the first country to attempt introduction of photographic warning labels for alcohol.²⁴¹ When the law was first proposed, it drew heavy criticism from trade

²³⁷ 27 C.F.R. § 16.22(a)(4) (2012).

²³⁸ *Id.* at § 16.22(c).

²³⁹ LEE, *supra* at 117.

²⁴⁰ International Center for Alcohol Policy, *Health Warning Labels* <http://www.icap.org/table/HealthWarningLabels> (last visited Aug. 4, 2013).

²⁴¹ See Appendix B, Figure B-8.

partners around the world. When Thailand notified the WTO of the proposed law, major wine producers like the U.S. and Australia responded almost immediately. “The critical point that needs to be addressed is the introduction of graphic warning labeling as this will affect the sale of U.S. wines and whiskies in Thailand and it imposes unnecessary costs on importers for labeling preparation.”²⁴² The existing alcoholic beverage exports from the U.S. to Thailand represented almost \$4 million USD in 2010.²⁴³ The proposed Thai law required a rotation of six pictorial warning labels on alcoholic beverages that would cover between 30% and 50% of the total surface area of the container.²⁴⁴ Additionally, containers would have to include a written warning against the sale of alcohol to minors.²⁴⁵ Foreign opponents to the measures argued that they were overly restrictive, costly, and not based on sufficient scientific data.²⁴⁶ The Representative from the U.S. raised the point “that the requirement to rotate the warning labels every thousand bottles would require a stop and a change in the production line every three to four minutes, which would be extremely difficult for suppliers to manage and very disruptive to the production process.”²⁴⁷ Despite the many the protests of other members, the WTO did not find in the end that the measures equated to a technical barrier to trade. That said, this author could find no evidence that the Thai government ever implemented the measures, but it is likely a matter of time, and other countries have begun discussing the possibility of following suit.

²⁴² USDA, *GAIN Report: Draft Regulation on Alcohol Graphic Warning Labeling*, TH0015 (Jan. 28 2010).

²⁴³ *Id.*

²⁴⁴ WTO Committee Notification, *Thailand – Draft Notification of the Alcohol Beverages Control*, G/TBT/N/THA/332 (Jan. 21, 2010).

²⁴⁵ *Id.*

²⁴⁶ WTO Committee on Technical Barriers to Trade, *Minutes of the Meeting of 23-24 June 2010*, G/TBT/M/51 at 51-53 (Oct. 1, 2010).

²⁴⁷ *Id.* at 52.

5.2.2. Sulfite Disclosure

Sulfite disclosures are a subject of much misconception among consumers. When “the first sulfite disclosure statements started appearing on wine labels [...some] consumers stat[ed] that they would not be drinking California wine anymore now that wineries were using sulfites.”²⁴⁸ The fact is most of those wineries had not changed their production formulas at all, and all wines contain at least *some* sulfites because they are a natural part of the fermentation process. Sulfites are also used at various stages of the wine production process as an antioxidant, antibacterial, and antimicrobial.²⁴⁹ Some people suffer from allergies or sensitivities to sulfites that can lead to serious reactions, particularly for asthmatics; for this reason, the U.S. government instituted regulations that require sulfite declarations on alcoholic beverage containers. The regulation requires a disclosure that the product “Contains sulfites” when levels of or higher than 10 parts per million.²⁵⁰ Because of the natural occurrence of sulfites during fermentation, some wine labels will actually have both “No Sulfites Added” and “Contains sulfites” on the same label.²⁵¹

The EU now also requires a sulfite disclosure on wines. Regulation 1169/11 requires a listing of particular allergens on food labels as part of a list of ingredients.²⁵² Wines are exempted from the ingredients listing requirement, but they must still list allergens including sulfites.²⁵³ Alcoholic beverages containing more than 10 mg/liter of

²⁴⁸ LEE, *supra* at 114.

²⁴⁹ *Id.*

²⁵⁰ 27 C.F.R. § 4.32(e) (2012).

²⁵¹ LEE, *supra* at 115.

²⁵² Regulation 1169/2011 Art. 9(1)(c), 2011 O.J. (L 304) (EU).

²⁵³ *Id.* at Art. 16(4), 21(1).

sulfites must have a label bearing the words “Contains Sulphites” or “Contains Sulphur dioxide.”²⁵⁴

While some wines may choose to add additional information, such as “No sulfites added,” virtually all wines will have to contain a sulfite disclosure. The TTB has also provided guidance that says statements that say “Contains No Sulfites” or “Sulfite Free” are misleading and may not be used on wine.²⁵⁵ Any wines that contain sulfites of less than 10 parts per million are not required to disclose sulfite contents, but they must maintain supporting laboratory reports proving the negligible sulfite content; they may also opt to include phrases like “Contains No Detectable Sulfites” or “Contains Only Naturally Occurring Sulfites.”²⁵⁶

5.2.3. Allergen Disclosure

When the sulfite disclosure requirement was introduced in the U.S., it was and still is the only allergen labeling requirement for wines. This is very likely to change eventually because of the Food Allergen Labeling and Consumer Protection Act (FALCPA) adopted by congress in 2004.²⁵⁷ FALCPA took effect in 2006 and requires “all food products... in the United States to disclose the presence of allergens.”²⁵⁸ The inherent problem with allergen labeling for wine is that products containing milk or fish proteins are often used at different stages of the wine production process, but they are largely, if not completely, filtered out before bottling, but there are no affordable tests available and accurate enough to test for the actual presence of these allergens in

²⁵⁴ *Id.* at Art. 21(1), Annex II(12).

²⁵⁵ TTB, *ALFD Guidance for Organic Labeling Applicants* (Mar. 2010), available at <http://www.ttb.gov/pdf/organic/alfd-guidance-for-organic-labeling-applicants.pdf> (last visited Aug. 5, 2013).

²⁵⁶ *Id.*

²⁵⁷ LEE, *supra* at 135.

²⁵⁸ *Id.*

wine.²⁵⁹ The TTB can verify through records that allergens were used in the production process, but they have no way to determine whether those allergens are actually present in the wine. Many people claim to have food allergies without ever being tested, and even those that are actually allergic are unlikely to suffer any effects from whatever negligible traces of allergens might remain in the wine, but the use of allergen labeling on wine will discourage those people from purchasing wines possibly containing allergens.²⁶⁰ For the time being, at least, the allergen labeling requirements in the U.S. are voluntary for wines.²⁶¹

The same is not true for allergen labeling in the EU. In 2012, the EU amended Regulation 607/2009 to require that milk and egg allergens must be marked on wine bottles along with sulfites.²⁶² The Regulation also provides pictograms that can be used to supplement the allergen disclosure.²⁶³ One of the key problems with allergen labeling in the EU is the language requirement set forth in Regulation 1169/11: “mandatory food information shall appear in a language easily understood by the consumers of the Member States where a food is marketed.”²⁶⁴ In theory, this means that if a wine were to be marketed in all 27 members states of the EU, the label and its warnings or disclosures would have to be in at least one official language of each Member State. Pictogram disclosures were introduced to reduce this language burden, but when the national laws of the Member States are taken into consideration, it is still a minimum of 16 languages that would be required in conjunction with the pictograms to be

²⁵⁹ *Id.* at 135-36.

²⁶⁰ *Id.* at 137.

²⁶¹ TTB, *Major Food Allergen Labeling for Wines*, http://www.ttb.gov/labeling/major_food_allergen_labeling.shtml (last visited Aug. 5, 2013).

²⁶² Commission Implementing Regulation 579/2012, 2012 O.J. (L 171) (EU).

²⁶³ *Id.*

²⁶⁴ Regulation 1169/2011 Art. 15(1), 2011 O.J. (L 304) (EU).

“marketed” in all 27 Member States.²⁶⁵ In practice, this is a near impossible task to fulfill on one label, so wineries will generally select a few languages that cover their primary markets and then can use add-on labeling for other markets. The pictograms are still useful because in several jurisdictions that have more than one official language, it is sufficient to use one of the official languages together with the pictogram to disclose allergens.

5.3. Prohibited Statements

5.3.1. Therapeutic Claims

It is not always about what a winery is required to say, rather a winery must also consider what it is *not* allowed to say on a wine label. Marketing tactics that target minors have already been discussed, but there are also prohibited practices relating to marketing to adult consumers. One must remember that the foundation of all food and beverage labeling law is to inform consumers and prevent misleading statements or deceptive practices. As such, alcoholic beverage producers are prohibited from making therapeutic claims about their product in most jurisdictions. “By far the most common label offense is the making of improper therapeutic claims.”²⁶⁶

U.S. law divides health-related statements about alcohol into three general categories: health-related statements, specific health claims, and health-related directional statements.²⁶⁷ Health-related statements are those that “suggest a relationship between the consumption of [wine...] and “health benefits or effects on health.”²⁶⁸

²⁶⁵ European Commission, *Information Communicated by Member States as Regards the Authorised Languages for the Labelling of Allergens* (Sep. 5, 2012) available at http://ec.europa.eu/agriculture/markets/wine/labelling_allergens.pdf (last visited Aug. 6, 2013).

²⁶⁶ LEE, *supra* at 122.

²⁶⁷ 27 C.F.R. § 4.39(h)(1) (2012).

²⁶⁸ *Id.* at § 4.39(h)(1)(i).

Specific health claims are statements “that, expressly or by implication, characterize the relationship of [wine...] to a disease or health-related condition.”²⁶⁹ Lastly, health-related directional statements are those that refer a consumer “to a third party or other source for information regarding the effects on health of wine or alcohol consumption.”²⁷⁰ This division of therapeutic claims into distinct categories demonstrates a loosening of the regulatory grip on therapeutic claims relating to wine because of an increasing base of studies that show moderate consumption of alcohol may actually be beneficial to health.²⁷¹ The basic rule for all types of health-related statements is that they must be true, substantiated, and not in violation of any TTB or FDA regulations.²⁷² A broad range of statements have been rejected by the TTB as therapeutic claims, but the opinions have been changing over time.²⁷³ For example, the statement “Please Enjoy Our Wine in Moderation” was at one time considered a prohibited therapeutic claim, but it is now generally considered permissible.²⁷⁴ Other statements, such as “Science Is Clear: Wine Can Be Good For You,” may be technically true, but the TTB considers them misleading without some additional qualification.²⁷⁵ In general, however, it is best to avoid any statements that have any chance of being considered a health-related claim if one wishes to avoid a label rejection.

Regulation 1924/2006 in the EU governs the use of nutrition and health claims made on foods. It states that alcoholic beverages “shall not bear: (a) health claims; [or] (b) nutritional claims other than those which refer to a reduction in the alcohol or energy

²⁶⁹ *Id.* at § 4.39(h)(1)(ii).

²⁷⁰ *Id.* at § 4.39(h)(1)(iii).

²⁷¹ LEE, *supra* at 122-123.

²⁷² 27 C.F.R. § 4.39(h)(2) (2012).

²⁷³ LEE, *supra* at 125.

²⁷⁴ *Id.*

²⁷⁵ *Id.*

content.”²⁷⁶ A recent case in the European Court of Justice demonstrated how strict the prohibitions on health claims can be in relation to alcohol; in *Deutsches Weintor eG v. Land Rheinland-Pfalz*, the ECJ ruled that “Easily digested” was a prohibited health claim under the regulation.²⁷⁷ Interestingly, one of the questions posed to the court for a preliminary ruling was whether “a producer or marketer of wine [can] be prohibited, without exception, from making in its advertising a health claim... even if that claim is correct.”²⁷⁸ In relation to this question, the court ruled that there must be a balance between the freedom to choose an occupation, the freedom to conduct business, and the protection of public health.²⁷⁹ When alcohol is concerned, it is critical that health claims be “entirely unambiguous,” so it is not enough for a statement to be correct, rather it must also be complete; i.e. health claims related to alcohol will almost always be prohibited because they can only be complete when accompanied with a statement of the risks of alcohol abuse.²⁸⁰

5.3.2. Intoxicating Effects

For public policy reasons relating to the health dangers of alcohol abuse, the U.S. also prohibits the use of language touting a beverage’s intoxicating effects on a label or in advertising.²⁸¹

5.3.3. Government Symbols

²⁷⁶ Regulation 1924/2006 Art. 4(3), 2006 O.J. (L 404) (EC).

²⁷⁷ Case C-544/10, *Deutsches Weintor eG v. Land Rheinland-Pfalz*, 2012.

²⁷⁸ *Id.* at 26(3).

²⁷⁹ *Id.* at 46.

²⁸⁰ *Id.* at 47-52.

²⁸¹ 27 C.F.R. § 4.39(a)(7)(iii) (2012).

U.S. law also prohibits the use of anything that might be “construed as relating to the armed forces of the United States, or the American flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces” and symbols that might “mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such” symbol is associated.²⁸² The regulation also prohibits the “simulation of government stamps” to give the impression that the wine was made by or under the supervision of a state, federal, or foreign government unless such stamp was issued by that government.²⁸³

5.4. Information and Warning Labels in Practice

The client has been informed about the informational and warning requirements for his label, and he is beginning to realize how much detail needs to go into the label design. All of his wines are bottled in standard 750ml bottles, and they will be labeled as such. Though the client could choose to simply label his wines as “Table Wine” under the U.S. regulations governing alcohol content, he prefers to be in full compliance of the EU requirements as well, so he will place the exact percentages on each bottle. The first wine is 13.5% alcohol by volume, and the other two are 13%. He doesn’t plan to mark any of his wines as organic, so there are no concerns on that issue. The client admits that the wine uses albumen (egg white) as a fining agent during the wine production, so he concedes to including an allergen warning for egg proteins and sulfites. The two primary foreign markets for the client are Ireland and Germany, so in

²⁸² *Id.* at § 4.39(g).

²⁸³ *Id.* at § 4.39(e).

addition to the EU provided pictogram, he will mark the bottles in English and German with the necessary disclosures.

The client becomes very frustrated when he finds out that his tag line “Grapes so strong they’ll cure your blues” is probably impermissible. It would be easy to construe the statement as both a health-related claim and one that implies that the wine is stronger than it actually is. Having properly burst his bubble at least twice now, the client says, “At least we’re finally finished with these labels.” Not quite; there are a few last items to discuss.

6. Bottler, Importer, and Distributor Labeling

6.1. Name and Address Labeling

According to U.S. law the name and address of the bottler is also mandatory for all wine labels.²⁸⁴ The name and address of the bottler should match the information provided on the “basic permit or other qualifying document of the premises at which the operations took place [...] except that the street address may be omitted.”²⁸⁵ American produced wines may also include optional statements like “bottled for,” “distributed by,” “produced by,” or “blended by” in addition to others provided certain requirements are met to insure the statements are not misleading to the consumer.²⁸⁶ Imported wines must state the name and address of the bottler *and* importer.²⁸⁷ The same is required for wine labels in the EU.²⁸⁸

7. The Label Approval Process

²⁸⁴ 27 C.F.R. § 4.35(a)(1) (2012).

²⁸⁵ *Id.* at § 4.35(c).

²⁸⁶ *Id.* at § 4.35(a)(2).

²⁸⁷ *Id.* at § 4.35(b).

²⁸⁸ Council Regulation 491/2009 Art. 118y, 2009 O.J. (L 154) (EC).

7.1. Certificates of Label Approval in the U.S.

“Unlike labels for other food products, which are judged after entering the marketplace, every wine label must be approved by the TTB very early in the production cycle...”²⁸⁹ Wine labels must be reviewed by the TTB before they are even placed on a bottle.²⁹⁰ After review by the TTB, approved wine labels are issued a Certificate of Label Approval (COLA), and the TTB maintains a database of all COLAs online.²⁹¹ The database includes the completed COLA and usually the label images submitted with the application. This makes it an invaluable learning resource for others working on alcoholic beverage labeling. Once a COLA is issued, certain allowable changes may be made to the wine label without applying for another COLA, e.g. changing the vintage date. The allowable changes are listed with helpful comments on the third page of the COLA application.²⁹² The only exemptions to COLA requirements are when a wine is not intended for sale on any market or when a wine is intended for sale only in the state of production, but the wine must then be labeled “FOR SALE IN [INSERT STATE] ONLY.”²⁹³

From what has been explained thus far, a list of obligatory label components is apparent. The label must include: (1) a brand name; (2) a designation of class or type; (3) alcohol content; (4) the name and address of the bottler; (5) the net contents; and (6) a declaration of sulfites.²⁹⁴ Beyond this, we have already explored a number of other statements or images that can be voluntarily added to the label based on certain

²⁸⁹ LEE, *supra* at 77.

²⁹⁰ 27 C.F.R. § 4.50(a) (2012).

²⁹¹ See TTB COLA Registry, <http://www.ttbonline.gov/colasonline/publicSearchColasBasic.do> (last visited Aug. 6, 2013).

²⁹² See Appendix A, Figure A-5. Also available at <http://www.ttb.gov/forms/f510031.pdf> (last visited Aug. 6, 2013).

²⁹³ 27 C.F.R. § 4.50(b) (2012).

²⁹⁴ *Id.* at § 4.32.

prerequisites. All of these elements, along with the format in which they are presented, will be reviewed and evaluated by the TTB for COLA compliance.

The timetable for wine and label production is something that needs careful attention by a producer. At the time of writing, COLA applications for wine were averaging 39 days for processing.²⁹⁵

Wine production cycles, storage space, and harvest schedules often do not help in label planning. For printing a new label, the lead time for a moderately sized winery is a little over two months. Often a winery that is rushed for time will send out a label for printing before the label has been approved, only to discover, when it finally submits its COLA application, that the label is non-compliant for one reason or another. In such cases practitioners approach the TTB and attempt to obtain a variance to allow the use of the non-compliant label; this is called “use-up” permission.²⁹⁶

Having a well-informed legal team to review the label and COLA application for errors or compliance issues prior to submission to the TTB is invaluable, particularly for new vineyards unfamiliar with the process. Wines being imported to the U.S. must also complete a COLA application.

7.2. Label Approval for Imports to the EU

Under the Agreement between the U.S. and EU on the trade in wine, wines that receive a COLA from the TTB may be imported for sale in the EU by simply including a certification from the TTB that the wine is compliant with the terms of the agreement.²⁹⁷ This certificate is included in Annex III of the agreement.²⁹⁸ The core requirements of any wine label to be marketed in the EU are: (1) an alcohol statement; (2) a volume statement; (3) country of origin; (4) a product designation; (5) an allergen

²⁹⁵ Weekly COLA statistics are available at <http://www.ttb.gov/labeling/labeling-resources.shtml> (last visited Aug. 6, 2013).

²⁹⁶ LEE, *supra* at 79.

²⁹⁷ Agreement Between the United States of America and the European Community on Trade in Wine, Mar. 10, 2006, T.I.A.S. No. 06-310.1, Art. 9 (2006).

²⁹⁸ See Appendix A, Figure A-6.

statement; (6) the name and address of the importer; and (7) a lot number.²⁹⁹ These are the basic requirements that the certifying TTB agent will review on the label. This agreement saves U.S. wineries exporting to the EU some of the hassle of approval at the national level of the Member States, but the Agreement is always subject to modification or revocation, so it is wise for wineries to stay informed about EU and Member State policies if they are a major market for the winery. Wineries in other countries also may not benefit from similar agreements.

8. Consequences of Non-Compliance

At the most basic level, non-compliance with labeling requirements can mean exclusion from a market. For instance, wines that do not receive COLA approval are limited to sale within the state where they are produced. This could represent a significant business loss for the winery concerned.

The consequences of non-compliance are not limited to potential loss of market, rather they could also consist of direct financial losses in terms of taxes, fines, and penalties. For instance, mislabeling of alcohol content on a wine could result in the wine being reclassified according to the tax code. This could result in an increased tax rate and potential fines or penalties for tax fraud; the potential even exists for criminal charges, though this would require a showing of intent to defraud the government.

Even the possibility of reforming labeling errors is one that can be extremely costly to wineries. The costs incurred by wineries by the labeling and compliance process can be significant, and the time involved extensive.

²⁹⁹ Wine Australia, *Label Approval Checklist – European Union* (Sep. 3, 2012) available at http://www.wineaustralia.com/en/Production%20and%20Exporting/~/_media/0000Industry%20Site/Documents/Production%20and%20Exporting/Labelling/Label%20Approval%20Checklist%20-%20EU.ashx (last visited Aug. 6, 2013).

9. Harmonization Efforts

From this brief overview of alcoholic beverage labeling requirements in just two major jurisdictions, it quickly becomes apparent exactly how daunting label compliance can be for a vineyard, particularly a small and/or new vineyard. It is difficult to comply with the legal requirements of one jurisdiction, but for a vineyard seeking to export its wine, compliance issues can be overwhelmingly costly and time consuming. The wine industry as a whole would profit from greater harmonization of wine labeling requirements across borders. Currently, each country of export could mean yet another label to print. At a minimum, a winery is typically required to add the name and address of the importer, and the far end of the scale could mean a complete overhaul of the existing wine label.

In earlier sections, the harmonization efforts of the EU have already been mentioned. As the EU has moved from loose economic agreements to ever-deeper levels of economic and political integration, more and more labeling requirements for the wine industry have become standardized between all Member States. The progression has inched its way from national law to national law partially harmonized through directives to harmonized Union Regulations that still allow for some national measures. Language requirements in the EU can still be frustrating for marketers of wine. The Regulation on food labeling requires that the label must be “in a language easily understood by the consumers of the Member States where a food is marketed,” but Member States have the power to stipulate which of the official languages of the Union must be on a label to be marketed within its territory.³⁰⁰ An increased use of

³⁰⁰ Regulation 1169/2011 Art. 15(1), 2011 O.J. (L 304) (EU).

approved pictograms can ease some of these requirements, but they are far from replacing the need for multiple languages on wine labels.

For American wine producers exporting to the EU, there is some good news on label harmonization; the Agreement on the Trade in Wine between the U.S. and EU eases some of the compliance needs for wines heading towards Europe.³⁰¹ While the agreement is for the benefit of both parties, the easing of label approval requirements was primarily directed at U.S. wineries because the EU was focusing on protecting the use of traditional terms, geographic indicators, and designations of origin recognized in the EU on the American market. While the agreement does not excuse American producers from complying with EU labeling standards, it does allow for simplified EU-wide approval by means of an additional application procedure through the TTB after receiving a COLA.

The Agreement on Trade in Wine is not the only international agreement on wine labeling to which the U.S. is a party. One such agreement has been the source of recent changes in TTB regulations, namely the World Wine Trade Group (WWTG) Agreement on Requirements for Wine Labeling. This agreement between the U.S., Argentina, Australia, Canada, Chile, Georgia, New Zealand, and South Africa was entered into as a result of negotiations on reducing non-tariff barriers for the wine industry.³⁰² The Agreement defines four items of common mandatory information (CMI) that should be included in a single field of vision on all wine containers: (1) country of origin, (2) alcohol content, (3) net contents, and (4) product name.³⁰³ In order to bring U.S. law into conformity with the terms of the agreement, the TTB issued a

³⁰¹ Agreement Between the United States of America and the European Community on Trade in Wine, Mar. 10, 2006, T.I.A.S. No. 06-310.1, Art. 9 (2006).

³⁰² World Wine Trade Group, Agreement on Requirements for Wine Labelling (Jan. 23, 2007), *available at* <http://ita.doc.gov/td/ocg/WWTGlabel.pdf> (last visited Aug. 7, 2013).

³⁰³ *Id.*

new final rule amending 27 C.F.R. Part 4 with regards to mandatory label information for wine.³⁰⁴ The key change to the regulation is that alcohol content is no longer required to be displayed on the brand label, rather it can be on any label; this allows for the single field of vision rule in the agreement to be applied under U.S. law.³⁰⁵ This agreement is far from creating a single rule for label compliance because it only harmonizes labels to the extent that the CMI must be displayed in the same field of vision on all wine labels in the countries that are party to the agreement. That said, every step towards cooperation and harmonization is a win for the wine industry. This small area of common practice between states can add up to big savings for wineries.

10. Conclusion

Exhausted by the process, the client hesitantly opens the folder containing his new wine labels. The client had little appreciation for the legal minefield of labeling complexities that he faced, but he finally has finished labels back from the marketing firm that look professional and comply with the applicable laws in the U.S. and the EU, particularly Ireland, Germany, and even France for good measure. The client has survived the gauntlet of legal requirements during the label design, but he still has to apply for a COLA, await approval prior to printing and bottling, and then apply for further certification to export to the EU.³⁰⁶

This study considers purely the labeling requirements for the marketing of wine in the U.S. and the EU – there are a number of other legal considerations to deal with before a wine can actually be marketed to the public. Dealing with the legal aspects of

³⁰⁴ Modification of Mandatory Label Information for Wine, 78 Fed. Reg. 34565 (Jun. 10, 2013) (to be codified at 27 C.F.R. pt. 4).

³⁰⁵ *Id.*

³⁰⁶ See Appendix C for illustrative examples of the client's project.

labeling only adds to the day to day legal considerations of a winery: property issues, health and food safety, labor and employment, taxes, sales contracts, international sales contracts, etc... The problem for a winery attempting to market its wines in multiple jurisdictions is that labeling laws are detailed, complex, and can differ greatly from place to place. There are approximately 26 billion liters of wine produced annually across the globe, and each container intended for sale must comply with some form of labeling requirements.³⁰⁷ It is an unrealistically utopian view that there could be a universally accepted label if for no other reason than the thousands of languages spoke worldwide. It is impossible to properly inform a consumer if the consumer cannot understand the label. While a universal label may be out of reach, the greater the level of harmonization obtained worldwide, the less expensive it becomes for wineries to comply with labeling regulations, which could result in wider availability of products for consumers in different countries. Industry associations like the Wine Institute and the World Wine Trade Group work hard to bring different countries to the table to discuss wine trade issues, whether it is at the WTO or issue specific meetings.

From a legal professional's perspective, wine labeling is just one more area of law that is alive and frequently changing. Harmonization efforts also mean changes to local laws that must be taken into consideration by legal professionals. Alcoholic beverage labeling requires a great deal of background knowledge and a serious effort to stay on top of changing rules. First, an alcoholic beverage labeling professional must have some degree of understanding of the industry he/she represents. In the wine industry, it is important to have a detailed understanding of how appellations and designations work, the broad spectrum of wine varietals and their equivalent names,

³⁰⁷ The Wine Institute, *World Wine Production by Country* http://www.wineinstitute.org/files/2010_World_Wine_Production_by_Country.pdf (last visited Aug. 7, 2013).

production methods and additives, and much more. Next, a legal professional must know what laws govern labeling requirements, how to find those laws, and how to monitor the laws for changes. While the EU has harmonized much of wine labeling law, these harmonized requirements are found scattered among a large collection of regulations, directives, agreements, and Member State laws. Better than pure harmonization would be harmonization and consolidation. Having a common point of reference for all applicable laws would greatly improve productivity in the area of labeling compliance. Lastly, a legal professional must have an understanding of the economic and time constraints of his/her client. Labeling compliance is but one piece of a very large puzzle, and each piece of the puzzle takes time and costs money.

Whether for the winery owner that thinks he can make his own labels or the new attorney that thinks he can easily advise a client on label production and compliance requirements, it is important to realize how deep the bog of labeling law can be. The elements discussed in this study are handled in a very cursory manner, and they only provide a basic view of how complex the law actually is. True label compliance work can involve handling details literally down to the millimeter. For the legislator or regulator, it is crucial to understand that struggles for compliance are struggles of the economy, and they are also barriers to trade. Alcoholic beverage labeling laws may seldom reach the level of being considered technical barriers of trade by the WTO, but the intricacies of labeling compliance can hinder a business' ability to compete or even participate in a particular market. Given the economic hardships of many countries today, continuing to simplify and harmonize labeling requirements can help support at least one segment of the economy and foster global free trade.

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APPENDIX A

Figure A-1 Sample E-Bacchus Results for German Geographic Indicators



Germany

[File Number: PDO-DE-A0867](#)

[Ahr](#)

Quality type: Wine with a protected designation of origin (PDO)

[File Number: PGI-DE-A1278](#)

[Ahrtaler Landwein](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PDO-DE-A1264](#)

[Baden](#)

Quality type: Wine with a protected designation of origin (PDO)

[File Number: PGI-DE-A1279](#)

[Badischer Landwein](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1280](#)

[Bayerischer Bodensee-Landwein](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1281](#)

[Brandenburger Landwein](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PDO-DE-A1267](#)

[Franken](#)

Quality type: Wine with a protected designation of origin (PDO)

[File Number: PDO-DE-A1268](#)

[Hessische Bergstraße](#)

Quality type: Wine with a protected designation of origin (PDO)

[File Number: PGI-DE-A1283](#)

[Landwein der Mosel](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1288](#)

[Landwein der Ruwer](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1289](#)

[Landwein der Saar](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1282](#)

[Landwein Main](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1284](#)

[Landwein Neckar](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1285](#)

[Landwein Oberrhein](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1286](#)

[Landwein Rhein](#)

Quality type: Wine with a protected geographical indication (PGI)

[File Number: PGI-DE-A1287](#)

[Landwein Rhein-Neckar](#)

Figure A-2³⁰⁸

U.S. Appellations and Grape Origin Percentage Requirements

Appellation Used	FEDERAL Percentage of Grapes from Labeled Appellation
United States or “American”	75% from United States
Single State	75% from labeled state
Multi-state (must be contiguous)	Must indicate % from each state
Single County	75% from labeled county
Multi-county (must be within same state)	Must indicate % from each county
Single viticultural area	85% from within viticultural area
Multiple viticultural areas	85% from the area of overlap

³⁰⁸ LEE, *supra* at 84.

Figure A-3
Certificate of Trademark for Cycles Gladiator

United States of America
United States Patent and Trademark Office



Reg. No. 4,032,145

Registered Sep. 27, 2011

Int. Cl.: 25

TRADEMARK

PRINCIPAL REGISTER

SMITH & HOOK WINERY, INC. (CALIFORNIA CORPORATION)
37700 FOOTHILL ROAD, DRAWER C
SOLEDAD, CA 939600167

FOR: CLOTHING, NAMELY, JACKETS, VESTS, HATS, SHIRTS, SHORTS, SOCKS, SHOES,
AND RAINWEAR, PANTS, GLOVES, AND LEGGINGS, IN CLASS 25 (U.S. CLS. 22 AND
39).

FIRST USE 3-1-2006, IN COMMERCE 3-1-2006.

OWNER OF U.S. REG. NOS. 3,175,141 AND 3,345,506.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "CYCLES", APART FROM THE
MARK AS SHOWN.

THE MARK CONSISTS OF THE WORDS "CYCLES GLADIATOR" APPEARING NEXT TO
THE DESIGN OF A MYTHOLOGICAL NYMPH FLYING THROUGH THE NIGHT SKY WHILE
HOLDING HER WINGED BICYCLE.

SN 77-830,182, FILED 9-18-2009.

CHRISTINE MARTIN, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

Figure A-4

Trademark Status Information Sheet for Molly Dooker

Generated on: This page was generated by TSDR on 2013-08-02 07:13:50 EDT

Mark: MOLLY DOOKER



US Serial Number: 85881359

Application Filing Date: Mar. 20, 2013

Register: Principal

Mark Type: Trademark

Status: Review prior to publication completed.

Status Date: Aug. 01, 2013

Publication Date: Sep. 03, 2013

Mark Information

Mark Literal Elements: MOLLY DOOKER

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of the scripted lettering for the word "MOLLYDOOKER" with the letters "oo" stacked from bottom to top with stylized coiling from the "M" and the "K".

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 26.01.26 - Coils; Spirals; Swirls
27.03.01 - Geometric figures forming letters, numerals or punctuation

Related Properties Information

Claimed Ownership of US Registrations: 3249827, 3595067

Foreign Information

Foreign Registration Number: 1136061

Foreign Registration Date: Sep. 18, 2006

Foreign Application/Registration Country: AUSTRALIA

Foreign Expiration Date: Sep. 18, 2016

Goods and Services

Note: The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ([..]) identify any goods/services not claimed in a Section 15 affidavit of
- Asterisks "*" identify additional (new) wording in the goods/services.

For: Alcoholic Beverages, namely, Wine

International Class(es): 033 - Primary Class

U.S Class(es): 047, 049

Class Status: ACTIVE

Basis: 1(a) 44(e)

First Use: Dec. 31, 2006

Use in Commerce: Dec. 31, 2006

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: Yes

Currently 44E: Yes

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Figure A-5

IV. CONTACT INFORMATION

For Additional Information Contact:

Advertising, Labeling and Formulation Division (ALFD)
Alcohol and Tobacco Tax and Trade Bureau
1310 G. Street, N.W., Box 12
Washington, DC 20005
Phone (202) 453-2250
1-866-927-2533 (Toll Free)
E-mail address: alfd@ttb.gov

For A Supply Of This Form (TTB F 5100.31) Contact:

The form may be ordered electronically by accessing the TTB Web site at http://www.ttb.gov/forms/ordering_forms.shtml
The form may be electronically accessed at the TTB Web site at <http://www.ttb.gov/forms/f510031.pdf>

V. ALLOWABLE REVISIONS TO APPROVED LABELS

Once a label receives TTB approval, you are permitted to make certain changes to that label without submitting it to TTB. The label(s) identified on and affixed to this certificate may be revised without resubmission as follows:

NOTE: Any revision(s) you make to your approved label(s) must be in compliance with the applicable regulations in 27 CFR parts 4, 5, 7, and 16, and any other applicable provision of law or regulation, including, but not limited to, the conditions set forth in the "Comments" below.

YOU MAY...	REVISION APPLIES TO			COMMENTS
	WINE	DISTILLED SPIRITS	MALT BEVERAGE	
1. Delete any non-mandatory label information, including text, illustrations, graphics, etc.	YES	YES	YES	
2. Reposition any label information, including text, illustrations, graphics, etc.	YES	YES	YES	The repositioning must comply with any placement requirements applicable to mandatory information. For example, some types of mandatory information must appear on the brand label or must appear together with other label information.
3. Change the color(s) (background and text), shape and proportionate size of labels. Change the type size and font, and make appropriate changes to the spelling (including punctuation marks and abbreviations) of words, in compliance with the regulations. Change from an adhesive label to one where label information is etched, painted or printed directly on the container and vice versa.	YES	YES	YES	All mandatory information must be readily legible and appear on a contrasting background. If you received approval for a single label then you may not divide the label into multiple labels without re-approval. All changes must comply with applicable regulations, and changes in spelling must not change the meaning of the previously approved information.
4. Change the stated percentages for blends of grape varieties and appellations of origin for wine labels.	YES	N/A	N/A	When used for any of these items, the total percentages for each element must equal 100%. You may not change the name of the stated varieties or appellations without submitting a new application.
5. Add, change or delete a vintage date for wine labels.	YES	N/A	N/A	If the vintage date is deleted, no reference to "Vintage" may be made on any label or other materials (e.g., caps, capsules, corks, etc.) affixed to the bottle. When adding a new vintage date, you must comply with all applicable regulations, including the requirements regarding appellations of origin.
6. Change the optional "produced" or "made" by statements on wine labels to "blended", "vinted", "cellared" or "prepared" by statements.	YES	N/A	N/A	
7. Add, change or delete the stated amount of acid and/or the pH level for wine labels.	YES	N/A	N/A	
8. Change the stated amounts of sugar at harvest and/or residual sugar for wine labels.	YES	N/A	N/A	See ATF Ruling 82-4 for policy regarding use of sugar content statements and when such statements are required.
9. Add or delete bonded winery or taxpaid wine bottling house number for wine labels.	YES	N/A	N/A	If used, a bonded winery number must appear in direct conjunction with the bottler's name and address.
10. Change the net contents statement.	YES	YES	YES	Revisions must comply with all applicable regulations governing net content statements and standards of fill. Please ensure that all applicable type size requirements are met for each container size.
11. Change the mandatory statement of alcohol content, as long as the change is consistent with the labeled class and type designation, and all other labeling statements.	YES	YES	YES (Flavored Malt Beverages Only)	For example, you may change the alcohol content of a grape wine labeled with a varietal designation from 13 percent to 15 percent alcohol by volume, even though it results in a change to the product's tax classification. However, if the product was designated and labeled as a "table wine," an alcohol content of 15 percent alcohol by volume would be inconsistent with the rules for use of that designation, so this change would not be permitted. Similarly, a label bearing a "rum" designation may not be changed to state an alcohol content of less than 40 percent alcohol by volume. The revised alcohol content statement must be consistent with all other mandatory or optional labeling statements.
12. Add, delete, or change an optional statement of alcohol content for malt beverage labels.	N/A	N/A	YES	Malt beverages that contain alcohol derived from added flavors or other added nonbeverage ingredients (other than hops extract) containing alcohol are subject to mandatory alcohol content statement requirements.
13. Change the statement of percentage of neutral spirits and the name of the commodity from which a distilled spirit is produced.	N/A	YES	N/A	These changes must not result in a change to the class or type designation of the distilled spirits product.
14. Change the mandatory age statement, or delete or change an optional age statement for distilled spirits labels.	N/A	YES	N/A	These changes must not result in a change to the class or type designation. See 27 CFR 5.22 and 5.40 for further information about age statements and minimum aging requirements applicable to certain classes and types of spirits.
15. Delete or change an optional age statement, including a barrel aging statement, for wine and malt beverage labels.	YES	N/A	YES	Statements of age on wine labels must comply with 27 CFR 4.39(b).
16. Add, delete, or change statements or information in order to comply with the requirements of the State in which the malt beverage is to be sold.	N/A	N/A	YES	Applies only to malt beverages sold in that particular State.
17. Change the numerical values for calories, carbohydrates, protein, and fat contained in a statement of average analysis.	YES	YES	YES	Changes must be in compliance with TTB Ruling 2004-1.
18. Add, delete, or change stated bottling date, production date (day, month, and/or year) or freshness information including bottling, production or expiration dates or codes.	YES	YES	YES	Bottling dates added to wine labels must comply with 27 CFR 4.39(c).
19. Change the name or trade name to reflect a different name already approved for use by the responsible bonded wine cellar, taxpaid wine bottling house, distilled spirits plant, brewery, or importer. Change the address where it is within the same State.	YES	YES	YES	This means that a bonded wine cellar, taxpaid wine bottling house, distilled spirits plant, brewery or importer may revise the label to include the use of a name or trade name that is already approved for that particular industry member. The name or trade name must appear on the basic permit, brewer's notice, or other qualifying documents for the company to whom the original certificate was issued. If the name or trade name is also used as the brand name on the label, resulting in a change of brand name, you must submit a new application. The change in address is ONLY allowed for in-state moves or other changes to the COLA holder's address that have already been reflected on the industry member's basic permit, brewer's notice, or other qualifying documents.
20. Add, delete, or change the name and/or address of the foreign producer, bottler, or shipper.	YES	YES	YES	The producer, bottler, or shipper must be located in the same country originally shown.
21. Add, delete, or change the name, address, and/or trademark of the wholesaler, retailer, or persons for whom the product is imported or bottled.	YES	YES	YES	
22. Add, delete, or change bottle deposit information.	YES	YES	YES	
23. Add, delete, or change UPC barcodes and/or 2D mobile barcodes, e.g., QR codes or Microsoft Tags.	YES	YES	YES	Addition or change of UPC Code must be in compliance with Industry Circular 77-23. Any information retrieved from 2D barcodes must be in compliance with all applicable advertising regulations.

TTB F 5100.31 (10/2012)

Figure A-6

ANNEX III

(a) Community

Commercial document ¹ to accompany wine products
originating in the United States of America

1. Exporter (name and address)	2. Serial number
3. Importer (name and address)	4. Competent authority in the US at place of dispatch (name and address) <i>[TTB Office]</i>
5. Customs stamp (For official EC use only)	6. Date wine clears EC customs (For official EC use only)
7. Means of transport and transport details	8. Intended place of delivery (if different from 3)
9. Description of the imported product in particular: actual alcoholic strength: colour of the product:	10. Quantity
11. Certificates The product described above is intended for direct human consumption, complies with the conditions governing the production and entry into circulation applicable in the United States of America, has been produced using oenological practices in accordance with the terms of the EC-U.S. Agreement on Trade in Wine, and has been produced by a winery licensed by the Alcohol and Tobacco Tax and Trade Bureau for the production of grape wine and is subject to inspection and control by the office of that agency specified above. Federal permit number (winery):	
12. Record of control for EC only. For use by competent authority	13. Signatory's company, Federal permit number and telephone number
	14. Name of signatory
	15. Place and date
	16. Signature

¹ According to Annex III of the Agreement between the European Community and the United States of America on Trade in Wine.

USA/CE/Annex III/en 1

APPENDIX B

Sample Wine Labels

Figure B-1



Figure B-2

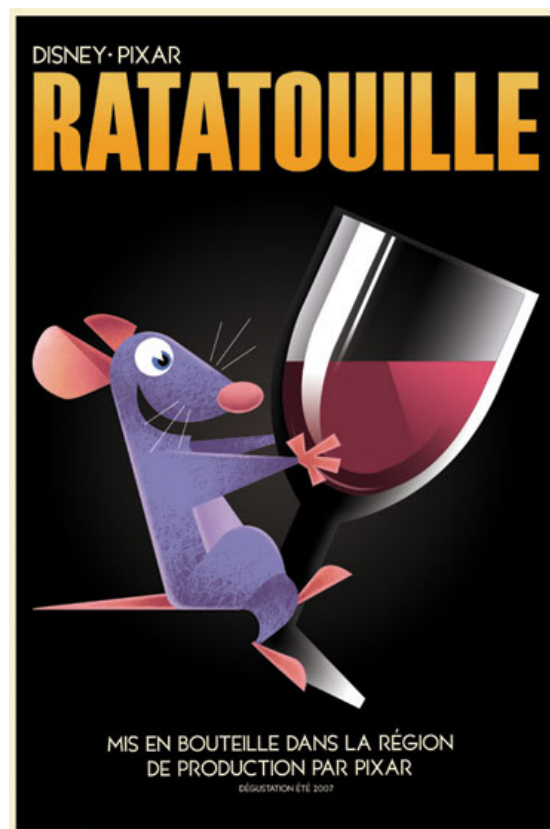


Figure B-3



Figure B-4



Figure B-5

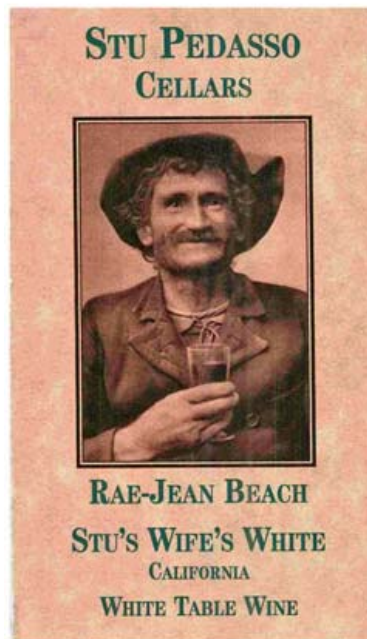


Figure B-6



Figure B-7

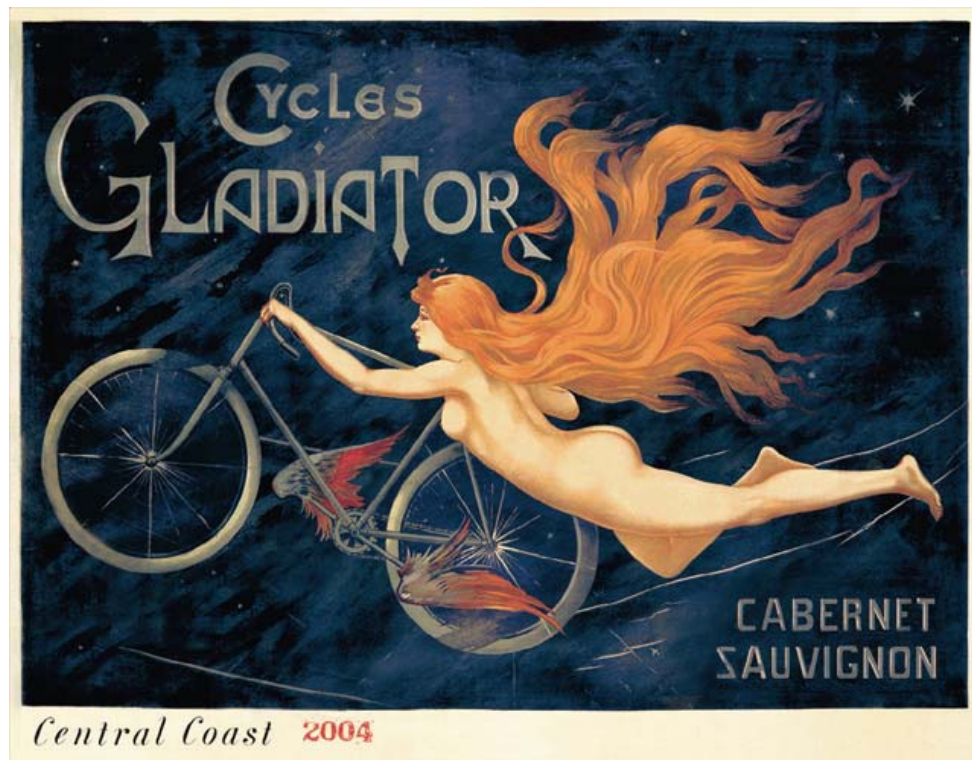


Figure B-8



Type 1 “Drinking alcohol causes the hypertension liver cirrhosis”



Type 4 “Drinking alcohol leads to sexual impotency”



Type 2 “Drunk driving causes disability or death”



Type 5 “Drinking alcohol leads to adverse health effect and family problems



Type 3 “Drinking alcohol leads to unconsciousness and even death”



Type 6 “Drinking alcohol is a bad role model for children and young people”

APPENDIX C

The Evolution of a Client's Wine Label³⁰⁹

EXAMPLE 1

Pluto's
Favorite

CALIFORNIA TABLE WINE
2012

[BIG IMAGE OF DISNEY'S PLUTO
HERE]

90% Zinfandel, 10% Cabernet Sauvignon

³⁰⁹ Note that size and typeface requirements were not taken into consideration for the purpose of these samples.

EXAMPLE 2

Purrington™

Blended California
Table Wine

40% Petit Syrah, 30% Syrah, 30% Zinfandel

Grapes so strong they'll cure your blues!

EXAMPLE 3

Purrington™

Blended California
Table Wine

Product of the U.S.A.
Lot 1321

750ml
13% alc/vol

A bold blend of
40% Petit Syrah, 30% Syrah, and 30% Zinfandel
that results in a wine with a fruit-forward character and spicy
personality.

GOVERNMENT WARNING:

(1) According to the Surgeon General, women should not drink
alcoholic beverages during pregnancy because of the risk of
birth defects.

(2) Consumption of alcoholic beverages impairs your ability to
drive.

Bottled by:
Purrington Vineyards
Napa, California 94558



CONTAINS SULFITES AND EGG PROTEINS
ENTHÄLT SULFITE UND EI PROTEIN
CONTIENT DES SULFITES ET PROTÉINE DE L'OEUF