Geographical Indications in Branding Strategies – Legal Issues and Examples in the U.S.

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Geographical Indications in U.S.

- U.S. recognizes TRIPs provisions on GIs
- However, U.S. has no registration system that expressly protects GIs
- GIs may be protected as geographical certification marks, although USPTO does not acknowledge if a certification mark is a GI
Geographical Indications in U.S.

➤ What does this mean?

➤ The U.S. standard to register a geographical certification mark is lower than the standard for establishing a GI under TRIPs

➤ It is not necessary that a geographical certification mark have any established quality, characteristic or reputation to be registered in US
Geographical Indications in U.S.

So, a GI may be registered in the U.S. as a geographical certification mark, but just because a term is registered as a geographical certification mark does not mean it is a GI pursuant to the TRIPS definition of GIs.
Geographical Indications in U.S.

Examples of U.S. registrations for geographical certification marks that are also arguably GIs under TRIPs:

- IDAHO for potatoes
- ASTI for wine
- COLUMBIAN for coffee
- WISCONSIN for cheese
- WEST INDIES for fabrics
Geographical Indications in U.S.

- Owners of U.S. certification marks *cannot* use the marks on the goods for which the mark is registered.

- Usually owned by governments or trade associations, not producers themselves.

- Idaho Potato Commission owns the registration for the IDAHO certification mark for potatoes.
Geographical Indications in U.S.

➢ So if the certification mark owner cannot use the certification mark, how does it promote the certification mark and the certified goods?

➢ Special exception under U.S. law: owner of the certification mark may promote the mark and the goods, but cannot sell the goods under the certification mark.
Geographical Indications in U.S.

- Certification mark owner may own service marks or trademarks which include the geographic term, so long as the trademark or service mark is distinguishable from the geographical certification mark.
Geographical Indications in U.S.

Prior U.S. Cl.: A

United States Patent and Trademark Office
Reg. No. 2,914,308
Registered Dec. 28, 2004

CERTIFICATION MARK
PRINCIPAL REGISTER

IDAHO

STATE OF IDAHO POTATO COMMISSION (IDaho STATE AGENCY)
599 WEST BANNOCK STREET
P.O. BOX 1068
BOISE, ID 837011068

FOR: POTATOES AND POTATO PRODUCTS,
NAMELY FRESH, FROZEN, REFRIGERATED
AND DEHYDRATED POTATOES, IN CLASS A
(U.S. CL. A).

THE CERTIFICATION MARK, AS USED BY
AUTHORIZED PERSONS, CERTIFIES THAT
GOODS IDENTIFIED BY THE MARK ARE GROWN
IN IDAHO AND THAT THE GOODS CONFORM TO
QUALITY, GRADE AND OTHER REQUIREMENTS,
PURSUANT TO STANDARDS DESIGNATED BY
THE APPLICANT.


DICKENSON PEATMAN & FOGARTY
Geographical Indications in U.S.

United States Patent and Trademark Office

TRADEMARK
PRINCIPAL REGISTER

IDAHO POTATO COMMISSION (IDAHO STATE AGENCY)
599 WEST BANNOCK STREET
P.O. BOX 1068
BOISE, ID 83701-1068

FOR: MAGNETS, IN CLASS 9 (U.S. CLS. 21, 22, 23, 26, 36 AND 38).


FOR: CALENDARS AND STICKERS, IN CLASS 16
(U.S. CLS. 2, 5, 22, 23, 29, 37, 38 AND 50).


OWNER OF U.S. REG. NOS. 1,735,559, 2,406,487 AND OTHERS.

THE COLOR(S) RED, BEIGE, BROWN AND GOLD IS/ARE CLAIMED AS A FEATURE OF THE MARK.

THE COLOR RED APPEARS ON THE SHIRT OF THE CHARACTER. BEIGE APPEARS IN THE POTATO BODY. BROWN APPEARS ON THE LEGS OF...
Geographical Indications in U.S.

- Pursuant to U.S. law, wine appellations are recognized and regulated by the Alcohol and Tobacco Tax and Trade Bureau (TTB)

- TTB will establish a wine region as an American Viticultural Area (AVA) if it can be demonstrated that the region demonstrates common soil, climactic and geological characteristics
Geographical Indications in U.S.

- The U.S. Government does not expressly recognize AVAs as GIs

However, certain AVAs clearly meet the TRIPs definition of GIs by demonstrating qualities, characteristics or reputation attributable to the region
Napa Valley AVA

- **27 CFR Section 9.23** - recognizes Napa Valley as an AVA

- Recognized February 21, 1981

- Second Recognized AVA
Napa Valley AVA

- Napa Valley is a GI

- One of the reasons is because Napa Valley can claim a worldwide reputation as a result of the quality of its wines and promotion of the GI
Napa Valley AVA

- Napa Valley is located 50 miles north of San Francisco, California.
Napa Valley AVA

- NVV founded in 1944
- Today 450 winery members
- Two primary missions
  - Protecting the Napa Valley AVA
  - Promoting the Napa Valley AVA
Ensuring Napa Valley Brand Conjunctive Labeling Requirement

- Experience of Bordeaux – Strength of Bordeaux reduced by use of smaller sub-appellations instead of larger Bordeaux appellation

- Solution – Conjunctive labeling law
Ensuring Napa Valley Brand Conjunctive Labeling Requirement

The Napa Valley Appellation and its Sub-Appellations

Napa Valley and Sub-Appellations
Ensuring Napa Valley Brand Conjunctive Labeling Requirement

- California Business & Professions Code 25240 – Any wine carrying a sub-appellation contained entirely within Napa Valley must use the “Napa Valley” AVA in direct conjunction with the sub-appellation on the label.
Ensuring Napa Valley Brand Conjunctive Labeling Requirement
Promotion of Napa Valley Brand

PREMIERE NAPA VALLEY®

Three-day festival and wine auction in Napa Valley for the trade, raises money to support NVV marketing programs
Promotion of Napa Valley Brand

MASTER NAPA VALLEY®

Three-day educational program in Napa Valley about Napa Valley wine for wine professionals
Promotion of Napa Valley Brand

NAPA VALLEY WINE EDUCATORS ACADEMY®

Educational course offered with The Culinary Institute of America for professional wine educators about winegrowing and winemaking in the Napa Valley
Promotion of Napa Valley Brand

EXPERIENCE NAPA VALLEY®

Special program where trade and media from a particular region are invited to Napa Valley to visit vineyards and wineries to learn more about the Napa Valley appellation
Promotion of Napa Valley Brand

TASTE NAPA VALLEY®

Tastings for trade and consumers in cities in U.S. and abroad
Promotion of Napa Valley Brand

NIGHTLIFE NAPA VALLEY®

Tastings targeted to millennial wine drinkers
Promotion of Napa Valley Brand

NAPA GREEN®

Sustainability certification program for Napa Valley vineyards and wineries
Promotion of Napa Valley Brand

AUCTION NAPA VALLEY®

Largest charitable wine auction in U.S. featuring wine from single appellation

Over $110 million dollars has been raised for Napa Valley charities
Promotion of Napa Valley Brand

NAPA NEIGHBOR®

Program for Napa Valley residents to receive wine discounts and special benefits at Napa Valley wineries
Promotion of Napa Valley Brand

NAPA VALLEY ROCKS®

Suite of educational and promotional materials available to the media and trade to provide information and background on the science of the Napa Valley appellation.
Promotion of Napa Valley Brand

Promotional Materials
Value of Napa Valley Brand

Napa Valley Grape Production 1975 - 2005

<table>
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<th>Year</th>
<th>Grape-Bearing Acres</th>
<th>Tons Produced</th>
<th>Dollar Value</th>
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<tr>
<td>1975</td>
<td>15,708</td>
<td>50,218</td>
<td>$13,524,580</td>
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<tr>
<td>1985</td>
<td>25,504</td>
<td>101,406</td>
<td>$79,531,089</td>
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<td>1995</td>
<td>31,514</td>
<td>109,841</td>
<td>$140,804,079</td>
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<tr>
<td>2005</td>
<td>41,910</td>
<td>181,025</td>
<td>$540,743,398</td>
</tr>
</tbody>
</table>
Value of Napa Valley Brand

- Due to their superior quality, Napa Valley Wines command a higher price than wines from any other region in the United States of America.

- Wines labeled with the Napa Valley AVA cost $19.80 more on average per bottle than wines labeled with a California appellation.
Value of Napa Valley Brand

Napa Valley produces just 4% of California’s wine grapes, yet the region is responsible for nearly 30% of the economic impact of wine in California and nearly 34% of the economic impact of California’s wine on the U.S. economy.
Value of Napa Valley Brand

- Economic impact of Napa Valley wine industry in Napa County is $10.9 billion
- Economic impact on State of California is $15.2 billion
- Economic impact on U.S. economy is $42.4 billion
As a result of its reputation for quality wine “Napa Valley” has been registered as a GI in six countries so far, including Thailand on November 15, 2011.
Napa Valley Reputation = GI

February 14, 2013, Napa Valley, California
Napa Valley Reputation = GI

Other jurisdictions where Napa Valley registered as a GI

- European Union
- China
- India
- Brazil
- Canada
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