



Wine Brands and Labeling: U.S. Perspective

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Abstract

I intend to begin by discussing how a wine trademark is cleared in the U.S. While the clearance process for wine trademarks is similar to other trademarks in searching the U.S. Patent and Trademark database, all wine labels in the U.S. must be approved by the U.S. Alcohol and Tobacco Tax and Trade Bureau (“TTB”). As a result, there is also a database of all wine labels that can be utilized for trademark clearance for potential common law rights. I will also discuss the particularities in clearance of wine trademarks, such as consideration of marks for other alcohol beverage products, issues of geographic descriptiveness and misdescriptiveness, surname issues and issues regarding foreign equivalents. I will also discuss clearance considerations relative to trademark registration on the one hand and risk of infringement claims related to use as the standards are not the same for both.

I will briefly discuss the process by which every wine label used in the U.S. must first be approved by the TTB for certain administrative formalities through an application for a Certificate of Label Approval.

In addition to the protection of traditional marks, the wine business also has other symbols which can be protected under U.S. law, such as bottle shapes and configuration as well as certain individual elements such as capsules on the top of the wine or particular label designs that are integrated into the bottle.

I will also discuss how wine appellations may be protected in the U.S. as geographical certification marks, either through registration or at common law. Since the U.S. does not have a GI system for appellations, the only way a wine appellation may obtain registered protection is as a geographical certification mark. This also can potentially impact the right to register or use a wine trademark that encompasses an appellation.

Finally, I will discuss the established case law that is unique and specific to wine trademarks. These cases include the Kendall-Jackson colored leaf case, the RABBIT RIDGE case, the BLACK CHICKEN case, the COLLINE DI SASSI case and the WHITE OAK case.