

Trademarks v. Appellations Conflict in U.S. Law The Calistoga Story

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U.S. Regulation of Wine Labels

- Federal Alcohol Administration Act
- Dept. of Treasury designated oversight for wine labeling
- Alcohol and Tobacco Tax and Trade Bureau (TTB) (formerly BATF)

U.S. Regulation of Wine Labels

27 CFR Section 4.39(i)

“a brand name of viticultural significance may not be used unless the wine meets the appellation of origin requirements for the geographic area named.”

U.S. Regulation of Wine Labels

27 CFR Section 4.39(i)

“A name has viticultural significance when it is the name of a state or county (or the foreign equivalents), when approved as a viticultural area in part 9 of this chapter, or by a foreign government, or when found to have viticultural significance by the appropriate TTB officer.”

U.S. Regulation of Wine Labels

27 CFR Section 9.3

TTB Administrator shall receive petitions to establish American viticultural areas (AVAs) and shall use the informal rulemaking process

U.S. Regulation of Wine Labels

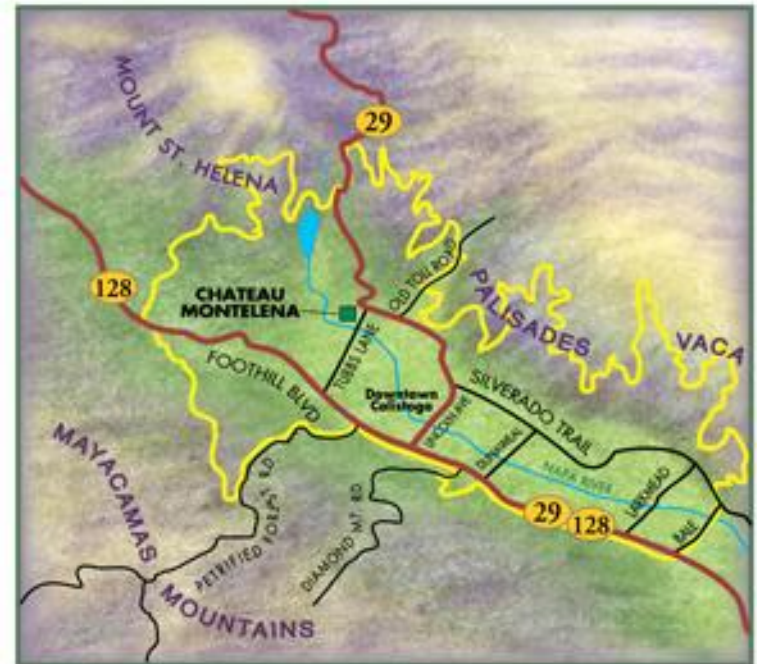
27 CFR Section 9.3

Petition for AVA shall contain:

“Evidence that the name of the viticultural area is locally and/or nationally known as referring to the area specified in the application”

Calistoga Appellation

The Napa Valley Appellation and its Sub-Appellations



Background on Calistoga

- 1861 first vineyards planted in Calistoga
- 1976 Judgment of Paris winner from Chateau Montelena made from Calistoga grapes
- 1993 Wine Atlas of California identifies Calistoga as Napa appellation

Background on Calistoga

- Not until 2003 was a petition filed with TTB to recognize Calistoga as an AVA
- Petition supported by report by well-recognized PhD on area's unique growing conditions in both geography and climate

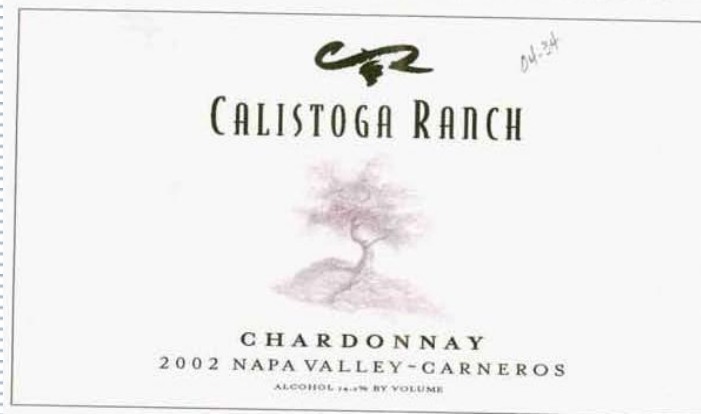
Background on Calistoga

- Very little dispute that Calistoga met all of the requirements necessary to be recognized as and AVA

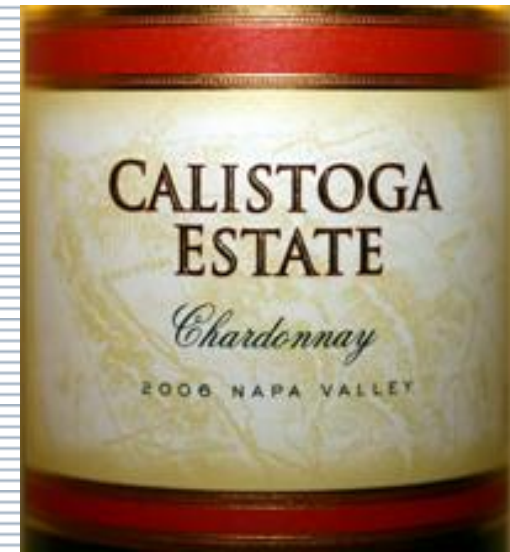
Background on Calistoga Brands



CALISTOGA CELLARS
Label approved
May 22, 1998



CALISTOGA RANCH
Label approved
May 11, 2004



CALISTOGA ESTATE
Label submitted
June 30, 2005

Background on Calistoga Brands

- CALISTOGA CELLARS brand only one that had label approval from TTB which preceded AVA petition filing date

Background on CALISTOGA RANCH

Int. Cls.: 33 and 43

Prior U.S. Cls.: 47, 49, 100, and 101

United States Patent and Trademark Office

Reg. No. 3,074,205

Registered Mar. 28, 2006

TRADEMARK
SERVICE MARK
PRINCIPAL REGISTER

CALISTOGA RANCH

OLYMPUS CALISTOGA, LLC (CALIFORNIA
LTD LIAB JT ST CO)
580 LOMMEL RD.
CALISTOGA, CA 94515

FOR: WINE, IN CLASS 33 (U.S. CLS. 47 AND 49).

FIRST USE 3-30-2003; IN COMMERCE 5-24-2004.

FOR: RESORT HOTEL AND LODGING SERVI-
CES, SIT-DOWN AND TAKE-OUT RESTAURANT
SERVICES, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 3-30-2003; IN COMMERCE 5-24-2004.

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

SN 78-196,981, FILED 12-20-2002.

CHARLES L. JENKINS, EXAMINING ATTORNEY

AVA vs. Brand – How Determine?

- Priority in filing? COLA v. AVA; TM App. v. AVA
- Public recognition of appellation v. brand?
- Coexist, no confusion, equity in laches or acquiescence?

Proposal for Calistoga AVA NPRM No. 77

- Notice of Proposed Rulemaking No. 77 (Nov. 20, 2007) proposed establishing Calistoga as new AVA within Napa Valley.

Proposal for Calistoga AVA NPRM No. 77

- Brands using “Calistoga” in their names will be grandfathered if:
 - actually used on COLAs in commerce for a “significant period of time” prior to the date on which TTB published its first Notice of Proposed Rulemaking on the Calistoga AVA (March 31, 2005);
 - the labels include information dispelling misconceptions as to the origin of grapes used.

Proposal for Calistoga AVA NPRM No. 77



Calistoga Cellars

This wine is not from
the Calistoga AVA

*Cabernet Sauvignon
Napa Valley
Alcohol 14.5% by volume*

Proposal for Calistoga AVA NPRM No. 77

- Would grandfather CALISTOGA CELLARS a brand used on labels since 1998; would not grandfather CALISTOGA ESTATE or CALISTOGA RANCH that were submitted for label approval after the Calistoga AVA NPRM.

Proposed Rolling Grandfather Concept NPRM No. 78

- Notice No. 78 proposes similar grandfather rule to be generally applicable on prospective basis.
- Would permit qualifying brand owners to continue using a “name of viticultural significance” without any grapes from the named area.

Proposed Rolling Grandfather Concept NPRM No. 78

- Qualifying brand owners would need to meet following standards:
 - COLA for brand must have been approved 5 years before the AVA petition was “perfected” with TTB;
 - Brand in COLA must have been used in commerce for at least 3 years prior to the date AVA petition perfected; and
 - Label must contain information dispelling misconception about the origin of the grapes.

Public Responses to NPRMs

- TTB already has discretion and tools necessary to resolve name disputes on case by case basis; no need for changes (*Wine Institute, Napa Valley Vintners, Paso Robles trade organizations*)

Public Responses to NPRMs

- Widespread support for consumer protection, preventing misleading use of geographic names on wines not from region
- Concern about disclaimers being ineffectual in many purchasing environments

Public Responses to NPRMs

- Supporters of brands raised issues of taking of property based on regulations that would restrict use of such property

Final Rule – December 8, 2009

- Calistoga AVA recognized as proposed
- Term of viticultural significance recognized as “Calistoga”
- Any wine featuring term “Calistoga” on label as a brand name need be produced 85% from Calistoga grapes

Final Rule – December 8, 2009

“A label containing the word ‘Calistoga’ in the brand name approved prior to December 8, 2009 may not be used on wine bottled on or after December 10, 2012 if the wine does not conform to the standards for use of the label set forth in § 4.39(i) of this chapter [i.e., 85% Calistoga grapes].”

Thank You

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