

napa valley vintners

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November 9, 2006

VIA TELEFAX & US MAIL

Mr. John Manfreda
Administrator, Alcohol and Tobacco Tax and Trade Bureau
U.S. Department of the Treasury
1310 G. Street, N.W.
Washington, DC 20220

Re: TTB Notice of Proposed Rulemaking No. 36: Calistoga Viticultural Area

Dear Mr. Manfreda:

The Napa Valley Vintners Association ("NVV") is a regional trade association with an active membership of 270+ wineries, ranging from small, family-owned enterprises to large, publicly held companies. NVV represents a tradition of dedicated vintners and grape growers who have worked and cared for this renowned viticultural area since the early 1800s.

One of NVV's functions as a trade association is to raise domestic and international consumer awareness regarding truth in labeling, and we constantly are seeking new and innovative ways to protect and promote Napa Valley and its various viticultural sub-areas. Generations of local vintners and growers have invested countless time, energy and resources to promote the Napa Valley and to educate consumers about the unique characteristics and identities of Napa Valley's growing regions.

We are writing in support of the pending petition to establish Calistoga as an American viticultural area (AVA). We also request that, whatever name you might ultimately choose for this AVA, Calistoga be identified as the name of viticultural significance. Any failure to do so would overlook 145 years of winemaking history as well as widespread recognition of that name as a geographic indication ("GI") for wine locally and nationally. The U.S. Patent and Trademark Office ("PTO") itself recognizes Calistoga as a wine GI.

AVA Criteria

NVV supports the establishment of the Calistoga viticultural area with no additional modifier to the AVA name. The name Calistoga is accurate in terms of national and local name recognition and is supported by current and historical boundary evidence, all as demonstrated in the petition submitted by James P. "Bo" Barrett.

In addition to the evidence adduced in the petition, we would add the following:

1. Historian William Heintz, in California's Napa Valley: One Hundred Sixty Years of Winemaking (San Francisco: Scottwall Associates, 1999) reports that the "first use of the name Calistoga with respect to grapes and wines was in 1861 when Sam Brannan planted his first vineyard there. This was the same year that Charles Krug opened his winery in St. Helena."
2. Connoisseur's Guide recognized Calistoga as a viticultural area in 1979 in an article entitled "Napa Valley Appellations." The article appeared one year after your predecessor agency, BATF, adopted the modern system of appellations of origin. The description of this appellation (copy enclosed) reads as follows:

Calistoga. The upper part of the Valley is its warmest area. The people we surveyed all agreed that the Valley floor north of Lodi Lane is better suited to varieties like Chenin Blanc, Sauvignon Blanc, Zinfandel and Petite Syrah. Chateau Montelena's Zinfandel, for instance, is grown on its property practically in the shadow of Mount St. Helena. Cuvaison's Napa Valley Zinfandel and Stonegate's fairly successful Petite Syrah are also grown in the area. During the growing season, the heat accumulation usually makes this a Region III area. In the warmest spots, along the eastside foothills, the temperatures are high Region III to low Region IV. This prompted one of our survey group to suggest Barbera as a potentially successful grape for planting in this area.

3. Robert Mondavi said at the hearing on April 28, 1980, to establish the Napa Valley viticultural area: "Since 1937 I have been crushing grapes in the Napa Valley. These grapes have come from the various areas of Napa County: Carneros, Yountville, Oakville, St. Helena, Calistoga, Pope Valley, Chiles Valley, Wooden Valley and Gordon Valley... [T]he wines have their own characteristics from each of these areas."

Existing Brands

NVV understands that the establishment of a Calistoga viticultural area could impact the usage of existing brands that incorporate the term Calistoga, as explained in the Notice of Proposed Rulemaking dated March 31, 2005. Such brands include the following: Calistoga Estate Vineyards, Calistoga Ranch, and Calistoga Cellars. The first two brands are registered trademarks with the PTO. Calistoga Estate Vineyards is registered on the supplemental trademark register and Calistoga Ranch on the primary register. The last mark, Calistoga Cellars, is not a registered trademark.

With respect to the registered marks, PTO already has put the owners on notice that Calistoga is a GI for wine. The public files for these marks are enclosed. Specifically, PTO informed the owner of the Calistoga Estate Vineyards mark that this brand "comprises a geographical indication that identifies a place other than the origin of the goods," is geographically deceptive and could not be registered on the principal register. PTO did its own research and cited to the *Columbia Gazetteer of North America* (2000), among other documents, concluding that "The public is likely to believe that applicant's goods come from this place because 'CALISTOGA' is located in California's Napa wine country, and is known for its wine production. Furthermore, this belief would materially influence consumers to purchase the goods because wines from Calistoga are well known for their quality." Calistoga Estate Vineyards admitted in its response to the Office Action that the mark is geographically descriptive and asked for registration on the supplemental register instead of the primary register. PTO did so.

In the case of Calistoga Ranch, PTO responded to its trademark registration application by noting the geographic significance of the term Calistoga and presumed "a public association of the goods with

the place." The Trademark Examiner required a disclaimer of the word Calistoga as part of the composite mark. Calistoga Ranch complied.

Finally, in the case of the unregistered Calistoga Cellars mark, the owner has been on notice since 1986, when 27 C.F.R. § 4.39(j) was adopted, 13 years before its first use of that brand, that the use of a geographic term as a brand would limit its future grape sources if that name subsequently were established as an AVA. Wine producers in Napa Valley have been acutely aware of the issues surrounding the use of geographic brand names for many years. Such issues have been the topic of considerable, well-publicized debate and discussion in the California and Napa Valley wine communities, long before the Calistoga Cellars brand was first used. Not only was Calistoga Cellars on notice of the risks of adopting a geographic brand name, but it was reasonable to assume that the further community-based AVAs such as a Calistoga AVA would be established in the Napa Valley, following the precedent of Rutherford (established in 1993), Oakville (1993), St. Helena (1995), and Yountville (1999). As of 1999, Calistoga was the only community in the Napa Valley north of the City of Napa that had not yet petitioned for the establishment of an eponymous AVA. Given Calistoga's longstanding recognition within the industry and among the general public as a winegrowing region, it was not only reasonable to assume that a petition would be filed for a Calistoga viticultural area, but downright predictable.

The Equities

Everyone in the Napa Valley knows that Calistoga is a name of viticultural significance and any contrary finding would fly in the face of the facts and be an affront to the generations who have worked so hard and so long to make the area what it has become today.

NVV understands that TTB from time to time has used modifiers like the word "District" or the phrase "of the Napa Valley" as part of the AVA name and then recognized the composite name as being viticulturally significant. In certain cases, such as Oak Knoll, that may be warranted because of the usage of the name outside the area; obviously, there are oak knolls in many locales. This approach enables the AVA and the brand to co-exist, without restrictions. This approach is not appropriate here. Calistoga clearly is and has been the viticulturally significant name for over a century, and the new brand owners have used that name fully cognizant of TTB's 1986 rule on grape sourcing. Calistoga Estate Vineyards first used its brand on August 28, 2005, as noted on its trademark registration. This is over two years after the Calistoga AVA petition was filed. The same point applies to Calistoga Ranch whose first use date was May, 2004.

Calistoga Cellars began its operations as a "custom crush" operation that was not located in Calistoga and did not produce wines from Calistoga grapes. The wine press noted this in a June, 2003, issue of Wines and Vines, which demonstrates that Calistoga's renown as a "region" pre-dates that of the new brand, Calistoga Cellars:

With a name like Calistoga Cellars, one would expect to find the winery, or at least the vineyards in that region. Well, sort of. The grapes come from the Louer Family Vineyard in St. Helena, and the wine is made up north in Ukiah.

Calistoga Cellars became a bonded winery in 2004 when it opened its own winery facility in Calistoga. Just recently, Calistoga Cellars decided to move its operations outside of Napa County. The Napa Valley Register reported on November 1, 2006, in an article entitled "Calistoga Cellars Outgrows Winery Building": "Calistoga Cellars has sold its production building and will move production of its Napa Valley wines to a larger winemaking facility in Ukiah due to its rapid growth." Ukiah is located two counties away in Mendocino County, approximately 70 miles from Calistoga.

Conclusion


We urge you to establish the Calistoga AVA with Calistoga as the name of viticultural significance. Calistoga Cellars and any other past or future Calistoga brand owner can continue to use the Calistoga name in an appropriate, non-misleading manner, on wines that qualify for the Calistoga AVA. If they produce wines from other appellations, they should not use Calistoga in their brand names. Your regulations so provide; no change of regulation is required.

Any decision that does not recognize Calistoga as a name of viticultural significance in an effort to protect brand owners from a known risk would be contrary to the federal government's own recognition, through the PTO, of the term Calistoga as a GI. It would eviscerate the protections of 27 CFR 4.39(i) and open the door to wineries in the future misusing the name Calistoga for wines that do not qualify for the Calistoga AVA.

California has recognized the significance of Napa Valley's viticultural areas by enacting a state law (CAL. BUS. & PROF. CODE § 25241) that provides stricter protections than those provided under 27 CFR 4.39(i). Failure to recognize Calistoga alone as a name of viticultural significance might weaken, rather than supplement, California's efforts to protect Napa's names of viticultural significance. This would undermine a key reason for enactment of the Federal Alcohol Administration Act, which was to "do something to supplement legislation by the States to carry out their own policies" because the states "alone cannot do the whole job." (Remarks of Rep. Cullen on H.R. No. 8539, 74th Cong., 1st Sess., 79 Cong. Rec. (1935) 11714.)

In conclusion, Calistoga alone is clearly a name of viticultural significance. Even if you were to decide to modify the AVA name, which NVV does not support, we submit that the name of viticultural significance under 27 CFR 4.39(i)(3) should be Calistoga based on all of the facts referred to above and in the pending petition.

Sincerely,



Hugh Davies,
President

cc: Frank Foote
William Foster
Rob Toblissen
Nancy Sutton

Enclosures:

MIKE THOMPSON

1ST DISTRICT, CALIFORNIA

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The Honorable Henry M. Paulson, Jr.
Secretary, United States Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, D.C. 20220

The Honorable John Manfreda
Administrator, Alcohol and Tobacco Tax and Trade Bureau
United States Department of the Treasury
1310 G Street, NW
Washington, DC 20220

Dear Secretary Paulson and Administrator Manfreda:

We are writing to request that TTB take every step possible to protect the integrity of the American Viticultural Area (AVA) system. As the American wine industry continues to grow exponentially across the country, we believe it will become even more critical that our system for recognizing and protecting wine appellations provide the highest possible level of consumer protection.

A petition pending with the Alcohol and Tobacco Tax and Trade Bureau (TTB) since 2003 would establish Calistoga as an AVA. This AVA proposal follows in the tradition of other community-based AVAs in the Napa Valley like Oakville (established in 1993), Rutherford (1993), St. Helena (1995) and Yountville (1999). More than a century before TTB adopted the current appellation system in 1978, Calistoga was widely recognized as a wine appellation. Calistoga pioneer Sam Brannan first used the name for the area's grapes and wines in 1861.

Despite Calistoga's long history as a winegrowing region, TTB, in considering the AVA petition under 27 CFR 4.39(i), has proposed a new name, "Calistoga District". We contend this would confuse and mislead consumers, and it would open the door to future Calistoga-named brands that could escape the requirement that the wines on which the Calistoga name is used be made from Calistoga AVA grapes.

We cite the following reasons:

- The "Calistoga" AVA petition meets all of TTB's regulatory criteria for AVAs, as set forth at 27 CFR Section 9.3, it is accurate in terms of national and local name recognition and is supported by current and historical boundary evidence. The area also is viticulturally distinctive. By contrast, the proposed name "Calistoga District" is almost exclusively used in association with the area's public schools.

The Honorable Henry Paulson
The Honorable John Manfredo
May 22, 2007
Page 2

- Any conjunctive AVA name like Calistoga District that does not recognize Calistoga as the name of viticultural significance would allow Calistoga to be used in existing and future brands without any Calistoga grapes in the bottle. This is misleading to consumers and violates the principal tenet of the Federal Alcohol Administration Act, which is to protect consumers from deceptive labeling.

In view of Calistoga's longstanding historical significance and renown, these brand owners cannot reasonably assert that they did not know about the viticultural significance of Calistoga when they adopted their brands. In 1979, the *Connoisseur's Guide* recognized Calistoga as a viticultural area in an article entitled "Napa Valley Appellations." At the TTB hearing on the proposed establishment of the Napa Valley AVA in 1980, Robert Mondavi said "Since 1937 I have been crushing grapes in the Napa Valley. These grapes have come from the various areas of Napa County: Carneros, Yountville, Oakville, St. Helena, Calistoga [T]he wines have their own characteristics from each of these areas." TTB followed Mr. Mondavi's advice and has established each of these community-named AVAs without the modifier "district."

We respectfully request answers to the following questions:

- 1) Does the Calistoga AVA petition satisfy all of TTB's regulatory requirements for the establishment of AVAs, and why is the Calistoga AVA being handled differently than the neighboring AVAs of Yountville, Oakville, Rutherford and St. Helena?
- 2) Would TTB consider allowing a transition period for the brand owners to purchase Calistoga grapes as it did when it first introduced the current appellation system in 1978 (effective date 1983) and when it prohibited the use of such misleading terms as Gamay Beaujolais and Johannisberg Riesling?

As Co-chairs of the Congressional Wine Caucus, we feel strongly that the AVA system should be used to enhance the distinct character of each geographic region and to protect consumers who rely on the meaning and value of these unique place names. To recognize anything other than Calistoga as the term of viticultural significance in the proposed AVA would fly in the face of the facts and be an affront to the generations who have worked so hard and so long to make these areas what they have become today.

Sincerely,


MIKE THOMPSON
Member of Congress


GEORGE RADANOVICH
Member of Congress

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Napa Valley Vintners, with over 270 member wineries, is the essential source for the promotion and protection of the Napa Valley Appellation. Visit us on the web at napavintners.com

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From: Scott Gerien [mailto:Sgerien@dpf-law.com]
Sent: Friday, May 25, 2007 12:33 PM
To: Rex Stults
Subject: Letter to the Editor for Calistogan and Star

Rex:

Let me know if this is what you had in mind
+++++

Dear Sir:

I am counsel to the Napa Valley Vintners and am writing to clarify a point in your May 25, 2007 article entitled "Vintners bemoan delay of Calistoga AVA." If the official name of the AVA for Calistoga were to be "Calistoga District," and not simply "Calistoga," the Alcohol and Tobacco Tax and Trade Bureau ("TTB") would allow any party to use the term "Calistoga" as part of a trademark for wine regardless of the geographic origin of the wine. Thus, a San Joaquin Valley winery could legally produce a wine from the larger California appellation with the brand name "Calistoga Ridge," or an Australian winery could use the name "Calistoga Ranch" on Australian Shiraz. This is because the TTB would only restrict use of the entire phrase "Calistoga District" to wine produced 85% or more from grapes grown in the Calistoga area, but wineries would be free to use the word "Calistoga" in any manner they wished, so long as it wasn't followed by the term "district." The absurdity of this is clear -- what value does a "Calistoga District" AVA add for the consumer when the term "Calistoga" is free for use without restriction?

Sincerely,

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