

# Chicago Daily Law Bulletin®

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## Geographic naming rights to products a hot topic in intellectual property law

When Juliet discovers that her lover Romeo has the wrong last name (that of an enemy), she tells the world that she will simply call him by another name. In Shakespeare's immortal words, "a rose by any other name would smell as sweet." While a certain laxity might be allowed in connection with the names of friends and lovers, as I discovered during a recent sojourn in Italy, wines are another matter. In the intellectual property world of wine and roses, names mean everything. Juliet can call Romeo John Smith if she wants, but woe to the person who "misnames" an Italian wine.

As anyone who has enjoyed a glass of Chianti can attest, the flavor of these Italian wines is unique. It is also carefully regulated by the Chianti Classico Wine Consortium. You can tell if you are drinking a bottle of true Chianti wine by the black rooster on the seal (the Gallo Nero) and the phrase DOCG on the label (an acronym for "controlled and guaranteed denomination of origin").

To be granted the exalted status of a Chianti a vintner must not only use Sangiovese grapes grown in the Chianti region, he must also follow exact rules about the combinations of grapes allowed — at least 80 percent Sangiovese grapes, the rest specified red varietals, including merlot and/or cabernet sauvignon — and production processes, including aging times and techniques. Failure to do so results in ejection from the Chianti "club."

The legendary story of the birth of the "Super Tuscan" wines that have proven so popular in the United States involved an attempt by a group of Chianti vintners to "improve" the popularity of their wine by altering the "recipe" to allow for the inclusion of a broader mix of grapes to obtain a richer flavor.

When the Chianti Consortium rejected the requested change, a new wine was born. Produced outside the controls of the DOCG regulations of the consortium,

Super Tuscans operate within the much broader regulations of an IGT (indicazione geografica tipica) that permits a wider range of blends and production techniques to bear the "Toscana" designation.

In fact, some claim that the IGT designation was created to combat the embarrassing problem of having so many well-known Italian wines existing outside any control whatsoever.

If anyone doubts the value of a geographic indication, such as Chianti, as a marketing tool, the story of the Gaja Wineries and the \$400 bottle of Langhe Nebbiolo 2010 should convince them.

Similar to the tale of the Super Tuscans, an Italian vintner, Andreas Gaja, wanted to alter the mix of grapes in his DOCG Barbaresco wine to provide for a more consistent flavor. Some allege that Gaja also wanted to combine grapes from newly acquired vineyards outside the territorial domains of the Barbaresco region in Piedmonte.

Like Chianti, Barbaresco is a geographic indication whose use is strictly controlled. The Consortium of Tutela Barolo Barbaresco Alba Langhe and Roero was no less accommodating to Gaja's request for a waiver than the Chianti Consortium had been to the Super Tuscans. But instead of creating a new wine, Gaja simply chose to rebrand the wine he created outside the DOCG regulations of the Barbaresco Consortium with the less regulated Langhe Nebbiolo designation.

As a DOC (as opposed to a DOCG), the regulations for the Langhe Nebbiolo wine allow for greater variety in production techniques, granting Gaja the ability to use a variety of grapes to achieve the desired blend for his wine. Most remarkable of all, by relabeling previously highly prized DOCG Barbaresco with the arguably less desirable Langhe Nebbiolo designation, Gaja produces some of the most sought after bottles of this "lower ranked" wine. More significantly, Italian Nebbiolos are gaining market share in the United States.



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The tales of the Super Tuscans and Gaja's Nebbiolos help illustrate why geographic indication have become such a hot issue in international intellectual property law. Even though such indications are not technically trademarks, they can become powerful marketing tools. Developing countries, such as India, China and Brazil, have embraced geographic indications to enhance their ability to market locally produced goods, including handicrafts. Yet protection for such indications remains woefully inconsistent internationally.

A relevant component of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) stipulates that no country may use another country's geographical indications in connection with the production of

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wine or spirits. Pre-TRIPS producers were excepted.

Thus, new producers of sparkling wine in the United States may not refer to their product as "champagne." Only sparkling wine produced in the Champagne region of France can use that exalted designation.

Producers of other geographically distinct goods, such as Roquefort cheese, Darjeeling tea or Idaho potatoes, are not so lucky. Instead, they may only stop uses of geographic indications that "cause confusion or mistake as to the source of the goods." Thus, "cheddar" may be an English indication for cheese, but in the United States "Wisconsin cheddar cheese" may flourish because no one is confused about the source of the tasty cheese they are devouring.

Immigration has contributed to increasingly bitter disputes over the right to use a given geographic indication in connection with similar products as newcomers bring their production practices from home, along with the ancestral name. "Pilsner" in the Czech Republic, for example, is a protected geographic indication for a particular beer. In the United States, the word is more broadly used to indicate a process for making a particular style of beer.

One current proposal for dealing with geographic indication is to expand the "thou shalt not use" list under TRIPS to include beer, cheese, tobacco and chocolate (among others) for which exclusive rights would be granted to the "home" indication. With the popularity of home-grown variations, including microbrewing, it is doubtful the U.S. would agree to any such lists.

For other countries, particularly Italy and other EU members, geographic indications remain strongly protected locally.

In the United States, however, so long as producers are honest about the true source of production of their goods (Chicago Parma ham, for example), Shakespeare's view on differently named roses remains a viable option for U.S. producers.