

# Champagne for the New Year – Trademark or Geographic Indicator?

January 10, 2018 – The TMCA

by Case Collard and Lindsey Sadler



Did you celebrate with a sip of Champagne on New Year's Eve? Champagne is not just a sparkly beverage consumed around the world, it also refers to the region in northeastern France where the drink originated. For centuries, this region has grown, produced, and labeled its sparkling wine under the "Champagne" name. However, California vintners have produced and labeled their own sparkling wine as "champagne" since the 1860s, a clear contradiction of the drink's geographic origin.

A quirk of US intellectual property law—and

extensive negotiation with the European Union—will allow this unusual labeling to continue.

Wine producers, from the United States and France alike, rely on geographic terms like "Champagne" or "Napa Valley" to inform consumers about the quality and characteristics of their wines, even if that consumer has never heard of their brand. In 1919, France was the first country to legally recognize a specific form of intellectual property protection, "geographic indicators." These geographic indicators are used to label products that directly specify a product's particular geographic origin, like "champagne" from France or "parmigiana reggiano" from Italy. Numerous other countries—but not the US—have followed suit since then by adopting geographic indicators as a form of intellectual property protection, and also extending local courts' jurisdictions to hear disputes under such laws. The geographic indicator "Champagne" has been protected throughout Europe since 1992 under European Community ("EC") regulations, meaning no other wine producer in the EC can make, bottle, and sell a sparkling wine under the "champagne" label.

## Related People

- Case Collard
- Lindsey Sadler

## Related Capabilities

- Trademark, Copyright + Advertising
- Intellectual Property Litigation

For EC member countries, geographic indicators are similar to trademarks, but are an entirely separate category of intellectual property, given special legal status separate from trademark law protection. Once a geographic indicator is registered, it confers certain exclusive rights on the owner, which, in turn, allows the owner to use the geographic indicator to create market recognition of its product, add a premium price mark-up to the product, and protect the association of certain food or beverage characteristics with that region. Conversely, in the United States, geographic indicators are a sub-set of trademark law; as a matter of historic practice and precedent, Congress has refused to grant geographic indicators full intellectual property rights, isolating the United States from others countries, particularly the European Union, on the issue.

According to the U.S. Patent and Trademark Office, geographical indicators serve the same function as trademarks and thus, are potentially registrable as certification or collective marks if they meet the necessary requirements. While these two types of registered marks (as opposed to geographically descriptive marks, which can be registered upon proof of secondary meaning) usually run parallel with geographic indicators of the European Union, an essential feature of trademark law causes them to diverge. Words that are “generic” cannot be protected as trademarks. In the United States, champagne became so synonymous with sparkling white wines in general—describing a class of goods, not the source of the goods—it no longer describes the region of origin of the wine. Therefore, under U.S. trademark law, the term champagne appears to be generic, and thus incapable of trademark protection.

The United States and the European Union have negotiated and disputed this issue through trade agreements, the World Trade Organization, and litigation. The negotiations finally concluded in 2006 when United States agreed to ease trade restrictions it had previously placed on European Union wine products in exchange for removing certain names from its domestic wine labels, including champagne. However, this agreement was not retroactive and any names used prior to March 10, 2006 could continue being used indefinitely. While no future wine labels may bear the name “California Champagne,” the ones already in existence have the right to continue their labeling practices, to the frustrations of many French winemakers and organizations. In an effort to regain the prominence the term “champagne” once held, French winemakers have initiated a public policy campaign to educate wine lovers of all kinds—if your sparkling wine was produced in Champagne, France, feel free to call it champagne! However, if it was bottled in California, it should be referred to as “sparkling wine.” The same goes for prosecco from Italy and cava from Spain!