

China Recognises "Napa Valley" as Geographical Indicator

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It has recently been announced that the Napa Valley has been granted geographical indicator ("GI") status by the People's Republic of China, making it the first wine region outside China to be granted this recognition.

The Napa Valley is an internationally renowned wine growing area located in Napa County, California, United States. The growers and vintners of the 435 wineries situated in the Napa Valley are known for their wine making methods that combine cutting-edge science and traditional techniques. The name "Napa Valley" is therefore indicative of a geographical region in the US where wines with specific characteristics are produced. This is known as a "geographical term" or "geographical indicator".

As a general rule, a trade mark cannot be registered – or offered any form of protection – unless it is capable of distinguishing the goods or services of the applicant from the goods or services of another. Accordingly, GIs are not usually considered distinctive enough to be registered as trade marks.

In fact, in South Africa, the Trade Marks Act precludes the registration of a mark consisting exclusively of a sign which may serve as a designation of geographical origin and a GI is generally only afforded protection if the mark has become distinctive through extensive use thereof in association with certain goods or services or if it is registered as a certification or collective trade mark.

However, use of a place name to describe a product which was in fact made elsewhere, or when the product so described does not have the usual characteristics associated with products from a specific region, can mislead consumers. This is of particular concern to wine and spirit makers where the geographical origin of their products is often associated with the quality or characteristics thereof.

In an effort to address these concerns, member countries of the World Trade Organisation negotiated the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") in the early '90s. This agreement included special provisions to regulate the use of GIs. Article 23 of TRIPS prohibits any false use of a GI, even if such use is not misleading or does not amount to unfair competition.

The restricted use of the words "Napa Valley" is therefore in line with the provisions of TRIPS.

The request for GI recognition in China was made directly to the Chinese government by the Napa Valley Vintners (“NVV”), a non-profit trade association responsible for promoting and protecting the Napa Valley designation. Napa Valley wines have been sold in China for the past 14 years and, although Napa Valley accounts for just 4% of California's wine production, nearly 25% of NVV member wineries are exporting to China. Not only is this recognition a great honour but it also allows the NVV to prevent the use of the words Napa Valley on wines that are not produced in this region.

The NVV's campaign to protect the “Napa Valley” designation has also seen it granted GI status in other important and emerging markets such as India, Thailand, Canada and Brazil.

According to a recent report of SAWIS (South African Wine Industry Information & Systems), South African wine exports to China increased with almost 75% in 2011. Well-known South African producer Leopard's Leap Wines entered into a joint venture earlier this year to export nearly 2.9 million bottles of South African wine to China and it is likely that more South African producers will start to look at Asia as an export destination for their wines.

In this increasingly globalised economy, it is becoming more and more important to grant GIs the appropriate protection. Although a number of wine related GIs are protected in South Africa under the Wine of Origin Scheme, it is becoming more important for South Africa to protect its wine GI's in other export territories. While South Africa has taken strides towards recognising this form of intellectual property, it is yet to introduce a comprehensive legal framework to provide adequate protection to both local and international GIs.

Implementing such a framework would surely go a long way to persuading international communities to recognise South Africa's own GIs in their local markets.

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