Appellations of Origin: The Continuing Controversy

Lori E. Simon
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I. INTRODUCTION

Appellations of origin (appellations d’origine) are geographical denominations that indicate a product’s origin, as well as particularly distinctive and renowned qualities associated with the location. Because of the singularity of these titles, the disparity in national laws, and the potential for infringement of the rights associated with the names, protection of appellations of origin continues to be a controversial topic in international trade law. The debate over protection of appellations of origin primarily stems from conflicting national economic interests and divergent fundamental conceptions of the purpose of protecting trade names. It is entangled further by cultural, linguistic, and historical differences among nations. Most recently, with the upsurge in demands from the developing nations, the questions are becoming increasingly political. This comment compares the positions of the major parties to the controversy, represented by the United States, France, and the developing nations, and highlights the potential benefits of increased United States protection, especially for the United States wine industry.

The essential point of departure for any discussion of appellations of origin is an understanding of the term and how it differs from other trade names. Within the broad classification of geographical terms, laws in some countries distinguish between indications of source and appellations of origin.\(^1\) An indication of source (indication de provenance) is merely a name designating a product by its source. Unlike an appellation of origin, an indication of source does not represent particularly distinctive or renowned qualities associated with the product’s origin, although both designations refer to geographic locations. The attribution of unique characteristics to products bearing an appellation of origin necessitates special protection for these denominations. The benefit of recognizing appellations of origin as a separate designation is that distinctive trade names promote sales by distinguishing similar

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products from one another. This process of differentiation through identification with distinct trade names also encourages production of high quality products. Additionally, geographic designations may play a role in protecting producers and consumers from unfair competition and deception.

Debate continues over the degree of international protection that should be afforded appellations of origin. For example, the Paris Convention for the Protection of Industrial Property, the primary treaty on international patent and trademark protection, has been revised several times and is scheduled for further revision. With the continued development of worldwide trade, the divergent national interests grow more pronounced, the stakes increase, and a consensus becomes increasingly difficult.

France and the United States are primary factions in the controversy over international agreement on appellations of origin. France

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2 See Association Internationale pour la Protection de la Propriété Industrielle, Draft Resolution on Question 62B, International Protection of Appellations of Origin and Indications of Source (AIPPI XXIX Congress San Francisco) (1975). In considering questions related to intellectual property protection, the International Association for the Protection of Industrial Property (AIPPI) has designated this issue “Question 62B.”

3 Id.


5 The last diplomatic conference was held in Geneva in October, 1982. Despite a significant amount of discussion devoted to article 10 quater which concerns false indications of source, see infra notes 103-04 and accompanying text, no consensus was reached. The Group B countries, see infra note 6, are scheduled to meet in Lisbon in fall 1983 to develop an agreement prior to the fourth Diplomatic Conference, Feb. 27-Mar. 4, 1984, in Geneva. Telephone interview with W. Thomas Hofstetter, Member, U.S. Delegation to Geneva Diplomatic Conference on the Paris Convention, Fall, 1982 (Apr. 6, 1983).

6 One commentator notes that the desire to strengthen protection for geographical indications has caused France, along with other European Economic Community (EEC) countries, to split the unity of the developed market economy nations, or Group B nations as they are known in United Nations parlance. Kirk, Revision of the Paris Convention and Appellations of Origin, 1979 A.B.A. SEC. PAT. TRADEMARK & COPYRIGHT L. 185, 186 (1979 summary of proceedings, app. F) (Symposium speech by Michael Kirk, Director, Office of Legislation and International Affairs, U.S.
has been particularly adamant and outspoken in favor of stricter protection of appellations of origin for a variety of reasons. Foremost among them is that appellations of origin are common particularly in the wine and cheese industries. Because of France's long history of substantial economic interest in these industries, it has been wrestling with the problem since the seventeenth century. French laws now provide a model of strict (though not absolute) protection of appellations of origin. In contrast, United States law traditionally has been much more lenient on the use of geographical denominations. Although the United States is a member of the Paris Union, it is not a signatory of either the Lisbon Arrangement for the Protection of Appellations of Origin or the Madrid Arrangement for the Repression of False Indications of Origin. These more recent treaties, respectively, provide stricter, more specific protection to appellations of origin and indications of source than the Paris Convention. Further, certain changes


8 The United States signed the Paris Convention, supra note 4, on March 20, 1883. Id.

9 The Lisbon Arrangement for the Protection of Appellations of Origin and Their International Registration of Oct. 31, 1958, revised at Stockholm in 1967, reprinted in 3 S. LADAS, supra note 4, at 1954-57 [hereinafter cited as The Lisbon Arrangement]. Article 3 provides, "Protection shall be ensured against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation is used in translated form or accompanied by terms such as 'kind,' 'type,' 'make,' 'imitation,' or the like." Id. art. 3, reprinted in 3 S. LADAS, supra note 4, at 1954. As of January 1, 1978, the following countries were signatories to the Lisbon Arrangement: Algeria, Bulgaria, Congo, Cuba, Czechoslovakia, France, Gabon, Haiti, Hungary, Israel, Italy, Mexico, Portugal, Togo, Tunisia, and Upper Volta (Haiti, Mexico, and Portugal have not accepted the Stockholm revisions of 1967). See Union for the Protection of Appellations of Origin and Their International Registration (Lisbon Union), 19 INDUS. PROP. 13 (1980).

10 The Madrid Arrangement for the Repression of False Indications of Origin of Apr. 14, 1891 was last revised at Lisbon (1958) and supplemented at Stockholm (1967). For a reprint of the Arrangement's text, see 3 S. LADAS, supra note 4, at 1937 [hereinafter referred to as The Madrid Arrangement]. Currently, the following countries are signatories to the Madrid Arrangement and have accepted its revisions through Stockholm (1967): Algeria, Bulgaria, Czechoslovakia, Egypt, France, the Federal Republic of Germany, German Democratic Republic, Hungary, Ireland, Israel, Italy, Japan, Liechtenstein, Monaco, Spain, Sweden, Switzerland, and the United Kingdom. See Madrid Arrangement for the Repression of False or Deceptive Indications of Source or Goods, 19 INDUS. PROP. 9 (1980). Those countries that are signatories to the Madrid Arrangement but that have not accepted revisions through Stockholm (1967) are: Cuba and Morocco (accepting revisions through Lisbon (1958)); Lebanon, New Zealand, Portugal, San Marino, Sri Lanka, Syria, Tunisia, Turkey, and Viet Nam (accepting revisions through London (1934)); Brazil, the Dominican Republic, and Poland (accepting revision through The Hague (1925)). Id.
proposed for the Paris Convention would conflict with current United States law. Nonetheless, persuasive arguments exist for increasing the protection afforded appellations of origin, due in part to the rapid expansion of the United States wine industry that stands to benefit from stricter protection of geographic names.

The magnitude of the issues has led to the creation of a number of organizations that develop positions, advocate change, and enforce the established standards. Important among these organizations is the World Intellectual Property Organization (WIPO), which has authority over the Paris Convention. WIPO’s existence and its network of specialized agencies highlight the complexity and scope of regulation and protection of appellations of origin. Other private, as well as public organizations in the United States and abroad add to the structure. These organizations’ goals and positions vary according to their charters and their constituencies. Likewise, many nations in the debate pursue different ends. More specifically, United States trade law traditionally has been concerned with protecting the consumer from deception, whereas French law centers on the interests of the producers or manufacturers and the improper use of their marks by other producers.

Despite the differences in orientation, culture, and historical dependence on particular industries, a consensus regarding the international regulation of appellations of origin may be possible. Agreement, however, will require many people in the United States to adopt a more favorable perspective toward regulation of appellations of origin than they currently hold. This does not imply that the arguments against stricter protection of appellations of origin are without substance. On the contrary, many merit considerable attention. Nonetheless, the significant increase in the value of geographic indications of source resulting from rising standards of living, more sophisticated consumer tastes,

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13 Id. at 7.

14 Kirk, supra note 6, at 188.
and increased mobility, indicates that it may be the appropriate time to shift toward more stringent protection in the United States.\textsuperscript{15} Such a change would be consistent not only with trends in consumer protection legislation, but with the needs and demands of the growing United States wine industry.\textsuperscript{16} As the exigencies of competition in world trade increase, the United States is likely to find that the sacrifices required to implement and adjust to a stricter policy of protection for appellations of origin are outweighed by the long-term benefits.

II. TERMINOLOGY

Confusion between an indication of source—a geographic designation of a product's origin—and an appellation of origin—a geographic denomination attached to a product that signifies its distinctive and renowned qualities—stems from at least two sources. One source is the failure of some countries to recognize an appellation of origin as a legally protected right.\textsuperscript{17} This failure partially arises from the second source of confusion, the inaccuracy of translation.

The lack of a precise English equivalent for "appellation d'origine"\textsuperscript{18} creates substantial difficulties in international usage. Many countries typically use "indications of origin" to refer to both "appellations of origin" and "indications of source." This problem is evidenced by previously unsuccessful attempts to change and clarify terminology, which has resulted in continuing ambiguity.\textsuperscript{19} Even the official translation of the Paris Convention that uses "source" to mean "provenance," may be inaccurate. As one commentator points out, "provenance" implies a more definite geographic origin than "source."\textsuperscript{20} Further, a sharp distinction should be drawn between an "indication," a sign that serves to point out, indicate, or make known, and an "appellation," which is a name or a title by which a person or

\textsuperscript{16} Id.
\textsuperscript{17} 3 S. LADAS, supra note 4, at 1575.
\textsuperscript{18} Id. at 1574.
\textsuperscript{19} For example, at the Conference of Lisbon in 1958, the International Bureau of WIPO proposed to change article I of the Paris Convention from "indications of source or appellations of origin" to "indications of source and appellations of origin," thus implying that the terms are equivalent. 3 S. LADAS, supra note 4, at 1574 (emphasis added). Neither this change, nor the alternative proposal to include appellations of origin as one kind of indication of origin, was accepted. Id. at 1575.
\textsuperscript{20} Id. at 1574.
An understanding of the history of protecting appellations of origin in France helps clarify the differences among the various terms and their origins. The early French laws against false designations of origin and manufacture were designed to inform consumers where goods were made and who produced them, rather than to carry any implications of quality. They were aimed at differentiating one commercial establishment from any other, rather than distinguishing among particular products from different producers. The Law of July 28, 1824, as well as other early laws, treated false indications of source in the same manner as false representations as to the manufacturer. These laws were criminal statutes that punished all false representations as to a product's origin, whether it consisted of a French mark, a French commercial name, or a French appellation of origin. Further protection was afforded by the Grande loi du 1er août 1905, which focused on protection of private rights, especially the protection of consumers and victims of contract fraud. Among the proscribed frauds was fraud in labeling the origin of the product. Under the laws, misrepresentation of origin had to be the main reason for the buyer's purchase in order for a violation to exist. Also, the laws primarily were directed at the relation between sellers and buyers, rather than between competing producers.

Subsequently, these laws proved inadequate when a tremendous controversy over champagne labeling arose after the French Revolution in 1789. The major social and economic upheaval resulting from

21 Id.
22 2 P. ROUBIER, supra note 7, at 722.
23 La loi du 28 juillet 1824.
24 Law of 1857, art. 19 concerning marks (la loi de 1857 sur les marques, article 19), supplemented by the Law of Jan. 11, 1892, art. 15bis (la loi du 11 janvier, article 15bis). See 2 P. ROUBIER, supra note 7, at 756.
25 2 P. ROUBIER, supra note 7, at 755-56.
26 Id. at 756.
27 After the French Revolution in 1789, France was divided into départements. The département de l'Aube and the département du Marne were located in what had previously been the provinces of Champagne and Bourgogne (Burgundy). The controversy arose over who could call his sparkling wine "Champagne." The choice between the Dom Pérignon Burgundian production method or the Maumené system of wine-making in the old province of Champagne was left to local authorities. Most experts at the time felt that the Dom Pérignon method produced a superior quality product. The principle issue was whether the right to the appellation of origin "Champagne" would be granted on the basis of location alone, or whether there were accompanying quality standards inherent in the product from that location. The dispute eventually resulted in wine
the controversy was temporarily halted by World War I, after which the National Assembly passed the Law of May 6, 1919. This law, drawing in large part on the old laws, provided jurisdiction in the courts to consider the question of appellations of origin and established criteria for the judiciary to use in determining if such designations were warranted. The primary consideration was the geographic origin of the particular product, although attention also was given to the nature of the product, its composition, and its “substantial qualities” acquired from local, loyal, and constant methods of production.

B. Modern Definitions and their Associated Rights

Protection of appellations of origin grew in two ways. First, the mark was granted strictly on the basis of geographic origin, that is, the distinctive characteristics actually belonged to the natural environment, for example, soil, water, animal life, vegetation, and climate. One could not physically produce the same product in another location. The second type of appellation of origin had an historic basis. The appellation was not based on the attributes of the physical environment, but rather on a product’s historical association with its place of manufacture or production because of the location’s original or especially high quality process. Despite the lack of physical dependence on the geographic setting, a strong association of the product and the location developed over time. With this type of appellation, the connection between the product and its origin was less direct and the product could have been produced elsewhere.
This distinction between the two types of appellations of origin established the precedent for the modern distinction between an *appellation d'origine* and an *indication de provenance*, and the corresponding difference in the rights each protects. As an indicator of quality, an appellation of origin designates a geographic denomination corresponding to a country, region, or other locality, which in turn identifies the virtues derived essentially from the natural characteristics or conditions of the location of origin. The product is renowned because of its distinctive qualities. The misappropriation of such a title raises "a statutory right of collective recovery for producers situated within a judicially-defined geographic area." It is designed to protect the producers. In contrast, an indication of source is simply a geographic designation indicating the location of production, manufacture, or extraction of a particular product or products. It gives rise to "a public right to protection against consumer deception resulting from false marks of origin, usually in international commerce." The frequent effect of this designation is to protect the host country's economy.

The primary differences between appellations of origin and indications of source are as follows:

1. The laws regarding appellations of origin are designed principally to define conditions for recognizing a private right with protection against everyone else. The laws regarding false indications of source list a series of fraudulent or unlawful actions that will be sanctioned.

2. Judgments concerning appellations of origin affect all producers in the protected location. Judgments concerning false indications of source only affect the parties involved in the litigation.

3. An appellation of origin is a title of quality that certifies the

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34 *Id.* at 763.
35 3 S. LADAS, supra note 4, at 1574.
36 *Id.* See also 2 P. ROUBIER, supra note 7, at 767-811.
37 Lenzen, supra note 7, at 175.
38 3 S. LADAS, supra note 4, at 1574; 2 P. ROUBIER, supra note 7, at 767, 811.
40 See 2 P. ROUBIER, supra note 7, at 812.
legitimacy of a certain type of production’s location. An indication of source may refer to a location that does not have any particular reputation for distinctive quality.

4. With an appellation of origin, using the name of a renowned location for any product not originating there is per se unlawful. With an indication of source, indicating the product’s true point of origin is sufficient to correct otherwise improper usage. Therefore, the protection of indications of source covers a much broader range of distinctive signs that may mislead the public as to the origin of products, whereas an appellation of origin is used exclusively for a location.⁴¹

C. The Problem of Generics

Another source of difficulty in distinguishing between appellations of origin and indications of source arises from the use and definition of generics. When a product’s geographic name becomes accepted as signifying the type of product, rather than its geographic source, the name is considered generic and it becomes part of the public domain.⁴² There are no longer private rights to its use. The difficulty lies in determining when a geographic name has become generic.

According to one commentator, when a product derives its value from the natural qualities of a particular region or location and bears the name of that location, a generic use is not possible.⁴³ The product’s name cannot belong to the public domain because the exclusivity of its origin will make products from any other source bearing that name deceptive.⁴⁴

Although this analysis is correct theoretically, United States law does not offer the described protection. Instead, the United States has developed lists of generics⁴⁵ and semi-generics.⁴⁶ Semi-generic marks may be used regardless of the actual origin of the product, as long as the product is labeled plainly with the true origin.⁴⁷ But, even if one

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⁴¹ Id. at 813.
⁴³ 2 P. ROUBIER, supra note 7, at 818.
⁴⁴ Id.
⁴⁵ “Examples of generic names, originally having geographic significance, which are designations for a class or type of wine are: Vermouth, Sake.” 27 C.F.R. § 4.24(a)(2) (1982).
⁴⁶ “Examples of semi-generic names which are also type designations for grape wines are Angelica, Burgundy, Claret, Chablis, Champagne, Chianti, Malaga, Marsala, Madeira, Moselle, Port, Rhine Wine (syn. Hock), Sauterne, Haut Sauterne, Sherry, Tokay.” Id. § 4.24(b)(2).
⁴⁷ Federal regulations state:

Semi-generic designations may be used to designate wines of an origin other than that indicated by such name only if there appears in direct conjunction therewith an appropriate ap-
accepts the United States system for generic classification, a great deal of disagreement about what marks to consider generic remains. Critics in the United States complain that quality standards for classification are inconsistent, either among the domestic producers or between the domestics and their European counterparts. This creates a sharp contrast with the rigorous and detailed standards enforced in many European countries.49

III. SYSTEMS IN CONFLICT

As developed nations, the United States and France frequently have common interests concerning international trade. Their views on trademarks and protection of industrial property, however, conflict. In general, French laws are much more protective of domestic and foreign trade names and producers' rights. Further, France's long history of deference to geographic appellations establishes these laws firmly in practice and tradition. In contrast to the French system, United States law is less protective and primarily directed toward consumer protection. International conflicts develop because United States law permits domestic producers to use freely many foreign appellations of origin that would be legally protected in their countries of origin. For example, "champagne" is an appellation of origin in France and Britain,51

48 Benson, supra note 42, at 130. Benson notes: "Worse yet, there is even no consistency of taste, grapes, or methods required within the United States itself." Id. Nathan Chroman, a wine writer, similarly comments: "Taste three different California wines labeled burgundy, and it is more than likely that you will have trouble relating them to the same family of wine. . . . [A] generic label means—well, nothing." Id. Benson also quotes William Massee, a wine connoisseur who indicates that "[s]uch generics are a nuisance wherever in the world they appear on the market, glutting it and confusing the buyer." Id.

49 For a comparison of the French and American laws, see infra notes 52-84 and accompanying text.

50 The developed nations comprise what is known in U.N. parlance as Group B. See supra note 6. It includes representatives of Canada, France, the Federal Republic of Germany, Switzerland, United Kingdom, and the United States. Id.

51 In Bollinger v. Costa Brava Wine Co., 1960 R.P.D. & T.M. Cas. 16, quoted in Benson, supra note 42, at 129, the defendants, sellers of "Spanish Champagne," argued that the name was generic, citing burgundy, chablis, and sauterne as similar examples. The judge's response was clear: "Whatever may be said of the other wines which have suffered such ignominy, it is plain on the evidence before me that Champagne has not been humiliated in the same way." For a discussion of this case, see Abel, The "Spanish Champagne" Case, 51 TRADE-MARK REP. 466 (1961). Cf. Vine Products v. MacKenzie & Co., (1969) R.P.D. & T.M. Cas. 1 (English courts determined that
but not in the United States. 52

A. United States Law

Under the Federal Alcohol Administration Act,53 the Deputy Commissioner of Internal Revenue in charge of the Alcohol Tax Unit has discretion to determine generic, semi-generic, and non-generic designations of geographical significance.54 The federal regulations state that:

A wine shall be entitled to an appellation of origin if (1) at least 75 percent of its volume is derived from the fruit or agricultural products grown in the place or region indicated by such appellation, (2) it has been fully manufactured and finished within the State in which such place or region is located, and (3) it conforms to the requirements of the laws and regulations of such place or region governing the composition, method of manufacture, and designation of wines for home consumption.55 Even by American standards, these regulations have been deemed overly broad and narrower provisions have been drafted.56 The new regulations provide protection somewhat more analogous to French law and they more closely approximate the definition of an appellation of origin as a denomination representing particular qualities derived from the natural characteristics of the product's geographic origin. In particular, the new regulations require petitions for the establishment of American viticultural or wine grape growing areas to contain:

(1) Evidence that the name of the viticultural area is locally and/or nationally known. . . . (ii) historical or current evidence that the boundaries of the viticultural area are as specified in the application, (iii) evidence

sherry was generic and thus was not entitled to the same protection as champagne). For a brief discussion of Vine Products, see Abel, The "Sherry" Case, 58 TRADE-MARK REP. 188 (1968).

Similarly, United States courts have held that Minneapolis flour must originate from Minneapolis, Pillsbury-Washburn Flour Mills Co. v. Eagle, 86 F. 608 (7th Cir. 1898), but that bourbon whisky need not be produced in Bourbon County, Kentucky, American Medicinal Spirits Co. v. United Distillers, 76 F.2d 124 (2d Cir. 1935) (dictum). See Benson, supra note 42, at 129.

52 The United States has designated champagne as a semi-generic. See supra note 46.


54 27 C.F.R. § 4.24 (1982). Some examples of non-generic designations of geographical significance for wines are: Bordeaux, Medoc, St. Julien; Bourgogne, Grand Chablis or Bourgogne des Environs de Chablis, Côte de Nuits, Côte de Beaune, Côte Maconnaise or Maconnais, Macon, Côte Beaujolaise, Beaujolais, Rhone or Côte de Rhone, Côte Rotie, Hermitage, Chateauneuf-du-Pape, Tavel; Loire, Anjou; Alsace or Alsation; Mosel-Saar-Ruwer, Mosel; Swiss or Suisse. Id. § 4.24(b)(4).

56 The new regulations became mandatory on January 1, 1983. The changes include three additions to the previous regulations governing the labeling and advertising of wine: (1) Varietal (grape type) labeling, id. § 4.23a; (2) Appellations of Origin, id. § 4.25a; and, (3) Estate bottled, id. § 4.26.
relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas. . . .

Enforcement of these requirements should result in more standardized criteria for appellations of origin for wines. Specifically, these regulations attempt to require the delimitation of an exact renowned location by requiring the production of evidence showing, first, that a product from the location has distinct characteristics that differentiate it from other products, and second, that those characteristics are a result of natural features of the location. If these regulations are effective, the requirements will align the use of appellations of origin in the United States more closely with the French use.

United States law also prohibits the use or importation of goods bearing infringing marks or forbidden names under the Lanham Act, the primary United States trademark statute. Under section 43 of the Act,

(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation, including words or other symbols tending falsely to describe or represent the same . . . shall be liable to a civil action by any person doing business in the locality falsely indicated as that of origin or in the region in which said locality is situated, or by any person who believes that he is or is likely to be damaged by the use of any such false description or representation.

Section 44(b) extends the benefits of section 43(a) to members of other countries that are parties to the Paris Convention or to “any convention or treaty relating to trademarks, trade or commercial names, or the repression of unfair competition” to which the United States is also a party.

Any reference to appellations of origin is conspicuously absent from the Lanham Act. It does, however, include common law provisions to the extent that it prohibits registration on the primary register of “primarily geographically descriptive” or “deceptively misdescriptive” names, unless they are registerable under section 4 of the Act as a collective or certification mark, they are “primarily merely a surname,” or they have acquired a secondary meaning through use in

57 Id. § 4.25a(e)(2).
58 For a discussion of French law, see infra notes 67-82 and accompanying text.
61 Id. § 1126(b).
62 This section has been codified at 15 U.S.C. § 1054 (1976).
As one author points out, however, the requirements under section 32(f) of the Act for establishing secondary meaning—"proof of substantially exclusive and continuous use...in commerce for...five years"—may not be met in the case of a true appellation of origin because of the collective nature of the right. This poses a major dilemma when misleading uses of geographical terms are claimed as

63 Under section 2(e) of the Lanham Act, a trademark may not be registered on the principal register if it:

(e) consists of a mark which, (1) when applied to the goods of the applicant is merely descriptive or deceptively misdescriptive of them, or (2) when applied to the goods of the applicant is primarily geographically descriptive or deceptively misdescriptive of them, except as indications of regional origin may be registrable under section 1054 hereof, or (3) is primarily merely a surname.


Prior to the Lanham Act, geographical names could not be registered as trademarks on the primary register because they were considered descriptive (as opposed to arbitrary and fanciful). An otherwise descriptive geographic term could be protected by an unfair competition action, however, if it had a secondary meaning; that is, if in addition to its primary or language significance it had acquired significance as identifying the source of the goods in question.

The test for geographical terms is whether they will mislead the public as to origin. For example, in Singer Mfg. Co. v. Birginal-Bigby Corp., 319 F.2d 273 (C.C.P.A. 1963), the Singer Manufacturing Co. opposed the registration of the mark "American Beauty" on a Japanese-made sewing machine. The court held that the mark was both geographic and misdescriptive, because it suggests to the consumer that the product is made in the United States. Id. at 277.

Under section 4 of the Lanham Act, collective and certification marks may be registered on the primary register and, thus, receive full trademark protection, "except when used so as to represent falsely that the owner or user thereof makes or sells the goods or performs the services on or in connection with which such mark is used." 15 U.S.C. § 1054 (1976). The Act defines "collective mark" as:

a trademark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.

Id. § 1127. A "service mark" is:

a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

Id. The definition of a "certification mark" is:

a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.

Id. Thus, geographical marks can be registered as trademarks if they have secondary meaning, see, e.g., American Waltham Watch Co. v. United States Watch Co., 173 Mass. 85, 53 N.E. 141 (1899), where the name "Waltham" was found to have acquired secondary meaning as a designation of the watches that the public had become accustomed to associate with the name, in addition to the original geographic meaning (Waltham, Mass.). Id. at 86, 53 N.E. at 142.

Geographical marks without secondary meaning can also be registered as certification marks. For example, in Community of Roquefort v. William Faehndrich, Inc., 198 F. Supp. 291 (S.D.N.Y. 1961), aff'd, 303 F.2d 494 (2d Cir. 1962), Roquefort's certification mark for cheese was protected against infringement by manufacturers producing sheep's milk blue-mold cheese in other locations.

64 3 S. LADAS, supra note 4, at 1608.
trademarks. The question of whether the appellation of origin should prevail when it conflicts with a trademark remains controversial and unresolved. This dilemma is due in part to the vast differences between United States treatment of appellations of origin and that in many European countries.

B. French Law

The development of protection for appellations of origin in France has been through laws against false origins (lois sur les fausses indications de provenance) and regulations concerning appellations contrôlées, rather than through special laws for appellations of origin. The Law of July 4, 1931, began the appellation contrôlée system and officially recognized appellations of origin as titles of quality. This was followed by the décret-loi of July 30, 1935, for wines, eaux-de-vie, champagnes, and mousseux. The goal was to outline conditions that determine quality and to set restrictive specifications. The primary mechanisms under this new law were the establishment of L’Institut national des appellations d’origine and a new statute on appellations contrôlées. The Institut had two main functions: to set standards and monitor appellations d’origines contrôlées, and to defend against fraud. One author points out that the first of these tasks is complete, while the second remains an ongoing process.

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65 This issue is discussed along with 13 other questions from developing nations that arose at a 1975 meeting of an Ad Hoc Group of Governmental Experts. These questions were first presented in WIPO Doc. PR/GE/1/10. The Director General of WIPO prepared an analysis that was published later in 1975 in WIPO Doc. PR/GE/II/2. See also Diamond, supra note 1, at 4-5.

66 In addition to the Lanham Trademark Act and the federal regulations already mentioned, the following forms of regulation help protect the United States wine industry: the Food, Drug and Cosmetics Act, 21 U.S.C. §§ 301-392 (1976); common law protection against passing-off; the Federal Trade Commission’s ability to issue cease and desist orders; Patent Office proceedings to prevent registrations or to obtain cancellations of misleading trademarks (see, e.g., Community of Roquefort v. William Faehndrich, Inc., 198 F. Supp. at 291); and various state statutory actions prohibiting false statements in advertising and labeling. See 3 S. LADAS, supra note 4, at 1606-11. For a brief summary of the California and New York statutes relating to regulation of wines, see Lenzen, supra note 7, at 169-73.

67 The French system, “appellations contrôlées,” provides for regulation and control of wine labeling and ensures the uniformity of production conditions and quality of particular wines.

68 2 P. ROUBIER, supra note 7, at 755.

69 Id. at 754-55.

70 Id. at 755.

71 Id.

72 Id. at 791.

73 Id.

74 Id. For further explanation of the appellation contrôlée system, see 2 P. ROUBIER, supra note 7, at 791-97.
In 1965, a new French Trademark Act replaced the Trademark Act of 1857. Under the new Act, the Institut National de la Propriété Industrielle (INPI) examines and registers trademarks. Geographical names previously were unprotectable, unless they were distinctively represented. Article I of the new law, however, protects geographical names as trademarks, provided they are not deceptive and the particular geographic name to be used as the mark does not already have a reputation for producing the goods or services.

Because of the liberal provisions for registration of marks under French law, trademarks registrable in most other countries may also be registered in France. As one author suggests, however, it is wise for foreigners to register their marks in France even if it would not be possible to receive domestic registration in their own countries, so that they can benefit from the stricter protection provided under French law.

In many respects, French trademark law is similar to the laws in other European countries. Shared participation in the Madrid arrangement provides for protection of "all goods bearing a false or misleading indication, by which one of the countries to which this agreement applies, or a place situated therein, [which] is directly or indirectly indicated as being the country or place of origin." It also allows each participating country to decide which appellations are generic and, therefore, not under the protection of the agreement. The specific exclusion of wines has been the primary reason for the relative unpopularity of the Arrangement. Attempts have been made, although unsuccessfully, to amend article 4 so that the exclusion from generic treatment would extend to regional appellations of origin for wine and other products that nations may want to protect. This additional protection also would preserve the power of these countries' courts to rule on whether an appellation has become a generic description.

77 Id. at 486. According to Dassas, proving "distinctiveness" in France is relatively easy compared to a similar requirement in the United States. The traditional definition in the United States requires that the mark be arbitrary and fanciful, whereas in France descriptive marks are often upheld as valid. See id. at 489 for examples.
78 Dassas gives the following examples of geographic names that courts have upheld as valid trademarks: ORLY for chemical products; ORLEANS for clothing; AULNAY for perfumes; and SAVOIE for papers. Id. at 490.
79 Id. at 486. Thus, the provisions of article 6quinquies of the Paris Convention, supra note 4, requiring dual registration, are rarely called upon.
80 Id.
81 The Madrid Arrangement, supra note 10. This Arrangement provides for protection of "all goods bearing a false or misleading indication, by which one of the countries to which this agreement applies, or a place situated therein, [which] is directly or indirectly indicated as being the country or place of origin." Id. art. 1, § 1. It also allows each participating country to decide which appellations are generic and, therefore, not under the protection of the agreement. Id. art. 4. "Products of the vine," however, are excluded from this provision. Id.

The specific exclusion of wines has been the primary reason for the relative unpopularity of the Arrangement. McCarthy & Devitt, Protection of Geographic Denominations: Domestic and International, 69 TRADE-MARK REP. 199, 206 (1979). Under the exclusion for wines, their regional appellations of origin cannot be declared generic. This method of addressing generics is unacceptable to the United States and other countries that have given generic treatment to many foreign appellations. Id. at 207. On the other hand, France and other countries that have traditionally been protective of appellations of origin are favorably disposed to this strict protection. 3 S. LADAS, supra note 4, at 1578.

Attempts have been made, although unsuccessfully, to amend article 4 so that the exclusion from generic treatment would extend to regional appellations of origin for wine and other products that nations may want to protect. Id. at 1600. This additional protection also would preserve the power of these countries' courts to rule on whether an appellation has become a generic description. Id.
Lisbon\textsuperscript{82} Arrangements provides consistency among the European nations in the form of strict trademark protection.

\section*{C. International Protection}

The Paris Convention\textsuperscript{83} is the primary treaty protecting inventions, industrial designs, trademarks, service marks, trade names, indications of source, appellations of origin, and regulations against unfair

\textsuperscript{82} The Lisbon Arrangement, \textit{supra} note 9. The Lisbon Arrangement is another treaty designed to protect appellations of origin. Its protection extends to areas not covered by the Madrid Arrangement. \textit{Id.} art. 1, § 2; 3 S. LADAS, \textit{supra} note 4, at 1602; McCarthy & Devitt \textit{supra} note 81, at 207.

The Lisbon Arrangement has several significant provisions. Article 2 provides a widely used definition of “appellation of origin”:

In the meaning of the present Arrangement, an appellation of origin is understood to be the geographical denomination of a country, a region or locality serving to designate a product originating therein and of which the quality and characteristics are due exclusively or essentially to the geographic milieu, comprising natural factors and human factors.

The Lisbon Arrangement, art. 1, § 2, \textit{supra} note 9. Article 1, section 2 provides for international registration of appellations of origin. This system disseminates to other countries precise information concerning a particular appellation under investigation, defines those entitled to claim rights to the appellation, allows any member country to refuse acceptance by giving reasons for the refusal, and provides protection for any uncontested appellations. 3 S. LADAS, \textit{supra} note 4, at 1602. WIPO publishes a periodical, \textit{Les appellations d'origine}, which lists all of the international registrations. \textit{Id.} at 1605. The most distinctive feature of the Lisbon Arrangement is the absolute protection of registered appellations of origin: “[R]egardless of whether another's use is liable to mislead or not...[t]he only issue is whether there was in fact use of the registered appellation by someone unauthorized to use it.” McCarthy & Devitt, \textit{supra} note 81, at 208.

The Lisbon Arrangement goes even further than the Madrid Arrangement’s exclusion of wines from its generics provisions and prohibits an appellation of origin being deemed generic by any of its member states if it is protected in its country of origin. The Lisbon Agreement, art. 6, \textit{supra} note 9. It has been suggested that this is one reason for the Arrangement’s unpopularity. McCarthy & Devitt, \textit{supra} note 81, at 208.

\textsuperscript{83} See \textit{supra} note 4. The Paris Convention is under the auspices of WIPO, headquartered in Geneva, Switzerland. After the signing of the Paris Convention, the separate bureaux of the Paris Convention and the Berne Convention for the Protection of Literary and Artistic Works of 1886 were united in 1893 to form the United International Bureaux for the Protection of Intellectual Property (BIRPI). A separate Convention at Stockholm in 1967, established WIPO; since then, WIPO has assumed most of BIRPI’s functions. WIPO’s membership is open to any state that is a member of either the Paris or Berne Conventions, or of the United Nations or any one of its specialized agencies. There are four organs of WIPO: The General Assembly, the Conference, the Coordinating Committee, and the International Bureau. The General Assembly supervises the International Bureau and insures administrative cooperation among the Unions of the Paris Convention. The Conference is generally a forum for intellectual exchanges and it is responsible for the adoption of amendments to the WIPO Convention. The third group is the Coordinating Committee, the executive committee of the General Assembly and the Conference. The Director General presides over the International Bureau, WIPO’s Secretariat. WIPO became a United Nations Specialized Agency in 1974. 1 S. LADAS, \textit{supra} note 4, at 67-150. For further description of BIRPI, see Pfanner, \textit{supra} note 12, at 2-3. The functions of each of the WIPO organs are also described in McCarthy & Devitt, \textit{supra} note 81, at 201. Membership in each of the organs is listed in 19 INDUS. PROP. 5 (1980).
competition. The Convention's more than eighty member nations—the largest number of adherents to any intellectual property treaty—form the Paris Union.\textsuperscript{84} The aim of the Convention is to protect intellectual property in its various forms.\textsuperscript{85}

A central provision of the Paris Convention is the National Treatment Clause, whereby each member state of the Paris Union must extend the same protection to nationals of other member states as it affords its own citizens.\textsuperscript{86} Article 6 provides further protection for the filing and registration of trademarks in other countries of the Union regardless of whether products are registered in the country of origin.\textsuperscript{87} In addition, special treatment is accorded well-known marks under article 6\textsuperscript{bis}. This article prohibits the use of any trademark that is “liable to create confusion” with a well-known mark in a country belonging to the Union.\textsuperscript{88} The cancellation of a mark liable to create such confusion may be requested within five years.\textsuperscript{89} If, however, the use is in bad faith, there is no time limit for cancellation.\textsuperscript{90}

Article 10, relating to false indications of the source of goods, has been of major concern to Union members.\textsuperscript{91} As article 10 currently reads, it applies the provisions of article 9, relating to the seizure of “[a]ll goods unlawfully bearing a trademark or tradename”\textsuperscript{92} to “cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.”\textsuperscript{93} Thus,

\begin{itemize}
\item \textsuperscript{84} McCarthy & Devitt, supra note 81, at 200. For a list of the member nations as of January 1980, see 19 INDUS. PROP. 6-8 (1980).
\item \textsuperscript{85} Intellectual property consists of industrial property such as inventions, trademarks, industrial designs, and copyrights on artistic creations. Pfanner, supra note 12, at 1.
\item \textsuperscript{86} The National Treatment Clause is contained in article 2, section 1 of the Paris Convention. It reads, in pertinent part:
\begin{itemize}
\item (1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all other countries of the Union the advantages that their respective laws now grant, to nationals; they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights...
\end{itemize}
The Paris Convention, art. 2, § 1, supra note 4.
\item \textsuperscript{87} Id. art. 6.
\item \textsuperscript{88} Section 1 of article 6\textsuperscript{bis} provides in pertinent part:
\begin{itemize}
\item (1) The countries of the Union undertake... to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well-known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods...
\end{itemize}
\item \textsuperscript{89} Id. art. 6\textsuperscript{bis}, § 2.
\item \textsuperscript{90} Id. art. 6\textsuperscript{bis}, § 3.
\item \textsuperscript{91} For early changes and attempted revisions leading up to the current text of article 10, see 3 S. LADAS, supra note 4, at 1577-81.
\item \textsuperscript{92} The Paris Convention, art. 9, § 1, supra note 4.
\item \textsuperscript{93} Id. art. 10, § 1.
\end{itemize}
two questions are raised: whether what is being used qualifies as an indication of source, and whether the indication of source is false. Questions relating to the definition of terms in article 10, the seizure remedy, and other related issues have been, and are still being debated in preparation for revision of the Convention. In addition to protecting against the use of false indications of source, the Convention mandates that "[t]he countries of the Union are bound to assure to nationals of such countries effective protection against unfair competition." Among the acts that are prohibited are "all acts of such a nature as to create confusion by any means whatever. . . ."

The Paris Convention permits member nations to enter into other arrangements for the protection of industrial property, such as the Madrid Arrangement. The United States' refusal to participate in this Arrangement is indicative of its position that strict protection for industrial property is an unnecessary and undesirable restriction on trade name use and would only benefit foreign producers. Further objections stem from the fear that changes in international protection of trade names would conflict with existing United States law and, therefore, would require extensive changes in domestic regulations.

IV. CHANGE AND CONTROVERSY

Article 10 of the Paris Convention has been the focus of repeated debate. A central question to the debate is whether the protection of geographic terms is an appropriate topic for the treaty. The United States position is that protection of geographic terms does not

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94 Due to the use of the word concernant in the French text (the original language of the treaty), falsity can refer to either the origin of the product or to the identity of the producer. 3 S. LADAS, supra note 4, at 1581.
95 The Paris Convention, art. 10bis, § 1, supra note 4.
96 Id. § 3(1).
97 Id. art. 19. For a complete description of various treaties, see 3 S. LADAS, supra note 4, at 1578-99. Ladas cites the Stressa Agreement, June 1, 1951, and its Protocol, signed July 18, 1951, as an example of a multilateral agreement covering one specific type of product. This agreement prohibits the use of appellations of origin, denominations, or designations of cheeses produced in the contracting countries. Parties to this Agreement are: Austria, Denmark, France, Italy, Norway, Sweden, and Switzerland. Id. at 1599.

98 The Madrid Arrangement, supra note 10.
99 See infra notes 108-11, 115-20 and accompanying text.
100 See supra note 11 and accompanying text.
101 See supra notes 91-94 and accompanying text.
belong in the Paris Convention and that the topic is more appropriate for special agreements, such as the Lisbon and Madrid Arrangements. Nonetheless, given the political realities of international trade, the United States is likely to continue its membership in the Paris Union provided the revisions adopted do not differ dramatically from current United States law or standards of trade name registration and use.

The United States and France are not the only parties to the debate over the protection of geographic terms. Currently, four proposals regarding Question 62B—International Protection of Appellations of Origin and Indications of Source are under consideration, including: a proposal by the nine European Economic Community (EEC) countries, plus Spain, Portugal, Greece, and Austria, requesting a new article, article 10 quater; an amended version of the above proposal favored by the United States, Japan, Canada, and Australia; a proposal of the developing countries for an additional paragraph to the EEC countries' proposal; and a Socialist countries' proposal which is a modification of the EEC's text.

Several basic tensions underlie the various proposals. The first results from the nations' diverse societies and their respective needs. For example, the developing nations believe that they need special protection under the Paris Convention due to their economic status and dependence on agricultural and craft-based industries. Their fear is that

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102 Diamond, supra note 1, at 4.
103 The proposals are the result of a working group meeting of the Preparatory Intergovernmental Committee of the Revision of the Paris Convention for the Protection of Industrial Property held under the auspices of the WIPO, to discuss the conflict between appellations of origin and trademarks, from June 18 to 29, 1979, in Geneva. WIPO Doc. PR/WGAO/II/1 through PR/WGAO/II/6 (1979) (copies of these documents are on file in the offices of the Northwestern University Journal of International Law & Business). This meeting was conducted in preparation for the Diplomatic Conference held in Geneva from February 4 to March 4, 1980. Unfortunately, the delegates never reached the issue of Question 62B at that time. For an explanation of the terminology "Question 62B," see supra note 2.
104 Kirk, supra note 6. Kirk explains that Group B, or the developed market economy countries, are split on this issue because some of the countries adamantly favor stronger protection of appellations of origin. Id. at 186. He describes, in detail, the various issues and positions that were to be presented at the 1980 Geneva conference. It should be remembered that although these are the official positions of the various countries involved, the delegates to the various diplomatic conferences are not required to support the same positions. The exact content of what delegates intend to present at the most recent diplomatic conferences is confidential government information.

The United States may be willing to agree to the French proposal if France would accept the inclusion of various exceptions as safeguards. These exceptions might include generics, surnames, or marks protected under grandfather clauses. Telephone interview with W. Thomas Hofstetter, Member, U.S. Delegation to Geneva Diplomatic Conference on the Paris Convention, Fall, 1982 (Apr. 6, 1983).
before their own appellations of origin have a chance to evolve and
become known in the world market, producers in developed countries
will adopt identical terms as trademarks. Thus, the developing
countries advocate a provision for reserving the names of geographical
locations not currently in use, in order to preserve the locality’s name
for the future use of their own manufacturers and producers.

The United States position, like the developing countries’ proposal,
reflects interests unique to United States society and culture. This
culture is a mixture of elements brought to the United States from
other nations. Immigrants from around the world came to the United
States with their own customs and frequently adopted familiar names
from their native countries for products and their locations. In this
type of “derivative society,” it would be virtually impossible sud-
denly to prohibit the use of marks that have been used consistently as
generics. For example, a prohibition against the use of an ethnic name
on a label, simply because the product does not originate from the sug-
gested country, would be a hopeless task. Additionally, such a pro-
hibition is not necessary to avoid confusion among products; Danish
pastry, French salad dressing, and Swiss steak are not considered to
denote origin in the named country. Thus, the United States, where
this type of ethnic designation appears frequently, is opposed to the
developing countries’ proposed protection against such designations.

A second source of tension over Question 62B is the different no-
tions of what interest should be protected. United States trade law has
traditionally been concerned with protecting consumers from decep-

105 Diamond, supra note 1, at 4.
106 This approach would increase drastically all previous forms of trademark protection. Al-
though the concern of the developing nations is not unfounded, this same argument could be
advanced for locations in any country. Significantly, it is not the location itself that is valuable.
Rather, the need for protection arises only after a product originating in that location becomes
known for having attained its essential and desirable characteristics from the location. To protect
the geographical locations in developing nations without prior use would undermine the system of
designating only particular denominations as appellations of origin. Thus, despite the individual
needs of the developing nations, it may not be feasible to accommodate them through the pro-
posed additional protection.
107 Many commentators use this terminology when describing the United States culture. See
Kirk, supra note 6, at 185; Diamond, supra note 1, at 121.
108 Kirk, supra note 6, at 187.
109 Diamond, supra note 1, at 12-13. Diamond additionally notes that among United States
cities or towns 13 are named Paris, 15 are named Athens, 7 are called London and 11 are called
New London. Neither these geographic names, nor the ethnic designations such as Russian salad
dressing, denote origin in the named location, and they do not create any confusion. Id.
110 The proposal would be much more compatible with the society and culture of France or
other European countries, because relatively few examples of new meanings for geographic names
currently exist in their societies.
tion. The test for deceptive indications of origin is whether the consumer is likely to be confused, mistaken, or deceived.\textsuperscript{111} In contrast, French protection of appellations of origin primarily is concerned with the interests of the producers or manufacturers and the improper use of their marks by other producers.\textsuperscript{112}

Finally, depending on an industry's importance to a particular country and any special need of the industry to gain protection through the use of appellations of origin, the country may be more or less inclined to favor restrictive legislation. Thus, France, protective of her long-established wine and cheese industries, has been a staunch advocate of stricter international protection of appellations of origin, consistent with French domestic law.\textsuperscript{113} Although the French position appears firmly grounded in centuries of tradition and practice, France and other European countries did little to establish this position during the formative years of the United States. Rather, they were proud of the New World's attempts to copy Old World products. Now they may regret their previous inactivity, because what was previously a flattering adaptation, has become a major threat to trade in European countries.\textsuperscript{114}

\textbf{A. Resistance to Change}

In addition to the difficulties of imposing stricter enforcement on a derivative society, several other arguments militate against the United States increasing the protection of appellations of origin. Given the social and economic characteristics of its society and the overriding consumer orientation of United States law, consumer confusion is unlikely to result as long as appellations are qualified by the actual loca-

\textsuperscript{111} Under the Lanham Act, the test for infringement is whether the mark is "likely . . . to cause confusion, or to cause mistake, or to deceive." 15 U.S.C. § 1052 (1976). The basic forms of evidence for determining "likelihood of confusion" are: evidence of actual confusion; descriptions of conditions in the trade; evidence of wrongful intent; testimony of dealers or others experienced in the trade; and reaction tests or surveys. The major factors of similarity are appearance, sound, connotation, goods, and marketing environment. B. PATTISHALL & D. HILLIARD, TRADEMARKS, TRADE IDENTITY AND UNFAIR TRADE PRACTICES 4.2-4.3 (1974).

Because of the fundamental role in the United States of the "likely to cause confusion" test, the United States would be willing to accept a modification of article 10\textsuperscript{quater} that would prevent misuse of appellations of origin, but that would allow fair use. Telephone interview with W. Thomas Hofstetter, Member, U.S. Delegation to Geneva Diplomatic Conference on the Paris Convention, Fall, 1982 (Apr. 6, 1983).

\textsuperscript{112} 3 S. LADAS, supra note 4, at 1574-75.

\textsuperscript{113} See supra notes 6-7 and accompanying text.

\textsuperscript{114} Kirk, supra note 6, at 185. For example, the name "Champagne" has never been registered or contested in the United States despite its use in the United States since 1839. Knoll, CHAMPAGNE, 19 INT'L & COMP. L. Q. 309, 312 (1970).
tion of the product's origin. Especially with wine labeling, "the use of the type name is merely to describe its taste characteristics, in terms English-speaking consumers will understand." Pragmatically, if traditional names describing products suddenly became unavailable, United States consumers would be left without the necessary terminology to identify and describe products. The use of these names is not a recent occurrence in the United States. Americans have been producing wine for over 300 years and have done so on a substantial commercial scale for more than a century. The involvement of European immigrants and their descendants, as well as the importance of the Old World products and processes, has been highly influential in the wine trade and in consumer understanding of wine nomenclature. Thus, nations such as the United States are unwilling to intervene suddenly and restrict established uses by "conferring a quasi-monopoly upon the industry and trade of foreign countries." On the other hand, the United States has agreed to strict protection where it would further its own economic interests. For example, the appellations "Cognac," "Armagnac," and "Calvados" were offered strict United States protection in exchange for similar protection in France for "Bourbon" and "Bourbon Whisky." Aside from occasional agreements such as this, the United States wine industry currently enjoys a competitive advantage in generics because of the free use of generics and semi-generics and because of domestic regulations prohibiting United States importation of wines labeled in violation of the exporting country's laws, most of which prevent similar use of generics.

B. Benefits of Protection

Not all arguments, however, favor the unrestricted use of geographic appellations. Geographic indications of source are increasingly important because of rising standards of living, more sophisticated consumer habits, and generally increased mobility, which have contributed to a growing preference for products from specific countries, regions, and places of production. These factors favor

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115 S. LADAS, supra note 4, at 1610.
116 Id. at 1609.
117 Id. at 1610.
118 Id. at 1600.
119 This reciprocal protection was accomplished through an exchange of letters between the French Minister of Foreign Affairs and the United States Ambassador to France on December 2, 1970 and January 18, 1971, respectively. See S. LADAS, supra note 4, at 1611.
120 Benson, supra note 42, at 130.
121 Beier, supra note 15, at 153.
protecting indications of origin to guard consumers against misleading or unauthorized use of indications of source, as well as to protect producers' economic interests. Producers may want to protect themselves against a nation's failure to recognize and enforce the rights attached to appellations of origin. When these rights are not recognized, producers in countries with strict regulations may suffer because producers in other countries improperly use their marks. Moreover, producers in the country with lenient standards, who use honest, descriptive terms to label their products are also harmed when other producers use unmerited appellations of origin.

Besides the suppression of these negative consequences stemming from lenient standards, stricter standards offer a variety of direct benefits. For example, the suppression of false or misleading indications of origin domestically "encourages the perfection of products of definite qualities and characteristics," while internationally, it "encourages the improvement of national products rather than the imitation of foreign goods, by inferior quality, and cheapness of price." In this way, domestic producers are compelled to improve their products' quality, and in the long-run they may be able to compete more successfully in both domestic and foreign markets.

From a marketing perspective, the distinction of goods on the basis of their origins, especially where the qualities associated with the product stem from the physical characteristics of the location of origin, benefits producers through product differentiation, as well as consumers, who receive more information on which to base their selections.

United States courts have recognized product origin as an important factor in product choice, and have supported the desirability of providing consumers with this kind of information. This is true especially

122 Id.

123 Lenzen, supra note 7, at 146. Producers facing fewer restrictions can obtain a competitive advantage by becoming "free riders" who benefit from the favorable reputation associated with a well-known appellation. A producer under heavy restriction also may suffer when an infringing product is of a lesser quality than that traditionally associated with the appellation. If the infringing product is not prohibited, over time, quality may no longer be tied to the appellation.

124 Id.

125 3 S. LADAS, supra note 4, at 1576. The German Patent Office also has expressed the view that the most efficacious mean of protecting German production is to improve the quality of German products, rather than to encourage the development of foreign products through the use of the foreign appellations. Id. at 1590 n.62.

126 Id. at 1576.


128 In Singer Mfg. Co. v. Birginal-Bigsby Corp., 319 F.2d 273 (C.C.P.A. 1963), the court discussed the economic advantage of identifying geographic origin. The court recognized that a certain segment of Americans may prefer American manufactured sewing machines to those made
where consumers desire distinguishing information for agricultural products for which trademarks or firm names are not available because of the vast number of small- and medium-size producers.\(^\text{129}\) In such situations, United States courts have recognized the collective right of a community to sue in order to protect a denomination of origin with a reputation for particular quality.\(^\text{130}\)

Practices such as the wide use of generics for wines may be detrimental to the United States wine industry's long-term interests. Several commentators have suggested that as United States products become increasingly important in world markets, it will be in the United States' best interest to claim the rights associated with the distinctive appellations of those products.\(^\text{131}\) This is especially true of wines. Several wine regions in California have become known worldwide for superior products. As foreign markets become increasingly important to United States producers, it is conceivable that foreign producers could retaliate against the United States fairly free use of foreign appellations by usurping the same rights from United States producers.\(^\text{132}\)

V. CONCLUSION

The United States is unlikely to favor absolute protection of appellations of origin. An attempt to do so would conflict with current United States law and long-established customs and uses. Nonetheless, if regulation of appellations of origin is to protect consumers and producers—both foreign and domestic—against unfair methods of competition, the United States should agree to stricter standards.

The protection of the appellations "Cognac," "Armagnac," and "Calvados" provides a precedent for more stringent standards. The

\(^{129}\) Beier, supra note 15, at 158-59. Where rights are not exclusive, and therefore, trademark protection is not available, suitable protection can be secured through registration of a collective or certification mark. See supra note 63.


\(^{131}\) See, e.g., Lenzen, supra note 7, at 186; Benson, supra note 42, at 130.

\(^{132}\) Benson suggests that it might be "logical revenge for the vintners of Champagne, France; Jerez (sherry), Spain; or Chianti, Italy; to compete in foreign markets with wines labeled 'French California Wine,' 'Spanish Sonoma Wine,' or 'Italian Napa Valley Red.' " Benson, supra note 42, at 130.
new federal regulations for wine labeling and restrictions on registration of primarily geographically descriptive trademarks are further recognition of the need to establish guidelines for trade name use. Yet, the current treatment of generics in United States law and the hesitancy to define and treat appellations of origin as a separate classification is inconsistent with worldwide trade practices and short-sighted with regard to United States economic interests. Protection of appellations of origin is necessary because these appellations encourage production of quality products, distinguish similar products from one another, protect the interests of producers and consumers against unfair competition and deception, and encourage improvement and acceptance of national products in world markets. Further, stricter standards would help satisfy consumers' subjective biases for products from particular origins rather than ignoring these preferences in the hope they will disappear.

The benefits from modifying United States practices to conform more closely with European standards would help standardize domestic nomenclature and would strengthen both the United States relations with France, and its position in world trade. Despite the required adjustments to traditional practices and current United States law, the long-term benefits of increased recognition and protection of appellations of origin will outweigh the short-term costs.

Lori E. Simon

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133 See supra notes 53-58 and accompanying text.
134 In the Singer case, the court recognized the existence of subjective prejudices and preferences when it said, "many purchasers of many articles desire to buy those of American manufacture, perhaps only for reasons personal to themselves." Singer Mfg. Co. v. Birginal-Bigsby Corp., 319 F.2d 273, 277 (C.C.P.A. 1963).