

Lies on Your Bottles

Was it White Zinfandel?

Decades ago, a wine came into the United States that sold well. It was putatively a White Zin. It was from Brazil and it was suspect. It was sweet (nothing wrong there), but did not smell like Zin or taste like it.

The U.S. government usually accepts the certification of other countries as to what's in its wines. And Brazil said this stuff was Zin. (Gee, I wonder why Brazil would do such a thing. Could money be at the heart of this issue?)

Viticulture expert Rich Kunde told me, "We went back to Washington, and we submitted evidence [to ATF]... that there was no documented acreage of Zinfandel" there.

He said Brazil "had a lot of money tied up in this." So it rubber-stamped that what was being sold to the United States was in fact Zinfandel.

Kunde says the argument was eventually shot down. He said the United States soon blocked Brazil from importing any more "White Zinfandel."

What brought this to mind occurred in October. We were wandering through the wine aisles at a Swedish state liquor store and saw something odd: bottles with labels that to me were fraudulent.

The most obvious of these were the huge number of "organic wines" the store was carrying. In two cases, the wines were from California and I knew that the wineries made the wines from organic grapes. But the labels said "organic wine," a different thing.

Organic wine is certified to carry that statement and is made without the use of sulfur dioxide at bottling. As such, they

would not be defined in the United States as organic and have to be labeled, "Made from organic grapes."

What made the wines legal to be sold in Europe as "organic" is the definition of the word. Europe defines the term "organic" differently from how we do in the United States.

It was clear that what is illegal here may be legal in another country if a different definition is used.

Other terms that have yet to be defined by the U.S. government for wine are such commonly seen words and phrases as "old vine," most often applied to Zinfandel; "Reserve" and its various versions of the term, which are widely used and often relatively meaningless; and the ubiquitous term often seen on Chardonnays, "barrel fermented."

(One question: how long does a wine have to be in a barrel during fermentation before the term "barrel fermented" can be used? Answer: I'd guess only until the fermentation is over; see Page 3 for an example.)

It is true that such a term can help consumers since we know that fermenting Chardonnay in barrel has a demonstrable impact on how the wine turns out.

So I was amused the other day to learn that the term "double-oaked" has come under fire in a dispute between two whisky giants, Brown-Forman and Jim Beam.

In mid-October, Beam formally opposed B-F's use of the term with the U.S. Patent and Trademark Office (PTO) Trademark Trial and Appeal Board. Since last year, Brown-Forman has used the term Reserve Double Oaked on its Woodford bourbon.

Beam said in its appeal that the phrase is generic "for the process of aging... in a second oak barrel" and is thus simply descriptive.

Beam's case leans on the PTO's tradition of denying use of

descriptive terms. The PTO typically refuses registration for marks that contain a generic or merely descriptive phrase.

As defined by the PTO, "A mark is considered merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose, or use of the specified goods or services."

The website of Lehrman Beverage Law says consumers understand "Generic terms... as the common name for a class or type of good or service (e.g., "whiskey")."

In this case, Beam argues that "Double Oaked" is generic because it refers to a type of aging process (i.e., aging a spirit in a second oak barrel), which it claims is common in the industry.

Under the same logic, I assume that any winery could challenge the use of the terms "reserve," "barrel fermented, and "old vine" as having no meaning at all and thus may not be used by anyone. None are based on a definition of what they are.

In every case, the terms are used to imply quality and thus should be supported by proof that such is the case. But that won't happen since wine is ruled by the TTB, not the PTO. And TTB isn't about to let another agency usurp its turf.

Also, over the decades, TTB has declined to enter this complicated mess—which it created by failing to take a leadership role!