

January 18, 2007

Food & Drug Administration
Dockets Management Group
Rm 1-23
12420 Parklawn Dr.
Rockville MD 20857
<http://www.fda.gov/ohrms/dockets/>

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2007 JAN 18 PM 2:51
PARKING & INFORMATION OFFICE

PETITION

The undersigned submits this petition under Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drug (under 21 CFR, Part 5.10) to request the Commissioner of Food and Drugs to issue a new regulation.

Problem to Address

The identification and sales of a "flavored wine product" as if it were a true varietal wine ie: The selling of Peach Chardonnay "wine product" as if it were Chardonnay wine flavored with peach. This is misleading and confusing to the consumer and blatantly unfair competition to the vintners of real wine.

The Action Required - A New Regulation

"Wine product", the composition of wine, water, sugar, with or without flavorings and an alcohol content of less than 7% can not be marketed or sold with a wine varietal designation.

Facts

1. Wine product and wine are sold in the same retail setting, basically in the same bottle style.
2. Wine product is thereby identified and sold as wine - even though it contains large amounts of water and sugar. (The actual juice content can be as low as 30%)
3. TTB regulations, (See exhibit #I attached) forbid a varietal wine (like Chardonnay) above 7% alcohol to be identified as Chardonnay, if it has flavor added. Wine product under 7% alcohol falls under FDA regulations which apparently allows a varietal designation with flavor.
 - a. The results are:
 - i. A Chardonnay wine that really is wine can not be called Chardonnay because it has flavor added (TTB regs.) and a "wine product" which really isn't wine can be called a flavored Chardonnay (FDA regs.)

My suggested change would force the selling of "wine product" to be sold as wine product and not be masquerading as a real varietal wine. This would level the "playing field" and make the FDA regs. and the TTB regs. more comparable.

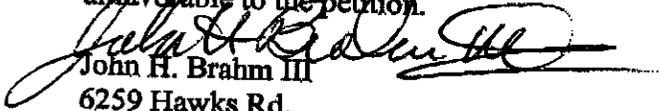
2007P.0097

CP1

Thank you for considering my petition and I stand ready to provide you with the following if you so desire.

1. A bottle of varietal "wine product"
2. Wine advertisements that show wine product being advertised as wine.
3. A formulation for wine product which I believe the wine product producers are using. FACT: According to TTB regulations a varietal wine (Chardonnay) has to contain 75% of that variety to be called a varietal. The product "wine product" can contain as low as 30% of the varietal and apparently still be referred to as varietal.

The undersigned certifies that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioners which are unfavorable to the petition.



John H. Brahm III
6259 Hawks Rd.
Naples NY 14512
585-374-5817



INDUSTRY CIRCULAR

DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Washington, DC 20226
Number: 2000-3 Date: 10/26/00

Passion AT
Exhibit # I

TTb

LABELING OF WINE SPECIALTY PRODUCTS, INCLUDING FLAVORED WINES

e alt fd @ ttb.gov.

Proprietors of Bonded Wine Cellars, Importers and Others Concerned:

Purpose. The purpose of this industry circular is twofold: (1) to announce the publication of the final rule concerning the labeling of flavored wine products and (2) to advise industry members that upon the effective date of the final rule, certificates of label approval that are not in compliance with the regulations will be revoked and must be voluntarily surrendered.

Background. On October 6, 2000, the Bureau of Alcohol, Tobacco and Firearms (ATF) published in the Federal Register a final rule concerning the labeling of flavored wine products (T.D. ATF-431). The final regulations, which become effective January 1, 2001, prohibit the use of any varietal designation (e.g., Chardonnay), type designation of varietal significance (e.g., Muscatel), semi-generic geographic type designation (e.g., Chablis), or geographic distinctive designation (e.g., Bordeaux) in statements of composition for flavored wines and other wine specialty products.

*

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The final regulations also provide that references on labels to such designations in the brand name, product name, or fanciful name are limited to standard grape wines, i.e., wines made in accordance with the standards prescribed in classes 1, 2, or 3 of 27 CFR 4.21. In addition, any other use of such designations on other than a standard grape wine is presumed misleading.

*

Upon the effective date of the final rule, applications for certificates of label approval must be in compliance with the regulations. In accordance with the regulations (27 CFR 13.51 and 13.72(a)(2)), upon the effective date of the final rule certificates of label approval (COLAs) that are not in compliance with the regulations will be revoked by operation of regulation. Certificate holders must voluntarily surrender all certificates that are no longer in compliance and submit applications for new certificates that are in compliance with the new requirements. Industry members are reminded that once revoked, a COLA cannot be used to bottle wine, remove wine from the place where bottled (i.e., from bonded premises), or remove wine from Customs custody (27 CFR 13.73).

February 23 2007

To: Food & Drug Administration
5630 Fishers Lane Room 1061
Rockville MD 20852

5997 7 FEB 27 03:18

From: John H Brahm III – Petitioner

Subject: Action for New Regulation

Wine Product, the composition of wine, water, sugar, with or without flavorings and an alcohol content of less than 7% can not be marketed or sold with a wine varietal designation. (Filed by FAX on 1/18/07).

Your Office has contacted me regarding the omission of an Environmental Impact Statement from my petition. I did not file an Environmental Impact statement because in my view there was no environmental impact. The new regulation merely requires a change of label and advertising for an existing product.

If a categorical exclusion is required to be identified, then I would refer to sec. 25.32 Foods, Food Additives and Color Additives

The classes of action listed in this section are categorically excluded and, therefore, ordinarily do not require the preparation of an EA or EOS:

25.32 (a) Issuance, amendment, or repeal of a food standard.

My petition asks for the issuance of a food standard (assuming “wine product” is a food) that presently does not exist. Therefore the preparation of a ES or an EIS is categorically excluded.

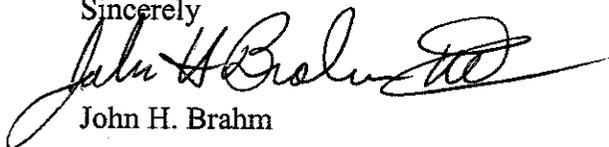
Since I filed my petition on 1/18/07 I have reviewed my “Action for a New Regulation” and would like to change/amend my proposed action to read as follows:

Action for New Regulation

“Wine Product”, a blended formulation of wine, water, sugar or corn syrups with or without flavorings and a alcohol content of less that 7% can not be advertised or offered for sale with a wine variety designation.

Thank you for your assistance in helping me move my petition forward.

Sincerely



John H. Brahm