

ESTTA Tracking number: **ESTTA470860**

Filing date: **05/04/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204543
Party	Defendant Patridge, Monty R
Correspondence Address	PATRIDGE, MONTY R 921 N HARBOR BLVD # 189 LA HABRA, CA 90631-3103 flynjer@aol.com
Submission	Answer
Filer's Name	Robert D. Rentzer, Attorney At Law
Filer's e-mail	lawcal@roadrunner.com
Signature	/Robert D. Rentzer/
Date	05/04/2012
Attachments	AnswerToOpposition91204543.pdf (35 pages)(3768348 bytes)

ROBERT DENNIS RENTZER
5011 Casa Drive
Tarzana, CA 91356
(818) 758-1611

1 2. Answering paragraph 2 of BMR'S Notice of
2 Opposition, APPLICANT lacks sufficient knowledge or
3 information to form a belief as to the allegations
4 contained therein and, accordingly, denies said allegations.

5 3. Answering paragraph 3 of BMR'S Notice of
6 Opposition, APPLICANT lacks sufficient knowledge or
7 information to form a belief as to the allegations
8 contained therein and, accordingly, denies said allegations.

9 4. Answering paragraph 4 of BMR'S Notice of
10 Opposition, APPLICANT lacks sufficient knowledge or
11 information to form a belief as to the allegations
12 contained therein and, accordingly, denies said allegations.

13 5. Answering paragraph 5 of BMR'S Notice of
14 Opposition, APPLICANT admits the allegations contained
15 therein.

16 6. Answering paragraph 6 of BMR'S Notice of Opposition,
17 APPLICANT admits the allegations contained therein.

18 7. Answering paragraph 7 of BMR'S Notice of
19 Opposition, APPLICANT admits having sought registration of
20 the LA RUCA Mark. Except for that admission APPLICANT
21 denies the remainder of paragraph 7 and expressly denies
22 any similarity, confusing or otherwise, with BMR'S Mark.

23 8. Answering paragraph 8 of BMR'S Notice of
24 Opposition, APPLICANT denies each and every allegation
25 contained therein.

26 9. Answering paragraph 9 of BMR'S Notice of
27 Opposition, APPLICANT denies each and every allegation
28 contained therein.

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5011 Casa Drive
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1 10. Answering paragraph 10 of BMR'S Notice of
2 Opposition, APPLICANT lacks sufficient knowledge or information
3 to form a belief as to what BMR believes as alleged
4 therein and, accordingly, APPLICANT denies said allegations.

5 11. Answering paragraph 14 (*sic*)¹ of BMR'S Notice of
6 Opposition, APPLICANT denies each and every allegation
7 contained therein.

8 12. APPLICANT further affirmatively alleges that he
9 registered the Mark LA RUCA in Mexico February 1, 2012 (Copy of
10 Registration attached hereto as Exhibit "A" and incorporated
11 herein by this reference) and alleges that since said
12 registration and adoption the Mark LA RUCA has become a
13 valuable asset of APPLICANT, carries considerable good will and
14 consumer anticipation of the APPLICANT'S tequila advertised
15 under said Mark, making the Mark distinctive to APPLICANT.

16 13. APPLICANT further affirmatively alleges that
17 there is no likelihood of confusion, mistake or
18 deception because, *inter alia*, APPLICANT'S Mark and the
19 pleaded Mark of BMR are not confusingly similar.

20 14. APPLICANT further affirmatively alleges that
21 one reason there is no likelihood of confusion, mistake
22 or deception is that the content of the Marks differ in
23 that BMR'S Mark contains a descriptive word following
24 the word RUCA, i.e., "MALEN" whereas APPLICANT'S Mark
25 contains a word preceding the word RUCA, i.e., "LA" thus
26 they are not even as similar as the words which precede the
27 word "Cola," as in "Pepsi," or "Coca" or even "RC" Cola.

28 ¹ The Objector omits any paragraphs numbered 11, 12 or 13 going from 10 to 14.

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5011 Casa Drive
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1 15. APPLICANT further affirmatively alleges that
2 the word RUCA, itself, is a Spanish word subject to
3 several differing interpretations, such as:

4 a) "The Girlfriend," as in the "Additional Statement
5 Section" on page 5 of 6 of APPLICANT'S form 1478 filing
6 (Copy of relevant page attached hereto as Exhibit "B"
7 and incorporated herein by this reference).

8 b) "Young Girl," presumptively in the "Additional
9 Statement Section" on page 5 of 6 of BMR'S form 1478
10 filing (as evidenced on page 1, 4th paragraph of the
11 January 12, 2012 letter from BMR'S counsel to APPLICANT.
12 (Copy of said letter attached hereto as Exhibit "C" and
13 incorporated herein by this reference).

14 c) "The Old Lady" as a slang expression in Spanish,
15 which was "...first said by sublime in (waiting for my
16 ruca) which stated it meant girlfriend or True lover."
17 Source, internet site: www.dictionaryslangu.com/ruca.

18 d) "Older Woman" as a derogatory Chicano slang term
19 for a woman of the barrio or older chola. Source,
20 internet side as in "c," above.

21 e) "Old Maid" as yet another Chicano slang and
22 mostly a derogatory term. Source, internet site:
23 www.urbandictionary.com/define.php?term=ruca.

24 g) "Tried Woman" "...as in having been through the
25 trials of life and living." Source, internet site as in
26 "c" above.

27 16) APPLICANT further affirmatively alleges that
28 there are two distinct Spanish meanings for the word MALEN.

ROBERT DENNIS RENTZER
5011 Casa Drive
Tarzana, CA 91356
(818) 758-1611

1 A Google Search using the inquiry phrase, "Malen In
2 Spanish" brings up two different meanings which appear
3 under the following heading,

4 "*Malen - Spanish Origin, Meaning, and Numerology of the Name*"

5 a) "The *Spanish* meaning of the name *Malen* is 'Woman
6 from Magdala'."

7 b) "Variant of Madeleine."

8 Thus BMR's mark translates to either "Young girl
9 from Magdala" or "Young girl Madeline."

10 Source: www.allbabynames.com/BabyName/Spanish/Malen.aspx

11 17) APPLICANT further affirmatively alleges that
12 the use of the phrase RUCA MALEN actually translates to
13 mean, "The Girls House." Source: internet site:
14 www.interpatagonia.com/mapuche/dixtionary.html which
15 contains the Mapuche-English Dictionary and states,
16 "The mapuche or mapudungum tongue did not have a writing
17 system when the Spanish arrived (thus) *Rucamalen*: girl's
18 house." And, quoting from the relevant part of a RUCA
19 MALEN distributor's web site (Opici Wines): "*The Opici*
20 *Wines portfolio includes classic selections under the*
21 *Opici label, such as Ruca Malen from Argentina.*

22 That above referenced citee then goes on to say,
23 "The name 'Ruca Malen' translates from the Mapuche Indian
24 language as 'the house of the young girl.' It derives
25 from a local legend of the romance between a god and a
26 fearless, beautiful woman."

27 Source: <http://opiciwines.com/wine/winery/ruca-malen/>

28 ///

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5011 Casa Drive
Tarzana, CA 91356
(818) 758-1611

1 18) APPLICANT further affirmatively alleges that,
2 "Cola" products, bearing that word in their trademark and
3 not differing in their liquid content's color, use, taste and
4 enjoyment by the consumer, are distinguished by a second word.
5 Here, BMR'S product and the APPLICANT'S product are not
6 only distinguishable by a second word used in conjunction
7 with the word RUCA, but are further distinguishable in that
8 BMR'S product is a wine and APPLICANT'S product is a
9 tequila, thereby differing completely in color, use,
10 taste and enjoyment by the consumer.

11 19) APPLICANT further affirmatively alleges that if
12 there is any public confusion it would be as between a
13 French vineyard that produces wine and BMR'S Mark for
14 its wine, but certainly not between the tequila Mark of
15 APPLICANT. (Copy of French Vineyard advertisement and
16 their linked information sheet attached hereto, designated
17 Exhibit "D" and incorporated herein by this reference).

18 20) APPLICANT further alleges that there are so
19 many variant translations to the word RUCA that it is as
20 much a generic term as the single word "Zipper," which
21 word was once was a B.F. Goodrich trademark subsequently
22 recognized as too generic to warrant protection.

23 21) APPLICANT further affirmatively alleges that
24 only when the generic word RUCA is used in conjunction
25 some second word can that specific combination of words
26 then be protected as a trademark, the differing combination
27 of words thus precluding any likelihood of confusion,
28 mistake deceit in origin, sponsorship or association.

ROBERT DENNIS RENTZER
5011 Casa Drive
Tarzana, CA 91356
(818) 758-1611

1 22) APPLICANT further affirmatively alleges there
2 are so many variant uses of the word RUCA that, when
3 that word is used in conjunction with a wine produced by
4 a corporation in Argentina and followed by the word
5 MALEN, it can not be confused with a tequila produced in
6 Mexico and where said word is preceded by the word LA.

7 It follows that just as a restaurant having a beer
8 and wine license may not serve hard liquor, the ordinary
9 consumer of a wine (fine or otherwise) is not likely to
10 associate a wine with a hard liquor. In fact, the very
11 nature of the beverages themselves distinguishes them,
12 since the average alcohol content of wine ranges from 5% to
13 15% whereas the average alcohol content of tequila ranges
14 from 35% to 55% (See APPLICANT'S Exhibit "E," attached
15 hereto and incorporated herein by this reference). This
16 indisputable fact further precludes the association of
17 APPLICANT'S tequila Mark with BMR'S wine Mark.

18 23) APPLICANT further affirmatively alleges, LA
19 RUCA labels depict the line drawing of an agave plant and
20 prominently contain the designation of the tequila's origin
21 as Mexico, i.e., "Hecho en Mexico." (Exemplar attached
22 hereto, designated exhibit "F-1" and incorporated herein by
23 this reference), this is to be contrasted with labels on
24 RUCA MALEN wines which depict a line drawing of a woman's
25 profiled face and prominently contain the designation of
26 the wine's origin as Argentina, i.e., "Mendoza, Argentina."
27 (Exemplar attached hereto, designated Exhibit "F-2" and
28 incorporated herein by this reference).

ROBERT DENNIS RENTZER
5011 Casa Drive
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(818) 758-1611

1 While APPLICANT recognizes that labels can always be
2 changed, the point to be made is that, regardless of any
3 change in the product's logo, each product must continue
4 to show its place of origin. And, in that regard, while
5 the label on BMR'S wine will always show it having been
6 made in Argentina, APPLICANT'S label can never show its
7 tequila being made other than in Mexico because tequila
8 is an exclusive product of Mexico. That is because it
9 must be derived principally from the Agave Tequilana
10 Weber plant ('blue' variety) which is a distinctive
11 product of Mexico, manufactured only in Mexico and in
12 compliance with the laws of Mexico. This is expressly
13 required by the "*Consejo Regulatorio Tequila*," which is
14 the Tequila Regulatory Counsel of Mexico. (Copy of the
15 said law is attached hereto, designated Exhibit "G" and
16 incorporated herein by this reference.)

17 As for the U.S.A. labeling requirement, that is set
18 by the Department of Treasury, Alcohol and Tobacco Tax
19 and Trade Bureau Distilled Spirits Labeling provisions
20 in the Code of Federal Regulations cited as: 27 CFR 5.36 (e).
21 (For ease of reference a copy thereof is attached hereto,
22 designated Exhibit "H" and incorporated herein by this
23 reference.) This is in accord with the prohibition against
24 false designation of origin set out in 37 C.F.R. Part 2-
25 Rules of Practice In Trademark Cases, Title VIII, §43,
26 and as set out in 15 U.S.C. §1125, which speaks to origin
27 as a factor regarding confusion, mistake or deception
28 and, thus, differing origins eliminate any such possibility.

ROBERT DENNIS RENTZER
5011 Casa Drive
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1 Accordingly, APPLICANT'S label must always show that
2 APPLICANT'S tequila is from Mexico and, for that reason
3 alone, can never be confused with a wine from Argentina.

4 WHEREFORE APPLICANT, based upon any of the foregoing
5 affirmative allegations, and certainly in combination
6 thereof, respectfully contends that BMR may not capture
7 the generic word RUCA and requests that the BMR Notice
8 of Opposition be dismissed.

9 Dated: May 4, 2012

Respectfully submitted,



10
11 Robert D. Rentzer,
12 Attorney for APPLICANT,
13 MONTY R. PATRIDGE
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EXHIBIT “A”

Datos del expediente

Número de expediente:: 1200557
Número de registro: 1261535
Fecha de presentación: 04/08/2011 03:06:17 PM
Fecha de uso:
Fecha de concesión: 20/01/2012
Fecha de vigencia: 04/08/2021
Denominación: LA RUCA
Clase nacional:
Tipo de solicitud: MARCA
Tipo de marca: NOMINATIVA
Leyendas y figuras no reservables:

Productos y servicios		
Clase	Tipo de clase	Descripción
33	9	TEQUILA.

Datos del titular	
Nombre:	MONTY R. PATRIDGE
Dirección:	921 N. HARBOR BLVD # 189
Población:	LA HABRA HTS, CA
Código postal:	90631
País:	ESTADOS UNIDOS DE AMERICA
Nacionalidad:	ESTADOUNIDENSE
RFC:	
Teléfono:	
Fax:	
E-mail:	

Datos del apoderado	
Nombre:	ANA LINDA ESPINOZA PALOS
Dirección:	OTRANTO # 2546-6, COL. PROVIDENCIA
Población:	GUADALAJARA, JAL.
Código postal:	44630
País:	MEXICO
RFC:	
Teléfono:	
Fax:	
E-mail:	

Datos del expediente

Establecimiento	
Dirección:	
Población:	
Código postal:	
País:	

Trámite	
Folio:	143237
Serie:	2011
Descripción:	SOLICITUD DE REGISTRO
Fecha de inicio:	04/08/2011
Fecha de conclusión:	

EXHIBIT “B”

GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	033
IDENTIFICATION	Distilled Spirits
* FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS SECTION	
*TRANSLATION (if applicable)	The English translation of La Ruca in the mark is The Girlfriend.
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
CORRESPONDENCE INFORMATION	
*NAME	Patridge, Monty R
*STREET	921 N Harbor Blvd #189
*CITY	La Habra
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE	90631
PHONE	714 -927-1734
FAX	888-308-3983
*EMAIL ADDRESS	flynjer@aol.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
* SIGNATURE	/Monty R Patridge/
* SIGNATORY'S NAME	Monty R Patridge

EXHIBIT “C”



Law Offices
Jacobson Holman
Professional Limited Liability Company
400 Seventh Street, N.W.
Washington, D.C. 20004-2218

(202) 638-6666
(202) 393-5350/51/52 (fax)
www.jhip.com
Firm e-mail: lp@jhip.com

January 10, 2012

Monty R. Patridge
921 North Harbor Boulevard, No. 189
La Habra, California 90631

Re: Possible Opposition to USSN 85/373118
Mark: **LA RUCA**
Our Ref: 6128/I06535

Dear Mr. Patridge:

We represent Bodega Ruca Malen S.A. (BRM), an Argentina corporation. It believes that your LA RUCA mark will likely be confused with its RUCA MALEN mark.

BRM owns Reg. No. 3308386 RUCA MALEN for use on "wines" in International Class 33. It is a strong mark because it is fanciful when used in connection with these goods.

You allegedly intend to use your mark on "distilled spirits" in International Class 33. RUCA is the mark's dominant element of this mark because LA is simply the definite article.

Both marks are similar in appearance and sound. They share RUCA. BRM's mark does add the word MALEN. However, it retains the associated meaning of "young girl."

Moreover, the marks are used on closely related goods. Because there is no limitation as to their nature, type, channels of trade, or class of purchasers, the presumption is that the goods move in all normal channels of trade, and are available to all classes of purchasers. Distilled spirits can be made from wine and both goods are sold through liquor stores.

Thus, consumers are likely to believe that your goods are associated with, are affiliated with, are endorsed by, or originate from BRM. In other words, consumers are likely to be confused by your use of LA RUCA.

Because of this likelihood of confusion, co-existence between the marks is not possible. Therefore BRM asks that you withdraw this application and agree to never use this mark or any other similar mark in connection with clothing.

To preserve BRM's rights, we have already requested a 90-day extension of time to oppose. We hope you are amenable to this settlement so that the parties may avoid a costly and

Jacobson Holman PLLC

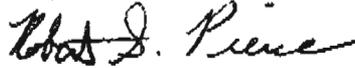
Monty R. Patridge
January 10, 2012
Page 2

time-consuming opposition. Please contact us, and we will prepare the necessary agreement. We request the courtesy of a reply by **January 25, 2012**.

This letter is sent without prejudice to BRM's rights and claims, all of which are expressly reserved.

We thank you for your attention to this matter and look forward to your reply.

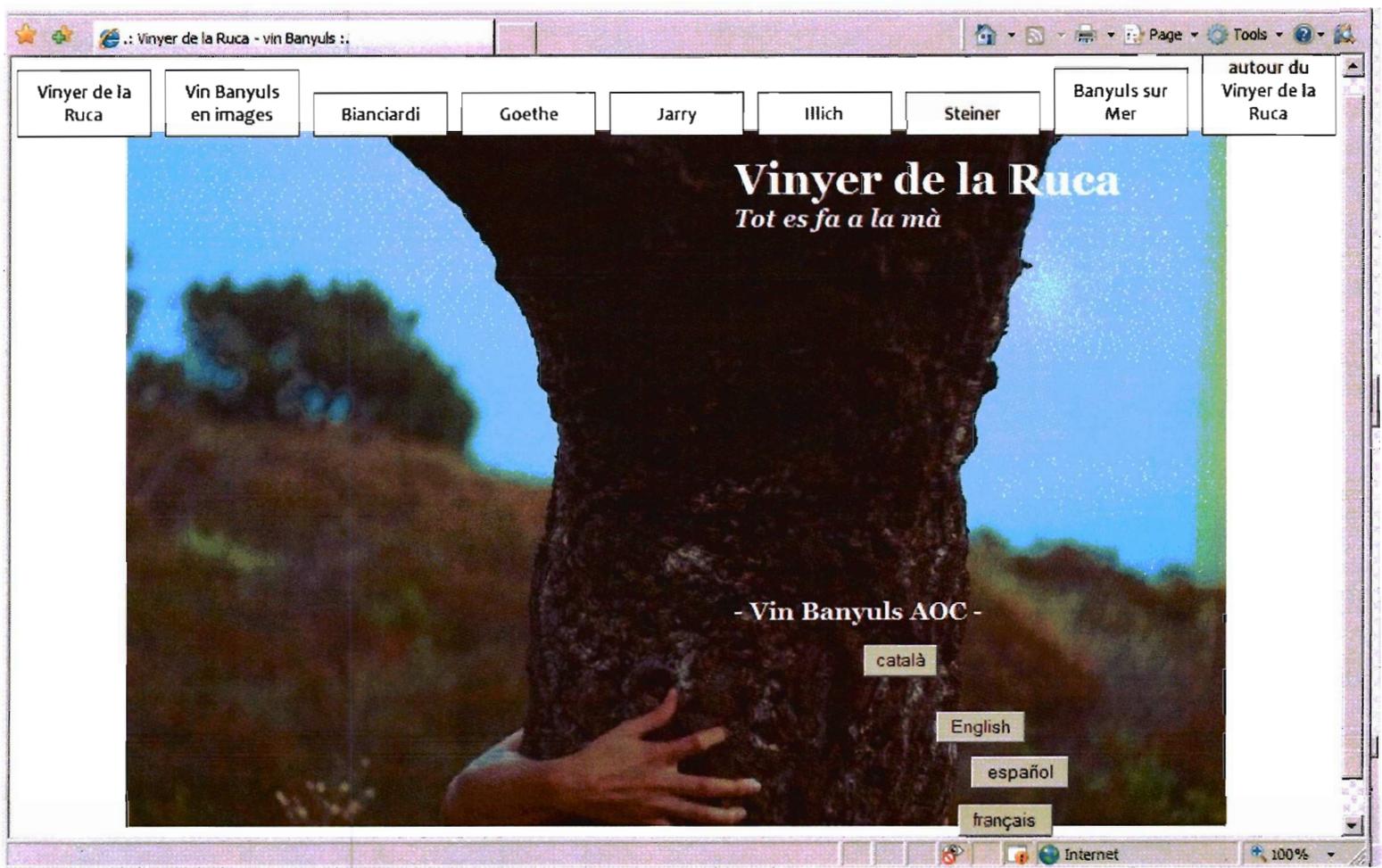
Sincerely,



Robert S. Pierce
JACOBSON HOLMAN PLLC
[\[rpierce@jhip.com\]](mailto:rpierce@jhip.com)

JCH/RSP/

EXHIBIT “D”



Vinyer de la Ruca

Vin Banyuls en images

Bianciardi

Goethe

Jarry

Illich

Steiner

Banyuls sur Mer

autour du Vinyer de la Ruca

Vinyer de la Ruca

Tot es fa a la mà

- Vin Banyuls AOC -

català

English

español

français

Internet

100%

THE VINYER DE LA RUCA

Everything is done by hand.

In the Pyrenees, overlooking the Mediterranean, on rain-starved soil, surrounded by cork oaks, on shale terraces, among walls of dry stone, wind-buffed and sun-soaked. Fifty-year-old *gobelet* of Grenache, priceless as wine, of gold and light.

Produce ex nihilo.

Independence and a love of life inspire the Vinyer de la Ruca. Land subject to nature's law and spiritual energies, integrating convictions, instincts, Bianciardi, Jarry, Goethe, Steiner and Ivan Illich.

The labour is agricultural, primary, almost spontaneous.

Everything is done by hand. Chosen animals share and help.

The means are the ends.

The tools are primitive, manual, convivial, and sources of joy; they require no control - administrative, medical, legal or professional. No product born of artificial chemical synthesis is used. No petrol, no powered machines. Nothing that revolves, slides, engages or accelerates.

The pace is slow.

Apodictic. Serene and festive. Movements are precise. Work follows the seasons, the astronomical calendar and the moon.

Outdoors.

Biodynamic preparations boost the fertility of the soil and plants. Natural quarried sulphur, twice applied manually, protects the fruit. Digging, pruning, hand weeding, harvesting. Everything is done by hand. Sickle, shears, digging bar, hoe, spade, *xadic*.

Indoors.

Grape crushing by ballerinas, destemming by hand, pressing in wood, autochthonous yeasts, one year in a barrel, frequent oxygenation, bottling by pitcher, bottles by a Catalan glassblower, labels by an artist, sun pouch. Everything is done by hand. **No filtration, no clarification, no additions.** One thousand bottles of Banyuls each year.

Convivial agriculture is a way of developing inventiveness, of increasing one's knowledge, of enabling the practice of **creativity** and **independence**.

Banyuls by *Vinyer de la Ruca* serves beauty and transcendence.

VINYER DE LA RUCA - Rue de l'artisanat - 66650 Banyuls sur Mer - France

www.vinyerdelaruca.com

EXHIBIT “E”

[Tequila - Wikipedia, the free encyclopedia](#)

en.wikipedia.org/wiki/Tequila

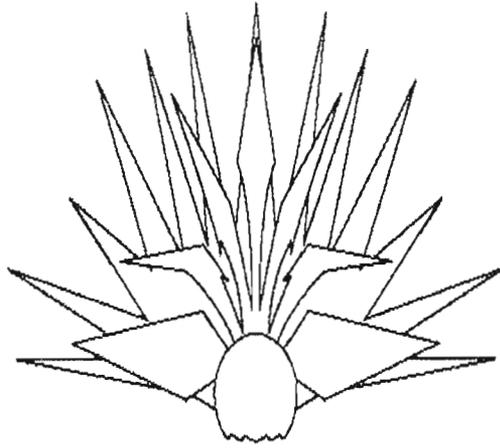
Tequila is most often made at a 38–40% *alcohol content* (76–80 proof), but can be produced between 35–55% *alcohol content* (70–110 proof). T

[What is the Average alcohol content in wine](#)

wiki.answers.com › [Wiki Answers](#) › [Categories](#) › [Home & Garden](#)
12 percent.

Wines can range anywhere from 5% to 15%. It all depends on the amount of sugar that has been fermented into *alcohol*

EXHIBIT “F-1”



La Ruca[®]
TEQUILA PLATA

40% ALC. VOL.

100% DE AGAVE

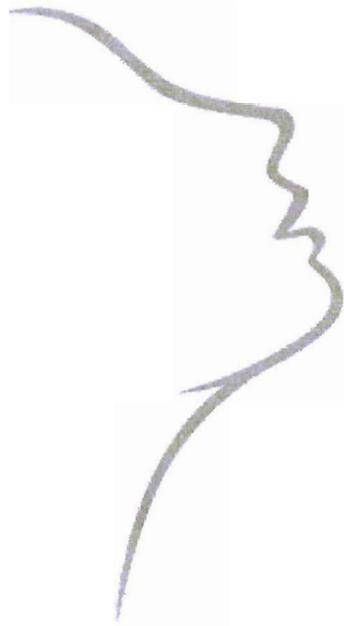
CONT. NET. 750 ML.

80 Proof

Hecho en Mexico

EXHIBIT “F-2”

RUCA
MALEN



CHARDONNAY
RESERVA

MENDOZA, ARGENTINA

EXHIBIT “G”

Consejo Regulatorio Tequila

GENERAL DECLARATION FOR PROTECTION OF THE APPELLATION OF ORIGIN "TEQUILA"

1st.- Protection foreseen by Fifth Chapter of the Law of Inventions and Trademarks into force to the Appellation of Origin "Tequila", to be applied on the alcoholic beverage of that same name.

2nd.- The Appellation of Origin protected by this General Declaration shall be applied only to the alcoholic beverage known with the same name as referred in the "Quality Official Standard for Tequila", as established by the General Direction for Standards of the Secretary of Heritage and Industrial Development.

Characteristics and raw material used for product elaboration and procedure for its manufacturing shall be always the same as determined in said Official Standard.

3rd.- For the purposes of this protection declaration, the entire protected Mexico territory of origin is located within the State of Jalisco: the Municipalities of Abasolo, Ciudad Manuel Doblado Cuernavaca, Huanimaro, Penjamo and Purisima del Rincon; in the State of Guanajuato: the Municipalities of Brisenas de Matamoros, Chavinda, Chilchota, Churintzio, Cotija, Ecuandureo, Jacona, Jiquilpan, Maravatio, Nuevo Parangaricutiro, Numaran, Pajacuaran, Periban, La Piedad, Regules, Los Reyes, Sahuayo, Tancitaro, Tangamandapio, Tangancicuero, Tanhuato, Tingüindin, Tocumbo, Venustiano Carranza, Villamar, Vistahermosa, Yurecuero, Zamora and Zinaparo; into the State of Michoacan: the Municipalities of Ahuacatlan, Amatlan de Canas, Ixtlan, Jala, Jalisco, San Pedro de Lagunillas, Santa Maria del Oro and Tepic, of the State of Nayarit; and the Municipalities of Aldama, Altamira, Antiguo de Morelos, Gomez Farias, Gonzalez, Llera, Mante, Nuevo Morelos, Ocampo, Tula and Xicotencatl of the State of Tamaulipas.

4th.- The Secretary of Heritage and Industrial Development will grant the right to use the Appellation of Origin protected by this General Declaration to any individual or corporation who meets requirements set forth by Article 164 of the Law for Inventions and Trademarks.

5th.- General Declaration terms may be amended as foreseen by Article 161 of the Law for Inventions and Trademarks into force ex – officio or upon interested party request.

6th.- The Secretary of Heritage and Industrial Development, through the Foreign Affairs Secretary, shall arrange the registry of the Appellation of Origin referenced in this General Declaration to get international protection as per agreements in this field.

FIRST TEMPORARY ARTICLE. This General Declaration shall be published by the Federation Official Newspaper and the Bulletin of the Industrial Property.

SECOND TEMPORARY ARTICLE. General Declaration to Appellation of Origin Tequila dated November 22, 1974, as published by the Federation Official Newspaper on December 9, 1974, is hereby overruled.

THIRD TEMPORARY ARTICLE. Authorizations for use granted as per the fourth item of the Declaration hereby amended, shall be in effect under terms of this Declaration if it is not opposite to terms of this amendment.

EXHIBIT “H”

BUREAU RULING — II

Subpart A — ALCOHOL

27 CFR 5.36(e); 27 CFR 19.650

COUNTRY OF ORIGIN STATEMENTS ON DISTILLED SPIRITS LABELS

ATF Ruling 2001-2

The Bureau of Alcohol, Tobacco and Firearms (ATF) has been asked to clarify the requirement to disclose the country of origin on labels of imported distilled spirits. Specifically, ATF has been asked how the requirement to disclose the country of origin applies to products that are comprised of spirits produced in more than one country, including mixtures of foreign and domestic spirits.

Background

Country of Origin Regulations - Distilled Spirits

ATF's distilled spirits labeling regulations in 27 CFR part 5 require that all distilled spirits products sold, shipped or otherwise introduced in interstate commerce must bear labels that contain certain mandatory information. Among other things, the mandatory label information at 27 CFR § 5.32(b)(2) requires that the "country of origin" for imported spirits be shown on the brand label or on a back label, in accordance with §5.36. The regulation at 27 CFR 5.36(e) states as follows:

(e) *Country of Origin.* On labels of imported distilled spirits there shall be stated the country of origin in substantially the following form "Product of _____", the blank to be filled in with the name of the country of origin.

The same regulatory language is found at 27 CFR 19.650 and there is a requirement for a country of origin statement on bottles of spirits for domestic use that are exempt from label approval (27 CFR 19.642).

Inquiries - Blending of Imported and Domestic Distilled Spirits

Members of the public and industry have asked ATF about the blending of imported and domestic distilled spirits. They asked how section 5.36(e) applies, and if the use of imported distilled spirits in such products must be disclosed on the label. ATF determined that when the country of origin regulation in Part 5 was originally written, the agency did not contemplate that bottlers would blend imported and domestic spirits. As written, the regulations assume that imported spirits would be bottled using 100% imported spirits.

Section 5.36(e) as it exists in its current form was promulgated in 1959 by Treasury Decision 6410, 1959-2 C.B. 632. A Technical Memorandum issued at the time of the regulation's issuance indicates that § 5.36(e) was intended to apply to distilled spirits products bottled after importation in bulk. Prior to the issuance of Treasury Decision 6410, the country of origin of imported distilled spirits statement was required on labels only in the case of distilled spirits imported in bottles for the purpose of compliance with Customs regulations. Nothing in the rulemaking record directly discusses the situation where imported and domestic spirits are blended together.

Basis in Law

All goods imported into the United States are subject to a determination as to their country of origin. The origin of merchandise imported into the customs territory of the United States (the fifty states, the District of Columbia and Puerto Rico) is important for several reasons. The origin can affect the rate of duty, entitlement for special programs, admissibility, quota, anti-dumping, or countervailing duties, procurement by government agencies and marking requirements.

The United States Customs Service has primary responsibility for the administration and enforcement of the rules of origin for imported merchandise. These rules of origin are based on several laws enforced by Customs including: Section 304 of the Tariff Act of 1930 (19 U.S.C. 1304), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), and certain other trade preference programs.

U.S. Customs Rules of Origin

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), generally provides that every article of foreign origin imported into the United States shall be marked to indicate to the ultimate purchaser in the United States the country of origin of the article. Generally, the country of origin of a good is the country in which the good is wholly manufactured, produced or grown. Further work or material added to an article in another country must effect a "substantial transformation" to render such other country the country of origin. See 19 CFR 134.1, definition of country of origin. A product that is not substantially transformed must be marked with all countries where further work or material is added. There are two methods of determining substantial transformation for marking purposes.

The first method is used to determine the country of origin for products from all countries, except Canada and Mexico. It is based on a case-by-case approach employing the "substantial transformation" criterion when further work or material is added in another country. The substantial transformation criterion is based on whether the article undergoes a change in name, character, and use into a new or different article of commerce (i.e., the country of origin is the last country where the article is substantially transformed). Customs regulations that implement this method are found in 19 CFR Part 134.

The second method is based on Annex 311 of the North American Free Trade Agreement (NAFTA). Annex 311 of the agreement requires that the parties to the NAFTA (United States, Canada and Mexico) establish rules for determining the country

of origin of a good originating from a NAFTA country. In response to this requirement, U.S. Customs developed a set of country of origin rules for parties to NAFTA. This method codifies the substantial transformation criterion by imposing a tariff-shift approach under the Harmonized Tariff Schedule of the United States. Generally, under this approach, an article imported from Canada or Mexico under a certain tariff classification that is further processed in the United States and “shifts” to a different tariff classification may be substantially transformed into a product of the United States. An imported product of Canada or Mexico that is further processed in the United States and that does not “shift” tariff classification is not substantially transformed. Thus, this product is marked as originating from Canada or Mexico and the United States. Customs regulations that implement this method are found in 19 CFR Part 102, Rules of Origin. See also T.D. 96-48, 61 FR 28955, June 6, 1996, Customs regulations implementing both approaches.

In addition to its regulations, Customs also issues interpretive rulings relating to country of origin determinations. For example, in 1989 Customs issued a Headquarters Ruling Letter (732260) that dealt with the mixing of foreign whiskies.

Decision to Issue a Ruling

Based on the above, the United States Customs Service has primary responsibility for the administration and enforcement of the rules of origin for imported merchandise. Further, the rules administered and enforced by Customs are intended to encompass all articles imported into the United States. Therefore, we have concluded that ATF country of origin requirements under 5.36(e) for imported distilled spirits will be interpreted in a manner consistent with Customs’ rules of origin. Issuance of separate ATF regulations might lead to inconsistencies between Customs and ATF rules and result in confusion for the industries affected by those rules.

Accordingly, ATF is holding through this ruling that the requirement under 5.36(e) applies to all imported distilled spirits. For an imported distilled spirit that is wholly the product of a single country, the country of origin will be stated in substantially the following form, “Product of _____.” We hold “substantially the following form” to mean that the distilled spirits may, in the alternative, be labeled in conformity with Customs country of origin marking requirements. For a product composed of spirits produced in more than one country, including mixtures of foreign and domestic spirits, we hold “substantially the following form” to mean that the country of origin will be determined and marked in accordance with U.S. Customs’ regulations in 19 CFR.

Industry members may seek a ruling from Customs for a determination of the country of origin for their product by writing to:

Office of Regulations and Rulings
U.S. Customs Service
1300 Pennsylvania Ave., N.W.
Washington, D.C. 20229

This ruling recognizes the primary role that Customs plays in country of origin determinations and interprets the 5.36(e) requirement in a manner consistent with Customs' requirements.

Implementation of Ruling 2001-2

ATF recognizes that immediate compliance with this ruling could cause severe hardship for proprietors who have a stockpile of previously approved labels which lack the required "country of origin" statements discussed in this ruling. In view of this fact, the effective date for compliance with this ruling is January 1, 2002.

Held: The requirement under 5.36(e) applies to all imported distilled spirits. For an imported distilled spirit that is wholly the product of a single country, the country of origin will be stated in substantially the following form, "Product of _____." We hold "substantially the following form" to mean that the distilled spirits may, in the alternative, be labeled in conformity with Customs country of origin marking requirements. For a product composed of spirits produced in more than one country, including mixtures of foreign and domestic spirits, we hold "substantially the following form" to mean that the country of origin will be determined and marked in accordance with U.S. Customs' regulations in 19 CFR.

Date signed: March 14, 2001

SERVICE LIST

In the Matter of:

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John Clarke Holman
and Robert S. Pierce
Jacobson Holman PLLC
400 7th St., NW
Suite 600
Washington, DC 20004-2218