



Chief, Regulations Division
Bureau of Alcohol, Tobacco and Firearms
PO Box 50221
Washington, DC 20091-0221

TC
9/9/02

WAT 9/9/02

January 13, 1999

re: Notice number 947 – Establishment of Oak Knoll District Viticultural Area (2002R-046P)

Dear Madam or Sir:

I am writing on behalf of Jonathan and Deborah Goldman. The Goldman's own a twenty acre parcel near Luna Vineyards. Their property falls just outside the proposed boundary for the Oak Knoll District and they are interested in being included in the official designation of the viticultural area.

Luna Vineyards lies within the proposed boundary, on the west side of the Silverado Trail. Our winery is just north of the Goldman property – perhaps a half mile away. At the winery we grow 39 acres of Pinot Grigio. As growers along the proposed boundary we know of no consistent climatic, soil related or cultural differences from one side of the road to the other.

As a result, the proposed boundary is in my view artificial; it appears to be placed out of convenience. It would be more true to the agriculture of our neighborhood to extend the boundary in question eastward to the point where the valley floor begins to rise, forming the foothills at the eastern edge of the valley.

Regards,

MaryAnn Tsai
President

#5



November 25, 2002

Chief, Regulations Division
Bureau of Alcohol, Tobacco & Firearms
P.O. Box 50221
Washington, D.C. 20091-0221


RC

Re: Notice Number 947 - Oak Knoll District Viticultural Area

Dear Madam or Sir:

This is a follow up to my January 13, 2002 letter to you concerning the Oak Knoll District viticultural area. On behalf of Jonathan and Deborah Goldman and Luna Vineyards, I hereby withdraw my opposition to the proposed boundaries and support the viticultural area as proposed in Notice No. 947.

Best regards,


MaryAnn Tsai
President

*CC: Jim Verhey
UCC Vineyard Grp*



WWT
9/10/02

August 26, 2002

Chief, Regulations Division
Bureau of Alcohol, Tobacco & Firearms
P.O. Box 50221
Washington, DC 20091-0221

RE: Notice No. 947: Establishment of Oak Knoll District Viticultural Area (2002R-046P)

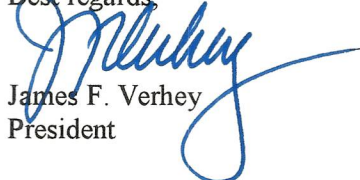
Gentlemen:

I am writing to you on behalf of UCC Vineyards Group, of which I am President, and Jonathon and Deborah Goldman, the owners of a 20 acre parcel on the east side of Silverado Trail (APN 039-190-034), 13 acres of which UCC Vineyards Group ("UCCVG") leases and operates as its Milliken Vineyards (see attached map). UCCVG has owned and operated vineyards in the Napa Valley since 1982 and currently operates vineyards on 8 separate properties comprising nearly 200 acres, all of which are on the valley floor. Three of these vineyards, comprising over 100 acres, are within the proposed Oak Knoll District Area and produce ultra-premium Merlot, Chardonnay, Pinot Grigio, Sauvignon Blanc and Cabernet Sauvignon grapes for Napa-based wineries. At least one of these wineries is located within the proposed Oak Knoll District.

Our 12 acre Milliken Vineyard was leased from the Goldmans in 1999 and planted to 10 acres of Chardonnay (contracted to Stags Leap Wine Cellars) and 2 acres of Pinot Noir (contracted to Judd's Hill Winery). The vineyard borders the Silverado Trail, on the east side, just outside the proposed border of the Oak Knoll District. The soils are primarily Bale Loam which are similar to the soils found throughout the proposed Oak Knoll District, including those right across Silverado Trail. There are no geological or climactic difference between our Milliken Vineyard on the east side of Silverado Trail and the adjacent parcels on the west side of Silverado Trail. Obviously, it is convenient to use Silverado Trail as the eastern boundary of the Oak Knoll District Area because it traverses the valley floor from south to north. But in doing so, it excludes vineyards that produce grapes of the same varieties and the same quality levels from the same soils and the same climate. In proposing the new Oak Knoll District, it seems that consistency of soils, climate, varieties and quality should overrule the simplicity of drawing boundaries that are easy to define, but illogical.

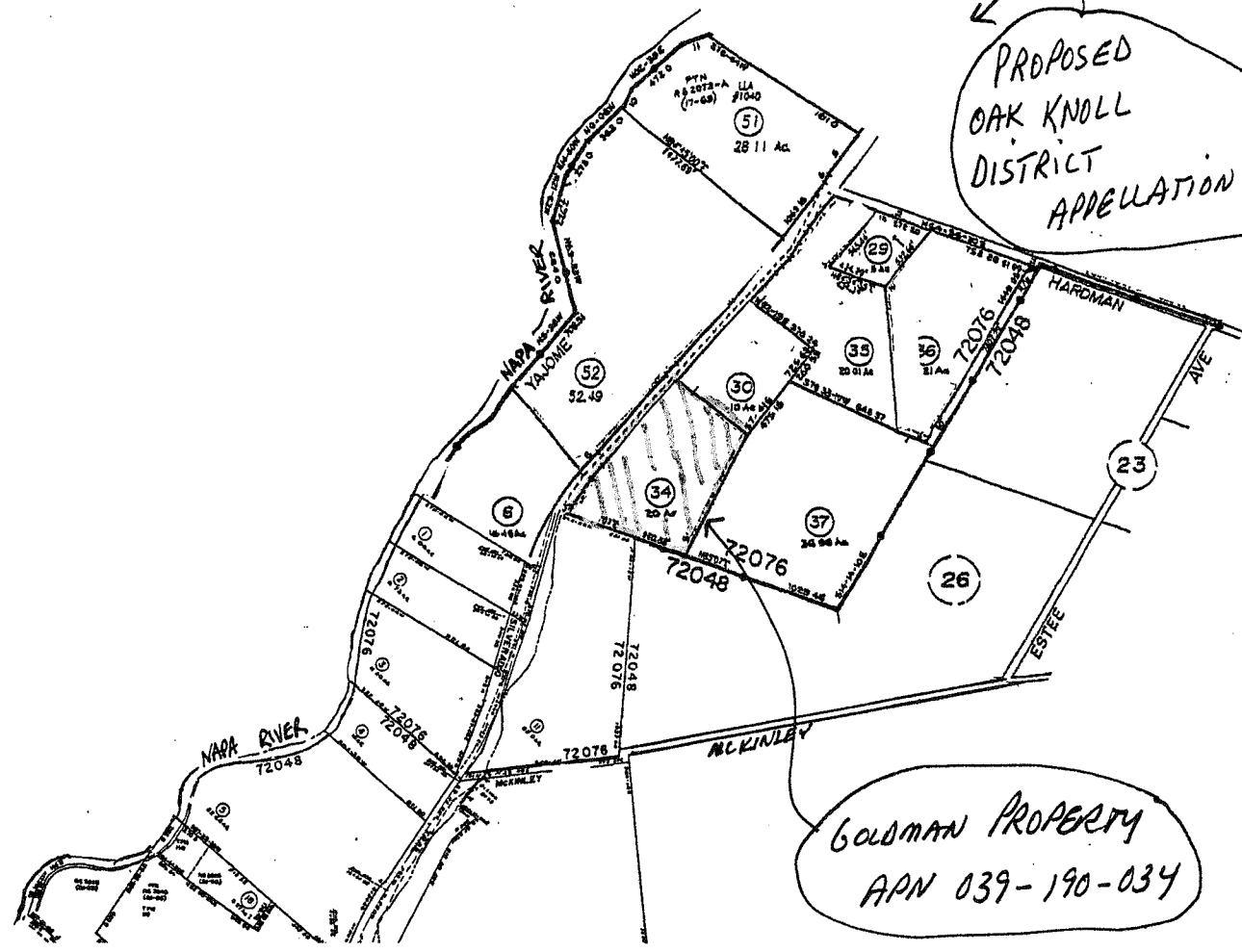
In conclusion, there are no climatic or soil differences which can be distinguished by Silverado Trail. To the contrary, the changes in climate and soils are imperceptible until the eastern foothills of the valley start to rise out of the valley floor. Consequently, we ask that you redraw the eastern boundary to include our Milliken Vineyard and all other properties that reflect the same soil, climatic, varietal and quality characteristics of the proposed Oak Knoll District Viticultural Area.

Best regards,


James F. Verhey
President



PROPOSED
OAK KNOLL
DISTRICT
APPELLATION BOUNDARY



GOLDMAN PROPERTY
APN 039-190-034



November 25, 2002

10

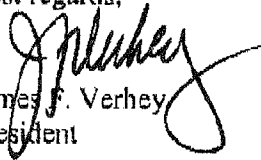
Chief, Regulations Division
Bureau of Alcohol, Tobacco & Firearms
P.O. Box 50221
Washington, D.C. 20091-0221

Re: Notice Number 947 - Oak Knoll District Viticultural Area

Dear Madam or Sir:

I am President of UCC Vineyards Group. Having conferred with the petitioners and their experts concerning the proposed Oak Knoll District viticultural area boundaries, I withdraw my opposition to the AVA and support the area as proposed in Notice No. 947.

Best regards,


James F. Verhey
President



MARKETERS OF FINE WINES
Est. 1975

August 30, 2002

Chief, Regulations Division
Bureau of Alcohol, Tobacco, & Firearms
P.O. Box 50221
Washington, D.C. 20091-0221

RC
9/10/02

WHT
9/12/02

ATTENTION: Notice # 947

Dear sir or ma'am:

Our firm, the San Francisco Wine Exchange, has been the national marketing and sales agent for **Oak Knoll Winery** of Hillsboro, Oregon since early 2001.

It has come to our attention that a hearing will be held soon by the BATF concerning a petition to name an area in Napa valley as a new AVA entitled Oak Knoll. Prior to this hearing, we understand that you will be accepting public commentary.

We would like to make the following comments for the record:

- Oak Knoll Winery was founded in 1970 and is the 5th oldest family-owned winery in Oregon
- Oak Knoll wines have been marketed and sold for many years both nationally and internationally as an Oregon winery brand.
- Oak Knoll is a trademarked brand
- Oak Knoll is perceived by the consumer as an Oregon wine brand, not as a geographical region. To create a new Napa Valley, California AVA with the same name would certainly invite consumer confusion, both in the retail sector and when selecting a wine from restaurant wine lists.
- A new AVA would certainly negatively impact our ability to properly and effectively market the Oak Knoll brand as an Oregon winery.

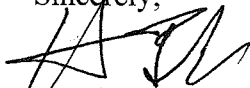
I do not understand the motives or rationale of the proponents of this AVA. Certainly Spring Mountain and Stag's Leap are well-documented AVA's with true historical and viticultural data to support their designation within the Napa Valley. In 30 years of selling Napa wines, I certainly have never heard of the "Oak Knoll" district in Napa

442 Tehama Street, San Francisco, California 94103
phone (415) 546-0484 Fax (415) 243-0636 • www.sfwe.com

Valley. On the other hand, when I hear the name Oak Knoll, it immediately connotes the Oregon Winery, even prior to our company's recent association with the brand.

I would urge you to consider all of these valid points as just a few of the reasons to deny the proposed Oak Knoll-Napa Valley AVA.

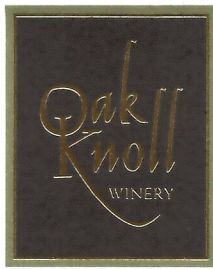
Sincerely,



Hugh Thacher
President



James E. Faber
Vice President



#4

WKA
9/12/02

NOTICE OF OPPOSITION TO ESTABLISHMENT OF THE OAK KNOLL DISTRICT
VITICULTURAL AREA
(RESPONSE AND COMMENT ON BATF NOTICE # 947)

Sirs:

On behalf of the founders, the owners, and the entire staff of Oak Knoll Winery (located in the Willamette Valley of Oregon), we wish to express our strongest outrage and opposition to the application of several California wineries to create an "Oak Knoll District" in the Napa Valley. We request that the Bureau of Alcohol, Tobacco and Firearms deny this application. The petition is a totally unjustified theft of--and infringement upon--our brand name and our reputation in wine commerce. Our opposition is based on major issues and precedents involving areas of law, commerce and common sense, including:

1. Clear violation of our established trademark, and dilution of the Oak Knoll trademark as defined by the laws and the Federal Courts of the United States.
2. Long-term abandonment of the use of the name Oak Knoll by any Napa Valley wineries or vineyards, along with total lack of any wine trade use of the term for substantial periods of time by anyone in California.
3. Creation of significant consumer confusion and deception by allowing the use of the term "Oak Knoll District" in California. The express purpose of the labeling and viticultural regulations is to aid consumer knowledge—not promote confusion and deception.
4. Violation of common law equity and fairness by allowing businesses in one wine region in California to capitalize on the years of work—and expense—spent by the founders of Oak Knoll Winery in Oregon. Oak Knoll Winery has established a valuable reputation and good will in the name Oak Knoll amongst consumers. The Oak Knoll Winery name is firmly established--by over 30 years of work--throughout the wine trade and in worldwide commerce.

Oak Knoll Winery received its BATF basic winery permit on May 28, 1970 and has been producing and marketing wine under the brand name "Oak Knoll" since 1971. In 1975 Oak Knoll Winery applied for and was granted a U.S. Registered Trademark (# 1,028,865) for the brand name "Oak Knoll" pertaining to wine.

Oak Knoll Winery has spent years and great effort to promote their brand. This has resulted in the public totally associating the name “Oak Knoll” with Oregon—not California—wine. Oak Knoll wines are distributed in most states in the United States and are exported to Canada, the Caribbean, Great Britain, the European continent and parts of Asia. In an effort to even further expand distribution, Oak Knoll Winery hired the long-established San Francisco Wine Exchange to help increase sales and marketing throughout the United States.

Since 1970, Oak Knoll Winery has been the only wine producer in the United States to legally—and continuously—promote both the trademarked name “Oak Knoll” and term “Oak Knoll” to consumers and the wine trade. Oak Knoll Winery has absolutely no connections with the Napa Valley or wine producers and vineyards located in that region—except that we are competitors in the American and world wine trade.

In the 1980’s, Pine Ridge tried using the designation “Oak Knoll Cuvee” on one of their wines. When Oak Knoll sent Pine Ridge a cease and desist request, Pine Ridge responded with a lawsuit challenging Oak Knoll’s trademark and rights to control the name “Oak Knoll” in the wine business. In Federal District Court in San Francisco, Judge Peckham ruled (in 1985) that the use of the term “Oak Knoll Cuvee” by Pine Ridge was indeed a violation of Oak Knoll Winery’s trademark. Pine Ridge argued that their use was strictly geographical, denoting where the grapes were grown. The judge ruled that any use of the name—geographic or otherwise—would cause dilution of the brand name or a likelihood of confusion among consumers purchasing a wine with the name “Oak Knoll” used for different descriptive purposes.

While historians can establish that before prohibition there were Napa references to an Oak Knoll (such as a street name), the only winery to legally use that term in over three decades is our operation in the northern Willamette Valley of Oregon. In Oregon, the name Oak Knoll has a long history at our location. The Oak Knoll Winery is housed in an old dairy building (what used to be termed a milking parlor). The last operating dairy at this location was named after the owners: “Burkhalter Dairy.” However, it is our understanding that previous dairy operations on this site—dating back to the early 1900’s--were named “Oak Knoll Dairy.” The local use of the name derives from a hillside of oak trees still standing directly across from the main entrance to Oak Knoll Winery.

The Napa Valley wine trade long ago abandoned the use of the term Oak Knoll in connection with vineyards. I (Thomas Burton) was hired in May 2002 as the new General Manger of Oak Knoll Winery. I have been in the wine trade nearly all of my adult life. I spent over a decade (from 1980 into the 1990’s) working directly with the owners and winemakers of dozens of Napa Valley wineries. I obtained the rights to exclusively distribute their wines in the Midwest (mainly the Minnesota market) and do whatever possible to help market dozens of brand new wineries that were often totally unknown outside of Napa.

I was one of the first retailers in the nation to offer (many times from their very first vintages) such wines as Grgich-Hills, La Jota, Whitehall Lane, Markham, Tudal, Etude, Storybook Mountain, ZD (after they relocated to the Silverado Trail), Rutherford Vintners, Napa Cellars, Pope Valley Winery, Napa Vintners, Robert Pecota, Randy Dunn and more. I spent on average at least one month per year visiting these and other wineries to stay informed about all the then-exciting developments in the Napa and Sonoma wine trade. I also met frequently with the founders of larger Napa producers, ranging from the Wagner family at Caymus to the Trefethens (and was often consulted about wine distribution in the Midwest).

I can honestly state that in all the years I've worked in the wine business--and in all that time I spent working directly with Napa vintners and vineyard owners--I don't recall anyone ever in the Napa region referring to an "Oak Knoll" district (or making any reference to the name Oak Knoll other than the Pine Ridge "Oak Knoll Cuvee" description referenced above). The only modern day famous name using "oak" in the Napa Valley to refer to a place or district is Oakville.

Vintners after prohibition described the locations of their vineyards by reference to the nearest town (much like the wine names used in the Burgundy region of France). Thus, winery founders such as Bruce Markham and Charlie Wagner might refer to their "Rutherford" vineyard; or their "Calistoga" vineyard; or their vineyard near "Yountville." But I don't recall anyone during my extensive wine business trips in Napa prior to 1995—even the Trefethens—referring to an "Oak Knoll" area. The only name that appeared between Napa and Yountville was Eshcol, which the Trefethen's promoted on their wine labels.

In searching through an extensive library of wine books published between the 1970's and 2000, I also failed to find any references to the name "Oak Knoll" other than discussing Oak Knoll Winery in Oregon. I could not find one word mentioning an Oak Knoll Napa in any of the most popular wine reference books of a thirty-year span. I searched numerous updated editions, including:

Hugh Johnson's and Jancis Robinson's *The World Atlas of Wine*
Hugh Johnson's *Modern Encyclopedia of Wine*
Alexis Lichine's *Encyclopedia of Wines and Spirits*
Frank Schoonmaker's *Encyclopedia of Wine*
The New Sotheby's Wine Encyclopedia by Tom Stevenson
The Oxford Companion to the Wines of North America, edited by Bruce Cass
Wine Spectator's California Wine by James Laube
Exploring Wine: The Culinary Institute of America's Complete Guide to the Wines of the World by Steven Kolpan, Brian Smith and Michael Weiss

The best selling history of American wineries since it was first published in 1973 (and updated numerous times) is *The Wines of America* by Leon Adams, founder of the Wine Institute. Again, I did not find any reference to a Napa "Oak Knoll" in this well-known book—only Oak Knoll Winery of Oregon was mentioned.

Neither the wine trade nor the wine buying public has referred to an Oak Knoll District in the Napa Valley for decades. In both trademark and common law, if you do not use a name you lose the rights to that name. The trademark office found no California use of the name "Oak Knoll" when they granted our Oregon winery that trademark in 1975. From 1975 to 1995, the only Napa business to use anything near the name "Oak Knoll" was Pine Ridge and they were found by the Federal Courts to be in violation of Oak Knoll Winery's trademark. Only since 1995--when a handful of Napa vineyards settled on trying to establish a new AVA and selected the name "Oak Knoll"--has anyone in the wine trade mentioned that name in connection with Napa rather than Oregon. Such references have been self-generated by interviews with the Napa vintners who are a petitioning to appropriate the Oak Knoll name. Their use of the term is totally self-serving: an Oak Knoll district in the Napa Valley is entirely unknown to the public and has not been adopted by the wine trade. It has only appeared in articles based on interviews with these people.

Oak Knoll Winery legally trademarked that name in 1975 and has since done everything legally possible to protect that trademarked name. We've established the only reputation within the wine trade (and amongst consumers) in connection with the name Oak Knoll; and we market the only wines with the words "Oak Knoll" appearing anywhere on a wine label in the United States! Oak Knoll Winery is the only business in the wine trade that obtained the legal rights to use that name; Oak Knoll Winery is the only vineyard in the United States to continuously market wines with that name for over the last 32 years; and Oak Knoll Winery is the only business in the wine trade to create a meaning and reputation for the name "Oak Knoll" amongst the public.

Since our wines are the only wines in the channels of wine commerce bearing the term "Oak Knoll," any California claims to that name should be long defunct. Even if the name was used in California before prohibition, such an old, unused precedent is irrelevant, as it has no meaning to consumers in today's marketplace. All consumer recognition of the Oak Knoll name--both nationally and internationally--comes from the Oregon winery, and not from the Napa Valley!

We also oppose the use of the term "Oak Knoll" on anyone else's labels because the overall commercial impression is too similar to "Oak Knoll Winery." A major portion of total wine sales in today's market is in restaurants (on-premise accounts). Currently, when Oak Knoll Pinot Noir appears on a restaurant wine list anywhere in the United States, the public knows they are getting an Oregon Pinot Noir from Oak Knoll Winery. If the BATF allows an "Oak Knoll District" to be created in Napa, it is likely that the only information that will appear on a restaurant wine list is, for example, "So & So's Oak Knoll Pinot Noir." Restaurant wine lists virtually never include all the words that appear on a label; it is common practice to drop the word "District" from any name that appears on a wine list.

Restaurants also frequently combine Oregon and California wines as a category and list them side-by-side. This increases the likelihood of consumer confusion if the BATF allows our competitors to use the name "Oak Knoll" in any way.

As we market many of the same varietal types of wine that are produced in this region of the Napa Valley, we fear many wines will confusingly include the name "Oak Knoll" and therefore consumers will have a hard time distinguishing our Oregon wines from those of our California competitors. This confusion will apply to retail newsletters and catalogs; wine articles; internet sites; anywhere our wines and those of California might be listed. As a result, the public will get "So & So's" California Oak Knoll Pinot Noir when they believed they had ordered an Oak Knoll Oregon Pinot Noir. Thus "So & So" will get to benefit from—and cause damage to—our reputation at the same time! The likelihood of consumer confusion is immense.

Worse for us, most California Pinot Noirs are inferior to what we can produce here in Oregon and therefore our market reputation will be injured by the public's misunderstanding that "So & So's" Pinot Noir had anything to do with us. We don't want any connection to—or confusion with—Napa Pinot Noirs (or Chardonnays, or Rieslings, or Pinot Gris), and we do not want the public mistaking Napa wines for ours!

There is no possible justification for allowing a group of Napa Valley wineries to cause irreparable harm to an Oregon winery that has done everything legally possible to acquire, protect and build a reputation with its legally trademarked brand name.

The general public—even the most informed wine consumers—does not associate the name "Oak Knoll" with the Napa Valley. Neither the wine press—nor the wine trade—associates the name "Oak Knoll" with the Napa Valley.

Let these Napa vineyards call themselves anything but Oak Knoll! Certainly there must be another name these wineries could use. Why punish Oak Knoll because these Napa wineries didn't want to be part of the Yountville District? Why cause Oak Knoll irreparable harm because these wineries don't want to use Eshcol or some other appropriate historical name?

They hired a historian; filed a petition; and mentioned a proposed "Oak Knoll District" in a couple of interviews. We've trademarked our name; defended our legal rights; and spent over 30 years establishing a reputation for Oak Knoll amongst the public and the wine trade. Our reputation, promotion and investment in the name "Oak Knoll" is worldwide—not a long-forgotten local reference. It is a great injustice if you allow them to steal the use of our name and irreparably damage the over 30 years of effort we've put into establishing our name and reputation. The name "Oak Knoll" is only known by the public through our efforts based here in Oregon; it is not associated with the Napa Valley.

If the BATF mistakenly allows this group of wineries to steal our name, at the very least require them to use the phrase "Oak Knoll District of the Napa Valley" on all their labels! This will at least slightly help differentiate their California wines from our Oregon wine on the retail shelf. However, this would still cause great confusion to the public; damage to our reputation; and forever hinder our marketing in restaurants, etc.

Unlike Oregon, California has a history of “borrowing” famous wine names from other regions throughout the world whenever they think it is to their advantage in promoting California wines. Thus we have California burgundy; California chablis; California champagne; and most recently, California pinot grigio (all terms allowed and freely abused in California, but prohibited by law in Oregon). We thought the basis and reason for the existence of the AVA program is to help inform the public—not ferment the likelihood of confusion. Granting California vineyards the use of a name that has not been used in California for over 30 years will do great damage to the only winery that has promoted, marketed and established a reputation for the name Oak Knoll since 1970: Oak Knoll Winery of Oregon. Please do not grant this petition: do not allow a group of California wineries to tread (and trade) on our name, Oak Knoll!

Sincerely,



Thomas Burton
General Manager



Ronald Vuylsteke
Founder and Winemaker



Marjorie Vuylsteke
Founder

NOTICE OF OPPOSITION TO ESTABLISHMENT OF THE OAK KNOLL DISTRICT
VITICULTURAL AREA
(RESPONSE AND COMMENT ON BATF NOTICE # 947)

Sirs:

On behalf of the founders, the owners, and the entire staff of Oak Knoll Winery (located in the Willamette Valley of Oregon), we wish to express our strongest outrage and opposition to the application of several California wineries to create an "Oak Knoll District" in the Napa Valley. We request that the Bureau of Alcohol, Tobacco and Firearms deny this application. The petition is a totally unjustified theft of--and infringement upon--our brand name and our reputation in wine commerce. Our opposition is based on major issues and precedents involving areas of law, commerce and common sense, including:

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Hugh Johnson's and Jancis Robinson's *The World Atlas of Wine*

Hugh Johnson's *Modern Encyclopedia of Wine*

Alexis Lichine's *Encyclopedia of Wines and Spirits*

Frank Schoonmaker's *Encyclopedia of Wine*

The New Sotheby's Wine Encyclopedia by Tom Stevenson

The Oxford Companion to the Wines of North America, edited by Bruce Cass

Wine Spectator's California Wine by James Laube

Exploring Wine: The Culinary Institute of America's Complete Guide to the Wines of the World by Steven Kolpan, Brian Smith and Michael Weiss

The best selling history of American wineries since it was first published in 1973 (and updated numerous times) is *The Wines of America* by Leon Adams, founder of the Wine Institute. Again, I did not find any reference to a Napa "Oak Knoll" in this well-known book—only Oak Knoll Winery of Oregon was mentioned.

Neither the wine trade nor the wine buying public has referred to an Oak Knoll District in the Napa Valley for decades. In both trademark and common law, if you do not use a name you lose the rights to that name. The trademark office found no California use of the name “Oak Knoll” when they granted our Oregon winery that trademark in 1975. From 1975 to 1995, the only Napa business to use anything near the name “Oak Knoll” was Pine Ridge and they were found by the Federal Courts to be in violation of Oak Knoll Winery’s trademark. Only since 1995--when a handful of Napa vineyards settled on trying to establish a new AVA and selected the name “Oak Knoll”--has anyone in the wine trade mentioned that name in connection with Napa rather than Oregon. Such references have been self-generated by interviews with the Napa vintners who are petitioning to appropriate the Oak Knoll name. Their use of the term is totally self-serving: an Oak Knoll district in the Napa Valley is entirely unknown to the public and has not been adopted by the wine trade. It has only appeared in articles based on interviews with these people.

Oak Knoll Winery legally trademarked that name in 1975 and has since done everything legally possible to protect that trademarked name. We’ve established the only reputation within the wine trade (and amongst consumers) in connection with the name Oak Knoll; and we market the only wines with the words “Oak Knoll” appearing anywhere on a wine label in the United States! Oak Knoll Winery is the only business in the wine trade that obtained the legal rights to use that name; Oak Knoll Winery is the only vineyard in the United States to continuously market wines with that name for over the last 32 years; and Oak Knoll Winery is the only business in the wine trade to create a meaning and reputation for the name “Oak Knoll” amongst the public.

Since our wines are the only wines in the channels of wine commerce bearing the term “Oak Knoll,” any California claims to that name should be long defunct. Even if the name was used in California before prohibition, such an old, unused precedent is irrelevant, as it has no meaning to consumers in today’s marketplace. All consumer recognition of the Oak Knoll name—both nationally and internationally--comes from the Oregon winery, and not from the Napa Valley!

We also oppose the use of the term “Oak Knoll” on anyone else’s labels because the overall commercial impression is too similar to “Oak Knoll Winery.” A major portion of total wine sales in today’s market is in restaurants (on-premise accounts). Currently, when Oak Knoll Pinot Noir appears on a restaurant wine list anywhere in the United States, the public knows they are getting an Oregon Pinot Noir from Oak Knoll Winery. If the BATF allows an “Oak Knoll District” to be created in Napa, it is likely that the only information that will appear on a restaurant wine list is, for example, “So & So’s Oak Knoll Pinot Noir.” Restaurant wine lists virtually never include all the words that appear on a label; it is common practice to drop the word “District” from any name that appears on a wine list.

Restaurants also frequently combine Oregon and California wines as a category and list them side-by-side. This increases the likelihood of consumer confusion if the BATF allows our competitors to use the name “Oak Knoll” in any way.

As we market many of the same varietal types of wine that are produced in this region of the Napa Valley, we fear many wines will confusingly include the name “Oak Knoll” and therefore consumers will have a hard time distinguishing our Oregon wines from those of our California competitors. This confusion will apply to retail newsletters and catalogs; wine articles; internet sites; anywhere our wines and those of California might be listed. As a result, the public will get “So & So’s” California Oak Knoll Pinot Noir when they believed they had ordered an Oak Knoll Oregon Pinot Noir. Thus “So & So” will get to benefit from—and cause damage to—our reputation at the same time! The likelihood of consumer confusion is immense.

Worse for us, most California Pinot Noirs are inferior to what we can produce here in Oregon and therefore our market reputation will be injured by the public’s misunderstanding that “So & So’s” Pinot Noir had anything to do with us. We don’t want any connection to—or confusion with—Napa Pinot Noirs (or Chardonnays, or Rieslings, or Pinot Gris), and we do not want the public mistaking Napa wines for ours!

There is no possible justification for allowing a group of Napa Valley wineries to cause irreparable harm to an Oregon winery that has done everything legally possible to acquire, protect and build a reputation with its legally trademarked brand name.

The general public—even the most informed wine consumers—does not associate the name “Oak Knoll” with the Napa Valley. Neither the wine press—nor the wine trade—associates the name “Oak Knoll” with the Napa Valley.

Let these Napa vineyards call themselves anything but Oak Knoll! Certainly there must be another name these wineries could use. Why punish Oak Knoll because these Napa wineries didn’t want to be part of the Yountville District? Why cause Oak Knoll irreparable harm because these wineries don’t want to use Eshcol or some other appropriate historical name?

They hired a historian; filed a petition; and mentioned a proposed “Oak Knoll District” in a couple of interviews. We’ve trademarked our name; defended our legal rights; and spent over 30 years establishing a reputation for Oak Knoll amongst the public and the wine trade. Our reputation, promotion and investment in the name “Oak Knoll” is worldwide—not a long-forgotten local reference. It is a great injustice if you allow them to steal the use of our name and irreparably damage the over 30 years of effort we’ve put into establishing our name and reputation. The name “Oak Knoll” is only known by the public through our efforts based here in Oregon; it is not associated with the Napa Valley.

If the BATF mistakenly allows this group of wineries to steal our name, at the very least require them to use the phrase “Oak Knoll District of the Napa Valley” on all their labels! This will at least slightly help differentiate their California wines from our Oregon wine on the retail shelf. However, this would still cause great confusion to the public; damage to our reputation; and forever hinder our marketing in restaurants, etc.

Unlike Oregon, California has a history of “borrowing” famous wine names from other regions throughout the world whenever they think it is to their advantage in promoting California wines. Thus we have California burgundy; California chablis; California champagne; and most recently, California pinot grigio (all terms allowed and freely abused in California, but prohibited by law in Oregon). We thought the basis and reason for the existence of the AVA program is to help inform the public—not ferment the likelihood of confusion. Granting California vineyards the use of a name that has not been used in California for over 30 years will do great damage to the only winery that has promoted, marketed and established a reputation for the name Oak Knoll since 1970: Oak Knoll Winery of Oregon. Please do not grant this petition: do not allow a group of California wineries to tread (and trade) on our name, Oak Knoll!

Sincerely,

Thomas Burton
General Manager

Ronald Vuylsteke
Founder and Winemaker

Marjorie Vuylsteke
Founder

OAK KNOLL WINERY
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JAB
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September 5, 2002

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Chief, Regulations Division
Bureau of Alcohol, Tobacco and Firearms
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Attn: Notice No. 947

Dear Sir,

On behalf of the Napa Valley Vintners Association, I am writing to express our support of the new American Viticultural Area, Oak Knoll District. The Association believes that the use of the word "district" in conjunction with the name of the AVA helps to identify the area more clearly.

Sincerely,

Dawnine Dyer
President



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January 17, 2003

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Re: Oak Knoll District Viticultural Area Notice No. 947

Dear Ms. Brady:

Our office represents the petitioners for the Oak Knoll District viticultural area, which is the subject of ATF's Notice of Proposed Rulemaking No. 947. We understand that, under separate cover, Ms. Tsai of Luna Vineyards and Mr. Verhey of the UCC Vineyards Group have withdrawn their comments in opposition to the viticultural area. As such, we address below the remaining comments protesting the use of the term "Oak Knoll" in the name of the proposed American Viticultural Area ("AVA"). For the reasons described below, petitioners are willing to revise the name of the viticultural area to "Oak Knoll District – Napa Valley," should ATF find such a revision advisable.

Use of Term "Oak Knoll"

In its response to ATF's Notice of Proposed Rulemaking for the establishment of the Oak Knoll District AVA, Oak Knoll Winery objects on the grounds that the name would confuse and mislead consumers, that the term Oak Knoll has been abandoned by wineries and vineyards in Napa Valley, that use of the AVA name would constitute trademark infringement, and that establishment of the AVA would violate principles of equity and fairness.

An examination of each of these objections in light of the relevant federal statute, ATF and federal court precedents, and the evidence presented in the petitioners' original application leads to the conclusion that the objections of the Oak Knoll Winery are without merit and in no way preclude ATF from establishing an Oak Knoll District AVA.

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FAA Act Authority & ATF Precedent

Under the Federal Alcohol Administration (“FAA”) Act, ATF is charged with regulating the labeling of alcoholic beverages so as to prohibit consumer deception and provide consumers with adequate knowledge regarding the quality and identity of alcoholic beverages they may buy. 25 U.S.C. § 205(e). The regulations in 27 CFR Part 4, promulgated pursuant to the FAA mandate, authorize ATF to establish delimited grape-growing regions distinguished by geographic features, known as AVAs. 27 CFR § 4.25a (e)(2). In addition to presenting evidence of distinctive geographical characteristics, applicants for an AVA must provide evidence that the name proposed for the AVA is locally and/or nationally known as referring to the proposed area, and historical or contemporary evidence justifying specifically described boundaries.

A review of ATF precedent reveals that the existence of a trademark or brand name similar or identical to a proposed AVA name is not a bar to the approval of the proposed AVA. In its AVA decisions, ATF has taken into considerations such factors as whether the use of the proposed AVA name would constitute a fair use under the terms of the Lanham Act, and the degree of similarity between the trademark or brand name and that of the proposed AVA.

Under the standards established by the FAA Act, the proposed Oak Knoll District AVA would not mislead or confuse consumers. First, the use of the term “Oak Knoll” within the Oak Knoll District AVA constitutes fair use of that geographic term as part of an appellation of origin for wine and therefore does not constitute trademark infringement. Second, the proposed Oak Knoll District, with the “District” and, if ATF wishes, “Napa Valley” modifiers, follows ATF’s well-established precedent for distinguishing an AVA from a similar brand name.

Fair Use of a Trademark

The viticultural area name Oak Knoll District constitutes a “fair-use” of the geographic designation “Oak Knoll” and does not infringe on the trademark rights of the Oak Knoll Winery. The fair use of a descriptive term which is similar or identical to a registered trademark is defined at 15 USCA § 1115(b)(4) as “a use, otherwise than as a mark, of . . . a term or device which is descriptive of and used fairly and in good faith only to describe the goods or services of [the allegedly infringing] party, or their geographic origin” The proposed Oak Knoll District AVA will serve precisely to describe the geographic origin of wines made from grapes grown in a particular portion of the Napa Valley AVA in California and therefore falls squarely within the ambit of the classic fair use defense. McCarthy, Trademarks and Unfair Competition § 14:7 (second edition).

Under 15 U.S.C. § 1072 the registration of a mark by the U.S. Patent and Trademark Office (“USPTO”) establishes constructive statutory notice of the registrant’s claim of ownership and exclusive right to use the mark. However, the property right

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represented by such a mark is not an absolute right. See 15 U.S.C. § 1115. As noted above and as applied to geographic terms, the fair use defense preserves the right of non-registrants to make good-faith use of geographic descriptors to accurately describe their own goods. “The ‘fair-use’ defense, in essence, forbids a trademark registrant to appropriate a descriptive term for his exclusive use and so prevent others from accurately describing a characteristic of their goods.” Soweco, Inc. v. Shell Oil Co., C.A.5 (Tex.) 1980, 617 F.2d 1178, 1185, 207 U.S.P.Q. 278, certiorari denied 101 S.Ct. 1516, 450 U.S. 981, 67 L.Ed.2d 816, 210 U.S.P.Q. 776.

The proposed Oak Knoll District AVA uses the term Oak Knoll in a specifically geographic descriptive sense, namely, as a viticultural area designation, as distinguished from a trademark or brand sense. Schafer Co. v. Innco Management Corp., E.D.N.C.1992, 797 F.Supp. 477, 481-82, 24 U.S.P.Q.2d 1872, affirmed 995 F.2d 1064, 27 U.S.P.Q.2d 1239. The combination of the word “District” with the term Oak Knoll clearly indicates that the proposed AVA is a geographic description, rather than a mark or brand. “District” necessarily indicates that the AVA is identified with an “identifiable geographic place of origin . . .,” a necessary component of the fair use defense. Armstrong Cork Co. v. World Carpets, Inc., N.D.Ga.1978, 448 F.Supp. 1072, 1078, 199 U.S.P.Q. 30, affirmed in part, reversed in part on other grounds 597 F.2d 496, 203 U.S.P.Q. 19, certiorari denied 100 S.Ct. 277, 444 U.S. 932, 62 L.Ed.2d 190, 204 U.S.P.Q. 608.

The Oak Knoll Winery, in its response to the proposed rule proposing an Oak Knoll District AVA, makes reference to the judgment issued in Pine Ridge Associates v. Oak Knoll Winery, Inc. Oak Knoll Winery successfully defended its mark in this declaratory relief action by Pine Ridge Associates concerning Pine Ridge’s use of the term Oak Knoll Cuvée, which the court found to constitute a secondary brand name. Winery representatives, in their response to Notice of Proposed Rulemaking, seriously mischaracterize the holding in that action. Oak Knoll Winery contends that the Court “ruled that any use of the name – geographic or otherwise – would cause dilution of the brand name or a likelihood of confusion among consumers purchasing wine with the name ‘Oak Knoll’ used for different descriptive purposes.” In light of the basic principles of trademark law outlined above, the Court in this action could not have ruled as the Winery asserts it did. Indeed, the judgment dated February 25, 1986, specifically holds that “Pine Ridge is enjoined from using ‘Oak Knoll’ in labeling its wine, *except in a clearly geographic phrase or explanation indicating the source of the grapes* used in its wine.” Pine Ridge Associates v. Oak Knoll Winery, Inc. – Civil Action No. C 85-4207-RFP (emphasis added).

Elaborating on this judgment in an amended judgment dated March 13, 1986, the Court clarified its prior holding, stating that “Pine Ridge is not precluded from using ‘Oak Knoll’ in a phrase, sentence or paragraph that explains to consumers that the grapes used in the wine were grown in vineyards in the Oak Knoll area of California.” Id. As

the purpose of an AVA is precisely to inform consumers more easily and accurately of the grape source of wines, and as the petitioners have fulfilled the requirements of 27 CFR 4.25a (establishing the criteria for approval of an AVA), it could not be clearer that the use of the term "Oak Knoll" as part of the Oak Knoll District AVA is a fair use, rather than an infringing use, of that term.

Distinguishing the Mark and the AVA

As requested by Oak Knoll Winery in its letter of opposition, petitioners are willing to change the name of the proposed AVA from Oak Knoll District to Oak Knoll District – Napa Valley, if ATF so decides. Either name would be consistent with ATF's precedent of using geographic modifiers to distinguish between brand names and AVAs incorporating similar geographical terms, and also to distinguish between AVAs using similar geographic terms. This insures that the labeling context in which the mark Oak Knoll and the AVA Oak Knoll District (or Oak Knoll District – Napa Valley) appear will effectively dispel any potential for consumer confusion arising from the similarity in terms.

Distinguishing Brand Names from AVAs Using Similar Terms

ATF has a long and well-established precedent that the use of the modifier "District" serves to distinguish a brand name from an AVA and to ensure that there is no consumer confusion. This precedent was recently acknowledged by a District Court in a suit brought by an established winery, Viña Santa Rita, alleging that ATF was infringing its mark, Santa Rita pertaining to wine, by establishing the Santa Rita Hills AVA. The winery's request for a temporary restraining order and preliminary injunction delaying the implementation of the Final Rule establishing the Santa Rita Hills AVA was denied. Sociedad Anonima Viña Santa Rita v. U.S. Department of the Treasury, (D.D.C. 2001). 193 F. Supp.2d 6. As stated by ATF in its Announcement 2001-11, reporting the decision, "the memorandum opinion stated that ATF has been consistent in its policy when establishing viticultural areas with names that include trademarks. ATF has rejected proposed viticultural area names when confusion was present or has used modifiers such as 'District,' 'Valley,' or 'Hills' to distinguish the area's name." Department of the Treasury, ATF Quarterly Bulletin 2001 Volume 4, September 16 – December 31, pp. 47-48. This was the case in the AVAs of Stags Leap District (Treasury Decision 281, effective February 27, 1989), Spring Mountain District (Treasury Decision 341, effective June 14, 1993) and Diamond Mountain District (Treasury Decision 456, effective July 31, 2001). In each of those viticultural areas, there are wineries or vineyards with similar brand names, specifically and respectively, Stag's Leap Wine Cellars and Stags' Leap Winery, Spring Mountain Vineyards and Diamond Mountain Vineyard. Similarly, in the instant case the proposed AVA Oak Knoll District is not the same as the existing trademark "Oak Knoll."

In the case of the Wild Horse Valley AVA (Treasury Decision 278, effective December 30, 1988), ATF specifically addressed the trademark issues involved with the establishment of AVAs. ATF wrote in the Final Rule establishing that AVA:

The Santa Lucia Winery registered the trademark "Wild Horse" under the Lanham Act, 15 U.S.C. Chapter 22, in 1985. Santa Lucia contends that use of the viticultural designation "Wild Horse Valley" by other parties will infringe upon their Federally registered trademark. It is not the policy of ATF to become involved in purely private disputes involving proprietary rights, such as trademark infringement suits. However, in the event a direct conflict arises between some or all of the rights granted under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. ATF believes that the evidence submitted by the petitioner establishes that designation of the Wild Horse Valley viticultural area is in conformance with the law and regulations. Accordingly, ATF finds that Federal registration of the term "Wild Horse" does not limit the Bureau's authority to establish a viticultural area known as Wild Horse Valley.

Id.

Following the recent establishment of the Santa Rita Hills AVA (66 Fed. Reg. 29476 (May 31, 2001)), the Sociedad Anonima Viña Santa Rita sued ATF, alleging that the act of establishing the AVA was an infringement of their mark, "Santa Rita" pertaining to wine, and requesting a temporary restraining order and preliminary injunction to suspend the effective date of the final rule. Sociedad Anonima Viña Santa Rita v. U.S. Department of the Treasury (D.D.C. 2001) 193 F.Supp.2d 6. The Court denied the plaintiff's request, agreeing with the view of ATF expressed in the final rule establishing Wild Horse Valley AVA, quoted above. The Court held, specifically, that the establishment of an AVA was not an infringing act within the meaning of the Lanham Act, as it did not constitute a "use" of the mark. Id. at 20.

Distinguishing AVAs Using Similar Terms

ATF has consistently used geographic modifiers to avoid consumer confusion in approving multiple AVAs incorporating the same geographical term. For example, the term "Green Valley" is incorporated into the names of two AVAs: Green Valley – Solano County (47 Fed.Reg. 57921 (December 29, 1982)) and Green Valley – Sonoma County (48 Fed.Reg. 52577 (November 21, 1983)). The use of the name of the county within which these AVAs are located differentiates them from each other and from any existing name, brand, or mark using the term "Green Valley" pertaining to wine. Likewise, Shenandoah Valley (located in Virginia and West Virginia, 47 Fed. Reg. 57696, December 28, 1982) and Shenandoah Valley – California (47 Fed. Reg. 57694 December

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28, 1982) are distinguished by the use of the state name "California" as a modifier. In approving the petition for the establishment of Shenandoah Valley, ATF commented as follows:

Approval of Shenandoah Valley for Virginia-West Virginia as a viticultural area does not preclude establishment of a California Shenandoah Valley. Regulations do not preclude the use of the same name for two areas if both areas meet the established guidelines and it is clear to consumers where the areas are located. ATF believes that the use of the name 'Shenandoah Valley' in direct conjunction with the name of the State of California would eliminate the potential for consumer confusion and would allow consumers to readily identify where the wine comes from. Therefore, the Treasury decision approving the use of the name Shenandoah Valley in California will require the name California to appear in direct conjunction with the name Shenandoah Valley.

47 Fed. Reg. 57696, 57697 (December 28, 1982). See also 47 Fed. Reg. 57694, 57695 (December 28, 1982).

In sum, the inclusion of geographic modifiers in the AVA name is consistent with ATF precedent and effectively dispels any possibility of consumer confusion.

Conclusion

For all of the foregoing reasons, petitioners respectfully request that ATF issue a final rule establishing an Oak Knoll District or Oak Knoll District – Napa Valley viticultural area, with the boundaries as described in the proposed rule, Notice No. 947.

Sincerely,

DICKENSON, PEATMAN & FOGARTY


Richard Mendelson

RPM:srw