

# AOC-AOP

## Geographical Indication in the EU and USA

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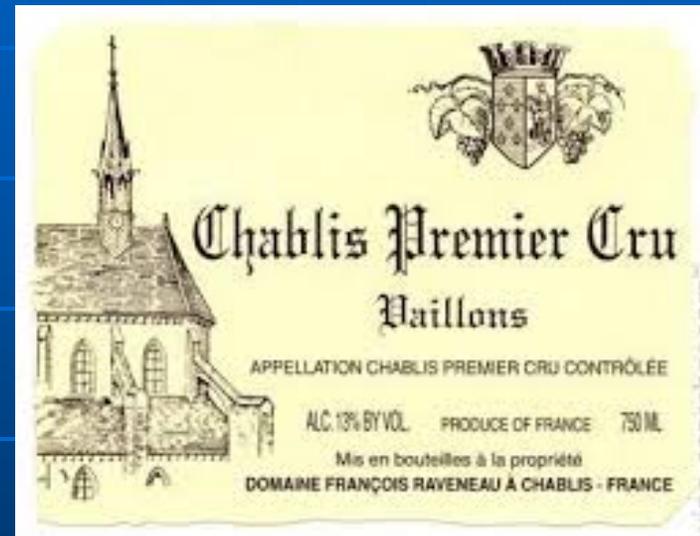
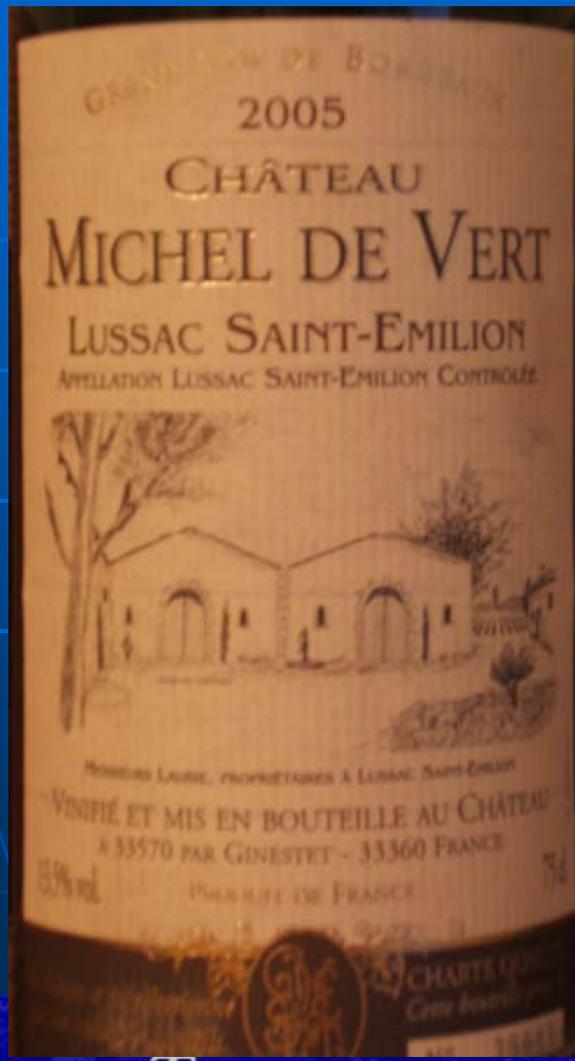
# AOC-Appellation d'Origin Contrôléé

AOC is an official French label for the protection of a product.

AOC designates a product for all of the steps of fabrication and realization according to know-how and knowledge associated with the same geographic zone, which gives the characteristics to the product.

Is based on the French concept of "terroir".

# AOC



# INAO

French labeling is governed by INAO: [www.inao.gouv.fr](http://www.inao.gouv.fr)



INSTITUT NATIONAL  
DE L'ORIGINE ET DE  
LA QUALITÉ

INAO has certified about 500 products, of which about 370 are wine.

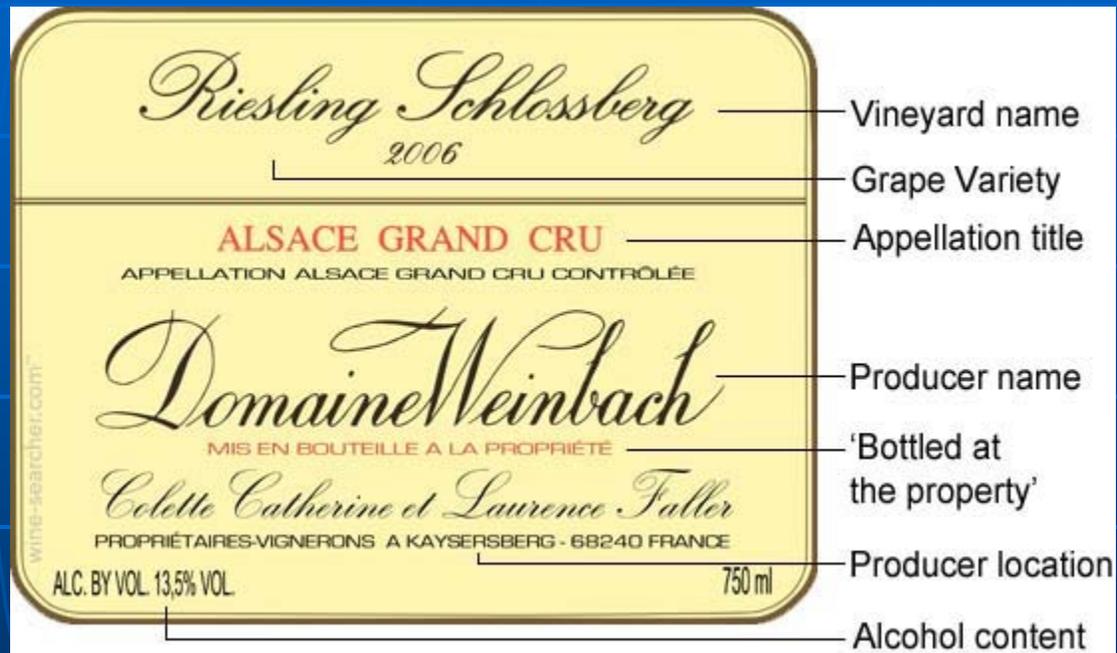


# Vin

## French Wine Label

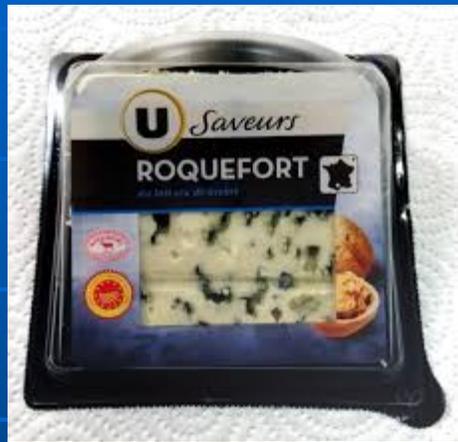


# Vin



[www.wine-searcher.com](http://www.wine-searcher.com)

# Cheese - Frommage

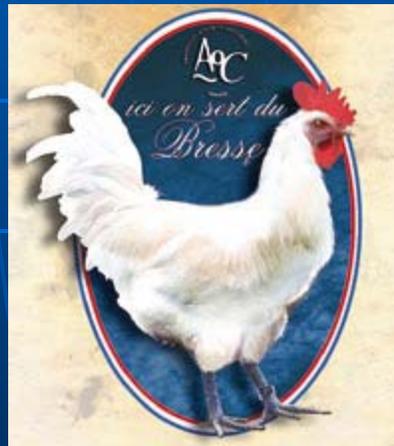


NOT

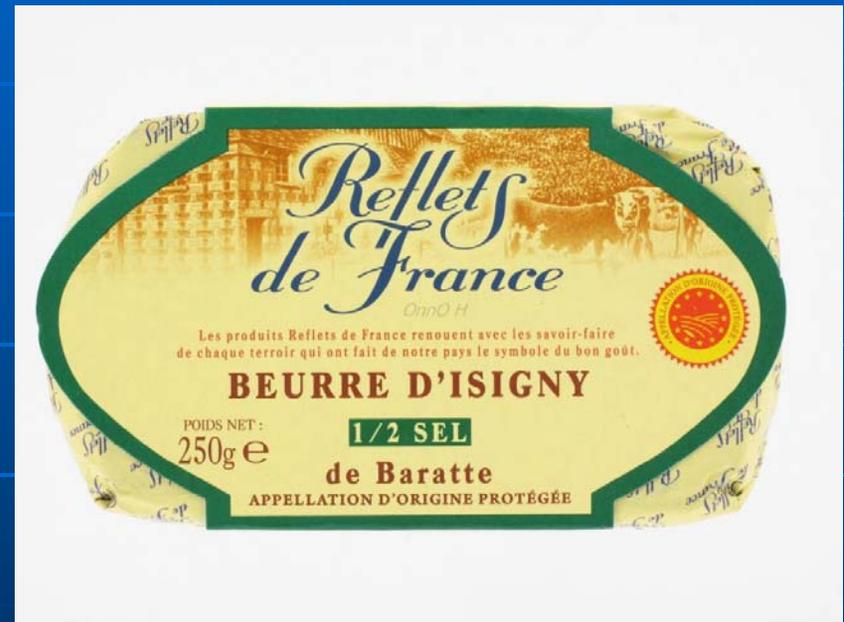


But "ROKA" is registered to Kraft (s/n 72089191)

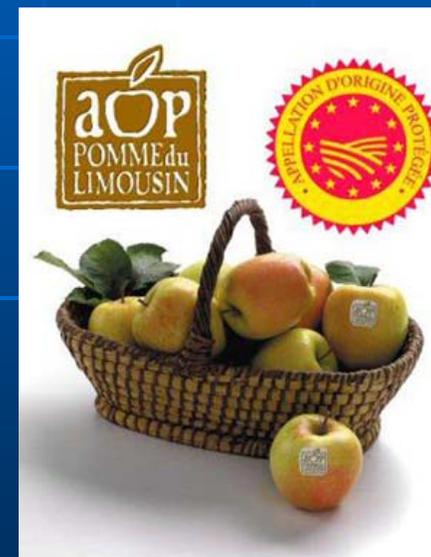
# Chicken - Poulet



# Butter - Beurre



# Olives - Apples



# History

- In France since 1905
- International since 1958 (Lisbon Treaty)
- On the European level via AOP (PDO – protected designation of origin)
  - August 2009: The EU adopted a regulation of wine where AOC officially turned into AOP (PDO)
  - January 2012: Products can only carry to AOP (PDO) label with the exception of wine and some well known products were grandfathered.

# AOC/AOP Five Guarantees

1 / The production area is geographically delimited inside of a wine region according to traditional criteria, but also from geological, soil factors related to terroir.

2 / The grapes are selected to make the best wine on a specific terroir, depending on weather conditions.

3 / The yield per hectare is fixed by decree. Maximum efficiency which, in any case, exceeds the standard. Specifies hectoliters per hectare (hl / ha). How to grow and maintain the vines is also regulated.

4 / The minimum alcohol content, apart, of course, from any added sugar.

5 / The cultivation and vinification processes with a concern to preserve traditional winemaking practices.

# Protected designation of origin (PDO-AOC)

The Protected designation of origin is the name of an area, a specific place or, in exceptional cases, the name of a country, used as a designation for an agricultural product or a foodstuff:

- which comes from such an area, place or country,
- whose quality or properties are significantly or exclusively determined by the geographical environment, including natural and human factors,
- whose production, processing and preparation takes place within the determined geographical area.

In other words, to receive the PDO status, the entire product must be traditionally and entirely manufactured (prepared, processed and produced) within the specific region and thus acquire unique properties.



# Protected Geographical Indication (PGI-IGP)

The Protected geographical indication is the name of an area, a specific place or, in exceptional cases, the name of a country, used as a description of an agricultural product or a foodstuff:

- which comes from such an area, place or country,
- which has a specific quality, goodwill or other characteristic property, attributable to its geographical origin,
- whose production, processing or preparation takes place within the determined geographical area.

In other words, to receive the PGI status, the entire product must be traditionally and at least partially manufactured (prepared, processed or produced) within the specific region and thus acquire unique properties.



# Traditional Specialities Guaranteed (TSG-STG)

The TSG quality scheme aims to provide a protection regime for traditional food products of specific character. Differing from PDO and PGI, this quality scheme does not certify that the protected food product has a link to specific geographical area.

To qualify for a TSG a food must be of “specific character” and either its raw materials, production method or processing must be “traditional”. Under Art. 3 of Regulation 1151/12 “specific character” is defined as “the characteristic production attributes which distinguish a product clearly from other similar products of the same category”. Under Art. 3 of Regulation 1151/12 “traditional” is defined as “proven usage on the domestic market for a period that allows transmission between generations; this period is to be at least 30 years”. For a food name to be registrable under the TSG scheme it must (a) have been traditionally used to refer to the specific product; or (b) identify the traditional character or specific character of the product.

A TSG creates an exclusive right over the registered product name. Accordingly, the registered product name can only be used by producers who conform to the registered production method and product specifications.

“The legal function of the TSG is to certify that a particular agricultural product objectively possesses specific characteristics which differentiate it from all others in its category, and that its raw materials, composition or method of production have been consistent for a minimum of 30 years. Thus, TSG food denominations are registered trade signs with a distinctive function.”

# TSG



# Label Rouge

Label Rouge (Red Label) is a sign of quality assurance in France as defined by Law No. 2006-11 (January 5, 2006).

Products eligible for the Label Rouge are food items (including seafood) and non-food and unprocessed agricultural products such as flowers. According to the French Ministry of Agriculture: "The Red Label certifies that a product has a specific set of characteristics establishing a superior level to that of a similar current product"



# AB

AB excludes the use of synthetic chemicals, genetically modified organisms and respects natural balances. AB certifies an organic product.



# Geographical Indication Protection in the United States

“Geographical indications” (“GIs”) are defined at Article 22(1) of the World Trade Organization’s (WTO) 1995 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) as “indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.”

Examples of geographical indications from the United States include: “FLORIDA” for oranges; “IDAHO” for potatoes; and “WASHINGTON STATE” for apples.

# Geographical Indication Protection in the United States

Geographical indications can be viewed as a subset of trademarks. Geographical indications serve the same functions as trademarks, because like trademarks they are: 1) source-identifiers, 2) guarantees of quality, and 3) valuable business interests.

The United States has found that by protecting geographical indications through the trademark system – usually as certification and collective marks -- the United States can provide TRIPS-plus levels of protection to GIs, of either domestic or foreign origin.

The United States has provided protection to foreign and domestic GIs since at least 1946, decades prior to the implementation of the TRIPS Agreement (1995) when the term of art “geographical indication” came into wide use.

# How Does the United States Protect Geographical Indications?

- The United States' GI system uses administrative trademark structures already in place, and provides opportunities for any interested party to oppose or cancel a registered GI if that party believes that it will be damaged by the registration or continued existence of a registration. The same governmental authority (the United States Patent and Trademark Office or "USPTO") processes applications for both trademarks and GIs.

# GIs as Certification Marks

The U.S. Trademark Act provides that geographic names or signs--which otherwise would be considered primarily geographically descriptive and therefore unregistrable as trademarks or collective marks without a showing of acquired distinctiveness in the United States--can be registered as certification marks.

A certification mark is any word, name, symbol, or device used by a party or parties other than the owner of the mark to certify some aspect of the third parties' goods/services.

There are three types of certification marks used to indicate: 1) regional or other origin; 2) material, mode of manufacture, quality, accuracy or other characteristics of the goods/services; or 3) that the work or labor on the goods/services was performed by a member of a union or other organization.

# Example: ROQUEFORT

the mark ROQUEFORT (U.S. Registration No. 571,798) is used to indicate that the cheese has been manufactured from sheep's milk and cured in the caves of the Community of Roquefort (France) in accordance with their long established methods and processes.

2 important characteristics of Certification Marks

- 1) The owner does not use it.
- 2) The Certification mark does not indicate a commercial source or distinguish the goods or services of one person from those of another person.

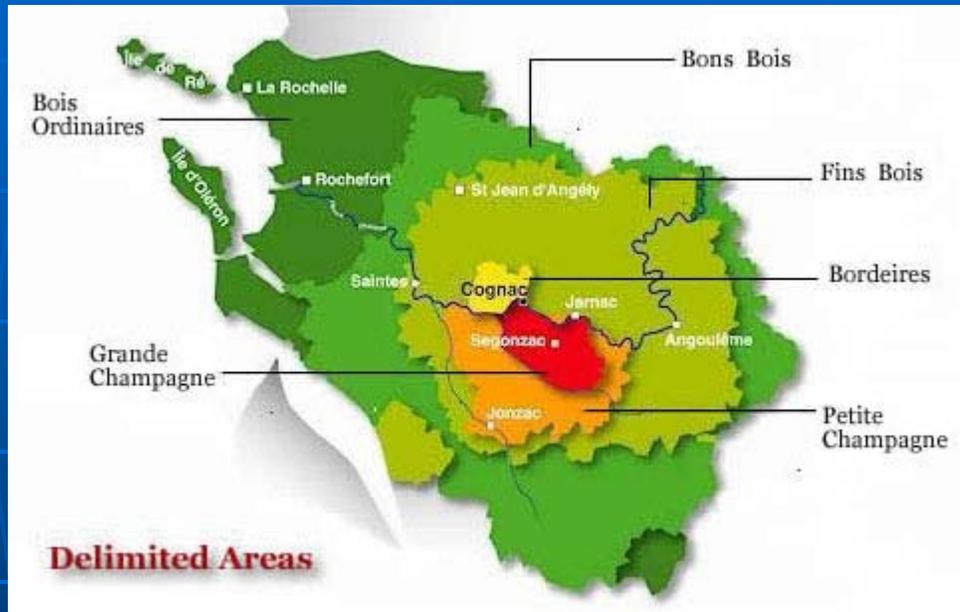


# Common-Law Geographical Indications

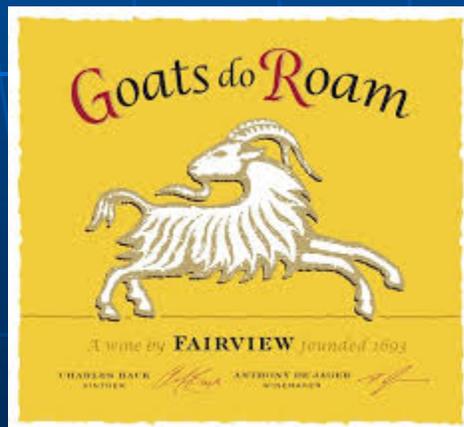


Geographical indications also are protected through common law trademark law without being registered by the USPTO. For example, the TTAB has held that “COGNAC” is protected as a common-law (unregistered) certification mark in the United States. *Institut National Des Appellations v. Brown-Forman Corp*, 47 USPQ2d 1875, 1884(TTAB 1998) (“Cognac” is a valid common law regional certification mark, rather than a generic term, since purchasers in the United States primarily understand the “Cognac” designation to refer to brandy originating in the Cognac region of France, and not to brandy produced elsewhere, and since opposer’s control and limit use of the designation which meets certain standards of regional origin.)

# COGNAC



# Côtes du Rhône and Goats do Roam

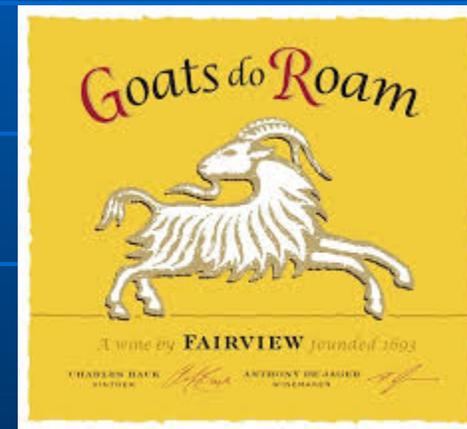


# Goats do Roam

Reg. No. 2885533

Owned by Fairview Trust of South Africa

Opposed by Bully Hill Vinyard (July 2001)



Opposer claimed "likelihood of confusion"

# Goats do Roam

-Bully Hills Marks included LOVE MY GOAT, LE GOAT, BULLY HILL BILLY GOAT, HAPPY HEARD, GOAT WHITE WINE, GOAT POWER, WATERS HIS NAME GOATS HIS GAME, KING OF THE GOATS.

-Not all of Bully Hills' marks were in original complaint.

-Opposer tried to amend and consolidate proceedings but was refused on grounds of timeliness.

-Issue was settled out of court – Stipulation of dismissal April 2004.

# Goat-Roti

-Reg. No. 3822182

Published for opposition January 8, 2002

Opposer: INSTITUTE NATIONAL des APPELLATIONS  
d'ORIGINE ("INAO")

Claimed likelihood of confusion with "Cotes du Rhône"



Specimen from TESS

Settled out of court

# JPK Paris 75



In re Miracle Tuesday, LLC, 695 F.3d 1339 (Fed. Cir 2012).

Is the mark identified with Paris as source of the goods?

# JPK Paris 75

- Under Section 2(e)(3) of the Lanham Act, a mark may not be registered on the principal register if the mark, "when used on or in connection with the goods of the applicant is primarily geographically deceptively misdescriptive of them." 15 U.S.C. § 1052(e)(3). A mark is primarily geographically deceptively misdescriptive, and thus barred from registration, if: (1) "the primary significance of the mark is a generally known geographic location"; (2) "the consuming public is likely to believe the place identified by the mark indicates the origin of the goods bearing the mark, when in fact the goods do not come from that place"; and (3) "the misrepresentation was a material factor in the consumer's decision" to purchase the goods. *In re Cal. Innovations, Inc.*, 329 F.3d 1334, 1341 (Fed.Cir.2003).

# Materiality

JPK is not located in Paris, but in Miami

Paris is renowned for fashion

“Because we have determined that the primary significance of Paris to the relevant public is the geographic place, and in view of the renown and reputation of fashion designs originating in Paris, we may infer that at least a substantial portion of consumers who encounter applicant's mark featuring the word “Paris” on applicant's products are likely to be deceived into believing that those products come from or were designed in Paris.”

# California Innovations

In re California Innovations, Inc. 329 F.3d 1334  
(Fed. Cir . 2003)

- Products (bags and wraps) did not originate in California
- PTO Examiner refused registration of ITU as being primarily geographically misdescriptive
- Appealed to CAFC (Judge Rader)

# Lanham Act 1052(a)

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, **deceptive**, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; **or a geographical indication which, when used on or in connection with wines or spirits, identifies a place other than the origin of the goods** and is first used on or in connection with wines or spirits by the applicant on or after one year after the date on which the WTO Agreement (as defined in section 3501(9) of title 19) enters into force with respect to the United States.

# The Test

- The PTO must establish that (1) the mark misrepresents or misdescribes the goods, (2) the public would likely believe the misrepresentation, and (3) the misrepresentation would materially affect the public's decision to purchase the goods.
- Two categories of marks: (1) primarily geographically descriptive, (2) deceptively misdescriptive.
- In re Nantucket required set forth a goods-place association requirement, where the Court required a geographically deceptively misdescriptive mark to have more than a merely a primary geographic connotation.
- Under NAFTA a geographically deceptive misdescription could no longer acquire distinctiveness.
- Current test is deceptiveness.

# Frusen Gladje

Haagen-Dazs, Inc. v. Frusen Gladje, 493 F. Supp. 73 (S.D.N.Y).

The court rejected a trademark infringement claim brought by an originator of an ersatz-Scandinavian ice cream brand against a competitor who also adopted a name with "Scandinavian Flair."

Contrast to Alaska Incorporated v. Alaska Ice Cream Co., 34 USPQ2d 1145 (E.D. Pa 1995) (suggestive power of ALASKA ice cream, the court held that geographic designation susceptible to private appropriation).

# American

If "AMERICA" or "AMERICAN" appears in a phrase or slogan, the examining attorney must evaluate the entire mark to determine whether it is merely descriptive as laudatory or even incapable. In re Boston Beer Co. L.P., 198 F.3d 1370, 53 USPQ2d 1056 (Fed. Cir. 1999) (THE BEST BEER IN AMERICA so highly laudatory and descriptive as applied to beer and ale that it is incapable of acquiring distinctiveness); In re Carvel Corp., 223 USPO 65 (TTAB 1984) (AMERICA'S FRESHEST ICE CREAM held incapable for ice cream); In re Wileswood, Inc., 201 USPO 400 (TTAB 1978) (AMERICA'S BEST POPCORN! and AMERICA'S FAVORITE POPCORN! merely descriptive of unpopped popcorn). Typically, these marks primarily extol the quality or popularity of the goods or services and secondarily denote geographic origin. The examining attorney must look at each mark to determine whether it is capable, considering all relevant circumstances and case law.

TMEP 1209.03(n)

# Other TMEP Merely Descriptive

- "National"
- "International"
- "Global"
- "Worldwide"
- Function or purpose
- Source or provider of goods and services
- Retail store or distributor services
- Slogans
- Repetition of descriptive or generic term
- Punctuation

Examples: "Best Beer in America", "National Rent a Fence", "Screenwipe"  
"La Lingerie", "Tires Tires Tires", "Ceasar! Ceaser!", "888 Patents"  
(phone number), "Hotels.com"

# Categorization Matrix

Inherently Distinctive	Non-inherently distinctive	No Distinctiveness	
No secondary meaning required	Secondary meaning required	No TM distinctiveness	
Arbitrary & Fanciful	Suggestive	Descriptive Geographic Personal Name	Generic

# References

- <http://www.dico-du-vin.com/a/aocaop-appellation-dorigine-controleeappellation-dorigine-protegee/>
- [https://en.wikipedia.org/wiki/Geographical\\_indications\\_and\\_traditional\\_specialities\\_in\\_the\\_European\\_Union](https://en.wikipedia.org/wiki/Geographical_indications_and_traditional_specialities_in_the_European_Union)
- [www.agriculture.gouv.fr](http://www.agriculture.gouv.fr)
- [http://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi\\_system.pdf](http://www.uspto.gov/sites/default/files/web/offices/dcom/olia/globalip/pdf/gi_system.pdf)

# Thank You

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