

# Intellectual Property Dynamics in the Wine Industry

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# Intellectual Property

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- Marks
- Geographical Indications
- Patents
- Copyrights
- Trade Secrets

# What is a Mark?

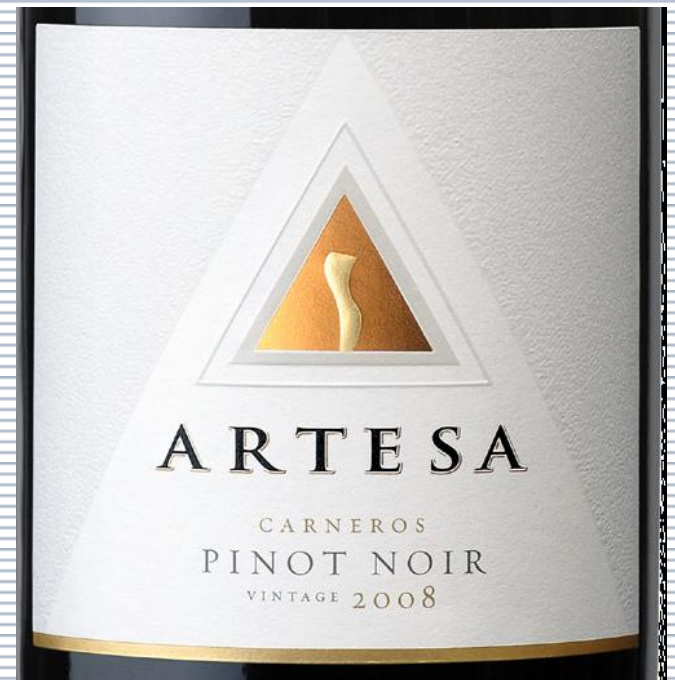
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Any symbol (word, image, configuration, sound, smell) used in commerce to designate source of a good or service.

# What is a Mark?

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Word – Brand Name  
**ARTESA**



# What is a Mark?

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## Word

- Sub Brand
- Fanciful Name
- Secondary Mark

# LE REVE



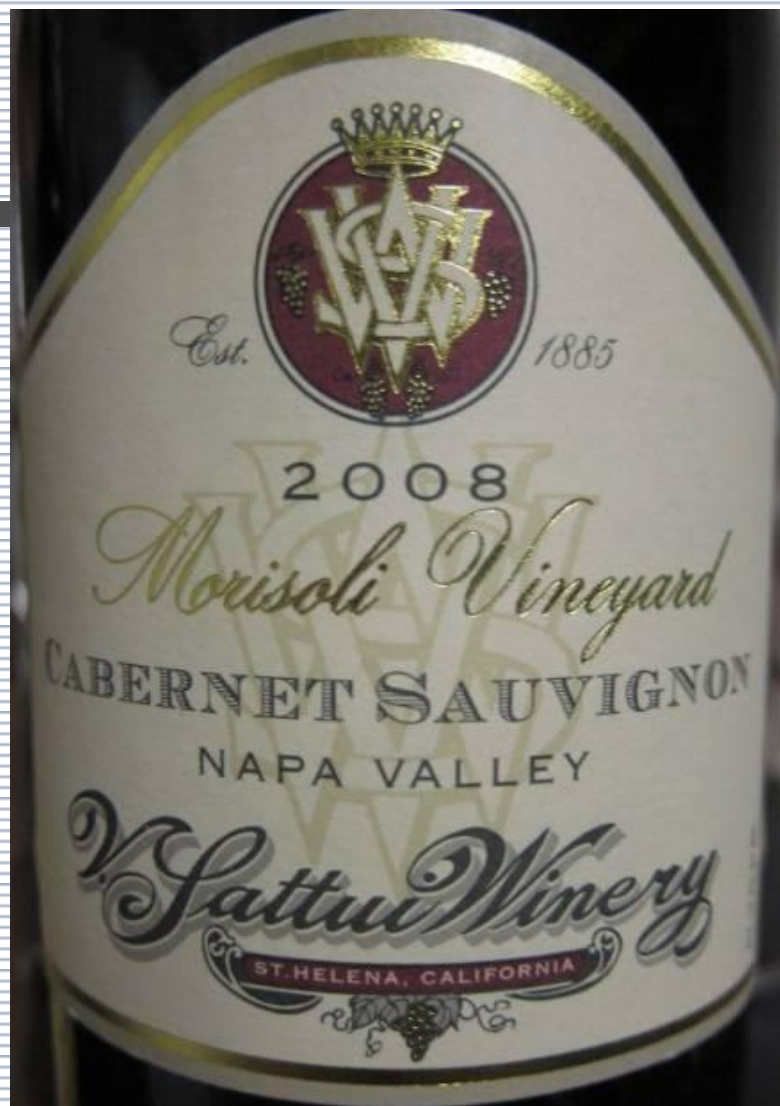
# What is a Mark?

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Word

Vineyard Designation

MORISOLI  
VINEYARD

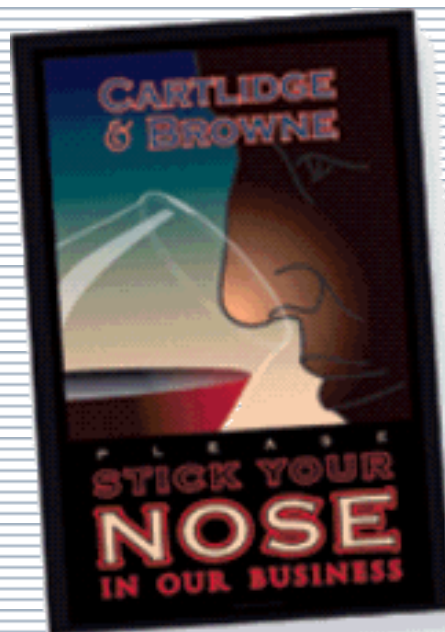


# What is a Mark?

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Word – Tagline/Slogan

*"Please  
stick your  
nose  
in our business"*



# What is a Mark?

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## Design: Logo





# What is a Mark?

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## Design: Label Design



# What is a Mark?

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Configuration:  
Bottle Shape

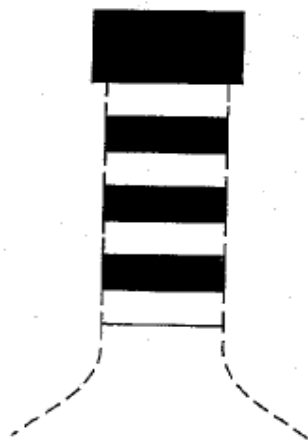


# What is a Mark?

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## Product Feature: Striped Capsule

**TRADEMARK  
PRINCIPAL REGISTER**



# What is a Mark?

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## Configuration

## Overall “Trade Dress”



# Types of Marks

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- Trademark
- Service Mark
- Certification Mark
- Collective Mark

# Types of Marks

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## Trademark

Used in association with goods, such as wine

# Types of Marks

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## Service Marks

Used with providing services, e.g.,  
wine club services

# Types of Marks

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## Certification Marks

Certify a particular product meets certain standards of quality and/or geographic origin



# Types of Marks

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## Collective Marks

Indicate membership in a particular association with certain rules for qualified membership



# Trade Names

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- The name under which a party does business
- Sometimes trade name is same as mark, but not always

# Trade Names

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Frequently the trade name of the winery is also the brand, so it functions as a trademark



# Trade Names

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Other times they are different, so the trade name does not have independent trademark significance

# What Makes a Strong Trademark?

# Scope of Protection

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Weak Mark.....Strong Mark  
Not Protectable.....Protectable

Generic    Descriptive    Suggestive    Arbitrary

# Descriptive Marks

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- Is the term geographic?
- A surname?
- Describes an attribute of the product?
- Related to the trade?

# Adoption of Marks

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## Self-Help “Knock-Out” Searching

➤ Google

➤ USPTO TESS Database

<http://tess2.uspto.gov/bin/gate.exe?f=tess&state=4009:t2503t.1.1>

➤ TTB COLA Database

<https://www.ttbonline.gov/colasonline/publicSearchColasBasic.do>



# Adoption of Marks

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If Knock-Out search is clear or ambiguous, confer with trademark counsel for a preliminary screening search

# Adoption of Marks

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2012

- 3,760 Trademark Applications filed with USPTO for wine
- 105,837 COLAs filed with TTB for wine

# Registration of Marks

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- State
- Federal
- International

# Registration of Marks

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## State (California)

- Must be based on use of mark
- Covers the entire state
- Not examined against other marks
- Less expensive to file (\$70 filing fee in CA)

# Registration of Marks

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## Federal

- Based on use or intended use of mark
- Covers the entire U.S.
- Creates legal presumptions
- Constructive notice
- More expensive (\$275 filing fee)
- Can serve as security

# Registration of Marks

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## Federal

- 3-5 mos. - filing to examination
- 2-3 mos. – exam to publication
- 1 month – publication for opposition
- 1-2 mos. - publication to registration

# Registration of Marks

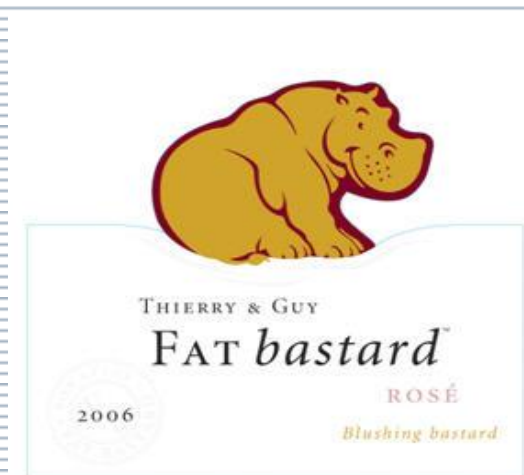
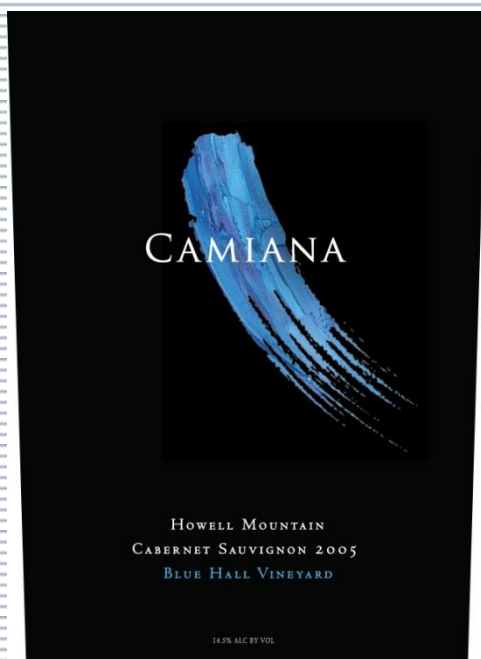
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## Biggest pitfalls in registering marks

- Descriptive – GREAT ESTATES
- Geographically Descriptive – OAKVILLE EAST
- Surnames – O'NEILL CELLARS

# Registration of Marks

Best Bet - Avoid descriptive marks, fanciful or arbitrary marks more protectable and unique





# COLA Protection?

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**A COLA DOES NOT PROVIDE ANY  
RIGHT TO USE A MARK!!!**

- The application for a COLA expressly states that a COLA does not confer any trademark protection

# Trade Names

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There is virtually no name protection provided by:

- Corporate name registration
- Fictitious business name statement

# Domain Name

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- Registration of your mark or trade name as a domain name does not provide legal rights.
- Only provides ownership of domain name, which is treated more like a phone number or address than IP right.





# Thank You

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