

August 3, 1992

NAPA VALLEY

To: Marjorie Ruht, Bureau of Tobacco, Alcohol & Firearms
202 927 8602

From: Christopher Howell

Re: Proposed Spring Mountain Viticultural Area

Cain Cellars is a vintner (BW 5135) and a grower (approx 80 acres) in the proposed Spring Mountain viticultural area. In our experience growing and marketing grapes in and from this area, we believe that Spring Mountain deserves recognition as a distinctive viticultural area.

We request establishment of the Spring Mountain viticultural area as shown (together with the boundaries as detailed) in the notice of proposed rulemaking.

Thank you for your consideration.

Sincerely,

Christopher Howell
Cain Cellars



SUMMIT RANCH

V I N E Y A R D S

July 27, 1992

Chief, Wine and Beer Branch
Bureau of Alcohol, Tobacco, and Firearms
P.O. Box 50221
Washington, D.C. 20091-0221

REFERENCE: Notice No. 741

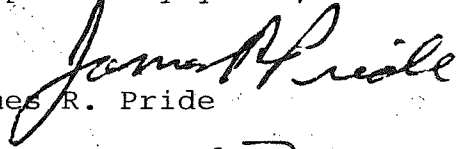
Dear Sir:


We would like to support the granting of a "SPRING MOUNTAIN" appellation.

We are grape growers (40+ acres) on Spring Mountain. Our crops are premium quality Cabernet Sauvignon, Cabernet Franc, and Chardonnay. To be able to have an appellation would be a tremendous added aid in the marketing and sale of our product.

Please give every consideration to granting the request of the growers of Spring Mountain. We believe that the U.S. wine industry, the Napa Valley, and those of us with wine grape operations on Spring Mountain would all stand to benefit.

Respectfully yours,


James R. Pride


Carolyn L. Pride

4026 Spring Mountain Rd.
St. Helena, CA 94574

AREA: Approximately 8,500 A. west of town of St. Helena, on the eastern slope of the Mayacamus Mts. that separate Napa Valley from the Sonoma Valley and the Santa Rosa Plain.

LAW OFFICES OF
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July 31, 1992

Ms. Margerie D. Ruhf
Wine and Beer Branch
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Avenue, N.W.
Washington, DC 20091-0221

Re: Notice No. 741 (57 FR 23559)

Dear Ms. Ruhf:

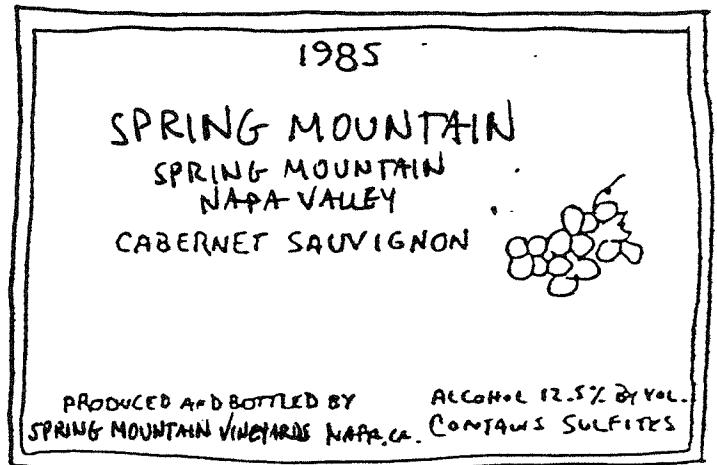
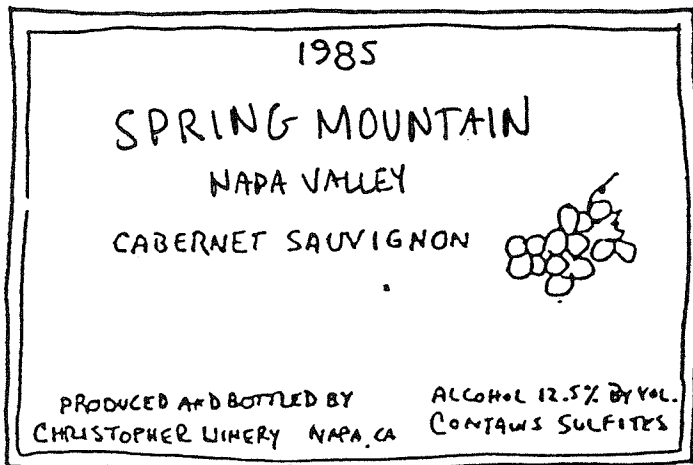
Pillsbury Madison & Sutro files the following comments on behalf of Spring Mountain Vineyards in opposition to the establishment of the Spring Mountain viticultural area proposed in Notice No. 741.

Contrary to the Notice's summary, the proposed Spring Mountain viticultural area will not enable "consumers to better identify the wines they purchase." Instead, as demonstrated below, it will create consumer confusion between established Spring Mountain brand wines and new Spring Mountain viticultural area wines. Contrary to the statutory authority of 27 U.S.C. § 205, the new viticultural area will not "provide the consumer with adequate information as to the identity and quality of the products" but, instead, will encourage rather than "prohibit deception of the consumer with respect to such products."

Under 27 C.F.R. § 4.33, a wine may be sold without a brand name, in which case the name of the person required to appear on the brand label¹ is deemed to be the wine's brand name. Wine with the proposed Spring Mountain viticultural area designation could be sold with no brand name which might distinguish it from Spring Mountain brand wine.

¹ The 27 C.F.R. § 4.32(a) list of mandatory brand label information does not include any reference to a "person." Consequently, it is not clear what person's name is deemed a brand name under 27 C.F.R. § 4.33. We assume the person referred to in 27 C.F.R. § 4.33 is the name and address required to appear on any label under 27 C.F.R. §§ 4.32(b) and 4.35, in our example Christopher Winery.

Confusion is compounded because ATF wine labeling regulations permit the Spring Mountain viticultural area² designation to appear far more prominently on a wine label than any brand³ designation. Consequently, both wine labels shown below would be permitted.



The left-hand label represents an unbranded Spring Mountain viticultural area wine and the right-hand label a Spring Mountain brand wine. On the left-hand label, the producer's name would be deemed a brand name, but the Spring Mountain viticultural area appears in substantially larger print and is located where a brand name normally appears. The consumer will see the viticultural area designation in large print, assume it is the brand name and confuse the wine on the left with the Spring Mountain brand wine on the right. As a result, the

2 The viticultural area, under certain circumstances, must appear in direct conjunction with and in lettering substantially as conspicuous as the wine's class and type designation. 27 C.F.R. § 4.34(b). However, nothing prohibits a viticultural area from appearing more conspicuously than a wine's class and type or, for that matter, more conspicuously than its brand name.

3 On 750 ml. bottles, 27 C.F.R. §§ 4.32 and 4.38(b) require the brand name to appear in letters at least two millimeters in size. Nothing compels the brand name to appear more conspicuously than the viticultural area.

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consumer purchases the wrong wine and Spring Mountain Vineyards loses goodwill and sales.⁴

This confusion will occur in restaurants as well as in wine shops and grocery stores. Wine lists have limited space to describe wine. Using the example pictured above, restaurants are likely to list both the left-hand label Christopher Winery Cabernet Sauvignon and the right-hand label Spring Mountain Vineyards Cabernet Sauvignon as "Spring Mountain Cabernet Sauvignon," thereby perpetuating and increasing consumer confusion.

The consumer confusion created by the proposed new Spring Mountain viticultural area will irreparably harm the Spring Mountain brand, a brand Spring Mountain Vineyards has invested substantial time, money and effort to establish and maintain. The SPRING MOUNTAIN trademark (Reg. No. 968,801) was first used in 1940 and registered in 1973. Spring Mountain Vineyards has sold wine under the Spring Mountain brand name for over half a century. Spring Mountain Vineyards generally sells over 20,000 cases of Spring Mountain brand wine per year in all 50 states; the brand generates wide consumer acceptance and recognition. The proposed viticultural area designation will permit other producers to unfairly poach on Spring Mountain Vineyards' name and efforts.

If new Spring Mountain viticultural wines enter the marketplace, the consumer will perceive the Spring Mountain brand name as simply the same viticultural area designation used by any one of a number of different producers. The Spring Mountain brand name will no longer distinguish wine produced by Spring Mountain Vineyards from wines produced by others. Not only will unbranded Spring Mountain viticultural area wine be confused with Spring Mountain brand wine as discussed above; ironically, Spring Mountain brand wine will be confused with unbranded Spring Mountain viticultural area wine. The Spring Mountain brand will lose all meaning and value.

The proposed regulation appropriates the substantial goodwill Spring Mountain Vineyards has built in its name, generally acknowledged as one of the most valuable assets owned by any company, in order to inform consumers that certain wines come from grapes grown in an area of approximately 8,600 acres,

⁴ While ATF regulations attempt to prevent consumer confusion of a brand name for an established geographic or semi-generic designation, they make no attempt to prevent consumer confusion of a new viticultural designation for an established brand name.

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of which approximately 800 acres are planted; an area virtually unknown to most consumers.

Subject to certain conditions, 27 C.F.R. §4.39(i) would permit Spring Mountain Vineyards to continue to use its registered trademark as a brand name, even if the Spring Mountain viticultural area were adopted. However, this regulation provides no protection from consumer confusion between the new Spring Mountain viticultural area and the established Spring Mountain brand name. Permission for Spring Mountain Vineyards to continue to use its brand name which has been appropriated as a viticultural area is meaningless when the brand name has been rendered worthless by that appropriation.

Similarly, California Business & Professions Code § 25240 would require Spring Mountain viticultural area wine labels to add the Napa Valley designation. This requirement, promoted by the Napa Valley Vintners' Association, insures wide usage of the Napa Valley name, but, since Spring Mountain Vineyards is located in the Napa Valley, and would already use the Napa Valley designation on its wines in any case, the fact that new users of a Spring Mountain viticultural area designation would also use it in no way distinguishes our client's wines from those of petitioners. If anything, the requirement to use "Napa Valley" along with the words "Spring Mountain," increases, rather than ameliorates, potential consumer confusion by requiring that both our client and petitioners use the same labeling formula:

"Spring Mountain"
"Napa Valley"⁵

In short, the California requirement to use the words "Napa Valley" does nothing to help the consumer distinguish between wines carrying identical Spring Mountain brand and Spring Mountain viticultural area designations. The California law would relieve neither consumer confusion nor the destruction of the Spring Mountain trademark under the proposed viticultural area regulation.

5 Of course, if the proposed regulations is adopted our client could designate its wines

"Spring Mountain"
"Spring Mountain"
"Napa Valley"

but that would be absurd. See the right-hand label on page 2.

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Initially, ATF recognized that established trademark rights were superior to a proposed viticultural area. In 1980, ATF considered a petition to establish a viticultural area named "The Pinnacles." Paul Masson Vineyards, Inc. objected to use of the name "The Pinnacles" based on Paul Masson's prior use of the trademarks PINNACLE, PINNACLES, and A PINNACLES SELECTION. Paul Masson argued that use of "The Pinnacles" by other wineries would confuse the public because it had come to associate the term Pinnacles with wine from Paul Masson. ATF concluded that the name, "The Pinnacles," was inappropriate to designate the proposed viticultural area "because of Paul Masson's trademark claims and the possible consumer confusion that would result." Pinnacles Viticultural Area, 46 FR 49600-01 (October 7, 1981).

More recently, ATF has established viticultural areas over the objections of trademark owners. In Martha's Vineyard Viticultural Area, 50 FR 255-01 (January 3, 1985), ATF established a "Martha's Vineyard" viticultural area in Massachusetts despite opposition from Thomas May who, since 1963, has used the mark MARTHA'S VINEYARD for his vineyard located in Napa Valley. May sold his grapes to Heitz Wine Cellars, which produced Cabernet Sauvignon labeled "Napa Valley" with an additional vineyard designation of "Martha's Vineyard." ATF approved the Martha's Vineyard viticultural area, reasoning "consumers were unlikely to be confused between wines bearing labels designating an appellation of origin of 'Napa Valley' and those designating 'Martha's Vineyard' due to their wide geographic separation."

In 1988, ATF reasserted its belief in the Federal Alcohol Administration Act's preeminence over the Lanham Act and established the Wild Horse Valley viticultural area despite the Santa Lucia Winery's registered trademark rights in WILD HORSE. Wild Horse Valley Viticultural Area, 53 FR 48244-02 (November 30, 1988).

In both Martha's Vineyard and Wild Horse Valley, the trademarked wine was produced outside the boundaries of the proposed viticultural area, limiting the potential for confusion. Spring Mountain Vineyards is located within the proposed viticultural area, inviting consumer confusion as to the source of the wine and encouraging the misconception that all wine bearing the Spring Mountain appellation is produced by Spring Mountain Vineyards.

Moreover, in Martha's Vineyard the trademarked vineyard designation was secondary to the Heitz Wine Cellars brand which appeared on the wine. Spring Mountain is the only brand name on Spring Mountain brand wines. In Wild Horse Valley, the

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viticultural area ("Wild Horse Valley") was not identical to the registered trademark ("Wild Horse"). The proposed Spring Mountain viticultural area is identical to the registered trademark, Spring Mountain. In both Martha's Vineyard and Wild Horse Valley, the trademarked wine could be distinguished to some degree from wine designated with the viticultural area. This is not the case with the proposed Spring Mountain viticultural area.⁶

These decisions establishing viticultural areas in the face of trademark rights are readily distinguishable from the current case. More important, they appear to turn on the following conclusion articulated in Wild Horse Valley:

"[I]n the event a direct conflict arises between some or all of the rights granted by a registered trademark 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."

Id. (emphasis added). This conclusion is based upon the false assumption that the FAA Act establishes a right to use a given viticultural area designation. In fact, the FAA Act establishes no such right.

The FAA Act empowers ATF to prescribe regulations to prohibit consumer deception with respect to alcoholic beverages, to prohibit misleading statements concerning alcoholic beverages and to provide the consumer with adequate information as to the identity and quality of alcoholic beverages. 27 U.S.C. § 205.

⁶ While Spring Mountain Vineyard opposes any viticultural area which will dilute or destroy its Spring Mountain trademark, it acknowledges that a "Spring Mountain District" viticultural area might be less objectionable. The addition of "District" creates a marginal distinction between the viticultural area and brand name designations. Moreover, Exhibits 1, 2 and 11 to the Spring Mountain Viticultural Area Petition refer to "Spring Mountain District" or "Spring Mt. Dist.," not "Spring Mountain." Other Exhibits seem to refer to a peak or prominent point in the area not a region or district when they describe a location on or atop Spring Mountain, not in Spring Mountain. It would be awkward, for example, to refer to a vineyard on Napa Valley or atop Stags Leap District. Petitioner's evidence of a locally or nationally known area named Spring Mountain appears inconclusive at best.

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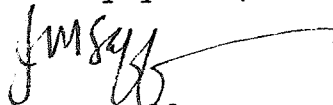
The Act protects the consumer, but does not, in any way, create a wine bottler's "right" to use a viticultural area designation. The term "viticultural area" does not even appear in the FAA Act. ATF's alleged "direct conflict" between the FAA Act's viticultural area "right" and those trademark rights clearly established and codified under the Lanham Act has no basis in the FAA Act.

Until ATF, in its discretion, establishes a specific American viticultural area by regulation, the viticultural area does not exist. Nothing in the regulation compels ATF to grant a viticultural area or creates a "right" to such designation. 27 C.F.R. § 9.3 states that "[i]n accordance with 27 C.F.R. § 4.25a(e)(2) and § 71.41(c), the Director shall receive petitions to establish American viticultural areas" and describes the information required in such petitions. 27 C.F.R. §71.41(c) states "petitions shall be given careful consideration, and the petitioner shall be advised of the action taken thereon." Nothing in the statute or regulations compels ATF to establish a viticultural area simply because the petition conforms to regulation. In particular, nothing compels ATF to establish a viticultural area when it conflicts with Lanham Act rights or, for that matter, at any other time. There is no right to a viticultural area designation under the law or regulations.

In short, the proposed Spring Mountain viticultural area regulation will confuse the consumer and destroy valuable property rights not only without statutory authority, but in direct opposition to the statutory authority under which this proposed regulation would be promulgated.

Spring Mountain Vineyards opposes the petition to establish the Spring Mountain viticultural area. It would be willing to consider dropping its opposition if ATF will amend the name to Spring Mountain District. If ATF proposes to grant the petition in its present (unamended) form, Spring Mountain Vineyards respectfully requests a hearing at which to present further evidence.

Very truly yours,



James M. Seiff

Rec'd by Hand 12/2/92

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December 2, 1992

HAND DELIVERED

Ms. Marjorie Ruhf
Wine and Beer Branch
Bureau of Alcohol, Tobacco and Firearms
650 Massachusetts Avenue, N.W.
Washington, D.C. 20226

Re: Proposed Spring Mountain Viticultural Area

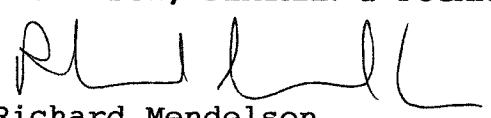
Dear Ms. Ruhf:

Following the publication of the Notice of Proposed Rulemaking for the Spring Mountain viticultural area and our review of the comments submitted by the Spring Mountain Winery, petitioners Michael Marston (Marston Vineyards) and Fritz Maytag (York Creek Vineyards), whom our office represents, have decided to amend the petition to change the name of the proposed viticultural area to "Spring Mountain District." We believe this is appropriate under the circumstances, particularly in light of the fact that the "Spring Mountain District" name has been used on wine labels in the past. A copy of such label is included as Exhibit 11 to the petition.

Please call me if you have any questions.

Sincerely,

DICKENSON, PEATMAN & FOGARTY



Richard Mendelson

RPM:srw
rpm\spring.atf

cc: James Seff, Esq.

SUMMIT RANCH

V I N E Y A R D S

March 10, 1993

Marjorie D. Ruhf
Specialist, Wine and Beer Branch
Dept. of the Treasury
Bureau of Alcohol, Tobacco and Firearms
Washington, D.C. 20226

Dear Ms. Ruhf:

I am replying to your letter dated February 17, 1993 regarding the Spring Mountain viticulture area.

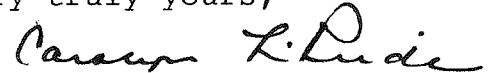
I would like to offer the suggestion that the proposed wording "Spring Mountain District" be changed to "Appellation: Spring Mountain" or "Spring Mountain Appellation".

I feel that from the point-of-view of marketing one's products there is more of a quality oriented sound to either of the phrases which I would like to designate.

I would note also that Spring Mountain Winery (who proposed the "Spring Mountain District" wording) was closed. The facility was purchased by another group, and I have not heard under what name they will be doing business.

Thank you for your consideration in this matter.

Very truly yours,



James R. and Carolyn L. Pride
4026 Spring Mountain Rd.
St. Helena, CA 94574