

**MEMORANDUM**

To: Senator Floyd Prozanski, Chair and  
Members of the Oregon State Senate Committee on Judiciary

From: Jesse D. Lyon

Date: February 20, 2019

Subject: Oregon Winegrowers Association / General Counsel Comments on SB 591 and  
Proposed Amendments concerning Wine Labeling under Oregon's Unfair Trade  
Practices Act

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My name is Jesse D. Lyon. I am a partner at the Davis Wright Tremain LLP law firm. I am proud to have served as general counsel for the Oregon Winegrowers Association (OWA) for nearly 20 years. Over that time, I have watched Oregon's vineyard and wine industry become a source of consumer pride, and a meaningful driver of economic activity in viticultural areas throughout our state.

Oregon's position in the wine marketplace was enabled by winery founders who long ago envisioned an industry with a commitment to quality and authenticity, buttressed by the world's highest legal standards for accurately labeling wine with its true variety and geographic origin.

At the Oregon Wine Symposium last week, Danny Brager, a Senior Vice President in the Beverage Alcohol Group at The Nielsen Company, identified Oregon wine as "*the top of the class*" among all key consumer trends, firmly positioned as premium products, and growing well ahead of the overall wine market across multiple consumer distribution channels.

OWA has long stood for the premise that Oregon should be the best place in the country to grow, produce, sell, purchase, and consume wine. But consumer trust in Oregon wine is now being put to the test. Unfortunately, some who would ride this wave today are less scrupulous than others. We have observed out-of-state winemakers apparently circumventing Oregon law with labels seemingly intended to mislead or confuse consumers about the grapes the winemakers have purchased and the wine they have made.

Accordingly, OWA has proposed SB 591 in order to clarify how wine labeling rules concerning geographic origin and variety designations should be addressed under the ORS Chapter 646 (Oregon's Unfair Trade Practices Act, or the "UTPA") to better protect consumers and their expectations.

We appreciate the good dialogue thus far with stakeholders on this important enforcement tool through the UTPA, and we recognize that work needs to be done. We expect to have additional amendments as we continue our conversations with the Oregon Department of Justice (DOJ) and other stakeholders.

In the meantime, here are some key issues with this proposed legislation:

- OWA recommends a new, stronger wine labeling enforcement tool through the UTPA. While the UTPA currently allows DOJ action when a person uses “*deceptive representations or designations of geographic origin in connection with ... goods*”, we believe a more specific reference to wine labeling laws is necessary.
- OWA’s proposed amendments in Section 2 clarify that our focus is on wineries (whether in-state or out-of-state) ... not wholesalers or retailers who may purchase and re-sell mislabeled wines. OWA believes that wholesalers and retailers should expect that their suppliers will label wine in compliance with the law, and we don’t intend to create any legal jeopardy for those wholesalers and retailers who rely on their suppliers to respect and adhere to wine labeling laws.
- Through the amendment process, we hope to clarify that a UTPA wine labeling violation should only apply where there is an apparent intent to deceive consumers, rather than a simple error or oversight in the cellar or on a bottling line. We think this is an appropriate threshold for either the DOJ or private parties commencing action under the UTPA. Moreover, it is a TTB standard that wine industry members are familiar with... and it is usually quite easy in the labeling context in particular to distinguish purposeful cheating from innocent mistakes. In this heavily-regulated industry, wineries already are required to keep detailed sourcing, winemaking and labeling records which can be discovered if needed to enforce this standard.
- OWA has learned that there is some concern about the bill additionally referencing “*any [wine labeling] standards established by rule*” as grounds for a UTPA violation. However, we note that many other consumer protection laws cross-referenced in the UTPA to specific ORS provisions also include reference to “any rule adopted pursuant thereto.” See ORS 646.608(1)(ii), (kk), (ll), (ww), and (ddd). We only seek parallel treatment in Section 2 clause (3) of SB 591 as we would amend it. Given that most wine labeling details about geographic origin and variety designations are addressed in Oregon Administrative Rules adopted and published by the OLCC, pursuant to its authority under ORS 471.442(1) and ORS 471.446(2), it is important that compliance with those pertinent rules adopted by OLCC also be a part of this UTPA tool.
- Finally, OWA does not want to expose wineries – most of whom are small businesses – to frivolous lawsuits. To discourage this, OWA’s amendments in Section 3 would clarify that private and class actions seeking recovery for statutory damages, punitive damages, and attorneys’ fees could only be brought in the event the defendant winery mislabeled 5,000 or more cases. OWA believes that situations concerning 5,000 or more cases of wine are those most likely to have a material negative impact on consumers and their trust in a fair, efficient, and well-regulated marketplace for wine.

Thank you for your attention to these important issues for Oregon’s vineyard and winery industry.