

# IPR in the Wine Sector: Regulatory bodies and collective action against counterfeiting

## China IPR SME Helpdesk



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## **IPR in the Wine Sector: Regulatory bodies and collective action against counterfeiting**

In this article we'll be looking at how certain regulatory bodies and wine associations can, and in some cases already do, help producers to protect the reputations of their brands. Finally we'll look at how the wine industry can come together to tackle the counterfeiting industry which continues to damage the sales and reputation of this much loved beverage.

Some weeks ago, we contacted INAO, institut national de l'origine et de la qualité, The national institute of origin and quality, France's public administrative authority responsible for the implementation of French policy on official signs of identification of the origin and quality of agricultural and food products, including wine.

Over the last decade, INAO has worked hard to protect French PDOs and PGIs in China, and has seen its actions in China increase considerably between 2008 and 2015. Indeed INAO has seen bad faith trade mark registrations of French GIs quadruple in recent years with just 12 predatory French GI registrations in 2009 rising to 60 in 2014 with no sign of a reduction in numbers. In their experience these have been a mix of true 'trade mark squatters', simply out to make a profit, as well as shady importers of genuine GIs registering trade marks in an attempt to gain exclusivity over the market, thereby ignoring the collective nature of GIs.

INAO, like other national bodies, has not sat idly by however, and has filed numerous opposition or annulment actions before the Chinese Trade Mark Office (CTMO) against marks which infringe French GIs. The average cost of these actions comes to around €2,000 and as the number of infringing applications is on the rise they are beginning to feel the strain on their budget.

As such, INAO has been less able to involve itself in 'boots on the ground' investigations and actions against individual counterfeiters. Representatives have expressed their dissatisfaction at their inability to tackle these counterfeiters, who are damaging the industry as a whole, however the prohibitive costs in tackling the numerous infringers is too high for their already overstretched budget and they need more support if they are to tackle the roots of the problem.

Regional organisations have also made attempts at reducing the problems of counterfeiting in China. The Bordeaux Wine Council; Conseil Interprofessionnel du Vin de Bordeaux (CIVB)<sup>1</sup> has been working for years to combat wine fraud, and with the help of the French Finance Ministry runs a specialist

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<sup>1</sup> <http://www.bordeaux.com/>

laboratory to test suspected fakes, as well as commissioning an app; Smart Bordeaux<sup>2</sup>, which allows buyers to check the details of vintages by taking a photo of a wine label or scanning a bar code<sup>3</sup>.

In January 2011, the CIVB engaged Nick Bartman, a specialist counterfeit investigator, to put together a team and investigate wine counterfeiting in China<sup>4</sup>. However due to budget constraints, the scope of the investigation was limited, as was the legal action which followed. The team's actions on behalf of the CIVB resulted in an estimated €30 million worth of damage to counterfeiting operations. Bartman believes however that without the limits on investigative scope and freedom to litigate, this figure could have been vastly improved. With more time, and a fully-fledged cross-border investigation, enough damage could be done to infringement operations to significantly deter future wine counterfeiting in the region.

In addition to Mr Bartman's activities, the CIVB has also engaged another old China hand; Thomas Jullien. Based out of Hong Kong, Mr Jullien and his team work both to promote Bordeaux wines in China, as well as chase down counterfeits and tackle infringers. In their anti-counterfeiting efforts Thomas's team work to register GIs for all of Bordeaux's 50 appellations, as well as track down and take action against infringers. This project has now been active for over 5 years and has removed a great number of counterfeits from the market. However, enforcement remains a key issue and even though Thomas's team focus their efforts on large scale infringers, with more obvious counterfeits, lack of education within enforcement authorities regarding wine counterfeiting means that officials in less experienced bureaus remain reluctant to take risks to shut down infringers. Without the resources to help educate the numerous local authorities around China, this barrier to enforcement will remain and successful actions will be limited primarily to first tier cities, thereby limiting the effective impact that these experienced anti-counterfeiting teams can have on national production.

It's not just the investigators feeling this frustration; Dr. Paolo Beconcini, managing partner at Carroll, Burdick & McDonough LLP<sup>5</sup>, has spent more than 15 years taking down counterfeiters in China for some of the biggest brands in business and has studied and written on wine counterfeiting in the past<sup>6</sup>. Paolo's philosophy when it comes to counterfeiters is akin to a well-aimed sledgehammer; once found you have to hit them fast, and you have to hit them hard. This 'shock and awe' tactic is incredibly effective, and works not only to close down the immediate counterfeiting operations, but also to deter other counterfeiters of those products.

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<sup>2</sup> <https://itunes.apple.com/gb/app/smart-bordeaux-bordeaux-wines/id404568006?mt=8>

<sup>3</sup> <http://www.ft.com/cms/s/0/07aa952e-1345-11e5-ad26-00144feabdc0.html#ixzz3ron4bpRI>

<sup>4</sup> Suzanne Mustacich. (2015). *Thirsty Dragon, China's Lust for Bordeaux and the Threat to the World's Best Wines*. London: Henry Holst and Co. p130-156.

<sup>5</sup> <http://www.cbmlaw.com/>

<sup>6</sup> <https://www.linkedin.com/pulse/china-counterfeiters-wine-business-paolo-beconcini?trk=prof-post>

Each year, Paolo attends working groups for the Quality Brands Protection Committee of China (QBPC)<sup>7</sup>, as well as Interpol's China and South-East Asia Trafficking in Illicit Goods and Counterfeiting Sub-Directorate<sup>8</sup> which provides training for customs officials and police on recognition of products, thereby assisting them in carrying out the investigations and raids which have marked Paolo's successful career.

These working groups, and the lobbying clout they represent could catapult the wine industry into the crosshairs for Chinese police officials, and yet representatives are conspicuously absent from their memberships. Without the education and support of these Chinese officials, and relying on the comparatively shallow pockets of individual producers and organisations like the CIVB, the wine industry is unable to bring to bear the strength necessary to tackle the now established counterfeiting operations which continue to damage profits and reputations of wine producers around the world.

For lasting success in the war against counterfeiters, a much larger coalition is required; a global wine protection initiative with the support of national and regional wine associations, importers, retailers, and individual producers. With this kind of backing individual costs would be slight, but the political weight and financial power behind the investigators and legal teams would be the greatest threat yet seen by counterfeiters in any industry.

**Alex Bayntun-Lees**

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<sup>7</sup> <http://www.qbpc.org.cn/>

<sup>8</sup> <http://www.interpol.int/Crime-areas/Trafficking-in-illicit-goods-and-counterfeiting/Trafficking-in-illicit-goods-and-counterfeiting>

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