

# Tequila, or Not Tequila? Appellation of Origin, and the Saga of Temequila

By: Max Kleiner



When you think of tequila, the first thing that probably comes to mind is the spirit. Perhaps you are thinking of the song, or the town in the Mexican state, Jalisco. But chances are you are thinking about shots and lime wedges, an expensive glass bottle with an ornamental plug at the top, or a cold green cocktail served in a coupe glass with a salted rim. And I would never fault you for thinking of any of those things. But have you ever asked yourself what makes tequila tequila?[1]

Despite tequila's reputation for being a care-free, life of the party sort of liquor, there is a network of statutes and international treaties that determines what can be sold as tequila.[2] In 1974, the Mexican Secretary of Heritage and Industrial Development released a resolution in the Official Journal of the Federation declaring tequila as an "Appellation of Origin." [3] According to the World Trade Organization, an Appellation of Origin (AO) is a name used to designate a product that comes from a "specific limited geographical area" and has special qualities that come from that geographic location.[4] Think Champagne, Parmesan, or Feta.[5] This concept, the idea that the product's qualities 'come with the territory,'" is often been described as *terroir*. [6] Professor Justin Hughes points out that, although the use of AOs and Geographical Indications (GIs) is based in *terroir*, countries are driven to protect these terms primarily by the profit they gain from their exclusive use.[7] To summarize, in 1974, Mexico set out to make sure no other country could profit by producing their own versions of tequila.

However, simply declaring something as an AO or GI is not enough. The 1974 legislation allows for regulation of the production and sale of liquor within Mexico, but enforcing the AO designation in other countries requires treaties and/or trade agreements. One such treaty that Mexico joined in the 1960s is the Lisbon Agreement.[8] The Lisbon Agreement functions by compiling a list of AOs from member countries, allowing each country to decide how AOs will be enforced within their

borders (judicial or administrative procedures), and it then giving member countries the permission to use those processes to assert the exclusive use of their AOs.[9] The Lisbon agreement includes twenty-nine member countries and, since 2015, the European Union.[10] In order to enforce the AO for Tequila in the EU before 2015, Mexico signed a treaty with the European Union in 1997.[11] This 1997 treaty functioned similarly to the Lisbon Agreement.[12]

Tequila also receives protection in the United States, originally through a 1974 agreement[13] and later through NAFTA.[14] Under a 2006 agreement, as a supplement to the agreement in NAFTA, the office of the United States Trade Representative (USTR) is responsible for enforcing the Mexican tequila standards.[15] In exchange, U.S. companies are permitted to work with Mexican tequila producers, and Mexico is not allowed to regulate U.S. companies' marketing, advertising, or labeling of Tequila for sale in the United States.[16] Though the USTR is responsible generally for preventing American companies from producing tequila in the United States or using the term tequila to describe their own products, NAFTA still gives Mexico the ability to use U.S. courts to enforce its domain over tequila.[17]

One example of the effect of these treaties is the story of John B. Wagoner and his attempt to produce an American tequila. According to an *LA Times* article from 2005, Wagoner originally sought out agave because he was looking for shrubbery that would not block the views from his residential property in Temecula, California.[18] Mr. Wagoner bought 100 agave pups from an agave plantation in Jalisco, Mexico, and moved them to Temecula.[19] After the plants had grown, Wagoner found out about an agave shortage in Mexico that led to increased prices for the plant and decided to harvest them. [20] He initially considered selling the agave back to Mexican producers, but then decided he could make more money by producing his own spirits.[21] To skirt protection of the term tequila, Wagoner tried to come up with a clever name that would give his buyers an idea of what his product was without crossing any international trade boundaries.[22] Since his operation was based in Temecula, he landed on the name, Temequila.[23]

In February of 2005, the Tequila Regulatory Counsel, or Consejo Regulador Del Tequila sent a cease-and-desist letter to Wagoner,[24] and the Alcohol and Tobacco Tax and Trade Bureau (TTB) denied his request to trademark the term "temequila." [25] Wagoner ended up selling his product as J.B. Wagoner Ultra Premium 100 percent Blue Agave.[26] However, even after removing all mention of tequila from the name of his product, Wagoner later received another order from the TTB, ordering him to discontinue an advertisement which described his product as, "not your mamacita's tequila." [27] J.B. Wagoner Ultra Premium is no longer in production, which is evidence of the effectiveness of AOs in protecting the use of the term tequila by American companies. It's not easy for an American producer to sell blue agave-based liquor without being able to call it tequila. [28]

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[1] While many tequilas are 100% blue agave, according to the official standards a tequila product can contain 49% non-agave sugar, such as sugar cane, during the distillation process. And considering that the result of distilling sugar cane is rum, some tequilas are basically a 51% agave to 49% rum mix. Perhaps this is partly why tequila has a reputation for giving bad hangovers. Ministry of the Economy, Official Mexican Standard Nom-006-SCFI-2012 Alcoholic Beverages-Tequila-Specifications 4.36 (2012), [https://www.crt.org.mx/images/documentos/Normas/NOM\\_006\\_SCFI\\_2012\\_Ingles.pdf](https://www.crt.org.mx/images/documentos/Normas/NOM_006_SCFI_2012_Ingles.pdf) [<https://perma.cc/JU6U-6HUK>] (courtesy translation).

[2] *Authenticity*, Consejo Regulador del Tequila, <https://www.crt.org.mx/index.php/en/noticias-2/authenticity> [<https://perma.cc/M5CM-RXUM>] (last visited Oct. 23, 2022) (As the Consejo Regulador Del Tequila (CRT) states on its website, in all caps, "IF IT LACKS A LABEL, IT'S NOT TEQUILA.").

[3] José Andrés Oteyza, *General Declaration for Protection of the Appellation of Origin "Tequila"*, Consejo Regulador del Tequila, <https://www.crt.org.mx/index.php/en/pages-2/declaration> [<https://perma.cc/37FW-Y2W9>] (last visited Oct. 23, 2022) (translation on CRT website).

[4] World Trade Organization, *The Law On Indications Of Geographical Origin*, art. 3 (2016)

[https://www.wto.org/english/thewto\\_e/acc\\_e/cgr\\_e/wtaccgr24a1\\_leg\\_6.pdf](https://www.wto.org/english/thewto_e/acc_e/cgr_e/wtaccgr24a1_leg_6.pdf) [https://perma.cc/4K4V-28QF].

[5] *Id.* at art. 3-4. Technically, these terms are “geographical indications,” which are slightly different from appellations of origin. The characteristics of AO’s can come either “exclusively or essentially” from “natural (or) human factors” in the region, whereas GI’s “quality, reputation, or (character)” must be “essentially attributed to their geographic origin.”

[6] Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate about Geographical Indications*, 58 *Hastings L.J.* 299, 301 (2006).

[7] *Id.* at 305.

[8] World Intellectual Property Organization, *WIPO Administered Treaties*, WIPO IP Portal,

[https://wipolex.wipo.int/en/treaties/ShowResults?search\\_what=C&treaty\\_id=10](https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=10) [https://perma.cc/KK77-HHYF] (last visited Oct. 23, 2022) (scroll down to find Mexico).

[9] *Id.*

[10] *Id.*

[11] Agreement Between the European Community and The United Mexican States on the Mutual Recognition and Protection of Designations for Spirit Drinks, June 11, 1997 OJ (L 152) 16–26 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A21997A0611%2801%29> [https://perma.cc/9DWW-KVC7].

[12] *Id.* at art. 4.

[13] Department of the Treasury Bureau of Alcohol, Tobacco, and Firearms, Industry Circular Number: 75-13 (1975) [https://www.ttb.gov/images/industry\\_circulars/archives/1975/75-13.html](https://www.ttb.gov/images/industry_circulars/archives/1975/75-13.html) [https://perma.cc/4WVGJ-5JWT].

[14] *International Protection of the Tequila Designation of Origin*, Consejo Regulador Del Tequila, <https://www.crt.org.mx/index.php/en/pages-2/proteccion-del-tequila-a-nivel-internacional> [https://perma.cc/S9G8-PKRA] (last visited Oct. 23, 2022).

[15] *Agreement Between the United States and the Secretaría de Economía of the United Mexican States on Trade in Tequila*, art. 2 (Jan. 17, 2006) in 1 *Customs Law and Administration: Treaties* § 20:1.

[16] *Id.* at art. 3 (besides, of course, a label to show where the tequila was produced).

[17] North American Free Trade Agreement, art. 1712(1-3), Dec. 17, 1992, <http://www.sice.oas.org/trade/nafta/chap-172.asp#A1712> [https://perma.cc/PBW6-BVAZ].

[18] Andrew Wang, *Just Don't Call it Tequila...*, *La Times* (Mar. 13, 2005), <https://www.latimes.com/archives/la-xpm-2005-mar-13-fi-tequila13-story.html> [https://perma.cc/84D6-4FTQ].

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] Wang *supra* note 18.

[25] Associated Press, *California Liquor Maker in another Squabble with Tequila Industry*, *Banderas News* (Nov. 2005), <http://banderasnews.com/0511/ent-temequila.htm> [https://perma.cc/5WZ9-YZA2].

[26] *Id.*

[27] *Id.*

[28] Unfortunately, the effectiveness of tequila as an AO is not the end of the story. According to Bowen and Zapata, the rapid expansion of tequila markets from the 1990’s onward has had negative ecological, social, and economic impacts for smaller agave growers in Mexico. Although Mexico’s domain over the word tequila is based in the concept of *terroir*, the industrialization of the tequila industry is creating a more generic product as agave growers and tequila producers using traditional techniques are pushed out of the market. Sarah Bowen & Ana Valenzuela Zapata, *Geographical Indications, Terroir, and Socioeconomic and Ecological Sustainability: The Case of Tequila*, 25 *J. Rural Stud.* 108 (2009).

