Counterfeit and Misrepresented Wine, Can it be ignored?

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It used to be commonly accepted that the label on the outside of a bottle of wine represented the wine inside the bottle, exactly what it purported to be in terms of varietal, source, chateau, and vintage. However, in recent years questions have been raised on whether the wine on the inside matches the label. This is not a small trend, but one that may overvalue the wine in the marketplace by millions, or even billions of dollars. Why, because it’s the outside of the bottle, i.e. the label that gives this commodity called “wine,” value.

The nature of the product is such that even though bottles have the same nominal value when looked at from the outside of the bottle, sans label; it is only the label that gives it value. Otherwise, one would just see hundreds of bottles of red, white or pink liquid on the wine store shelves. The only difference between the bottles is the labels. (Example: Set A consists of bottles that have wine bottles with labels of “Charles Shaw” and “vin du pays.” Set B consists of bottles that have wine labels of “Chateau Lafitte Rothschild” or “Screaming Eagle.” The only differences between sets A and B are the labels that make a consumer want to pay only pennies for set A and hundreds to thousands of dollars for set B.) No one tastes the wine itself, until after the purchase, if not much later, or even never.

Part of the problem is that the wine is a living organism. Science has not yet achieved any definitive, reliable, and economic way of determining age, varietal and/or source of wine. Rather such things are left to human recordkeeping and honesty, subject to frail human values of mistake and greed.

On the one hand, there are those who say this is victimless crime and the fault, if any belongs with the buyer who bought wine with doing their due diligence, including through examinations of the bottles and the bottles provenance. The nature of the people involved in the high end wine trade is such that they do not want to know if they have fakes or not because their friends and business associates who they try to impress will not likely notice and they don't want to be known as someone who was taken and therefore, they don’t care. Plus it may not be economically advantageous to do anything about it because of the legal fees involved and a real possibility that the owner of a potentially counterfeit wine may keep that potentiality to them and sell the bottle without disclosing the concerns.

On the other hand, many people do feel taken. These include both producers and consumers. If they feel taken, what are the liabilities and remedies as against those people involved in the provenance of the wine at issue? The most lucrative trade in counterfeit wines seems to be in bottles labelled to make the buyer believe they are buying “Old French Chateau” that have been bought and sold by collectors by and through auction houses, brokers, the internet, wine stores have labels affixed to wine that are counterfeit. This is by far the most financial rewarding part of falsely represented wine. But when a bottle creates a concern that it may be counterfeit, how far back in the provenance of the wine does a duped investor has to go. This paper explores the potential legal options, relative to the expenses and legal fees necessary, of consumers or producers who do want to do something about the potentially counterfeit wine that they own, or did not produce. It addresses the remedies of owners of wines that may be
counterfeit, against those involved in the sales and/or production of the wine and its labels. It further addresses the industry’s reaction and solutions to the problem. Finally it addresses the issue, going back to those who don’t care as to what the long term effects are on the wine industry, if the problem is simply ignored.