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Responded At: Apr 20, 2023 13:08:22 pm

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IP Address: [REDACTED]

Q1. Name

Q2. Email address

Q3. Mailing address

Q4. Phone

Q5. Organisation name (if applicable)

Q6. Entity type

Industry body

Q7. Please select which EU wine geographical indication (GI) your submission is against

Prosecco

Q8. Grounds of objectionA submission against one or more of the wine GIs must be based on at least one of the four grounds of objection.

The EU GI name is used in Australia as the common name for the relevant good, including as a type or style of wine.

The EU GI name is used in Australia as the name of a grape variety, plant variety, or an animal breed.

The EU GI name is identical to, or likely to cause confusion with a trade mark that is registered in Australia or the subject of a pending application made in good faith in Australia.\*

The EU GI name is identical to, or likely to cause confusion with, an unregistered trade mark that has acquired rights through use in good faith in Australia. \*

Q9. Please provide further details, based on the grounds of objection for each GI. (If submission based on existing trade mark please provide trade mark number. If submission based on unregistered trade mark please provide evidence of use on Australia).

[REDACTED]. Prosecco Submission Introduction [REDACTED] is a highly regarded organisation that represents the interests of approximately [REDACTED] independent winegrape growers in the [REDACTED] [REDACTED]. This is Australia's [REDACTED] production zone, accounting for approximately [REDACTED] percent of the national annual winegrape crush. Based in the regional city of [REDACTED] principal functions are to provide extension services, inform growers of market and industry intelligence, advocate to protect and promote growers' interests and assist members in their commercial dealings. It is in this context [REDACTED] MVW provides this submission on behalf of winegrape growers in the [REDACTED] region, seeking to dispute the European Union's (EU) claims that Prosecco is a Geographical Indication (GI). Prosecco grape production in the [REDACTED] regions Vintage Tonnes \$ Total Grape Value \$/Tonne 2021 4,738 \$3.85M \$812/t 2022\* 3,850 \$2.89M \$750/t \*Note –reduced production in Vintage 2022 was due to disease pressures affecting one of the region's largest producers The Prosecco variety has been one of the few shining lights in the wine industry in the [REDACTED] in recent years, being the highest-value crop on a dollar-per-tonne basis for growers when many other varieties have suffered declining values due to; • Significant tariffs being imposed on Australian wine in the Chinese market • Major freight and logistics issues globally (container availability, costs, and shipping accessibility) • The impact of the COVID environment on international sales and marketing programs Prosecco is certainly a key variety in the sustainability of wine grape growers. Growers have also invested heavily in vineyard developments, planting Prosecco grapes at the request of wine producers, underpinned by medium to long-term grape supply agreements (banks and financiers require winery supply contracts before underwriting

grower vineyard redevelopments). Many wine producers have invested millions of dollars in specialised equipment to process Prosecco grapes, whilst supporting their sales and marketing programs with significant financial outlays to promote their Prosecco brands. The overall growth of the Prosecco market has been a carefully planned and considered process for all parties involved. Documented Research There have been various research documents produced analysing the EU's claims that Prosecco is a GI region rather than a grape variety. We fully support the findings contained within the following reports that justify our strong position that Prosecco is indeed a grape variety;

- The European Union's attempts to limit the use of the term 'Prosecco' (Monash University & Macquarie University) Report extract quote from Mark Davison, Professor of Law at Monash University "The evidence speaks for itself, Prosecco has been recognised as the name of a grape for centuries, but not as a geographical indication (GI) – protecting the term as a geographical indication is a cynical attempt to avoid competition from Australian wine producers" Conclusion (Page 18) "The evidence is abundantly clear that Prosecco is the name of a grape variety and is not a geographical indication. As such, there is no justification for the EU's demands for protection of Prosecco as a condition of entering free trade agreements with other countries. In addition, any bans or proposed bans on the marketing of non-Italian wine labelled as Prosecco is likely to raise significant issues of inconsistency with WTO members' obligations under the TRIPS and TBT Agreements and, in the case of Australia, potential Constitutional issues. Moreover, to accept the EU's claims in relation to Prosecco also paves the way for further dubious claims for other agricultural products"
- In vino veritas? The Dubious Legality of the EU's Claims to Exclusive Use of the Term "Prosecco" (Mark Davison, Caroline Henckels & Patrick Emerton) Conclusion (Pages 20- 21) If Prosecco is the name of a grape variety and not a geographical indication, the prohibition of its use in trademarks on exported Australian Prosecco would, in our view, be likely to contravene Article 20 of the TRIPS Agreement and Article 2.1 of the TBT Agreement. It is unclear whether a prohibition on the use of the word on Australian Prosecco in Australia would be inconsistent with the Australian Constitution. This issue would depend, in part, on whether the law in question was characterised as a law with respect to trademarks, in which case it would not constitute an acquisition of property on other than just terms. The more fundamental question is whether, and if so to what extent, domestic legal systems may permissibly be used to generate claims to intellectual property that are then used to leverage international protection for that intellectual property. When other governments have no particular interest in the subject matter other than to recognise it in return for trade concessions, the position becomes both complicated and distorted, because these governments' interest in concluding trade agreements has come at the cost of detailed consideration of the evidence of the existence of the alleged intellectual property. The Australian government should not jettison the commercial interests of Australian wine producers without a detailed consideration of the evidence that supports or fails to support the assertions of the European Union. Giving in to bluster and passionate assertion rather than engaging in a principled consideration of the merits of intellectual property claims is unwise from either a principled or pragmatic perspective. The acceptance of one dubious claim without adequate scrutiny paves the way for the making of further dubious claims. In addition, both the EU and other governments that have banned or propose to ban imports of wine labelled as Australian Prosecco should be on notice that such bans might well contravene their WTO obligations.
- LAW4801: Research Project. Provide a detailed analysis of the change in Italian & EU law regarding the creation of a DOC and PDO for Prosecco in 2009 (Student No. 26899248) Conclusion (Page 21) "Given that Prosecco is a type of grape variety used in wine, as evidenced by the in-depth analysis in this research paper on the use of the term by Italian government in IGT, DOC, and DOCG regulations, it will not meet the definition of geographical indication in the TRIPS Agreement. If Prosecco were a geographical indication, Australia would be empowered to place a restriction on the use of the trademark because protection of geographical indication is a legitimate interest of Australia pursuant to Article 22. However, given that Prosecco is merely a grape variety and the Italian legislative decree has no effect in altering the 'actual nature' of Prosecco, any restriction imposed by Australia may amount to an unjustifiable encumbrance on the trademark"

Please contact the MVW representative detailed below if you do not already have copies of the documents detailed above. In conclusion Australian Prosecco production has increased significantly over the years, with regions such as the Murray Valley investing millions of dollars in infrastructure, sales and marketing, tourism, and hospitality. Prosecco is grown in many regions throughout Australia and is providing some financial relief to growers that have been long-suffering through the turbulent times that have plagued the industry over the past two decades. Losing the capacity to use Prosecco as a grape variety would strike fear in the wine industry, with many wondering what variety might be next. Potentially stifling investment in the diversification of products now when the industry critically needs separation from the standard varieties that are subject to worldwide supply and demand imbalances. Given that 95 percent of Prosecco wine is sold domestically in Australia, the EU should have few issues with Australia's use of the grape variety name unless they see this as a stepping stone to other grape /wine varieties and other common food products. There would be many other Australian industries that would be fearful of their respective products being targeted by similar unfounded GI claims that would be devastating to their

businesses. Grape growers have planted Prosecco grapes in good faith on the understanding that it is a recognised grape variety, well established in Australia, and any claims to the contrary by the EU pose a significant threat to all Australian primary producers. Enquiries regarding this submission can be directed to: [REDACTED]

Q10. Would you like to make a second selection of EU wine geographical indications (GI)?	Yes
Q11. Please select the second EU wine GI your submission is against	Conegliano Valdobbiadene - Prosecco / Valdobbiadene - Prosecco / Conegliano - Prosecco
Q12. Grounds of objectionA submission against one or more of the wine GIs must be based on at least one of the four grounds of objection.	<p>The EU GI name is used in Australia as the common name for the relevant good, including as a type or style of wine.</p> <p>The EU GI name is used in Australia as the name of a grape variety, plant variety, or an animal breed.</p> <p>The EU GI name is identical to, or likely to cause confusion with a trade mark that is registered in Australia or the subject of a pending application made in good faith in Australia.*</p> <p>The EU GI name is identical to, or likely to cause confusion with, an unregistered trade mark that has acquired rights through use in good faith in Australia. *</p>
Q13. Please provide further details, based on the grounds of objection for each GI. (If submission based on existing trade mark please provide trade mark number. If submission based on unregistered trade mark please provide evidence of use on Australia).	as detailed above
Q14. Would you like to make a third selection of EU wine geographical indications (GI)?	No
Q15. Please select the third EU wine GI your submission is against	not answered
Q16. Grounds of objectionA submission against one or more of the wine GIs must be based on at least one of the four grounds of objection.	not answered
Q17. Please provide further details, based on the grounds of objection for each GI. (If submission based on existing trade mark please provide trade mark number. If submission based on unregistered trade mark please provide evidence of use on Australia).	not answered
Q18. Would you like to make a fourth selection of EU wine geographical indications (GI)?	not answered
Q19. Please select the fourth EU wine GI your submission is against	not answered

Q20. Grounds of objectionA submission against one or more of the wine GIs must be based on at least one of the four grounds of objection.	not answered
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Q21. Please provide further details, based on the grounds of objection for each GI. (If submission based on existing trade mark please provide trade mark number. If submission based on unregistered trade mark please provide evidence of use on Australia).	not answered
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Q22. Would you like to make a fifth selection of EU wine geographical indications (GI)?	not answered
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Q23. Please select the fifth EU wine GI your submission is against	not answered
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Q24. Grounds of objectionA submission against one or more of the wine GIs must be based on at least one of the four grounds of objection.	not answered
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Q25. Please provide further details, based on the grounds of objection for each GI. (If submission based on existing trade mark please provide trade mark number. If submission based on unregistered trade mark please provide evidence of use on Australia).	not answered
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Q26. Upload your supporting evidence for each EU wine GI you have selected.	<div></div> <div></div> <div></div> <div></div>
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Q27. Would you like to upload another supporting document?	not answered
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Q28. OtherAny other information on the impacts EU GIs may have on Australian businesses or industry.	not answered
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Q29. Is your response confidential?	No
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Q30. Please specify the parts of your response that are confidential.	not answered
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Q31. Do you agree to your response being published on our website?	Yes
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Q32. Please de-identify my response	not answered
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Q33. Confirm that you have read and understand this privacy notice.	Yes
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Q34. Confirm that you have read and understand this declaration.

Yes

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