

Respondent No: 472

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Responded At: Apr 21, 2023 11:32:33 am

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IP Address:

Apr 21, 2023 11:32:33 am

Apr 21, 2023 01:32:15 am

Q1. Name

Q2. Email address

Q3. Mailing address

Q4. Phone

Q5. Organisation name (if applicable)

not answered

Q6. Entity type

Individual

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 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).

Background As an Australian with northern Italian heritage (Veneto region) who has been a part of the Australian grape and wine sector since 2009, I have both a personal and professional interest in the protection of the grape variety Prosecco. Both my current employer and I have invested considerable time, finances and indeed our reputations on ongoing international efforts to maintain Australian grape and wine producers' legitimate rights to the name of the Prosecco grape variety. I have built ongoing personal connections with a number of regional businesses and people that this decision will substantially impact and understand how much investment has been made in the Prosecco grape variety. A poor decision by the Australian Government to disregard these people and businesses in favor of an international trading partners interest will be devastating and have long lasting flow on effect beyond the grape and wine sector and the regional economies they support. I urge the Australian Government to take the words of the sector seriously and understand the full ramifications of what is at stake here. It is vital that the Australian Government stands up to the EU and support Australian people, businesses and our regional community in this negotiation. Proposed EU GIs being objected to I object to the term "Prosecco" being protected as a European Union (EU) Geographic Indication (GI) on the grounds that it is used in Australia as the name of a grape variety. I objecting to Number 52 "Prosecco" in the list of proposed GIs (refer below) which contains the term "Prosecco" as a single term. The objection is made on the grounds detailed in the following sections. I am also objecting to the remaining terms (Number 53 and 54), which contain the term Prosecco within a compound term. While i acknowledge that the Australian Government has noted it is not the intention for terms that form part of compound terms to be protected, there remains a risk that interested parties might mount an argument to the contrary. Accordingly, I object to the use of "Prosecco" within the

compound terms, as there is no reason for grape varietal terms to be incorporated into EU GIs, but rather, that the geographical element of the compound term ought to be sufficient. For example: • (53) “Asolo” / “Colli Asolani” (English translation - hills of Asolo) is a province of Treviso, Italy i.e. the geographic origin of the compound GI term. (Asolo Google Maps Reference) • (54) Conegliano Valdobbiadene / Valdobbiadene (google maps reference) / Conegliano (google maps reference) are both also individual provinces of Treviso, Italy i.e. the geographic origin of the compound GI term. Prosecco is the grape variety grown in these provinces, not the geographic origin. Having grape varietal terms used as a GI only causes conflict and confusion for consumers. Australian consumers understand and make purchases based on grape varieties. Grounds for objection I object to the inclusion of the term “Prosecco” being protected as part of an EU GI on the main grounds that Prosecco is used in Australia as the name of a grape variety (Grounds 2). In addition, I object on behalf of the sector on the grounds that Prosecco is identical to, or likely to cause confusion with, existing trademarks that are registered in Australia, or the subject of a pending application made in good faith in Australia (Grounds 3). Furthermore, I object on behalf of the sector on the grounds that Prosecco is identical to, or likely to cause confusion with, unregistered trademarks that have acquired rights through use in good faith in Australia. (Grounds 4). Prosecco is a grape variety Internationally and in Australia Prosecco is recognized as the name of a grape variety. It has been for many years and there can be no question of these facts. There are extensive resources supporting this, which quote Australian, EU, Italian and other international sources affirming Prosecco is the name of a grape variety. The following are some references which support the fact that Prosecco is the name of a grape variety that should not be protected as an EU Wine GI. General references 1. Australian Grape and Wine Prosecco Factsheet (2022). [https://www.agw.org.au/wp-content/uploads/2022/11/AGW\\_Australian-Prosecco-fact-sheet\\_visual-1.pdf](https://www.agw.org.au/wp-content/uploads/2022/11/AGW_Australian-Prosecco-fact-sheet_visual-1.pdf) 2. International Organisation of Vine and Wine (OIV), International list of vine varieties and their synonyms. <http://www.oiv.int/public/medias/2273/oiv-liste-publication-2013-complete.pdf> 3. OIV Vine Varieties Database - <https://www.oiv.int/what-we-do/viticulture-database-report?oiv=> 4. Jancis Robinson, Julia Harding and José Vouillamoz, *Wine Grapes: A Complete Guide to 1,368 Vine Varieties* (Penguin, 2012). 5. Kym Anderson, *Which Wine Grapes are Grown Where?* (University of Adelaide Press, 2013). The database upon which the book is based is available at <https://www.adelaide.edu.au/wine-econ/databases/>. Journal articles 6. Monash University Final report on the 'EU's attempts to limit the use of the term 'Prosecco' – August 2022 <https://www.agw.org.au/wp-content/uploads/2023/04/Prosecco-Report-Final-16-August-2022.pdf> 7. Journal Article referencing the dubious nature of the EU's attempts to protect Prosecco globally as a grape variety - Davison, Mark, Henckels, Caroline and Emerton, Patrick, *In vino veritas? The Dubious Legality of the EU's Claims to Exclusive Use of the Term “Prosecco”*, *Australian Intellectual Property Journal* (forthcoming in 2019). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3304239](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3304239) 8. Geographical Indications in the EU, China and Australia, WTO Case Bottling Up Over Prosecco, *European Integration and Global Power Shifts: What Lessons for Asia?* (Julien Chaisse ed.) 2018/2019, Forthcoming, Peking University School of Transnational Law Research Paper No. 18-14 [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3218810](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3218810) 9. Historical References to the grape variety Prosecco - Hill, Sam, 2019, *dalle uve del vitigno Prosecco - Italian government decrees referring to Prosecco*, Monash University [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3444265](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3444265) References to Legal Cases 10. Reference to the WFA legal case against the European Commission in Australia where WFA proved legally that Prosecco was a grape variety in Australia. - *Winemakers' Federation of Australia v European Commission* [2013] ATMOGI 1 (22 November 2013) <http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ATMOGI/2013/1.html> 11. The decision of the High Court of Singapore to deny the application to protect Prosecco as a GI in Singapore based on the fact it was proven to be a recognised grape variety and was likely to mislead consumers if protected as a GI (2021) [https://www.elitigation.sg/gd/s/2022\\_SGHC\\_33](https://www.elitigation.sg/gd/s/2022_SGHC_33) 12. The decision of United States Patent and Trademark Office US have rejected applications for protection of Prosecco as a GI based on 438 pieces of evidence that shows that the term Prosecco identifies a Grape Variety, not a Place of Origin. (2022) [https://tsdr.uspto.gov/#caseNumber=88392015&caseType=SERIAL\\_NO&searchType=statusSearch](https://tsdr.uspto.gov/#caseNumber=88392015&caseType=SERIAL_NO&searchType=statusSearch) Useful Articles which articulate the Prosecco argument and related risks. 13. Australian Grape & Wine article - The Prosecco GI Lie (February 2020) <https://www.agw.org.au/the-prosecco-gi-lie/> 14. Australian Grape & Wine article - First Prosecco, Now Vermentino. What's Next...? (September 2022) <https://www.agw.org.au/first-prosecco-now-vermentino-whats-next/> 15. VinePair Inc - Recent objective article which clearly sets out the facts of the debate (2023) <https://vinepair.com/articles/italian-vs-australian-prosecco/> 16. Jamie Goode, 'Prosecco Wars: should the Aussies be able to use the name?', *Wine Anorak*, 11 April 2018, [www.wineanorak.com/wineblog/australia/prosecco-wars-should-the-aussies-be-able-to-use-the-name](http://www.wineanorak.com/wineblog/australia/prosecco-wars-should-the-aussies-be-able-to-use-the-name) (accessed April 2023) Prosecco is identical to, or likely to cause confusion with registered trademarks (Grounds 3). I do not hold the rights to any “Prosecco” registered trademarks in Australia. However, I note on the sector's behalf that there are 33 results available when searching the term Prosecco on the IP Australia trademark database.

The majority of these are registered to Australian companies with trademark rights. These trademarks all consist of or contain the term "Prosecco", commonly used on wine labels, at events and in marketing and promotional materials. It is likely that any registration of the term Prosecco as an EU GI would cause confusion amongst Australian consumers and broader public. Prosecco is identical to, or likely to cause confusion with unregistered trademarks (Grounds 4) I do not directly hold the rights to any unregistered "Prosecco" trademarks in Australia. However, I note on the sector's behalf that there are hundreds of Australian wine producers with multiple brands who hold common law interests in the name Prosecco, acquired through use in good faith in Australia. The term Prosecco is used by the sector on wine labels, at events and in marketing and promotional materials. Evidence of such expansive common use is apparent in a number of basic searches for Australian Prosecco wines. Examples include: • Wine Australia's Export Label Image Search System (ELISS) provides 173 results for labels containing the term Prosecco. Most of these labels are used for the Australian market as well as export. • Search of Dan Murphy's, one of Australia's largest online liquor retailers, provides results for 108 Australian wine Products that use Prosecco on their label. • King Valley Prosecco Road, Wines of King Valley and the 12 main wine producers of the region that established the region's reputation on Prosecco hold a common law interest in the name Prosecco, acquired through use in good faith. This is not limited to labels and extends to the use of the term associated with regional infrastructure development, festivals, tourism, restaurants and catering and marketing and promotional use of the term. Impact As noted above the decision to protect the grape variety prosecco as a EU GI would have longstanding devastating impacts on the grape and wine sector, its people and the regional economies who have invested for many years to build consumer understanding of Australian Prosecco. Aside from the industry impacts and their broader economic implications, I have personally invested significant time, resources and reputation as part of my professional career in efforts to maintain Australian grape and wine producers' rights to the Prosecco grape variety. This includes the Australian case in 2013, international efforts to oppose GI/ trademark registrations, legal mediation, opposition and negotiation with the EU across a number of trade agreements, not just limited to Australia. I and my employer have staked our reputation on the historical facts that the industry's producers deserve the right to continue to grow, produce and label this grape variety. An outcome which removed producers' rights to continue to use the grape variety in Australia would risk serious damage to our reputation. Conclusion I urge the Australian Government to take the words of the sector seriously and understand the full ramifications of what is at stake here. It is vital that the Australian Government stands up to the EU and support Australian people, businesses and our regional community in this negotiation. Prosecco is a grape variety name that has been grown, produces and sold in Australia since the 1990s and should not be protected as an EU GI.

**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 objection A 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 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. \*

**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).**

Refer to comments on "Prosecco"

Q14. Would you like to make a third selection of EU wine geographical indications (GI)?	Yes
Q15. Please select the third EU wine GI your submission is against	Colli Asolani - Prosecco / Asolo – Prosecco
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.	<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>
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).	Refer to comments on "Prosecco"
Q18. Would you like to make a fourth selection of EU wine geographical indications (GI)?	No
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
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
Q22. Would you like to make a fifth selection of EU wine geographical indications (GI)?	not answered
Q23. Please select the fifth EU wine GI your submission is against	not answered
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
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

Q26. **Upload your supporting evidence for each EU wine GI you have selected.** not answered

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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.**

Evidence provided in text of submission

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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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