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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 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 The Australian Government has opened a public objections process to give interested stakeholders the opportunity to have their say on a range of proposed new and updated European Union (EU) wine geographical indications (GIs). Australia is negotiating amendments to the Australia-European Community Agreement on Trade in Wine (Wine Agreement). The Wine Agreement already provides protections for Australian and European wine GIs. Interested stakeholders can submit their views on the proposed list of EU GIs and raise objections based on at least one of the four grounds of objection: 1. The EU GI name is used in Australia as the common name for the relevant good, including as a type or style of wine. 2. The EU GI name is used in Australia as the name of a grape variety, plant variety, or an animal breed. 3. The EU GI name is identical to, or likely to cause confusion with a trademark that is registered in Australia or the subject of a pending application made in good faith in Australia. Confusion may be likely where a trademark consists of, or contains, the EU GI name or something so nearly resembling it. 4. The EU GI name is identical to, or likely to cause confusion with, an unregistered trademark that has acquired rights through use in good faith in Australia. Confusion may be likely where a trademark consists of, or contains, the EU GI name or something so nearly resembling it.

Subject to limited exceptions, if additional EU GIs are afforded protection in Australia, EU wine producers will be afforded exclusive rights to the use of those terms in Australia, meaning Australian producers would no longer be able to use the terms. This has the potential to stymie the use of existing trademarks containing the newly proposed EU GIs, and potentially the use of grape varieties that are similar or identical to them. Accordingly, it's important that interested parties inform the Australian Government of the likely impact of

the terms being afforded protection by making submissions. [REDACTED] has made every effort to encourage sector stakeholders to review the full list of proposed EU GIs to consider their own or their business's interests. Producers will raise their own objections to the process in consideration of the list, however Australian Grape & Wine's submission will focus solely on the inclusion of the term "Prosecco". Our submission is made on the protection of the grape variety Prosecco, because an EU GI would have far-reaching consequences, spanning multiple regions beyond the loss of the current \$200 million category that Australian Prosecco is today. At a time in which the Australian grape and wine sector is facing unprecedented economic pressure with oversupply, increasing costs of production and market closures, the impacts of revoking our right to use the grape variety name Prosecco, would be significant at the national, state and regional levels, with the most acute impacts felt in rural Australia's wine producing regions in the form of job losses, lower investment and reduced prosperity across wine growing communities. Furthermore, protection of the grape variety Prosecco as an EU GI, establishes a dangerous precedent for other grape varieties, given the EU's proven track-record of seeking to change the rules around GI protection to suit its protectionist agenda and give European producers an unfair competitive edge. Proposed EU GIs being objected to Primarily, Australian Grape & Wine is strongly 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. [REDACTED] is also objecting to the remaining terms (Number 53 and 54), which contain the term Prosecco within a compound term. NO COUNTRY GEOGRAPHICAL INDICATION PROTECTION STANDARD 52 Italy Prosecco PGI 53 Italy Colli Asolani - Prosecco / Asolo – Prosecco PGI 54 Italy Conegliano Valdobbiadene - Prosecco / Valdobbiadene - Prosecco / Conegliano - Prosecco PGI While we 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, we 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. GIs are defined at Article 22(1) of the World Trade Organization's (WTO) 1995 Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), as "indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin." [emphasis added] Prosecco is the grape variety grown in these provinces, not the geographic origin. In Australia and elsewhere in the world, GIs relate exclusively to geographic areas with clear boundaries that have no direct restriction or reference to the grape variety, or varieties, that are grown in these GIs. [REDACTED] recommends that this approach ought to be adopted by Australia to accommodate future requests for GIs and avoid such issues in the future. It will be argued by the EU and Italians that "Prosecco" does have a geographic origin, based on the existence of a small outer suburb of Trieste which is on the border of Italy, Croatia and Slovenia. However, aside from its name, the suburb has no historical relevance to the production of Prosecco grapes. The area is more than 150km from the traditional Conegliano Valdobbiadene growing area, with significant differences in terms of location, climate, soil, topography and culture from this area. There is no connection to quality, reputation or other characteristic of modern Italian Prosecco grape production and this suburb. For items 53 & 54, we recommend that instead the Australian Government protect only the geographic elements of the terms being "Asolo" / "Colli Asolani" and Conegliano Valdobbiadene / Valdobbiadene / Conegliano. The EU GI "Prosecco" (Prosecco DOC) is a construct that was invented in 2009, in order to restrict trade of the grape variety, with no genuine link to a geographic origin. In Italy, the Prosecco DOC regional boundaries are ever shifting and continuing to grow. The Prosecco grape variety used to be grown within the 6,500 hectares of Conegliano Valdobbiadene regions (the geographic origin). In 2009, the total area where Prosecco could be grown increased to around 20,000 hectares with the creation of the fictional new DOC boundaries. To put this jump in size into perspective, the change would be akin to the Australian region of Coonawarra (planted area of 5,827 hectares) growing to the size of the Riverina, one of Australia's largest wine regions (>20,000 hectares planted area), virtually overnight. Not only was the original change in 2009 a huge increase in allowable area, but since that time, the boundaries of the larger Prosecco DOC have shifted to accommodate market demand. As global demand for Prosecco has risen, so too has the size of the Prosecco DOC. In 2016, Stefano Zanette, President of the Prosecco DOC Consortium (the Prosecco Consortium), tasked with promoting and protecting the Prosecco DOC, announced that the DOC planned to expand its vineyards by about 5% a year from 2017 to 2019. In that year, an additional 3,000 hectares of vineyards were planted in the regions of Veneto and Friuli Venezia Giulia (Northeast of Italy), extending the total planted area of the Prosecco DOC to 23,250

hectares. More sources have put the current total area of the Prosecco DOC at anywhere between 28,000ha , 31,050ha and 36,000ha . If the importance of establishing regional GI boundaries is that the product draws aspects of quality, reputation or other characteristic associated with the geographic origin, the continually expanding Prosecco DOC must be challenged. It is not one based on historical or cultural significance, but rather made in an attempt to monopolise the market of this highly valuable grape variety. The threat is again on the horizon and Australia must ensure that the rights of our producers to grow and label, not only, the Prosecco grape variety but all other grape varieties are protected into the future. Grounds for objection On behalf of the Australian grape and wine sector, we 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, we 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, we 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 used in Australia as the name of a grape variety (Grounds 2) [REDACTED] strongly objects to the protection of Prosecco as an EU GI as there can be no doubt that Prosecco is the name of a grape variety. It is recognised as such internationally as well as in Australia. Only through extensive investment and propaganda by the EU, Italy and the Consortium, over many years since 2009 to attempt to alter these facts, has this been called into question. The following evidence is provided to support the fact that Prosecco is recognised and used as the name of a grape variety in Australia and Internationally. Internationally recognised grape variety International Organisation of Vine and Wine (OIV) The Australian and Italian Governments, as well as the EU (as observers), are members of the International Organisation of Vine and Wine (OIV) which is recognised as the preeminent scientific and technical reference body for matters relating to grape growing and winemaking. The OIV recognises Prosecco as a vine variety in its 2013 publication International list of vine varieties and their synonyms - the global reference point for grape variety names. In addition, Prosecco is also recognised as such on the OIV’s newly developed Vine Varieties Databases. According to these OIV references, Prosecco has been a recognised grape variety for use in Australia since 2011 and is also recognised as being used in, Argentina, Bosnia-Herzegovina, Bulgaria, Croatia, Slovenia (refer below). # Variety Synonyms Country Date 2836 Prosecco B Prosecco ARGENTINA 27/09/2012 2836 Prosecco B AUSTRALIA 12/09/2011 2836 Prosecco B Prošek BOSNIA-HERZEGOVINA 04/10/2012 2836 Prosecco B BULGARIA 01/02/2011 2836 Prosecco B Teran bijeli CROATIA 13/12/2010 2836 Prosecco B Glera SLOVENIA 01/01/2004 Table extracted from OIV International list of vine varieties and their synonyms International reference material (Jancis Robinson) Prosecco is noted as grape variety in the internationally renowned grape variety reference materials. The multi-award-winning works by Jancis Robinson, reference guide Wine Grapes (2012), often cited as the most comprehensive and respected reference point for grape varieties globally, provides extensive detail on 1368 internationally recognised grape varieties. There are three relevant sections for the Prosecco grape variety being “Prosecco”, “Prosecco Lungo”, and “Glera”. Under the entry for ‘Glera’ it simply states: ‘GLERA see PROSECCO’. The entry for “Prosecco” contains detail of characteristics of the varietal (Prosecco / Prosecco Tondo) but also makes a clear distinction on the merit of the term Glera, explaining “PROSECCO ... Misleadingly renamed Glera for commercially protective reasons.” While Jancis Robinson is the most well-known international author to verify the status of Prosecco as a grape variety, there are a number of other world leading wine authors who have also verified these facts over many years. These references are extensively detailed as part of the Monash University work by Mark Davison, Caroline Henckels, and Patrick Emerton, in their 2018 publication in the Australian Intellectual Property Journal ‘In Vino Veritas? The Dubious Legality of the EU’s Claims to Exclusive Use of the Term “Prosecco”’. This includes reference materials dating back over 100 years, including such examples as Oxford Wine Companion, pocket wine guides, Italian wine reference guides, Wine encyclopedias and Italian regional reference materials. All of these leading reference works refer to Prosecco as a grape variety. The decision of the High Court of Singapore The following details the decision held by the High Court of Singapore to deny the application of the Italian Prosecco consortium 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 The decision of United States Patent and Trademark Office US The United States Patent and Trademark Office has 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 European Union acknowledgment of the Prosecco vine variety Even the European Union has verified that Prosecco is a grape variety. In the 1994 Agreement between Australia and the EU, the “Agreement between the European Community and Australia on trade in wine” (the Wine Agreement) the EU expressly stated that Prosecco is a grape variety. This treaty level agreement is

the cornerstone of allowable practices between Australia and the EU and established the level and conditions around Australian wine GI systems. On page 62, after claiming protection for the geographical indication 'Montello e Colli Asolani', the Wine Agreement follows reference to that geographical indication with the following statement: "accompanied by one of the following expressions: • rosso • superior or by the name of one of the following vine varieties: • Prosecco • Merlot • Cabernet • Cabernet franc • Cabernet sauvignon • Chardonnay • Pinot bianco • Pinot grigio" (emphasis added) The word 'Glera' does not appear anywhere in the 1994 agreement. Not only does this verify the EUs clear understanding of the grape variety Prosecco, but it also clarifies the EUs use of Prosecco as part of a compound term being that it is the grape variety produced in the region, not the geographic origin i.e., 'Montello e Colli Asolani'. This further supports the objection to the use of the term Prosecco as part of compound terms.

Ampelology - French DNA testing The Monash report also references the extensive historical scientific evidence verifying the origin of the Prosecco grape variety. DNA testing is the most reliable mechanism for identifying grape varieties. The Monash work notes amongst other evidence that in 2011 a leading French Institute, the Institut Français de la vigne et du vin, received 11 samples of different vines from an Australian vineyard, and was asked to undertake DNA testing in order to identify the names of the vines from which they were taken. It determined that one of the samples was a Prosecco vine. The word Glera was not mentioned in the report. Italian organisations and publications

The Monash report In *Vino Veritas? The Dubious Legality of the EU's Claims to Exclusive Use of the Term "Prosecco"* also details a number of Italian government and industry references which have consistently verified Prosecco is a grape variety. This includes resources published by the Italian Trade Commission in Montreal and sponsored by the Italian Ministry of Agriculture, Food and Forestry. In particular a five volume reference guide *Principali Vitigni Da Vino Coltivati in Italy* (English translation "Main Wine Grapes Cultivated in Italy") commissioned and published by the then Italian Ministry for Agriculture and Food over a period of several years prior to and during the time of the creation of the Italian DOC system, refers extensively to the grape variety Prosecco. Recognised and used in Australia as the name of a grape variety

Winemakers' Federation of Australia v European Commission (22 November 2013) The term Prosecco is not already one of the protected EU wine GIs within the Australian system. This is because it has already undergone the extensive application, objection and appeals process in Australia as part of the legal proceeding of *Winemakers' Federation of Australia (now Australian Grape & Wine) v European Commission* (22 November 2013). In 2012 & 2013 the Australian Geographical Indications Tribunal held that Prosecco was in common use in Australia as the name of a grape variety and, therefore, it cannot be restricted on the basis of being an EU wine GI within the Australian wine GI system. The finding was based on the widespread use of the term Prosecco as the name of a grape variety at the time the name was first used in Australia, and the fact that the term Prosecco was the only name that Australian producers were legally permitted to use in respect of the relevant grape variety. The finding also noted that Prosecco had been used in conjunction with other indications of its Australian production, such as identifying regionality, and that any "cultural and other similar references must be seen in the context of Australia as a migrant community where references to the rich tapestry of history and tradition of our forebears are commonplace." Additionally, the decision noted that Australian vignerons purchasing this [Prosecco] variety, planting a vineyard, cultivating and eventually making and selling wine will be required to use the term Prosecco in the presentation and description of their wine.

The Agreement on Trade in Wine between the European Union and Australia (Wine Agreement) prescribes the list of grape varieties held by the International Organisation of Wine and the Vine (OIV) as the reference for names or synonyms of a grape variety to be used to describe a wine. This is given force by the *Wine Australia Regulations 2018* Part 4, section 25 (1). Prosecco is listed as a grape variety with no other synonym for Australia. Therefore, for Australian producers of wine made from these grapes, Prosecco is the only variety name that can be used on a label in Australia. Australian Grape & Wine strongly objects to the inclusion of the term Prosecco as a GI as part of the EU Australia FTA negotiations as it has already undergone an extensive application, objection and appeals process and is legally proven within Australia to be the name of a grape variety, and not applicable for Australian GI protection. Since 2013, Australian Prosecco production and consumption increased significantly further compounding these finding which were acknowledged in 2013 beyond any doubt.

Australian Government acknowledgment The Australian Government has consistently verified that Prosecco is the name of a grape variety, including in the treaty level agreement between it and the EU back in 1994, the Wine Agreement (as noted above) and in the form of statements and documents from political leaders, ministers and Government departments stating that Prosecco is the name of a grape variety. Wine Australia, the Government statutory authority has also confirmed the status of Prosecco as a grape variety in a number of publications. More recent examples include: • Annual National Vintage reports (2017 – current) <https://www.wineaustralia.com/market-insights/national-vintage-report> • OIV list of grape vine varieties and their synonyms (Australia) https://www.wineaustralia.com/getmedia/edbbb059-e0ac-4ff1-a4a5-88e0123e3944/OIV-List-Updated-July-2020_2.pdf • Article explaining the status of Prosecco <https://www.wineaustralia.com/news/articles/prosecco-what-is-the-deal> Impact

National Australian grape and wine sector impacts Australian Wine industry Wine Australia's data confirms that Australian Prosecco sales were valued at \$205million to December 2021. To put this in perspective, our third largest export market by value, Canada, is currently valued at \$188 million, less than the total value of all Australian Prosecco sales. An inability to utilise the grape variety on label would directly impact the sector in the same manner as closing our third largest export market. This would be the direct impact alone and would not account for the extensive previous investment of growers, producers, suppliers and the broader implications to tourism, state and regional economies. The impacts of China's imposition of trade-prohibitive import duties on Australian bottled wine have had long lasting and direct impact on the economic viability of the Australian wine sector. The industry is currently facing unprecedented challenges in the form of a sharp and widespread oversupply scenario, particularly for red grape varieties. Prosecco, a white grape variety, has not been impacted by the effective closure of the China market, and is one of few remaining positive stories for the sector, showing genuine ongoing potential for high value growth in Australian and international markets. Average grape prices of a number of varieties were as low as \$300/tonne according to 2022 vintage report with widespread anecdotal reports of even lower prices being offered in 2023. Prosecco's weighted average purchase price in 2022 vintage report was \$960/Tonne. Prosecco has grown to the 8th most produced white grape variety in Australia with an estimated 15,397 tonnes produced in the 2022 vintage period. Australia's Prosecco crush has grown year on year and has increased by 603% since 2015. The variety is high yielding, low input and intervention, and well suited to a number of Australian wine regions. It is currently produced across 20 Australian wine regions. The value of Australian Prosecco exports grew by 48% in the last year and by 33% per annum over the last 5 years (\$3.8 million). New Zealand, the United States and Singapore are some of the largest markets for these exports. The investment from the Australian grape and wine sector, since the first Australian commercial vintage of Prosecco in 2004, has directly resulted in the growth of production and sales of Prosecco. We are unable to quantify the value of this sunken investment as it is extensive and spans investment in:

- Establishing vineyards and associated infrastructure, equipment and people.
- Winemaking equipment, supplies, infrastructure and people
- Marketing and promotion
- Tourism, restaurants and catering.

Aside from the direct impact of the loss of a market worth more than \$200 million per annum, the impacts of losing the ability to label the grape variety would extend beyond this to the supply chain, tourism, restaurant and catering, state and regional economies and inevitably, the jobs of people living across regional Australia. Commercial wine business modelling from 2017 predicted that Prosecco would grow from a \$60million value to 200million within five years, and to over \$500million within 10 years. The figures to date have eclipsed this modelling, with Prosecco reaching \$200million in 2020. While the investments and growth in Prosecco by the Australian wine sector are set to continue, it is not unreasonable to expect the category to continue to reach the direct value modelled in 2017. However, to allow this to occur, producers need certainty about the future of the variety and for the unfettered ability to continue to grow, label, produce and promote the grape variety as they would any other. Precedent for other Australian grape varieties. The risk of impacts goes beyond Prosecco, to other grape varieties. Allowing a grape variety to be protected as an EU GI in Australia, sets a dangerous precedent for a number of other varieties that are clearly being targeted for future EU GI protection. Any protection of the grape variety Prosecco sets an unacceptable precedent for not just wine, but for all other food and agricultural industries. It is the thin edge of the wedge and exposes all producers to the risk of the same being done across a range of products, that is, to limit the ability to produce a common food or grape variety. Many Australian wine regions are currently investing heavily in a number of Italian grape varieties including Montepulciano, Fiano, Vermentino, Sangiovese, Barbera and Nero d'Avola, to name a few. This precedent of protecting a grape variety as a GI puts all of these varieties at risk. It may seem like an extreme example, but this precedent puts at risk more than just the Italian 'alternative' varieties. Chardonnay - Australia's most produced white grape variety - is also a town and commune in France (See link below). Yet it is and has been for many years the name of a grape variety. If Prosecco, the name of a very small suburb of Trieste that does not have commune status in Italy, can be converted into a GI and cease to be the name of a grape variety, then so too might Chardonnay. Chardonnay has a little used synonym of Morillon. CHARDONNAY - Map of Chardonnay 71700 France (map-france.com)' Australian Grape & Wine is deeply concerned that the EU will continue to progress an agenda of rewriting history regarding grape variety names to pursue its protectionist agenda. Australian Consumers Australian wine consumers understand and make purchasing decisions for wines based on grape variety names. Restricting or altering Australian wine producers' ability to refer to grape variety names on their labels would confuse Australian consumers and not allow for accurate description of their products. Furthermore, restricting or revoking Australian Prosecco producers' rights would further limit variety and Australian consumer choice. The investment made by the Australian sector in the past 20 plus years would be lost, only serving to benefit Italian imports limited to a very specific production and product specifications. States & Regions As noted above Prosecco is now produced in more than 20 Australian wine regions. While the main concentration of Prosecco vines is based in King Valley and Alpine Valley

(Victorian) and Murray Darling & Swan Hill (NSW/Victoria), outside of these regions production of Prosecco is rapidly rising. For example, there are currently nine South Australian regions producing Prosecco and a number of which are planning to expand production of Prosecco and alternative varieties as part of strategies to build greater value in their regional brands. These efforts will undoubtedly come with state and regional investment that will bolster industries beyond wine such as other food, tourism and restaurant and catering. This has been proven to be the case in King Valley which has successfully reinvigorated the regional economy off the back of the Prosecco grape variety. King Valley Prosecco Road campaigns have been in-market since 2010 and have served to reinvigorate the region. Supported by the Victorian Government and the Rural City of Wangaratta, along with state tourism and private industry investment, this multi-year project is beginning to pay off for the region, which is now flourishing, while others continue to feel significant economic downward pressure. This long-term plan received \$4.3 million of funding in the 2020 State Government budget; and requires a further \$19.3 million of public sector investment and \$30 million of private sector investment. Public and private sector investment will grow the King Valley visitor economy from an existing \$268 million in total output and 1267 jobs, to \$369 million per annum in total output and 1734 jobs once projects are completed and operational. Additionally, expenditure on construction will deliver short term economic benefits of \$110 million in output and 284 jobs. More information on the investment and the most recent plan for Activating King Valley is available [here](#). • Wines of King Valley – Prosecco Road website • Tourism South East Activating King Valley Plan • Rural City of Wangaratta Prosecco road website There are already regions seeking to replicate this successful model to help market and build the value of their regional brand proposition. A recent example is the Riverland, South Australia which is undertaking a Riverland Uprising campaign to build its brand value based on alternate varieties suited to the region's climate. This campaign is also being expanded to international audiences through the region's marketing through Wine Australia made our way campaigns Australian grape and wine businesses and their supply chains At the heart of this decision are the Australian grape, wine and supplier businesses that have invested in Prosecco. These businesses, many of which are family owned, small and medium enterprises, who are crucial to their regional economies, will not be able to survive another blow if Prosecco were to be taken away from them. Many of the small businesses dedicate large portions of their business solely to Prosecco, with some citing an 80 to 90% reliance on the variety. These businesses invested in good faith, seeking to compete on a level playing field with other producers of the grape variety Prosecco – including the Italians. A large proportion of the equipment purchased by the Australian wine sector is produced in Europe, much of it in Italy. With investment in Prosecco production highly focused on specific equipment used for making and bottling Prosecco, the net effect of attempts to restrict trade of Australian wine would also impact on the European suppliers of that equipment. [REDACTED]

[REDACTED] has invested significant time, resources and political capital 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. [REDACTED]

[REDACTED] has staked its reputation on the historical facts that the industry's producers deserve the right to continue to grow, produce and label this grape variety, for at least the past 20 years. Our membership, and indeed the sector as a whole, understands the effort and investment made by [REDACTED] An outcome which removed producers' rights to continue to use the grape variety in Australia would risk serious damage to our reputation as an effective voice of the grape and wine sector and place significant further financial pressure on the organisation. Australian Government international agreements and obligations WTO TRIPS Agreement Like Australia, the EU is a signatory to the WTO's Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement). Article 24 of that agreement provides exceptions to the application of geographical indication protection, including in the following circumstance; "Article 24 (6). Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement." Restricting the ability of Australian wine producers to produce and label a grape variety, based on GI protection, would directly contravene Australia's (and the EUs) internationally agreed obligations under the TRIPS Agreement. It would also seemingly run counter to the Australian Government's long-held and highly valued commitment to the international rules-based trading system. WTO TBT Agreement. The WTO's Technical Barriers to Trade (TBT) Agreement is designed to ensure, inter alia, that technical regulations are non-discriminatory and do not create unnecessary barriers to international trade. Article 2.1 of the TBT Agreement prohibits WTO members from enacting or maintaining technical regulations that, in law or in fact, impose unjustifiable discrimination between 'like' (similar) foreign and domestic products or between foreign products. Any prohibition of the marketing of Australian or other countries' wines labelled as Prosecco, but not Italian Prosecco, would

likely contravene Article 2.1 of the TBT Agreement. The reasonable solution that [REDACTED] has proposed in this submission, would be consistent with both the TRIPS and TBT Agreements, and provide a mutually acceptable outcome. Australian Constitution and compensation. In addition to contravening international obligations and causing an unjustifiable and devastating impact on Australian wine businesses and regional economies, a prohibition or even a partial restriction on the use of the word Prosecco on Australian products in the Australian market, may be inconsistent with the Australian Constitution (section 51(xxxi)), which prohibits the acquisition of property by government on other than just terms. On this matter, the Monash final report notes that “there is a serious question as to whether an Australian law prohibiting the marketing of Australian Prosecco is unconstitutional”. This decision creates risk for the Australian Government on future litigation and compensation for those impacted by this decision. Prosecco is identical to, or likely to cause confusion with registered trademarks (Grounds 3). Australian Grape & Wine does not hold the rights to any “Prosecco” registered trademarks in Australia. However, we 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) Australian Grape & Wine does not directly hold the rights to any unregistered “Prosecco” trademarks in Australia. However, we 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. Conclusion Australian Grape & Wine continues to support the appropriate and genuine protection of GIs in Australia. We do not, however, support the inclusion of common grape variety names as part of GIs in an effort to distort trade. Australian Grape & Wine’s policy position is as follows. • Prosecco is recognised in Australia and internationally as the name of common grape variety. The variety appears on the list maintained by the International Organisation of Vine and Wine (OIV) which is the internationally recognised list of grape variety names. Prosecco also appears as grape variety in the internationally renowned grape variety reference book by Jancis Robinson (refer to Additional References & Resources), and a number of historical references spanning hundreds of years (refer to references). As such, the term is regularly used in Australia to describe the grape variety by winegrape growers, winemakers, consumers, and exporters internationally. • Prosecco has undergone an extensive legal application, objection and appeals process under the Australian wine GI system and has unequivocally been found to be in common use in Australia as the name of a grape variety. • Restricting the ability to label grape variety names would confuse Australian consumers and not allow for accurate description of the product on label. • Consumers demand and have the right to choose what they purchase. They recognise Prosecco as a grape variety name, and prohibiting the use of the grape variety name Prosecco would remove those consumer rights. • Restrictions of grape variety names in Australia will impact both our domestic and export markets and have a devastating impact on grape and wine businesses, jobs and regional communities and their economies. • Prohibiting the use of Prosecco as a grape variety name in Australia risks setting a dangerous precedent that could lead to future attempts to take the same underhanded, protectionist approach taken by Italy and the EU in the case of Prosecco and apply it to other grape varieties. Previous submissions have provided extensive information regarding the impact on regional wine businesses, background of the disingenuous name change for the grape variety, production, volumes, value of the variety and further information on domestic and export markets. Much of this information has been excluded from this submission as it has been previously provided, however, we would be happy to source additional information as required. The submission also contains a number of additional references and resources noted below. Additional References & Resources The following are references which support Australian Grape & Wine’s position in opposition to the registration of the grape variety Prosecco as an EU Wine GI. General references 1. [REDACTED]

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 books 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 EUs 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 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 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 References to Legal Cases 10. Reference to the WFA legal case against the European Commission in Australia where we 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 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 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 (accessed April 2023)

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

Colli Asolani - Prosecco / Asolo – 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.

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

Conegliano Valdobbiadene - Prosecco / Valdobbiadene - Prosecco / Conegliano - 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.

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. *

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.

[REDACTED]

Q27. Would you like to upload another supporting document?

not answered

Q28. OtherAny other information on the impacts EU GIs may have on Australian businesses or industry.

Attachment contains full submission and supporting evidence

Q29. Is your response confidential?

No

Q30. Please specify the parts of your response that are confidential.

not answered

Q31. Do you agree to your response being published on our website?

Yes

Q32. Please de-identify my response

not answered

Q33. Confirm that you have read and understand this privacy notice.

Yes

Q34. Confirm that you have read and understand this declaration.

Yes