

18 April 2023

Department of Agriculture, Fisheries and Forestry
GPO Box 858,
CANBERRA ACT 2601

Via [online form](#) submission

Dear Sir/Madam

Public objections process on EU Geographical Indications

The Intellectual Property Committee of the Business Law Section of the Law Council of Australia (the **Committee**) makes the following submission in relation to Prosecco and general principles surrounding consideration of that claim. As required by the relevant Discussion Paper,¹ for the purposes of this submission, the Committee refers to the following ground of objection:

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

General Principles

The Committee notes that the Discussion Paper makes various references to the term 'GI' in a general sense but that the ground of objection specifically refers to 'The EU GI'. The recognition of a term as a GI in one jurisdiction does not automatically mean that the term is a GI in another jurisdiction. Registration of Prosecco as a GI in the European Union does not, by that act, make Prosecco a GI in Australia. For example, it is quite possible that the wine called Prosecco does not have any characteristic or quality essentially attributable to the large, geographically and climatically diverse Prosecco DOC region. Similarly, any reputation that the word might have in one place such as the European Union does not necessarily mean that the word has a similar reputation in Australia.

More generally, the Committee notes that, if wine made from a particular grape variety has been promoted and marketed on that basis for some time, a particular reputation or goodwill associated with that grape variety will be formed and shared by all those wine producers who have engaged in promotion and marketing of that wine. Consequently, if Prosecco wine has been promoted and marketed in Australia on the basis that the wine is made of the Prosecco grape variety, all wine producers from all countries where such wine was made and then sold in Australia would share in the reputation or goodwill attributable to the name of the grape variety.

If the name Prosecco is legally deemed to cease to be a grape variety and legally deemed to be a geographical indication, the effect is twofold. First, those Australia wine producers who previously shared in the reputation or goodwill of Prosecco in Australia would cease to be able to do so. The value of their promotional efforts would be reduced to zero. Second,

¹ Department of Agriculture, Fisheries and Forestry, *Public Objections Process: EU Wine Geographical Indications*, [Discussion Paper](#) (2023).

all of that Australian part of the reputation or goodwill associated with Prosecco would be transferred to the Italian Prosecco producers who would then have both the exclusive freedom to use the term and the exclusive right to prevent others from using it. There is no obvious justification for the appropriation of that reputation or goodwill. As a general principle, the Australian government should resist situations in which a grape variety name is claimed to be a GI well after the original use of the grape variety name. Prosecco appears to be such a case but there might be others in the future.

Is Prosecco a grape variety name?

While the Committee makes no definitive statement on this issue, as those in the Australian wine industry can do, there appears to be strong evidence that Prosecco was used as a grape variety name from as early as the late 18th century. Multiple Italian government publications from the early 20th century until the 21st century repeatedly described it as a grape variety.² The European Union itself stated it was a grape variety in the 1994 treaty with Australia.³ In contrast, Prosecco was first recognised as GI in Italy in 2009,⁴ 236 years after written evidence that it was regarded in Italy as a grape variety name.⁵ Finally, the matter was considered in *Winemakers' Federation of Australia v European Commission* [2013] ATMOGI 1 (22 November 2013) which found that Prosecco is a grape variety name in Australia. The European Commission chose not to appeal that decision.

Conclusion and further contact

The Committee would be pleased to discuss any aspect of this submission. Please contact the chair of the Committee, Angus Lang at lang@tenthfloor.org, if you would like to do so.

Yours faithfully



Philip Argy
Chairman
Business Law Section

² Eg Cosmo, Grafiche Longo & Zoppelli, *Indici del Principali Vitigni Da Vino Coltivati in Italia E Guida viticola D'Italia Volume V* (1st ed, Treviso, 1966); Commissione per Lo Studio Ampelografico dei Principali vitigni ad uve da vino coltivati in Italia Ministero Dell L'Agricoltura E Delle Foreste at 18; 'Treviso's province takes in the hills north of Venice between the towns of Conegliano and Valdobbiadene, noted for the popular Prosecco, a dry to softly sweet white, almost always bubbly. A refined version is known as Superiore di Cartizze. The adjacent Montello e Colli Asolani zone is noted for Prosecco, Cabernet and Merlot' Burton Anderson, *The Wines of Italy* (Italian Trade Commission, 7th ed, 2004) at p80.

³ Agreement between the European Communities and Australia on trade in Wine – Protocol – Exchange of letters [1994] OJ L 86/3, annex II at p62 refers to Prosecco in a list of other vines including merlot and chardonnay.

⁴ Gazzetta Ufficiale della Repubblica Italiana (Italy) No 173, 28 July 2009

⁵ 'Already in the 15th-17th centuries the hills around Conegliano, Veneto, were famous on the main markets of the day as a valuable vine-growing and wine-making area, but the name Prosecco had not yet appeared (Calò et al.1999). Only in 1773 did Villafranchi mention this vine for the first time as one cultivated in the Conegliano area.' Vitis Rauscedo, *General Catalogue* (2007). This online catalogue is no longer available. The relevant quotation has been removed from subsequent online editions. Villafranchi's reference to Prosecco was from an essay entitled *Oenologia Toscana* published in 1773.