

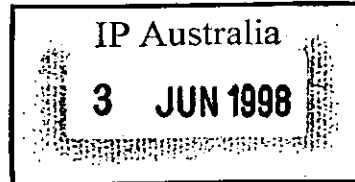
**FREEHILLS**  
**PATENT ATTORNEYS**

PATENTS TRADE MARKS DESIGNS

This facsimile is confidential. If you are not the intended recipient, you must not disclose or use the information contained in it. If you have received this facsimile in error, please tell us immediately (reverse charges).

Phone [+61 3] (03) 9288 1577 (switch) [+61 3] (03) 9288 1341 (fax operator)  
 Fax [+61 3] (03) 9288 1567  
 Address Level 43, 101 Collins Street, Melbourne Vic 3000 Australia

3 June 1998



Our ref SMS:JPB 40073478  
 Phone 03 9288 1602  
 Page 1 of 8

Attention: Mr John Braybrooks

Registrar of Trade Marks  
 IP Australia  
 Fax 02 6293 2278  
 Phone 02 6293 7444

Pin no 42336  
 Checked by

Dear Sir

704779

**Australian Trade Mark Application number ~~704779~~ Colour Orange in Class 33 in the name of Veuve Clicquot Ponsardin**

We refer to our recent telephone conversations in respect of this application.

We now enclose the Statutory Declarations of Paul Tasca, Bradley Smith and Jeremy Oliver in support of the above application. The Statutory Declaration of Bradley Smith has been signed but not yet witnessed due to Mr. Smith's work commitments. We anticipate that it will be formally declared tomorrow and we will forward it to you in due course. Given the urgency of this application, the declarations are being faxed today and will be lodged shortly.

We believe that these Statutory Declarations, particularly when read in conjunction with the Statutory Declarations already filed, provide extremely clear evidence of the fact that the Veuve Clicquot Orange is recognised as a trade mark and is distinctive of the Applicant's products by the wine trade and the wine buying public throughout Australia.

All three declarations are made by persons with 15 or more years experience working in or dealing with the Australian retail wine trade. None of these declarants has ever worked for or had any specific association with the applicant.

It should also be noted that these declarants have experience throughout Australia. Jeremy Oliver is one of Australia's foremost wine writers with a very extensive experience of the wine retail market and the wine buying public throughout

Australia. Bradley Smith has experience in the wine retail industry in Tasmania, New South Wales and Victoria. Paul Tasca offers the perspective of a deep experience of the wine buying public in Victoria.

Each of these declarants states, from their knowledge and experience of the Australian wine buying public, that members of the Australian wine buying public strongly associate the Veuve Clicquot Orange colour with the applicant. Each of these declarants further states that this association is made in the context of all wines and not just sparkling wines or Champagnes, and that the Veuve Clicquot Orange is distinctive amongst all wines.

Our client has now filed seven Statutory Declarations in relation to this matter. We wish to take this opportunity to summarise a number of points which show, in our submission, that the Veuve Clicquot Orange is both capable of, and does in fact, distinguish our client's products throughout Australia.

- Every declaration states that the Australian wine buying public associates the Veuve Clicquot Orange with the applicant and its products.
- Every declaration states that the Veuve Clicquot Orange is unique and distinctive of the applicant's products amongst wines, sparkling wines and Champagnes.
- Of the seven declarants, only Gerard Baillat and Michael Hill-Smith have any association with the applicant whatsoever.
- The experience of Jeremy Oliver, Michael Hill-Smith, Robert Hirst and Brian Stonier is not limited to the state in which they made their declaration but, in each case, covers the whole of Australia.
- The experience of the remaining declarants have experience in Tasmania, New South Wales, Victoria and also an international perspective on the Australian market generally.

The colour orange has no inherent meaning to purchasers of wine, nor any function (as may be the case, for example, with safety equipment). There is no need for other traders to use this colour and, in fact, the evidence is that the Veuve Clicquot Orange is unique and distinctive amongst all wines, and is recognised as such. Accordingly, we submit that that this application should be accepted under Section 41(5), or, at least, under Section 41(6).

We hope that the foregoing is of assistance to you. If you have any further queries, please do not hesitate to contact us.

Yours faithfully  
FREEHILLS PATENT ATTORNEYS



James Cherry

encls.

**AUSTRALIA**  
*Trade Marks Act 1995*

**IN THE MATTER** of Australian  
Trade Mark Application No. 704779  
in the name of **VEUVE CLICQUOT**  
**PONSARDIN**

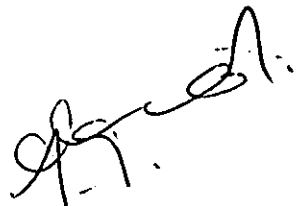
- and -

**IN THE MATTER** of the  
examiner's objection thereto

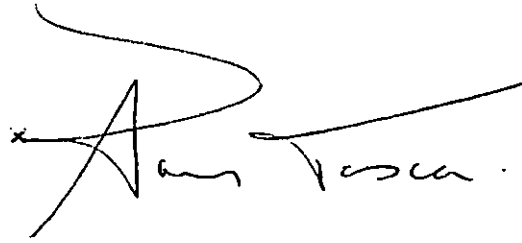
**STATUTORY DECLARATION**

**I, PAUL MARK TASCA**, of 293 Lygon Street, Carlton, Melbourne, manager, **DO SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 I make this Declaration from my own knowledge.
- 2 I have been involved in the retail wine trade for approximately 20 years. For the last 13 years I have worked full time in the retail wine industry. I am now the manager of King and Godfree, one of Melbourne's most successful independent fine wine retail shops.
- 3 Through my experience within the wine industry, and as a consumer myself, I am familiar with most of the wines, sparkling wines and champagnes available on the Australian retail market, including the products of the applicant, Veuve Clicquot.
- 4 I am also familiar with the particular orange colour used by Veuve Clicquot to distinguish its products (the Veuve Clicquot Orange). I believe that the Veuve Clicquot Orange is distinctive of Veuve Clicquot's products amongst all wines, sparkling wines and champagnes. I personally associate the Veuve Clicquot Orange with the Applicant's products.
- 5 In my experience, members of the wine buying public definitely associate the Veuve Clicquot Orange with the Applicant. For example, I have had retail customers request the Applicant's products simply by reference to the Veuve Clicquot Orange colour.

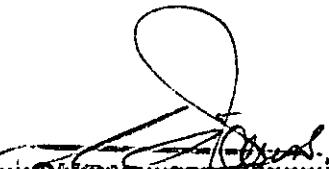
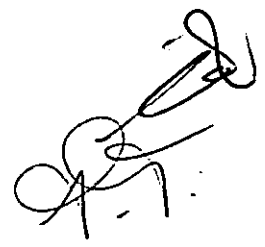


AND I MAKE THIS STATUTORY DECLARATION believing the same to be true and correct in every particular.



DECLARED by the said  
**PAUL MARK TASCA**  
in the State of Victoria  
this 22<sup>nd</sup> day of **MM** 1998.

Before me:

  
**CHRIS JANSON**  
**PHARMACY**  
22 MAY 98.  
REG. No. 4549K  
337 LYGON ST., CARLTON  
Telephone - - 347 2581

**AUSTRALIA****Trade Marks Act 1995**

**IN THE MATTER** of Australian  
Trade Mark Application No. 704779  
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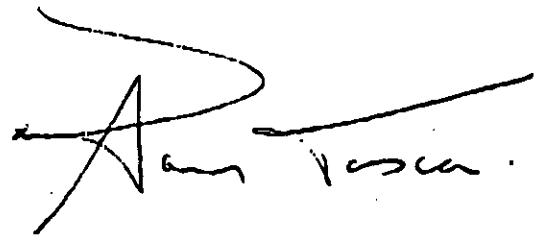
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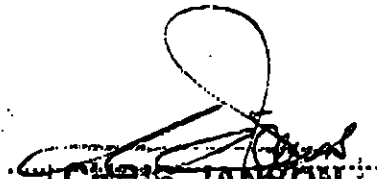
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- 2 I have been involved in the retail wine trade for approximately 20 years. For the last 13 years I have worked full time in the retail wine industry. I am now the manager of King and Godfree, one of Melbourne's most successful independent fine wine retail shops.
- 3 Through my experience within the wine industry, and as a consumer myself, I am familiar with most of the wines, sparkling wines and champagnes available on the Australian retail market, including the products of the applicant, Veuve Clicquot.
- 4 I am also familiar with the particular orange colour used by Veuve Clicquot to distinguish its products (the Veuve Clicquot Orange). I believe that the Veuve Clicquot Orange is distinctive of Veuve Clicquot's products amongst all wines, sparkling wines and champagnes. I personally associate the Veuve Clicquot Orange with the Applicant's products.
- 5 In my experience, members of the wine buying public definitely associate the Veuve Clicquot Orange with the Applicant. For example, I have had retail customers request the Applicant's products simply by reference to the Veuve Clicquot Orange colour.



AND I MAKE THIS STATUTORY DECLARATION believing the same to be true and correct in every particular.



DECLARED by the said  
**PAUL MARK TASCA**  
in the State of Victoria  
this 22<sup>nd</sup> day of ~~MM~~ 1998.

Before me:   
**CHRIS JANSON**  
**PHARMACY**  
22 MAY 98.  
REG NO 1546K  
937 LYGON ST., CARLTON  
Telephone - - 347 2581



**AUSTRALIA**  
*Trade Marks Act 1995*

IN THE MATTER of Australian  
Trade Mark Application No. 704779  
in the name of **VEUVE CLICQUOT**  
**PONSARDIN**

- and -

IN THE MATTER of the  
examiner's objection thereto

**STATUTORY DECLARATION**

I, **BRADLEY NICHOLAS JOHN SMITH**, of [REDACTED]  
**DO SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 I make this Declaration from my own knowledge.
- 2 I have worked in the retail wine industry since 1980. I have held a wide range of positions, including management positions with Aberfeldy Cellars in Hobart, Camperdown Cellars in Sydney, as well as the Melbourne Wine Gallery and Phillip Murphy Corporate Services in Melbourne.
- 3 Through my experience within the wine industry, and as a consumer myself, I am familiar with most of the wines, sparkling wines and champagnes available on the Australian retail market, including the products of the applicant, Veuve Clicquot. I am also familiar with the general opinions and perceptions of the wine buying public regarding wines available in Australia.
- 4 I am also familiar with the particular orange colour which is used by Veuve Clicquot to distinguish its products (the Veuve Clicquot Orange). I am particularly familiar with the Veuve Clicquot Orange colour from its use on Veuve Clicquot's non vintage Champagne as well as on outer case packaging and on promotional materials such as posters, magazine advertisements, in-store promotional cards and price cards. I believe that the Veuve Clicquot Orange is unique and distinctive of Veuve Clicquot's non vintage Champagne amongst all wines, sparkling wines and champagnes. Indeed, there have been occasions when I have failed to locate Veuve Clicquot's "Vintage" Champagne

*Mark A. Krenzer*

**MARK HEINRICH KRENZER**

*Freehill Hollingdale & Page*

(which has a different coloured label) in a store or a fridge display because the mental association of bright orange with Veuve Clicquot is so deeply ingrained. If I were to see the Veuve Clicquot Orange on the label or packaging of bottle of wine, sparkling wine or Champagne, or used on promotional material for wine, sparkling wine or Champagne, I would immediately associate the use of that Orange colour with Veuve Clicquot.

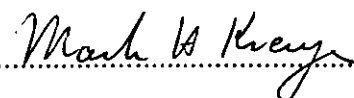
- 5 In my experience, members of the wine buying public also associate the Veuve Clicquot Orange with Veuve Clicquot. It is quite common, in my experience, for members of the wine buying public to ask for and identify Veuve Clicquot's products by reference to the Veuve Clicquot Orange colour when purchasing wine at retail.
- 6 Furthermore, if members of the wine buying public were to see the Veuve Clicquot Orange on a bottle of wine, sparkling wine or Champagne, I believe that they would associate the use of that colour with Veuve Clicquot.

**AND I MAKE THIS STATUTORY DECLARATION** believing the same to be true and correct in every particular.

**DECLARED** by the said

BRADLEY MCCOY & JOHN SMITH.  
at MELBOURNE in the State of VICTORIA  
this Fourteenth day of June 1998



Before me: 

**MARK HEINRICH KRENZER**  
*Freehill Hollingdale & Page*  
101 Collins Street Melbourne  
A natural person who is a current  
practitioner within the meaning of  
the Legal Practice Act 1996.



**AUSTRALIA**  
**Trade Marks Act 1995**

**IN THE MATTER** of Australian  
Trade Mark Application No. 704779  
in the name of **VEUVE CLICQUOT**  
**PONSARDIN**

- and -

**IN THE MATTER** of the examiner's  
objection thereto

**STATUTORY DECLARATION**

**I, BRADLEY NICHOLAS JOHN SMITH, of** [REDACTED]

**DO SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 I make this Declaration from my own knowledge.
- 2 I have worked in the retail wine industry since 1980. I have held a wide range of positions, including management positions with Aberfeldy Cellars in Hobart, Camperdown Cellars in Sydney, as well as the Melbourne Wine Gallery and Phillip Murphy Corporate Services in Melbourne.
- 3 Through my experience within the wine industry, and as a consumer myself, I am familiar with most of the wines, sparkling wines and champagnes available on the Australian retail market, including the products of the applicant, Veuve Clicquot. I am also familiar with the general opinions and perceptions of the wine buying public regarding wines available in Australia.
- 4 I am also familiar with the particular orange colour which is used by Veuve Clicquot to distinguish its products (the Veuve Clicquot Orange). I am particularly familiar with the Veuve Clicquot Orange colour from its use on Veuve Clicquot's non vintage Champagne as well as on outer case packaging and on promotional materials such as posters, magazine advertisements, in-store promotional cards and price cards. I believe that the Veuve Clicquot Orange is unique and distinctive of Veuve Clicquot's non vintage Champagne amongst all wines, sparkling wines and champagnes. Indeed, there have been occasions when I have failed to locate Veuve Clicquot's "Vintage" Champagne (which has

a different coloured label) in a store or a fridge display because the mental association of bright orange with Veuve Clicquot is so deeply ingrained. If I were to see the Veuve Clicquot Orange on the label or packaging of bottle of wine, sparkling wine or Champagne, or used on promotional material for wine, sparkling wine or Champagne, I would immediately associate the use of that Orange colour with Veuve Clicquot.

5 In my experience, members of the wine buying public also associate the Veuve Clicquot Orange with Veuve Clicquot. It is quite common, in my experience, for members of the wine buying public to ask for and identify Veuve Clicquot's products by reference to the Veuve Clicquot Orange colour when purchasing wine at retail.

6 Furthermore, if members of the wine buying public were to see the Veuve Clicquot Orange on a bottle of wine, sparkling wine or Champagne, I believe that they would associate the use of that colour with Veuve Clicquot.

**AND I MAKE THIS STATUTORY DECLARATION** believing the same to be true and correct in every particular.

**DECLARED** by the said

at \_\_\_\_\_ in the State of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 1998

Before me: Barry Stt

**AUSTRALIA****Trade Marks Act 1995**

**IN THE MATTER of Australian  
Trade Mark Application No. 704779  
in the name of VEUVE CLICQUOT  
PONSARDIN**

- and -

**IN THE MATTER of the examiner's  
objection thereto**

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a different coloured label) in a store or a fridge display because the mental association of bright orange with Veuve Clicquot is so deeply ingrained. If I were to see the Veuve Clicquot Orange on the label or packaging of bottle of wine, sparkling wine or Champagne, or used on promotional material for wine, sparkling wine or Champagne, I would immediately associate the use of that Orange colour with Veuve Clicquot.

5 In my experience, members of the wine buying public also associate the Veuve Clicquot Orange with Veuve Clicquot. It is quite common, in my experience, for members of the wine buying public to ask for and identify Veuve Clicquot's products by reference to the Veuve Clicquot Orange colour when purchasing wine at retail.

6 Furthermore, if members of the wine buying public were to see the Veuve Clicquot Orange on a bottle of wine, sparkling wine or Champagne, I believe that they would associate the use of that colour with Veuve Clicquot.

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**DECLARED** by the said

at \_\_\_\_\_ in the State of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ 1998

Before me: Barry Stt

**AUSTRALIA**  
**Trade Marks Act 1995**

**IN THE MATTER** of Australian  
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in the name of **VEUVE CLICQUOT**  
**PONSARDIN**

- and -

**IN THE MATTER** of the  
examiner's objection thereto

**STATUTORY DECLARATION**

I, **JEREMY OLIVER**, of 565 Burwood Road, Hawthorn, Victoria 3122, **DO SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 I make this Declaration from my own knowledge.
- 2 I have worked in the wine industry for over 15 years. I currently work primarily as a wine educator and wine writer. However, I have worked in all aspects of the wine trade including the retail wine trade and the restaurant trade. I studied wine making at Roseworthy University in Adelaide in 1984. I have written seven books on wine and I have contributed articles on wine to over 40 different magazines and newspapers. I am presently writing for the Wine Spectator Magazine - an American publication which is one of the most widely distributed wine magazines in the world. I also regularly teach classes about wine and regularly conduct tutored wine tastings for members of the public. In the course of my profession as a wine writer and educator, I am required to taste almost every quality wine produced in Australia each year. Furthermore, I write a book which reproduces in colour the label of virtually every quality wine produced in Australia.
- 3 Through my experience within the wine industry, and as a consumer myself, I am familiar with most of the wines, sparkling wines and champagnes available on the Australian retail market, including the products of the applicant, Veuve Clicquot. I am also familiar with the general perceptions and opinions of Australian wine buyers regarding wines, sparkling wines and Champagnes available on the Australian market.

  
**MARK HEINRICH KRENZER**  
Freehill Hollingdale & Page  
101 Collins Street Melbourne



4 I am also familiar with the particular orange colour which is used by Veuve Clicquot to distinguish its products (the Veuve Clicquot Orange). I have seen the Veuve Clicquot Orange colour used on Veuve Clicquot's non vintage Champagne as well as on the outer packaging of Veuve Clicquot's wines and on the extensive promotional and advertising materials put out by Veuve Clicquot. I believe that the Veuve Clicquot Orange is unique and distinctive of Veuve Clicquot's products amongst all wines, sparkling wines and champagnes. The Veuve Clicquot Orange is, to me, instantly recognisable and, to my mind, the colour immediately recalls the high quality products of Veuve Clicquot. I believe that regular buyers of quality table wines, including sparkling wines and Champagne, would also recognise the Veuve Clicquot Orange and form the same association with Veuve Clicquot.

5 If I were to see the Veuve Clicquot Orange on the label or packaging of a bottle of wine, sparkling wine or Champagne, or used on promotional material for wine, sparkling wine or Champagne, I would immediately associate the use of that Orange colour with Veuve Clicquot.

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**AND I MAKE THIS STATUTORY DECLARATION** believing the same to be true and correct in every particular.

**DECLARED** by the said

*SERENY OLIVER*

at *Melbourne* in the State of *Victoria*  
this *28<sup>th</sup>* day of *May* 1998



Before me: *Mark H Krenzer*

**MARK HEINRICH KRENZER**  
*Freehill Hollingdale & Page*  
101 Collins Street Melbourne  
A natural person who is a current  
practitioner within the meaning of  
the Legal Practice Act 1996.

**AUSTRALIA****Trade Marks Act 1995**

**IN THE MATTER** of Australian  
Trade Mark Application No. 704779  
in the name of **VEUVE CLICQUOT  
PONSARDIN**

- and -

**IN THE MATTER** of the  
examiner's objection thereto

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*Mark H. Krenzer*  
**MARK HEINRICH KRENZER**  
Freshill Hollingdale & Page  
101 Collins Street Melbourne



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6 In my experience, members of the wine buying public also associate the Veuve Clicquot Orange with Veuve Clicquot. I believe that any regular buyers of quality table wines (including sparkling wines and Champagnes) seeing the Veuve Clicquot Orange on a bottle of wine, sparkling wine or Champagne, would associate the use of that colour with Veuve Clicquot.

**AND I MAKE THIS STATUTORY DECLARATION** believing the same to be true and correct in every particular.

DECLARED by the said

*SERENY OLIVER*

at *Melbourne* in the State of *Victoria*  
 this *28<sup>th</sup>* day of *May* 1998



Before me: *Mark H. Krenzer*

**MARK HEINRICH KRENZER**  
*Freehill Hollingdale & Page*  
 101 Collins Street Melbourne  
 A natural person who is a current  
 practitioner within the meaning of  
 the Legal Practice Act 1998.