

TXR
TSD
11

F R E E H I L L S
P A T E N T A T T O R N E Y S

PATENTS TRADE MARKS DESIGNS

25 March 1998

Our ref SMS:JPB 40073478

Phone 03 9288 1604

Doc no MELCD\98076000.8

The Registrar of Trade Marks
Australian Industrial Property Organisation
Level 6
565 Bourke Street
MELBOURNE VIC 3000

Dear Sir

**Australian Trade Mark Application No. 704779 for COLOUR ORANGE
in classes 32 and 33 in the name of Veuve Clicquot Ponsardin**

We refer to your report of 9 January 1998.

We enclose herewith the Statutory Declarations of Robert Hill-Smith and Kenneth Brian Stonier AO in support of the above application. We also enclose a draft Statutory Declaration from Robert Hirst. Unfortunately, Mr. Hirst is unable to make this Statutory Declaration as he is overseas until 8 April 1998. However, he has confirmed his approval of the Statutory Declaration in the form provided to you and will execute the Declaration in this form on his return to Sydney. We will forward the declared document to you as soon as it has been received by us.

We believe that these Statutory Declarations provide very clear evidence of the distinctiveness of the Veuve Clicquot Orange as a trade mark and its reputation and recognition amongst the Australian wine trade and wine buying public in general. All three Declarations are made by persons having a very great deal of experience in all aspects of the Australian wine industry. While the experience of these declarants covers the whole of Australia (and many other countries as well), it should also be noted that each deponent is based in a different State. Robert Hill-Smith has been involved in the wholesale wine, Champagne and sparkling wine industry since 1971. Brian Stonier offers not only the retail consumer's perspective but also a professional perspective as a proprietor of Stonier's Vineyard since 1978. Robert Hirst also has extensive experience in all aspects of the Australian wine market, particularly wholesale and retail. It is notable that Mr Hirst is in fact the Managing Director of a company which is the agent for a competing Champagne marque.

101 Collins Street Melbourne Victoria 3000 Australia
Telephone (03) 9288 1577 Int+ (61 3) 9288 1577 Facsimile (03) 9288 1577
DX 240 Melbourne

OFFICES IN MELBOURNE AND SYDNEY

AUSTRALIAN INDUSTRIAL
PROPERTY ORGANISATION
26 MAR 1998
MELBOURNE

JMS

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, **ROBERT HILL-SMITH**, of Yalumba, Angaston in the State of South Australia, **DO SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 I make this Declaration from my own knowledge, save where I indicate to the contrary.
- 2 I am, and have been since 1975, employed by Samuel Smith & Son Pty Ltd and its predecessor in business. I was initially employed by that company in 1975 as a production assistant. In or about the period 1976 to 1978 I was the assistant to the production director and systems analyst. In 1980 I was appointed the company sales manager for Victoria and Tasmania and in 1981 I became the company's export manager and company wine brands manager. In 1982 I became the marketing manager of the S. Smith & Son group of companies, and in 1984 I was made the marketing director of S. Smith & Son Pty Ltd. I have held the positions of managing director and marketing director of the company since in or about 1985.
- 3 I have been involved in the wine and liquor industry in Australia, and particularly the Australian wholesale wine, champagne and sparkling wine industry, since at least 1971. My involvement in the Australian wine and liquor industry has been, except for a period in 1979, continuous since that time, although my job descriptions and consequent responsibilities have changed.
- 4 By virtue of my extensive experience in the Australian wine and liquor industry, I have developed expertise in the areas of marketing and labelling of wines, including champagnes and sparkling wines, in Australia. While my particular knowledge is of

RAH
RAH

Australian labelling and marketing practices, I am also aware of the practices adopted overseas with respect to the labelling of wines, champagnes and sparkling wines. This knowledge has been acquired during overseas travel, as a result of my involvement with the importation of wines into Australia and due to the fact that I maintain business and personal relationships with others involved in the wine industries in other countries.

5 During my time in the wine industry, as part of my various jobs, I have had close contact and had many discussions with wine customers and retailers and I have visited retail outlets on numerous occasions. Moreover, I have observed and become very familiar with the wine industry in Australia, the way it operates and the opinions and beliefs of other people within the industry. I am particularly aware of trends in marketing and promotion as these areas have been critical to my work over the years.

6 I have been familiar with the Veuve Clicquot Ponsardin ("Veuve Clicquot") range of champagnes and their distinctive labels since at least 1989, when I commenced discussions with Veuve Clicquot regarding the importation of its champagnes into Australia. I have continually worked for employers who have sold Veuve Clicquot champagnes since at least 1991, and, in my experience, Veuve Clicquot champagnes have always been marketed as being one of the highest quality among the available champagnes and sparkling wines. I have always found Veuve Clicquot products to enjoy the highest reputation amongst those in the wine and liquor industry and customers alike. In this regard, the reputation of Veuve Clicquot's champagnes in Australia is the same as I have found them to enjoy in other countries which I have visited.

7 To my knowledge, Veuve Clicquot uses a number of different trade marks in respect of its champagnes. Often one or more of these trade marks are combined on the label placed on a bottle of Veuve Clicquot champagne. One of these trade marks is the orange colour which I understand Veuve Clicquot is seeking to register in Australia in the application No. A704779 (the said colour is hereafter referred to as "the Clicquot Orange").

8 As a result of my familiarity with wines and sparkling wines, both produced in and imported into Australia, and my many years of experience in the wine/sparkling wine industry more generally, I am aware that there is a strong connection made by the retail and wholesale wine and liquor trade between the Clicquot Orange and Veuve Clicquot. In my view, this is due to the use by Veuve Clicquot of the Clicquot Orange on its

RAV

champagne labels and other associated material including bottles of champagne, marketing and promotional materials, price lists and guides, promotional products, display stands and letterhead. I have been, for many years, familiar with such use by Veuve Clicquot of the Clicquot Orange. In particular, I often receive trade magazines and have attended trade shows where, in such magazines and at such trade shows, Veuve Clicquot promotes its products using the Clicquot Orange not only on the labels of the sparkling wines illustrated or on display but also in accompanying advertising and promotional materials and in relation to accessories and related products of Veuve Clicquot displayed.

9 I believe that the Clicquot Orange used by Veuve Clicquot is unique, classical and distinctive among the champagnes, other sparkling wines and wines generally available in Australia. As far as I am aware, there are no other champagnes, sparkling wines or wines available in Australia which use a colour similar to the Clicquot Orange on their labels. My knowledge in this regard is based on my familiarity over a long period of time with Veuve Clicquot's champagnes and the other products available in the Australian wine and liquor industry, both domestic and imported. In my opinion, the use of the Clicquot Orange distinguishes Veuve Clicquot's products from the products of other wine, champagne and sparkling wine makers and is specifically associated with the products of Veuve Clicquot.

AND I MAKE THIS STATUTORY DECLARATION conscientiously believing the same to be true, and by virtue of the provisions of the *Oaths Act* 1936.

DECLARED by the said

ROBERT HILL-SMITH

at ANGASTON in the State of South Australia

this 5th day of MARCH 1998



Before me:  J.P. 16442.



AUSTRALIA
Trade Marks Act 1995

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

- and -

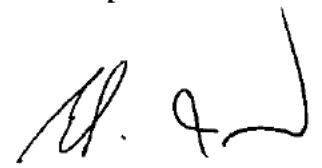
IN THE MATTER of the
examiner's objection thereto

STATUTORY DECLARATION

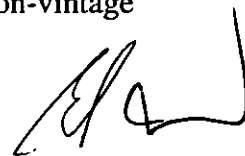
I, KENNETH BRIAN STONIER, A.O., of [REDACTED]

[REDACTED] **DO SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 I make this Declaration from my own knowledge, save where I indicate to the contrary.
- 2 In 1978 I founded Stonier's Merricks Vineyard on the Mornington Peninsula in Victoria. Prior to that time I was involved in the Australian publishing industry. I continue to be involved in the Australian publishing industry, but my special interest is now, and has been since in or about 1988, the operation of Stonier's Merricks Vineyard, the production of wine from the grapes grown in that vineyard and other vineyards in the surrounding area and the marketing and sale of wines produced by the vineyard. In 1988 I was appointed a director of Stonier Yuill Hamson & Limb Pty Ltd, the company now operating Stonier's Merricks Vineyard, and I continue to hold that position.
- 3 Since founding Stonier's Merricks Vineyard in 1978 (the first commercial vintage of which was produced in 1982), the vineyard has become one of the largest in the Mornington Peninsula region, which, in turn, is one of the emerging wine producing regions in Australia. As a result of my close involvement with the vineyard now for many years, I have become very acutely aware of the issues associated with the labelling of wine and the importance of wine labels in the selection of wines by consumers. Moreover, I have necessarily become familiar with the labels and other promotional materials of many wines and sparkling wines which are both produced in and imported into Australia.



- 4 Even prior to founding Stonier's Merricks Vineyard I was familiar with many different wines, both those produced in Australia and imported wines, because I have for many years purchased, enjoyed and consumed a wide variety of quality wines.
- 5 By virtue of my experience in the Australian wine industry and my own private purchase and consumption of quality wines over many years, I am aware of the practices adopted in Australia and overseas with respect to the labelling of wines, champagnes and sparkling wines. In addition, this knowledge has been acquired in part during overseas travel and also as a result of business and personal relationships which I maintain with others involved in the wine industries in Australia and in other countries and as an exporter of wine.
- 6 From the time I have spent in the wine industry, I have studied and become familiar with the industry and the way it operates. From many discussions with other wine merchants and wine producers in Australia and at trade shows and socially with members of the public, I have become familiar with the wine industry generally, including marketing and promotional trends, popular wine products and the knowledge, beliefs and preferences of Australian wine makers, importers and consumers.
- 7 I have been familiar with the Veuve Clicquot Ponsardin ("Veuve Clicquot") range of champagnes and their distinctive labels for in or about forty-five (45) years, when I first started purchasing and consuming Veuve Clicquot champagnes. I have since that time been a prodigious consumer of Veuve Clicquot champagnes and other champagnes and sparkling wines and have purchased bottles of Veuve Clicquot champagne and other champagnes and sparkling wine many times every year since that time. Since I first became aware of Veuve Clicquot champagnes, it has been my experience that they are always marketed as being of the highest quality among the available champagnes and sparkling wines in Australia and elsewhere. I have always found Veuve Clicquot champagnes to enjoy the highest reputation among people in the wine and liquor industry and customers alike. In this regard, the reputation of Veuve Clicquot's champagnes in Australia is the same as I have found them to enjoy in other countries which I have visited.
- 8 I have been informed that Veuve Clicquot has applied to register as a trade mark in Australia the orange colour of the label it ordinarily uses on the bottles of its non-vintage



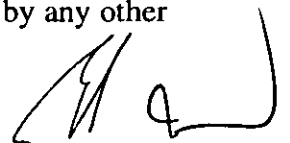
champagne and related products. I understand that this orange colour constitutes the trade mark which is the subject of application number A704779 ("the Clicquot Orange").

9 I am aware, from my experience in the Australian wine industry and my very long standing familiarity with Veuve Clicquot champagnes, that Veuve Clicquot uses a number of different trade marks in respect of its champagnes and related products. Often one or more of these trade marks is combined on the label placed on a bottle of Veuve Clicquot champagne. One of these trade marks is the Clicquot Orange which, for the reasons set out below, is, in my view, distinctive of Veuve Clicquot and its products.

10 I am familiar with the use that has been made of the Clicquot Orange by Veuve Clicquot and I have seen the Clicquot Orange used not only on the bottles of Veuve Clicquot non-vintage champagne but also in a variety of other places. By way of example, I can recall seeing point of sale material, posters and other advertising materials promoting Veuve Clicquot with each of these materials using the Clicquot Orange. Having seen the manner in which Veuve Clicquot has obviously adopted the Clicquot Orange and used it to represent itself, I have come to identify the Clicquot Orange, when used in respect of wines and related products, as indicating to me that the product in question is a Veuve Clicquot product. Thus, if I were at a function and saw a bottle of sparkling wine with a label bearing the Clicquot Orange, without even seeing any other identification such as the name and trade mark "Veuve Clicquot", I would form the immediate conclusion that this product was from Veuve Clicquot.

11 To my knowledge, there has been such a pervasive use by Veuve Clicquot of the Clicquot Orange across such a wide range of materials used to promote Veuve Clicquot and its products, that members of the retail and wholesale wine and sparkling wine market, and the public more generally, have all come to associate the Clicquot Orange in respect of wine and related products with Veuve Clicquot. As mentioned above, I personally have seen it used in a variety of ways to promote Veuve Clicquot products. Indeed, the colour is often used not only in association with a particular Champagne but also with Veuve Clicquot generally.

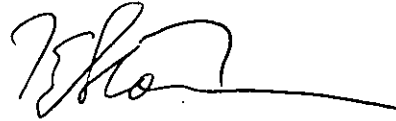
12 I have been informed by the solicitors for Veuve Clicquot that the Trade Marks Examiner has asserted that there are other champagnes and sparkling wines available in Australia which use the Clicquot Orange on their label. I am not aware of any such use by any other



champagne or sparkling wine producer. Moreover, as a result of my familiarity over a very long period of time with Veuve Clicquot's champagnes and the other champagnes and sparkling wines offered for sale in Australia, I believe that the Clicquot Orange is unique among the champagnes and other sparkling wines available in Australia and, as such, is distinctive of Veuve Clicquot and its products.

AND I ACKNOWLEDGE THAT THIS DECLARATION is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

DECLARED by the said
KENNETH BRIAN STONIER
at Merricks in the State of Victoria
this 13th day of March, 1998



Before me:

TREVOR WATSON
MANAGER

