

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

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31 October 1997

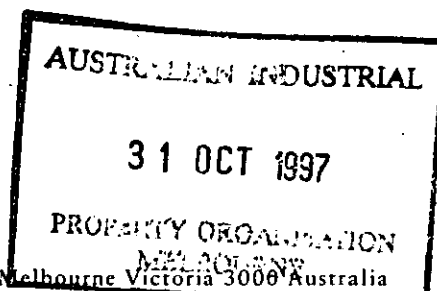
The Registrar of Trade Marks
Australian Industrial Property Organisation
Level 6
565 Bourke Street
MELBOURNE VIC 3000

Dear Sir

**Australian Trade Mark Application No. 704779 for COLOUR ORANGE
(Colour Trade Mark) in classes 32 and 33 in the name of Veuve Clicquot Ponsardin
Our Ref: SMS:MHK:40073478**

We refer to the second examiner's report dated 26 March 1997 in respect of this application. We now enclose a Statutory Declaration of Gérard Baillat made on 15 October 1997. The Statutory Declaration is self-explanatory, but some of the principal points we wish to emphasise to the examiner are as follows:

- the applicant and its predecessors in business have been producing and selling Champagne since approximately 1805;
- the COLOUR ORANGE trade mark was first used by the applicant or its predecessor in business in or about 1860;
- the applicant's Champagnes produced and sold under or by reference to the COLOUR ORANGE trade mark have been available in Australia since at least 1900;
- approximately 90% of the applicant's Champagnes which are exported to Australia bear the COLOUR ORANGE trade mark;
- since the year 1900, the applicant's Champagnes have at all times been available in Australia except during the final year of World War I, during one year of the great depression and the years of World War II;
- the sales of the applicant's Champagnes in Australia number in the millions of bottles; and
- the applicant and/or its Australian distributor undertake a wide range of promotional activities under or by reference to the COLOUR ORANGE trade mark.



101 Collins Street Melbourne Victoria 3000 Australia
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OFFICES IN MELBOURNE AND SYDNEY

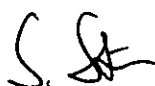
SS

We submit that in such circumstances, where the COLOUR ORANGE trade mark is so prominently used by the applicant and has been used so extensively and for such a very long period of time, both in Australia and around the world, the trade mark in fact distinguishes the goods for which the applicant seeks to register the trade mark from the goods of other traders. We further submit that accordingly the applicant should be allowed to register this trade mark in Australia as it has done in a number of other countries including as follows:

Country	Registration No.	Class(es)
France	1597323	32 and 33
Benelux	506978	
United Kingdom	1418384	33
United States of America	2.052.302	

We await notification of acceptance.

Yours faithfully
FREEHILLS PATENT ATTORNEYS



Stephen Stern

Enc

AUSTRALIA

Trade Marks Act 1995

IN THE MATTER of Australian
Trade Mark Application
No. A704779 in the name of **VEUVE
CLICQUOT PONSARDIN**

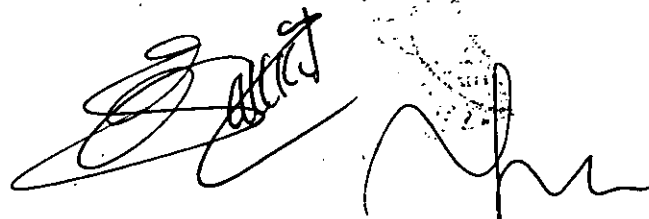
- and -

IN THE MATTER of the examiner's
objection thereto

STATUTORY DECLARATION

I, GERARD ROGER GEORGES BAILLAT, Legal Officer, of 12 Rue du Temple, Reims,
France, **DO SOLEMNLY AND SINCERELY DECLARE** as follows:

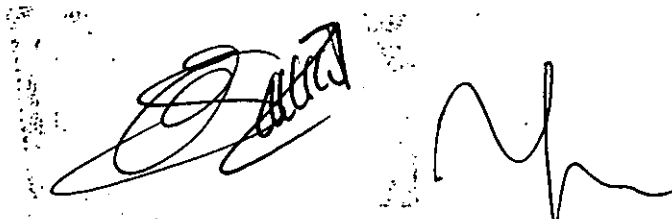
1. I make this Declaration from my own knowledge, save where I indicate to the contrary.
2. I am, and have since May 1987 been, a Legal Officer in the sole employ of Veuve Clicquot Ponsardin Maison Fondée En 1772, a société anonyme organised and existing under the laws of the Republic of France ("Veuve Clicquot").
3. As part of my duties and responsibilities as a Legal Officer employed by Veuve Clicquot, I have been required to, and in fact I have, become familiar with both the history and the world-wide business activities of Veuve Clicquot.
4. My responsibilities also require me, inter alia, to be familiar with all matters relating to Veuve Clicquot's trade marks, including matters relating to the use or misuse of Veuve Clicquot's trade marks throughout the world and attempts by third parties to register trade marks in conflict with the trade marks of which Veuve Clicquot is the proprietor. Accordingly, I have familiarised myself (from the records and documents held by Veuve Clicquot) with the history of Veuve Clicquot, with the history of Veuve Clicquot's predecessors in business, with the history of the worldwide group of companies owned and/or controlled by Veuve Clicquot and with the history and the use throughout the world of the trade marks of which Veuve Clicquot is the proprietor. (I refer to Veuve Clicquot, Veuve Clicquot's predecessors in business and the worldwide group of companies owned and/or controlled by Veuve Clicquot as "Veuve Clicquot" and to their business as "the Veuve Clicquot Business").



5. The information contained in the exhibits to this statutory declaration marked "Confidential" is confidential and commercially sensitive to Veuve Clicquot, and it is lodged with the Trade Marks Office on the basis that it is to be kept strictly confidential and is not disclosed, other than to the Registrar (or his delegates), for the purpose of considering Veuve Clicquot's trade mark application No. 704779.
6. Veuve Clicquot is and has at all material times been a company duly incorporated pursuant to the laws of the Republic of France, and is entitled to lodge the Australian trade mark application No. 704779 in its corporate name.
7. The Veuve Clicquot Business in modern times consists of, inter alia, the Veuve Clicquot vineyards and facilities for manufacturing and bottling champagne, all in the Champagne region of France. The Veuve Clicquot Business also consists of a worldwide network of wholly owned subsidiary distribution companies including in countries such as the United States of America, the United Kingdom and Germany. The Veuve Clicquot Business does not have a wholly owned subsidiary acting as a distribution company in Australia, but uses an independent locally-based distributor, Samuel Smith & Son Pty Ltd ("Smith & Son"), to perform the tasks that otherwise would be performed by one of its wholly owned subsidiary distribution companies.
8. The functions of the wholly owned subsidiary distribution companies (and, in Australia, the functions of Smith & Son) include the importation, distribution, promotion and marketing of Veuve Clicquot's products in the country where the subsidiary or distributor is based. The operation of the wholly owned subsidiaries or distributors (insofar as the distributor's operation concerns the importation, distribution and sale of Veuve Clicquot Champagne) is subject to Veuve Clicquot's direction and control.

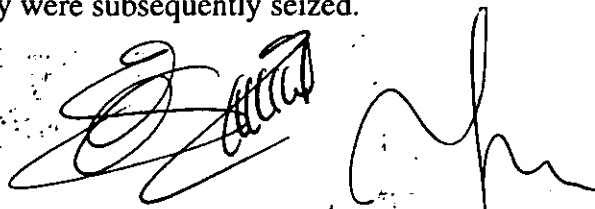
HISTORY OF VEUVE CLICQUOT

9. The House of Clicquot was founded by Philippe Clicquot in 1772 in Reims, France, and its business interests included banking, textiles and the production and sale of Champagne. Philippe Clicquot's son, François, after having studied the writings of Dom Perignon (the head cellarman of the Monastery at Hautvillers), between the years of 1796 and 1799 developed the Veuve Clicquot vineyards and their wines. In 1799 François Clicquot married Nicole Barbe Ponsardin, the daughter of a spinner who was the mayor of Reims. When François Clicquot died of malignant fever in 1805, the young and

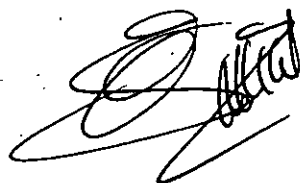


inexperienced Madame Clicquot, then aged only 27, assumed the management of her late husband's business. At a time when commerce was not considered to be a fitting activity for ladies, Madame Clicquot showed great strength of character and founded a company, namely "La Societe Veuve Clicquot Ponsardin" to handle the business of the House of Clicquot. The word "Veuve" was included in the company's title because it is the French word for "widow".

10. During the early years of the Nineteenth Century, Madame Clicquot spent most of her time in the town of Reims in the Champagne region, personally supervising all aspects of her business. She sent representatives to countries throughout Europe, most notably to Austria and Russia, in order to generate purchasers for her Champagne, which soon gained a very favourable reputation throughout continental Europe. This favourable reputation was achieved by Madame Clicquot's constant search for perfection, a philosophy which she imbued in the company. The emphasis on perfection is still encapsulated by Veuve Clicquot today, as is shown by its motto - "Only one quality: the very finest".
11. In pursuit of her philosophy, Madame Clicquot devoted much of her time and energy to improving the production processes for the Champagne produced by Veuve Clicquot's vineyards. One aspect of this was her work to eliminate the deposits which are formed in the Champagne bottle during the second fermentation stage. She came up with the idea of giving each bottle of Champagne a quarter of a turn every day and at the same time inclining it, with the result that the deposits in the wine gradually descended until they reached the cork. This practice was subsequently adopted by all other Champagne houses in their production of Champagne.
12. At about the time Madame Clicquot was developing and perfecting her Champagne in the manner described in the preceding paragraph, the production origin of each wine was marked on the cork of the wine bottle. There is one reported instance in the early nineteenth century where, because of the high reputation enjoyed by Madame Clicquot's Champagne, another wine merchant attempted to pass off his wines as being the product of Madame Clicquot. A Russian friend of Madame Clicquot, whose son was a Russian custom's officer, found that infringing bottles of Champagne were being sent into Russia and immediately informed Madame Clicquot of the existence of the infringing bottles, with the result that they were subsequently seized.



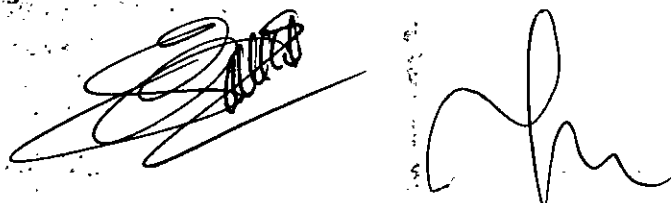
13. In 1831, Madame Clicquot entered into partnership with Count Edouard Werle, who was soon given the task of looking after the vineyards, overseeing the vine growers and choosing the *cuvees*. At about this time Madame Clicquot divested the other business interests of Veuve Clicquot and concentrated on the production of Champagne, on the advice of her new partner.
14. In 1858, Count Edouard Werle registered two Veuve Clicquot bottle labels as trade marks. Although the labels on bottles of Veuve Clicquot Champagne had, prior to that time, had a distinctive appearance which indicated their origin from Veuve Clicquot's vineyards, this is the first time that such labels had been registered as trade marks by Veuve Clicquot.
15. The colour orange, constituting the trade mark which is the subject of application No. A704779 ("the Clicquot Orange"), was first used by Veuve Clicquot as the background colour on the labels of bottles of Veuve Clicquot Champagne in or about the year 1860. The first registration of labels bearing the Clicquot Orange took place on or about 12 February 1877.
16. When Madame Clicquot died in 1866, Count Edouard Werle assumed the control and management of Veuve Clicquot and remained in that position until his death in 1888. The Count's direct descendants still manage Veuve Clicquot today.
17. In or about 1902 Bertrand de Mun assumed the management and control of Veuve Clicquot. Monsieur de Mun embarked on an era of public relations and customer development in those countries to which Veuve Clicquot exported its Champagne, in order to raise the public profile of Veuve Clicquot. This set the tone for a period of continually increasing sales volumes of Veuve Clicquot's Champagne around the world. As a result of Monsieur de Mun's efforts, by 1911 Veuve Clicquot was selling 2 million bottles per annum of Champagne worldwide. Even during the years of World War I, Veuve Clicquot succeeded in exporting an average of 700,000 bottles per annum, principally to England, the United States of America, South America, Canada and Latin America. In the interwar years, sales growth continued to be experienced for Veuve Clicquot's Champagne, except in the years of the Great Depression.



18. In 1987 Veuve Clicquot joined the corporate group of Louis-Vuitton-Moët-Hennessy, which concentrates its efforts on the production of luxury items in accordance with traditional methods and to high quality standards.

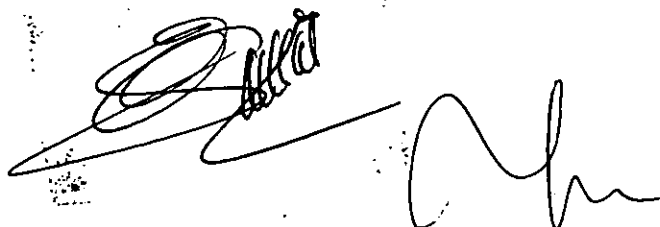
THE VEUVE CLICQUOT TRADE MARKS

19. Since 1831, when the Veuve Clicquot Business started to focus on producing exclusively Champagne, it has experienced an expansion of its Champagne production business. The expansion has been to such an extent that today the Veuve Clicquot vineyards consist of over 265 hectares of vines.
20. Ever since 1772 the Veuve Clicquot Business has conducted its operations on a substantial scale of production, distribution, promotion, marketing and sales of a range of high quality Champagne. These Champagnes have been produced, distributed, promoted, marketed and sold under or by reference to a combination of trade marks such as the names "VEUVE CLICQUOT PONSARDIN", "VEUVE CLICQUOT" and device trade marks such as an arabesque device, a five-point star-with-tail device and an anchor in a six-point star device. In addition, the use of these trade marks in relation to Champagne, in particular non-vintage champagne, has often been in conjunction with the Clicquot Orange as a background colour. As a result of this use of its trade marks, including the Clicquot Orange, in relation to Veuve Clicquot's Champagne and for the reasons set out below, the public associates each of the trade marks and, in particular, the Clicquot Orange with Veuve Clicquot.
21. Since at least in or about the year 1860, Veuve Clicquot Champagne has been distributed, promoted, advertised, offered for sale and sold by the Veuve Clicquot Business on an extensive scale in countries other than France under and by reference to labels the background colour of which is entirely the Clicquot Orange.
22. Ever since Veuve Clicquot Champagne has been available in Australia, and certainly for at least the last 130 years, Veuve Clicquot Champagne has been sold under or by reference to labels the background colour of which is the Clicquot Orange. By reason of the extensive use of the Clicquot Orange by Veuve Clicquot over a very long period of time and the high quality of Veuve Clicquot Champagne, the Clicquot Orange has acquired a valuable reputation and is associated by the public with the high quality of the Champagne produced by Veuve Clicquot. Many decades ago Veuve Clicquot recognised



and decided to exploit the valuable reputation it had acquired in the Clicquot Orange and to reinforce the strong connection made by the public and the retail and wholesale wine and liquor trade between the Clicquot Orange and Veuve Clicquot. In order to do this, Veuve Clicquot has for many decades used the Clicquot Orange effectively as a "house colour" in all aspects of its business. As a result, Veuve Clicquot has used the Clicquot Orange on the labels applied to its bottles of champagne, in its marketing and promotional materials, price lists and guides, on promotional products, on display stands, on other documents produced by Veuve Clicquot such as invoices, business cards and letterhead. This use of the Clicquot Orange by Veuve Clicquot in all aspects of its business has had the effect that when consumers and people in the retail and wholesale wine and liquor trade, in Australia and elsewhere, see wines (including champagnes and sparkling wines) bearing a label the background colour of which is Clicquot Orange or otherwise sold or promoted under or by reference to the Clicquot Orange or even any similar colour, they expect that the product is manufactured by Veuve Clicquot and of the same very high quality consumers and members of the trade associate with the products of Veuve Clicquot or that the products are in some way associated with Veuve Clicquot. Examples of use of the Clicquot Orange are given below.

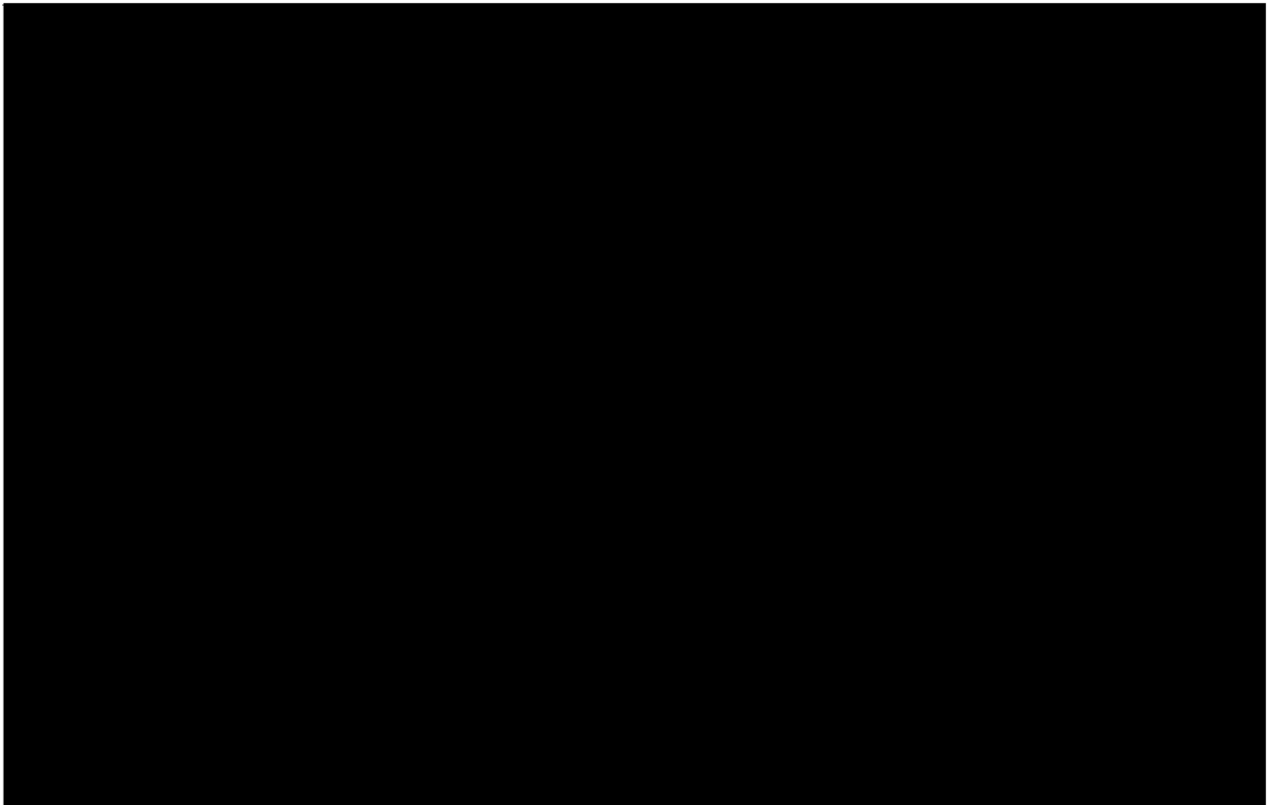
23. Now produced and shown to me and marked "GB-1" is a colour photocopy of a page from a publication by Veuve Clicquot distributed internationally which shows the use and evolution of the labels used by Veuve Clicquot since 1811, illustrating continued use of the Clicquot Orange since at least in or about 1860.
24. Now produced and shown to me and marked "GB-2" are four (4) colour photocopies of various labels used by Veuve Clicquot on or in relation to its Champagne. The trade marks are copied from pages 130, 138, 143 and 144 respectively of the official history of Veuve Clicquot, entitled "Veuve Clicquot - La Grande Dame De La Champagne", which was published in 1992 ("the Official History"). As can be seen, the exhibited labels each incorporate a number of Veuve Clicquot's trade marks, including the Clicquot Orange.
25. Now produced and shown to me and marked "GB-3" are colour photocopies of two (2) illustrations of Veuve Clicquot Champagne as used since in or about 1870, showing the use of labels incorporating the Clicquot Orange trade mark. These drawings are copied from pages 139 and 140 respectively of the Official History.

A handwritten signature in black ink, consisting of a large, stylized initial 'O' followed by a series of loops and a long horizontal stroke extending to the right.

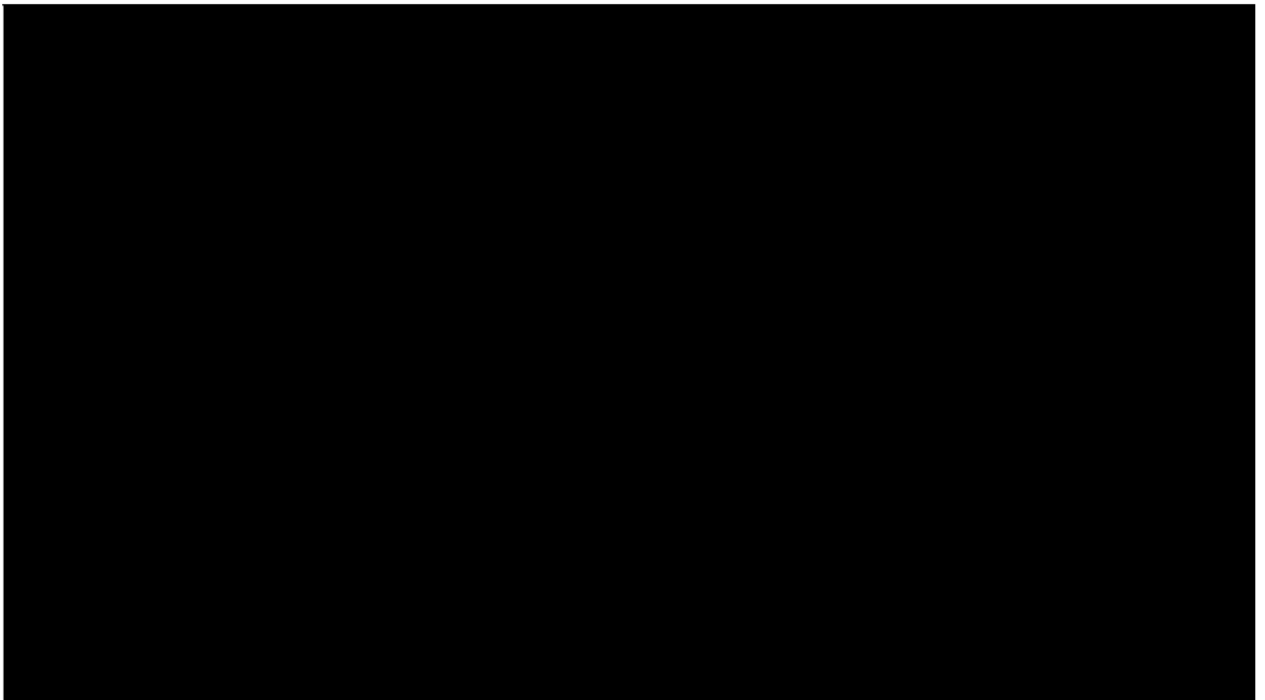
26. Now produced and shown to me and marked "GB-4" are colour photocopies of four (4) photographs showing bottles of Veuve Clicquot Champagne bearing labels dated 1985, 1899 and 1904. These labels also each use the Clicquot Orange trade mark. These photographs are copied from pages 145, 170, 171, and 175 respectively of the Official History.
27. Now produced and shown to me and marked "GB-5" are coloured photocopies of two (2) artistic works, the first from the early 1900s and the second from the year 1889. These artistic works depict bottles of Veuve Clicquot Champagne, both of which bear labels incorporating the Clicquot Orange trade mark. These artistic works are copied from pages 163 and 168 respectively of the Official History.
28. The exhibits referred to in the preceding three paragraphs illustrate the long and extensive use of the Clicquot Orange by Veuve Clicquot as the background colour for the labels of and advertising and promotional material for its Champagnes. It was a result of this extensive use of the Clicquot Orange colour in respect of its Champagnes and the reputation that arose as a result of such use (combined with the high reputation enjoyed by Veuve Clicquot's Champagnes) that caused Veuve Clicquot to adopt the Clicquot Orange as a "house colour" as described in paragraph 22 hereof.

REPUTATION OF THE VEUVE CLICQUOT CHAMPAGNE IN AUSTRALIA

29.



[Handwritten signatures]




30. For the period from before 1979 to 1990, the Elders IXL group of companies (initially known as Elder Smith Goldsbrough Mort Ltd) was responsible for the importation and distribution of Veuve Clicquot Champagne into and around Australia. From 1990 to in or about August 1993 Veuve Clicquot Australia Pty Ltd (which is a subsidiary of Veuve Clicquot) imported Veuve Clicquot Champagne in Australia, and United Distillers Australia was responsible for distribution of Veuve Clicquot Champagne around Australia. Since in or about August 1993 Smith and Son has been responsible for the importation and distribution of Veuve Clicquot Champagne into and around Australia.
31. From documents contained in Veuve Clicquot's records and from information supplied to me by officers of the companies responsible from time to time for importing and distributing Veuve Clicquot Champagne into and around Australia, I believe that Veuve Clicquot Champagne bearing or under or by reference to the Clicquot Orange trade mark is and has for a substantial period of time been promoted, distributed and sold and has been widely available to the public in Australia in substantial quantities. Based on the same information, I believe that Veuve Clicquot Champagne is sold and has for a substantial period of time been sold, offered and promoted by a considerable variety of means to a very large number of retail customers in every State of Australia bearing labels with the background colour of Clicquot Orange (except for the labels of Veuve Clicquot's other, lower volume Champagnes) and under or by reference to the Clicquot Orange trade mark.

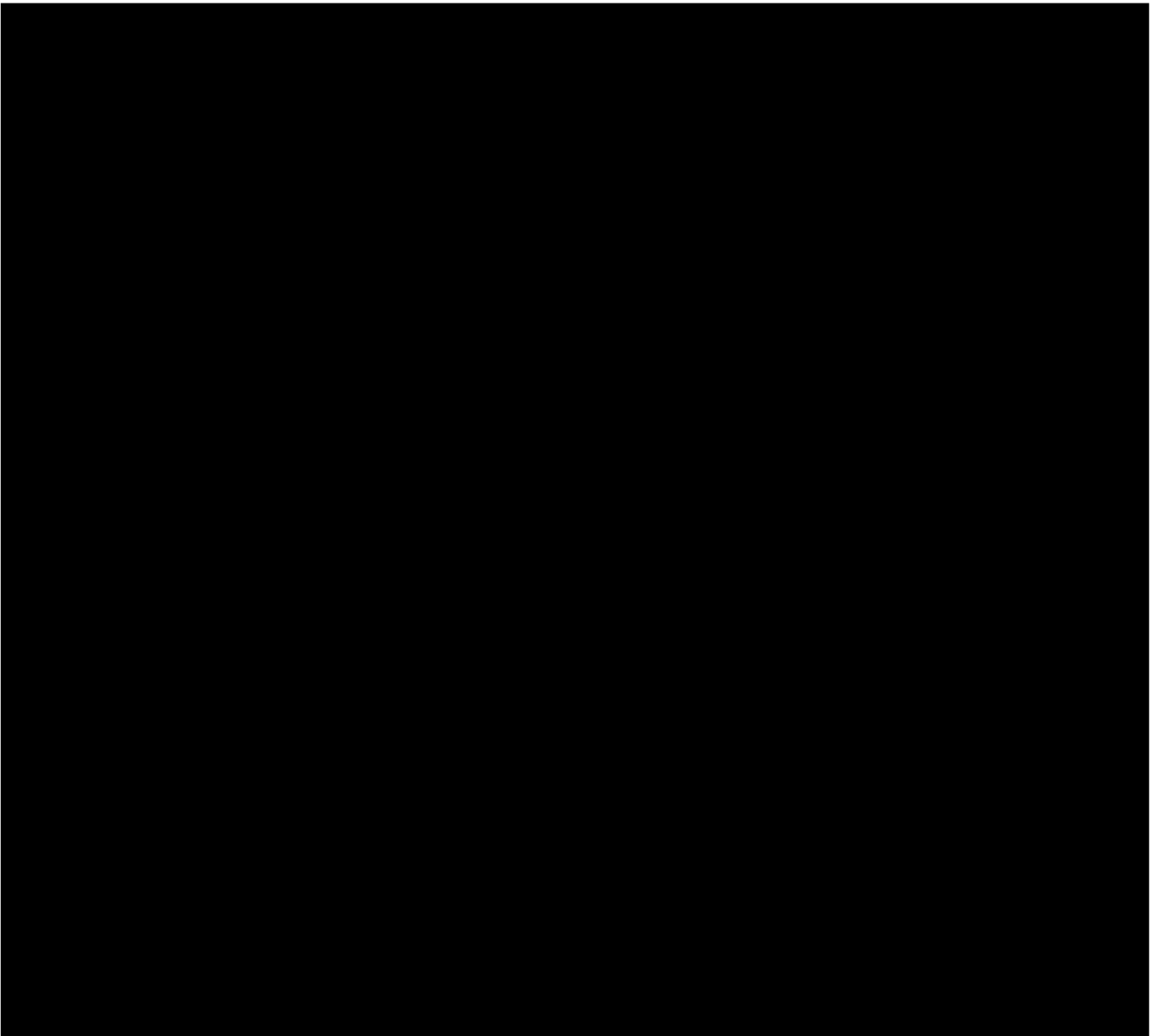
32. As mentioned above, the Clicquot Orange trade mark is used by Veuve Clicquot not only as the background colour for the labels placed on Veuve Clicquot's non-vintage Champagne bottles, but also on all of Veuve Clicquot's promotional materials and in relation to promotional activities (see paragraphs 35 to 38 below). Additionally, the Clicquot Orange is used by Veuve Clicquot on company letterhead, press releases and other material before the public. Now produced and shown to me and marked "GB-7" are examples of other uses of the Clicquot Orange in Australia, being a page of Veuve Clicquot letterhead and the front page of a press release. The effect of these other uses of the Clicquot Orange trade mark by Veuve Clicquot on items other than bottles of Champagne and in relation to its promotional activities is to strongly reinforce the connection made by the public between the Clicquot Orange trade mark and goods (including Champagnes) produced and sold by Veuve Clicquot.
33. The reputation associated with products promoted, offered and sold, by Veuve Clicquot in Australia under or by reference to the Clicquot Orange trade mark is based on the extremely high quality of the Champagne produced by Veuve Clicquot, and its history and reputation for producing such Champagne - the better the quality the product and the more prestigious its reputation, the more famous and well known the trade marks associated with it become among the public and members of the trade. Additionally, products sold under or by reference to the Clicquot Orange trade mark have all been made by and have been subjected to the strict quality control of Veuve Clicquot in Reims, France and thus these other products are of the same high quality traditionally associated with Veuve Clicquot's Champagnes, and the use of Clicquot Orange trade mark in respect of such products further enhances the reputation of that trade mark and the association between the Clicquot Orange trade mark and Veuve Clicquot and its high quality Champagnes.
34. The reputation for high quality associated with the Veuve Clicquot Champagnes has meant that they have been the subject of many references in well-known films, with a reference to Veuve Clicquot Champagnes conveying the idea of "classy", fashionable surroundings. I believe that references to Veuve Clicquot Champagne in films in these circumstances adds to the reputation enjoyed by Veuve Clicquot in the minds of the public. The films in which a reference to Veuve Clicquot Champagne is made (and which I have been informed by Mr Stephen Stern of Veuve Clicquot's Australian solicitors,



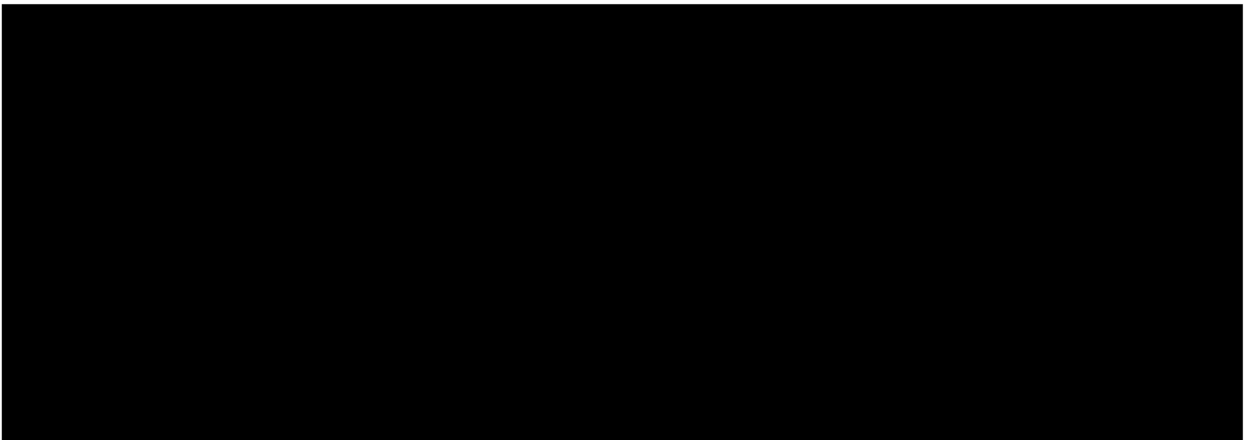
Messrs Freehill Hollingdale & Page, and verily believe have been shown in Australia) include "The Rope", "My Fair Lady", "The Cotton Club", "My Beautiful Laundrette", "Casablanca", "Wild Orchid", "The Fabulous Baker Boys" and "Casino Royale", just to name a few.

PROMOTION AND ADVERTISING OF VEUVE CLICQUOT CHAMPAGNE

35. Veuve Clicquot Ponsardin has at all material times promoted and advertised its Champagne throughout the world generally and specifically in Australia. This has been done by, inter alia, distributing, promoting and supplying throughout the world, including in Australia, a large range of promotional products such as champagne bottle openers, glassware, bar-stands, ice buckets and key rings. Now produced and shown to me and marked "GB-8" is an advertising brochure/catalogue featuring many of those promotional products. As can be seen, many of the promotional items (and indeed, the advertising brochure/catalogue itself) use, incorporate and are coloured with the Clicquot Orange trade mark. I have been informed by officers of Smith & Son and verily believe that such promotional items are given to wholesalers, retailers, restaurateurs, caterers and/or the public in each State and Territory of Australia.
36. In addition, other items produced and distributed by Veuve Clicquot which use, incorporate and are coloured with the Clicquot Orange trade mark include posters, place cards and even marquees (although the later are merely provided by Veuve Clicquot for use and not for distribution). Veuve Clicquot, either itself or through its Australian distributor from time to time, conducts promotional activities, including at high profile sporting events and cultural events. Such promotional activities, to give a typical example, may include Champagne tastings conducted by Veuve Clicquot at high profile horse race such as the Melbourne Cup. Typically at such events, and especially at the champagne tastings, the Clicquot Orange is prominently used on the posters hanging on the walls, on leaflets handed out to guests and on the bottles of Veuve Clicquot Champagne from which the Champagne for tasting is poured. As a result, the Clicquot Orange trade mark at such events in effect surrounds the guests and, if necessary, strengthens the guests' association between the Clicquot Orange trade mark and Veuve Clicquot and its Champagnes.
37. 



38.



LEGAL ACTION BY VEUVE CLICQUOT

39. In or about 1994 Veuve Clicquot became aware that an Australian wine producer, Tyrrell's Vineyard Pty Ltd, had commenced producing, promoting, distributing and selling a sparkling wine which was produced in Australia bearing a label the background

colour of which was a shade of orange. Now produced and shown to me and marked "GB-11" is a colour photocopy of the label used on the said bottles of sparkling wine produced, promoted, distributed and sold by Tyrrell's Vineyard Pty Ltd.

40. Shortly after Veuve Clicquot became aware of this action by Tyrrell's Vineyard Pty Ltd, I instructed Stephen Stern of Freehill Hollingdale & Page, Veuve Clicquot's Australian solicitors, to take whatever action was required to stop the continued use of the label with that background colour by Tyrrell's Vineyard Pty Ltd.
41. As a result of the action taken by Stephen Stern on behalf of Veuve Clicquot, Tyrrell's Vineyard Pty Ltd substantially altered the background colour of the label used on bottles of its sparkling wine to effectively a bright yellow colour. Now produced and shown to me and marked "GB-12" is a copy of the label now used by Tyrrell's Vineyard Pty Ltd in relation to bottles of its sparkling wine.

OTHER REGISTRATIONS

42. Veuve Clicquot has also registered the Clicquot Orange trade mark in a number of other countries around the world. Details of those registrations are as follows:

Country	Registration No.	Date of Registration
France	No. 1597323	15 June 1990
Benelux	No. 506978	6 March 1992
Great Britain	No. 1418384	6 March 1997
United States of America	No. 2.052.302	15 April 1997

CONCLUSION

43. By reason of the matters contained in the preceding paragraphs, I believe that Veuve Clicquot has become extremely well known as a reputable firm throughout the world and in Australia. By reason of the fact that the Clicquot Orange trade mark is used very prominently in all aspects of Veuve Clicquot's business, the Clicquot Orange trade mark has for many decades been extremely distinctive of Veuve Clicquot's image and goodwill. Because Veuve Clicquot has at all material times maintained and continues to maintain the highest and most valuable reputation amongst the Australian public generally, and in particular amongst the Australian wine industry and consumers of Champagnes and sparkling wines, Veuve Clicquot's very extensive and ubiquitous use

the Clicquot Orange trade mark has achieved a far greater and more prominent level of consciousness among members of the public and the wine and liquor trade than would otherwise occur with an everyday product in the same circumstances.

44. By reason of the foregoing matters, the Clicquot Orange trade mark is and has long been known amongst the public in Australia and amongst the Australian wine trade. The result is that these groups identify Champagne and promotional goods bearing, using, incorporating and coloured with the Clicquot Orange trade mark and promotional activities conducted with reference to the Clicquot Orange with Veuve Clicquot. I believe that the Clicquot Orange trade mark is very widely and favourably known as indicating distinctively and exclusively Veuve Clicquot Champagne and the Veuve Clicquot promotional goods manufactured, imported, distributed, promoted, advertised, offered for sale and sold by Veuve Clicquot and activities conducted by or under the auspices Veuve Clicquot.

45. By reason of the foregoing matters, the public in Australia:

- (a) acquiring or proposing to acquire Champagne or promotional goods and participating in activities conducted under or by reference to the Clicquot Orange trade mark or colours deceptively similar thereto; or
- (b) acquiring or proposing to acquire Champagne or promotional goods and activities bearing the Clicquot Orange or colours deceptively similar thereto

intend and expect to acquire Champagne or promotional goods and activities supplied by or connected with Veuve Clicquot and which are of a standard, quality, grade and composition commensurate with the standard, quality, grade and composition of Veuve Clicquot Champagne or promotional goods produced by and activities organised by or under the auspices of Veuve Clicquot. In forming this intention and expectation, the public relies on:

- (a) the extremely favourable reputation of Veuve Clicquot and the Veuve Clicquot Champagne or the Veuve Clicquot promotional goods and activities manufactured, imported, distributed, promoted, advertised, offered for sale, sold and organised by or under the auspices of Veuve Clicquot; and
- (b) the decades of use of the Clicquot Orange trade mark by Veuve Clicquot internationally, including in Australia as a house colour and the Clicquot Orange

trade mark's consequent use in all aspects of Veuve Clicquot's activities in Australia.

46. By reason of the foregoing, I believe that the Clicquot Orange trade mark is capable of distinguishing, and in fact in Australia does very clearly distinguish, the products and activities of Veuve Clicquot from those of other traders. Use of the Clicquot Orange trade mark by the manufacturer of another Champagne, sparkling wine or wine would be likely to deceive or cause confusion to consumers and members of the wine and liquor trade in Australia.

AND I MAKE THIS STATUTORY DECLARATION conscientiously believing the same to be true and correct by virtue of the provisions of an act of the Parliament of Victoria rendering persons making a false statutory declaration punishable for wilful and corrupt perjury.

SIGNED at Reims

in the Republic of France

this day of *October 15th* 1997



GERARD ROGER GEORGES BAILLAT

Before me: *Maître Roland CALSAC*.....
Notaire associé à Reims (Marne).



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