

FREEHILLS
PATENT ATTORNEYS

PATENTS TRADE MARKS DESIGNS

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TSD.

3 September 1998

Our ref SMS:JPB 40073478

Phone 03 9288 1013

Doc no MELCD\98246009.3

The Registrar of Trade Marks
IP Australia
Level 6
565 Bourke Street
MELBOURNE VIC 3000

Dear Sir/Madam

**Trade Mark Application No. 704779 for Veuve Cliquot Orange Colour
in classes 32 and 33 in the name of Veuve Cliquot Ponsardin**

We enclose herewith the sworn Statutory Declaration of Robert Hirst in relation to
the above matter.

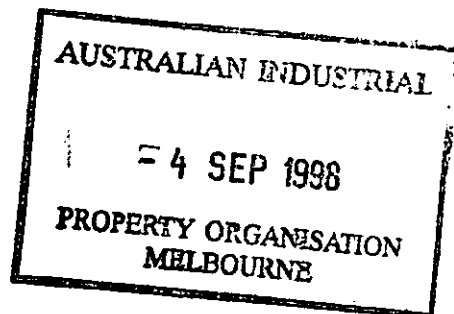
Yours sincerely



Steve Stern

Enc

*declaration
dated 23/8/98
10/9.*



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 HIRST**, of 11 Rosebery Avenue, Rosebery in the State of New South Wales, Managing Director, **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 presently the Managing Director of Tucker Seabrook (Australia) Pty Ltd. I have been a member of the Australian wine and liquor industry since 1976, when I first joined the Tucker Group, which is and has for many years been my family's business. I have been, since 1985, the Chairman of the Tucker Group and was also appointed Managing Director of Tucker Seabrook (Australia) Pty Ltd in 1985.
- 3 Tucker Seabrook (Australia) Pty Ltd and its subsidiaries are together major Australian importers, wholesalers and distributors of locally produced and imported wines and spirits.
- 4 I have therefore spent a significant amount of my working life in the purchasing and re-selling of wines and spirits of all kinds, and have a wide and extensive knowledge of both Australian wines and wines from all major wine producing countries. Moreover, throughout my time in the industry, as part of my job, I have visited many retail outlets and trade shows and have spoken extensively to wine makers, marketeers, retailers and consumers and have studied their opinions, preferences and attitudes to wine in Australia. It is and has been my business to know the views and preferences of wine consumers and to be familiar with trends in marketing and retail practices.

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5 By virtue of my experience in the Australian wine and liquor industry, and, particularly, my involvement with the Tucker Group since 1976, I have developed expertise in the areas of marketing and labelling of wines, including champagnes and sparkling wines. While my particular knowledge is of 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 in part during overseas travel and in part as a result of my involvement with the importation, distribution and wholesaling of wines in Australia. I also maintain business and personal relationships with others involved in the wine industries in Australia and in other countries. As part of my work, I am also required to travel extensively throughout Australia and, in the course of such travel, I have acquired extensive knowledge and experience regarding the use by many wine makers, importers and distributors of their wine labels and various other promotional materials.

6 I have been familiar with the Veuve Clicquot Ponsardin range of champagnes and their distinctive labels since at least 1976, when I first joined the Australian wine and liquor industry.

7 I am aware from my experience in the Australian wine and liquor industry and my long standing familiarity with Veuve Clicquot champagnes that 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 is the subject of application No. 704779 in the name of Veuve Clicquot for registration of the said colour as a trade mark in Australia (the said colour hereafter referred to as "the Clicquot Orange").

8 Based on my familiarity over a long period of time with Veuve Clicquot's champagnes and the other wines (both domestic and imported) available in the Australian wine and liquor industry, I believe that the Clicquot Orange is specifically recognisable and distinctive among the champagnes, sparkling wines and wines generally available in Australia.

9 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. In my view, the Clicquot Orange utilised on

Handwritten signature

the labels of Veuve Clicquot champagne bottles is distinct from any other orange colour that I have ever seen used in relation to wines, including champagnes and sparkling wines, available in Australia.

10 Moreover, 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 due to its extensive use by Veuve Clicquot. In particular, Veuve Clicquot uses the Clicquot Orange not only on its champagne labels but also in relation to various accessories, promotional materials and other related products which I come across in the course of my business. I believe that the Clicquot Orange is widely recognised throughout Australia and is associated by the public with the high quality of champagnes related products of Veuve Clicquot.

11 I think it is true to say that whenever I see the distinctive Clicquot Orange used on or in relation to a sparkling wine or related product, this immediately signifies to me that the product is manufactured by and/or associated with Veuve Clicquot.

AND I MAKE THIS STATUTORY DECLARATION by virtue of the *Statutory Declaration Act* 1959, and subject to the penalties provided by that Act for the making of false statements in Statutory Declarations, conscientiously believing the statements contained in this Declaration to be true in every particular.

DECLARED by the said

ROBERT HIRST

at Rosebery in the State of New South Wales

this **16** day of **AUGUST**

1998



Before me: 

DRAFT

AUSTRALIA

Trade Marks Act 1995

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Trade Mark Application No. 704779
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- 6 I have been familiar with the Veuve Clicquot Ponsardin range of champagnes and their distinctive labels since at least 1976, when I first joined the Australian wine and liquor industry.
- 7 I am aware from my experience in the Australian wine and liquor industry and my long standing familiarity with Veuve Clicquot champagnes that 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 is the subject of application No. 704779 in the name of Veuve Clicquot for registration of the said colour as a trade mark in Australia (the said colour hereafter referred to as "the Clicquot Orange").
- 8 Based on my familiarity over a long period of time with Veuve Clicquot's champagnes and the other wines (both domestic and imported) available in the Australian wine and liquor industry, I believe that the Clicquot Orange is specifically recognisable and distinctive among the champagnes, sparkling wines and wines generally available in Australia.
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DECLARED by the said

ROBERT HIRST

at Rosebery in the State of New South Wales

this day of

1998

Before me: