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# Australian Wine and Brandy Corporation Amendment Regulations 2004 (No. 1)<sup>1</sup>

Statutory Rules 2004 No. <sup>2</sup>

252

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Australian Wine and Brandy Corporation Act 1980*.

Dated 19 AUG 2004 2004

PM Jeffery

Governor-General

By His Excellency's Command

WARREN TRUSS  
Minister for Agriculture, Fisheries and Forestry

**1 Name of Regulations**

These Regulations are the *Australian Wine and Brandy Corporation Amendment Regulations 2004 (No. 1)*.

**2 Commencement**

These Regulations commence on the commencement of Schedule 3 to the *US Free Trade Agreement Implementation Act 2004*.

**3 Amendment of Australian Wine and Brandy Corporation Regulations 1981**

Schedule 1 amends the *Australian Wine and Brandy Corporation Regulations 1981*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 3, after definition of *Food Standards Code***

*insert*

*GI* means geographical indication.

*GIC* means the Geographical Indications Committee established under section 40N of the Act.

**[2] Regulation 3, after definition of *licensee***

*insert*

*proposed GI* has the meaning it has in subsection 40RA (1) of the Act.

**[3] After regulation 17***insert***17A Use of trade mark in description of wine (Act s 40J)**

- (1) This regulation applies if:
- (a) the Registrar of Trade Marks decides, under subsection 40RC (2) of the Act, that an objection to a proposed GI is made out, and the GI is subsequently registered in accordance with section 40ZD (2) of the Act; or
  - (b) a trade mark is registered or is the subject of a pending application under the *Trade Marks Act 1995* and:
    - (i) after the registration of, or application for, the trade mark, a GI is proposed and registered; and
    - (ii) the trade mark is identical to, or is likely to be confused with, the GI.
- (2) For subsection 40J (5) of the Act, the use of the trade mark mentioned in subregulation (1) to describe and present wine that did not originate in a region or locality indicated by an Australian GI mentioned in subregulation (1) is exempted from the operation of the offence provisions (to the extent that the offence provisions relate to the use of a registered GI) if:
- (a) the trade mark is used in the description and presentation of the wine; and
  - (b) the origin of the wine is shown in the description and presentation of the wine in a way that is not likely to mislead.
- (3) In subregulation (2):
- Australian GI*** has the meaning it has in subsection 40P (1) of the Act.
- the offence provisions*** has the meaning given in subsection 40J (1) of the Act.

**[4] After regulation 26**

*insert*

**27** *Note* Regulation 27 reserved for future use.

**[5] After Part 5**

*insert*

**Part 6** **Objection to determination of  
GI based on pre-existing trade  
mark rights**

**Division 1** **General**

**28** **Definition for Part 6**

In this Part:

*Registrar* means the Registrar of Trade Marks.

**29** **Parties to send copies of evidence to each other**

Evidence in relation to proceedings under this Part is not taken to be validly filed unless the party filing the evidence:

- (a) gives a copy of the evidence to each other party; and
- (b) includes, with the evidence being filed, a statement setting out the date, place and manner in which the copy was given to each other party.

**30** **Costs**

The Registrar is not entitled to make an order for costs in proceedings mentioned in this Part.

**31** **How fees are to be paid (Act s 40RC and s 40RE)**

For subsections 40RC (5) and 40RE (2) of the Act, a fee imposed under this Part must be paid to the Registrar.

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**32**      *Note* Regulation 32 reserved for future use.

## **Division 2                      Consideration of objections**

### **33                      Application of Division 2 (Act s 40RC)**

For subsection 40RC (5) of the Act, this Division applies in relation to the making of a decision under subsection 40RC (2) of the Act.

### **34                      Definition for Division 2**

In this Division:

*party*, in relation to proceedings mentioned in this Division, means any of the following:

- (a) the applicant for the GI;
- (b) a person who makes an objection under paragraph 40RA (2) (b) of the Act;
- (c) a person who registers in response to a notice published under subregulation 35 (1).

### **35                      Objections**

- (1) If a person, in response to an invitation made under paragraph 40RA (2) (b) of the Act, files an objection to a proposed GI, the Registrar must publish a notice:
  - (a) stating that the objection has been filed; and
  - (b) inviting any interested person to register as a party to the proceedings; and
  - (c) stating that any registration under paragraph (b) must be made 1 month or less after the notice is published.
- (2) The notice must be published in a manner that the Registrar thinks appropriate.

**36 Evidence**

Not less than 1 month after a notice is published under subregulation 35 (1), the Registrar must send each party a notice (an *invitation notice*) that:

- (a) gives the name and address of each other party; and
- (b) invites the party to file evidence in relation to a decision about the matter; and
- (c) states that any evidence must be filed 3 months or less from the date of the invitation notice.

**37 Evidence in answer**

If a person files evidence in response to an invitation notice sent under regulation 36, the Registrar must send each party a notice that:

- (a) invites the party to file evidence in answer to another party's evidence; and
- (b) states that evidence in answer must be filed 2 months or less from the date of the notice sent under this regulation, or any longer period that the Registrar thinks is appropriate under the circumstances.

**38 Request for hearing**

- (1) Any party may, no more than 1 month after the end of the period given under paragraph 37 (b) for the acceptance of evidence in answer, ask the Registrar to conduct a hearing.
- (2) The Registrar must agree to a request made under subregulation (1).

**39 New evidence**

- (1) At any time before the Registrar makes a decision about an objection to a proposed GI, but after the end of a period specified by the Registrar for the filing of evidence, a party may apply to the Registrar, in writing, to file new evidence.
- (2) An application must include a statement:
  - (a) describing the new evidence; and

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- (b) giving the reasons why the new evidence was not filed within the specified period.
  - (3) If, after considering the application, the Registrar decides that it is reasonable to allow the filing of the new evidence, he or she must set a date by which the new evidence must be filed.
  - (4) If the new evidence is filed by the date mentioned in subregulation (3), the Registrar must send a notice to the other parties telling them that the new evidence is filed and setting a reasonable period for the parties to file evidence in answer to it.

#### **40 Decision by Registrar**

- (1) The Registrar must, as soon as is practicable after the last day set for evidence to be filed, make a decision under subsection 40RC (2) of the Act by considering:
  - (a) the notice published under subsection 40RA (2) of the Act and any related documents; and
  - (b) the documents filed by the parties; and
  - (c) any other matter that the Registrar thinks is relevant.
- (2) If a hearing is held, the Registrar must also invite submissions from the parties and consider the submissions.

#### **41 No decision if trade mark subject to removal or cancellation proceedings**

The Registrar must not make a decision under subsection 40RC (2) of the Act if the registered trade mark concerned is the subject of removal or cancellation proceedings.

#### **42 Withdrawal of objection**

If a person objecting to a proposed GI:

- (a) does not file evidence within the period mentioned in paragraph 36 (c); or

- (b) withdraws the notice of objection before the Registrar makes a decision about the objection;  
the Registrar must decide that the ground of the objection is not made out.

*Note* The Registrar must notify the parties and the GIC about his or her decision: see subsection 40RD (1) of the Act.

### 43 Fees

- (1) In proceedings mentioned in this Division, the fees specified in column 3 of an item in the following table are payable in respect of a matter specified in column 2 of the item.
- (2) The Registrar must disregard any matter until the fee for the matter is paid.

Item	Matter	Fee (\$)
1	Filing a notice of objection in response to an invitation under paragraph 40RA (2) (b) of the Act	500
2	Registering as a party to proceedings in response to a notice published under subregulation 35 (1)	250
3	Applying to file new evidence under subregulation 39 (1)	100
4	Filing evidence under regulation 36, 37 or 39 (that is, evidence in support, evidence in answer or new evidence)	375
5	Requesting a hearing under subregulation 38 (1)	500
6	Attending a hearing	500 per day or part of a day

- (3) If a person requests a hearing and pays the fee mentioned in item 5 of the table in respect of the hearing, the fee in item 6 of the table applies to the person only for the second and any subsequent day of the hearing.

*Note* No fee is payable under item 2 of the table by a person applying for a GI.



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## **Division 3                    Application for decision that ground of objection no longer exists**

### **44                    Application of Division 3 (Act s 40RE)**

For subsection 40RE (2) of the Act, this Division applies in relation to the making of a decision under subsection 40RE (1).

### **45                    Definition for Division 3**

In this Division;

*claimant* means an applicant for a decision under paragraph 40RE (1) (b) of the Act.

*party*, in relation to proceedings mentioned in this Part, means any of the following:

- (a) the claimant;
- (b) the owner of the trade mark concerned;
- (c) a person who registers in response to a notice published under subregulation 46 (1).

### **46                    Claims**

- (1) If the Registrar receives an application from a claimant, the Registrar must publish a notice:
  - (a) stating that the application has been made; and
  - (b) inviting any interested person to register as a party to the proceedings; and
  - (c) stating that any registration under paragraph (b) must be made 1 month or less after the notice is published.
- (2) The notice must be published in a manner that the Registrar thinks appropriate.
- (3) The Registrar must also give a notice in writing to the following, stating that the application has been made:
  - (a) the owner of the trade mark concerned;
  - (b) any person who asked the GIC to determine a GI that could be confused with the trade mark.

**47 Evidence**

Not less than 1 month after a notice is published under subregulation 46 (1), the Registrar must send each party a notice (an *invitation notice*) that:

- (a) gives the name and address of each other party; and
- (b) invites the party to file evidence in relation to a decision about the matter; and
- (c) states that any evidence must be filed 3 months or less after the date of the invitation notice.

**48 Decision if no evidence is filed**

If no party files evidence within the period mentioned in paragraph 47 (c), the Registrar must:

- (a) decide that the claim is not made out; and
- (b) notify the parties and the GIC, in writing, of the decision.

**49 Evidence in answer**

If a person files evidence in response to an invitation notice sent under regulation 47, the Registrar must send each party a notice that:

- (a) invites the party to file evidence in answer to another party's evidence; and
- (b) states that evidence in answer must be filed 2 months or less from the date of the notice sent under this regulation, or any longer period that the Registrar thinks is appropriate under the circumstances.

**50 Request for hearing**

- (1) Any party may, no more than 1 month after the end of the period given under paragraph 49 (b) for the acceptance of evidence in answer, ask the Registrar to conduct a hearing.
- (2) The Registrar must agree to a request made under subregulation (1).

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**51 New evidence**

- (1) At any time before the Registrar makes a decision about whether a ground of objection to a proposed GI no longer exists, but after the end of a period specified by the Registrar for the filing of evidence, a party may apply to the Registrar, in writing, to file new evidence.
- (2) An application must include a statement:
  - (a) describing the new evidence; and
  - (b) giving the reasons why the new evidence was not filed within the specified period.
- (3) If, after considering the application, the Registrar decides that it is reasonable to allow the filing of the new evidence, he or she must set a date by which the new evidence must be filed.
- (4) If the new evidence is filed by the date mentioned in subregulation (3), the Registrar must send a notice to the other parties telling them that the new evidence is filed and setting a reasonable period for the parties to file evidence in answer to it.

**52 Decision by Registrar**

- (1) The Registrar must, as soon as is practicable after the last day set for evidence to be filed, make a decision under subsection 40RE (1) of the Act by considering:
  - (a) the documents filed by the parties; and
  - (b) any other matter that the Registrar thinks is relevant.
- (2) If a hearing is held, the Registrar must also invite submissions from the parties and consider the submissions.

**53 Withdrawal of claims**

- (1) If, before the Registrar makes a decision under this Division, the claimant withdraws the claim, the Registrar must continue the proceedings if requested to do so by another party.
- (2) However, if no party makes a request to continue, the Registrar must:
  - (a) make no decision about the matter; and

(b) notify the parties and the GIC, in writing, accordingly.

**54 No decision if trade mark subject to removal or cancellation proceedings**

The Registrar must not make a decision under 40RE (1) of the Act if the trade mark concerned is the subject of removal or cancellation proceedings.

**55 Fees for claim that ground of objection no longer exists (Act s 40RE)**

- (1) In proceedings mentioned in this Division, the fees specified in column 3 of an item in the following table are payable in respect of a matter specified in column 2 of the item.
- (2) The Registrar must disregard any matter until the fee for the matter is paid.

Item	Matter	Fee (\$)
1	Making an application for a decision under paragraph 40RE (1) (b) of the Act	500
2	Registering as a party in response to a notice under subregulation 46 (1)	250
3	Applying to file new evidence under regulation 51	100
4	Filing evidence under regulation 47, 49 or 51 (that is, evidence in support, evidence in answer or new evidence)	375
5	Requesting a hearing under regulation 50	500
6	Attending a hearing	500 per day or part of a day

- (3) If a person requests a hearing and pays the fee mentioned in item 5 of the table in respect of the hearing, the fee in item 6 of the table applies to the person only for the second and any subsequent day of the hearing.

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**Notes**

1. These Regulations amend Statutory Rules 1981 No. 156, as amended by 1986 No. 161; 1993 No. 374; 1994 No. 338; 2000 No. 130; 2001 No. 76; 2002 No. 60; 2003 No. 191.
2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

26 August