



Australian Government
IP Australia



Patents



Trade Marks

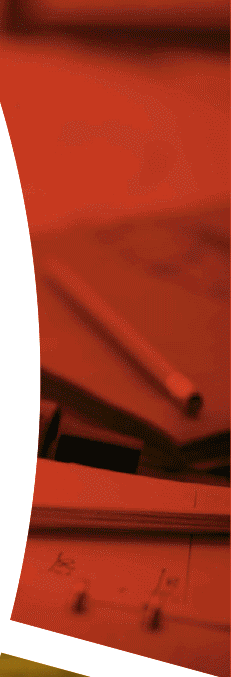


Designs



Plant Breeder's
Rights

Recent developments in Australia in the field of Geographical Indications





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Key points

Background on Australian system of GI protection

Australian normative framework

Australian experience with GI protection in Australia

Data-driven economic study



Australian system of protection

Two types of registration

- Certification marks
- *Sui generis* system protecting wine and grape products

Other means

- Common law tort of passing off
- Consumer protection laws



Objections, generics and composite terms

Transparency in Publishing

Understanding application, registration and objection processes

Interested parties are given notice and have standing

Due Process

Process for objection

No automatic protection

Safeguard Public Domain and prior TM rights

Generic terms should not be protected

Prior trade mark rights



Generic Terms

Registration helps:

Protect against misuse

Prevent a term from falling into the common language

Traders to know where they have freedom to act

Protection of generic terms fundamentally inconsistent with IP principles

Anti-competitive

Reduction of choice

Clear and transparent objection process

Generic or descriptive components of composite terms should not be protected

Composite term in full should only have protection



Prior Rights

Exclusive rights
afforded by the
TRIPS Agreement

Uncertainty may
result in reduced
business
confidence

Trade mark system
provides protection
for prior rights and
a transparent
registration system

TRIPs consistent
administrative
systems subject
domestic and
foreign GIs to the
same set of rules



Australian Grape and Wine Authority Act (AGWA Act)

Sui generis system for protection of wine GIs was introduced in 1994

Implemented the Australia-European Community Agreement on Trade in Wine (Wine Agreement)

Established the Register of Protected Geographical Indications and Other Terms

Amended many times since enactment



Register of Protected GIs & Other Terms

Includes:

- Australian wine GIs
- non-Australian wine GIs;
- and translations of non-Australian wine GIs.

Examples of wine GIs on the Register:

- Champagne
- Barossa Valley
- Rutherglen



Certification Trade Marks

Administered by IP Australia and assessed by the Australian Competition and Consumer Commission

Indicate that the goods meet standards including those of quality, composition or geographical origin

Certification mark standards can replicate the GI's country of origin specification

Both the trade mark registration and the associated standards are open to third party objections

Currently approximately 650 registered or pending certification trade marks on the Trade Mark Register, covering a wide range of certification schemes



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Examples



Certification
mark no 677876
for cheese



Certification mark no
888055 for wine

SCOTCH WHISKY

Certification
mark no
1532781 for
spirits and spirit
based beverages

DARJEELING

Certification mark
no 998592 for tea

TEQUILA

Certification
mark no
1377413 for
Alcoholic
beverages
made from the
agave tequilana
weber blue
variety



Certification mark
no 815585 for
ham



Dual Protection

Some wine GIs are protected in Australia under both the AGWA and as registered certification trade marks

Examples of dual protection:



Trade Mark No. 888055

RECIOTO DI SOAVE

Trade Mark No. 1045175



Additional Protection for GIs

Passing off

- Goodwill/ reputation
- Misrepresentation
- Damage (likely damage)

Australian Consumer Law

- Misleading or deceptive conduct (likely to mislead or deceive)
- False or misleading representations



Absolute Protection - Pitfalls

Implementing legislation in Australia had to be amended over the years since the first Wine Agreement

AGWA Act now provides reasonable (but limited) exceptions for use that is not likely to mislead but is:

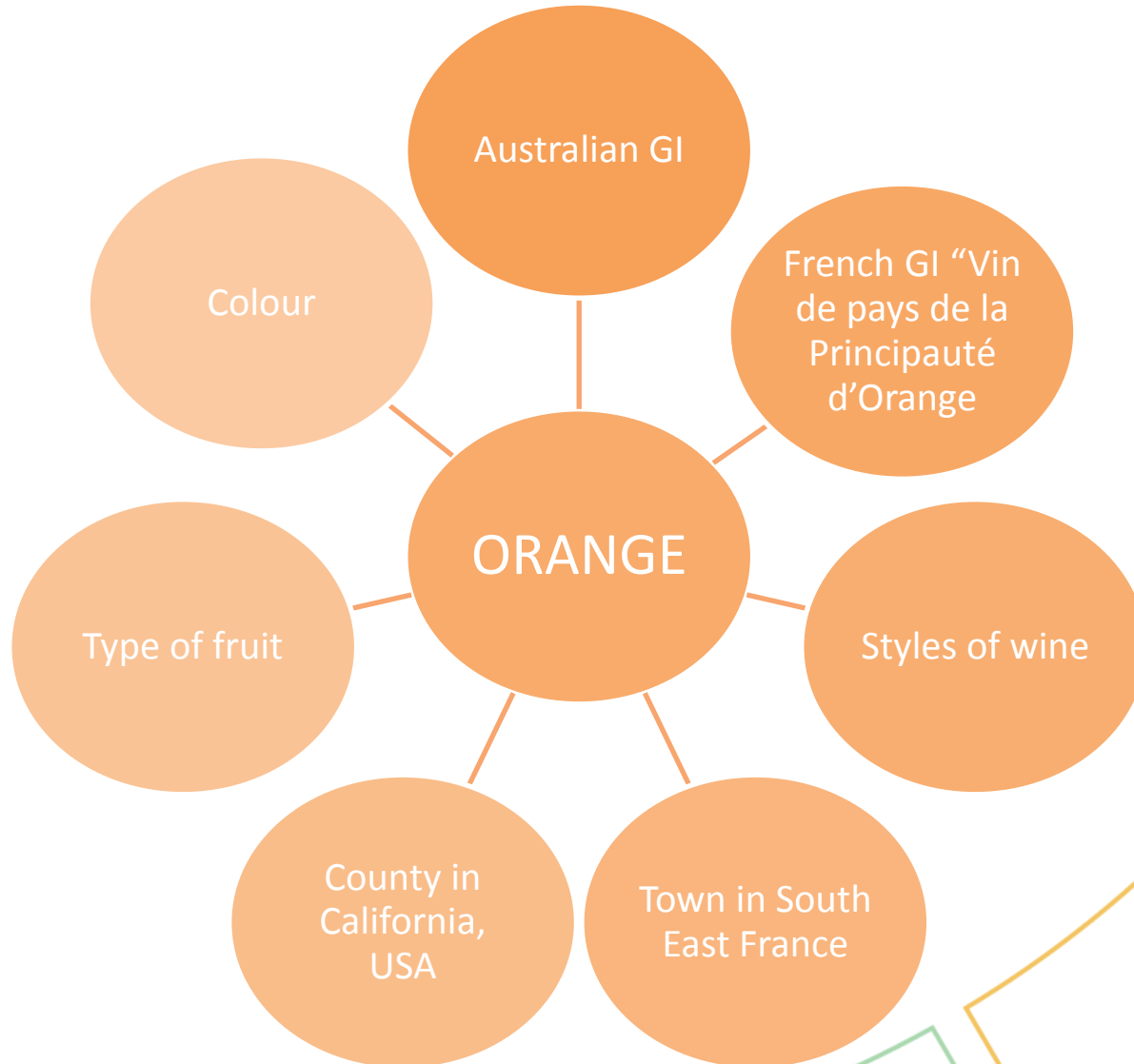
A common name of a type or style of wine; or

A name of a variety of grape

Use of common English words in a way that is not misleading

Requires publication for objections to new GIs – on grounds of prior trade mark rights; generic terms and grape varieties







Economic Significance and Potential Impact

Research into the economic significance of GIs and the potential impact on Australian producers

Developed by the Office of the Chief Economist at IP Australia

Two separate pieces of work:

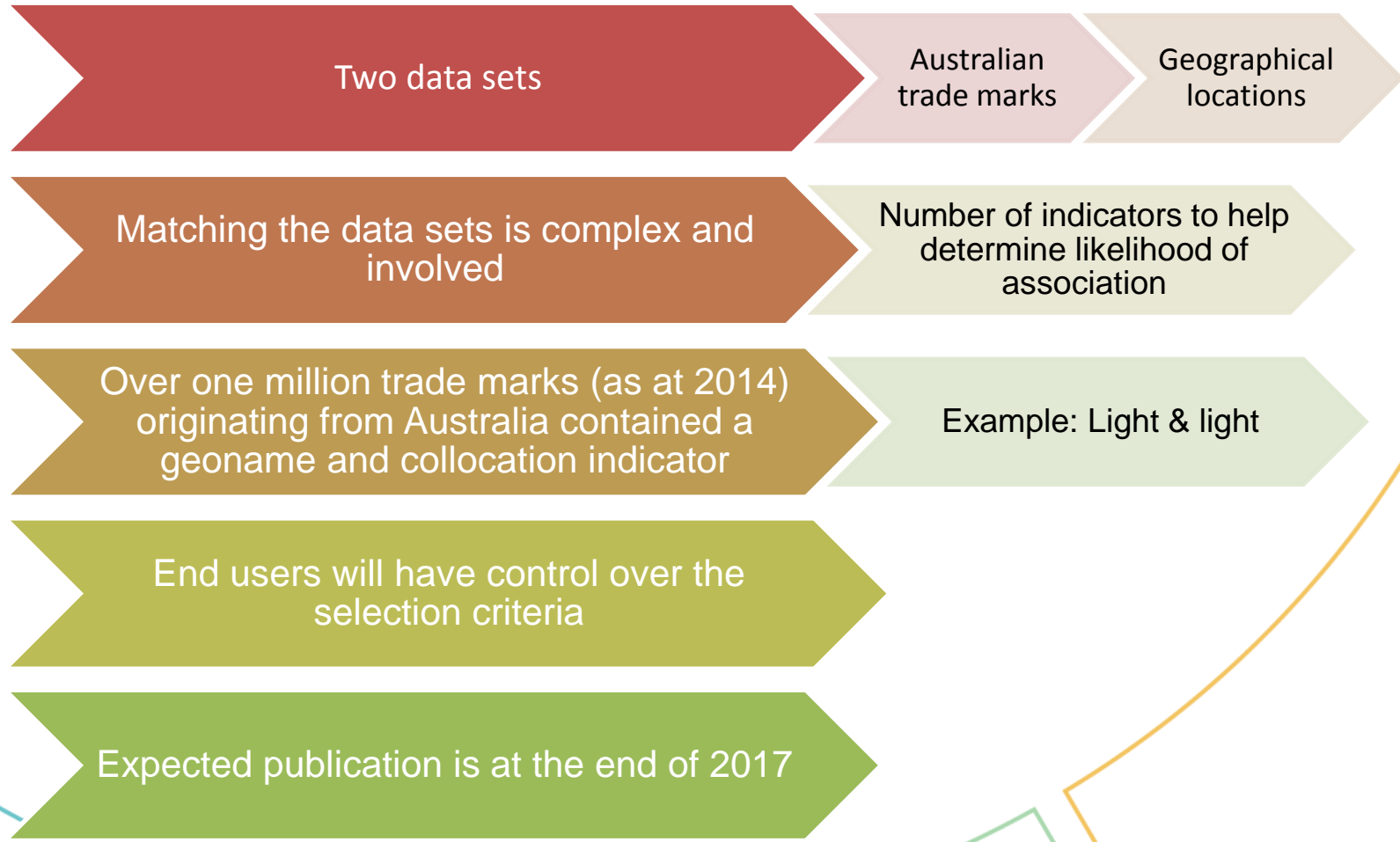
Data set of trade marks with geonames (GeoName Database)

Economic impact on the Australian economy

Both projects are ongoing and continue in the OCE's forward work agenda



Data Set of Trade Marks with Geonames





Economic Impact on the Australian Economy

Uses
consumer
choice-
based
methods

Starts with
extensive
market
research to
understand
GI-related
products,
prices and
market
share across
the
economy

Viable
alternative
names are
confirmed
through
market
investigation

Discrete
Choice
Experiments
conducted
with over
1,000
surveys to
determine
consumer
preferences
for names

'What-if
scenarios'
are
modelled
through a
decision
support
system to
understand
how
preferences
for names
and labels
impact a
product's
market
share



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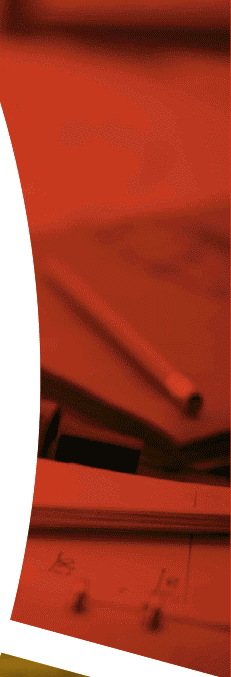
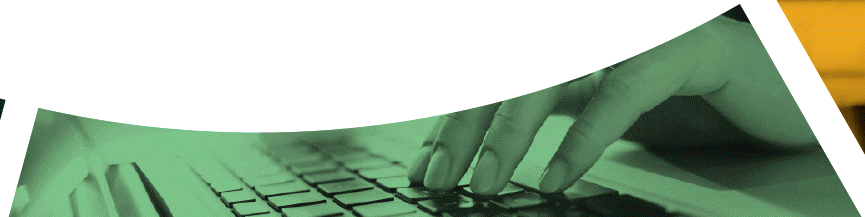


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Thank you





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