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What constitutes use of a plant variety name

presentation at

*Plant Names and Geographical
Indications,*

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Territoriality

- IP rights in a country are determined by that country's own laws
- Obtaining an IP right in one country does not confer the same rights in another.

Salvation Jane or Paterson's curse or purple viper's-buglos



D'Agen Prunes



Australia - prosecco

- Use of a plant variety name can be planting and cultivating a variety, it does not need to be sale to consumers.

Winemakers' Federation of Australia v European Commission [2013] ATMOGI 1,
<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/ATMOGI/2013/1.html>

Singapore - prosecco

- How would the average consumer in Singapore view the name
- A plant variety name may be known by different numbers of people
- The test is whether a name is recognised as a plant variety name by a not insignificant number of people.

Consorzio di Tutela della Denominazione di Origine Controllata Prosecco v Australian Grape and Wine Incorporated [2023] SGCA 37 [74]

https://www.elitigation.sg/gd/s/2022_SGHC_33

Greece – kalamata olives

- Strike a fair ‘balance between the interests at stake’
- Establish the actual use of the names in conflict
- How would the average informed and reasonably observant consumer view the name.

Lawful Coexistence of Similar Names of a Plant Variety and a PDO, GRUR International, 74(7), 2025, 655–656, <https://doi-org.ezproxy.lib.uts.edu.au/10.1093/grurint/ikae154>

An approach to the treatment of GIs and plant variety names in third countries

1. An earlier plant variety name cannot stop the registration of a later GI
2. Registration of a GI cannot stop use of an existing plant variety name unless on a case by case basis the name is used with an intent to deceive as to the origin of the product
3. Once a GI is registered a new plant variety name that would breach the rules for protection for use of that GI can't be introduced or used.

Comments or discussion welcome:

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