

Champagne Jayne v CIVC The Full Monty FAQs

1. Why was it necessary to secure the Champagne Jayne trade mark?

Trade marks exist to provide consumer information and to protect brand reputation. It's a major expense in management time and funds to build a global personal brand such as 'Champagne Jayne' and when you're a sole trader, reputation is your most important asset.

After ten years of working hard to become an overnight success as 'Champagne Jayne', my international speaking, writing and events business was at a tipping point. During 2011 it was brought to my attention that there was some confusion in the Australian market, because a new business offering similar services was operating under the deceptively similarly styled name 'Champagne Dame'.

In January 2012, as I was about to embark on a series of international speaking engagements, it seemed a completely natural business step to register my trade mark (no. 1471878) for 'Champagne Jayne' - in order to protect my IP investment and to provide correct information to consumers.

2. What does the Champagne Jayne trade mark relate to?

While my trade mark application for 'Champagne Jayne' in Class 41 concerns matters such as public speaking services, author services and event management, all of which I had specialised in since May 2003, my trade mark application does not concern champagne products, bottles of champagne, or anything linked to selling champagne, or sparkling wines in general, which I never sold nor purported to sell.

Since there were other trade marks on the Australian Register such as "Champagne Poppers™", "Diamonds in Champagne™", "Strawberries and Champagne™" and even my personal favourite "Champagne Life on a Beer Budget™", in these circumstances it had not crossed my mind that CIVC would object to me registering 'Champagne Jayne™' in the appropriate class. It therefore caught me completely off-guard to be on the receiving end of a trademark opposition.

3. Who is the CIVC in France?

Founded in 1941 - the CIVC (or Champagne Committee) - represents the interests of growers, producers, brokers and merchants of the champagne industry and is entitled to institute legal proceedings in its name.

4. What made you defend the Champagne Jayne trade mark against CIVC opposition?

It was literally six weeks after I had been invested as a Dame Chevalier de L'Ordre des Coteaux de Champagne (Champagne Dame) by members of the champagne industry in France, in recognition of my international advocacy for champagne wines, that CIVC's Australian lawyers lodged their notice of opposition with the Australian Registrar of Trade Marks.

Nobody from the CIVC actually spoke to me, and even my friends in Champagne said they were powerless to help me. The Trade Mark Opposition Proceeding and the Federal Court Proceeding brought against me by CIVC made no sense at all. Since CIVC had been in regular contact with me since 2003, why had they allowed me to continue to invest in building my brand for ten years, before demanding that I stop using the Champagne Jayne name altogether? I did some research to discover that in a trade mark opposition proceeding the maximum award of legal fees to the winner is capped by regulation at \$1,995.

So David decided to stand up to Goliath. Within six months of defending myself, I began to feel like a kite caught in a hurricane, but since honesty, integrity, fairness and standing up to bullying or oppressive conduct are some of my core values - there literally was no way around this Goliath.

5. What happened next and why did CIVC commence proceedings in Federal Court?

Unfortunately rather than waiting for the Registrar's decision on the Champagne Jayne trade mark application, CIVC opted to commence a second parallel litigation regarding my use of the 'Champagne Jayne™' name and trade mark in the Federal Court Of Australia in Melbourne (Proceeding No VID 1373 of 2013) just before Christmas 2013.

The CIVC's originating Statement of Claim (prepared by a Mr Stephen Stern, a Partner at Corrs, Chambers, Westgarth) asked the Federal Court for an order requiring me to withdraw my Australian trade mark application number 1471878 for 'Champagne Jayne™', as well as completely shutting down Champagne Jayne™ social media channels, website presence, events, and my consulting business. This despite CIVC's longstanding knowledge of my brand and my business.

After the first Federal Court ordered mediation between the parties in London was unsuccessful, on 15 April 2014, CIVC's Australian lawyers (Corrs) wrote a letter to the Australian Registrar of Trade Marks requesting a suspension of the Champagne Jayne™ trade mark opposition, pending the outcome of the Federal Court Proceeding in Melbourne before Middleton J.

The CIVC's lawyer's own words in that letter (the contents of which are to the best of my knowledge in the public domain):

'The Application, the subject of the (trade mark) Opposition Proceeding, is at the very crux of the (Federal) Court Matter and should the (Federal) Court Matter proceed to trial,' (which it did) 'the Court may order the withdrawal of the Application' (which it did not).

Read a copy of CIVC's application to IP Australia to suspend the Champagne Jayne Trade Mark Opposition Proceeding (April 2014) here (public domain information):

http://champagnejayne.com/wp-content/uploads/2017/05/IP-Australia_CIVC-suspension-request_Apr14.pdf

6. What was the legal basis for CIVC's Federal Court case?

The CIVC alleged that as Champagne Jayne, Ms Powell had engaged in misleading or deceptive conduct and made false representations in contravention of ss 18 and 29 of the Australian Consumer Law (Sch 2 to the Competition and Consumer Act 2010 (Cth)) (ACL).

(see two excerpts from Beach J Federal Court judgement below - again public domain stuff)

168 **Sections 29(1)(g) and 29(1)(h) (of the ACL) provide:**

A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services:

(g) make a false or misleading representation that goods or services have sponsorship, approval, performance characteristics, accessories, uses or benefits; or

(h) make a false or misleading representation that the person making the representation has a sponsorship, approval or affiliation.

The CIVC further alleged that Champagne Jayne had advertised wines under a false or misleading description in contravention of ss 40C and 40E of the Australian Grape and Wine Authority Act 2013 (Cth) (AGWA Act)

277 **Section 40C (AGWA Act) provides as follows:**

(1) A person commits an offence if:

- . (a) the person sells, exports or imports wine; and*
- . (b) the wine is sold, exported or imported by the person:
 - (i) in trade or commerce, and*
 - (ii) with a false description and representation**

*. **Section 40E provides as follows:***

(1) A person commits an offence if:

- . (a) the person sells, exports or imports wine; and*
- . (b) the wine is sold, exported or imported by the person:
 - (i) in trade or commerce; and*
 - (ii) with a misleading description and presentation.**

7. What did the Federal Court find about use of 'Champagne Jayne'?

The Court found that the CIVC had not established any entitlement to relief which would involve Ms Powell cancelling various registrations for her 'Champagne Jayne' business name, her domain name www.champagnejayne.com, her Facebook account 'Champagne Jayne', her Twitter account 'Jayne Powell @champagnejayne', nor which would require her to withdraw the Champagne Jayne trade mark application.

The Court also found that the CIVC's claim under the AGWA Act failed because Ms Powell was not part of the supply chain; she promotes but does not sell wine.

Finally, the Court found that CIVC's claims were not valid in relation to the manner in which Ms Powell discussed sparkling wines at events.

8. What did the Federal Court find about social media use?

The Court found that a number of Ms Powell's tweets and posts contravened the Australian Consumer Law because they failed to adequately clarify that certain sparkling wines were not, in fact, champagne.

Since the Federal Court Final Orders of 23 December 2015 Jayne Powell has used the disclaimer hashtag (note: #notachampagnewine) in any Champagne Jayne social media comments which may refer to sparkling wines which are not from the Champagne region.

Read a copy of the CIVC v Champagne Jayne Federal Court Judgment (October 2015) here:
<http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2015/2015fca1110>

9. What happened after Federal Court Judgment was delivered by Beach J?

As is plain from its decision on 20 October 2015, the Federal Court did not consider that the CIVC has any monopoly on the use of the word 'champagne' nor any entitlement to prevent the registration of the Champagne Jayne™ trade mark in Class 41 entertainment services. The Federal Court's judgement about the validity of my rights to my trade mark seems to be quite clear, and that should have been enough for any opponent to accept the umpire's decision and to withdraw its opposition to my approved trade mark application for Champagne Jayne.

Instead, CIVC and its advisors continued, in their wisdom, to protract the Champagne Jayne trade mark opposition proceeding for another 18 months after the Federal Court Judgement.

10. What was the legal basis of CIVC's claim against the Champagne Jayne Trade Mark?

The original Statement of Grounds of Opposition submitted by CIVC in November 2012 provided for eleven grounds of Opposition to the Champagne Jayne trade mark. However in their final submissions in December 2017, CIVC only pleaded the following two Grounds of Opposition:

Section 42. Trade mark scandalous or its use contrary to law

An application for the registration of a trade mark must be rejected if:

(a) ...

(b) its use would be contrary to law.

Section 43. Trade mark likely to mislead or deceive

An application for the registration of a trade mark in respect of particular goods or services must be rejected if, because of some connotation that the trade mark or a sign contained in the trade mark has, the use of the trade mark in relation to those goods or services would be likely to deceive or cause confusion.

11. What did the Registrar of Trade Marks decide about Champagne Jayne's Application?

The delegate of the Australian Registrar of Trade Marks had to consider whether use of the Champagne Jayne Trade Mark would be contrary to s18 of the ACL, which provides:

A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

In his written Reasons for Decision, the delegate for the Australian Registrar of Trade Marks noted that Beach J's Final Orders in the parallel Champagne Jayne Federal Court Proceeding (also brought by CIVC) did not include that the Applicant (Champagne Jayne) cease using her social media accounts altogether, only that the Applicant be permanently restrained from posting items on those accounts referring to wines which are not Champagne wines without clearly stating that they are not Champagne wines.

Conclusion

After considering all of the extensive evidence submitted by both parties over the course of this five year opposition, IP Australia, the national trade mark registration authority, made its decision to approve my Champagne Jayne trade mark for registration on 3 April 2017. That decision was not appealed by the CIVC, which means that I am officially entitled to legal ownership of my brand.

- I'm so delighted to report that for once the little guy has actually prevailed.

Given the long and drawn out nature of both proceedings, I thought it prudent to wait until the appeal period for CIVC's Opposition to Champagne Jayne had officially passed before telling anybody about this fantastic result.

Read a copy of the Registrar of Trade Marks Written Reasons Champagne Jayne (April 2017) here:

<http://champagnejayne.com/wp-content/uploads/2017/05/1471878-170404-CHAMPAGNE-JAYNE-decision.pdf>

12. What happens next for Champagne Jayne?

This significant legal victory for Champagne Jayne means I am finally free to continue my vocation of educating and entertaining people about the world's most enigmatic fine wines - champagne and other world class sparkling wines - using my life long nickname and registered trade mark, Champagne Jayne™.

Over the last five years, I've learnt more about the law and my own resilience than I ever expected or planned to. As a result, I already have many useful lessons to share with other brand owners to help them understand their legal exposure in today's world, as well as being able to comment on the intricacies of marketing wine in a global market. I'm not quite sure how I managed to persevere through every twist and turn of this extremely challenging misadventure, but I do know the support of good friends near and far really helped.

I'm also really excited to join UNSW's 2017 Master of Law, Media and Journalism program in Sydney, where my studies will focus on intellectual property law, defamation, and law in the culture industries. I will also be developing my feature writing and literary and narrative journalism skills, with plans to release a second book in 2018.

Against all odds, Champagne Jayne has kept her sparkle!

Jayne Powell

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Harpers 2012 Champagne Educator of the Year

Gourmand 2011 Author Best French Wine Book (Aus)

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