

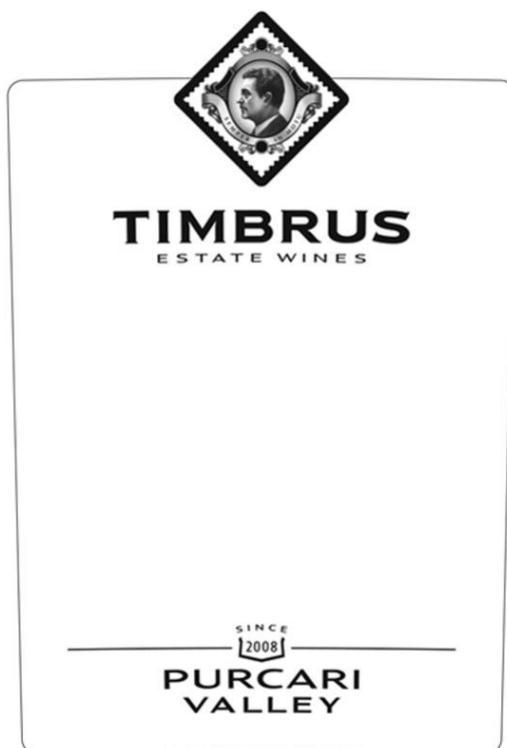
O/0521/23

TRADE MARKS ACT 1994

IN THE MATTER OF INTERNATIONAL REGISTRATION NO. WO0000001574226

BY TIMBRUS PURCARI ESTATE S.R.L.

TO REGISTER THE TRADE MARK:



IN CLASS 33

AND

IN THE MATTER OF OPPOSITION THERETO

UNDER NO. 426107 BY

VINARIA PURCARI S.R.L.

## BACKGROUND AND PLEADINGS

1. International registration no. 1574226 (“the IR”) consists of the sign shown on the cover page of this decision. The holder is TIMBRUS PURCARI ESTATE S.R.L.. The IR is registered with effect from 29 October 2020. With effect from the same date, the holder designated the UK as a territory in which it seeks to protect the IR under the terms of the Protocol to the Madrid Agreement. Priority is claimed from 20 May 2020. The holder seeks protection for the IR in relation to the following goods:

Class 33      Alcoholic beverages, except beers; alcoholic preparations for making beverages.

2. The request to protect the IR was published on 2 July 2021. On 11 August 2021, VINARIA PURCARI S.R.L. (“the opponent”) opposed the protection of the IR in the UK based upon sections 5(2)(a), 5(2)(b), 5(3), 3(3)(b) and 3(6) of the Trade Marks Act 1994 (“the Act”). Under section 5(2)(a) the opponent relies upon the following trade mark:



**VINĂRIA PURCARI**

EUTM no. 18091616

Filing date 5 July 2019

Registration date 19 October 2019

(“the First Earlier Mark”)

Under section 5(2)(b) the opponent relies upon the following trade mark:



# CHATEAU PURCARI

EUTM no. 18189289

Filing date 30 January 2020

Registration date 25 August 2020

("the Second Earlier Mark")



# PURCARI WINERIES

EUTM no. 18190691

Filing date 30 January 2020

Registration date 25 August 2020

("the Third Earlier Mark")



IR designating the EU no. 1528808

Registration date 26 March 2020

Designation date 26 March 2020  
Protection granted 24 November 2020  
("the Fourth Earlier Mark")

3. The opponent relies upon all goods for which the marks are registered, as set out in the Annex to this decision. Under section 5(2), the opponent claims that the marks are identical or similar and that the goods are identical or similar, resulting in a likelihood of confusion.

4. Under section 5(3), the opponent relies upon all of the earlier marks shown above and claims a reputation for all of the goods and services for which they are registered. The opponent claims that use of the IR would, without due cause, take unfair advantage of, and/or be detrimental to, the distinctive character and/or repute of the earlier marks.

5. Under section 3(3)(b), the opponent claims that the IR is of a nature as to deceive the public as to the quality and geographical origin of the goods. The opponent submits that PURCARI is an area of Moldova made famous for the production of wine by the activity of the opponent and, as the holder does not produce wine or other alcoholic beverages in the PURCARI region, the IR should be refused upon the basis of section 3(3)(b) of the Act.

6. Under section 3(6), the opponent claims that the holder has no genuine intention to use the mark in relation to the goods because it has no intention to sell goods from the PURCARI region. The opponent states that there is a deliberate attempt to misappropriate a trade mark of a direct competitor and they intend to benefit from the opponent's reputation. As a result, the IR has been filed in bad faith and should be refused.

7. The holder filed a counterstatement as follows:

- a) Acknowledging that PURCARI is "not only the name of a village in the Republic of Moldova, but is the name of the whole wine-growing region, which is one of the largest and best known in Moldova". The holder states that "Purcari wines

have been known in Europe and beyond for centuries and that Purcari wines are almost as famous as Bordeaux and Burgundy wines". As a result, the holder submits that the common element of the mark simply refers to the geographical origin of the goods and so there is no confusion or link under sections 5(2) and (3).

- b) Denying that the marks are similar.
- c) Confirming that the holder grows grapes and produces its wines in the Purcari region and so is entitled to use the geographical indicator.
- d) Denying that the application has been filed in bad faith.

8. The holder is represented by Leonis Cotruta and the opponent is represented by Sonder & Clay.

9. Both parties filed evidence in chief. The opponent also filed evidence in reply. Neither party requested a hearing and only the opponent filed written submissions in lieu. This decision is taken following a careful perusal of the papers.

## **EVIDENCE AND SUBMISSIONS**

10. The holder's counterstatement was accompanied by 5 annexes containing evidence. Although these were not filed under cover of a witness statement, the counterstatement itself does contain a statement of truth and so I am prepared to accept these documents as evidence in the proceedings.

11. The opponent's evidence in chief consists of:

- a) The first witness statement of Chiosa Nicolae dated 23 December 2021, which is accompanied by 22 exhibits.
- b) The affidavits of Ciorici Mariana and Adrian Ivana confirming the translation of exhibits 13, 17 and 21 to Mr Nicolae's statement.

12. The holder's evidence in chief consists of:

- a) The witness statement of Bondartov Evghenii dated 4 April 2022, accompanied by 20 exhibits. Mr Evghenii is the administrator and majority shareholder of Timbrus Purcari Estate LLC.
- b) The affidavits of Svetlana Macari and Sergiu Ponomarenco confirming the translation of exhibits.

13. The holder's evidence was accompanied by written submissions dated 4 April 2022.

14. The opponent's evidence in reply consists of the second witness statement of Mr Nicolae dated 29 September 2022, which is accompanied by 5 exhibits.

15. The opponent filed written submissions in lieu dated 23 February 2023.

16. I have taken the evidence and submissions into account in reaching my decision and will refer to them below where necessary.

## **RELEVANCE OF EU LAW**

17. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 requires tribunals to apply EU-derived national law in accordance with EU law as it stood at the end of the transition period. The provisions of the Act relied upon in these proceedings are derived from an EU Directive. This is why this decision continues to make reference to the trade mark case-law of EU courts.

## **DECISION**

### **Section 3(3)(b)**

18. Section 3(3)(b) states as follows:

“(3) A trade mark shall not be registered if it is –

(a) [...]

(b) of such a nature as to deceive the public (for instance as to the nature, quality or geographical origin of the goods or service).”

19. In *TWG Tea Company Pte Ltd v Mariage Frères SA*, BL O/358/17, Mr Phillip Johnson, sitting as the Appointed Person, conveniently summarised the case law as follows:

“(a) it is necessary to establish that the mark will create actual deceit or a sufficiently serious risk that the consumer will be deceived: *C-87/97 Consorzio per la tutela del formaggio Gorgonzola*, ECLI:EU:C:1999:115, paragraph 41; *C-259/04 Emanuel*, ECLI:EU:C:2006:2015, paragraph 47; *C-689/15 W.F. Gözze Frottierweberei*, EU:C:2017:434, paragraph 54;

(b) the deception must arise from the use of the mark itself (i.e. the use per se will deceive the consumer); *Gorgonzola*, paragraph 43; *Emanuel*, paragraph 49; *Gözze Frottierweberei*, paragraph 56;

(c) the assessment of whether a mark is deceptive should be made at the date of filing or priority date and so cannot be remedied by subsequent corrective statements: *Axle Associates v Gloucestershire Old Spots Pig Breeder’s Club* [2010] ETMR 12, paragraph 25 and 26;

(d) the deception must have some material effect on consumer behaviour: *CFA Institute’s Application* [2007] ETMR, paragraph 40;

(e) where the use of a mark, in particular a collective mark, suggests certain quality requirements apply to goods sold under the mark, the failure to meet such requirements does not make use of the mark deceptive: *Gözze Frottierweberei*, paragraphs 57 and 58;

(f) only where the targeted consumer is made to believe that the goods and services possess certain characteristics which they do not in fact possess will the consumer be deceived by the trade mark: T-248/05, *HUP Usługi Polska v OHIM*, ECLI:EU:T:2008:396, paragraph 65;

(g) where a mark does not convey a sufficient specific and clear message concerning the protected goods and services or their characteristics but, at the very most, hints at them, there can be no deception in relation to those goods and services: *HUP*, paragraph 67 and 68; T-327/16; *Aldi v EUIPO* ECLI:EU:T:2017:439, paragraph 51;

(h) once the existence of actual deceit, or a sufficiently serious risk that the consumer will be deceived, has been established, it becomes irrelevant that the mark applied for might also be perceived in a way that is not misleading: T-29/16 *Caffé Nero Group v EUIPO*, ECLI:EU:T:2016:635, paragraph 48;

(i) where a trade mark contains information which is likely to deceive the public it is unable to perform its function of indicating the origin of goods: T-41/05 *SIMS – École de ski internationale v OHIM*, EU:T:991:200, paragraph 50, *Caffé Nero*, paragraph 47.”<sup>1</sup>

20. The parties both agree that Purcari is a wine-producing region in Moldova, with a reputation for those goods internationally. The basis of the opposition under this ground is that the holder does not, in fact, grow grapes or produce its wine in this region and so is not entitled to use that name as part of its trade mark as, to do so, would deceive or mislead the public as to the geographical origin of its goods.

21. I note the following from the opponent’s evidence:

- a) The opponent claims to be “the only company that produces and bottles wine on an industrial scale in Purcari Village”.

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<sup>1</sup> Paragraph 84

- b) The opponent and the holder (under their previous name, according to Mr Nicolae's evidence) worked together to draft requirements for registering PURCARI as a Protected Designation of Origin ("PDO"). A draft document was prepared to further this aim, but the opponent states that the holder abandoned the attempt once it became clear they would not be able to meet the requirements of the PDO.<sup>2</sup>
- c) It does not appear that PURCARI has ever been registered as a PDO.
- d) A court bailiffs report dated 18 May 2019 confirms that at an address in Purcari village, that Mr Nicolae states is the premises of the holder (again, under a previous name), "there is no factory/location for producing bottled wines (including for processing and storage of grapes, wine aging/storage/warehousing)."<sup>3</sup> The photographs provided show a building surrounded by fields.

22. I note the following from the holder's evidence:

- a) Mr Evghenii gives narrative evidence that "between 2009 and 2012 the land was purchased in the village of Purcari and vineyards were planted on it. Today, the company owns 157 hectares of land in the village of Purcari, of which 112 hectares are fruit-bearing vineyards. The company cultivates 11 varieties of technical grape varieties." He also states that the holder "produces all 100% of the wines from its own grapes grown in the Purcari region".
- b) Mr Evghenii accepts that the holder does not have a factory for the purposes of processing and bottling its wines in Purcari village.
- c) A document confirming the name change of the holder previously confirms that the registered office is located in Purcari village.<sup>4</sup>

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<sup>2</sup> Exhibit CN17

<sup>3</sup> Exhibit CN21

<sup>4</sup> Exhibit BE01

d) The holder confirms that it is registered with The National Office of Vine and Wine in Moldova as operating in Purcari.<sup>5</sup>

e) A certificate dated 25 May 2020 confirms that the opponent is a business operating in the territory of Purcari and owns agricultural land planted with vines.<sup>6</sup>

23. I note the following from the opponent's evidence in reply:

a) A document issued by the Purcari Parish Council withdraws the permit of Bravo Wines (who the opponent states is the previous name of the holder) to use the name PURCARI in its trade marks.<sup>7</sup> This is dated 23 March 2022. However, no explanation is given as to why the permit is withdrawn.

24. This ground of opposition is concerned only with whether the use of PURCARI in the IR is deceptive as to the geographical origin of the goods. The holder accepts that it does not yet produce the wine itself in Purcari village. However, the grapes are grown there. There is nothing in the opponent's evidence that, in my view, contradicts this account. The bailiffs report confirms that there was no factory on site, but that does not mean that grapes were not being grown there. The relevant date is the priority date for the IR i.e. 20 May 2020. I note that the opponent has filed evidence to show that in 2022 the holder's permit to use the word PURCARI in their trade mark had been revoked, but that is after the relevant date and there is no suggestion in the evidence that it was withdrawn because it would mislead as to geographical origin of the goods. In my view, the relationship between the location in which the grapes are grown and the wine itself is so strong that it cannot be said to be misleading as to geographical origin to include the location in which the grapes were grown, even if the wine was then produced elsewhere.

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<sup>5</sup> Exhibit BE05

<sup>6</sup> Exhibit BE12

<sup>7</sup> Exhibit BE25

25. In any event, the above case law makes it clear that in order for an objection under section 3(3)(b) to be successful, the deception must have a material effect on consumer behaviour. Even if the opponent had been able to demonstrate that the holder was not producing goods connected with the PURCARI region, there is no evidence before me to suggest that that would have any material effect on the behaviour of the UK consumer. There is no evidence before me to suggest that grapes grown/wine produced in that region have any reputation amongst the UK public, such that marking goods as originating from that place would encourage the consumer to purchase them.

26. The opposition based upon section 3(3)(b) is dismissed.

### **Section 5(2)**

27. Section 5(2) of the Act reads as follows:

“A trade mark shall not be registered if because –

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, or

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

28. Section 5A of the Act is as follows:

“5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the

trade mark is applied for, the application is to be refused in relation to those goods and services only.”

29. By virtue of their earlier filing dates, the trade marks upon which the opponent relies qualify as earlier trade marks pursuant to section 6 of the Act. As the earlier marks had not completed their registration process more than 5 years before the priority date of the IR, they are not subject to proof of use pursuant to section 6A of the Act. The opponent can, therefore, rely upon all of the goods identified.

30. The following principles are gleaned from the decisions of the EU courts in *Sabel BV v Puma AG*, Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*, Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV*, Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*, Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM*, Case C-334/05P and *Bimbo SA v OHIM*, Case C-591/12P:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other

components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings to mind the earlier mark, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public will wrongly believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

31. As a preliminary point, I note that the opponent relies upon the First Earlier Mark under section 5(2)(a) of the Act. However, the parties have both dealt with this pleading as if it had been made under section 5(2)(b) of the Act. Clearly, the marks are not identical. They contain different words and different devices. Consequently, the opposition based upon section 5(2)(a) of the Act must fail. However, for reasons that I will explain later, the opponent would have been in no stronger position even if it had

correctly pleaded its case and relied upon this mark under section 5(2)(b) of the Act. I will, therefore, proceed to consider the section 5(2)(b) ground based upon the Second, Third and Fourth Earlier Marks only.

### **Comparison of trade marks**

32. It is clear from *Sabel BV v. Puma AG* (particularly paragraph 23) that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the marks, bearing in mind their distinctive and dominant components. The Court of Justice of the European Union (“CJEU”) stated at paragraph 34 of its judgment in Case C-591/12P, *Bimbo SA v OHIM*, that:

“... it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relative weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion.”

33. It would be wrong, therefore, to artificially dissect the trade marks, although it is necessary to take into account the distinctive and dominant components of the marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

34. The respective trade marks are shown below:

Opponent's trade marks	The IR
<div data-bbox="405 338 584 412" data-label="Image"> </div> <p data-bbox="248 412 743 450"><b>CHATEAU PURCARI</b></p> <p data-bbox="311 488 679 524">(the Second Earlier Mark)</p> <div data-bbox="416 622 571 685" data-label="Image"> </div> <p data-bbox="277 685 711 721"><b>PURCARI WINERIES</b></p> <p data-bbox="328 761 660 797">(the Third Earlier Mark)</p> <div data-bbox="312 925 673 1482" data-label="Image"> </div> <p data-bbox="319 1503 671 1538">(the Fourth Earlier Mark)</p>	<div data-bbox="1007 253 1187 430" data-label="Image"> </div> <p data-bbox="948 448 1249 510"><b>TIMBRUS</b> ESTATE WINES</p> <div data-bbox="903 864 1294 958" data-label="Image"> </div> <p data-bbox="997 904 1200 958"><b>PURCARI VALLEY</b></p>

The Overall Impression

35. The IR consists of the word TIMBRUS in large standard font above the words ESTATE WINES, which appear in much smaller font. Above these words is a diamond male profile device and beneath them are the words PURCARI VALLEY and a small device containing the words SINCE 2008 which intersects a horizontal line. Surrounding all of this is a curved corner, rectangular border. Given its size and

positioning within the mark, it is the word TIMBRUS that plays the greater role in the overall impression. The diamond man's profile device also plays a significant (but lesser) role. The words ESTATE WINES, SINCE 2008 and PURCARI VALLEY and the outline/border all play a lesser role due to their size and positioning. The fact that these words all appear to describe characteristics of the goods i.e. that they come from a wine estate, that they began being produced in 2008 and that they originate from a place called PURCARI VALLEY, also means that they are non-distinctive elements of the mark.

36. The Second Earlier Mark consists of the words CHATEAU PURCARI presented in a standard font beneath a building device. In my view, the overall impression of the mark lies in the combination of these elements, with the wording playing a slightly greater role. The Third Earlier Mark consists of the words PURCARI WINERIES presented in a standard font beneath the same building device. The overall impression, again, lies in the combination of these elements, with the wording playing a slightly greater role. The word WINERIES will clearly be non-distinctive for wine, but serves to identify PURCARI as the name of the wineries in question. The Fourth Earlier Mark consists of the word PURCARI presented in standard font beneath the same building device and above the word CHATEAU (in much smaller font). In large letters beneath these words is the number 1827 above the word SINCE (again, presented in much smaller font). All of these elements are surrounded by a rectangular border. In my view, the word PURCARI and the number 1827 play the greater role due to their size. However, 1827 is likely to be recognised as non-distinctive as it will indicate the date that production of the goods/the operation of the business began.

### Visual Comparison

#### *The IR and the Second Earlier Mark*

37. The only point of visual overlap between the Second Earlier Mark and the IR is the word PURCARI. This plays part of the central element in the Second Earlier Mark. However, in the IR, the use of that word in combination with the word VALLEY is secondary to the word TIMBRUS and the diamond shaped male profile device. The use of PURCARI before VALLEY also means that the average consumer is likely to

identify it as the place from where the wine originates. Consequently, it will be perceived as a non-distinctive element in the IR. Bearing in mind the differences between the marks, I consider the marks to be visually similar to a very low degree.

#### *The IR and the Third Earlier Mark*

38. The same applies to these trade marks, although PURCARI plays a greater role in the Third Earlier Mark than it did in the Second Earlier Mark, because the word appears before WINERIES giving it slightly more prominence. However, there are still vast visual differences between the marks. In my view, they are visually similar to a low degree.

#### *The IR and the Fourth Earlier Mark*

39. The word PURCARI is common to both marks. However, the positioning of the word is entirely different. The marks do also share the common presentational style of a rounded corner rectangular border (appearing like a label). Bearing in mind the differences between the marks, I consider them to be visually similar to a low degree.

#### Aural Comparison

40. My primary finding is that the IR will be articulated as TIMBRUS (or possibly TIMBRUS WINE ESTATES). Given that the word PURCARI in the IR is followed by the word VALLEY, indicating a geographical location, I consider it unlikely that it will be articulated by the average consumer (being a non-distinctive element). If that is correct, then there is no aural overlap between the marks, other than between WINES/WINERIES in relation to the Third Earlier Mark. Consequently, I consider the marks to be aurally dissimilar/similar to a very low degree.

41. However, if I am wrong in this finding and the word PURCARI in the IR is articulated, bearing in mind the differences between the other elements of the marks, I consider the marks to be aurally similar to no more than between a low and medium degree.

## Conceptual Comparison

### *The IR and the Second and Fourth Earlier Marks*

42. The word TIMBRUS in the IR is an invented word and, consequently, would convey no conceptual meaning. I consider it unlikely that, when seen on its own, the average consumer would recognise PURCARI as a place. However, when combined with the word VALLEY, it seems highly likely that they will recognise it as referring to a place. CHATEAU PURCARI will be perceived by average UK consumers as the name of a chateau called Purcari. The same applies to the word PURCARI in the Fourth Earlier Mark because it appears below a picture of a building and above the word 'Chateau' (albeit in small font). To the extent that there are average consumers who recognise the word PURCARI in the earlier marks as also being a place name, clearly there will be some conceptual overlap (albeit non-distinctive) arising from the fact that both parties' marks refer to the same place. However, in my view, that is the high point of the conceptual similarity between the marks. I consider it to be low (at best).

### *The IR and the Third Earlier Mark*

43. The same applies to these marks. However, there is also an additional conceptual overlap arising from the fact that both refer to wine producing businesses (i.e. ESTATE WINES in the IR and WINERIES in the Third Earlier Mark). Consequently, I consider the marks to be conceptually similar to between a low and medium degree (at best).

## **Distinctive character of the earlier trade marks**

44. In *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel BV*, Case C-342/97 the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other

undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Attenberger* [1999] ECR I-2779, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

45. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.

46. As noted above, I consider it unlikely that the average consumer will identify the word PURCARI as a place name in the earlier marks. If that is correct, then the earlier marks are all inherently distinctive to a reasonably high degree. However, if it is recognised as name of the place where the fruit is grown and/or the products are made, then I do not consider any of them to be distinctive to any more than a medium (or average) degree as a whole.

47. The opponent has filed evidence to demonstrate that the distinctiveness of its mark has been enhanced through use. The relevant market for assessing enhanced distinctiveness is the UK market. With that in mind, I note the following from the opponent’s evidence:

- a) Mr Nicolae confirms that the opponent exports wine to the UK.

- b) The opponent sold over 5,000 bottles of wine in England in 2015, over 2,000 bottles in 2016 and 2,400 bottles in 2017.<sup>8</sup> This amounted to total sales of over £42,000 in the UK.
- c) Although marketing expenditure figures have been provided, no information is given as to what proportion (if any) of these relate to the UK market.<sup>9</sup>
- d) Invoices addressed to UK customers in relation to a variety of wines in 2018 and 2019 amounted to over £11,000.<sup>10</sup>
- e) Photographs have been provided of goods on shelves in Tesco stores, but these are undated and, in any event, appear in currency other than GBP so clearly do not relate to the UK market.<sup>11</sup>
- f) The opponent has three UK-based stockists, although no information is provided about when these businesses started stocking the opponent's wines.<sup>12</sup>
- g) The opponent has won various awards.<sup>13</sup> However, most of these are either dated after the relevant date or relate to jurisdictions other than the UK (or, at least, I have no confirmation that they relate to the UK where the jurisdiction is ambiguous). That being said, I note that the opponent's dessert wine won "Bronze" and its Pinot Noir won a "Seal of Approval" at the Wine & Spirit Competition, London in 2003 and 2006 respectively.
- h) The opponent has been referenced in various publications, but its not clear to me that any of these relate to the UK market specifically.<sup>14</sup>

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<sup>8</sup> Exhibit CN2

<sup>9</sup> Exhibit CN2

<sup>10</sup> Exhibit CN4

<sup>11</sup> Exhibit CN6

<sup>12</sup> Exhibits CN8 to CN11

<sup>13</sup> Exhibit CN12

<sup>14</sup> Exhibit CN16

48. Clearly, the opponent has made sales in the UK market. However, they are far from extensive. I have no information about the advertising expenditure in the UK or any activities taken to promote the opponent's goods in this jurisdiction. Whilst I recognise that the opponent has won awards in the past at a London-based wine competition, this is not sufficient, in my view, to counter the other deficiencies in the opponent's evidence. I am not satisfied that the distinctiveness of the earlier marks has been enhanced through use.

### Comparison of goods

49. I have included only those goods that I consider represent the opponent's best case in the table below. With that in mind, the competing goods are as follows:

Opponent's goods	Holder's goods
<p><b>The Second Earlier Mark</b>  <u>Class 33</u>            Alcoholic beverages (except beers);            Alcoholic preparations for making beverages.</p> <p><b>The Third Earlier Mark</b>  <u>Class 33</u>            Alcoholic preparations for making beverages; Alcoholic beverages (except beers).</p> <p><b>The Fourth Earlier Mark</b>  <u>Class 33</u>            Alcoholic beverages except beer and wine.</p>	<p><u>Class 33</u>            Alcoholic beverages, except beers;            alcoholic preparations for making beverages.</p>

50. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.”

51. Guidance on this issue has also come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

52. In *Gérard Meric v Office for Harmonisation in the Internal Market*, Case T- 133/05, the General Court (“GC”) stated that:

“29. In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut for Lernsysteme v OHIM – Educational Services* (ELS) [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark.”

#### *Alcoholic beverages, except beers*

53. This term is self-evidently identical or identical on the principle outlined in *Meric* to “alcoholic beverages (except beers)” in the specification of the Second and Third Earlier Marks and “alcoholic beverages except beer and wine” in the specification of the Fourth Earlier Mark.

#### *Alcoholic preparations for making beverages*

54. This term appears identically in the specifications of the Second and Third Earlier Marks. There will be some overlap in trade channels, user and nature with “alcoholic beverages except beer and wine” in the specification of the Fourth Earlier Mark. These goods are similar to a medium degree.

### **The average consumer and the nature of the purchasing act**

55. As the case law above indicates, it is necessary for me to determine who the average consumer is for the respective parties’ goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A. Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited*, [2014] EWHC 439 (Ch), Birss J described the average consumer in these terms:

“60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the

relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The words “average” denotes that the person is typical. The term “average” does not denote some form of numerical mean, mode or median.”

56. The average consumer for the goods will be a member of the general public, who is over the age of 18. The goods will be relatively low cost and reasonably frequent purchases. However, the average consumer is likely to take factors such as flavour, alcohol content and quality into account when purchasing the goods. Consequently, I agree with the opponent’s submission that a medium (or average) degree of attention will be paid.

57. The goods are likely to be purchased by self-selection from the shelves of a retail outlet or online equivalents. Consequently, visual considerations will dominate the selection process. However, I do not discount that aural components are relevant as advice may be sought from retail assistants and orders may be placed aurally in bar/restaurant environments.

### **Likelihood of confusion**

58. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertaking being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the earlier marks, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

59. I have found as follows:

- a) The goods are either identical or similar to a medium degree.
- b) The average consumer is a member of the general public who is over the age of 18 and will pay a medium (or average) degree of attention during the purchasing process.
- c) The purchasing process is predominantly visual, although aural considerations will play a part.
- d) The IR and the Second Earlier Mark are visually similar to a very low degree, aurally dissimilar, or similar to between a low and medium degree (depending upon how they are articulated), and conceptually similar to a low degree (at best).
- e) The IR and the Third Earlier Mark are visually similar to a low degree, aurally similar to a very low degree, or to between a low and medium degree (depending upon how they are articulated), and conceptually similar to between a low and medium degree (at best).
- f) The IR and the Fourth Earlier Mark are visually similar to a low degree, aurally dissimilar, or similar to between a low and medium degree (depending upon how they are articulated), and conceptually similar to a low degree (at best).
- g) The earlier marks are inherently distinctive to no more than a medium (or average degree) or to a reasonably high degree (depending upon how PURCARI is understood by the average consumer).

60. Taking all of the above factors into account and bearing in mind the visual differences between the marks, and the predominantly visual purchasing process, I do not consider that the marks will be mistakenly recalled or misremembered as each

other, even when used on identical goods. Consequently, I do not consider there to be a likelihood of direct confusion.

61. I now turn to consider indirect confusion. In *L.A. Sugar Limited v By Back Beat Inc*, Case BL O/375/10, Mr Iain Purvis Q.C., as the Appointed Person, explained that:

“16. Although direct confusion and indirect confusion both involve mistakes on the part of the consumer, it is important to remember that these mistakes are very different in nature. Direct confusion involves no process of reasoning – it is a simple matter of mistaking one mark for another. Indirect confusion, on the other hand, only arises where the consumer has actually recognized that the later mark is different from the earlier mark. It therefore requires a mental process of some kind on the part of the consumer when he or she sees the later mark, which may be conscious or subconscious but, analysed in formal terms, is something along the following lines: ‘The later mark is different from the earlier mark, but also has something in common with it. Taking account of the common element in the context of the later mark as a whole, I conclude that it is another brand of the owner of the earlier mark’.

17. Instances where one may expect the average consumer to reach such a conclusion tend to fall into one or more of three categories:

- (a) where the common element is so strikingly distinctive (either inherently or through use) that the average consumer would assume that no-one else but the brand owner would be using it in a trade mark at all. This may apply even where the other elements of the later mark are quite distinctive in their own right (‘26 RED TESCO’ would no doubt be such a case).
  
- (b) where the later mark simply adds a non-distinctive element to the earlier mark, of the kind which one would expect to find in a sub-brand or brand extension (terms such as ‘LITE’, ‘EXPRESS’, ‘WORLDWIDE’, ‘MINI’ etc.).

(c) where the earlier mark comprises a number of elements, and a change of one element appears entirely logical and consistent with a brand extension ('FAT FACE' to 'BRAT FACE' for example)."

62. In *Liverpool Gin Distillery Ltd & Ors v Sazerac Brands, LLC & Ors* [2021] EWCA Civ 1207, Arnold LJ referred to the comments of James Mellor KC (as he then was), sitting as the Appointed Person in *Cheeky Italian Ltd v Sutaria* (O/219/16), where he said at [16] that "a finding of a likelihood of indirect confusion is not a consolation prize for those who fail to establish a likelihood of direct confusion". Arnold LJ agreed, pointing out that there must be a "proper basis" for concluding that there is a likelihood of indirect confusion where there is no likelihood of direct confusion. It is not sufficient that a mark merely calls to mind another mark: *Duebros Limited v Heirler Cenovis GmbH*, BL O/547/17. This is mere association not indirect confusion.

63. The only point of overlap between the marks is the element PURCARI. The parties both agree that this is a place in Moldova. For those average consumers who are aware of this, I see no reason for them to assume that the goods originate from the same or economically linked undertakings; the common use of the geographical place name will just be seen as a coincidence, both indicating goods that originate from the same place. Even those consumers who do not know that PURCARI is a place name, will perceive it as such when combined with the word VALLEY (as it is in the IR). This means that they will identify it as referring to the place of geographical origin. By contrast, the word PURCARI in the earlier marks appears in contexts in which indicates the trade origin of the goods. Consequently, I consider that when encountering the words PURCARI VALLEY in the IR, even if they are familiar with the opponent's marks, average UK consumers would not assume that the marks are used by the same or economically linked undertaking. At best, there might be a calling to mind, but that is mere association not indirect confusion. Consequently, I do not consider there to be a likelihood of indirect confusion.

64. The opposition based upon section 5(2)(b) is dismissed.

## **Final Remarks**

65. Even if the opponent had properly pleaded its case based upon the First Earlier Mark under section 5(2)(b), the same issues would have arisen. Ultimately, the use of the word PURCARI in the IR will simply be viewed as indicating no more than the geographical origin of the goods/business and would not, in my view, lead to a likelihood of confusion with the First Earlier Mark, even when used on identical goods. Consequently, as set out above, this earlier mark would not have put the opponent in any stronger position.

### **Section 5(3)**

66. Section 5(3) of the Act states:

“5(3) A trade mark which -

(a) is identical with or similar to an earlier trade mark, [...] shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or repute of the earlier trade mark.”

67. Section 5(3A) of the Act states:

“Subsection (3) applies irrespective of whether the goods and services for which the trade mark is to be registered are identical with, similar to or not similar to those for which the earlier trade mark is protected.”

68. As the opposition was filed prior to the UK leaving the EU, the opponent is entitled to rely upon EUTMs and, consequently, it is the EU market (which, at that time, included the UK) that is relevant for the purposes of assessing reputation. I can deal with this ground of opposition relatively swiftly. The first issue for the opponent is that, whilst it is the EU market that is relevant for assessing reputation, it must show a link in the mind of the UK relevant public. Even if the opponent’s evidence, which

admittedly is more compelling in respect of the EU as a whole, could establish the requisite reputation, no explanation has been put forward as to why a link would be made in the minds of the UK relevant public, in the absence of any significant reputation here. The second issue for the opponent is that, even leaving aside that issue, the marks are, in my view, too far apart for a link to be made in any event. For the reasons set out above, it seems far more likely to me that the average consumer will view the common word PURCARI as a coincidence, simply referring to goods that originate from the same geographical location. Consequently, I do not consider that a link would be made or that damage would occur.

69. The opposition based upon section 5(3) is dismissed.

### **Section 3(6)**

70. Section 3(6) of the Act states:

“(6) A trade mark shall not be registered if or to the extent that the application is made in bad faith.”

71. In *Sky Limited & Ors v Skykick, UK Ltd & Ors*, [2021] EWCA Civ 1121 the Court of Appeal considered the case law from *Chocoladefabriken Lindt & Sprüngli AG v Franz Hauswirth GmbH*, Case C-529/07 EU:C:2009:361, *Malaysia Dairy Industries Pte. Ltd v Ankenævnetfor Patenter Varemærker* Case C-320/12, EU:C:2013:435, *Koton Mağazacılık Tekstil Sanayi ve Ticaret AŞ*, Case C-104/18 P, EU:C:2019:724, *Hasbro, Inc. v EUIPO, Kreativni Dogaaji d.o.o. intervening*, Case T-663/19, EU:2021:211, *pelicantravel.com s.r.o. v OHIM, Pelikan Vertriebsgesellschaft mbH & Co KG (intervening)*, Case T-136/11, EU:T:2012:689, and *Psytech International Ltd v OHIM, Institute for Personality & Ability Testing, Inc (intervening)*, Case T-507/08, EU:T:2011:46. It summarised the law as follows:

“68. The following points of relevance to this case can be gleaned from these CJEU authorities:

1. The allegation that a trade mark has been applied for in bad faith is one of the absolute grounds for invalidity of an EU trade mark which can be relied on before the EUIPO or by means of a counterclaim in infringement proceedings: *Lindt* at [34].

2. Bad faith is an autonomous concept of EU trade mark law which must be given a uniform interpretation in the EU: *Malaysia Dairy Industries* at [29].

3. The concept of bad faith presupposes the existence of a dishonest state of mind or intention, but dishonesty is to be understood in the context of trade mark law, i.e. the course of trade and having regard to the objectives of the law namely the establishment and functioning of the internal market, contributing to the system of undistorted competition in the Union, in which each undertaking must, in order to attract and retain customers by the quality of its goods or services, be able to have registered as trade marks signs which enable the consumer, without any possibility of confusion, to distinguish those goods or services from others which have a different origin: *Lindt* at [45]; *Koton Mağazacılık* at [45].

4. The concept of bad faith, so understood, relates to a subjective motivation on the part of the trade mark applicant, namely a dishonest intention or other sinister motive. It involves conduct which departs from accepted standards of ethical behaviour or honest commercial and business practices: *Hasbro* at [41].

5. The date for assessment of bad faith is the time of filing the application: *Lindt* at [35].

6. It is for the party alleging bad faith to prove it: good faith is presumed until the contrary is proved: *Pelikan* at [21] and [40].

7. Where the court or tribunal finds that the objective circumstances of a particular case raise a rebuttable presumption of lack of good faith, it is for the applicant to provide a plausible explanation of the objectives and commercial logic pursued by the application: *Hasbro* at [42].

8. Whether the applicant was acting in bad faith must be the subject of an overall assessment, taking into account all the factors relevant to the particular case: *Lindt* at [37].

9. For that purpose it is necessary to examine the applicant's intention at the time the mark was filed, which is a subjective factor which must be determined by reference to the objective circumstances of the particular case: *Lindt* at [41] – [42].

10. Even where there exist objective indicia pointing towards bad faith, however, it cannot be excluded that the applicant's objective was in pursuit of a legitimate objective, such as excluding copyists: *Lindt* at [49].

11. Bad faith can be established even in cases where no third party is specifically targeted, if the applicant's intention was to obtain the mark for purposes other than those falling within the functions of a trade mark: *Koton Mağazacılık* at [46].

12. It is relevant to consider the extent of the reputation enjoyed by the sign at the time when the application was filed: the extent of that reputation may justify the applicant's interest in seeking wider legal protection for its sign: *Lindt* at [51] to [52].

13. Bad faith cannot be established solely on the basis of the size of the list of goods and services in the application for registration: *Psytech* at [88], *Pelikan* at [54].”

72. According to *Alexander Trade Mark*, BL O/036/18, the key questions for determination in a claim of bad faith are:

(a) What, in concrete terms, was the objective that the applicant has been accused of pursuing?

(b) Was that an objective for the purposes of which the contested application could not be properly filed? and

(c) Was it established that the contested application was filed in pursuit of that objective?

73. It is necessary to ascertain what the holder knew at the relevant date: *Red Bull GmbH v Sun Mark Limited and Sea Air & Land Forwarding Limited* [2012] EWHC 1929 (Ch). Evidence about subsequent events may be relevant, if it casts light backwards on the position at the relevant date: *Hotel Cipriani SRL and others v Cipriani (Grosvenor Street) Limited and others*, [2009] RPC 9 (approved by the Court of Appeal in England and Wales: [2010] RPC 16).

74. In its Notice of opposition, the opponent states its bad faith claims as follows:

“20. The Applicant has no genuine intention to use the mark applied for in relation to the goods for which registration is sought.

21. Should the specification of goods of the application be amended to include a limitation to goods produced in the region of PURCARI, such a limitation will render the application as having been made in bad faith. The Applicant does not produce goods in the PURCARI region and has no bona fide intention to produce and sell goods from the PURCARI region.

22. Further and in the alternative, the Applicant has filed the mark with the inclusion of the term PURCARI in a deliberate attempt to misappropriate a trade mark of a direct competitor. The Applicant is aware of the Opponent’s history of use of the sign PURCARI for the same goods and it is their intention to benefit from the Opponent’s reputation by including the reputed sign within their composite trade mark. The deliberate attempt to misappropriate the trade mark of a competitor is ‘dishonest by ordinary standards of honest people’. (*Hotel Cipriani SRL v Cipriani (Grosvenor Street)* [2008] EWHC 3032 (ch)). Evidence will be adduced of the dishonest conduct in due course.”

75. It appears, therefore, that the opponent claims that the holder has been pursuing the objective of 1) filing a mark with no intention to use it, 2) filing a mark that if amendments were made to the specification in the future to limit the goods to those produced in the region of PURCARI that the application would then have been made in bad faith and 3) that the holder has included the word PURCARI in its trade mark in a deliberate attempt to misappropriate the trade mark of the opponent and in order to benefit from the opponent's reputation.

76. The second of these objectives is not, in my view, a basis for a bad faith claim. Ultimately, the application in question does not include a limitation that the goods only be produced in a specified region. In any event, adding a limitation after publication inevitably means adding it after the date the holder designated the UK for protection of the IR, and consequently after the relevant date. I accept that the first and third objectives, listed above, could be the basis of a bad faith objection.

77. However, I am not satisfied that the opponent has made out a prima facie case of bad faith. In relation to the first objective, the opponent has put forward no evidence to suggest that the holder has no intention to use the mark. Indeed, it seems that the real basis of the opponent's claim is that the holder has no intention to use the mark in relation to goods produced in PURCARI. However, for the reasons already stated, I dismiss this line of argument. In relation to the third objective, I have already explained why I do not consider that the inclusion of the words PURCARI VALLEY in the IR would lead to any confusion/link on the part of the average consumer and so I can see no basis for a claim that the application has been filed in a deliberate attempt to misappropriate the opponent's mark. It may very well be the case that the opponent is the best known producer of wine in that region in Moldova, however, there is no evidence that that would be known by the UK relevant public and, even if it was, it would not prevent other businesses from using the word PURCARI as a geographical indicator of the origin of their goods, if they genuinely are producing goods from natural products grown in that region.

78. The opposition based upon section 3(6) is dismissed.

## CONCLUSION

79. The opposition is unsuccessful, and the application may proceed to registration.

## COSTS

80. The holder has been successful and is entitled to a contribution towards its costs based upon the scale published in Tribunal Practice Notice 2/2016. In the circumstances, I award the holder the sum of **£2,050**, calculated as follows:

Filing a counterstatement and considering the Notice of opposition	£450
Filing evidence and considering the opponent's evidence	£1,600
<b>Total</b>	<b>£2,050</b>

81. I therefore order VINARIA PURCARI S.R.L. to pay TIMBRUS PURCARI ESTATE S.R.L. the sum of £2,050. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

**Dated this 5<sup>th</sup> day of June 2023**

**S WILSON**

**For the Registrar**

## ANNEX

Under sections 5(2) and 5(3), the opponent relies upon the following goods and services:

### **The First Earlier Mark**

#### Class 33

Alcoholic beverages (except beer); Preparations for making alcoholic beverages; Cider.

### **The Second Earlier Mark**

#### Class 33

Alcoholic beverages (except beers); Preparations for making alcoholic beverages; Cider; Alcoholic preparations for making beverages.

#### Class 35

Organisation of exhibitions and events for commercial or advertising purposes; Advertising particularly services for the promotion of goods; Retail services in relation to cups and drinking glasses; Advertising services to promote public awareness of the benefits of shopping locally; Display services for merchandise; Sales promotion using audiovisual media; Secretarial and clerical services; Organisation of customer loyalty programs for commercial, promotional or advertising purposes; Television advertising; Administration of sales promotion incentive programs; Retail services via global computer networks related to non-alcoholic beverages; Online advertisements; Computerised business promotion; Administrative processing of computerized purchase orders; Business management of wholesale outlets; Direct mail advertising to attract new customers and to maintain the existing customer base; Arranging of demonstrations for advertising purposes; Management administration of commercial undertakings; Organisation of exhibitions and trade fairs for business and promotional purposes; Advertising services for the promotion of beverages; Draws with prizes for advertising purposes; Commercial information services relating to wine; Business administration; Business management of retail outlets; Customer loyalty services for commercial, promotional and/or advertising purposes; Organisation of exhibitions and trade fairs for business and promotional purposes; Providing consumer product

information relating to food or drink products; Advertising; Advertising services to promote the sale of beverages; Export promotion services; Arranging of competitions for advertising purposes; Mail order retail services related to alcoholic beverages (except beer); Administration of sales and promotional incentive schemes; Retail services via global computer networks related to alcoholic beverages (except beer); Promotion of fairs for trade purposes; Arranging and conducting of commercial exhibitions and shows; Arranging and conducting of fairs and exhibitions for business purposes; Alcoholic beverage procurement services for others [purchasing goods for other businesses]; Business administration and management; Organisation of trade fairs for commercial or advertising purposes; Sales promotion; Retail services in relation to preparations for making alcoholic beverages; Prize draws (Organising of -) for promotional purposes; Business promotion; Administration of loyalty and incentive schemes; Business promotion; Direct mail advertising; Advertising and marketing; Organisation of trade fairs for advertising purposes; Business management for shops; Advertising via electronic media and specifically the internet; Radio advertising; Retail services in relation to alcoholic beverages (except beer); Administration of loyalty rewards programs featuring trading stamps; On-line advertising on a computer network; Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; Advertisement and publicity services by television, radio, mail; Organisation and management of business incentive and loyalty schemes; Retail services via catalogues related to alcoholic beverages (except beer); Organisation, operation and supervision of loyalty schemes and incentive schemes; Computerised office management; Administration of loyalty rewards programs; Organisation, operation and supervision of customer loyalty schemes; Wholesale services in relation to preparations for making beverages; Unmanned retail store services relating to drink; Advertising; Organisation and management of customer loyalty programs; Business administration; Wholesale services in relation to preparations for making alcoholic beverages; Administration of the business affairs of retail stores; Administration of consumer loyalty programs; Retail services in relation to preparations for making beverages; Provision of information relating to advertising; Sales promotion through customer loyalty programs; Administration of customer loyalty and incentive schemes; Wholesale services in relation to alcoholic beverages (except beer); Retail services relating to alcoholic beverages; Administration of loyalty programs involving discounts or incentives; Clerical services; Clerical services;

Administration of contests for advertising purpose; Organisation of trade fairs for commercial or advertising purposes; Administration of business affairs; Advertising in the popular and professional press; Promoting and conducting trade shows; Business records management; Promotion [advertising] of business.

### **The Third Earlier Mark**

#### Class 33

Alcoholic preparations for making beverages; Alcoholic beverages (except beers); Preparations for making alcoholic beverages; Cider.

#### Class 35

Organisation of exhibitions and events for commercial or advertising purposes; Advertising particularly services for the promotion of goods; Retail services in relation to cups and drinking glasses; Advertising services to promote public awareness of the benefits of shopping locally; Display services for merchandise; Sales promotion using audiovisual media; Secretarial and clerical services; Organisation of customer loyalty programs for commercial, promotional or advertising purposes; Television advertising; Administration of sales promotion incentive programs; Retail services via global computer networks related to non-alcoholic beverages; Online advertisements; Computerised business promotion; Administrative processing of computerized purchase orders; Business management of wholesale outlets; Direct mail advertising to attract new customers and to maintain the existing customer base; Arranging of demonstrations for advertising purposes; Management administration of commercial undertakings; Organisation of exhibitions and trade fairs for business and promotional purposes; Advertising services for the promotion of beverages; Draws with prizes for advertising purposes; Commercial information services relating to wine; Business administration; Business management of retail outlets; Customer loyalty services for commercial, promotional and/or advertising purposes; Organisation of exhibitions and trade fairs for business and promotional purposes; Providing consumer product information relating to food or drink products; Advertising; Advertising services to promote the sale of beverages; Export promotion services; Arranging of competitions for advertising purposes; Mail order retail services related to alcoholic beverages (except beer); Administration of sales and promotional incentive schemes; Retail services via global computer networks related to alcoholic beverages (except beer);

Arranging and conducting of commercial exhibitions and shows; Arranging and conducting of fairs and exhibitions for business purposes; Alcoholic beverage procurement services for others [purchasing goods for other businesses]; Business administration and management; Organisation of trade fairs for commercial or advertising purposes; Sales promotion; Retail services in relation to preparations for making alcoholic beverages; Prize draws (Organising of -) for promotional purposes; Business promotion; Administration of loyalty and incentive schemes; Business promotion; Direct mail advertising; Advertising and marketing; Organisation of trade fairs for advertising purposes; Business management for shops; Advertising via electronic media and specifically the internet; Promotion of fairs for trade purposes; Radio advertising; Retail services in relation to alcoholic beverages (except beer); Administration of loyalty rewards programs featuring trading stamps; On-line advertising on a computer network; Organization of events, exhibitions, fairs and shows for commercial, promotional and advertising purposes; Advertisement and publicity services by television, radio, mail; Organisation and management of business incentive and loyalty schemes; Retail services via catalogues related to alcoholic beverages (except beer); Organisation, operation and supervision of loyalty schemes and incentive schemes; Computerised office management; Administration of loyalty rewards programs; Organisation, operation and supervision of customer loyalty schemes; Wholesale services in relation to preparations for making beverages; Unmanned retail store services relating to drink; Advertising; Organisation and management of customer loyalty programs; Business administration; Wholesale services in relation to preparations for making alcoholic beverages; Administration of the business affairs of retail stores; Administration of consumer loyalty programs; Retail services in relation to preparations for making beverages; Provision of information relating to advertising; Sales promotion through customer loyalty programs; Administration of customer loyalty and incentive schemes; Wholesale services in relation to alcoholic beverages (except beer); Retail services relating to alcoholic beverages; Administration of loyalty programs involving discounts or incentives; Clerical services; Clerical services; Administration of contests for advertising purpose; Organisation of trade fairs for commercial or advertising purposes; Administration of business affairs; Advertising in the popular and professional press; Promoting and conducting trade shows; Business records management; Promotion [advertising] of business.

## **The Fourth Earlier Mark**

### Class 33

Alcoholic beverages except beer and wine; Wines complying with the definition/conditions of use of the traditional term for 'Château' wines.