



Benelux Office for  
**Intellectual  
Property**

**BENELUX OFFICE FOR INTELLECTUAL PROPERTY  
OPPOSITION DECISION  
N° 2016376  
of 30 June 2022**

**Opponent:** **VINARIA PURCARI S.R.L., intreprindere mixta**  
Stefan-Voda -  
4229 Purcari  
Republic of Moldova

**Representative:** **AWA Benelux SA**  
Avenue Josse Goffin 158  
1082 Brussels  
Belgium

**1<sup>st</sup> Invoked right:** **European Union trademark registration 18190691**



**PURCARI WINERIES**

**2<sup>nd</sup> Invoked right:** **European Union trademark registration 18189289**



**CHATEAU PURCARI**

**3<sup>rd</sup> Invoked right:** **European Union trademark registration 18091616**



**VINĂRIA PURCARI**

**4<sup>th</sup> Invoked right:** **International trademark registration 867059**

**ROȘU DE PURCARI**

**5<sup>th</sup> Invoked right:** **International trademark registration 867058**

NEGRU DE PURCARI

*against*

**Defendant:** **TIMBRUS PURCARI ESTATE S.R.L.**  
Str. Grigore Vieru nr. 134 Purcari  
4229 Stefan Voda  
Republic of Moldova

**Representative:** **Bukovnik IP Consulting Sprl**  
Avenue des Courses 22  
1050 Brussels  
Belgium

**Contested trademark: International trademark application 1540919**




**TIMBRUS  
PURCARI VALLEY**

## I. FACTS AND PROCEEDINGS

### A. Facts

1. On 5 June 2020 the defendant filed an international trademark application also designating the **TIMBRUS** Benelux for the semi-figurative trademark **PURCARI VALLEY** for goods in class 33. This application was processed under the number 1540919 and was published in the Gazette 2020/27 on the 16 of July 2020.

2. On 15 September 2020 the opponent filed an opposition against the registration of the application. The opposition is based on the following earlier trademarks:

1. the European Union trademark 18190691 of the semi-figurative mark  **PURCARI WINERIES**, filed on 30 January 2020 and registered on 25 August 2020 for goods and services in classes 33 and 35.
2. the European Union trademark 18189289 of the semi-figurative mark  **CHATEAU PURCARI**, filed on 30 January 2020 and registered on 25 August 2020 for goods and services in classes 33 and 35.
3. the European Union trademark 18091616 of the semi-figurative mark  **VINARIA PURCARI**, filed on 5 July 2019 and registered on 19 October 2019 for goods in class 33.
4. the international trademark 867059 designating the Benelux of the semi-figurative mark **ROȘU DE PURCARI**, filed and registered on 7 July 2005 for goods in class 33.
5. the international trademark 867058 designating the Benelux of the wordmark "NEGRU DE PURCARI", filed and registered on 7 July 2005 for goods in class 33.

3. According to the registers the opponent is the actual holder of the trademarks invoked.

4. The opposition is directed against all of the goods covered by the contested application and is based on all of the goods covered in class 33 by the trademarks invoked.

5. The grounds for opposition are those laid down in article 2.14, 2 (a) of the Benelux Convention on Intellectual Property (hereinafter: "BCIP").

6. The language of the proceedings is English.

### B. Course of the proceedings

7. The opposition is admissible and was notified by the Benelux Office for Intellectual Property (hereinafter: "the Office" or "BOIP") to the parties on 23 September 2020. During the administrative phase of the proceedings both parties filed arguments and the opponent filed documents to prove use of the invoked rights for which proof of use was requested. The course of the proceedings meets the requirements as stated in the BCIP and the Implementing Regulations (hereinafter "IR"). The administrative phase was completed on 16 February 2022.

## II. ARGUMENTS

8. The opponent filed an opposition at the Office under article 2.14, 2 (a) BCIP, in accordance with the provisions of article 2.2ter, 1 (b) BCIP: the likelihood of confusion based on the identity or similarity of trademark and sign and the identity or similarity of the goods or services concerned.

#### **A. Opponent's arguments**

9. The opponent starts his arguments with the comparison of the signs. He notes that the most distinctive element of the invoked trademarks consists in the verbal element "PURCARI" which will not be perceived as having a meaning by the public in the European Union and in the Benelux in particular. The dominant elements of the contested trademark are the word elements "TIMBRUS" and "PURCARI", the latter being identically present in the invoked trademarks. The word element "VALLEY" in the contested trademark is, according to the opponent, descriptive for the products covered as it could relate to their place of origin. As a result, the opponent considers the trademarks visually very similar.

10. In light of the above, the opponent considers that the phonetically comparison should be made with regards to the previously established dominant elements of the trademarks, namely "PURCARI" and "TIMBRUS PURCARI". Since the word "PURCARI" is identically present in both trademarks, the opponent concludes that they are phonetically very similar.

11. Conceptually, the opponent argues that none of the dominant elements of the trademarks have a meaning making a comparison irrelevant.

12. Comparing the goods covered by the trademarks, the opponent finds them to be identical.

13. The opponent notes that the goods in question are addressed at the public at large whose level of attention will therefore be average.

14. In addition, the opponent states that, while "PURCARI" is the name of the village where the covered products are produced, it does not constitute a protected geographical indication, nor will it be perceived as a geographical place by the general consumer in the Benelux who would not know about this place.

15. The opponent points out that he has greatly developed his brand over the last years, knowing commercial success, filing numerous trademarks and achieving accolades for his products to the point that the opponent is recognized as the most popular winery among Moldovan wine producers. The opponent notes that the Moldova Supreme Court of Justice even held that the trademark "VINARIA PURCARI" was a well-known trademark in Moldova. As a result, specialized consumers would, according to the opponent, refer to his products when confronted with the word "PURCARI". Furthermore, the opponent notes that the applicant has been trying to create confusion by naming his products in an identical manner to those of the opponent even though his products do not originate from the geographical region.

16. As a result, the opponent considers the high degree of similarity between the trademarks and the fact that they cover identical goods makes it so that there exists a likelihood of confusion for the consumer. Thus, he asks the Office not to register the contested trademark and to order that the costs be borne by the defendant.

17. Following the request by the defendant, the opponent submitted proof of use for the international trademarks invoked.

#### **B. Defendant's arguments**

18. In the first place the defendant asks the opponent to provide proof of use for the invoked trademarks which fall under an obligation of use.

19. In that regard the defendant considers that the proof submitted by the opponent is insufficient to prove genuine use of the invoked trademark. More specifically, he notes that some of the materials provided do not contain a date, nor do they show information regarding the link between the opponent and his alleged distributor "CRAMA CEPTURA SRL". The defendant argues that the invoices submitted also do not show genuine use of the invoked trademarks as some of the invoices do not contain a reference to the invoked trademark, nor are the invoices issued by the opponent himself. Finally, the defendant notes that the volume of products sold is insufficient to prove genuine use of the invoked rights.

20. In his arguments addressing the likelihood of confusion, the defendant notes in the first place that the word element "PURCARI" of the invoked trademarks is descriptive as it can refer to the geographical origin of the goods. The defendant notes that it is irrelevant that "PURCARI" is not a protected geographical indication at the current moment. The defendant further submits evidence showing that the region of "PURCARI" enjoys a reputation and would be known to the relevant public in the Benelux. Furthermore, the defendant refers to previous decisions rendered by the EUIPO where "PURCARI" was held to be descriptive as a geographical name.

21. Comparing the trademarks visually and phonetically, the defendant notes that these only coincide in the verbal element "PURCARI" yet differ in all other elements.

22. Conceptually the defendant notes that the contested trademark refers to the "PURCARI" region, with the word "TIMBRUS" coming from the Latin word "timbre" meaning stamp and the "VALLEY" describing a "low stretch of land between hills, especially one that has a river flowing through it". The invoked trademarks, according to the defendant, respectively consist of the word "PURCARI" designating the region in Moldova associated with various descriptive terms with regards to wine. As a result, the defendant concludes that the trademarks conceptually coincide only in their reference to the "PURCARI" region.

23. Since the trademarks, according to the defendant, only coincide in the descriptive element "PURCARI", he concludes that their overall impression should be considered dissimilar.

24. The defendant notes that the EUTMs invoked by the opponent have an average level of distinctiveness whereas the international trademarks invoked, seen as they are exclusively composed of descriptive elements, should be considered devoid of distinctive character.

25. The relevant public for the goods covered according to the defendant is the public at large.

26. The defendant provides a brief overview of his company, contesting some of the facts stated by the opponent in this regard.

27. Considering the arguments above, the defendant finds that the proof of use submitted is insufficient to prove a genuine use of the invoked trademarks for the relevant period and in the relevant territory. Furthermore, the defendant finds that there exists no risk of confusion for consumers confronted with these trademarks due to the only common element between these being the descriptive geographical reference of "PURCARI". Therefore, the defendant asks the Office to register the contested trademark and to order that the costs be borne by the opponent.

### **III. DECISION**

**A.1 Likelihood of confusion**

28. In accordance with article 2.14 BCIP, the holder of a prior trademark may submit a written opposition to the Office, within a period of two months to be calculated from the publication date of the application, against a trademark which in the order of priority, ranks after its own in accordance with Article 2.2ter BCIP.

29. Article 2.2ter, para. 1 BCIP stipulates that, *"A trademark shall, in case an opposition is filed, not be registered (...) where: b. because of its identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered by the trademarks, there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier trademark."*

30. According to case law of the Court of Justice of the European Union (hereinafter: the "CJEU") concerning the interpretation of Directive 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks (hereinafter: "Directive"), the likelihood of confusion of the public, which is defined as the risk that the public might believe that the goods or services in question come from the same undertaking or, as the case may be, from economically-linked undertakings, must be appreciated globally taking into account all factors relevant to the circumstances of the case (CJEU, Canon, C-39/97, 29 September 1998, ECLI:EU:C:1998:442; Lloyd Schuhfabrik Meyer, C-342/97, 22 June 1999, ECLI:EU:C:1999:323; CJBen, Brouwerij Haacht/Grandes Sources belges, A 98/3, 2 October 2000; Marca Mode/Adidas, A 98/5, 7 June 2002; Supreme Court of the Netherlands, Flügel-bottle, C02/133HR, 14 November 2003, ECLI:NL:HR:2003:AK4818; Court of Appeal Brussels, N-20060227-1, 27 February 2006).

**Comparison of the goods**

31. In assessing the similarity of the goods and services concerned, all the relevant factors relating to these goods or services themselves should be taken into account. These factors include, inter alia, their nature, their end-users and their method of use and whether they are in competition with each other or are complementary (CJEU, Canon, already cited).

32. With the comparison of the goods of the trademarks invoked and the goods against which the opposition is filed, the goods are considered only on the basis of what is expressed in the register.

33. The goods to be compared are the following:

*Concerning the first trademark invoked (European Union trademark registration 18190691)*

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
CI 33: Alcoholic preparations for making beverages; Alcoholic beverages (except beers); Preparations for making alcoholic beverages; Cider.	CI 33 Alcoholic beverages (except beers).

34. The contested goods "*Alcoholic beverages (except beers)*" are identically covered by the invoked trademark. The defendant does not contest that the goods covered by the trademarks in question are identical.

#### *Conclusion*

35. The goods covered by the contested trademark are identical to the goods covered by the trademark invoked.

#### **Comparison of the trademarks**


36. The wording of Article 5, 1 (b) of the Directive (cf. article 2.2ter, 1 (b) BCIP) according to which "there exists a likelihood of confusion on the part of the public including the likelihood of association with the earlier trademark" shows that the perception of marks in the mind of the average consumer of the type of goods or services in question plays a decisive role in the global assessment of the likelihood of confusion. The average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (CJEU, Sabel, C-251/95, 11 November 1997, ECLI:EU:C:1997:528).

37. Global assessment of the visual, aural or conceptual similarity of the marks in question, must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (CJEU, Sabel and Lloyd, already cited).

38. The overall impression created in the memory of the relevant public by a complex mark might, in certain circumstances, be dominated by one or more components of that mark (CJEU, Limonchello, C-334/05 P, 12 June 2007, ECLI:EU:C:2007:333). With regard to the assessment of the dominant characteristics of one or more components of a complex trademark, account must be taken, in particular, of the intrinsic qualities of each of these components by comparing them with those of other components. In addition, account may be taken of the relative position of the various components within the arrangement of the complex mark (EGC, Matratzen, T-6/01, 23 October 2002, ECLI:EU:T:2002:261 and El Charcutero Artesano, T-242/06, 13 December 2007, ECLI:EU:T:2007:391).

39. The trademarks to be compared are the following:

*Concerning the first trademark invoked (European Union trademark registration 18190691)*

<b>Opposition based on:</b>	<b>Opposition directed against:</b>
	<p style="text-align: center;"><b>TIMBRUS PURCARI VALLEY</b></p>

#### *Conceptual comparison*

40. The invoked trademark consists of the verbal elements "PURCARI WINERIES" with a figurative element representing a building in a mountainous region. The verbal element "WINERIES", describing a place where wine is produced and/ or offered for sale, will be perceived as a descriptive indication for the products covered by the trademark and therefore will not constitute a dominant element of said trademark. The figurative element would probably be perceived as an ornamental feature possibly referring to the

origin of the goods. The verbal element "PURCARI", which constitutes the dominant element of the invoked trademark, does not have a clear meaning for the average consumer in the Benelux. While the parties mention (paragraphs 14 and 20) that it refers to a place in Moldova, the average consumer in the Benelux will not be aware of this place and thus not perceive the word "PURCARI" as having a meaning.

41. The contested trademark is composed of the verbal elements "TIMBRUS PURCARI VALLEY". Likewise, while the verbal element "VALLEY", will be perceived as a descriptive indication for the goods covered by the contested trademark, referring to the origin of the goods. Therefore, the dominant verbal elements for the contested trademark will be "TIMBRUS" and "PURCARI". These verbal elements do not have a clear meaning for the average consumer in the Benelux. Indeed, the average Benelux consumer does not speak or understand Latin, thus even if the verbal element "TIMBRUS" is relatively close to the French word "timbre" meaning stamp, the consumer would not necessarily establish this link upon perceiving the contested sign. Instead, the verbal elements "TIMBRUS PURCARI" would probably be perceived by most consumers in the Benelux as made-up words without a clear meaning.

42. As a result, since both trademarks do not have a meaning for the Benelux consumer, a conceptual comparison of the trademarks is irrelevant.

#### *Visual comparison*

43. The invoked trademark consists of the verbal elements "PURCARI WINERIES" composed of 7 and 8 letters respectively. Above the verbal elements is a representation of a building with a tower in a mountainous landscape. The contested trademark is composed of the word elements "TIMBRUS PURCARI VALLEY" composed of 7, 7 and 6 letters respectively.

44. Where a sign consists of both verbal and figurative elements, the former are, in principle, considered more distinctive than the latter, because the average consumer will more easily refer to the goods or services in question by quoting their name than by describing the figurative element of the trademark (EGC, SELENIUM-ACE, T-312/03, 14 July 2005, ECLI:EU:T:2005:289). The Office is of the opinion that the relevant public will perceive the verbal element as the dominant element of the invoked trademark due to its placement and the fact that the consumers are used to seeing representations of sumptuous buildings as an ornamental feature on these types of products. Furthermore, the respective verbal elements "WINERIES" and "VALLEY" are descriptive as they may designate the origin of the products covered by the trademarks (see paragraphs 40 and 41). As a result, the verbal element "PURCARI" of the invoked trademark and the verbal elements "TIMBRUS PURCARI" will be perceived as the dominant elements of the trademarks concerned.

45. While the contested trademark contains the word element "TIMBRUS" which is not present in the invoked trademark, the previously held dominant element of the latter, "PURCARI", is entirely incorporated in the contested trademark. As a result, the overall visual impression of the trademarks is similar.

46. The trademarks are visually similar.

#### *Aural comparison*

47. Concerning the aural comparison, it must be pointed out that, in the strict sense, the aural reproduction of a complex sign corresponds to that of all its verbal elements, regardless of their specific graphic features, which fall more within the scope of the analysis of the sign on a visual level (EGC, PC WORKS, T-352/02, 25 May 2005, ECLI:EU:T:2005:176 and Thai Silk, T-361/08, 21 April 2010,



ECLI:EU:T:2010:152). Furthermore, considering that the verbal elements "WINERIES" and "VALLEY" are, as previously held (paragraphs 40 and 41) descriptive for the goods covered, they will probably not be pronounced by the consumer (EGC, LIBERTE, T-206/12, 3 July 2013, ECLI:EU:T:2013:342).

48. The verbal elements to be compared are thus "PURCARI", composed of 3 syllables [PUR] [CA] [RI] for the invoked trademark and "TIMBRUS PURCARI" composed of 5 syllables [TIM] [BRUS] [PUR] [CA] [RI] for the contested trademark. Indeed, while the trademarks differ in length, the verbal element "PURCARI" is identically present in both the trademarks, resulting in a similar overall aural impression.

49. Thus, the Office considers the trademarks to be aurally similar.

#### *Conclusion*

50. The trademarks in question are visually and phonetically similar and a conceptual comparison is irrelevant.

### **A.2 Global assessment**

51. When assessing the likelihood of confusion, in particular the level of attention of the relevant public, the similarity of the goods and services in question and the similarity of the signs are important factors.

52. The average consumer is deemed to be reasonably well-informed and reasonably observant and circumspect (case Lloyd, already cited). It should also be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods or services in question. In the present case, the goods covered are directed at the public at large for which the level of attention is deemed to be normal (paragraphs 13 and 25).

53. The global assessment of the likelihood of confusion assumes that there is a certain degree of interdependence between the factors to be taken into account, particularly between the level of similarity of the signs and of the goods they cover. A lesser degree of similarity between the relevant goods can be offset by a greater degree of similarity between the trademarks, and vice versa (Canon and Lloyd, already cited).

54. The more distinctive the earlier trademark, the greater the likelihood of confusion. Marks with a highly distinctive character, either per se or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character (Canon, Sabel and Lloyd, already cited). In the present case, the defendant argues that the verbal element "PURCARI" is descriptive as it constitutes a winemaking region in Moldova (paragraph 20). However, the elements submitted by the defendant in support of his argument: academic texts and other publications - originally in Russian language - and decisions rendered by other IP offices fail to show that the average consumer in the Benelux would know about this region in relation to the products concerned. Indeed, while the region of "PURCARI" may be known for wine within certain circles, the goods covered by the trademarks concerned are general consumer goods destined at the public at large. Thus, the evidence submitted needs to show that the average consumer of these goods in the Benelux would be aware of the region of "PURCARI" in relation to the goods concerned. In light of the evidence submitted to that end, the Office is not convinced that this is the case. Thus, since the Office does not find that the word element "PURCARI" will be perceived as a descriptive indication by the relevant public, the invoked trademark has to be considered as having normal distinctiveness for the goods concerned.

55. Account must also be taken of the circumstance that normally, the average consumer perceives a mark as a whole and does not proceed to analyse its various details (Sabel and Lloyd, already cited). Furthermore, it is of importance that the average consumer only rarely has the chance to make a direct comparison between the different marks but must place his trust in the imperfect picture of them that he has kept in his mind.

56. Based on the abovementioned circumstances, the Office finds that due to both trademarks being visually and phonetically similar while a conceptual comparison is irrelevant, the relevant public might believe that the identical goods they cover would come from the same undertaking or from economically-linked undertakings.

#### **B. Other factors**

57. In an opposition procedure there is no question of the other party being ordered to bear the costs incurred (see paragraphs 16 and 27). Only a referral of the costs set at the established opposition fee in case the opposition is totally rejected (or justified) is provided for.

#### **C. Conclusion**

58. Based on the foregoing the Office is of the opinion that there exists a likelihood of confusion.

59. Since the opposition is justified based on the first trademark invoked, for reasons of procedural economy, the Office will not carry out an assessment of likelihood of confusion for the other trademarks invoked, nor proceed to an analysis of the proof of use submitted for the invoked trademarks for which it was requested.

#### **IV. DECISION**

60. The opposition with number 2016376 is justified.

61. The international application with number 1540919 will not be registered in the Benelux.

62. The defendant shall pay the opponent 1,045 euros in accordance with article 2.16, 5 BCIP in conjunction with rule 1.28, 3 IR, as the opposition is justified. This decision constitutes an enforceable order pursuant to article 2.16, 5 BCIP.

The Hague, 30 June 2022



*François Châtellier*  
(*rapporteur*)

*Pieter Veeze*

*Eline Schiebroek*

Administrative officer: Rémy Kohlsaat