

## BELGIUM

GEVERS  
Brussels*Katia De Clercq***Boost for colour marks**

On November 4, the Brussels Commercial Court issued a decision regarding the Community trade mark Veuve Clicquot Ponsardin number 5069711 (figurative mark), Benelux trade mark number 746608 and CTM number 747949 (both colour marks), all for goods in class 33. The complex sign and the colour in question (Pantone 137C) are shown below.



MHCS, the manufacturer of Veuve Clicquot champagne, and the owner of these trade marks, began a procedure against the manufacturer and the Belgian distributor of Don Jaime, a sparkling wine of Spanish origin, who sell their products in a bottle and with a label as shown below.



The Court reasoned that this colour is used in a dominant manner, as it is designed to catch the eye of the relevant public who often sees champagne bottles from a distance. Since the colour used on the Don Jaime bottles only slightly differs from the colour marks of MHCS and as a consumer generally relies on an imperfect picture in his/her mind, the colours in question will not be perceived as different. Since the defendants could not have chosen a colour closer to MHCS's colour marks, the Court considered the colour used on Don Jaime bottles was identical.

Moreover, since the Pantone 137C colour has been used extensively for more than 135 years, the Court considered the trademarks to be well-known. Consequently, by using an almost identical colour the defendants have taken

unfair advantage of the reputation and caused harm to the distinctive character of MHCS's marks.

Finally, the Court considered the use of the Don Jaime label to be an act of unfair competition, that is parasitic behaviour, which is prohibited by the Trade Practices and Consumer Protection Act of April 6 2010.

In conclusion, this judgment again proves that although it is difficult to get a colour mark registered, once you succeed, its protection is relatively broad, considering that colours are widely recognised and called to mind by the relevant public.