JUDGMENT OF THE GENERAL COURT (Second Chamber)

23 November 2010 *

In Case T-35/08,

Codorniu Napa, Inc., established in Napa, California (United States), represented initially by X. Fàbrega Sabaté and M. Curell Aguilà, lawyers, and subsequently by M. Curell Aguilà and J. Güell Serra, lawyers,

applicant,

v

Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by O. Mondéjar Ortuño, acting as Agent,

defendant,

the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance, being

Bodegas Ontañón, SA, established in Quel, La Rioja (Spain), represented by J. Grimau Muñoz and J. Villamor Muguerza, lawyers,

intervener

* Language of the case: Spanish.

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 20 November 2007 (Case R 747/2006-4), concerning opposition proceedings between Bodegas Ontañón, SA and Codorniu Napa, Inc.,

THE GENERAL COURT (Second Chamber),

composed of I. Pelikánová, President, K. Jürimäe and S. Soldevila Fragoso (Rapporteur), Judges,

Registrar: B. Pastor, Deputy Registrar,

having regard to the application lodged at the Registry of the Court of First Instance on 24 January 2008,

having regard to the response of OHIM lodged at the Registry on 20 May 2008,

having regard to the response of the intervener lodged at the Registry of the Court on 5 May 2008,

further to the hearing on 13 April 2010,

gives the following

Judgment

1 On 13 March 2003, the applicant, Codorniu Napa, Inc., filed an application for registration of a Community trade mark with the Office for Harmonisation of the Internal Market (Trade Marks and Designs) (OHIM) pursuant to Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1), as amended (replaced by Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1)).

2 The mark for which registration was applied for is the following figurative sign:



3 The goods for which registration was applied for are in Class 33 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and correspond to the following description: 'Wines produced and bottled in Napa Valley (California, USA)'.

4 The Community trade mark application was published in *Community Trade Marks Bulletin* No 93/2003 of 24 November 2003.

5 On 23 February 2004, the intervener, Bodegas Ontañón, SA, brought opposition proceedings under Article 42 of Regulation No 40/94 (now Article 41 of Regulation No 207/2009) against registration of the trade mark for the goods referred to in paragraph 3 above.

6 The opposition was based on two signs. The first sign was the figurative Community trade mark reproduced below and registered under No 2 050 623



for goods in Class 33 of the Nice Agreement and corresponding to the following description: 'Alcoholic beverages (except beers)'. The second was the Spanish word mark

LA ARTESA No 844194, for goods in Class 33 of the Nice Agreement and corresponding to the following description: 'Wines, spirits and liqueurs'.

7 The ground relied on in support of the opposition was that referred to in Article 8(1)(b) of Regulation No 40/94 (now Article 8(1)(b) of Regulation No 207/2009).

8 On 31 March 2006, the Opposition Division upheld the opposition, on the sole basis of a comparison between the earlier figurative Community trade mark ARTESO and the mark applied for. In its decision, the Opposition Division took the view that it was unnecessary to examine whether the evidence of use of the Spanish word mark LA ARTESA was sufficient to establish effective use of that mark.

9 On 30 May 2006, the applicant filed an appeal with OHIM against the decision of the Opposition Division on the basis of Articles 57 to 62 of Regulation No 40/94 (now Articles 58 to 64 of Regulation No 207/2009).

10 By decision of 20 November 2007 ('the contested decision'), the Fourth Board of Appeal of OHIM dismissed the appeal. In particular, it considered that the word elements 'arteso' and 'artesa' were central to and dominated the marks at issue, that the graphic element of the mark applied for was not particularly distinctive and that the expression 'napa valley' was descriptive of the geographic origin of the goods and could not be regarded as a distinctive and dominant element. Next, the Board of Appeal held, firstly, that the goods concerned were identical and, secondly, that, notwithstanding manifest differences between the graphic elements of the marks, those

marks shared their most distinctive and dominant elements, thus possessing a certain degree of visual similarity and being similar phonetically. In the light thereof, the Board of Appeal concluded that there was a likelihood of confusion between those signs. The Board of Appeal considered it pointless to examine the evidence of genuine use of the earlier Spanish mark having regard to the fact that, on the basis of one of the prior rights, the form of order sought by the opponent was granted in full.

Forms of order sought by the parties

11 The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

12 OHIM and the intervener contend that the Court should:

— dismiss the action;

— order the applicant to pay the costs.

Law

13 The applicant raises a single plea in law in support of its action, alleging infringement of Article 8(1)(b) of Regulation No 40/94.

Arguments of the parties

14 The applicant submits that the signs at issue are not sufficiently similar so as to give rise to a likelihood of confusion.

15 It argues that, when evaluating the existence of a likelihood of confusion, the Board of Appeal did not follow the approach adopted in the case-law of the General Court, since it did not carry out an overall analysis of the signs at issue. In particular, the Board of Appeal merely isolated and compared the word elements, finding them to be dominant, and dissociated the graphic components of the signs, finding them to be accessory. Those graphic elements are examined only once in a comparison with the word elements, in order to establish whether they constitute a differentiating factor sufficient to remove any likelihood of confusion.

16 The applicant takes the view that the word elements of the marks at issue do not dominate the image of those marks and that the figurative elements, having regard to the overall impression which they create, are not negligible. On the contrary, they

have an importance analogous to that of the word elements, since they occupy a position at least equivalent to that of the word elements, they are much larger in size and they confer on the signs a very particular and original shape.

17 It asserts that, from a phonetic point of view, the two signs are clearly different, since the mark applied for is made up of three words and seven syllables ('ar', 'te', 'sa', 'na', 'pa', 'va', 'lley'), while the earlier mark comprises a single three-syllable word ('ar', 'te', 'so'). Similarly, it points out that, phonetically, the mark applied for is longer than the earlier mark.

18 The applicant submits that, contrary to the findings of the Board of Appeal, the expression 'napa valley' cannot be excluded from the phonetic comparison of the signs at issue, since the expression 'artesa napa valley' will be used in its entirety by the public when buying goods, thus constituting an additional differentiating factor for the mark for which registration is sought.

19 It states that, from a conceptual point of view, the fact that the word element 'artesa' of the mark applied for has a specific meaning in Spanish tends to neutralise the phonetic similarities with the earlier mark, the word element 'arteso' of which, having no meaning in Spanish, could evoke a mythological person, such as that placed above that element.

20 It adds that the two marks give different conceptual impressions, since the expression 'napa valley' of the mark applied for gives consumers unequivocal conceptual information and its graphic element expresses an idea of modernity. The word and figurative elements of the earlier mark, however, associate the sign with classical mythology.

21 The applicant states that wines and alcoholic beverages in general are marketed in supermarkets, food shops and restaurants, which allows consumers to examine the labels on the bottles. Thus, consumers would perceive the marks in question visually more than phonetically.

22 The applicant submits that the expression 'napa valley', appearing in the mark applied for, indicates a geographic origin different from that of the goods covered by the earlier mark. That fact assists in differentiating between the mark applied for and the earlier mark, since the geographic origin of alcoholic beverages is normally regarded as a particular feature to which the average consumer accords great importance.

23 The applicant concludes that, given that the signs differ greatly in their graphics and that, in the sector of the goods in question, the visual aspect of the signs is more important than the phonetic aspect, the figurative marks at issue can 'peacefully co-exist' on the market.

24 OHIM and the intervener dispute all the arguments put forward by the applicant.

Findings of the Court

25 Under Article 8(1)(b) of Regulation No 40/94, upon opposition by the proprietor of an earlier trade mark, the trade mark applied for is not to be registered if because of its identity with or similarity to the earlier trade mark and the identity or similarity

of the goods or services covered by the trade marks there exists a likelihood of confusion on the part of the public in the territory in which the earlier trade mark is protected. The likelihood of confusion includes the likelihood of association with the earlier trade mark. In addition, by virtue of Article 8(2)(a)(i) of Regulation No 40/94 (now Article 8(2)(a)(i) of Regulation No 207/2009), earlier trade marks means trade marks registered in the European Community with a date of application for registration which is earlier than the date of application for registration of the Community trade mark.

26 In accordance with settled case-law, the risk that the public might believe that the goods or services in question come from the same undertaking or from economically-linked undertakings constitutes a likelihood of confusion. In accordance with that case-law, the likelihood of confusion must be assessed globally, according to the relevant public's perception of marks and of the goods or services in question, taking into account all factors relevant to the circumstances of the case, particularly the interdependence between the similarity of the trade marks and that of the goods or services covered (Case T-162/01 *Laboratorios RTB* v *OHIM - Giorgio Beverly Hills (GIORGIO BEVERLY HILLS)* [2003] ECR II-2821, paragraphs 30 to 33, and Case T-259/06 *Torres* v *OHIM – Navisa Industrial Vinícola Española (MANSO DE VELASCO)* [2008], not published in the ECR, paragraphs 23 and 24).

27 For the purposes of applying Article 8(1)(b) of Regulation No 40/94, a likelihood of confusion presupposes both that the two marks are identical or similar and that the goods or services which they cover are identical or similar. Those conditions are cumulative (Case T-316/07 *Commercy* v *OHIM - easyGroup IP Licensing (easyHotel)* [2009] ECR II-43, paragraph 42, and judgment of 23 September 2009 in Case T-291/07 *Viñedos y Bodegas Príncipe Alfonso de Hohenlohe* v *OHIM – Byass (ALFONSO)* [2009] not published in the ECR, paragraph 25).

28 Furthermore, in accordance with case-law, in the global assessment of the likelihood of confusion, account should be taken of the average consumer of the category of

goods concerned, who is reasonably well informed and reasonably observant and circumspect. 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 (Case T-256/04 *Mundipharma* v *OHIM - Altana Pharma (RESPICUR)* [2007] ECR II-449, paragraph 42, and *ALFONSO*, paragraph 27).

29 In the present case, the likelihood of confusion was assessed by the Board of Appeal in the light of the two Community trade marks, the earlier mark covering 'alcoholic beverages (except beers)' and the mark applied for 'wines produced and bottled in Napa Valley (California, USA)'. The Board of Appeal took the view, in paragraph 20 of the contested decision, that the goods covered by the earlier mark were identical to those covered by the mark applied for, which has not been directly contested by the applicant.

30 Similarly, the Board of Appeal held, in paragraph 16 of the contested decision, that, having regard to the nature of the goods in question and the fact that the earlier mark is a Community trade mark, the relevant public was composed of average European consumers, which again has not been contested by the applicant.

The comparison of the signs at issue

31 The global assessment of the likelihood of confusion, in relation to the visual, phonetic or conceptual similarity of the signs at issue, must be based on the overall impression given by them, bearing in mind, in particular, their distinctive and dominant components. The perception of the marks by the average consumer of the goods or

services in question plays a decisive role in the global assessment of that likelihood of confusion. In this regard, the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details (Case C-334/05 P *OHIM* v *Shaker* [2007] ECR I-4529, paragraph 35 and the case-law cited).

32 Assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark. On the contrary, the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components (see *OHIM* v *Shaker*, paragraph 41 and the case-law cited). It is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element (*OHIM* v *Shaker*, paragraph 42, and judgment of 20 September 2007 in Case C-193/06 P *Nestlé* v *OHIM*, not published in the ECR, paragraph 43). That could be the case in particular where that component is likely alone to dominate the image of that mark which the relevant public remembers, such that all the other components of the mark are negligible in the overall impression given by it (*Nestlé* v *OHIM*, paragraph 43).

33 In the present case, the Board of Appeal took the view that the marks in question shared their most distinctive and dominant elements and therefore had a certain degree of visual similarity and were phonetically similar.

34 In that regard, the applicant takes the view that the graphical element is not negligible in the overall impression given by each sign and objects to the fact that the Board of Appeal, in assessing the likelihood of confusion, took into account only the word elements.

— The visual similarity

35 In accordance with the case-law, when assessing the dominant character of one or more given components of a composite trade mark, account must be taken, in particular, of the intrinsic qualities of each of those components by comparing them with those of other components. In addition and accessorily, account may be taken of the relative position of the various components within the arrangement of the mark (Case T-6/01 *Matratzen Concord* v *OHIM - Hukla Germany (MATRATZEN)* [2002] ECR II-4335, paragraph 35, and judgment of 13 December 2007 in Case T-242/06 *Cabrera Sánchez* v *OHIM – Industrias Cárnicas Valle (el charcutero artesano)*, not published in the ECR, paragraph 47).

36 It is therefore appropriate to consider whether the word element stands out as the dominant element in the overall impression given by each of the marks at issue.

37 Firstly, it must be stated that, where a sign consists of both figurative and word elements, it does not automatically follow that it is the word element which must always be considered to be dominant (see, to that effect, Case T-3/04 *Simonds Farsons Cisk* v *OHIM - Spa Monopole (KINJI by SPA)* [2005] ECR II-4837, paragraph 45). In the case of a composite mark, the figurative element may rank equally with the word element (see, to that effect, Case T-110/01 *Vedial* v *OHIM - France Distribution (HUBERT)* [2002] ECR II-5275, paragraph 53, and *el charcutero artesano*, paragraph 55).

38 Secondly, as recalled in paragraph 32 above, it is only if all the other components of the mark are negligible that the assessment of the similarity can be carried out solely on the basis of the dominant element.

39 In the present case, contrary to the conclusion reached by the Board of Appeal, the word element in the two marks at issue does not constitute the dominant element having regard to the various figurative elements of which those marks are composed and to the position of those elements in the signs. The figurative elements, in particular their shape, size and colour, placed above the word elements, clearly have a part in determining the image of each of the marks at issue which the relevant public retains, such that they cannot be ignored when those marks are perceived.

40 The image of the earlier mark retained by consumers represents, in black and white, a centaur straddled by a rider, both holding a staff from which an amphora hangs at both ends, with the word 'arteso' written in capital letters below the design. However, with regard to the mark applied for, the image retained by consumers is a vertical rectangle which contains, in its upper section against a grey background, a triangle itself containing a sinuous element, above which is written the word 'artesa' in golden capital letters on a black background and, in its lower section, the expression 'napa valley', also written in gold capital letters on a black background.

41 Accordingly, as the applicant has rightly argued, the visual comparison between the signs must be carried out on the basis of all of their various components: figurative and word elements.

42 In those circumstances, it is appropriate to analyse the similarity of the signs on the basis of the overall impression given by all their various components and to ascertain whether the conclusion reached by the Board of Appeal after its examination is affected by the error which it committed.

43 In accordance with the case-law, the fact that the marks at issue contain similar word elements is not in itself sufficient to justify the conclusion that the signs at issue are visually similar. The presence in the signs of figurative elements of a particular configuration is likely to lead to the overall impression conveyed by each sign being different (see, to that effect, Case T-156/01 *Laboratorios RTB* v *OHIM - Giorgio Beverly Hills (GIORGIO AIRE)* [2003] ECR II-2789, paragraphs 73 and 74, and *KINJI by SPA*, paragraph 48).

44 Indeed, as has been pointed out in paragraph 39 above, the signs at issue are significantly different in the shape, size and colour of their graphical elements, namely, in the earlier mark, the representation in black and white of a centaur straddled by a rider, and, in the mark applied for, the representation in different colours of a triangle containing a sinuous element and placed in a rectangle. Nevertheless, despite those differences, the comparison between the signs shows a strong similarity between the word elements 'arteso' and 'artesa', which are written in similar capital letters, which are placed in a similar position below the graphical elements, and whose only differences are their colour and their final vowel. The word element 'napa valley', given its position, the size of its letters, which are smaller than those used for the element 'artesa', and the narrow separation between the letters of which it is composed, stands out only slightly from the mark as a whole and is presented as a secondary element in that mark, which cannot play a decisive role in the visual differentiation of the marks at issue. Accordingly, contrary to the applicant's submissions, the presence in both marks of the common word part 'artes' leads to a finding of a slight degree of visual similarity between the marks.

45 In the light of the foregoing, the Court considers that the signs at issue have a slight degree of visual similarity.

— The phonetic similarity

46 From a phonetic point of view, it cannot be disputed that the word elements 'arteso' and 'artesa' in the two marks at issue are very similar. As has already been pointed out in paragraph 44 above, those words differ only in their final vowel.

47 However, the applicant asserts that the Board of Appeal erred in not taking into consideration, in the phonetic comparison of the signs, the word element 'napa valley' of the mark applied for, which, in its view, reinforces the differences between those signs.

48 In that regard, it must be noted that, a priori, the expression 'artesa napa valley' of the mark applied for gives a different phonetic impression from that given by the word 'arteso'.

49 Nevertheless, in the present case, the expression 'napa valley' occupies a secondary place in relation to the word 'artesa' and, as a secondary element in the mark applied for, will be disregarded by the relevant public when pronouncing that mark. In addition, as the Board of Appeal pointed out in paragraph 32 of the contested decision, the relevant English-speaking public will rather perceive that element as an indication

of geographical origin of the goods in question and not as a distinctive element of that mark. Thus, it is very probable that, in referring to the mark applied for, consumers will merely say the word 'artesa' (judgment of 14 November 2007 in Case T-101/06 *Castell del Remei* v *OHIM – Bodegas Roda (CASTELL DEL REMEI ODA)*, not published in the ECR, paragraph 66). Accordingly, contrary to the applicant's submissions, the word element 'napa valley' is not sufficient to remove all phonetic similarity between the signs at issue.

50 Having regard to the foregoing, it must be concluded that there is strong phonetic similarity between the two signs.

— The conceptual similarity

51 In accordance with case-law, the conceptual differences can be such as to counteract the visual and phonetic similarities if at least one of the marks at issue has, from the point of view of the relevant public, a clear and specific meaning so that the public is capable of grasping it immediately (Case T-292/01 *Phillips-Van Heusen* v *OHIM - Pash Textilvertrieb und Einzelhandel (BASS)* [2003] ECR II-4335, paragraph 54).

52 In the present case, as the Board of Appeal noted in paragraph 34 of the contested decision and OHIM has argued, the word 'arteso' has no semantic weight and the word 'artesa', which means a vessel of a specific shape for kneading bread, is rarely used in Spanish and its use is limited to a specialised public. Furthermore, since the term 'artesa' is a Spanish word, it will have no meaning to the rest of the relevant non-Spanish-speaking public in the European Union. Accordingly the relevant public, as

defined in paragraph 30 above, will not attribute any conceptual content to those word elements.

53 Contrary to the applicant's arguments, the view must be taken that the expression 'napa valley' is not sufficient to prevent the public from believing that the goods in question emanate from the same undertaking or from economically linked undertakings. Indeed, as has been pointed out in paragraph 49 above, the expression in question will be perceived as an indication of geographical origin of the goods in question by a significant part of the relevant public, but without that public attributing a particular conceptual content to the sign.

54 The applicant's argument that the figurative elements of the signs evoke different concepts cannot call that conclusion into question. Firstly, the representation of a centaur straddled by a rider carrying a staff with amphorae alludes to the mythological origins of wine and therefore refers to wine and its production. Accordingly, the sign will evoke wine, having regard to the relevant public, but without that evocation constituting a clear and definite meaning for the relevant public which could be such as to establish a conceptual difference between the signs.

55 Secondly, with regard to the mark applied for, the stylisation of the graphic element makes it difficult to convey a conceptual content and above all makes it difficult for that content to be clearly perceived by the average consumer. Accordingly, it is not possible to conclude that the mark applied for alludes, in the overall impression which it gives, to an idea of modernity which will immediately be grasped by the public concerned.

56 Having regard to the foregoing, it must be concluded that, conceptually, consumers will not note any particular semantic connotation with regard to the signs at issue which enables them to establish a difference or similarity between the two signs.

The overall assessment of the likelihood of confusion

57 A global assessment of the likelihood of confusion implies some interdependence between the relevant factors, and in particular the similarity between the trade marks and that between the goods or services covered. Accordingly, a low degree of similarity between these goods or services may be offset by a high degree of similarity between the marks, and vice versa (see, by analogy, Case C-39/97 *Canon* [1988] ECR I-5507, paragraph 17, and Joined Cases T-81/03, T-82/03 and T-103/03 *Mast-Jägermeister* v *OHIM - Licorera Zacapaneca (VENADO with frame and others)* [2006] ECR II-5409, paragraph 74).

58 In the present case, the Board of Appeal considered that the signs compared had a certain degree of visual similarity and were phonetically similar and therefore concluded, in the light of the fact that the goods in question are identical, that there was a likelihood of confusion between the two marks.

59 However, the applicant takes the view that the signs have significant graphical differences and that, given the importance of the visual aspect of signs in the sector of the goods in question, the marks at issue can 'peacefully co-exist' on the market.

60 In that regard, it must be stated that, in the global assessment of the likelihood of confusion, the visual, phonetic or conceptual aspects of the opposing signs do not always have the same weight and it is then appropriate to examine the objective conditions under which the marks may be present on the market (Joined Cases T-117/03 to T-119/03 and T-171/03 *New Look* v *OHIM - Naulover (NLSPORT, NLJEANS, NLACTIVE and NLCollection)* [2004] ECR II-3471, paragraph 49).

61 The significance of the similarities or differences between the signs may depend, in particular, on the inherent qualities of the signs or the conditions under which the goods or services covered by the signs are marketed. If the goods covered by the marks in question are usually sold in self-service stores where consumers choose the product themselves and must therefore rely primarily on the image of the trade mark applied to the product, a visual similarity between the signs will as a general rule be more important (*NLSPORT, NLJEANS, NLACTIVE and NLCollection*, paragraph 49, and *el charcutero artesano*, paragraph 80). If, however, the product is primarily sold orally, greater weight will usually be attributed to any phonetic similarity between the signs (judgment of 8 February 2007 in Case T-88/05 *Quelle* v *OHIM – Nars Cosmetics (NARS)*, not published in the ECR, paragraph 68).

62 In the wines sector, unlike the non-alcoholic beverages referred to in the *KINJI by SPA* judgment (paragraphs 57 and 58), consumers thereof usually describe and recognise wine by reference to the verbal element which identifies it, in particular in bars and restaurants, in which wines are ordered orally after their names have been seen on the wine list (Case T-40/03 *Murúa Entrena* v *OHIM - Bodegas Murúa (Julián Murúa Entrena)* [2005] ECR II-2831, paragraph 56, and judgment of 12 March 2008 in Case T-332/04 *Sebirán* v *OHIM – El Coto De Rioja (Coto D'Arcis)*, not published in the ECR, paragraph 38). Accordingly, in the present case, it is appropriate to attach a particular importance to the phonetic similarity between the signs at issue.

63 In the present case, it has been held that the goods covered by the two marks, that is to say, wines, are identical and that the signs have a strong phonetic similarity and a slight visual similarity. In those circumstances, the Court considers that, in the light of the manner in which consumers describe the goods in question and, accordingly, of the importance to be accorded to the phonetic similarity, there is a likelihood of confusion between the two signs within the meaning of Article 8(1)(b) of Regulation No 40/94.

64 Furthermore, the fact that the goods covered by the mark applied for are produced, as indicated on that mark, in the Napa Valley cannot prevent a likelihood of confusion. In accordance with the case-law, there may be a likelihood of confusion even where the public perception is that the goods are produced in different places (*Canon*, paragraphs 29 and 30, and Case T-29/04 *Castellblanch* v *OHIM - Champagne Roederer (CRISTAL CASTELLBLANCH)* [2005] ECR II-5309, paragraph 52).

65 Consequently, the plea in law must be rejected and, accordingly, the action dismissed in its entirety.

Costs

66 Under Article 87(2) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant was unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by OHIM and the intervener.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

1. Dismisses the action;

2. Orders Codorniu Napa, Inc., to pay the costs.

Pelikánová Jürimäe Soldevila Fragoso

Delivered in open court in Luxembourg on 23 November 2010.

[Signatures]