

Supreme Court of Appeal of South Africa

**MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL**

From: The Registrar, Supreme Court of Appeal

Date: 9 March 2006

Status: Immediate

*Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal*

**DIE BERGKELDER BEPERK**

**v**

**VREDENDAL KOÖP WYNMAKERY & 2 OTHERS**

The SCA today dismissed an appeal against a judgment of the Cape High Court concerning the trademark infringement of the so-called Grünberger wine bottle. The appellant, Die Bergkelder Bpk, holds a trade mark for a container for South African wines in the form of the bottle. The bottle has, however, a classical wine bottle shape and had been used by foreign wine producers whose wines had been on the local market before Grünberger wines became available.

The respondents sought to market a local wine in a similarly shaped bottle save that it had embossed on the one flat side a large prominent crayfish.

Die Bergkelder Bpk sought to interdict the respondents on the ground of trademark infringement. Without deciding whether there was infringement, the court ordered the expungement of the trademark on the ground that the shape of the bottle on its own cannot distinguish the wine of Bergkelder from the wines of others who use and have used the particular bottle legitimately.

