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Press and Information

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Judgment of the Court of Justice in Case C-343/07

Bavaria NV, Bavaria Italia Srl v Bayerischer Brauerbund eV

**THE REGISTRATION OF ‘BAYERISCHES BIER’ AS A PROTECTED
GEOGRAPHICAL INDICATION IS VALID**

Bayerischer Brauerbund is a German association working to protect the common interests of Bavarian brewers, which was founded in 1917 and has been the proprietor of the registered collective trade marks ‘Bayrisch Bier’ and ‘Bayerisches Bier’ since 1968. In 1993 Bayerischer Brauerbund submitted to the German Government an application which – notwithstanding opposition from a number of Member States – resulted in the registration in 2001 of ‘Bayerisches Bier’ as a protected geographical indication (‘PGI’).¹

Bavaria, a Dutch beer producer, operates on the international market and began to use the word ‘Bavaria’ in 1925. It is the proprietor of several trade marks containing the word ‘Bavaria’ registered as from 1947. Bavaria Italia belongs to the Bavaria group of companies.

In 2004, Bayerischer Brauerbund, following proceedings brought in other Member States, asked the Tribunale di Torino (District Court, Turin), to stop Bavaria and Bavaria Italia from using the Italian parts of the marks. As the Tribunale di Torino allowed in part the application of Bayerischer Brauerbund, Bavaria and Bavaria Italia appealed against that judgment. The Corte d’appello de Torino (Appeal Court, Turin) referred to the Court for a preliminary ruling a number of questions concerning the validity of the regulation on PGIs and the interpretation of the consequences of the recognition of the PGI ‘Bayerisches Bier’ for pre-existing marks containing the word ‘Bavaria’.

The Court of Justice can find no factor liable to affect the validity of Council Regulation No 1347/2001 from the point of view of its scope, legal basis or the ‘simplified’ registration procedure.

The procedure for registration of the PGI

The Court points out that an assessment of the conditions for registration requires detailed knowledge of matters particular to the Member State concerned, subject to review by the

¹ Council Regulation (EC) No 1347/2001 of 28 June 2001 supplementing the Annex to Commission Regulation (EC) No 1107/96 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ 2001 L 182, p. 3).

national courts. It states that the German authorities verified those conditions for registration, and the correctness of their decision was not called into question before a national court. Furthermore, the Court holds that the Community institutions were right to find that the PGI 'Bayerisches Bier', first, satisfied the substantive conditions for registration and, secondly, had not become generic as the direct link between the reputation of Bavarian beer and its geographical origin had not disappeared.

The conflict between the PGI and the pre-existing trade mark

Where there is conflict with a pre-existing trade mark, the Court points out that the Community institutions may – on the basis of prior analysis relating to the possibility of a mistake on the part of the consumer as to the identity of the product – refuse to register the PGI. Once the PGI has been registered, it is by contrast for the national courts, in order to permit the use of the trade mark to continue despite that conflict, to verify that the mark in question was registered in good faith before the date on which the application for registration was lodged and that there are no grounds for invalidity or revocation of the trade mark.

For all those reasons, the Court holds that the regulation registering 'Bayerisches Bier' as a PGI has no adverse effects on the validity and the possibility of using, in one of the situations of conflict referred in the Regulation on PGIs², pre-existing trade marks of third parties in which the word 'Bavaria' appears, in so far as those trade marks comply with the above conditions, which is for the national courts to verify.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR CS DE EL EN ES IT NL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-343/07>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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² Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1).