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Judgment of the Court of Justice in Case C-132/05

Commission of the European Communities v Federal Republic of Germany

ONLY CHEESES BEARING THE PROTECTED DESIGNATION OF ORIGIN (PDO) 'PARMIGIANO REGGIANO' CAN BE SOLD UNDER THE NAME 'PARMESAN'

Since the Commission has not established that the German legal system does not sufficiently protect the PDO 'Parmigiano Reggiano', the infringement proceedings against Germany are dismissed.

Under the regulation concerning Community protection of designations of origin¹, products registered as a PDO are protected inter alia against 'any misuse, imitation or evocation'. Generic names may not, however, be registered, and registered designations may not become generic.

Being of the opinion that Germany does not protect the PDO 'Parmigiano Reggiano' sufficiently, the Commission brought infringement proceedings. Taking the view that the term 'Parmesan' is a translation of the PDO 'Parmigiano Reggiano', it called on the German authorities to take action on their own initiative to stop the marketing of products sold under the name 'Parmesan' which do not comply with the specification for the PDO 'Parmigiano Reggiano'.

The Court first points out that it is not only the exact form in which a PDO has been registered which is protected under Community law.

Second, it holds that, given the phonetic and visual similarity between the names in question, and the similar appearance of the products, use of the name 'Parmesan' must be regarded as an evocation of the PDO 'Parmigiano Reggiano', which is protected by Community law against such an occurrence. The question whether the name 'Parmesan' is a translation of the PDO 'Parmigiano Reggiano' is therefore of no relevance. Since it has failed to show that the name 'Parmesan' is generic, Germany cannot rely on that exception under the regulation.

Finally, with regard to Germany's obligation to take action against infringements of PDOs, the Court points out that the mere possibility of being able to rely on the provisions of a regulation before the national courts does not release the Member States from their duty to take the national measures which may be needed to ensure its full application. The Court nevertheless holds that

¹ 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. 1-8)

the German legal system provides instruments which are capable of guaranteeing protection of the interests of producers and consumers alike.

Contrary to the Commission's claim, a Member State is not obliged to take on its own initiative the measures required in order to penalise the infringement on its territory of PDOs from another Member State. The Court adds that the only inspection structures which are obliged to ensure compliance with PDOs are those of the Member State from which the PDO in question originates. Responsibility for monitoring compliance with the specification for the PDO 'Parmigiano Reggiano' does not therefore lie with the German inspection authorities.

The Court therefore dismisses the infringement proceedings brought by the Commission against Germany.

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Languages available: BG, CS, DE, EL, EN, HU, IT, PL, PT, RO, SK

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-132/05>

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

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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