



Court of Justice of the European Union

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Press and Information

Advocate General's Opinion in Case C-44/17
The Scotch Whisky Association, The Registered Office v Michael Klotz

Advocate General Saugmandsgaard Øe issues his opinion on the interpretation of EU law provisions relating to geographical indications for spirit drinks in the context of a dispute concerning a German whisky named 'Glen Buchenbach'

A German court has asked the Court of Justice whether use of such a name is capable of constituting 'indirect use' or an 'evocation' of the registered geographical indication 'Scotch Whisky' or a 'false or misleading indication liable to convey a false impression as to [the] origin' of the relevant product

Mr Michael Klotz markets a whisky under the designation 'Glen Buchenbach', which is produced by a distillery located in Berglen in the Buchenbach valley in Swabia (Germany). The label on the bottles includes, inter alia, the following information: 'Waldhornbrennerei [Waldhorn distillery], Glen Buchenbach, Swabian Single Malt Whisky, Deutsches Erzeugnis [German product], Hergestellt in den Berglen [produced in the Berglen]'.

The Scotch Whisky Association, which promotes the interests of the whisky industry in Scotland, takes the view that use of the term 'Glen' for the German whisky in question infringes the registered geographical indication 'Scotch Whisky'. Despite the other information on the label, the term 'Glen' is allegedly liable to cause consumers to make an inappropriate connection to the protected geographical indication and, thus, to mislead them as to the true origin of the whisky in question. The Scotch Whisky Association therefore brought an action before the Landgericht Hamburg (Regional Court, Hamburg, Germany) requesting that it order Mr Klotz to stop using the designation 'Glen Buchenbach' for that whisky.

It is in that context that the Landgericht, Hamburg has asked the Court of Justice to interpret EU legislation on the protection of registered geographical indications applicable to spirit drinks.¹ The referring court states that the word 'glen' is a Gaelic word meaning 'a narrow valley' and that 31 out of 116 distilleries producing 'Scotch Whisky' — thus whisky of Scottish origin — are named after the glen in which they are located. It observes, however, that there are also whiskies produced outside of Scotland which have 'glen' as part of their name, such as the whiskies 'Glen Breton', 'Glendalough' and 'Glen Els', which come from Canada, Ireland and Germany respectively.

In today's opinion, Advocate General Henrik Saugmandsgaard Øe notes that this is the first time the Court has been invited to specify to what extent a designation without any similarity, either phonetic or visual, with a protected geographical indication, may nevertheless infringe that indication.

First, the Advocate General states that a registered geographical indication is only subject to prohibited 'indirect use' if the disputed denomination is identical or phonetically and/or visually similar to the indication in question. Therefore, it is not sufficient that that designation is liable to evoke in the relevant public some kind of association of ideas with the indication or the relevant geographical area.

¹ Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ 2008 L 39, p. 16).

Second, the Advocate General considers that the disputed denomination does not necessarily require phonetic and visual similarity with the registered geographic indication in order for it to constitute an unlawful ‘evocation’ of that indication. However, it is not sufficient that the designation is liable to evoke in the relevant public some kind of association of ideas with the protected indication or the relevant geographical area. In the absence of phonetic and visual similarity, it is necessary to take account of the conceptual proximity existing, if it be the case, between the indication in question and the disputed designation, in so far as that proximity is of such a nature as to lead the consumer to have in mind, as reference image, the product whose indication is protected. It is therefore solely for the Landgericht Hamburg to determine whether, in the present case, when the average European consumer is confronted with a comparable product bearing the designation ‘Glen’, the image triggered directly in his mind is that of ‘Scotch Whisky’.

The Advocate General adds that, in order to establish the existence of a prohibited ‘evocation’, **it is not necessary to take account of additional information found alongside the sign at issue** in the description, presentation or labelling of the product concerned, in particular that relating to the true origin of the product. It is irrelevant, in that context, that the disputed designation corresponds to the name of the undertaking and/or the place where the product is manufactured; Mr Klotz claims that the designation ‘Glen Buchenbach’ is a play on words consisting of the name of the place of origin of the drink at issue (Berglen) and the name of a local river (Buchenbach).

Third, the Advocate General states that for the purposes of establishing the existence of a ‘false or misleading indication liable to convey a false impression as to [the] origin’ of the relevant product, it is also not necessary to take account of additional information found alongside the sign at issue in the description, presentation or labelling of the product, in particular with regard to its true origin.

NOTE: The Advocate General’s Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court’s decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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