



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-44/17  
Scotch Whisky Association v Michael Klotz

**In order to decide whether there is an ‘evocation’ prohibited by EU law, the national court must determine whether a consumer thinks directly of the protected geographical indication ‘Scotch Whisky’ when he sees a comparable product bearing the designation ‘Glen’**

*It is not sufficient that the designation is liable to evoke, in the consumer concerned, some kind of association of ideas with the protected indication or the relevant geographical area*

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 registered 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 the EU rules on the protection of registered geographical indications applicable to spirit drinks.<sup>1</sup>

In today’s judgment, the Court of Justice holds, **first**, that it is apparent from the wording, context and objective of the Regulation that, **for the purpose of establishing that there is ‘indirect commercial use’ of a registered geographical indication, the disputed element must be used in a form that is either identical to that indication or phonetically and/or visually similar to it.** Accordingly, it is not sufficient that that element is liable to evoke in the relevant public some kind of association with the indication concerned or the geographical area relating thereto.

**Second, the Court holds that the decisive criterion for finding there to be an ‘evocation’ of the protected geographical indication is whether, when an average European consumer who is reasonably well informed and reasonably observant and circumspect is confronted with the name of the product concerned, the image triggered in his mind is that of the product whose indication is protected.** That is a matter for the national court to determine, taking into account, as the case may be, the partial incorporation of a protected geographical indication in the disputed designation, any phonetic and/or visual similarity between that designation and that indication, or any conceptual proximity between the designation and the indication. **For the purposes of that determination, account is not to be taken either of the**

<sup>1</sup> 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).

**context surrounding the disputed element, or, in particular, of the fact that that element is accompanied by an indication of the true origin of the product concerned.**

Consequently, in the present case, **the national court will have to determine whether an average European consumer thinks directly of the protected geographical indication ‘Scotch Whisky’ when he is confronted with a comparable product bearing the designation ‘Glen’.**

However, it is not sufficient that the disputed element of the sign at issue evokes in the relevant public some kind of association with the protected geographical indication or the geographical area relating thereto. Such an interpretation of the concept of ‘evocation’ would jeopardise the objective of the Regulation, which is ‘ensure a more systematic approach in the legislation governing spirit drinks’.

**Third and finally, the Court holds that, for the purpose of establishing that there is a ‘false or misleading indication’, as prohibited by the Regulation, account is not to be taken of the context in which the disputed element is used.** Attainment of the Regulation’s objectives — in particular the protection of registered geographical indications in the interests of consumers and of economic operators bearing higher costs in order to guarantee the products’ quality — would be jeopardised if that protection could be restricted by the fact that additional information is found alongside an indication which is false or misleading.

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**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 European Union 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 judgment is published on the CURIA website on the day of delivery.

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