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Court of Justice of the European Union

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Judgment in Case C-490/19

Syndicat interprofessionnel de défense du fromage Morbier v Société Fromagère du Livradois SAS

EU law prohibits the reproduction of the shape or appearance of a product protected by a PDO in certain circumstances

It is necessary to determine whether that reproduction may mislead consumers taking into account all the relevant factors, including the way in which the product is presented to the public and marketed and the factual context

Morbier is a cheese produced in the Jura mountains (France) which has enjoyed a protected designation of origin (PDO) since 22 December 2000. It is characterised by the presence of a black line which divides the cheese in two horizontally. That black line, originally made from a layer of cinder and now made from vegetable carbon, is expressly referred to in the product description in the specification for the PDO.

Société Fromagère du Livradois SAS, which has produced Morbier cheese since 1979, is not situated within the geographical area reserved for the name 'Morbier'. From the expiry of a transitional period it has therefore used the name 'Montboissié du Haut Livradois' for its cheese.

In 2013, the Syndicat interprofessionnel de défense du fromage Morbier ('the Syndicat') brought proceedings against Société fromagère du Livradois before the Tribunal de grande instance de Paris (Regional Court, Paris, France). The Syndicat accuses Société Fromagère du Livradois of infringing the PDO and committing acts of unfair and parasitic competition by producing and marketing a cheese that reproduces the visual appearance of 'Morbier', the product covered by the PDO, in particular the black line. Its action was dismissed.

By a 2017 judgment, the cour d'appel de Paris (Court of Appeal, Paris, France) upheld that decision. That court held that the PDO is intended to protect not the appearance or features of a product but its name, so that the production of a product using the same techniques is not prohibited. The Syndicat therefore appealed on a point of law to the referring court.

In those circumstances, the Cour de cassation (Court of Cassation, France) seeks a ruling by the Court of Justice on the interpretation of Article 13(1) of Regulation No 510/2006¹ and Article 13(1) of Regulation No 1151/2012,² which concern the protection of registered names. In particular, the question arises as to whether the reproduction of the physical characteristics of a product covered by a PDO without the use of the registered name may constitute a practice that is liable to mislead the consumer as to the true origin of the product, which is prohibited by Article 13(1)(d) of those two regulations. The Court therefore finds it necessary, for the first time, to interpret Article 13(1)(d) of both of those regulations.

Findings of the Court

The Court finds, in the first place, that Article 13(1) of Regulation No 510/2006 and Article 13(1) of Regulation No 1151/2012 do not prohibit solely the use by a third party of the registered name. In the second place, the Court states that Article 13(1)(d) of both of those regulations prohibits the

¹ Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p.12).

² Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p.1).

reproduction of the shape or appearance characterising a product covered by a registered name where that reproduction may lead the consumer to believe the product in question is covered by that registered name. In that regard, it is necessary to assess whether that reproduction may mislead the European consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account all the relevant factors in the case, including the way in which the products in question are presented to the public and marketed and the factual context.

In reaching those findings, the Court notes, first of all, that Article 13(1) of Regulation No 510/2006 and Article 13(1) of Regulation No 1151/2012 contain a graduated list of prohibited conduct and do not merely prohibit the use of the registered name itself. Thus, although they do not specify the prohibited conduct, Articles 13(1)(d) of both of those regulations broadly cover any conduct, other than that prohibited by Articles 13(1)(a) to (c), which may result in the consumer being misled as to the true origin of the product in question.

Concerning, next, whether the reproduction of the shape or appearance of a product covered by a registered name may constitute conduct liable to mislead the consumer, the Court observes that, indeed, **the protection provided for by Regulations No 510/2006 and No 1151/2012 concerns the registered name and not the product covered by that name. It follows that the purpose of that protection is not to prohibit the use of manufacturing techniques or the reproduction of one or more characteristics indicated in the specification of a product covered by a registered name**, on the ground that they appear in that specification.

Nevertheless, PDOs are protected as they designate a product that has certain qualities or characteristics. Thus, the PDO and the product covered by it are closely linked. Therefore, **the possibility remains that the reproduction of the shape or appearance of a product covered by a registered name may fall within the scope of Article 13(1)(d) of both of those regulations without that name appearing either on the product in question or on its packaging.** This will be the case where that reproduction is liable to mislead the consumer as to the true origin of the product in question.

In order to determine whether that is the case, **it is necessary, in particular, to assess whether an element of the appearance of the product covered by the registered name constitutes a baseline characteristic which is particularly distinctive of that product so that its reproduction may, in conjunction with all the relevant factors in the case in point, lead the consumer to believe that the product containing that reproduction is a product covered by that registered name.**

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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