



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-783/19
Comité Interprofessionnel du Vin de Champagne v GB

Advocate General Pitruzzella: PDO products are protected against all forms of commercial parasitism

That phenomenon occurs when an evocative element (for example, a name) relating to certain products or services triggers directly in the mind of the average consumer the image of a product covered by a PDO

The Comité Interprofessionnel du Vin de Champagne, a body which safeguards the interests of champagne producers, brought an action before the Spanish courts seeking to prevent the use of the word 'CHAMPANILLO' referring, in particular, to some 'tapas bars' (catering establishments) in Catalonia (Spain).

The Audiencia provincial de Barcelona (Provincial Court, Barcelona, Spain), hearing the case on appeal, asked the Court of Justice to interpret EU law on the protection of products covered by a protected designation of origin (PDO), such as the name 'Champagne', in a situation in which the allegedly conflicting name 'CHAMPANILLO' is used to designate not goods but services.

In today's Opinion, Advocate General Giovanni Pitruzzella proposes that the Court should rule that **EU law protects PDO products against all parasitic commercial practices, whether they relate to goods or services.**

Advocate General Pitruzzella states that the **regulation on common organisation of the markets in agricultural products**¹ applies to the present case.

The Advocate General notes that there is no doubt that the PDO 'Champagne' and the disputed name 'CHAMPANILLO' have a certain degree of phonetic and visual similarity, particularly in view of the fact that the Spanish translation of the PDO in question is 'Champán'. That being so, the Advocate General recalls that the words at issue must be visually and phonetically highly similar or almost identical in order for there to be 'use' of a PDO within the meaning of the regulation.² In the present case, however, the suffix 'illo' distinguishes, both visually and phonetically, the word 'CHAMPANILLO' from those other words. As such, the Advocate General **concludes that the word 'CHAMPANILLO' does not constitute 'use', within the meaning of that regulation, of the PDO 'Champagne'.**

The Advocate General notes that the **regulation prohibits** not only misuse of a PDO but also, more generally, **any practice, relating to goods or services, which is aimed at taking undue**

¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671). **Prior to 20 December 2013, the situation at issue in the present case was governed by Council Regulation (EC) No 1234/2007** of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2007 L 299, p. 1), **which is worded in substantially identical terms.**

² Judgment of the Court of 7 June 2018 in Case [C-44/17](#), *Scotch Whisky Association* (see press release [No 83/18](#)), which interpreted 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). As regards the concept of 'use' of a geographical indication (PGI or PDO), that regulation has a similar content to that of Regulation No 1308/2013, which is relevant to the present case.

advantage of the reputation of a PDO through mental association with it. In particular, the regulation **prohibits** undue **evocation** of the PDO.

The Advocate General points out that what is relevant in order to establish whether there is an evocation of a PDO is that **the average circumspect European consumer is led to make a mental association between the contested element referring to the goods or services in question, on the one hand, and the PDO product, on the other.**³ Accordingly, if the national court, which is responsible for carrying out that assessment, relying on the presumed reaction of the consumer, concludes that when the consumer is confronted with the contested sign (in the present case, the name 'CHAMPANILLO'), the 'image triggered directly in his or her mind' is that of the product covered by the registered name (in the present case, champagne), the use of that sign is prohibited under the regulation. However, if, in the opinion of that court, such an association of ideas is unlikely to occur, an evocation within the meaning of that regulation must be ruled out.

In order to ascertain whether there is an evocation, the national court must carry out an **assessment of all the relevant factors in the specific case, taken as a whole.** One of these factors is whether or not the PDO product and the goods or services in question are identical or comparable. However, a low degree of comparability does not, in itself, preclude the existence of an evocation.

As regards the present case, the Advocate General suggests that the Court urge the national court to take into consideration, in addition to the **partial visual and phonetic similarity, the strong conceptual similarity** between the PDO 'Champagne' and the word 'CHAMPANILLO' (literally 'little champagne'). Next, if the national court should ascertain that **the 'tapas bars' identified by the word 'CHAMPANILLO' are linked to the distribution of champagne or of identical or comparable products,** it would then have an additional reason to find that **the word 'CHAMPANILLO' constitutes an undue evocation of the PDO within the meaning of the regulation.** The fact that the word 'CHAMPANILLO' is accompanied, in the insignia and in advertisements, by the **image of two coupe glasses** depicted as coming together in a toast, may also support such a finding.

Lastly, the Advocate General notes that the protection against evocation provided for by the regulation **does not necessarily require that there be a competitive relationship** between the PDO products and the products or services in respect of which the element at issue is used, **a likelihood of confusion** on the part of the consumer in relation to the latter, **or that the conduct consisting in evocation be intentional.** Accordingly, **protection of the PDO does not necessarily require that there be unfair competition.**

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 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.

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

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

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

³ Judgment of the Court of 2 May 2019 in Case [C-614/17](#), *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (see press release [No 55/19](#)).