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Judgment of the General Court in Case T-239/23 | Comité interprofessionnel du vin de Champagne et INAO v EUIPO – Nero Lifestyle (NERO CHAMPAGNE)

### **Nero CHAMPAGNE cannot be registered as an EU trade mark for wine bearing the protected designation of origin ‘Champagne’**

In 2019, the Italian company Nero Lifestyle filed with the European Union Intellectual Property Office (EUIPO) an application for registration of the word sign NERO CHAMPAGNE. That application concerns certain goods and services, including ‘wine complying with the specifications of the protected designation of origin (PDO) “Champagne.”’

The Comité interprofessionnel du vin de Champagne and the Institut national de l’origine et de la qualité objected to registration on the ground, inter alia, that the PDO ‘Champagne’ has been registered since 1973. They maintain that the trade mark NERO CHAMPAGNE is likely to take unfair advantage of the reputation of the PDO products whose protection is essentially intended to assure consumers that they have certain specific characteristics and, therefore, offer a guarantee of quality due to their geographical provenance.

Since the opposition was rejected in part by EUIPO, the professional bodies brought an action before the **General Court of the European Union**. In its judgment, it **annuls EUIPO’s decision and upholds the opposition**, including as regards ‘wine complying with the specifications of [the PDO] “Champagne.”’ Accordingly, **the application for registration of the trade mark NERO CHAMPAGNE is rejected**.

The Court notes, first of all, that EU law does not prohibit a trade mark from containing a PDO. However, its registration may be refused if the PDO does not comply with the product specification concerned, if its use exploits the reputation of a PDO or if the mark applied for conveys a false or misleading indication as to the provenance or origin of the product.

The General Court considers that there is a presumption that a trade mark containing a PDO and registered solely in respect of products complying with the specification of that PDO does not unfairly exploit the reputation of that PDO. However, such a presumption may be rebutted where it is shown that a trade mark is liable to exploit unduly the reputation of a PDO, **even if it designates only products which comply with the product specification of that PDO**. Thus, when evidence to that effect is brought to EUIPO’s attention, EUIPO must examine it in order to ascertain whether they allow that presumption to be rebutted.

Therefore, first, the Court finds that, despite EUIPO’s consistent practice to that effect, the Board of Appeal erred in law in finding, in essence, that that presumption cannot be called into question by any evidence. Secondly, the Board of Appeal of EUIPO was in breach of its obligation to state reasons. It did not sufficiently explain how the evidence produced by the professional bodies was not capable of rebutting the presumption.

Finally, the Court finds that the word ‘nero’ could be perceived by consumers as evoking either the champagne grape variety or its colour, with the result that the mark applied for could convey false or misleading information. The Court notes that that term is used in the name of several well-known Italian grape varieties and that multiple

grapevine varieties include it in their names. Furthermore, the word 'nero' will be understood by the Italian-speaking public as meaning 'black'. The public might therefore think that it is a 'black champagne', even though, under the specification of the PDO, a champagne can only be white or rosé.

**NOTE:** EU trade marks and Community designs are valid for the entire territory of the European Union. EU trade marks coexist with national trade marks. Community designs coexist with national designs. Applications for registration of EU trade marks and Community designs are addressed to EUIPO. Actions against its decisions may be brought before the General Court.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court, as appropriate. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within 2 months and 10 days of notification of the decision. The appeal will not proceed unless the Court first decides that it should be allowed to do so. Accordingly, it must be accompanied by a request that the appeal be allowed to proceed, setting out the issue(s) raised by the appeal that is/are significant with respect to the unity, consistency or development of EU law.

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The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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