

Case C-87/97

**Consorzio per la Tutela del Formaggio Gorgonzola**  
v  
**Käserei Champignon Hofmeister GmbH&Co. KG and**  
**Eduard Bracharz GmbH**

(Reference for a preliminary ruling  
from the Handelsgericht Wien)

(Articles 30 and 36 of the EC Treaty — Regulation (EEC) No 2081/92  
on the protection of geographical indications and designations of origin  
for agricultural products and foodstuffs)

Opinion of Advocate General Jacobs delivered on 17 December 1998 ..... I - 1304  
Judgment of the Court (Fifth Chamber), 4 March 1999 ..... I - 1321

Summary of the Judgment

1. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National measures for the protection of designations of origin registered pursuant to Regulation No 2081/92 — Justification*  
(*EC Treaty, Arts 30 and 36; Council Regulation No 2081/92*)

2. *Agriculture — Standard laws — Protection of geographical indications and designations of origin of agricultural products and foodstuffs — Regulation No 2081/92 — Protection of registered names — Evocation of a registered name — Meaning — Evocation of the protected designation of origin ‘Gorgonzola’ by the name ‘Cambozola’*  
(Council Regulation No 2081/92, Art. 13(1)(b))
  
3. *Agriculture — Standard laws — Protection of geographical indications and designations of origin of agricultural products and foodstuffs — Regulation No 2081/92 — Trade mark registered before the registration of a designation of origin — Proceedings brought by the trade mark proprietor in respect of its use — Requirements — ‘Cambozola’ registered as a trade mark before registration of the designation of origin ‘Gorgonzola’ — Assessment by the national courts — Criteria*  
(EC Treaty, Arts 30 and 36; Council Regulation No 2081/92, Art. 14(2); Council Directive 89/104)
  
1. In the present state of Community law, the principle of the free movement of goods does not preclude Member States from taking the measures necessary for the protection of names registered in accordance with Regulation No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.
  
2. Article 13(1)(b) of Regulation No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs provides that registered names are protected against all evocation, even if the true origin of the product is indicated.

Articles 30 and 36 of the Treaty do not preclude the application of rules laid down by a bilateral convention between Member States on the protection of indications of provenance and designations of origin, provided that the protected names have not become generic in the country of origin; *a fortiori*, they do not preclude Member States from taking the measures necessary for the protection of names registered in accordance with Regulation No 2081/92.

The concept of evocation covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected. It is possible for a protected designation to be evoked where there is no likelihood of confusion between the products concerned and even where no Community protection extends to the parts of that designation which are echoed in the term or terms at issue.

Since the product at issue is a soft blue cheese which is not dissimilar in appearance to 'Gorgonzola', it would seem reasonable to conclude that a protected name is indeed evoked where the term used to designate that product ends in the same two syllables and contains the same number of syllables, with the result that the phonetic and visual similarity between the two terms is obvious. Use of a name such as 'Cambozola' may therefore be deemed, for the purposes of Article 13(1)(b) of Regulation No 2081/92, to evoke the protected designation of origin 'Gorgonzola', irrespective of the fact that the packaging indicates the product's true origin.

3. Article 14(2) of Regulation No 2081/92 provides that, for the continued use of a trade mark registered before the registration of a designation of origin pursuant to that Regulation, the trade mark in question must have been registered in good

faith and must not be liable to be declared invalid or revoked on the grounds set out in the relevant provisions of the First Directive 89/104 on trade marks.

As regards the trade mark 'Cambozola', registered before the registration of the designation of origin 'Gorgonzola', it is for the national court to decide whether the conditions laid down in Article 14(2) are satisfied, having regard in particular to the law in force at the time of registration of the trade mark, in order to determine whether such registration could have been made in good faith — a concept which must be interpreted in the light of all the legislation, national and international, applicable at the time when the application for registration of the trade mark was lodged — on the basis that use of a name such as 'Cambozola' does not *per se* constitute an attempt to deceive the consumer.