

JUDGMENT OF THE COURT
OF 25 FEBRUARY 1981 ¹

**Firma A. Weigand
v Schutzverband Deutscher Wein eV
(preliminary ruling requested
by the Bundesgerichtshof)**

“Description and presentation of wines”

Case 56/80

*Agriculture — Common organization of the market — Wine — Description and presentation of wines — Prohibition of “misleading information” — Scope
(Council Regulation No 355/79, Arts 8 (c), 18 (c) and 43)*

The expression “misleading information” employed in Articles 8 (c) and 18 (c) of Regulation No 355/79 laying down general rules for the description and presentation of wines and grape musts and the expressions “confusion” and “false impression” occurring in Article 43 of the same regulation must be interpreted as covering not only descriptions which are liable to be

confused with the description of a particular small locality (“Lage”) but also all descriptions which are liable to induce the public to believe that the description in question is the name, or part of the name, of a wine-growing local administrative area (“Weinbauort”) which does not in fact exist or the name of a small locality (“Lage”) which does not in fact exist.

In Case 56/80

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesgerichtshof [Federal Court of Justice] for a preliminary ruling in the action pending before that court between

FIRMA A. WEIGAND, Weinbau, Weingroßkellerei [wine producers and wholesalers], Bingen am Rhein,

and

¹ — Language of the Case: German.

SCHUTZVERBAND DEUTSCHER WEIN EV [Association for the Protection of German Wines], Mannheim,

on the interpretation of Articles 8 (c), 18 (c) and 43 (1) and (2) of Council Regulation (EEC) No 355/79 of 5 February 1979, laying down general rules for the description and presentation of wines and grape musts (Official Journal 1979, L 54, p. 99),

THE COURT

composed of: J. Mertens de Wilmars, President, P. Pescatore, Lord Mackenzie Stuart and T. Koopmans (Presidents of Chambers), A. O'Keefe, G. Bosco, A. Touffait, O. Due and U. Everling, Judges,

Advocate General: F. Capotorti
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and written procedure

A — *The facts and the questions referred for a preliminary ruling*

Firma A. Weigand, of Bingen am Rhein, trades in quality wines produced in

specified regions (quality wines psr) under various descriptions, including "Klosterdokter" and "Schloßdokter" together with an indication of the particular region of production. Both descriptions have been registered as trade-marks in Germany since 1930. The above-mentioned descriptions are used by Weigand in its labelling and advertising material together with an indication of the place of origin and the quality, for example "Bereich [district of] Bingen-Rheinhessen, Qualitätswein mit Prädikat" ("Spätlese", "Auslese"),

"Bereich Mittelhardt — Deutsche Weinstraße und Rheinland-Pfalz, Qualitätswein". The labels also bear an illustration of a monk drinking wine and looking out of the window of his study ("Klosterdokter") or the picture of a "Schloßdokter" in period dress, sometimes accompanied by the text of a drinking song.

The Schutzverband Deutscher Wein eV is an organization operating within the German wine industry with the object of fostering fair competition. It objected to the descriptions selected by Weigand for its wines on the ground that they are misleading, both as regards the "Weingesetz" [Law on wine] and in relation to the "Gesetz gegen den unlauteren Wettbewerb" [Law on unfair competition], hereinafter referred to as "the UGW", because they give the impression of wines produced in a small locality ("Lageweine"). The descriptions "Klosterdokter" and "Schloßdokter" call to mind the description "Dokter" which is well-known as a name of wine-growing localities, occurring frequently in German wine-growing regions, and which has become world-renowned in the name "Bernkasteler Dokter".

The words "Schloß-" and "Kloster-", which refer to buildings, also constitute geographical references because they are synonymous with the names of small wine-growing localities ("Weinberg-lagen") in Dienheim and Oppenheim or because they appear in the names of many small wine-growing localities. Thus deception is being practised as to the geographical origin of the wine. The false impression thus given is not removed by the fact that under the Weingesetz of 1971 the names of wine-growing localities may now only be used in conjunction with place names, and the descriptions at issue contain no such place name. In fact it has since been made clear that imaginary descriptions may give the false impression that they refer to small wine-growing localities

even when they are not preceded by a place name.

The action brought by the Schutzverband Deutscher Wein was unsuccessful in the Landgericht [Regional Court] Mannheim, but was successful in the Oberlandesgericht [Higher Regional Court] Karlsruhe, which, acting on Article 3 of the UGW, ordered Weigand to cease marketing or advertising in any form whatsoever wine described as "Klosterdokter" or "Schloßdokter".

The higher court held that the action was well founded, the confusion which had arisen being due, in its view, to the fact that not a few of the trade circles involved would gain from the disputed descriptions the false impression that the name derived from a specific small wine-growing locality, a factor which would have considerable influence on anyone's inclination to buy, because wines from specific localities are more highly regarded than blended wines.

Weigand contended in its appeal before the Bundesgerichtshof that Article 3 of the UGW was not applicable in this instance because the descriptions selected were permissible under the provisions of Community law on the description of wines (notably Article 43 (1) of Council Regulation No 355/79), which lays down comprehensive rules on the subject. Labelling which is permitted under Articles 18 and 43 (1) of that regulation because it is not liable to cause confusion with another permitted description of wine from a particular locality is also permissible if repeated in advertising material, within the meaning of Article 43 (2), even though it would not be permitted under the stricter provisions of national law.

The Bundesgerichtshof considers that the appeal court was correct in deciding that the requirements of Article 3 of the UGW were met in this instance (misleading information as to the origin of the goods). It considers that the question whether or not the small locality "Bernkasteler Dokter" is known

only under that combination of words is irrelevant to that of how far the word "Doktor" is known as a description of a small wine-growing locality. What is at issue is not the possible danger of confusion with that particular locality but whether, because that wine is well-known as coming from a particular locality, the descriptions here objected to may, because of the component "-doktor", likewise be taken as describing small wine-growing localities, with the consequence that wine thus described as if it came from a specific small locality would mistakenly be more highly regarded than a wine whose origin is not stated.

The Bundesgerichtshof is also of the opinion that, if well founded, Weigand's argument would be of some importance in deciding the case, since the judgment against it can only be supported by Article 3 of the UWG. As the argument raises a question of Community law the Bundesgerichtshof made an order on 19 December 1979 whereby it deferred judgment and referred the following questions to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty:

1. Must the word "confusion" in Article 43 (1) of Regulation (EEC) No 355/79 of 5 February 1979 (Official Journal L 54, p. 99 et seq.) and/or the words "misleading information" in Articles 8 (c) and 18 (c) of the regulation, as distinct from the words "false impression" in Article 43 (2) of the regulation, be interpreted as covering only cases in which

- (a) purchasers may confuse a brand name with another specific brand name or description (in the present case, a description of a small locality ("Lage")) or
- (b) are confusing descriptions or misleading information to be understood as covering de-

scriptions or information which induce the public to believe that what is being represented is the name, or part of the name, of a wine-growing local administrative area ("Weinbauort"), which does not in fact exist, or of a small wine-growing locality ("Weinbaulage"), which does not in fact exist?

2. If Question 1 (b) is answered in the affirmative:

- (a) May a description and presentation (in this case, labelling) which is not objectionable under Article 43 (1) none the less come within the scope of Article 43 (2), or does Article 43 (1) provide comprehensive rules for the description of products?
- (b) Does Article 43 of the regulation permit the application of national legislation having wider scope, for example, Article 3 of the UWG (Gesetz gegen den unlauteren Wettbewerb [Law against unfair competition]), in a case where consumers may be misled by a description which, whilst it cannot be confused with the name of an actually existing small locality, may give the impression of being the name of a small locality.

B — The relevant Community rules

Council Regulation No 355/79 is based on the fact that Council Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal L 54, p. 1) "lays down certain rules governing the description of certain wines in particular cases and provides for the adoption of general rules on the description and presentation of certain wine products" (Article 54). Regulation No 355/79 therefore provides:

In Article 8:

"Labelling used for the description of a table wine may not bear brand names containing words, parts of words, signs or illustrations which:

...

(c) in the case of table wines described in accordance with Article 54 (2) and (3) of Regulation (EEC) No 337/79, contain false or misleading information, particularly in respect of geographical origin, vine variety, vintage year or superior quality;"

...

In Article 18:

"Labels used for the description of a quality wine may not bear brand names containing words, parts of words, signs or illustrations which:

...

(c) contain false or misleading information, particularly in respect of geographical origin, vine variety, vintage year or superior quality."

In Article 43:

"1. The description and presentation of the products referred to in Article 1 (3), including any form of advertising, must not be liable to cause confusion as to the nature, origin and composition of the product; this shall apply to the information referred to in Articles 2, 12, 27, 28 and 29.

2. The description and presentation in advertising material must be such as not to create a false impression of the product in question, particularly as regards:

— the type of product, the colour, origin, quality, vine variety, vintage year and the contents of the containers;

— the identity or status of the natural or legal persons or group of persons involved in the production or distribution of the product in question."

C — *The relevant national legislation*

Article 3 of the UWG provides that:

"Whosoever shall, in the course of trade, for reasons of competition, give misleading information as to the commercial position, in particular as to the nature, origin, method of production or price of individual goods or industrial or commercial services or of the body of goods or services offered, as to price-lists, as to the way in which the goods are acquired or their source, as to the possession of awards, as to the cause or the purpose of the sale or as to the quantity of goods available, may be required to terminate the use of such information."

D — *The procedure in the Court of Justice*

A copy of the order making the reference was received at the Registry of the Court on 13 February 1980.

Firma Weigand, represented by Fritz Hallgarten, of the Wiesbaden Bar, the Schutzverband Deutscher Wein eV, represented by Peter Hass, of the Mannheim Bar, the Government of the Federal Republic of Germany, represented by its Legal Adviser, Martin Seidel, acting as Agent, the Government of the French Republic, represented by its

Agent, Thierry Le Roy, and the Commission of the European Communities, represented by Jörn Sack, a member of its Legal Department, acting as Agent, presented written observations in accordance with Article 20 of the Protocol of the Statute of the Court of Justice of the EEC.

Upon hearing the report of the Judge- Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Observations submitted to the Court

1. *Observations submitted by Weigand*

By way of introduction, Weigand points out that the term "Doktor" taken in isolation does not indicate a "small wine-growing locality" ("Lage"), the latter being, within the meaning of the Weingesetz, a particular vineyard or group of vineyards the produce of which generally leads to the production of wines of similar quality and taste and which are situated in one or more local administrative areas within the same specific production region; the name of a small wine-growing locality thus comprises two elements: the name of the vineyard and that of the local administrative area in which the vineyard is situated. The term "Doktor" is only one element in the composition of the following descriptions of wines from a given locality which are officially registered: Bernkasteler Doktor (Mosel-Saar-Ruwer), Blankenhornsberger Doktorgarten (Baden), Ihringer Doktorgarten (Baden), Dexheimer Doktor (Rheinhessen, Venninger Doktor (Rheinpfalz), Waldracher Doktorberg (Mosel-Saar-Ruwer).

The order making the reference describes the grounds of the judgment of the Oberlandesgericht erroneously, for the latter based its decision, not on the false impression liable to be created as to

the origin, but principally on that liable to be created as to the nature of the wine.

In view of the general aspect of the labels on the wine bottles in question, there is no room for confusion and the brands (identified as such by the words "eingetragene Marke" [registered trade-mark]) cannot be understood as indicating the origin of the wine. In advertising material, that is to say, price-lists, brand names can immediately be identified for what they are. All branded wines are quality wines *psr*, including the "Lagenprädikatswein" "Pölicher Held", which bears the word "Kabinett" and the "Schloßdoktor" trade-mark, and other "Prädikatsweine" bearing the words "Spätlese" and "Auslese" as also other wines from specified localities and "Liebfraumilch". On price-lists they appear separately in heavy with the mention "our own brand" alongside supplementary information such as catalogue number, production region and quality. Any buyer who has before him the Weigand wine list can see not only the brand names, but also the name of the production region and, in the case of "Prädikatsweine", the "Bereich" [district] together with a detailed description of the wine. The order making the reference makes no mention of the fact that the labelling has already been the subject of criminal proceedings for infringement of Article 46 of the Weingesetz, in the course of which it became clear that no objection could be made to the brand names and the use thereof. The question of the risk of confusion was considered in 1932 by the Reichspatentamt [German Patent Office] which held that there was no such risk. The labels comply with the provisions of Commission Regulation No 1608/76 of 4 June 1976 laying down detailed rules for the description and presentation of wines and grape musts (Official Journal L 183, p. 1), and with the fourth indent of Article 16 of the Weinverordnung (the implementing provisions relating to wine).

Weigand points out that in regard to Article 5 of the Weingesetz of 1930, Article 5 of the Weinverordnung of 1932 provided that:

"the following, in particular, shall be considered as misleading:

- (1) Imaginary descriptions, in so far as they are directly joined with the names of local wine-growing areas or are otherwise such as to lead the public to believe that they are the names of local wine-growing areas or the names of small wine-growing localities despite the addition of such information as the brand name, the trade-mark and the trade name."

That provision ceased to apply in 1971. Article 46 of the Weingesetz of 1971 made certain changes; the requirements listed therein were supplemented by the fourth indent of Article 16 of the Weinverordnung: the brand name must be clearly separated from the designation of origin. There is thus a provision on competition which precludes any risk of confusion.

In Weigand's view the rules relating to labelling are based on two fundamental principles:

- the consumer must be given precise information as to the description of the wine;
- the vendor must ensure that the purchaser does not confuse a wine of a specific origin with wine of a different origin.

Articles 8 and 18 of the regulation in question constitute a special set of rules for brand names in relation to labelling, on the basis of which the lawfulness of the brand names depends; Article 43 deals with all the other provisions which supplement the preceding ones, the first paragraph dealing with all kinds of advertising, whether oral or written, in the press, on radio, or on television, the second paragraph dealing with advertising relating to all the descriptions taken together, that is to say brand names and all descriptions, both lawful

and otherwise. The provisions of Article 46 of the Weingesetz were not adopted. Furthermore, in 1976 also, the Member States again expressly refused to adopt such legislation.

The fact that the description has remained uncontested for 50 years shows that it is not liable to create confusion. Where brand names have been used like this without objection, Community law should require proof that a false impression has been created, even if the expression used in the regulation is: "such as ... to create a false impression". On that point the wording of Article 18 is clear and defines the nature of permitted brand names. The information liable to create confusion must be included in the brand name, that is to say, it must be conveyed by the wording or the illustration. According to Weigand, it is in conformity with German practice to market all German wines wherever possible with a mention of the local administrative area and small locality. Where table wines are concerned it has not been possible, since 1971, to show the locality. That is due to harmonization with the legal position in France and Italy where, in fact, only a small proportion of production may bear the designations of origin "AC" [appellation contrôlée] and "VDQS" [vin délimité de qualité supérieure], or "DOC" [denominazione di origine controllata] and "DOCG" [denominazione di origine controllata e garantita]. Germany has not drawn up for the Commission a proper list of the geographical units for publication in the Official Journal. Although they may occur 72 times over, wine-growing localities are only given once and without any indication of the local administrative unit. For so long as that list is not published a common basis is lacking.

In its well-known judgment on sparkling wines and spirits (Case 12/74, *Commission v Germany* [1975] ECR 181) the Court stated that:

"... registered designations of origin and indirect indications of origin ... only fulfil their specific purpose if the product which they describe does in fact possess qualities and characteristics which are due to the fact that it originated in a specific geographical area ... [which], as regards indications of origin in particular, ... must confer on [the product] a specific quality and specific characteristics of such a nature as to distinguish it from all other products".

The Bundesgerichtshof would appear to wish to treat vague expressions as indications of origin. Weigand challenges the opinion expressed in the order making the reference to the effect that there are some names which, by their nature, are liable to create a false impression, such as the word "Doktor", which does not, however, have any geographical connotation.

There can be no question of deception unless the owner of the brand name based the name which he invented on an existing name of origin, in order to create confusion. When the brand names are merely imaginary names and the buyer mistakenly considers them to be real names, although they do not call to his mind another region the special reputation of which is known to him, it is impossible for him to confuse the brand name with the name of a locality. That applies to dozens of place names ending in "-berg" (mountain), "-tal" or "-thaler" (valley), "-halde" (hillside) and dozens of names which end in "-garten" (garden). In the case of the names which the order for reference refers to as inducing a belief in the public, what are involved are apparent indications of geographical origin where neither a corresponding place name nor a corresponding vineyard exist. They cannot be confused with each other. For instance, "Affentaler", a well-known Baden red wine, is neither the

description of a district nor the description of a specific small locality. It is part of the descriptive name of a "Typenwein" called "Affentaler Spätburgunder Rotwein" (comprising blended wine and a percentage of the product of the sweetening process, or grape must, from a specified wine-growing region, intended for sweetening). It is a name which has been invented for blended red wines, in the same way as "Liebfraumilch", "Ehrentrudis" or "Badisch Rotgold" are invented names. A brand name cannot be regarded as liable to mislead merely because it contains the same word-ending as another. A purchaser is confused only if he is acquainted with a product bearing a similar designation and thinks he is buying that product. One wine must not be taken for another specified wine nor a branded wine with a statement of its origin be taken for a wine of different geographical origin. The same legal principle underlies the tort of passing off which is employed in English law to prevent confusion or false attribution of goods.

Weigand also contends that in Community law only the precise geographical provenance (indication of origin) has legal significance. The indication of provenance must refer to a clearly defined geographical locality or region. One cannot consider everything which comprises some vague geographical reference as an indication of origin. The "Klosterdoktor" and "Schloßdoktor" brand names refer to personages and contain no geographical reference whatsoever. Without the name of a place, a name of the vineyard constitutes an imaginary, and therefore permitted, description. Weigand observes that the question is correctly posed in the body of the order making the reference. What is at issue, according to the order itself, is the possibility of confusion, not as to the geographical origin, but as to the quality of the wines sold under the brand names

in question, for it is there stated that the buyer mistakenly regards more highly a wine coming from a specific small locality.

Weigand takes the meaning of Question 2 (a) to be as follows:

"Can a permitted description and presentation be set out in advertising material in such a manner as to create a false impression as to origin or quality?"

The principal aim of Article 43 (2) is to prevent unfair competition. If a permitted description induces error because of the way in which it is used, all words, pictures and illustrations which brought about that result should be suppressed. Thus if the "Schloßdoktor" label included a picture of a château with a vineyard in the background, what should be prohibited is the use of the picture, and not that of the name. Permissible names may not be prohibited on the sole ground that in letters, oral remarks or advertising material information is used which is contrary to the law on competition, as has occurred in the judgment given by the Oberlandesgericht.

As far as Question 2 (b) is concerned, Weigand observes that what is authorized by Community law cannot be prohibited by German internal law. If the German, French and English language versions of Article 43 are compared it will be seen that, according to the last two, the false impression must actually have been created. There too, it is not the brand name itself which might be prohibited, but only the misleading way in which it is used in advertising.

In its supplementary observations, Weigand points out that shortly before

the order making the reference was made the Bundesgerichtshof, in a decision not subject to appeal, refused to accept the brand name "Fürstenthaler" with a view to its registration as a trademark with the German Patent Office. The applicant, however, was not asked about and gave no indication of the kind of wine he intended to market under that name; nor was he asked to produce samples of wine in order to establish whether consumers' expectations as to quality would be met.

Weigand adds that if the wine supplied corresponds to the consumer's idea of its quality there is no ground for legal action on the basis of competition law. As regards names which might be confused with a wine-growing area (Fürstenthaler) this impression of quality can only refer to a table wine. That is because according to the Weingesetz table wines may not bear the name of a specific production area or small locality, only the name of a wine-growing local administrative area or region.

Weigand quotes the Commission which, in a proposal for a guideline on the Community position regarding the revision of the Paris Convention on the protection of industrial property in relation to geographical designations, dated March 1979, stated, in a discussion of the judgment in Case 12/74, referred to above:

"According to the Court of Justice of the European Communities the indications of origin referred to in that directive always describe at the least a product coming from a specific geographical area . . . These appellations fulfil their specific purpose only if the product which they describe does in fact possess qualities and characteristics which are due to the fact that it originated in a specific geographical area".

Question 2 (b) is, according to the plaintiff in the main action, incomprehensible: it does not take into account the fact that the factual circumstances liable to create a false impression as to “the nature [or] origin” required by Article 3 of the UWG, and the factual circumstances liable to create a false impression regarding “the origin [or] quality” required by Article 43 (2) of Regulation No 355/79 are in fact identical. Thus the question refers to origin, whilst the grounds of the order indicate that the consumers’ expectation concerns the quality. Provided that the wine which is supplied is of the quality anticipated, there is no ground for seeking an injunction, and therefore an application under Article 3 of the UWG could not succeed.

2. *Observations submitted by the Schutzverband Deutscher Wein*

The Schutzverband is of the opinion that only the question contained in Question 1 (b) should be answered in the affirmative. Article 43 (1) does not concern merely confusion with actual existing designations. The works “confusion” or “false impression” should be understood to mean that people in the trade consider the brand name or what constitutes it to belong, by its very nature, to the class of descriptions previously listed. In fact anything which is considered to be other than what it is in reality is equally liable to give rise to confusion. An invented description cannot be “false” in the strict sense, only, at most, liable to mislead, precisely because it may be thought to be an indication of the geographical origin, and thus may be confused with, or wrongly thought to be, such an indication.

In support of the above, it might be added that Articles 12 and 18 of Regulation No 355/79 protect all types of description of quality wines *psr*, especially indications concerning their geographical origin, the reason being

that buyers expect a certain level of satisfaction from a quality wine *psr* connected with the special properties (place, small, locality etc.) of that kind of wine. In the case of table wine, the buyer does not expect such a standard and there is no need to provide wide-ranging protection because table wine is marketed according to its alcohol content.

Article 43 (1) does not contain an exhaustive set of rules for the description of products. The design of the label also constitutes advertising and is covered by paragraph (2) of the article independently of paragraph (1). The difference between the two paragraphs lies purely in the fact that the scope of the concept of advertising is not as wide in the Member States as in German law. The use of two paragraphs in Article 43 makes it quite clear that unlawful descriptions and presentations are prohibited both in labelling and in advertising. What is prohibited under paragraph (2) cannot be authorized under paragraph (1).

The Schutzverband Deutscher Wein considers, moreover, that Article 43 allows sufficient scope for the application of national law (in this case, Article 3 of the UWG). In the same way as all Community law relating to viticulture, Article 43 is a provision of public law because it regulates a market. It is permissible to apply concurrently with those rules the provisions of civil law, especially those which pre-date the Community law. Moreover, Community law does not contain exhaustive rules even in that respect, for criminal penalties are to be adopted at the level of national law. In other words, if Article 43 could afford grounds for an application for an injunction, which is governed by civil law, application of Article 3 of the UWG might be excluded. As that is not the case, applications for injunctions, being regulated by civil law, may only be brought on the basis of national law.

3. *Observations submitted by the Government of the Federal Republic of Germany*

The Federal Government considers that the reply to the question which has been asked should be as follows: the word "confusion" used in Article 43 (1) and the words "misleading information" used in Article 8 (c) and in Article 18 (c) are to be interpreted, as in the interpretation suggested in Question 1 (b), as covering descriptions and indications which give the public the false impression that what is being represented is a wine-growing local administrative area which does not in fact exist, or a small wine-growing locality which does not in fact exist. The Federal Government does not consider the words "confusion" and "misleading information" to be restricted to cases where the brand name is confused, in the course of trade, with another specific brand name, or with the description of a specific small wine-growing locality.

In the view of the Federal Government that interpretation is based on the evident purpose and scope of the prohibition against creating a false impression set out in paragraph (2) of Article 43 and on the interdependence between that provision and the other provisions involved in this dispute, referred to above. Whilst paragraph (2) of Article 43 prohibits the creation of a "false impression" in the description and presentation of wine in advertising, paragraph (1) provides for such a prohibition in the case of "confusion" due to the presentation and description of wine in labelling. The legal consequences of the two prohibitions do not differ, but are fundamentally dependent on each other, given the purpose of the legislation. To interpret these two concepts in different ways would result in certain advertising descriptions being prohibited when used

in general advertising material but permitted, in certain circumstances, when forming an integral part of the labelling, where a wine is marketed direct. Such a distinction is contrary to the legislative intention of protecting the buyer by prohibiting, not merely in a general fashion but in all circumstances, the giving of a false impression through the description or presentation of wine, whether in advertising or in labelling. That is undoubtedly the purport of the second recital in the preamble to the regulation.

When the Council adopted that regulation it did not intend to fall short of the strict rules enforced at the time in France and in the Federal Republic of Germany. Under Article 46 of the Weingesetz, there exists an equivalent wide-ranging prohibition against creating a false impression, whether in labelling or in general advertising. That prohibition goes on to include expressly "imaginary descriptions", "which are liable to give the false impression that they constitute an indication of the geographical origin". The corresponding French provisions are no less comprehensive.

In view of the purpose of the rules, the doubts which have been raised as to their wording, especially in the German language version, are not justified. In interpreting them it is important to note that Article 43 (1) includes in the French language version, for the word "Verwechslung", the words "des confusions" and, in the English language version, the word "confusion", the accepted meaning of which is wider than the narrow German term. That is equally true in respect of the interpretation of the concept of "misleading information". The truth is that Articles 8 and 18 constitute special rules governing the use of brand names in the labelling of table

wines and quality wines psr which, in the same fashion as the provision in Article 43 (1), are closely linked to the general prohibition against creating false impressions applied to advertising by Article 43 (2). The arguments for correspondingly wide interpretation of Article 43 (1), in the direction of a prohibition against creating false impressions, require a similar interpretation here too.

As to the second question, clearly the Court of Justice is not required to reply to it unless its reply to part (b) of the first question is in the negative. As the Federal Government gives an affirmative reply to that question, it does not consider it necessary to give its observations on the second question. It nevertheless points out that the legal consequences of infringing a specific prohibition contained in Community law against creating false impressions, which contains at the same time the basic elements of a prohibition against creating false impressions which has been laid down by one of the national laws, might be more serious in the context of the national legal rule. To the extent to which Community law does not expressly define those legal consequences, the power to decide what the legal consequences of an infringement of prohibitions laid down by Community law are to be remains with the Member States. That is why, where there is an infringement of the prohibitions laid down in Article 43 or in Articles 8 and 18 of Regulation No 355/79, which at the same time presents the elements which constitute the prohibition against creating a false impression within the meaning of Article 3 of the UWG, the legal remedies provided for in Article 13 of that law are available.

4. Observations submitted by the Government of the French Republic

The view of the French Government is that the questions before the Court concern, first, the application of regu-

lations relating to wine and wine-growing, and therefore provisions of French criminal law intended to ensure their observance by means of the imposition of penalties for their breach and, secondly, the rules relating to unfair competition.

As to the sphere of application of those regulations, the French Government is of the opinion that Article 18 is concerned exclusively with trade names when used in the labelling of wines. Article 43 (1), on the other hand, concerns all compulsory or permitted descriptions — which include brand names — whether used in labelling or in advertising, but does not apply to symbols or illustrations, which are not mentioned in Regulation No 355/79. Finally, Article 43 (2), the scope of which is wider, covers all descriptions, references, symbols or illustrations featured in advertising, including labelling (for it cannot be denied that advertising includes labelling).

It is quite clear that offences in relation to brand names may be identified on the basis of the three Community provisions in question simultaneously, or of one of them, if they have been infringed. The French Government remarks, on this matter, that the Decree of 21 April 1972 treats the regulation in question as a decree adopted in application of the criminal law of 1 August 1905. The purpose of that provision was to enable the criminal penalties under that law to be applied to breaches of Community law. Any interpretation which has the effect of treating the respective spheres of application of the provisions in question as mutually exclusive would introduce into French criminal law a concept hitherto unknown to it.

As to the scope of those provisions, it must first be emphasized that French law does not recognise the concept of "false impression" mentioned in Article 43 (2), and it may be said that that concept is no different from that of "confusion"

mentioned both in the first paragraph of that article and in Article 18 (c). As to the merits of the case, the similarity between the place name "Schloßdoktor" and the brand name (which must by definition be invented) "Klosterdoktor" inclines one to consider that there is a risk of confusion as to the origin of the product and that the provisions in question apply simultaneously to the brand name in question which must necessarily appear on the labelling and in advertising material.

On this subject the French Government cites the judgment of the Cour de Cassation of 14 February 1973, according to which the attaching of a label bearing the trade name "Klerling", which sounds somewhat like the Alsatian vine variety known as Riesling, to bottles of a certain white wine "was intended to confirm the impression which the buyer might have gained as to the nature and origin of the wine, and to mislead him . . . Similarly, it is stated in the judgment of 27 July 1959 that the labelling of bottles of ordinary wine with an imitation of the coat of arms of the town of Bordeaux and a representation of a building which appears to be a château is clearly liable to mislead buyers as to the origin of the wine which is being sold. In a judgment of 18 January 1980 the Cour d'Appel [Court of Appeal], Paris, refused to accept the brand name Sainte Odile even though that is the name of a saint, the place name with which it might be confused being "Mont Sainte Odile". Following that reasoning, any brand name including the word "Saint" might be prohibited, even if there is no such place, owing to the fact that 17 registered designations include the word (St. Estève, St. Emilion etc.). The same policy of rejection could apply to names ending in "ac", because of designations

of origin such as Armagnac and Cognac. One could go on to give as an example a prohibition against using the French definite articles before brand names owing to the confusion which that might create with well-known place names or vineyards (*premier cru*).

The Community rules in the field of legislation relating to wine-growing permit the use of names of small localities or groups of localities, of local administrative areas or of parts thereof only if the production area is properly defined and if the wine permitted to bear such names comes exclusively from one of those places, the full list of which must be communicated to the Commission in order for it to be published in the Official Journal of the European Communities. It should be added that the geographical names of quality wines themselves must be listed exhaustively. For those reasons, it should be considered that the provisions contained in the articles in question constitute a single body of rules designed to cover as comprehensively as possible all cases of confusion and that any restrictive interpretation would run counter to the second recital in the preamble to Regulation No 355/79.

The two provisions in question, namely a Community regulation concerning the labelling of wine and a national law for the prevention of unfair competition, are both designed to protect the consumer, but they differ in nature. The Community rules on the labelling of wine have a preventive aspect. The aim of the national legislation on unfair competition, however, is to provide

protection against practices which, by leading to confusion as to the characteristics of products, disturb the normal operation of competition. While certain conduct is subject under certain laws to criminal sanctions, other conduct is regulated only by civil law usually through a court order to cease such conduct, as is the case with Article 3 of the UWG.

In its well known decision in the *Walt Wilhelm* case, the Court found that as Community and national law on cartels consider the latter from different points of view, in the absence of any provision to the contrary the national authorities may take proceedings in respect of a cartel in application of their national law. It stipulated, however, that that application must not prejudice the uniform application throughout the Community of the Community regulations. Unlike the circumstances which led to the judgment in the *Walt Wilhelm* case, the present case juxtaposes Community law on wine-labelling and national law on unfair competition, that is to say, two bodies of law which are not concurrent. A precedent as to the choice of application as between Community law and national laws may be found in a text which originated from the Community, Article 16 of the Proposal for a Council Regulation on the Community Trade-Mark. That text provides that:

“This regulation shall not prejudice the right to bring other actions in respect of a Community trade-mark under national law relating in particular to tortious liability and unfair competition, for acts other than those referred to in Articles 10 and 11” (infringement of trade-mark).

That proposal excludes, save in the case of criminal sanctions, recourse to the

action for infringement under national law. Since it does not regulate actions in respect of unfair competition and other actions recognized by national law, which enable a person to protect his own distinctive mark, it does not exclude recourse to the latter which might, however, by different means, bring about results similar to those of an action for infringement.

The French Government considers it reasonable thus to recognize the non-concurrent nature of laws which partially overlap and the right of any person concerned to select the legal domain within which he wishes to place his action.

5. Observations submitted by the Commission

The Commission maintains that if one proceeds on the basis of a purely linguistic interpretation of the words “Verwechslung” (“confusion” in French; “confusion” in English) or “verwechselbare Angaben” (“indications susceptibles de créer des confusions” in French; “misleading information” in English) in Articles 12, 18 and 43 of Regulation No 355/79, the reply to the first question from the Bundesgerichtshof must undoubtedly be that suggested in paragraph 1 (a), that is, that the provision in Article 43 (1) applies exclusively in the case where a brand name may be confused with another specific brand name (in the present instance, the trade name of wine from a small locality). As a matter of logic one can only confuse a thing with something else which actually exists, not with something which does not exist, which is a false or misleading representation, not

a confusion. The same is true of most of the words which are used in the other Community languages. Further support for a reply as suggested in paragraph 1 (a) is to be found in the fact that the word "Irreführung" ("opinion erronée" in French; "false impression" in English) in Article 43 (2) appears to be contrasted with the word "Verwechselung" ("confusion" in French; "confusion" in English). However, the scope of the word "Irreführung" is wider than that of "Verwechselung". A false impression may equally well be due to the fact that something is presented to someone as a reality when in fact it does not exist. Thus the concept of "Irreführung" is in any case the wider in scope. The same applies in respect of the words which have been selected in all the other Community languages.

Despite these arguments in favour of interpreting the two terms differently the Commission is of the view that the word "Verwechselung" ("confusion") must be understood in the wider sense of "Irreführung" ("false impression"). The conclusive argument may be found in the general purport of Article 43. The distinction between the description and presentation of wine in labelling, on the one hand, and advertising, on the other, is an extremely difficult one to make, since all labelling has advertising influence, albeit limited. Hence it is hard to understand how an impression which is false in the sense that it has false connotations (the assumption that a wine-growing locality with a given name exists, whereas in fact it does not) can be permitted in advertising by virtue of paragraph (1), only to be prohibited in advertising by virtue of paragraph (2). Similar observations apply equally in respect of Articles 8 (c) and 18 (c). It would be contrary to the purpose of those provisions, which constitute a general rule for the prevention of fraud, for them to cover only information which is false (that is to say, objectively untrue) or "misleading information"

(that is to say, information which may be confused with other existing descriptions) and not those merely designed to mislead the public.

The Commission therefore suggests that the answer to the points raised in Question 1 should be that the words "confusion" in Article 43 (1) and "misleading information" in Article 8 (c) and in Article 18 (c) of Regulation No 355/79 extend to descriptions which are generally misleading as to the characteristics of the products referred to in those descriptions, in particular those which induce the public to think that what is being represented is the name, or part of the name, of a wine-growing area, which does not in fact exist, or of a small wine-growing locality, which does not in fact exist.

The Commission believes that the order making the reference contains an error. In view of the purport of Question 1, the wording of Question 2 would only make sense if the phrase

"2. If Question 1 (b) is answered in the affirmative: ..."

were to read as follows:

"2. If Question 1 (a) is answered in the affirmative: ..."

or:

"2. If Question 1 (b) is answered in the negative: ..."

In that case a reply to Question 2 is unnecessary. Moreover, there is no need for the Bundesgerichtshof to have recourse to the UWG in order to decide the case (Question 2 (b)) because Community law supplies all that is required for an assessment of the circumstances of the case. However, it appears to the Commission that the reply to the first question does not wholly resolve the question of the extent to which descriptive brand names which contain word components frequently appearing in the names of wine-growing

localities are prohibited under Article 43 and, if they are not, whether it may still perhaps be possible to apply stricter national provisions. Question 2 (b) is also crucial to the decision to be given by the court making the reference because the Schutzverband Deutscher Wein eV has no title to bring legal proceedings under Article 13 of the UWG unless representations have been made of the kind covered by that law.

In reply to the question asked at 2 (b), the Commission observes that there is to be found in Regulation No 355/79, taken in conjunction with the implementing regulations, a comprehensive set of Community rules governing the description and presentation of wines and grape musts. Complementary national provisions or derogations are permitted only to the extent to which they are expressly provided for and authorized by Community law. For example, it would be contrary to the principle of a common market in wine for specific descriptions used to indicate one and the same characteristic of a wine to be subject to different rules in the various Member States, which might hinder the course of trade. That requirement is fully met by the extremely detailed provisions of Regulation No 355/79 which define precisely the extent to which national rules may allow for exceptions or for definitive or temporary additions to the provisions of Community law.

The only proviso in favour of national legislation in the regulation in question which may have some relevance to the present case is that in Article 13 (2),

which states that in the case of quality wines psr obtained in their territory, Member States may make compulsory, dispense with or restrict the use of certain particulars referred to in Article 12 (2). One might be tempted to take that provision as meaning that, for example, the use of brand names for a quality wine psr obtained on German territory may be restricted by the provisions of the UWG. Such an interpretation, however, would not survive scrutiny of the concepts of misleading descriptions and presentations of wine. In fact Article 13 (2) makes an exception only in respect of national legislation relating to the optional information for which provision is made in Article 12 (2), and not as regards other compulsory provisions of Community law, in particular as regards Articles 18 and 43. That is why in deciding whether the descriptions "Klosterdokter" and "Schlossdokter" may be applied to certain wines having regard to the risks of a false impression being created in respect of the products the Bundesgerichtshof must proceed exclusively on the basis of the provisions in Regulation No 355/79, the UWG not being applicable on that point.

It is for the court making the reference to decide this case on the facts. In construing the terms in question particular attention should be given to Article 12 (2) (I) and Article 14 where there is a possibility of confusion regarding the description of the wine-producing locality. Those articles lay down the requirements governing the description of a quality wine by the use on the label of the name of a "geographical unit which is smaller than the specified region". According to Article 14 (1), first indent, such a smaller geographical unit may be represented by, in

particular, a small locality. Article 14 does not define the various descriptions which may be selected as the names of localities: it leaves to the laws of the Member States the task of determining them, and in paragraph (2) it provides merely that that geographical unit must be well-defined and that all the grapes from which such wines have been produced must originate in that unit. There should be a requirement that the national laws should no longer accept any names of localities other than those recognizable as being geographical references. Descriptions which are purely imaginary, even where accepted in local use and in popular language as indicating a specific smaller region, are not permitted as names of localities within the meaning of Articles 12 and 14 because, outside that restricted zone, they do not have the identifying effect that a geographical description has. Terms such as "Doktor", "Schloß-doktor" and "Klosterdoktor", for example, should be considered as imaginary names without any geographical connotations. The Weingesetz, which, among other things, decides what names are lawful for wine-growing localities in the German wine-producing regions, meets the requirements of Community law regarding recognition as a geographical unit; when the name of a wine-producing locality is selected (it may also be an imaginary name, provided that it refers to an area appearing under that name in the local land register), the "Gemeinde" [local administrative area] or the place name must be added (for instance, "Bernkasteler Doktor").

only arise when the brand name is selected in such a way that it may be understood in the trade as referring to a smaller geographical unit and the wine described by that designation does not come from grapes harvested in that geographical unit. As a general rule there can be no question of a "false impression" in the case of all brand names which are manifestly imaginary descriptions, even if certain parts of words correspond to parts of words in the names of specific wine-producing localities. That interpretation is borne out by the intention of the Community legislature to reduce, in the interest of the consumer, to a clearly recognizable basic structure the multitude of wine descriptions hitherto existing. When the description of the wine-producing locality (like that of a geographical unit smaller than the specified regions) can be clearly seen to be a geographical description, protection of it is only worthwhile in so far as that is its function. It would exceed the purpose of Regulation No 355/79 to attempt also to protect the imaginary constituents of the names of wine-producing localities when there is no risk of confusion with wine from specific wine-growing localities and when the use of identical imaginary terms in brand names for wine is quite simply prohibited. According to the terms of Regulation No 355/79 the description of the wine-producing locality must be recognizable as being a geographical indication and is to be protected in that sense.

In answer to the questions asked under Point 2, the Commission therefore suggests the reply that the regulation in question, together with its implementing provisions, constitutes a comprehensive set of rules governing the description and presentation of the wines and grape musts falling within the scope of that regulation, and that national legislative

It is the opinion of the Commission that, in accordance with Article 14, the names of wine-producing localities should be considered as geographical descriptions. That means that a false impression can

provisions do not apply unless that regulation expressly provides therefor or so authorizes. According to Articles 43 (1), 12 (2) (c) and 18 (c), a brand name contains information liable to cause confusion as to the geographical origin of a wine, and in particular as to its being wine from a recognized wine-producing locality, and according to Article 43 (2) the description and presentation of a wine in advertising are such as to create a false impression of the product in question, when that description has been selected in order that it may be thought to refer to a geographical unit, and in particular a small locality, within the meaning of Article 14 of that regulation, although the conditions under which the use of such a description of origin is permitted are not fulfilled in the case of the wine in question.

III — Oral procedure

Weigand, represented by F. Hallgarten, advocate at the Landgericht Wiesbaden and H. Hieronimi, advocate at the Oberlandesgericht Koblenz, the Schutzverband Deutscher Wein, represented by Freiherr von Stackelberg, advocate at the Bundesgerichtshof, and Peter Hass, advocate at the Landgericht Mannheim, the Government of the Federal Republic of Germany, represented by its Legal Adviser, Martin Seidel, acting as Agent, and the Commission of the European Communities represented by Jörn Sack, a member of its Legal Department, acting as Agent, presented oral argument at the sitting on 12 November 1980.

The Advocate General delivered his opinion at the sitting on 16 December 1980.

Decision

- 1 By an order of 19 December 1979, which was received at the Court on 13 February 1980, the Bundesgerichtshof [Federal Court of Justice] referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty two questions concerning the interpretation of Council Regulation (EEC) No 355/79 of 5 February 1979 laying down general rules for the description and presentation of wines and grape musts (Official Journal 1979, L 54, p. 99).
- 2 Those questions have been raised in the course of proceedings between Firma A. Weigand, which deals in wines, and the Schutzverband Deutscher Wein eV, an association for the protection of German wines.
- 3 Weigand trades in quality wines produced in specified regions (quality wines *psr*) under, amongst others, the descriptions "Klosterdokter" and "Schloßdokter". Both descriptions have been registered as trade-marks in Germany since 1930.

- 4 Weigand uses the above-mentioned descriptions on its labels and in its advertising material together with an indication of the place of origin and quality, as for example "Bereich [district of] Bingen-Rheinhessen, Qualitätswein mit Prädikat" ("Spätlese", "Auslese"), "Bereich Mittelhardt — Deutsche Weinstraße und Rheinland-Pfalz, Qualitätswein". The labels also bear an illustration of a monk drinking wine ("Klosterdokter") or the picture of a "Schloßdokter" in period dress, sometimes accompanied by the text of a drinking song.
- 5 The Schutzverband Deutscher Wein, an organization concerned with the observance of fair competition, instituted proceedings against Weigand before the Landgericht [Regional Court] Mannheim. It contended that the descriptions in question were misleading within the meaning of both the German "Weingesetz" [Law on wine] and the "Gesetz gegen den unlauteren Wettbewerb" [Law on unfair competition], hereinafter referred to as "the UWG", because they create the impression that they refer to a "small locality" ("Lage"). According to the Schutzverband, the names "Klosterdokter" and "Schloßdokter" call to mind the designation "Dokter" which is known as the name of a small locality and which occurs quite commonly in German wine-producing regions. Whilst they refer to buildings, the words "Schloß" and "Kloster" also constitute geographical references because they are names of small localities or because they appear in the names of many such localities. Thus deception is being practised as to the geographical origin of the wine.
- 6 Article 3 of the UWG provides *inter alia* that whosoever shall, in the course of trade, for reasons of competition, give misleading information in particular as to the quality, origin or method of production of goods may be required to terminate the use of such information.
- 7 The proceedings were dismissed by the Landgericht Mannheim but an appeal was allowed by the Oberlandesgericht [Higher Regional Court] Karlsruhe which ordered Weigand to cease marketing or advertising in any form whatever wine bearing the descriptions "Klosterdokter" or "Schloßdokter".
- 8 According to the order making the reference, the Bundesgerichtshof considers that on the basis of Article 3 of the UWG the action is well founded. The descriptions are misleading because a not inconsiderable proportion of purchasers may derive from those descriptions the erroneous impression that the wine originates from a particular small locality and that may influence the decision to buy since such wines are more highly regarded

than blended wines. The impression that the wine in question comes from a small locality arises from the fact that the descriptions "Klosterdokter" and "Schloßdokter" call to mind the term "Dokter" which is known as the name of small localities and which occurs quite commonly in German wine-producing regions and has even become known throughout the world in the form of "Bernkasteler Dokter".

- 9 Before the Bundesgerichtshof Weigand contended that Article 3 of the UWG was not applicable in the present case because the descriptions selected are permissible under the rules of Community law governing the description of wines, in particular Article 43 (1) of Council Regulation No 355/79, which, it was argued, lays down comprehensive rules on this subject. The descriptions in question, it was said, are in fact purely invented names which cannot give rise to confusion with any actual statement of origin.
- 10 In order to be able to give a ruling on these arguments the Bundesgerichtshof referred the following questions to the Court of Justice for a preliminary ruling:

"1. Must the word 'confusion' in Article 43 (1) of Regulation (EEC) No 355/79 of 5 February 1979 (Official Journal L 54, p. 99 et seq.) and/or the words 'misleading information' in Articles 8 (c) and 18 (c) of the regulation, as distinct from the words 'false impression' in Article 43 (2) of the regulation, be interpreted as covering only cases in which

- (a) purchasers may confuse a brand with another specific brand name or description (in the present case, a description of a small locality ('lage')) or
- (b) are confusing descriptions or misleading information to be understood as covering descriptions or information which induce the public to believe that what is being represented is the name, or part of the name, of a wine-growing local administrative area ('Weinbauort'), which does not in fact exist, or of a small wine-growing locality ('Weinbaugebiet'), which does not in fact exist?

2. If Question 1 (b) is answered in the affirmative:

- (a) May a description and presentation (in this case, labelling) which is not objectionable under Article 3 (1) none the less come within the scope of Article 43 (2), or does Article 43 (1) provide comprehensive rules for the description of products?

- (b) Does Article 43 of the regulation permit the application of national legislation having wider scope, for example, Article 3 UWG (Gesetz gegen den unlauteren Wettbewerb [Law against unfair competition]), in a case where consumers may be misled by a description which, whilst it cannot be confused with the name of an actually existing small locality, may give the impression of being the name of a small locality?”.

- 11 Article 54 (1) of Council Regulation No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1) requires the Council to adopt “rules relating to the designation and presentation of the products listed in Article 1”. Those rules form the subject-matter of Regulation No 355/79, the interpretation of which is at issue before the Bundesgerichtshof.
- 12 Articles 8, 18 and 43 of the latter regulation, which form the subject-matter of the questions of the Bundesgerichtshof, must be interpreted within the framework of the rules on the common organization of the market in wine of which they form part. The purpose of that organization is to ensure that wine products may circulate freely throughout the Community as a whole and at the same time to establish the equilibrium of the market within the framework of a policy which is intended to maintain and improve the quality of wine placed on the market. In that context Regulation No 355/79, has the particular purpose, with regard to the description and presentation of wines, of ensuring, in the interests of consumers in all the Member States, the transparency of the market and of enabling appropriate supervision to be carried out.
- 13 That objective is emphasized by both the 45th recital in the preamble to Regulation No 337/79, which states that “fraud and misrepresentation must be punished effectively and speedily”, and by the second recital in the preamble to Regulation No 355/79, in which it is stated that “the purpose of any description and presentation should be to supply potential buyers and public bodies responsible for organizing and supervising the marketing of the products concerned with information which is sufficiently clear and accurate to enable them to form an opinion of the products”.
- 14 To that end and in regard to the description of the wines and advertising, Regulation No 355/79 applies systematically to all practices capable of affecting fair trading.

- 15 That is the subject-matter of Article 8 (c) and Article 18 (c) which prohibit, in the description of table wines and quality wines *psr* respectively, the use on labels of words, signs and illustrations which contain "false or misleading information, particularly in respect of geographical origin, vine variety, vintage year or superior quality".
- 16 Equivalent terms are also employed in the general provisions contained in Article 43 (1) which prohibits in the description and presentation of wines any information "liable to cause confusion as to the nature, origin and composition of the product". In addition, that article makes reference, in the case of Community wines, to the detailed requirements of Articles 2 and 12, which deal in particular with information concerning the classification, origin, bottling and characteristics of the products.
- 17 Article 43 (2) prohibits all practices which, by means of the description and presentation in advertising material, are liable to create "a false impression" of the products in question, that is to say to give a deceptive appearance. Since the description and presentation mentioned in Articles 8, 18 and 43 (1) form an integral part of any advertising material referred to in Article 43 (2), the expressions contained in those provisions may not be given differing interpretations.
- 18 Those provisions serve the same purpose, namely the prevention in the marketing of wine of all practices which are of such a nature as to create false appearances, irrespective of whether such practices give rise in the minds of those engaged in the trade or of consumers to confusion with existing products or the erroneous impression of an origin or of characteristics which in reality do not exist.
- 19 Accordingly the terms employed in Articles 8, 18 and 43 (1) may not receive a narrower construction than that given to the expression employed in Article 43 (2). All those expressions must be understood as equivalent and as being directed, through their common objective, towards the prevention of the occurrence in the market in wine of not only any confusion, in the narrow sense of the word, but also the use of all deceptive information,

irrespective of whether the presentation of the products themselves or advertising material is involved.

- 20 The reply to the first question should accordingly be that the expression "misleading information" employed in Articles 8 (c) and 18 (c) of Regulation No 355/79 and the expressions "confusion" and "false impression" occurring in Article 43 of the same regulation must be interpreted as covering not only descriptions which are liable to be confused with the description of a particular small locality ("Lage") but also all descriptions which are liable to induce the public to believe that the description in question is the name, or part of the name, of a wine-growing local administrative area ("Weinbauort") which does not in fact exist or the name of a small locality ("Lage") which does not in fact exist.
- 21 In view of the reply to the first question it is unnecessary to answer the second question.

Costs

- 22 The costs incurred by the Government of the Federal Republic of Germany, the Government of the French Republic and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main action are concerned, in the nature of a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Bundesgerichtshof by order of 19 December 1979, hereby rules:

The expression "misleading information" employed in Articles 8 (c) and 18 (c) of Regulation No 355/79 and the expressions "confusion" and "false impression" occurring in Article 43 of the same regulation must be

interpreted as covering not only descriptions which are liable to be confused with the description of a particular small locality ("Lage") but also all descriptions which are liable to induce the public to believe that the description in question is the name, or part of the name, of a wine-growing local administrative area ("Weinbauort") which does not in fact exist or the name of a small locality ("Lage") which does not in fact exist.

Mertens de Wilmars	Pescatore	Mackenzie Stuart	Koopmans	O'Keefe
Bosco	Touffait	Due	Everling	

Delivered in open court in Luxembourg on 25 February 1981.

A. Van Houtte
Registrar

J. Mertens de Wilmars
President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI
DELIVERED ON 16 DECEMBER 1980¹

*Mr President,
Members of the Court,*

1. This request for a preliminary ruling calls for an interpretation of certain provisions of Council Regulation No 355/79 of 5 February 1979 which laid down "general rules for the description and presentation of wines and grape musts". The first matter to be established is the scope of the prohibition whereby persons who hold such products for sale

or place them on the market are forbidden to describe or present them in a manner liable to cause confusion or to give customers a false impression as to their characteristics, in particular with regard to their geographical origin. The next matter to be ascertained is whether the relevant Community provisions permit the application of other, and more stringent, national provisions.

I shall briefly summarize the facts.

¹ — Translated from the Italian.