



Reports of Cases

Case C-75/15

Viiniverla Oy

v

Sosiaali- ja terveystieteiden tutkimuskeskus ja valvontavirasto

(Request for a preliminary ruling from the markkinaoikeus)

(Reference for a preliminary ruling — Protection of geographical indications of spirit drinks — Regulation (EC) No 110/2008 — Article 16(b) — Evocation — Cider spirits produced in Finland and placed on the market as ‘Verlados’ — Protected geographical indication ‘Calvados’)

Summary — Judgment of the Court (Second Chamber), 21 January 2016

1. *Approximation of laws — Uniform legislation — Definition, description, presentation, labelling and protection of geographical indications of spirit drinks — Regulation No 110/2008 — Evocation of a protected geographical indication — Concept — Scope*

(European Parliament and Council Regulation No 110/2008, Art. 16(b))

2. *Approximation of laws — Uniform legislation — Definition, description, presentation, labelling and protection of geographical indications of spirit drinks — Regulation No 110/2008 — Evocation of a protected geographical indication — Evocation of the protected geographical indication ‘Calvados’ by the name ‘Verlados’ — Assessment by the national court — Criteria*

(European Parliament and Council Regulation No 110/2008, Art. 16(b))

3. *Approximation of laws — Uniform legislation — Definition, description, presentation, labelling and protection of geographical indications of spirit drinks — Regulation No 110/2008 — Evocation of a protected geographical indication — Concept — Evocation of the protected geographical indication ‘Calvados’ by the name ‘Verlados’ — Included — Absence of a likelihood of confusion between the products at issue — No effect*

(European Parliament and Council Regulation No 110/2008, Art. 16(b))

1. Article 16(b) of Regulation No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Regulation No 1576/89 must be interpreted as meaning that, in order to assess whether there is an ‘evocation’ within the meaning of that provision, the national court is required to refer to the perception of the average consumer who is reasonably well informed and reasonably observant and circumspect, that concept being understood as covering European consumers and not only consumers of the Member State in which the product giving rise to the evocation of the protected geographical indication is manufactured.

For the purpose of finding the existence of an ‘evocation’, it is for the national court to verify, in addition to the inclusion of part of a protected name in the term used to designate the product at issue, 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. Therefore, the national court must essentially rely on the presumed reaction of consumers in the light of the term used to designate the product at issue, it being essential that those consumers establish a link between that term and the protected name.

In that context, the protection provided by Article 16 of Regulation No 110/2008 to geographical indications must be interpreted in the light of the objective pursued by the registration of those indications, namely, to allow the identification of spirit drinks as originating from a specific territory in situations where a given quality, reputation or other characteristic of those drinks may be essentially attributed to that geographical origin.

Moreover, the system of registration of geographical indications of spirit drinks seeks to contribute to the attainment of a high level of consumer protection. On that basis, in order to assess the ability of a word used to designate a product to evoke a protected name, it is necessary to take account of the presumed expectation of the average consumer, who is reasonably well informed and reasonably observant and circumspect, a criterion which is based on the principle of proportionality.

Finally, in the light of the need to guarantee effective and uniform protection of the geographic indications in the territory of the European Union, it must be considered that the concept of ‘consumer’ covers European consumers.

(see paras 22-28, operative part 1)

2. Article 16(b) of Regulation No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Regulation No 1576/89 must be interpreted as meaning that, in order to assess whether the name ‘Verlados’ constitutes an ‘evocation’ within the meaning of that provision of the protected geographical indication ‘Calvados’ with respect to similar products, the referring court must take into consideration the phonetic and visual relationship between those names and any evidence that may show that such a relationship is not fortuitous, so as to ascertain whether, when the average European consumer, reasonably well informed and reasonably observant and circumspect, is confronted with the name of a product, the image triggered in his mind is that of the product whose geographical indication is protected.

The fact that the name ‘Verlados’ refers to the name of the undertaking which manufactures the product and to the true origin of the latter and that the drink named ‘Verlados’ is a local product, which is sold only locally and in small quantities are not relevant for the purposes of assessing the existence of an ‘evocation’ within the meaning of Article 16(b) of Regulation No 110/2008.

(see paras 41, 42, 46, 48, operative part 2)

3. Article 16(b) of Regulation No 110/2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Regulation No 1576/89 must be interpreted as meaning that the use of a name classified as an ‘evocation’ within the meaning of that provision of a geographical indication referred to in Annex III to that regulation may not be authorised, even in the absence of any likelihood of confusion.

(see para. 52, operative part 3)