

4. In the Third Ground of Appeal, the Appellant puts forward that the General Court erred in law by requiring that the motivation of the decision should make clear how each (negative) comment impacted on the points awarded for each sub-criterion and subpoint, and as such applied a stricter test regarding the duty to state reasons as the one that follows from the settled case-law of the Court of Justice. For that reason the General Court erred in law in annulling the contested decision on the grounds of a violation of Article 100 (2) General Financial Regulation read in conjunction with Article 296 TFEU.
5. In the Fourth Ground of Appeal, the Appellant alleges that the General Court erred in law in awarding damages to the first Applicant in first instance as one of the cumulative conditions for incurring non-contractual liability of EU institutions (i.e. the presence of unlawful conduct) has not been demonstrated. In subsidiary order, the Appellant submits that, even if the Appeal of EUIPO would only succeed on its first ground of appeal, the Contested Judgment should still be annulled insofar as it imposes the obligation to pay damages as in that case the existence of a causal link between the remaining unlawful conduct (manifest error of assessment and failure to state reasons) and the alleged harm is not demonstrated. In the alternative the Appellant demonstrated that the General Court erred in law by awarding damages on the basis of the loss of opportunity as such a basis to award damages cannot be considered as a general principle common to the laws of the Member States and thus violated the explicit provision of Article 340 TFEU.

**Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 14 July 2016 —
Comité Interprofessionnel du Vin de Champagne v Aldi Einkauf GmbH & Co. OHG Süd**

(Case C-393/16)

(2016/C 402/18)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Comité Interprofessionnel du Vin de Champagne

Defendant: Aldi Einkauf GmbH & Co. OHG Süd

Intervener: Galana NV

Questions referred

1. Are Article 118m(2)(a)(ii) of Regulation (EC) No 1234/2007 ⁽¹⁾ and Article 103(2)(a)(ii) of Regulation (EU) No 1308/2013 ⁽²⁾ to be interpreted as meaning that their scope also covers a case in which the protected designation of origin is used as part of the designation of a foodstuff which does not correspond to the product specifications but to which an ingredient has been added which does correspond to the product specifications?

2. If Question 1 is answered in the affirmative:

Are Article 118m(2)(a)(ii) of Regulation (EC) No 1234/2007 and Article 103(2)(a)(ii) of Regulation (EU) No 1308/2013 to be interpreted as meaning that the use of a protected designation of origin as part of the designation of a foodstuff which does not correspond to the product specifications but to which an ingredient has been added which does correspond to the product specifications constitutes exploitation of the reputation of the designation of origin in the case where the designation of the foodstuff corresponds to the customary designations on the market in question and the ingredient is added in a quantity which is sufficient to give the product one of its essential characteristics?

3. Are Article 118m(2)(b) of Regulation (EC) No 1234/2007 and Article 103(2)(b) of Regulation (EU) No 1308/2013 to be interpreted as meaning that the use of a protected designation of origin in the circumstances set out in Question 2 constitutes misuse, imitation or evocation?

4. Are Article 118m(2)(c) of Regulation (EC) No 1234/2007 and Article 103(2)(c) of Regulation (EU) No 1308/2013 to be interpreted as meaning that they are applicable only to false or misleading indications which, on the market in question, are liable to create a false impression as to a product's geographical origin?

- ⁽¹⁾ 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 (Single CMO Regulation); OJ 2007 L 299, p. 1.
- ⁽²⁾ 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.

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 1 August 2016 — Hansruedi Raimund v Michaela Aigner

(Case C-425/16)

(2016/C 402/19)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Hansruedi Raimund

Defendant: Michaela Aigner

Questions referred

1. May an action for infringement of an EU trade mark (Article 96(a) of Regulation (EC) No 207/2009, ⁽¹⁾ as amended by Regulation (EU) 2015/2424) be dismissed on the ground of an objection that the trademark application was filed in bad faith (Article 52(1)(b) of Regulation (EC) No 207/2009, as amended by Regulation (EU) 2015/2424) if, despite the defendant having brought a well-founded counterclaim for a declaration of invalidity of the EU trade mark (Article 99(1) of Regulation (EC) No 207/2009, as amended by Regulation (EU) 2015/2424), the court has not yet ruled on that counterclaim?
2. If the answer is in the negative: May the court dismiss an action for infringement on the ground of an objection that the trademark application was filed in bad faith, if the court at least simultaneously upholds the counterclaim for a declaration of invalidity, or must the court delay the decision on the action for infringement in any event until the decision on the counterclaim is *res judicata*?

⁽¹⁾ Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark; OJ 2009 L 78, p. 1.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla y León (España) lodged on 2 August 2016 — Instituto Nacional de la Seguridad Social (INSS), Tesorería General de la Seguridad Social (TGSS) v José Blanco Marqués

(Case C-431/16)

(2016/C 402/20)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla y León