



Reports of Cases

Case C-393/16

Comité Interprofessionnel du Vin de Champagne
v
Aldi Süd Dienstleistungs-GmbH & Co.OHG

(Request for a preliminary ruling from the Bundesgerichtshof)

Reference for a preliminary ruling — Common organisation of the markets in agricultural products — Protection of protected designations of origin (PDOs) — Regulation (EC) No 1234/2007 — Article 118m(2)(a)(ii), (b) and (c) — Regulation (EU) No 1308/2013 — Article 103(2)(a)(ii), (b) and (c) — Scope — Exploitation of the reputation of a PDO — Misuse, imitation or evocation of a PDO — False or misleading indication — PDO ‘Champagne’ used in the name of a foodstuff — The name ‘Champagner Sorbet’ — Foodstuff containing champagne as an ingredient — Ingredient conferring on the foodstuff an essential characteristic)

Summary — Judgment of the Court (Second Chamber), 20 December 2017

1. *Agriculture — Common organisation of the markets — Wine — Designation and presentation of wine — Protected designations of origin and protected geographical indications — Protection — Scope — Use of a protected designation of origin in the name of a foodstuff containing an ingredient which corresponds to the product specifications for that designation — Included*

(Council Regulation No 1234/2007, as amended by Regulation No 491/2009, Art. 118m(2)(a)(ii); European Parliament and Council Regulation No 1308/2013, Art. 103(2)(a)(ii))

2. *Agriculture — Common organisation of the markets — Wine — Designation and presentation of wines — Protected designations of origin and protected geographical indications — Exploitation of the reputation of a protected designation of origin — Concept — Use of a protected designation of origin that seeks to take undue advantage of the reputation of that designation of origin*

(Council Regulation No 1234/2007, as amended by Regulation No 491/2009, Art. 118m(2)(a)(ii); European Parliament and Council Regulation No 1308/2013, Art. 103(2)(a)(ii))

3. *Agriculture — Common organisation of the markets — Wine — Designation and presentation of wines — Protected designations of origin and protected geographical indications — Protection — Exploitation of the reputation of a protected designation of origin — Concept — Use of a protected designation of origin in the name of a foodstuff containing an ingredient which corresponds to the product specifications for that designation — Included — Conditions — Foodstuff that does not have, as one of its essential characteristics, a taste attributable primarily to the presence of that ingredient in the composition of the foodstuff*

(Council Regulation No 1234/2007, as amended by Regulation No 491/2009, Art. 118m(2)(a)(ii); European Parliament and Council Regulation No 1308/2013, Art. 103(2)(a)(ii))

4. *Agriculture — Common organisation of the markets — Wine — Designation and presentation of wines — Protected designations of origin and protected geographical indications — Misuse, imitation or evocation of a protected designation of origin — Concept — Use of a protected designation of origin in the name of a foodstuff containing an ingredient which corresponds to the product specifications for that designation — Precluded*

(Council Regulation No 1234/2007, as amended by Regulation No 491/2009, Art. 118m(2)(b); European Parliament and Council Regulation No 1308/2013, Art. 103(2)(b))

5. *Agriculture — Common organisation of the markets — Wine — Designation and presentation of wines — Protected designations of origin and protected geographical indications — Protection against false or misleading indications — Scope*

(Council Regulation No 1234/2007, as amended by Regulation No 491/2009, Art. 118m(2)(c); European Parliament and Council Regulation No 1308/2013, Art. 103(2)(c))

1. Article 118m(2)(a)(ii) of 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), as amended by Council Regulation (EC) No 491/2009 of 25 May 2009, and Article 103(2)(a)(ii) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 October 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 are to be interpreted as meaning that the scope of those provisions covers a situation where a protected designation of origin, such as ‘Champagne’, is used as part of the name under which a foodstuff is sold, such as ‘Champagner Sorbet’, and where that foodstuff does not correspond to the product specifications for that protected designation of origin but contains an ingredient which does correspond to those specifications.

(see para. 36, operative part 1)

2. See the text of the decision.

(see para. 40)

3. Article 118m(2)(a)(ii) of Regulation No 1234/2007, as amended by Regulation No 491/2009, and Article 103(2)(a)(ii) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a protected designation of origin as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that protected designation of origin but contains an ingredient that does correspond to those specifications, such as ‘Champagner Sorbet’, constitutes exploitation of the reputation of a protected designation of origin, within the meaning of those provisions, if that foodstuff does not have, as one of its essential characteristics, a taste attributable primarily to the presence of that ingredient in the composition of the foodstuff.

In that regard, it must be concluded that the use of a PDO as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient which does correspond to those specifications is intended to take unfair advantage of the reputation of the PDO if that ingredient does not confer on that foodstuff one of its essential characteristics. As to whether the ingredient in question confers on the foodstuff concerned one of its essential characteristics, the quantity of that ingredient in the overall composition of the foodstuff is a significant but not, in itself, a sufficient factor. Where the name of the foodstuff indicates, as in the

main proceedings, that it contains an ingredient protected by a PDO, which is intended to convey the taste of the foodstuff, the taste imparted by that ingredient must constitute the essential characteristic of that foodstuff.

(see paras 50-53, operative part 2)

4. Article 118m(2)(b) of Regulation No 1234/2007, as amended by Regulation No 491/2009, and Article 103(2)(b) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a protected designation of origin as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that protected designation of origin but contains an ingredient that does correspond to those specifications, such as ‘Champagner Sorbet’, does not constitute misuse, imitation or evocation within the meaning of those provisions.

By incorporating in the name of the foodstuff in question the name of the ingredient protected by a PDO, direct use is made of the PDO to claim openly a gustatory quality connected with it, which does not amount to misuse, imitation or evocation.

(see paras 57, 59, operative part 3)

5. Article 118m(2)(c) of Regulation No 1234/2007, as amended by Regulation No 491/2009, and Article 103(2)(c) of Regulation No 1308/2013 are to be interpreted as being applicable both to false or misleading indications which are liable to convey a false impression as to the geographical origin of the product concerned and to false or misleading indications relating to the nature or essential qualities of the product.

(see para. 64, operative part 4)