

- If the applicant country has itself for a long time accepted and benefited from the generic use of the designation, it will have forfeited any right to argue that the designation is non-generic.
- Registration as a designation of origin at Community level is excluded if a designation is a generic designation in even only one Member State.
- Lawful production and marketing over a long period of time in other Member States are central factors in the evaluation of a generic designation. Lawful marketing of this kind may be suppressed only if it is contrary to fair custom and practice or gives rise to a genuine risk of confusion.
- Lawful production in non-member countries and their trade with the EU also argue in favour of treating a designation as being covered by the prohibition of registration of generic designations, *inter alia* in the light of the Community's obligations under the WTO.
- There is a presumption that non-geographical indications are generic designations, in particular where an indication is derived from a language other than that of the applicant country.
- The applicant country and, secondly, the Commission have the onus of establishing that a non-geographical indication is not a generic designation and that lawful marketing over a long period in other countries is contrary to fair custom and practice and gives rise to a genuine risk of confusion.

Denmark attaches particular importance to the following specific factors:

- Whether as a designation or a product, feta does not have its origin specifically in Greece. The traditional consumption and production area covers a number of Balkan lands, including several non-member countries due shortly to join the EU.
- Up until 15 years ago, Greece itself imported, produced, consumed and exported feta, including feta made from cow's milk. Consumers in Greece must, for a number of years, have regarded the designation as being generic.
- In other countries, both within and outwith the EU, in which it is consumed and produced in large quantities, consumers also regard feta as being a generic designation.

- Lawful production and marketing of feta outside the area of origin take place in a number of Member States and non-member countries.
- Danish production and marketing of feta are in no wise contrary to fair custom and practice, nor do they give rise to any genuine risk of confusion, precisely because Danish legislation has, since as far back as 1963, required that such feta be designated as 'dansk feta'.
- The Community legislature, including the Commission, has, in a number of legal provisions and measures, proceeded on the basis that 'feta' is a generic designation.

(Alternative)

The Commission adopted Regulation No 1829/2002 in contravention of the basic regulation inasmuch as feta does not satisfy the conditions governing registration as a traditional non-geographical name laid down in Article 2(3) of the basic regulation.

⁽¹⁾ OJ L 277 of 15.10.2002, p. 10.

⁽²⁾ Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92 (OJ L 148 of 21.6.1996, p. 1).

⁽³⁾ Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208 of 24.7.1992, p. 1).

Action brought on 31 December 2002 by Kingdom of Spain against Commission of the European Communities

(Case C-468/02)

(2003/C 55/21)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 31 December 2002 by the Kingdom of Spain, represented by Lourdes Fraguas Gadea, Abogado del Estado, acting as Agent, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul Decision 2002/881/EC ⁽¹⁾ so far as concern the financial corrections imposed on the Kingdom of Spain
2. order the defendant institution to pay the costs.

Pleas in law and main arguments

(Public storage of olive oil, financial correction of EUR 37 621,55)

The successful tenderer fulfilled its obligation to communicate its refusal to take over the lot, informing and notifying the Commission thereof in fulfilment of its obligation under Article 10 of Regulation No 561/99⁽²⁾.

Secondly, return of the securities did not result in any loss to the Community budget since the oil in question continued to form part of the intervention stock, subject to that body of rules and available to cover future operations, just as if refusal had been communicated by the successful tenderer directly to the Commission.

(Areas harvested for pasture by the paying agency of Castile and Leon, financial correction of EUR 1 229 951,00)

The corrections relating to the 1998 and 1999 harvests are the result of applying 2 % to the result of dividing the total declared area in cases where the discrepancies detected during administrative checks were in excess of 3 % or 2 hectares into the total declared area.

Spain does not agree with the Commission on the proposed financial correction because, first, Community legislation⁽³⁾ does not mean that the results of the administrative checks should be included in the risk analysis when selecting the checks to be made on the spot and, secondly, handling of the applications for 'area' aid makes it impossible to carry out all the administrative checks before on-the-spot checks are carried out.

Nonetheless, in the Autonomous Community of Castile and Leon cases in which irregularities have been detected in the administrative checks carried out the previous year are systematically included as a risk criterion when selecting the sample of cases for on-the-spot checks.

⁽¹⁾ Commission Decision 2002/881/EC of 5 November 2002 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), OJ 2002 L 306, p. 26.

⁽²⁾ Commission Regulation (EC) No 561/1999 of 15 March 1999 on the opening of a standing invitation to tender for the sale of olive oil held by the Spanish intervention agency, OJ L 69, 16.1.1999, p. 13.

⁽³⁾ Article 6(4) of Commission Regulation (EEC) No 3887/92 of 23 December 1992, OJ 1992 L 391, p. 36.

Appeal brought on 23 December 2002 by the European Broadcasting Union (EBU) against the judgment delivered on 8 October 2002 by the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities in Joined Cases T-185/00, T-216/00, T-299/00 and T-300/00 between Métropole télévision SA (M6), Antena 3 de Televisión, SA, Gestevisión Telecinco, SA, SIC-Sociedade Independente de Comunicação, SA, supported by Deutsches SportFernsehen GmbH (DSF) and Reti Televisive Italiane Spa (RTI) and Commission of the European Communities, supported by European Broadcasting Union (EBU) and Radiotelevisión Española (RTVE)

(Case C-470/02 P)

(2003/C 55/22)

An appeal against the judgment delivered on 8 October 2002 by the Second Chamber, Extended Composition, of the Court of First Instance of the European Communities in Joined Cases T-185/00, T-216/00, T-299/00 and T-300/00 between Métropole télévision SA (M6), Antena 3 de Televisión, SA, Gestevisión Telecinco, SA, SIC-Sociedade Independente de Comunicação, SA, supported by Deutsches SportFernsehen GmbH (DSF) and Reti Televisive Italiane Spa (RTI) and Commission of the European Communities, supported by European Broadcasting Union (EBU) and Radiotelevisión Española (RTVE) was brought before the Court of Justice of the European Communities on 23 December 2002 by the European Broadcasting Union (EBU), represented by D. Waelbroeck and M. Johnsson, lawyers.

The appellant claims that the Court should:

- set aside the judgment of the Court of First Instance of the European Communities of 8 October 2002 in Joined Cases T-185/00, T-216/00, T-299/00 and T-300/00, Métropole Télévision and Others v Commission;
- send the case back to the Court of First Instance so that it may rule on the other pleas in law raised by the applicants on which it has not yet ruled;
- reserve the costs.

Pleas in law and main arguments

By basing its reasoning on arguments that were not raised by the applicants, the Court of First Instance has ruled *ultra petita* and infringed the rights of the defence of the EBU and of the Commission. The decisive element for the Court of First Instance is the application of the sub-licensing scheme for 'live