

SEVERI

JUDGMENT OF THE COURT (Fourth Chamber)

10 September 2009*

In Case C-446/07,

REFERENCE for a preliminary ruling under Article 234 EC, by the Tribunale civile di Modena (Italy), made by decision of 26 September 2007, received at the Court on 1 October 2007, in the proceedings

Alberto Severi, in his own name, and as legal representative of Cavazzuti e figli SpA, now known as Grandi Salumifici Italiani SpA,

v

Regione Emilia-Romagna,

intervening party:

Associazione fra Produttori per la Tutela del ‘Salame Felino’,

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, T. von Danwitz, R. Silva de Lapuerta, G. Arestis and J. Malenovský (Rapporteur), Judges,

Advocate General: E. Sharpston,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 11 December 2008,

after considering the observations submitted on behalf of:

- Mr Severi and Grandi Salumifici Italiani SpA, by G. Forte and C. Marinuzzi, avvocati,

- Regione Emilia-Romagna, by G. Puliatti, avvocato,

- Associazione fra Produttori per la Tutela del ‘Salame Felino’, by S. Magelli and A. Ballestrazzi, avvocati,

- the Greek Government, by I. Chalkia, V. Kondolaimos and M. Tassopoulou, acting as Agents,

- the Italian Government, by R. Adam, acting as Agent, assisted by S. Fiorentino, avvocato dello Stato,

- the Commission of the European Communities, by C. Cattabriga and B. Doherty, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 7 May 2009,

gives the following

Judgment

- ¹ This reference for a preliminary ruling concerns the interpretation of Article 2 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29), of Articles 3(1) and 13(3) of 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 1992 L 208, p. 1), and of Article 15(2) of First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks (OJ 1989 L 40, p. 1).

- 2 The reference has been made in proceedings between Mr Severi, acting in his own name and on behalf of Grandi Salumifici Italiani SpA ('GSI'), formerly Cavazzuti e figli SpA, and the Regione Emilia-Romagna in relation to the labelling of sausages which GSI markets under the name 'Salame tipo Felino'.

Legal context

Community legislation

Directive 2000/13

- 3 Recital 4 in the preamble to Directive 2000/13 states:

'The purpose of this Directive should be to enact Community rules of a general nature applicable horizontally to all foodstuffs put on the market.'

- 4 Recital 6 in the preamble to Directive 2000/13 is as follows:

'The prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.'

5 Recital 8 in the preamble to that directive states:

‘Detailed labelling, in particular giving the exact nature and characteristics of the product which enables the consumer to make his choice in full knowledge of the facts, is the most appropriate since it creates fewest obstacles to free trade.’

6 Article 1 of Directive 2000/13 is worded as follows:

‘1. This Directive concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer and certain aspects relating to the presentation and advertising thereof.

...

3. For the purpose of this Directive:

(a) “labelling” shall mean any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff;

...'

7 Article 2(1) of Directive 2000/13 provides:

'1. The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

- (i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production;

...

3. The prohibitions or restrictions referred to in paragraphs 1 and 2 shall also apply to:

- (a) the presentation of foodstuffs, in particular their shape, appearance or packaging, the packaging materials used, the way in which they are arranged and the setting in which they are displayed;

(b) advertising.’

- 8 Article 3(1) of Directive 2000/13 sets out an exhaustive list of the particulars which are compulsory on the labelling of foodstuffs. Point 7 of that article requires the display of the name or business name and address of the manufacturer or packager, or of a seller established within the Community, while Point 8 prescribes particulars of the place of origin or provenance where failure to give such particulars might mislead the consumer to a material degree as to the true origin or provenance of the foodstuff.
- 9 Article 5 of Directive 2000/13 provides:

‘1. The name under which a foodstuff is sold shall be the name provided for in the Community provisions applicable to it.

- (a) In the absence of Community provisions, the name under which a product is sold shall be the name provided for in the laws, regulations and administrative provisions applicable in the Member State in which the product is sold to the final consumer or to mass caterers.

Failing this, the name under which a product is sold shall be the name customary in the Member State in which it is sold to the final consumer or to mass caterers, or a description of the foodstuff, and if necessary of its use, which is clear enough to let the purchaser know its true nature and distinguish it from other products with which it might be confused.

...'

Regulation No 2081/92

- 10 Although the national court refers, in its order for reference, to Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12), which repeals Regulation No 2081/92, it is clear from the facts of the dispute in the main proceedings that Regulation No 510/2006 is not applicable to that dispute. Rather, in light of the date on which a penalty was imposed on Cavazzuti e figli SpA by the Italian Police, it is Regulation No 2081/92, as amended by Commission Regulation (EC) No 2796/2000 of 20 December 2000 (OJ 2000 L 324, p. 26, 'Regulation No 2081/92, as amended'), which is applicable.
- 11 Regulation No 2081/92, as amended, sets out rules for the protection of designations of origin (PDO) and geographical indications (PGI) of agricultural products and foodstuffs. That protection, granted when there is a link between the characteristics of the product or foodstuff and its geographical origin, is obtained in accordance with a Community registration procedure.
- 12 The fourth recital in the preamble to Regulation No 2081/92, as amended, states that 'in view of the wide variety of products marketed and of the abundance of information concerning them provided, consumers must, in order to be able to make the best choice, be given clear and succinct information regarding the origin of the product'.

13 The fifth recital in the preamble to Regulation No 2081/92, as amended, reads as follows:

‘... the labelling of agricultural products and foodstuffs is subject to the general rules [in the Community and to those] laid down in Council Directive [2000/13]; ... in view of their specific nature, additional special provisions should be adopted for agricultural products and foodstuffs from a specified geographical area’.

14 According to the seventh recital in the preamble to Regulation No 2081/92, as amended, ‘a framework of Community rules on protection will permit the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework will ensure fair competition between the producers of products bearing such indications and enhance the credibility of the products in the consumers’ eyes.’

15 Under Article 1(2) of Regulation No 2081/92, as amended, that regulation is to apply without prejudice to other specific Community provisions.

16 Article 3(1) of Regulation No 2081/92, as amended, provides:

‘Names that have become generic may not be registered.

For the purposes of this Regulation, a “name that has become generic” means the name of an agricultural product or a foodstuff which, although it relates to the place or the

17 Article 5 of Regulation No 2081/92, as amended, sets out the procedure that a Member State must follow when an application for registration is made. Article 5(5) provides:

“The Member State shall check that the application is justified and shall forward the application ... to the Commission, if it considers that it satisfies the requirements of this Regulation.

That Member State may, on a transitional basis only, grant on the national level a protection in the sense of the present Regulation to the name forwarded in the manner prescribed, and, where appropriate, an adjustment period, as from the date of such forwarding; ...

Such transitional national protection shall cease on the date on which a decision on registration under this Regulation is taken ...

...’

18 Article 13(3) of Regulation No 2081/92, as amended, provides that ‘[p]rotected names may not become generic.’

National legislation

- ¹⁹ Article 2 of Legislative Decree No 109 of 27 January 1992, which transposed the provisions of Article 2(1)(a)(i) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1), provisions now to be found in Article 2(1)(a)(i) of Directive 2000/13, which repealed and replaced Directive 79/112 ('Legislative Decree No 109/92'), provides:

'1. The labelling and the methods used are intended to provide the consumer with clear and accurate information. They must be such as:

- (a) not to mislead the purchaser as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production of the foodstuff in question;

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

- ²⁰ GSI, the head office of which is in Modena, manufactures and markets sausages.

- 21 On 12 December 2002 the Milan municipal police informed Mr Severi, in his own name and as the legal representative of GSI, that GSI was charged with infringing Article 2 of Legislative Decree No 109/92 relating to labelling, presentation and advertising of foodstuffs, by having marketed a sausage, produced in Modena, the labelling of which bore the expression 'Salame tipo Felino'.
- 22 The police report of the infringement states, first, that the word 'tipo' (type) is written on the labelling at issue in the main proceedings in letters which are too small to be adequately visible and, second, that the other particulars mentioned on the label relate solely to the ingredients and the name and head office of the producer, and contain no information on the place of production or the fact that the place of production and the head office of the producer are the same. The report concludes that, in those circumstances, the labelling of the product is likely to mislead the consumer as to the origin and provenance of the sausage, since it does not allow clear and accurate identification of the provenance of the product, which is understood to be where the meat is processed and packaged. The name 'Salame tipo Felino' refers, in fact, to a traditional method of production and to a place of production — the territory of the commune of Felino, in Emilia Romagna, in the province of Parma — which does not correspond to the facts of the case in the main proceedings, since, in that case, the foodstuff in question is produced in Modena, also in Emilia Romagna, but in the province of Modena.
- 23 As a result of the findings in the report completed by the Milan municipal police, on 16 May 2006 the Regione Emilia-Romagna imposed on Mr Severi an administrative penalty of EUR 3 108.33 for infringement of Article 2 of Legislative Decree No 109/92.
- 24 In its decision, which upholds the municipal police interpretation, the Regione Emilia-Romagna held that the designation 'Salame Felino' designed an authentic and typical product, characteristic of the territory of the commune of Felino. Since the characteristics ascribed to Salame Felino could not be extended to all sausage meats produced using a similar recipe but originating in other territories, or produced 'industrially', use of the expression 'tipo' was not sufficient to exclude all likelihood of confusion in the mind of the consumer. The labelling at issue in the main proceedings

was therefore likely to mislead the consumer as to the place of manufacture of the product at issue, and therefore did not enable the consumer to purchase in full knowledge of the facts.

25 Mr Severi challenged the penalty of 16 May 2006 before the Tribunale civile di Modena (Civil Court, Modena). In support of his action, he claimed that Article 2 of Directive 2000/13, transposed by Article 2 of Legislative Decree No 109/92, intended to prescribe methods of labelling foodstuffs which are such as not to mislead the consumer as to the origin and provenance of a product, should be interpreted in conjunction with other provisions of Community law, and in particular Regulation No 2081/92, as amended. Since Directive 2000/13 contains no definition of the concepts of origin and provenance, it is in Regulation No 2081/92, as amended, that the substantive content of those concepts is to be found.

26 The Regione Emilia-Romagna rejected those arguments, invoking the autonomous nature of Article 2 of Directive 2000/13, the interpretation of which required no reference to Regulation No 2081/92, as amended, and which applied to any discrepancy between the place mentioned on the label and the actual place of production, whether or not the designation of origin under consideration enjoyed protection.

27 The arguments of the Regione Emilia-Romagna, based on the autonomy of Article 2 of Directive 2000/13, did not find favour with the Tribunale civile di Modena. The Tribunale upheld the argument advanced by the applicant in the main proceedings, and took the view that the concept of origin and provenance could not be limited to the place where the place of production is located, but had to be based on the expectations which the consumer associates with the place-name as regards the type of product and its qualities. In order to establish whether the labelling of the product at issue in the main proceedings should be deemed to be misleading, the referring court therefore held that it was necessary to define the legal status of the designation 'Salame Felino'. The Tribunale also considered that it was necessary to determine whether that designation referred to a recipe or to a type of product, and was therefore a generic name, or whether it referred to qualities, characteristics, or to a reputation due

exclusively or essentially to the geographical environment of origin and, consequently, constituted a genuine designation of origin within the meaning of Regulation No 2081/92, as amended.

28 Furthermore, because of the existence of a collective trade mark covering the expression ‘Salame Felino’, the referring court took the view that it was necessary to clarify the interaction of that trade mark and the designation used in good faith for more than 10 years by traders based outside the territory of the commune of Felino.

29 In light of the foregoing, the Tribunale civile di Modena decided to stay the proceedings and to refer to the Court of Justice for a preliminary ruling the following questions:

- ‘1. Must Articles 3(1) and 13(3) of Regulation (EC) No 2081/92 (now Articles 3(1) and 13(2) of Regulation (EC) No 510/2006), read with Article 2 of Legislative Decree 109/92 (Article 2 of Directive 2000/13/EC), be interpreted as meaning that the name of a food product containing geographical references, for which, at national level, the submission of an application to the Commission for registration as a protected designation of origin (PDO) or a protected geographical indication (PGI) within the meaning of those regulations has been “rejected” or blocked, must be considered generic at least throughout the period for which such “rejection” or “blocking” remains effective?

2. Must Articles 3(1) and 13(3) of Regulation No 2081/92 (now Articles 3(1) and 13(2) of Regulation No 510/2006) read with Article 2 of Legislative Decree 109/92 (Article 2 of Directive 2000/13) be interpreted as meaning that the name of a food product which is evocative of a place, but not registered as a PDO or PGI within the meaning of those regulations, may be legitimately used in the European market by producers who have used it in good faith and uninterruptedly for a considerable period before the entry into force of Regulation No 2081/92 (now Regulation No 510/2006) and in the period following the entry into force of that regulation?

3. Must Article 15(2) of Directive 89/104/EEC ... be interpreted as meaning that the proprietor of a collective mark for a food product containing a geographical reference is not allowed to prevent producers of a product having the same characteristics from using to describe it a name similar to that contained in the collective mark, where those producers have used that name in good faith and uninterruptedly over a period of time considerably pre-dating the registration of that collective mark?

The questions referred for a preliminary ruling

The first question

- ³⁰ By its first question, the referring court seeks, in essence, to ascertain whether a geographical name in respect of which an application for registration as a PDO or PGI has been rejected or blocked at national level must be regarded as generic at least during the period for which that rejection or blocking remain effective.
- ³¹ First, it must be observed that this first question, the admissibility of which is disputed by the Italian Government and by the Commission, derives from the arguments relied on by GSI in the action which it brought to challenge the penalty imposed on it for an infringement of Article 2 of Legislative Decree No 109/92.
- ³² In support of its action seeking to establish that the labelling of the sausages which it markets under the designation ‘Salame tipo Felino’ is not misleading within the meaning of Article 2 of Legislative Decree No 109/92, GSI has put forward a two-stage argument.

- 33 GSI has claimed, first, that the labelling at issue in the main proceedings could not be regarded as misleading since the designation 'Salame tipo Felino' must be deemed to be generic within the meaning of Article 3 of Regulation No 2081/92, as amended. GSI has claimed, next, that the designation 'Salame tipo Felino' must be deemed to be generic because, moreover, an application for registration of the designation 'Salame Felino' as a PGI was submitted by two associations of local producers and, at the time of the penalty at issue in the main proceedings, no ruling on that application had yet been made.
- 34 The referring court regarded as established the first part of GSI's argument and therefore referred to the Court of Justice only the second part of the argument, which forms the subject of the first question.
- 35 However, both the Italian Government and the Commission dispute the premise that the possibility that the designation 'Salame tipo Felino' may be generic, within the meaning of Article 3 of Regulation No 2081/92, as amended, affects the assessment of whether the labelling is misleading, within the meaning of Article 2 of Directive 2000/13. They contend that the question referred, which concerns the legal value of the name itself, is inadmissible in the absence of any connection to the dispute in the main proceedings, which relates to whether the labelling of products so named is misleading.
- 36 Prior to consideration of the merits of the question referred, it is necessary therefore to rule on its admissibility.

Admissibility of the question

- 37 It is settled case-law that, in proceedings under Article 234 EC, it is, as a general rule, for the national court hearing a dispute to determine both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it

submits to the Court. The Court may, however, refuse to rule on a question referred for a preliminary ruling by a national court, inter alia, where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts of the main action or its purpose and is therefore not objectively necessary for the resolution of the dispute (see, inter alia, Case C-421/97 *Tarantik* [1999] ECR I-3633, paragraph 33, and Joined Cases C-393/04 and C-41/05 *Air Liquide Industries Belgium* [2006] ECR I-5293, paragraph 24).

38 It is, admittedly, important to emphasise that whether a designation is generic, within the meaning of Article 3 of Regulation No 2081/92, as amended, cannot a priori preclude the possibility that the labelling of products so named may be misleading, within the meaning of Article 2 of Directive 2000/13. As stated by the Advocate General in points 53 and 54 of her Opinion, there are circumstances in which a consumer could indeed be misled by the use of a generic name on the label of a product, having regard to the intrinsic characteristics of the labelling of that product. Accordingly, it does not follow from the fact that the use by a producer of a generic name, which by definition is not protected, does not infringe Regulation No 2081/92, as amended, that the interests of consumers, protected by Directive 2000/13, are necessarily safeguarded.

39 Nevertheless, contrary to the contentions of the Italian Government and the Commission, the legal value of the designation, and in particular whether it may be generic, is one of the factors which, while not the only decisive factor, may usefully be taken into account in the assessment of whether the labelling is misleading.

40 In order to determine whether a designation is or is not generic, the Commission must take into account a number of factors; inter alia, under Article 3 of Regulation No 2081/92, as amended, 'the existing situation in the Member State in which the name originates and in areas of consumption'. For its part, the referring court will also have to take account of those factors in order to determine whether the labelling of the product concerned is such as to mislead the consumer, within the meaning of Article 2(1) of Directive 2000/13.

- 41 It follows that it is relevant for the referring court, in the assessment required of it as to whether the labelling of the product at issue in the main proceedings may be misleading, to know whether the designation at issue is or is not generic.
- 42 From this it follows that the question referred is not obviously irrelevant to the resolution of the dispute in the main proceedings and that it is, therefore, admissible.

Substance

- 43 First, it must be observed that the first question, as it appears in the order for reference, rests on two facts. On the one hand, the name 'Salame Felino' was the subject of an application for registration as a PDO or PGI within the meaning of Regulation No 2081/92, as amended, and, on the other hand, the forwarding of that application to the Commission was subsequently rejected, or at least blocked, by the Italian authorities.
- 44 It is clear, from reading together the provisions of Article 5(4) and (5), Article 6(2) to (5) and the last subparagraph of Article 3(1) of Regulation No 2081/92, as amended, that the Commission has, in short, exclusive competence to take a decision on applications for registration which are forwarded to it by the national authorities, either by granting the protection sought, or, on the contrary, by refusing the registration applied for on the ground, as it may be, that the name at issue is generic. Consequently, neither the fact that the application for registration may have been rejected or blocked by the national authorities, nor the reasons for such rejection or blocking, can, in any way, affect the answer to be given to the question referred.
- 45 However, the national court, referring to the provisions of Article 3(1) and Article 13(3) of Regulation No 2081/92, as amended, seeks to ascertain, in essence, whether there may not be, in some circumstances, a presumption that a designation is generic before

the Commission's decision is made, as soon as the application for registration is submitted, and which at least endures from the time at which that application is submitted until the time of any forwarding of the application to the Commission by the national authorities.

46 In that regard, referring to Article 13(3) of Regulation No 2081/92, as amended, the national court appears to be asking whether an interpretation *a contrario* of that provision does not lead to such a presumption.

47 It must be declared that that is not the case. Article 13(3) of Regulation No 2081/92, as amended, provides that names which are (already) protected cannot become generic. It does, admittedly, follow as an *a contrario* conclusion from that provision that names which are not yet protected, on the ground that they are the subject of an application for registration, may become generic, unless, by reason of some protection already in force, there is something to prevent this happening.

48 However, such an *a contrario* interpretation allows no more to be inferred than the mere possibility that the name at issue may become generic. By contrast, that interpretation does not permit the conclusion to be made that names not yet protected, for which an application for registration has been submitted, must be presumed to be generic.

49 It follows from the foregoing that Articles 3(1) and 13(3) of Regulation No 2081/92, as amended, read together, cannot be interpreted as meaning that a name which is the subject of an application for registration should be deemed to be generic pending the possible forwarding of the application for registration to the Commission.

50 That conclusion is supported by the actual meaning of the term ‘generic’, as clarified by the case-law of the Court. The way in which the name of a product becomes generic is the result of an objective process, at the end of which that name, although referring to the geographical place where the product in question was originally manufactured or marketed, has become the common name of that product (see, to that effect, Joined Cases C-465/02 and C-466/02 *Germany and Denmark v Commission* [2005] ECR I-9115, paragraphs 75 to 100, and Case C-132/05 *Commission v Germany* [2008] ECR I-957, paragraph 53).

51 In those circumstances, the fact that the name at issue in the main proceedings is the subject of an application for registration must, as such, be regarded as irrelevant to the outcome of such an objective process of vulgarisation or of breaking the link between the designation and the territory.

52 Further, it must be observed that to establish a presumption that a name is generic on the basis of a submission of an application for registration would be contrary to the objectives pursued by Regulation No 2081/92, as amended.

53 The system for registration of designations as a PDO or PGI, established by Regulation No 2081/92, as amended, meets both the requirements of consumer protection, as is clear from the fourth recital in the preamble to Regulation No 2081/92, as amended, and the need to maintain fair competition between producers, as is clear from the seventh recital in the preamble to that regulation. However, the recognition that a designation is generic, by definition, precludes the granting of such protection. Accordingly, to presume, merely because an application for registration has been submitted, that a name which ultimately is found not to be generic is in fact generic is likely to jeopardise the achievement of the two abovementioned objectives. Consequently, the recognition that a designation is generic cannot be assumed during the entire period before the Commission takes its decision on the application for registration.

54 In light of the foregoing, the answer to be given to the first question is that Articles 3(1) and 13(3) of Regulation No 2081/92, as amended, must be interpreted as meaning that the designation of a foodstuff containing geographical references, which has been the subject of an application for registration as a PDO or PGI within the meaning of that regulation, cannot be regarded as generic pending the possible forwarding of the application for registration to the Commission by the national authorities. A designation cannot be presumed to be generic, within the meaning of Regulation No 2081/92, as amended, for as long as the Commission has not taken a decision on the application for registration of the designation, as the case may be, by rejecting it on the specific ground that that designation has become generic.

The second question

55 By its second question, the referring court seeks to determine, in essence, whether Articles 3(1) and 13(3) of Regulation No 2081/92, as amended, read with Article 2 of Directive 2000/13, must be interpreted as meaning that the designation of a foodstuff which is evocative of a place and which is not registered as a PDO or PGI may be legitimately used by producers who use it uninterruptedly and in good faith, before and after entry into force of Regulation No 2081/92.

Admissibility of the question

56 The Italian Government and the Associazione fra Produttori per la Tutela del ‘Salame Felino’ contend that this second question is inadmissible. In particular, the Italian Government states that that question has no relevance to the subject-matter of the dispute in the main proceedings on the ground that there is no provision of Community or national law on the labelling of products which takes into consideration the good faith of the trader who has placed on the market a product which is misleadingly labelled.

57 It must, however, be held that such an argument, which relates to the substance of the question referred, cannot have any bearing on its admissibility.

Substance

58 First, as the Advocate General states in point 49 of her Opinion, despite there being differences in the objectives of Directive 2000/13 and Regulation No 2081/92, as amended, and in the scope of the protection they provide, the use of geographical names on the labels of foodstuffs may, in a situation such as that in the main proceedings, fall simultaneously within the ambit of both those legal instruments.

59 However, in the dispute in the main proceedings, the referring court is required to rule solely on whether, in the light of Article 2 of Legislative Decree No 109/92, which transposes Article 2 of Directive 2000/13, GSI could have misled consumers by using on the labelling of the products which it markets the name 'Salame tipo Felino'. The referring court seeks to know therefore whether the fact that the designation at issue, which is not registered as a PDO or PGI, is used by producers who have used it in good faith and uninterruptedly for a considerable period has any effect on the assessment of whether the labelling at issue in the main proceedings is misleading.

60 In that regard, it must be recalled that, as a general rule, it is not for the Court of Justice to rule on the question whether the labelling of certain products is likely to mislead the purchaser or consumer or to determine whether a sales description is potentially misleading. That task is for the national court (see, inter alia, Case C-210/96 *Gut Springenheide and Tusky* [1998] ECR I-4657, paragraph 30, and Case C-366/98 *Geffroy* [2000] ECR I-6579, paragraphs 18 and 19). When giving a preliminary ruling on a reference, however, the Court may, in appropriate cases, give clarifications to guide the national court in its decision (*Geffroy*, paragraph 20).

- 61 It is clear from the Court's case-law that, in order to assess the capacity to mislead of a description to be found on a label, the national court must in essence take account of the presumed expectations, in light of that description, of an average consumer who is reasonably well informed, and reasonably observant and circumspect, as to the origin, provenance, and quality associated with the foodstuff, the critical point being that the consumer must not be misled and must not be induced to believe, incorrectly, that the product has an origin, provenance or quality which are other than genuine (see, to that effect, Case C-470/93 *Mars* [1995] ECR I-1923, paragraph 24; *Gut Springenheide and Tusky*, cited above, paragraph 31; and Case C-220/98 *Estée Lauder* [2000] ECR I-117, paragraph 30).
- 62 Among the factors to be taken into account in order to assess whether the labelling at issue in the main proceedings may be misleading, the length of time for which a name has been used is an objective factor which might affect the expectations of the reasonable consumer. On the other hand, any good faith on the part of the manufacturer or retailer, which is a subjective factor, cannot affect the objective impression given to the consumer by the use of a geographical name on a label.
- 63 In light of the foregoing, the answer to be given to the second question is that Articles 3(1) and 13(3) of Regulation No 2081/92, as amended, read with Article 2 of Directive 2000/13, must be interpreted as meaning that the designation of a foodstuff containing geographical references, which is not registered as a PDO or PGI, may legitimately be used, on condition that the labelling of the product so named does not mislead the average reasonably well informed, observant and circumspect consumer. For the purpose of assessing whether that is the case, national courts may have regard to the length of time during which the name has been used. By contrast, any good faith on the part of the manufacturer or retailer is irrelevant in that regard.

The third question

64 By its third question, the referring court seeks to ascertain, in essence, whether, on the basis of Directive 89/104, the proprietor of a collective trade mark relating to a foodstuff and containing a geographical reference identical to the designation at issue in the main proceedings may oppose the use of that designation.

65 The Italian Government contends that the third question is inadmissible to the extent to which the case before the national court does not relate to collective trade marks. The Italian Government states that the Regione Emilia-Romagna, which imposed on GSI the penalty at issue in the main proceedings, is not itself the proprietor of any mark and, moreover, does not claim that GSI had infringed any collective mark. In addition, at the hearing, the Italian Government stated that the referring court was concerned only with asking whether the labelling 'Salame tipo Felino', as used by GSI, was likely to mislead consumers as to the real origin of the product at issue. Notwithstanding the intervention in the proceedings of an association of local producers which is the proprietor of a collective trade mark 'Salame Felino', the allegation of any infringement of a collective trade mark was not made in the case heard by the referring court.

66 It must be recalled that, in accordance with the settled case-law cited in paragraph 37 of this judgment, in the procedure provided for in Article 234 EC, the Court has no jurisdiction to rule on questions submitted to it by a national court if those questions obviously bear no relation to the facts or the subject-matter of the main action and hence are not objectively necessary in order to settle the dispute in the main proceedings.

67 It is common ground that the referring court is required to rule, in the dispute before it, solely on whether the labelling of sausages named 'Salame tipo Felino' is likely to mislead consumers and, consequently, to infringe the provisions of national law which transpose Directive 2000/13.

68 Accordingly, the question whether the proprietor of a collective trade mark relating to a foodstuff and containing a geographical reference identical to the designation at issue in the main proceedings may oppose the use of that designation is manifestly irrelevant to the resolution of the dispute in the main proceedings and must for that reason be declared inadmissible.

Costs

69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. **Articles 3(1) and 13(3) of 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, as amended by Commission Regulation (EC) No 2796/2000 of 20 December 2000, must be interpreted as meaning that the designation of a foodstuff containing geographical references, which has been the subject of an application for registration as a protected designation of origin or a protected geographical indication within the meaning of Regulation No 2081/92, as amended by Regulation No 2796/2000, cannot be regarded as generic pending the possible forwarding of the application for registration to the Commission of the European Communities by the national authorities. A designation cannot be presumed to be generic, within the meaning of Regulation No 2081/92, as amended by Regulation No 2796/2000, for as long as the Commission has not taken a decision on the application for registration of the designation, as the case may be, by rejecting it on the specific ground that that designation has become generic.**

2. **Articles 3(1) and 13(3) of Regulation No 2081/92, as amended by Regulation No 2796/2000, read with Article 2 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, must be interpreted as meaning that the designation of a foodstuff containing geographical references, which is not registered as a protected designation of origin or a protected geographical indication, may legitimately be used, on condition that the labelling of the product so named does not mislead the average reasonably well informed, observant and circumspect consumer. For the purpose of assessing whether that is the case, national courts may have regard to the length of time during which the name has been used. By contrast, any good faith on the part of the manufacturer or retailer is irrelevant in that regard.**

[Signatures]