



## Reports of Cases

### JUDGMENT OF THE COURT (Fifth Chamber)

17 December 2020 \*

(Reference for a preliminary ruling – Agriculture – Protection of geographical indications and designations of origin for agricultural products and foodstuffs – Regulation (EC) No 510/2006 – Regulation (EU) No 1151/2012 – Article 13(1)(d) – Practice liable to mislead the consumer as to the true origin of the product – Reproduction of the shape or appearance of a product which has a protected name – Protected designation of origin (PDO) ‘Morbier’)

In Case C-490/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Cour de cassation (Court of Cassation, France), made by decision of 19 June 2019, received at the Court on 26 June 2019, in the proceedings

**Syndicat interprofessionnel de défense du fromage Morbier**

v

**Société Fromagère du Livradois SAS,**

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, K. Lenaerts, President of the Court, acting as a Judge of the Fifth Chamber, M. Ilešič, C. Lycourgos and I. Jarukaitis (Rapporteur), Judges,

Advocate General: G. Pitruzzella,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 18 June 2020,

after considering the observations submitted on behalf of:

- the Syndicat interprofessionnel de défense du fromage Morbier, by J.-J. Gatineau, avocat,
- the Société Fromagère du Livradois SAS, by E. Piwnica, avocat,
- the French Government, by C. Mosser and A.-L. Desjonquères, acting as Agents,
- the Greek Government, by G. Kanellopoulos, E. Leftheriotou and I.-E. Krompa, acting as Agents,
- the European Commission, by D. Bianchi and I. Naglis, acting as Agents,

\* Language of the case: French.

after hearing the Opinion of the Advocate General at the sitting on 17 September 2020,  
gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of Article 13(1) of 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) and the same article of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1).
- 2 The request was submitted in proceedings between the Syndicat interprofessionnel de défense du fromage Morbier ('the Syndicat') and the Société Fromagère du Livradois SAS concerning an infringement of the protected designation of origin (PDO) 'Morbier' and acts of unfair and 'parasitic' competition (free-riding) alleged against the Société Fromagère du Livradois SAS.

### **Legal context**

#### ***EU law***

- 3 Recitals 4 and 6 of Regulation No 510/2006, which was repealed by Regulation No 1151/2012, stated:  
  
'(4) In view of the wide variety of products marketed and the abundance of product information provided, the consumer should, in order to be able to make the best choices, be given clear and succinct information regarding the product origin.  
  
...  
(6) Provision should be made for a Community approach to designations of origin and geographical indications. A framework of Community rules on a system of protection permits the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework ensures fair competition between the producers of products bearing such indications and enhances the credibility of the products in the consumer's eyes.'
- 4 Article 13(1) of the regulation is worded as follows:  
  
'Registered names shall be protected against:  
  
(a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or in so far as using the name exploits the reputation of the protected name;  
  
(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or similar;  
  
(c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

(d) any other practice liable to mislead the consumer as to the true origin of the product.

...'

5 Recitals 18 and 29 of Regulation No 1151/2012 state:

'(18) The specific objectives of protecting designations of origin and geographical indications are securing a fair return for farmers and producers for the qualities and characteristics of a given product, or of its mode of production, and providing clear information on products with specific characteristics linked to geographical origin, thereby enabling consumers to make more informed purchasing choices.

...

(29) Protection should be granted to names included in the register with the aim of ensuring that they are used fairly and in order to prevent practices liable to mislead consumers ...'

6 Article 4 of that regulation, entitled 'Objective', provides:

'A scheme for protected designations of origin and protected geographical indications is established in order to help producers of products linked to a geographical area by:

- (a) securing fair returns for the qualities of their products;
- (b) ensuring uniform protection of the names as an intellectual property right in the territory of the Union;
- (c) providing clear information on the value-adding attributes of the product to consumers.'

7 Article 5(1)(a) and (b) of that regulation, which essentially reproduces the wording of Article 2(1)(a) and (b) of Regulation No 510/2006, provides as follows:

'For the purpose of this Regulation, "designation of origin" is a name which identifies a product:

- (a) originating in a specific place, region or, in exceptional cases, a country;
- (b) whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors ...'.

8 The wording of Article 13(1) of the regulation reproduces, in essence, that of Article 13(1) of Regulation No 510/2006. Except that at the end of points (a) and (b) the words 'including when those products are used as an ingredient' have been added.

9 Pursuant to Commission Regulation (EC) No 2400/96 of 17 December 1996 on the entry of certain names in the 'Register of protected designation of origin and protected geographical indications' provided for in Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1996 L 327, p. 11), as amended by Commission Regulation (EC) No 1241/2002 of 10 July 2002 (OJ 2002 L 181, p. 4), the name 'Morbier' was entered in the Register of protected designation of origin and protected geographical indications, annexed to that regulation, as a PDO.

- 10 The description of the product contained in the specification in Commission Implementing Regulation (EU) No 1128/2013 of 7 November 2013 approving minor amendments to the specification for a name entered in the register of protected designations of origin and protected geographical indications (Morbier (PDO)) (OJ 2013 L 302, p. 7) is as follows:

“Morbier” is a cheese made from raw cow’s milk, with an uncooked pressed paste, in the shape of a flat cylinder 30 to 40 centimetres in diameter, 5 to 8 centimetres high, weighing 5 to 8 kg, with flat sides and a slightly convex heel.

Throughout each slice the cheese has a continuous, joined, horizontal, central black mark.

Its rind is natural, rubbed, of regular appearance, smeared, and bears the imprint of the frame of the mould. Its colour is beige to orange with shades of orangey brown, orangey red and orangey pink. Its paste is homogeneous and ivory to pale yellow in colour, with frequently a number of scattered openings the size of a redcurrant or small flattened bubbles. It is soft to the touch, smooth and melting and not very sticky in the mouth and its texture is smooth and fine. The taste is clear with hints of milk, caramel, vanilla and fruit. With ageing, the aromatic range becomes enriched by roasted, spicy and vegetable nuances. The flavours are balanced. The cheese has a minimum fat content of 45 grams per 100 grams after complete desiccation. The moisture content of the fat-free cheese must be between 58% and 67%. The maturing of the cheese is carried out over a minimum period of 45 days from the day of production, without interrupting the cycle.’

### *French law*

- 11 Article L. 722-1 of the Intellectual Property Code, in the version applicable to the main proceedings, provides:

‘In the event of any infringement of a geographical indication, the person responsible shall incur civil liability.

For the purposes of this Chapter, “geographical indications” are:

...

- (b) protected designations of origin and protected geographical indications under Community legislation on the protection of geographical indications and designations of origin for agricultural products and foodstuffs;

...’

- 12 Morbier cheese has enjoyed *appellation d’origine contrôlée* (AOC) (registered designation of origin) status since the adoption of the decree of 22 December 2000 relating to the registered designation of origin ‘Morbier’ (JORF No 302 of 30 December 2000, p. 20944), since repealed, which defined a geographical reference area, and the conditions necessary to claim that designation of origin, and laid down, in Article 8 thereof, a transitional period for undertakings situated outside that geographical area which had produced and marketed cheeses under the name “Morbier” on a continuous basis, in order to enable them to continue to use that name without the ‘AOC’ reference, until the expiry of a period of five years following the publication of the registration of the designation of origin ‘Morbier’ as a PDO.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 13 In accordance with the decree of 22 December 2000, Société Fromagère du Livradois, which had produced Morbier cheese since 1979, was authorised to use the name ‘Morbier’, without the AOC indication, until 11 July 2007. After that date, it substituted for that name the name ‘Montboissié du Haut Livradois’. Moreover, on 5 October 2001, Société Fromagère du Livradois filed an application in the United States for the US trade mark ‘Morbier du Haut Livradois’, which it renewed in 2008 for 10 years, and, on 5 November 2004, it filed an application for the French trade mark ‘Montboissier’.
- 14 On 22 August 2013, accusing Société Fromagère du Livradois of infringing the protected designation and committing acts of unfair and parasitic competition by producing and marketing a cheese that has the visual appearance of the product covered by the PDO ‘Morbier’, in order to create confusion with that product and to benefit from the renown of the image associated with it, without having to comply with the specification of the designation of origin, the Syndicat brought proceedings before the Tribunal de grande instance de Paris (Regional Court, Paris, France) requesting that Société Fromagère du Livradois be ordered to cease any direct or indirect commercial use of the name of the PDO ‘Morbier’ for products not covered by that name, any misuse, imitation or evocation of the PDO ‘Morbier’, any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product by any means liable to convey a false impression as to the origin of the product, any other practice liable to mislead the consumer as to the true origin of the product and, in particular, any use of a black line separating two parts of the cheese, and to compensate it for the damage suffered.
- 15 Those applications were dismissed by judgment of 14 April 2016, which was upheld by the cour d’appel de Paris (Court of Appeal, Paris, France) by judgment of 16 June 2017. The cour d’appel de Paris (Court of Appeal, Paris) held that the marketing of a cheese which has one or more features contained in the specification for Morbier cheese, and which therefore resembles that cheese, did not constitute misconduct.
- 16 In that judgment, after stating that PDO legislation aims to protect not the appearance or features of a product as described in its specification, but its name, and therefore does not prohibit a product being made using the same techniques as those set out in the standards applicable to the geographical indication, and after taking the view that, in the absence of an exclusive right, reproducing the appearance of a product falls within the scope of the freedom of trade and industry, the cour d’appel de Paris (Court of Appeal, Paris) held that the features relied on by the Syndicat, in particular the blue horizontal line, relate to a historical tradition, an ancestral technique present in other cheeses, which were implemented by Société Fromagère du Livradois even before the PDO ‘Morbier’ was obtained, and which are not built on the investments made by the Syndicat or its members. That court held that, although the right to use vegetable carbon is conferred only on cheese with the PDO ‘Morbier’, in order to comply with United States legislation, Société Fromagère du Livradois had to replace it with grape polyphenol, and therefore the two cheeses cannot be likened as a result of that feature. Noting that Société Fromagère du Livradois had claimed other differences between the Montboissié and the Morbier cheeses relating, inter alia, to the use of pasteurised milk in the former and raw milk in the latter, the court concluded that the two cheeses were distinct and that the Syndicat was seeking to extend the protection of the PDO ‘Morbier’ for commercial interests, which was unlawful and contrary to the principle of free competition.
- 17 The Syndicat appealed on a point of law against the judgment of the cour d’appel de Paris (Court of Appeal, Paris) before the referring court, the Cour de cassation (Court of Cassation, France). In support of its appeal, it submits, first, that a designation of origin is protected against any practice liable to mislead the consumer as to the true origin of the product and that in holding, however, that only the use of the name of the PDO is prohibited, the cour d’appel de Paris (Court of Appeal, Paris) infringed Article 13 of Regulation No 510/2006 and the same article of Regulation No 1151/2012. The Syndicat submits, next, that by merely stating, first, that the features that it relied on related to a



historical tradition and were not dependent on the investments made by the Syndicat and its members and, secondly, that the ‘Montboissié’ cheese marketed since 2007 by Société Fromagère du Livradois was different from ‘Morbier’ cheese, without investigating, as requested, whether Société Fromagère du Livradois’ practices, in particular copying the ‘cinder line’ feature of Morbier cheese, were liable to mislead the consumer as to the true origin of the product, the court of appeal’s decision had no legal basis in the light of that legislation.

- 18 For its part, the Société Fromagère du Livradois maintains that the PDO protects products from a defined region, which alone can claim the protected designation, but does not prohibit other producers from producing and marketing similar products, provided they do not give the impression that they are covered by the designation in question. It is to be inferred from national law that any use of the sign constituting the PDO to designate similar products which are not entitled to that designation, either because they do not come from the defined area or because they come from it without having the required properties, is prohibited, but that it is not prohibited to market similar products, provided that such marketing is not accompanied by any practice liable to cause confusion, in particular by the misuse or the evocation of that PDO. It also argues that a ‘practice liable to mislead the consumer as to the true origin of the product’, within the meaning of Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012, must necessarily focus on the ‘origin’ of the product. It must therefore be a practice which causes the consumer to think that the product he or she is encountering is the PDO product in question. It considers that that ‘practice’ cannot result merely from the appearance of the product in itself, without any indication on its packaging referring to the protected origin.
- 19 The referring court states that the appeal before it raises the novel question of whether Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 must be interpreted as prohibiting only the use by a third party of the registered name or whether it must be interpreted as also prohibiting any presentation of the product which is liable to mislead the consumer as to its true origin, even if the registered name has not been used by the third party. Noting in particular that the Court has never ruled on that question, it considers that there is doubt as to the interpretation of the expression ‘other practice’ in those articles, which constitutes a particular form of infringement of a protected designation if it is liable to mislead the consumer as to the true origin of the product.
- 20 The question therefore arises, according to the referring court, as to whether the reproduction of physical characteristics of a product protected by a PDO may constitute a practice that is liable to mislead the consumer as to the true origin of the product, as prohibited by Article 13(1) of the regulations cited above. That question amounts to determining whether the presentation of a product that is protected by a designation of origin, in particular the reproduction of the shape or the appearance which are characteristic of it, is capable of constituting an infringement of that designation, despite the fact that the name has not been reproduced.
- 21 In those circumstances, the Cour de cassation (Court of Cassation) decided to stay proceedings and to refer the following question to the Court:

‘Must Article 13(1) of Regulation No 510/2006 ... and Article 13(1) of Regulation No 1151/2012 ... be interpreted as prohibiting solely the use by a third party of the registered name, or must they be interpreted as prohibiting the presentation of a product protected by a designation of origin, in particular the reproduction of the shape or the appearance which are characteristic of it, which is liable to mislead the consumer as to the true origin of the product, even if the registered name is not used?’

## Consideration of the question referred

### *First part of the question*

- 22 By the first part of its question, the referring court asks whether Article 13(1) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 must be interpreted as prohibiting solely the use by a third party of the registered name.
- 23 It is clear from the wording of those provisions that registered names are protected against various acts, namely, first, direct or indirect commercial use of a registered name, secondly, misuse, imitation or evocation, thirdly, false or misleading indications as to provenance, origin, nature or essential qualities of the product on the inner or outer packaging, advertising material or documents relating to the product concerned and the packing of the product in a container liable to convey a false impression as to its origin and, fourthly, any other practice liable to mislead the consumer as to the true origin of the product.
- 24 Those provisions therefore contain a graduated list of prohibited conduct (see, to that effect, judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, C-614/17, EU:C:2019:344, paragraph 27). Whilst Article 13(1)(a) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 prohibit direct or indirect use of a registered name for products not covered by the registration, in an identical form or a form that is phonetically and/or visually highly similar (see, by analogy, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraphs 29, 31 and 39), Articles 13(1)(b) to (d) of those regulations prohibit other types of conduct against which registered names are protected and which do not use the names themselves either directly or indirectly.
- 25 Thus, the scope of Article 13(1)(a) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 must necessarily be distinguished from that relating to the other rules on the protection of registered names contained in Article 13(1)(b) to (d) of those regulations. In particular, Article 13(1)(b) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 prohibit actions which, unlike those referred to in point (a), do not use either directly or indirectly the protected name itself, but suggest it in such a way that it causes the consumer to establish a sufficiently close connection with that name (see by analogy, concerning Article 16 of Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ 2008 L 39, p. 16), judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 33).
- 26 As regards, more specifically, the concept of ‘evocation’, the decisive criterion is whether, when the consumer is confronted with a disputed designation, the image triggered directly in his or her mind is that of the product covered by the PDO, a matter which it falls to the national court to assess, taking into account, as the case may be, the partial incorporation of a PDO in the disputed designation, any phonetic and/or visual similarity, or any conceptual proximity, between the designation and the PDO (see, by analogy, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 51).
- 27 Furthermore, in its judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:344), the Court held that Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that a registered name may be evoked through the use of figurative signs. In reaching that view, the Court held, inter alia, in paragraph 18 of that judgment, that the wording of that provision can be understood as referring not only to words capable of evoking a registered name, but also to any figurative sign capable of evoking in the mind of

the consumer products whose designation is protected. In paragraph 22 of the judgment, it noted that it cannot be excluded, in principle, that figurative signs may trigger directly in the consumer's mind the image of products whose name is registered on account of their 'conceptual proximity' to such a name.

- 28 With regard to the conduct referred to in Article 13(1)(c) of Regulation No 510/2006 and the same article of Regulation No 1151/2012, it should be noted that those provisions widen, in relation to points (a) and (b) of those articles, the scope of the protection by including, inter alia, 'any other indication', that is to say, information provided to consumers, on the inner or outer packaging of the product concerned, on advertising material or documents relating to that product, which, while not actually evoking the protected geographical indication, is false or misleading as regards the links between the product concerned and that indication. The expression 'any other indication' includes information which may appear in any form on the inner or outer packaging of the product concerned, on advertising or on documents relating to that product, in particular in the form of text, pictures or a container likely to provide information on the provenance, origin, nature or essential qualities of that product (see, by analogy, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraphs 65 and 66).
- 29 As regards the conduct referred to in Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012, as the Advocate General notes in point 49 of his Opinion, it is clear from the words 'any other practice' used in those provisions that they are intended to cover any conduct not already covered by the other provisions of those articles and thus to tighten the system of protection for registered names.
- 30 Thus, it follows from the foregoing considerations that Article 13(1) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 are not limited to prohibiting the use of the registered name itself, but have a wider scope.
- 31 Consequently, the answer to the first part of the question referred for a preliminary ruling must therefore be that Article 13(1) of Regulation No 510/2006 and Article 13(1) of Regulation No 1151/2012 do not prohibit solely the use by a third party of a registered name.

### ***Second part of the question***

- 32 By the second part of its question, the referring court asks, in essence, whether Article 13(1)(d) of Regulation No 510/2006 and Article 13(1)(d) of Regulation No 1151/2012 must be interpreted as prohibiting the reproduction of the shape or appearance characteristic of a product covered by a registered name where that reproduction is liable to mislead the consumer as to the true origin of the product.
- 33 By providing that registered names are protected against 'any other practice liable to mislead the consumer as to the true origin of the product', Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 do not specify the conduct prohibited by those provisions, but broadly cover all conduct, other than that prohibited by Article 13(1)(a) to (c) of those regulations, which may result in the consumer being misled as to the true origin of the product in question.
- 34 Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012 meet the objectives set out in recitals 4 and 6 of Regulation No 510/2006 and in recitals 18 and 29 and Article 4 of Regulation No 1151/2012, from which it is apparent that the system of protection of PDOs and protected geographical indications (PGIs) is intended, in particular, to provide consumers with clear information on the origin and properties of the product, so as to enable them to make more informed purchasing choices, and to prevent practices which may mislead them.



- 35 More generally, it is clear from the Court's case-law that the system of protection of PDOs and PGIs is essentially intended to assure consumers that agricultural products with a registered name have, because of their provenance from a particular geographical area, certain specific characteristics and, accordingly, offer a guarantee of quality due to their geographical provenance, with the aim of enabling agricultural operators to secure higher incomes in return for a genuine effort to improve quality, and of preventing improper use of those designations by third parties seeking to profit from the reputation which those products have acquired by their quality (see, by analogy, judgment of 14 September 2017, *EUIPO v Instituto dos Vinhos do Douro e do Porto*, C-56/16 P, EU:C:2017:693, paragraph 82; of 20 December 2017, *Comité Interprofessionnel du Vin de Champagne*, C-393/16, EU:C:2017:991, paragraph 38, and of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraphs 38 and 69).
- 36 As regards the question of whether the reproduction of the shape or appearance of a product covered by a registered name may constitute a practice prohibited by Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012, it should be observed that, indeed, as the Société Fromagère du Livradois and the European Commission argued, the protection provided for by those provisions concerns, according to the wording itself of those provisions, the registered name and not the product covered by that name. It follows that the purpose of that protection is not to prohibit, inter alia, the use of manufacturing techniques or the reproduction of one or more characteristics indicated in the specification of a product covered by a registered name, on the ground that they appear in that specification, in the making of another product not covered by the registration.
- 37 Nevertheless, as the Advocate General noted, in point 27 of his Opinion, a PDO is, in the words of Article 5(1)(a) and (b) of Regulation No 1151/2012, which, essentially, reproduces the wording of Article 2(1)(a) and (b) of Regulation No 510/2006, a name which identifies a product originating in a specific place, region or, in exceptional cases, a country, whose quality or characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors. PDOs are therefore protected as they designate a product that has certain qualities or characteristics. Thus, the PDO and the product covered by it are closely linked.
- 38 Therefore, having regard to the open-ended nature of the expression 'any other practice' in Article 13(1)(d) of Regulation No 510/2006 and the same article of Regulation No 1151/2012, the possibility remains that the reproduction of the shape or appearance of a product covered by a registered name may fall within the scope of those provisions without that name appearing either on the product in question or on its packaging. This will be the case where that reproduction is liable to mislead the consumer as to the true origin of the product in question.
- 39 In order to determine whether that is so, it is necessary, as the Advocate General stated, in essence, in points 55 and 57 to 59 of his Opinion, first, to refer to the perception of the average European consumer, who is reasonably well informed and reasonably observant and circumspect (see, by analogy, judgments of 21 January 2016, *Viiniverla*, C-75/15, EU:C:2016:35, paragraphs 25 and 28, and of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 47), and, secondly, to take into account all the relevant factors in the present case, including the way in which the products in question are presented to the public and marketed and the factual context (see, to that effect, judgment of 4 December 2019, *Consorzio Tutela Aceto Balsamico di Modena*, C-432/18, EU:C:2019:1045, paragraph 25).
- 40 In particular, as regards, as in the case in the main proceedings, an element of the appearance of the product covered by the registered name, it is necessary, in particular, to assess whether that element constitutes a baseline characteristic which is particularly distinctive of that product so that its reproduction may, in conjunction with all the relevant factors in the case in point, lead the consumer to believe that the product containing that reproduction is a product covered by that registered name.

- 41 In the light of all the foregoing considerations, the answer to the second part of the question referred is that Article 13(1)(d) of Regulation No 510/2006 and Article 13(1)(d) of Regulation No 1151/2012, must be interpreted as prohibiting the reproduction of the shape or appearance characterising a product covered by a registered name where that reproduction is liable to lead the consumer to believe that the product in question is covered by that registered name. It is necessary to assess whether such reproduction may mislead the European consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account all the relevant factors in the case.

### **Costs**

- 42 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 (Fifth Chamber) hereby rules:

**Article 13(1) of 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 and Article 13(1) of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs must be interpreted as meaning that they do not prohibit solely the use by a third party of a registered name.**

**Article 13(1)(d) of Regulation No 510/2006 and Article 13(1)(d) of Regulation No 1151/2012 must be interpreted as prohibiting the reproduction of the shape or appearance characterising a product covered by a registered name where that reproduction is liable to lead the consumer to believe that the product in question is covered by that registered name. It is necessary to assess whether such reproduction may mislead the European consumer, who is normally informed and reasonably observant and circumspect, taking into account all relevant factors in the case.**

[Signatures]