

Court of Justice EU, 9 September 2021, Champanillo

(trade name for tapas bars)



PROTECTED DESIGNATION OF ORIGIN

Article 103(2)(b) of Regulation No 1308/2013 (common organisation of the markets for agricultural products) protects designations of origin (PDO) against acts which concern both products and services

- Article 103(2) of Regulation No 1308/2013 provides for broad protection, which extends to any use which exploits the reputation attached to products covered by one of those designations
- In that regard, to interpret Article 103(2)(b) of Regulation No 1308/2013 as meaning that it is impossible to protect a PDO where the sign at issue designates a service would not only be contrary to the broad scope of protection of registered geographical indications which has been recognised, but would also mean that that objective of protection could not be fully achieved, given that the reputation of a product covered by a PDO may be unlawfully exploited even where the practice referred to in that provision concerns a service.

The 'evocation' referred to in Article 103(2)(b) of Regulation No 1308/2013 does not necessarily require that the product covered by a PDO and the product or service covered by the contested sign be identical and similar

- The concept of 'evocation' covers a situation in which the sign used to designate a product contains part of a protected geographical indication or of a PDO

'Evocation' is present when the use of a designation evokes, in the minds of a reasonably well-informed and reasonably observant average European consumer, a sufficiently direct and obvious link between that designation and the PDO.

- The existence of such a link may be shown by various elements, in particular the fact that that name contains part of the protected name, the phonetic and visual similarity between the two names and the resulting correspondence and, even in the absence of those elements, by the fact that the PDO and the name in question are conceptually close or that the products covered by that PDO and the products or services covered by that name are similar.

In making that assessment, it is for the referring court to take account of all the relevant factors concerning the use of the designation in question.

'Evocation' is not dependent on a finding of unfair competition

- The provision provides for a specific and separate protection which applies irrespective of the provisions of national law on unfair competition.

Vindplaatsen: [ECLI:EU:C:2021:713](https://eur-lex.europa.eu/eli/cjrep/c/2021/713)

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