

Indications Géographiques:

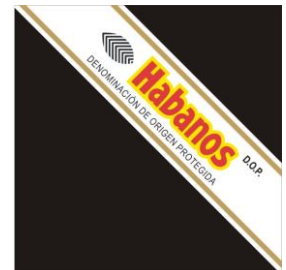
La consolidation du concept d'évocation dans la jurisprudence européenne



Summary

- I. oriGIn
- II. The concept of evocation
- III. Some conclusions

oriGIn – the global alliance of GIs



Evocation: Legal bases in the EU

- Article 13(1)(b) of Regulation (EU) No 1151/2012
- Article 103(2)(b) of Regulation (EU) No 1308/2013
- Article 21(2)(b) of Regulation (EU) No 2019/787

Art. 13(1)(b) of Reg. 1151/2012

- “Registered names shall be protected against: (b) **any** misuse, imitation or **evocation**, even if the true origin of the products or services is indicated or if the protected name is translated or accompanied by an expression such as ‘style’, ‘type’, ... including when those products are used as an ingredient”
- **Evocation not restricted to the use of word signs**



Evocation in the case law



- Might be established even where there is no likelihood of confusion for consumers
- Might be established through explicit or implicit references
- Might be established through “conceptual” proximity

Evocation in the case law



- Might be established through the use of figurative elements
- Might be established through the external appearance of products which names are protected
- Might be established also with respect to signs used on non-comparable products and services, if they exploits the reputation of protected names

No need of likelihood of confusion for consumers

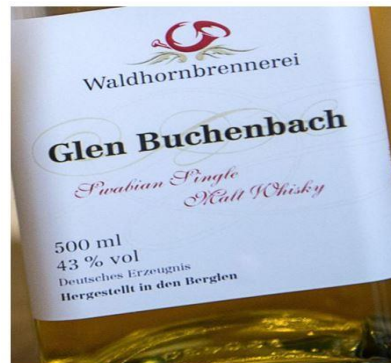
- CJEU: “Cambozola” (C-87/97), “Parmesan” (C-132/05), “Cognac” (joined C-4/10 & C-27/10), “Verlados” (C-75/15), “Glen Buchenbach” (C-44/17) & “Manchego/Don Quixote” (C-614/17)
- C-135-05, par. 45: “... It is possible for a PDO to be evoked **even where there is no likelihood of confusion between the products concerned** and even where no Community protection extends to the parts of that designation which are echoed in the term or terms at issue.”

Explicit or implicit references

- “Cognac” in joined cases C-4/10 & C-27/10: Registration and use of a trademark incorporating the GI Cognac
- Par. 46: “Points (a) to (d) of Article 16 of Regulation No 110/2008 refer to various **situations in which the marketing of a product is accompanied by an explicit or implicit reference to a geographic indication in circumstances liable to mislead the public as to the origin of the product or, at the very least, to set in train in the mind of the public an association of ideas regarding that origin, or to enable the trader to take unfair advantage of the reputation of the geographical indication concerned.**”

Conceptual proximity

- “Glen Buchenbach” (C-44/17): Distillery located in Germany producing whisky under the designation “Glen Buchenbach”
- “Glen” is widely used in Scotland to refer to “valley” and is an element of the trademarks of Scotch Whisky producers



Conceptual proximity

- CJEU, principles for national courts:
 - a. Evaluate if in the mind of an average European consumer, the image of the product whose indication is protected is triggered when confronted with the name at issue
 - b. Indication of the true origin of the good does not exclude automatically the evocation
- Follow-up: the German court confirmed that the use of “Glen” on the product at issue is misleading

Use of figurative elements

- “Manchego/Don Quixote” (C-614/17): Spanish company commercializing cheese products through a label with figurative elements + the word “Rocinante”



Use of figurative elements

- CJEU, principles for national courts:
 - a. An evocation can be established also in the absence of visual, phonetical and conceptual similarities between the protected name and the product's labelling
 - b. Including when figurative signs are used by a producer established in that region

- Follow-up: the Supreme Court of Spain ruled that the concerned figurative elements have sufficient conceptual proximity to “La Mancha” region to lead consumers to associate them with the PDO “Queso Manchego”

External appearance

- “Mamiella Tres Oscos” (419/13): commercialization of a cheese product with a conical shape identical to the typical one of the PDO “Queso Tetilla”
- Rulings of the Commercial Court of first instance and the Commercial Court of appeal of Alicante



Goods and services not comparable with the GI product

- “Champanillo” for catering services (case C-783/19)
- EUTM application No. 16.471.922 for the word mark “Champagnola” in classes 30, 40 and 43

EUIPO Guidelines

Part B, Examination / Section 4, Absolute grounds for refusal / Chapter 10, Geographical Indications / 4. Situations covered by the EU Regulations and Absolute Grounds Examination / 4.2.2 Evocation/imitation, of the 2021 Guidelines edition, in force since the 1st of March 2021:

<https://guidelines.euipo.europa.eu/1922895/1925929/trade-mark-guidelines/4-2-2-imitationevocation>

Some conclusions

- Evocation: powerful tool to protect GIs against the most subtle attempts to benefit from their reputation
- Evocation outside the EU? case law + the WIPO Geneva Act of the Lisbon Agreement

Many thanks for your attention!

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