



Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

9 September 2021 *

(Reference for a preliminary ruling – Agriculture – Protection of designations of origin and geographical indications – Uniform and exhaustive nature – Regulation (EU) No 1308/2013 – Article 103(2)(a)(ii) – Article 103(2)(b) – Evocation – Protected designation of origin (PDO) ‘Champagne’ – Services – Comparability of products – Use of the trade name ‘Champanillo’)

In Case C-783/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Audiencia Provincial de Barcelona (Provincial Court, Barcelona, Spain), made by decision of 4 October 2019, received at the Court on 22 October 2019, in the proceedings

Comité Interprofessionnel du Vin de Champagne

v

GB,

THE COURT (Fifth Chamber),

composed of E. Regan, President of the Chamber, M. Ilešič, E. Juhász (Rapporteur), C. Lycourgos and I. Jarukaitis, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Comité Interprofessionnel du Vin de Champagne, by C. Morán Medina, abogado,
- GB, by V. Saranga Pinhas, abogado, and F. Sánchez García, procurador,
- the French Government, initially by A.-L. Desjonquères, C. Mosser and E. de Moustier, and subsequently by A.-L. Desjonquères and E. de Moustier, acting as Agents,
- the Italian Government, by G. Palmieri, acting as Agent, and S. Fiorentino, avvocato dello Stato,

* Language of the case: Spanish.

– the European Commission, by F. Castilla Contreras, M. Morales Puerta and I. Naglis, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 April 2021,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 103 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).
- 2 The request has been made in proceedings between the Comité Interprofessionnel du Vin de Champagne (‘the CIVC’) and GB, concerning an infringement of the protected designation of origin (PDO) ‘Champagne’.

Legal framework

Regulation No 1308/2013

- 3 Recital 97 of Regulation No 1308/2013 states:

‘Registered designations of origin and geographical indications should be protected against uses which take advantage of the reputation enjoyed by complying products. So as to promote fair competition and not to mislead consumers, that protection should also extend to products and services not covered by this Regulation, including those not found in Annex I to the Treaties.’

- 4 Part II, Title II, Chapter I, Section 2 of that regulation, concerning ‘Designations of origin, geographical indications and traditional terms in the wine sector’, includes a subsection 1, entitled ‘Introductory provisions’, which includes Article 92, itself entitled ‘Scope’, which provides:

‘1. Rules on designations of origin, geographical indications and traditional terms laid down in this Section shall apply to the products referred to in points 1, 3 to 6, 8, 9, 11, 15 and 16 of Part II of Annex VII.

2. The rules referred to in paragraph 1 shall be based on:

- (a) protecting the legitimate interests of consumers and producers;
- (b) ensuring the smooth operation of the internal market in the products concerned; and
- (c) promoting the production of quality products referred to in this Section, whilst allowing national quality policy measures.’

5 Article 93 of that regulation, entitled ‘Definitions’, which is included in subsection 2, entitled ‘Designations of origin and geographical indications’, of the same Section 2 of that regulation, provides in paragraph 1:

‘For the purposes of this Section, the following definitions shall apply:

- (a) “a designation of origin” means the name of a region, a specific place or, in exceptional and duly justifiable cases, a country used to describe a product referred to in Article 92(1) fulfilling the following requirements:
- (i) the quality and characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
 - (ii) the grapes from which the product is produced come exclusively from that geographical area;
 - (iii) the production takes place in that geographical area; and
 - (iv) the product is obtained from vine varieties belonging to *Vitis vinifera*;
- ...’

6 Under Article 103 of that regulation, entitled ‘Protection’:

‘1. A protected designation of origin and a protected geographical indication may be used by any operator marketing a wine which has been produced in conformity with the corresponding product specification.

2. A protected designation of origin and a protected geographical indication, as well as the wine using that protected name in conformity with the product specifications, shall be protected against:

- (a) any direct or indirect commercial use of that protected name:
 - (i) by comparable products not complying with the product specification of the protected name; or
 - (ii) in so far as such use exploits the reputation of a designation of origin or a geographical indication;
 - (b) any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcribed or transliterated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation”, “flavour”, “like” 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 wine product concerned, as well as 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.
- ...’

- 7 Article 107 of Regulation No 1308/2013, entitled ‘Existing protected wine names’ provides in paragraph 1 that ‘wine names referred to in Articles 51 and 54 of Council Regulation (EC) No 1493/1999 [of 17 May 1999 on the common organisation of the market in wine (OJ 1999 L 179, p. 1)] and Article 28 of Commission Regulation (EC) No 753/2002 [of 29 April 2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (OJ 2002 L 118, p. 1),] shall be automatically protected under this Regulation. The Commission shall list them in the register provided for in Article 104 of this Regulation’.
- 8 Article 230 of that regulation repeals Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1 and corrigendum OJ 2011 L 313, p. 47) as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1) (‘Regulation No 1234/2007’).
- 9 Article 232 of that regulation provides that it is to enter into force on the day of its publication in the *Official Journal of the European Union* and that it is to apply from 1 January 2014.
- 10 Point 5 of Part II of Annex VII to Regulation No 1308/2013, to which Article 92(1) of that regulation refers, sets out the characteristics of ‘quality sparkling wine’, a category that includes champagne.

Regulation (EU) No 1151/2012

- 11 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) repealed and replaced 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), with effect from 3 January 2013.
- 12 Recital 32 of that regulation states:
- ‘Protection of designations of origin and geographical indications should be extended to the misuse, imitation and evocation of the registered names on goods as well as on services in order to ensure a high level of protection and to align that protection with that which applies to the wine sector. When protected designations of origin or protected geographical indications are used as ingredients, the Commission Communication entitled “Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients” should be taken into account.’
- 13 Article 2 of that regulation, entitled ‘Scope’, provides, in paragraph 2 thereof, that ‘this Regulation shall not apply to spirit drinks, aromatised wines or grapevine products as defined in Annex XIb to Regulation (EC) No 1234/2007, with the exception of wine-vinegars’.
- 14 Article 13 of that regulation, entitled ‘Protection’, is worded, in paragraph 1(b), in terms comparable to those of Article 103(2)(b) of Regulation No 1308/2013.

The main proceedings and the questions referred for a preliminary ruling

- 15 GB owns tapas bars in Spain and uses the sign CHAMPANILLO to designate and promote them on social media and through advertising flyers. He combines that sign, in particular, with a graphic device representing two coupes filled with a sparkling beverage which are being clinked together.
- 16 On two occasions, in 2011 and 2015, the Oficina Española de Patentes y Marcas (Spanish Patent and Trade Mark Office) upheld the opposition filed by the CIVC, the body responsible for protecting the interests of champagne producers, against applications for registration of the mark CHAMPANILLO filed by GB, on the ground that registration of that sign as a trade mark is incompatible with the PDO ‘Champagne’, which enjoys international protection.
- 17 GB sold a sparkling beverage called Champanillo until 2015 and stopped selling it at the CIVC’s request.
- 18 As the CIVC took the view that use of the sign CHAMPANILLO infringed the PDO ‘Champagne’, it brought an action before the Juzgado de lo Mercantil de Barcelona (Commercial Court, Barcelona, Spain) seeking an order requiring GB to cease using the sign CHAMPANILLO, including on social media (Instagram and Facebook), to withdraw from the market and the internet any signs or advertising or commercial documents featuring that sign and to cancel the domain name ‘champanillo.es’.
- 19 In his defence, GB submitted that the use of the sign CHAMPANILLO as the trade name of catering establishments did not give rise to any likelihood of confusion with the products covered by the PDO ‘Champagne’ and that he had no intention of exploiting the reputation of that PDO.
- 20 The Juzgado de lo Mercantil de Barcelona (Commercial Court, Barcelona) dismissed the CIVC’s action.
- 21 It held that GB’s use of the sign CHAMPANILLO did not evoke the PDO ‘Champagne’ since that sign did not refer to an alcoholic beverage but to catering establishments – where champagne is not sold – and therefore to products other than those protected by the PDO, aimed at a different public. Accordingly, the sign did not infringe that designation.
- 22 The Juzgado de lo Mercantil de Barcelona (Commercial Court, Barcelona) based its decision on a judgment delivered on 1 March 2016 by the Tribunal Supremo (Supreme Court, Spain), in which that court found that use of the term ‘Champín’ to market a non-alcoholic fruit-based carbonated beverage, intended for consumption at children’s parties, did not infringe the PDO ‘Champagne’, given the difference between the products concerned and the public at which they were aimed, despite the phonetic similarity between the two signs.
- 23 The CIVC brought an appeal against the judgment of the Juzgado de lo Mercantil de Barcelona (Commercial Court, Barcelona) before the Audiencia Provincial de Barcelona (Provincial Court, Barcelona, Spain).
- 24 The referring court raises the question of the interpretation of Article 13(1)(b) of Regulation No 510/2006 and of Article 103(2)(b) of Regulation No 1308/2013, in particular whether those provisions protect PDOs from the use in trade of signs which designate services rather than products.

25 In those circumstances, the Audiencia Provincial de Barcelona (Provincial Court, Barcelona) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Does the scope of protection of a designation of origin make it possible to protect that designation of origin not only as against similar products but also as against any services which may be associated with the direct or indirect distribution of those products?
- (2) Does the risk of infringement by evocation, to which the articles in question of the [EU] regulations refer, necessitate in the first instance a nominal analysis to determine the effect that this has on the average consumer, or, in order to examine that risk of infringement by evocation is it necessary to establish first of all that the products at issue are the same or similar or are complex products whose components include a product protected by a designation of origin?
- (3) Must the risk of infringement by evocation be defined using objective criteria when the names are exactly the same or highly similar or must that risk be calibrated by reference to the products and services which evoke and are evoked in order to conclude that the risk of evocation is tenuous or irrelevant?
- (4) In cases where there is a risk of evocation or exploitation, is the protection provided for in the legislation referred to specific protection related to the special features of the products concerned or must the protection be connected to the provisions on unfair competition?

Consideration of the questions referred

Preliminary observations

- 26 In the first place, it must be observed that the referring court takes the view that the rules of EU law relating to the protection of PDOs should be applied in conjunction with those of the Convention between the French Republic and the Spanish State on the protection of designations of origin, indications of provenance and names of certain products, signed in Madrid on 27 June 1973 (JORF, 18 April 1975, p. 4011), and Article L. 643-1 of the French Rural Code.
- 27 However, with regard to the application of Regulation No 1234/2007, the Court has held that the system of protection of PDOs is uniform and exhaustive in nature, with the result that that regulation precludes both the application of a national system of protection of designations or geographical indications and the application of a system of protection laid down by agreements between two Member States which confers on a designation, recognised under the law of a Member State as constituting a designation of origin, protection in another Member State (see, to that effect, judgments of 8 September 2009, *Budějovický Budvar*, C-478/07, EU:C:2009:521, paragraphs 114 and 129, and of 14 September 2017, *EUIPO v Instituto dos Vinhos do Douro e do Porto*, C-56/16 P, EU:C:2017:693, paragraphs 100 to 103).
- 28 It follows that, in a dispute such as that at issue in the main proceedings, which concerns the protection of a PDO, the referring court is required to apply solely the EU law applicable in that regard.

- 29 In the second place, according to settled case-law, in the procedure laid down by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it to determine the case before it. In that context, the Court may extract from all the information provided by the referring court, in particular from the grounds of the order for reference, the legislation and the principles of EU law that require interpretation in view of the subject matter of the dispute in the main proceedings, even if those provisions are not expressly indicated in the questions referred (judgment of 11 November 2020, *DenizBank*, C-287/19, EU:C:2020:897, paragraph 59 and the case-law cited).
- 30 The referring court raises the question of the interpretation of Article 13 of Regulation No 510/2006 and Article 103 of Regulation No 1308/2013.
- 31 However, it must be observed that neither Regulation No 510/2006 nor Regulation No 1151/2012, which repealed and replaced it, applies to the main proceedings. Under the second subparagraph of Article 1(1) of Regulation No 510/2006 and Article 2(2) of Regulation No 1151/2012, those regulations do not apply to wine-sector products/grapevine products.
- 32 That finding is not, however, such as to affect the content of the answer to be given to the referring court. First, as stated in paragraph 14 above, the relevant provisions of Regulation No 1151/2012 and Regulation No 1308/2013 are comparable. Secondly, the Court has held that the principles developed in each system of protection may be applied horizontally so as to ensure the consistent application of the provisions of EU law relating to the protection of names and geographical indications (see, to that effect, judgment of 20 December 2017, *Comité Interprofessionnel du Vin de Champagne*, C-393/16, EU:C:2017:991, paragraph 32).
- 33 In the third place, it must also be observed that, as regards the application *ratione temporis* of Regulation No 1308/2013, which repealed Regulation No 1234/2007 and has been applicable since 1 January 2014, the information provided by the referring court does not make it possible to determine whether that regulation is also applicable to the facts at issue in the main proceedings.
- 34 However, since the wording of Article 103(2) of Regulation No 1308/2013 is comparable to that of Article 118m(2) of Regulation No 1234/2007, the interpretation of the former provision is applicable to the latter.
- 35 Lastly, in the fourth place, it must be observed that, although the referring court raises the question of the interpretation of Article 103 of Regulation No 1308/2013, in particular paragraph 2(b) thereof, it is apparent from the file before the Court that doubts have been expressed as to whether Article 103(2)(a)(ii) of that regulation is applicable.
- 36 In that regard, it must be observed that Article 103(2) of Regulation No 1308/2013 contains a graduated list of prohibited conduct, which is based on the nature of that conduct (see, by analogy, judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, C-614/17, EU:C:2019:344, paragraphs 25 and 27). Thus, the scope of Article 103(2)(a) of Regulation No 1308/2013 must necessarily be distinguished from that of Article 103(2)(b) thereof (see, by analogy, judgment of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043, paragraph 25).

- 37 Article 103(2)(a)(ii) of Regulation No 1308/2013 seeks to prohibit any direct or indirect use of a registered name exploiting the reputation of a designation of origin or geographical indication protected by registration, in a form that is phonetically and visually identical with that name or, at least, highly similar (see, by analogy, judgment of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier*, C-490/19, EU:C:2020:1043, paragraph 24 and the case-law cited).
- 38 That implies, as the Advocate General observed in point 27 of his Opinion, that there is ‘use’ of a PDO, within the meaning of Article 103(2)(a) of Regulation No 1308/2013, where the degree of similarity between the signs at issue is particularly high and close to identity, visually and/or phonetically, meaning that the protected geographical indication is used in a form with such close links to it that the sign at issue clearly cannot be dissociated from it.
- 39 Unlike the conduct referred to in Article 103(2)(a) of Regulation No 1308/2013, the actions which fall within the scope of Article 103(2)(b) thereof do not use the protected name itself either directly or indirectly, but suggest it in such a way that it causes the consumer to establish a sufficiently close connection with that name (see, by analogy, judgments of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 33, and of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier*, C-490/19, EU:C:2020:1043, paragraph 25).
- 40 It follows that the concept of ‘use’, within the meaning of Article 103(2)(a) of Regulation No 1308/2013, must be interpreted strictly, as otherwise the distinction between that concept and, in particular, that of ‘evocation’, within the meaning of Article 103(2)(b) of that regulation, would be rendered moot, which would be contrary to the intention of the EU legislature.
- 41 In the main proceedings, and subject to the assessment of the referring court, the question arises as to whether the sign at issue, CHAMPANILLO – which results from the combination of the word ‘champagne’ in Spanish (*‘champán’*), without the tonic accent on the vowel ‘a’ and with the diminutive suffix ‘illo’, which thus means ‘little champagne’ in Spanish – is comparable to the PDO ‘Champagne’. It appears that that sign, while suggesting that designation, differs significantly from a visual and/or phonetic point of view. Consequently, under the case-law referred to in paragraphs 36 to 39 above, the use of such a sign does not appear to fall within the scope of Article 103(2)(a) of Regulation No 1308/2013.
- 42 In the light of the foregoing, it is appropriate, in responding to the questions referred, to proceed to interpret Article 103(2)(b) of Regulation No 1308/2013.

First question

- 43 By its first question, the referring court asks, in essence, whether Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that it protects PDOs in respect of conduct relating to both products and services.
- 44 According to settled case-law of the Court, in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, inter alia, judgment of 6 October 2020, *Jobcenter Krefeld*, C-181/19, EU:C:2020:794, paragraph 61 and the case-law cited).
- 45 As regards the wording of Article 103(2)(b) of Regulation No 1308/2013, it must be observed that that provision states that PDOs are protected against any misuse, imitation or evocation, even if the true origin of the product ‘or service’ is indicated.

- 46 It follows that, although under Article 92 and Article 93(1)(a) of that regulation, only products are eligible for a PDO, the scope of the protection conferred by that name extends to any use of that PDO by products or services.
- 47 Such an interpretation deriving from the wording of Article 103(2)(b) of Regulation No 1308/2013 is confirmed by the context in which that provision occurs. First, recital 97 of Regulation No 1308/2013 shows that the EU legislature intended thereby to protect PDOs against any use made of them by products and services not covered by that regulation. Secondly, recital 32 of Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs, the relevant provisions of which, as has been pointed out in paragraph 32 above, are comparable to those of Regulation No 1308/2013, also states that the protection of PDOs against misuse, imitation and evocation of registered names should be extended to services in order to ensure a high level of protection and to align that protection with that which applies to the wine sector.
- 48 That interpretation is likewise consistent with the objectives pursued by Regulation No 1308/2013.
- 49 It must be recalled that that regulation constitutes an instrument of the common agricultural policy essentially intended to assure consumers that agricultural products bearing a geographical indication registered under that regulation 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 (judgment of 20 December 2017, *Comité Interprofessionnel du Vin de Champagne*, C-393/16, EU:C:2017:991, paragraph 38 and the case-law cited).
- 50 As the Advocate General observed in points 36 and 37 of his Opinion, Article 103(2) of Regulation No 1308/2013 therefore provides for wide-ranging protection which is designed to extend to all uses which take advantage of the reputation enjoyed by products covered by one of those indications.
- 51 In that context, an interpretation of Article 103(2)(b) of Regulation No 1308/2013 which does not grant protection to a PDO where the sign at issue designates a service would not only be inconsistent with the broad scope conferred on the protection of registered geographical indications, but would also prevent the protection objective from being fully attained given that the reputation of a product with a PDO is also liable to be improperly exploited where the practice referred to in that provision concerns a service.
- 52 In the light of the foregoing, the answer to the first question is that Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that it protects PDOs in respect of conduct relating to both products and services.

Second and third questions

- 53 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the ‘evocation’ referred to in that provision, first, requires, as a prior condition, that

the product protected by a PDO and the product or service covered by the sign at issue be identical or similar and, secondly, must be established by reference to objective factors in order to determine whether there is a significant effect on an average consumer.

- 54 In that regard, it must be observed, as the Advocate General does in point 44 of his Opinion, that while Article 103(2)(a) of Regulation No 1308/2013 specifies that the direct or indirect use of a PDO is prohibited both in so far as it concerns ‘comparable products’ that do not comply with the relevant product specification and in so far as such use exploits the reputation of the PDO, Article 103(2)(b) does not contain any indication either that the protection against evocation is limited solely to cases where the products covered by the PDO and the products or services for which the sign at issue is used are ‘comparable’ or ‘similar’, or that that protection extends to cases where that sign refers to products and/or services which are not similar to those covered by the PDO.
- 55 According to the Court’s settled case-law, the concept of ‘evocation’ covers a situation in which the sign used to designate a product incorporates part of a protected geographical indication or a PDO so that when the consumer is confronted with the name of the product in question, the image triggered in his or her mind is that of the product whose indication or designation is protected (see, to that effect, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 44 and the case-law cited).
- 56 Furthermore, there may be an evocation of a protected geographical indication or a PDO where, concerning products which are similar in appearance, the protected geographical indication or the PDO and the sign at issue are phonetically and visually similar (see, to that effect, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 48 and the case-law cited).
- 57 However, neither the partial incorporation of a PDO in a sign borne by products or services which are not covered by that designation nor the identification of phonetic and visual similarity between that sign and that designation are essential conditions for establishing that there is an evocation of that designation. Evocation may also result from a ‘conceptual proximity’ between the protected name and the sign at issue (see, to that effect, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraphs 46, 49 and 50).
- 58 It follows that, as far as the concept of ‘evocation’ is concerned, the decisive criterion is whether, when the consumer is confronted with a disputed name, 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 name, any phonetic and/or visual similarity, or any conceptual proximity, between the name and the PDO (see, to that effect, judgments of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 51, and of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier*, C-490/19, EU:C:2020:1043, paragraph 26).
- 59 In any event, the Court has stated that the essential point for the purposes of a finding of evocation is that the consumer establish a link between the term used to designate the product in question and the protected geographical indication. That link must be sufficiently clear and direct (see, to that effect, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraphs 45 and 53 and the case-law cited).

- 60 It follows that evocation, within the meaning of Article 103(2)(b) of Regulation No 1308/2013, can be established only by means of an overall assessment by the referring court including all the relevant aspects of the case.
- 61 Consequently, the concept of ‘evocation’ within the meaning of Regulation No 1308/2013 does not require that the product covered by the PDO and the product or service covered by the name at issue be identical or similar.
- 62 The Court has explained that, in assessing whether there is such evocation, reference must be had to the perception of an average European consumer who is reasonably well informed and reasonably observant and circumspect (see, to that effect, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 47 and the case-law cited).
- 63 The concept of the average European consumer must be interpreted in a way that guarantees effective and uniform protection of registered names against any evocation throughout the territory of the European Union (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 47).
- 64 The Court has consistently held that the effective and uniform protection of protected names throughout EU territory means that circumstances which may lead to the conclusion that there is no evocation only in respect of the consumers of one Member State must be disregarded. However, it is also sufficient for evocation to be assessed solely by reference to the consumers of a single Member State for the protection provided for in Article 103(2)(b) of Regulation No 1308/2013 to be triggered (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 48).
- 65 In the main proceedings, it is for the referring court to assess, taking into account all the relevant factors which characterise the use of the PDO in question and the context in which that use occurs, whether the name CHAMPANILLO is such as to create, in the mind of the average European consumer who is reasonably well informed and reasonably observant and circumspect, a sufficiently clear and direct link with champagne in order for that court to then examine whether, in this case, there is evocation, within the meaning of Article 103(2)(b) of Regulation No 1308/2013, of that PDO. In making that assessment, the referring court will have to take into consideration a number of factors, including, in particular, the strong visual and phonetic similarity between the name at issue and the protected name and the use of the contested designation to designate and advertise catering services.
- 66 Having regard to the foregoing, the answer to the second and third questions is that Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the ‘evocation’ referred to in that provision, first, does not require, as a prior condition, that the product protected by a PDO and the product or service covered by the sign at issue are identical or similar and, secondly, is established where the use of a name creates a sufficiently clear and direct link between that name and the PDO in the mind of an average European consumer who is reasonably well informed and reasonably observant and circumspect. The existence of such a link may arise from several factors, in particular the partial incorporation of the protected designation, the phonetic and visual resemblance of the two names and the resulting similarity, and, even in the absence of those factors, the conceptual proximity between the PDO and the

name at issue or the similarity between the products covered by that PDO and the products or services covered by that name. In making that assessment, it is for the referring court to take account of all the relevant factors surrounding the use of the name in question.

Fourth question

- 67 By its fourth question, the referring court asks, in essence, whether the concept of ‘evocation’ within the meaning of Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the ‘evocation’ referred to in that provision is conditional on the existence of unfair competition.
- 68 As is apparent from paragraphs 56 to 60 above, the system of protection against evocation of a PDO as provided for in Article 103(2)(b) of Regulation No 1308/2013 is an objective system of protection, since it does not require proof of intent or fault to be triggered. Moreover, the protection established by that provision is not conditional on a finding of a competitive relationship between the products protected by the registered name and the products or services for which the sign at issue is used or on a likelihood of confusion in the mind of the consumer as regards those products and/or services.
- 69 It follows that, although, as the Advocate General observed, in point 75 of his Opinion, it is possible that the same conduct may simultaneously satisfy the conditions of a practice prohibited under Article 103(2)(b) of Regulation No 1308/2013 and an act of unfair competition under the applicable national law, the scope of that provision is broader than the latter.
- 70 In the light of the foregoing, the answer to the fourth question is that Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the ‘evocation’ referred to in that provision is not conditional on a finding of unfair competition, since that provision establishes specific protection which applies independently of the provisions of national law relating to unfair competition.

Costs

- 71 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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:

- 1. Article 103(2)(b) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 must be interpreted as meaning that it protects protected designations of origin (PDOs) in respect of conduct relating to both products and services.**
- 2. Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the ‘evocation’ referred to in that provision, first, does not require, as a prior condition, that the product protected by a PDO and the product or service covered by the sign at issue are identical or similar and, secondly, is established where the use of a name creates a**

sufficiently clear and direct link between that name and the PDO in the mind of an average European consumer who is reasonably well informed and reasonably observant and circumspect. The existence of such a link may arise from several factors, in particular the partial incorporation of the protected designation, the phonetic and visual resemblance of the two names and the resulting similarity, and, even in the absence of those factors, the conceptual proximity between the PDO and the name at issue or the similarity between the products covered by that PDO and the products or services covered by that name.

- 3. Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that the ‘evocation’ referred to in that provision is not conditional on a finding of unfair competition, since that provision establishes specific protection which applies independently of the provisions of national law relating to unfair competition.**

[Signatures]