

Notification to the opponent of a decision

Alicante, 21/12/2020

ALTIUS
Avenue du Port 86 C B414
B-1000 Brussels
BÉLGICA

Your reference: **20190000995**

Opposition number: **B 003102239**

Contested trade mark number: **W01474686**

Name of the opponent: **COMITÉ INTERPROFESSIONNEL DU
VIN DE CHAMPAGNE, loi de 1941**

Please see the attached decision which ends the abovementioned opposition proceedings. It was taken on **21/12/2020**.



Denitza STOYANOVA-VALCHANOVA

Enclosures (excluding the cover letter): 9 pages.

Please note that the decisions of the Opposition Division will not be signed by the responsible officials, but will only indicate their full name and carry a printed seal of the Office according to Article 94(2) EUTMR.

OPPOSITION No B 3 102 239

Comité Interprofessionnel du Vin de Champagne, Loi de 1941, 5, rue Henri-Martin, 51204 Épernay cedex, France, and **Institut national de l'origine et de la qualité - INAO**, 12 rue Henri Rol-Tanguy, 93100 Montreuil-Sous-Bois, France (opponents), represented by **Altius**, Avenue du Port 86 C B414, 1000 Brussels, Belgium (professional representative)

a g a i n s t

Woof and Brew Limited, 4 Bramley Road, St Ives PE27 3WS, United Kingdom (holder), represented by **Gallafents Ltd.**, 1 Sans Walk, London EC1R 0LT, United Kingdom (professional representative).

On 21/12/2020, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 102 239 is upheld for all the contested goods.
2. International registration No 1 474 686 is entirely refused protection in respect of the European Union.
3. The holder bears the costs, fixed at EUR 620.

REASONS

The opponents filed an opposition against all the goods of International registration designating the European Union No 1 474 686 'CHAMPAWS' (word mark), namely against all the goods in Class 31. The opposition is based on the protected designation of origin 'CHAMPAGNE'. The opponents invoked Article 8(6) EUTMR.

DESIGNATIONS OF ORIGIN OR GEOGRAPHICAL INDICATIONS — ARTICLE 8(6) EUTMR

According to Article 8(6) EUTMR, upon opposition by any person authorised under the relevant law to exercise the rights arising from a designation of origin or a geographical indication, the trade mark applied for must not be registered where and to the extent that, pursuant to the Union legislation or national law providing for the protection of designations of origin or geographical indications:

- (i) an application for a designation of origin or a geographical indication had already been submitted, in accordance with Union legislation or national law, prior to the date of application for registration of the EU trade mark or the date of the priority claimed for the application, subject to its subsequent registration;
- (ii) that designation of origin or geographical indication confers the right to prohibit the use of a subsequent trade mark.

a) The right under applicable law

Designations of origin and geographical indications for wines and other grapevine products protected under Council Regulation (EU) No 1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products fall under Article 8(6) EUTMR.

This includes the names already registered under Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine or Council Regulation No 479/2008 of 29/04/2008 on the common organisation of the market in wine. At present, geographical indications for wines are protected under EU legislation under Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013, known as the 'Wines Regulation', establishing a common organisation of the markets in agricultural products (Regulation No 1308/2013 or the Wines Regulation), which replaced and repealed Regulation No 1234/2007, which had integrated through codification by Regulation No 491/2009 the abovementioned Regulation No 479/2008, which was repealed at the same time. Wine names referred to in Articles 51 and 54 of Council Regulation (EC) No 1493/1999 and Article 28 of Commission Regulation (EC) No 753/2002 are automatically protected under this Regulation (see Article 107 of Regulation No 1308/2013). The Wines Regulation protects geographical indications that were already protected in a Member State on 01/08/2009 (or on the date of accession of a new Member State) subject to further conditions, and any further geographical indications applied for and registered pursuant to the EU system of protection thereafter.

According to Article 93(1)(a) of Regulation No 1308/2013, '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) of Regulation No 1308/2013 that complies with the following requirements:

- its quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
- the grapes from which it is produced come exclusively from this geographical area;
- its production takes place in this geographical area; and
- it is obtained from vine varieties belonging to *Vitis vinifera*.

The opponents refer in the notice of opposition and in their observations to the protection granted to the earlier right in the territory of France under French law. With respect thereto, the Opposition Division deems it useful to clarify that the EU system of protection of geographical indications for wines is exhaustive in nature and supersedes national protection for those goods with the result that any national rules granting any additional protection which supplements or supplants that granted under the Wines Regulation are not to be taken into account in the present proceedings (14/09/2017, C-56/16 P, PORT CHARLOTTE, EU:C:2017:693, § 96).

b) The earlier right and the opponents' entitlement

The opponents invoked in the present case as earlier right the protected designation of origin (PDO) 'Champagne'.

Under EU law, 'Champagne' was recognized and registered as a PDO on 18/09/1973 and the registration was published in the Official Journal of the European Union (Series C 74/18/09/1973, page 8, attached as Exhibit I.10). The opponents made reference to an online source recognised by the Office (in accordance with Article 7(3) EUTMDR), namely to the EU geographical indications register eAmbrosia, from which it can be confirmed that the PDO 'Champagne' is registered under number PDO-FR-A1359. The register confirms that the legal instrument protecting the name is Article 107 of Regulation No 1308/2013 and that

the PDO 'Champagne' for wine was registered with this system on 18/09/1973 (Extracts from the Register of Protected Designation of Origin and Protected Geographical Indications established by Article 104 of Regulation (EU) No 1308/2013 are also submitted as Annex 1 to the submissions filed with the notice of opposition and Exhibit I.9 to the submissions filed within the substantiation time limit).

It follows from the above that the PDO 'Champagne' is protected under the Wines Regulation for *wine*. From the above outline it is also clear that the invoked PDO is earlier than the contested IR in which the EU was designated on 22/05/2019, with priority date 22/11/2018.

As regards the opponents' entitlement to file the opposition, in relation to the first opponent, Comité interprofessionnel du vin de Champagne (CIVC), evidence was submitted that it is a French body and it has been established by virtue of a French legal act dated 12/04/1941 (French Law of 12 April 1941 establishing a Comité interprofessionnel du vin de Champagne, filed by the opponents with a translation into the language of the proceedings).

According to the provisions of said law (Article 8) the opponent is entrusted with the functions of, inter alia, undertaking protection and defence campaigns in favour of the pre-determined Champagne registered appellations of origin. Furthermore, according to Article 13 of the said law, the CIVC has legal personality and has the right to take matters to court. It may exercise all the rights reserved for a civil party in all courts, in relation to actions that may directly or indirectly harm the collective interests of the groups that it represents.

The opponents submitted, furthermore, a copy of a French Supreme Court Decision of 18/02/2004 in case number 02-10576, CIVC/Parfums Caron, 'Royal Bain de Champagne' and 'Bain de Champagne' wherein the French Supreme Court ruled on the admissibility of actions brought by the first opponent against the infringement to the CHAMPAGNE appellation of origin, such actions being unquestionably prejudicial to the collective interest of Champagne producers and of all the traders involved in the production and sale of Champagne wine.

The second opponent, Institut national de l'origine et de la qualité - INAO, is, according to the opponents' submissions, an administrative public institution controlled by the French Ministry of Agriculture and Fisheries. The opponents explain that Inao was established by the French Decree-Law of 30 July 1935 concerning the defense of the wine market and the economic regime of alcoholic products and that the legal provisions governing Inao's functioning and responsibilities are set out in Title IV of Book VI of the French Rural and maritime fisheries Code (attached as Exhibits I.2 and I.3).

Under Article L. 642-5 of the said Code, INAO's duties include contributing to the protection and defence, in France and abroad, of, inter alia, the French designations of origin. With a view to INAO's legal personality and capacity to act in defence of the earlier PDO, including to initiate and participate in court and administrative proceedings the opponents make reference to a judgement of the Paris Court of Appeal confirming that INAO is a public body placed under control of the Ministry in charge of agriculture and has been entrusted with, among other things, the duty to recognise, control, promote and defend, both in France and in foreign countries, the designations of origin. Moreover, from the legal provisions and rules governing this body it would be evident that it may initiate legal proceedings concerning any facts that are of such a nature as to infringe the 'CHAMPAGNE' designation of origin.

In addition to the above, the opponents make reference to previous decisions of the Office where the entitlement of the opponents to file an opposition has been confirmed.

In light of the arguments and evidence submitted, the Opposition Division considers that the opponents have provided sufficient evidence as to their respective entitlement to exercise the rights arising from the PDO 'Champagne' and, in particular, to file the present opposition.

c) The opponents' right vis-à-vis the contested trade mark

According to Article 103(2) of Regulation No 1308/2013, protected designations of origins and protected geographical indications and the wines using those protected names in conformity with the product specification will be protected against:

- (a) any direct or indirect commercial use of a protected name:
 - (i) by comparable products not complying with the product specification of the protected name; or
 - (ii) insofar 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 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, 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.

The opponents maintain that there is a conflict between the protected PDO and the contested IR. The opponents are of the view that it could be debatable whether the contested IR would amount to 'direct or indirect use' of the earlier PDO in the sense of Article 103(2)(a) of Regulation No 1308/2013 and base the opposition on Article 103(2)(b), (c) and/or (d) of Regulation No 1308/2013.

The opponents correctly point out that under Article 8(6) EUTMR there is no requirement to prove that the PDO invoked has been used in the course of trade of more than mere local significance.

Nevertheless, the opponents have submitted extensive argumentation and evidence, inter alia:

Exhibit I: Documents in relation to the existence and validity of the earlier right, comprising mainly French laws and the extracts from the register of PDOs and PGIs established by Article 104 of Regulation (EU) No 1308/2013 and from the Official Journal of the EU.

Exhibit II: Notice letter from the opponents to the holder asking the latter to withdraw the trade mark application and to cease and desist from any use of the contested sign or any similar sign using, imitating or evoking the earlier PDO.

Exhibit III: Evidence with regard to the 'Champagne' designation of origin, inter alia:

Materials edited and distributed by the opponents related to the history and production of wines from the Champagne region and more specifically about the PDO Champagne, namely:

Annex III.A.01: The wines of Champagne, From lifestyle to wine styles;

Annex III.A.02: Champagne, From Terroir to Wine;

Annex III.A.03: Printout from the website www.champagne.fr dated 26/10/2010;

Annex III.A.04: Printouts from the website of the Champagne Information Bureau in the UK www.champagne-civc.co.uk dated 25/10/2010;

Annex III.A.05: Printout from the website www.champagne.co.uk dated 19/10/2010 with information in relation to a Champagne DVD containing four films in nine languages;

Annex III.A.06: Printout from the website www.champagne.co.uk dated 19/10/2010 with information in relation to an educational CD-ROM intended for teachers of wine education.

Materials in relation to the reputation of the PDO 'Champagne', namely excerpts from publications by third parties commenting on the fame and prestige of the PDO 'Champagne', as follows:

Annex III.B.01: An excerpt (the foreword) from Michael Edwards, *The finest wines of Champagne. A guide to the Best Cuvées, Houses and Growers*, Fine Wine Editions, 2009;

Annex III.B.02: L'ABCdaire du Champagne;

Annex III.B.03: Angélique de la Chaise and Eric Glatre, *Champagne, le plaisir partagé*, Hoëbeke;

Annex III.B.04: James Turnbull, *Champagne Grandeur Nature*, E/PI/ Editions;

Annex III.B.05: Philippe Boucheron, *The independent traveller's guide to Champagne, Destination Champagne*, Wine Destination Publications, 2005;

Annex III.B.06: Karl Lagerfeld's tryst with Dom Pérignon, September 2006.

Facts and figures with respect to the PDO 'Champagne'

Annex III.C.01: 'Les expéditions de vins de Champagne en 2018', edited by the CIVC, available at www.champagne.fr (Champagne wines shipments in 2018);

Annex III.C.02: Champagne - A major economic player 2016;

Annex III.C.03: 'Le Champagne dans le monde' 2000-2009 (Champagne in the world 2000-2009).

Exhibit IV: Case-law. The opponents have provided copies of decisions and judgments from various jurisdictions in the European Union involving the earlier PDO and/or other PGIs/PDOs.

From the documents listed above it becomes evident that the PDO 'Champagne' has acquired an outstanding prestige in the European Union. The materials submitted by the opponents show a geographically widespread and longstanding use of the PDO (as claimed by the opponents and supported with evidence with regard to sales volumes, shipments throughout the EU and the world, distribution of Champagne wines and turnover achieved). It is evident from the submitted materials that the wine growers from the Champagne region and the CIVC dedicate investments and efforts to promote and protect the 'Champagne' PDO. Moreover, the opponents successfully proved that Champagne wines are associated with luxury, success, festivities, and glamour, as reflected in numerous publications and, indeed, previous case-law.

The opponents' main argumentation aims at supporting the claim that the contested IR evokes the earlier PDO. In the opponents' view, there exists some degree of visual and phonetic similarity between the contested IR and the earlier PDO; the PDO 'Champagne' has acquired an outstanding reputation and prestige, in the European Union and beyond; there is a certain relation between the relevant goods; such evocation exploits the reputation of the PDO 'CHAMPAGNE', etc.

The Opposition Division will now assess whether the conditions set by Article 103(2)(b) of Regulation No 1308/2013 are met.

According to the Court, the concept of 'evocation' covers, inter alia, a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected (see, to that effect, 21/01/2016, C-75/15, Verlados, EU:C:2016:35, § 21; 04/03/1999, C-87/97, Cambozola, EU:C:1999:115, § 25; 26/02/2008, C-132/05, Commission v Germany, EU:C:2008:117, § 44).

Therefore, consumers must establish a link between the term used to designate the contested goods (i.e. the contested sign 'Champaws') and the product whose designation is protected (*wines*) (21/01/2016, C-75/15 Verlados, EU:C:2016:35, §§ 21-22), whilst it is necessary to take account of the presumed expectation of the average consumer, who is reasonably well informed and reasonably observant and circumspect. The Court has clarified that such link between the term used to designate the product and the product whose name is protected must be **sufficiently clear and direct** and that a mere association with the protected geographical indication or the geographical area relating thereto is not sufficient (21/01/2016, C-75/15, Verlados, EU:C:2016:35, § 22, 07/06/2018, C-44/17, Glen Buchenbach, EU:C:2018:415, § 53).

In assessing whether such a link is established, the Court has considered that the **visual, phonetic or conceptual relationship** between the signs is one of the factors to be taken into account. Another relevant aspect of the analysis is the **degree of proximity of the goods/services concerned**, including the actual physical appearance or the ingredients and taste of the products covered by the contested IR and the protected designation (judgment of 04/03/1999, C-87/97, Cambozola, EU:C:1999:115, § 27).

1. The goods

The earlier PDO enjoys protection for *wines*.

The opposition is directed against the following goods:

Class 31: *Pet foods; pet beverages.*

The Opposition Division takes note of the holder's arguments that the contested goods would be completely different from the protected *wines* in terms of their nature and physical appearance, method of elaboration and use of the same raw materials. The holder, furthermore, maintains that the *wine* protected by the earlier PDO is for human consumption whereas the contested *pet foods* and *pet beverages* are not intended for human consumption and it would be well known that *pet beverages* should be non-alcoholic since alcohol is bad for pets. According to the holder, the goods would neither be consumed on largely identical occasions nor would they be distributed through the same channels or be subject to similar marketing rules. Therefore, the holder is of the opinion that the goods would be different and would not intersect with those of the PDO.

However, the Opposition Division concurs with the opponents that the protection granted to PDOs under EU law aims not only at enabling consumers to make more informed purchasing choices but also at preventing uses which take advantage of the reputation enjoyed by complying products and promoting fair competition (recital 97 of Regulation (EU) No 1308/2013).

Furthermore, from the evidence submitted by the opponents it becomes clear that the physical appearance of the contested goods is very similar to the appearance of the protected goods and that also it is intended to be offered at similar festive and special occasions:



Woof & Brew
Cham:Paws
Champagne For
Dogs & Cats
Woof & Brew

In this respect, even if the *wines* and the contested goods (beverages for pets and the broader category foodstuffs for pets, including also beverages) are not identical and the holder is right in pointing out relevant differences, a certain proximity cannot be denied.

This link between the conflicting goods is reinforced by the messages accompanying the marketing of the contested goods (referring to intrinsic characteristics of the Champagne wines, such as 'bubbles' - as demonstrated by the opponents).

2. The signs

CHAMPAGNE	+	CHAMPAWS
Earlier PDO		Contested sign

The relevant territory is the European Union.

Visually, the signs coincide in their first six letters, 'CHAMPA'. They are of a similar length (nine vs eight letters) and only differ in their last three and two letters, respectively.

It is of particular importance that the coincidences are in the beginnings of the signs because this is the part the consumers generally tend to focus on. This is because the public reads from left to right, which makes the part placed at the left of the sign (the initial part) the one that first catches the attention of the reader.

Therefore, the signs are similar to a higher than average degree.

Aurally, irrespective of the different pronunciation rules in different parts of the relevant territory, the pronunciation of the signs coincides in the first syllable, 'CHAM', present identically in both signs. Furthermore, the following coinciding letters 'PA' reinforce the similarities between the signs. While the pronunciation of the signs differs in their endings, this is the part that tends to be memorised less by the consumers, as explained above. Therefore, also aurally the signs are similar to a higher than average degree.

Conceptually, the earlier PDO refers to a region in France while the contested sign will be perceived by a significant part of the public as a meaningless term. Another part of the public, in particular the English-speaking public, may single out in the contested sign the word 'PAWS' which will be clearly linked to the relevant goods for pets. While there is no similarity between the signs, the contested mark's concept (for a part of the public) cannot be attributed too much significance due to its link to the relevant goods and is, in any event, not capable of offsetting the visual and phonetic similarities.

d) Conclusion

As explained above, it is required that the public establishes a sufficiently clear and direct link between the contested sign and the product protected by the PDO (i.e. *wines*). Considering all the above, the Opposition Division comes to the conclusion that the similarities between the signs and the proximity between the goods are sufficient for the public to make a clear and direct connection between the contested IR on the contested goods with the protected product *wine* coming from the Champagne region.

Indeed, the Opposition Division concurs with the opponents that, as evident from the materials on file (Exhibit V), the holder's marketing strategy is built on the evocation between the contested goods and Champagne wines. The image of prestige and luxury, festivities, and glamour of the Champagne wines which is a result not only of the intrinsic reputation related to the quality of the products but also of the efforts invested to create this particular image is clearly used by the holder to promote its goods.

The above conclusions are not altered by the references of the holder to EUIPO decisions (decision in opposition B 2 406 885, *t-secco*; decisions of the 4th Board of Appeal in the *Toro* case, R612/2015-4 and in the *Cavariane* case, R54-2017-4; and decision of the 5th Board of

Appeal in the Mat Prat case R26/2018-5) and a Spanish national decision (CHAMPIN – however, the decision was not submitted by the holder so that the background, the reasoning and other relevant information in the dispute are not clear and, in any event, are not binding for the Office). In particular, it is to be borne in mind that there are relevant differences from the factual and legal circumstances in the present opposition – by way of example, as also pointed out by the opponents, the cases decided by the Opposition Division and the Boards of Appeal involved different goods, signs and grounds for refusal.

Considering all the above, the Opposition Division finds the opposition is well founded on the basis of the invoked PDO. Therefore, the contested trade mark must be rejected for all the contested goods.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

Since the holder is the losing party, it must bear the opposition fee as well as the costs incurred by the opponents in the course of these proceedings.

According to Article 109(1) and (7) EUTMR and Article 18(1)(c)(i) EUTMR, the costs to be paid to the opponents are the opposition fee and the costs of representation, which are to be fixed on the basis of the maximum rate set therein.



The Opposition Division

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According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.