

**CJEU referral:
PDO QUESO MANCHEGO vs. INDUSTRIAL QUESERA CUQUERELLA, S.L.
TRIBUNAL SUPREMO S.1, MADRID, RECURSO DE CASACION 3250/14**

Background

In November 2017, the Court of Justice of the European Union (CJEU) notified to the European Commission and the Member States the terms of a referral it received from the Spanish Supreme Court.

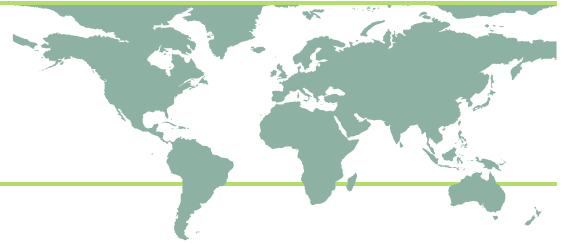
The Spanish case at stake involves the group representing the PDO “Queso Manchego” v. a company which is commercializing cheese products associated with graphical elements related to “La Mancha” region in Spain (such as Don Quijote de La Mancha, the Rocinante horse and middle-age wind mills).

The CJEU will not rule on the case itself. It is rather called to clarify the concept of evocation (art. 13.1 b of Regulation 1151/2012) and in particular whether conceptual graphical elements of a label (instead of phonetic or graphical resemblance to the PDO/PGI) can, under certain circumstances, represent for consumers an evocation of PDO/PGI.

oriGIn believes “evocation” is a powerful tool for the protection of EU PDO, PGI and GIs. It is therefore important EU GIs groups liaise with their respective national authorities to provide the CJEU observations. To this end, oriGIn prepared this paper to recall the main features of evocation according to the EU Regulations and case law.

Evocation according to the EU Regulations and case law

- a. Regulation 1151/2012 does not restrict the concept of evocation to the use of word signs. Art. 13.1.b) refers to “...any evocation...” (the formulation is found in art. 103.b of Regulation (EU) No 1308/2013 and in art. 16.b Regulation (EC) No 110/2008).
- b. The European supreme court has already expressed itself on “evocation” in the following cases: “Cambozola”, “Parmesan”, “Cognac” and “Verlados”. It was stated that evocation “covers 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 (...) there may be an evocation of a protected name 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”. What is relevant to determine whether there is an evocation of a PDO (or PGI or GI), is the fact that a consumer confronted with the product at issue associates it to the PDO (or PGI or GI).



- c. Paragraph 55 of the “Parmesan case”(C-132/05) ruling concern the use of graphical elements: “According to the documents in the case, in Germany, certain producers of cheese called ‘Parmesan’ market that product with labels referring to Italian cultural traditions and landscapes. It is legitimate to infer from this that consumers in that Member State perceive ‘Parmesan’ cheese as a cheese associated with Italy, even if in reality it was produced in another Member State (see to that effect *Germany and Denmark v Commission*, paragraph 87).
- d. The European supreme court has already established that there is evocation if explicit or implicit references are used in the labelling of the products. In the “Cognac” case (judgment of 14/07/2011 in joined cases C-4/10 and C-27/10, paragraph 46), the Court states: “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”.
- e. The European Union Intellectual Property Office (EUIPO) practice established, since 2014, that exists evocation due to the use of “figurative elements that are usually associated with the geographical area in question (as well-known historical monuments) or when reproducing a specific shape of the product”. Examples: bridge of Dom Luis I (Porto); image of the Abbey of Mont-Saint-Michel (moules de bouchot of the Baie du Mont-Sain-Michel); cheese with conical shape (Tetilla Cheese).
- f. With specific reference to consumers, the ruling of January 21, 2016 (case C-75/15, “Verlados” case), established that: “Article 16(b) 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 must be interpreted as meaning that, in order to assess whether there is an ‘evocation’ within the meaning of that provision, the national court is required to refer to the perception of the average consumer who is reasonably well informed and reasonably observant and circumspect, that concept being understood as covering European consumers and not only consumers of the Member State in which the product giving rise to the evocation of the protected geographical indication is manufactured”.