

Use of GIs as ingredients

Background

- Ingredient branding
- Scope of protection of GIs
- 2010 EU Commission Guidelines
- Case C-393/16: ‘Champagner Sorbet’



Case C-393/16 CIVC v. Aldi Süd Dienstleistungs-GmbH & Co

Unlawful exploitation of the reputation of a PDO entails use of the PDO that **seeks to take undue advantage of its reputation.**

Use of the name ‘Champagner Sorbet’ **is liable to extend to that product the reputation of the PDO ‘Champagne’** and therefore to take advantage of its reputation.

Use of the name ‘Champagner Sorbet’ does **not** take undue advantage (and therefore does **not** exploit the reputation) of the PDO ‘Champagne’ **if the product concerned has a taste that is primarily attributable to Champagne.**

The quantity of Champagne in the sorbet is a significant **but not, in itself, sufficient factor.**

Key takeaways from Case C-393/16

- Which taste?
- Assessment of the taste
- No indications about the presentation of the product



- Impact on trademark examination: e.g. EUIPO Practice & Guidelines
- Impact on enforcement

Focus: GIs as ingredients & trademark examination

EUIPO approach:

(source: EUIPO Guidelines, part B Examination Section 4 Absolute grounds for refusal)

- **Products used as ingredients:** if the goods covered by the PDO/PGI can be used as a **commercially relevant ingredient** (in the sense that it may determine the choice of the main product) of any of the goods included in the EUTM application, a restriction will be requested. This is because Article 13(1)(a) and (b) of Regulation (EU) No 1151/2012 expressly extend the scope of protection of a PDO/PGI registered for a given product 'when those products are used as an ingredient'.

PDO/PGI in the EUTM	Original specification (which is not acceptable)	Acceptable list of goods	Explanation
POMME DU LIMOUSIN (FR/PDO/0005/0442)	<i>Jams and compotes</i>	<i>Jams and compotes of apples complying with the specifications of the PDO 'Pomme du Limousin'.</i>	The <i>fruit</i> is the main ingredient of <i>jams and compotes</i> .
PROSCIUTTO DI PARMA (IT/PDO/0117/0067)	<i>Pizzas</i>	<i>Pizzas with ham complying with the specifications of the PDO 'Prosciutto di Parma'.</i>	This topping is the main ingredient of a <i>pizza</i> and the one which determines the consumer's choice.

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EUIPO approach:

(source: EUIPO Guidelines, part B Examination Section 4 Absolute grounds for refusal)

A restriction is not necessary if the goods covered by the PDO/PGI are used as a secondary, not commercially relevant ingredient of the claimed goods.

PDO/PGI in the EUTM	Original specification	Acceptable list of goods	Explanation
ACEITE DE LA ALCARRIA (ES/PDO/0005/0562)	<i>Pastry</i>	<i>Pastry</i>	The goods do not need to be restricted by the mere fact that <i>oil</i> is used in their preparation. <i>Oil</i> is a secondary ingredient which is not commercially relevant.

Focus: GIs as ingredients & trademark examination

Example: EU Application No. 017887009



“Biscuits filled with coffee cream complying with the specifications of the protected geographical indication “Café de Colombia”; Wafers filled with coffee cream complying with the specifications of the protected geographical indication “Café de Colombia”; Coffee-based pralines complying with the specifications of the protected geographical indication “Café de Colombia”.”

Focus: GIs as ingredients & enforcement

- Wide variety of situations requires tailor-made strategies
...from chips, gummies, pet food...to cosmetics, candles...
- (mis)interpretation of Case C-393/16 and GI regulations
- The use of the GI in the presentation of the hosting product remains an open issue
- Education about the GI Product Specifications (“GI aroma”, “GI powder”)