

VIGNERONS ET MAISONS



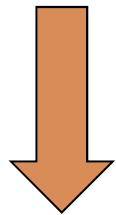
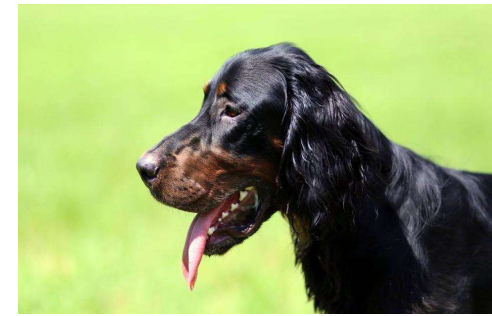
PROTECTION OF PDO 'CHAMPAGNE' AGAINST EVOCATION WITH RESPECT TO NON COMPARABLE PRODUCTS AND SERVICES IN EU



Giulia Belinci
Legal adviser, Comité Champagne

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Protection against evocation: to what extent?



CHAMPAGNOLA



Evocation before EU Regulation No 1308/2013



33 Wine with the registered designation of origin "Champagne"

35 Advertising; Business management; Business administration; Office functions; [...] All the aforesaid services relating to wine with the protected designation of origin "champagne"; Retailing of wine with the protected designation of origin "champagne" and oenological articles relating to the aforesaid wine.

41 Education, providing of training, entertainment; [...] All the aforesaid services relating to wine with the protected designation of origin "champagne".

43 Services for providing food and drink; Temporary accommodation; All the aforesaid services relating to wine with the protected designation of origin "champagne".

- signs visually, phonetically and conceptually similar
- products and services related
- reputation

} EVOCATION

(OHIM Opposition division, 3/07/2013)



Recital 97

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.

Article 103(2)(a)(b)

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;



OPPOSITION AGAINST ALL THE GOODS AND SERVICES:

Class 30: Bread, pastry and confectionery; baking preparations, flavourings for baking except scented oils, preparation for making leaven dough, sugar, flour, preparations made from bread, cereals and confectionery, dough, **yeast**, baking-powder, yeast extracts not for medical purposes, **honey**, molasses syrup, malt for food purposes, basic and ready mixes for bread production.

Class 40: Bakeries, production of semi-finished bakery and confectionery products and the baking thereof, **bakery services** and services related thereto, processing and treatment of raw materials for bakery, dough and confectionery production.

Class 43: Restaurant services; provision of gastronomic services, including catering services, buffet services, snack bar services, patisseries, café services, cafeteria services, coffee services, self-service restaurant services, canteen services.





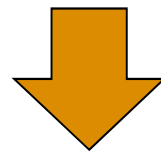
DECISION OF THE EUIPO OPPOSITION DIVISION 26/03/2019

- Application rejected in class 43 on the basis of another earlier sign
- Opposition rejected in relation to classes 30 and 40

REASONS

1. CHAMPAGNE is not fully included in CHAMPAGNOLA ➡ **no direct or indirect commercial use of the protected name** within the meaning of Article 103 (2)(a)

2. non comparable goods and services ➡ **no sufficiently clear and direct link**



NO EVOCATION within the meaning of Article 103 (2)(b)






DECISION OF THE BOARDS OF APPEAL 17/04/2020

“Champagnola” evokes “Champagne”

REASONS

1. Regulation No 1308/2013:
 - protection against identical use or evocation of protected names
 - with respect to comparable products or **non comparable goods and services, ONLY IF: PDO reputation**

2. Evocation  comparability of goods and services



EUTM application «CHAMPAGNOLA» in classes 30 and 40



- No prior actual use resulting in actual harm or detriment of the PDO reputation
- Article 8(5) EUTMR regarding unfair advantage taken from a reputation:

prima facie evidence of a future risk

normal practice in the relevant commercial sector

- In practice: CHAMPAGNOLA BAKERY



impression of a somewhat vague connection with Champagne sparkling wine

“It suffices that there is an appeal on the emotional basis”



Spanish restaurant «Champanillo»: request for preliminary ruling EUCJ C-783/19





1. If the scope of protection of a PDO allows for its protection, not only in relation to similar products, but also regarding services that might be linked to the direct or indirect distribution of these products.

YES, it also covers protection against non-comparable products or services

- C-393/16 20/12/2017 “Champagner Sorbet” EU:C:2017:991, point 31
- Recital 97 Regulation 1308/2013
- Art 103 of EU Regulation 1308/2013





2. If the risk of infringement by evocation requires a nominal analysis, in order to define its impact upon the average consumer, or if it is necessary to previously determine that the products at issue are either the same, similar or complex products having, among their components, a product protected by a PDO.

3. If the risk of infringement by evocation shall be defined on the basis of objective parameters in case of an either total or very high coincidence between the signs, or if it shall be assessed according to the products and services evoking and evoked in order to conclude whether such a risk is minor or irrelevant.

It is not necessary for the national court to preliminarily determine whether the evocative term is used for the same products, similar products or complex products whose components include a product protected by the PDO.

- No proof of a risk of confusion
- Image triggered in consumers' minds
- Set of indications





Association/unfair advantage (EUTM law) and evocation (EU PDO-PGI law)

- no confusion

- connection between the earlier trade mark and the conflicting sign to be assessed globally:
 - the degree of similarity between the conflicting signs
 - the nature of the goods/services
 - the relevant section of the public
 - the strength of the earlier mark's reputation
 - the degree of its distinctive character





4. If the protection provided against evocation or exploitation is a protection specific to those products' peculiarities, or if the protection shall necessarily be linked to unfair competition law.

The protection that Regulation No 1308/2013 accords to PDOs and PGIs is *sui generis*

NO NEED TO HAVE

- a risk of confusion
- a misleading behaviour

Additional applications of unfair competition laws

- Recital 97: promoting fair competition
- Article 22(2) of the TRIPs: *prevent any use which constitutes an act of unfair competition within the meaning of Art. 10bis Paris Convention*



EU designation of IR registration CHAMPAWS in class 31



BROUGHT TO YOU FROM AWARD-WINNING WOOF&BREW, CHAM:PAWS IS A DECADENT, NON-ALCOHOLIC, HERBAL INFUSION THAT OFFERS LOVED PETS BOTH SUBSTANCE AND STYLE. WE'VE MADE IT OUR MISSION TO PROVIDE **THE SAME LITTLE LUXURIES** IN LIFE WE ENJOY, FOR OUR PETS. WE LIVE BY 'IT MUST BE GOOD ENOUGH FOR US TO BE GOOD ENOUGH FOR THEM' AND ENSURE OUR PRODUCTS ARE HUMAN-GRADE.

VIGNERONS ET MAISONS



THANK YOU!

giulia.belinci@civc.fr

COMITÉ INTERPROFESSIONNEL
DU VIN DE CHAMPAGNE
5, rue Henri-Martin, Boîte Postale 135
51204 Épernay Cedex
France

www.champagne.fr