

oriGIn paper on the protection of PDO, PGI and GIs against “evocation” in the EU regulations and case law

1. Introduction

The protection against products’ labelling that may constitute an “evocation” of PDO, PGI and GIs – as provided in Article 13(1)(b) of Regulation (EU) No 1151/2012, Article 103(2)(b) of Regulation (EU) No 1308/2013 and Article 21(2)(b) of Regulation (EU) No 2019/787 – is a powerful tool for their meaningful protection, especially against “subtle” attempts to mislead consumers.

Following the Court of Justice of the European Union (CJEU) rulings (then reflected in the judgments of the national courts’ that had referred the cases), the depth/meaning/notion/concept of “evocation” has been clarified over the years. Likewise, the European Union Intellectual Property Office (EUIPO) – through its practice as well as “Guidelines for examining European Union trade marks”, has contributed to the same objective of clarification/consolidation.

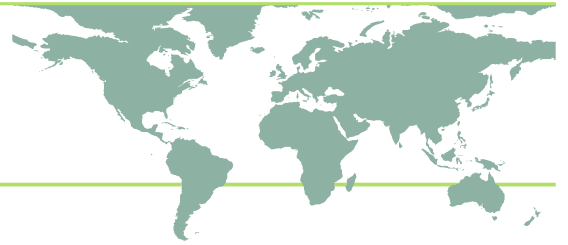
On the one hand, oriGIn EU and its members believe there is a need to promote a wider knowledge of evocation (and its depth) across the EU, including among IP/trademark offices, to ensure a uniform implementation of the relevant rules.

On the other, oriGIn works to make the concept of evocation known outside the EU, with the goal to encourage convergence at the international level.

2. Crucial elements of evocation according to the EU Regulations and case-law

The relevant EU Regulations and case law clarify the following issues concerning the evocation of protected names:

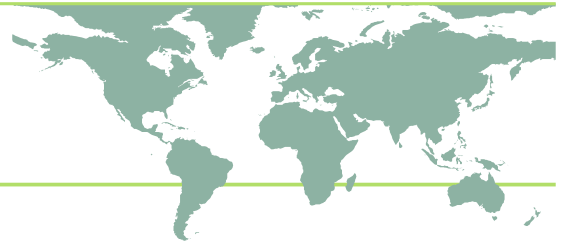
- a. **Evocation is not restricted to the use of word signs;**
- b. **Evocation might be established even where there is no likelihood of confusion for consumers;**
- c. **Evocation might be produced by the use of graphical elements;**
- d. **Evocation might be established through explicit or implicit references;**
- e. **Not only consumers in the Member State in which the product at issue is manufactured are relevant when ruling on evocation;**
- f. **Evocation might be established through “conceptual” proximity;**
- g. **Evocation might be established through the use of figurative elements;**
- h. **The reproduction of the external appearance of products which names are protected can result in an evocation;**
- i. **Evocation can be established either with respect to contested signs used on comparable products with respect to the ones of the PDO, PGI or GI at issue (absolute protection) as well as with respect to other goods and services which**



are not comparable (if the contested sign exploits the reputation of the PDO, PGI or GI at issue).

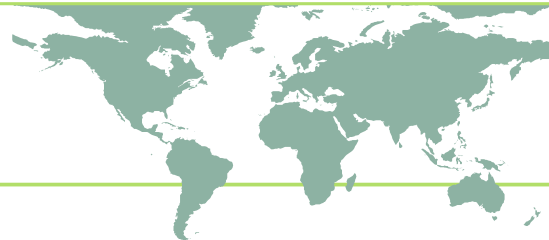
Below an analysis of each of the above-mentioned points:

- a. The relevant Regulations do not restrict the concept of evocation to the use of word signs. Article 13(1)(b) of Regulation 1151/2012 refers to "...any evocation..." (the same formulation is found in Article 103(2)(b) of Regulation 1308/2013 and in Article 16(b) of Regulation 110/2008).
- b. The CJEU case law ("Cambozola", "Parmesan", "Cognac", "Verlados", "Glen Buchenbach" and "Manchego/Don Quixote de La Mancha") has clarified that "(...) 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".
- c. Paragraph 55 of the "Parmesan case" (C-132/05) ruling concerns 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 *Germany and Denmark v Commission*, paragraph 87).
- d. 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". As a result, there can be an evocation of PDO, PGI and GI if explicit or implicit references are used in the labelling of the products at issue.
- e. With reference to consumers, the ruling of January 21, 2016 (case C-75/15, "Verlados" case), establishes 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".
- f. In case C-44/17 ("Glen Buchenbach"), the CJEU clarifies that he "conceptual" proximity between a GI and the contested name can result in an evocation. This has to be evaluated



by national courts, taking into account the fact that an average European consumer, who is reasonably well informed and observant and circumspect, when confronted with the name at issue, the image triggered in his mind is that of the product whose indication is protected. This is the first case which puts it beyond doubt that evocation can exist even where the name at issue is not similar phonetically or visually to the GIs (the contested name was “Glen Buchenbach” with respect to the GI “Scotch Whisky” – “Glen” in fact is widely used in Scotland to refer to “valley” and is an element of the trade mark of Scotch Whisky producers). Moreover, according to the Court, the indication of the true origin of the good at issue does not exclude automatically the evocation of a GI. Following the CJEU Judgment, in February 2019, the German court which had referred the case to the CJEU found that “Glen” is strongly associated with Scotland and Scotch Whisky, and the only reason to use “Glen” for a German whisky is because of its undoubted association with Scotch Whisky. As a result, the court's decision confirmed that the use of “Glen” on a German whisky is misleading.

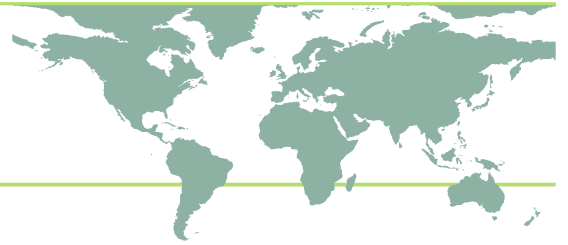
- g. In Case C-614/17 (“Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego” v. “Industrial Quesera Cuquerella SL and Juan Ramón Cuquerella Montagud”, a company which commercializes some of its cheese products, through labels with figurative elements - a knight similar to the usual depictions of “Don Quixote de La Mancha” and a bony horse and landscapes with windmills and sheep - as well as the words “Quesos Rocinante”), the CJEU confirms that an evocation of a PDO (or PGI and GI) can be produced by the use of figurative elements. This also in the absence of visual, phonetical and conceptual similarities between the protected name and the product's labelling. Moreover, the Court found that the use of figurative signs evoking the geographical area with which a designation of origin is associated may constitute evocation of that designation, including where such figurative signs are used by a producer established in that region, but whose products, similar or comparable to those protected by the designation of origin, are not covered by the PDO; and that an average consumer can be understood as including consumers of the Member State where the product is produced and mainly consumed. Following the CJEU Judgment, in July 2019 the Supreme Court of Spain ruled that figurative elements (“Don Quixote de La Mancha” as well as a bony horse and landscapes with windmills and sheep) have sufficient conceptual proximity to “La Mancha” region to lead consumers to associate them with the PDO “Queso Manchego”. As a result, the use of the above-mentioned figurative elements on cheese products made in “La Mancha” – without following the “Queso Manchego” product's specification though - were considered a violation of the relevant EU law (an evocation of the PDO, according to art. 13.1.b of Regulation (EU) No 1151/2012). Likewise, the Supreme Court invalidated the registered trademark “Rocinante” (art. 14.1 of the same Regulation).
- h. Another interesting ruling for the purpose of this paper concerns the reproduction of the external appearance of PDO/PGI/GI products. Through ruling 17 - 25822 (17 June 2019), the French “Cour de cassation” referred a case to the CJEU concerning the interpretation of article 13.1 of Regulation 1151/2012. The “Syndicat interprofessionnel de défense du fromage Morbier” had seized the “Cour de cassation” contesting the use and commercialization by the French company “Fromagère du Livradois” of a cheese product reproducing the visual appearance of the PDO “Morbier”. In Case C-490/19 the CJEU clarifies two points: First of all, Article 13(1) of Regulation No 1151/2012 does not prohibit



solely the use by a third party of the registered name. It prohibits the reproduction of the shape or appearance characterizing a product covered by a registered name where that reproduction may lead the consumer to believe the product in question is covered by that registered name. In those circumstances, it is necessary to assess whether that reproduction may mislead the European consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account all the relevant factors in the case, including the way in which the products in question are presented to the public and marketed and the factual context.

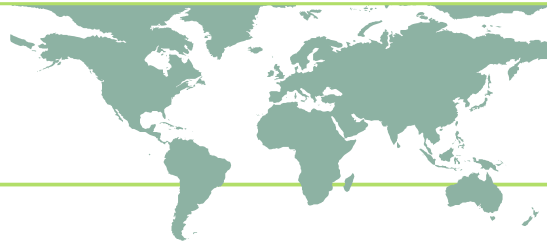
A similar conclusion on the reproduction of the external appearance of PDO/PGI/GI products was reached by the Commercial Court of appeal of Alicante in October 2013, following an action brought by the Consejo Regulador of the PDO “Queso Tetilla”. “Queso Tetilla” is a Spanish PDO identifying a cheese produced in the region of Galicia, whose most recognizable feature is its singular conical shape which resembles a female breast, from which the expression “Tetilla” originates. In its Judgement n° 419/13, the Spanish Court held that “the PDO Queso Tetilla protects a traditional name which the consumers inexorably associate with a conical shape, given that the name of the PDO does not correspond with a region or a specific place, but with a cheese having a special and well-known format”. Consequently, the unauthorized commercialization of cheese with an identical shape (the package of the product at issued reproduced the typical “Tetilla” shape and was commercialized under the trademark “Mamiella Tres Oscos”) is deemed to be an infringement of this PDO according to article 13(1)(b) of Regulation (EU) n° 1151/2012 on quality schemes for agricultural products and foodstuffs, which protects PDO and PGI, among others, against evocation. The Court concludes that the “evocation may not only arise from the use of a word, but also from other practices so that when the consumer is confronted with the shape of the product the image triggered in his mind is that of the product whose designation is protected”. Previously, the Commercial Court of first instance, in its Judgement n° 58/13 of 20 March 20 - 2013, had already found that the use of the term “Mamiella” with regard to cheese constitutes an infringement of the PDO “Queso Tetilla”. Although not being similar to each other, the Court of first instance concluded that the term “Mamiella”, which comes from the Latin word “mama” (breast), evokes the PDO “Queso Tetilla”. In this regard, the Court furthermore invalidated the registration of the trademark “Mamiella Tres Oscos”.

- i. The issue of evocation with respect to contested signs used on goods and services which are not comparable to the ones of the PDO, PGI or GI at issue is dealt with by the CJEU in case C-783/19. In October 2019, the Court of Appeal of Barcelona had referred a case to the CJEU regarding the interpretation of Article 103 of EU Regulation 1308/2013. The case concerns the use of “Champanillo” as a business name for restaurants. While the Spanish Trademark Office had refused the registration of “Champanillo” as a trademark for catering services in class 43 on the basis, among others, of the evocation of the PDO Champagne and of the risk for consumers to associate such name with the PDO, the business name is still in use in Spain, together with a logo which might strengthen the association with the PDO. As a result, the Comité Champagne had brought an action before the Court of Barcelona, on the basis of the evocation of the PDO and the unfair advantage taken from the designation’s reputation. In its judgement of 13 July 2018, the Court of Barcelona had dismissed all the actions. The Comité Champagne had then appealed such decision before



the Court of Appeal of Barcelona. In its judgment of 9 September 2021, the CJEU finds that the EU Regulation 1308/2013 protects PDOs vis-à-vis conduct in respect of both products and services. Protected names under the Regulation 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. The Court considers that an interpretation of Article 103(2)(b) of EU Regulation 1308/2013 that does not grant protection to a PDO where the disputed sign designates a service would be inconsistent with the broad scope granted to protected names. Likewise, such an interpretation would also prevent the protection objective from being fully attained, since the reputation of a product covered by a PDO is liable to be exploited also where the practice referred to in that provision concerns a service. Moreover, recalling the case law, the Court insist on the fact that the concept of 'evocation' does not require that the product covered by the PDO and the product or service covered by the disputed name be identical or similar. Evocation is established where the use of a name creates, in the mind of an average European consumer who is reasonably well informed and reasonably observant and circumspect, a sufficiently clear and direct link between that name and the PDO. The existence of such a link can result from several aspects, in particular, the partial incorporation of the protected designation, the phonetic and visual relationship between the two names and the similarity resulting from it, and even in the absence of those aspects, from the conceptual similarity between the PDO and the name at issue or from a similarity between the products covered by that PDO and the products or services covered by that name. National courts confronted with such cases have to take into account all the relevant aspects surrounding the use of the name at issue.

The EUIPO Board of Appeal had previously reached a similar conclusion on evocation with respect to contested signs used on non-comparable goods (including services). In the case "Champagnola" (April 2020). In 2017, a Czech company had filed the European Union trademark (EUTM) application No. 16.471.922 for the word mark "Champagnola". Rejected in class 43 (food and drink services), it was published for opposition in class 30 (bread, pastry, baking preparations, ...) and 40 (bakeries, production of semi-finished bakery and confectionery products and the baking thereof, bakery services and services related thereto, ...). On the same year, the Comité Champagne had opposed the application on the grounds of Article 8.6 of EUTM Regulation, the provisions of EU Regulations and French national law. "Champagne" is recognized as PDO by virtue of Article 107(1) of Regulation (EU) No 1308/2013. In 2019, the EUIPO Opposition Division had rejected the opposition and the Comité Champagne had filed a notice of appeal. In its decision, the Board of Appeal finally upheld the Comité Champagne initial opposition and stated that the contested EUTM application must be rejected for all the goods and services in Classes 30 and 40, because "Champagnola" represents an evocation of the PDO Champagne. The reasons given by the Board of Appeal are extremely interesting, because clarify once again the extent of GIs evocation in the EU legal framework. First of all, the Board of Appeal said that the Opposition Division has misconstrued the provisions of Regulation No 1308/2013. That Regulation confers protection against identical use or evocation of protected names, and this either with respect to comparable products (wine in the present case), or other goods and services which are not comparable ones of the protected name only if the contested sign exploits the reputation of the protected names. The Opposition Division contested decision

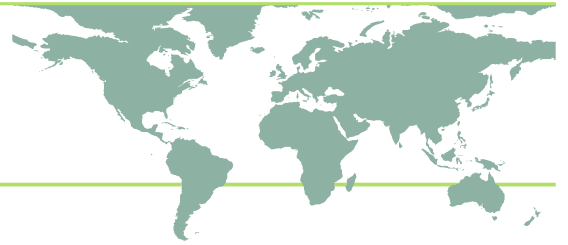


made a mistake in linking evocation with an evaluation of the comparability of goods and services. Evocation can be established with respect to both comparable and non-comparable goods (or even services). It is improper to mix this condition with considerations which would correspond to the 'link between the goods' under Article 8(5) EUTMR. The provisions providing protection in Regulation 1308/2013 must be read in the same way as the parallel conditions in Article 8(5) EUTMR, namely that it is not required to prove actual use resulting in actual harm or detriment of the PDO reputation. As a consequence, when dealing with an opposition based on a PDO which has a reputation, exploitation of that reputation does not require prior actual use of the contested sign by the trade mark applicant. In this respect, guidance can be obtained from the parallel provision in Article 8(5) EUTMR regarding unfair advantage taken from a reputation: It is for the proprietor of the earlier right to adduce evidence enabling the conclusion to be drawn that an injury is probable, in the sense that it is foreseeable in the ordinary course of events. There must however be *prima facie* evidence of a future risk, which is not hypothetical, that an injury will occur, on the basis of deductions founded on an analysis of the probabilities and by taking account of the normal practice in the relevant commercial sector as well as all the other circumstances of the case.

3. Evocation in the EUIPO Guidelines for examining European Union trade marks

Since 2014, the European Union Intellectual Property Office (EUIPO), in its "Guidelines for examining European Union trade marks" (<https://guidelines.euipo.europa.eu/1922895/1923283/trade-mark-guidelines/1-introduction>), established clear principles to evaluate whether a trademark application represents an evocation of a PDO/PGI/GI. On this, see **Part B, Examination / Section 4, Absolute grounds for refusal / Chapter 10, Geographical Indications / 4. Situations covered by the EU Regulations and Absolute Grounds Examination / 4.2.2 Evocation/imitation, of the 2021 Guidelines edition, in force since the 1st of March 2021. It is available at <https://guidelines.euipo.europa.eu/1922895/1925929/trade-mark-guidelines/4-2-2-imitation-evocation> (the full text is reported below):**

According to the Court, the decisive criterion for finding 'evocation' is whether, '**when the consumer is confronted with a disputed designation, the image triggered directly in his mind is that of the product whose geographical indication is protected**' (07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 51; 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; 21/01/2016, C-75/15, Viiniverla, EU:C:2016:35, § 21). Consumers must **establish a sufficiently clear and direct link** between the term used to designate the product and the product whose name is protected (21/01/2016, C-75/15, Viiniverla, EU:C:2016:35, § 22; 07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 53). At the same time, it is necessary to take account of **the presumed expectation of the average consumer**, who is reasonably well informed and reasonably observant and circumspect. In particular, it is not enough if the term incorporated in the trade mark application evokes in the relevant public **some kind of association** with the protected geographical indication or the area relating thereto, because such association does not necessarily establish a sufficiently clear and direct link between that element and the indication concerned (07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 53). It is important to emphasise that the finding of evocation is never automatic. There may be no evocation even if the EUTM incorporates part of the GI or if a visual and aural similarity and conceptual proximity is established. What has to be found is that the



relevant public establishes a **sufficiently clear and strong link** between the element of the EUTM and the GI, with the result that, upon encountering the EUTM, the image triggered directly in the public's mind is that of the product whose geographical indication is protected.

According to the Advocate General (17/12/1998, C-87/97, *Cambozola*, EU:C:1998:614, § 33), 'the term "evocation" is **objective**, so that it is not necessary to show that the owner of the mark intended to evoke the protected name'.

Importantly, the EU regulations protect geographical indications and denominations of origin throughout the territory of the European Union. As a result, the Court has ruled that, in order to guarantee effective and uniform protection of GIs in that territory, **the concept of the consumer must be considered to cover European consumers** and not merely consumers of the Member State in which the product giving rise to a possible evocation of the GI is manufactured (21/01/2016, C-75/15, *Viiniverla*, EU:C:2016:35, § 27; 07/06/2018, C-44/17, *SCOTCH WHISKY*, EU:C:2018:415, § 59). Taking the *Viiniverla* case as an example, the possible evocation of the GI 'Calvados' by a Finnish manufacturer of a cider spirit named *Verlados* has to be assessed on the basis of a number of criteria (see below) with respect to European consumers, not only Finnish consumers. Likewise, in the 'Scotch Whisky' case, the Court of Justice held that the fact that the disputed designation referred to a place of manufacture that was known to consumers in the Member State where the product was manufactured was irrelevant for the purpose of assessing evocation, since GIs are protected throughout the territory of the European Union and all European consumers must be included in that exercise (07/06/2018, C-44/17, *SCOTCH WHISKY*, EU:C:2018:415, § 59).

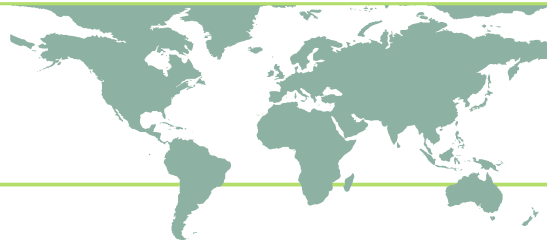
Furthermore, in the 'Scotch Whisky' case, the Court of Justice held that phonetic and visual similarity between the disputed designation and the GI is not an essential condition for establishing that there is an evocation; it is only one of the factors to be taken into account. Therefore, in the absence of any phonetic or visual similarity or partial incorporation of the GI in the trade mark applied for, the examination of evocation must take into account also any **conceptual proximity** between the GI and the disputed designation in the trade mark applied for.

There may be evocation where the EUTM contains an element that is **visually, aurally or conceptually similar** to the protected GI. This extends to the figurative elements of a sign, as confirmed by the Court of Justice, should those elements trigger directly in the consumer's mind the products whose names are registered (02/05/2019, C-614/17, *Queso Manchego*, ECLI:EU:C:2019:344, § 22, 32). In both instances, that of conceptual proximity or evocation through figurative elements, the finding of evocation will be unlikely because, as a matter of principle, evocation of the earlier GI is difficult to establish *ex officio* if there is no visual or aural similarity whatsoever between the earlier GI and the disputed element. Third party observations may help/assist the Office in drawing attention to such cases.

As indicated above, according to the Court (04/03/1999, C-87/97, *Cambozola*, EU:C:1999:115; 26/02/2008, C-132/05, *Commission v Germany*,

EU:C:2008:117; 21/01/2016, C-75/15, *Viiniverla*, EU:C:2016:35, § 21, cited above), the EUTM must trigger in the consumer's mind the image of the product whose designation is protected, in the sense that a link is established.

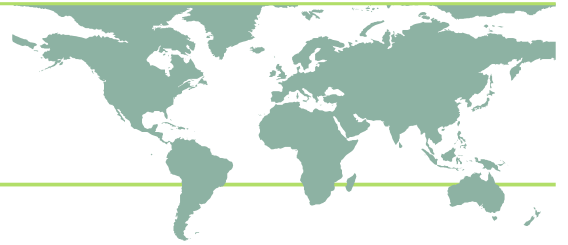
Importantly, evocation is **not assessed in the same way as likelihood of confusion**. Therefore, it is irrelevant whether a likelihood of confusion can be established or not in order to find that there is evocation of the GI. As the Court has held, there can be 'evocation' even in the absence of any



likelihood of confusion. What matters, in particular, is that an association of ideas regarding the origin of the products is not created in the mind of the public, and that a trader does not take undue advantage of the reputation of the protected geographical indication (21/01/2016, C-75/15, Viiniverla, EU:C:2016:35, § 45). For evocation, **a link must be made with the product whose designation is protected**. Therefore, whether or not there is evocation will not be analysed according to the principles laid down by the Court in its judgment of 11/11/1997, C-251/95, Sabèl, EU:C:1997:528.

In assessing whether such a link is established, the Court has considered the following factors:

- whether there is a **visual, phonetic or conceptual relationship** between the terms:
 - e.g. if the terms share a characteristic beginning, such as Parmesan/Parmigiano Reggiano (26/02/2008, C-132/05, Commission v Germany, EU:C:2008:117);
 - e.g. if the terms share characteristic roots or endings that have no particular meaning, such as in Gorgonzola/Cambozola (04/03/1999, C-87/97, Cambozola, EU:C:1999:115) and Verlados/Calvados (21/01/2016, C-75/15, Viiniverla, EU:C:2016:35);
 - e.g. if the terms share the same number of letters or syllables, such as Gorgonzola/Cambozola (04/03/1999, C-87/97, Cambozola, EU:C:1999:115);
 - e.g. where there is conceptual proximity, such as between Parmesan and Parmigiano Reggiano (26/02/2008, C-132/05, Commission v Germany, EU:C:2008:117, § 47); this includes situations where there is conceptual proximity but no visual or phonetic similarity (07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 56).
- **the degree of proximity of the goods concerned**, including the actual physical appearance (04/03/1999, C-87/97, Cambozola, EU:C:1999:115, § 27) or the ingredients and taste of the products covered by the EUTM and the GI. The fact that the goods are comparable does not, as such, lead automatically to the evocation of the GI. However, if the goods concerned are identical, this is an element in support of evocation (see paragraph 4.2 above).
 - For instance, the expression 'POLISH TASTE' for *vodka* evokes the GI 'Polish vodka'. However, the Office considers that the expression 'POLISH TASTE' for *whisky* does not evoke the PGI Polish *vodka*, considering the differences between whisky and vodka. In other words, given the differences between whisky and vodka (e.g. different characteristics, ingredients and taste) and the fact that the PGI 'Polish vodka' is not fully reproduced in the trade mark, the relevant consumers will not establish a link between a bottle of whisky marketed under the trade mark 'POLISH TASTE' and vodka protected by the designation 'Polish vodka'.
 - Similarly, the expression 'M. MÜLLER — ECHTE BAYERISCHE QUALITÄT VON BODENSEE' [M. Müller — Real Bavarian Quality from Lake Constance] for *beef* evokes the GI 'Bayerisches Rindfleisch' (beef from Bavaria). However, the Office considers that the same expression for *poultry* will not evoke the GI 'Bayerisches Rindfleisch'. The Office considers that even if these are all 'meat products', when account is taken of the differences between beef and poultry and the





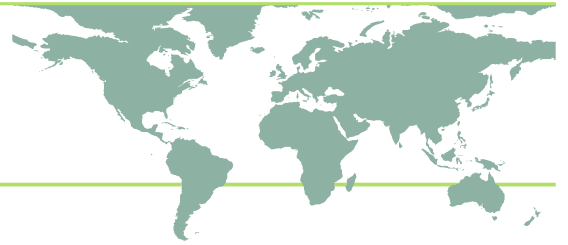
fact that the GI 'Bayerisches Rindfleisch' is not fully reproduced in the trade mark, the relevant consumers will not establish a link between poultry meat marketed under the trade mark 'M. MÜLLER — ECHTE BAYERISCHE QUALITÄT VON BODENSEE' and beef protected by the designation 'Bayerisches Rindfleisch'.


- the fact that the **context surrounding the element under assessment is not to be taken into account** (07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 60). In particular, the fact that the EUTM contains indications of the true origin of the product or what are known as 'delocalisers' are not factors that will weigh against a finding of evocation (see paragraph 4.4 et seq.).

The Office does not consider that a claim to the widespread reputation of a specific GI (or evidence thereof) is one of the factors to be taken into account in establishing evocation. The assessment of whether the public will establish a sufficiently clear and direct link between the element in the sign and the GI concerned should be based on equal knowledge by the public of all protected GIs. As indicated above under paragraph 4.1.1, the Office will assess any claim relating to exploitation of a GI's reputation by the use of the trade mark in the context of Article 8(6) EUTMR.

Examples of where evocation was found

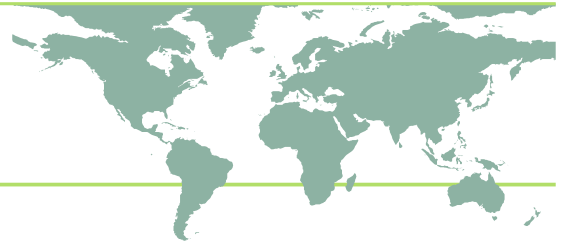
GI	EUTM	Explanation
SCOTCH WHISKY	 (EUTM No 15 420 607)	The country name Scotland is a noun that evokes the adjective 'Scotch', which forms part of the PGI 'Scotch Whisky'.
LYGOURIO ASKLIPIOU (EL/PDO/0017/0050)	 (EUTM No 15 510 721)	The term 'ASKLIPIOU', which forms part of the PDO 'Lygourgio Asklipiou', is the genitive case of the noun 'ASKLEPIOS' (or 'ASKLIPIOS'), which appears in the nominative case in the contested EUTM. The genitive case denotes, inter alia, origin and possession and in this case evokes the PDO. The figurative element is a visual repetition of the term as it consists of a typical representation of the ancient Greek god Asclepios.





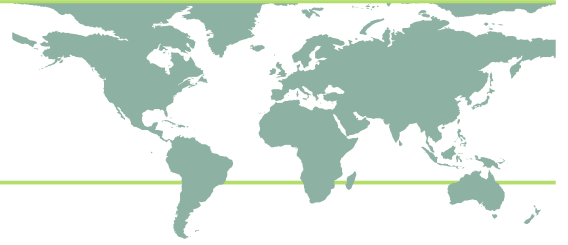
<p>PORC DE NORMANDIE (FR/PGI/0017/0192)</p> <p>VOLAILLES DE NORMANDIE (FR/PGI/0017/0154)</p> <p>CAMEMBERT DE NORMANDIE (FR/PDO/0017/0112)</p>	 <p>(EUTM No 17 772 401)</p>	<p>The term Normandy will be linked with the French term 'Normandie'.</p>
<p>CHAMPAGNE (PDO-FR-A1359)</p>	 <p>(EUTM No 17 962 122)</p>	<p>The word element in the later trade mark can be seen as phonetically and visually similar to the term Champagne and will have to be assessed for evocation.</p>
<p>IRISH POTEEN</p> <p>IRISH WHISKEY</p> <p>IRISH CREAM</p>	<p>Irish Monk (EUTM No 017 496 308)</p>	<p>Reference to 'Irish' as seen in this later trade mark will have to be assessed for evocation against the registered GIs containing the same term.</p>
<p>TIERRA DEL VINO DE ZAMORA (PDO-ES-A0634)</p>	 <p>(EUTM No 17 009 127)</p>	<p>The term Zamora is clearly visible in both the GI and the later trade mark, and an assessment for evocation will have to be carried out.</p>



Examples of where evocation was not found

GI	EUTM	Explanation
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<p>VINHO VERDE (PDO PDO-PT-A1545)</p>	<p>VERDI EUTM No 15 080 278</p>	<p>Due to the clear conceptual meaning of the designation 'VERDI', the relevant public will not be led to believe that the aforementioned designation depicts the PDO in question.</p> <p>The presence of a partial correlation in the present case between the terms 'VERDI' on the one hand, and 'VERDE' on the other, is not sufficient to offset the fact that the consumer of the goods in question will perceive the sign 'VERDI' as a clear reference to the Italian opera composer.</p> <p>(06/04/2017, R 1972/2016-5, VERDI, § 12 and 14)</p>
<p>CAPE GIRARDEAU COUNTY (Non-EU-country PGI (United States of America)</p>	 <p>EUTM No 16 081 614</p>	<p>The mark contains the term 'craft beer'. Therefore, it is unlikely that it will be perceived as evoking a PGI relating to wine.</p> <p>Moreover, 'Cape' by itself is not, on its own, the significant part of the PGI. Therefore, in order to evoke the PGI, reference to the other geographically significant part of the PGI (e.g. 'Girardeau') is necessary.</p>
<p>ROSEE DES PYRENEES CATALANES (MULTI/PGI/0005/01343)</p>	 <p>EUTM No 17 371 063</p>	<p>The fact that the trade mark contains the generic term Rosée does not in itself lead to an evocation of the PGI referred to.</p>
<p>LAVILLEDIEU (PGI-FR-A1136)</p>	<p>Laville Pavillon EUTM No 10 961 785</p>	<p>The mere reference to Laville is not sufficient to trigger in the public's mind a link with the GI Lavilledieu. As many municipalities start with the term 'Laville', this term is commonly used and no direct link can be established with any</p>



		particular GI product.
<p>ISOLA DEI NURAGHI (PGI-IT-A1140)</p> <p>S. ANNA DI ISOLA CAPO RIZZUTO (PDO-IT-A0629)</p>	 <p>EUTM No 17 626 664</p>	<p>'ISOLA BIANCA' means 'WHITE ISLAND'. Although 'ISOLA' appears in the GIs 'Isola dei Nuraghi' and 'S. Anna di Isola Capo Rizzuto', the term 'ISOLA' cannot by itself evoke those GIs as the term 'ISOLA' itself is a common term referring merely to an island as such.</p>
<p>PORTOFINO (PDO-IT-A0355)</p>	 <p>EUTM No 17 960 157</p>	<p>The mark contains the term 'gin'. Therefore, it is unlikely that it will be perceived as evoking a PDO relating to wine.</p> <p>The EUTM is acceptable since the logical and conceptual unit translates as gin from Portofino, which precludes the evocation of the PDO, as a new distinct conceptual unit emerges for the European public.</p>