

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

20 December 2017 (*)

(Reference for a preliminary ruling — Common organisation of the markets in agricultural products — Protection of protected designations of origin (PDOs) — Regulation (EC) No 1234/2007 — Article 118m(2)(a)(ii), (b) and (c) — Regulation (EU) No 1308/2013 — Article 103(2)(a)(ii), (b) and (c) — Scope — Exploitation of the reputation of a PDO — Misuse, imitation or evocation of a PDO — False or misleading indication — PDO ‘Champagne’ used in the name of a foodstuff — The name ‘Champagner Sorbet’ — Foodstuff containing champagne as an ingredient — Ingredient conferring on the foodstuff an essential characteristic)

In Case C-393/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 2 June 2016, received at the Court on 14 July 2016, in the proceedings

Comité Interprofessionnel du Vin de Champagne

v

Aldi Süd Dienstleistungs-GmbH & Co. OHG, represented by Aldi Süd Dienstleistungs-GmbH, formerly Aldi Einkauf GmbH & Co. OHG Süd,

intervening parties:

Galana NV,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader, A. Prechal and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 18 May 2017,

after considering the observations submitted on behalf of:

- the Comité Interprofessionnel du Vin de Champagne, by C. Onken, Rechtsanwältin,
- Galana NV, by H. Hartwig and A. von Mühlendahl, Rechtsanwälte,
- the French Government, by D. Colas, S. Horrenberger and E. de Moustier, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and A. Gameiro, acting as Agents,

– the European Commission, by B. Eggers, I. Galindo Martín and I. Naglis, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 20 July 2017,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 118m(2)(a)(ii), (b) and (c) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), as amended by Council Regulation (EC) No 491/2009 of 25 May 2009 (OJ 2009 L 154, p. 1) ('Regulation No 1234/2007'), and of Article 103(2)(a)(ii), (b) and (c) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).
- 2 The request has been made in proceedings between the Comité Interprofessionnel du Vin de Champagne ('the CIVC') and Aldi Süd Dienstleistungs-GmbH & Co. OHG, formerly Aldi Einkauf GmbH & Co. OHG Süd ('Aldi'), concerning the use of the protected designation of origin (PDO) 'Champagne' in the name of a frozen product distributed by Aldi.

Legal context

Regulations No 1234/2007 and No 1308/2013

- 3 In its request for a preliminary ruling, the referring court refers to both Regulation No 1234/2007, in force at the material time, and Regulation No 1308/2013, which replaced it with effect from 1 January 2014, indicating that an interpretation of the latter regulation is necessary as the application for an injunction prohibiting the use of the PDO 'Champagne' at issue in the main proceedings will be determined in the future, so that it will be required to rule on that application also in the light of the provisions applicable at the time its decision is made.
- 4 Article 118b of Regulation No 1234/2007, headed 'Definitions', stated in paragraph 1 thereof as follows:
'For the purposes of this Subsection, the following definitions shall apply:
 - (a) "designation of origin" means the name of a region, a specific place or, in exceptional cases, a country used to describe a product referred to in Article 118a(1) that complies with the following requirements:
 - (i) its quality and characteristics are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
 - (ii) the grapes from which it is produced come exclusively from this geographical area;
 - (iii) its production takes place in this geographical area; and
 - (iv) it is obtained from vine varieties belonging to *Vitis vinifera*;

...'

- 5 Article 118k(1) of that regulation was worded as follows:

‘Names that have become generic shall not be protected as a designation of origin or geographical indication.

...’

6 Article 118m of Regulation No 1234/2007, entitled ‘Protection’, provided as follows :

‘1. [PDOs] and protected geographical indications may be used by any operator marketing a wine which has been produced in conformity with the corresponding product specification.

2. [PDOs] and protected geographical indications and the wines using those protected names in conformity with the product specification shall 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) 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 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.

3. [PDOs] and protected geographical indications shall not become generic in the Community within the meaning of Article 118k(1).

4. Member States shall take the steps necessary to stop unlawful use of [PDOs] and protected geographical indications as referred to in paragraph 2.’

7 Recitals 92 and 97 of Regulation No 1308/2013 essentially reproduce the content of recitals 27 and 32 of Council Regulation (EC) No 479/2008 of 29 April 2008 on the common organisation of the market in wine, amending Regulations (EC) No 1493/1999, (EC) No 1782/2003, (EC) No 1290/2005, (EC) No 3/2008 and repealing Regulations (EEC) No 2392/86 and (EC) No 1493/1999 (OJ 2008 L 148, p. 1). The provisions of Regulation No 479/2008 on the protection of PDOs and protected geographical indications (‘PGIs’) were incorporated into Regulation No 1234/2007 by Regulation No 491/2009. Those recitals state as follows:

‘(92) The concept of quality wines in the Union is based, inter alia, on the specific characteristics attributable to the wine’s geographical origin. Such wines are identified for consumers through [PDOs] and [PGIs]. In order to allow for a transparent and more elaborate framework underpinning the claim by the products concerned to be of quality, a system should be established in which applications for a designation of origin or a geographical indication are examined in line with the approach followed by Union’s horizontal quality policy applicable to foodstuffs other than wine and spirits, set out in Regulation (EU) No 1151/2012 of the European Parliament and of the Council [of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1)].

...

(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.'

8 Article 101(1) and Article 103 of Regulation No 1308/2013 are worded in similar terms to Article 118k(1) and Article 118m of Regulation No 1234/2007.

Other provisions of EU law

9 Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000, on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29), in force at the material time, provided in Article 3(1) thereof as follows:

'In accordance with Articles 4 to 17 and subject to the exceptions contained therein, indication of the following particulars alone shall be compulsory on the labelling of foodstuffs:

- (1) the name under which the product is sold;
- (2) the list of ingredients;
- (3) the quantity of certain ingredients or categories of ingredients as provided for in Article 7;

...'

10 Under Article 5(1) of the directive:

'The name under which a foodstuff is sold shall be the name provided for in the Community provisions applicable to it.

- (a) In the absence of Community provisions, the name under which a product is sold shall be the name provided for in the laws, regulations and administrative provisions applicable in the Member State in which the product is sold to the final consumer or to mass caterers.

Failing this, the name under which a product is sold shall be the name customary in the Member State in which it is sold to the final consumer or to mass caterers, or a description of the foodstuff, and if necessary of its use, which is clear enough to let the purchaser know its true nature and distinguish it from other products with which it might be confused.

...'

11 Article 6(5) of Directive 2001/13 was worded as follows:

'The list of ingredients shall include all the ingredients of the foodstuff, in descending order of weight, as recorded at the time of their use in the manufacture of the foodstuff. It shall appear preceded by a suitable heading which includes the word "ingredients".

...'

12 Article 7(1) and (5) of the directive provided as follows:

'1. The quantity of an ingredient or category of ingredients used in the manufacture or preparation of a foodstuff shall be stated in accordance with this Article.

...

5. The indication referred to in paragraph 1 shall appear either in or immediately next to the name under which the foodstuff is sold or in the list of ingredients in connection with the ingredient or category of ingredients in question.'

13 Directive 2000/13 was repealed, with effect from 13 December 2014, by Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18). Article 9 of Regulation No 1169/2011, headed 'List of mandatory particulars', provides as follows:

'1. In accordance with Articles 10 to 35 and subject to the exceptions contained in this Chapter, indication of the following particulars shall be mandatory:

- (a) the name of the food;
- (b) the list of ingredients;

...'

14 Article 17 of Regulation No 1169/2011, entitled 'Name of the food', states as follows:

'1. The name of the food shall be its legal name. In the absence of such a name, the name of the food shall be its customary name, or, if there is no customary name or the customary name is not used, a descriptive name of the food shall be provided.

...'

15 Article 18 of that regulation, entitled 'List of ingredients', is worded as follows:

'1. The list of ingredients shall be headed or preceded by a suitable heading which consists of or includes the word "ingredients". It shall include all the ingredients of the food, in descending order of weight, as recorded at the time of their use in the manufacture of the food.

2. Ingredients shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 17 and in Annex VI.

...'

16 Article 22 of Regulation No 1169/2011, headed 'Quantitative indication of ingredients', is worded as follows:

'1. The indication of the quantity of an ingredient or category of ingredients used in the manufacture or preparation of a food shall be required where the ingredient or category of ingredients concerned:

- (a) appears in the name of the food or is usually associated with that name by the consumer;
- (b) is emphasised on the labelling in words, pictures or graphics; or
- (c) is essential to characterise a food and to distinguish it from products with which it might be confused because of its name or appearance.

...'

17 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 (OJ 2008 L 39, p. 16) provides in Article 10 thereof, headed ‘Specific rules concerning the use of sales denominations and geographical indications’, as follows:

‘1. Without prejudice to Directive 2000/13/EC, the use of a term listed in categories 1 to 46 of Annex II, or of a geographical indication registered in Annex III in a compound term or the allusion in the presentation of a foodstuff to any of them shall be prohibited unless the alcohol originates exclusively from the spirit drink(s) referred to.

...’

18 Article 16(a) of that regulation protects the geographical indications registered in Annex III thereto in terms similar to those set out in Article 118m(2)(a) of Regulation No 1234/2007 and Article 103(2)(a) of Regulation No 1308/2013.

19 Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1) states in recital 32 thereof as follows:

‘Protection of designations of origin and geographical indications should be extended to the misuse, imitation and evocation of the registered names on goods as well as on services in order to ensure a high level of protection and to align that protection with that which applies to the wine sector. When [PDOs] or [PGIs] are used as ingredients, the Commission Communication entitled “Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients” should be taken into account.’

20 Article 13 of Regulation No 1151/2012, headed ‘Protection’, provides as follows:

‘1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a registered name in respect of products not covered by the registration where those products are comparable to the products registered under that name or where using the name exploits the reputation of the protected name, including when those products are used as an ingredient;

...’

21 The Guidelines on the labelling of foodstuffs using protected designations of origin (PDOs) or protected geographical indications (PGIs) as ingredients (OJ 2010 C 341, p. 3) (‘the Guidelines’) state as follows:

‘2.1 Recommendations on the use of registered names

1. According to the Commission, a name registered as a PDO or PGI may legitimately be included in the list of ingredients of a foodstuff.

2. The Commission also considers that a name registered as a PDO or PGI may be mentioned in or close to the trade name of a foodstuff incorporating products benefiting from a registered name, as well as in the labelling, presentation and advertising relating to that foodstuff, provided that the following conditions are met.

- The foodstuff in question should not contain any other “comparable ingredient”, i.e. any other ingredient which may partially or totally replace the ingredient benefiting from a PDO or PGI. As a non-restrictive example of the concept of “comparable ingredient”, the Commission considers that a blue-veined cheese (commonly known as “blue cheese”) could be considered comparable to “Roquefort” cheese. |

- This ingredient should also be used in sufficient quantities to confer an essential characteristic on the foodstuff concerned. However, given the wide range of possible scenarios, the Commission is not able to suggest a minimum percentage to be uniformly applied. As an example, the incorporation of a minimum amount of a spice benefiting from a PDO/PGI in a foodstuff could, if appropriate, be sufficient to confer an essential characteristic on that foodstuff. By contrast, the incorporation of a minimum amount of meat benefiting from a PDO/PGI in a foodstuff would not a priori be sufficient to confer an essential characteristic on a foodstuff.
- Finally, the percentage of incorporation of an ingredient with a PDO or PGI should ideally be indicated in or in close proximity to the trade name of the relevant foodstuff or, failing that, in the list of ingredients, in direct relation to the ingredient in question.

...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 22 At the end of 2012, Aldi, a company distributing, inter alia, foodstuffs, began to sell a frozen product manufactured by Galana NV, intervener in the main proceedings in support of Aldi. That product was distributed under the name ‘Champagner Sorbet’ and contained, among its ingredients, 12% champagne.
- 23 Taking the view that the distribution of that product under that name constituted an infringement of the PDO ‘Champagne’, the CIVC, an association of champagne producers, brought proceedings before the Landgericht München I (Regional Court, Munich I, Germany) in order to obtain an injunction, on the basis of Article 118m of Regulation No 1234/2007 and Article 103 of Regulation No 1308/2013, prohibiting Aldi from using that name on the frozen goods market. The decision of that court, which granted the application, was reversed on appeal by decision of the Oberlandesgericht München (Higher Regional Court, Munich, Germany), which dismissed the application.
- 24 The appeal court considers, in particular, that the conditions for bringing an action under Article 103(2)(a) (ii), (b) and (c) of Regulation No 1308/2013 were not satisfied, as the condition requiring unfair use of a PDO was not met in the present case, Aldi had a legitimate interest in using the name ‘Champagner Sorbet’ to refer to a food product known to the public under that name and in which champagne was an essential ingredient, and there was no misleading indication.
- 25 The CIVC then lodged an appeal on a point of law before the Bundesgerichtshof (Federal Court of Justice, Germany), which states, in the first place, that it is inclined to take the view that Aldi’s use of the name ‘Champagner Sorbet’ falls within the scope of Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 because Aldi uses that name for a frozen dessert and, therefore, for a product that does not correspond to the product specifications for wines protected by the PDO ‘Champagne’ and uses that PDO for commercial purposes.
- 26 In the second place, the referring court considers that the name ‘Champagner Sorbet’ is likely to extend the reputation of the PDO ‘Champagne’ to the product distributed by Aldi. It is nonetheless uncertain whether the use of a PDO constitutes exploitation of the reputation of the PDO, within the meaning of the provisions cited above, where the name of the foodstuff corresponds to the name by which the relevant public usually refers to that foodstuff and the ingredient has been added in sufficient quantity to confer on the foodstuff one of its essential characteristics. Like the appeal court, the Bundesgerichtshof considers that where there is a legitimate interest in the use of the PDO, there cannot be exploitation of the reputation of the PDO.
- 27 In the third place, as it takes the view that the action brought by the CIVC may be based on Article 118m(2)(b) of Regulation No 1234/2007 and on Article 103(2)(b) of Regulation No 1308/2013, the referring court is uncertain whether the use of a PDO in circumstances such as those of the main

proceedings constitutes unlawful misuse, imitation or evocation within the meaning of those provisions. It considers in that regard that those provisions require disputed use of a PDO to be unlawful and that, where use is justified by a legitimate interest, such use therefore falls outside the prohibitions laid down by those provisions.

28 In the fourth place, as the CIVC has claimed that Aldi has made misleading use of the name ‘Champagner Sorbet’, within the meaning of Article 118m(2)(c) of Regulation No 1234/2007 and Article 103(2)(c) of Regulation No 1308/2013, the referring court seeks to ascertain whether the scope of those provisions covers only misleading indications which are likely to convey a false impression to the relevant public as to the geographical origin of the product or whether it also covers misleading indications as to the essential qualities of the product.

29 In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings before it and to refer the following questions to the Court for a preliminary ruling:

‘(1) Are Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 to be interpreted as meaning that the scope of those provision also covers a case in which a [PDO] is used as part of the name of a foodstuff which does not correspond to the product specifications but to which an ingredient has been added which does correspond to the product specifications?

(2) If the first question is answered in the affirmative:

Are Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 to be interpreted as meaning that the use of a [PDO] as part of the name of a foodstuff which does not correspond to the product specifications but to which an ingredient has been added which does correspond to the product specifications constitutes exploitation of the reputation of the designation of origin where the name of the foodstuff corresponds to the name usually used by the relevant public to refer to that foodstuff and the ingredient has been added in a quantity which is sufficient to give the product one of its essential characteristics?

(3) Are Article 118m(2)(b) of Regulation No 1234/2007 and Article 103(2)(b) of Regulation No 1308/2013 to be interpreted as meaning that the use of a [PDO] in the circumstances set out in Question 2 constitutes unlawful misuse, imitation or evocation?

(4) Are Article 118m(2)(c) of Regulation No 1234/2007 and Article 103(2)(c) of Regulation No 1308/2013 to be interpreted as meaning that they are applicable only to false or misleading indications which, for the relevant public, are liable to convey a false impression as to a product’s geographical origin?’

Consideration of the questions referred

The first question

30 By its first question, the referring court seeks to ascertain, in essence, whether Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013, the content of which is similar, are to be interpreted as meaning that the scope of those provisions covers a situation where a PDO, such as ‘Champagne’, is used as part of the name under which a foodstuff is sold, such as ‘Champagner Sorbet’, and where that foodstuff does not correspond to the product specifications for that PDO but contains an ingredient which does correspond to those specifications.

31 It should be noted, first, that the scope of protection afforded by Article 118m(2)(a) of Regulation No 1234/2007 and Article 103(2)(a) of Regulation No 1308/2013 is particularly broad, in that those provisions are directed at any direct or indirect commercial use of a PDO or a PGI and protect them against

such use, both as regards comparable products which do not comply with the product specifications of the protected name and as regards products which are not comparable, in so far as that use exploits the reputation of that PDO or PGI. The extent of that protection is consistent with the objective, confirmed in recital 97 of Regulation No 1308/2013, of protecting PDOs and PGIs against any use intended to take advantage of the reputation enjoyed by products which comply with the relevant specifications.

32 Second, the provisions of EU law on the protection of registered geographical names and indications, which form part, as confirmed by recital 92 of Regulation No 1308/2013, of the EU's horizontal quality policy, must be interpreted in such a way as to ensure that those provisions are applied consistently.

33 In that regard, in the first place, Regulation No 1151/2012, recital 32 of which states that the objective of the regulation is to ensure a high level of protection and to align that protection with that which applies to the wine sector, provides in Article 13(1)(a), for names registered under that regulation, protection similar to that afforded by Article 118m(2)(a) of Regulation No 1234/2007 and Article 103(2)(a) of Regulation No 1308/2013, and expressly states that that protection is also to apply to products used as an ingredient.

34 In the second place, the Court has previously held, in its judgment of 14 July 2011, *Bureau national interprofessionnel du Cognac* (C-4/10 and C-27/10, EU:C:2011:484, paragraph 55), in relation to the interpretation of Article 16(a) of Regulation No 110/2008, the wording and purpose of which are similar to those of Article 118m(2)(a) of Regulation No 1234/2007 and Article 103(2)(a) of Regulation No 1308/2013, that the use of a mark containing a geographical indication, or a term corresponding to that indication and its translation, with respect to spirit drinks which do not meet the relevant specifications, constitutes, in principle, for the purposes of Article 16(a) of Regulation No 110/2008, a direct commercial use of that geographical indication.

35 In the light of the above, it must be concluded that Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 are applicable to the commercial use of a PDO, such as 'Champagne', as part of the name of a foodstuff, such as 'Champagner Sorbet', containing an ingredient which corresponds to the product specifications of the PDO.

36 As a consequence, the answer to the first question is that Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 are to be interpreted as meaning that the scope of those provisions covers a situation where a PDO, such as 'Champagne', is used as part of the name under which a foodstuff is sold, such as 'Champagner Sorbet', and where that foodstuff does not correspond to the product specifications for that PDO but contains an ingredient which does correspond to those specifications.

The second question

37 By its second question, the referring court asks, in essence, whether Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a PDO as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient that does correspond to those specifications, such as 'Champagner Sorbet', constitutes exploitation of the reputation of a PDO, within the meaning of those provisions, where the name of the foodstuff corresponds to the name by which the relevant public usually refers to that foodstuff and the ingredient has been added in sufficient quantity to give the foodstuff one of its essential characteristics.

38 As the Court observed in paragraph 82 of the judgment of 14 September 2017, *EUIPO v Instituto dos Vinhos do Douro e do Porto* (C-56/16 P, EU:C:2017:693), in connection with the protection of PDOs and PGIs, Regulation No 1234/2007 constitutes an instrument of the common agricultural policy essentially intended to assure consumers that agricultural products bearing a geographical indication registered under that regulation have, because of their provenance from a particular geographical area, certain specific characteristics and, accordingly, 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.

39 Moreover, with regard to points (a) to (d) of Article 16 of Regulation No 110/2008, the Court stated, in paragraph 46 of the judgment of 14 July 2011, *Bureau national interprofessionnel du Cognac* (C-4/10 and C-27/10, EU:C:2011:484), that that provision refers to various situations in which the marketing of a product is accompanied by an explicit or implicit reference to a geographical 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.

40 It follows that exploitation of the reputation of a PDO within the meaning of Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 entails use of the PDO that seeks to take undue advantage of the reputation enjoyed by the PDO.

41 In the present case, as observed by the referring court, the use of the name ‘Champagner Sorbet’ to refer to a sorbet containing champagne is likely to extend to that product the reputation of the PDO ‘Champagne’, which conveys an image of luxury and prestige, and therefore to take advantage of that reputation. In order to determine whether it undermines the protection afforded by Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013, it is therefore necessary to examine whether such use constitutes a means of taking unfair advantage of the reputation of that PDO.

42 It should be noted in that regard, first, that Article 3(1) and Article 5(1) of Directive 2000/13, which was in force at the material time, and, as observed by the referring court, Article 9(1)(a) and Article 17(1) of Regulation No 1169/2011 do not, in any case, require the PDO to be included in the name of a foodstuff which does not correspond to the product specifications for that PDO but which contains an ingredient that does correspond to those specifications, where the use of such a name would be at odds with the protection afforded by Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013.

43 Moreover, strict observation of the provisions governing the names of foodstuffs laid down in Directive 2000/13 and in Regulation No 1169/2011, as well as the provisions relating to ingredients in those measures, in particular the provisions in Article 6(5) and Article 7(1) and (5) of Directive 2000/13 and those in Article 18(1) and (2) and Article 22(1) of Regulation No 1169/2011, cannot rule out the possibility that unfair use of the reputation of a PDO may exist.

44 Next, as observed by the referring court, under Article 10(1) of Regulation No 110/2008, the use of a registered geographical indication in a compound term is prohibited, unless the alcohol concerned originates exclusively from the spirit drink referred to.

45 Lastly, the Guidelines, which, according to recital 32 of Regulation No 1151/2001, must be taken into account where products protected as a PDO or PGI are used as ingredients, state, in Section 2.1.2 thereof, that a name registered as a PDO may be mentioned in the trade name of a foodstuff incorporating products benefiting from a registered name provided three conditions, set out in that section, are met. Given that that regulation seeks, as indicated in paragraph 33 above, to ensure a high level of protection and to align that protection with that which applies to the wine sector, the Guidelines are also relevant for the purposes of interpreting Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013.

46 It follows that the use of a PDO as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient which does correspond to those specifications cannot be regarded, in itself, as an unfair use and, therefore, as a use against which PDOs are protected in all circumstances by virtue of Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013. As a consequence, it is for the national courts to

determine, in the light of the particular circumstances of each individual case, whether such use is intended to take unfair advantage of the reputation of a PDO.

47 For that purpose, the fact that the name at issue in the main proceedings corresponds to the name by which the relevant public usually refers to the foodstuff concerned is not a factor that may be taken into consideration.

48 As the purpose of protecting registered names and geographical indications is, *inter alia*, as indicated in paragraph 38 above, to assure consumers that products bearing such an indication have, because of their provenance from a particular geographical area, certain specific characteristics and offer a guarantee of quality due to their geographical provenance, that purpose would not be achieved if it were possible for a PDO to be or become a generic name. Thus, under Article 118k(1) of Regulation No 1234/2007 and Article 101(1) of Regulation No 1308/2013, names which have become generic are not protected as PDOs. Moreover, Article 118m(3) of Regulation No 1234/2007 and Article 103(3) of Regulation No 1308/2013 provided that PDOs cannot become generic in the European Union. To take the view that the fact that the name of a foodstuff, such as ‘Champagner Sorbet’, is the name commonly used by the relevant public to refer to that foodstuff may be relevant when determining whether the use of a PDO as part of that name is unfair would be tantamount to accepting that that PDO may be used generically and would therefore be at odds with the protection conferred by those regulations.

49 As to whether, for the purposes of that determination, a relevant test is whether the ingredient protected by a PDO has been added in sufficient quantity to confer on the foodstuff concerned one of its essential characteristics, it should be noted that that test corresponds to one of the three conditions set out in Section 2.1.2 of the Guidelines for determining whether a name registered as a PDO may be mentioned in the trade name of a foodstuff incorporating products benefiting from that PDO. The Commission makes it clear, however, that, given the wide range of possible scenarios, it cannot suggest a minimum percentage to be uniformly applied.

50 In that regard, it must be concluded that the use of a PDO as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient which does correspond to those specifications is intended to take unfair advantage of the reputation of the PDO if that ingredient does not confer on that foodstuff one of its essential characteristics.

51 As to whether the ingredient in question confers on the foodstuff concerned one of its essential characteristics, the quantity of that ingredient in the overall composition of the foodstuff is a significant but not, in itself, a sufficient factor. Whether that is the case depends on the products concerned and entails a qualitative assessment. In that regard, as the Advocate General observed in points 76 and 77 of his Opinion, it is not a question of identifying in the foodstuff the essential characteristics of the ingredient protected by a PDO but of establishing that that foodstuff has an essential characteristic connected with that ingredient. That characteristic will often be the aroma or taste imparted by that ingredient.

52 Where the name of the foodstuff indicates, as in the main proceedings, that it contains an ingredient protected by a PDO, which is intended to convey the taste of the foodstuff, the taste imparted by that ingredient must constitute the essential characteristic of that foodstuff. If the taste of the foodstuff is more attributable to other ingredients it contains, the use of such a name will take unfair advantage of the reputation of the PDO concerned. Thus, in order to determine whether the champagne contained in the product at issue in the main proceedings confers on it one of its essential characteristics, the national court must ascertain, in the light of the evidence before it, whether the taste of the product is attributable primarily to the presence of champagne in the composition of the product.

53 In the light of the above considerations, the answer to the second question is that Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a PDO as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient that does correspond to those specifications, such as ‘Champagner Sorbet’, constitutes exploitation of the reputation of a PDO, within the

meaning of those provisions, if that foodstuff does not have, as one of its essential characteristics, a taste attributable primarily to the presence of that ingredient in the composition of the foodstuff.

The third question

54 By its third question, the referring court seeks to ascertain, in essence, whether Article 118m(2)(b) of Regulation No 1234/2007 and Article 103(2)(b) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a PDO as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient that does correspond to those specifications, such as ‘Champagner Sorbet’, constitutes misuse, imitation or evocation within the meaning of those provisions.

55 Article 118m(2)(a) to (d) of Regulation No 1234/2007 and Article 103(2)(a) to (d) of Regulation No 1308/2013 concern various infringements to which PDOs, PGIs and wines using those names may be subject and against which those provisions give protection.

56 In the present case, it is clear from the answers to the first and second questions that the use of a PDO, such as ‘Champagne’, as part of the name under which is sold a foodstuff which does not correspond to the product specifications for that PDO but contains an ingredient which does correspond to those specifications, such as ‘Champagner Sorbet’, constitutes a commercial use of the PDO within the meaning of Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013, against which the PDO is protected under those provisions if such use is intended to take unfair advantage of its reputation and that that is the case in particular if that ingredient does not confer on the foodstuff one of its essential characteristics.

57 However, the use of a PDO in the name of a foodstuff such as that at issue in the main proceedings does not appear such as to constitute misuse, imitation or evocation within the meaning of Article 118m(2)(b) of Regulation No 1234/2007 and Article 103(2)(b) of Regulation No 1308/2013. By incorporating in the name of the foodstuff in question the name of the ingredient protected by a PDO, direct use is made of the PDO to claim openly a gustatory quality connected with it, which does not amount to misuse, imitation or evocation.

58 With regard to the concept of ‘evocation’, it should also be noted that, according to settled case-law, that concept 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, judgment of 21 January 2016, *Viiniverla*, C-75/15, EU:C:2016:35, paragraph 21 and the case-law cited). The incorporation of the name of the PDO in its entirety in that of the foodstuff concerned to indicate the taste of the foodstuff does not, therefore, correspond to that situation.

59 It follows that the answer to the third question is that Article 118m(2)(b) of Regulation No 1234/2007 and Article 103(2)(b) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a PDO as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that PDO but contains an ingredient that does correspond to those specifications, such as ‘Champagner Sorbet’, does not constitute misuse, imitation or evocation within the meaning of those provisions.

The fourth question

60 By its fourth question, the referring court asks, in essence, whether Article 118m(2)(c) of Regulation No 1234/2007 and Article 103(2)(c) of Regulation No 1308/2013 are to be interpreted as being applicable only to false or misleading indications which are liable to convey a false impression as to the geographical origin of the product concerned, or as being applicable also to false or misleading indications relating to the nature or essential qualities of the product.

- 61 In that regard, it should be noted that, although Article 118m(2)(c) of Regulation No 1234/2007 and Article 103(2)(c) of Regulation No 1308/2013 refer to false or misleading indications on the inner or outer packaging, advertising material or documents relating to the wine product concerned, those provisions can be effective in the situation in the main proceedings, where the wine product concerned is an ingredient of a foodstuff, only if they relate to the packaging, advertising material or documents relating to that foodstuff.
- 62 As regards the scope of those provisions, it is apparent from their wording that PDOs, PGIs and wines using those protected names in conformity with the product specifications are protected against, on the one hand, false or misleading indications 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, on other hand, the use of packing for the product in a container liable to convey a false impression as to its origin. Thus, it is possible, under those provisions, to prohibit both false or misleading indications as to the geographical origin of the product concerned and false or misleading indications relating to the nature or essential qualities of the product, such as, for instance, its taste.
- 63 If the foodstuff at issue in the main proceedings did not have, as an essential characteristic, a taste attributable primarily to the presence of champagne in its composition, it would therefore be possible to conclude that the name ‘Champagner Sorbet’ on the inner or outer packaging of that foodstuff constituted a false or misleading indication within the meaning of Article 118m(2)(c) of Regulation No 1234/2007 and Article 103(2)(c) of Regulation No 1308/2013.
- 64 In the light of the foregoing considerations, the answer to the fourth question is that Article 118m(2)(c) of Regulation No 1234/2007 and Article 103(2)(c) of Regulation No 1308/2013 are to be interpreted as being applicable both to false or misleading indications which are liable to create a false impression as to the geographical origin of the product concerned and to false or misleading indications relating to the nature or essential qualities of the product.

Costs

- 65 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

- 1. Article 118m(2)(a)(ii) of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation), as amended by Council Regulation (EC) No 491/2009 of 25 May 2009, and Article 103(2)(a)(ii) of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 October 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 are to be interpreted as meaning that the scope of those provisions covers a situation where a protected designation of origin, such as ‘Champagne’, is used as part of the name under which a foodstuff is sold, such as ‘Champagner Sorbet’, and where that foodstuff does not correspond to the product specifications for that protected designation of origin but contains an ingredient which does correspond to those specifications.**
- 2. Article 118m(2)(a)(ii) of Regulation No 1234/2007, as amended by Regulation No 491/2009, and Article 103(2)(a)(ii) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a protected designation of origin as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that protected designation of origin but**

contains an ingredient that does correspond to those specifications, such as ‘Champagner Sorbet’, constitutes exploitation of the reputation of a protected designation of origin, within the meaning of those provisions, if that foodstuff does not have, as one of its essential characteristics, a taste attributable primarily to the presence of that ingredient in the composition of the foodstuff.

3. Article 118m(2)(b) of Regulation No 1234/2007, as amended by Regulation No 491/2009, and Article 103(2)(b) of Regulation No 1308/2013 are to be interpreted as meaning that the use of a protected designation of origin as part of the name under which is sold a foodstuff that does not correspond to the product specifications for that protected designation of origin but contains an ingredient that does correspond to those specifications, such as ‘Champagner Sorbet’, does not constitute misuse, imitation or evocation within the meaning of those provisions.
4. Article 118m(2)(c) of Regulation No 1234/2007, as amended by Regulation No 491/2009, and Article 103(2)(c) of Regulation No 1308/2013 are to be interpreted as being applicable both to false or misleading indications which are liable to convey a false impression as to the geographical origin of the product concerned and to false or misleading indications relating to the nature or essential qualities of the product.

[Signatures]

* Language of the case: German.