

Provisional text

JUDGMENT OF THE COURT (Fourth Chamber)

2 May 2019 (\*)

(Reference for a preliminary ruling — Agriculture — Regulation (EC) No 510/2006 — Article 13(1)(b) — Protection of geographical indications and designations of origin for agricultural products and foodstuffs — Manchego cheese (‘queso manchego’) — Use of signs capable of evoking the region with which a protected designation of origin (PDO) is associated — Concept of the ‘average consumer who is reasonably well informed and reasonably observant and circumspect’ — European consumers or consumers of the Member State in which the product covered by the PDO is made and mainly consumed)

In Case C-614/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Supremo (Supreme Court, Spain), made by decision of 19 October 2017, received at the Court on 24 October 2017, in the proceedings

**Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego**

v

**Industrial Quesera Cuquerella SL,**

**Juan Ramón Cuquerella Montagud,**

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, K. Jürimäe, D. Šváby, S. Rodin (Rapporteur) and N. Piçarra, Judges,

Advocate General: G. Pitruzella,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 25 October 2018,

after considering the observations submitted on behalf of:

- the Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego, by M. Pomares Caballero, abogado,
- Industrial Quesera Cuquerella SL and M. Cuquerella Montagud, by J.A. Vallejo Fernández, F. Pérez Álvarez and J. Pérez Itarte, abogados,
- the Spanish Government, by A. Rubio González and V. Ester Casas, acting as Agents,
- the German Government, by T. Henze, M. Hellmann and J. Techert, acting as Agents,
- the French Government, by D. Colas, S. Horrenberger, A.-L. Desjonquères and C. Mosser, acting as Agents,

– the European Commission, by I. Galindo Martín, D. Bianchi and I. Naglis, acting as Agents, after hearing the Opinion of the Advocate General at the sitting on 10 January 2019, gives the following

### Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 13(1)(b) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 2006 L 93, p. 12).
- 2 The request has been made in proceedings between, on the one hand, the Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego (Foundation responsible for managing the Protected Designation of Origin Queso Manchego, Spain) ('the Queso Manchego Foundation') and, on the other hand, Industrial Quesera Cuquerella SL ('IQC') and Mr Juan Ramón Cuquerella Montagud concerning, inter alia, the use by IQC of labels to identify and market cheeses which are not covered by the protected designation of origin (PDO) 'queso manchego'.

### Legal context

- 3 Recitals 4 and 6 of Regulation No 510/2006 state:

'(4) In view of the wide variety of products marketed and the abundance of product information provided, the consumer should, in order to be able to make the best choices, be given clear and succinct information regarding the product origin.

...

(6) Provision should be made for a Community approach to designations of origin and geographical indications. A framework of Community rules on a system of protection permits the development of geographical indications and designations of origin since, by providing a more uniform approach, such a framework ensures fair competition between the producers of products bearing such indications and enhances the credibility of the products in the consumer's eyes.'

- 4 Article 2(1)(a) of that regulation states:

'For the purposes of this Regulation:

- (a) "designation of origin" means the name of a region, a specific place or, in exceptional cases, a country, used to describe an agricultural product or a foodstuff:
  - originating in that region, specific place or country,
  - the quality or characteristics of which are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors, and
  - the production, processing and preparation of which take place in the defined geographical area'.

- 5 Article 13(1) of Regulation No 510/2006 provides:

'Registered names shall be protected against:

...

- (b) any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as “style”, “type”, “method”, “as produced in”, “imitation” 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 product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;

...’

6 Article 14(1) of that regulation provides:

‘Where a designation of origin or a geographical indication is registered under this Regulation, the application for registration of a trademark corresponding to one of the situations referred to in Article 13 and relating to the same class of product shall be refused if the application for registration of the trademark is submitted after the date of submission of the registration application to the [European] Commission.

Trademarks registered in breach of the first subparagraph shall be invalidated.’

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

- 7 The Queso Manchego Foundation is responsible for managing and protecting the PDO ‘queso manchego’. On that basis, it brought an action against the defendants in the main proceedings before the Spanish court of first instance with jurisdiction to hear the case seeking a declaration that the labels used by IQC to identify and market the cheeses ‘Adarga de Oro’, ‘Super Rocinante’ and ‘Rocinante’, which are not covered by the PDO ‘queso manchego’, and the use of the words ‘Quesos Rocinante’ infringe the PDO ‘queso manchego’ because those labels and those words constitute an unlawful evocation of that PDO for the purpose of Article 13(1)(b) of Regulation No 510/2006.
- 8 The Spanish court of first instance dismissed that action on the ground that the signs and names used by IQC to market the cheeses which were not covered by the PDO ‘queso manchego’ were not visually or phonetically similar to the PDOs ‘queso manchego’ or ‘La Mancha’ and that the use of signs such as the name ‘Rocinante’ or the image of the literary character Don Quixote de La Mancha evoke the region of La Mancha (Spain) and not the cheese covered by the PDO ‘queso manchego’.
- 9 The Queso Manchego Foundation brought an appeal against that decision before the Audiencia Provincial de Albacete (Provincial Court, Albacete, Spain), which, by judgment of 28 October 2014, upheld the judgment at first instance. That court held that, for cheeses marketed by IQC which are not covered by the PDO ‘queso manchego’, the use of landscape and images typical of La Mancha on the labels of those cheeses leads consumers to think of the region of La Mancha but not necessarily of the cheese covered by the PDO ‘queso manchego’.
- 10 The applicant in the main proceedings brought an appeal against that judgment before the Tribunal Supremo (Supreme Court, Spain).
- 11 In its order for reference, the Tribunal Supremo (Supreme Court) sets out a number of factual considerations.
- 12 First of all, the referring court states that the word ‘*manchego*’ used in the PDO ‘queso manchego’ is the adjective which describes, in Spanish, the people and the products originating in the region of La Mancha. Next, it observes that the PDO ‘queso manchego’ covers cheeses made in the region of La Mancha from

sheep's milk in accordance with the traditional production, preparation and ageing requirements set out in the product specification of that PDO.

13 Moreover, the referring court states that Miguel de Cervantes set most of the story relating to the fictional character Don Quixote de La Mancha in the region of La Mancha. Don Quixote is also described by the referring court as having certain physical features and clothing similar to those of the character depicted on the figurative design on the label of the cheese 'Adarga de Oro'. In that regard, the archaic word '*adarga*' (small leather shield) is used in [Cervantes'] novel to describe the shield used by Don Quixote. In addition, the referring court notes that one of the names used by IQC for some of its cheeses is the name of the horse ridden by Don Quixote de La Mancha, namely 'Rocinante'. The windmills which Don Quixote fights are a typical feature of the landscape of La Mancha. Landscapes featuring windmills and sheep appear on some of the labels used for the cheeses produced by IQC which are not covered by the PDO 'queso manchego' and in some of the illustrations on IQC's website, which also advertises cheeses not covered by the PDO.

14 In those circumstances, the Tribunal Supremo (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the evocation of a [PDO], prohibited by Article 13(1)(b) of Regulation No 510/2006 necessarily be brought about by the use of a name visually, phonetically or conceptually similar to the [PDO] or may it be brought about by the use of figurative signs evoking the [PDO]?

(2) When the [PDO] is of a geographical nature (Article 2(1)(a) of Regulation No 510/2006) and when the products are the same or comparable, can the use of signs evoking the region with which a [PDO] is associated constitute evocation of the [PDO] itself, within the meaning of Article 13(1)(b) of Regulation No 510/2006, which is prohibited even when the user of those signs is a producer established in the region associated with the [PDO], but whose products are not protected by [that PDO] because they do not meet the requirements set out in the product specification, apart from the geographical provenance?

(3) Must the concept of the average consumer who is reasonably well informed and reasonably observant and circumspect, to whose perception the national court has to refer in order to assess whether there is "evocation" within the meaning of Article 13(1)(b) of Regulation No 510/2006, be understood to cover European consumers or can it cover only consumers of the Member State in which the product giving rise to evocation of the protected geographical indication is produced or with which the PDO is geographically associated and in which the product is mainly consumed?'

## Consideration of the questions referred

### *The first question*

15 By its first question, the referring court asks, in essence, whether Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that a registered name may be evoked through the use of figurative signs.

16 The Court has consistently held that, in interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgments of 17 May 2018, *Industrias Químicas del Vallés*, C-325/16, EU:C:2018:326, paragraph 27, and of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 27).

17 In the first place, it is apparent from the wording of Article 13(1)(b) of Regulation No 510/2006 that registered names must be protected against any evocation, even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation' or similar.

- 18 That wording can be understood as referring not only to words capable of evoking a registered name, but also to any figurative sign capable of evoking in the mind of the consumer products whose designation is protected. In that regard, the use of the word ‘any’ reflects the EU legislature’s intention to protect registered names as it took the view that evocation is possible through the use of a word element or a figurative sign.
- 19 It is true that the Court has held that the concept of ‘evocation’ covers a situation where the term used to designate a product incorporates part of a registered name, 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 name is protected (see, by analogy, judgment of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 25).
- 20 The Court has also stated that, for the purposes of determining what is meant by the term ‘evocation’, within the meaning of 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 (OJ 2008 L 39, p. 16), the decisive criterion 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 (judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 51).
- 21 Although the case-law cited in paragraphs 19 and 20 above concerned cases relating to product names and not figurative signs, it may nevertheless be inferred, as the Advocate General noted in point 24 of his Opinion, that the decisive criterion for establishing whether an element evokes a registered name, within the meaning of Article 13(1)(b) of Regulation No 510/2006, is whether that element is capable of triggering directly in the consumer’s mind the image of the product whose designation is protected.
- 22 Therefore, it cannot be excluded, in principle, that figurative signs may trigger directly in the consumer’s mind the image of products whose name is registered on account of their ‘conceptual proximity’ to such a name.
- 23 In the second place, as regards the context in which the term ‘evocation’ occurs, it cannot be accepted, as the Commission maintains, that the evocation of a registered name through the use of figurative signs can be examined only in the light of Article 13(1)(c) of Regulation No 510/2006.
- 24 First, it should be noted that the wording itself of Article 13(1)(b) of that regulation does not limit the scope of that provision solely to the names of the products covered by those names. On the contrary, as the Advocate General noted in point 28 of his Opinion, that provision requires protection against ‘any’ evocation, even if the protected name is accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’ or ‘imitation’, on the packaging of the product concerned.
- 25 Second, as the Commission pointed out, it is true that the Court held, in the judgment of 7 June 2018, *Scotch Whisky Association* (C-44/17, EU:C:2018:415, paragraph 65), that Article 16 of Regulation No 110/2008, which is worded in similar terms to Article 13 of Regulation No 510/2006, sets out a graduated list of prohibited conduct.
- 26 Nevertheless, it cannot be inferred from the fact that Article 13(1)(c) of Regulation No 510/2006 refers to any other indication on the inner or outer packaging, advertising material or documents relating to the product concerned that only that provision precludes the use of figurative signs that infringe registered names.
- 27 As the Advocate General stated in point 33 of his Opinion, the graduated list referred to by the Court relates to the nature of the prohibited conduct, namely, as regards Article 13(1)(c) of that regulation, to false and misleading indications as to the provenance, origin, nature or essential qualities of the product and not to the factors to be taken into consideration when determining whether there are such false or misleading indications.

28 Therefore, a contextual interpretation of Article 13(1)(b) of Regulation No 510/2006 confirms the interpretation based on the wording of that provision set out in paragraph 22 above.

29 In the third place, it should be noted that Regulation No 510/2006 pursues, inter alia, the objective of ensuring, in accordance with recitals 4 and 6 of that regulation, that the consumer has clear, succinct and credible information regarding the origin of the product.

30 Such an objective is further guaranteed if the registered name cannot be evoked, within the meaning of Article 13(1)(b) of that regulation, through the use of figurative signs.

31 Finally, it is important to note that it is for the referring court to assess specifically whether figurative signs, such as those at issue in the main proceedings, are capable of triggering directly in the consumer's mind the products whose names are registered.

32 Consequently, the answer to the first question is that Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that a registered name may be evoked through the use of figurative signs.

### *The second question*

33 By its second question, the referring court asks, in essence, whether Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that the use of figurative signs evoking the geographical area with which a designation of origin, as referred to in Article 2(1)(a) of that regulation, 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 that designation of origin, are not covered by it.

34 It must be observed at the outset that the wording of Article 13(1)(b) of Regulation No 510/2006 does not provide that a producer established in a geographical area corresponding to the PDO and whose products are not protected by the PDO but are similar or comparable to those protected by it is to be excluded from that provision.

35 Alternatively, if such a producer were excluded, such an exclusion would have the effect of authorising a producer to use figurative signs which evoke the geographical area whose name is part of a designation of origin covering an identical or similar product to that of that producer and, accordingly, of allowing him to take unfair advantage of the reputation of that designation.

36 Consequently, in a situation such as that at issue in the main proceedings, the fact that a producer of similar or comparable products to those protected by a designation of origin is established in a geographical area associated with that designation cannot exclude that producer from the scope of Article 13(1)(b) of Regulation No 510/2006.

37 Next, although it is for the national courts to ascertain whether the use by a producer of figurative signs which evoke the geographical area whose name is part of a designation of origin for identical or similar products to those covered by that designation amounts to evocation of a registered name, within the meaning of Article 13(1)(b) of that regulation, the Court, when giving a preliminary ruling on a reference, may, in appropriate cases, give clarifications to guide the national court in its decision (see, to that effect, judgment of 10 September 2009, *Severi*, C-446/07, EU:C:2009:530, paragraph 60).

38 In doing so, the national court must essentially rely on the presumed reaction of consumers, it being essential that the latter establish a link between the disputed elements, namely, in the present case figurative signs evoking the geographical area whose name is part of a designation of origin and the registered name (see, to that effect, judgment of 21 January 2016, *Viiniverla*, C-75/15, EU:C:2016:35, paragraph 22).

- 39 In that regard, it is for the national court to assess whether the link between those disputed elements and the registered name is sufficiently clear and direct that that name is especially brought to the mind of the consumer in their presence (see, to that effect, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraphs 53 and 54).
- 40 Accordingly, it is for the referring court to establish whether there is sufficiently clear and direct conceptual proximity between the figurative signs at issue in the main proceedings and the PDO ‘queso manchego’, which, in accordance with Article 2(1)(a) of Regulation No 510/2006, refers to the geographical area with which it is associated, namely the region of La Mancha.
- 41 In the present case, the referring court must ensure that the figurative signs at issue in the main proceedings, in particular the illustrations of a character resembling Don Quixote de La Mancha, a bony horse and landscapes with windmills and sheep, are capable of creating conceptual proximity with the PDO ‘queso manchego’ so that the image triggered directly in the consumer’s mind is that of the product protected by that PDO.
- 42 In that regard, the referring court must assess whether it is necessary, as stated by the Advocate General in point 41 of his Opinion, to consider together all the figurative and word signs which appear on the products at issue in the main proceedings in order to carry out an overall assessment taking account of all the elements which are potentially evocative.
- 43 In the light of the foregoing, Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that the use of figurative signs evoking the geographical area with which a designation of origin, as referred to in Article 2(1)(a) of that regulation, 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 it.

### ***The third question***

- 44 By its third question, the referring court asks, in essence, whether the concept of the average consumer who is reasonably well informed and reasonably observant and circumspect, to whose perception the national court has to refer in order to assess whether there is ‘evocation’ within the meaning of Article 13(1)(b) of Regulation No 510/2006, must be understood as covering European consumers or only consumers of the Member State in which the product giving rise to evocation of the protected name is made or with which that name is geographically associated and in which the product is mainly consumed.
- 45 First of all, as regards the interpretation of Article 16(b) of Regulation No 110/2008, worded in similar terms to Article 13(1)(b) of Regulation No 510/2006, the Court held that for the purpose of establishing whether there is an ‘evocation’ of a registered geographical indication, the referring court is required to determine whether, when the average European consumer who is reasonably well informed and reasonably observant and circumspect is confronted with the disputed designation, the image triggered directly in his mind is that of the product whose geographical indication is protected (see, to that effect, judgment of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 56).
- 46 The Court has also made clear that the fact that the disputed designation in the case that gave rise to the judgment cited in the preceding paragraph refers to a place of production that is known to consumers in the Member State where the product is made is not relevant for the purpose of assessing the concept of ‘evocation’ within the meaning of Article 16(b) of Regulation No 110/2008, since that provision protects registered geographical indications against any evocation throughout the territory of the European Union and, in view of the need to guarantee effective and uniform protection of those indications in that territory, it covers all European consumers (see, by analogy, judgments of 21 January 2016, *Viiniverla*, C-75/15, EU:C:2016:35, paragraphs 27 and 28, and of 7 June 2018, *Scotch Whisky Association*, C-44/17, EU:C:2018:415, paragraph 59).

- 47 It follows from the foregoing that the concept of the average European consumer who is reasonably well informed and reasonably observant and circumspect must be interpreted in a way that guarantees effective and uniform protection of registered names against any evocation throughout the territory of the Union.
- 48 Thus, as the Advocate General observed in point 51 of his Opinion, while the effective and uniform protection of registered names means that circumstances which may lead to the conclusion that there is no ‘evocation’ only in respect of the consumers of one Member State must be disregarded, that does not mean, on the other hand, that evocation assessed by reference to the consumers of a single Member State is not sufficient to trigger the protection provided in Article 13(1)(b) of Regulation No 510/2006.
- 49 Therefore, it is for the referring court to assess whether both the figurative and word elements relating to the product at issue in the main proceedings, which is made or mainly consumed in Spain, evoke the image of a registered name in the mind of the consumers of that Member State, which must, if that is the case, be protected against evocation wherever that may occur throughout the territory of the European Union.
- 50 It follows that the answer to the third question is that the concept of the average consumer who is reasonably well informed and reasonably observant and circumspect, to whose perception the national court has to refer in order to assess whether there is ‘evocation’ within the meaning of Article 13(1)(b) of Regulation No 510/2006, must be understood as covering European consumers, including consumers of the Member State in which the product giving rise to evocation of the protected name is made or with which that name is geographically associated and in which the product is mainly consumed.

### Costs

- 51 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 (Fourth Chamber) hereby rules:

- 1. Article 13(1)(b) of Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs must be interpreted as meaning that a registered name may be evoked through the use of figurative signs.**
- 2. Article 13(1)(b) of Regulation No 510/2006 must be interpreted as meaning that the use of figurative signs evoking the geographical area with which a designation of origin, as referred to in Article 2(1)(a) of that regulation, 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 it.**
- 3. The concept of the average consumer who is reasonably well informed and reasonably observant and circumspect, to whose perception the national court has to refer in order to assess whether there is ‘evocation’ within the meaning of Article 13(1)(b) of Regulation No 510/2006, must be understood as covering European consumers, including consumers of the Member State in which the product giving rise to evocation of the protected name is made or with which that name is geographically associated and in which the product is mainly consumed.**

[Signatures]



\* Language of the case: Spanish.