Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

21 January 2016 * [i]

(Reference for a preliminary ruling — Protection of geographical indications of spirit drinks — Regulation (EC) No 110/2008 — Article 16(b) — Evocation — Cider spirits produced in Finland and placed on the market as 'Verlados' — Protected geographical indication 'Calvados')

In Case C-75/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the markkinaoikeus (Market Court, Finland), made by decision of 13 February 2015, received at the Court on 19 February 2015, in the proceedings

Viiniverla Oy

v

Sosiaali- ja terveysalan lupa- ja valvontavirasto,

THE COURT (Second Chamber),

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

Advocate General: P. Mengozzi,

Registrar: A. Calot Escobar,

after considering the observations submitted on behalf of:

— the French Government, by G. de Bergues, D. Colas and S. Ghiandoni, acting as Agents,

— the Italian Government, by G. Palmieri, acting as Agent, and M. Russo, avvocato dello Stato,

— the European Commission, by P. Aalto, I. Galindo Martín and B. Eggers, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Finnish.

Judgment

1 This request for a preliminary ruling concerns the interpretation 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).

2 The request has been made in proceedings between Viiniverla Oy ('Viiniverla'), a company established under Finnish law, and the Sosiaali- ja terveysalan lupa- ja valvontavirasto (Social and Health Sector Licensing and Supervisory Authority, 'the Authority') concerning the latter's decision of 18 November 2013 to prohibit Viiniverla from marketing a drink named 'Verlados' as from 1 February 2014.

Legal context

EU law

3 Recitals 2 and 14 of Regulation No 110/2008 are worded as follows:

'(2) The spirit drinks sector is important for consumers, producers and the agricultural sector in the [European Union]. The measures applicable to the spirit drinks sector should contribute to the attainment of a high level of consumer protection, the prevention of deceptive practices and the attainment of market transparency and fair competition. …

…

(14) Given that 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), as amended by Council Regulation (EC) No 1791/2006 of 20 November 2006 (OJ 2006 L 363, p. 1)] does not apply to spirit drinks, the rules for protection of geographical indications on spirit drinks should be laid down in this Regulation. Geographical indications should be registered, identifying spirit drinks as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the spirit drink is essentially attributable to its geographical origin.'

4 Article 1(2) of Regulation No 110/2008 provides:

'This Regulation shall apply to all spirit drinks placed on the market in the [European Union] whether produced in the [European Union] or in third countries, as well as to those produced in the [European Union] for export. …'

5 Article 15 of Regulation No 110/2008, entitled 'Geographical indications', provides:

'(1) For the purpose of this Regulation a geographical indication shall be an indication which identifies a spirit drink as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to its geographical origin.

(2) The geographical indications referred to in paragraph 1 are registered in Annex III.

(3) The geographical indications registered in Annex III may not become generic.

Names that have become generic may not be registered in Annex III.

A name that has become generic means the name of a spirit drink which, although it relates to the place or region where this product was originally produced or placed on the market, has become the common name of a spirit drink in the [European Union].

(4) Spirit drinks bearing a geographical indication registered in Annex III shall comply with all the specifications of the technical file provided for under Article 17(1).'

6 Article 16 of that regulation, entitled 'Protection of geographical indications', is worded as follows:

'Without prejudice to Article 10, the geographical indications registered in Annex III shall be protected against:

…

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or the geographical indication is used in translation or accompanied by an expression such as "like", "type", "style", "made", "flavour" or any other similar term;

…'

7 Annex III to the regulation, entitled 'Geographical indications', states that 'Calvados' was registered in the category of products No 10 'Cider spirit and perry spirit', as originating in France.

Finnish law

8 Under Paragraph 43(1) of the Law on alcohol (alkoholilaki (1143/1994), 'the Law on alcohol'), the producer and importer of alcoholic beverages are to be responsible for the quality and composition of alcoholic beverages they place on the market for consumption, as well as for compliance of the product and its labelling and other presentation with the applicable rules and regulations.

9 According to Paragraph 49(2) of the Law on alcohol, the Authority may prohibit the placing of alcoholic beverages on the market or, without compensation, require the party that has placed alcoholic beverages on the market to remove them, if the product or its presentation infringes the relevant provisions and regulations.

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

10 Viiniverla, established in Verla (Finland), has manufactured and marketed cider spirits named 'Verlados' since 2001.

11 On 23 November 2012, following a complaint relating to the alleged misuse of the French geographic indication 'Calvados', the European Commission sent the Finnish authorities a request for clarification relating to the use of the name 'Verlados'.

12 In their reply of 31 January 2013, the Finnish authorities stated that the drink named 'Verlados' is a local product whose name refers directly to the place of its manufacture, that is to say the village of Verla and the Verla winery. They added that the names 'Calvados' and 'Verlados' have only their last syllable in common, which is insufficient in the light of the Court's case-law, in accordance with which there exists an 'evocation' where there are at least two identical syllables.

13 On 6 March 2013 the Commission sent the Finnish authorities a request for additional information. In that request, the Commission considered, in accordance with Article 16(b) of Regulation No 110/2008, that the name 'Verlados' was not authorised and informed the Republic of Finland of its intention to open infringement proceedings against it if it failed to comply with that interpretation. According to the Commission, the ending 'ados' of the name 'Verlados' suffices to call to mind the name 'Calvados' for the purposes of the Court's case-law.

14 Consequently, the Authority adopted, on the basis of Article 49(2) of the Law on alcohol, a decision prohibiting Viiniverla from marketing the drink named 'Verlados' as from 1 February 2014.

15 Viiniverla brought before the markkinaoikeus (Market Court) an action for annulment of that decision. Before that court, it claimed that the use of the name 'Verlados' does not constitute any misuse, imitation or evocation of the product 'Calvados' and does not therefore infringe EU law on the protection of geographical indications.

16 Since it considers that the Court's case-law does not contain all the information it considers necessary in order to rule on the dispute before it, the markkinaoikeus (Market Court) stayed the proceedings and referred the following questions to the Court for a preliminary ruling:

'(1) When assessing where there has been an "evocation" within the meaning of Article 16(b) of Regulation [No 110/2008], should reference be made to an average consumer who is reasonably well informed and reasonably observant and circumspect?

(2) When assessing whether to prohibit the use of the name Verlados used to market nationally a spirit drink distilled from apples in order to protect the geographical indication "Calvados", what importance should be given to the following facts in the interpretation of the concept of "evocation" in Article 16(b) of Regulation No 110/2008 and the application of that regulation:
   (a) the first part of the name Verlados, Verla, is a village in Finland whose name may be recognised by Finnish consumers;
   (b) the first part of the name Verlados, Verla, refers to the producer of Verlados, Viiniverla Oy;
   (c) Verlados is a local product produced in Verla village of which a few hundred litres on average are sold each year in the winery's own restaurant and a limited amount by order from the State-owned alcohol business referred to in the Law on alcohol;
   (d) the words Verlados and Calvados have only one syllable in common ("dos") out of three, although the last four letters ("ados") of the words, that is, half of the total number of letter in each word, are identical?

(3) If there is considered to be an "evocation" within the meaning of Article 16(b) of Regulation No 110/2008, may the use of the name Verlados nevertheless be authorised on one of the grounds mentioned above or on other grounds, such as that Finnish consumers at least are unlikely to imagine that Verlados is produced in France?'

Consideration of the questions referred

The first question

17 By its first question, the referring court asks, in essence, whether Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that, in order to assess whether there is an 'evocation' within the meaning of that provision, it is required to refer to the perception of the average consumer who is reasonably well informed and reasonably observant and circumspect.

18 While the French Government suggests that the first question be answered in the affirmative, the Italian Government and the Commission are of the opinion that it is not necessary to refer to the concept of 'consumer'. In that regard, the Italian Government notes that there may be 'evocation' even in the absence of any likelihood of confusion on the part of the public, while the Commission considers for its part that the finding of an evocation is objective in nature, based solely on an examination of the names at issue.

19 According to Article 15(1) of Regulation No 110/2008, the expression 'geographical indication' designates an indication which identifies a spirit drink as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of that spirit drink is essentially attributable to that geographical origin.

20 Article 16(b) of Regulation No 110/2008 protects geographical indications from any 'evocation', 'even if the true origin of the product is indicated or the geographical indication is used in translation or accompanied by an expression such as "like", "type", "style", "made", "flavour" or any other similar term'.

21 According to the Court's case-law, the concept of 'evocation' covers a situation in which 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, as regards Article 16(b) of Regulation No 110/2008, judgment in *Bureau national interprofessionnel du Cognac*, C-4/10 and C-27/10, EU:C:2011:484, paragraph 56; see also, concerning Article 13(1)(b) of Council Regulation (EEC) No 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), judgments in *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 25, and *Commission* v *Germany*, C-132/05, EU:C:2008:117, paragraph 44).

22 It is true that Article 16(b) of Regulation No 110/2008 does not expressly refer to the concept of 'consumer'. However, it follows from the case-law referred to in the previous paragraph that, for the purpose of finding the existence of an 'evocation' within the meaning of that provision, the Court has ruled that it is for the national court to verify, in addition to the inclusion of part of a protected name in the term used to designate the product at issue, 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. Therefore, the national court must essentially rely on the presumed reaction of consumers in the light of the term used to designate the product at issue, it being essential that those consumers establish a link between that term and the protected name.

23 In that context, it should be noted that the protection provided by Article 16 of Regulation No 110/2008 to geographical indications must be interpreted in the light of the objective pursued by the registration of those indications, namely, as is apparent from recital 14 of that regulation, to allow the identification of spirit drinks as originating from a specific territory in situations where a given quality, reputation or other characteristic of those drinks may be essentially attributed to that geographical origin (judgment in *Bureau national interprofessionnel du Cognac*, C-4/10 and C-27/10, EU:C:2011:484, paragraph 47).

24 Moreover, the system of registration of geographical indications of spirit drinks provided for by Regulation No 110/2008 seeks to contribute, as is noted in recital 2 of that regulation, not only to the prevention of deceptive practices and the attainment of market transparency and fair competition, but also to the attainment of a high level of consumer protection.

25 It is apparent from established case-law relating to consumer protection, that, in general, it is necessary in that field to take account of the presumed expectation of the average consumer, who is reasonably well informed and reasonably observant and circumspect (see, inter alia, judgments in *Mars*, C-470/93, EU:C:1995:224, paragraph 24; *Gut Springenheide and Tusky*, C-210/96, EU:C:1998:369,

paragraph 31; *Estée Lauder*, C-220/98, EU:C:2000:8, paragraph 30; *Lidl Belgium*, C-356/04, EU:C:2006:585, paragraph 78; *Severi*, C-446/07, EU:C:2009:530, paragraph 61; *Lidl*, C-159/09, EU:C:2010:696, paragraph 47; and *Teekanne*, C-195/14, EU:C:2015:361, paragraph 36).

26 In order to assess the ability of a word used to designate a product to evoke a protected name for the purposes of Article 16(b) of Regulation No 110/2008, it is likewise necessary to apply such a criterion, which is based on the principle of proportionality (see, to that effect, judgment in *Estée Lauder*, C-220/98, EU:C:2000:8, paragraph 28).

27 As regards, moreover, the referring court's doubt regarding the relevance, in assessing the concept of 'evocation' within the meaning of Article 16(b) of Regulation No 110/2008, of the fact that the name 'Verlados' refers to the place where the product at issue in the main proceedings is manufactured, which is known to Finnish consumers, it should be noted that Article 16(b) of Regulation No 110/2008 protects geographical indications registered in Annex III thereto against any 'evocation' throughout the territory of the European Union. In the light of the need to guarantee effective and uniform protection of those geographic indications in that territory, it must be considered, as do the Italian Government and the Commission, that the concept of 'consumer', referred to in the case-law cited in paragraph 21 above, covers European consumers and not merely consumers of the Member State in which the product giving rise to the evocation of the protected geographical indication is manufactured.

28 In the light of the foregoing considerations, the answer to the first question is that Article 16(b) of Regulation No 110/2008 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.

The second question

29 By its second question, the referring court asks, in essence, whether Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that, in order to assess whether the name 'Verlados' constitutes an 'evocation' within the meaning of that provision of the protected geographical indication 'Calvados' with respect to similar products, it must take into consideration, in addition to the phonetic and visual relationship between those names, the existence of circumstances which tend to indicate that the use of the name 'Verlados' is not likely to deceive Finnish consumers.

30 In particular, the referring court questions what significance should be attached to the circumstances that, first, the beginning of the name 'Verlados' corresponds to the name of the Finnish village Verla, and that name is likely to be recognised by Finnish consumers; secondly, the element 'Verla' refers to the undertaking Viiniverla, which manufactures the drink named 'Verlados'; thirdly, that drink is a local product manufactured and sold in limited quantities; and fourthly, the terms 'Verlados' and 'Calvados' have only one syllable in common, while the last four letters of each of those words, that is to say half of their total number of letters, are identical.

31 It should be noted, first of all, that it is for the referring court to assess whether the name 'Verlados' for cider spirits constitutes an 'evocation' within the meaning of Article 16(b) of Regulation No 110/2008 of the protected geographical indication 'Calvados'. However, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the national court guidance in its decision (see, to that effect, judgments in *Severi*, C-446/07, EU:C:2009:530, paragraph 60, and, to that effect, *Bureau national interprofessionnel du Cognac*, C-4/10 and C-27/10, EU:C:2011:484, paragraph 49).

32 As is clear from paragraph 21 above, in order to assess the existence of an 'evocation' within the meaning of Article 16(b) of Regulation No 110/2008, the national court is required to determine whether, when confronted with the name 'Verlados', the image triggered in the mind of consumers is that of the product benefiting from the protected geographical indication, namely, in the main proceedings, 'Calvados'.

33 In that regard, the Court has held that it was legitimate to consider that there is evocation of a protected name where, concerning products which are similar in appearance, the sales names are phonetically and visually similar (see, to that effect, judgments in *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 27; *Commission* v *Germany*, C-132/05, EU:C:2008:117, paragraph 46; and *Bureau national interprofessionnel du Cognac*, C-4/10 and C-27/10, EU:C:2011:484, paragraph 57).

34 The Court has held that such similarity was clear where the term used to designate the product at issue ends in the same two syllables as the protected name and contains the same number of syllables as that name (see, to that effect, judgment of 4 March 1999 in *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 27).

35 The Court has also ruled that it is necessary, where appropriate, to take account of the 'conceptual proximity' between terms emanating from different languages, since such a proximity and the phonetic and visual relationship referred to in paragraph 33 above are such as to bring to the mind of the consumer the product whose geographic indication is protected, when he is confronted with a similar product bearing the disputed name (see, to that effect, judgment in *Commission* v *Germany*, C-132/05, EU:C:2008:117, paragraphs 47 and 48).

36 In addition, the Court held that the registration 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 specifications required by that indication, constituted an evocation within the meaning of Article 16(b) of Regulation No 110/2008 (judgment in *Bureau national interprofessionnel du Cognac*, C-4/10 and C-27/10, EU:C:2011:484, paragraph 58).

37 In this case, it must be noted that, according to the referring court, it is not disputed that the name 'Verlados' is used in Finland for products similar to those with the protected geographical indication 'Calvados', that those products have objective characteristics in common, and they are consumed, from the point of view of the relevant public, on occasions which are largely identical.

38 As regards the visual and phonetic relationship between the names 'Verlados' and 'Calvados', the referring court must take into account the fact that they both contain eight letters, the last four of which are identical, and the same number of syllables, and that they share the suffix 'dos', which confers on them a certain visual and phonetic similarity.

39 It is also for the referring court to take into account, in accordance with the Court's case-law, possible information capable of indicating that the visual and phonetic relationship between the two names is not fortuitous (see, to that effect, judgment in *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 28).

40 In that regard, the French Government contends that the product 'Verlados' was originally named 'Verla', the suffix 'dos' being added only later, following a significant growth in exports of 'Calvados' to Finland between 1990 and 2001. Moreover, that government observes that the syllable 'dos' has no particular meaning in the Finnish language. Those facts, which are to be established by the referring court, are capable of constituting evidence from which it may be concluded that the relationship referred to in paragraph 38 of the present judgment is not fortuitous.

41 As regards the facts listed by the referring court, it must be concluded, in agreement with all the parties who submitted written observations, that those facts are not relevant for the purposes of assessing the existence of an 'evocation' within the meaning of Article 16(b) of Regulation No 110/2008.

42 In the first place, the referring court points out that the name 'Verlados' refers, first, to the name of the undertaking Viiniverla, which manufactures that drink, and, secondly, to the village of Verla, which is known to Finnish consumers, so that that name is not capable of misleading those consumers.

43 In that regard, it should be noted, first of all, that, according to Article 16(b) of Regulation No 110/2008, there may be an 'evocation' even if the true origin of the product is indicated (see, to that effect, judgment in *Bureau national interprofessionnel du Cognac*, C-4/10 and C-27/10, EU:C:2011:484, paragraph 59).

44 Next, it should be stated that Article 16(b) of Regulation No 110/2008 protects geographical indications registered in Annex III thereto against any 'evocation' throughout the territory of the Union. In that regard, it was noted, in paragraph 27 above, that the concept of 'consumer' referred to in the case-law cited in paragraph 21 above covers 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.

45 Finally, the Court has already held that there can be 'evocation' even in the absence of any likelihood of confusion between the products concerned (judgments in *Consorzio per la tutela del formaggio Gorgonzola*, C-87/97, EU:C:1999:115, paragraph 26, and *Commission* v *Germany*, C-132/05, EU:C:2008:117, paragraph 45), since what matters is, in particular, that there is not created in the mind of the public an association of ideas regarding the origin of the products, and that a trader does not take undue advantage of the reputation of the protected geographical indication (see, to that effect, judgment in *Bureau national interprofessionnel du Cognac*, C-4/10 et C 27/10, EU:C:2011:484, paragraph 46).

46 In the second place, the referring court notes that the drink named 'Verlados' is a local product manufactured in the village of Verla, which is sold only locally and in small quantities, and which may in addition be obtained, by order, from the State undertaking for the distribution of alcoholic drinks provided for by the Law on alcohol.

47 In that regard, regardless of the fact that the above is contradicted by the French Government, which submitted documents indicating that the drink named 'Verlados' is also available by means of distance selling to consumers in other Member States, it suffices to note that, in any event, that fact is irrelevant since Regulation No 110/2008 applies, in accordance with Article 1(2), to all spirit drinks placed on the market in the European Union.

48 In the light of the foregoing considerations, the answer to the second question is that Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that, in order to assess whether the name 'Verlados' constitutes an 'evocation' within the meaning of that provision of the protected geographical indication 'Calvados' with respect to similar products, the referring court must take into consideration the phonetic and visual relationship between those names and any evidence that may show that such a relationship is not fortuitous, so as to ascertain whether, when the average European consumer, reasonably well informed and reasonably observant and circumspect, is confronted with the name of a product, the image triggered in his mind is that of the product whose geographical indication is protected.

The third question

49 By its third question, the referring court asks, in essence, whether Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that the use of a name classified as an 'evocation' within the meaning of that provision of a geographical indication referred to in Annex III to that regulation may nevertheless be authorised in the light of the circumstances described in the second question or in the absence of a likelihood of confusion between the products at issue.

50 As follows from the wording of Article 16(b) of Regulation No 110/2008, 'without prejudice to Article 10 [containing specific rules concerning the use of sales denominations and geographical indications], the geographical indications registered in Annex III shall be protected against … (b) any … evocation …'. Consequently, in the absence of such specific rules applicable in circumstances such as those at issue in the main proceedings, where the referring court finds that there is 'evocation' within the meaning of that provision, it may not authorise the name 'Verlados' in the light of the circumstances mentioned in the second question.

51 Moreover, as has been noted in paragraph 45 above, there may be 'evocation' even in the absence of any likelihood of confusion between the products at issue.

52 In the light of the foregoing considerations, the answer to the third question is that Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that the use of a name classified as an 'evocation' within the meaning of that provision of a geographical indication referred to in Annex III to that regulation may not be authorised, even in the absence of any likelihood of confusion.

Costs

53 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 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.**

2. **Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that, in order to assess whether the name 'Verlados' constitutes an 'evocation' within the meaning of that provision of the protected geographical indication 'Calvados' with respect to similar products, the referring court must take into consideration the phonetic and visual relationship between those names and any evidence that may show that such a relationship is not fortuitous, so as to ascertain whether, when the average European consumer, reasonably well informed and reasonably observant and circumspect, is confronted with the name of a product, the image triggered in his mind is that of the product whose geographical indication is protected.**

3. Article 16(b) of Regulation No 110/2008 must be interpreted as meaning that the use of a name classified as an 'evocation' within the meaning of that provision of a geographical indication referred to in Annex III to that regulation may not be authorised, even in the absence of any likelihood of confusion.

[Signatures]

i — The wording of paragraphs 33 and 34 of this document have been modified after it was first put online.