JUDGMENT OF THE COURT (Fourth Chamber)
5 July 1995 *

In Case C-46/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Police, Bordeaux (France), for a preliminary ruling in the criminal proceedings before that court against

Michèle Voisine

on the interpretation of Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13),

THE COURT (Fourth Chamber),

composed of: P. J. G. Kapteyn, President of the Chamber, C. N. Kakouris and J. L. Murray (Rapporteur), Judges,

Advocate General: M. B. Elmer,
Registrar: L. Hewlett, Administrator,

* Language of the case: French.

after considering the written observations submitted on behalf of:

— Michèle Voisine, by Daniel Rumeau, of the Paris Bar,

— the Institut National des Appellations d'Origine, by Jacques Cavalie, of the Paris Bar,

— the French Government, by Catherine de Salins, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Jean-Louis Falconi, Secretary for Foreign Affairs in the same Directorate, acting as Agents,

— the Commission of the European Communities, by Gérard Rozet, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of the French Government and of the Commission at the hearing on 19 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 9 March 1995,

gives the following

Judgment

1 By a judgment of 12 March 1993, received at the Court on 4 February 1994, the Tribunal de Police (Local Criminal Court), Bordeaux, referred to the Court for a

preliminary ruling under Article 177 of the EC Treaty a question on the interpretation of Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts (OJ 1989 L 232, p. 13).

2 The question was raised in criminal proceedings in which Michèle Voisine was charged with having infringed Article 11 of the Law of 1 August 1905 on fraud and falsification relating to products or services.

3 Article 72 of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine (OJ 1987 L 84, p. 1) provides for the adoption of general rules for the description and presentation of products in the wine sector. On that basis the Council adopted Regulation No 2392/89.

4 The fifth recital in the preamble to Regulation No 2392/89 indicates that with the aim of avoiding too divergent interpretations 'it was deemed appropriate to lay down fairly comprehensive rules on description; whereas, to ensure that these rules are effective, it should also be laid down as a principle that only the details specified in the rules in question or in the relevant implementing rules are permitted for the description of wines and grape musts.'

5 In that connection Regulation No 2392/89 establishes a distinction between mandatory information necessary to identify the product and optional information designed mainly to indicate the special properties of the product or to characterize it.

6 Article 11(1) sets out the rules governing the mandatory information to be given in the description on the labelling. That mandatory information includes the name of the specified region of origin (Article 11(1)(a)).

7 Under Article 11(2) the description on the labelling may be supplemented by certain additional information, in particular a brand name, in accordance with the conditions laid down in Article 40(c).

8 According to Article 12(1), only the information specified in Article 11 is to be allowed for the description on the label of a quality wine produced in a specified region ('quality wine psr'), apart from certain exceptions which are not relevant here.

9 Article 38(1) defines 'labelling' as 'all descriptions and other references, signs, designs or brand names which distinguish the product and which appear on the same container, including its sealing device, or the tag attached to the container.' However, 'Particulars, signs and other references shall not constitute part of the labelling if they:

— are required under the tax provisions of the Member States,

— refer to the manufacturer or to the volume of the container and are inscribed directly and indelibly thereon,

— are used for the purpose of bottling checks and are indicated in detailed rules to be laid down,

— are used to identify the product by means of a figure code and/or of a mechanical scanning symbol,

— refer to the price of the product concerned,

— are laid down by the legislation of the Member States on quantity and quality control of products subject to systematic official examination.'

10 Article 40(1) provides that the description and presentation of the products referred to in the regulation, and any form of advertising for such products, must not be incorrect or likely to cause confusion or to mislead the persons to whom they are addressed, particularly as regards the information provided for in Article 11 of the regulation and the characteristics of the products such as, in particular, their nature, origin or provenance.

11 Article 40(2) states that where the description, presentation and advertising of the products referred to in the regulation are supplemented by brand names, such brand names may not contain any words, parts of words, signs or illustrations which: are likely to cause confusion or mislead the persons to whom they are addressed; or are liable to be confused by the persons to whom they are addressed with all or part of the description of a quality wine psr; or are identical to the description of any such product unless the products used for making the final products referred to above are entitled to such description or presentation. Moreover, the labelling used for the description of quality wines psr may not bear brand names containing words, parts of words, signs or illustrations which contain false information, particularly with regard to geographical origin, vine variety, vintage year or a reference to a superior quality.

12 As far as sparkling wines are concerned, the Council adopted, on the basis of Article 54(1) of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (OJ 1979 L 54, p. 1), Regulation (EEC) No 3309/85 of 18 November 1985 laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines (OJ 1985 L 320, p. 9).

13 Under Article 2 of Regulation No 3309/85, labelling means 'all references, symbols, illustrations and marks or any other descriptions which serve to distinguish the product and which appear on the same container, including the closure, tags attached to the container and the sheathing covering the neck of bottles ...'.

14 Article 4(1) provides:

'In the case of the products referred to in Article 1(1), the description on the labelling may be supplemented by other particulars, provided that:

— they are not liable to mislead the persons for whom the information is intended, particularly as regards the mandatory information specified in Article 3 and the optional information specified in Article 6;

— where appropriate, the provisions of Article 6 are observed.'

15 Finally, Article 13 provides:

'1. The description and presentation of the products referred to in Article 1(1) and any form of advertising for such products must not be incorrect or likely to cause confusion or to mislead the persons to whom they are addressed, particularly as regards:

— the information laid down in Articles 3 and 6; this shall also apply if the information is used ... with a reference to the actual provenance ...

— the characteristics of the products, and in particular their ... origin [or] provenance ... .

2. Where the description, presentation and advertising of the products referred to in Article 1(1) are supplemented by brand names, such brand names may not contain any words, syllables, signs or illustrations which:

(a) are likely to cause confusion or mislead the persons to whom they are addressed within the meaning of paragraph 1;

or

(b) are liable to be confused with all or part of the description of a table wine, a quality wine produced in a specified region, including a quality sparkling wine psr ...'

16 In 1991 S.à r. l. 'Bouteilles en fête', of which Michèle Voisine was the manager, offered for sale in supermarkets in Vendôme, Romorantin, Blois and Azay-le-Rideau bottles of Bordeaux wine marked quality wine psr and bottles of champagne, or sparkling quality wine psr, bearing both a label containing the mandatory information within the meaning of the abovementioned provisions and moulded inlays and prints reproducing, on the front, the name and an illustration of a place in the town where the bottles were being offered for sale and, on the back, a text giving the history of the town or region in question.

17 Michèle Voisine was charged before the Tribunal de Police, Bordeaux, with having infringed Article 11 of the Law of 1 August 1905 on fraud and falsification in relation to products or services on the ground that 1 425 bottles of Bordeaux wine offered for sale carried labelling which included information not permitted by Articles 11 and 12 of Regulation No 2392/89 and that the presentation of those 1 425 bottles and of 60 bottles of Champagne was contrary to Article 40 of Regulation No 2392/89 and Article 13 of Regulation No 3309/85 respectively. Since names of towns appeared on the bottles which could be confused with the designation of origin of those geographical localities or the 'Romorantin' vine variety, their presentation was allegedly liable to mislead purchasers as to the provenance of the wine or the vine variety.

18 Before the national court Michèle Voisine contended *inter alia* that the said Community provisions governed only the labelling of wine. The reference to the towns which appeared on the prints on the bottles constituted decoration on the bottle

which, as distinct from the labelling, had no connection with the product and was not therefore subject to the rules laid down by the regulations in question.

19 The Tribunal de Police, Bordeaux, considered that an interpretation of Article 38 of Regulation No 2392/89 was required before the case could be resolved and therefore decided to stay proceedings until the Court had given a preliminary ruling on the following question:

'Does the definition of "labelling" in Article 38 of Council Regulation (EEC) No 2392/89 prohibit any decoration or advertising on the bottle which is unconnected with the wine itself?'

20 Since Article 38(1) of Regulation No 2392/89 does not contain a prohibition, the question must be understood as seeking clarification as to whether the definition of labelling in that article covers decoration or advertising which is unconnected with the wine concerned.

21 Article 38(1) of Regulation No 2392/89, like Article 2 of Regulation No 3309/85 moreover, is in broad terms. By including in the definition of labelling all descriptions and other references, signs, designs or brand names which distinguish the product and appear on the same container, including its sealing device, or the tag attached to the container, the Community legislature intended to ensure that

anything which could be attached to a container holding wine, apart from the particulars, signs and other references mentioned in the second subparagraph of that provision, would be governed by the legislation in question.

22 That interpretation is confirmed by the other provisions of Regulation No 2392/89, in particular Articles 11 and 12 thereof. Those articles reveal the Community legislature's intention to adopt, in that regulation, a detailed and complete code governing the description and presentation of wines.

23 It should be noted in this connection that the Community provisions relating to the labelling of wines constitute a highly developed set of rules aimed at the prevention in the marketing of wine of all practices which are of such a nature as to create false appearances, irrespective of whether such practices give rise in the minds of those engaged in the trade or of consumers to confusion with existing products or the erroneous impression of an origin or of characteristics which in reality do not exist (see Case 56/80 *Weigand* v *Schutzverband Deutscher Wein* [1981] ECR 583, at paragraph 18).

24 The exclusion from the definition of labelling of decoration on a bottle is liable to create such false appearances, even where the decoration has no connection with the wine itself.

25 Moreover, the words 'distinguish the product' in Article 38(1) can hardly be interpreted, as Michèle Voisine suggests, to mean that decoration on a bottle which is unconnected with the wine itself is not covered by the definition of labelling, because such details, appearing in particular on the container, distinguish the product and differentiate it from other products.

26 Hence, decoration on a container of wine is covered by the definition of labelling laid down in Article 38(1) of Regulation No 2392/89.

27 It follows that such decoration must be in conformity with Articles 11 and 12 of Regulation No 2392/89, which determine the sole particulars permitted for describing quality wine psr on the labelling.

28 Among those particulars, account should be taken of the option given in Article 11(2)(c) of supplementing the description on the labelling by a brand name under the conditions laid down in Article 40(2) of the regulation, which are substantively similar to the conditions laid down in Articles 4(1) and 13 of Regulation No 3309/85 concerning quality sparkling wines psr.

29 Since the brand names whose use is authorized by Regulations Nos 2392/89 and 3309/85 may include words, parts of words, signs or illustrations, decoration such as that in point in the main proceedings is covered by those provisions.

30 The reply to the question must therefore be that the definition of 'labelling' in Article 38(1) of Regulation No 2392/89 covers decoration or advertising which is unconnected with the wine concerned.

Costs

31 The costs incurred by the French Government and by the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fourth Chamber),

in answer to the question referred to it by the Tribunal de Police, Bordeaux, by judgment of 12 March 1993, hereby rules:

The definition of 'labelling' in Article 38(1) of Council Regulation (EEC) No 2392/89 of 24 July 1989 laying down general rules for the description and presentation of wines and grape musts covers decoration or advertising which is unconnected with the wine concerned.

Kapteyn Kakouris Murray

Delivered in open court in Luxembourg on 5 July 1995.

R. Grass
Registrar

P. J. G. Kapteyn
President of the Fourth Chamber