JUDGMENT OF THE COURT

25 June 2002 *

In Case C-66/00,

REFERENCE to the Court under Article 234 EC by the Tribunale di Parma (Italy) for a preliminary ruling in the criminal proceedings before that court against

Dante Bigi,

third party:

Consorzio del Formaggio Parmigiano Reggiano,

on the interpretation of Article 13 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3),

* Language of the case: Italian.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann, F. Macken, N. Colneric and S. von Bahr (Presidents of Chambers), D.A.O. Edward (Rapporteur), J.-P. Puissochet, V. Skouris and J.N. Cunha Rodrigues, Judges,

Advocate General: P. Léger,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Mr Bigi, by G.G. Lasagni, avvocato,

— the Consorzio del Formaggio Parmigiano Reggiano, by F. Capelli, avvocato,

— the Italian Government, by U. Leanza, acting as Agent, and by O. Fiumara, avvocato dello Stato,

— the German Government, by W.-D. Plessing and B. Muttelsee-Schön, acting as Agents,

— the Greek Government, by I.K. Chalkias and C. Tsiavou, acting as Agents,

— the Austrian Government, by H. Dossi, acting as Agent,

— the Commission of the European Communities, by J.L. Iglesias Buhigues and P. Stancanelli, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Bigi, represented by G.G. Lasagni; the Consorzio del Formaggio Parmigiano Reggiano, represented by F. Capelli; the Italian Government, represented by U. Leanza and O. Fiumara; the German Government, represented by W.-D. Plessing; the Greek Government, represented by G. Kanellopoulos, acting as Agent, and C. Tsiavou; the French Government, represented by C. Vasak and L. Bernheim, acting as Agents; the Portuguese Government, represented by L.I. Fernandes, acting as Agent; and the Commission, represented by J.L. Iglesias Buhigues and P. Stancanelli, at the hearing on 6 June 2001,

after hearing the Opinion of the Advocate General at the sitting on 9 October 2001,

gives the following

Judgment

1 By order of 21 February 2000, received at the Court on 28 February 2000, the Tribunale di Parma referred to the Court for a preliminary ruling under Article 234 EC seven questions on the interpretation of Article 13 of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical

indications and designations of origin for agricultural products and foodstuffs (OJ 1992 L 208, p. 1), as amended by Council Regulation (EC) No 535/97 of 17 March 1997 (OJ 1997 L 83, p. 3, hereinafter 'Regulation No 2081/92').

2 Those questions were raised in criminal proceedings instituted against Mr Bigi following a complaint from the Consorzio del Formaggio Parmigiano Reggiano (hereinafter 'the Consorzio'), in which he is charged with violating Italian laws on fraudulent trading, on the marketing of products bearing misleading marks or signs, and on the use of protected designations of origin (hereinafter 'PDOs')

The legal context

3 Regulation No 2081/92 establishes a system of Community protection of designations of origin and geographical indications for agricultural products and foodstuffs.

4 Article 3(1) of Regulation No 2081/92 provides:

'Names that have become generic may not be registered.

For the purposes of this regulation, a "name that has become generic" means the name of an agricultural product or a foodstuff which, although it relates to the place or the region where this product or foodstuff was originally produced or

marketed, has become the common name of an agricultural product or a foodstuff.

...'

5 Article 4(1) of that regulation provides that '[t]o be eligible to use a protected designation of origin (PDO) or a protected geographical indication (PGI) an agricultural product or foodstuff must comply with a specification'. Paragraph 2 of that article lists the minimum particulars which are to be included in the product specifications.

6 Article 13(1) and (2) of Regulation No 2081/92 states:

'1. Registered names shall be protected against:

(a) any direct or indirect commercial use of a name registered in respect of products not covered by the registration in so far as those products are comparable to the products registered under that name or insofar as using the name exploits the reputation of the protected name;

(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;

(d) any other practice liable to mislead the public as to the true origin of the product.

Where a registered name contains within it the name of an agricultural product or foodstuff which is considered generic, the use of that generic name on the appropriate agricultural product or foodstuff shall not be considered to be contrary to (a) or (b) in the first subparagraph.

2. By way of derogation from paragraph 1(a) and (b), Member States may maintain national systems that permit the use of names registered under Article 17 for a period of not more than five years after the date of publication of registration, provided that:

— the products have been marketed legally using such names for at least five years before the date of publication of this Regulation,

— the undertakings have legally marketed the products concerned using those names continuously during the period referred to in the first indent,

— the labelling clearly indicates the true origin of the product.

However, this derogation may not lead to the marketing of products freely within the territory of a Member State where such names were prohibited.'

7 In addition to the normal registration procedure provided for in Articles 5 to 7, Regulation No 2081/92 establishes a simplified transitional procedure, set out in Article 17, which permits registration of designations of origin already protected under national law.

8 Article 17 of Regulation No 2081/92 thus provides:

'1. Within six months of the entry into force of the Regulation, Member States shall inform the Commission which of their legally protected names or, in those Member States where there is no protection system, which of their names established by usage they wish to register pursuant to this Regulation.

2. In accordance with the procedure laid down in Article 15, the Commission shall register the names referred to in paragraph 1 which comply with Articles 2 and 4. Article 7 shall not apply. However, generic names shall not be added.

3. Member States may maintain national protection of the names communicated in accordance with paragraph 1 until such time as a decision on registration has been taken.'

9 Applying that simplified procedure, the Italian Republic informed the Commission that it wished to register, *inter alia*, the name 'Parmigiano Reggiano'. The Commission effected that registration by including that name in the list of PDOs in the Annex to Commission Regulation (EC) No 1107/96 of 12 June 1996 on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Regulation No 2081/92 (OJ 1992 L 148, p. 1).

The main proceedings

10 Nuova Castelli SpA (hereinafter 'Castelli'), of which Mr Bigi is the person vested with legal representation, is a company which produces several types of cheese in Italy. As well as producing a cheese which conforms to the specification for the PDO 'Parmigiano Reggiano', it has, for some considerable time, produced a dried, grated pasteurised cheese in powder form, made from a mixture of several types of cheese of various origins, which does not comply with that specification and which may not therefore be sold in Italy. That second type of cheese, sold with a label bearing the word 'parmesan', is marketed exclusively outside Italy, *inter alia* in France.

11 On 11 November 1999, a quantity of that second type of cheese, packaged with that label bearing the word 'parmesan' and intended for export towards other Member States was seized at the premises of a distributor established in Parma. The seizure was made following a complaint by the Consorzio, a grouping of producers of cheese bearing the PDO 'Parmigiano Reggiano' which claimed damages in criminal proceedings brought against Mr Bigi in the Tribunale di Parma.

12 Mr Bigi is charged with fraudulent trading and selling industrial products with misleading indications by producing and marketing that cheese in those circumstances. Mr Bigi is also accused of having contravened the prohibition on using recognised designations of origin or typical designations, altering or partially modifying them by adding, even if indirectly, qualifying terms, such as 'type', 'purpose', 'taste' or similar expression.

13 In his defence, Mr Bigi relies on the provisions of Article 13(2) of Regulation No 2081/92 and contends that the Italian Republic is not entitled to prohibit producers established in Italy from manufacturing cheese which does not meet the requirements of the PDO 'Parmigiano Reggiano', where that cheese is intended to be exported for marketing in other Member States.

The questions referred for a preliminary ruling

14 Unsure of the correct interpretation of the Community legislation applicable, the Tribunale di Parma decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must Article 13(2) of Regulation No 2081/92 (as amended by Article 1 of Regulation (EC) No 535/97) be interpreted as meaning that no official measure of a legislative or administrative nature need be adopted by the Member State concerned in order to allow the use on its territory of designations which may be confused with those registered under Article 17 of Regulation No 2081/92?

2. Therefore, in order to allow use of the designations referred to above in the territory of the Member State concerned, is it sufficient that there is no opposition by that Member State to such use?

3. Does the lack of any opposition by the Member State in whose territory the designation which is open to confusion with one registered under Article 17 of Regulation No 2081/92 is used render lawful the use of that designation by an undertaking whose registered office is in the territory of the Member State in which the designation was registered, if that undertaking uses the designation which is open to confusion only for products intended to be sold outside the country of registration and only within the territory of the Member State which is not opposed to use of the said designation?

4. Does the period of five years referred to in Article 13(2) of Regulation No 2081/92 for use of a name in relation to a product whose designation was registered on 12 June 1996 (see Regulation No 1107/96, cited above) expire on 12 June 2001?

5. Therefore, is an undertaking whose registered office is in a Member State at whose request a protected designation of origin (PDO) has been registered in accordance with Article 17 of Regulation No 2081/92, which has used a designation that is open to confusion with the one registered uninterruptedly over the five years prior to the entry into force of Regulation No 2081/92 (24 July 1993), entitled to use the same designation to distinguish products which are intended to be sold only outside the Member State of registration and only in the territory of a Member State which has not opposed the use of that designation in the said territory?

6. If Question 5 is answered in the affirmative, may the undertaking whose registered office is in the Member State of registration of the protected

designation of origin legitimately describe its products by using the designation which is open to confusion with the one registered until the expiry of the fifth year following the date of registration of the protected designation (12 June 1996), in other words until 12 June 2001?

7. As from the day following the date indicated in Question 6 above (12 June 2001), must the use of any designation open to confusion with the one registered in all the Member States by any operator who is not expressly authorised to use the registered designation within the meaning of Regulation (EEC) No 2081/92 be regarded as prohibited.'

The admissibility of the questions referred for a preliminary ruling

15 The German Government contends that the reference for a preliminary ruling is inadmissible on the ground that the answer to the questions referred is not necessary for the decision in the main proceedings. The designation 'parmesan' used by Mr Bigi is, it argues, a generic name and not a PDO within the meaning of Regulation No 2081/92.

16 The name 'parmesan' is generic because it has become, in general, a name which on its own refers to a grated cheese or cheese intended for grating. Thus, it is argued, 'parmesan' has 'become the common name of ... a foodstuff' within the meaning of Article 3(1) of Regulation No 2081/92. The German Government refers *inter alia* to point 35 of the Opinion of Advocate General Ruiz-Jarabo Colomer in Case C-317/95 *Canadane Cheese Trading and Kouri* [1997] ECR I-4681, concerning the generic nature of the name 'parmesan cheese'.

17 The German Government argues that, since only the name 'Parmigiano Reggiano' has been registered, Community protection is confined to that name and only covers that precise formulation of the name registered. It adds that, according to the case-law of the Court of Justice, the protection of each of the constituent parts of a compound designation can be envisaged only if they are not generic or common terms (Joined Cases C-129/97 and C-130/97 *Chiciak and Fol* [1998] ECR I-3315, paragraph 37).

18 It is settled case-law that, in the context of the cooperation between the Court of Justice and the national courts established by Article 234 EC, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted by the national court concern the interpretation of Community law, the Court of Justice is, in principle, bound to give a ruling (see, for example, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 59).

19 However, the Court has also stated that, in exceptional circumstances, it can examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, for example, Case C-390/99 *Canal Satélite Digital* [2002] I-607, paragraph 19).

20 However, in the present case it is far from clear that the designation 'parmesan' has become generic. It is contended by all the governments which have submitted written observations in this case, apart from the German Government and, to a certain extent, the Austrian Government, and by the Commission that the French designation 'parmesan' is the correct translation of the PDO 'Parmigiano Reggiano'.

21 Against that background it cannot be argued that it is clear that the questions raised by the referring court are covered by one of the situations listed in the case-law cited at paragraph 19 of this judgment. It follows that the reference for a preliminary ruling is admissible.

The questions referred for a ruling

22 The questions referred for a preliminary ruling concern certain aspects of the system of derogations established by Article 13(2) of Regulation No 2081/92.

23 The products at issue in the main proceedings originate in the Member State which obtained the registration of the PDO ('the State of the PDO'), without, however, meeting the PDO requirements. It is the protection conferred by such registration under Article 13(1)(a) and (b) of Regulation No 2081/92 that is at issue. Consequently, the first question is whether that system of derogations can be applied to such products.

24 The scope of that system of derogations must therefore be determined. Account should be taken not only of the wording of Article 13(2) of Regulation No 2081/92 but also of the purpose of that provision in the general scheme of the regulation.

25 According to its wording, Article 13(2) of Regulation No 2081/92 provides for a system of derogations implementation of which depends on the desire of the Member State concerned to maintain, within its national territory and for a limited period, its previous national system and requires certain conditions to be fulfilled. Those conditions essentially require that an undertaking wishing to rely on the system of derogations should have legally marketed the products at issue for a specified period under the name that has since been registered and that the labelling should clearly indicate their true origin.

26 The second subparagraph of Article 13(2) of Regulation No 2081/92 provides, further, that this exception may not lead to the marketing of such products freely on the territory of a Member State where that name was prohibited.

27 Thus, Article 13(2) of Regulation No 2081/92 implements one of the objectives of Regulation No 2081/92, namely that of not abolishing with immediate effect the option of using names registered under Article 17 of Regulation No 2081/92 for products which do not meet the specification of the PDO concerned. As the third recital in the preamble to Regulation No 535/97 indicates, the Community legislature considered it necessary to grant an adjustment period in order not to prejudice producers who had been using such names for a long time.

28 However, as that recital also makes clear, such a transitional period should apply only to names registered under Article 17 of that regulation, that is to say to names, such as that in issue here, which have been registered under the simplified procedure. That procedure presupposes, *inter alia*, that the name which a Member State seeks to register should be legally protected in that Member State or, in Member States where there is no system of protection, validated through use.

29 In other words, the simplified procedure presupposes that, at the time when a Member State applies to register a name as a PDO, products which do not comply with the specification for that name cannot be marketed legally on its territory.

30 Accordingly, Regulation No 2081/92 must be interpreted as meaning that, once a name has been registered as a PDO, the system of derogations provided for by Article 13(2) of Regulation No 2081/92, in order to allow the continued use of that name under certain conditions and within certain limits, applies only to products not originating in the State of the PDO.

31 As the Advocate General observed in points 71 to 79 of his Opinion, that interpretation of Article 13(2) of Regulation No 2081/92 is consistent with the objectives of consumer protection and fair competition set out in the sixth and seventh recitals in the preamble to Regulation No 2081/92.

32 Thus, on a proper construction of Article 13(2) of Regulation No 2081/92, products are not covered by the system of derogations set up by Article 13(2)

where they originate in the State of the PDO the protection of which under Article 13(1)(a) and (b) of Regulation No 2081/92 is at issue and they do not meet the product specification for that PDO.

33 Accordingly, given that the system of derogations laid down by Article 13(2) of Regulation No 2081/92 does not apply to products such as those at issue here, there is no need to reply to the questions as put by the Tribunale di Parma.

34 In the light of those considerations, the answer to be given to the national court is that, on a proper construction of Article 13(2) of Regulation No 2081/92, products are not covered by the system of derogations set up by Article 13(2) where they originate in the State of the PDO the protection of which under Article 13(1)(a) and (b) of Regulation No 2081/92 is at issue and they do not meet the product specification for that PDO.

Costs

35 The costs incurred by the Italian, German, Greek, French, Austrian and Portuguese Governments and by the Commission, 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,

in answer to the questions referred to it by the Tribunale di Parma by order of 21 February 2000, hereby rules:

On a proper construction of Article 13(2) of Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, as amended by Council Regulation (EC) No 535/97 of 17 March 1997, products are not covered by the system of derogations set up by Article 13(2) where they originate in the State of the protected designation of origin the protection of which under Article 13(1)(a) and (b) of Regulation No 2081/92, as amended, is at issue and they do not meet the product specification for that protected designation of origin.

Rodríguez Iglesias Jann Macken

Colneric von Bahr Edward

Puissochet Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 25 June 2002.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President