Reports of Cases

OPINION OF ADVOCATE GENERAL
PITRUZZELLA
delivered on 29 April 2021 [1]

Case C-783/19

Comité Interprofessionnel du Vin de Champagne
v
GB

(Request for a preliminary ruling
from the Audiencia Provincial de Barcelona (Provincial Court, Barcelona, Spain))

(Reference for a preliminary ruling – Protection of geographical indications and designations of origin for agricultural products and foodstuffs – Services – Concept of evocation – Comparability between products – 'Champagne' PDO – Use of the name 'Champanillo' for catering services)

1. The request for a preliminary ruling which is the subject of this Opinion concerns the interpretation of Article 103 of Regulation (EU) No 1308/2013. [2]

2. That request was lodged in the context of a dispute between the Comité Interprofessionnel du Vin de Champagne ('CIVC') and GB concerning the use, in the course of trade, of the sign CHAMPANILLO to designate business premises used for catering activities.

I. Legal framework

3. Article 92(1) and (2) of Regulation No 1308/2013, in Section 2 of that regulation, provides as follows:

'1. Rules on designations of origin, geographical indications and traditional terms laid down in this Section shall apply to the products referred to in points 1, 3 to 6, 8, 9, 11, 15 and 16 of Part II of Annex VII. [3]

2. The rules referred to in paragraph 1 shall be based on:

(a) protecting the legitimate interests of consumers and producers;

[1] Original language: Italian.

[2] Regulation of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

[3] These consist of grapevine products. Point 5 of Part II of Annex VII to Regulation No 1308/2013 defines the characteristics of 'quality sparkling wine', a category that includes champagne.

(b) ensuring the smooth operation of the internal market in the products concerned; and

(c) promoting the production of quality products referred to in this Section, whilst allowing national quality policy measures.'

4. Under Article 93(1)(a) of that regulation:

'1. For the purposes of [Section 2 of Regulation No 1308/2013], the following definitions shall apply:

(a) "a designation of origin" means the name of a region, a specific place or, in exceptional and duly justifiable cases, a country used to describe a product referred to in Article 92(1) fulfilling the following requirements:

(i) the quality and characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;

(ii) the grapes from which the product is produced come exclusively from that geographical area;

(iii) the production takes place in that geographical area; and

(iv) the product is obtained from vine varieties belonging to *Vitis vinifera* …'

5. Article 103(2) of that regulation, entitled 'Protection', provides:

'A protected designation of origin [(PDO)] and a protected geographical indication [(PGI)], as well as the wine using that protected name in conformity with the product specifications, shall be protected against:

(a) any direct or indirect commercial use of that protected name:

(i) by comparable products not complying with the product specification of the protected name; or

(ii) in so far as such use exploits the reputation of a designation of origin or a geographical indication;

(b) any misuse, imitation or evocation, even if the true origin of the product or service is indicated or if the protected name is translated, transcripted or transliterated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar;

…'

6. In accordance with the first sentence of Article 104 of Regulation No 1308/2013, 'the Commission shall establish and maintain an electronic register of [PDOs] and [PGIs] for wine which shall be publicly accessible.'

7. Under Article 107(1) of Regulation No 1308/2013, certain PDOs of wines existing before the entry into force of that regulation are automatically protected under the regulation and listed in the register provided for in Article 104 of the regulation. The name 'Champagne' is a PDO within the meaning of Article 93(1)(a) of Regulation No 1308/2013, registered at EU level [4] and protected under Article 107(1) of that regulation as it existed before the entry into force of that regulation. This designation is reserved for quality sparkling wine (white or rosé) as defined in point 5 of Part II of Annex VII to Regulation No 1308/2013, produced, in accordance with the requirements set out in the product specification, in certain areas or villages in the French departments of Marne and Aube and in the Grand Est region.

II. The dispute in the main proceedings, the questions referred for a preliminary ruling and the procedure before the Court of Justice

8. The CIVC, the appellant in the main proceedings, is a semi-public organisation with legal personality, recognised under French law and responsible for safeguarding the interests of champagne producers. The CIVC brought an action before the Juzgado Mercantil de Barcelona (Commercial Court, Barcelona, Spain) seeking an order requiring GB, the respondent in the main proceedings, to cease use of the sign CHAMPANILLO, including on social media (Instagram and Facebook), to remove any insignia or advertising or commercial document featuring that sign from the market and from the internet, and to cancel the domain name 'champanillo.es'. GB appeared before the court claiming that the sign CHAMPANILLO is used as a trade name for catering premises (tapas bars situated in the Autonomous Community of Catalonia), and that there was no likelihood of confusion with the products covered by the name 'Champagne' and no intention of taking unfair advantage of the reputation of that name.

9. The Juzgado Mercantil de Barcelona (Commercial Court, Barcelona) rejected all of the CIVC's claims. It held that the use of the sign CHAMPANILLO did not constitute an evocation in breach of the 'Champagne' PDO, since it was intended to designate not an alcoholic beverage but catering premises – where champagne is not sold – and therefore products other than those protected by the PDO and targeting a different market. In the grounds of that judgment, the Juzgado Mercantil de Barcelona (Commercial Court, Barcelona) referred to the guidance provided by the Tribunal Supremo (Supreme Court, Spain) in a 2016 judgment, in which it was ruled that the use of the term CHAMPÌN to market a non-alcoholic fizzy fruit drink consumed at children's parties did not infringe the 'Champagne' PDO on account of the difference between the products concerned and their target market, despite the phonetic similarity between the two signs. [5]

10. The CIVC appealed against the judgment of the Juzgado Mercantil de Barcelona (Commercial Court, Barcelona) before the Audiencia provincial de Barcelona (Provincial Court, Barcelona, Spain). The Provincial Court explains that: (i) GB has twice attempted to register the sign CHAMPANILLO as a trade mark with the Spanish patent office and that those applications were rejected, by decisions of 8 February 2011 and of 14 April 2015, following opposition from the CIVC; (ii) GB uses the image of two champagne coupes containing a sparkling beverage as a graphic medium to advertise its premises; (iii) the CIVC produced documents certifying that, until 2015, GB solda sparkling wine [6] called 'Champanillo' on its premises and that sales ceased only following action taken by the CIVC.

4 Ref. PDO-FR-A1359.

5 Judgment of 1 March 2016 (ECLI:ES:TS:2016:771).

6 The order for reference uses both the terms 'beverage' and 'wine'.

11. The referring court notes that both Article 13 of Regulation No 510/2006[7] and Article 103 of Regulation No 1308/2013 protect PDOs in relation to products, with the sole exception of Article 103(2)(b) which also mentions services. The referring court states that it has doubts as to the scope and correct interpretation of the provisions of EU law on the protection of a PDO in a situation where the sign allegedly in conflict with that name is used in the course of trade to designate not goods but services.

12. In those circumstances, the Audiencia Provincial de Barcelona (Provincial Court, Barcelona) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the scope of protection of [a] designation of origin make it possible to protect that designation of origin not only as against similar products but also as against any services which may be associated with the direct or indirect distribution of those products?

(2) Does the risk of infringement by evocation, to which the articles in question of the Community regulations refer, necessitate in the first instance a nominal analysis[,] to determine the effect that this has on the average consumer, or[,] in order to examine that risk of infringement by evocation[,] is it necessary to establish first of all that the products at issue are the same or similar or are complex products whose components include a product protected by a designation of origin?

(3) Must the risk of infringement by evocation be defined using objective criteria when the names are exactly the same or highly similar or must that risk be calibrated by reference to the products and services which evoke and are evoked in order to conclude that the risk of evocation is tenuous or irrelevant?

(4) In cases where there is a risk of evocation or exploitation, is the protection provided for in the legislation referred to specific protection related to the special features of the products concerned or must the protection be connected to the provisions on unfair competition?'

13. Observations were submitted pursuant to Article 23 of the Statute of the Court of Justice by the CIVC, the French and Italian Governments and the European Commission. As a measure of organisation of procedure within the meaning of Article 61(1) of the Rules of Procedure of the Court of Justice, the Court invited the parties to the main proceedings and interested parties within the meaning of Article 23 of the Statute of the Court of Justice to reply in writing to specific questions. The CIVC, GB, the French and Italian Governments and the Commission complied with that measure.

III. Analysis

A. Preliminary observations

14. Before examining the questions referred for a preliminary ruling, it is necessary to provide some clarification as regards the legal framework set out in the order for reference.

[7] Council Regulation (EC) 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).

15. In the first place, it is apparent from that order for reference that the Audiencia provincial de Barcelona (Provincial Court, Barcelona) considers both the bilateral Convention between the French Republic and the Spanish State of 27 June 1973 on the protection of designations of origin, indications of provenance and names of certain products [8] and, by virtue of that convention, Decree No 2010-1441 of 22 November 2010 on the protected controlled designation of origin 'Champagne' [9] and Article L 643-1 of the French Rural Code to be applicable to the dispute in the main proceedings. [10] According to the referring court, those provisions of French law should be 'integrated' with the applicable provisions of EU law.

16. However, as the Commission correctly pointed out in its written observations, the Court of Justice has previously ruled, in relation to Regulation No 1234/2007 [11] (repealed and replaced with effect from 20 December 2013 by Regulation No 1308/2013), that the system of protection for designations of origin established under EU law is 'uniform and exclusive' and precludes both the application of a national system of protection for geographical indications that are protected under that law [12] and a system of protection laid down by agreements between two Member States. [13]

17. In the second place, although the Audencia provincial de Barcelona (Provincial Court, Barcelona) does not expressly refer to any specific provision of EU law on the protection of PDOs in the wording of the questions referred for a preliminary ruling, in the grounds of the order for reference it refers, as we have seen, not only to Article 103 of Regulation No 1308/2013, but also to Article 13 of Regulation No 510/2006. [14] Nevertheless, the second subparagraph of Article 1(1) of that latter regulation [15] specifically excludes grapevine products from its scope. Therefore, neither Regulation No 510/2006 nor Regulation No 1151/2012, which replaced it, apply to the dispute in the main proceedings.

18. Nevertheless, since the provisions on the protection of geographical indications contained in the various sectoral regulations are worded in broadly identical terms, the Court has consistently held that the principles developed in the context of the interpretation of individual systems of protection may be applied horizontally. [16]

8 JORF, 18 April 1975, p. 4011.

9 JORF No 0273, 25 November 2010, Text No 8.

10 I note that the referring court supported the legislative references on which the CIVC's action at first instance was based.

11 Council Regulation (EC) of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1).

12 See judgment of 14 September 2017, *EUIPO* v *Instituto dos Vinhos do Douro e do Porto* (C-56/16 P, EU:C:2017:693, paragraphs 96, 101 and 103).

13 See, to that effect, judgment of 14 September 2017, *EUIPO* v *Instituto dos Vinhos do Douro e do Porto* (C-56/16 P, EU:C:2017:693, paragraphs 99 to 102). In that judgment, the Court refers to its judgment of 8 September 2009, *Budějovický Budvar* (C-478/07, EU:C:2009:521, paragraph 107 et seq.), in which the Court was called upon to rule on the application of an agreement between two Member States on the basis of which a geographical indication registered in one Member State, but not at European level, was still recognised and protected in the other Member State. In its judgment of 14 September 2017, *EUIPO* v *Instituto dos Vinhos do Douro e do Porto* (C-56/16 P, EU:C:2017:693, paragraphs 99 to 102), the Court applied the same reasoning in a context where the designation of origin was registered at EU level.

14 Now Article 13 of Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs (OJ 2012 L 343, p. 1). This regulation repealed and replaced Regulation No 510/2006 with effect from 3 January 2013.

15 Now Article 2(2) of Regulation No 1151/2012.

16 See, on the need to interpret the provisions of EU law on the protection of registered geographical names and indications which form part of the EU's horizontal quality policy in such a way as to ensure that those provisions are applied consistently, judgment of 20 December 2017, *Comité Interprofessionnel du Vin de Champagne* (C-393/16, EU:C:2017:991, paragraph 32; '*CIVC*').

19. Lastly, as regards the application *ratione temporis* of EU law, although there is no express reference to that effect in the order for reference, it is clear that the conduct targeted by the CIVC's action was, at least in part, committed after the entry into force of Regulation No 1308/2013. It follows, therefore, that the questions referred for a preliminary ruling must be interpreted as seeking an interpretation of Article 103(2) of Regulation No 1308/2013. Furthermore, although this aspect is not explicitly stated in the order for reference, it is possible that some of the offences allegedly committed by GB in breach of the 'Champagne' PDO were initiated while Regulation No 1234/2007 was still in force. Accordingly, although I will refer only to Article 103(2)(b) of Regulation No 1308/2013 in the examination of the questions referred for a preliminary ruling, the answers I will propose to those questions also apply to the interpretation of Article 118m of Regulation No 1234/2007, as amended by Regulation No 491/2009,[17] which is worded in substantially identical terms.

B. The first question referred for a preliminary ruling

20. By its first question referred for a preliminary ruling, the referring court asks, in essence, whether PDOs are protected only against practices which relate to products which are identical or comparable to those designated by the PDO in question, or whether they are also protected against practices relating to services connected with the direct or indirect distribution of those products.

21. The question is formulated in broad terms, covering all practices prohibited under Article 103(2) of Regulation No 1308/2013.

22. However, it is apparent both from the file in the main proceedings[18] and from the wording of the second and third questions referred and the grounds of the order for reference, that the doubts of the Audiencia provincial de Barcelona (Provincial Court, Barcelona) and the case before that court relate specifically to the protection against evocation provided for in paragraph 2(b) of that article.

23. Nevertheless, in their written observations, both the CIVC and the Commission also expressly referred to subparagraph (a) of that paragraph, while the French Government examined the first question for a preliminary ruling with regard to all conduct prohibited under Article 103(2) of Regulation No 1308/2013, including the practices referred to in subparagraphs (c) and (d) of that provision.[19]

24. As a measure of organisation of procedure, the Court asked the parties and interested parties referred to in Article 23 of the Statute to comment on the possibility of applying Article 103(2)(a)(ii) of Regulation No 1308/2013 – a provision prohibiting the direct or indirect commercial use of the protected name which exploits the reputation of that protected name – to the dispute in the main proceedings. The question asked by the Court specifically referred to paragraph 31 of the judgment of 7 June 2018, *Scotch Whisky Association*[20] ('*Scotch Whisky Association*'), in which, in ruling on the interpretation of Article 16(a) of Regulation

[17] Council Regulation (EC) of 25 May 2009 amending Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ 2009 L 154, p. 1).

[18] It is clear from the CIVC's written observations that the action brought against GB challenges the latter's alleged unlawful evocation of the 'Champagne' PDO.

[19] I note, however, that the CIVC, the French and Italian Governments and the Commission all formulate their answers to the first question by referring in general terms to the protection of PDOs or to Article 103 of Regulation No 1308/2013.

[20] C-44/17, EU:C:2018:415.

No 110/2008,[21] the Court stated that 'for a situation to be covered by [that provision], the disputed sign must use the registered geographical indication in an identical form or at least in a form that is phonetically and/or visually highly similar'.

25. There is no doubt that the 'Champagne' PDO and the disputed sign, CHAMPANILLO, have a certain degree of phonetic and visual similarity, particularly if the comparison is made taking into account the Spanish word for champagne, 'Champán'.[22] Except for the accent, that word is reproduced in its entirety and is immediately perceptible both visually and phonetically in the disputed name. It is reasonable, therefore, to ask, in order to ascertain the scope of the first question referred, whether Article 103(2)(a)(ii) of Regulation No 1308/2013 applies to a situation such as the one in the main proceedings – in other words, whether the use of the disputed sign could constitute 'use' of the 'Champagne' PDO within the meaning of that provision.[23]

26. However, like the Commission, I am inclined to answer this question in the negative and to take the view that the conduct contested by the CIVC should be examined only in the light of Article 103(2)(b) of Regulation No 1308/2013.

27. Although it is true that the concept of 'use' of a protected geographical indication within the meaning of Article 103(2)(a) of that regulation may also include the use, in the disputed sign, of such an indication 'in a form that is phonetically and/or visually highly similar',[24] the clarification given by the Court in *Scotch Whisky Association* suggests that in order for such use to be found, the conflicting signs must be highly similar and almost identical. In paragraph 29 of that judgment, the Court clarified that the scope of that provision covered the use of the protected geographical indication 'in a form with such close links to it, in visual and/or phonetic terms, that the disputed sign clearly cannot be dissociated from it'.

28. However, the comparison between the signs at issue in the case in the main proceedings does not, in my view, satisfy that test. Specifically, the situation at issue in the main proceedings differs from the situation at issue in the case which gave rise to the judgment in *CIVC*, which also involved the reproduction, as part of a product name, of a translation of the 'Champagne' PDO. In that case, the word 'Champagner' (the German word for 'Champagne') was used on its own in the disputed name, albeit followed by the word 'Sorbet'. By contrast, the disputed sign in the main proceedings differs substantially, both visually and phonetically, from the Spanish name 'Champàn' owing to the addition of the suffix 'illo'.

[21] Regulation (EC) 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). Article 16(a) of Regulation No 110/2008 is similar in content to Article 103(2)(a) of Regulation No 1308/2013, but differs from it in so far as, unlike the latter provision, it specifies direct or indirect commercial use 'in respect of products not covered by the registration'. Notwithstanding this difference, the Court's interpretation of the term 'use' in paragraphs 29 to 31 of *Scotch Whisky Association* is applicable to the concept of 'use' in Article 103(2)(a) of Regulation No 1308/2013.

[22] I would point out here that in *CIVC*, paragraphs 34 and 35, the Court held that Article 118m(2)(a)(ii) of Regulation No 1234/2007 and Article 103(2)(a)(ii) of Regulation No 1308/2013 applied to a situation in which the disputed name contained not the PDO as such (in this case, 'Champagne'), but its German translation ('Champagner').

[23] If Article 103(2)(a)(ii) of Regulation No 1308/2013 were to be regarded as applicable to the facts of the main proceedings, GB's conduct would probably be categorised, in part, as 'direct commercial use' within the meaning of that provision (for example, the use of the sign 'Champanillo' to designate a sparkling wine/beverage served on its premises or as a logo for its catering services) and, in part, as 'indirect commercial use' (for example, the use of that sign in advertising and on social media). I would point out here that, in paragraph 32 of *Scotch Whisky Association*, the Court stated, with regard to Article 16(a) of Regulation No 110/2008, that 'direct' use implies that the protected geographical indication is affixed directly to the product concerned or its packaging (or, where the use for services is permitted, that that indication is used to identify those services), while 'indirect' use requires the indication to feature in supplementary marketing or information sources, such as an advertisement for that product or documents relating to it. That interpretation is applicable to the concepts of 'direct use' and 'indirect use' within the meaning of Article 103(2)(a)(ii) of Regulation No 1308/2013.

[24] See, by analogy, *Scotch Whisky Association*, paragraph 31.

29. I note, however, that such an addition seems, conversely, to render the name 'Champagne' and the disputed sign conceptually very similar, if not identical, if – as the case file suggests – the word 'Champanillo' literally means 'little champagne' and corresponds roughly, in Italian, to the slang term 'champagnino' ('petit champagne', in French). In my view, this strongly supports the finding that the practices complained of come within the scope of Article 103(2)(b) of Regulation No 1308/2013, which, as will be seen below, covers situations in which the relevant consumer makes an association between the disputed sign and the product covered by the PDO. [25]

30. Lastly, I note that, in ruling on the interpretation of Article 13(1) of Regulation No 1151/2012, which is worded along the same lines as Article 103(2) of Regulation No 1308/2013, the Court recognised that that provision contains a graduated list of prohibited conduct and that the scope of Article 13(1)(a) of Regulation No 1151/2012 must necessarily be distinguished from the scope of other rules on the protection of registered names and in particular that of subparagraph (b). [26] However, an excessively broad interpretation of the concept of 'use' within the meaning of Article 103(2)(a)(ii) of Regulation No 1308/2013, including situations where the alleged unlawful practice consists of the use of the protected name in a form that does not substantially correspond to the one registered, is likely to blur the boundaries between the cases covered by that provision and those within the scope of Article 103(2)(b) of that regulation, making it hard to distinguish between them.

31. That said, the answer to the first question referred for a preliminary ruling, as set out above, does not, in my view, pose any particular difficulties.

32. The wording of Article 103(2)(b) of Regulation No 1308/2013 expressly indicates that PDOs are protected against any 'misuse, imitation or evocation, even if the true origin of the product or *service* is indicated'. [27] There is no doubt, both from a syntactic point of view and in keeping with the internal logic of the rule, that that provision refers to the origin of the goods or services covered by the disputed sign. This is undeniable, as the Italian Government correctly points out, since, according to the definition contained in Article 93(1)(a) of Regulation No 1308/2013, PDOs describe a product within the meaning of Article 92(1) of that regulation, and therefore cannot be registered for services.

33. The literal interpretation of Article 103(2)(b) of Regulation No 1308/2013 thus suggests that PDOs are protected against the practices coming within its scope, even where those practices relate to services.

34. This is further supported by a teleological interpretation of that provision.

35. The Court has recognised that Regulation No 1308/2013 constitutes an instrument of the common agricultural policy aimed, inter alia, at preventing improper use of those designations by third parties seeking to profit from the reputation which those products, bearing a geographical indication registered under that regulation, have acquired by their quality. [28]

[25] See, by analogy, *Scotch Whisky Association*, paragraph 33.

[26] See judgment of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043, paragraphs 24 and 25).

[27] Emphasis added.

[28] See, as regards Regulation No 1234/2007, judgment of 14 September 2017, *EUIPO* v *Instituto dos Vinhos do Douro e do Porto* (C-56/16 P, EU:C:2017:693, paragraph 82), and *CIVC*, paragraph 38.

36. Article 103(2) of that regulation therefore provides for wide-ranging protection which, according to the first sentence of recital 97 of that regulation, is designed to extend to all 'uses which take advantage of the reputation enjoyed by complying products' covered by one of those indications.

37. More specifically, subparagraph (b) of Article 103(2) prohibits any practice aimed at taking undue advantage of the reputation of a PDO (or PGI) through association with it.

38. In that context, an interpretation of Article 103(2)(b) of Regulation No 1308/2013 which does not grant protection to a PDO where the disputed sign designates a service and not a product would not only be inconsistent with the broad scope granted by the Court to the protection of registered geographical indications, but would, as the Italian Government correctly observed, prevent the protection objective laid down in the first sentence of recital 97 of that regulation from being fully attained. The reputation of a product covered by a PDO is liable to be exploited not only where the practice prohibited by Article 103(2)(b) of Regulation No 1308/2013 relates to a product, but also where it concerns a service.

39. Therefore, in order to meet the objectives set out in Regulation No 1308/2013, that provision should also apply in cases where the PDO is evoked in the context of marketing a service. That conclusion also clearly emerges from the second sentence of recital 97 of that regulation – to which both the CIVC and the French and Italian Governments and the Commission refer – which states that 'to promote fair competition …, that protection [of PDOs and PGIs] should also extend to products and services not covered by [that] Regulation, including those not found in Annex I to the Treaties'.[29] It should further be noted that, with specific reference to protected designations of origin and geographical indications of wines, recital 92 of that regulation encourages alignment with the approach followed by the European Union's horizontal quality policy set out in Regulation No 1151/2012. In turn, recital 32 of Regulation No 1151/2012, in stating that 'protection of designations of origin and geographical indications should be extended to the misuse, imitation and evocation of the registered names on goods as well as on services' expressly refers to the need to ensure a 'high level of protection and to align that protection with that which applies to the wine sector'.

40. On the basis of all the foregoing considerations, I therefore propose that the Court answer the first question referred for a preliminary ruling by holding that Article 103(2)(b) of Regulation No 1308/2013 must be interpreted as meaning that acts of misuse, imitation or evocation of a PDO which relate to services may also come within the scope of that provision.

41. Before continuing my analysis, I wish to clarify – in the event that the Court should decide not to limit the answer to the first question referred for a preliminary ruling to the sole interpretation of Article 103(2)(b) of Regulation No 1308/2013 – that the same scope that I propose the Court confer on that provision should, in my opinion, also be recognised in respect of Article 103(2)(a)(ii) of that regulation.

42. First, the wording of that provision, by referring to '*any* direct or indirect commercial *use*',[30] prevents its scope from being confined to the use of products only, to the exclusion of services. Moreover, in specifying that the prohibition applies 'in so far as such use exploits the reputation of a designation of origin or a geographical indication', that provision specifically emphasises the effects of the use, and not a particular type of use. Second, the same considerations regarding the

[29] These are products covered by Articles 39 to 44 TFEU on the common agricultural policy.

[30] Emphasis added.

objectives of Regulation No 1308/2013 and the scope of protection afforded by that regulation to geographical indications registered in accordance with its provisions, set out in points 35 and 36 of this Opinion, also apply for the purposes of a teleological interpretation of Article 103(2)(a)(ii) of that regulation. [31]

C. The second and third questions referred for a preliminary ruling

43. By its second and third questions referred for a preliminary ruling, which should be dealt with together, the referring court asks, in essence, what criteria are to be applied when assessing whether there is an evocation within the meaning of Article 103(2)(b) of Regulation No 1308/2013. Specifically, the Audiencia provincial de Barcelona (Provincial Court, Barcelona) is uncertain what role should be assigned, in that assessment, to the comparison between the product covered by the PDO and the product (or service) in relation to which the disputed sign is used, and whether it is necessary first to establish whether those products (or the PDO product and the service in question) are identical or similar or whether another type of link exists between them.

44. In that regard I note, first, that although Article 103(2)(a) of Regulation No 1308/2013 specifies that the direct or indirect use of a PDO is prohibited both in so far as it concerns 'comparable products' not complying with the product specification (subparagraph (a)(i)) and in so far as such use exploits the reputation of the PDO (subparagraph (a)(ii)), Article 103(2)(b) does not contain any indication either that the protection against evocation is limited solely to cases where the products covered by the PDO and the products or services for which the disputed sign is used are 'comparable' or 'similar', or that that protection extends to cases where that sign refers to products and/or services which are different from those covered by the PDO. [32] Second, the concept of 'similarity of the goods' as applied in trade mark law, [33] to which the referring court seems to refer, appears to be unrelated to the protection of geographical indications, where, as has been seen, the concept of 'comparability between products' is more relevant [34] – a concept that, it seems, must be interpreted in more restrictive terms. [35]

45. In that context, contrary to the apparent assertions of the CIVC and the French Government, I do not consider the clarification provided by the Court, according to which registered names are protected against evocation regardless of whether there is a likelihood of confusion, [36] to be of decisive importance for determining whether the scope of that protection should be regarded as

[31] See *CIVC*, paragraph 31. In that regard, that protection also extends to dissimilar products; see, by analogy, judgment of 12 June 2007 *Budějovický Budvar* v *OHMI – Anheuser-Busch (BUDWEISER)* (T-53/04 to T-56/04, T-58/04 and T-59/04, not published, EU:T:2007:167, paragraph 175).

[32] For an alternative view, see judgment of 12 June 2007, *Budějovický Budvar* v *OHMI – Anheuser-Busch (BUD)* (T-60/04 to T-64/04, not published, EU:T:2007:169, paragraphs 164 to 169, especially paragraph 166).

[33] See judgment of 29 September 1998, *Canon*, C-39/97 (EU:C:1998:442, paragraph 23).

[34] Article 103(2)(a)(i) of Regulation No 1308/2013. Incidentally, I note that similar concepts such as, for example, 'product of the same type' also feature in the provisions of EU regulations on geographical indications relating to absolute grounds for refusal of registration of trade marks in the event of a conflict with a PDO or PGI (see, for example, Article 14(1) of Regulation No 1151/2012). These concepts are interpreted uniformly by the European Union Intellectual Property Office (EUIPO), see Guidelines for Examination of European Union Trade Marks, Part B 'Examination', Section 4 'Absolute grounds for refusal', Chapter 10 'Trade marks in conflict with geographical indications', p. 618.

[35] See judgment of 14 July 2011, *Bureau national interprofessionnel du Cognac* (C-4/10 and C-27/10, EU:C:2011:484, paragraph 55). For a broader interpretation regarding the concept of 'same type of product' referred to in Article 14(1) of Regulation No 2081/92, see judgment of 2 February 2017, *Mengozzi* v *EUIPO – Consorzio per la tutela dell'olio extravergine di oliva toscano (TOSCORO)* (T-510/15, EU:T:2017:54, paragraph 44), according to which it is sufficient for the product concerned to share some common characteristics with the product which is the subject of the geographical indication.

[36] See, by analogy, judgments of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola* (C-87/97, EU:C:1999:115, paragraph 26), and of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 45).

limited to products and/or services that are comparable to the PDO product. Indeed, a likelihood of confusion may be ruled out – for example, in the cases expressly provided for in Article 103(2)(b) of Regulation No 1308/2013, where the origin of the product or service is indicated or where terms such as 'method' or 'imitation' are used – even where the products covered by the PDO and the products or services to which the disputed sign applies are identical or comparable.

46. That being so, although there is no doubt that the 'natural' scope, so to speak, of the protection of PDOs against evocation consists of situations where, because the products covered by the protected name are identical or comparable to the products or services identified by the disputed sign, the use of the latter sign allows its holder to appropriate the typical qualities recognised in the PDO products, it is apparent, as we have seen,[37] from the same preamble to Regulation No 1308/2013, and clearly stated in the case-law of the Court, that protected designations of origin are, in general, protected against any exploitation of the reputation of the products they cover.

47. As I observed in my Opinion in *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:11, point 17), protection against evocation constitutes a kind of *sui generis* protection, not governed by the criterion of being misleading – which presupposes that the sign that conflicts with the registered name is likely to mislead the public as to the geographical origin or the quality of the product – and not affording protection simply based on the likelihood of confusion. Its main objective is to protect the traditional quality and reputation of protected designations against parasitic acts.

48. Whether there is evocation should thus be assessed on the basis of criteria which are specific to the protection afforded to DPOs and geared to achieving the objectives of the EU's quality legislation.

49. The Court has progressively clarified the criteria for such an assessment. For example, it has ruled that the concept of 'evocation' covers a situation in which 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 designation is protected'.[38]

50. However, in *Scotch Whisky Association*, with reference to Article 16(b) of Regulation No 110/2008, the Court held that neither the partial incorporation of a registered name in the disputed name nor the identification of a phonetic and visual similarity between the former and the latter are essential requirements for establishing that there is an evocation.[39] There may also be an evocation as a result of the mere 'conceptual proximity' between the registered name and the disputed sign.[40] Accordingly, it is not sufficient for the disputed element of the sign at issue to evoke in the relevant public some kind of association with the registered name or its geographical area. Instead, there has to be a 'sufficiently clear and direct link' between that element and the registered name.[41]

[37] See points 35 to 37 of this Opinion.

[38] See, by analogy, judgments of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola* (C-87/97, EU:C:1999:115, paragraph 25); of 26 February 2008, *Commission* v *Germany* (C-132/05, EU:C:2008:117, paragraph 44); and of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 21).

[39] *Scotch Whisky Association*, paragraphs 46 and 49.

[40] *Scotch Whisky Association*, paragraph 50.

[41] *Scotch Whisky Association*, paragraph 53.

51. According to the Court, the decisive criterion for determining whether there is an 'evocation' of a PDO within the meaning of Article 103(2) of Regulation No 1308/2013 and of the corresponding provisions of the regulations governing the various EU quality schemes is, therefore, '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'. [42] The Court also clarified that an evocation is also possible where the disputed element is not a name but a figurative sign, which, on account of its conceptual proximity to the registered name, is capable of triggering directly and unequivocally in the consumer's mind the image of products whose designation is protected. [43]

52. It is true that the Court developed the abovementioned principles in relation to situations where the products covered by the registered name and the products covered by the disputed sign were broadly comparable.

53. However, in gradually defining the criteria for assessing the existence of an evocation, the Court has placed increasing emphasis on the mental association between the disputed sign and the product covered by the PDO or PGI. In this context, the similarity between the products in question, both materially and in terms of their physical appearance, was treated as a factor in assessing the ability of the phonetic, visual and conceptual similarities identified between the signs at issue to trigger the necessary mental association, rather than as a prerequisite for determining the existence of an evocation. [44]

54. More generally, as I observed in my Opinion in *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego*, [45] it is apparent from the Court's case-law [46] that the analysis as to whether there is an evocation must take into account any implicit or express reference to the registered name, whether they be word or figurative elements included on the label of the ordinary product [47] or that appear on its packaging, or elements concerning the form or presentation to the public of that product. [48] This analysis must also consider whether the products in question are identical or the degree of similarity between the products and the way they are marketed, including their respective sales channels, and elements that make it possible to establish whether the reference to the product covered by the registered name was intentional or, conversely, unintentional. Establishing whether an evocation exists thus requires an assessment of a set of indications, without the presence or absence of any one such indication being sufficient on its own to establish or rule out the existence of evocation.

[42] See, by analogy, *Scotch Whisky Association*, paragraph 51, and judgments of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:344, paragraph 20), and of 17 December 2020 *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043, paragraph 26).

[43] See judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:344, paragraph 21). See also judgment of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043, paragraph 27).

[44] See, for example, judgment of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraphs 33 and 35).

[45] C-614/17, EU:C:2019:11, point 29.

[46] See, in particular, judgments of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola* (C-87/97, EU:C:1999:115, paragraphs 27 and 28); of 26 February 2008, *Commission* v *Germany* (C-132/05, EU:C:2008:117, paragraphs 46 and 47); of 14 July 2011, *Bureau national interprofessionnel du Cognac* (C-4/10 and C-27/10, EU:C:2011:484, paragraph 57); and of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraphs 33, 35, 37).

[47] These products are not covered by a protected geographical indication or designation.

[48] In that regard, I would point out that, in its judgment of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:344, paragraph 27), the Court specified, with reference to Article 13(1)(a) to (d) of Regulation No 510/2006, that the graduated list of prohibited conduct contained in that regulation relates to the nature of the prohibited conduct and not to the factors to be taken into consideration when determining whether either situation applies.

55. On the basis of the foregoing, I do not believe a preliminary assessment of whether the product covered by a PDO or a PGI and the product (or service) covered by the disputed sign – or the former and a characteristic ingredient of the latter [49] – are identical or comparable is required in order to exclude a priori an evocation within the meaning of Article 103(2)(b) of Regulation No 1308/2013.

56. Nevertheless, the issue of whether or not the products are identical or comparable must be taken into consideration in order to assess, when examining all the relevant circumstances, whether the conditions for evocation are in fact satisfied. The fact that those products have objective characteristics in common, that they are consumed on occasions which are largely identical, or have a similar appearance, and also that they are in competition with each other or are complementary, [50] is therefore relevant to the assessment, as is the fact that, where the disputed sign relates to a service, this is linked to the distribution of the product covered by the registered name or of an identical or comparable product.

57. In the light of the questions asked by the referring court, it is necessary to provide some further clarification on the concept of the relevant consumer in evocation cases and as regards whether evocation can be calibrated. Some guidance on the application of the abovementioned principles to the case in the main proceedings will be provided below.

1. The relevant public

58. As we have seen, since the finding of an evocation prohibited under Article 103(2) of Regulation No 1308/2013 does not require proof of a likelihood of confusion, the relevant public, whose perception is important for the purpose of assessing whether the disputed sign is capable of triggering an unlawful association with the registered name, does not – contrary to the conclusion reached by the Juzgado Mercantil de Barcelona (Commercial Court, Barcelona) in the judgment appealed before the referring court – consist solely of the group of persons for whom the products covered by that name are intended.

59. In the light, in particular, of the objectives of the protection of fair competition and consumer protection pursued by the PDO and PGI protection mechanisms, the Court has clarified that, in cases concerning the existence of an evocation of such designations, the national court is required to refer to the perception of an 'average consumer, who is reasonably well informed and reasonably observant and circumspect' [51] and that, in view of the need to ensure effective and uniform protection of those designations throughout the territory of the European Union, that concept covers European consumers [52] – and not only, as GB mistakenly seems to believe, consumers of the Member State in which the product (or service) giving rise to the evocation of the registered name is manufactured (or provided). [53]

[49] This is the situation under examination by the Court in the case that gave rise to the judgment in *CIVC*, which the referring court implicitly refers to in the wording of the second question referred for a preliminary ruling.

[50] See, to that effect, judgment of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 37).

[51] See, by analogy, judgment of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraphs 22 to 26).

[52] See judgments of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 27), and of 2 May 2019, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:344, paragraphs 47 to 50); see also *Scotch Whisky Association*, paragraph 59.

[53] See judgment of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 27).

2. The question of whether evocation can be calibrated

60. In its third question referred for a preliminary ruling, the referring court refers to the possibility of calibrating the 'risk of evocation', particularly in the light of the comparison between the products evoked and the products and services which evoke, and of excluding from the scope of Article 103(2)(b) of Regulation No 1308/2013 cases where that risk is tenuous or irrelevant.

61. In this respect, I explained above that the assessment to be conducted under that provision must be made in the light of all the relevant factors, which include whether the products at issue (or the products covered by the registered name and the service covered by the disputed sign) are comparable, without a lack or low degree of comparability automatically precluding the existence of an evocation.

62. That being so, if the national court, which is responsible for conducting that assessment,[54] relying on the presumed reaction of the consumer,[55] concludes that when the consumer is confronted with the disputed sign, the 'image triggered directly in his mind' is that of the product covered by the registered name, the use of that sign is caught by the prohibition under Article 103(2)(b) of Regulation No 1308/2013. However, if, in the opinion of that court, such an association of ideas is unlikely to occur, an evocation within the meaning of that provision must be ruled out.

63. The concept of 'evocation' cannot, therefore, be calibrated. The Court defined that concept in *Scotch Whisky Association*, in which, as I observed in point 50 of this Opinion, it stated that only where there is 'a sufficiently clear and direct link'[56] between the disputed sign and the registered name are the conditions for that concept to be considered satisfied.[57] In the absence of such a 'qualified' link, even where there is a reference to the registered name and the products in question are comparable, the evocation should be ruled out.

3. Application to the circumstances in the main proceedings

64. Although, as has already been stated, it is for the referring court to give judgment in the matter before it in the light of all the foregoing considerations, the Court, when giving a preliminary ruling, may, where appropriate, provide clarification designed to give the national court guidance in its decision.[58]

[54] See, by analogy, judgment of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 31).

[55] See, by analogy, judgment of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 22).

[56] As I affirmed in my Opinion in *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:11, point 19), that clarification is, in my opinion, to be understood both in terms of immediacy (the associative cognitive process must not require a complex reprocessing of information) and impact (the association with the image of the product covered by the protected designation must have sufficient impact) as regards the consumer's response to the stimulus.

[57] See *Scotch Whisky Association*, paragraph 53.

[58] See, by analogy, judgment of 21 January 2016, *Viiniverla* (C-75/15, EU:C:2016:35, paragraph 31 and the case-law cited).

65. When establishing whether there is an evocation by reference to the use of a name, as is the matter in hand in the main proceedings, the national court must, on the basis of the case-law cited above, take into account any partial incorporation of the registered name in the disputed name, any phonetic and/or visual similarity between the latter and the registered name,[59] or any conceptual proximity between the terms at issue, even if emanating from different languages.[60]

66. In the circumstances of the case in the main proceedings, the 'Champagne' PDO, in the form in which it was registered, was partly incorporated into the disputed name. Conversely, the Spanish translation of this PDO ('Champàn') has been fully incorporated (except for the accent). The result is a significant visual and phonetic similarity between the two designations, whether account is taken of the form in which the 'Champagne' PDO was registered or the Spanish translation of that designation. Conceptually, as has already been pointed out, there appears to be a direct link with the product covered by the 'Champagne' PDO, if – as it appears, although it is for the referring court to confirm – in Spanish the term 'Champanillo' literally means 'little champagne'.

67. As to the elements that are not related to the comparison between the designations at issue, the referring court must first consider the link between the product covered by the Champagne PDO and the service covered by the disputed sign, a link which is hard to dispute in the case of catering services – in other words, services that may directly involve the sale of champagne or 'comparable' products. The closeness of this link must be assessed by establishing whether – as seems to be the case – the sale of champagne or beverages of that type is customary in the catering sector in which GB operates.[61]

68. Another aspect that the referring court must take into account in its assessment is the fact that the disputed name is accompanied, in the insignia and advertisements used by GB, by an image of two stemmed coupe glasses (typically used to serve champagne) containing a sparkling beverage, which are depicted as coming together in a toast. Although the beverage is red in colour, this depiction undoubtedly has the potential to evoke both the product covered by the 'Champagne' PDO and the occasions when it is typically consumed.

69. Lastly, although it is not necessary for the conduct to be intentional in order for it to be found that there is an evocation within the meaning of Article 103(2) of Regulation No 1308/2013,[62] intention is a factor to be taken into account in the context of that assessment.[63] Considered as a whole, the abovementioned factors – including the sale, in the past, in the premises covered by the disputed sign, of a sparkling wine under the same name CHAMPANILLO – seem to suggest that the reference to the 'Champagne' PDO is not coincidental.

[59] See, by analogy, judgments of 4 March 1999, *Consorzio per la tutela del formaggio Gorgonzola* (C-87/97, EU:C:1999:115, paragraphs 25 and 27); of 26 February 2008, *Commission* v *Germany* (C-132/05, EU:C:2008:117, paragraphs 46 to 48); and of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043, paragraph 26).

[60] See, by analogy, judgments of 26 February 2008, *Commission* v *Germany* (C-132/05, EU:C:2008:117, paragraph 47), and of 17 December 2020, *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:1043, paragraph 26); see also *Scotch Whisky Association*, paragraph 50.

[61] I note that, in its replies to the questions put by the Court, GB describes its catering business as focusing on fast food, far from the 'aura of luxury and prestige' that the CIVC associates with the PDO it is defending.

[62] See, to that effect, the Opinion of Advocate General Jacobs in *Consorzio per la tutela del formaggio Gorgonzola* (C-87/97, EU:C:1998:614, point 33).

[63] See Opinion of Advocate General Jacobs in *Consorzio per la tutela del formaggio Gorgonzola* (C-87/97, EU:C:1998:614, point 35), as well as my Opinions in *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego* (C-614/17, EU:C:2019:11, point 29) and in *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:730, point 45).

70. Ultimately, subject to the findings of the referring court, I am inclined, in the light of the evidence in the file, to conclude that, when confronted with the sign 'Champanillo', as used by GB to identify and advertise its catering services, the image triggered directly in the mind of an average European consumer who is reasonably well informed and reasonably observant and circumspect is the product protected by the 'Champagne' PDO, and that, therefore, the conditions for an evocation prohibited under Article 103(2)(b) of Regulation No 1308/2013 are satisfied.

4. Conclusions on the second and third questions referred for a preliminary ruling

71. In the light of all the foregoing considerations, I propose that the Court answer the second and third questions referred for a preliminary ruling to the effect that, in order to determine whether there is an evocation of a PDO within the meaning of Article 103(2) of Regulation No 1308/2013, it is not necessary to establish first that the product covered by the PDO and the product or service identified by the disputed sign are identical or comparable or that the latter product includes, as one of its ingredients, the product covered by the PDO. However, whether or not the products are identical or comparable is a factor the national court must take into consideration, together with any other relevant factor, when assessing whether there is an evocation within the meaning of that provision.

D. The fourth question referred for a preliminary ruling

72. By its fourth question referred for a preliminary ruling, the Audiencia provincial de Barcelona (Provincial Court, Barcelona) asks the Court, in essence, whether the protection against evocation provided for in Article 103(2) of Regulation No 1308/2013 requires a finding of unfair competition.

73. As previously mentioned, the protection of registered designations provided for in EU quality legislation meets specific criteria that are instrumental to the achievement of the objectives pursued by that legislation.[64] Those criteria are listed exhaustively in the provisions governing the various cases of infringement of protected designations contained in the sectoral and horizontal regulations that make up that legislation.[65] Those provisions must also be applied uniformly throughout the territory of the European Union.

74. As regards, in particular, the protection of registered names against evocation, it is apparent from the answers to the first three questions referred for a preliminary ruling that such protection is neither conditional on a finding of a competitive relationship between the products covered by the registered name and the products or services for which the disputed sign is used or a likelihood of confusion on the part of the consumer in relation to those products and/or services, nor on the conduct that may give rise to evocation being intentional.

[64] On the separation between the rules on geographical designations and the rules on trade marks, see, in particular, my Opinion in *Syndicat interprofessionnel de défense du fromage Morbier* (C-490/19, EU:C:2020:730, point 29).

[65] See, to that effect, point 16 of this Opinion and the case-law cited.

75. Accordingly, although – as the Commission has observed – it is possible that the same conduct may simultaneously satisfy the conditions of a practice prohibited under Article 103(2)(b) of Regulation No 1308/2013 and an act of unfair competition within the meaning of the applicable national law, the scope of that provision is broader and is not limited to cases where that conduct is engaged in by a competitor.

76. Therefore, I propose that the answer to the fourth question referred for a preliminary ruling should be that the protection against evocation provided for in Article 103(2)(b) of Regulation No 1308/2013 is not limited to cases where the practice giving rise to evocation satisfies the conditions for an act of unfair competition within the meaning of the relevant provisions of the applicable national law.

IV. Conclusion

77. On the basis of all the foregoing considerations, I propose that the Court answer the questions referred by the Audiencia provincial de Barcelona (Provincial Court, Barcelona, Spain) as follows:

Article 103(2)(b) of Regulation No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products must be interpreted as meaning that acts of misuse, imitation or evocation of a PDO in relation to services may also come within the scope of that provision.

In order to determine whether there is an evocation of a protected designation of origin within the meaning of Article 103(2) of Regulation No 1308/2013, it is not necessary to establish, first of all, that the product covered by that designation and the product or service covered by the disputed sign are identical or comparable or that the latter product includes among its ingredients the product covered by the protected designation of origin. However, whether or not the products are identical or comparable is a factor that the national court is required to take into consideration, together with any other relevant factor, when assessing whether there is an evocation within the meaning of that provision.

The protection against evocation provided for in Article 103(2)(b) of Regulation No 1308/2013 is not limited to cases where the practice giving rise to evocation satisfies the conditions for an act of unfair competition within the meaning of the relevant provisions of the applicable national law.