



Case C-132/05 Commission v Germany, judgment of 26 February 2008

Protection of geographical indications and designations of origin for agricultural products and foodstuffs

The Court considers the protection of geographical indications and designations of origin of products – the name ‘parmesan’.

The Commission initiated proceedings for failure to fulfil obligations against Germany, claiming that Germany had failed to take the necessary measures to proceed against the marketing on its territory of products designated as ‘parmesan’ which do not comply with the specification for the protected designation of origin (PDO) ‘Parmigiano Reggiano’.

This gave the Court of Justice the opportunity to examine the question of the protection of a PDO. Accordingly, it stated that, under Article 13(1)(b) of Regulation (EEC) 2081/92, registered names are protected against any misuse, imitation or evocation, even if the true origin of the product is indicated or if the protected name is translated.

More specifically with regard to the evocation of a PDO, the Court held that that concept covers a situation where the term used to designate a product incorporates part of a protected designation, so that when the consumer is confronted with the name of the product, the image brought to his mind is that of the product whose designation is protected.

Examining the specific case referred to it, the Court found that there is phonetic and visual similarity between the names ‘Parmesan’ and ‘Parmigiano Reggiano’, and that this is the case in a situation where the products have a similar appearance, namely they are hard cheeses, grated or intended to be grated. In addition, whilst leaving open the issue of whether or not the name ‘Parmesan’ is an exact translation of the PDO ‘Parmigiano Reggiano’ or of the term ‘Parmigiano’, the conceptual proximity between those two terms emanating from different languages must also be taken into account. All these factors are such as to bring to the mind of the consumer the cheese protected by the PDO ‘Parmigiano Reggiano’, when he is confronted by a hard cheese, grated or intended to be grated, bearing the name ‘Parmesan’. The Court therefore concluded that the name ‘Parmesan’ is an evocation of the PDO ‘Parmigiano Reggiano’, which is in principle prohibited. In so doing, the Court dismissed the argument put forward by Germany that the term ‘Parmesan’ has become a generic name which precludes it from amounting to an evocation.

However, the Court does not concur with the Commission’s line of reasoning in relation to the obligations incumbent on Member States under the Regulation and intended to protect PDOs and penalise infringements. In particular, the Court did not accept that there was an obligation on the Member States to take on their own initiative the measures necessary to penalise, on their territory, infringements of PDOs from another Member State, since it took the view that the inspection structures whose task it is to ensure compliance with the PDOs are those of the Member State from which the PDO in question comes. Therefore, in the view of the Court, the responsibility for monitoring compliance with the specification of the PDO ‘Parmigiano Reggiano’ does not lie with the German inspection authorities. Furthermore, the Commission had not sufficiently demonstrated that Germany failed to take national measures to guarantee the application of Regulation 2081/92.