



Press release dated December 17, 2018

German Federal Supreme Court sides with BARDEHLE PAGENBERG: Champagne producers must prove that the ingredient Champagne does not determine the taste of “Champagner Sorbet”.

In its judgment of December 20, 2017 (Case C-393/16), in proceedings brought by the French Comité Interprofessionnel du Vin de Champagne (“CIVC”) against the German Aldi Einkauf GmbH & Co. OHG (“Aldi”) and Belgian Galana NV (“Galana”), concerning the use of “Champagner Sorbet”, following a referral by the German Federal Supreme Court, the Court of Justice of the European Union (“CJEU”) established principles for the use of a protected designation of origin as part of the name of a foodstuff containing as an ingredient a product for which a designation of origin is protected. The German Federal Supreme Court, having resumed these proceedings, found in its decision of July 19, 2018, the grounds of which have become available on December 11, 2018, that the burden of submission and proof that the ingredient of Champagne does not determine the taste of the accused “Champagner Sorbet” rests on the claimant (Case I ZR 268/14).

I.

Galana produced a Sorbet with the name “Champagner Sorbet” which contained, as principal ingredient in addition to water and sugar, 12 % of Champagne. This product was sold – in 2012 – by Aldi. CIVC brought an action before the Munich District Court I against Aldi seeking a prohibition of the use of the product name “Champagner Sorbet”. Galana, interpleaded by Aldi, intervened in the action in support of Aldi. The Munich District Court I, by decision of March 18, 2014, found in favour of CIVC. Upon Galana’s appeal, the Munich Court of Appeal, by decision of October 16, 2016, reversed and dismissed the action. Leave to appeal to the German Federal Supreme Court was granted, which, after a Hearing, referred, by decision of June 2, 2016, four questions for a preliminary ruling to the CJEU. The CJEU delivered its judgment on December 20, 2017 (for further details see our IP Report [Court of Justice of the European Union: “Champagne Sorbet” does not infringe “Champagne” if the sorbet contains Champagne and has a taste attributable primarily to the presence of that ingredient](#)).

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II.

On July 19, 2018, after the case returned to the Supreme Court for further proceedings, that Court heard the matter a second time. The Court stated that after the judgment of the CJEU the decision of the Munich Appeal Court, which had based its dismissal of the action on the customary use of the name “Champagner Sorbet” for sorbets containing Champagne, could not be confirmed. Rather, following the judgment of the CJEU, the decisive criterion was whether the product has – as one of its essential characteristics – a taste attributable primarily to the presence of Champagne in the composition of the sorbet.

III.

Now, after the Federal Supreme Court issued its decision, on July 19, 2018, to remand the case to the Munich Appeal Court, the written grounds of that decision have become available. The key result of this judgment of significance for the outcome of the conflict can be found in para. 39, which reads as follows:

The claimant bears the burden of submission and proof that the requirements for finding a violation of Article 118m (2) lit a No. 11 and lit c Regulation (EC) No 1234/2007 and of Article 103 (2) lit a No. ii and li c Regulation (EU) No 1308/2013 are met. Thus, he must submit and prove that the ingredient of Champagne does not determine the taste of the accused “Champagner Sorbet”. This is also true where the product has a wine-product-like taste but where such taste is not primarily caused by Champagne but by other ingredients (such as food flavourings). In doing so, the taste of the product must be determined in a first step. In a second step, which may require the obtaining of an expert opinion, the cause of the taste must be investigated.

We shall now wait for the Munich Appeal Court to re-schedule the matter and to invite the parties to submit further observations in due course.

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