Alicante, 17/04/2020
R1132/2019-4

ALTIUS
Avenue du Port 86 C B414
B-1000 Brussels
BÉLGICA

Subject: Appeal No. R1132/2019-4 Champagnola / Champagne
Your ref.: 20170000842

**Notification of a decision of the Boards of Appeal**

Please find enclosed the decision of the Fourth Board of Appeal dated 17/04/2020 concerning the appeal R1132/2019-4.

Article 72 EUTMR provides that an action may be brought before the General Court against decisions of the Boards of Appeal. The action shall be brought within two months from the date of notification of the decision of the Board of Appeal.

Should you intend to challenge the legality of the Decision of the Board of Appeal, your attention is drawn to the Rules of Procedure of the General Court published on 25 September 2018 (OJ 2018 L 240, p. 68), and to the Decision of the General Court of 11 July 2018 on the lodging and service of procedural documents by means of e-Curia (OJ 2018 L 240, p. 72) *(https://curia.europa.eu/jcms/jcms/Jo2_7040/ )*.
By virtue of those texts, with effect from 1 December 2018, the e-Curia application will become the sole means of correspondence between the parties' representatives and the General Court Registry. It follows that procedural documents must be lodged with the General Court Registry via the e-Curia application and that service will be made by the General Court Registry using that application.
In light of the above information, parties' representatives who do not yet have an account for access to the e-Curia application should ask to have such an account opened.
Information about the e-Curia application is to be found on the website of the Court of Justice of the European Union *(http://curia.europa.eu/jcms/jcms/P_78957 )*.

To the extent that you are adversely affected by the attached decision and you nonetheless decide not to challenge it, please inform us accordingly as soon as possible.

Rafaela VIDAL ROMERO
Registry
Enc.: 1 (14 pages)

**DECISION**
**of the Fourth Board of Appeal**
**of 17 April 2020**

In Case R 1132/2019-4

**COMITÉ INTERPROFESSIONNEL DU VIN DE CHAMPAGNE, loi de 1941**
5, rue Henri-Martin
51204 Épernay cedex
France Opponent / Appellant

represented by ALTIUS, Avenue du Port 86 C B414, 1000 Brussels, Belgium

v

**BREADWAY**
Vlastibořská 2790/4
19300 Praha
Czech Republic Applicant / Defendant

represented by Róbert Pružinský, NA Řádku 8, 69002 Břeclav, Czech Republic

APPEAL relating to Opposition Proceedings No B 2 953 118 (European Union trade mark application No 16 471 922)

THE FOURTH BOARD OF APPEAL

composed of D. Schennen (Chairman and Rapporteur), C. Bartos (Member) and E. Fink (Member)

Registrar: H. Dijkema

gives the following

Language of the case: English

## Decision

### Summary of the facts

1 On 16/03/2017, the applicant filed EUTM application No 16 471 922 for the word mark

**Champagnola**

presently, after rejection of Class 43 in parallel proceedings, pending for:

Class 30 – Bread, pastry and confectionery; baking preparations, flavourings for baking except scented oils, preparation for making leaven dough, sugar, flour, preparations made from bread, cereals and confectionery, dough, yeast, baking-powder, yeast extracts not for medical purposes, honey, molasses syrup, malt for food purposes, basic and ready mixes for bread production.

Class 40 – Bakeries, production of semi-finished bakery and confectionery products and the baking thereof, bakery services and services related thereto, processing and treatment of raw materials for bakery, dought and confectionery production.

2 On 06/09/2017, the Comité Interprofessionnel du vin de Champagne (CIV) filed an opposition on the grounds of Article 8(4)(a) EUTMR (now Article 8(6) EUTMR) in conjunction with various provisions of EU Regulations and French national law and based on the protected designation of origin protected by virtue of Article 107(1) of Regulation (EU) No 1308/2013 for the goods 'Champagne wine'

**CHAMPAGNE**

3 The opponent invoked a high reputation and filed abundant evidence.

4 By decision of 05/08/2019, the Opposition Division rejected the opposition in its entirety and ordered the opponent to bear the costs.

5 It gave, in particular, the following reasons for its decision:

On substantiation of the earlier right:

- The opponent invoked as earlier right the protected designation of origin (PDO) 'Champagne'.
- The opponent submitted evidence showing that the PDO 'Champagne' was protected under French law under several legal acts dating back to as early as 1908.
- Under EU law 'Champagne' was recognized and registered as a PDO on 18/09/1973 and the registration was published in the Official Journal of the European Union (Series C 74/18/09/1973, page 8, submitted as Exhibit I, Annex I.08). The opponent made reference to an online source recognised by the Office (in accordance with Article 7(3) EUTMDR), namely to the register of designations of origin for wines protected under EU law (see

http://ec.europa.eu/agriculture/markets/wine/e-bacchus/index.cfm?event=searchPTradTerms&language=EN), from which it can be confirmed that the PDO 'Champagne' is registered under number PDO-FR-A1359. The register confirms that the legal instrument protecting the name is Article 107 of Regulation No 1308/2013 and that the PDO 'Champagne' was registered with this system on 18/09/1973 (printout submitted by the opponent as Exhibit I, Annex I.07).

- It follows that the PDO 'Champagne' is protected under the Wines Regulation for wine.
- As regards the opponent's entitlement to file the opposition, the opponent submitted evidence that it is a French body and it has been established by virtue of a French legal act dated 12/04/1941 (French Law of 12 April 1941 establishing a Comité interprofessionnel du vin de Champagne, filed by the opponent with a translation into the language of the proceedings).
- According to the provisions of said law (Article 8) the opponent is entrusted with the functions of, inter alia, undertaking protection and defence campaigns in favour of the pre-determined Champagne registered appellations of origin. Furthermore, according to Article 13 of the said law, the opponent has legal personality and has the right to take matters to court. It may exercise all the rights reserved for a civil party in all courts, in relation to actions that may directly or indirectly harm the collective interests of the constituent groups that it represents.
- The opponent submitted furthermore a copy of a French Supreme Court Decision of 18/02/2004 in case number 02-10576, CIVC/Parfums Caron, 'Royal Bain de Champagne' and 'Bain de Champagne' wherein the French Supreme Court ruled on the admissibility of actions brought by the opponent against the infringement to the Champagne appellation of origin, such actions being unquestionably prejudicial to the collective interest of Champagne producers and of all the traders involved in the production and sale of Champagne wine.
- In light of the arguments and evidence submitted, the Opposition Division considers that the opponent has provided sufficient evidence as to its entitlement to exercise the rights arising from the PDO 'Champagne' and, in particular, to file the present opposition.

On substance:

On the right to prohibit use:

- According to Article 103(2) of Regulation No 1308/2013, protected designations of origins and protected geographical indications and the wines using those protected names in conformity with the product specification will be protected against:
  (a) any direct or indirect commercial use of a protected name:
    (i) by comparable products not complying with the product specification of the protected name; or
    (ii) insofar 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 or accompanied by an expression such as ‘style’, ‘type’, ‘method’, ‘as produced in’, ‘imitation’, ‘flavour’, ‘like’ 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 wine 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 consumer as to the true origin of the product.

– An EUTM application must be refused pursuant to Article 8(4)(a) EUMTR (now Article 8(6) EUTMR) in conjunction with the above provisions where any of the situations referred to in Article 103(2) of the Regulation No 1308/2013 would occur.
– Outstanding reputation has been proven by the evidence (as listed on pages 7-9 of the decision). Champagne wines are associated with luxury, success, festivities, and glamour, as reflected in numerous publications and, indeed, previous case-law.

On unfair advantage:

– While the Opposition Division finds that the opponent has provided convincing arguments in respect to services in Class 43, the argumentation in relation to the contested goods and services in Classes 30 and 40 is scarce and is limited to rather general statements in the sense that there would be almost automatic exploitation of the PDO’s reputation and its image of excellence whatever the nature of the goods and services concerned and that the same arguments as in relation to Class 43 would apply a fortiori to the goods/services in Classes 30 and 40 which, like Champagne wines, are all foodstuffs which are either closely related to agriculture and/or may be consumed together with Champagne wines.
– There is no ‘direct or indirect commercial use’.
– There is no evocation.
– Indeed, the Opposition Division concurs with the opponent that there exists a high degree of visual and phonetic similarity between the signs resulting from the fact that the earlier PDO is almost entirely incorporated in the beginning of the contested mark.
– The contested goods and services (even foodstuffs or related to foodstuffs) cannot be considered to be comparable to the protected wines but are completely different in terms of their nature and physical appearance, method of elaboration and use of the same raw materials. They are neither consumed on largely identical occasions nor are they distributed through the same channels or are subject to similar marketing rules. Moreover, the opponent neither developed a cogent line of arguments nor adduced evidence in support of its claim.
– The fact that both signs coincide in ‘Champagn-’ is, in this case, not sufficient for the public to make a clear and direct connection between the con-

tested EUTM application on the contested goods and services with the protected product 'wine coming from the Champagne region'.
- Customers would not be misled:
- Article 103(2)(c) and (d) of the Wines Regulation protect the PDO against a number of false or misleading indications about the origin, nature or essential qualities of the product. These provisions do not apply vis-à-vis the contested services in Class 40. The contested goods in Class 30 (e.g. baking preparations, sugar, yeast) are so different from wine that the public would not think of Champagne sparkling wine nor be misled by the contested EUTM application as a possible indication about the origin, nature or essential qualities of such goods.

6 On 23/05/2019, the opponent filed a notice of appeal, followed by a statement of grounds of appeal on 18/07/2019.

7 In an extensive analysis the appellant reasons why all the required conditions of the applicable legislation (Article 8(6) EUTMR and Article 103 of Regulation (EU) No 1308/2013) are fulfilled and in which part of the analysis the appellant disagrees with the Opposition Division. As regards the connection with the contested goods the appellant refers to various recipes or traditions to use 'Champagne' as an ingredient for biscuits and bread.

8 On 04/11/2019, the defendant requested to uphold the contested decision and to award costs, agreed with the reasoning of the contested decision, took the view that the non-matching parts of the signs had a massive impact on the meaning and sound of the words as a whole, and denied that there would be any exploitation of the reputation of the PDO 'Champagne'.

**Reasons**

*The ground for opposition under Article 8(6) EUTMR*

9 The opposition was based on the ground laid down in Article 8(4)(a) EUTMR, which has been introduced by Regulation No 1015/2424 with effect of 23/03/2016 and renumbered as Article 8(6) by Regulation No 2017/1001.

10 That provision reads:

'6. Upon opposition by any person authorised under the relevant law to exercise the rights arising from a designation of origin or a geographical indication, the trade mark applied for shall not be registered where and to the extent that, pursuant to the Union legislation or national law providing for the protection of designations of origin or geographical indications:

(i) an application for a designation of origin or a geographical indication had already been submitted, in accordance with Union legislation or national law, prior to the date of application for registration of the EU trade mark

or the date of the priority claimed for the application, subject to its subsequent registration;

(ii) that designation of origin or geographical indication confers the right to prohibit the use of a subsequent trade mark.

11 As the opponent explained, the provision was initially covered by Article 8(4) EUTMR but the new provision no longer requires proof of use of the Protected Designation of Origin (PDO) in trade. However, such use still remains required to be proven when reputation of the PDO is invoked.

12 Whether or not the invoked term is a designation of origin or a geographical indication in the sense of Article 8(6) EUTMR is to be examined, as concerns wines, by checking the official database run be the Commission under https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/. On that database 'Champagne' is shown to be registered as Protected Designation of Origin (PDO) PDO-FR-A1359 for the goods 'Wine' with a date of registration of 18/09/1973. As the opponent pointed out, Article 107 of Regulation No 1308/2013 provides that all existing PDOs have been incorporated into the protection scheme under that Regulation and are to be incorporated into the database of the Commission, which was the case here.

13 Two things are to be observed: Under Article 8(6) EUTMR the PDO must be 'earlier' than the filing date of the contested EUTM application. The latter was filed in March 2017. There is no doubt that the PDO 'Champagne' has been registered long before that date. The discussion as to whether the PDO had already been protected long before that date is irrelevant for the purposes of defining the 'earlier' right and might only be relevant within the framework of discussing a reputation. Next, the opponent indicated in the official opposition form that the PDO is protected for 'Champagne wine' but later submitted the extract from the Official Journal of the EU which refers to 'Wine'. This difference is irrelevant; the state of the PDO register is controlling. 'Wine' includes sparkling wine, including the one under the designation 'Champagne'.

*Substantiation of the law governing the protection*

14 The rights under the PDO protected by Article 8(6) EUTMR are those under the applicable EU Regulations. It is common ground that this is, for the instant case, Regulation No 1308/2013 (the 'Wine Regulation'). The opponent has relied on its Article 103 (and, with detailed arguments, on each of its subparagraphs). The Board finds that Article 102 of Regulation No 1308/2013 is equally relevant. By invoking and citing relevant provisions of Regulation No 1308/2013, the opponent has complied with its duty to substantiate the applicable national or EU law in accordance with Article 7(2)(e) EUTMDR (which is applicable, as the cooling-off period expired in November 2017, see Article 82(2)(b) EUTMDR).

15 On the other hand, the various norms of French national law (such as Article L-642-5 of the French 'Code Rural') are irrelevant; the protection of geographical indications for wines is the exclusive competence of the EU, and the scope of protection for a PDO protected under Regulation No 1308/2013 follows exclusively from EU law (18/05/2017, C-56/16, Port Charlotte, EU:C:2017:394, § 91, 100, 103).

16 There is no doubt that the opponent is the 'person authorised under the relevant law to exercise the rights arising from a designation of origin or a geographical indication' as required under Article 8(6) EUTMR. The opponent has furnished the relevant French legislation, namely the French Law of 12 April 1941 establishing a Comité interprofessionnel du vin de Champagne, especially its Article 8, which entitles the opponent to defend the rights under the PDO.

17 The earlier right has been duly substantiated.

*Right to prohibit use and/or registration of a younger trade mark*

18 The Opposition Division has misconstrued the provisions of Regulation No 1308/2013. That Regulation confers protection against identical use or evocation, and this either against 'comparable products' (in the sense of the Wine Regulation, i.e. comparable to 'wine') or against other goods and services, which are not 'comparable' to wine, only if the younger sign 'exploits the reputation of the PDO'. This is in essence a test as in Article 8(5) EUTMR, save that the 'exploitation' of the reputation must be the one of the geographic function of the PDO.

19 Article 103(2)(a) and (b) of Regulation No 1308/2013 are in issue, but its subparagraphs (c) and (d) not. Subparagraphs (c) and (d) refer exclusively to the use of the PDO for products having another origin. The considerations regarding a 'misleading' character of the younger sign were misleading themselves. The essential function of a geographical indication is to protect the geographical origin and in particular against use of the geographical name for products not having that geographical origin. This must be assessed vis-à-vis the geographical origin the product has on the defendant's markets. When there is no such use on the market yet (as will be regularly the situation during the examination of an EUTM application on absolute grounds) the presumption is that the mark will (or can) be used in a non-deceptive way, but when evidence of actual use is on file the used form counts (02/03/2020, R 1499/2016-G, LA IRLANDESA 1943, § 27). In the present case nothing was adduced as to whether or not the defendant uses the sign for the goods applied for and it is in principle possible to market bakery products with the addition of genuine 'Champagne' sparkling wine. This point is entirely out of the scope of Article 8(6) EUTMR, which protects the collective rights (as represented by the Comité interprofessionnel du vin de Champagne) in the geographical designation as an intellectual property right. Article 8(6) EUTMR does not allow for invoking absolute grounds for refusal, and we are not in revocation proceedings based on Article 58(1)(c) EUTMR.

20 Article 8(6) EUTMR requires that the opponent has a right to prohibit the use of the younger sign as a trade mark. The right to prohibit use and the right to prohibit registration coincide. The right to prohibit registration does not follow from Article 103 of Regulation No 1308/2013, but from its Article 102. As indicated it is not harmful that the opponent did not explicitly quote that other provision as well.

21 Article 102 of Regulation No 1308/2013 reads:

'The registration of a trade mark that contains or consists of a protected designation of origin or a geographical indication which does not comply with the product specification concerned or the use of which falls under Article 103(2), and that relates to a product falling under one of the categories listed in Part II of Annex VII shall be

(a) refused if the application for registration of the trade mark is submitted after the date of submission of the application for protection of the designation of origin or geographical indication to the Commission and the designation of origin or geographical indication is subsequently protected;
(b) (deleted)

22 This enshrines the right to prohibit the registration of a younger EUTM.

23 The combined application of this provision and of Article 103 of Regulation No 1308/2013 results in that the younger EUTM application must be refused on the grounds for opposition laid down in Article 8(6) EUTMR,

– if the younger sign constitutes a misuse, imitation or evocation of the sign protected by the PDO, even if the true origin of the product or service is indicated or if the protected name is translated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar;

and

– if the younger trade mark application is filed for comparable products not complying with the product specification of the protected name;

or

– if direct or indirect commercial use of the PDO for goods and services which are not 'comparable' products would exploit the reputation of a designation of origin or a geographical indication.

24 Some clarifications are needed. The criterion of 'misuse, imitation or evocation of the sign' is an objective test, similar to the one undertaken in comparing signs under Article 8(1)(b) EUTMR. Any unauthorised and/or illegal use of the PDO for identical products is by definition 'misuse'. The notion of 'imitation' corre-

sponds to the wording of Article 6bis (1) of the Paris Convention, where it is used to circumscribe situations where there is a likelihood of confusion. The notion of 'evocation' is a criterion which is specific to the law of geographical indications, as has been amply explained by judgments of the Court of Justice, to which we shall come back later, and which may most simply be paraphrased by 'bringing the PDO to mind'. This condition applies to both types of injury discussed hereinafter.

25 The scope of protection is against 'comparable' products, without the need that the PDO has been used in trade (as a result of the legislative reform to transfer geographical indications from Article 8(4) EUTMR into a separate subparagraph) and against non-comparable products (i.e. against any other type of goods or services) only

- if the PDO has a reputation
- and if the use of the younger sign would exploit that reputation.

26 That is a protection along the lines of Article 8(5) EUTMR, protecting the goodwill and reputation of a well-known sign even against dissimilar goods and services, save that 'exploitation of the reputation' is the sole type of injury foreseen in Regulation No 1308/2013; nevertheless, the present tense in that provision 'against any use' and 'such use exploits' must be read in the same way as the parallel conditions in Article 8(5) EUTMR, namely that it is not required to prove actual use resulting in actual harm or detriment.

27 The fact that Article 102 of Regulation No 1308/2013 states the right to prohibit the registration of a younger trade mark only in respect of 'comparable' products is irrelevant. Article 8(6) EUTMR refers to the right to prohibit the use of the younger trade mark and under the same conditions its registration may also be opposed; so Article 103(2) of Regulation No 1308/2013 can be applied directly (18/09/2015, T-387/13, COLOMBIANO HOUSE, EU:T:2015:647, § 42). Otherwise the holder of a PDO could attack 'different' goods and services – based on the reputation of the PDO – only in infringement proceedings and not even in cancellation proceedings, and not even based on absolute grounds, given that Article 7(1)(j) EUTMR only refers to cases where the Wine Regulation prohibits the registration of a mark. And the usual 'disclaimer' that the product must correspond to the specification of the PDO would not make sense either, because there is no specification for 'different' products and no protection of the geographic origin of any such other 'different' product.

28 To conclude, it follows from Article 8(6) EUTMR in conjunction with Articles 102 and 103 of Regulation No 1308/2013 that the holder of a reputed PDO can oppose the registration of a younger EU trade mark application under the conditions of Article 103(2)(a)(ii) of Regulation No 1308/2013 (see 18/09/2015, T-387/13, COLOMBIANO HOUSE, EU:T:2015:647, § 42).

29 Having said this, much of the reasoning of the Opposition Division falls apart and much of the pleadings of the appellant are not relevant to the case (which is why

the description of the contents of the statement of grounds of appeal could be laconic).

30 To begin with, products 'comparable' to wine are certain products similar to wine, or wine must, but none of the goods claimed in Class 30. Therefore the success of the opposition requires reputation of the PDO.

*Imitation or evocation of the PDO 'Champagne'*

31 The sign applied for is 'Champagnola'. The applicant has remained silent as to why it chose that sign, as to what it could mean or not, and as to which language it should be derived from. Prima facie one might think it is an Italian word due to the last letter '-A' but this is not correct; there is no 'CH' at the beginning of word in Italian, and the word for countryside is 'campagna' in Italian and 'campagne' in French.

32 It is, however, safe to say that the ending '-ola' will, across Member States, be perceived as a kind of diminutive or derivative form.

33 The contested sign begins with 'Champagn-' and ends with '-ola' and clearly appears as a derivative form, diminutive or nickname form of the word 'Champagne'. After having read the initial letters 'Champagn-', no other conclusion will be readily possible for the average consumer.

34 There is a clear evocation.

35 The concept of 'evocation' covers a situation in which 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 triggered in his mind is that of the product whose designation is protected (18/05/2017, C-56/16, Port Charlotte, EU:C:2017:394, § 122). 'Evocation' covers a situation where, when the consumer is confronted with the product, the image triggered in his mind is one of the protected product (04/03/1999, C-87/97, Cambozola, EU:C:1999:115, § 25).

36 This is to be assessed, in principle, with regard to the perception by the average European consumer for wine (12/07/2018, T-774/16, Cave de Tain, EU:T:2018:441, § 43, 93).

37 The 'evocation' must be one regarding the geographic region mentioned in the PDO (18/05/2017, C-56/16, Port Charlotte EU:C:2017:394, § 124; 05/09/2016, R 980/2015-4, Cave de Tain, § 37). This is the case as there is no other interpretation of 'Champagnola' possible than being linked with the geographic region 'Champagne'.

38 The opponent mentioned decisions of the Cancellation Division in which 'evocation' was found to exist even for signs which were much further away from the

PDO than the present one is, namely ‘Bergazola’ and ‘Cambozola’ evoking ‘Gorgonzola’.

39 The mistake of the contested decision was to link the term ‘evocation’ with a comparison of the goods and services. The term ‘evocation’ is a condition for protection both against comparable goods and against different goods (or even services) and is it improper to mix this condition with considerations which would correspond to the ‘link between the goods’ under Article 8(5) EUTMR.

40 To conclude, ‘Champagnola’ evokes ‘Champagne’, quite clearly.

*Reputation*

41 Reputation of the PDO ‘Champagne’ has been proven by the opponent. Reference is made to the summary of the evidence on page 7-9 of the contested decision.

42 Indeed, ‘Champagne’ is one of the most reputed geographical indications for wine (including sparkling wine) in Europe at all. That is evident from the documents submitted by the opponent, in particular the immense sales figures, the export figures for all over the world, and the number of publications exclusively featuring ‘Champagne’ wines, specifically those quoted on page 16 and 17 of the statement substantiating the opposition (for which the relevant evidence is contained in the attachments to that statement).

43 That is what the Opposition Division acknowledged, and nothing has been submitted by the defendant that would have challenged this finding.

*Exploitation of reputation*

44 It has already been stated above that when dealing with an opposition based on a PDO which has a reputation, ‘exploitation’ of that reputation does not require prior actual use of the contested sign by the applicant of the younger trade mark application. It is allowable to resolve the question as to whether there is ‘exploitation’ on the basis of a prognosis. Guidance can be obtained from the parallel provision in Article 8(5) EUTMR regarding unfair advantage taken from a reputation: It is for the proprietor of the earlier right to adduce evidence enabling the conclusion to be drawn that the respective type of injury is probable, in the sense that it is foreseeable in the ordinary course of events (27/11/2008, C-252/07, Intel, EU:C:2008:655, § 31). It is not required to demonstrate actual and present harm to its mark; there must however be prima facie evidence of a future risk, which is not hypothetical, that one of the types of injury will occur, on the basis of deductions founded on an analysis of the probabilities and by taking account of the normal practice in the relevant commercial sector as well as all the other circumstances of the case (14/11/2013, C-383/12, Wolf’s head, EU:C:2013:741, § 42, 43).

45 The reputation of the PDO ‘Champagne’ is linked with luxury. ‘Champagne’ sparkling wine is at the very upper end of the price range and consumed on special occasions. It is common to have breakfast in the form of a ‘champagne breakfast’ (Champagnerfrühstück, Sektfrühstück), where a glass of sparkling wine adds to the distinctive and special atmosphere.

46 The contested goods in Class 30 are all foodstuff items consumed at breakfast. Already in the statement for substantiating the opposition the opponent referred to the fact that all the contested goods are foodstuffs and can be consumed together with ‘Champagne’. These goods can all be ‘flavoured’ with sparkling wine. The opponent, in the statement of grounds of appeal, showed various examples in that direction but what matters is that it is perfectly normal and conceivable to add sparkling wine to the contested goods so as to give them a ‘finer’ taste. The contested goods will all appear to be more ‘prominent’, ‘glamorous’ or special in taste when brought in conjunction with ‘Champagne’ sparkling wine.

47 In particular, Champagne (sparkling wine from that French region) may very well be added to each of the contested goods as a special and distinct flavour.

48 The threshold is the perception by the average consumer. The consumer cannot verify the exact composition and ingredients of the contested Class 30 goods. It suffices that he or she will get the impression of a somewhat vague connection with ‘Champagne’ sparkling wine. It suffices that there is an appeal on the emotional basis.

49 As indicated Article 103 of Regulation No 1308/2013 also applies against trade mark applications for services.

50 The contested services in Class 40 are, in essence, ‘bakery’ services. This is not more than the place where the bakery products claimed in Class 30 are sold. It is at the occasion of a purchase of the goods in Class 30, be it over the counter or be it in the form of a breakfast, where the consumer will be confronted with the contested sign ‘Champagnola’. The conclusion that there is exploitation of the reputation is the same as for the respective goods in Class 30.

*Final considerations*

51 Decisions adopted under Article 99 of Regulation No 1308/2013 protect designations of origin and geographical indications against any evocation throughout the whole EU. In the light of the need to guarantee effective and uniform protection of those geographic indications throughout the whole EU, European consumers at large are to be taken into account and not merely consumers of the Member State in which the product giving rise to the evocation of the protected designation of origin or the protected geographical indication is manufactured (21/01/2016, C-75/15, Viiniverla Oy, EU:C:2016:35, § 28; 12/07/2018, T-774/16, Cave de Tain, EU:T:2018:441, § 44) or where the PDO is located, or where the applicant of the younger mark has its seat. The PDOs under Regulation No 1308/2013 have

unitary character. It was therefore not necessary to analyse the conditions of Article 8(6) EUTMR country by country.

52 The appellant (opponent) has relied on a number of legal arguments. To the extent they are relevant, they were basically correct and discussed above. The remainder needs not be discussed here. There is no reason to proceed to a dismissal of arguments raised by the winning party. The appellant also referred to a vast number of decisions including judgments from the Court of Justice regarding the protection of geographical indications. These judgments do not have to be discussed in detail either; on the one hand they are clear and leave no issues to be resolved by the Board, on the other hand they have, to the extent relevant, all be taken into account in the above analysis.

53 So the contested decision shall be annulled, the opposition be upheld and the contested EUTM application be rejected for all the goods and services in Classes 30 and 40.

**Costs**

54 As the defendant is the losing party within the meaning of Article 109(1) EUTMR, it must bear the costs incurred by the appellant (opponent) in the opposition and appeal proceedings.

55 Pursuant to Article 109(1), (7) EUTMR and Article 18(1)(c)(i) and (iii) EUTMIR, the amount of these costs is fixed at the standard rates for professional representation in the opposition proceedings at EUR 300 and in the appeal proceedings at EUR 550, plus the opposition fee of EUR 320 and the appeal fee of EUR 720, in total EUR 1,890.

**Order**

On those grounds,

THE BOARD

hereby:

1. **Annuls the contested decision;**

2. **Rejects the contested EUTM application;**

3. **Orders the defendant to bear the costs of the opposition and appeal proceedings, which are fixed at EUR 1,890.**

| Signed | Signed | Signed |
|---|---|---|
| D. Schennen | C. Bartos | E. Fink |

Registrar:

Signed

p.o. R. Vidal