



Fresh from the Press: Update on EU Case Law on GIs

Ortrun Günzel – FICPI 16th Open Forum, St. Petersburg, 7 October 2016

CJEU: Verlados

C-75/15 – Decision of January 21, 2016

Request for a preliminary ruling from the Markkinaoikeus (Finland) –

Viiniverla Oy v Sosiaali- ja terveystieteiden tutkimuskeskus – lupa- ja valvontavirasto

- > Verlados v. Calvados
- > Interpretation of evocation
 - Verla is name of a Finnish village
 - Verlados is local product produced in Verla
 - Limited scale of production under mark Verlados
- > Relevant that Finnish consumers are unlikely to imagine that Verlados is produced in France?

Answers from the Court

Assessment of „evocation“:

- > Relevant trade circles: European Consumers (not only consumers in the Member State of production)
- > Phonetic and visual similarities not fortuitous
- > Sign triggers image in the mind of the consumer of the product protected as a GI
- > Likelihood of confusion not required



CJEU: Champagner Sorbet

Request for a preliminary ruling from the Bundesgerichtshof (Germany) by Ruling of June 2, 2016 – I ZR 268/14

ALDI offered "Champagner Sorbet" icecream with 12% champagne

Higher Regional Court of Munich:

- use of designation not misleading or unjustified
- Champagner Sorbet common term for sorbet having champagne as an ingredient
- No minimum proportion of champagne due to large variety of recipes

German Federal Court of Justice:

foodstuff does not comply with specification but has such product as an ingredient in sufficient quantity in order to give product an essential feature, and the designation of the foodstuff is in line with common usage

- Exploitation, Art. 103 (2) (a) (ii) Regulation (EU) No 1308/2013 ?
- Misuse, imitation or evocation, Art. 103 (2) (b) Regulation (EU) No 1308/2013 ?
- False or misleading indication as to the provenance, origin, nature or essential qualities, Art. 103 (2) (c) Regulation (EU) No 1308/2013 only where targeted trade circles may err about geographical origin of the foodstuff?





GC: Genuß für Leib & Seele KLOSTER Andechs SEIT 1455

T-78/14, Decision of October 10, 2015



Opposition against CTM application Genuß für Leib & Seele KLOSTER Andechs SEIT 1455 (+device) based on earlier CTM registrations SEIT 1908 ANDECHSER NATUR (+device) and ANDECHSER NATUR (+device)

- > Goods: Milk and dairy products of class 29
- > Opposition upheld
- > Decision final



BoA: PORTOBELLO ROAD

R 1105/2015-4, Decision of June 15, 2016



Opposition against CTM application PORTOBELLO ROAD (+device)
based on Portuguese PDO porto

- > Goods of class 33: gin
- > Opposition Division of EUIPO: Rejects EUTM application
- > BoA: Rejects Opposition

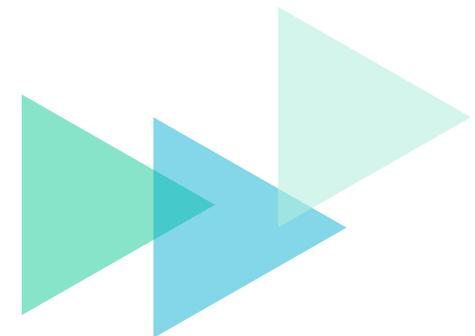


Regional Court Mannheim

2 O 187/14 – Decision of September 15, 2015

Action for a negative declaratory judgement

- > PDOs „Aceto Balsamico die Modena“, „Aceto balsamico tradizionale die Modena“, and „Aceto balsamico tradizionale di Reggio Emilia“
- > „Balsamico“ as such subject to GI protection or generic term?
- > Court: Evocation!



Thank you for your Attention!



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- > **Litigation & Dispute Resolution**
- > **Trade Marks, Unfair Competition & Designs**
- > **Life Sciences**
- > **Consumer Brands**

Ortrun is a partner at the law firm of Taylor Wessing in Munich, Germany. Her focus is on trademark, design and unfair competition matters. Ortrun helps clients in developing their IP strategies and in defending and enforcing IP rights in and out of court. She has acquired a good deal of experience in negotiating trademark license agreements, in providing IP support in corporate transactions, and in anti-counterfeiting measures. Special expertise lies in matters concerning indications of geographical origin. Among her industries of focus are the life science industry, and the food and beverages industry.

She studied law at the universities of Regensburg, Münster and Liège, Belgium. She passed her legal State Examinations in 1998 and 2000 and was admitted to the bar in 2000. Before joining Taylor Wessing as a partner in January 2013, Ortrun spent twelve years in Berlin and Munich based law firms, the last seven years at a large international firm of patent attorneys and attorneys at law.

Ortrun is a frequent speaker and publishes in magazines on trademark law. She is a member of the German Bar Association, the German Association for the Protection of Intellectual Property Rights (GRUR), of INTA and MARQUES. She is chairing the INTA Geographical Indications Enforcement Subcommittee and is involved in the MARQUES Geographical Indications Team. Recommended for trademark and unfair competition law in the German edition of THE LEGAL 500.

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