DUTCH GENQUILA for wine held to evoke PGI ‘Tequila’

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- **Consejo Regulador del Tequila opposed the registration of DUTCH GENQUILA for goods in Class 33 based on the PGI ‘Tequila’**
- **The Board of Appeal held that evocation may occur even without significant or visual similarities between the signs**
- **The contested sign constituted an evocation of the earlier PGI within the meaning of Article 21(2)(b) of Regulation 2019/787**

In *Consejo Regulador del Tequila AC v Dutch Eureka BV* (Case R1033/2023-2), the Second Board of Appeal of the EUIPO has held that the relevant EU consumer was likely to establish a sufficiently clear and direct link between the contested sign DUTCH GENQUILA and the spirit drink protected by the protected geographical indication (PGI) ‘Tequila’.

Background

Dutch Eureka BV filed a European trademark application for the word mark DUTCH GENQUILA for goods in Class 33, including alcoholic beverages, and related services in Class 35.

Consejo Regulador del Tequila AC filed an opposition against registration of the mark for the goods claimed in Class 33 on the basis of Article 8(6) of Regulation 2017/1001 - namely, based on the PGI ‘Tequila’, protected for other spirit drinks in the European Union.

In the notice of opposition, the opponent specified that it wished to rely on online substantiation for the identification of the particulars concerning the filing or registration of the earlier right, and pointed out the following:

> *[P]lease note that in the application pursuant to Article 17(6) of [Regulation 110/2008] on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing [Council Regulation 1576/89], it is indicated that the Regulatory Council of Tequila AC is the competent body responsible for verification and monitoring, as well as the certification of tequila, duly accredited...//*

The Opposition Division of the EUIPO rejected the opposition and deemed that the grounds had not been properly substantiated.

An appeal was filed before the Board of Appeal, which ordered the Opposition Division to consider that the substantiation evidence provided in the opposition proceedings was relevant but insufficient, although not manifestly insufficient, and to proceed accordingly in compliance with Article 8 of **Regulation 2018/625**. Further, it was noted that the belated evidence considered relevant and admissible by the board should be taken into due account in the assessment made by the Opposition Division.

By its decision of 28 March 2022, the Opposition Division upheld the opposition for all of the contested goods other than wine.

On 16 May 2023 the opponent filed an appeal against this decision, requesting that it be partially set aside to the extent that the opposition was rejected for wine in Class 33.

Decision

The Board of Appeal upheld the appeal, recalling that, with respect to the evocation of a PGI pursuant to Article 21(2)(b) of **Regulation 2019/787**, it covers a situation where the disputed term used to designate a product incorporates part of a protected designation of origin, so that when consumers encounter the name of the product, the image triggered in their mind is that of the product whose designation of origin is protected (see ***PORT CHARLOTTE*** (Case C-56/16 P), Paragraph 122).

It was also recalled that evocation may occur even without significant or visual similarities between the signs. The board stressed the importance of the criterion of conceptual proximity between terms from different languages, as this may trigger associations in the consumers' minds with PGIs.

Even if the adjective 'Dutch' would indicate to consumers the origin of the goods as the Netherlands, the evocation can still occur even if the true origin of the goods is indicated, in accordance with Article 21(2)(b) of Regulation 2019/787.

It was also emphasised that similarity between the goods is not necessary to establish evocation (see ***Comité Interprofessionnel du Vin de Champagne*** (Case C-783/19)).

In light of the above, the board held that, in the present case, the relevant EU consumer was likely to establish a sufficiently clear and direct link between DUTCH GENQUILA, used to designate wine, and the spirit drinks protected by the PGI 'Tequila'. Therefore, from the perspective of the EU public, the contested sign constituted an evocation of the earlier PGI within the meaning of Article 21(2)(b) of Regulation 2019/787.

The appeal was thus upheld and the contested application was rejected for all goods claimed in Class 33.

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