OPPOSITION No B 3 180 390

Comité Interprofessionnel Du Vin De Champagne, Loi De 1941, 5, rue Henri-Martin, 51204 Épernay cedex, France (opponent), represented by **Altius**, Avenue du Port 86 C B414, 1000 Brussels, Belgium (professional representative)

a g a i n s t

Monument Grill LLC, 3 Atlantic Street, Plainsboro, 08536 New Jersey, United States of America (applicant), represented by **A.Bre.Mar. S.R.L.**, Via Servais, 27, 10146 Torino, Italy (professional representative).

On 12/06/2025, the Opposition Division takes the following

DECISION:

1. Opposition No B 3 180 390 is rejected in its entirety.

2. The opponent bears the costs, fixed at EUR 300.

REASONS

On 07/10/2022, the opponent filed an opposition against all the goods of European Union trade mark application No 18 726 840 (figurative mark), namely: *searchlights; gas burners; disposable sterilization pouches; roasters; cookers; stoves; hot plates; roasting apparatus; griddles [cooking appliances]; grills [cooking appliances]; roasting apparatus; brackets for gas burners; barbecues; bread baking machines; hearths; cooking utensils, electric; cooking apparatus and installations; refrigerating appliances and installations; electric fans for personal use; flashlights [torches]; lighters (gas -)* in Class 11. The opposition is based on the Protected Designation of Origin 'Champagne' in relation to which the opponent invoked Article 8(6) EUTMR.

On 18/10/2023 the Opposition Division rendered a decision that resulted in the rejection of the opposition pursuant to Article 8(6) EUTMR on the grounds that the opponent had not demonstrated that the conditions laid down in Article 103(2) of Regulation No 1308/2013 are met.

The decision was appealed, and the Board of Appeal decided in case R 2139/2023-2 on 18/09/2024. The Board's decision annulled the contested decision and remitted the case to the Opposition Division for further prosecution because 'the Opposition Division failed to take into consideration the amendments introduced by Regulation 2021/2117 and therefore decided the case on the basis of the wrong legislation' (decision of 18/09/2024 in R 2139/2023-2, CHAMPAIGN (fig.) / Champagne (GI.), § 19).

PRELIMINARY REMARK ON THE APPLICABLE REGULATION

The present case concerns the application of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.

The Opposition Division notes that the above-mentioned Regulation was amended by Regulation (EU) 2024/1143 of the European Parliament and of the Council of 11 April 2024 on geographical indications for wine, spirit drinks and agricultural products, as well as traditional specialities guaranteed and optional quality terms for agricultural products, amending Regulations (EU) No 1308/2013, (EU) 2019/787 and (EU) 2019/1753 and repealing Regulation (EU) No 1151/2012 (hereinafter Regulation (EU) 2024/1143).

Regulation (EU) 2024/1143 applies as of 13/05/2024. However, according to established case-law of the Court of Justice, the decisive date for the purpose of identifying the applicable substantive law is the filling date of the contested trade mark. Given that the contested trade mark in this case was filed before 13/05/2024, the facts of the case are governed by the substantive provisions of Regulation (EU) No 1308/2013 in force at the time.

As stated by the Board of Appeal in the decision of 18/09/2024 in case R 2139/2023-2 above-mentioned, Regulation 2021/2117 was published on 06/12/2021, meaning that the amendments came into force on 07/12/2021. The application of the contested mark was filed on 04/07/2022, the opposition on 07/10/2022 and the contested decision was rendered on 18/10/2023. All these events were subsequent to the entry into force of Regulation 2021/2117 (decision of 18/09/2024 in R 2139/2023-2, CHAMPAIGN (fig.) / Champagne (GI.), § 15 to 17).

Therefore, the facts of the case at hand are governed by the substantive provisions of Regulation (EU) No 1308/2013 as amended by Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021 amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, (EU) No 1151/2012 on quality schemes for agricultural products and foodstuffs, (EU) No 251/2014 on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and (EU) No 228/2013 laying down specific measures for agriculture in the outermost regions of the Union.

Before the amendments to Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 introduced by Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021, the second alternative of Article 103(2)(a) of Regulation No 1308/2013 granted protection to earlier PGIs and PDOs in respect of any direct or indirect commercial use of the protected name ‘insofar as such use exploits the reputation of a designation of origin or a geographical indication’.

Following the amendments introduced to Regulation (EU) No 1308/2013 by Regulation (EU) 2021/2117, the second alternative of Article 103(2)(a) of Regulation No 1308/2013 granted protection in respect of any direct or indirect commercial use of the protected name not only insofar as such use exploits the reputation of a designation of origin or a geographical indication but also ‘insofar as such use […] weakens or dilutes the reputation of a designation of origin or a geographical indication.’

The Board of Appeal considered, since ‘it appears that the Opposition Division failed to take into consideration the amendments introduced by Regulation 2021/2117 and therefore decided the case on the basis of the wrong legislation’ and ‘given the parties’ legitimate interest that the case be examined by both instances of the Office’, that the case should be

remitted to the Opposition Division, in accordance with Article 71(1) second sentence, EUTMR.

According to Article 71(2), if the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, 'that department shall be bound by the *ratio decidendi* of the Board of Appeal, in so far as the facts are the same'.

Therefore, in the present decision, the Opposition Division will assess the merits of the case specifically as regards '(a) any direct or indirect commercial use of a protected name, including the use for products used as ingredients (ii) in so far as such use exploits, **weakens or dilutes** the reputation of a designation of origin or a geographical indication' while it will, in essence, refer to the reasoning already developed in the contested decision as to the remaining claims.

DESIGNATIONS OF ORIGIN OR GEOGRAPHICAL INDICATIONS — ARTICLE 8(6) EUTMR

According to Article 8(6) EUTMR, 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 must 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.

a) The right under applicable law

The opponent invoked a designation of origin protected for *wine*.

Designations of origin and geographical indications for wines and other grapevine products protected under Council Regulation (EC) No 1308/2013 of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007, as amended by Regulation (EU) 2021/2117 of the European Parliament and of the Council of 2 December 2021), fall under Article 8(6) EUTMR.

This includes the names already registered under Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine or Council Regulation No 479/2008 of 29/04/2008 on the common organisation of the market in wine. The above-mentioned Regulation (EU) No 1308/2013, known as the 'Wines Regulation', replaced and repealed the previous Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

Wine names referred to in Articles 51 and 54 of Council Regulation (EC) No 1493/1999 and Article 28 of Commission Regulation (EC) No 753/2002 are automatically protected under this Regulation (see Article 107 of Council Regulation No 1308/2013 of 17 December 2013). The Wines Regulation protects geographical indications that were already protected in a Member

State on 01/08/2009 (or on the date of accession of a new Member State) subject to further conditions, and any further geographical indications applied for and registered pursuant to the EU system of protection thereafter.

According to Article 93(1)(a) of Regulation (EU) No 1308/2013, 'designation of origin' means a name, including a traditionally used name, which identifies a product referred to in Article 92(1) that complies with the following requirements:

- its quality and characteristics of the product are essentially or exclusively due to a particular geographical environment with its inherent natural and human factors;
- it originates in a specific place, region or, in exceptional cases, country;
- the grapes from which the product is produced come exclusively from that geographical area;
- its production takes place in that geographical area; and
- it is obtained from vine varieties belonging to *Vitis vinifera* or a cross between the *Vitis vinifera* species and other species of the genus *Vitis.*

The opponent submitted arguments and evidence, which will be referred to below.

b) The earlier right and the opponent's entitlement

The opponent invoked in the present case as earlier right the protected designation of origin (PDO) 'Champagne'.

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 (Exhibit I.4).

It can be confirmed from the opponent's Exhibit I.1 that the PDO 'Champagne' is registered under the 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' for wine was registered with this system on 18/09/1973 (Extracts from the Register of Protected Designation of Origin and Protected Geographical Indications established by Article 104 of Regulation (EU) No 1308/2013 are also submitted as Annex 1 to the submissions filed with the notice of opposition and Exhibit I.1 to the submissions filed within the substantiation time limit).

It follows from the above that the PDO 'Champagne' is protected under the Wines Regulation for *wine*. From the above outline it is also clear that the invoked PDO is earlier than the contested EUTM, filed on 04/07/2022.

As regards the opponents' entitlement Comité interprofessionnel du vin de Champagne (CIVC), to file the opposition, evidence was submitted 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 CIVC 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 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 first 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 (Annex 3 to submissions of 07/10/2022).

In addition to the above, the opponent makes reference to previous decisions of the Office where the entitlement of the opponent to file an opposition has been confirmed.

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.

c) The opponent's right vis-à-vis the contested trade mark

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, including the use for products used as ingredients:
>
> (i) by comparable products not complying with the product specification of the protected name; or
>
> (ii) in so far as such use exploits, weakens or dilutes 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, transcripted or transliterated or accompanied by an expression such as 'style', 'type', 'method', 'as produced in', 'imitation', 'flavour', 'like' or similar, including where those products are used as ingredients;
>
> (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.

It follows from the above that an application for an EUTM must be refused pursuant to Article 8(6) EUMTR in conjunction with the above provisions where any of the situations referred to in Article 103(2) of Regulation No 1308/2013 may occur.

In the assessment of a potential conflict with a registered geographical indication, reference must be made to the perception of the average European consumer who is reasonably well informed and reasonably observant and circumspect (26/02/2008, C-132/05, Parmigiano Reggiano, EU:C:2008:117, § 44; 04/03/1999, C-87/97, Cambozola, EU:C:1999:115, § 25;

07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 46-47; 21/01/2016, C-75/15, VERLADOS / CALVADOS, EU:C:2016:35, § 25, 28).

Moreover, since the EU Regulations protect geographical indications and denominations of origin throughout the territory of the European Union, the potential conflict with these earlier rights must be assessed from the point of view of the consumers throughout the European Union and not merely consumers in the Member State in which the product giving rise to a conflict with the protected designation of origin is manufactured (21/01/2016, C-75/15, VERLADOS / CALVADOS, EU:C:2016:35, § 27).

According to Article 95(1) EUTMR, in proceedings relating to relative grounds for refusal of registration, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought. Therefore, in all *inter partes* cases the burden is on the party making a particular claim or allegation to provide the Office with the necessary facts and arguments in order to substantiate the claim.

The opponent claims the following:

- The contested EUTMA amounts to 'use' of the PDO 'CHAMPAGNE' in the sense of point (a) of Article 103(2) of Regulation No 1308/2013:
- The verbal element 'CHAMPAIGN' is almost identical visually to the PDO. It is phonetically identical in most official languages of the Union (including, without limitation, English), whilst being almost identical in the other languages. Conceptually, it is identical to the PDO as it frequently used as an English translation for the PDO 'CHAMPAGNE' (Exhibit V.1). 'CHAMPAIGN' consists of a very basic English word which will be widely understood by the relevant public in the whole European Union, especially since identical or similar terms exist in many languages of the European Union with the same semantic content (inter alia, 'champanhe' in Portuguese, 'šampaňské' in Czech, 'champagne' in Danish, Dutch, Italian and Swedish, 'champán' in Spanish). For those consumers who do not understand (even basic) English, it is highly likely that they will perceive the word 'CHAMPAIGN' as a misspelling of the French word 'CHAMPAGNE'.
- The addition of a small figurative element to the word element 'CHAMPAIGN' in the contested EUTMA does not preclude the finding that the latter may amount to 'use' of the PDO 'CHAMPAGNE'.
- In addition to have an inherent reputation owing to its nature, the PDO 'CHAMPAGNE' has acquired an extraordinary reputation throughout the European Union.
- Therefore, on seeing the contested trade mark 'CHAMPAIGN' in relation to the contested goods in Class 11, the relevant public will immediately think of the PDO.
- It is obvious that the use of the contested EUTMA for the applicant's products is likely to affect the consumers preferences, by inducing them to believe that the applicant's products are "premium" products and comply with the highest quality standards as would be expected of wines benefiting from the PDO 'CHAMPAGNE', which enjoys enormous repute and appreciation, among European consumers, for its characteristic qualities.
- Therefore, the use of the contested sign containing the element 'CHAMPAIGN' for the goods at issue in Class 11 would take unfair advantage of, and exploit, the enormous repute enjoyed by the wines with PDO 'CHAMPAGNE', among European consumers.
- This is all the more the case as the goods applied for in Class 11 essentially consist of cooking apparatus. They are therefore closely related to foodstuffs, that are often consumed together with wine, including Champagne wines. The 'CHAMPAGNE' PDO's reputation within the European Union is outstanding. Consequently, the probability of a non-hypothetical future risk of unfair advantage being taken by the mark

applied for is so obvious in the present case that the opponent does not need to put forward or adduce evidence to that end.

- The evocation of 'CHAMPAGNE' in the trade mark applied for functions as an 'eye-catcher' to facilitate the introduction of the goods and services for which the contested trade mark is applied in the EU market. By offering the goods covered by the contested EUTMA evoking the PDO 'CHAMPAGNE', the applicant instantly confers an image of high quality, refinement, uniqueness, and excellence on those goods, which are perceived as "fine" and "top-notch".
- To that extent, the choice of consumers confronted with goods in Class 11 referred to in the contested EUTMA could be influenced in favour of the applicant's ones, owing to the positive images triggered in their mind as a result of the association between the applicant's trade mark 'CHAMPAIGN' and the PDO 'CHAMPAGNE'.
- While the goods at issue are not entirely comparable, they all relate to foodstuffs and, more specifically, beverages. Therefore, it is not altogether inconceivable that the relevant public, even if there is no likelihood of confusion, could be led to transfer the values of the PDO 'CHAMPAGNE' to the goods bearing the mark applied for. The image portrayed by the earlier PDO is highly positive. That very positive image portrayed by the PDO 'CHAMPAGNE' could benefit the goods covered by the mark applied for. Without any doubt, using the PDO 'CHAMPAGNE', amongst others for cooking apparatus, confers on those products an aura of quality, craftsmanship and exclusivity. That image transfer will thus enable the applicant to introduce its own trade mark on the market without incurring any great risk and the costs – in particular advertising costs – of launching a newly created mark.
- It is beyond any doubt that the sign 'CHAMPAIGN', amongst all available commercial names, has been chosen deliberately in order to exploit the reputation of the PDO 'CHAMPAGNE', that is, with the aim of diverting onto the applicant's goods the image of prestige and celebration conveyed by that PDO.
- It follows from the foregoing that the contested EUTMA amounts to 'use' of the PDO 'CHAMPAGNE' and that such use for the goods covered by the contested application would exploit that PDO's reputation. Therefore, the opposition must be declared well-founded and the contested EUTMA must be refused registration pursuant Article 8(6) EUTMR in combination with Article 103(2)(a)(ii) of Regulation No 1308/2013.
- Next to an exploitation of the repute of the PDO 'CHAMPAGNE', use of the contested EUTMA would also weaken or dilute the reputation of the PDO 'CHAMPAGNE' in the sense of Article 103(2)(a)(ii) of Regulation No 1308/2013.
- The association of Champagne wine with such goods as (without limitation) gas burners and brackets for gas burners and lighters would, without any doubt, have as the effect of weakening the reputation of the PDO.
- More in general, any use of the contested EUTMA for goods that are not comparable to wines would, by definition, dilute the reputation of the PDO.
- In addition to what has been stated above concerning point (a) of Article 103(2) of Regulation No 1308/2013, regarding direct or indirect use of the PDO, the trade mark applied for bearing the sign 'CHAMPAIGN' would at least evoke in the mind of the average European consumer throughout the EU the PDO 'CHAMPAGNE'. It follows that the contested EUTMA must be rejected for the goods applied for also on the ground of Article 103(2)(b) of Regulation No 1308/2013.
- When the different factors singled out in the case-law are applied in this present matter to assess the existence of an 'evocation', it is clear that:
  - there exists a high degree of visual and phonetic similarity between the contested EUTMA 'CHAMPAIGN' and the PDO 'CHAMPAGNE' (see paragraph 60 above);
  - the trade mark 'CHAMPAIGN' incorporates a significant part of the PDO 'CHAMPAGNE';

  - it is a generally known fact that the trade mark applied for, i.e. 'CHAMPAIGN', and the PDO 'CHAMPAGNE' are conceptually identical. Indeed, the contested EUTMA is commonly used as an English translation for 'CHAMPAGNE' (Exhibit V.1);
  - the PDO 'CHAMPAGNE' has acquired an outstanding reputation and prestige throughout the European Union;
  - there is some proximity between the goods at issue which, while being not comparable, are related to foodstuffs, beverages and cooking;
  - the CJEU has pointed out that it is possible for a PDO to be evoked even where there is no likelihood of confusion between the products concerned (04/03/1999, C-87/97, CAMBOZOLA, EU:C:1999:115, § 26).
- It follows that the probability that the contested EUTMA will directly bring to the mind of the average European consumer the PDO 'CHAMPAGNE', when seeing it used for the applicant's goods, is particularly high, since the signs are visually and aurally highly similar to the earlier PDO 'CHAMPAGNE' and it is a generally known fact throughout the Union that 'CHAMPAIGN' is a used in English as a synonym for 'CHAMPAGNE' so that both signs are also conceptually similar.
- The trade mark applied for, also amounts to misuse or imitation, under Article 103(2)(b) of Regulation No 1308/2013.

It follows from the above submissions that the opponent invokes Article 8(6) EUTMR in relation to the alleged breach of Article 103(2)(a)(i) and (ii) as well as Article 103(2)(b) of Regulation (EU) No 1308/2013.

Moreover, the opponent's claim that the PDO 'CHAMPAGNE' enjoys high reputation in relation to *wine* must be duly considered.

The applicable rules protect those entitled to use the PDOs against improper use by third parties seeking to profit from the reputation that they have acquired. They are intended to guarantee that the product displaying them comes from a specified geographical area and has certain characteristics. The reputation of PGIs and PDOs depends on their image in the minds of consumers and that image, in turn, depends essentially on particular characteristics and, more generally, on the quality of the product. It is on the quality of the product that its reputation is based (14/09/2017, C-56/16 P, PORT CHARLOTTE, EU:C:2017:693, § 81-82). Therefore, the reputation of a geographical indication is linked only to the quality of the product that it designates. For consumers, the link between the reputation of the producers and the quality of the products also depends on the assurance that products sold under the designation of origin are authentic (08/09/2009, C-478/07, Budějovický Budvar, EU:C:2009:521, § 110; C-56/16 P cited above, § 81, 83).

All registered geographical indications offer a guarantee of quality due to their geographical provenance. Therefore, the Office considers that geographical indications are intrinsically reputed by the mere fact that they are registered.

Notwithstanding, the opponent submitted extensive argumentation and evidence concerning the reputation of its PDO 'CHAMPAGNE', as follows.

- **Exhibit I**: Documents in relation to the existence and validity of the earlier right, comprising mainly French laws and the extracts from the register of PDOs and PGIs established by Article 104 of Regulation (EU) No 1308/2013 and from the Official Journal of the EU.

- **Exhibit II**: Correspondence between the parties regarding the withdrawal of the trade mark application and refrain from any use of that name.

- **Exhibit III**: Evidence with regard to the 'Champagne' designation of origin, as follows:

  Annex III A: Materials edited and distributed by the opponent related to the history and production of wines from the Champagne region and more specifically about the PDO Champagne, namely:

  - *Annex III.A.1*: The wines of Champagne, From lifestyle to wine styles;
  - *Annex III.A.2*: Champagne, From Terroir to Wine;
  - *Annex III.A.3*: Printout from the opponent's website www.champagne.fr dated 26/10/2010;
  - Annex III.A.4: Printouts from the website of the Champagne Information Bureau in the UK www.champagne-civc.co.uk dated 25/10/2010;

  Annex III B: Materials in relation to the reputation of the PDO 'Champagne', namely excerpts from publications by third parties commenting on the fame and prestige of the PDO 'Champagne', as follows:

  - Annex III.B.1: An excerpt (the foreword) from Michael Edwards, The finest wines of Champagne. A guide to the Best Cuvées, Houses and Growers, Fine Wine Editions, 2009;
  - Annex III.B.2: Christian Pessey, L'ABCdaire du Champagne, Flaumarien, 2002;
  - Annex III.B.3: Angélique de la Chaise and Eric Glatre, Champagne, le plaisir partagé, Hoëbeke, 2000;
  - Annex III.B.4: James Turnbull, Champagne Grandeur Nature, E/PI/ Editions, 1998;
  - Annex III.B.5: Philippe Boucheron, The independent traveller's guide to Champagne, Destination Champagne, Wine Destination Publications, 2005;
  - Annex III.B.6: Karl Lagerfeld's Tryst with Dom Perignon, September 2006.

  Annex III C: Facts and figures with respect to the PDO 'Champagne'

  - Annex III.C.1: 'Les expéditions de vins de Champagne en 2019, edited by the CIVC, available at www.champaqne.fr (Champagne wines shipments in 2019) providing sales figures between 2010 and 2019 inter alia, in the EU;
  - Annex III.C.2: Champagne - A major economic player 2020;
  - Annex III.C.3: Champagne - A major economic player 2021;
  - Annex III.C.4: Printout from info@champagne.fr: Champagne : 326 million bottles shipped in 2022 – cautious optimism for 2023
  - Annex III.C.5: 'Le Champagne dans le monde' 2000-2009 (Champagne in the world 2000-2009);
  - Annex III.C.6: 'Le Champagne en France métropolitaine' 2000-2009 (Champagne in metropolitan France 2000-2009); DIN: 0074826203
  - Annex III.C.7: 'Le Champagne dans l'Union européenne' 2000-2009 (Champagne in the European Union 2000-2009).

- **Exhibit IV**: Case-law. The opponent has provided copies of decisions and judgments from various jurisdictions in the European Union, inter alia:

  France, e.g. Court of Appeal of Caen, 28/10/2003, case number 02/2403, CIVC vs Hotel-Restaurant 'Le Champagne'; District Court of Paris, 19/11/2002, case number 01/08137, CIVC vs Luc Chercheve ('SANDWICHS ET

CHAMPAGNE'); District Court of Nanterre, 24/06/2002, case number 00/13142, CIVC vs T&B ('QUART DE CHAMP !).

EUIPO: e.g. Opposition Division, 31/01/2012, B 1 545 956, 'Champarty'; Opposition Division, 27/01/2010, B 949 984, 'Champagne and Roses'; Board of Appeal, 19/11/2008, R 251/2008-1, 'Champagne and Roses'; Opposition Division, 01/03/2016, B 2 464 199, 'Champagnecharly'; Opposition Division, 12/03/2013, B 2 010 398, 'Rita & Champagne'; Opposition Division, 03/07/2013, B 1 805 079, 'Champagnothèque';

Other jurisdictions: e.g. Oberlandesgericht Munich, 06/11/2003, ChamPearl, GRUR RR 2004; Commercial Court of Stockholm, 29/08/2002, INAO – CIVC – Veuve Clicquot Ponsardin – Pierre Cheval/Arla Foods AB ('Champagnesmak'); High Court of Justice, Chancery Division, 29/01/1993, F.S.R., 641, CIVC – Taittinger/Albev Ltd and opinion of LJ Peter Gibson ('Elderflower Champagne');

Judgments of the General Court and the Court of Justice of the EU (establishing general principles and not involving a case similar to the one at hand).

Having examined the evidence above, the Opposition Division comes to the conclusion that the PDO 'Champagne' has acquired an outstanding reputation and prestige in the European Union. The materials submitted by the opponent show a geographically widespread and longstanding use of the PDO (as claimed by the opponent and shown with evidence with regard to sales volumes, shipments throughout the EU and the world, distribution of Champagne wines and turnover achieved). It is evident from the submitted materials that the wine growers from the Champagne region and the CIVC dedicate investments and efforts to promote and protect the 'Champagne' PDO. Moreover, the opponent successfully proved that Champagne wines are associated with luxury, success, festivities, and glamour, as reflected in numerous publications and, indeed, previous case-law.

Therefore, the Opposition Division will now assess whether the conditions set by Article 103(2)(a) of Regulation No 1308/2013 are met.

Article 8(6) EUTMR in conjunction with Article 103(2)(a)(ii) of Regulation No 1308/2013 – use including exploitation, weakening or dilution of the reputation in relation to non-comparable products

The second alternative of Article 103(2)(a) of Regulation No 1308/2013 grants protection in respect of any direct or indirect commercial use of the protected name insofar as such use exploits, weakens or dilutes the reputation of a designation of origin or a geographical indication. Therefore, this provision may also apply to the use of the protected name on products that are not comparable, as long as that use is capable of exploiting, weakening or diluting the reputation enjoyed by the PDO.

The goods under assessment, that is, utensils, apparatus and installations for lighting, heating, cooking, and/or refrigerating in Class 11, on the one hand, and *wine* on the other hand are obviously not comparable. Furthermore, the opponent has established that the earlier PDO 'Champagne' enjoys an outstanding reputation in the relevant territory.

Therefore, the Opposition Division will assess whether there is use and exploitation, weakening or dilution of the reputation of said PDO.

As to the use of the PDO 'Champagne'

The second alternative of Article 103(2)(a) of Regulation No 1308/2013 grants protection in respect of any direct or indirect commercial use of the protected name insofar as such use exploits, weakens or dilutes the reputation of a designation of origin or a geographical indication. Therefore, this provision may also apply to the use of the protected name on products that are not comparable, as long as that use is capable of exploiting, weakening or diluting the reputation enjoyed by the PDO.

In addition to the reputation prerequisite, Article 103(2)(a)(ii) of Regulation No 1308/2013 provides as condition for granting protection to the PDO that there is direct or indirect commercial use of a protected name.

The concepts of 'direct' and 'indirect' commercial use, as interpreted according to the current practice of the Office, are reflected in the Guidelines, Part B, Examination, Section 4 Absolute Grounds for Refusal, Chapter 10, Trade Marks in Conflict with Designations of Origin and Geographical Indications (Article 7(1)(j) EUTMR).

In particular, according to the Office's Guidelines, 'direct use' of a PDO/PGI as an EUTMA refers to situations where the trade mark consists solely of the name of the PDO/PGI or where the whole denomination of the PDO/PGI is reproduced in the EUTMA together with other elements. On the other hand, there is 'indirect use' of a PDO/PGI, for example, when the PDO/PGI appears in a complex trade mark (such as the representation of a label) in smaller characters as information about the origin or type of the product or as part of the producer's address. In any event, there must be a logical separation of the PDO/PGI from the rest of the term for it to be identifiable and to be held to constitute indirect use.

Furthermore, the Court has specified that the notion of 'use' referred to in Article 103(2)(a) of Regulation No 1308/2013 requires, by definition, that the sign at issue make use of the PDO itself, in the form in which that designation was registered or, at least, in a form with such close links to it, in visual and/or phonetic terms, that the sign at issue clearly cannot be dissociated from it (07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 29).

According to the Court of Justice, for a situation to be covered by Article 16(a) of Regulation (EC) No 110/2008 (equivalent to the current Article 103(2)(a) of Regulation (EU) No 1308/2013), the sign at issue must use the registered geographical indication in an identical form or at least in a form that is phonetically and/or visually highly similar (07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 31). In addition, the Court held that '[t]he incorporation in a trade mark of a name which is protected … cannot be held to be capable of exploiting the reputation of that [name] … if that incorporation does not lead the relevant public to associate that mark or the goods in respect of which it is registered with the [name] concerned or the … product in respect of which it is protected' (14/09/2017, C-56/16 P, PORT CHARLOTTE, EU:C:2017:693, § 115).

It is to be recalled that the earlier PDO and the contested sign are the following:

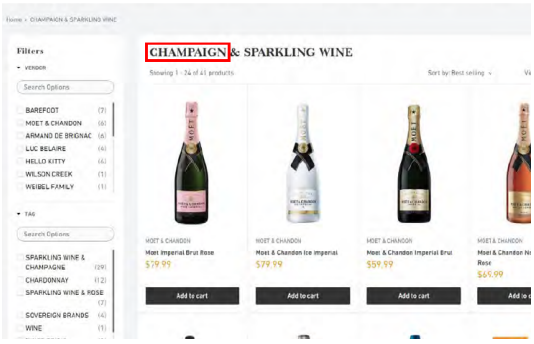
Champagne	
Earlier sign	Contested sign

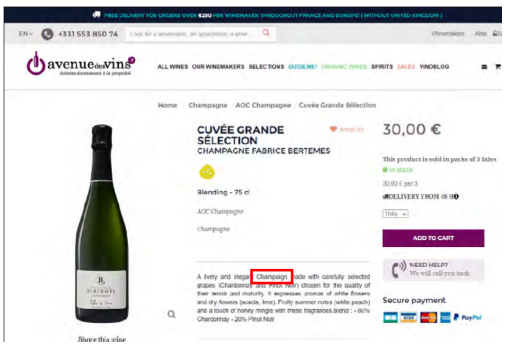
In the present case, the contested EUTMA neither consists solely of the PDO 'Champagne' nor contains or reproduces the whole PDO. Even though the signs are admittedly phonetically

identical for at least part of the public such as the English-speaking part of the public, it cannot be considered that the signs are visually and/or conceptually close to identical since the figurative element consisting in the representation of the last stroke of the letter 'm' in the shape of a cooking utensil introduces a relevant difference.

In particular, the opponent claims that 'Champaign' being frequently used as the English translation of 'Champagne', it will be perceived as such in the contested sign, and it filed the following evidence as **Exhibit V** in support of its claim:

- Article from https://www.quadcitiesbusinessnews.com entitled 'Understanding the difference between Champaign and Sparkling Wines' dated 26/01/2018.
- Article published on a Russian website entitled Champaign is served, Cheers!
- Article from a website in the Netherlands entitled 'Champaign Drinks, 2009'.
- Screenshots of websites of alcoholic beverages' retailers of unknow location, as well as inside and outside the relevant territory showing the denomination 'Champaign' along with pictures of seemingly bottles of Champagne wine such as follows:





- Screenshot of a YouTube video screenshot entitled 'Holiday Champaign Cocktail'.

However, in the present case, the sign applied for consist of a figurative mark in which the letter 'm' of the denomination 'Champaign' is represented by a figurative element representing a cooking utensil. Furthermore, it can be safely assumed that said cooking utensil will clearly and immediately be perceived as evoking the act of 'cooking' by the whole relevant public. Therefore, the visual impression and semantic concept conveyed by the signs cannot be considered the same and display significant differences allowing to dissociate the contested sign from the earlier PDO.

It follows that even if it was considered that the verbal element 'Champaign' would as such correspond to a translation or a misspelling of the denomination 'Champagne' – which remains unproven – this would not necessarily imply that the contested sign will be perceived as such or that this would amount to direct or indirect use in the meaning of Article 103(2)(a)(ii) of Regulation No 1308/2013.

According to the case law quoted by the opponent itself, there is 'use' of a PDO, within the meaning of Article 103(2)(a) of Regulation No 1308/2013, where the degree of similarity between the signs at issue is particularly high and close to identicality, visually and/or phonetically, meaning that the protected geographical indication is used in a form with such close links to it that the sign at issue clearly cannot be dissociated from it (09/09/2021, C-783/19, Comité Interprofessionnel du Vin de Champagne (Champanillo), EU:C:2021:713, § 38).

In any event, assuming that there is indeed direct or indirect commercial use of the protected PDO in the contested EUTMA, it remains necessary to assess whether such use is likely to exploit, weaken or dilute its reputation.

As to the exploitation, weakening or dilution of the reputation of the PDO 'Champagne'

Even if it was to be considered that there is direct or indirect commercial use of the protected PDO in the contested sign, the Opposition Division notes that under Article 103(2)(a)(ii) of Regulation No 1308/2013 a further requirement for granting protection to PDOs in case of direct or indirect use has to be met, namely that such use exploits, weakens or dilutes the reputation of a designation of origin or a geographical indication.

There is no doubt that the goods in the present case are entirely different (*wine* versus various utensils, apparatus and installations for lighting, heating, cooking, and/or refrigerating in Class 11). The opponent's argumentation in relation to the contested goods is very scarce and is limited to rather general statements and principles, most of which are irrelevant. Furthermore, even when referring to relevant case-law and principles, the opponent fails to demonstrate their application to the present case and only puts very little factual or actual arguments.

The line of reasoning submitted by the opponent as to the contested sign's exploitation, weakening or dilution of reputation of the PDO merely refers to the similarity between the earlier PDO and the contested sign and does not contain relevant arguments regarding the context of the goods in question.

In essence, the opponent claims that the use of the contested sign would allow the applicant to benefit from clearly advantageous associations with the name 'Champagne' for some goods *(cooking apparatus and installations; refrigerating appliances and installations)* while the use of the contested sign for goods such as *gas burners, brackets for gas burners* and *lighters* would dilute and weaken the remarkable reputation of 'Champagne'. However, the opponent did not offer any compelling explanation (or evidence) as to why this would be the case.

Exploitation of the reputation

All in all, it infers from the opponent's argumentation that there would be almost automatic exploitation of the PDO's reputation and its image of excellence whatever the nature of the goods concerned, and the opponent considers that an exploitation of the PDO 'is all the more the case as the goods applied for in Class 11 essentially consist of cooking apparatus'. In the opponent's view, these 'are therefore closely related to foodstuffs, that are often consumed together with wine, including Champagne wines' and 'the probability of a non-hypothetical future risk of unfair advantage being taken by the mark applied for is so obvious in the present case that the opponent does not need to put forward or adduce evidence to that end.'

The Opposition Division disagrees with such an approach. Article 95(1) EUTMR requires the opponent to submit and prove all the facts on which its opposition is based. In discharging this burden of proof, the opponent cannot merely contend that exploitation of the reputation would be a necessary consequence flowing automatically from the use of the sign applied for, owing to the strong reputation and image of the earlier PDO and the fact that the contested goods – which is only true for part of them – 'are closely related to foodstuffs, that are often consumed together with wine'.

In the Opposition Division's view, the fact that the contested sign consists of the term 'Champaign' is itself insufficient to lead to the conclusion that there is use of the earlier PDO which would automatically lead to exploitation of the reputation of the earlier PDO for goods such as *cooking apparatus and installations*; *refrigerating appliances and installations*; *searchlights* and *gas burners*. Such a conclusion would mean, in fact, a blanket protection of

GIs and it would be too excessive and incompatible with the foundations of the GI protection system.

The European system for the protection of geographical indications does not provide automatic or blanket protection against possible use of the protected designation for any goods or services, without providing convincing evidence or – at least – reasoned argumentation regarding the existence of the risks provided in the respective legislation.

In the present case, the opponent failed to adduce evidence and/or at least to develop a cogent line of argument to demonstrate specifically how, taking into account the signs, the goods in question and all the relevant circumstances, the use of the contested sign in relation to the contested goods in Class 11, which are very different from *wine* would result into exploitation of the reputation of the PDO 'Champagne'. This is by no means obvious or self-evident given that the goods are so different and concern entirely distinct market sectors.

The opponent hence needs to provide more specific arguments and/or evidence in order to succeed in this claim.

This principle was confirmed in a recent judgment of the General Court in case 26/02/2025, T-23/24, Quevedo Port, EU:T:2025:182, where the Court upheld the Board's finding regarding the lack of exploitation of reputation of the PDO 'Port' in the mark 'Quevedo Port' applied for *olive oil* in Class 29, taking into account the lack of convincing arguments or evidence to the contrary.

The Court stated:

> *58 Lastly, it must be found that none of the arguments submitted by the applicant can call into question the finding made by the Board of Appeal in the contested decision that the applicant 'failed to adduce evidence [or] at least develop a coherent line of argument to demonstrate specifically how the use of the contested sign, that seeks protection for olive oils in Class 29, would result in exploitation of the reputation of the [name] "Port" [of the earlier PDO] protected for wine'.*
>
> *59 As in the proceedings before EUIPO (see paragraph 38 of the contested decision), the applicant merely makes general statements regarding the similarity of the signs at issue and the fact that there is, in its view, almost automatic exploitation of the reputation of the earlier PDO and its image irrespective of the nature of the products concerned.*
>
> *(…)*
>
> *62 (…) By contrast, it did not develop any specific arguments capable of calling into question the reasoning of the Board of Appeal as regards, in particular, the way in which the use of the contested sign, that seeks protection for olive oils in Class 29, would result in exploitation of the reputation of the name 'Port' of the earlier PDO protected for wine.*

The same reasoning was adopted by the General Court in case 26/02/2025, T-40/24, Portsoy, EU:T:2025:183, concerning the lack of exploitation of reputation of the PDO 'Port' in the trade mark 'Portsoy' applied for *Scotch Whisky complying with the specifications of the PGI Scotch Whisky* in Class 33:

> *80 Accordingly, contrary to what the applicant claims and for the reasons stated previously, it seems unlikely that the mere incorporation of the element 'port' in the contested sign in order to designate whisky would be sufficient to establish an*

association between the contested sign and the name 'Port' used by the earlier PDO to protect wines based on their quality and geographical provenance.

81 Lastly, and in any event, it must be found that none of the arguments submitted by the applicant can call into question the finding of the Board of Appeal in the contested decision that the applicant 'failed to adduce evidence and/or at least develop a coherent line of argument to demonstrate specifically how, taking into account the signs and all the relevant circumstances, the use of the contested sign in relation to the non-comparable goods would result in exploitation of the reputation of the earlier PDO …'.

82 The applicant merely makes general statements regarding the similarity of the signs at issue and the fact that there is, in its view, almost automatic exploitation of the reputation of the earlier PDO and its image irrespective of the nature of the products concerned.

(…)

85 (…) By contrast, it did not develop any specific arguments capable of calling into question the reasoning of the Board of Appeal as regards, in particular, the way in which the use of the contested sign to designate products which were not comparable would result in exploitation of the reputation of the earlier PDO.

Therefore, the Opposition Division concludes that the opponent did not sufficiently demonstrate how the use of the contested trade mark, given the type of the product under comparison, would exploit the repute of the earlier PDO.

Weakening or dilution of the reputation

As regards the weakening or dilution of the earlier PDO, the opponent claimed before the Opposition Division that 'Next to an exploitation of the repute of the PDO 'CHAMPAGNE', use of the contested EUTMA would also weaken or dilute the reputation of the PDO 'CHAMPAGNE' in the sense of Article 103(2)(a)(ii) of Regulation No 1308/2013. The association of Champagne wine with such goods as (without limitation) gas burners and brackets for gas burners and lighters would, without any doubt, have the effect of weakening the reputation of the PDO. More in general, any use of the contested EUTMA for goods that are not comparable to wines would, by definition, dilute the reputation of the PDO.'

Before the Board of Appeal, the opponent added that the use of the earlier PDO in the contested sign 'implies antagonisms and (at least) vulgarisations in terms of image and sensations which will invariably lead to the whittling away of the reputation of that PDO.'

However, and similarly to what was highlighted above as regards exploitation of the reputation of the PDO, the opponent did not offer any compelling explanation (or evidence) as to why the use of the term 'Champaign' as depicted in the contested sign would 'without any doubt, have as the effect of weakening the reputation of the PDO' or 'more in general, any use of the contested EUTMA for goods that are not comparable to wines would, by definition, dilute the reputation of the PDO.' Besides, the opponent's claim put forward before the Board of Appeal is not sustained by any argument or evidence either.

In the Opposition Division's view, the coincidence between the signs in the sequence of letters 'Champa(*)gn(*)' is itself insufficient to lead to the conclusion that there is use of the earlier PDO which would automatically lead to the weakening or dilution of the reputation of the earlier PDO for goods such as *cooking apparatus and installations*; *refrigerating appliances and installations*; *searchlights* and *gas burners*.

In line with what was mentioned above, this would mean, in fact, an automatic protection of GIs which would be too excessive and incompatible with the foundations of the GI protection system. The opponent needs to provide more specific arguments and/or evidence in order to succeed in this claim.

Despite the fact that the contested sign shares some similarities with the earlier PDO, the contested goods are entirely different from the product protected by the earlier PDO, namely, *wine* and, it is not obvious why the use of the contested sign in the context of such goods would necessarily result in weakening or diluting its reputation.

Therefore, the Opposition Division concludes that the opponent did not sufficiently demonstrate how the use of the contested trade mark, given the type of the product in question, would weaken or dilute the repute of the earlier PDO.

Since Article 95(1) EUTMR requires the opponent to submit and prove all the facts on which its opposition is based, the opponent cannot merely contend that weakening and dilution of the reputation would be a necessary consequence flowing automatically from the use of the sign applied for, owing to the strong reputation and image of the earlier PDO and the similarities between the signs, without any regard to the context of the goods in question.

Taking into account all the relevant circumstances, including the goods in question that is, on the one hand, the contested goods in Class 11, and the *wine* protected by the PDO 'Champagne', it is by no means obvious or self-evident how the use of the contested sign in relation to these goods would result into weakening or dilution of the reputation of the PDO 'Champagne'.

As the opponent failed to adduce evidence and/or at least develop a cogent line of argument to demonstrate specifically how, taking into account the signs and all the relevant circumstances, the use of the contested sign would result in weakening or dilution of the reputation of the PDO 'Champagne', this claim must fail as unsubstantiated.

It follows from all the above that the opposition based on Article 8(6) EUTMR taken in conjunction with Article 103(2)(a)(ii) of Regulation No 1308/2013 has to be rejected.

Article 8(6) EUTMR in conjunction with Article 103(2)(b) of Regulation No 1308/2013 – evocation

As set out above, the opponent also claims that the contested EUTM application is to be considered at least an evocation of the PDO.

According to the Court, the concept of 'evocation' covers a situation where the term used to designate a product incorporates part of a protected designation, with the result that, when the consumer is confronted with the name of the product, the image triggered in his or her mind is that of the product the designation of which is protected (04/03/1999, C-87/97, Cambozola, EU:C:1999:115, § 25; 26/02/2008, C-132/05, Commission v Germany, EU:C:2008:117, § 44).

Therefore, consumers must establish a link between the term used to designate the contested goods/services (i.e. the contested sign 'Champaign') and the product whose designation is protected (wines) (21/01/2016, C-75/15 Verlados, EU:C:2016:35, §§ 21-22), whilst it is necessary to take account of the presumed expectation of the average consumer, who is reasonably well informed and reasonably observant and circumspect. The Court has clarified that such link between the term used to designate the product and the product whose name

is protected must be sufficiently clear and direct and that a mere association with the protected geographical indication or the geographical area relating thereto is not sufficient (21/01/2016, C-75/15, Verlados, EU:C:2016:35, § 22, 07/06/2018, C-44/17, Glen Buchenbach, EU:C:2018:415, § 53).

Therefore, consumers must establish a link between the term used to designate the contested goods and the product whose designation is protected (*wine*) (C-75/15, § 21-22). It is necessary to take account of the presumed expectation of the average consumer, who is reasonably well informed and reasonably observant and circumspect. The Court has clarified that this link between the term used to designate the product and the product whose name is protected must be sufficiently clear and direct and that a mere association with the protected geographical indication or the geographical area relating thereto is not sufficient (C-75/15, § 22, 07/06/2018, C-44/17, SCOTCH WHISKY, EU:C:2018:415, § 53).

It is important to emphasise that the finding of evocation is never automatic. What has to be found is that the public establishes a sufficiently clear and strong link between the element of the EUTM and the PDO/PGI, with the result that, upon encountering the contested mark, the image triggered directly in the public's mind is that of the product whose geographical indication is protected.

In assessing whether such a link is established, the Court has considered that the visual, phonetic or conceptual relationship between the signs is one of the factors to be taken into account. Another relevant aspect of the analysis is the degree of proximity of the goods/services concerned, including the actual physical appearance or the ingredients and taste of the products covered by the contested sign and the protected designation (04/03/1999, C-87/97, Cambozola, EU:C:1999:115, § 27).

The notion of 'evocation' referred to in Article 103(2)(b) of Regulation (EU) No 1308/2013 does not require, as a prerequisite, that the product benefitting from a PDO and the product or service covered by the sign at issue be identical or similar (09/09/2021, C-783/19, Champanillo, EU:C:2021:713, § 66). Nevertheless, this aspect will be taken into account in the assessment of evocation.

According to the Advocate General (17/12/1998, C-87/97, Cambozola, EU:C:1998:614, § 33), 'the term 'evocation' is objective, so that it is not necessary to show that the owner of the mark intended to evoke the protected name.

The present claim must be assessed in the light of the above considerations.

As mentioned above, the goods in question are not comparable and they are very different from *wine* protected by the earlier PDO. Even though before the Opposition Division, the opponent referred to the fact that the contested goods are related to food and beverages, which is only partially true, in the absence of any argument as to their eventual proximity with the goods protected by the earlier PDO, this lacks relevance for the purpose of assessing the link with the earlier PDO.

The opponent mainly emphasises that the contested sign takes over eight of the nine letters of the PDO, in the same order and therefore, the signs are visually and aurally highly similar. In addition, it argues that since the word 'Champaign' is commonly used as an English translation for 'CHAMPAGNE', the contested sign is conceptually identical to the PDO 'CHAMPAGNE' and therefore there is, necessarily an 'evocation' of the PDO (26/02/2008, C-132/05, Commission v Germany (PARMESAN), EU:C:2008:117, § 47).

In that connection, following the line of argument of the opponent and evidence filed in this regard, even if it was assumed that 'Champaign' is a commonly used translation for

'CHAMPAGNE' (which is not apparent), it can only be inferred from said evidence that the word 'Champaign', in the context of wine retail could be perceived as referring to 'Champagne'. However, in the context of the contested goods in Class 11, which are entirely different to *wine*, it is unlikely that the word 'Champaign' of the contested sign will call the wine protected by the PDO Champagne into mind of consumers in view of the stylisation of the letter 'm' which features a cooking utensil device and in view of the fact that.

In this respect, it is clear that the contested goods do not include any beverages or foodstuffs and are completely different from these products. Therefore, the criteria established by the Court and referred to by the opponent in order to assess the degree of proximity of the relevant products consisting in the actual physical appearance or the ingredients and taste of the products covered by the EUTM application and the protected designation are clearly not applicable to the present case. Moreover, the opponent neither developed a cogent line of arguments nor adduced evidence in support of its claim that 'there is some proximity between the goods at issue which, while being not comparable, are related to foodstuffs, beverages and cooking', which, as such, is not a convincing argument.

In the Opposition Division's view, bearing in mind the specific graphic representation of the contested sign featuring a cooking utensil, the fact that the goods in question include *refrigerating appliances and installations* and various *cooking appliances,* which are different from the *wine* protected by the earlier PDO, do not make the establishment by the relevant public of a sufficiently clear and direct link with the earlier PDO 'even more', but rather less likely.

Even if the above-mentioned *refrigerating appliances and installations* may admittedly be used to store *wine*, this is not enough to establish any degree of proximity between them. The contested goods and the *wine* covered by the earlier PDO are very remote in terms of their nature and physical appearance, method of fabrication/elaboration and purpose. In addition, the opponent did not argue or present any evidence which would establish that the contested refrigerating apparatus, for example, are distributed through the same channels or could come from the same undertakings, and this is not a well-known fact on which the Opposition Division could rely ex officio.

Finally, it is noted for the sake of completeness that even though the relevant public will most probably not perceive any meaning in the contested sign, the fact that 'Champaign' refers in English dictionaries, inter alia, to *an expanse of level open country* (https://www.collinsdictionary.com/es/diccionario/ingles/Champaign definition extracted on 06/06/2025) makes it unlikely, as the opponent claims, that 'the sign 'Champaign', amongst all available commercial names, has been chosen deliberately in order to exploit the reputation of the PDO 'CHAMPAGNE', that is, with the aim of diverting onto the applicant's goods the image of prestige and celebration conveyed by that PDO.'

Furthermore, the opponent's argument that, 'since both signs are, at least for the English-speaking part of the relevant public, phonetically identical, it is obvious that, at least when pronounced, both signs will be understood as having the same meaning' is not convincing either in view of the above. In fact, if the English-speaking part of the public was to see any meaning in the contested sign, taking into account the graphic representation of the letter 'm' and the context of the contested goods, it would most likely be a reference to *an expanse of level open country* rather than a reference to the earlier PDO 'Champagne'.

In any event, what is decisive in order to assess whether there is evocation is the perception of the relevant public and it is required that the public establishes a sufficiently clear and direct link between the contested sign and the product protected by the PDO 'Champagne'. Furthermore, according to Article 95(1) EUTMR, in proceedings relating to relative grounds

for refusal of registration, the Office shall be restricted in this examination to the facts, evidence and arguments provided by the parties.

In the present case however, the opponent did not put forward any coherent line of arguments or evidence concerning the possible perception of the contested sign and the alleged evocation and the Opposition Division finds it unlikely in view of the conceptual difference between the signs introduced by the contested sign's stylisation and the lack of proximity between the goods in question, that the contested sign displayed on the contested goods in Class 11 calls into mind the *wine* protected under the PDO 'Champagne'.

Therefore, the fact that both signs coincide in 'Champa(*)gn(*)' is, in this case, not sufficient for the public to make a clear and direct connection between the contested EUTM application on the contested goods with the protected product wine coming from the Champagne region.

In addition, this conclusion is not called into question by the numerous decisions quoted by the opponent as the circumstances, facts and evidence on the face of which these cases were assessed were different from those of the present case. The outcome of any particular case will depend on specific criteria applicable to the facts of that particular case, including, the parties' assertions, arguments and submissions and each case has to be dealt with separately and with regard to its particularities.

It follows that the contested EUTM application does not amount to evocation of the earlier PDO within the meaning of Article 103(2)(b) of Regulation No 1308/2013 or that there is misuse or imitation of the earlier PDO in the contested sign and therefore the opposition based on Article 8(6) taken in conjunction with this provision must be rejected.

Article 8(6) EUTMR in conjunction with Article 103(2)(c) and (d) of Regulation No 1308/2013 – commercial use in relation to comparable products 'false or misleading indication of origin' and 'other practice liable to mislead the consumer'

The opponent's claim based on Article 103(2)(c) and (d) of Regulation No 1308/2013 was not sustained by any argument whatsoever and according to the above, the Opposition Division is of the view that the contested sign will not be perceived misleading. Therefore, it should also be rejected.

c) Conclusion

The Opposition Division finds that the conditions of Article 8(6) EUTMR in connection with Article 103(2) of Regulation No 1308/2013 are not fulfilled.

Therefore, the opposition is not well founded under Article 8(6) EUTMR.

COSTS

According to Article 109(1) EUTMR, the losing party in opposition proceedings must bear the fees and costs incurred by the other party.

Since the opponent is the losing party, it must bear the costs incurred by the applicant in the course of these proceedings.

According to Article 109(7) EUTMR and Article 18(1)(c)(i) EUTMIR, the costs to be paid to the applicant are the costs of representation, which are to be fixed on the basis of the maximum rate set therein.

The Opposition Division

Jakub MROZOWSKI Marine DARTEYRE Angela DI BLASIO

According to Article 67 EUTMR, any party adversely affected by this decision has a right to appeal against this decision. According to Article 68 EUTMR, notice of appeal must be filed in writing at the Office within two months of the date of notification of this decision. It must be filed in the language of the proceedings in which the decision subject to appeal was taken. Furthermore, a written statement of the grounds for appeal must be filed within four months of the same date. The notice of appeal will be deemed to have been filed only when the appeal fee of EUR 720 has been paid.