

European Court of Justice: Italian Vinegar Makers Lost the Battle Over “Balsamico” Name

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The European Court of Justice ("**ECJ**") has examined the Italian balsamic vinegar manufacturer Consorzio Tutela Aceto Balsamico di Modena's ("**Consorzio**") request against German manufacturer Balema GmbH ("**Balema**"). Consorzio claimed that Balema's use of "balsamico" expression on product labels extends geographical indication protection arising from "Aceto Balsamico di Modena PGI" ("**Expression**") registration.

Consequently, ECJ has rendered its decision in favor of Balema, saying that using the word "balsamico" separately from the Expression does not extend to the use of non-geographical individual terms.

Prior to the lawsuit, Consorzio has made an application to register "Aceto Balsamico di Modena" as a geographical indication. Following this, Germany, France, and Greece have objected to such an application stating that this application will have a negative effect on the products on the market. The European Commission decided that geographical indication protection involves the Expression as a whole, and according to European Union legislation, the non-geographical indication terms can be used alone, together or as a translation of these terms without any problem. Consequently, the European Commission has accepted the Expression to take benefit from geographical indication protection with registration.

As to the subject of the decision,

- Consorzio has claimed that Balema, manufacturing, and marketing vinegar-based products made from wines for 25 years, infringes its rights arising from the Expression's geographical indication registration by using "Balsamico" word on its product labels. In this sense, Consorzio has sent a formal notice and following this, brought an action before German Courts.
- Germany First Instance Court and Federal Court have decided that Balema's uses constitute trademark infringement.
- Following this Balema has appealed Germany First Instance Court's decision and the file has been transferred to Germany Federal Court.
- Germany Federal Court has decided to determine whether the Expression takes benefit as a whole or each part of its name from geographical indication protection.
- Germany Federal Court has underlined that the protection of a name that consists of several terms, registered as a designation of origin or geographical indication, may extend to the individual terms. It court also has taken Commission's specification that expressions under protection can be restricted into consideration.
- Therefore, Germany Federal Court addressed the following question to EJC: "Does the protection of the entire Expression extend to the use of the individual non-geographical components of the term as a whole ("Aceto", "Balsamico", "Aceto Balsamico")?"

ECJ has stated that the Expression has been registered as a whole, takes benefit from the protection and has an undeniable reputation on the national and international market. As a rule, geographical indications are protected as a whole thus unless there is statement the expressions within these indications cannot be used separately by the third parties. However, within the Expression's registration process it has been stated that the objecting countries only uses the word "balsamico" or its translations, however, the protection is granted to "Aceto Balsamico di Modena" as a whole therefore the terms where the geographical indication references are not made can be used separately. Following this, it is established that the term 'aceto' is a common term and e term 'balsamico' is the Italian translation

of the adjective 'balsamic' which has no geographical connotation. In this sense, the Expression does not extend the use of the individual non-geographical terms of that name.

In Turkey, the registration conditions of geographical indications are regulated under Industrial Property Law numbered 6769. Although the question whether the non-geographical terms take benefit separately or not from the protection arising from the geographical indication protection is not regulated, we are of the opinion that this decision shall be guiding.

Please see this [link](#) for the full text of the ECJ's decision dated 4 December 2019.

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