

***The “Queso Manchego” case:
How far can GI protection go?
C-614/17***

ECTA Council meeting workshop

Larnaca (Cyprus), October 18, 2019

**Aitor Pomares
Attorney-at-law**

*“Somewhere in La Mancha, in a place whose name I do not care to remember...”**

PDO Manchego cheese



Ordinary cheese



* «El ingenioso hidalgo Don Quijote de La Mancha», Miguel de Cervantes, 1605

What is 'Queso Manchego' (PDO)?

- Sheep cheese
- Made with either pasteurised or raw milk
- Only milk of ewes of the 'Manchega' breed
- Specificity: pressed cheese with a hard rind and a firm and compact paste, a colour that varies from white to ivory-yellow, an intense and persistent aroma, a slightly acidic, strong and flavoursome taste and a buttery, slightly floury texture with low elasticity.

- Production area:

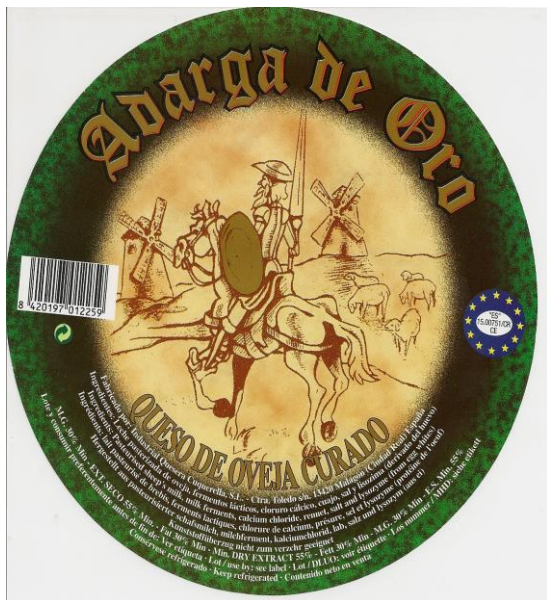


Protection:

- In Spain since February 16, 1984; by means of Order of the ministry of Agriculture of the Spanish government.
- In the EU by means of the Commission Regulation (EC) No 1107/96, of 12 June 1996, on the registration of geographical indications and designations of origin under the procedure laid down in Article 17 of Council Regulation (EEC) No 2081/92

Challenged activity

For sheep cheese produced in La Mancha which does not comply with the specifications of the PDO

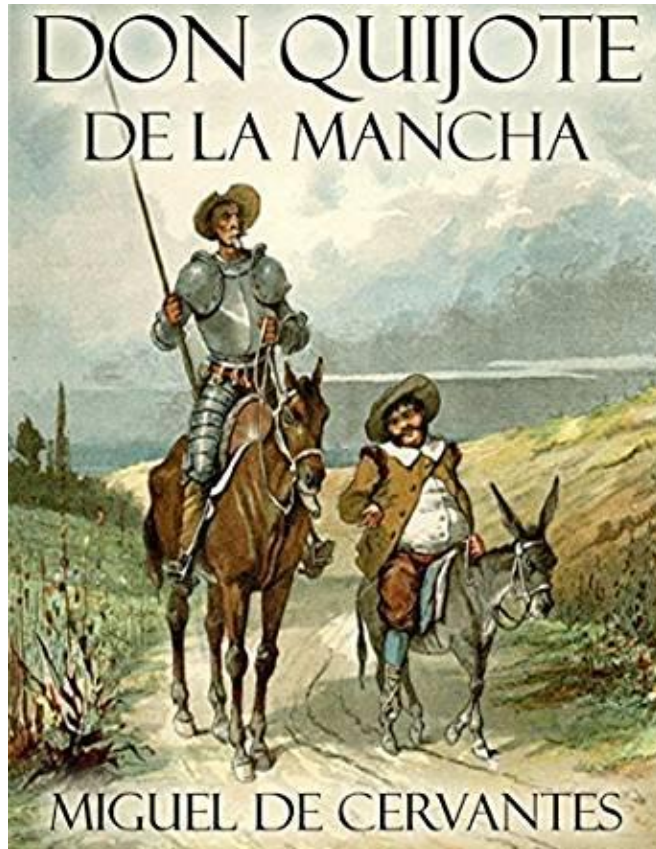


Spanish trade name nº 235378 “ROCINANTE” (word),
trademark nº 2045182 and nº 2635904 (device),
for cheese and cheese-related services.

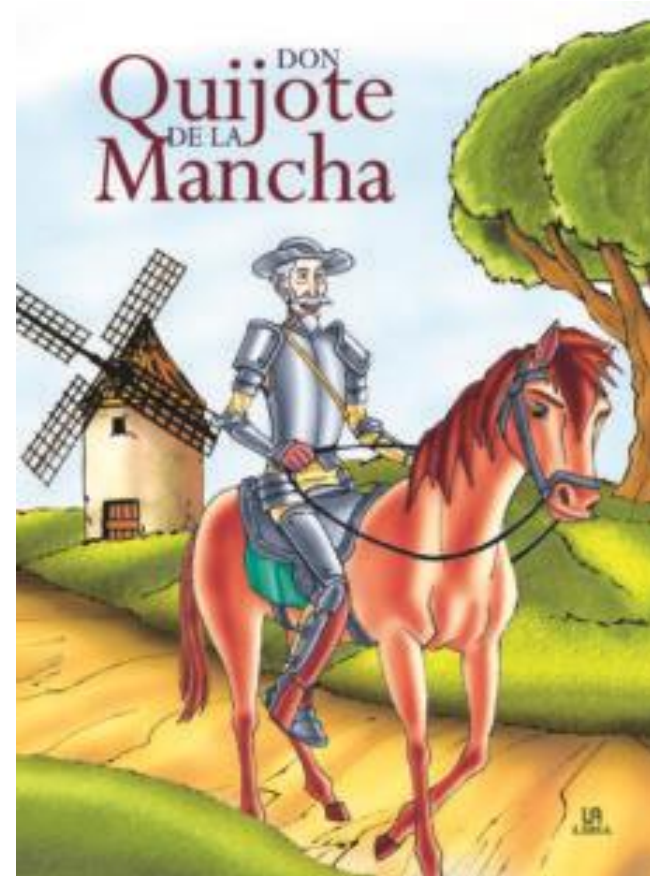




BERENGUER & POMARES
ABOGADOS



© Amazon Media EU S.à r.l.



© Libsa

T. +34 966 083 900
F. +34 966 081 995
www.berenguer-pomares.com

C/ Canalejas, 13 Ático
03001 - ALICANTE
administracion@berenguer-pomares.com



BERENGUER & POMARES
ABOGADOS



T. +34 966 083 900
F. +34 966 081 995
www.berenguer-pomares.com

C/ Canalejas, 13 Ático
03001 - ALICANTE
administracion@berenguer-pomares.com



BERENGUER & POMARES
ABOGADOS



T. +34 966 083 900
F. +34 966 081 995
www.berenguer-pomares.com

C/ Canalejas, 13 Ático
03001 - ALICANTE
administracion@berenguer-pomares.com



BERENGUER & POMARES
ABOGADOS



T. +34 966 083 900
F. +34 966 081 995
www.berenguer-pomares.com

C/ Canalejas, 13 Ático
03001 - ALICANTE
administracion@berenguer-pomares.com

Scope of protection:

Registered names shall be protected against:

- (b) any misuse, imitation or **evocation**, even if the true origin of the products or services is indicated (...)

Questions referred to by the Supreme Court:

- (1) Must the evocation necessarily be brought about by the use of a name visually, phonetically or conceptually similar to the [PDO] or may it be brought about by the use of figurative signs evoking the [PDO]?*

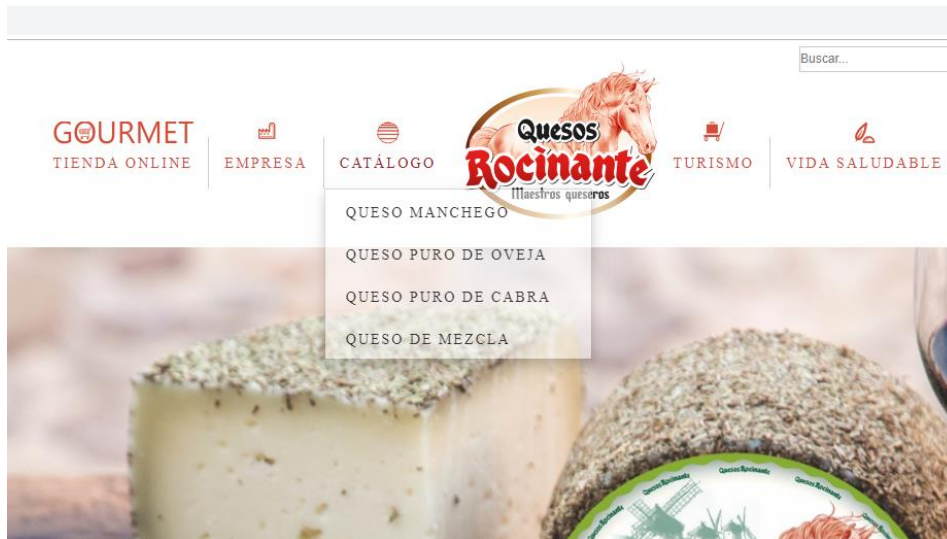


A registered name may be evoked through the use of figurative signs

(2) Can the use of signs evoking the region with which a [PDO] is associated constitute evocation of the [PDO] itself, even when the user of those signs is a producer established in the region associated with the [PDO], but whose products are not protected by [that PDO] because they do not meet the requirements set out in the product specification, apart from the geographical provenance?



Including where such figurative signs are used by a producer established in that region, but whose products, similar or comparable to those protected by the designation of origin, are not covered by it.



(3) Must the concept of the average consumer in order to assess whether there is “evocation”, be understood to cover European consumers or can it cover only consumers of the Member State in which the challenged product is produced or with which the PDO is geographically associated and in which the product is mainly consumed?

All European consumers, including consumers of that Member State.

Effective and uniform protection throughout the territory of the European Union must be guaranteed.

Evocation assessed by reference to the consumers of a single Member State may be sufficient.

Judgement nº 451 of the Spanish Supreme Court of July 18, 2019:

- Labelling infringes the PDO
- Annuls the registered trademarks and trade name “ROCINANTE”

Evolution of the concept of evocation in the CJ's case-law

Phonetic

- 4/3/1999 C-87/97 Cambozola / Gorgonzola. 26/2/2008 C-132/05 Parmesan / Parmigiano Reggiano
- *'covers a situation where the term used to designate a product incorporates part of the 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'*

Conceptual

- 7/6/2018 C-44/17 Soth Whisky / Glen
- There may be evocation as a result of the simple 'conceptual proximity' between the PGI and the disputed sign

Mere figurative signs

- 2/5/2019 C-614/17 Queso Manchego / figurative signs
- *A registered name may be evoked through the use of figurative signs*

Thank you for your attention



+34 966083900



apomares@berenguer-pomares.com



www.berenguer-pomares.com



@bypabogados