United Kingdom

“Greek Yoghurt”

Decision of the Court of Appeal

28 January 2014 – Case No. A3/2013/0936 ([2014] EWCA Civ 5)

Fage UK Ltd. v. Chobani UK Ltd.

EU Regulation No. 1151/2012

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Keywords Passing-off · Misleading use of geographical connotation · Relationship to registered geographical indications under EU law

1. Traders who make yoghurt in Greece using a traditional process may join the class of traders for whose products the phrase “Greek yoghurt” has become distinctive and complain of the misuse of the phrase provided they have used it for a sufficient period of time to acquire a share in the goodwill associated with it.
2. Use of the phrase “Greek yoghurt” in relation to yoghurt not made in Greece is calculated to cause deception and confusion and to lead members of the public to buy it thinking they are buying the genuine article. Such activity is intended to take advantage in order to sell the product at the premium price which Greek yoghurt commands, and amounts to passing-off.
3. The EU Regulation 1151/2012 on geographical indications ensures uniform protection within the Union of geographical indications which it covers or which fall within its scope. It does not preclude systems of national protection for geographical indications which do not fall within its scope, namely to prevent confusion and deception of the public.
4. It would be very surprising if the effect of EU law were to prevent Member States from taking action against deceptive marketing.