France

“Morbier”

**Decision of the Court of Cassation of France (Cour de Cassation)
14 April 2021 – Case No. 17-25.822;
ECLI:FR:CCASS:2021:CO00366**

*Syndicat interprofessionnel de défense du fromage
Morbier v. Fromagère du Livradois, simplified
joint-stock company*

Regulation (EU) No 1152/2012, Art. 13

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Keywords Protected designation of origin (PDO) · Visual appearance of the product · Confusion · Unfair and parasitic competition · Infringement · Applicability outside EU territory

1. The simple renewal of a trade mark registration in the United States of America, without a risk of evocation in the mind of European consumers, does not lead to an infringement of a protected designation of origin (PDO) committed outside of the European Union territory since Art. 13 of Regulation (EU) No 1152/2012 gives protection to Q1 PDOs only in Member States.
2. A PDO is not solely protected against the use of the registered name by a third party but also against the reproduction of the shape or the appearance (here the blue horizontal line of the “Morbier” cheese) characterizing a product covered by the registered name where that reproduction is liable to lead the consumer to believe that the product in question is covered by that registered name.
3. It is up to the courts to investigate whether the shape or the appearance of a product is unique to a PDO and whether its reproduction, combined with all the relevant factors of the case, is liable to mislead the consumer as to the true origin of the product being marketed.

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Available in English at <https://www.courdecassation.fr>. For the preliminary ruling of the CJEU in this matter, see “Syndicat interprofessionnel de défense du fromage Morbier” at IIC (6)52:806 (2021), <https://doi.org/10.1007/s40319-021-01079-1>.