“Champím” vs “Champagne”, little brother wins the battle.

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Judgment of the Supreme Court (First Chamber) no. 107/206 of 1 March 2016

The Spanish Supreme Court (SC) in a judgment of 1 March 2016, dismissed the cassation appeal filed by the “*Comité Interprofessionnel du vin de Champagne*” (joint trade association for Champagne) in respect of registration of the Spanish trademark “*Champím*” and use of the distinctive sign “*Champin*”.

Facts: “*Champín*” is a fruit flavoured fizzy drink aimed at children and is presented in a bottle similar to that used for bottling sparkling wines, and using the distinctive sign “*Champín*”:

The defendant filed an application for Spanish word mark “*Champím*” in 1996 for goods in class 32. In 2011 the Comité de Champagne filed legal actions based on the following allegations:

(i) the trademark “*Champím*” is invalid on the following grounds:

- It contravenes art. 5.1.f) of the Spanish trademark Act (LM), as the sign is considered to be unlawful, specifically in respect of the Community Regulation which protects Designations of Origin (D.O.) including “Champagne” (R EC 1234/2007, of 22 October).
- It misleads the public as to the geographical origin of the good or service

pursuant to 1.g) LM;

(ii) use of the trademark presupposes infringement of the Champagne D.O. and

(iii) that use and the shape and presentation of the product are deemed to be acts of unfair competition pursuant to Spanish regulations.

The Commercial Court of Granada upheld almost all the claims of the Comité de Champagne declaring that the trademark was invalid and that it had infringed the D.O. considering it to be an act of misappropriation of another's reputation. However, the Provincial Appellate Court of Granada completely overturned the judgment which led the Comité de Champagne to file a cassation appeal.

What were the Supreme Court's arguments in this case?

- **Regarding invalidity of the trademark on grounds that it contravenes the Law**: the TS holds that the prohibition of 5.1.f) LM does not cover any legal infringement. In this case, Community Regulations in D.O. matters have not been breached as the trademark was not registered for wine or spirits, nor does it evoke these in any way.
- **Regarding infringement of the Champagne D.O.**: it was pointed out that there is no such evocation, the phonetic similarity is irrelevant and coverage is neither identical nor similar: sparkling wine/fizzy soft drink.
- **Regarding the invalidity of the trademark due to its misleading nature**: the TS holds that no consumer would be likely to think that the drink "*Champím*" had been made from Champagne or that it shared any of its principal features, given the difference between the singular nature of Champagne and the fizzy fruit drink.
- Similarly, the TS does not consider that there has been any unfair competition based on misappropriation of another's reputation despite the fact that the mark refers to the formal creations and forms of presentation, because the behavior of "*Champím*" is not conducive to obtaining any advantages deriving from the market position of Champagne, highlighting the fact that use of the bottle – decorated, moreover, with childish designs, – far from resembling a champagne label -, is not exclusive to the well known French drink, but is shared by other sparkling and semi-sparkling wines.

Conclusion:

The judgment concludes that the trademarks Champagne and Champin are able to coexist in Spain, both on the register and in the market. With all due respect merited by the Spanish Supreme Court, we cannot share the conclusion that in this case there is no evocation of any kind. In my view, the expression "*Champím*" in the factual context in which it is used, clearly evokes Champagne.

In short, it would appear that French champagnes will be required to continue coexisting in the Spanish market alongside "*Champím*". Hard to credit, but true.