

THE PROTECTION OF FOOD QUALITY IN SPAIN

Introduction

I would like to start by pointing out the

similarities and differences between the those from Italy or France and, therefore, the question relating to their similar foods. Above all, they share a very

similar cultural view

experience than simply something you need in order to live and work. Eating is a

pleasure to be enjoyed and not necessarily the manifestation of an ordered life

(Rabelais, Montagne, Boccaccio or Cervantes, all write about food in a very carnal way

that would be considered grotesque by some in our days).

This implies, in my opinion, that our concept of quality in food is more inclined towards

sensuality, tradition and the land than towards a perfect, well-controlled, way of

producing.

We are talking about quality and I would like to say that I will use the

“quality” with a very loose meaning

decides but what the consumer understands by quality, which includes aspects such as

health claims and organic production.

Quality in food, in my opinion, means the perception of quality.

I will try to to

then elaborate further some specific

problems that the protection of food quality has posed in Spain, and the solutions

offered by the Courts.

of food in the sense that eating has more to do with a sensual **expression. In my view, quality means not what an expert describe, very briefly, the present Spanish legislation on the matter and cases which, in my opinion, illustrate the legal**

1) Current Spanish Legal Situation

1.1 Statute of Vineyards, Wine and alcohol

It all started with wine.

In Spain the promotion and protection of quality in food started- like in many places with

the protection of quality of wine. The first regulations, in the XIX century, were aimed at preventing fraud, more than anything else. The first statute on wine was passed in the 30's, but is not until the 70's that protection of quality adopts the form of Designation of Origins, created under the first Act made in Spain for this purpose, the Ley 25 of 1970 del estatuto de la viña, del vino y de los alcoholes Vineyards, Wine and Alcohols. This Act was extended – by means of its fifth additional disposition- to products other than wines, and is the system of food quality protection in Spain.

- Statute on **foundation of the legal**

1.2 European Legislation

In the year 1986 Spain joined the of quality in food in Spain has been closely linked with the Common Agricultural Policy.

In this respect, Regulation 2081 and 2082 of 1992, and the subsequent Regulations 509 and 510 of 2006, as well as those Regulations on wine and alcohol products, are the legislation in force in Spain.

Under these Regulations a increasing number of products are protected by Designation of Origin, Geographical Indications and Traditional Specialities.

I must say that some of these designations are geographical area, products covered by them, or whether they are sometimes motivated by local political interest or whether, irrespectively of their reputation, the control they exert on production –and the possibility of using the label DO, IG- are really promoting and

protecting the quality of the food.

What I can say is that consumers are sometimes completely unaware of some of these Designations, up to the point that I have been told that- in the face of the proliferation of designations of origin for olive oil- the government conducted research to work out which of these designations were best known by consumers, to find that it was “aceite de Jaen” (olive oil of Jaen). Jaen is a province of Spain known for the cultivation of olive trees and for the production of olive oil, but is not a designation of origin (although within the province of Jaen there are several designations of origin for olive oil).

European Community and, since then, the protection hardly known outside their and one might question what real reputation they offer to the

1.3 Vertical Legislation

Apart from this general legal framework, a number of specific products

authorities for these sectors.

There are specific regulations on quality for the following products:

Fish, seafood and canned fish.

Iberian Pork Meat

Meats, Cured Meats and Ham

Edible Oils and table olives

Wines

Spirits (Rum, Whisky, Brandy, Anisette Liquor, Gin, etc), Beers and Ciders

Milk and dairy products

regulations for specific and sectors are in force in Spain, reflecting special concern on the part of the

1.4 Horizontal Legislation. Organic Products and Integrated Agriculture

I should also mention that

1989 and that another form of quality through environmentally friendly production is

Organic food production has been regulated in Spain since

Integrated Agriculture

2002.

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, regulated in Spain by Royal Decree 1201 of 20th November.**5 Regional Legislation; promoting local quality**

The legal system in Spain is completed by local Regulations. Many of these regulations develop the system and procedures for access to protected designations, indications or traditional specialities. But other Local Regulations aim to create regional trade marks of guarantee.

Under the Trade Mark Act of December 2001 it is possible to create marks and trade marks of guarantee

created a whole network of regulations aimed at promoting local food quality, while formally respecting the requirements of European Law on the matter.

At the end of the day, these trade marks are a way of promoting the consumption of local products, more than anything else.

To end this initial description of the legal framework, I should mention that the

collective trade. Using these tools, Regional Governments have

infringement of food quality

1983

businesses). Furthermore, infringement of quality in Spain can be a crime of

even a

designations.

in Spain can be prosecuted under **Royal Decree 1945 of (which allows authorities to impose fines of up to 3 Million € and to close down fraud or crime against intellectual property if committed against protected**

2) Specific cases

Following this brief overview of the general legislative system for the protection of food quality in Spain, I would now like to elaborate on some specific situations, some cases that, in my opinion, have served to point out –and sometimes to set limits to– different issues affecting the protection of food quality.

2.1 The case of Rioja and Delhaize; Quality and control of production.

(

babalisation of the content of the Designation of Origin).

I was going to start with this case, but due to the time available, I will not elaborate on it, since it has been already mentioned by my colleague and I suppose it is sufficiently known by the participants.

2.2 The case of Sherry wine; Designation of Origin versus the concept of generic product.

Sherry wine is one of the

produced in the Andalusian city of Jerez- from local grapes,- and is a wine that has been well known and traded for centuries. For this reason, Jerez's wine has been copied and faked, and for many years was considered a generic name in many countries

is still a semi-generic term in the United States under the recent wine accord. At the present moment, a Californian sherry is produced and sold in the United States.

The Sherry designation of origin includes not only the wines known as sherry wine, but **most famous Spanish wines. Sherry is a fortified wine, . In fact, it**

also

opera Carmen. Manzanilla is the wine that Carmen drinks “chez Lillas Pastia”).

The

a judgment of the Spanish Supreme Court. However, the decision of the Supreme Court was not unanimous and there was a

The question was to

manzanilla, a kind of dry sherry produced in the area (it is mentioned in Bizet's manzanilla designation has been challenged in the Spanish Court, and settled by dissenting opinion of one of the Judges. what extent the existence of the designation of origin

“

the

Manzanilla-Saluncar de Barrameda” prevented the registration of a brand including word manzanilla, and whether a brand of wines including the word manzanilla

could mislead the consumer and make him believe that he was drinking a wine protected by a designation of origin.

Is there a risk of confusion if we only use one of the words of origin, and not the word which refers to a location?

I must say that this question is not unusual. Although the background facts of the case are different, there are strong similarities in the debate at stake between this case and the one now pending the decision of the European Court of Justice on the use of the name of a protected designation

Parmesan and the Designation of Origin Parmigiano Reggiano

In the opinion of the plaintiff, the word Manzanilla is a generic term applicable to a type of dry white wine and does not designate any geographical origin.

This opinion is

The decision of the Supreme Court takes into consideration the protection and function of the designation of origin, the fact that the word Manzanilla is included in the Regulation of the Common Market Organisation of Wine as a geographical designation,

and concludes that the term

Designation of Origin

.rejected by the Supreme Court. *Manzanilla is the name of the region referred to by Manzanilla de Sanlucar de Barrameda.*

However, a

reality a generic name, given a to a type of wine and that this expression can not be

protected by a designation of origin, because these designations apply only to

geographical names, which is the case of

not of

to protect the Designation of Origin.

The arguments in this case and the non-unanimous opinion of the Court, can be seen as

an example of how the extraordinary reputation of some food products- in this case

sherry wine – implies a continuous risk: that people or companies one way or another,

try to copy them to take advantage of their reputation. In this sense, the delimitation of

the concept of generic names is extremely important.

dissenting opinion of one of the Judges considers that manzanilla is in *Manzanilla de Sanlucar de Barrameda, but Manzanilla. Protecting the name manzanilla goes clearly beyond what is needed*

2.3 The case of Jamón de Huelva; Protecting the concept of Designation of Origin

There is another curious example in Spain of a third party trying to take advantage of

the reputation of a Designation of Origin. But in this case the party does not copy the

geographical name protected by the Designation of Origin, but the

Designation of Origin itself.

concept of a

The facts of the case are as follows: Jamon de Huelva is a Designation of Origin created

to protect the reputation of a cured ham produced in the mountains of this part of

southern Spain. We must say that

name of an entire province, made up by much more than just the mountain region where the cured ham is produced, mountains that, moreover, go beyond the limits of province of Huelva. In any case,

Iberian cured hams,

living free-range in the woodlands. The curing method of this ham is totally natural and environmentally friendly. It takes a long time to produce an Iberian cured ham, longer than a normal one. Within these mountains,

traditionally

In this context, a group of business concerns of Jabugo (clearly supported by the Town Hall) created a company called “

not a trade mark, only the name of the company but it was clearly used in a brand like manner on the company's products. The company Origen Jabugo was producing many cured meat products, not only cured ham, and there was little risk of confusion in the name with the designation Jamon de Huelva, because both expressions clearly mentioned different locations.

Nevertheless, The Governing Council of Jamón de Huelva challenged the name of the company and

de Huelva, Origen Jabugo by using the

their products are protected by a designation of origin

the quality and reputation of products protected by a designation of origin, a reputation which, in the opinion of Jamon de Huelva, is due to the strict controls carried out by the Governing Councils of Designation of Origin.

Huelva is not a very accurate name, since it is the this area is known in Spain for producing one of the finest produced from Iberian pork, made from pigs fed on eicorns and Jabugo is a small town particularly and known for the quality of its hams. Origen Jabugo, S.L” –Origin Jabugo-. This name was accused it of unfair competition. In the opinion of the Council of Jamon word “Origin” is giving the impression that and implying that they have

The matter is arguable

pretension of Jamón de Huelva that calling a company “Origen Jabugo” was misleading the consumer and was, therefore, unfair competition. But the

and, as matter of in fact, the Court of First instance rejected the *Audiencia Provincial-*
the

Superior Court- adjudicating on the case on appeal, reversed the opinion of the lower Court and considered that the use of the word “origin” was an unfair practice, and banned it.

The case is pending the decision by the Supreme Court, but it is, in my opinion, a curious example of the faking and

against the protected name of the product but by faking the concept of Designation of Origin, and the guarantee that this concept offers the consumer.

banalisation of the Designations of Origin, not

2.4 The case of the term “bio” and Organic products.

I will not elaborate in the case of bio, only to mention that, in my opinion, the Court of Justice examines the concept of generic not by reference to a national context but an european context.

2.5 The case of the Iberian Pork Meat Regulation; should rules applying to quality in food be compulsory or voluntary?

This was the question posed by AENOR, the Spanish Standards Agency, to the Spanish Supreme Court when

Regulations for Cured Iberian Pork Products.

I have to explain, first of all, that a

legislation passed by the Government and

Governmental Organisation devoted to establishing and certifying voluntary industrial standards.

challenging Spanish Royal Decree 1083 of 2001 on Quality Spanish Royal Decree is a compulsory form of AENOR is a private entity, a Non

According to AENOR

1083 of 2001 was doing was to lay down industrial quality standards for the preparation of meat and these kind of rules were, by their own nature,

opposed to safety rules that were compulsory

lay down quality standards for foodstuffs, the State was invading the competence of the Non Governmental Organisation, which was the only body who could create quality – and therefore non compulsory- standards for foodstuff.

, and under the Spanish Industry Act, what the Royal Decree **voluntary standards, as. Since this Royal Decree intended to**

The State opposed

The Court analysed the

which are non-compulsory technical specifications, compulsory rules.

this argument. **Spanish Industry Act. This act distinguishes standards, from regulation, the are**

The Government is entitled

view of the

and Regulations are different by Law, there is no matter which is reserved to Standards and excluded from Regulations.

In this case, the

for the manufacturing of a product, it w

for the protection of the interests of consumers, laying down the prohibition of the use of the words “ibérico, ibérico puro, montanera, recebo, bellota, retinto, pata negra” (all terms related with the tradition of Iberian pork meat) to products that did not comply with these conditions.

Therefore, this

specifications for Iberian pork meat but also traditional and environmentally friendly production methods

Mediterranean forest by using woodlands that would otherwise serve no economic purpose, helping to preserve a breed of pigs and a traditional food, ensuring fair competition and protecting the interests of consumers.

Therefore, under Spanish Law, quality food discipline covers aspects that go well beyond the technical rules that can be laid down in standards. Regulation of Quality in Food is not a mere technical standard, but has a distinctive different legal nature.

to rule directly on technical specifications of products **social values that the Administration has to protect. Even if Standards Royal Decree was regulating more than just on technical specifications as also regulating other aspects including rules Spanish Royal Decree was aimed at regulating not only technical. The farming of pigs living free in the woods protects the**

2.6 Olive oil; Health Claims as an attribute of quality

My view of

be- hypothetically - only accessible to experts), it is a

In this respect, it is essential for a quality food product to be able to communicate that quality. As far as I am concerned –in my position as a Lawyer-

exists if I can communicate it

In my opinion, the quality of a food product is the result of a number of factors and characteristics, and within these characteristics one is that the product is healthy. It can't be denied that for the consumer a healthy product is better in quality than an unhealthy one. What I mean is that, if not all quality food has to present itself as particularly healthy, good effects on

quality

If the

extent that we can

quality is that, more than a characteristic of the product itself (that could perception of the consumer. quality in food only. health can be considered one of the attributes of food. quality of the product is only important to the extent that it is known and to the communicate it, and if health is an attribute of quality, then the

Health Claims Regulation deals with and affects the quality of food

Regulation establishes what we can and cannot say about the health qualities of a product.

The Health Claims Regulation includes the concept of

characteristics that a foodstuff must have before we can say that it is healthy, and these characteristics are related to- among others- the content of

In a way, products with high content in sugar and fat are

This consideration, that may make some sense in the case of highly processed

foodstuffs is very unfair when it comes to the case of basic products, products which are the result of the primary transformation of an agricultural product, such as

extra virgin- or

different sugars, but are full of

effect on human health

cannot be altered

presentation of their health qualities

claim at all.

In my opinion, Regulation 1924/2006 on nutrition and health claims made on foods,

could have

products, like olive oil, so important to

particularly if other

allegation, leaving olive oil in an unfairly

You can make Coca Cola without sugar, but not honey. You can produce a snack with reduced fat, but not olive oil.

This is, in very brief summary, the legal situation of food quality protection in Spain, I hope I have been able to describe and transmit an overall view on this matter and I remain at your disposal to answer any question here or afterwards.

Thank you

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This nutrient profiles, which are fat and sugar of the products devalued by this Regulation. olive oil particularly honey. In this case, these products are nothing but fat ornatural qualities, with generally accepted positive. These products are natural, so their nutritional profile and this could devalue them, as far as the advertising and, or even prevent them from making any healthnegative effects on the promotion of quality of some basic agriculturalSpanish and Mediterranean agriculture,more processed products can obtain the right to make a healthdisadvantaged position on the food market.

Spanish experience and the French and Italian cases.

Of course, all cases are similar and different, but what I mean is that, unfortunately, number of Spanish food products recognised or famous in the world is not as extensive

protection are, in some way, different. Many Spanish food products are only known locally, nationally or exported as a commodity, as much as anything else.

On the other hand Spain, Italy and France share -broadly speaking- similar geographic and climatic conditions and produce very