

## GERMANY



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## Bavarian beer has to come from Bavaria

In a recent decision, dated February 14 2008 (BGH I ZR 69/04), the German Federal Supreme Court (BGH) referred three questions to the European Court of Justice for a preliminary ruling on the interpretation of Article 14 (1) of EC/510/06 which concerns the protection of geographical indications and designations of origin.

After Champagne, Dresdner Stollen and Schwarzwälder Kirschtorte, this time Bayerisches Bier (Bavarian Beer) is the subject of the matter.

The plaintiff, the Bavarian Brewers Association in Munich, Germany, filed a cancellation action against the international trade mark registration Bavaria Holland Beer, registered in the name of Netherlands company Brauerei Bavaria NV (the defendant), claiming a priority date of April 28 1995.

Prior to that date, on January 20 1994, the Federal German Government had filed a request for protection of the designation of origin Bayerisches Bier according to Article 17 of ECC/2081/92 (the predecessor of EC/510/06), which provided a simplified procedure for registering geographical designations up to the year 2003. The designation was afterwards simply listed in a register provided by the European Commission. On June 28 2001, EC/1347/01 Bayerisches Bier was added to the Annex to EC/1107/96 according to Article 17 of ECC/2081/921 and its registration was published.

The main issues of the BGH proceedings are the validity of EC/1347/01, which established the protection of a geographical designation for Bayerisches Bier by way of publishing its registration, and the priority date of the geographical designation. The first question submitted to the ECJ is: Is Article 14 (1) EC/510/06 applicable when the protected designation was validly registered according to the sim-

plified proceeding of Article 17 ECC/2081/92 and then published according to EC/1347/01?

The BGH then seeks further clarification on the priority of the geographical designation. Since Article 17 ECC/2081/92 did not deal with the question of priority, the question is whether the priority date of a geographical designation registered in this way is the date of filing the application or the date of its published registration.

Finally the BGH wants to know whether national law for protection of geographical designations may be applicable if EC/1347/01 is void and Bayerisches Bier fulfils the criteria of EC/2081/92 and EC/510/06.

For the case, EC 1347/01 is valid and Bayerisches Bier has priority over Bavaria Holland Beer, and if there is no coexistence entitlement, the BGH has envisaged that it will acknowledge an infringement of the designation Bayerisches Bier by Bavaria Holland Beer.