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Wine About It: Why Croatia's Historic Wine Prosek Should be Granted A Protected Designation of Origin by the European Union

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COMMENTS

WINE ABOUT IT: WHY CROATIA'S HISTORIC WINE PROŠEK SHOULD BE GRANTED A PROTECTED DESIGNATION OF ORIGIN BY THE EUROPEAN UNION

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I. INTRODUCTION

Land has been one of the most important resources for as long as history tells us. Land is one of the main causes of war, with leaders of countries wanting to conquer new territory for various reasons, such as the natural resources that exist there, or for the history associated with it.¹ In another context, land is often associated with the idea of

1. See Paul Poast, *This Land Is No Longer Your Land: A Primer on Territorial Disputes*, WAR ON THE ROCKS (Dec. 3, 2021) <https://warontherocks.com/2021/12/this-land-is-no-longer-your-land-a-primer-on-territorial-disputes> (acknowledging that the Issue Correlates of War Project finds that the vast majority of territorial disputes in their data concern land); see generally Mark Altaweel, *Geography of Conflict*, GEOGRAPHY REALM (Nov. 21, 2016), <https://www.geographyrealm.com/geography-of-conflict> (highlighting the importance of ethnic groups in geography

home, and the heritage that comes along with that.² In Europe, specifically within the European Union, many countries and their constituents are proud of their unique foods and beverages.³

The European Union as a whole takes pride in the diverse cultural and gastronomic heritage of its member states.⁴ To protect this diversity, the European Union adopted a framework of geographical indications.⁵ Geographical indications protect the integrity of products from certain geographical regions that have unique, value-adding characteristics, that the product can only gain by being from that region.⁶ This idea is thought to stem from the French idea of *terroir*, which was first used to protect French wines.⁷ Producers of those products would like to keep others from infringing on the familiarity of the products they make in order to keep their value.⁸ As a response to these concerns, the European Union enacted quality schemes of geographical indicators for foodstuffs and agricultural products designed to protect producers from infringement, and prevent consumers from being misled as to the origin of a product.⁹ If a

and conflicts).

2. See Richard Pfeilstetter, *Culture in Heritage: On the Socio-Anthropological Notion of Culture in Current Heritage Discourses*, 112 ANTHROPOS 609, 610 (2017) (explaining the idea that natural heritage and cultural heritage cannot be separated); see generally *The Importance of Cultural Heritage*, BLUE SHIELD INT'L, <https://theblueshield.org/why-we-do-it/the-importance-of-cultural-heritage> (last visited Mar. 21, 2022) (explaining the association between tangible and intangible heritage and its importance in community identity).

3. See *More Than a Trip*, EUR. UNION, <https://europa.eu/more-than-food-uae/more-than-trip> (last visited July 11, 2022) (explaining the pride and passion that goes into European food products).

4. See Council Regulation 1151/2012, 2012 O.J. (L 343) 1.

5. *Id.*; Council Regulation 1308/2013, 2013 O.J. (L 347) 671; Council Regulation 2021/2117, 2021 O.J. (L 435) 262 (amending Council Regulations 1308/2013 and 1151/2012).

6. See Kal Raustiala & Stephen R. Munzer, *The Global Struggle over Geographic Indications*, 18 EUR. J. INT'L L. 337, 344 (2007) (quoting the European Commission's definition of *le goût du terroir*).

7. Press Release, *Growing Grapes Globally: International Terroir Congress Comes to Oregon*, WINE BUS. (Jul. 26, 2016), <https://www.winebusiness.com/news/article/172051> (explaining that the term "terroir" was first used to protect wines in Burgundy).

8. See Raustiala & Munzer, *supra* note 6, at 345 (explaining that beneficiaries of geographical indicators police their use).

9. See generally Fabio Parasecoli, *Geographical Indicators: The Sui Generis*

producer believes their product qualifies for this kind of protection, they can apply to their country's government, and if their government deems that the product meets the criteria, the country will apply to the European Union for protection.¹⁰ The strictest, and therefore most valuable protection, is the Protected Designation of Origin (PDO).¹¹ Perhaps the most commonly known product with this designation is Champagne, a sparkling wine produced in the northeast French region of Champagne.¹² Only wines produced in the Champagne region of France can claim to be "true" Champagne.¹³

In 2009, Italy received PDO protection for its globally famous sparkling wine, Prosecco.¹⁴ When Croatia joined the European Union

System, in KNOWING WHERE IT COMES FROM: LABELING TRADITIONAL FOODS TO COMPETE IN A GLOBAL MARKET 49, 66–72 (2017) (detailing the history of the European system for geographical indication protection).

10. Britton Seal, *Conorzio Del Prosciutto Di Parma & Salumifico S. Rita Spa v. Asda Stores Ltd. & Hygrade Food Ltd.: Classic Protectionism – Thin Ham Provides Thick Protection for Member State Domestic Goods at the Expense of the European Common Market*, 12 TUL. J. INT'L & COMP. L. 545, 548–49 (2004) (explaining that the process for applying for a PDO begins by applying to the EU member state and then to the European Commission).

11. See *Geographical Indications and Quality Schemes Explained: Aims of EU Quality Schemes*, EUR. COMMISSION [hereinafter *Aims of EU Quality Schemes*], https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/quality-schemes-explained_en (last visited Mar. 21, 2022) (stating that product names registered as PDO have the strongest links to the place in which they are made).

12. *Champagne, eAmbrosia*, EUR. COMMISSION, <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/details/EUGI00000002663> (last visited Mar. 23, 2022); E.g., K. William Watson, *Reign of Terroir: How to Resist Europe's Efforts to Control Common Food Names as Geographical Indications*, CATO INST. (Feb. 16, 2016) (explaining that Champagne is a sparkling wine which usually comes from the namesake region of France, and whose name French producers aim to protect from use by producers outside of the French region of Champagne).

13. See Deborah J. Kemp & Lynn M. Forsythe, *Trademarks and Geographical Indications: A Case of California Champagne*, 10 CHAP. L. REV. 257, 258 (2006) (explaining that, in the European Union, the designation "Champagne" can only refer to sparkling wines produced in the Champagne region of France); see *id.* (explaining that the European Union argues that foreign producers of sparkling wines should not be allowed to use the term "Champagne" to refer to their products, hence California's André being marketed as "California Champagne").

14. *eAmbrosia*, EUR. COMMISSION, <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register> (select Wine Register) (last visited Oct. 25, 2022); see also Amy

in 2013, it became subject to EU regulations, including the quality schemes for wine and the protections for registered products, meaning it could not infringe on Prosecco's PDO protection.¹⁵ For centuries, Croatia has produced a sweet, dessert wine, largely consumed domestically, called Prošek, which when translated to Italian is "Prosecco."¹⁶ Croatia is subject to EU regulations and has therefore been banned from selling Prošek in the EU market.¹⁷ In 2021, Croatia formally applied for Prošek to be granted PDO protection.¹⁸ Italy has vehemently opposed such an application since Croatia's admission to the European Union.¹⁹ The Court of Justice of the European Union (Court of Justice) has historically refrained from granting PDOs in similar situations, mainly because of evocation and the possibility to mislead consumers.²⁰

Cortese, *Italian Makers of Prosecco Seek Recognition*, N.Y. TIMES (Dec. 28, 2008), <https://www.nytimes.com/2008/12/28/business/worldbusiness/28prosecco.html> (stating that Prosecco had been protected under Italian law since 1969).

15. *See Prosecco or Prošek? Italy and Croatia at Loggerheads in the EU*, MEININGER'S WINE BUS. INT'L (Sept. 16, 2021) [hereinafter *Prosecco or Prošek?*], <https://www.wine-business-international.com/wine/news-styles-regions/prosecco-or-prosek-italy-and-croatia-loggerheads-eu> (indicating that upon becoming an EU member state in 2013, Croatia became subject to EU regulations and thus was prohibited from using the name Prošek to sell the wine).

16. Sarah Neish, *Croatia and Italy Go to Battle over Use of the Term Prošek*, THE DRINKS BUS. (Sept. 22, 2021), <https://www.thedrinksbusiness.com/2021/09/croatia-and-italy-go-to-battle-over-use-of-the-term-prosek> (explaining that Prošek is a Croatian wine produced for centuries and which has a name similar to the Italian wine Prosecco).

17. *See Prosecco or Prošek?*, *supra* note 15 (explaining that Croatia is subject to EU regulations that prohibit it from using the name Prošek to sell the wine).

18. Neish, *supra* note 16 (noting that since joining the European Union in 2013, Croatia has sought PDO protection for Prošek, but Italy was successful in blocking Croatia's first attempt in 2013).

19. *See id.* (explaining the strong opposition some Italians have voiced toward the idea of Croatia being allowed to use the name Prošek to sell the wine); *see also* Mike Pomranz, *Italy's Prosecco Producers Don't Want Croatia's Prošek Confusing Customers*, FOOD & WINE (Nov. 4, 2021), <https://www.foodandwine.com/news/italy-croatia-prosecco-prosek-designation> (explaining that producers of Prosecco would like to prevent producers of Prošek from using that designation to sell their wines).

20. *E.g.*, Case C-783/19, *Comité Interprofessionnel du Vin de Champagne v. GB*, ECLI:EU:C:2021:713, ¶ 2 (Sept. 9, 2021) (holding that in order to determine evocation, national courts must consider whether or not the products are identical or comparable); *see Evocation*, OXFORD ENGLISH DICTIONARY (2020) (defining evocation as "the calling (of the spirit) from present surroundings"); Case C-44/17,

Pursuant to Article 103 of Regulation No 1308/2013, the European Union should grant Croatia's Prošek PDO protection because phonetic similarity should not be a definitive factor in whether a PDO is granted when it would contravene the stated purposes of the protection schemes. This Comment argues that the European Union should put more value on whether the newer product is intending to mislead consumers, whether it is attempting to profit off the reputation of the already protected product, as well as whether denying the newer product protection would be in opposition to the European Union's stated goals. If these factors were given more weight, Croatia should be granted a PDO for Prošek because it is not attempting to mislead consumers or profit from Prosecco's reputation, and granting protection would be in line with the European Union's stated goals of preserving cultural heritage, and protecting rural economies. Denying Prošek PDO protection would contravene the purposes of the quality schemes, as it would be denying crucial protection to a rural economy and local producers of this historic Croatian wine.

Part II of this Comment provides the background information on EU quality schemes, the history of Prosecco and Prošek, and relevant case law. Part III of this Comment argues that the case surrounding Prošek's application for PDO status differs from prior Court of Justice decisions and that denying Prošek PDO protections would be inconsistent with EU law. Part III also considers Italy and Prosecco's argument against Prošek. Part IV recommends that the European Union formally define each protection a product receives when it is granted a PDO so that interested parties have a more concrete idea of what constitutes a breach of these protections. It also advocates that opposing parties to PDO applications should submit substantive proof that granting this newer product would infringe on their already existing protection. Furthermore, this Comment recommends that the European Union grant Prošek PDO status to avoid setting a dangerous precedent that would allow large countries to maintain a monopoly over these protections. Part V concludes, expressing that adopting these measures would allow the European Union to continue its

The Scotch Whisky Ass'n v. Michael Klotz, ECLI:EU:C:2018:111, ¶ 60 (Feb. 22, 2018) (stating that the determinative criterion in determining evocation is "whether 'when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected'").

protection of cultural and gastronomic heritage, while fully incorporating newer member states into the organization.

II. BACKGROUND

A. THE EUROPEAN UNION AND GEOGRAPHICAL INDICATORS

In 1992, the European Union, then the European Community, began a framework for the protection of the geographical origins of foodstuffs.²¹ The aim is to protect and promote specific products based on their unique characteristics resulting from their geographic origin.²² This system was revised in 2006, and then again in 2012 with Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs.²³ A year later the European Union passed Regulation No 1308/2013 which does apply to the wine sector.²⁴

21. Council Regulation 2081/92, 1992 O.J. (L 208) 1 (EC); Hazel Moir, *Geographical Indications: An Assessment of EU Treaty Demands*, in AUSTRALIA, THE EUROPEAN UNION AND THE NEW TRADE AGENDA 121, 123 (Annmarie Elijah et al. eds., 2017) (explaining that the European Union created a framework for protecting geographical indicators in 1992); *id.* (explaining that the EU framework for protecting geographical indicators was built upon earlier systems in place in some member states); see generally *Glossary of Summaries: Primacy of EU Law*, EUR-LEX, <https://eur-lex.europa.eu/EN/legal-content/glossary/primacy-of-eu-law.html> (last visited July 11, 2022) (explaining that the EU laws take precedent over individual member states' laws).

22. *Aims of EU Quality Schemes*, *supra* note 11 (stating that EU policy is meant to protect the names of products to promote unique characteristics, such as geographical origin); see Eva Gutierrez, *Geographical Indicators: A Unique Perspective on Intellectual Property*, 29 HASTINGS INT'L & COMP. L. REV. 29, 38–40 (2005) (explaining that geographical indicators, based on the geographical origins of the products, give those products marketing power and protects products from competition for use of the name).

23. Council Regulation 510/2006, 2006 O.J. (L 93) 12 (EC); Council Regulation 1151/2012, *supra* note 4; Moir, *supra* note 21, at 123–24 (explaining that the European Union's framework for protecting geographical indicators for foodstuffs was revised in 2006 and then again in 2012); Parasecoli, *supra* note 9, at 68 (explaining that the 2012 modification to the European Union's framework for protecting geographical indicators reflected the enlargement of the European Union to include Eastern European member states).

24. Council Regulation 1308/2013, *supra* note 5, at 719; see Council Regulation 2021/2117, *supra* note 5 (amending Council Regulations 1308/2013 and 1151/2012 without affecting the applicable sections of the Regulations analyzed in this Comment).

The EU system divides geographical indications into three categories for protection. The strictest protection is PDO.²⁵ For a product to obtain this protection, every part of the production, processing, and preparation of a food, agricultural product, or wine must take place in a specified region in order to use the protected name on the product.²⁶ Protected Geographical Indication (PGI) has almost identical privileges to PDO; however, the requirements are less stringent, making it less protective for the product and its producers.²⁷ The lowest level of protection is Geographical Indicators (“GI”) and Traditional Specialty Guaranteed (“TSG”), which are for spirit drinks and aromatized wines and for the protection of food and agricultural products, respectively.²⁸ Since PDOs have the highest level of protection, they are the most valued by producers.²⁹

These quality schemes were introduced for several reasons. The EU legislature wanted to support the rural economy and preserve the quality and diversity of the European Union’s agricultural production, which it considers one of its biggest strengths.³⁰ The quality and

25. *Aims of EU Quality Schemes*, *supra* note 11 (stating that PDO registered products have the strongest link to the place they are made).

26. *Id.* (explaining that for wines, this means the grapes must exclusively come from the geographical area where the wine is made).

27. Moir, *supra* note 21, at 124 (explaining that while the privileges that PDOs and PGIs provide are identical, that PDOs have strict production controls while PGIs are flexible on sourcing of inputs and do not have similarly strong geographical connections); *Aims of EU Quality Schemes*, *supra* note 11 (explaining that for protecting geographical indicators for wine, 85% of the grapes used in its production must come exclusively from the region where the wine is made).

28. *Aims of EU Quality Schemes*, *supra* note 11 (explaining that “traditionally specialty guaranteed” (TSG) highlights traditional aspects of a product without having a geographical connection); *id.* (explaining that, as an example of a requirement for a geographical indicator, Irish whiskey is made in Ireland, but the raw products used to make it do not have to exclusively come from Ireland).

29. Raquel Bravo Rubio, *Incidencia de la Protección de las Denominaciones Geográficas en el Comercio Internacional Agroalimentario* 85 (2015) (Ph.D. dissertation, Universidad Politécnica de Madrid) (indicating that the European Union considers geographical indicators preventing other countries from using those names to be the highest level of protection); *see* Ahmed Yangui et al., *Comportamiento de los Consumidores Españoles y los Factores Determinantes de su Disposición a Pagar por el Aceite de Oliva Ecológico*, 115 INFORMACIÓN TÉCNICA ECONÓMICA AGRARIA 252, 264 (2019) (finding that, for example, Catalan consumers of olive oil most valued it being from Catalonia).

30. Case C-490/19, Syndicat Interprofessionnel de Défense du Fromage Morbier

diversity of such agriculture is a major contribution to the European Union's living cultural and gastronomic heritage.³¹ Additionally, the European Union hoped to strengthen consumer protection and ensure the authenticity of the product.³² These goals are particularly applicable to wines since they have specific characteristics attributable to their geographic origin, such as the effect soils have on the grapes and production processes unique to specific areas, an idea referred to as *terroir*.³³ There is no direct translation to English, but the idea is that specific land is an input for food products, giving them unique qualities that the food product could only achieve from that land.³⁴ Geographically indicated products are not simply from a place, they have qualities that only that place alone can provide for the product.³⁵

If an EU member state has a product it believes qualifies for geographical indication protection, it first goes through its own country's approval mechanism.³⁶ After the member state grants

v. Société Fromagère du Livradois SAS, ECLI:EU:C:2020:1043, ¶ 26 (Dec. 17, 2020).

31. Council Regulation 1151/2012, *supra* note 4, at 1.

32. Council Regulation 1308/2013, *supra* note 5, at 679; *Morbier v. Société Fromagère*, C-490/19, ¶ 29; see Ryan B. Stoa, *Marijuana Appellations: The Case for Cannabicultural Designations of Origin*, 11 HARV. L. & POL'Y REV. 513, 527 (2017) (explaining that informing consumers about agricultural products' origins protects those consumers).

33. Council Regulation 1308/2013, *supra* note 5, at 679; Enrico Bonadio & Magali Contardi, *Prosecco or Prošek? The EU Battle between Italy and Croatia Over Wine Branding*, THE CONVERSATION (Sept. 27, 2021), <https://theconversation.com/prosecco-or-prosek-the-eu-battle-between-italy-and-croatia-over-wine-branding-168759> (explaining that Prošek is made with a unique production process where the grapes are sun-dried on straw mats prior to being pressed).

34. Justin Hughes, *Champagne, Feta, and Bourbon: The Spirited Debate About Geographical Indications*, 58 HASTINGS L.J. 299, 301 (2006) (stating that there is no direct English translation of *terroir*); see generally Parasecoli, *supra* note 9, at 59–61 (explaining the origins, history, and development of *terroir*).

35. See Raustiala & Munzer, *supra* note 6, at 344 (explaining that one of the fundamental ideas behind geographical indicators is that the quality of some regions' products is tied to the regions themselves, a quality which could not be reproduced elsewhere); Hughes, *supra* note 34, at 301 (explaining that *terroir* is the idea of a land/quality nexus, promoting the idea that a product's qualities are linked to the land).

36. Seal, *supra* note 10, at 549 (explaining that the first step of the PDO approval mechanism is for a party to apply to the EU member state of the geographical region in question).

producers national-level protection, the member state or a consortium representing the interests of the product can file an application with the European Union.³⁷ If the application complies with EU requirements, it is then published in the *Official Journal of the European Union*.³⁸ Opposing parties, which can be EU member states or other third countries, have two months to provide reasons for their opposition.³⁹ If no objection is filed, then the application is approved, and the product is considered registered.⁴⁰

Once a PDO application is approved, the regulations protect against commercial use of the name by others within the European Union.⁴¹ Additionally, the product is then entitled to protections against any direct or indirect commercial usage of that name, any misuse or evocation, and any other practice liable to mislead the consumer as to the true origin of the product.⁴² It is important to note that PDOs and other geographical indicators granted by the European Union are only applicable within EU member states.⁴³

PDOs have been quite popular within the European Union. One account states that by the end of 2012, there were 1,188 PDO registrations filed.⁴⁴ Of these registrations, 87% were owned by five countries: France, Greece, Portugal, Spain, and, most relevant for this Comment, Italy.⁴⁵

37. See Parasecoli, *supra* note 9, at 70 (noting that as part of the application process, if the member state approves a geographical indicator, the application is then sent to the European Commission).

38. Council Regulation 1308/2013, *supra* note 5, at 721.

39. See Parasecoli, *supra* note 9, at 70 (explaining how parties can object to registration of a PDO); Council Regulation 1308/2013, *supra* note 5, at 721.

40. Parasecoli, *supra* note 9, at 70 (explaining that if no party objects to the registration of a geographical indication, it is approved and registered).

41. Gutierrez, *supra* note 22, at 40 (stating that once the Commission approves a PDO, regulations protect it from being used commercially by others in the EU).

42. Council Regulation 1308/2013, *supra* note 5, at 723.

43. See generally *Sources and Scope of European Union Law, Fact Sheets on the European Union*, EUR. PARL., <https://www.europarl.europa.eu/factsheets/en/sheet/6/sources-and-scope-of-european-union-law> (last visited July 12, 2022) (explaining how EU regulations are binding upon member states).

44. Moir, *supra* note 21, at 125 (stating that as of 2012, there were 1,188 geographical registrations filed).

45. See *id.* (listing the countries owning the most PDO registrations); *id.* at 125–27 (demonstrating that the number of PDO registrations Italy owns is higher than what would be expected based on its level of agricultural production, as well as its

Geographical indicators such as PDOs have been viewed as a form of intellectual property, being recognized in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).⁴⁶ PDOs are similar to trademarks, in the sense that consumers can have product recognition.⁴⁷ A key difference is that while traditional IP protections like trademarks protect a singular business, geographical indicators aim to protect a regional reputation, and they apply to multiple producers in a region.⁴⁸

B. RELEVANT COURT OF JUSTICE OF THE EUROPEAN UNION DECISIONS

The Court of Justice is the judicial authority of the European Union, tasked with reviewing the legality of acts of EU institutions, and ensuring that member states comply with their obligations.⁴⁹ As such,

GDP and population).

46. Gutierrez, *supra* note 22, at 35 (explaining that geographical indicators are addressed in Articles 22–24 of TRIPS); *id.* at 30 (explaining that TRIPS sets minimum standards for geographical indicators but does not dictate the system WTO members must implement); *see id.* at 31–32 (indicating that geographical indicators are a form of intellectual property recognized in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)); *see also* Michelle Agdomar, Note, *Removing the Greek from Feta and Adding Korbel to Champagne: The Paradox of Geographical Indications in International Law*, 18 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 541, 545 (2008) (explaining that TRIPS considers geographical indicators to be a form of intellectual property).

47. Gutierrez, *supra* note 22, at 31 (giving the analogy that trademarks allow consumers to choose between wines from Robert Mondavi or Pascal Bouchard wineries, while geographical indicators allow the consumer to decide between Chianti and Bordeaux); *see* Hughes, *supra* note 34, at 300 (comparing geographical indicators with trademarks).

48. Gutierrez, *supra* note 22, at 31–32 (explaining that trademarks give the owner the exclusive right to that mark in commerce, while geographical indicators are a form of communal property shared by a region’s producers); *see* Hughes, *supra* note 34, at 300 (explaining how trademarks represent specific businesses known for certain products); *see also* Carol Robertson, *The Sparkling Wine War: Pitting Trademark Rights Against Geographic Indications*, 18 BUS. L. TODAY 19, 19–20 (2009) (explaining how in the American wine business, greater emphasis is placed on trademarks rather than geographical indicators, indicative of American law’s general preference for trademarks over geographic location).

49. *The Institution: General Presentation*, CT. OF JUST. OF THE EUR. UNION, https://curia.europa.eu/jcms/jcms/Jo2_6999/en (last visited July 12, 2022) (stating that the Court of Justice is the European Union’s judicial authority); *see Court of Justice: Presentation*, CT. OF JUST. OF THE EUR. UNION, <https://curia.europa.eu>

the Court of Justice is the appropriate tribunal for disputes regarding geographical indications within the European Union.

In 2018, the Scotch Whisky Association brought suit against a German seller claiming that the German seller's use of the term "Glen" infringed upon the registered geographical indication "Scotch Whisky" because it constituted indirect commercial use, an evocation of the registered geographical indication, and was a false or misleading indication.⁵⁰ The question for the Court was whether "evocation" meant there had to be a phonetic or visual similarity between the products, or whether it was sufficient that the disputed term simply evokes some kind of association within the mind of the relevant public.⁵¹ Answering this question, the Court of Justice set forth a clear standard for identifying evocation: "the only determining criterion is whether, 'when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected.'"⁵² Further, the Court said that in determining evocation, it is necessary to take into account the "conceptual proximity" between the protected product and the product in question.⁵³

A year later, in a case involving Manchego cheese, the Court found that the evocation analysis must also consider the degree of similarity between the products and their marketing, including their respective sales channels, "and elements that make it possible to establish

[/jcms/jcms/Jo2_9089/en/#competences](#) (last visited July 12, 2022) (explaining that the Court of Justice has clearly defined jurisdiction and can address references for preliminary hearings, actions for failure to fulfill obligations, actions for annulment, actions for failure to act, and appeals).

50. Case C-44/17, *The Scotch Whisky Ass'n v. Michael Klotz*, ECLI:EU:C:2018:111, ¶ 2 (Feb. 22, 2018); *Scotch Whisky, eAmbrosia*, EUR. COMMISSION, <https://ec.europa.eu/info/food-farming-fisheries/food-safety-and-quality/certification/quality-labels/geographical-indications-register/details/EUGI00000015685> (last visited Feb. 26, 2022) (showing that the entirety of the United Kingdom is the geographic area protected for Scotch Whisky).

51. *Scotch Whisky v. Klotz*, C-44/17, ¶ 4.

52. *Id.* ¶ 60.

53. *Id.* ¶ 109(2) (stating that while it is important to consider whether the consumer faced with the product in question will have the protected product triggered in their mind, it is not sufficient "that the disputed designation is liable to evoke in the relevant public some kind of association with ideas with the protected indication or the geographical area relating thereto").

whether the reference to the product covered by the protected name was intentional.”⁵⁴ In another decision, regarding Morbier cheese, the Court said that evocation must be established on a case-by-case basis, including all elements deemed relevant to the association between the product at issue and the protected product.⁵⁵

The most recently decided, and most cited case in the conversation regarding Prošek, is the 2021 Champanillo decision.⁵⁶ A Spanish company operating tapas bars in Catalonia, Spain was using the term “Champanillo,” along with the image of two clinking glasses, to promote its restaurants.⁵⁷ The Commercial Court in Barcelona held that “Champanillo” did not constitute an evocation of “Champagne”

54. Case C-614/17, *Fundación Consejo Regulador de la Denominación de Origen Protegida Queso Manchego v. Industrial Quesera Cuqueralla SL*, ECLI:EU:C:2019:344, ¶ 29 (May 2, 2019).

55. Case C-490/19, *Syndicat Interprofessionnel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶ 45 (Dec. 17, 2020 (classifying relevant elements as those with a potentially evocative nature, or those that could reduce the consumer’s ability to make a clear association between an ordinary product and that with the protected name); *id.* (finding that it should be established whether there was an intention to take unfair advantage of the protected name).

56. Case C-783/19, *Comité Interprofessionnel du Vin de Champagne v. GB*, ECLI:EU:C:2021:713 (Sept. 9, 2021); *The Comité Interprofessionnel du Vin de Champagne (CIVIC) is an organization that safeguards the interests of Champagne producers. Cf. Court of Justice Press Release 154/21, The Court Specifies the Conditions for the Protection of Products Covered by a Protected Designation of Origin as Laid Down by the Regulation Establishing a Common Organisation of the Markets in Agricultural Products*, (Sept. 9, 2021), <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-09/cp210154en.pdf> (explaining that the Comité Interprofessionnel du Vin de Champagne, or CIVIC, is an organization that safeguards the interests of Champagne producers); *Id.* (explaining that CIVIC brought this suit before Spanish courts, seeking to prohibit the use of the term “Champanillo”).

57. Gerardo Fortuna, *Champagne Makers Mark First Win in ‘Champanillo’ Legal Battle After EU Court Ruling*, EURACTIV (Sept. 9, 2021), <https://www.euractiv.com/section/agriculture-food/news/champagne-makers-mark-first-win-in-champanillo-legal-battle-after-eu-court-ruling> (explaining how a chain of bars in Spain was using the term “Champanillo”); *The ‘Champanillo’ Ruling Marks a Turning Point in the Protection of Appellations*, VITISPHERE (Sept. 21, 2021), <https://www.vitisphere.com/news-94858-the-champanillo-ruling-marks-a-turning-point-in-the-protection-of-appellations.html> (explaining how, along with using the term “Champanillo,” the Spanish bars chain also used a logo of two clinking glasses); *Champagne v. GB*, C-783/19, ¶ 29 (explaining that the word “Champanillo” translates literally to “little Champagne”).

since “Champanillo” was not being used to designate an alcoholic beverage, and therefore it was not targeting the PDO-protected product of Champagne.⁵⁸ The Court of Justice rejected this decision, ruling that evocation is not limited to situations where the product is similar to that of the protected PDO.⁵⁹ The Court stated that “the decisive criterion for determining whether there is an ‘evocation’ of a PDO . . . is, therefore, ‘whether, when the consumer is confronted with a disputed designation, the image triggered directly in his mind is that of the product whose geographical indication is protected.’”⁶⁰

Article 13(1)(d) of Regulation No 1151/2012 protects registered names from “any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product.”⁶¹ The *Morbier* case also addressed this issue and found that the assessment of a risk of misleading consumers must be established on a case-by-case basis after considering all relevant elements.⁶²

C. HISTORY OF PROŠEK

Prošek is a traditional Croatian sweet dessert wine produced in the Dalmatia region of Croatia.⁶³ Prošek can vary in appearance; it can be either white or red with its color ranging from dark yellow to reddish-

58. *Champagne v. GB*, C-783/19, ¶ 9 (noting that the tapas bars did not sell or serve Champagne).

59. *See Fortuna*, *supra* note 57 (explaining that the Court of Justice found that the concept of evocation does not require that the product covered by the PDO and the product or service covered by the disputed name be identical or similar). *Champagne v. GB*, C-783/19, ¶ 51 (citing Case C-44/17, *The Scotch Whisky Ass’n v. Michael Klotz*, ECLI:EU:C:2018:111 (Feb. 22, 2018)).

60. *Champagne v. GB*, C-783/19, ¶ 51; *id.* ¶ 2 (explaining that when evaluating perception, the national court is required to evaluate on the basis of “an ‘average consumer, who is reasonably well informed and reasonably observant and circumspect.’”).

61. Council Regulation 1151/2012, *supra* note 4, at 11; Council Regulation 1308/2013, *supra* note 5, at 72.

62. Case C-490/19, *Syndicat Interprofessionnel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶ 55 (Dec. 17, 2020); *see supra* note 54 and accompanying text.

63. Bonadio & Contardi, *supra* note 33 (explaining that Prošek is made from grapes grown in Dalmatia); *see also Dalmatia*, BRITANNICA, <https://www.britannica.com/place/Dalmatia> (last visited Mar. 20, 2022) (explaining that Dalmatia region is a coastal strip and a fringe of islands in the southeast of Croatia, along the eastern shore of the Adriatic Sea).

brown.⁶⁴ It is quite a strong wine with a minimum total alcohol content of at least twenty percent.⁶⁵ There is not a well-documented date for when Prošek was first created, though as of 2022, it is thought to have been produced for more than 2,000 years.⁶⁶ It is common in Croatia for parents to purchase a bottle of Prošek the year their child is born, and save that bottle for their 18th birthday or wedding day.⁶⁷

Prošek is produced from Croatian grape varieties, none of which are the Glera grape, that have been overripened and dried on straw mats.⁶⁸ After the grapes are dried, they undergo a pressing process to extract the remaining juice.⁶⁹ The next step is fermentation, which for Prošek takes longer than other wines since its raw materials contain more sugar.⁷⁰ After fermentation is completed, the wine is left to mature.⁷¹

64. Commission Publication, Application for Protection of the Traditional Term ‘Prošek’, 2021 O.J. (C 384) 6 (EU).

65. *Id.*; see *Special Wines*, BRITANNICA, <https://www.britannica.com/topic/wine/Bottle-fermentation#ref110671> (last visited July 13, 2022) (explaining that in the United States, dessert wines are those with an alcohol content of at least fourteen percent).

66. Steven Gallagher, *Prošek or Prosecco: Intellectual Property or Intangible Cultural Heritage*, in WINE LAW AND POLICY 651, 664 (Julien Chaisse et al. eds., 2021) (explaining that Croatians claim that the technique and custom of making Prošek dates back 2,000 years); see also Albert Leonard, *Dubrovnik, Croatia, in MEDITERRANEAN WINES OF PLACES: A CELEBRATION OF HERITAGE GRAPES* 27, 30 (2020) (explaining that the Roman Emperor Diocletian became a fan of Prošek after taking residence in modern-day Split, in Dalmatia).

67. Gallagher, *supra* note 66, at 664 (stating that drinking Prošek is traditional when a child is born, that birth vintages are saved for coming-of-age and weddings, and family produced bottles are given as gifts at traditional festivals); Bonadio & Contardi, *supra* note 33 (noting that it is common for parents to keep a bottle of Prošek from the year their child was born to be consumed on that child’s wedding day); Rebecca Ann Hughes, *What’s in a Name? Italy’s Prosecco Producers Distraught over Croatian Prošek*, WINE MAG. (Nov. 8, 2021), <https://www.winemag.com/2021/11/08/prosecco-different-prosek-croatia> (stating that families often make the wine so it will be available on their child’s eighteenth birthday).

68. Colleen Barry, *Prosecco vs. Prosek: Fight over Wine Names Gets Ready to Pop*, L.A. TIMES (Nov. 3, 2021), <https://www.latimes.com/world-nation/story/2021-11-03/italy-croatia-fight-prosecco-name> (explaining that Prošek is made with native Croatian grapes in the *passito* method).

69. *Id.*

70. See *id.* (noting that the fermentation process for Prošek can take up to one year, and that Prosecco *Glera* grapes have lower sugar levels).

71. *Id.* (stating that Prošek maturation occurs in wooden barrels and takes at least one year).

Prošek is sold in a standard dessert-style wine bottle, which is tall, thin, and relatively straight.⁷²

Prošek sells at a premium price because its manufacturing process is quite lengthy and uses more grapes per bottle than other dessert wines.⁷³ Due to this manufacturing process, it is produced on a small scale with only about thirty producers making approximately 3,000 bottles a year, and it is largely consumed domestically.⁷⁴ Despite Prošek's mainly domestic consumption, in 2019 Croatia exported \$19.8 million worth of wine.⁷⁵

D. HISTORY OF PROSECCO

Prosecco is a white, sparkling wine produced in nine provinces across northern Italy.⁷⁶ It has a straw-yellow appearance and a minimum total alcohol content of ten and a half percent.⁷⁷ Prosecco is made from the Glera grape.⁷⁸ Prosecco is consumed on a large variety of occasions, with one producer saying “[t]he only moment we don’t

72. *Your Guide to the 6 Most Common Wine Bottle Shapes*, PENNSYLVANIA WINES (May 21, 2020) [hereinafter *Guide to Common Wine Bottle Shapes*], <https://pennsylvaniawine.com/2020/05/21/your-guide-to-the-6-most-common-wine-bottle-shapes> (explaining that dessert wine bottles are usually tall and thin).

73. Hughes, *supra* note 34 (explaining that Prošek is expensive because it uses a significant number of grapes and takes a tremendous amount of time to produce); Bonadio & Contardi, *supra* note 33 (explaining that Prošek is more expensive than other dessert wines because it uses a greater number of grapes).

74. Paola Stefanelli, *The EU Staggers Between Champagne and Prosecco*, BUGNION, (Dec. 3, 2021), <https://www.bugnion.eu/en/the-eu-staggers-between-champagne-and-prosecco> (explaining that around 3,000 bottles of Prošek are sold annually, mostly in Croatia).

75. *Wine in Croatia*, THE OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/bilateral-product/wine/reporter/hrv> (demonstrating the total monetary value of Croatian wine exports in 2019); *GDP (Current US\$)*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last accessed Mar. 10, 2022) (demonstrating that in 2020, Croatia's GDP was \$57,203.78 million).

76. Joseph V. Micallef, *Is Prosecco Italy's Sparkling Wine Juggernaut*, FORBES (Aug. 18, 2018), <https://www.forbes.com/sites/joemicallef/2018/08/18/is-prosecco-italys-sparkling-wine-juggernaut/?sh=795737ad3d89> (explaining that Prosecco is produced in nine northern Italian provinces).

77. Commission Regulation 2019/33, 2020 O.J. (C 362) 26, 27 (EU) (communicating approval of standard amendment to 'Prosecco' PDO).

78. *Id.* at 30; see Micallef, *supra* note 76 (explaining that Prosecco must be at least 85% from Glera grapes).

drink it is for breakfast.”⁷⁹

Prosecco is produced using the Charmat method, where the second fermentation occurs in a stainless-steel tank and the wine is bottled under pressure.⁸⁰ Wines produced by the Charmat method are bottled directly after fermentation, without any aging.⁸¹ Prosecco is sold in a Champagne-style bottle, with sloping shoulders and a divot in the bottom of the bottle.⁸²

Prosecco has benefitted from a dramatic increase in global popularity since the 1990s.⁸³ As of 2008, about 150 million bottles of Prosecco were produced each year,⁸⁴ and by 2014, production rates had doubled, resulting in more than 300 million bottles produced each year.⁸⁵ In 2018, Prosecco’s unit sales exceeded those of Champagne.⁸⁶ As of March 2022, Prosecco is a multi-billion-dollar business,

79. Cortese, *supra* note 14 (explaining that a vice-president of a consortium representing wineries in the traditional Prosecco-producing region joked that the only time Italians did not drink prosecco was breakfast); see Stefano Ponte, *Bursting the Bubble? The Hidden Costs and Visible Conflicts Behind the Prosecco Wine ‘Miracle’*, 86 J. RURAL STUD. 542, 542 (2021) (explaining that Prosecco has also been described as an easy-to-drink wine, that is flexible in pairing with different cuisines).

80. Commission Regulation 2019/33, *supra* note 77, at 27 (communicating approval of standard amendment to ‘Prosecco’ PDO); Micallef, *supra* note 76 (explaining that Prosecco is produced using the Charmat method).

81. *How to Make Sparkling Wine: The Charmat Method*, MASTERCLASS (Nov. 8, 2020), <https://www.masterclass.com/articles/how-to-make-sparkling-wine#what-is-the-process-for-charmat-method> (explaining that wines produced using the Charmat method are bottled without another fermentation).

82. *Guide to Common Wine Bottle Shapes*, *supra* note 72 (explaining that sparkling wine bottles have sloping shoulders and a dimple in the bottom).

83. Cortese, *supra* note 14 (explaining that Prosecco has become increasingly popular since the 1990s); Micallef, *supra* note 76 (stating that Prosecco has become an export phenomenon and “an inexpensive sparkling wine juggernaut”).

84. Cortese, *supra* note 14 (providing the number of bottles of Prosecco sold in 2007); Micallef, *supra* note 76 (explaining that Prosecco production doubled from 1998 to 2008).

85. *Id.* (explaining that Prosecco production doubled between 2008 and 2014).

86. *Id.* (explaining that the sales volume of Prosecco is higher than that of Champagne); Press Release, *Prosecco DOC Increased Exports to the US Market in 2021, Marking an Exceptional Year for the Denomination* WINE INDUSTRY ADVISOR, Jul. 13, 2021, <https://wineindustryadvisor.com/2022/07/13/prosecco-doc-increased-exports-to-the-us-market-in-2021> (stating that the Prosecco market was \$1.3 billion in 2020).

producing more than 600 million bottles per year.⁸⁷

Prosecco is largely exported outside of Italy, with its three largest markets being the United Kingdom, Germany, and the United States.⁸⁸ As of 2019, Italy was the world's largest wine producer, exporting \$7.25 billion worth of wine.⁸⁹

III. ANALYSIS

PDO protections are extremely strong. Once Croatia joined the European Union, it was prohibited from making, advertising, or selling Prošek in stores across the European Union because Prosecco was already granted protection.⁹⁰ The current system operates on the logic of a "first come, first served" basis, which could lead to results inconsistent with the stated purposes of such protections.⁹¹

To remain consistent with its legislative intent and holdings of the Court of Justice, the European Union must grant Croatia's PDO application for Prošek, over Italy's objection. Granting Prošek PDO

87. Hughes, *supra* note 34 (explaining that more than 600 million bottles of Prosecco are produced every year); Micallef, *supra* note 76 (explaining that more than 300 million bottles of Prosecco were produced in 2014).

88. Micallef, *supra* note 76, (explaining that the largest export markets for Prosecco are Great Britain, the United States, and Germany).

89. Annalisa Girardi, *Prosecco Leads the Italian Wine Market, but at What Cost?*, FORBES (Apr. 16, 2019), <https://www.forbes.com/sites/annalisagirardi/2019/04/16/prosecco-leads-the-italian-wine-market-at-high-environmental-costs/?sh=4421394c5819> (explaining that Italy is the world's largest producer of wine); *Wine in Italy*, THE OBSERVATORY OF ECON. COMPLEXITY, <https://oec.world/en/profile/bilateral-product/wine/reporter/ita> (demonstrating the total monetary value of Italian wine production in 2019); *GDP (Current US\$)*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last accessed Mar. 10, 2022) (demonstrating that in 2020, Italy's GDP was \$1,888,709.44).

90. Bonadio & Contardi, *supra* note 33 (stating that once Croatia joined the European Union, Prošek has been traded under the name VINO DALMATO); *Prošek vs Prosecco*, WINE & MORE (Mar. 1, 2016), <https://www.thewineandmore.com/stories/prosek-vs-prosecco> (stating that Prosecco was granted PDO status in 2009, four years prior to Croatia's admission to the EU).

91. See *Aims of EU Quality Schemes*, *supra* note 11 (explaining that names of registered products are legally protected against imitation and misuse, and states may prevent and stop production or marketing of unregistered products using such a name); see *id.* (stating that EU policy is meant to protect the names of products to promote unique characteristics, such as geographical origin, so that consumers can distinguish quality products and producers may better market their products).

protections would support Croatia's rural economy; protect Croatian producers, in turn protecting Croatian culture and heritage; protect consumers by ensuring the authenticity of the product they are purchasing; and Prošek does not infringe on the PDO protections of Prosecco. Furthermore, Italy's arguments for denying PDO protection for Prošek would fail based on the standards the Court of Justice has set forward.

A. THE EUROPEAN UNION MUST GRANT CROATIA'S APPLICATION FOR PDO PROTECTIONS FOR PROŠEK TO BE CONSISTENT WITH THE ARTICULATED PURPOSES OF THE PROTECTION SYSTEM.

Croatia's application for Prošek's PDO protection is in line with the stated objectives of the quality schemes. Geographical indicators can promote products by signaling their authenticity from a well-known region, which can be of considerable benefit to rural economies.⁹² These indicators also benefit consumers, who can be assured of the product's authenticity.⁹³

1. *PDO Protections for Prošek Would Be More Supportive of a Rural Economy than Prosecco's Protections*

Prosecco is a global phenomenon, with over 8,000 producers placing between 500 and 600 million bottles into the market in 2020.⁹⁴

92. See Gutierrez, *supra* note 22, at 31 (stating that geographical indications signify a regional reputation rather than a business, and are a way for the consumer to identify the source of the product); see generally Parasecoli, *supra* note 9, at 69 (quoting the 1992 Regulation preamble that said promotion of these products "improve[s] the income of farmers"); see also Joseph Bohling, *Conclusion: Terroir vs. McWorld*, in *THE SOBER REVOLUTION* 180, 195 (2018) (stating that fresh ideas have been sparked leading to a new appreciation for intersections of culture, nature, and how we consume food); see also *id.* at 181 (arguing that in an ever-increasingly industrialized world, systems that incentivize small-scale production can be appealing).

93. See Stoa, *supra* note 32, at 519; see also Bohling, *supra* note 92, at 195 (noting that place-based production can provide consumers with a sense of refinement, since they are learning about the geographical area where the product is produced).

94. See Stefanelli, *supra* note 74 (noting that the traditional term Prošek dates back to 1774); see also Hughes, *supra* note 34 (Annual sales of Prosecco are estimated at \$2.8 billion); see also Barry, *supra* note 68 (stating that the majority of Prosecco sold is exported).

Meanwhile, Prošek is a drastically smaller Croatian operation, with only around thirty producers making about 3,000 bottles a year, which are mostly sold domestically.⁹⁵ The Court of Justice has stated that the purpose of the EU legislature in creating PDO protections was “first, to support the rural economy—particularly in less-favoured or remote areas.”⁹⁶ Facially, Croatia is a more rural economy than Northern Italy, and arguably a more remote area.⁹⁷

The European Union prides itself on the cultural and gastronomic heritage of its member states. Prošek is undeniably part of Croatia’s cultural and gastronomic heritage and denying it PDO protection simply because Italy made it to the European Union first with a different product would obscure the goal of such protections in the first place.⁹⁸ As of 2019, Italy was the world’s largest wine producer.⁹⁹

95. See Stefanelli, *supra* note 74 (stating that if a name is homonymous with an already registered name, it “shall be registered with due regard to local and traditional usage and any risk of confusion”); see also Gallagher, *supra* note 66, at 652 (stating that Prošek production is often done by single families, and according to family recipes).

96. Case C-490/19, *Syndicat Interprofessionel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶ 26 (Dec. 17, 2020).

97. See generally Fabio Gaetano Santeramo et al., *The Synergies of Italian Wine and Tourism Sectors*, 6 WINE ECON. & POL’Y 71 (2017) (finding that promoting the agro-food sector has a significant impact on tourism); *Number of International Arrivals in Tourist Accommodation in Croatia from 2006 to 2020*, STATISTA (Oct. 18, 2022) (showing that Croatia had 17.3 million international tourists in 2019), <https://www.statista.com/statistics/614346/number-international-arrivals-spent-in-accommodation-in-croatia>; *Total Number of International Tourist Arrivals in Italy from 2015 to 2020*, STATISTA (July 14, 2022), <https://www.statista.com/statistics/780963/inbound-tourist-arrivals-in-italy> (showing that Italy had 96.2 million international tourists in 2019).

98. Council Regulation 1151/2012, *supra* note 4; see also Gallagher, *supra* note 66, at 662–63 (explaining that while Croatians are likely to view their wines as part of their cultural heritage, Italians are more likely to consider them a useful economic export).

99. See Girardi, *supra* note 89 (stating that in 2019, Italy produced around 48.5 million hectoliters, with more than 20 million hectoliters being granted PDO protection); *id.* (noting that while there seems to be conflicting reports of exactly how much Prosecco is worth economically, it is clear that Prosecco’s total revenue is much higher than Prošek); see also Hughes, *supra* note 34 (stating that Prosecco is a multi-billion-dollar business selling over 600 million bottles a year, quoted as being recognized as a world-wide brand); see generally Micallef, *supra* note 76 (noting the tremendous growth of Prosecco and how it currently exceeds the unit

In 2019 Croatia exported \$19.8 million worth of wine, while Italy exported \$7.25 billion.¹⁰⁰ From an overall economic perspective, there is no doubt that Croatia has the more rural economy.¹⁰¹ In 2020, Italy's gross domestic product (GDP) came in at 1,888,709.44 million USD, while Croatia's GDP was 57,203.78 million USD.¹⁰² Croatia's rural economy encourages granting PDO protection for Prošek and denying it such protection would negate the articulated purposes of the PDO protection scheme.

2. *Granting Prošek PDO Protection Would Support Croatian Producers*

Another goal of the PDO protection scheme is to protect producers who make these products with specific characteristics linked to their geographical origin.¹⁰³ The main protection that producers have is against the "evocation" of their product.¹⁰⁴

If the European Union rules in favor of Italy, by deciding that Prošek evokes the image of Prosecco, Croatian producers of Prošek would have to cease production of the traditional wine.¹⁰⁵ The local Croatian producers of Prošek, many of whom are family businesses, would lose their source of income, in addition to losing the long-

sales of champagne).

100. See generally *Croatia*, TREND ECONOMY, <https://trendeconomy.com/data/h2/Croatia/2204> (last visited July 13, 2022) (graphing the trend in growth of exports in Croatia); *Italy*, TREND ECONOMY, <https://trendeconomy.com/data/h2/Italy/2204> (last visited July 13, 2022) (graphing the trend in growth of exports in Italy).

101. Casba Csaki & Laura Tuck, *Rural Development Strategy: Eastern Europe and Central Asia*, Technical Paper No. 484, THE WORLD BANK, at v (2000) (explaining that the rural economic sector is not confined to agriculture, rather, it is defined by "economic development activities; institutional, economic, and social infrastructure; and natural resources in rural areas").

102. See *GDP (current US\$)*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last accessed Mar. 10, 2022) (noting the GDP in Italy).

103. Case C-490/19, *Syndicat Interprofessionel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶¶ 26–27 (Dec. 17, 2020).

104. Council Regulation 1308/2013, *supra* note 5, at 723; *Evocation*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/evocation> (defining evocation as "the act or fact of evoking; summoning").

105. See generally Council Regulation 1308/2013, *supra* note 5, at 720–25.

standing traditional wine.¹⁰⁶ Opponents of granting Prošek PDO protection could argue that Croatian producers could change the name of the wine. However, the name Prošek has centuries of history and tradition attached to it.¹⁰⁷ Why should Croatians have to change the name of their beloved, traditional product simply because Italy was granted PDO protection for Prosecco prior to Croatia joining the EU?¹⁰⁸ This would set a precedent that the products of other smaller, late-coming members of the European Union will not be protected in favor of larger, founding members of the European Union.

3. *To Ensure Authenticity and Protect Consumers, Prošek Should Be Granted PDO Protection*

Consumers want to be assured that the wine they are paying a premium for is the genuine product that they are expecting. Regulation 1308/2013 explicitly protects this right of consumers in its Article 103(2)(d),¹⁰⁹ and the Court of Justice has repeatedly affirmed this principle in its decisions regarding geographical indicators.¹¹⁰ For consumers of Prošek to be assured of its authenticity and geographic origin, it should be able to be marketed under the name it has been known as for centuries in its home country.¹¹¹ It is unknown how banning the sale of 'Prošek' in the European Union would affect the market for the dessert wine within Croatia. However, deviation from the centuries-old identification of this traditional dessert wine could cause confusion among consumers, which is in direct contradiction with the stated purpose of Article 103(d)(2) of Regulation

106. See Bonadio & Contardi, *supra* note 33 (noting the wine trades under the name *Vino Dalmato* because of objections from the Italians).

107. See generally Gallagher, *supra* note 66, at 662–67 (discussing the cultural and historical background of Prošek).

108. *Country Profiles*, EUR. UNION, https://european-union.europa.eu/principles-countries-history/country-profiles_en (last visited July 13, 2022) (showing that Italy was a founding member of the European Union, while Croatia joined 2013).

109. See Council Regulation 1308/2013, *supra* note 5, at 723 (“Any other practice liable to mislead the consumer as to the true origin of the product.”).

110. See Case C-783/19, *Comité Interprofessionnel du Vin de Champagne v. GB*, ECLI:EU:C:2021:713 (Sept. 9, 2021); see also Case C-490/19, *Syndicat Interprofessionnel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043 (Dec. 17, 2020).

111. See generally Gallagher, *supra* note 66, 662–67 (discussing the cultural and historical background of Prošek).

1308/2013.¹¹²

As well as consumer confusion, making this deviation from the name Prošek would disrupt thousands of years of Croatian culture.¹¹³ If the European Union wants to show that it values cultural heritage, it should grant Prošek PDO protection.¹¹⁴ To protect consumers of Prošek, the name should be granted PDO protection so that consumers can continue to buy the wine under the well-known, historic name.

Additionally, Article 103(2)(c) prevents “any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product.”¹¹⁵ In the Morbier case, the Court clarified what this protection covers.¹¹⁶ The Court said that the “consumer must be misled into thinking, mistakenly, that the [infringing] product comes from the geographical area referred to by the registered name or that it was made using a production method covered by the registered name.”¹¹⁷ This assessment must be carried out on a case-by-case basis, considering all relevant elements, similar to the evaluation for evocation.¹¹⁸ One of these relevant elements is the way the product is presented to the public when they are making their purchasing decision.¹¹⁹ Lastly, the Court says this is to be decided from the

112. Case C-490/19, *Syndicat Interprofessionnel de Défense du Fromage Morbier v Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶ 29 (Dec. 17, 2020) (recognizing that the rules on registered names embody “the objective of protecting consumer interests.”).

113. *See generally* Gallagher, *supra* note 66, at 664 (providing a history of Prošek).

114. *See id.* at 662 (noting that Italians are less likely to view Prosecco as part of their cultural heritage, and rather as a useful economic export); *see id.* at 664 (explaining that Prošek has a much stronger argument for intangible cultural heritage because of the “social practices, rituals, and festive events” associated with its consumption).

115. Council Regulation 1308/2013, *supra* note 5, at 723.

116. Case C-490/19, *Syndicat Interprofessionnel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶ 61 (Dec. 17, 2020) (holding that reproducing the shape or appearance of a protected product may constitute a prohibited practice if it is liable to mislead consumers as to the true origin of the product).

117. *Id.* ¶ 52.

118. *Id.* ¶ 55 (stating that one of the elements to consider is, in the eyes of the consumer, what the element in question for identification is).

119. *Id.* ¶ 57 (adding that the question to consider is whether the consumer actually encounters the characteristic at issue when making their purchasing

perspective of the average European consumer, who is reasonably well-informed, circumspect, and observant.¹²⁰

It is highly unlikely that a court would find that Croatian producers of Prošek would be misleading consumers as to the origin of their product.¹²¹ The name Prošek has its own appearance, history, and production process, completely different from Prosecco's appearance, history, and production process; therefore, well-informed consumers presented with Prošek would not be misled as to the origin of the product. When two products have a close physical appearance, a well-informed consumer may be misled; however, when two products appear very differently, there is a very low risk of misleading the consumer.¹²²

B. THE EUROPEAN UNION MUST DENY ITALY'S OBJECTION TO PDO PROTECTION FOR CROATIA'S PROŠEK BECAUSE PROŠEK DOES NOT INFRINGE ON ANY OF PROSECCO'S PDO PROTECTIONS

The history of Prošek sets it apart from other PDO cases that the Court of Justice of the European Union has decided. Prošek existed long before "Prosecco" was granted protection, and before the schemes for such protection even existed.¹²³ Italy was eligible for PDO protection for Prosecco prior to Croatia was able to apply for Prošek, because Italy was a founding member of the European Union, while Croatia was not admitted until 2013.¹²⁴ The argument that Prošek producers are attempting to capitalize off the popularity of Prosecco is meritless. In the Scotch Whisky, Morbier, and Champanillo cases, the 'newer' product seeking PDO protection was

decision).

120. *Id.* ¶ 59 (directing the national courts to make that assessment).

121. *See id.* ¶ 50–59 (discussing practices that could mislead consumers as to the true origin of a product).

122. *See* Gallagher, *supra* note 66, at 664 (discussing the cultural heritage of Prošek).

123. *See id.* at 664 (noting that the first written mention of Prošek appeared in 1556, centuries before the European Union came into existence).

124. *See generally* Croatia: Membership Status, EUR. COMM'N, https://ec.europa.eu/neighbourhood-enlargement/croatia_en#:~:text=Croatia%20applied%20for%20EU%20membership,country%20on%201%20July%202013 (last visited July 7, 2022) (providing the date and other background information on Croatia's membership).

attempting to capitalize on familiarity from the PDO-protected product, attempting to evoke the image of the well-known protected product and mislead consumers as to their product.¹²⁵ While evocation and misleading consumers may seem interchangeable, the European Union has explicitly differentiated them, both in the applicable regulations and in relevant case law.¹²⁶ When evaluating a product for PDO protection, the European Union should consider whether the product is attempting to evoke the image or familiarity of an already protected product and whether it is attempting to mislead consumers.

1. Prošek Does Not Evoke an Association With Prosecco Under the Established Standard

Article 103(2)(b) of Regulation No 1308/2013 protects PDO products from “any misuse, imitation or evocation.”¹²⁷ The Regulation itself does not set forth how to evaluate evocation, so the Court of Justice has given elements that constitute evocation on an ad hoc basis. In 2018, the Court addressed evocation in the Scotch Whisky case.¹²⁸ It held that the only determining criterion “is whether, ‘when the consumer is confronted with the name of the product, the image triggered in his mind is that of the product whose designation is protected.’”¹²⁹ The Court also noted that it is not consistent with the

125. See *Champagne*, *supra* note 12 (noting that Champagne was granted PDO protection in 1973, Scotch Whisky was granted PDO protection in 1989, and Morbier cheese was granted PDO protection in 2000); Case C-490/19, *Syndicat Interprofessionnel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶ 9 (Dec. 17, 2020); see generally *Scotch Whisky*, *supra* note 50 (providing the date of registration).

126. Council Regulation 1308/2013, *supra* note 5, at 723 (noting Article 103(2)(b) protects against “misuse, imitation or evocation” and the following paragraph, Article 103(2)(c) states the protection against “any other false or misleading indication,” therefore, these two concepts are different for purposes of analyzing whether a product infringes upon PDO protections); see generally Case C-44/17, *The Scotch Whisky Ass’n v. Michael Klotz*, ECLI:EU:C:2018:111 (Feb. 22, 2018) (posing two questions for review: one addressing evocation and the other addressing whether there is any other false or misleading indication, showing that these two inquiries are separate); see generally *Morbier v. Société Fromagère*, C-490/19, ¶¶ 42–60 (discussing practices that constitute evocation and those that mislead consumers).

127. Council Regulation 1308/2013, *supra* note 5, at 723.

128. See *Scotch Whisky v. Klotz*, C-44/17.

129. *Id.* ¶ 60.

objectives of the PDO protection schemes to allow a vague and far-reaching criterion, such as “the disputed element evokes in the relevant public *some kind of association* with the registered geographical indication or the geographical area.”¹³⁰ While giving some clarity as to what evocation means in the PDO protection context, the Court did not set forth a clear-cut test.

Two years later, in the *Morbier* case, the Court added that evocation must be established on a case-by-case basis, taking into account the shape or appearance of the product.¹³¹

A year later, the Court again faced the question of what constitutes evocation in the *Champanillo* case. The Court referred back to its *Scotch Whisky* decision, quoting the standard the Court decided in that case,¹³² and then built on that language. The decision noted that the Court has placed an increasing emphasis on “the mental association between the disputed sign and the product covered by the PDO.”¹³³ The Court also defined who constituted the ‘relevant public’ in cases concerning the existence of evocation: “the national court is required to refer to the perception of an ‘average consumer, who is reasonably well informed and reasonably observant and circumspect.’”¹³⁴ Lastly, the Court mentioned that intention is a factor to be taken into account when assessing evocation.¹³⁵

130. *Id.* ¶ 61.

131. *Morbier v. Société Fromagère*, C-490/19, ¶ 40–45 (“a registered name may be evoked when the consumer encounters the shape or appearance of an ordinary product which partially or wholly reproduces the shape or appearance of a similar product covered by a protected name”); *id.* ¶¶ 42–45 (setting forth three elements to consider in determining evocation: (1) the element that has been reproduced must appear in the specification of the registered name as a distinctive characteristic of the product; (2) the element that has been reproduced must not be intrinsically linked to a production process which must remain freely available for use by any producer; and (3) whether there is intention to take unfair advantage of the protected name).

132. *Case C-783/19, Comité Interprofessionnel du Vin de Champagne v. GB*, ECLI:EU:C:2021:713, ¶ 51 (Sept. 9, 2021).

133. *Case C-783/19, Comité Interprofessionnel du Vin de Champagne v. GB*, ECLI:EU:C:2021:713, ¶ 53 (Sept. 9, 2021) (quoting *Case C-44/17, The Scotch Whisky Ass’n v. Michael Klotz*, ECLI:EU:C:2018:111 (Feb. 22, 2018)) (“whether, when the consumer is confronted with a disputed designation, the image triggered directly in his mind is that of the product whose geographical indication is protected”).

134. *Id.* ¶ 59.

135. *Id.* ¶ 69 (clarifying that intention is not a requirement, but it is a factor to be

With this compiled test, the question is whether Prošek evokes the image of Prosecco (the protected product) in the mind of an average consumer, who is reasonably well-informed, observant, and circumspect, as well as whether Croatia intended to create such an evocation with Prošek. As we know, the average consumer of Prošek is Croatian, so the questions should be evaluated through that lens.¹³⁶ Would a well-informed Croatian wine consumer have the image of Prosecco evoked when faced with the traditional Prošek wine? It is highly unlikely.¹³⁷

Even evaluated outside of Croatia, any European consumer is highly unlikely to confuse the two wines.¹³⁸ The differences between the wines outweigh any similarity between the names. There is a difference in visual appearance, price point, and occasion for drinking.¹³⁹ There is little cross-over in the markets that each of these wines serves.¹⁴⁰ If a consumer intending to purchase Prosecco accidentally purchased Prošek, there would be a strong doubt as to whether that consumer meets the “reasonably well informed and reasonably observant and circumspect” standard set forth by the Court.¹⁴¹ From the clarity about misleading consumers that comes from the Morbier case, it is highly unlikely that a court would find that Croatian producers of Prošek would be misleading consumers as to the origin of their product.

Addressing the intent element to evocation, Croatia did not, and does not, intend to use Prosecco’s familiarity to promote Prošek.¹⁴² Prošek’s centuries-long history shows just that.¹⁴³ How could a wine that existed before the European Union, and therefore before the PDO

accounted for in the assessment for evocation).

136. See Gallagher, *supra* note 66, at 651 (stating that Prošek is an important social and cultural icon for the Croatian people).

137. See Barry, *supra* note 68 (noting that a Croatian member of the European Parliament has been quoted saying that “consumers will not be confused by this”).

138. See discussion *supra* Sections II.C, II.D

139. *Id.*

140. *Id.*

141. Case C-44/17, *The Scotch Whisky Ass’n v. Michael Klotz*, ECLI:EU:C:2018:111, ¶ 59 (Feb. 22, 2018).

142. See discussion *supra* Sections II.C, III.B

143. See Gallagher, *supra* note 66, at 651 (noting Prošek has been produced for perhaps more than 2,000 years).

protection schemes, be attempting to capitalize on the status of a protected product?

With the test that the Court of Justice has established to evaluate evocation, there is a very strong argument that Prošek is not evoking the image of Prosecco and therefore would not infringe on Prosecco's PDO protection.

2. *PDO Protections Prevent Other Products from Misleading Consumers*

Article 103(2)(c) prevents “any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product.”¹⁴⁴ In the *Morbier* case, the Court clarified what this protection covers.¹⁴⁵ The Court said that the “consumer must be misled into thinking, mistakenly, that the [infringing] product comes from the geographical area referred to by the registered name or that it was made using a production method covered by the registered name.”¹⁴⁶ This assessment must be carried out on a case-by-case basis, considering all relevant elements, similar to the evaluation for evocation.¹⁴⁷ One of these relevant elements is the way the product is presented to the public when they are making their purchasing decision.¹⁴⁸ Lastly, the Court says this is to be decided from the perspective of the average European consumer, who is reasonably well-informed, circumspect, and observant.¹⁴⁹

Given the clarity about misleading consumers that the *Morbier* case provides, it is highly unlikely that a court would find that Croatian producers of Prošek would be misleading consumers as to the origin of their product. The name Prošek has its own appearance, history, and production process completely apart from Prosecco's appearance,

144. Council Regulation 1308/2013, *supra* note 5, at 723.

145. Case C-490/19, *Syndicat Interprofessionnel de Défense du Fromage Morbier v. Société Fromagère du Livradois SAS*, ECLI:EU:C:2020:1043, ¶ 62 (Dec. 17, 2020) (holding that reproducing the shape or appearance of a protected product may constitute a prohibited practice if it is liable to mislead consumers as to the true origin of the product).

146. *Id.* ¶ 52.

147. *See supra* note 118 and accompanying text.

148. *See supra* note 119 and accompanying text.

149. *See supra* note 120 and accompanying text.

history, and production process. Therefore, Prošek would not mislead a well-informed consumer as to the origin of the product.¹⁵⁰ When two products have a close physical appearance, a well-informed consumer may be misled; however, when two products appear very differently, there is a very low risk of misleading the consumer.¹⁵¹

C. THE EUROPEAN UNION MUST DENY ITALY'S OBJECTION TO PDO STATUS FOR CROATIAN PROŠEK BECAUSE ITALY'S ARGUMENTS AGAINST PROŠEK FAIL BASED ON THE STANDARDS SET FORTH BY THE COURT OF JUSTICE

If the European Union sides with Italy's Prosecco lobby and denies Prošek PDO protection, it will be re-solidifying its position as possibly the most stringent GI protection. Italy is arguing that any recognition of Prošek would be in breach of Prosecco's protection against "misuse, imitation, or evocation," and that it would set the entire protection system in jeopardy.¹⁵² Taking a strict view of the Court of Justice's jurisprudence, it could be possible for the European Union to find that Prošek would infringe on Prosecco's already-granted protections.

Prošek could be found to be an evocation of Prosecco if, when presented with Prošek, a reasonably well-informed consumer thinks of Prosecco.¹⁵³ The Court has placed an increasing emphasis on the mental association between the disputed sign and the protected product and, considering Prosecco's global familiarity, a decision-maker could find that the lesser-known Prošek could evoke images of Prosecco.¹⁵⁴

However, Italy's statement that Prošek can be seen as an imitation of Prosecco would nonetheless fail. The Court of Justice has addressed

150. *Prošek vs Prosecco*, *supra* note 90 (offering a list of characteristics that differentiate Prošek from Prosecco).

151. See *Morbier v. Société Fromagère*, C-490/19, ¶ 62.

152. Mara Bizzotto, *Strengthening the System for Protecting PDO and PGI Denominations in the EU After the Prosecco/Prošek Case*, EUR. PARL., (Nov. 10, 2021) https://www.europarl.europa.eu/doceo/document/G-9-2021-001003_EN.html.

153. Case C-783/19, *Comité Interprofessionnel du Vin de Champagne v. GB*, ECLI:EU:C:2021:713, ¶ 51 (Sept. 9, 2021).

154. *Id.* ¶ 53 (directing national courts to consider the "similarity between the products in question, both materially and in terms of their physical appearance").

cases where after a product, such as Morbier cheese, is granted PDO protections, products with similar appearances and characteristics emerge.¹⁵⁵ This is not that case. As already established, Prošek existed for decades, if not centuries, before the formation of the European Union and therefore before Prosecco's PDO protection.¹⁵⁶

Another point Italy can raise is that Prošek is misusing the term Prosecco. When the Croatian word Prošek is translated to Italian, it comes out as Prosecco.¹⁵⁷ If a decision-maker viewed the words as functionally similar, it could find that by labeling a dessert wine with Prošek (the Croatian word for Prosecco), the producer is misusing the term, which is intended for the Italian sparkling wine.

While Italy has several avenues to argue that granting Prošek PDO protections would infringe on Prosecco's already-existing protection, standing alone it is not certain that any one of the arguments would be dispositive. Italy will likely need to weave together multiple elements of infringement to make a compelling case to deny Prošek PDO protection.

The European Union should grant Prošek PDO protection to protect the Croatian producers and consumers of the traditional wine because granting Prošek PDO protection would not infringe on the protections of Italy's Prosecco. Prošek is not attempting to evoke the image or familiarity of Prosecco, and Prošek is not attempting to mislead consumers. For the EU PDO protection schemes to stay in line with their stated purposes, Prošek should be granted PDO protection.

IV. RECOMMENDATIONS

Prošek's PDO application, and Italy's opposition to it, have highlighted issues with the European Union and Court of Justice's piecemeal definitions of infringement and factors to consider when evaluating infringement. The current system is not clear-cut and could lead to results inconsistent with the stated purpose of the PDO protection schemes, such as denying Prošek protection. To ensure that

155. See *Morbier v. Société Fromagère*, C-490/19.

156. See *supra* note 123 and accompanying text.

157. Translation of Croatian: Prošek to Italian: Prosecco, GOOGLE TRANSLATE, <https://translate.google.com/?hl=en&sl=hr&tl=it&text=Pro%C5%A1ek&op=translate>.

evaluations of PDO applications comply with the purposes of the protections, the European Union should formally define what constitutes an infringement of PDO protection, as well as require opponents to the PDO application to prove potential infringement.

A. THE EUROPEAN UNION SHOULD FORMALLY DEFINE WHAT CONSTITUTES AN INFRINGEMENT OF PDO PROTECTIONS WHEN EVALUATING A PDO APPLICATION

Regulation 1308/2013 sets forth the protections against direct or indirect commercial use of the protected name; any misuse, imitation, or evocation; any false or misleading indication as to the origin of the product; and any other practice liable to mislead the consumer as to the true origin of the product.¹⁵⁸ This seems thorough at first glance; however, when opponents to PDO applications claim that the applying product is infringing on their protections, that shows how much gray area there is.¹⁵⁹ The Court of Justice has been faced with these questions, but the resulting factors that the Court enunciated show that they are not the best forum to define these protections and what constitutes infringement. To define more thoroughly what constitutes infringement on PDO protections, the European Union should formally set forth standards, or questions to be answered, for evaluating potential infringement.

The test for ‘evocation’ is probably the best example of how the European Union setting forth standards would clarify what to evaluate when dealing with potential infringement. The Scotch Whisky decision set forth “the decisive criterion” for determining the evocation of a PDO.¹⁶⁰ The Champanillo case recognizes this “decisive criterion,” but also notes that the Court had held it was legitimate to evaluate other factors such as whether the sales names

158. Council Regulation 1308/2013, *supra* note 5, at 723.

159. *E.g.*, Case C-783/19, Comité Interprofessionnel du Vin de Champagne v. GB, ECLI:EU:C:2021:713 (Apr. 29, 2021).

160. Case C-44/17, The Scotch Whisky Ass’n v. Michael Klotz, ECLI:EU:C:2018:111, ¶ 51 (Feb. 22, 2018) (noting that the Court said “the decisive criterion for determining whether there is an ‘evocation’ of a PDO within the meaning of Article 103(2) of Regulation NO 1308/2013 . . . is, therefore, ‘whether, when the consumer is confronted with a disputed designation, the image triggered directly in his mind is that of the product whose geographical indication is protected’”).

were phonetically and visually similar.¹⁶¹ With these varying factors to weigh, as well as assessing the “decisive criterion,” the question of potential infringement due to evocation is messy. If the European Union formally adopted the “decisive criterion” set forth in Scotch Whisky as the test for evocation, it could remedy issues with the piecemeal case law that the Court of Justice deals with.

B. OPPONENTS OF PROPOSED PDOs NEED TO PROVE INFRINGEMENT

Secondly, opponents of PDO applications should have to prove that infringement is probable to a degree. As the Regulation stands right now, the only requirement for a member state or third country’s statement of opposition is that it be “duly substantiated”.¹⁶² Italy’s opposition to the publication of Prošek’s PDO application sets forth the protections that Prosecco enjoys as an already protected product, references the Champanillo decision, and said that the Commission was setting forth a “dangerous precedent” by publishing Prošek’s application.¹⁶³ Nowhere in its 478-word answer did Italy clearly articulate what specific protections Prošek would be infringing on (evocation, misleading consumers, etc.) and how Prošek would cause such infringement.¹⁶⁴

For the Commission to more effectively evaluate PDO applications and objections, objecting parties should be required to list exactly what protections would be infringed upon, along with some explanation of how that infringement would occur. In the case of Prošek, Italy’s opposing statement could include an argument that Prošek would mislead consumers into thinking they were purchasing Prosecco due to the translation of the word, therefore harming Prosecco in the European wine market because consumers could pick up a bottle of Prošek and be under the impression that it was the famous sparkling wine.¹⁶⁵ Or, Italy could claim that the name Prošek evokes the image of Prosecco, since Prosecco is a globally known name, while Prošek

161. Case C-783/19, *Comité Interprofessionnel du Vin de Champagne v. GB*, ECLI:EU:C:2021:713, ¶ 51 (Sept. 9, 2021).

162. Council Regulation 1308/2013, *supra* note 5, at 721.

163. Bizzotto, *supra* note 152.

164. *Id.*

165. Translation of Croatian: Prošek to Italian: Prosecco, *supra* note 157.

is pretty much only known within Croatia or Croatian culture.¹⁶⁶ A level of specificity in opposing statements should be required for thorough evaluation at the Commission level. A member State or third country simply claiming that granting a PDO would constitute infringement should not be sufficient.

Requiring some description of how infringement could occur could have multiple benefits for the European Union and the applicant country. The European Union is a major bureaucracy, inundated with thousands of tasks. By requiring states opposing PDO applications to provide more thorough answers, a potential bureaucratic backlog could be avoided. From the perspective of the applicant state, they could more aptly address the concerns of opponents, without needing special sessions in the European Union or bringing a case before the national courts and eventually the Court of Justice.

C. DENYING PROŠEK PROTECTION COULD CREATE A DANGEROUS PRECEDENT FOR OTHER COUNTRIES WITH LATER ADMISSION DATES TO THE EUROPEAN UNION

If Prošek was denied PDO status, it could create a dangerous precedent that would allow larger, longer-standing members of the European Union to maintain a near monopoly over these protections. By the end of 2012, only five countries held 87% of the registered PDOs in the European Union.¹⁶⁷ There is also a disproportionate distribution of these PDOs when compared to the size of the country's agricultural sector.¹⁶⁸ Particularly relevant to this Comment is that Italy's GI protections are 90% higher than what would be expected based on its gross domestic product and population, and 50% higher than would be expected based on the size of its agricultural sector.¹⁶⁹ By granting Prošek PDO status, it would signal a departure from the

166. See *supra* notes 14, 74 and accompanying text.

167. See Moir, *supra* note 21, at 125 (noting the five countries are France, Greece, Italy, Portugal, and Spain); *Country Profiles*, *supra* note 108 (showing that France and Italy were founding members of the European Union, while Greece, Portugal, and Spain joined in the 1980s).

168. See Moir, *supra* note 21, at 125–27 (displaying a table demonstrating the percentage shares of GIs, GDP, population, and agricultural value added for Germany, France, the UK, Italy, Spain, Greece, and Portugal).

169. *Id.* at 127 (referencing the table on page 126).

current structure where powerful EU players get to dominate the market with their PDO products and show that the European Union equally values countries with smaller economies.

V. CONCLUSION

The European Union's system of geographical indications is very valuable for rural economies, producers, and consumers. In evaluating a product for protection, the European Union should consider whether granting protection is in line with the stated goals of the regulatory scheme. Denying a product simply because it has a similar name to an already protected one, despite significant differences between the products, contravenes the express purposes of such protection.

Croatia's Prošek is an ideal candidate for a PDO. It is highly unique to the area, part of a rural economy, and granting the PDO would ensure its authenticity to consumers. Denying Prošek such status simply because Italy was the first to obtain protection for Prosecco could set a dangerous precedent that would allow major EU players like Italy to dominate the PDO market.

To avoid such a result, the European Union should formally define each of the elements of protection, clearly delineating what constitutes evocation and misleading consumers. Secondly, entities opposing the application should have to set forth some level of substantive evidence that granting protection for this new product would result in infringement on their product; mere speculation should not be sufficient. Adopting these measures would allow the European Union to expand its PDO protections to newer member states, while still maintaining the integrity and stated purposes of the protection schemes.