

Nefndasvið Alþingis

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Efni: Umsögn Einkaleyfastofunnar um frumvarp til laga um vernd afurðarheita sem vísa til uppruna, landsvæðis eða hefðbundinnar sérstöðu, þingskjal 157, 154. mál á 144. löggjafarþingi 2014-2015.

Vísað er til fundar sem fulltrúar Einkaleyfastofunnar áttu með atvinnuveganefnd þann 18. nóvember sl., í tengslum við frumvarp til laga um vernd afurðarheita sem vísa til uppruna, landsvæðis eða hefðbundinnar sérstöðu, sbr. þskj. 157, 154. mál og bréfs dags. 5. desember sl.

Eins og rætt var stuttlega á fundinum gerir Einkaleyfastofan athugasemdir við þá fyrirætlan að samræma ákvæði sem varða vöru- og félagamerki reglugerð Evrópusambandsins (ESB) nr. 1151/2012, frá 21. nóvember 2012, um gæðakerfi fyrir landbúnaðarafurðir og matvæli, þrátt fyrir álit stofnunarinnar dags. 28. október sl., sem laut að samræmi ákvæða tengdum vöru- og félagamerkjum við ákvæði reglugerðarinnar. Það er einkum 24. gr. frumvarpsins um tengsl yngri afurðarheita við eldri vöru- og félagamerki og samhliða vernd (*e. co-existence*) sem þessar athugasemdir lúta að, Einkaleyfastofan gerir ekki frekari athugasemdir við c. lið 7. gr. og 23. gr. frumvarpsins.

Áður en frekari athugasemdir verða settar fram við 24. gr. frumvarpsins telur Einkaleyfastofan rétt að benda á, í ljósi þess að stofnunin fer með málefni faggildingar skv. lögum nr. 24/2006 um faggildingu o.fl., að í 3. mgr. 30. gr. frumvarpsins er fjallað um aðila „sem hlotið hafa faggildingu samkvæmt lögum um faggildingu o.fl.“. Með því að vísa í lög in er í raun verið að ákveða að faggildingarsvið Einkaleyfastofunnar (ISAC) annist faggildinguna. Ef það verkefni sem opinber aðili kys að fela faggiltum aðila reynist utan tæknilegrar getu ISAC til faggildingar getur þurft að kalla eftir þjónustu annars faggildingaraðila. Slík faggilding er því ekki framkvæmd á grundvelli laga nr. 24/2006. Allar faggildingarstofur fylgja hins vegar sömu viðmiðum sem fram koma í staðli nr. 17011 og reglugerð Evrópuþingsins og Ráðsins (EB) nr. 765/2008 um kröfur varðandi faggildingu o.fl., sem innleidd var hér á landi með reglugerð nr. 566/2013. Einkaleyfastofan leggur því til að tilvísun til lagagreinarinnar falli brott svo eftir standi í 3. mgr.:

„Opinberum eftirlitsaðila er heimilt að fela öðrum sem hlotið hafa faggildingu [...]að annast tiltekin verkefni við framkvæmd eftirlits samkvæmt lögum þessum...“

Ástæða þess að Einkaleyfastofan óskaði eftir endurskoðun 24. gr. sérstaklega er einkum sú að í því ferli sem leiddi til breytinga á fyrirliggjandi frumvarpi frá frumvarpi því sem lagt var fram árið 2013 var lagt upp með að unnið væri að sambærilegri endurskoðun og samræmi við reglugerð ESB nr. 1151/2012 í Noregi. Rétt væri því talið að fara sömu leið hér á landi. Hins vegar hefur það fengist staðfest að þrátt fyrir að viðræður hafi átt sér stað milli ESB og Noregs um samræmi í þessum efnnum hefur engin ákvörðun þess efnis verið tekin enn og engar tillögur að breytingum á gildandi reglugerð í Noregi eru í opinberu ferli. Þá er með öllu óljóst hvort og þá hvernig staðið verður að breytingum á gildandi reglum þar í landi.

Sá sem áunnið hefur sér rétt til vöru- eða félagamerkis með notkun eða skráningu hér á landi nýtur m.a. einkaréttar til notkunar eða ráðstöfunar viðkomandi merkis sem varinn er af eignaréttarákvæði 72. gr. stjórnarskrárinnar, sbr. lög nr. 33/1944 um stjórnarskrá lýðveldisins Íslands. Í vöru- og félagamerkjarétti gilda ennfremur meginreglurnar „fyrstur kemur fyrstur fær“ og að eldri réttindi gangi frammar yngri. Sömu reglur gilda á alþjóðavísu, enda eru reglur um hugverkaréttindi, þ.á m. um vöru- og félagamerki, samræmdar m.a. með Parísarsamþykkt um vernd eignaréttinda á sviði iðnaðar,¹ samningi Alþjóðavískaftastofnunarinnar (WTO) um hugverkaréttindi í viðskiptum (TRIPS)² og innan Evrópu með tilskipun nr. 2008/95/EB um samræmingu á lögum aðildarríkja um vörumerki.³ Kveðið er á um einkarétt rétthafa til ráðstöfunar í 16. gr. TRIPS samningsins og í 5. gr. reglugerðar 2008/95/EC, sem endurspeglast hér á landi í 4. gr. laga nr. 45/1997 um vörumerki (vml.). Þá er samkvæmt 2. tl. 1. mgr. 14. gr. vml., óheimilt að skrá merki sem gefur villandi upplýsingar um uppruna merkis eða vöru/þjónustu sem það stendur fyrir.

Þegar framangreint frumvarp var fyrst birt til umsagnar um mitt ár 2013, voru þau ákvæði sem um ræðir, þ.e. nú c. liður 7. gr. (þá c. liður 9. gr.), 23. gr. (þá 24. gr.) og 24. gr. (þá 25. gr.) að öllu leyti í samræmi við 18. og 19. gr. reglugerðar um sama efni í Noregi, þ.e. *REG 2007 -07 -05 no 698: Regulation on the protection of designations of origin, geographical indications and designations of specific traditional character on foodstuffs*.⁴

Með orðalagi 18. og 19. gr. norsku reglugerðarinnar og fyrra orðalagi ákvæða frumvarpsins eru framangreindar meginreglur virtar að öllu leyti, þ.e. *ekki er unnt að skrá vöru- eða félagamerki* ef til staðar er verndað afurðarheiti og *ekki er unnt að skrá afurðarheiti* ef til staðar er skráð vörumerki eða félagamerki. Ávallt er miðað við að hætt sé við ruglingi og að neytendur geti ranglega ætlað að vörurnar komi frá sama

¹ Paris Convention for the Protection of Intellectual Property, sjá www.wipo.int

² Agreement on Trade-Related aspects of Intellectual Property Rights, sjá www.wto.org

³ Um Evrópusambandsvörumerki gildir reglugerð nr. 207/2009/EC sem ekki tekur til Íslands.

⁴ Afrit af reglugerðinni fylgir.

stað/framleiðanda. Máli skiptir í báðum tilvikum hvor lagði fyrstur inn umsókn um skráningu viðkomandi réttinda, enda hefst vernd á umsóknardegi, sbr. 26. gr. vml.

Með því orðalagi sem áður var byggt á næst ákveðið jafnvægi milli réttindanna þar sem eldri réttindi eru virt að jöfnu. Aðilum er í samræmi við almennar reglur samningaréttar frjálst að semja sín á milli um gagnkvæma eða samhliða notkun, s.s. með veitingu nytjaleyfa o.þ.h. Hér á landi er ennfremur ávallt hægt að koma við samskráningu réttinda ef um ruglingshættu með merkjum er að ræða, með samþykki eldri rétthafa sbr. 2. mgr. 14. gr. vml. Lagt var til á sínum tíma af hálfu Einkaleyfastofunnar að sambærilegu ákvæði yrði bætt við frumvarpið til að tryggja að unnt væri að afla samþykkis eldri rétthafa fyrir skráningu afurðarheitis.

Með því að kveða á um betri rétt þess sem síðar sækir um afurðarheiti er að mati Einkaleyfastofunnar verið að kollvarpa framangreindum meginreglum að miklu leyti og skapa óvissu meðal þeirra sem nú þegar hafa með notkun eða skráningu áunnið sér rétt til vöru- eða félagamerkis. Aðeins *alþekkt* merki (sbr. erindi atvinnuvega- og nýsköpunarráðuneytis frá 5. desember sl.) geta notið verndar gegn skráningu síðari umsóknar um afurðarheiti sbr. c. lið 7. gr. frumvarpsins en kröfur varðandi það hvað telst vera alþekkt merki hafa hingað til verið fremur strangar og því eru í raun afar fá merki sem munu falla undir þetta skilyrði. Þá er með því að leyfa yngra afurðarheiti að ganga framur eldri vörumerkjarétti eða leyfa samhliða vernd án samþykkis eldri rétthafa verið að þvinga fram samhliða vernd í stað þess að láta hana lúta venjubundnum reglum.

Með því orðalagi sem nú er miðað við í 24. gr. (sbr. erindi atvinnuvega- og nýsköpunarráðuneytis frá 5. desember sl.) er gengið út frá því að sá sem áunnið hefur sér rétt til merkis geti aðeins notað það áfram og/eða endurnýjað hafi hann verið í góðri trú. Vissulega er meginþorri þeirra sem hefja notkun á eða skrá vörumerki í góðri trú en óljóst er samt sem áður með öllu í hvaða eða hversu mörgum tilvikum látið verður reyna á, með tilheyrandi kostnaði, álagi o.fl., hvort viðkomandi rétthafi hefur verið í góðri eða vondri trú. Getur þetta því haft gríðarleg áhrif, ekki aðeins fyrir rétthafa sem fara við slík mál inn í ferli óvissu um hvort réttur þeirra standi eða ekki, heldur getur þetta einnig leitt til aukins álags í þessum málum hvort sem er fyrir dómstólum eða hjá Einkaleyfastofunni. Þá er með öllu óljóst hvort og þá hvernig rétthafi, sem hugsanlega hefur eytt fjölda ára og miklum kostnaði í framleiðslu, markaðssetningu o.fl. í kringum vörumerki sitt fær þann kostnað bættan verði rétturinn af honum tekinn.

Framleiðendur vara, sem verndaðar eru erlendis með afurðarheiti, hafa um árábil átt kost á því að fara þá leið að vernda afurðarheiti hér á landi með skráningu vöru- eða félagamerkis og hafa fjölmargir, m.a. framleiðendur innan ESB, tryggt réttindi sín með þeim hætti. Réttindi margra hverra eru því tryggð að nokkru marki nú þegar, einnig þeirra sem ekki eiga skráð réttindi hér á landi með áður nefndu ákvæði 2. tl. 1. mgr. 14. gr. vml., sem kemur í veg fyrir skráningu merkja sem eru villandi um uppruna.

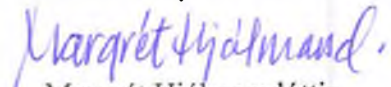
Hvernig staðið skuli að vernd afurðarheita er umdeilt í heiminum í dag þó flestir séu sammála um að þau beri að vernda með einhverjum hætti. Endurskoðun stendur nú yfir á svonefndum Lissabon samningi um alþjóðlega skráningu afurða sem vísa til uppruna

(e. *Lisbon Treaty for the International Registration on Appellations of Origin*) sem miðar að því að taka vernd landfræðilegra tilvísana einnig upp í samninginn. Mjög fá ríki eru aðilar að þessum samningi eða alls 28 og eru ekki allir á eitt sáttir um hvernig endurskoðunin fer fram. Þá má nefna að vernd landfræðilegra tilvísana er það sem helst stendur í vegi fyrir því að fríverslunarsamningur milli Evrópusambandsins og Bandaríkjanna verði að veruleika.

Rakið hefur verið hér það sem Einkaleyfastofunni þykir helst skipta máli í tengslum við vöru- og félagamerkjarett. Til viðbótar er að mati Einkaleyfastofunnar óljóst samkvæmt 25. gr. frumvarpsins hvort erlendir aðilar koma til með að greiða hér gjald fyrir skráningu afurðarheita, en það getur skapað ósamræmi og ójafnræði þurfi innlendir aðilar að greiða fyrir skráningu en erlendir (miklum mun fleiri) ekki. Þá fær stofnunin ekki séð að skoðað hafi verið hver áhrif lagasetningar verða á þá sem framleiða vörur hér á landi, sambærilegar þeim sem verndaðar eru sem afurðarheiti innan sambandsins (s.s. ostar ýmiskonar).

Hafa verður í huga að erlend (ESB) afurðarheiti eru mun fleiri en íslensk munu nokkurn tíma verða. Hagsmunir af samhliða vernd eru því ótvírætt minni fyrir íslenska réttihafa og framleiðendur en þeirra sem koma frá ESB. Að öllu framangreindu virtu þætti Einkaleyfastofunni því rétt að staldra við og skoða ýmis atriði nánar áður en frumvarpið verður samþykkt enda margt óljóst enn um heildaráhrif lagasetningarinnar.

Virðingarfyllst,
f.h. Einkaleyfastofunnar


Margrét Hjálmarsdóttir
yfirlögfræðingur

REG 2007 – 07 – 05 no 698: Regulation on the protection of designations of origin, geographical indications and designations of specific traditional character on foodstuffs

CHAPTER I PURPOSE, SCOPE AND DEFINITIONS

Section 1 Purpose

The purpose of this Regulation is to protect designations of foodstuffs based on origin, geography and traditional character, including ensuring the honest sale of these products.

Section 2 Scope and extent

The Regulation applies to foodstuffs. The Regulation lays down conditions for the protection, upon application, of designations of origin, geographical indications and designations of specific traditional character.

Designations of origin and geographical indications for wine, beverages with a strong alcoholic content and aromatized beverages etc., spring water and natural mineral water are exempted from the provisions of this Regulation.

The provisions of this Regulation also apply to foreign designations.

This Regulation as well as regulations laid down pursuant thereto, will not have priority over Norway's obligations under international law.

Section 3 Definitions, etc.

For the purposes of this Regulation,

1. *group* means any organization, irrespective of its legal status, of primary producers and/or processors working with the same foodstuff. Other interested parties may also be included in the group.
2. *product regulation* means a regulation which gives a product specification for each foodstuff with a designation protected by this Regulation.

Section 4 Use of designations and brands

Only producers, processors or other persons to whom protection has been granted under this Regulation, and regulations laid down pursuant thereto, may use the designations "protected designation of origin" or "protected original name", "protected geographical indication" or "protected geographical name", "protected specific traditional character", the brand in question, in one of the two official Norwegian languages, and the name that is protected pursuant to the specific product regulation.

Together with the labelling described in the first paragraph, the north or southsami designations "suddjejuvvon álgonamahus" or "vaarjelamme maadtoediejvse", "suddjejuvvon geográfalas namahus" or "vaarjelamme eatnemediejvse", "suddjejuvvon árbevirolas erenoamásvuohta" or "vaarjelamme vuekiediejvse", and the brand in question with north or southsami text, may be used.

CHAPTER II DESIGNATIONS OF ORIGIN AND GEOGRAPHICAL INDICATIONS

Section 5 Protection of designations of origin

A designation of origin for a foodstuff can be protected provided the following conditions are fulfilled:

1. the designation must indicate the name of a specific region or a specific place,
2. the foodstuff which is sold under the designation must originate in this region or this place,
3. the qualities or other characteristics of the foodstuff must essentially or exclusively be attributable to the region's or place's geographical environment with its inherent natural and human factors, and
4. the foodstuff must be produced, processed and prepared in this region or place.

Section 6 Exceptions from the conditions set out in Section 5

A non-geographical name can also be protected as a designation of origin for a foodstuff provided the name is traditionally associated with a specific region or place. The other conditions in Section 5 must be fulfilled.

Even if the raw materials for a foodstuff come from an area larger than or different from the processing area, a geographical indication can be protected as a designation of origin, notwithstanding the conditions set out in Section 5, nos. 2, 3 and 4, provided that:

1. the production area of the raw materials is defined,
2. special conditions apply to the production of the raw materials,
3. there are inspection arrangements in place to ensure that those conditions are adhered to, and
4. the designation is a traditional characteristic and has an exceptional reputation and standing.

For the purposes of this provision, raw materials mean live animals, meat and milk.

Section 7 Protection of geographical indications

A geographical indication for a foodstuff can be protected provided that the following conditions are fulfilled:

1. the designation must indicate the name of a region or a specific place,
2. the foodstuff which is sold under the indication must originate in that region or specific place,
3. the foodstuff's specific qualities, reputation or other characteristics can be attributed to that geographical origin, and
4. the foodstuff is produced, processed or prepared in the defined geographical area.

Section 8 Names and designations that cannot be protected

Designations that indicate the nature of the foodstuff cannot be protected. For the purposes of this Regulation, designations that indicate the nature of the foodstuff mean the name of a foodstuff which, although it relates to the place or the region where it was originally produced or marketed, has become the common designation for the foodstuff.

To establish whether or not a designation has become generic, account shall be taken of all factors, in particular the conditions in which the name originated, and where it is used, and relevant regulations.

Designations that may be mixed up with the name of a plant or breed of animal and thus might mislead the public as to the true origin of the product cannot be protected as a designation of origin or a geographical indication.

Section 9 Content of the application

An application for protection of designations of origin and geographical indications shall contain at least:

1. the trade name of the foodstuff, including the designation of origin or the geographical indication,
2. a description of the foodstuff with information regarding the raw materials, and the key physical, chemical, microbiological and/or organoleptic characteristics,
3. a definition of the geographical area and, if appropriate, information indicating compliance with the requirements in Section 6,
4. information that confirms that the foodstuff originates in the specified geographical area, cf. Section 5 or 7,
5. a description of the method used to produce the foodstuff and, if appropriate, information regarding the original and long-established local method in the area. The packaging shall be described if the applicant can establish and provide reasons why the packaging must take place in the defined geographical area to safeguard the foodstuff's quality, traceability or inspection,
6. specification of the factors that confirm the link with the geographical environment or the geographical origin, cf. Section 5 or 7, and
7. proposals for labelling the foodstuff.

Section 10 Scope of the protection

Designations of origin and geographical indications shall be protected against:

1. any direct or indirect commercial use of a protected designation in respect of foodstuffs that do not satisfy the requirements of the current Product Regulation, if the foodstuffs are comparable to the foodstuffs protected under this designation, or if use of the designation exploits the reputation of the protected designation,
2. any misuse, imitation or intimation, even if the true origin of the foodstuff is indicated or if the protected designation is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation" or "similar",
3. any other false or misleading indication as to the provenance, origin, nature or essential qualities of the foodstuff, on the inner or outer packaging, in advertising material or in documents relating to the foodstuff concerned, and the use of packaging which is liable to convey a false impression as to its origin, and
4. any other practice liable to mislead the public as to the true origin of the foodstuff.

When a protected designation contains a generic name, the use of the generic name on similar products is nonetheless permitted.

Protected designations may not become generic names.

The right to use a designation does not entitle the holder to deny others the use of their name or company or the company's address in accordance with good business practice.

CHAPTER III CONDITIONS FOR PROTECTION OF SPECIFIC TRADITIONAL CHARACTER

Section 11 Protection of designations with traditional character

Specific traditional character is a characteristic which clearly differentiates a foodstuff from other similar foodstuffs in the same category. The appearance of the foodstuff is not regarded as a characteristic of this nature. The specific character cannot solely be a quantitative or qualitative composition or a production method indicated in a regulation or standard, unless the regulation or standard has been designed to define a specific character.

A designation for specific traditional character for a foodstuff can be protected if the following conditions are fulfilled:

1. the foodstuff must be produced from traditional raw materials, have a traditional composition, or have a production or processing method which reflects its traditional method of production or processing.
2. the name in itself must be specific and traditional, or expresses the foodstuff's specific character. Geographical names can be protected if they are not protected under Chapter II.

A name expressing specific character pursuant to these provisions may not be protected if:

1. it refers only to claims of a general nature used for a set of foodstuffs, or to claims provided for by special regulations,
2. it is misleading, for instance in that it refers to an obvious characteristic of the product, or does not correspond to the Product regulations or to the consumers' expectations based on the special characteristics of the product.

If the specific character of the product is due to its provenance or geographical origin or solely to application of a technological innovation, protection is not obtainable.

Section 12 Content of the application

An application for protection of specific character shall contain at least:

1. the tradename of the foodstuff, including the designation of specific traditional character,
2. a description of the method of production, including information on the nature and characteristics of the raw materials and/or ingredients used and/or the method of preparation, referring to the specific character of the foodstuff,

3. a description of aspects allowing appraisal of the long-established/traditional character referred to in Section 11, second paragraph, no.1,
4. a description of the special characteristics of the foodstuff giving its most important physical, chemical, microbiological and/or organoleptic characteristics which relate to the specific character, and
5. the minimum requirements and procedures for product inspection.

Section 13 Extent of the protection

A protection of specific traditional character shall be protected against any practice liable to mislead the public. This includes attributing protection to a foodstuff which it doesn't have.

The designation of specific traditional character and the brand referred to in Section 4 shall be reserved for foodstuffs which fulfil the conditions in the relevant Product Regulation.

The name is thus only reserved for foodstuffs which fulfil the conditions in the relevant Product Regulation when

1. the group has requested this in its application
2. it is not clear from the processing of the application that use of the name is lawful, recognised and economically significant for similar foodstuffs.

The right to use a designation does not entitle the holder to deny others the use of their name or company or the company's address in accordance with good business practice.

Chapter IV Common provisions

Section 14 Requirements for applicants

Any group may apply for protection of a designation of origin, a geographical indication or a designation of specific traditional character.

Any natural or legal person who is not a group may in special and well-justified cases apply for protection provided that the following conditions are fulfilled:

1. the person is the only existing producer in the defined geographical area,
2. there are established, long-standing local methods that are only used by the person in question,
3. the defined area has characteristics that are essentially different from those of surrounding areas and/or the characteristics of the product are different.

Section 15 Application for protection of a designation, etc.

Applications may only be submitted for foodstuffs which the applicant himself produces, processes or prepares.

Applications for protection of a designation shall be submitted to the Norwegian Food Control Authority or the body authorised by the said Authority to be in charge of processing applications.

If an application does not comply with the requirements in Section 9 or Section 12, respectively, or processing of the application is otherwise prevented, the applicant shall be notified thereof. The applicant shall be given a suitable time limit within which to respond and, as the case may be, correct the shortcomings.

Shortcomings in the application shall not preclude the application being regarded as having been submitted on the date the application reached the Norwegian Food Control Authority or the body authorised by the said Authority, provided that the shortcomings are corrected within a fixed time limit.

If the applicant fails to make a statement or correct the shortcomings before the time limit expires, the application shall be shelved. Processing of the application shall be resumed if the applicant makes a statement or corrects the shortcomings within two months after expiry of the time limit. The processing of an application may only be resumed once. If the applicant has replied to the notification within the fixed time limit, but the application still contains shortcomings, the application shall be refused unless the Norwegian Food Control Authority or the body authorised by the said Authority finds that the applicant should receive new notification with a new time limit.

The draft of a Product Regulation shall be published in the Norwegian Trademark Gazette and circulated for general consultation.

If the Norwegian Food Control Authority finds that all the conditions for protection have been fulfilled, a Product Regulation shall be established. The Product Regulation shall be published in the Norwegian Trademark Gazette. The Product Regulation shall not be published in the Norwegian Law Gazette.

Section 16 Amendment of Product Regulations

If technology and scientific knowledge change or a need arises to redefine a geographical area, the original applicant or other lawful users of a protected designation of origin or geographical indication may request that the Norwegian Food Control Authority amend the Product Regulations regarding protection of a designation of origin or geographical indication.

The original applicant or other lawful users may request that the Norwegian Food Control Authority amend the Product Regulations regarding the protection for a designation of specific traditional character.

Applications in accordance with subsection one or two above shall be published in the Norwegian Trademark Gazette and circulated for general consultation. If objections are raised from other persons who lawfully produce or prepare products covered by the Product Regulation, amendments cannot be made.

The amended Product Regulation shall be published in the Norwegian Trademark Gazette. Amendments to the regulation shall not be published in the Norwegian Law Gazette.

Section 17 Provision regarding priority

If there are several applications for protection of the same or similar designation at the same time, the one that first reached the Norwegian Food Control Authority or the body authorised by the said Authority to be in charge of processing applications shall have priority.

Section 18 Situation regarding earlier trademarks or collective trademarks

A trademark or collective trademark may not be protected if it, when it is used in the business sector, would be liable to be confused with a designation which is protected by a Product Regulation, if the application for registration was submitted after the application for establishment of the Product Regulation was submitted in accordance with this regulation.

Section 19 Situation regarding older trademarks etc

It cannot be determined a Production Regulation to protect a designation if, in the light of the reputation and renown of a trademark or collective trademark and the length of time it has been used, it is liable to mislead consumers as to the true origin of the product.

A designation of origin, geographical indication or designation of specific traditional character may not be protected if a registered trademark or collective trademark already exists which:

1. is identical to or resembles the designation of origin or geographical indication, and which
2. is registered for the same or a similar foodstuff, and
3. may mislead consumers as to the true origin of the foodstuff, and
4. has been registered or for which an application for registration was submitted prior to the date on which an application for protection of a designation of origin or a geographical indication pursuant to these Regulations was received.

These provisions apply correspondingly to a protected business name or other business and trade characteristics, plant production rights and to protected personal names.

Section 20 Objections to an application to establish a Product Regulation

Anybody may, within three months of the date of publication, submit a written objection, with reasons, to an application against a proposal to establish a Product Regulation.

An objection shall be upheld and the application shall be refused if:

1. The objection shows that the conditions laid down in the regulations are not fulfilled, or
2. it shows that the proposed protected designation will wholly or partly impinge upon an equivalent designation, a trademark, a collective trademark, a protected business name or other business and trade characteristics, plant production rights or a protected personal name or
3. it shows that the proposed name is a generic name.

The objection shall be submitted to the Norwegian Food Control Authority or the body authorised by the said Authority.

Section 21 Retesting and judicial review of a Product Regulation

Any person with a legal interest may request that the Product Regulation should be cancelled completely or partly by the Norwegian Food Control Authority, or declared completely or partly null and void by legal action.

A request that the Product Regulation should be cancelled by the Norwegian Food Control Authority must be in writing and contain the reasons for the request.

The Product Regulation shall be cancelled or declared null and void as far as it conflicts with this Regulation.

Section 22 Approval

Any person may, under the same conditions as laid down in this Regulation and in the Product Regulation, use a designation that is already protected. Such use must be approved in advance by the Norwegian Food Control Authority. The approval may be withdrawn if the user no longer fulfils the conditions laid down in this Regulation and in the Product Regulation. The approval may be reversed if the Product Regulation is repealed or amended.

Section 23 Consumption

The original applicant or other lawful users of a protected designation cannot oppose the use of a designation for products brought onto the market using this designation by the original applicant or other lawful users, or with approval from one of the latter.

The first paragraph is not applicable if the original applicant or lawful users have a reasonable cause to oppose further sale of the goods, especially if the goods have been amended or have reduced in value after they have been brought onto the market.

Section 24 Verification

Any producer who fulfils the requirements of this Regulation and Product Regulation may request that the Norwegian Food Control Authority, or the body authorised by the said Authority, verifies compliance with the Product Regulation.

The fee for the costs thereof shall be payable by the producer in question.

CHAPTER V ENFORCEMENT AND APPEALS ETC.

Section 25 Inspection and decisions

The Norwegian Food Control Authority shall carry out inspections and take decisions to accomplish the provisions given in and pursuant to this regulation.

The Norwegian Food Control Authority may delegate the inspection and decision-making authority to other public or private controlling organisations.

Section 26 Appeals

Decisions made pursuant to this Regulation or a Product Regulation may be appealed in accordance with the rules in the Public Administration Act, Chapter VI, and the special rules in this section.

Decisions made regarding determination or amendment of a Product Regulation may be appealed only if the application is not approved. The appeal can only be made by the applicant.

The decision regarding an objection in accordance with Sections 16 or 20 and the decision regarding a claim concerning administrative retesting in accordance with Section 21 may be appealed by the person who the decision has gone against.

Section 27 Fees

A fee shall be payable for processing applications for:

1. establishing the Product Regulation
2. approval pursuant to the current Product Regulation
3. resumption of processing an application after it has been shelved
4. amendment of the Product Regulation

The fee shall be calculated per application and shall be payable to the body that is authorised by the Norwegian Food Control Authority to be in charge of processing applications. The fee shall be payable upon submission of the application, in the following amount:

for applications pursuant to the first paragraph, nos. 1 and 2, NOK 20,000 shall be payable.

for applications pursuant to the first paragraph, nos. 3 and 4, NOK 12,000 shall be payable.

Section 27a Recompense and compensation

Any person who wilfully or negligently uses a protected designation contrary to this Regulation must pay the lawful users reasonable compensation for this. The compensation shall as a minimum correspond to the profit the unlawful user have obtained. Compensation shall also be paid for additional damages.

A group may on behalf of the individual lawful users of a protected designation claim recompense and compensation for damage caused to the individual lawful users.

The recompense may be reduced and the compensation amended if the unlawful user was only partially to blame.

If the use occurred in good faith, the law can, to the extent this is reasonable, require the unlawful users to pay recompense and compensation in accordance with these provisions.

Section 28 Penalty

Intentional or negligent violation of this regulation or provisions and resolutions made in pursuant to it, are punishable according to the Section 28 of the Norwegian Food Act.

Section 29 Commencement

This Regulation shall enter into force immediately.