



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-544/10
Deutsches Weintor eG v Land Rheinland-Pfalz

In Advocate General Mazák's view, advertising for a wine suggesting a temporary beneficial effect on the stomach is prohibited

This applies also to claims which suggest that, owing to reduced acidity, the adverse effects of the wine on physical well-being are more limited than is usually the case with wines of that kind

Given the positive image which health claims tend to confer on the foods concerned and the encouraging effect which such claims may therefore have on the consumer, Regulation 1924/2006 on nutrition and health claims made on foods¹ seeks to protect the consumer from claims which are misleading and/or untruthful. As regards alcoholic beverages containing more than 1.2% by volume of alcohol, the Regulation prohibits the use of health claims generally, that is to say, irrespective of whether the beneficial effect implied is truthful. Given the dangers of addiction and abuse connected with the consumption of alcohol, the more far-reaching aim here is to avoid any positive health-related connotation which could generally encourage alcohol consumption.

A case has arisen out of a dispute between Deutsches Weintor, a wine-growers' cooperative in Rheinland-Pfalz (Rhineland-Palatinate) and the State authorities. The authorities have objected to the use of the word *bekömmlich* (wholesome, easily digestible) on wine produced by the cooperative. The authorities believe that that description, coupled with a reference to gentle acidity, constitutes a health claim and is, therefore prohibited. The wine in question is made from the Dornfelder and grey/white Burgundy grape varieties and is marketed under the description 'Edition Mild', which is followed by a reference to 'sanfte Säure' (gentle acidity). The label states, in particular that the wine: '... owes its mildness to the application of our special LO₃ protective process for the biological reduction of acidity'. The label on the neck of the wine bottles includes the words: 'Edition Mild *bekömmlich*' (Edition Mild wholesome/easily digestible). In the price list, the wine is described as 'Edition Mild – sanfte Säure/*bekömmlich*' (Edition Mild – gentle acidity/wholesome). In this context, the Bundesverwaltungsgericht (Federal Administrative Court, Germany), hearing the action brought by Deutsches Weintor, has submitted a series of questions to the Court of Justice as regards the interpretation and, eventually, the validity of the Regulation.

In his Opinion today, Advocate General Ján Mazák emphasises at the outset that it is not for the Court of Justice to determine what is actually meant by '*bekömmlich*', coupled with a reference to gentle acidity of the wine, and whether this description amounts to a 'health claim' for the purposes of the Regulation. He notes, however, that the Bundesverwaltungsgericht has indicated that this description will not, (contrary to the view taken by Deutsches Weintor) be understood by the consumer as a reference to general well-being alone or to general characteristics of the wine described, such as its taste, but as a reference to its gentle acidity, which emphasises the particularly gentle effect of the wines on the stomach and, therefore, their digestibility.

The Advocate General sees no basis in the provisions of the Regulation, or any other convincing reason, for assuming that the length or sustainability of the (beneficial) effect of the food promoted on the physical condition or bodily functions would be, or should be, constitutive of the notion of 'health claim'. It would rather be at odds with the objectives of the Regulation to construe the

¹ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ L 404, p. 9), as amended by Commission Regulation (EU) No 116/2010 of 9 February 2010 (OJ L 37, p. 16).

concept of 'health claim' so narrowly as to exclude claims which imply a temporary beneficial effect on the physical condition. This could remove from the protective scope of the Regulation a considerable number of products and related claims which, although implying a positive – albeit temporary – physiological effect, are nevertheless likely to encourage the consumption of the food to which they relate. Also, a distinction would cause problems of delimitation – as to when the claimed effect stops being temporary and starts to be longer-term or sustained.

In Mr. Mazák's view, the fact that the concept of 'health claim' requires the implication or suggestion of a positive or beneficial effect relating to health does not mean that there is any need to claim an actual improvement of the general health condition or actual curative effects similar to those of medicinal products. It also covers advertising where the beneficial physiological impact claimed lies in a merely relative health advantage, including an advantage attributable to the fact that a given food is merely less harmful to bodily functions than is usually the case with food of that kind. Even these kinds of claims may influence consumer habits and encourage consumption of the food concerned. Thus, to take the wines marketed by Deutsches Weintor, not only may the suggestion of improved digestibility arguably shift consumer preferences away from other wines or drinks which are otherwise comparable, but also it is conceivable that such a claim may, in absolute terms, encourage consumption of that wine and even attract new consumers, especially those with sensitive stomachs.

The Advocate General concludes, therefore, that the term 'health claims' within the meaning of the Regulation covers claims which imply a temporary beneficial effect on the physical condition, such as an effect limited to the time needed to consume and digest the food, including claims which imply that, owing to the reduced content of a substance, the adverse effects of a given food on physical well-being are more limited than is usually the case with food of that kind.

In addition, Mr. Mazák finds that the general prohibition laid down in the Regulation on the use of health claims of the kind at issue in relation to alcoholic beverages such as wine is compatible with the freedom to choose an occupation and the freedom to conduct business as provided for in the Charter of Fundamental Rights of the European Union.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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