COURT OF JUSTICE
OF THE EUROPEAN UNION

Judgment of the Court in Case C-395/25 | Orkla Care

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Consumer protection: the Court clarifies the circumstances in which the packaging of chemical products may mislead consumers because of its resemblance to food packaging

The Swedish company Orkla Care AB markets chemical products, notably laundry detergents, in coloured cardboard packaging in the shape of an elongated brick, fitted with a folded lid incorporating a screw cap.

Following complaints from consumers regarding the similarity of that packaging to that used for foodstuffs, the Swedish Chemicals Agency banned the marketing of nine products packaged in that way, on the basis of the regulation on the packaging of hazardous substances or mixtures. [1]

Orkla challenged that decision before the Swedish courts, which referred the matter to the Court of Justice to seek clarification on the criteria for assessing, in the light of that regulation, the similarity between the packaging of dangerous substances and that of foodstuffs.

Firstly, the Court notes that the packaging in question contains a substance or mixture **that poses a risk to health.** Consequently, suppliers must ensure that that substance or mixture is labelled and packaged in accordance with the relevant provisions of the Regulation.

Secondly, it notes that, as the regulation does not expressly specify the criteria for assessing the similarity between the packaging of chemical products and that of foodstuffs, account must be taken of **the general appearance of the former,** taking into consideration all their perceptible characteristics. Such similarity must be deemed to exist where, in the light of those characteristics, the packaging resembles that of a foodstuff and is liable to be confused with it because of distinctive features which usually enable the general public to identify foodstuffs. Those include, in particular, shape, size, volume, design, colour, labelling, the materials used, texture, smell or a combination of several of those elements. Furthermore, that assessment must be carried out on a case-by-case basis and contribute to ensuring a high level of protection for consumer health.

In that context, **the presence of an additional security feature**, such as a label covering the cap and designed to be removed on first use, **does not rule out a possible similarity between the packaging if that feature does not permanently alter the overall impression** created by the packaging, since it does not remain intact throughout the packaging's lifespan.

Thirdly, the Court considers that the market surveillance authority of a Member State [2] must take into account the fact that the packaging in question replicates the appearance of a product known and recognised by consumers in that State. It must therefore carry out its assessment **in the light of the public actually exposed to the product in question on the national market.** It follows that the national authority is not required to examine whether that same similarity would also be regarded as misleading in other Member States where the product is marketed.

Fourthly, the Court notes that **the concept of 'consumers' within the meaning of the Regulation encompasses** not only the average consumer who is reasonably well-informed and reasonably observant and circumspect, but also **any person likely to use the product after it has been purchased. That includes, in particular, children and vulnerable persons**, who may be particularly exposed to the risk of confusion. Consequently, account must be taken of the ability of

such persons to perceive the characteristics of packaging containing a dangerous substance or mixture.

Fifthly, the Court considers that, when assessing whether packaging complies with the relevant requirements, the objective of ensuring a high level of protection of human health does not require proof of a high risk; **a non-negligible risk is sufficient**. Furthermore, it is not necessary to establish the existence of cases where a consumer has already been misled by the similarity between the packaging.

Sixthly, the Court notes that **the national authorities are not required to take into account either the categories of hazard or the specific risks associated with the products in question**, as the criteria for similarity apply in the same way, irrespective of the nature of the hazard and the circumstances of use, in order to prevent any risk of hazardous exposure.

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 of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The account of the facts and the legal framework relates to the relevant period and is based on the case file.

The full text and, as the case may be, an abstract of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on 'Curia Web TV'.

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[1] Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on the classification, labelling and packaging of substances and mixtures.

[2] Market surveillance authorities are bodies designated by Member States to ensure, within their respective territories, compliance with the rules applicable to products placed on the market.