

CLIENT ALERT

EU Court Finds That Food Label May Be Misleading Even If List of Ingredients Is Not

June 2015

On 4 June 2015, the Court of Justice of the European Union announced its judgment in the Teekanne case ([Case C-195/14](#)) that food labeling may be misleading even if the packaging features an accurate and complete food ingredient list. The product at issue was a fruit tea with packaging that featured vanilla and raspberries and indicated it only contained natural ingredients. The judgment is another development in the ongoing food labeling litigation trend in Europe, which is similar in some respects to litigation trends in the U.S.

In the Teekanne case, a German consumer interest group brought a claim in the German courts, challenging product packaging as misleading based on the then-applicable European food labeling law (Dir. 2001/13/EC, now incorporated into and replaced by Reg. (EU) 1169/2011). Among other things, that Directive and the later Regulation prohibit misleading labeling and required the disclosure of certain information on food labels. The tea, Teekanne's "Felix raspberry and vanilla adventure," was marketed as a "fruit tea with natural flavourings," carried a seal representing that it contained "only natural ingredients," and depicted raspberry and vanilla flowers on the packaging. The German court found, however, that the tea did not contain any actual natural vanilla or raspberry flavors as suggested by the label, even though the ingredient list made clear that the tea contained "natural flavouring with a taste of vanilla" and "natural flavouring with a taste of raspberry."

On referral for a preliminary ruling on European law from the German court, the Court of Justice interpreted EU food law as prohibiting food labeling "from giving the impression ... that [an] ingredient is present even though it is not in fact present and this is apparent solely from the list of ingredients on the foodstuff's packaging." Key pieces of the court's holding include:

- The applicable standard is based on the "presumed expectations" of the "average consumer," who is reasonably well-informed, observant, and circumspect.
- While consumers are presumed to read ingredient lists on food labels, that information may not be overridden by misleading impressions created by other parts of the label.
- As noted in the food labeling directive, labeling may be "words, particulars, trademarks, brand name[s], pictorial matter[s] or symbol[s]," and the court looks to the location, size color, language, syntax, and punctuation of words and images on a label to determine whether the overall impression, when "taken as a whole," is misleading.

The German national court will apply the European court's judgment to determine whether the actual Teekanne fruit tea packaging is misleading. Although the European court judgment related to Dir. 2001/13/EC, it remains relevant to application and interpretation of the "new food law," Reg. (EU) 1169/2011, which incorporates the relevant article from the Directive.

The Teekanne case demonstrates the ongoing trend of food labeling litigation across jurisdictions, where parties seek judicial review and redress of allegedly misleading food packaging and labels. Food labeling litigation cases have been prominent in the U.S. and show little sign of slowing down. While the legal basis, procedure, and availability of remedies, including monetary

damages may differ across jurisdictions, the food industry in Europe and the U.S. face meaningful litigation risks from potentially misleading labeling and advertising claims.

Other Articles in this Month's Edition:

- [EU Parliament Votes in Favor of Mandatory EU Conflict Minerals Regime](#)
 - [Drinking and Droning: Safety, Privacy, and Security Take Center Stage as the Legal Landscape Evolves](#)
 - [CPSC's \\$3.4M Office Depot Penalty Settlement Highlights Enforcement Trends](#)
 - [Business Transitions and Personal Information: Managing Privacy Risks](#)
 - [Proposed Legislation to Create a Uniform Standard for 'Made in America' Labeling](#)
 - [Advertisers in the Ring – A Roundup of This Month's Competitor Advertising Challenges: Broad Performance Claims and Narrow Support](#)
-

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Eric Montens

Senior Counsel – Brussels

Phone: +32.2.282.1846

Email: emontens@crowell.com