Reports of Cases

JUDGMENT OF THE COURT (Ninth Chamber)

4 June 2015*

(Reference for a preliminary ruling — Directive 2000/13/EC — Labelling and presentation of foodstuffs — Articles 2(1)(a)(i) and 3(1)(2) — Labelling such as could mislead the purchaser as to the composition of foodstuffs — List of ingredients — Use of the indication 'raspberry and vanilla adventure' and of depictions of raspberries and vanilla flowers on the packaging of a fruit tea not containing those ingredients)

In Case C-195/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 26 February 2014, received at the Court on 18 April 2014, in the proceedings

Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale — Bundesverband e.V.

v

Teekanne GmbH & Co. KG,

THE COURT (Ninth Chamber),

composed of K. Jürimäe, President of the Chamber, M. Safjan (Rapporteur) and A. Prechal, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V., by J. Kummer and P. Wassermann, Rechtsanwälte,

— Teekanne GmbH & Co. KG, by A. Meyer, Rechtsanwalt,

— the Polish Government, by B. Majczyna, acting as Agent,

— the Portuguese Government, by L. Inez Fernandes and C. Madaleno, acting as Agents,

— the European Commission, by S. Grünheid and K. Herbout-Borczak, acting as Agents,

* Language of the case: German.

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 2(1)(a)(i) and 3(1)(2) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29), as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009 (OJ 2009 L 188, p. 14, 'Directive 2000/13').

2 The request has been made in proceedings between the Bundesverband der Verbraucherzentralen und Verbraucherverbände — Verbraucherzentrale Bundesverband e.V. (the Federal Union of Consumer Organisations and Associations, 'the BVV') and Teekanne GmbH & Co. KG ('Teekanne') concerning the allegedly misleading nature of the labelling of a foodstuff.

Legal context

European Union ('EU') law

Directive 2000/13

3 Directive 2000/13 was repealed with effect from 13 December 2014, pursuant to Article 53(1) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18). However, having regard to the date of the facts of the dispute in the main proceedings, that dispute is still governed by Directive 2000/13.

4 Under recitals 6, 8 and 14 in the preamble to Directive 2000/13:

'(6) The prime consideration for any rules on the labelling of foodstuffs should be the need to inform and protect the consumer.

...

(8) Detailed labelling, in particular giving the exact nature and characteristics of the product which enables the consumer to make his choice in full knowledge of the facts, is the most appropriate since it creates fewest obstacles to free trade.

...

(14) The rules on labelling should also prohibit the use of information that would mislead the purchaser ... To be effective, this prohibition should also apply to the presentation and advertising of foodstuffs.'

5 Article 1(1) and (3)(a) of that directive states:

‘1. This Directive concerns the labelling of foodstuffs to be delivered as such to the ultimate consumer and certain aspects relating to the presentation and advertising thereof.

...

3. For the purpose of this Directive,

(a) “labelling” shall mean any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on any packaging, document, notice, label, ring or collar accompanying or referring to such foodstuff.’

6 Article 2(1)(a)(i) of that directive provides:

‘The labelling and methods used must not:

(a) be such as could mislead the purchaser to a material degree, particularly:

(i) as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production; …’

7 Article 3(1) of Directive 2000/13 provides:

‘In accordance with Articles 4 to 17 and subject to the exceptions contained therein, indication of the following particulars alone shall be compulsory on the labelling of foodstuffs:

(1) the name under which the product is sold;

(2) the list of ingredients;

...’

8 Article 6 of that directive is worded as follows:

‘1. Ingredients shall be listed in accordance with this Article and Annexes I, II, III and IIIa.

...

4.

(a) “Ingredient” shall mean any substance, including additives and enzymes, used in the manufacture or preparation of a foodstuff and still present in the finished product, even if in altered form....

5. The list of ingredients shall include all the ingredients of the foodstuff, in descending order of weight, as recorded at the time of their use in the manufacture of the foodstuff. It shall appear preceded by a suitable heading which includes the word “ingredients”.

...

6. Ingredients shall be designated by their specific name, where applicable, in accordance with the rules laid down in Article 5.

However:

...

— flavourings shall be designated in accordance with Annex III,

…

7. Community provisions or, where there are none, national provisions may lay down that the name under which a specific foodstuff is sold is to be accompanied by mention of a particular ingredient or ingredients.

...'

Regulation (EC) No 178/2002

9 Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1), provides in Article 8 thereof, entitled 'Protection of consumers' interests':

'1. Food law shall aim at the protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume. It shall aim at the prevention of:

(a) fraudulent or deceptive practices;

(b) the adulteration of food; and

(c) any other practices which may mislead the consumer.'

10 Article 16 of that regulation provides:

'Without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, shall not mislead consumers'.

German Law

11 Paragraph 4(11) of the German Law against unfair competition (Gesetz gegen den unlauteren Wettbewerb), in the version applicable to the dispute in the main proceedings (BGBl. 2010 I, p. 254) ('the UWG') provides:

'Examples of unfair commercial practices

A person shall be regarded as acting unfairly in particular where he

...

11. infringes a statutory provision that is also intended to regulate market behaviour in the interests of market participants'.

12 Paragraph 5(1)(1) of the UWG provides:

‘Misleading commercial practices’

(1) A person shall be regarded as acting unfairly where he uses a misleading commercial practice. A commercial practice shall be deemed to be misleading if it contains untruthful information or other information which could mislead, regarding the following circumstances:

1. the essential characteristics of the goods or services, such as availability, nature, execution, benefits, risks, composition, accessories, method or date of manufacture, delivery or provision, fitness for purpose, uses, quantity, specification, after-sale customer assistance, complaint handling, geographical or commercial origin, the results to be expected from their use, or the results or material features of tests carried out on the goods or services.’

13 Paragraph 11, headed ‘Protection against misleading practices’, in the German Code on foodstuffs, consumer items and animal feed (Lebensmittel- Bedarfsgegenstände- und Futtermittelgesetzbuch), in the version applicable to the case in the main action (‘the LFGB’), provides:

‘It shall be prohibited to sell foodstuffs under names, indications or presentations liable to mislead and, in general or in individual cases, to advertise those foodstuffs by means of misleading representations or other statements. The following in particular are misleading:

1. in the case of a foodstuff, the use of names, indications, presentations, representations or other statements concerning characteristics, in particular those concerning the type, condition, composition, amount, perishability, place of manufacture, origin, or method of manufacture or derivation, which are liable to mislead;

...’

The dispute in the main proceedings and the question referred for a preliminary ruling

14 It is apparent from the order for reference that Teekanne markets a fruit tea under the name ‘Felix Himbeer-Vanille Abenteuer’ (‘Felix raspberry and vanilla adventure’) (‘the fruit tea’). The packaging for that tea comprises a foldable carton in the form of a parallelepiped, containing 20 bags.

15 That packaging comprises a number of elements of various sizes, colour and font, in particular (i) depictions of raspberries and vanilla flowers, (ii) the indications ‘Früchtetee mit natürlichen aromen’ (‘fruit tea with natural flavourings’) and ‘Früchtetee mit natürlichen aromen – Himbeer-Vanille-Geschmack’ (‘fruit tea with natural flavourings – raspberry-vanilla taste’) and (iii) a seal with the indication ‘nur natürliche Zutaten’ (‘only natural ingredients’) inside a golden circle.

16 The referring court found that the fruit tea does not in fact contain any vanilla or raspberry constituents or flavourings. The list of ingredients, which is on one side of the packaging, is as follows: ‘Hibiscus, apple, sweet blackberry leaves, orange peel, rosehip, natural flavouring with a taste of vanilla, lemon peel, natural flavouring with a taste of raspberry, blackberries, strawberry, blueberry, elderberry’.

17 The BVV brought an action against Teekanne before the Landgericht Düsseldorf (Regional Court, Düsseldorf), submitting that the items on the fruit tea’s packaging misled the consumer with regard to the tea’s contents. The BVV argues that because of those items, the consumer expects the tea to contain vanilla and raspberry or at least natural vanilla flavouring and natural raspberry flavouring.

18 Consequently, the BVV claimed that the Landgericht Düsseldorf should order Teekanne, on pain of specified penalties, to desist from advertising, or causing to be advertised, the fruit tea in the course of business. In addition, the BVV sought reimbursement of the costs of the letter of formal notice which it had sent, amounting to EUR 200.

19 By judgment of 16 March 2012, the Landgericht Düsseldorf upheld that action.

20 Teekanne lodged an appeal and the Oberlandesgericht Düsseldorf (the Higher Regional Court, Düsseldorf) set aside that judgment by judgment of 19 February 2013 and dismissed the BVV's application. That court held that there had been no misleading of the consumer either within the meaning of Paragraph 4(11) of the UWG, in conjunction with Paragraph 11(1), second sentence, point 1, of the LFGB, or as provided for in Paragraph 5(1), first sentence and second sentence, point 1, of the UWG.

21 The Oberlandesgericht Düsseldorf found that, in accordance with Directive 2000/13, those provisions of the UWG and the LFGB were to be interpreted by reference to the expectations of the average consumer. In the present case, it was clear from the fruit tea's list of ingredients, printed on the packaging, that the natural flavourings used have the taste of raspberry or vanilla. That list thus expresses, in a manner free from doubt, the fact that the flavourings used are not obtained from vanilla and raspberries but only taste like them. In accordance with the case-law of the Court of Justice, correct and complete information provided by the list of ingredients on packaging constitutes sufficient grounds on which to rule out the existence of any misleading of consumers.

22 The BVV brought an appeal on a point of law against that judgment before the Bundesgerichtshof (the Federal Court of Justice).

23 The referring court states that the repeated eye-catching depiction of raspberries and vanilla flowers on the fruit tea's packaging, the similarly repeated indication 'mit natürlichen Aromen' ('with natural flavourings') and the depiction of a seal featuring the words 'nur natürliche Zutaten' ('only natural ingredients') suggest that the taste of that tea is in part determined by flavours obtained from raspberries and vanilla flowers. The fruit tea is therefore presented in such a way as to be capable, even in the case of a reasonably well-informed and reasonably observant and circumspect consumer, of creating a false impression as to its composition. The presentation of the fruit tea is also such as to dissuade the consumer from taking note of the list of ingredients (reproduced — in much smaller print — on the product packaging), which sets out the true state of affairs.

24 The referring court considers that, in the light of recitals 6 and 8 in the preamble to Directive 2000/13, the labelling of the fruit tea and methods used are such as could mislead the purchaser within the meaning of Article 2(1)(a)(i) of that directive.

25 In those circumstances, the Bundesgerichtshof decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Is it permissible for the labelling, presentation and advertising of foodstuffs to give the impression, by means of their appearance, description or pictorial representation, that a particular ingredient is present, even though that ingredient is not in fact present and this is apparent solely from the list of ingredients provided for under Article 3(1)(2) of Directive 2000/13/EC?'

The question referred for a preliminary ruling

26 By its question, the referring court asks, in essence, whether Articles 2(1)(a)(i) and 3(1)(2) of Directive 2000/13 must be interpreted as precluding the labelling of a foodstuff and methods used for the labelling from giving the impression, by means of the appearance, description or pictorial representation of a particular ingredient, that that 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.

27 In the present case, first, the fruit tea's packaging includes, in particular, depictions of raspberries and vanilla flowers, the indications 'Früchtetee mit natürlichen aromen' ('fruit tea with natural flavourings') and 'Früchtetee mit natürlichen aromen – Himbeer-Vanille-Geschmack' ('fruit tea with natural flavourings – raspberry-vanilla taste') as well as a seal with the indication 'nur natürliche Zutaten' ('only natural ingredients').

28 Secondly, according to the list of ingredients on one side of the packaging, as provided for in Article 3(1)(2) of Directive 2000/13, which is agreed to be correct and complete, that tea contains natural flavourings with the 'taste of vanilla' and 'taste of raspberry'. It is therefore established that the tea does not contain natural ingredients from vanilla or raspberry or flavouring obtained from them.

29 In the main proceedings, the question is therefore whether the labelling of the fruit tea is such as could mislead the purchaser inasmuch as it gives the impression that it contains raspberry and vanilla-flower or flavourings obtained from those ingredients, even though such constituents or flavourings are not present in that tea.

30 As stated in recitals 6 and 8 of Directive 2000/13, the prime consideration of that directive is the need to inform and protect the consumer, with the detailed labelling, in particular giving the exact nature and characteristics of the goods, therefore having to enable the consumer to make his choice in full knowledge of the facts.

31 In that regard, Article 2(1)(a)(i) of Directive 2000/13 provides, echoing recital 14 of that directive, that the labelling and methods used must not be such as could mislead the purchaser, particularly as to the characteristics of the foodstuff and, in particular, as to its nature, identity, properties, composition, quantity, durability, origin or provenance, method of manufacture or production.

32 Consequently, Article 2(1)(a)(i) requires that the consumer have correct, neutral and objective information that does not mislead him (see, to that effect, judgment in *Commission* v *Italy*, C-47/09, EU:C:2010:714, paragraph 37).

33 It must be added that, as set out in Article 16 of Regulation No 178/2002, without prejudice to more specific provisions of food law, the labelling, advertising and presentation of food or feed, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, must not mislead consumers.

34 Although Directive 2000/13 is a more specific provision of food law, within the meaning of Article 16 of Regulation No 178/2002, Article 16 of that regulation, read in conjunction with Article 8 thereof, restates that the labelling of food cannot mislead.

35 So far as concerns a reply to the referring court, it must be recalled that, as a general rule, it is not for the Court of Justice, pursuant to the division of jurisdiction between the EU Courts and national courts, to rule on the question whether the labelling of certain products is likely to mislead the purchaser or consumer or to determine whether a sales description is potentially misleading. That task is for the national court. When giving a preliminary ruling on a reference, however, the Court of

Justice may, in appropriate cases, give further clarification as guidance to the national court in its decision (see, in particular, judgments in *Geffroy*, C-366/98, EU:C:2000:430, paragraphs 18 to 20, and *Severi*, C-446/07, EU:C:2009:530, paragraph 60).

36 In order to assess the capacity of labelling to mislead, the national court must in essence take account of the presumed expectations, in light of that labelling, which an average consumer who is reasonably well informed, and reasonably observant and circumspect has, as to the origin, provenance, and quality associated with the foodstuff, the critical point being that the consumer must not be misled and must not be induced to believe, incorrectly, that the product has an origin, provenance or quality which are other than genuine (see, to that effect, judgment in *Severi*, C-446/07, EU:C:2009:530, paragraph 61 and the case-law cited).

37 In that regard, it is apparent from the case-law that the Court has acknowledged that consumers whose purchasing decisions depend on the composition of the products in question will first read the list of ingredients, the display of which is required by Article 3(1)(2) of Directive 2000/13 (see, to that effect, judgments in *Commission* v *Germany*, C-51/94, EU:C:1995:352, paragraph 34, and *Darbo*, C-465/98, EU:C:2000:184, paragraph 22).

38 However, the fact that the list of ingredients is displayed on the packaging of the goods at issue in the main proceedings does not in itself exclude the possibility that the labelling of those goods and methods used for it may be such as to mislead the purchaser within the meaning of Article 2(1)(a)(i) of Directive 2000/13.

39 The labelling, as defined in Article 1(3)(a) of that directive, is composed of any words, particulars, trade marks, brand name, pictorial matter or symbol relating to a foodstuff and placed on its packaging. Some of those items may in practice be misleading, erroneous, ambiguous, contradictory or incomprehensible.

40 In that case, the list of ingredients, even though correct and comprehensive, may in some situations not be capable of correcting sufficiently the consumer's erroneous or misleading impression concerning the characteristics of a foodstuff that stems from the other items comprising its labelling.

41 Therefore, where the labelling of a foodstuff and methods used for the labelling, taken as a whole, give the impression that a particular ingredient is present in that foodstuff, even though that ingredient is not in fact present, such labelling is such as could mislead the purchaser as to the characteristics of the foodstuff.

42 In the event, it is for the referring court to carry out an overall examination of the various items comprising the fruit tea's labelling in order to determine whether an average consumer who is reasonably well informed, and reasonably observant and circumspect, may be misled as to the presence of raspberry and vanilla-flower or flavourings obtained from those ingredients.

43 In the context of that examination, the referring court must in particular take into account the words and depictions used as well as the location, size, colour, font, language, syntax and punctuation of the various elements on the fruit tea's packaging.

44 In the light of the foregoing considerations, the answer to the question referred is that Articles 2(1)(a)(i) and 3(1)(2) of Directive 2000/13 must be interpreted as precluding the labelling of a foodstuff and methods used for the labelling from giving the impression, by means of the appearance, description or pictorial representation of a particular ingredient, that that 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.

Costs

45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Ninth Chamber) hereby rules:

Articles 2(1)(a)(i) and 3(1)(2) of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council of 18 June 2009, must be interpreted as precluding the labelling of a foodstuff and methods used for the labelling from giving the impression, by means of the appearance, description or pictorial representation of a particular ingredient, that that 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.

[Signatures]