



Reports of Cases

Case C-19/15

Verband Sozialer Wettbewerb eV
v
Innova Vital GmbH

(Request for a preliminary ruling
from the Landgericht München I)

(Reference for a preliminary ruling — Consumer protection — Regulation (EC) No 1924/2006 — Nutrition and health claims made on foods — Article 1(2) — Scope — Foods to be delivered as such to the final consumer — Claims made in a commercial communication addressed exclusively to health professionals)

Summary — Judgment of the Court (Third Chamber), 14 July 2016

1. *EU law — Interpretation — Methods — Literal, systematic and teleological interpretation*
2. *Approximation of laws — Nutritional and health claims concerning foodstuffs — Regulation No 1924/2006 — Scope — Claims made in a commercial communication addressed exclusively to health professionals — Included*

(European Parliament and Council Regulation No 1924/2006, as amended by Regulation No 1047/2012, Art. 1(2))

3. *Approximation of laws — Nutritional and health claims concerning foodstuffs — Regulation No 1924/2006 — Conditions for using the said claims — Prohibition on claims referring to beneficial effects which are incomprehensible to the average consumer — Scope — Claims made in technical or scientific language in a non-commercial communication addressed to health professionals — Not included*

(European Parliament and Council Regulation No 1924/2006, as amended by Regulation No 1047/2012, Art. 5(2))

1. See the text of the decision.

(see para. 23)

2. Article 1(2) of Regulation No 1924/2006 on nutrition and health claims made on foods, as amended by Regulation No 1047/2012, must be interpreted as meaning that nutrition or health claims made in a commercial communication on a food which is intended to be delivered as such to the final consumer, if that communication is addressed not to the final consumer, but exclusively to health professionals, falls within the scope of that regulation.

The concept of a commercial communication within the meaning of Article 1(2) of Regulation No 1924/2006 must be understood as covering, *inter alia*, a communication made in the form of advertising foods, designed to promote, directly or indirectly, those foods. Such a communication may also take the form of an advertising document which food business operators address to health professionals, containing nutritional or health claims within the meaning of that regulation, in order that those professionals recommend, if appropriate, that their patients purchase and/or consume that food. In that regard, Article 1(2) of Regulation No 1924/2006 does not include any details on the addressee of the commercial communication and makes no distinction according to whether that addressee is a final consumer or a health professional. It follows that it is the product itself, and not the communication of which it is the subject matter, which must necessarily be aimed at consumers. It cannot be ruled out that the health professionals themselves may be misled by nutrition or health claims which are false, deceptive, or even mendacious. Therefore, those health professionals risk forwarding, in all good faith, incorrect information on foods which are the subject of a commercial communication to final consumers with whom they have a relationship. Consequently, the application of Regulation No 1924/2006 to the nutrition or health claims made in a commercial communication addressed to professionals contributes, in the context of the internal market, to a high level of consumer protection.

(see paras 29-31, 44, 45, 47, 54, operative part)

3. Regulation No 1924/2006 on nutrition and health claims made on foods, as amended by Regulation No 1047/2012, does not preclude the objective information for health professionals about new scientific developments, involving the use of a technical or scientific terminology, in the situation where the communication is of a non-commercial nature. Although it follows from Article 5(2) of that regulation that the use of nutrition and health claims is to be permitted only if the average consumer can be expected to understand the beneficial effects as expressed in the claim, it cannot, however, be inferred from that that any information from food business operators addressed to health professionals about new scientific developments involving the use of technical or scientific terminology is prohibited. In that regard, Article 5(2) must be understood in the sense that it applies if the nutrition and health claims are communicated directly to the final consumer, to enable him to make choices in full knowledge of the facts.

(see paras 49-51, 53)