[DE] BGH Asks ECJ for Preliminary Ruling on Food Health Claims

IRIS 2011-4:1/16

Peter Matzneller
Institute of European Media Law (EMR), Saarbrücken/Brussels

According to a decision of 13 January 2011 (case no. I ZR 22/09), the Bundesgerichtshof (Federal Supreme Court - BGH) will, in a request for a preliminary ruling, submit a number of questions to the Court of Justice of the European Union (ECJ) concerning the interpretation of the concept of “health claim” in the sense of Article 2(2)(5) of Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods (“Health Claims Regulation”).

The decision follows a case concerning advertising for a herbal liqueur containing 27% alcohol with the words "wohltuend und bekömmlich” (beneficial and agreeable). Under Article 4(3) of the Health Claims Regulation, health claims relating to beverages containing more than 1.2% alcohol are prohibited.

The Landgericht Regensburg (Regensburg District Court) had rejected a complaint by an association opposed to the promotion of the liqueur on the grounds that the terms "bekömmlich" and "wohltuend" used in the advertisement did not concern health, but general well-being. It had therefore decided that, as was clear from the way in which the Health Claims Regulation had evolved, these terms were not covered by its provisions.

The BGH will ask the ECJ to what extent the concept of “health claim” includes statements concerning general well-being. It will argue that the word “bekömmlich” suggests that the liqueur does not put a strain on or damage the body and its functions, but does not indicate that the advertised product is good for the health. The BGH will also ask the ECJ to clarify, with a view to the freedom of expression and information, whether it is proportionate to include such a statement in the ban contained in Article 4(3) of the Health Claims Regulation.

On the other hand, the BGH believes that the word “wohltuend” does represent a “health claim”, since it suggests, at least indirectly, that consumption of the liqueur is likely to improve the health of the consumer.

In a similar case in September 2010, the Bundesverwaltungsgericht (Federal Administrative Court) also asked the ECJ to interpret the concept of “health claim” referred to in the Health Claims Regulation.

© European Audiovisual Observatory (Council of Europe) 2026

Beschluss des BGH (Az. I ZR 22/09) vom 13. Januar 2011

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=aba29378475d441ac786cac60470bf4f&nr=54871&pos=0&anz=1

Decision of the Federal Supreme Court (case no. I ZR 22/09) of 13 January 2011

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026