[DE] LG Berlin Bans Advertising Claiming Beer Can Improve Looks or Health

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On 10 May 2011, in a dispute between the plaintiff, *Verbraucherzentrale Bundesverband e.V.* (federal association of consumer organisations), and *Deutscher Brauer-Bund e.V.* (German brewers' association), the *Landgericht Berlin* (Berlin District Court - LG) ruled that advertising should not claim that beer can improve people's looks or health.

The case concerned information published on the defendant's website about the effects of beer on human health. It was claimed, *inter alia*, that moderate beer consumption reduced the risk of dementia, adult diabetes and cardiovascular problems, and that its high Vitamin B content promoted clear skin and beautiful hair.

The plaintiff argued that these claims represented image advertising. They infringed Article 4(11) of the *Gesetz gegen den unlauteren Wettbewerb* (Unfair Competition Act - UWG) in connection with Article 4(3) of Regulation (EC) No 1924/2006 on nutrition and health claims made about foods (Health Claims Regulation) because they made a connection between consumption of a food or beverage and health. The defendant argued that this provision represented a disproportionate restriction of the freedom of speech. It added that the Health Claims Regulation did not apply in this case because the beverages had to "bear" the unlawful claims, which could only be understood as meaning that they should appear on the product's label.

The LG disagreed and ruled that the disputed claims represented a promotion of alcoholic beverages that was unlawful under EU law. The advertising infringed Article 4(3) of the Health Claims Regulation, which meant that the plaintiff was entitled to an injunction under Articles 3 and 4(11) UWG. According to Article 4(3) of the Regulation, beverages containing more than 1.2% by volume of alcohol must not bear health claims. It was generally forbidden to ascribe "medical properties" to foods in advertising, unless they conformed to the nutrient profiles established by the European Commission. Since breweries and their association were free to report on the health effects of beer consumption outside advertising, there was no disproportionate restriction of freedom of speech. The claims had not been made in a journalistic article. Furthermore, it was not necessary for the product itself to "bear" the claims on its label. Article 4(3) also applied to advertising on the Internet, as could be seen from the interpretation of its

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wording: the verb “tragen” was used as a synonym of the words “enthalten” and “aufweisen”. This was also confirmed by the French version, which used the verb “comporter” (“aufweisen” in German).

Urteil des LG Berlin vom 10. Mai 2011 (Az. 16 O 259/10)

http://www.berlin.de/imperia/md/content/senatsverwaltungen/justiz/kammergericht/presse/16_o_259_10_urteil_vom_10.05.2011_landgericht_berlin_anonymisiert.pdf?start&ts=1312203649&file=16_o_259_10_urteil_vom_10.05.2011_landgericht_berlin_anonymisiert

Ruling of the LG Berlin of 10 May 2011 (case no. 16 O 259/10)

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