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## Wettbewerbszentrale (WBZ) Annual Report 2015



Title of Document

Wettbewerbszentrale's (Centre for Protection against Unfair Competition) Annual Report 2015

Article 20 of Regulation (EC) no. 1223/2009 (Cosmetics Regulation) prohibits deceptive representation in the advertising of cosmetic products in order to protect consumers against misleading advertising claims concerning the efficacy and other properties of cosmetic products (see Recital 51). Despite this, misleading advertising still accounts for a great deal of the work carried out by the *Wettbewerbszentrale* – amazingly, this often also concerns advertising put out by large companies. For example, the *Wettbewerbszentrale* objected to a group's TV spot/ commercial in the spring of the year under review which advertised its sunscreen product with the claim "Soak up the sun with excellent protection against the sun from the test winner!" ("*Genieß die Sonne mit ausgezeichnetem Sonnenschutz vom Testsieger*"). Only one product had been tested, however, and not the entire range of sunscreen products. This was not apparent from the TV spot/ commercial (F 4 0172/15). A few weeks later, the company also advertised an innovation for sunscreen products in a TV spot although the product had already been on the market since January 2011 and only two products were actually new (F 4 0292/15). In both cases, the proceedings were concluded with a cease-and-desist declaration.

An international company advertised the possibility of repairing 2 year-old hair damage in a matter of seconds. In fact, the only effect was a smoothing of the hair. However, this reference was located in a barely legible way in the opposite direction to the reading direction on the right edge of the advertisement (F 4 0491/14). A settlement was reached in this regard before the arbitration committee of the Frankfurt Chamber of Industry and Commerce. The company must now make the explanation larger and place it in direct relation to the effect statement.

On page 23 of the German Sunday Newspaper: "frankfurter Allgemeine Sonntagszeitung" published on 29.11.2015, it is explained under the heading "Who's rubbing whose face in it?" ("*Wer schmiert hier wen an?*") what is behind labels on cosmetic products on which there is mention of recommendations or the like. In most cases, the claims did not keep the promises they made. However, Competition Law also offers the appropriate "tool" (*Werkzeug*) in these instances: the statements must be verifiable. At the same time, it is the case that, in the same way as for advertising with product tests, consumers must be provided with basic information under Article 5a of the Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb - UWG*) to enable them to be able to understand a test or survey report. This applies to any advertising featuring the result of a consumer study (F 4 0587/15) as well as advertising with the claim "More beautiful skin texture in 8 weeks" (*Schöneres Hautbild in acht Wochen*), accompanied only by the statement indicating a "clinical study over 12 weeks" (*Klinische Studie über 12 Wochen*) (F 4 0586/15).

Consumers are used to "good mood" T-Shirt brands and the like and do not attach any great importance to the claims. The situation is different, however, where a company advertises its "feeling of happiness" (*Glücksgefühl*) for deodorants with the claim "shown to put you in a good mood" (*Macht nachweislich gute Laune*). The deception was

URL of source: <https://www.wettbewerbszentrale.de/media/getlivedoc.aspx?id=35057>

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reinforced further by the reference to an independent test institute. The advertising was, however, based merely on a survey, according to which the vast majority of people using the product then "started the day in a good mood" (F 4 0606/13). The company undertook to desist from this in March of the year under review.

In a ruling obtained by the *Wettbewerbszentrale*, a manufacturer of wound care cream was prohibited from advertising with the claim "promotes healing" (*heilungsfördernd*) in connection with the areas of "chapped lips" (*rissige Lippen*), "cuts" (*Schnittwunden*), "grazes" (*Schürfwunden*) or a "sore bottom" (*wundem Po*). However, the court did not accept the *Wettbewerbszentrale's* argument that the overall advertisement presented the product as a medicinal product (Regional Court of Freiburg, judgement of 22.06.2015, ref. 12 O 61/14; F 4 0234/14). The Court of Appeal will have to decide on this. An appeal hearing is also to be expected in the proceedings against a well-known manufacturer of creams in 2016 on account of package design. The *Wettbewerbszentrale* had objected that the packaging feigned a larger quantity than that actually contained but was ruled against by the court of first instance (Regional Court of Hamburg, judgement of 27.01.2015, ref. 312 O 51/14; F 4 0901/13). Advertising by beauticians does not so much concern claims of effects but, rather, more their own services and performance. For example, the *Wettbewerbszentrale* twice issued a warning against references to a "5-Star Beauty Institute" (*5 Sterne Kosmetik-Institut*) on account of its arousing the impression of a kind of seal of approval similar to what is used in the hotel and catering sector (F 4 0190/15; F 4 0602/15). The healing effect of a laser for various skin diseases cannot be advertised by beauticians because they may only work in a grooming capacity under the Law on Alternative Healing Practitioners and not perform any therapeutic function, (F 4 0230/15). For these reasons, the additional title of "medical beautician" (*medizinische Kosmetikerin*) or advertising courses to become a "medical beautician" (*medizinischen Kosmetikerin*) is also problematic because beauticians may not work in a "medical" (*medizinisch*) capacity (F 4 0304/15; see also the *Wettbewerbszentrale* report under "News" dated 07.09.2015 <https://www.wettbewerbszentrale.de/de/aktuelles/news/?id=1588>).

The Commission is to submit a report on the use of advertising claims for cosmetic products to the European Parliament and the Council by 11 July 2016. Depending on the outcome, the Commission might then initiate the "reasonable and appropriate measures" referred to in Article 20 Paragraph 2 of the Cosmetics Regulation in order to guarantee truthful advertising claims. In this respect, the numerous companies that have discontinued their misleading advertising following intervention by the *Wettbewerbszentrale* are now already contributing towards safeguarding fair competition and – possibly – also preventing "health claims" for the cosmetics sector (see Annual Report 2014, page 59)