

Full title The Centre for Protection against Unfair Competition (WBZ - *Wettbewerbszentrale*) Annual Report 2017

<https://www.wettbewerbszentrale.de/media/getlivedoc.aspx?id=36147>

Title of relevant section Chapter VI: Case Processing Reports - Reports by Industry

9. Beverage Industry: c) wine; d) beer; e) spirits

Wine

If a company advertises with tradition/ heritage information, then it must be true. Giving the impression in advertising that the company is older than it really is, is misleading. A manufacturer of mulled wine had been advertised as a "tradition since 1576 / *Tradition seit 1576*", although the company was only founded in 2017. The company was issued with a cease and desist order, so that the case could be settled out of court (HH 4 0212/17).

Furthermore, wines were advertised with the claims "wholesome / *bekömmlich*" and "healthiest red wine / *gesündester Rotwein*". According to Art. 4 (3) Health Claims Regulation (1924/2006), however, alcoholic beverages with an alcohol content above 1.2% ABV may not be advertised with health claims. The companies have each been issued with cease and desist letters (HH 4 0057/17, HH 4 0227/17, see also the report of the food industry, page 88).

Beer

In addition to constantly incoming complaints on the geographical and operational origin of beer, the brewing industry brought this year various competition law issues for assessment.

Several times, advertising violated the Health Claims regulation (Reg. (EC) No. 1924/2006), and also beer is repeatedly being attributed a health-promoting effect for advertising purposes. For example, at the request of the WBZ by way of a preliminary injunction from the Berlin Regional Court (Case 15 O 303/17), a company was prohibited from advertising beers with the words: "special ingredients: ginseng and maca" (*Besondere Inhaltsstoffe: Ginseng und Maca*) with reference to the health claims described below. The company referred in a flyer, which it enclosed with bottles to be purchased online, the positive effects of the additives allegedly proven by expert opinion, in particular positive effects on physical performance, mental resilience, increasing sexual desire and strengthening the immune system and an added value of energy that can also counteract depression and chronic fatigue. It was also advertised that the additives would not only help prevent a possible hangover, but made the beer more durable, wholesome and enjoyable.

According to Art. 4 (3) Health Claims Regulation, health claims for alcoholic beverages above 1.2% by volume are inadmissible. In addition, the Stuttgart Higher Regional Court (OLG) (Judgement of 03.11.2016, ref. 5 U 37/16) has decided on the term "wholesome" ("*bekömmlich*") in beer; that its use creates a link between drink and health.

Other cases of inadmissible use of health claims, but also in violation of the Food Information Regulation (LMIV in German / (EU) No 1169/2011) in beer, for example, related to a beer presented as a medicine bottle (M 2 0022/17), which looked deceptively similar to a medical product, and the promotion of a non-alcoholic beer for colon cancer prevention (M 2 0017/17). Here, the overall picture of the advertising suggested that the disease, colon cancer can be positively influenced by the consumption of a non-alcoholic wheat beer. In both cases, following a warning by WBZ to the distributor or the brewery, cease and desist orders were issued.

In the broad field of misleading claims in beer marketing, in particular two issues in the area of brewing raw materials and energy use in the brewing process are newsworthy.

One case concerned the misleading claim of a brewery in publications and advertising campaigns to have re-cultivated an old almost extinct hop variety exclusively for the brewery and its light full beer. It was suggested that the reintroduction of this rare hop variety into the German list of varieties as well as the practical and scientific way in which it happened was on the initiative of the brewery and a farmer working with it. The rediscovery of the old hop variety had been an important milestone for the brewery, as tradition and the original art of brewing were of the utmost importance. The bright full beer was advertised with: "Especially

for me...a long forgotten hop variety is planted again" (*Extra für mich wird ... eine längst vergessene Hopfensorte wieder angepflanzt*). The brewery described the hops in their advertising claims as one of the fine aroma hops, with its low alpha acid content, whose bitterness is floral and fruity. However, the hops were actually reintroduced into the list of varieties due to the work of a hops farmer who had recovered the only surviving hop rootstock of the variety on his property and had carried out administrative registration and breeding at the provincial research institute. The brewery has been issued with a cease-and-desist declaration (M 2 0061/17).

In the other case, a brewery used a quality label "CO₂-neutral brewed with the power of nature" (*CO₂-neutral gebraut mit der Kraft der Natur*) on the bottle label. The WBZ did not see enough evidence to substantiate this claim, as the brewery did not provide any details on the labelling of what it meant by this statement. The traceability verification and certification bodies, which may award such a seal, were not assured. Although the brewery was certified as part of another, actually existing seal, which assigns a certification body in cooperation with the Technical University, due to their energy concept. However, this seal was not advertised by the brewery. However, the term CO₂-neutral suggests that the entire brewing process of the beer labelled in this way is completely CO₂-neutral. This has not been proven by the brewery with regard to the raw materials used (barley, wheat and the derived malt), the transport of raw materials, the production of bottles and containers and any auxiliary substances, such as filtration materials. The brewery has been issued with a cease and desist letter (M 2 0016/17).

Final three paras not relevant to advertising

Spirits

As in the previous year, in the year under review the WBZ received in this reporting year primarily complaints about spirits which are not as such, but are offered as "rum" on online trading. Rum is a spirit drink defined in the Spirit Drinks Regulation (EC) No 110/2008 Annex II, Category 1, which is derived from sugarcane and must not be flavoured and must have a minimum alcoholic strength of 37,5% by volume. The complaints often involved flavoured spirits with an alcohol content of 35% by volume, which were also flavoured (see also HH 4 0255/17, HH 4 0311/17, see also Activity Report 2016, pages 95, 96).
