

Full title	The Centre for Protection against Unfair Competition (WBZ - <i>Wettbewerbszentrale</i>) Annual Report 2015 https://www.wettbewerbszentrale.de/media/getlivedoc.aspx?id=35674
Title of relevant section	Chapter II: Reports by Industry Point 11. Beverage Industry: c) wine; d) beer; e) spirits
Wine	<p>As in the previous year (Annual Report 2014, p. 65), trade in supposed "port wine" from South Africa once again occupied the Wettbewerbszentrale (M 4 0158/15; M 4 153/15; M 4 0063/15). Port wine is a geographical designation of origin. So-called dessert wine must necessarily originate from certain regions of Portugal. The district court of Frankfurt am Main confirmed this after summary examination in a default judgment delivered on 27.05.2015 (Refs. 3-08 O 188/14; M 4 172/14).</p> <p>In addition, the WBZ also received complaints and requests for advice (M 4 0063/15; M 4 0046/15) on the lack of mandatory labelling of wines in online trading (Article 14 LMIV – Food Information Regulation¹). For example, the bottler information according to Art. 119 (1) of Regulation (EU) No 1308/2013 or the indication of allergens pursuant to Art. 9 (1c), Art. 21 LMIV in conjunction with Article 51 of Implementing Regulation (EC) No 607/2009.</p> <p>The misleading or non-transparent add-on advertising (M 4 0205/15) was the subject of a successful warning issued by the WBZ against a sparkling wine producer. He promised a shower gel as a gift by means of a voucher applied to the bottle. The coupon could be redeemed by the delivery in the participating drugstores. Another redemption opportunity resulted in the order via the associated online shop. There, however, this was only possible if in addition a further product was purchased, for which the customer had to spend at least 8.00 euros. However, this was not apparent from the advertising on the bottle.</p>
Beer	<p>In October 2015, the newspaper 'Süddeutsche Zeitung' (lit. South German Newspaper) ran the headline, "Beer needs a home" for its article on regionality in the beer market as an alternative to consumerism in the food sector. Terms such as "regional", "seasonal" and "craft" as an expression of homeland-related traditional craftsmanship in contrast to beers oriented towards mass taste, secure market share especially for small and medium-sized breweries. Breweries are perfectly aware of this (see Süddeutsche Zeitung v. 14.10.2015, p. 17).</p> <p>Accordingly, it is not surprising that violations of geographical and / or commercial origin were the main source of complaints from and about the brewing industry during this reporting period. Thus, the Munich Regional Court (LG Munich I, judgment of 07.05.2015, Ref. 17 HK O 1091/15; M 2 0361/14) had to decide on a lawsuit of the WBZ, in which the defendant in the name and other label design leads/ points to a nationally known Bavarian lake, although the beer does not originate from there. The Court was of the opinion that the lake might not already be a geographical indication of origin, but this was left undecided and the claim dismissed with the argument that the mentioned traffic circles (i.e. audience) would understand the name as pure fantasy design, comparable for example with a designation like 'Philadelphia cream cheese'. The WBZ has appealed against the judgment to the Higher Regional Court of Munich. It considers that the name of the beer contains a misleading use of a real existing place. The brewery is therefore famed for its unjustified geographical origin and, moreover, disregards German and European case law such as the ECJ raspberry-vanilla adventure decision (GRUR Int. 2015, 732 et seq.) on traffic expectations in the beverage and food sector. (Refer to WBZ Annual Report 2016 – where decision was overturned on appeal).</p> <p>The WBZ is currently pursuing a case of misleading company origin in a nationally known East German city (M 2 0227/15). There is a company with the name of a district in which a former brewery had established a beer tradition since 1882, but has not existed since the end of World War II. Accordingly, the company also labels its beer under the brewery name and refers to the tradition of the old brewery. Such a brewery does not exist in the city located in</p>

¹ Reg 1169/2011 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011R1169>

Saxony-Anhalt. Rather, the brewery gets the beer from Upper Franconia. The WBZ has brought a lawsuit to the competent district court. Overall, the WBZ notes that cases of such unjustified indications of origin in the beer industry are increasing.

Deceptions of a different kind are regularly subject to complaints from the brewing industry. Prominent cases that stand out include, misleadingness about unfounded awards from a Beer Contest ("Europe's best brewery") (M 2 0429/15) as well as well as the misleading advertising leaning a Hessian brewery to the Oktoberfest (M 2 0464/15).

Spirits

Geographical indications of origin also occupy the WBZ in the spirits sector. Thus, complaints were submitted on supposed "Grappa" from South Africa (M 4 0152/15, M 4 0159/15) or Swabia (M 4 0198/15). "Grappa" is a protected geographical indication for grape marc spirits originating from Italy under the spirit drink regulation (Regulation (EC) No 110/2008). For other spirits the term may not be used with indications such as "like" or "type", even if the actual origin is indicated (see Art. 16b² Spirit Drinks Regulation). The procedures could be terminated out of court.

Another case concerned misleading age/ antiquity advertising (M 4 0130/15). A distillery ran the advertisement "family-run distillery for whiskey, grain and fruit - 111 years 1904 - 2015". In fact, the building was only built in 1904 as a hotel by the family and got to dispossession and once again falls back into family ownership. The distillery was built in 2006 and put into operation. The company was issued with a cease and desist letter.

In the drinks sector as well, deceptive packaging is sometimes used, as the following case shows (M 4 0050/15): A gin producer distributed his spirits in a 0.75 litre bottle of opaque black glass. The bottle resembled a wine bottle and had an above-average *Culot de Bouteille*³ and was therefore about the size of a 1-litre wine bottle. The bottle itself contained only 0.70 litres of gin, as indicated by the label. It was therefore 5 cl clearly underfilled below the neck. This was only visible if the bottle was purposefully kept against pronounced lighting. Although there are mandatory nominal quantities for spirits, this does not mean that you can be misled by the size of the bottle. Following the objection to the presentation by the WBZ for violation of the measuring and calibration law, the misleadingness will be waived in the future.

² Art. 16: Without prejudice to Article 10, the geographical indications registered in Annex III shall be protected against:

(b) any misuse, imitation or evocation, even if the true origin of the product is indicated or the geographical indication is used in translation or accompanied by an expression such as 'like', 'type', 'style', 'made', 'flavour' or any other similar term

³ the indentation at the bottom of a wine or sparkling wine bottle, the English refer to it as *Punt*