Food & Beverage Insight

Retrospective view on labelling, advertising and trademark for the Norwegian food sector

Winter 2025 Edition

Introduction

Dear reader

A year has passed since we published our first edition of Food & Beverage Insight, a publication providing a retrospective overview on some of the significant legal developments concerning trademarks, labelling and advertising of food in Norway and in the EU during the past year. During that time, there have been significant developments within the three focus areas of this publication (intellectual property rights, advertising and food law).

While these focus areas are separate legal fields within their own and thus subject to different rules and considerations, there is an increasing convergence between the three fields. This convergence is particularly visible when it comes to trademarks, labelling and advertising of food products.

Knowledge of these three areas is crucial for food business operators in the retail sector, as well as for any advisor providing legal assistance to such clients. But the legal part is only one aspect – these areas also receive a lot of press attention and certain aspects are sensitive from a political aspect.

At Haavind, we have long traditions in providing food business operators with a wide range of legal services. Three of the many legal areas we frequently assist food business operators with are intellectual property rights, advertising and food law. With this and future publications, we intend to share with you some of the legal developments within these areas which occurred over the last year.

As a leading law firm on intellectual property and food law in Norway, our team continuously and closely monitors legal developments relevant to the food sector. If you wish to discuss how your business can meet the legal challenges of this innovative and highly regulated sector, you are always welcome to contact us.

Kind regards

Ida and Håkon

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Håkon is co-author and co-editor of Food & Beverage Insight. He specializes in regulatory affairs within the Life Sciences industries. Having extensive experience with food law, he assists enterprises within the food industry with a wide variety of regulatory services, including administrative complaints to the Norwegian Food Safety, product labelling, advertising of food, regulatory issues, notification of products, and use of claims (including nutrition and health claims). He also assists clients with all types of commercial agreements within the food business sector, including manufacturing agreements, distribution agreements, R&D agreements, material transfer agreements and joint marketing agreements.

Håkon also specializes within intellectual property rights, where he assists life science businesses with various services, including patent litigation, management, licensing and enforcement of intellectual property, trademark prosecution and litigation, matters on product imitation and matters in the intersection between trademark law and regulatory affairs. In addition to a law degree, Håkon also holds a bachelor's degree in pharmacy, and has work experience from various pharmacies as well as the Norwegian Medicines Agency.

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RECENT ADVANCES IN COLOR TRADEMARKS FOR FOOD PRODUCTS IN NORWAY

Last year's favorite trademark color in Norway was blue. This year, the palette is slightly more colorful.

Background

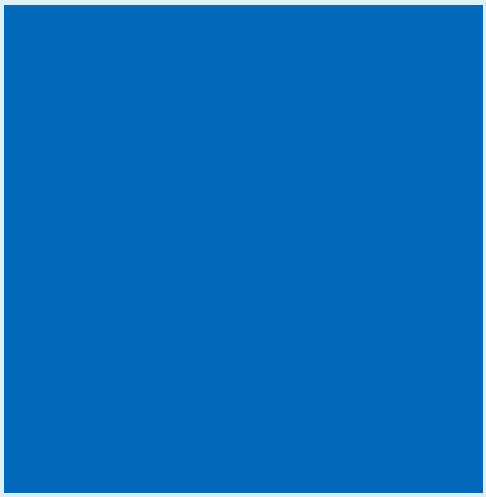
In our previous edition of Food & Beverage Insight, we highlighted the trademark case between Orkla and Mondelez concerning the latter's use of a blue color on the packaging. That case received significant media attention in Norway. The dispute arose when Mondelez introduced Freia Boble in 2023. The packaging of Freia Boble featured a blue color (Pantone 2145 C) that closely resembled the blue color used by Orkla on its well-established aerated milk chocolate, Stratos (Pantone 2144 C). Stratos has been in production since 1936 and has consistently used the blue color in its packaging since 1985.

On 7 June 2024, Oslo District Court issued a judgment (case reference TOSL-2023-186489) in a trademark infringement case between Orkla Confectionery & Snacks Norge AS (Orkla) and Mondelez Norge AS (Mondelez). Orkla claimed that the packaging of the aerated milk chocolate product, Freia Boble, constituted an infringement upon Orkla’s intellectual property rights. The District Court ruled in favor of Orkla, finding that Orkla had obtained trademark protection by use for Pantone 2144 C.

The question of whether single colors or color combinations can be protected as trademarks has continued to generate interest in Norway throughout 2025. Several successful registrations by Orkla have confirmed that such protection is possible where applicants can demonstrate convincing, well-documented evidence of acquired distinctiveness.

KFIR's decision in 25/00013: Stratos blue

Orkla had previously (in 2021) attempted to obtain trademark registration for the color Pantone 2144 C for the category "chocolate", an application that the Norwegian Industrial Property Office (NIPO) had rejected. Following the decision from the District Court, Orkla again attempted in July 2024, this time for the category "aerated chocolate". NIPO again rejected the application, citing inadequate evidence of acquired distinctiveness and emphasizing the importance of keeping colors available for the market.



Picture obtained from the database of the Norwegian Industrial Property Office – application 202407125

Orkla appealed this decision to the Norwegian Board of Appeal for Industrial Property Rights (KFIR), further limiting the scope to "aerated milk chocolate" as per the District Court's conclusions, and submitted additional evidence, including market surveys and expert testimony.

KFIR overturned NIPO's decision, finding that the use of Pantone 2144 C had made the mark capable of identifying "aerated milk chocolate" in class 30 as originating from a specific business, and that it had therefore acquired distinctiveness through use. In reaching this conclusion, KFIR largely adopted the reasoning of the District Court. The key factors considered were:

- Market surveys: In 2021, 71% of general consumers and 73% of frequent chocolate buyers associated Pantone 2144 C with Stratos/Nidar/Orkla. Orkla maintained extensive use of the blue color in packaging and marketing after 2021.

- Extensive marketing: The blue color has been featured in nationwide campaigns since 1985, with increased investment and visibility since 2017.
- Sales performance: Stratos chocolate products generated nearly NOK 4.4 billion in sales from 2000–2022, reinforcing the association between the color and the brand.

KFIR concluded that the use of Pantone 2144 C has resulted in the mark being suitable to identify “aerated milk chocolate” in class 30 as originating from a particular business. The mark has acquired distinctiveness through use, fulfilling the distinctiveness requirement for registration as set out in Section 14 of the Trademarks Act.

Additional color trademark registrations by Orkla

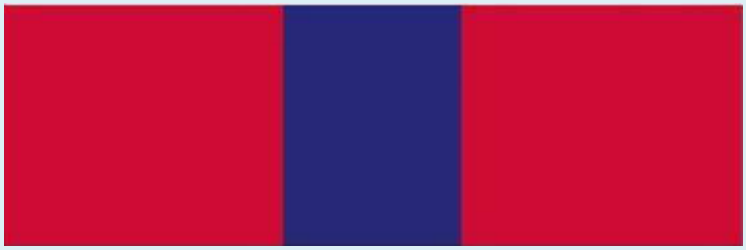
It seems clear that the decisions from Oslo District Court and KFIR have had an impact on NIPOs practice. Two further decisions by NIPO concerning trademark registrations for colors were obtained by Orkla in 2025.

The first concerned an application for Pantone 7408 C (Yellow) for frozen pizza (Class 30). The mark was initially refused due to lack of distinctiveness.

Picture obtained from the database of the Norwegian Industrial Property Office – application 202208657

However, registration was granted after Orkla provided evidence of long-term and consistent use on Grandiosa pizza since the 1980s, as well as substantial consumer recognition of the yellow color as identifying the product’s commercial origin.

The second application concerned a combination mark, also for chocolate (Class 30). The color combination of two red panels (Pantone 2000) and a central blue panel (Pantone 2747), as featured on Troika chocolate, a three-layered chocolate bar with raspberry jelly, truffle and marzipan, covered in dark chocolate, first launched in 1939.



Picture obtained from the database of the Norwegian Industrial Property Office – application 202314565

This mark was registered after Orkla demonstrated decades of continuous use and strong consumer association with these specific colors as indicators of the brand.

Comments

According to statements in the media, Orkla's registration of the color Pantone 2144 C for the category aerated milk chocolate is the first time a color as such has been registered for a food product.

The decisions demonstrate that registration of both single colors and color combinations for food products is attainable in Norway, provided applicants submit solid evidence of acquired distinctiveness over a lengthy period of time. While strong arguments exist for keeping colors free for all market participants within the food sector, solid and convincing documentation of consumer association between the colors and the products in question can justify exclusive rights. Overall, these developments illustrate that with careful strategy and documentation, color trademarks are a viable option for companies seeking to distinguish their products in the Norwegian market.

GOOD INTENTIONS GONE BAD? THE NEW PROHIBITION ON ADVERTISING OF CERTAIN FOODS TOWARDS CHILDREN

The prohibition on advertising of certain foods towards children is in effect, and now we are seeing the (unintentional) results.

Background

The hottest topic in Norway in 2025 amongst food enterprises which sells to consumers was the prohibition towards advertising of unhealthy products towards children. Announced in August 2024 through a consultative process, the proposal certainly did not lack criticism. Attempts to avoid the future legislation was futile – the regulation imposing the ban entered into force in April 2025, with effect from October 2025. While some of the criticism was mediated by the wording of the final regulation, the skepticism remains. For food business enterprises, the restrictions were not proportionate, and from parents, the lack of regulating product packaging means that it is perceived as too lenient. While everyone can agree on the purpose of the regulation, the means to achieve that purpose is not simple. And a transition from a self-regulatory system that enterprises are familiar with to a government sanctioned prohibition with severe violation penalties is not necessarily easy.

Which enterprises and products are subject to the prohibition?

The regulation applies to anyone who manufactures, processes and distributes (including both sales and advertising) food products.

The key provision in the Regulation is section 4 first paragraph, which states that advertising of products included by Annex I, when specifically directed towards children, is prohibited.

In Annex I of the Regulation, the affected products are stated. Enterprises with familiarity with the category stated in the self-regulatory regime would immediately recognize many of these. Category 1-5 includes chocolate, candy, energy bars, sweet spreads, desserts, cakes, cookies, pastries, snacks, ice cream, sodas, energy

drinks and similar beverages. For foods in these categories, the nutritional value does not matter – they are always included.

The remaining categories are more complicated, and depend on the nutritional value of the product per 100 gram or ml.

For instance, juice and similar products (category 6) are included, but only if they contain added sugar or sweetener – which is an oxymoron, since juice by definition cannot include added sugar in order to lawfully use the name.

The same is the case for milk and plant-based beverages (category 7). These are affected, insofar that sugar or sweeteners have been added.

Category 8 concerns cereals. Cereals were also included by the self-regulatory regime, but where the limit previously was above 20 grams sugar per 100 grams, the limit in the regulation is 12,5 grams sugar, and an addendum of below 6 grams of fiber is also added.

Category 9 includes yoghurts and similar products (also plant-based alternatives). Like the other categories, this was also a category in the self-regulatory regime, but the limits of sugar and fats per 100 g have been marginally reduced.

And then there is category 10. In the self-regulatory regime, this category was "take-away meals and meals to be served" – i.e. specifically aimed at foods sold by restaurants, cafeteria and pubs

etc. as well as similar food sold at kiosks and gas stations. In the regulation, this category was changed to "fast food and compounded ready meals". In other words, it also includes a wide variety of ready meals sold at grocery stores. The limits here are the same as in the self-regulatory regime – i.e. 225 kcal, saturated fat above 4 g and salt above 1 gram per 100 grams of food.

Which activities are prohibited?

As stated above, the prohibition concerns advertising of products included by Annex I, insofar that the advertising is specifically directed towards children, cf. section 4 first paragraph. Children are defined as people under the age of 18 years. Advertising is defined as any form of communication or action done for the purpose of advertising. It is specified that the purpose of advertising exists if the communication or the action is to promote sales towards consumers.

When is advertising specifically directed towards children? This is subject to an individual assessment, based on several factors to be considered, including those listed in section 4 of the regulation:

- If the product primarily is consumed by or especially appeals to children.
- If the advertising has a presentation form, content or shape that specifically may appeal to children due to language, colors, effects, images, use of animation or cartoons.
- Time and place of the advertising. This would also include online social media platforms (i.e. YouTube and TikTok).
- If there are contributions by children or people which specifically may appear to children.
- If use of gifts, toys, coupons, discounts, collection items, competition and games which may specifically appear to children.

These were also relevant criteria under the self-regulatory regime. However, it is important to stress that one of the main differences between the self-regulatory regime and the legislation is the age limit. The specific assessment for what is directed towards a 13-year-old and a 17-year-old is miles high, while the difference between an advertising for a 17-year-old (which is unlawful) and an 18-year-old (which is lawful) is exceedingly difficult to draw.

This was also illustrated in the consultative process by the Ministry of Justice, which stated that the age limit of 18 is problematic since it may have the effect as an advertising ban towards adults, and that this could fail to comply with the principle of proportionality (in particular aimed at the implications towards the EEA Agreement).

Like for the self-regulatory regime, there are some activities that are always considered as specifically directed towards children and thus prohibited:

- Advertising on cinema in relation to movies which are particularly directed towards children under 13 years, and which begin before 18.30. This was also in the self-regulatory regime.
- Competition with an age limit lower than 18 years. A ban on competitions was also prohibited in the self-regulatory regime, albeit with an age limit of 13 years.
- Supplying taste samples and product samples to children (i.e. people under 18). Under the self-regulatory regime, supplying taste samples and product samples to people under 13 was actually exempted, insofar that parents had given their consent.

Which activities are exempted from the prohibition?

Section 5 of the regulation lists 5 exceptions:

- Sponsorship to non-profit purposes, with an exception to sponsoring with products belonging to category 1-5.
- Use of sponsors name and trademarks, except trademarks which concern specific products in Annex I.
- The shape of the product
- Packaging and wrapping
- Normal display of products at a sales site
- Level-headed product information on webpages and in relation to the sales site.

Sponsorship and use of trademarks have caused a lot of concern among food business operators. The details on what is permitted and what is not in this regard have been blurry, and many of the traditional sponsors at events where children participate have typically been food business operators who sell products that are included in Annex I. Several companies have expressed in public that they would withdraw from sponsorship agreements as a result of the ban, which would affect many leisure activities for children (including sports programs).

Sanctions

The supervisory authority for the regulation is the Norwegian Directorate of Health, and can issue administrative decisions ordering e.g. to correct an advertisement. The administrative sanction is subject to a complaint procedure to the Norwegian Marketing Council.

However, what worries businesses is the sanctions which will be implemented from 1 January 2027. This will allow the Directorate to issue violation fines up to 4 percent of the annual sales of the violator, or up to appr. 2,6 Million NOK, whichever is higher. With such potential sanctions looming, the consequence of a breach can be severe, even though violation fines are intended for more serious breaches.

Guidelines from the Directorate

After the regulation entered into force, but before the prohibition took effect, the Directorate published a guideline for interpretation of the rules in the regulation. The intent for the Directorate was to receive input from various players before the prohibition became effective in October and provide for an update prior to this.

To a certain degree, the guideline has provided some clarifications, in particular with regard to sponsorship, which became a hair in the soup for the government after widespread media attention concerning businesses wanting to withdraw from agreements.

In other aspects, the guidelines provide additional uncertainties. For instance, the guidelines highlight that digital media where children form "a part of the user group" will be emphasized in the specific assessment on whether an advertising can be considered directed towards children. The guidelines here mention YouTube, TikTok, Snapchat and Instagram, which are used by many children. When combined with a statement that the relevant is whether the communication is suited to reach children, not whether it actually does so, there is cause for concern. From the wording of the regulation, it is clear that there is no "blanket ban" on advertising on social media platforms, which are also used by many adults.

Statements such as these are likely an attempt by the Directorate to raise awareness concerning the specific assessment, and to include as much flexibility as possible with regard to future references in specific supervisions. However, while such statements may function as an awareness for business operators that such criteria must be considered, they fail completely with regard to providing actual guidance and clarity on the matter.

Another example of a problematic interpretation concerns the nutritional declaration values in category 6-10. In the guideline, the Directorate states that products which have a content which complies with one or several of the stated limits are included. In other words, the limits are not cumulative. For example, all products in category 10 containing either 225 kcal per 100 gram, or more than 1 gram of salt per 100 gram, or more than 4 grams of saturated fat per 100 grams, are thus in scope. This "quirk" is not evident from the wording of the Regulation and is also questionable with regard to the aim of the prohibition. This is in particular evident for cereals, where a cereal which contains e.g. zero sugars still will be included if the cereal does not contain at least 6 grams of fiber per 100 grams.

Complaint to ESA

With all the criticism from food business operators, it should come as no surprise that the Regulation has been challenged. On 6 October 2025, Food Drink Norway lodged a complaint to the EFTA Surveillance Authority (ESA), citing non-compliance with the EEA Agreement. The main issue of the complaint revolves around the ban being non-proportionate and far more reaching than what is necessary to obtain its purpose.

Whether the complaint is successful or not remains to be seen. That the regulation interpreted in light of the guideline from the Directorate lacks sufficient clarity and thus makes it a risk for overreaching, is hard to argue against.

Is the prohibition "a grinch" that stole Christmas?

When looking at the wording of the prohibition itself, the regulation may not seem that restrictive. But emerging real-life examples indicate the far-reaching consequences the new prohibition actually has.

For instance, recent stories in the media of bakeries having to cancel "gingerbread workshop" and "pastry decorations workshop" which have been arranged for children for several years due to this prohibition illustrate the (likely) unintentional effects that can apply. Such forms of small contributions by local enterprises in their communities have often been an important tradition in Norway during the holidays. As such, the prohibition unintentionally acted as "a grinch" which stole away Christmas traditions. Another hair in the soup for the Ministry.

An unintentional effect of the ban is likely also that providing taste samples of ready meals in groceries is a thing of the past in Norway. In order to avoid breaching the prohibition, the company distributing samples would now have to check whether the receiver is actually 18 years in order to ensure compliance, and thus an initiative which is unlikely to be carried out by food businesses to avoid awkward situations and negative attention in the media.

As such, the regulation has become a dire warning of legislation with good intentions, but with many unintentional and undesirable side effects. Food business operators nevertheless have to reconsider their marketing strategies and adapt accordingly.

EUROPEAN PARLIAMENT PROPOSES TO BAN "MEATY NAMES" FOR PLANT-BASED PRODUCTS

Is the end of the veggie burger near?

A hot topic in food labelling over recent years have been whether it is permitted to use "meaty names" for plant-based substitute products. For instance, whether "vegetarian schnitzel" or "vegan burger" is and should be permitted is highly debated.

Unlike for milk products, where the name milk and other dairy specific names are protected by Regulation 1308/2013 (which establishes the common organization of the markets for agricultural products in the European Union) and thus not permitted for plant-based substitutes (which was also confirmed in CJEU's case C-422/16 *TofuTown*). As such, although commonly used by the public, names such as "soy milk" and "oat yoghurt" are not permitted either in labelling or in marketing.

For several years, it has been argued by politicians that the same restrictions should also apply when it comes to certain "meaty names". And on 8th October, a majority of the European Parliament voted to ban the use of some of these names.

The proposed ban comes as part of a proposal (COM/2024/577) to introduce several amendments to Regulation 1308/2013 (as well as Regulations 2021/2115, and 2021/2116), where the aim is to strengthen the positions of farmers in the food supply chain. As stated above, Regulation 1308/2013 The regulation already provides a list of names that are reserved for milk-based products, as well as also certain names for poultry.

The proposal suggests inclusion of a definition of meat to mean the edible parts of the animals referred to in points 1.2 to 1.8 of Annex I to Regulation 853/2004 (the Animal Hygiene Regulation). The proposal also suggests that the meat-related terms and names that fall under Article 17 of Regulation 1169/2011 (i.e. the legal names of FIC) and which are currently used for meat and meat cuts shall be reserved exclusively for the edible parts of the animals. The proposal also includes a definition of meat preparations and meat products.

Similarly, the proposed revisions also state that names that fall under Article 17 of FIC for meat products which are currently used for meat products and meat preparations shall be reserved exclusively reserved for meat. The proposal names examples of such names, which are:

- Steak
- Escalope
- Sausauge
- Burger
- Hamburger
- Egg yolk
- Egg White

In addition, the proposal also suggests to reserve poultry products and cuts as defined in Regulation 543/2008 (marketing standards for poultry meat) exclusively for the edible parts of animals and products containing poultry meat. This would for instance include terms such as "breast", "thigh", "drumstick" and "leg".

Finally, the proposal also clarifies that cell-cultured products (i.e. meat made from animal cells cultivated in vitro), shall be excluded from use of such names.

Comments

The proposal is not without controversy. While supporters of the proposal argue that it will protect consumers from potentially misleading labelling, critics argue that removing the possibility to use familiar names will make it more difficult for consumers to make informed choices, and that the proposal is a setback for sustainability.

It is important to stress that the adoption of the proposed amendments by the European Parliament does not mean that a ban on use of these terms for plant-based products has been implemented yet. Further legislative processes remain, where both the Council of the European Union and the Commission will be involved. As such, a potential ban on "meaty names" remains uncertain both with regard to whether and when it will come to effect, and the process could take several years. Still, the adoption shows that there is an uncertain regulatory landscape ahead for plant-based products.

NO LENIENCY FOR NAMING NON-ALCOHOLIC DRINKS

Case C-563/24: In a recent decision by the CJEU, the Court has concluded that non-alcoholic beverages cannot use the name "gin".

Background

In 2023, the German Association VSW, which is responsible for combating unfair competition, brought an action against a company which sells and promotes a non-alcoholic beverage named "Virgin Gin alkoholfrei". VSW was of the opinion that the advertising of this product was in violation or Regulation 2019/787. Pursuant to this regulation Annex I, gin is a drink that must be produced by flavoring ethyl alcohol of agricultural origin with juniper berries and the minimum alcoholic strength by volume must be 37.5%. VSW argued that if these requirements are not met, the beverage could not be sold under the name "gin", with reference to Article 10(7) of that Regulation. Article 10(7) essentially states that save for a few exceptions, the use of legal names as stated in paragraph 2 (which refers to Annex I of the regulation) in the description, presentation or labelling of any beverage not complying with the requirements of the relevant category shall be prohibited. This also applies where such legal names are used in conjunction with words or phrases such as "like", "type", "style", "made", "flavor" or any other similar terms.

The supplier argued that there was no violation of the Regulation, since it would be obvious to any consumer that the beverage does not contain alcohol. When the case was handled in Germany, the court had doubts whether Article 10(7) could be considered as valid on the grounds of a possible infringement of the freedom to conduct a business enshrined in Article 16 of the EU Charter. The German court was of the opinion that the prohibition on the presentation and labelling of a non-alcoholic beverage as ‘non-alcoholic gin’ was disproportionate in so far as it does not appear to pursue a legitimate objective. That court is of the view that the term ‘non-alcoholic’ eliminates the risk of misleading the consumer.

CJEU's reasoning

The CJEU published its decision published on 13 November 2025. Referring to the wording of Article 10(7), the Court found that it was clear that it is prohibited to present and label a beverage such as that in question in the main proceedings as ‘non-alcoholic gin’ due to the very fact that that beverage does not contain alcohol. It is therefore not produced by flavoring ethyl alcohol of agricultural origin, which is at odds with one of the requirements for being able to use the legal name ‘gin’ according to Annex 1.

The CJEU also found that it followed from Article 10(7) that the fact that the legal name "gin" was accompanied by the term "non-alcoholic" was irrelevant in so far as the prohibition also applies where terms are used for the purpose of indicating that a given beverage must not be confused with the spirit drink covered by that name. In conclusion, Article 10(7) shall be interpreted to prohibit the use of the name "non-alcoholic gin" in the presentation and labelling of a non-alcoholic beverage, as it does not comply with the specific requirements stated in Annex 1.

The question which remained then was whether Article 10(7) could be held as invalid. The CJEU dismissed this. The Court emphasized that it follows from case law that the freedom to pursue a trade or profession is not an absolute right but must be considered in relation to its social function. Restrictions may be imposed on the exercise of the freedom to conduct a business, provided that those restrictions in fact correspond to objectives of general interest pursued by the

European Union and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of that right.

The Court also emphasized that prohibition concerns only the use of the legal names of spirit drinks without hindering the production or distribution of beverages which do not comply with the requirements laid down by that regulation. With reference to previous case law, the Court found that the prohibition of Article 10(7) respected the essence of the freedom to conduct a business.

Concerning the argument that the prohibition was proportional, the Court referred to the aim of consumer protection.

The Court found that compliance with the definitions of the beverages designated by the legal names and placed on the EU market guarantees consumers that those products all meet the same quality standards and protects them against any risk of confusion as to the composition of the products which they intend to purchase. Furthermore, Such a measure makes it possible to prevent a producer of a beverage that does not comply with the requirements laid down in Regulation 2019/787 from being able to take advantage, for its own product, of the reputation acquired by producers of spirit drinks covered by a legal name.

If legal names could be accompanied by descriptive terms such as ‘non-alcoholic’ to designate products which do not comply with the requirements for obtaining such names, consumers could be misled as to the composition of the products that they intend to purchase, with reference to inter alia C 422/16 TofuTown.com. The Court thus found that the prohibition of Article 10(7) was not in breach of the principle of proportionality, and thus the CJEU also considered the prohibition to be valid.

Comments

The decision has received a lot of press attention, focusing in particular on the specific case, namely that manufacturers of non-alcoholic beverages cannot use the name "gin". However, while the specific case concerned the legal name "gin", the implication of the decision goes much further than for this specific name. In fact, it will apply to several other non-alcoholic beverages also using the names covered by Regulation 2019/787 Annex 1, where such non-alcoholic beverages due to the lack of alcohol content will not fulfill the requirements stipulated in Annex 1. Certain well-known names that will be affected (inter alia):

- Whisky
- Rum
- Brandy
- Vodka
- Aquavit
- Liqueur
- Sambuca

As such, enterprises which manufacture or supply non-alcoholic beverages should review their portfolio to ensure compliance towards any protected name. Both labelling and branding strategy should be reviewed. As stated in Article 10(7) of the regulation, the prohibition also applies *"where such legal names or geographical indications are used in conjunction with words or phrases such as ‘like’, ‘type', style’, ‘made’,‘flavour’ or any other similar terms."*

Regulation 2019/787 is part of the EEA Agreement, and implemented via a national regulation in Norway, and thus the decision also applies to Norwegian enterprises.

NORWEGIAN MUSIC GROUP FINED FOR PROMOTING ALCOHOL IN MUSIC VIDEO

A cautionary tale on the pitfall of using social media to promote products and blurring the lines between artistic expressions and commercial promotion.

Background

Norway has among the strictest regulation on alcohol advertisements in the world. The Norwegian Alcohol Act section 9-2 prohibits all advertisements on alcoholic beverages. The prohibition also applies to advertising for other goods with the same brand or characteristics as alcoholic beverages, and alcoholic beverages cannot be included in advertising for other goods or services.

Advertising is defined in the Alcohol Regulation section 14-2 as *"any form of mass communication for marketing purposes, including advertising in print, film, radio, television, telephone networks, computer networks, illuminated advertising, posters, signs and similar devices, images, exhibitions and the like, distribution of printed matter, product samples, etc."* In other words, nearly all actions with a marketing purpose are prohibited, irrespective of format. A list of 20 exemptions of what is not considered as advertising is included in section 14-3.

The use of social media in advertising, in particular influencer marketing, has in many instances caused conflict with this prohibition. A few years back, several prominent influencers received letters from the Norwegian Health Directorate (which supervises the rules on alcoholic beverages in Norway) and received criticism for depictions of alcoholic beverages in social media posts. In 2024, violation fines for breaches of the Alcohol Act entered into force, where a main goal was to have a deterrent for unlawful alcohol advertisements, as well as a more severe sanction in the supervisory toolbox. With the possibilities of issuing violation fines for unlawful advertising of alcohol in force, it was only a question of time until the sanction would be applied.

Reactions from the Directorate of Health

In October 2025, the Directorate issued two separate administrative decisions against the company behind a famous Norwegian music group and a supplier of an alcoholic beverange, imposing each of the companies with a violation fine of NOK 1 500 000 for breaches of the prohibition on alcohol advertising, by intensive advertising of the hard seltzer branded as Kald ("Cold").

The music group is called Ballinciaga (which is wordplay on the famous clothing brand), which is known for electronic music and dance pop. The most famous brand of the music group is that the three members of the group always wear pink balaclavas when they perform. The business is performed via a limited liability company called Nummer En AS ("Number One").

The alcoholic beverages company, The Big Norwegian, is a supplier for alcoholic beverages. The Big Norwegian and Nummer En jointly owns the company Kald AS which owns the brand rights to the hard seltzer.

The breaches on the advertising prohibition of Nummer En and The Big Norwegian are mainly related to the promotion in social media by Ballinciaga. A main theme pointed out by the Directorate is the similarities between the visual impressions of the music group and the packaging of the alcoholic beverage.

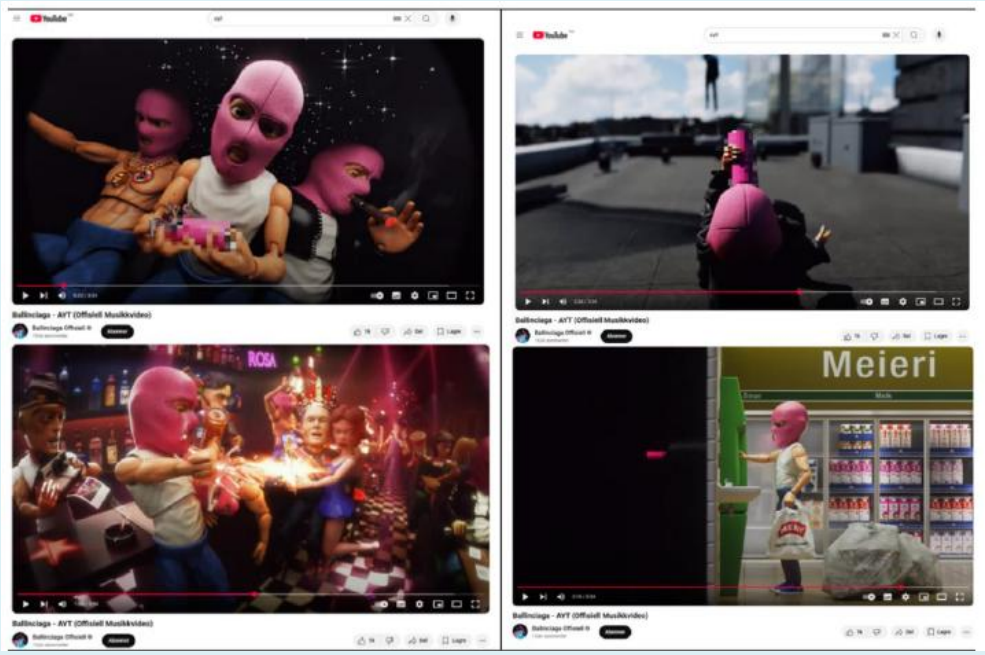
Picture from the decision of the Norwegian Health Directorate towards Nummer En AS

According to the decision, Nummer En claims that the products have been through a rebranding process which started before the company received a warning letter, in order to distinguish between the two brands. Ballinciaga has also developed a new logo.

The decision of the Directorate includes several examples of advertising that were considered as problematic:

- **Inclusion of the alcoholic beverage in a music video**

The Directorate refers to a music video for a song by Ballinciaga, which clearly shows the alcoholic beverage. According to the decision, the video received 49 000 views.

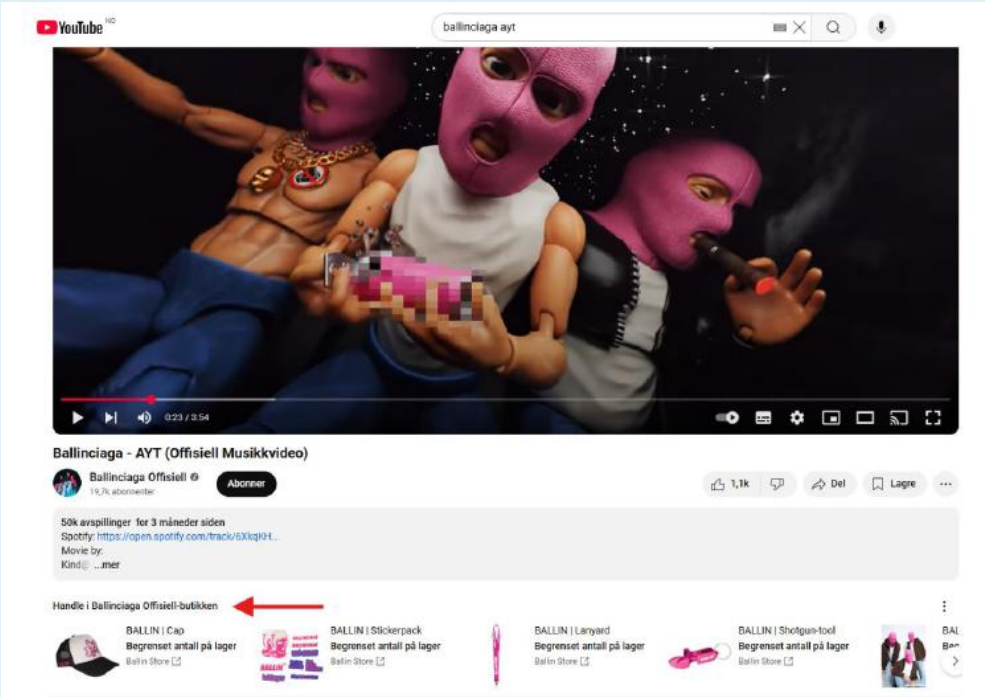


Picture from the decision of the Norwegian Health Directorate towards Nummer En AS

Prior to the release of the music video, a preview advertisement was also published on Youtube. This preview included a picture of a key chain which included a model head using the pink ski mask, the slogan of Ballinciaga ("Ballin") and a miniature version of the packaging of the alcoholic beverage:

Picture from the decision of the Norwegian Health Directorate against Nummer En AS

The Directorate also points out that just below the video published on Youtube, there are links to Ballinciaga's official online store, which inter alia sells Ballinciaga merchandise.

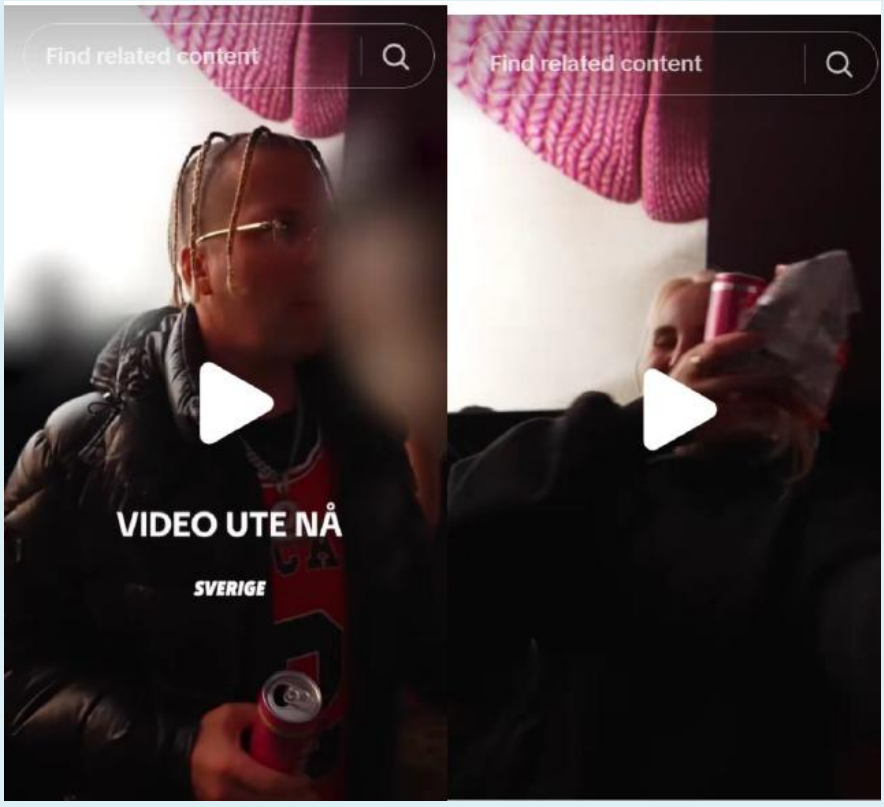


Picture from the decision of the Norwegian Health Directorate towards Nummer EN AS

- **Promotion on Ballinciaga's social media accounts**

The Directorate also points out that Ballinciaga has profiles on several social media, with several thousand followers on each media platform (e.g. TikTok with 161 000 followers), and thus any content will reach out to a significant audience. A large portion of these will be children.

The administrative decision mentions several examples of promotional activities on these accounts. For instance, the decision mentions that Ballinciaga held a launch event for the music video, and shared videos on TikTok from the event. In the video, several influencers boast the music video, while at the same time holding the alcoholic beverage.



Picture from the decision of the Norwegian Health Directorate towards Nummer EN AS

Another example highlighted in the decision is a video on Youtube, a so called "vlog", which according to the Directorate contains advertising of Kald Hard Seltzer. This inter alia depicts the band members wearing their signature balaclavas and holding the alcoholic beverage.

- **Depictions of a drinking contest with audience**

The most peculiar example mentioned in the decision is perhaps a video on Instagram where the group has arranged a drinking contest between a member of the group and a member of the audience. According to the decision, a young member of the audience entered the stage and competed with a member of the music group to decide which of them could consume 3 boxes of the alcoholic beverage fastest. The member of the audience won and was awarded NOK 10 000 for winning. The decision states that the beverage that was consumed was Kald Hard Seltzer, and that one of the band members shouted to the audience whether they had heard of "Hard Seltzer". According to the decision, Ballinciaga several times pointed out that this is not advertisement.

Picture from the decision of the Norwegian Health Directorate towards Nummer EN AS

- **Depictions of band members holding wine glasses**

Not all the breaches concerned promotion of Kald Hard Seltzer. The promotion of a music album launched by Ballinciaga, where pictures which depict alcohol (including a picture where the band members hold wine glasses) and were published at Snapchat, were also singled out by the Directorate as a breach.

The Directorate's reasoning

The Directorate considered that there was no doubt that the examples stated in the decision fulfilled the criteria for "mass communication for marketing purposes". It stated that that the company Nummer En through its ownership interest in Kald AS, it has clear market incentives to wanting to promote the sale of the alcoholic product Kald. Through the company Kald AS, it is also clear that there is a collaboration with the manufacturer. In this regard, the Directorate was of the opinion that Nummer En has acted as an advertiser which conveys advertising on behalf of The Big Norwegian. The Directorate was also of the opinion that there was a deliberate marketing strategy by Ballinciaga related to promote the alcoholic beverage, with reference to the use of the signature pink color and white font which is used by Ballinciaga and also used in the packaging of the alcoholic beverage. The alcoholic beverage had appeared as "merch" in the same way as other products marketed by Ballinciaga.

The Directorate stated that the depiction of Kald Hard Seltzer could be categorized as product placement. Also, the video where a band member had shouted that "this is not advertising" was of no consequence, since the Directorate stated that this obviously was advertisement. Attempts to "blur" the boxes of the alcoholic beverages were also not considered as redeeming – in fact, blurring the boxes in the videos was an element suited to draw further attention from the viewers, and that the viewers therefore were more likely to consider the videos as advertising.

A possible question is whether the use of the alcoholic beverages in the music video could be considered as an artistic expression and thus protected by freedom of expression, and not a commercial expression. The Directorate states that this has been considered, but that this was not the case. The main purpose of using the alcoholic beverage in the music video is precisely to promote and advertise the product, and it is not random that Ballinciaga has this particular brand in the video and showcased it on events.

Nummer En was also found to have violated the rule on including alcoholic beverages in advertising for other goods or services. Reference was here made to the pictures of influencers holding alcoholic beverages for the promotion at the launch event for the music song, and that in relation to videos on Youtube, a link to Ballinciaga's online store which depicted merch was shown.

A separate decision from the Directorate was directed towards the manufacturer The Big Norwegian, highlights some of the same pictures shown in the decision towards Nummer En. The manufacturer denied any responsibilities from any violations made by Ballinciaga. However, the Directorate argued that the manufacturer had deliberately chosen a design for their products which was identical with Ballinciaga's visual expression, to allow alcoholic beverages to be included in the marketing of Ballinciaga's goods and services, and at the same time promoting alcoholic beverages. In this regard, the Directorate pointed out that the design freedom for packaging is very broad, and that it could be assumed that the choice of colors and fonts for the packaging had been deliberate.

The manufacturer argued that they had never instructed Ballinciaga to promote their alcoholic beverages. The Directorate, however, argued that the manufacturer had not reacted, and that these omissions had contributed to the violations. Furthermore, it was profitable for The Big Norwegian to not react towards the marketing, since their product had thus received exposure and advertising which could generate income.

Concerning the size of the violation fines, the amount towards Nummer En and The Big Norwegian was in both instances NOK 1,5 Million. The Directorate emphasized in particular the large number of violations, that the exposure had reached many people. The most severe part was however that the breaches were directed towards and influenced children, both by using measures that are typically used in advertisements towards children, but also that celebrities which are popular amongst children attended the launch events and were promoted in the material.

Also the product itself was deemed to be popular among the younger audience. The Directorate in particular highlighted the "chugging video" as a severe breach, as this could influence children and young people to attempt the same.

Comments

While there are many examples of breaches of the prohibition of advertising of alcoholic beverages through use of social media, the circumstances are rather unique. The examples of promotions in social media in this case serve as an illustrative and educational guidance on which activities to avoid unless you want the Directorate's attention. At the same time, the strict approach by the Directorate does raise the question of where the line between freedom of expression for artists and commercial activities should be drawn.

In particular, the statements from the Directorate that omissions to act when artists promote a manufacturer's products are considered as "contributing" to a breach is concerning. If the statement is not a result of the special circumstances of this particular case, but a principle that applies in general, it means that manufacturers cannot sit idle by when artists use their products. At the same time, such intervention may in many cases not be legitimate and also runs the risk of negative PR for the company, as it may be seen as an attempt to hinder freedom of expression. In other words, damn if you do, damn if you don't.

At the time this article is written, it is unclear whether Nummer En and The Big Norwegian will appeal the decision. In light of the size of the violation fines, that seems rather likely. As such, we can likely expect to receive some clarifications from the appeal instance (the Marketing Council) in the future.

ARE PORTION PACK FIGURES OF NUTRITIONAL DECLARATIONS PROBLEMATIC?

Case C-315/24: A recent decision from the CJEU clarifies whether information is considered as description of properties and characteristics for a food for special medical purposes, or whether it is considered a mere repetition.

Background

Some foods have stricter regulations than others. Foods for infants and young children, food for special medical purposes and total diet replacement for weight controls are amongst these, and are regulated by the EU by Regulation 609/2013, which states that foods can only be placed on the market if they comply with all the requirements of this Regulation. For the category foods for special medical purposes, the requirements stipulated in the Commission Delegated Regulation 2016/128 also applies.

Any food labelling enthusiast will be aware of the mandatory labelling requirements set out in Article 9(1) of Regulation 1169/2011 (FIC). However, pursuant to Article 5(2) of Regulation 2016/128 additional mandatory particulars are required to be stated. One of these particulars are set out in Article 5(2) g:

> "*a description of the properties and/or characteristics that make the product useful in relation to the disease, disorder or medical condition for the dietary management of which the product is intended, in particular, as the case may be, relating to the special processing and formulation, the nutrients which have been increased, reduced, eliminated or otherwise modified and the rationale of the use of the product*"

At the same time, Article 6(2) of this Regulation stipulates that the information included in the mandatory nutrition declaration for food for special medical purposes shall not be repeated on the labelling. The question on whether a particular set of information is a repetition or a description pursuant to Article 5(2) litra g, can therefore be of importance when assessing compliance with the labelling of food for special medical purposes.

This was recently illustrated in a case which originated from Sweden, where Nestlé on the front of the packaging of special medical purpose foods used particulars relating to the energy value and the amount of various nutrients, expressed not per 100 g or per 100 ml, but per portion or per consumption unit. The Swedish Environment Committee required Nestlé to remove these particulars, based on the reasoning that use of these constituted a breach of Article 6(2) of Regulation 2016/128, since this was information which was already presented by the mandatory nutrition declaration provided for by FIC Article 30(1), expressed as either per 100 g or per 100 ml cf. Article 32(2) of FIC.

Nestlé decided to challenge the decision from the Environment Committee before the courts. Nestlé argued that the particulars in question did not constitute a repetition of the information included in the mandatory nutrition declaration, but should be considered as supplemental to that declaration, and thus allowed by Article 5(2) litra g. Nestlé was unsuccessful both in the first instance and in the appeal instance, but when the case arrived at the Swedish Supreme Administrative Court, the question was referred to the CJEU.

CJEU's decision

On 9 October 2025, the CJEU rendered its decision. CJEU first pointed out that in previous decisions, the Court had held that since food for special medical purposes first and foremost is food, the specific regulation must be understood in light of other legislation applicable to food, with reference to the principle established in C 760/21 Kwizda Pharma paragraph 59. As such, Article 5(2) litra g and Article 6(2) would have to be understood in light of Regulation No 1169/2011 (FIC) as well as Regulation No 609/2013.

CJEU found that from the wording of Article 5(2) litra g of Regulation 2016/128, that provision concerns mandatory particulars in addition to those which must also appear under Article 9(1) of FIC (i.e. the nutritional declaration). And these particulars could not be considered as mandatory information under that provision and at the same time constitute additional mandatory particulars within the meaning of Article 5(2) litra g of Regulation 2016/128. According to the CJEU, the information pursuant to Article 5(2) litra g is in addition to the mandatory information required by FIC.

The CJEU also pointed out that Article 5(2) litra g requires a "description" of the properties or characteristics of a product. This could not refer to particulars that already appear - albeit expressed differently - in the mandatory nutrition declaration on the back of the packaging of the food in question. When the food business operator merely repeats this information on the front of the packaging, this is not a description of particulars. The fact that such information is useful, which was raised by Nestlé, was irrelevant in the eyes of the Court.

An additional item raised by the CJEU was that the particulars mentioned in Article 5 of Regulation 2016/128 went beyond the nutritional content of the food concerned and was thus intended to be in addition to the nutritional content. In view of the fact that food for special medical purposes has been processed with a view to the dietary management of certain patients and which is to be used under medical supervision (cf. also recital 17 of Regulation 2016/128), the information necessary for the proper use of those foods could not be limited to a mere repetition of the particulars that already exist in the mandatory nutrition declaration. The CJEU also pointed towards the purpose of the rules on food for special medical purposes - to establish a high level of protection for vulnerable consumers, and that these products are intended to be consumed under the supervision of healthcare professionals.

In light of this, the CJEU found that Article 5(2) litra g and Article 6(2) of Regulation 2016/128 when properly interpreted, meant that indicating energy value and amount of nutrients expressed per portion or per consumption unit, when the mandatory nutritional declaration contains a statement of the energy value and amount of nutrients per 100 g or per 100 ml, is not a "description of the properties and/or characteristics" of a product within the meaning of Article 5(2) litra g, but a repetition of the information of the mandatory nutritional declaration, and thus prohibited by Article 6(2).

Comments

For foods in general, FIC Article 33(1) allows nutritional declaration to be expressed per portion or unit in addition per 100 g or 100 ml. The prohibition is thus a result of the strict rules applying for foods for special medical purposes. The decision by the CJEU emphasizes the main point of view for the labelling rules for foods for special medical purposes: They are intentionally stricter than those of FIC, and in place to protect vulnerable consumers, and intended for supervised use.

For food business operators involved in foods for special medical purposes, this decision brings necessary clarity on the relationship between the requirements of FIC and the specific rules governing labelling of such products. The result also means that food business operators should perform audit checks and if necessary, remove any nutritional declarations concerning portions or units, e.g. portion pack figures traditionally used in the food industry.

RECENT DEVELOPMENTS IN TRADEMARK LAW FOR FOOD AND BEVERAGE BRANDS IN NORWAY

In this article, we take a brief look at some of the most significant trademark cases in 2025 at the Board of Appeal for Industrial Property Rights within the food sector.

Throughout 2025, several rulings by the Norwegian Board of Appeal for Industrial Property Rights (KFIR) have addressed key issues relating to the registrability of trademarks in the Norwegian food and beverage market. The rulings address both the threshold for distinctiveness and how the risk of confusion with existing marks is evaluated in Norwegian practice. In the following, we will summarize recent cases that are shaping the current trademark landscape for the sector.

Decisions concerning likelihood of confusion

In **KFIR 24/00084** Reignbow Sorbet, the applicant sought registration of "REIGNBOW SHERBET" for energy drinks, soft drinks, and sports drinks in class 32. The Norwegian Industrial Property Office (NIPO) refused registration, citing a risk of confusion with the previously registered mark "RAINBOW RÅVARER AV FINESTE KVALITET" (in English: “Rainbow Raw materials of the finest quality"), also covering beverages in class 32:

KFIR upheld the refusal, emphasizing that both marks share “Rainbow” (or its homophone “Reignbow”) as their dominant and distinctive element. Given the identical category of goods and the clear phonetic and conceptual similarities, KFIR confirmed a risk of consumer confusion.

Similarly, in **KFIR 24/00105** TICLA, the application to register "TICLA" (for alcoholic beverages, except beer, in class 32) was refused on the grounds of a likelihood of confusion with the earlier mark "TIPLA" for spirits in class 33. KFIR found that the marks were both phonetically and visually similar, noting that the average consumer could easily mistake the "P" in "TIPLA" for a "C" in "TICLA," thereby increasing the risk of confusion.

Two related cases, **KFIR 24/00039** DR BEAST and **KFIR 24/00038** HYPERBEAST, concerned oppositions by Monster Energy Company against registrations for "DR BEAST" and "HYPERBEAST" by Irootfor AB. Monster based the oppositions on a series of "BEAST" marks, such as "UNLEASH THE BEAST!", "HYDRATE THE BEAST!", "REFRESH THE BEAST!", "UNLEASH THE SALTY BEAST!", "FUEL THE BEAST!", and "REHAB THE BEAST!", covering non-alcoholic beverages, beer, and energy drinks in class 32.

KFIR first considered whether the registrations for "DR BEAST" and "HYPERBEAST" should be refused based on the alleged well-known status of the BEAST marks and the claim that they were entitled to enhanced protection as a "trademark family". KFIR rejected these arguments, citing insufficient evidence of extensive or consistent use and no proof that the BEAST marks were widely recognized among the Norwegian public. KFIR also emphasized that the well-known status of the MONSTER brand could not automatically be extended to BEAST-related slogans without specific substantiation.

When assessing the overall likelihood of confusion, KFIR reached different conclusions for the two marks:

- **DR BEAST:** KFIR identified "REHAB THE BEAST!" as the closest comparable Monster mark, but emphasized key conceptual differences between the two. "DR BEAST" would likely be perceived as a "doctor-beast" - perhaps a fictional or sinister character—whereas "REHAB THE BEAST!" suggests rehabilitation or recovery. Given these conceptual differences, along with only moderate visual and phonetic similarity, KFIR found no risk of either direct

or indirect confusion. Accordingly, registration of "DR BEAST" was upheld for all goods.

- **HYPERBEAST:** In contrast, KFIR found an indirect likelihood of confusion with "UNLEASH THE ULTRA BEAST!", focusing on the shared "BEAST" element and the conceptual similarities between "HYPER" and "ULTRA", both conveying notions of intensity or extremity. As a result, registration was refused for beverages and related goods in classes 32 and 30, but permitted for dietary supplements in class 5 and other goods in class 30.

Decisions regarding lack of distinctive character

KFIR 25/00011 Juleskum concerned an application for the combined mark "Juleskum," covering sweets, confectionery, and chocolate in class 30, which had been refused by the NIPO.

KFIR upheld that Norwegian consumers would associate the mark with "Christmas" ("Jule") and "foam/marshmallow" ("skum") candy, describing a familiar seasonal treat. The graphic elements, including the arched letter arrangement and red coloring, were considered to further emphasize the descriptive nature of the mark rather than lend the mark distinctiveness. Haavind represented the applicant before KFIR.

In a similar vein, **KFIR 25/00048** Rainbow Strips saw KFIR uphold the refusal of "RAINBOW STRIPS" for confectionery in class 30.

KFIR held that "rainbow" would be understood as referring to multi-colored sweets, while "strips" described their shape. The figurative features – standard font for "RAINBOW" and the playful, decorative lettering for "STRIPS" – were deemed merely decorative and did not overcome the descriptive impression.

In both cases, KFIR emphasized that registration of these marks in other jurisdictions, including the EU, is not decisive. The key consideration is how the average Norwegian consumer perceives the mark. KFIR ultimately concluded that both "JULESKUM" and "RAINBOW STRIPS" are descriptive and lack the distinctiveness required for registration. The decisions reflect a broader trend and ongoing debate within Norway about whether the standards for registering figurative marks with descriptive terms are perhaps overly stringent. In any case, trademark practitioners should be mindful of these developments when advising clients on the likelihood of successfully registering such marks in Norway.

CAN TRADITIONAL MEDICINAL HERBAL TEA BE CONSIDERED AS "ORGANIC"?

C-618/23: A decision from the CJEU clarifies whether medicinal herbal tea can refer to the organic logo on the outer packaging.

Facts of the case

The German company SALUS marketed a medicinal herbal tea based on sage leaves, which on the outer packaging used the organic production logo of the EU, as well as using statements such as "from organic production". The tea in question is qualified as a "traditional herbal medicinal product", which is specifically defined in the Medicinal Product Directive (2001/83/EC)

A competitor in the tea marketed alleged that such use infringed the German legislation on marketing of medicinal products and initiated a legal action against SALUS. The German legislation in question complied with Article 62 of Directive 2001/83/EC, which basically states that the outer packaging and the package leaflet may include symbols or pictograms designed to clarify mandatory information pursuant to the requirements of the Directive, as well as *"other information compatible with the summary of the product characteristics which is useful for the patient, to the exclusion of any element of a promotional nature."*

The first instance German court ruled that the use of the logo and use of organic statements was an infringement of the German legislation on labelling of medicinal products. However, SALUS appealed the decision, and argued that Regulation 2018/848/EU on organic production and labelling of organic products applied not only to food but is also applicable to "other products closely linked to agriculture" listed in Annex 1, cf. Article 2(1) section paragraph. Among the categories listed in Annex 1 is "*plant-based traditional herbal preparations*." As such, SALUS argued that the labelling provision in both sets of rules applied concurrently, and in any event that the labelling elements authorized by Regulation 2018/848/EU must be considered as useful for the patient, cf. Article 62 of Directive 2001/83/EC. The appeal instance decided to refer to the matter to the Court of Justice of the European Union (CJEU).

CJEU's decision

The CJEU rendered its decision on 26 June 2025. The CJEU first evaluated whether products classified as a "traditional herbal medicinal product" by the medicinal product directive simultaneously can be regarded as "plant-based traditional herbal preparations" according to the organic production regulation. The CJEU pointed to that it follows from established case law that Article 2(2) of Directive 2001/83 gives priority to the application of EU law relating to medicinal products, by reason of the higher requirements deriving from the law relating to medicinal products for the placing of products on the market, is also consistent with the objective of a high level of protection of human health (cf. Also, C-760/21 *Kwizda Pharma*). Therefore, only the provisions of EU law specific to medicinal product apply to a product which satisfies equally well the conditions for classification as a ‘foodstuff’ and the conditions for classification as a ‘medicinal product’ (cf. Also joined cases C-211/03, C-299/03 and C-316/03 to C-318/03 *HLH Warenvertrieb and Orthica*).

Consequently, the CJEU found that the exclusive nature of the provisions of Directive 2001/83 precluded that a traditional herbal medicinal product within the meaning of that directive at the same time could come within the scope of other legislation that is not specific to medicinal products, such as Regulation 2018/848.

The CJEU then moved on to whether Article 62 of the medicinal product directive should be interpreted so that information relating to the organic production of the active substances of traditional herbal medicinal products could be considered as "useful to the patient" and not being "of a promotional nature". The CJEU here pointed out that

since Article 62 did not make any reference to national laws, the concepts of information "which is useful to the patient" and of "element of a promotional nature" must be regarded as autonomous concepts of EU law, which must be interpreted in a uniform manner throughout the territory of the European Union.

The CJEU further pointed out that the information referred to in Article 62 of the Medicinal Product Directive would have to be information which serves to inform patients as to the correct use of medicinal products, that information contributes to the protection of public health. Such information would make it possible to safeguard the patient from an excess of irrelevant information and marketing in the labelling of medicinal products, while promoting the proper use of those medicinal products.

If an economic operator could choose to use additional information on their outer packaging, such an objective could be jeopardized. Such information would be liable to be promotional in nature in particular where those elements are devoid of any value as regards health, they do not correspond to any of the indications provided for in the summary of the product characteristics, and the medicinal product can be purchased without a prescription. Therefore, information concerning the organic production of active substances was not considered as relevant information pursuant to the medicinal product directive Article 62.

Comments

This decision confirms that products that are classified as traditional herbal medicinal products cannot use the organic logo nor any statements concerning organic production in the labelling or marketing of such products. It also underlines that the strict rules of the Medicinal Product Directive take precedence over regulatory requirements following from other frameworks.

While the decision is an important clarification for national authorities governing the rules on organic products, businesses working within the herbal sector should take note. In particular, it is important for businesses which import organic products from abroad to clarify whether the product is classified as a medicinal product or as a food product, and thus whether the product is compliant or not.

IS THE NAME OF A BREAD A NUTRITIONAL CLAIM?

And if so, how coarse must the bread be in order to use the claim in Norway?

Background

In February 2023, a bakery was subject to an administrative decision concerning several infringements of the rules of labelling for three of their products. One of their products affected was a wholemeal bread which used the brand name "Ekstra Grov" (which can loosely be translated to "Extra Coarse". In the administrative decision, the Norwegian Food Safety Authority (NFSA) alleged that the coarseness of bread was a nutritional claim which was equal to a claim concerning fiber.

In the administrative decision, the regional office of NFSA alleged that a bread can be labelled as grovt/grov ("coarse") when more than half of the flour mix contains wholemeal flour, whole grains or bran. Products labelled with "grov/grovt" would thus not be considered as a nutritional claim as such, because this did not refer to a specific substance. However, in the same decision, the NFSA also claimed the average consumer would consider "grov" and "grovhet" ("coarseness") to be related to fiber, which is stated in Annex I of the Regulation 1924/2006 (the nutrition and health claim regulation), and states that it is not allowed to reinforce approved nutrition claims which words such as "super" and "extra", as this provides a new meaning of the claim. The decision then claims that the average consumer would consider the brand name as a nutritional claim concerning a high level of fiber. The NFSA refers to its guidance document, which at the time of the decision did refer to that product names using "wholemeal bread" created an expectation on high fiber content, and thus such a tradename was considered as a nutritional claim.

An issue further complicating the matter was the fact that the product "Ekstra Grov" was labelled with the so-called Bread Scale, which is a voluntarily labelling scheme owned by the Federation of Norwegian Bakers and Confectioners (BKLF). The Bread Scale uses a "pie slice" diagram to indicate the coarseness of the bread by four separate figures, where the number of pies indicate the coarseness. For instance, in order to use the symbol with three pie slices, the bread must have between 51-75,9% wholemeal or whole grains and

for four pie slices, 76-100% wholemeal or whole grains. Two of the marks used are depicted below:

Pictures obtained from the Norwegian Industrial Property Office's Database – applications 201801582 and 201801573

The percentage of these ingredients are also stated on the labelling. The Bread scale is widely used in labelling of bread in Norway, and thus well known by Norwegian consumers. By a mistake, the product "Ekstra Grov" used an older version of the Bread Scale, where it was stated "Coarseness 75%". However, the NFSA claimed that even with the correct use of the bread scale, it would not be permitted to use "Extra" in relation to the Bread Scale mark or other places on the packaging, even if the terms of the bread scale state that breads with a coarseness between 76-100% are classified as "extra coarse".

The bakery challenged the decision. First, it clarified that despite the labelling, the bread in question did in fact contain 76% of wholemeal/whole grain, so the classification according to the Bread Scale was correct. Somewhat interesting, the bakery did not argue that "Ekstra Grov" ("Extra Coarse") was not a nutritional claim – to the contrary, they argued that it was a permitted claim pursuant to the regulation, as it would be perceived by the consumers as the same as the claim "High in fiber". Second, in the event that "Ekstra Grov" was not a permitted nutritional claim, the bakery argued that it was a trademark and referred to Article 1(3) of the Regulation. Article 1(3) permits the use of a trademark, a brand name or fancy name, which appears in the labelling, presentation or advertising and which otherwise can be construed as a nutrition or health claim, but only if accompanied by a related nutrition or health claim.

The appellate instance decision

In June 2025, i.e. more than two years later, the headquarters of the NFSA (the appellate instance) rendered its decision. First, the NFSA

points out that bread is not a category which is particularly defined in the food legislation, thus neither are the definitions "coarse flour" or "wholemeal bread". The common understanding is that a bread can be called a wholemeal bread when more than half of the flour mix is wholemeal flour, whole grains or bran.

The NFSA further points out that there are three approved nutritional claims concerning fiber. "Coarse" is not a nutrient or any other substance. The NFSA found that there is no direct correlation between the coarseness and the fiber content, and there is no "common understanding" on how much fiber a bread must have to be called "grovt" ("wholemeal"). The NFSA thus also points out that in the Bread Scale, consumers do receive information about the coarseness of the bread, but nothing in the Bread Scale required a designation of fiber.

The appellate instance interestingly then states that there should be a high threshold for a discretionary assessment of whether a statement can be considered as a claim which must be considered to have the same meaning for the consumer as a claim stated in the Annex of the Regulation. The NFSA concludes by stating that in its opinion, "Coarse" is not a nutritional claim according to the Annex 1 of the Regulation, and "coarse" is not specific enough to say that it has the same meaning for the consumer as a nutritional declaration about fiber.

If the NFSA decision had stopped here, this means that both the first instance and the bakery were incorrect, but by default, the order to cease using "Ekstra Grov" could not have been based on the provisions of the nutritional and health claim regulation. However, the NFSA went further.

The NFSA points out that it is also necessary to assess whether the labelling or marketing is misleading, cf. Article 7 of Regulation 1169/2011 on food information to consumers (FIC), and that in such an assessment, the view of the average consumer must be taken into account. Interestingly, the appellate instance states that in regard to whether labelling or marketing is misleading, it should be considered whether it is likely that the expression or statement in question is "a direct cause to someone deciding to purchase a specific product compared to another." This is not among the four considerations mentioned in Article 7(1) litra a-d.

The NFSA points out that according to FIC Article 17, foods shall be labelled with its legal name. If there is no legal name, the food shall use its common name, or if there is no common name, a descriptive name. For bread products, there is no prescribed description in the

legislation. However, the common understanding is that wholemeal bread contains at least 50% wholemeal flour, which was also the basis for the Bread Scale. The decision cites that nearly half of all consumers use the Bread Scale when purchasing bread. As such, the appellate instance found that it is customary that an "extra coarse bread" should have a coarseness of at least 76%. The common name of a bread with 75% coarseness is thus "grovt brød" ("coarse bread" or "wholemeal bread"), and not Ekstra Grov. Pointing out that information that the bread is "extra coarse" is considered as food information pursuant to Article 2 second paragraph litra a, such information must also be accurate, clear and easy to understand for the consumer, and not misleading.

In its conclusion, the appellate instance points out that it can be relevant information for the consumer to differentiate between ordinary "coarse breads/whole meal breads" and those which have a higher degree of coarseness. "Extra" in this regard would be considered as something coarser than an ordinary "wholemeal bread". Referring again to the established parameters of the Bread Scale, an average consumer would thus expect that in cases where "extra coarse" is used, the bread is at least 76% coarse. It is thus misleading to use the statement "Ekstra coarse" for a "wholemeal bread" which is 75% coarse. The bakery had argued that the bread actually contained 76% wholemeal flour and whole grain, but the NFSA found that this had not been documented.

The bakery thus partially won the case with regard to the allegations concerning a nutritional claim, but not with regard to the brand name being misleading, cf. FIC Article 7(1).

In summary, "extra coarse" when used for a whole meal bread is no longer considered as a nutritional claim, but in order to use such a statement or name for the product (either as a brand name or the name of the food according to FIC Article 17, the product must comply with the definition of "extra coarse" in the Bread Scale, i.e. at least 76% whole meal or whole grain.

Comments

Despite the reasoning of the headquarters of the NFSA being rather short, there are a lot of learning points from this decision.

First, the NFSA has reverted itself with regard to statements in its previous guidelines. In these guidelines, a specific case was mentioned where the name "Monstergrovt" ("monster coarse") could not be used for a bread which contained 5,2 grams of fiber. In that case, "Monstergrovt" was considered as a nutritional claim concerning high fiber. This decision is in direct contrast, and that the appellate instance at the NFSA apparently does not choose to follow its own precedents from previous cases is noteworthy.

Second, the statement that there should be a "high threshold for a discretionary assessment" of whether a statement can be considered to have the same meaning as a nutritional claim listed in Annex 1 should also be noted. This is a double-edged sword – on one hand, it narrows down expressions and statements which can be considered as equivalent to a nutritional claim. However, it can also potentially be used to argue that if the wording deviates too much from the wording of the approved nutritional claim, it can no longer be considered as a nutritional claim in the Annex, and thus not compliant with Article 8 of the regulation.

Third, the decision illustrates the necessity to assess the rules of nutrition and health claims and the rules of FIC in tandem. Even if your brand name is not considered as nutrition claim or a health claim and thus outside the scope of these rules, it is necessary to consider your brand name in relation to the rules of FIC, most notably whether it is misleading pursuant to Article 7. As illustrated by this example, a "brand name" can be misleading if it deviates from the legal, customary or descriptive name pursuant to FIC Article 17.

The decision also raises an interesting question concerning the interpretation of FIC Article 17. The NFSA's consideration that when

assessing whether information is misleading should be considered in light of whether the consumer would consider to purchase a specific product compared to another is likely inspired by the misleading requirements in the Marketing Control Act, which is based on the rules of the Unfair Consumer Practice Directive (Directive 2005/29/EC - UPCD).

This raises a question on the relationship between FIC and UCPD. On one hand, recital 15 of FIC does refer to the UCPD, and states that the general principles of that Directive should be complemented by specific rules concerning the provision of food information to consumers. However, UCPD Article 3(4) states that *"In the case of conflict between the provisions of this Directive and other Community rules regulating specific aspects of unfair commercial practices, the latter shall prevail and apply to those specific aspects."* In other words, in cases of conflict, FIC rules shall prevail. That the wording of Article 7 does not include a "transactional decision" requirement indicates that there is no such requirement for a decision to be misleading by FIC Article 7 and implementing a limitation which does not follow from the wording, which the NFSA seems to argue for, seems to be a bit of a long shot.

The fact that it took more than 2 years before the appellate instance even began to process the administrative complaint from the bakery is also disconcerting, also because it may discourage food business operators from challenging decisions from the first instance of the NFSA concerning labelling and advertising.

The abovementioned decision is not the only decision concerning this topic. A separate decision by the appellate decision was also rendered in June 2025, with the same topic (albeit where the subject was a different bakery). Unlike in the abovementioned case, the complainant argued that "Extra Coarse" was not a nutritional claim, as it did not relate to fiber content.

FIRST HEALTH CLAIM FOR FRESH FRUIT APPROVED

Two large green kiwis a day…

On 30 August 2025, a health claim for a fresh fruit was approved via Commission Implementing Regulation (EU) 2025/1560. In recognition of the scientific evidence demonstrated for the digestive benefits of the green kiwifruit (Actinidia deliciosa), food business operators may now use the claim "Consumption of green kiwifruit contributes to normal bowel function by increasing stool frequency". The claim may be used for fresh green kiwifruit sold as such, or fresh green kiwifruit which have only been peeled and or/cut. Information must be given to the consumer that the beneficial effect is obtained with a daily intake of 200 g of fresh green kiwi flesh.

Somewhat worrying is that the procedure to approve the health claim took 5 years, as the applicant applied for the health claim in 2020, of which only 9 months was by EFSA, which presented a positive opinion in 2021. A lengthy regulatory procedure for several years after EFSA provided its scientific opinion is not exactly encouraging for applicants.

This is also the first time a health claim has been approved for fresh fruit. It is also a rare example of health claims being granted for a food as such and not an ingredient. Other examples of approved health claims for foods include meat (contribute to the improvement of iron absorption when eaten with other foods containing iron) and walnuts (contribute to the improvement of the elasticity of blood vessels).

The purpose of the framework of EU's rules on health claims is partially to protect consumers and partially to ensure the effective functioning of the internal market (to avoid distorting created by unequal competition). While health claims by its nature are a complex matter and topic of somewhat controversy, this case emphasizes that it might be time for a revision. The fact that it seems easier to get a health claim for an ingredient than for foods as such underlines the conservative nature of the health claim regulation, and the fact that it took several years via a complex regulatory procedure to get an approval for a food that is consumed widely after the scientific opinion was established shows the restrictiveness and complexity of the legislation.

Norwegian food business enterprises should note that at the time of the publication of this article, Commission Implementing Regulation (EU) 2025/1560 has not been entered into the EEA Agreement, and the health claim is thus not formally permitted to be used in Norway yet.

HEALTH CLAIMS ON BOTANICALS ARE PROHIBITED OUTSIDE OF TRANSITIONAL RULES

Case C-385/23: In last year's addition of Food and Beverage Insight, we addressed the Advocate General's opinion concerning the use of non-specific health claims for botanical substances. On 30 April 2025, the CJEU rendered its decision, with no surprises.

Background

The Regulation 1924/2006 on nutrition and health claims (the health claims regulation) is based on a principle that only health claims approved by the Commission are permitted, and several conditions of use need to be fulfilled. A key aspect of the regulation is the use of so-called non-specific health claims, which can only be used in combination with an approved specific health claim. An example for illustration: in order to use e.g. the non-specific claim "good for the heart", it is required to include a relevant specific health claim, e.g. “EPA and DHA contribute to the normal function of the heart".

For botanical ingredients, the health claim regulation has a rather complex history. When the health claims regulation was adopted, a prerequisite was that Member States should notify previous claims used to be scrutinized. Amongst the 44,000 claims reported there were approximately two thousand health claims on botanical ingredients. However, when botanical claims were assessed by EFSA in 2010, traditional data for the substantiation of health claims were found to be insufficient, despite the fact that 43 medical claims for traditional herbal medicines were accepted on the basis of traditional data. This discrepancy led to the Commission ceasing the assessment of health claims for botanicals, and these were ultimately placed “on hold”, and these claims could be used according to the transitional rules of Articles 28(5) and 28(6), until they had been examined. The status of “on-hold” for these claims have thus lasted for more than a decade.

The case in a nutshell

A German supplier of nutritional supplements containing saffron extracts and melon juice had made non-specific health claims that the German supervisory organization, Verband Sozialer Wettbewerb eV, ('VSW') alleged were prohibited under article 10. This initiated legal proceedings in Germany, where both the first instance and the appeal court found that the use of the claims were non-compliant with the health claims regulation. In order to be a violation, it is necessary to determine whether articles 10(1) and 10(3) do in fact apply to botanical substances. If this is the case, then non-specific health claims for botanical can only be used combined with an "on hold" botanical claim. However, these are not formally approved. When the German supplier appealed to the German Supreme Court, the court was of the opinion that it was unclear whether Articles 10(1) and 10(3) did in fact apply to botanicals substances. On one hand, as a matter of principle, this was not precluded by the regulation. On the other hand, in the view of the court, this was a matter of principle that was not resolved pending the outcome of the examination of the botanical claims. As such, the matter was referred to the CJEU.

The referring court thus in essence asked whether Article 10(1) and Article 10(3) prohibits the use of health claims or non-specific health

claims as long as such claims are not included on the positive lists, until the Commission has completed its examination of health claims relating to botanical substances.

The CJEU's decision

The CJEU confirmed the view that a specific health claim can only be used if it is approved and listed according to either Article 13(3) or Article 14(1). In other words, "on hold" claims are prohibited until they are included on these lists. However, this is not the case for claims which are subject to the transitional rules in Article 28(6). CJEU stated that under that provision, the health claims referred to, in Article 13(1)(b) of Regulation No 1924/2006 which have not been the subject of an evaluation and authorisation in a Member State may continue to be used, provided that an application was submitted in accordance with that regulation before 19 January 2008. However, this was not the case for the claims pertaining to the case from the referring court, as one of the claims was subject to a late application, and no application existed for the other. In other words, these were not under the transitional regime provided for in Article 28(6).

The CJEU thus concluded that Article 10(1) and 10(3) means that it is not permitted to use a specific health claim describing or referring to psychological or behavioral functions, or to make reference to the general, non-specific benefits of such a substance for overall good health and health-related well-being without that reference being accompanied by a specific health claim, unless the use of such claims is permitted under Article 28(6).

Comments

The decision of the CJEU is in line with the opinion of the Advocate General from October 2024, and the outcome was thus expected.

A point of interest is that the CJEU specifically addresses the transitional rules pursuant to Article 28(6), which applies only for certain types of health claims (psychological and behavioral functions). The transitional rules for the largest group of health claims, so-called 13(1)a claims (physiological function claims), are governed by Article 28(5). The CJEU does not adress transitional rules for these claims specifically in the reasoning. This could potentially raise the question on whether generic health claims pursuant to Article 10(3) can be accompanied by a physiological function claim for the botanical claims covered by the transitional regime in Article 28(5). However, these were addressed in the Advocate General's opinion, and thus there is little reason to believe

that there is a difference concerning the application of law for physiological function claims.

The decision provides required clarity with regard to the use of botanical claims and emphasizes that the prohibition on unauthorized health claims operates irrespective of the regulatory process concerning the botanical claims, which is currently suspended. The decision also expands on the rather rigorous approach CJEU found in Case C-524/18 *Dr. William Schwabe*, emphasizing the link between the generic clams of Article 10(3) and specific health claims of Article 13-14.

Haavind

Better understanding - better solutions