

Battle against unfair advertising

by Miriam Schuh and Saskia Wittbrodt

The Cosmetic Products Regulation and unfair competition

Protagonists in the cosmetics industry who do not adhere to the specifications of the Claims Regulation will in future face major liability risk under the law of competition

All manufacturers and distributors of cosmetic products should be familiar with them: the specifications of the Cosmetic Products Regulation for the labelling, making available on the market and in particular advertising of cosmetic products. They state that no texts, names, trade marks, pictures or other figurative or non-figurative signs are to be used in advertising if they purport to have features or functions which the products concerned do not actually possess. These specifications are supplemented by the common criteria dealt with in the appendix to the regulation laying down common criteria for the justification of claims used in relation to cosmetic products ([Claims Regulation EC 655/2013](#)). According to those, all the legal requirements must be complied with in the advertising of cosmetic products, and the advertising must furthermore be designed in such a way as to be truthful, verifiable, honest and fair and to enable the consumer to make an informed decision.

If market protagonists do not comply with these specifications, they face major liability risk under the law of competition. The specifications of the Cosmetic Products Regulation are market behaviour provisions within the meaning of the German Unfair Competition Act (UWG), violation of which can establish a basis for claims under the law of competition.

In spite of copious jurisprudence at supreme court level in respect of unfair advertising practices ...

- [BGH, judgement of 21 January 2010, file no. I ZR 23/07 \('Alpecin'\)](#)
- [BGH, judgement of 28 January 2016, 1 ZR 36/14 \('moisturising gel reservoir'\)](#)
- [BGH, judgement of 29 September 2016, I ZB 34/15 \(recall obligations following violation of the law of competition\)](#)

... and many others, there are obviously still market protagonists who continue to advertise their products in ways that flout the specifications of the Claims Regulation and thus gain a market advantage over their competitors.

The aim now is to put a stop to these practices

ICADA ([the International Cosmetic and Device Association](#)), the European service and lobby association for small and medium-sized companies in the cosmetics industry, has now been given the task of redoubling its efforts in the combating of unfair advertising in the cosmetics industry, in order to clarify the existing rules for the sector across the whole of its width and render the existing limitations visible. An initial precedent has already been brought to court, and according to ICADA the intention is to follow it right through to the last consequence. Apart from that, ICADA offers all market protagonists who are disadvantaged by the advertising behaviour of their competitors the opportunity to report on what has happened to them.

Outlook

It remains to be seen whether or not this campaign has the desired effects of enlightening the sector and preventing unfair advertising in the cosmetics industry in the long term. The risk that this will bring competitors into the arena sooner than has been the case so far is certainly likely to increase considerably as a result of the campaign. Effective compliance management with regard to the advertising of cosmetic products will thus become much more important, and appropriate costs should be budgeted for in good time.



reuschlaw Legal Consultants

reuschlaw Legal Consultants advise companies active on a national and international scale in more than 30 countries in the areas of product liability, product safety law, recall management, insurance law, cyber security and data protection, compliance management and contract law. The sectorial focus is on companies in the machine manufacturing and automotive supply industries, the consumer goods industry and manufacturers of medical devices and cosmetic products.

Company contact: Melanie Schuh / Head of Marketing & Communications / T +49 30 2332895-0 / E melanie.schuh@reuschlaw.de