

CE marking for individual parts: CE-rtainly?!

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In a Judgment on 5 July 2019, (Case No. 6 U 21/15), the [Higher Regional Court of Cologne](#) had to decide whether the housing for an electrical connector requires a CE marking if it is sold separately from the connector. The plaintiff in that case was appealing a Judgment of 21 January 2015 by the District Court of Cologne ([Case No.: 84 O 23/11](#)).

The plaintiff, an association devoted to combating unfair competitive practices, was seeking an order requiring the defendant, which was selling the housing separately from the electrical connectors, to desist from marketing this housing with the CE marking. Such an order may only be issued in response to an unfair business practice in accordance with the Act Against Unfair Competition. The plaintiff argued that affixing the CE marking in the present case constituted such a practice.

The duty to affix CE markings follows from the [Product Safety Act](#). The CE marking may only be affixed in the cases provided for in that statute. The [1st Product Safety Ordinance](#) for the Product Safety Act states that the CE marking is to be affixed for "electrical equipment."

The 1st Product Safety Ordinance is based on the [EU Low-Voltage Directive](#). Accordingly, the District Court of Cologne referred a question to the [ECJ](#), asking whether the provisions of the Low-Voltage Directive should be interpreted to mean "that housing as a component of multipole connectors (...) does not require to have a 'CE' marking affixed to it?" The [ECJ ruled](#) that the housing may qualify as electrical equipment in terms of the Directive if it performs a safety-related function, as opposed to merely aesthetic and protective functions. The ECJ found that this is not the case if the safety of the electrical equipment essentially depends on the manner in which it is incorporated into the final appliance. However, a counter-exception to that rule would apply if the electrical equipment has safety features independent of its incorporation into the appliance which may be subject to an examination relating to safety requirements. In such a case, the housing would still have to bear a separate CE marking. Based on this ruling, the District Court dismissed the complaint.

On the plaintiff's appeal, the Higher Regional Court largely adopted the legal view expressed by the District Court. It found that, while the provision in the Product Safety Act concerning the duty to affix the CE marking does generally qualify as a rule of market behavior subject to desistance claims in terms of the Act Against Unfair Competition, the CE marking affixed to the product in question does not violate the Product Safety Act. The Higher Regional Court referred at length to the ECJ's Judgment. Due to the fact that the housing has independently verifiable safety features whose conformity is not diminished by proper installation, the court ruled that it does qualify as electrical equipment in terms of the 1st Product Safety Ordinance and therefore requires CE marking in accordance with the Product Safety Act.

Practical tip

Violations of labeling requirements may result in cease and desist letters and even actions for desistance, which may be costly. Therefore, those responsible should absolutely make sure that they know in advance which of their products require a CE marking. These decisions are often made on a case-by-case basis.



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