**BGH Finds False Statements about Product Category Misleading**

Consumers must not be misled regarding the essential characteristics of a product. According to the case law of the Bundesgerichtshof (BGH), Germany’s Federal Supreme Court, the allocation of a product to a product category represents one of its essential characteristics.

Germany’s Unfair Competition Act, the Gesetz gegen den unlauteren Wettbewerb (UWG), provides that consumers must not be misled regarding the essential characteristics of a product or service. We at the commercial law firm GRP Rainer Rechtsanwälte note that examples of essential characteristics include the availability, benefits, risks, composition or properties associated with the product or service in question. In a ruling from June 21, 2018, the Bundesgerichtshof held that if a product belongs to a product category, this represents one of its essential characteristics if it serves to differentiate the product from other categories (Az.: I ZR 157/16).

The instant case concerned an engine oil that was referred to as “vollsynthetisch”, i.e. fully synthetic. Fully synthetic engine oils are generally located in the upper price segment because they are more expensive to produce than other oils. The plaintiff asserted that the use of the term “vollsynthetisch” in relation to the defendant’s engine oil was misleading, arguing that it did not satisfy the conditions required for it to be deemed a fully synthetic engine oil.

The Oberlandesgericht (OLG) Köln, the Higher Regional Court of Cologne, had granted the claim and prohibited the defendant from continuing to refer to the engine oil in question as fully synthetic for competition purposes. It held that the average consumer is entitled to expect an engine oil advertised as fully synthetic to be in line with products with this term in their name that have been available to date, since this is what informs consumers understanding of what a fully synthetic engine oil is. The OLG Köln went on to state that if the oil is obtained via another production process, it is misleading to then promote the relevant oil as “vollsynthetisch”, a term that is already established in the market.

The BGH upheld this view, ruling that the term was misleading because it gave consumers a false impression. When assessing whether it was misleading, the Court noted that it was not the specific properties of the product that were decisive but rather consumers’ expectation that fully synthetic oils belong to a product category of artificially produced oils that are located in the upper price segment and of high quality due to the complex production process involved. The Court concluded that it is therefore misleading if the oil is in fact obtained via another production process.

Violations of competition law can be met with severe penalties. Lawyers who are experienced in the field of competition law can offer advice and assist in fending off or enforcing claims arising from violations of this kind.

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