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Judgment of the Court in Case C-296/23 | dm-drogerie markt

Advertising for biocidal products: EU law prohibits use of the indication 'skin friendly'

The drugstore chain dm-drogerie markt GmbH & Co. KG ('dm') offered the disinfectant 'BioLYTHE' for sale. The label affixed to that product contained the following indications: 'ecological universal broad-spectrum disinfectant', 'skin, hand and surface disinfection', 'effective against SARS-Corona' and 'skin friendly • organic • alcohol-free'.

The German Association for Protection against Unfair Competition considers that the advertising concerned is unfair. According to that association, dm failed to comply with the regulation on biocidal products¹. It therefore brought an action before the German courts in order to require dm to refrain from designating or marketing the product at issue as an 'ecological universal broad-spectrum disinfectant' and/or 'skin friendly' and/or 'organic'.

Under the regulation, biocidal products may not be advertised in a manner in which the indications may mislead the user in respect of the risks from those products to health or the environment or in respect of their efficacy. Promoting a biocidal product with the indications 'low-risk biocidal product', 'non-toxic', 'harmless', 'natural', 'environmentally friendly', 'animal friendly' or any similar indication is prohibited.

In those circumstances, the Federal Court of Justice, before which the specific issue of the use of the indication 'skin friendly' was raised, referred a question to the Court of Justice. It wished to know whether the statement 'any similar indication' includes any indication that, like those cited above which are expressly referred to by the regulation, downplays the risk from a biocidal product to health or the environment or its efficacy, without being general in nature.

The Court notes that the regulation contains no indication that the prohibition is limited only to the use of general indications in the advertising of biocidal products. Accordingly, both general and specific indications that downplay the risks from those products may mislead the user in respect of the existence of those risks. Consequently, **the statement 'any similar indication' includes any indication in the advertising for biocidal products which refers to those products in a manner that is liable to mislead the user by downplaying those risks or even denying their existence, without necessarily being general in nature.**

With respect to the indication 'skin friendly', the Court observes that such an indication has a positive connotation that avoids suggesting any risk, with the result that it may not only qualify the harmful side effects of the product concerned but also imply that the product concerned could be beneficial for skin. **Such an indication is of a misleading nature which justifies the prohibition of its use in the advertising of the biocidal product at issue.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to

dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ Regulation (EU) [No 528/2012](#) of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products.