

Съдебна практика**Данни за случая**

Национален идентификатор: Supreme Administrative Court, Judgement 13376/2020

Държава-членка: България

Общоприето наименование: N/A

Вид решение: Решение на върховния съд

Дата на решението: 28/10/2020

Съд: Върховен административен съд

Заглавие:**Ищец:****Отвeтник:**

Ключови думи: misleading advertising

Членове от директивата

Misleading and Comparative Advertising Directive, [Article 3](#) Misleading and Comparative Advertising Directive, [Article 3](#)

Уводна бележка

The terms "natural", "organic" and "bio" may be used to designate cosmetic products in accordance with good practice, as there is no specific legal regulation and/or mandatory standards governing these designations.

The company name "BioFresh" does not carry enough information about the characteristics of the goods offered by the trader, therefore it cannot influence the choice of consumers and mislead them.

Факти

The trader Refan Bulgaria OOD filed a claim with the Commission for Protection of Competition (CPC) against its competitor BioFresh OOD, requesting the establishment of an applied deception, in particular misleading advertising, and the imposition of a property sanction. The alleged infringement is as follows: "BioFresh" Ltd. offers different types of cosmetic products through its website. As for the series Bio Rose of Bulgaria, there are claims for a percentage of naturalness, and for the series Nat'Aura there are claims for a percentage of organic. The site contains information about the composition of cosmetic products. According to Refan Bulgaria OOD, there are no grounds for these claims, and they constitute misleading information and in particular, misleading advertising.

Furthermore, "Refan Bulgaria" Ltd. believes that the very company name of its competitor - "BioFresh" may mislead consumers to thinking that the trader offers only organic products.

The CPC rejected the request and accepted that BioFresh OOD had not committed a violation of the Law on Protection of Competition (LPC). Dissatisfied, Refan Bulgaria OOD appealed the decision.

Правен въпрос

Is the company name "BioFresh" misleading information?

Is the description of the products contained on a website an advertisement within the meaning of the LPC?

Решение

The SAC considers that the decision of the CPC is correct and confirms it, rejecting the appeal of Refan Bulgaria OOD. In its arguments, the SAC referred to the expertise adopted by the CPC, in which the expert established the following:

- There is no legal regulation governing the conditions under which claims for "natural", "organic" or "bio" can be made when labelling cosmetic products. The only applicable standard is ISO 16128-1: 2018, which is not mandatory.
- There are a number of private certification organisations that issue certificates for "natural" and "bio / organic", but they have their own individual rules and interpretations of these concepts, and there are significant differences between them.
- The technical dossier of each of the considered products indicates the exact qualitative and quantitative composition. All raw materials have the trade names according to the INCI nomenclature.
- The ingredients declared on the packaging fully comply with the technical dossiers.
- The claims of "BioFresh" Ltd. are not for naturalness or organic matter of the cosmetic products themselves, but only of the raw materials from which they are made. In reality, the calculated percentage of organic matter did not take into account the input water, as "BioFresh" Ltd. considers it a "neutral ingredient". If the water is included in the natural part, the percentage of organic matter will be higher than announced on the package.
- "BioFresh" Ltd. has certificates for naturalness and organic matter for the raw materials used in cosmetic products, issued by various independent certification organisations.

The SAC supports the opinion of the CPC that the information on the composition of cosmetic products published on the website of BioFresh Ltd. does not constitute advertising, as it constitutes information required by law, which the trader must provide when trading online. There is no evidence that this information is incorrect or manipulated. It has not been established that BioFresh Ltd. uses advertising methods to promote its products - through television, radio, print or online publications. For this reason, there is no violation of Art. 33 of the LPC.

Finally, the SAC considers that in the absence of regulatory requirements and/or mandatory standards, BioFresh Ltd. has acted in accordance with good commercial practice, providing certificates from independent certification organisations for those ingredients that it claims to be "natural" and "bio / organic" and has correctly announced the composition of cosmetic products.

URL: <http://www.sac.government.bg/court22.nsf/d038edcf49190344c2256b7600367606/951d4e18e213de9fc225860e005d4f22?OpenDocument>

Пълен текст: [Пълен текст](#)

Свързани случаи

Няма налични резултати

Правна литература

Няма налични резултати

Резултат

The Supreme Court of Cassation confirms the decision of the Commission for Protection of Competition, which established that BioFresh OOD did not violate the LPC.