JUDGMENT OF THE COURT (First Chamber)
28 September 1994 *

In Case C-144/93,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Bundesverwaltungsgericht for a preliminary ruling in the proceedings pending before that court between

Pfanni Werke Otto Eckart KG

and

Landeshauptstadt München,

and

Landesanwaltschaft Bayern, representing the public interest,

on the interpretation of the first indent of Article 6(4)(c)(ii) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1),

* Language of the case: German.

THE COURT (First Chamber),

composed of: D. A. O. Edward (Rapporteur), President of the Chamber, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: W. Van Gerven,
Registrar: H. von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Pfanni Werke Otto Eckart KG, by Klaus Alfred Schroeter, Rechtsanwalt, Hamburg,

— the Landesanwaltschaft Bayern, by Walter Rzepka, Generallandesanwalt at the Landesanwaltschaft Bayern,

— the Commission of the European Communities, by Hendrik van Lier, Legal Adviser, and Angela Bardenhewer, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Pfanni Werke Otto Eckart KG, represented by Klaus Alfred Schroeter and Walter Zwipf, Rechtsanwalt, Munich, the Lande-

sanwaltschaft Bayern, represented by Jochen Mehler, Oberlandesanwalt, and the Commission at the hearing on 19 May 1994,

after hearing the Opinion of the Advocate General at the sitting on 16 June 1994,

gives the following

Judgment

1 By order of 26 November 1992, received at the Court on 6 April 1993, the Bundesverwaltungsgericht (Federal Administrative Court) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of the first indent of Article 6(4)(c)(ii) of Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1, hereinafter 'the directive').

2 That question was raised in proceedings between Pfanni Werke Otto Eckart KG (hereinafter 'Pfanni Werke') and Landeshauptstadt München regarding the obligation to include an additive in the list of ingredients appearing on the labelling of its products.

3 Article 3 of Directive 79/112 provides that the labelling of a foodstuff is to include a list of its ingredients. To that rule there are various exceptions, including that

contained in the first indent of Article 6(4)(c)(ii), which provides that the following are not to be regarded as ingredients:

'Additives whose presence in a given foodstuff is solely due to the fact that they were contained in one or more ingredients of that foodstuff, provided that they serve no technological function in the finished product'.

4 That provision was transposed into German law by Paragraph 5(2)(2) of the Lebensmittelkennzeichnungsverordnung (regulation on the labelling of foodstuffs — 'the LMKV'). At the material time that provision stated that the following were not to be regarded as ingredients: 'the substances in Annex 2 to the Zusatzstoffverkehrsverordnung (regulation on the marketing of additives) and aromas which were contained in one or more of the ingredients of a foodstuff, provided that they serve no technological function in the finished product' ('sofern sie im Enderzeugnis keine technologische Wirkung mehr ausüben'). Diphosphate E 450a is included in Annex 2 to the Zusatzstoffverkehrsverordnung of 10 July 1984 (BGBl. I, p. 897), as amended by the regulation of 19 June 1989 (BGBl. I, p. 1123).

5 Pfanni Werke, a manufacturer of dehydrated potato products, adds diphosphate E 450a when manufacturing the ingredient 'potato puree flakes' in order to counteract the grey discoloration caused by enzymes.

6 According to the order for reference, the Landeshauptstadt München objected to the fact that Pfanni Werke did not include that additive in the list of ingredients for its products on the ground that diphosphate E 450a affects the colour of the finished product and should therefore be regarded as an ingredient within the mean-

ing of the abovementioned provisions. The Landeshauptstadt München also informed Pfanni Werke that, if it continued its activities without satisfying the labelling requirement, a formal prohibition order would be made and a fine imposed.

7 Pfanni Werke brought an action against the Landeshauptstadt München before the Bayerisches Verwaltungsgericht München (Bavarian Administrative Court, Munich) (hereinafter 'the Verwaltungsgericht'), claiming that the diphosphate E 450a did not play any role in the finished product so that it did not have to be included in the list of ingredients. That additive was added to the potato pulp only in order to prevent it from changing colour, and the pulp was only one stage in the manufacturing process of the ingredient 'potato puree flakes'. After the subsequent dehydration of that pulp, the colour of the potato flakes in the finished product could no longer be affected, because the enzymes in the potato cells were neutralized through heating.

8 By judgment of 22 March 1989 the Verwaltungsgericht dismissed the action brought by Pfanni Werke. It took the view that the addition of diphosphate E 450a determined the appearance of the finished product and had therefore to be mentioned on the labelling.

9 Pfanni Werke appealed against that judgment to the Bayerische Verwaltungsgerichtshof. Relying on the wording of Paragraph 5(2)(2) of the LMKV, cited above, it claimed that diphosphate E 450a no longer served any technological function in the finished product.

10 By judgment of 1 August 1990 the Bayerischer Verwaltungsgerichtshof dismissed the appeal as unfounded. In its grounds of judgment it upheld the interpretation

adopted by the Verwaltungsgericht and stated that the legislature's intention was that the consumer should be informed as fully as possible about the composition and characteristics of the foodstuffs being offered to him.

11 Pfanni Werke then appealed on a point of law to the Bundesverwaltungsgericht. Since it considered that the dispute raised a question concerning the interpretation of the Community rules at issue, the Bundesverwaltungsgericht stayed the proceedings and referred the following question to the Court:

'Does an additive still serve a technological function in the finished product where it prevents discoloration of an ingredient during its manufacture and that state (Zustand) continues to exist in the finished product without the additive still needing to be present in that product?'

12 The essence of the question put by the national court is whether the first indent of Article 6(4)(c)(ii) of Directive 79/112 is to be interpreted as meaning that an additive which prevents the discoloration of an ingredient during its manufacture no longer serves a technological function in the finished product, where its presence in the finished product is no longer necessary to prevent the discoloration of that product.

13 The Landesanwaltschaft Bayern, which has stated that it is defending the same interests as the Landeshauptstadt München, submits that any additive which directly or indirectly influences the characteristics of the finished product must be included in the list of ingredients. It argues that the aim of the directive is to prevent the consumer from being misled by the labelling of foodstuffs and to inform him as fully as possible about their composition.

14 That argument cannot be accepted.

15 It is true that, as its sixth recital indicates, the directive is based on the need to inform and protect the consumer and that it is in order to give effect to that aim that it requires producers to include a list of ingredients on the labelling of their products. However, that obligation is subject to various derogations, including that contained in the first indent of Article 6(4)(c)(ii).

16 It follows from those provisions that the directive requires the consumer to be provided with effective information which he can understand, but not, as the Landeshauptstadt München claims, an exhaustive list of the ingredients used in the manufacturing process of the products concerned. Moreover, if such an interpretation were to be adopted, the first indent of Article 6(4)(c)(ii) of the directive would be deprived of its substance.

17 In the present case, it is apparent from the order for reference that the risk of the potato pulp's acquiring a grey discoloration no longer exists after the heating and dehydration process, so that the presence of diphosphate E 450a is no longer necessary in the finished product.

18 Accordingly, the additive at issue no longer serves a technological function in the finished product so that, if the consumer is not to be misled, it should not be included in the list of ingredients.

19 The reply to the question put by the national court must therefore be that, on a proper construction of the first indent of Article 6(4)(c)(ii) of the directive, an

additive preventing discoloration of an ingredient during its manufacture no longer serves a technological function in the finished product, where its presence in the finished product is no longer necessary to prevent the discoloration of that product.

Costs

20 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the question referred to it by the Bundesverwaltungsgericht, by order of 26 November 1992, hereby rules:

On a proper construction of the first indent of Article 6(4)(c)(ii) of Council Directive 79/112/EEC of 18 December 1978 relating to the labelling, presenta-

tion and advertising of foodstuffs for sale to the ultimate consumer, an additive preventing discoloration of an ingredient during its manufacture no longer serves a technological function in the finished product, where its presence in the finished product is no longer necessary to prevent the discoloration of that product.

Edward Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 28 September 1994.

R. Grass

Registrar

D. A. O. Edward

President of the First Chamber