"Why a soy drink cannot be called milk"

EU Court of Justice highlights the importance of protected dairy terms

On 02 July 2017 we will celebrate in Europe the 30th anniversary of our European system to protect milk and dairy products.

In the EU milk and dairy products are legally recognised for decades as being unique in composition and source, being the secretion from a mammal. The specific EU legislative framework also prevents consumers from being misled and guarantees every European citizen a clear knowledge of what milk and milk products are. This is also important with regard to the unique nutritional qualities that naturally characterise milk. The latest judgement of the European Court of Justice C422/16 of 14th June 2017 ('TofuTown') once more confirmed that protected dairy terms such as butter or milk are reserved for dairy only.

In the EU there is a clear, legally binding definition for milk in the Common Organisation of Markets Regulation (EU) No 1308/2013.

The same Regulation reserves names such as milk, whey, cheese, yoghurt, butter and cream etc. exclusively for milk products.

Nevertheless, plant-based products try various ‘creative’ ways of by-passing the legally binding dairy names and designations in marketing of plant-based products. Often legal steps must be undertaken to protect consumers from misleading product names and marketing.

The European dairy world welcomed the most recent judgement of the European Court of Justice of which once again confirmed that the EU law protects the unique dairy terms against misuse by the plant-based products.

On 14 June 2017 (C-422/16, Verband Sozialer Wettbewerb eV vs TofuTown) the Court ruled that purely plant-based products cannot be marketed with designations such as ‘milk’, ‘cream’, ‘butter’, ‘cheese’ or ‘yoghurt’, which are reserved by EU law for animal products. This is also the case if those designations are accompanied by clarifying or descriptive terms indicating the plant origin of the product concerned.

The German producer and distributor of vegetarian and vegan foods TofuTown was brought to a Regional Court in Trier by the German association combatting unfair competition (Verband Sozialer Wettbewerb). The association considered that using dairy des-
ignition on purely plant-based products marketed by TofuTown (e.g. 'Soyatoo Tofu butter', 'Plant cheese', 'Veggie Cheese', 'Cream') infringes the EU legislation reserving these designations for milk and milk products. The company argued that the way in which consumers understand those designations has changed considerably in recent years and that in addition designations such as 'butter', or 'cream' are not used on their own but in association with words referring to the plant origin, such as 'tofu butter' or 'rice spray cream'. In view of these arguments – and despite the very clear legal situation - the German court asked the European Court of Justice to interpret the relevant EU legislation.

The ECJ ruled that the term ‘milk’ is reserved only for milk of animal origin and that the legislation reserves designations like ‘cream’, ‘chantilly’, ‘butter’, ‘cheese’ and ‘yoghurt’ solely for milk products (derived from milk). It was confirmed that the dairy terms cannot be used to designate a purely plant-based product unless that product is mentioned on the list of exceptions, which is not the case for soya or tofu (the relevant legislation list e.g. a traditional ‘crème de riz’ in French as an exception from this rule). The Court also explained that the clarifying additions indicating the plant origin of the product concerned (tofu), such as those used by TofuTown, has no influence on that prohibition. The Court noted that the addition of descriptive or explanatory terms (e.g. 'tofu butter') cannot exclude consumers confusion. The Court also clarified that the legal restrictions for milk and milk foods are different than for meat or fish products and are therefore not comparable.

We as the European Dairy Association (EDA) and all our members welcomed this clear opinion of the Court. The European dairy sector has been involved for many years in protecting the dairy terms.

Alexander Anton, EDA Secretary General commented the ruling: "The unique and natural blend of micro- and macronutrients of milk and dairy products cannot be matched by any plant-based products. The European Court of Justice ruling protects European consumers: dairy terms like ‘milk’, ‘butter’, ‘whey’, ‘cheese’ or ‘yogurt’ cannot be used by vegetable ersatz-products. Even in explaining the difference on the packaging, those plant-based products are not allowed to misuse our dairy terms for marketing their products."

In a meeting with Mr Randy Mooney, the chairman of the U.S. dairy farmers organization NMPF, Anton and Mooney exchanged their opinion on this court ruling and the European protection scheme for milk and dairy terms. "In the U.S., we should have a close look at the court ruling and the Europe an approach for protecting dairy terms," confirmed Randy Mooney.

What are the fundamental differences between milk and soy drinks?

Milk and soy drinks are two different products, of different origins, ingredient compositions and nutritional value.

Milk is a naturally white liquid produced by the mammary glands of mammals. It is therefore always a product of animal origin. Milk is naturally rich in macronutrients such as high-quality protein and micro-nutrients such as vitamins B2 and B12 and minerals, including calcium, phosphorus and iodine. Most of the vitamins and minerals naturally present in milk are artificially added to soy beverages to improve their nutritional composition (fortification).

Soy drinks are produced in a process of first soaking soy beans and then grinding them with water. The fluid which results after straining is a basic soy drink. In order to reduce or eliminate a beany taste many soy drinks contain added sugar for sweet taste as well as flavours (such as cocoa, vanilla, etc.). Depending on the product some specific additives are also added, e.g. such as thickening agents (e.g. carrageenan) to improve the mouthfeel.

Soy beans are also the basis material for other soy products often marketed as alternatives for dairy products such as yoghurt or cream. In this case they also need specific additives in order to resemble a smell and taste of a yoghurt or cream.

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