
The Netherlands

Claiming 'Red Wine is Healthy', is a Breach of Art. 4.3 of the Claims Regulation¹: This Article Holds a General Prohibition for Alcoholic Beverages with an Alcohol Percentage of More Than 1.2 % to Bear a Health Claim

Red wine is healthy, as long as it is consumed with care. But printing this on the label is not allowed. Not even when this text is supported by all kinds of sensible advices such as: 'Keep on moving, play sports', 'drink a lot of water', 'do not eat too much greasy food' and 'think positive, laugh out loud and enjoy life'. Ilja Gort has provided us with a Dutch legal precedent, by putting comparable texts on the label on his *La Tulipe* wine (a Grand Vin de Bordeaux). The Dutch Advertising Code Committee (hereinafter: DACC) assessed the following line on the label of the bottle as a health claim according to the Claims Regulation: "*Is drinking wine healthy? Most publications confirm this.*"² The reason for this, according to the DACC, is the fact that the statement claims a relation between the product and health in general. And that is not allowed. For products containing more than 1.2% alcohol there is a general prohibition of any reference to health. Everybody is allowed to discuss the fact whether a glass of wine a day is healthy or not, but nobody is allowed to express this in advertising or on the label.

It is not surprising that the label in itself is considered to be advertising. And neither that it is in breach of the Dutch Advertising Code for Alcoholic Beverages, since this Code prohibits the referral to any positive health effects with the consumption of alcohol. The (Dutch) branch of the alcoholic beverages industry has accepted strict self regulation stating that alcohol and health is not a acceptable combination.

This was the first time the Claims Regulation was enacted in the Netherlands concerning alcohol. The question was whether this text should consid-

¹ Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (referred to as: Claims Regulation).

² Dutch original text: "Is wijn drinken gezond? De meeste publicaties bevestigen dit".

ered to be a claim in the sense of the Claims Regulation. As we all know, article 2 subsection 2 sub 1 CR is phrased quite broadly, so the answer was yes. But was it considered to be a 'health claim' in the sense of art. 2 subsection 2 sub 5 CR as well? Well, there the statement seems to establish a relationship between food (wine) and health in general. So the answer was yes again. Being a health claim, it was also infringing article 4 subsection 3 sub a of the CR; beverages containing more than 1.2 % volume of alcohol shall not bear health claims. The fact that

this was surrounded by other claims, sensible advice about living healthy and so on, made no difference.

The DACC has never tested the correctness of the claim. Because of the fact that the claim was a breach of the Claims Regulation, it was also a breach of Art. 2 of the DAC (in breach of the law). This way, the DACC did not have to test the scientific reports. A very pragmatic approach.

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