



NUTRITION and HEALTH CLAIMS

The European Regulation 1924/2006
on nutrition and health claims made on foods
and related best practices

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- » To advertise a mineral water as a “**calcium magnesium power source**” that product must contain a significant amount of both calcium and magnesium in accordance with annex XIII Reg. (EU) 1169/2011. The producer can choose whether the product contains 7,5 % of the nutrient reference values in 100 ml or 15 % of the nutrient reference values per portion if the package contains only a single portion. One portion is the amount that an average consumer usually consumes within a single process of consumption.¹⁴
- » The declaration “**Energy & Vodka**” is not a claim in the sense of Art. 2, para. 2(1) NHCR, because the term “Energy” refers to a property of the food, namely, an invigorating and stimulating effect, which from the perspective of a reasonably well-informed, observant, and circumspect average consumer, that is, the model consumer described in Recital 16 of NHCR 1924/2006, is common to all energy drinks.¹⁵
- » Advertising bakery products as “almost **fructose-free**”, “fructose-free” or “without fructose” constitutes a nutrition claim as it refers to a carbohydrate. These claims are unlawful since they are not listed in the annex. They are not comparable to permitted claims such as “lactose-free” or “gluten-free” since there are specific rules for these claims, but not for claims concerning fructose.¹⁶
- » Consumers view the declaration “**LowCarb**” as an indicator that a product is low in carbohydrates, not that it has a reduced content of carbohydrates in comparison with another product. Only the latter is allowed according to the annex of Reg. 1924/2006 (“reduced [name of nutrient]”), but there is no permitted declaration of low carbohydrates.¹⁷ The same is true for the combination with a product or substance name such as “Moringa Low Carb”¹⁸ or “Low Carb-Spaghetti”¹⁹. It is not just a description concerning a certain type of diet but does constitute a nutrition claim.²⁰
- » A court saw an – at least indirect – nutrition claim in the use of a positive, green **Nutri-Score** (scores A or B) as it would imply positive nutritional characteristics of



¹⁴ OLG Stuttgart, 19.09.2019, 2 U 65/18 – “Calcium-Magnesium POWERQUELLE”.

¹⁵ BGH, 09.10.2014, I ZR 167/12 – “Energy & Vodka”.

¹⁶ LG Essen, 06.05.2020, 44 O 7/20 – “Fructose frei”.

¹⁷ OLG Hamburg, 15.06.2020, 3 U 10/20 – “Low Carb”; OLG Hamburg, 09.11.2020, 13 U 15/20 – “low carb Lebensmittel”; OLG Hamburg, 24.04.2014, 3 W 27/14 – “LowCarb”.

¹⁸ LG Freiburg, 02.05.2016, 12 O 148/15 – “Moringa Low Carb”.

¹⁹ OLG Stuttgart, 12.12.2019, 2 U 23/19 – “Low Carb-Spaghetti”.

²⁰ OLG Hamburg, 15.06.2020, 3 U 10/20 – “Low Carb”.

a product or foodstuff which was unlawful;²¹ however, as the Nutri-Score is now officially introduced as an optional addition to labels in Germany²² (notified with the EU), this verdict cannot be upheld.

- » The phrase “**rich in salicine and flavonoids**” is a nutrition claim as it implies a positive level of certain nutrients similar to authorised claims like “high fibre”.²³
- » While foodstuffs in general may be declared as “low sodium/salt” as well as “**very low sodium/salt**” according to the annex of Reg. 1924/2006, **mineral waters** have to fulfil stricter requirements; for such waters the declaration “very low sodium/salt” shall not be used as the annex specifies.²⁴
- » The declaration as “**mildly salted – full in taste**” can be understood as either meaning low salt or reduced salt. The product then has to fall within the thresholds of the annex NHCR 1924/2006 and point out the difference in quantity on the front of the package.²⁵



- » Another prohibited declaration is “**no granulated sugar**” (German “ohne Kristallzucker”) since consumers would equate it with “no sugar”. As the juice in question only contained fructose, the statement may have been true. But consumers are used to granulated sugar as “normal” sugar and therefore might assume that its absence means that the product contains no sugar.²⁶
- » The statement “**no added sugar**” is a nutrition claim. If the product contains honey as a sweetener, this claim is misleading.²⁷

²¹ LG Hamburg, 16.04.2019, 411 HKO 9/19 – “Nutri Score”.

²² German Lebensmittelinformations-Durchführungsverordnung - LMIDV, § 4a Erweiterte Nährwertkennzeichnung

²³ OLG Frankfurt, 08.06.2018, 3/10 O 67/17 – “Alkoholkater”; OLG Frankfurt, 12.09.2019, 6 U 114/18 – “Anti-Hangover-Drink”.

²⁴ ECJ, 17.12.2015, C-157/14 – “low sodium/salt”.

²⁵ BGH, 18.05.2017, I ZR 100/16 – “Märchensuppe”.

²⁶ VG Lüneburg, 28.02.2013, 6 A 62/11 – “ohne Kristallzuckerzusatz”; OLG Zweibrücken, 6.6.2012, 4 U 30/12 – “ohne Kristallzucker”.

²⁷ OLG Celle, 06.09.19, 13 U 69/18 – “kein zugesetzter Zucker”.