

THE FOOD, BEVERAGE  
AND COSMETICS  
LAW REVIEW

SECOND EDITION

Editors

Kara L McCall and Elizabeth M Chiarello

THE LAWREVIEWS

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COSMETICS  
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# PREFACE

Food, beverage and cosmetic companies provide products that are beneficial to consumers, important to the economy and in high demand. Consumers are not only seeking high-quality products at reasonable prices but also increasingly considering sustainability, methods of manufacture and use (or omission) of certain ingredients. These demands require companies to not only be looking ahead towards the ‘next big thing’ in these consumer industries but also be considering how those attributes that are so important to customers (some of which have not been universally defined) can be communicated in a true and non-misleading way. What’s more, companies need to act in compliance with the regulatory schemes of the locations in which they sell, and also make sure that their products – some of which are quite cutting edge – are safe and effective.

Regulatory, legislative and civil litigation frameworks vary dramatically from country to country and from locality to locality within each country. These laws and regulations may be similar, or they may be directly contradictory. Some types of products may be subject to extreme scrutiny, whereas others seem to be of less interest (and where on that spectrum your product falls may differ from day to day). Each jurisdiction is different, and advice from local legal experts is absolutely necessary before operating in (including selling into) any jurisdiction. This guide, however, is intended to provide a general overview of both regulatory and civil legal frameworks in key countries for consideration by legal practitioners in these industries.

This is the second edition of *The Food, Beverage and Cosmetics Law Review*. It was developed because of the increase in class action litigation relating to claims, particularly health benefit claims, made in the labelling and marketing of food, beverage and cosmetic products. We have also seen an increase in concern about food safety and food tracing across the world – a result of food-borne illness outbreaks. This second edition covers 11 jurisdictions and includes a high-level overview of each jurisdiction’s legal framework for food, beverage and cosmetic products, and a year in review, followed by discussions of legal frameworks relating to food, beverage and cosmetic safety (including recalls); supply chain issues (including sustainability, anti-corruption, and labour and immigration); special legal issues relating to sales and marketing (including whether regulatory approvals are required); general product liability and intellectual property laws; the role of trade organisations (including certifications); and unique issues relating to financing and mergers and acquisitions in this space.

We hope that all readers find these chapters useful and informative. We wish to thank all of the contributors who have been so generous with their time and expertise. They have made this publication possible.

**Kara L McCall and Elizabeth M Chiarello**

Sidley Austin LLP

Chicago

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# GERMANY

*Ulf Grundmann and Elisabeth Kohoutek<sup>1</sup>*

## I OVERVIEW

The food industry is one of the most important industrial sectors in Germany. It has a medium-sized structure with a predominant share of small and medium-sized enterprises.<sup>2</sup> Sales in the food market will amount to approximately €202.4 billion in 2022. According to the forecast, a market volume of €241.5 billion will be reached in 2027; this corresponds to an annual sales growth of 3.6 per cent.<sup>3</sup>

Germany is the third-largest food exporter on the world market, with an export ratio of 33.6 per cent. Foreign business ensures industry growth. German food quality is in demand internationally, with meat products, confectionery, dairy products and beverages being exported in particular. More than three-quarters of exports go to the EU. The most important sales markets are the Netherlands, France and Italy, as well as China, the United States, Switzerland and Russia.

Germany's legal framework on food is primarily based on EU law – in particular, Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, Regulation (EU) No. 1169/2011 on the provision of food information to consumers, Regulation (EC) No. 1924/2006 on nutrition and health claims, and the German Food, Consumer Goods and Feed Code. Cosmetics are also primarily regulated on an EU level, namely by Regulation (EC) No. 1223/2009 on cosmetic products.

## II YEAR IN REVIEW

The German lawmaking body recently adopted the German Supply Chain Due Diligence Act,<sup>4</sup> which will apply as of 1 January 2023. The Act is intended to serve the improvement of the international human rights situation and to promote environmental protection by establishing requirements for responsible supply chain management for companies.

Also, in April 2022, the German Federal Minister of Justice presented a new draft of the German Whistle-blower Protection Act,<sup>5</sup> which serves the implementation of

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1 Ulf Grundmann is a partner and Elisabeth Kohoutek is a counsel at King & Spalding LLP.

2 In German: <https://www.bmel-statistik.de/ernaehrung-fischerei/ernaehrungsgewerbe/lebensmitteleinzelhandel>.

3 In German: <https://de.statista.com/outlook/cmo/lebensmittel/deutschland>.

4 In German: <https://www.gesetze-im-internet.de/lksg/>.

5 In German: [https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE\\_Hinweisgeberschutz.pdf;jsessionid=45A146CACF04F91395BB4E88E56743E5.1\\_cid334?\\_\\_blob=publicationFile&v=1](https://www.bmj.de/SharedDocs/Gesetzgebungsverfahren/Dokumente/RefE_Hinweisgeberschutz.pdf;jsessionid=45A146CACF04F91395BB4E88E56743E5.1_cid334?__blob=publicationFile&v=1).

Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law.<sup>6</sup> The draft regulates the protection of natural persons who have obtained information about violations in the course of their professional activities and pass this on to a reporting office set up for this purpose (whistle-blowers). In order to protect these persons, companies are required to set up internal reporting systems and prohibit reprisals such as warnings, denial of promotion, disciplinary proceedings or mobbing against whistle-blowers.

Finally, the revised Regulation (EU) No. 1308/2013 establishing a common organisation of the markets in agricultural products<sup>7</sup> will introduce a compulsory nutrition declaration and a compulsory list of ingredients for wines, aromatised wines, and dealcoholised and partially dealcoholised wines.

### III FOOD AND COSMETIC SAFETY

#### i Regulatory framework

In Germany, responsibility for official food monitoring lies with the federal states. Monitoring is coordinated by the responsible state ministry or the responsible senate administration in the city states. An overview of the state ministries and senate administrations can be found on the website of the German Federal Office for Consumer Protection and Food Safety (BVL).<sup>8</sup>

Similarly, for cosmetics also, the authorities of the respective states are responsible for monitoring and enforcement. An overview of the competent authorities on market surveillance of cosmetic products can also be found on the website of the BVL.<sup>9</sup>

#### ii Food additives and contaminants

The use of food additives in the European Union, including Germany, is regulated by Regulation (EC) No. 1333/2008 on food additives.<sup>10</sup> Additives may be placed on the market in foods only if they are expressly authorised at a European level (i.e., if they are included in a list of authorised substances). To this end, Regulation (EC) 1331/2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings provides a uniform evaluation and authorisation process.

No foodstuff may be placed on the market that contains an impurity in a toxicologically unacceptable quantity. Council Regulation (EEC) No. 315/93 lays down Community procedures for contaminants in food.<sup>11</sup> Irrespective of the health relevance, the impurities shall be limited to as low levels as are reasonably achievable by applying the good manufacturing

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6 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019L1937-20211110&qid=1658420259124>.

7 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013R1308-20211207&qid=1658419905792>.

8 [https://www.bvl.bund.de/DE/Arbeitsbereiche/01\\_Lebensmittel/01\\_Aufgaben/01\\_WerMachtWas/01\\_Landesbehoerden/lm\\_vet\\_ueberw\\_node.html;jsessionid=38D0C98308BE1D32BF25FC8C83FE5EFA.2\\_cid290](https://www.bvl.bund.de/DE/Arbeitsbereiche/01_Lebensmittel/01_Aufgaben/01_WerMachtWas/01_Landesbehoerden/lm_vet_ueberw_node.html;jsessionid=38D0C98308BE1D32BF25FC8C83FE5EFA.2_cid290).

9 [https://www.bvl.bund.de/DE/Arbeitsbereiche/03\\_Verbraucherprodukte/03\\_AntragstellerUnternehmen/02\\_Kosmetik/08\\_Adressen/Adressen\\_Behoerden/kosmetik\\_adressen\\_Behoerden\\_node.html](https://www.bvl.bund.de/DE/Arbeitsbereiche/03_Verbraucherprodukte/03_AntragstellerUnternehmen/02_Kosmetik/08_Adressen/Adressen_Behoerden/kosmetik_adressen_Behoerden_node.html).

10 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02008R1333-20220720&qid=1658408983696>.

11 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01993R0315-20090807&qid=1658409123426>.

practices regulations at all stages of extraction, production, treatment, transport and storage. Commission Regulation (EC) No. 1881/2006 sets individual maximum levels for certain contaminants on specific foodstuffs.<sup>12</sup>

For cosmetics, Regulation (EC) No. 1223/2009 on cosmetic products<sup>13</sup> lists in Annexes II to VI prohibited and restricted substances, colourants, preservatives and ultraviolet filters and provisions on how and whether they may be used. Non-regulated substances may be used provided that the safety of the product is assured and the product is not likely to endanger health. Also, the unintended presence of a small quantity of a prohibited substance stemming from impurities of natural or synthetic ingredients, the manufacturing process, storage or migration from packaging (which is technically unavoidable when following the good manufacturing practices regulations) is permitted provided that such presence is safe for human health.

### iii Recalls

If a food business operator considers or has reason to believe that a food that it has imported, produced, processed, manufactured or distributed is not in compliance with the food safety requirements, it must immediately initiate procedures to withdraw the food in question from the market where the food has left the immediate control of that initial food business operator and inform the competent authorities thereof (Article 19(1) of Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law).<sup>14</sup>

If the product might have reached the consumer, the operator must effectively and accurately inform the consumers of the reason for its withdrawal and, if necessary, recall from consumers products already supplied to them when other measures are not sufficient to achieve a high level of health protection.

In the case of cosmetics, if manufacturers or distributors consider or have reason to believe that a cosmetic product that they have placed on the market is not in conformity with Regulation (EC) No. 1223/2009 on cosmetic products, they must immediately take the corrective measures necessary to bring that product into conformity, withdraw it or recall it, as appropriate (Articles 5(2)1 and 6(3)1 of Regulation (EC) No. 1223/2009).

## IV SUPPLY CHAINS

### i Labour and immigration

As of 1 January 2023, the new German Supply Chain Due Diligence Act<sup>15</sup> will take effect. Companies based in Germany with 3,000 employees or more will be required to better fulfil their human rights responsibilities and due diligence obligations in their supply chains. The due diligence obligations of companies include:

- a establishing a risk management system and conducting a risk analysis;
- b adopting a policy statement of the corporate human rights strategy;

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12 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1881-20220701&qid=1658409172168>.

13 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R1223-20220301>.

14 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002R0178-20220701&qid=1658409310830>.

15 In German: <https://www.gesetze-im-internet.de/lksg/>.

- c* embedding preventive measures in their own business operations and with direct suppliers;
- d* immediately taking corrective action in the event of identified violations of the law;
- e* establishment of a complaints procedure in the event of legal violations; and
- f* documentation and reporting obligations for the fulfilment of due diligence obligations.

Compliance with these due diligence requirements is intended to strengthen the rights of affected people in these supply chains. This should also take into account the legitimate interests of companies in legal certainty and fair competitive conditions. The appropriate manner of acting in compliance with the due diligence obligations is determined in each case according to company-specific criteria. As of 1 January 2024, these requirements will apply also to companies of 1,000 employees or more.

On 23 February 2022, the European Commission issued a proposal for a Directive on Corporate Sustainability Due Diligence (COM/2022/71).<sup>16</sup> The proposed directive requires Member States to introduce due diligence requirements for a wide range of companies to avoid and minimise potential adverse impacts on human rights (and the environment). In particular, the proposed directive provides for the following obligations.

- a* Human rights and environmental due diligence obligations and protective measures of the company and their implementation in the company (including the obligations of employees) are to be included in the existing internal guidelines or mapped in separate internal guidelines.
- b* An analysis of the human rights and environment-related risks of the business activity (risk analysis) must be carried out.
- c* Internal policies and governance and control processes must be appropriate measures to prevent or, if not or not immediately possible, at least mitigate potentially adverse impacts.
- d* Appropriate measures shall be taken to terminate actual adverse impacts or, if not or not immediately possible, to minimise their extent.
- e* A grievance mechanism shall be established and maintained that is open to affected individuals as well as trade unions and other organisations to raise legitimate concerns regarding actual or potential adverse impacts on human rights or the environment.
- f* Monitor the effectiveness of preventive and reactive measures to identify, prevent, mitigate, eliminate and minimise the extent of adverse impacts on human rights and the environment.

Additionally, occupational health and safety regulations, such as the German Maternity Protection Act,<sup>17</sup> apply. In particular, employers must not expose pregnant women to certain hazardous substances, biological agents, physical agents or a stressful work environment. Likewise, employers may not allow pregnant women to carry out any activities in which they are or could be exposed to physical stress or mechanical influences to an extent that this poses an irresponsible risk to them or their child.

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16 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0071>.

17 [https://www.gesetze-im-internet.de/englisch\\_muschg/index.html](https://www.gesetze-im-internet.de/englisch_muschg/index.html).

## ii Processing and certifications

The EU organic logo is compulsory for most organic products and must be displayed according to a specific set of rules in Regulation (EU) 2018/848 on organic production and labelling of organic products.<sup>18</sup> This is to prevent consumer confusion, help maintain trust in organic food and support the authorities in their inspection regimes. The EU organic logo can be used only on products that have been certified as organic by an authorised control agency or body. After successful completion of the certification process by an approved organic control body and the issuance of the eco-certificate, every organic food label must include the EU organic logo and that of the German 'Bio-Siegel'.

## iii Sustainability

As is noted above, as of 1 January 2023, the new German Supply Chain Due Diligence Act will take effect. Companies based in Germany with 3,000 employees or more will be required to better fulfil their human rights responsibilities and due diligence obligations in their supply chains, which also includes measures to protect the environment and ensure sustainable sourcing.

Likewise, the proposal for a Directive on Corporate Sustainability Due Diligence (COM/2022/71) requires Member States to introduce due diligence requirements for a wide range of companies to avoid or minimise potential adverse impacts on the environment (and human rights).

## iv Anti-corruption rules

Taking and giving bribes and money laundering are criminal offences under the German Criminal Code.<sup>19</sup> Whoever in commercial practice in the capacity as an employee or agent of a business (1) demands, allows themselves to be promised or accepts a benefit for themselves or a third party in return for giving an unfair preference to another in the competitive purchase of goods or services in Germany or abroad or (2) without the permission of the business demands, allows themselves to be promised or accepts a benefit for themselves or a third party in return for performing or refraining from performing an act in the competitive purchase of goods or services, thereby breaching the duty incumbent on them towards the business, incurs a penalty of imprisonment for a term not exceeding three years or a fine (Section 299(1) of the German Criminal Code).

Whoever in commercial practice (1) offers, promises or grants a benefit to an employee or agent of a business or a third party in return for giving that person or another an unfair preference in the competitive purchase of goods or services in Germany or abroad or (2) without the permission of the business offers, promises or grants an employee or agent of a business or a third party a benefit in return for performing or refraining from performing an act in the competitive purchase of goods or services, and thereby breaches the duty incumbent on them in relation to the business, incurs the same penalty (Section 299(2) of the German Criminal Code). Stricter penalties are expected for bribery and corruption in the health sector (Section 299a and Section 299b of the German Criminal Code) and in especially serious cases (Section 300 of the German Criminal Code).

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18 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02018R0848-20220101&qid=1658409845864>.

19 [https://www.gesetze-im-internet.de/englisch\\_stgb/index.html](https://www.gesetze-im-internet.de/englisch_stgb/index.html).

Whoever commits the offense of money laundering incurs a penalty of imprisonment for a term of between three months and five years (Section 261(1) of the German Criminal Code). In especially serious cases, the penalty is imprisonment for a term of between six months and 10 years (Section 261(4) of the German Criminal Code).

#### **v Due diligence and monitoring**

The new German Supply Chain Due Diligence Act obliges companies to carry out due diligence obligations in their supply chains (see above). As part of risk management, the company must conduct an appropriate risk analysis to identify human rights and environmental risks not only in its own business area but also for its direct suppliers (Section 5(1) of the German Supply Chain Due Diligence Act).

In doing so, the company must also anchor appropriate preventive measures in respect of a direct supplier – in particular, (1) the consideration of human rights-related and environmental expectations in the selection of a direct supplier, (2) contractually assuring an immediate supplier that it will comply with the human rights-related and environmental expectations required by the company's management and adequately address them along the supply chain, (3) conducting training and education to enforce the contractual assurances of the immediate supplier as set forth in point (2), and (4) agreeing on appropriate contractual monitoring mechanisms and implementing them on a risk-based basis to verify the immediate supplier's compliance with the human rights strategy (Section 4 of the German Supply Chain Due Diligence Act).

If the company discovers that the violation of a human rights-related or an environmental obligation has already occurred or is imminent in its own business or at a direct supplier, it shall immediately take appropriate remedial action to prevent or end such a violation or to minimise the extent of the violation (Section 7(1)1 of the German Supply Chain Due Diligence Act).

If a company has factual indications that suggest that a violation of a human rights-related or an environmental obligation at indirect suppliers is possible (substantiated knowledge), it shall immediately and as appropriate (1) carry out a risk analysis; (2) establish appropriate preventive measures in respect of the polluter, such as the implementation of control measures, support in the prevention and avoidance of a risk, or the implementation of industry-specific or cross-industry initiatives to which the company is a party; (3) establish and implement a policy on prevention, cessation or minimisation; and (4) update, as appropriate, its policy statement (Section 9(3) of the German Supply Chain Due Diligence Act).

## **V SALES AND MARKETING**

### **i Regulatory framework**

First, food must be safe to be placed on the market (Article 14 of Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law). Food is deemed to be unsafe if it is considered injurious to health or unfit for human consumption.

Further, food must be labelled in accordance with Regulation (EU) No. 1169/2011 on the provision of food information to consumers.<sup>20</sup> Regulation (EU) No. 1169/2011 includes

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20 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011R1169-20180101&qid=1658411269580>.

mandatory particulars such as the name of the food, list of ingredients and a nutrition declaration (Section 9 et seq. of Regulation (EU) No. 1169/2011). Food information provided on a voluntary basis must not mislead the consumer or be ambiguous or confusing for the consumer and must, where appropriate, be based on the relevant scientific data (Article 36(1) and (2) and Article 7 of Regulation (EU) No. 1169/2011).

In the case of pre-packed foods offered for sale by means of distance communication, generally, mandatory food information must be available before the purchase is concluded and must appear on the material supporting the distance selling or be provided through other appropriate means clearly identified by the food business operator (Article 14(1) of Regulation (EU) No. 1169/2011). Also, all mandatory particulars must be available at the moment of delivery.

Similarly, cosmetics must be safe for human health when used under normal or reasonably foreseeable conditions of use, taking into account in particular the presentation, labelling, instructions for use and disposal, and any other indication or information provided by the responsible person (Article 3 of Regulation (EC) No. 1223/2009 on cosmetic products). Cosmetics must have the mandatory labelling, such as details on the responsible person, nominal content, durability and particular precautions to be observed in use (Article 19 of Regulation (EC) No. 1223/2009).

## **ii Consumer protection and false advertising**

Food information must not be misleading, particularly (1) as to the characteristics of the food and, in particular, as to its nature, identity, properties, composition, quantity, durability, country of origin or place of provenance, method of manufacture or production; (2) by attributing to the food effects or properties that it does not possess; (3) by suggesting that the food possesses special characteristics when in fact all similar foods possess such characteristics, in particular by specifically emphasising the presence or absence of certain ingredients or nutrients; and (4) by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient whereas in reality a component naturally present or an ingredient normally used in that food has been substituted with a different component or a different ingredient (Article 7(1) of Regulation (EU) No. 1169/2011 and Section 5 of the German Unfair Competition Act).<sup>21</sup>

Another key mechanism to prevent false advertising and enhance consumer protection are the restrictions on advertising with health claims and nutrition claims. Nutrition claims may be permitted only if they are listed in the Annex of Regulation (EC) No. 1924/2006 on nutrition and health claims and are in conformity with the conditions set out in the same (Article 8(1) of Regulation (EC) No. 1924/2006).<sup>22</sup> Health claims are prohibited unless they comply with the general requirements in Regulation (EC) No. 1924/2006 and are authorised in accordance with the same and included in the list of authorised claims. The list of permitted health claims made on foods is adopted with Commission Regulation (EU) No. 432/2012 establishing a list of permitted health claims made on foods<sup>23</sup> other than those referring to the reduction of disease risk and to children's development and health.

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21 [https://www.gesetze-im-internet.de/englisch\\_uwg/index.html](https://www.gesetze-im-internet.de/englisch_uwg/index.html).

22 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1924-20141213&qid=1658411612640>.

23 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0432-20210517&qid=1658411637135>.

Similarly, any information on cosmetics must not be used to imply that these products have characteristics or functions that they do not have (Article 20(1) of Regulation (EC) No. 1223/2009).

False labelling not only is monitored by the competent authority but also can be objected to by competitors. Under the German Unfair Competition Act, competitors can send a cease and desist and, if appropriate, file a motion for a preliminary injunction or an action on the merits (Sections 3, 3a, 5, 5a and 8 of the German Unfair Competition Act).

## VI PRODUCT LIABILITY

Consumers may make contractual claims against the seller if the food, beverage or cosmetic is defective. These include claims to demand cure, revoke the agreement or reduce the purchase price and demand damages or reimbursement of futile expenditure (Sections 437, 433, 435, 439, 440, 323, 326, 441, 280, 281, 283, 311a and 284 of the German Civil Code).<sup>24</sup> The warranty obligations under sales law apply along the entire food chain. Only the seller (i.e., usually the respective food retailer) is liable to the end consumer. However, the latter can take recourse against the supplier (Section 478(2) of the German Civil Code).

Furthermore, the consumer may also assert claims for damages in tort in the event of damage incurred (Section 823 et seq. of the German Civil Code) This presupposes that life, body, health, freedom, property or another right or a protective law has been violated. The tortious liability presupposes fault. Under certain conditions, liability also includes compensation for pain and suffering.

Finally, strict liability exists under the German Product Liability Act<sup>25</sup> under which anyone who lawfully opens and maintains a dangerous business for their own benefit should bear the risks typically associated with it that occur to others (Section 1 of the German Product Liability Act).

## VII INTELLECTUAL PROPERTY

Certain food and agricultural products, such as fruit and vegetables, fish, meat and meat products, cheese, bakery products and beer, can be protected as geographical indications (Regulation No. 1151/2012 on quality schemes for agricultural products and foodstuffs<sup>26</sup> with the German implementing provisions in Sections 130 to 136 of the German Trade Mark Act).<sup>27</sup>

- A distinction is made between two categories of protection, namely
- a* protected designations of origin (e.g., ‘Allgau Sennalp Cheese’ (‘Allgaeuer Sennalpkäese’)); and
  - b* protected geographical indications (e.g., ‘Thuringer Grilled Sausage’ (‘Thueringer Rostbratwurst’)).

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24 [https://www.gesetze-im-internet.de/englisch\\_bgb/index.html](https://www.gesetze-im-internet.de/englisch_bgb/index.html)

25 [https://www.gesetze-im-internet.de/englisch\\_prodhftg/index.html](https://www.gesetze-im-internet.de/englisch_prodhftg/index.html)

26 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R1151-20220608&qid=1658411780403>

27 [https://www.gesetze-im-internet.de/englisch\\_markeng/index.html](https://www.gesetze-im-internet.de/englisch_markeng/index.html)

In both cases, it must be a name that is used to describe the product. The product itself must come from a specific place, region or country. The essential requirement for protection is the connection between the characteristics of the product and its production in the area of origin. In the case of the designation of origin, this connection must be particularly close (i.e., all production steps must take place in the area in question). In the case of a geographical indication, on the other hand, it is sufficient if one of the production steps takes place in the region of origin and the quality, reputation or other characteristic of the product is essentially attributable to this geographical origin.

## VIII TRADE ORGANISATIONS

The Lebensmittelverband Deutschland<sup>28</sup> is the umbrella organisation of the German food industry. Based on its core competencies of food law and food science, the food association bundles and represents the interests of the players in the food industry along the entire food chain in all overarching issues.

The Wettbewerbszentrale<sup>29</sup> and the Verband Sozialer Wettbewerb<sup>30</sup> are two of the most active trade organisations. Both organisations actively observe the market and, in cases of a violation of regulatory laws, issue warning letters and enforce claims for injunctive relief.

## IX FINANCING AND M&A

In a transaction, due diligence of the target's compliance with regulatory requirements for manufacturers and distributors of food, beverages and cosmetics is a key factor. Certain categories of food require notification prior to being first placed on the market (i.e., food supplements), whereas others require approval and registration (i.e., novel food). Also, recalls and other corrective actions following an incident are a regular occurrence in the food industry, so sourcing, manufacturing and production must also be scrutinised carefully.

In addition, there are numerous obligations to correctly label and advertise foods and cosmetics (see above), which have a decisive influence on the sale of such products. Last but not least, the scope of any cease and desist declarations and the possible legal consequences of active proceedings and complaints must also be weighed up carefully.

Finally, with the coming into force of the German Supply Chain Duty of Care Act, the entire distribution chain must be examined for possible violations of human rights and environmental obligations.

## X SPECIAL ISSUES FOR CERTAIN PRODUCTS

### i Alcohol

The production and labelling of spirit drinks are laid down in Regulation (EU) 2019/787 on the definition, description, presentation and labelling of spirit drinks; the use of the names of spirit drinks in the presentation and labelling of other foodstuffs; the protection of geographical indications for spirit drinks; and the use of ethyl alcohol and distillates of

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28 <https://www.lebensmittelverband.de/en/home>.

29 <https://www.wettbewerbszentrale.de/de/home/>.

30 <https://vsw.info/>.

agricultural origin in alcoholic beverages.<sup>31</sup> Regulation (EU) 2019/787 provides the definition of ‘spirit drink’ and of 44 spirit drink categories allowed in the EU, outlining detailed rules to be followed for their production, description, presentation and labelling.

The European Commission published Guidelines for the implementation of certain labelling provisions of Regulation (EU) 2019/787,<sup>32</sup> providing guidance on the labelling rules for spirit drinks laid down in Regulation (EU) 2019/787.

The German Youth Protection Act<sup>33</sup> prohibits the sale of alcoholic beverages to children and adolescents under the age of 18. The only exemptions are beer, wine, wine-like beverages and sparkling non-alcoholic beverages, which may be sold to adolescents as of 16 years of age (Section 9(1) of the Youth Protection Act). Sweet beverages containing alcohol (alcopops) may be marketed commercially only with the notice ‘Sale to persons under 18 years of age prohibited’ (Section 9(4) of the Youth Protection Act).

Finally, as is noted above, the revised Regulation (EU) No. 1308/2013 establishing a common organisation of the markets in agricultural products will introduce a compulsory nutrition declaration and a compulsory list of ingredients for wines, aromatised wines, and dealcoholised and partially dealcoholised wines.

## ii Cannabis

According to the German Narcotics Act,<sup>34</sup> cannabis is a non-marketable narcotic (Section 1(1), Annex I of the Narcotics Act). Therefore, the traffic of cannabis (marijuana, plants and parts of plants belonging to the genus *Cannabis*) and Cannabis resin (hashish, the secreted resin of plants belonging to the genus *Cannabis*) and products made from cannabis is generally not permitted.

The German Narcotics Act exempts, among others things, seeds, provided that they are not intended for illicit cultivation, and tetrahydrocannabinol below 0.2 per cent that serves exclusively commercial or scientific purposes, which excludes abuse for intoxication purposes. Exempted is also cannabis from a cultivation that takes place for medical purposes under state control, as well as in preparations that are approved as finished medicines (Annexes I and Annex III of the Narcotics Act).

For the substance cannabidiol (CBD), no significant consumption has been documented before 15 May 1997. It is therefore assessed as novel in the Novel Food Catalog of the European Commission under the entry ‘Cannabinoids’ and thus requires approval under Regulation (EU) 2015/2283 on novel foods.<sup>35</sup> Since CBD has not yet been approved as a novel food, such products are not marketable to date.

Novelty applies both to cannabinoid-containing extracts from *Cannabis sativa L* and to any product to which cannabinoid-containing extracts are added as an ingredient (e.g., hemp seed oil with CBD). Cannabinoid-containing extracts from any plant other than *Cannabis sativa L* and synthetically produced cannabinoids are also classified as novel.

31 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R0787-20210525&qid=1658411968244>.

32 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022XC0218\(01\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022XC0218(01)).

33 In German: <https://www.gesetze-im-internet.de/juschg/>.

34 In German: [https://www.gesetze-im-internet.de/btmg\\_1981/](https://www.gesetze-im-internet.de/btmg_1981/).

35 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02015R2283-20210327&qid=1658412231328>.

### iii 'Cosmeceuticals'

Advertising for cosmetics that relates to the detection, elimination or alleviation of diseases, suffering, bodily harm or pathological complaints in humans must comply with the requirements of the German Therapeutic Products Advertising Act.<sup>36</sup> In particular, such advertising must not be misleading; must reference scientific, professional or other publications properly; and must meet the requirements for lay advertising (Sections 3, 6 and 11 of the Therapeutic Products Advertising Act).

Where the product is intended either to restore, correct or influence human physiological functions by a pharmacological, immunological or metabolic action, or to be used with properties to cure or prevent human disease, the product is a drug (Section 2(1) of the German Medicines Act).<sup>37</sup>

## XI OUTLOOK AND CONCLUSIONS

There is a current need for companies to act with regard to the assessment of their supply chains and the establishment of risk management systems in accordance with the new German Supply Chain Due Diligence Act. In addition, with the enactment of the German Whistleblower Protection Act, companies will have to set up reporting channels for whistle-blowers.

In addition, a trend towards selling food via e-commerce is clearly noticeable. New companies are entering the market with a wide variety of delivery offers. In 2022, 4 per cent of total sales in the food market are expected to be generated online,<sup>38</sup> so players in the food trade will increasingly be dealing with online distribution systems and e-commerce regulations.

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36 In German: <https://www.gesetze-im-internet.de/heilmwerbfg/>.

37 [https://www.gesetze-im-internet.de/englisch\\_amg/index.html](https://www.gesetze-im-internet.de/englisch_amg/index.html).

38 <https://de.statista.com/outlook/cmo/lebensmittel/deutschland>.

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