

CASE COMMENT

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"SHRINKFLATION" - UNFAIR COMMERCIAL PRACTICE UNDER GERMAN UNFAIR COMPETITION LAW FOR THE DISTRIBUTION OF PRODUCTS WITH REDUCED VOLUME AND ALMOST IDENTICAL PACKAGING

In a recent decision*, the Hamburg Regional Court (judgment of 13 February 2024, docket no. 406 HKO 121/22) ordered the manufacturer of a spreadable fat product to refrain from distributing a product with a reduced volume if it had recently, i.e. up to three months previously, been sold in almost identical packaging with a larger volume.

For many years, the defendant has distributed a spreadable fat product with a volume of 500g. In the summer of 2022, it reduced the volume of the product by 100g and continued to distribute it in a similar packaging. The only difference in the packaging was the filling quantity information, which was placed on the side of the products. A German consumer organization filed legal action against the "misleading packaging". The Hamburg Regional Court held that, at least for a transitional period, this behavior constitutes a misleading act under Sec. 3 and 5 of the German Act against Unfair Competition (UWG), unless there is a clearly visible and informative indication on the product packaging regarding the reduced volume. In this regard, it held that the indication of filling quantities on the side of the product packaging would not be noticed by an average consumer, who would therefore continue to assume a filling quantity of 500g.

In light of this decision (which may still be appealed by the defendant before the Hamburg Higher Regional Court), companies should be extremely cautious when reducing the volume of products sold in Germany and carefully consider the respective product design.

*Find here the original decision in [German](#) + English (Machine) [translation](#).

