

Legal Alert

July 2024 | www.skslegal.pl



Is every bread we buy in a shop traditional? Overview of the judgment of the Supreme Administrative Court

„Advertising is the key to business success” is a saying that has been known for many years. Actions aimed at attracting consumer attention are not only limited to advertising spots, social media posts or information leaflets, but also include the names given to foodstuffs.

Advertising and labelling of foodstuffs must comply with EU and national legislation, and their correctness is monitored by the State Sanitary Inspection (in Polish: *PPIS*) and Voivodship Inspectorates For Agricultural And Food Quality Inspection (in Polish: *WIJHARS*).

The case of bread - the factual status

The *WIJHARS* authorities reminded the bread manufacturer of the need to comply with the law on product naming.

The manufacturer marketed products under the names „*Traditional Bread*” and „*Rural Bread*”. As a result of an inspection carried out by officials of the Pomeranian *WIJHARS*, these products were found not to correspond to the quality expected of „*rural*” and „*traditional*” products.

The reason the names were challenged was because the flour used in the production of the breads contained the flour-processing agent food additive E300 (ascorbic acid).

As a result of the use of an ingredient in the manufacture of bread which contains a food additive in its composition, is it impossible for it to be regarded as a traditional product?

Position of *WIJHARS* confirmed by administrative courts

The manufacturer of the challenged breads disagreed with the assessment made by the supervisory authority and appealed against the decision issued by the Pomeranian *WIJHARS*. However, the case did not end quickly, as it was dealt with by both the Voivodship Administrative Court in Warsaw (WSA) and the Supreme Administrative Court (NSA).

I. WSA assessment:

The WSA disagreed with the arguments put forward by the manufacturer and dismissed the appeal, while confirming that:

- a) the product names (*rural* and *traditional*) suggested to consumers that only natural ingredients had been used in the production - this could have influenced their judgement and contributed to their purchasing decision;
- b) the labelling was in breach of Regulation 1169/2011¹ - despite the possibility to use the carry-over principle (the additive used in the flour does not have to be indicated in the list of ingredients of the finished bread), the ascorbic acid content in the flour affects the quality of the product and the lack of natural/rural character of the final product.

II. The NSA confirmed the assessment made by the court of first instance:

The assessment made by the WSA was confirmed by the NSA in its judgment of 16th April 2024 (II GSK 170/21), but it is worth noting the key theses presented by the administrative court.

- a) The judgment emphasises the importance of correctly informing the consumer of the composition of the product, including through the use of additional terms in the name: „*by using names reserved for products made strictly from natural ingredients and according to traditional recipes, which is at the same time uniformly understood and perceived by the general consumer perception, there was an infringement of food law as the party used an ingredient that did not meet this requirement (modified flour). (...) The infringement manifested itself in the fact that the assessed product used an ingredient at the stage of its creation which certainly does not fall within the concept of ‘traditional’ or ‘rural’ as perceived by the average oriented consumer on the basis of the very name formed with this adjective.*”

- b) Agri-food products placed on the market shall comply with the commercial quality requirements, if such requirements have been specified in the commercial quality legislation, and with additional requirements for such products, if their compliance has been declared by the manufacturer. Failure to comply with the commercial quality regulations may result in the agri-food article being deemed to be adulterated (within the meaning of the Trade Quality of Agri-food Products Act²).
- c) Giving a name while omitting ingredients that affect the nature of the product may lead to consumer confusion, which is prohibited under food law³.
- d) The fact that the final product does not contain ascorbic acid, which was used in its manufacture, changes nothing, since the names „*traditional*” and „*rural*” are linked not only to the natural content of the goods offered for sale, but also to their manufacture from naturally occurring products and not from artificially enriched products. In other words, such bread, the production of which uses modified flour, will not be the same product, corresponding to the meaning of the term „*Traditional bread*” or „*Rural bread*” as it is commonly understood.

What to look out for when naming marketed products?

When working on a new product, it is worth taking a comprehensive look at the matter, as both good, quality ingredients as well as correct labelling and advertising are important.

Product names should comply, among other things, with the requirements of food laws (including health and nutrition claims), commercial quality and, above all, should not mislead consumers.

If you are marketing food products, feel free to contact us!

Contact us!



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¹ Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers.

² The Law of 21 December 2000 on trade quality of agri-food products.

³ Food information shall not be misleading, particularly: 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; by attributing to the food effects or properties which it does not possess; 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 and/or nutrients; by suggesting, by means of the appearance, the description or pictorial representations, the presence of a particular food or an ingredient, while 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.