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Lingua del documento :

Inizio modulo

ECLI:EU:C:2020:60

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

30 January 2020([\*](http://curia.europa.eu/juris/document/document.jsf?text=&docid=222888&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2242734" \l "Footnote*))

(Reference for a preliminary ruling — Public health — Information and consumer protection — Regulation (EC) No 1924/2006 — Implementing Decision 2013/63/EU — Nutritional and health claims made on foods — Article 10(3) — Reference to general, non-specific benefits — Concept of ‘accompanying’ a specific health claim — Obligation to produce scientific evidence — Scope)

In Case C‑524/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Federal Court of Justice, Germany), made by decision of 12 July 2018, received at the Court on 10 August 2018, in the proceedings

**Dr. Willmar Schwabe GmbH & Co. KG**

v

**Queisser Pharma GmbH & Co. KG,**

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, P.G. Xuereb (Rapporteur), T. von Danwitz, C. Vajda and A. Kumin, Judges,

Advocate General: G. Hogan,

Registrar: M. Krausenböck, administrator,

having regard to the written procedure and further to the hearing on 12 June 2019,

after considering the observations submitted on behalf of:

–        Dr. Willmar Schwabe GmbH & Co. KG, by C. Stallberg, Rechtsanwalt,

–        Queisser Pharma GmbH & Co. KG, by A. Meisterernst, Rechtsanwalt,

–        the European Commission, by K. Herbout-Borczak and C. Hödlmayr, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 September 2019,

gives the following

**Judgment**

1        This request for a preliminary ruling concerns the interpretation of Article 10(3) of 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 (OJ 2006 L 404, p. 9), as amended by Regulation (EC) No 107/2008 of 15 January 2008 of the European Parliament and of the Council (OJ 2008 L 39, p. 8) (‘Regulation No 1924/2006’).

2        The request has been made in proceedings between Dr. Willmar Schwabe GmbH & Co. KG (‘Schwabe’) and Queisser Pharma GmbH & Co. KG concerning the alleged misleading packaging of a food supplement.

 **Legal context**

 ***European Union law***

 *Regulation No 1924/2006,*

3        According to recitals 1, 9, 14, 16, 17, 23 and 29 of Regulation No 1924/2006:

‘(1)      An increasing number of foods labelled and advertised in the Community bear nutrition and health claims. In order to ensure a high level of protection for consumers and to facilitate their choice, products put on the market, including imported products, should be safe and adequately labelled. …

…

(9)      There is a wide range of nutrients and other substances including, but not limited to, vitamins, minerals including trace elements, amino-acids, essential fatty acids, fibre, various plants and herbal extracts with a nutritional or physiological effect that might be present in a food and be the subject of a claim. Therefore, general principles applicable to all claims made on foods should be established in order to ensure a high level of consumer protection, give the consumer the necessary information to make choices in full knowledge of the facts, as well as creating equal conditions of competition for the food industry.

…

(14)      There is a wide variety of claims currently used in the labelling and advertising of foods in some Member States relating to substances that have not been shown to be beneficial or for which at present there is not sufficient scientific agreement. It is necessary to ensure that the substances for which a claim is made have been shown to have a beneficial nutritional or physiological effect.

…

(16)      It is important that claims on foods can be understood by the consumer and it is appropriate to protect all consumers from misleading claims. However, since the enactment of [Council] Directive [84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ 1984 L 250, p.17)], the Court of Justice of the European Communities has found it necessary in adjudicating on advertising cases to examine the effect on a notional, typical consumer. In line with the principle of proportionality, and to enable the effective application of the protective measures contained in it, this Regulation takes as a benchmark the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors, as interpreted by the Court of Justice, but makes provision to prevent the exploitation of consumers whose characteristics make them particularly vulnerable to misleading claims. …

(17)      Scientific substantiation should be the main aspect to be taken into account for the use of nutrition and health claims and the food business operators using claims should justify them. A claim should be scientifically substantiated by taking into account the totality of the available scientific data, and by weighing the evidence.

…

(23)      Health claims should only be authorised for use in the Community after a scientific assessment of the highest possible standard. …

…

(29)      In order to ensure that health claims are truthful, clear, reliable and useful to the consumer in choosing a healthy diet, the wording and the presentation of health claims should be taken into account in the opinion of the European Food Safety Authority [(EFSA)] and in subsequent procedures.’

4        Article 1 of that regulation, entitled ‘Subject matter and scope’ provides, in paragraph 1:

‘This Regulation harmonises the provisions laid down by law, regulation or administrative action in Member States which relate to nutrition and health claims in order to ensure the effective functioning of the internal market whilst providing a high level of consumer protection.’

5        Article 2(2)(5) of that regulation defines the concept of a ‘health claim’ as ‘any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.’

6        Chapter II of that regulation, relating to general principles, includes Articles 3 to 7 thereof.

7        Article 3 of Regulation No 1924/2006, entitled ‘General principles for all claims’, provides:

‘Nutrition and health claims may be used in the labelling, presentation and advertising of foods placed on the market in the Community only if they comply with the provisions of this Regulation.

Without prejudice to Directive 2000/13/EC [of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ 2000 L 109, p. 29)] and Directive [84/450], the use of nutrition and health claims shall not:

(a)      be false, ambiguous or misleading;

…’

8        Article 5 of that regulation, entitled ‘General conditions’, states, in paragraphs 1 and 2:

‘1.      The use of nutrition and health claims shall only be permitted if the following conditions are fulfilled:

(a)      the presence, absence or reduced content in a food or category of food of a nutrient or other substance in respect of which the claim is made has been shown to have a beneficial nutritional or physiological effect, as established by generally accepted scientific evidence;

…

2.      The use of nutrition and health claims shall only be permitted if the average consumer can be expected to understand the beneficial effects as expressed in the claim.’

9        Article 6 of that regulation, entitled ‘Scientific substantiation for claims’, provides, in paragraphs 1 and 2:

‘1.      Nutrition and health claims shall be based on and substantiated by generally accepted scientific evidence.

2.      A food business operator making a nutrition or health claim shall justify the use of the claim.’

10      Chapter IV of that regulation, on health claims, includes Articles 10 to 19 thereof.

11      Article 10 of Regulation No 1924/2006, under the heading ‘Specific conditions’, provides in paragraphs 1, 3 and 4:

‘1.      Health claims shall be prohibited unless they comply with the general requirements in Chapter II and the specific requirements in this Chapter and are authorised in accordance with this Regulation and included in the lists of authorised claims provided for in Articles 13 and 14.

…

3.      Reference to general, non-specific benefits of the nutrient or food for overall good health or health-related well-being may only be made if accompanied by a specific health claim included in the lists provided for in Article 13 or 14.

4.      Where appropriate, guidelines on the implementation of this Article shall be adopted in accordance with the procedure referred to in Article 25(2) and, if necessary, in consultation with interested parties, in particular food business operators and consumer groups.’

12      Article 13(3) of that regulation states:

‘After consulting the [EFSA], the Commission shall adopt, in accordance with the regulatory procedure with scrutiny referred to in Article 25(3), a Community list, designed to amend non-essential elements of this Regulation by supplementing it, of permitted claims as referred to in paragraph 1 and all necessary conditions for the use of these claims by 31 January 2010 at the latest.’

13      Under Article 17(5) of that regulation:

‘Health claims included in the lists provided for in Articles 13 and 14 may be used, in conformity with the conditions applying to them, by any food business operator, if they are not restricted for use in accordance with the provisions of Article 21.’

 *Implementing Decision 2013/63/EU*

14      Point 3 of the Annex to Commission Implementing Decision 2013/63/EU of 24 January 2013 adopting guidelines for the implementation of specific conditions for health claims laid down in Article 10 of Regulation (EC) No 1924/2006 of the European Parliament and of the Council (OJ 2013 L 22, p. 25), entitled ‘Reference to general, non-specific health benefits — Article 10(3)’, reads as follows:

‘Article 10(3) allows the use of easy, attractive statements which make reference to general, non-specific benefits of a food for overall good health or health-related well-being, without prior authorisation, subject to specific conditions. The use of such statements could be helpful to consumers as they would convey more consumer-friendly messages. However, they could be easily misunderstood and/or misinterpreted by consumers, possibly leading to imagine other/better health benefits of a food than those that actually exist. For this reason, when referring to general, non-specific health benefits, it is required to accompany such references by a specific health claim from the lists of permitted health claims in the Union Register. For the purposes of the Regulation, the specific authorised health claim accompanying the statement making reference to general non-specific health benefits, should be made ‘next to’ or ‘following’ such statement.

The specific claims from the lists of permitted health claims should bear some relevance to the general reference. … To avoid misleading consumers, food business operators have the responsibility to demonstrate the link between the reference to general, non-specific benefits of the food and the specific, accompanying, permitted health claim.

Some claims submitted for authorisation during their scientific assessment were judged to be too general or non-specific for evaluation.These claims could not be authorised and can therefore be found in the list of the non-authorised claims of the Union Register of nutrition and health claims. This does not exclude that those claims could benefit from the provisions laid down in Article 10(3) and can therefore be lawfully used when they are accompanied by a specific claim from the list of permitted health claims in accordance with that Article.’

 ***German Law***

15      Under Paragraph 3(1) of the Gesetz gegen den unlauteren Wettbewerb (Law on unfair competition, BGBl. 2010 I, p. 254), in the version applicable to the dispute in the main proceedings (‘the UWG’):

‘Unfair commercial practices shall be unlawful if they are likely to have a perceptible adverse effect on the interests of competitors, consumers or other market participants.’

16      Paragraph 5 of the UWG, entitled ‘Misleading commercial practices’, provides in subparagraph 1:

‘Any misleading commercial practice shall be regarded as an unfair practice. A commercial practice is misleading if it involves inaccurate claims or other information which could mislead, relating to one or more of the following:

1.      the essential characteristics of the goods or services, such as availability, nature, performance, benefits, risks, composition, accessories, method or date of manufacture, delivery or provision, fitness for purpose, possible uses, quantity, properties, after-sales services and the processing of claims, complaint handling, geographical or commercial origin, the results to be expected from their use, as well as the results and the main characteristics of tests carried out on the goods or services.

…’

17      Paragraph 11 of the Lebensmittel-, Bedarfsgegenstände- und Futtermittelgesetzbuch (Code on Foods, Consumer Staples and Animal Feed, BGBl. 2013 I, p. 1426, in the version applicable to the case in the main proceedings, entitled ‘Provisions to protect against deception’, provides, in subparagraph 1:

‘It shall be prohibited to sell foods under denominations, indications or presentations liable to mislead and, in general or in individual cases, to advertise those foods by means of misleading representations or other misleading statements. The following in particular are misleading:

1.      in the case of food, denominations, indications, presentations, descriptions or other statements concerning characteristics, inter alia concerning the type, quality, composition, quantity, shelf life, origin, provenance or method of manufacture or production used which are liable to deceive;

…’

 **The dispute in the main proceedings and the questions referred for a preliminary ruling**

18      It is apparent from the order for reference that Queisser Pharma markets a food supplement called Doppelherz® aktiv Ginkgo + B -Vitamine + Cholin, which combines eight ingredients, including, inter alia, zinc as well as vitamins B1 (thiamin), B2, B5 (pantothenic acid) and B12.

19      The back of the packaging of that food supplement includes a number of elements of different sizes, colours and fonts, which include the following claim, at issue in the main proceedings: ‘*B-Vitamine und Zink für Gehirn, Nerven, Konzentration und Gedächtnis*’ (B vitamins and zinc for the brain, nerves, concentration and memory).

20      On the reverse side of the packaging, in addition to any special claims relating to ginkgo and choline, the following particulars are set out:

‘Regular mental stimulation and a healthy diet play a role in supporting memory and concentration and the ability to cope with everyday tasks. The metabolism of the brain and nerves is therefore dependent on a good supply of nutrients.

Capsules of Doppelherz contain 100 mg of choline, B vitamins and the trace element zinc. 100 mg of ginkgo extract is also included.

Vitamin B1 and vitamin B12 contribute to normal energy metabolism and normal function of the nervous system as well as supporting normal mental capacity.

Vitamin B1, like vitamin B2, plays a role in normal energy metabolism and the normal function of the nervous system. It furthermore contributes to protecting cells against oxidative stress.

Folic acid also contributes to normal psychological functions and plays a role in the process of cell division.

Pantothenic acid contributes to normal mental performance and, like folic acid and vitamin B12, helps to reduce tiredness and fatigue.

The trace element zinc contributes to normal cognitive function and helps to protect cells against oxidative stress.

…’

21      According to the findings of the national court, Schwabe produces and markets products which compete with those of Queisser Pharma. Considering that the claim at issue in the main proceedings referred to in paragraph 19 of the present judgment infringed the second subparagraph of Article 3(a), Article 5(1)(a), Article 6(1) and Article 10(1) of Regulation No 1924/2006 and Paragraph 5(1) of the UWG and Article 11(1) of the Code on Foods, Consumer Staples and Animal Feed, Schwabe brought an action before the Landgericht Düsseldorf (Regional Court, Düsseldorf, Germany), seeking, inter alia, that Queisser Pharma be ordered, subject to a periodic penalty payment, to cease promoting the food supplement for as long as the claim at issue in the main proceedings appeared on the front of its packaging.

22      By judgment of 28 August 2014, the Landgericht Düsseldorf (Regional Court, Düsseldorf ) dismissed that action.

23      Schwabe’s appeal against that judgment was dismissed by decision of the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf, Germany) of 30 June 2016.

24      Schwabe brought an appeal on a point of law against the judgment of the Oberlandesgericht Düsseldorf (Higher Regional Court, Düsseldorf) before the Bundesgerichtshof (Federal Court of Justice, Germany).

25      The Bundesgerichtshof (Federal Court of Justice) expresses doubts as to the scope of the requirement, laid down in Article 10(3) of Regulation No 1924/2006, that a reference to general, non-specific benefits must be accompanied by a specific health claim and, in particular, as to whether that provision requires a direct spatial link between the reference and the specific health claim. In that respect, it indicates, on the one hand, that this ‘accompanying’ requirement could be understood in the sense that it requires spatial proximity, so that consumers can understand the specific authorised health claim ‘immediately’. The referring court states, however, that, in its view, if that requirement of direct proximity is not satisfied, a reference to the claim by means of an asterisk could also suffice. On the other hand, that requirement could also be interpreted in the manner advocated by the appellate court, according to which the average consumer, whose decision to purchase a product is determined by the composition of that product, first reads the list of ingredients of that product (judgment of 4 June 2015, *Teekanne*, C‑195/14, EU:C:2015:361). Given that such a list is often found on the reverse side of packaging, it is not unlikely that, in front of products such as the food supplement at issue in the main proceedings, such a consumer would thus be able to become aware of the specific health claims appearing on that reverse side.

26      In those circumstances, the Bundesgerichtshof (Federal Court of Justice) decided to stay the proceedings before it and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1)      Is a reference to general, non-specific health-related benefits “accompanied” within the meaning of Article 10(3) of Regulation No 1924/2006 by specific health claims in accordance with one of the lists provided for in Article 13 or 14 of that regulation, even if that reference is situated on the front and the authorised claims are situated on the back of an outer packaging and, in the perception of the public, although the claims are clearly related to the reference in terms of content, the reference does not contain a clear indication, marked with an asterisk, for example, to the claims on the back?

(2)      Does evidence within the meaning of Article 5(1)(a) and Article 6(1) of Regulation No 1924/2006 also need to be provided in the case of reference being made to general, non-specific benefits within the meaning of Article 10(3) of that regulation?’

 **Consideration of the questions referred**

 ***Preliminary observations***

27      According to Schwabe, the questions referred by the national court are based on the erroneous assumption that the claim at issue in the main proceedings referred to in paragraph 19 of the present judgment constitutes a reference to general, non-specific benefits within the meaning of Article 10(3) of Regulation No 1924/2006, whereas it is in fact a specific health claim within the meaning of Article 10(1) of that regulation.

28      In that regard, it should be borne in mind that, in accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (see, to that effect, judgment of 10 July 2019, *Federal Express Corporation Deutsche Niederlassung*, C‑26/18, EU:C:2019:579, paragraph 32 and the case-law cited).

29      That presumption of relevance cannot be rebutted by the simple fact that one of the parties to the main proceedings contests certain facts, the accuracy of which is not a matter for the Court to determine and on which the delimitation of the subject matter of those proceedings depends (judgment of 7 June 2007, *van der Weerd and Others*, C‑222/05 to C‑225/05, EU:C:2007:318, paragraph 23).

30      In addition, to alter the substance of the questions referred for a preliminary ruling, or to answer additional questions mentioned by the parties, would be incompatible with the Court’s duty to ensure that the governments of the Member States and the parties concerned are given the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union, bearing in mind the fact that, under that provision, only the decision of the referring court is notified to the interested parties (judgment of 16 October 2014, *Welmory*, C‑605/12, EU:C:2014:2298, paragraph 34 and the case-law cited).

31      In those circumstances, the questions referred must be answered on the basis of the premiss on which that court relies, namely that the claim at issue in the main proceedings constitutes a reference to general, non-specific benefits for health and therefore falls within the scope of Article 10(3) of Regulation No 1924/2006.

 ***The first question***

32      By the first question, the national court asks, in essence, whether Article 10(3) of Regulation No 1924/2006 is to be interpreted as meaning that the requirement which it lays down, that any reference to general, non-specific benefits of the nutrient or food must be accompanied by a specific health claim included in the lists provided for in Articles 13 or 14 of that regulation is satisfied where the packaging of a food supplement contains a reference to general, non-specific health benefits of a nutrient or food on the front of the package, whereas the specific health claim intended to accompany that reference appears only on the back of that packaging and there is no clear reference, such as an asterisk, between the two.

33      According to the Court’s settled case-law, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgments of 17 April 2018, *Egenberger*, C‑414/16, EU:C:2018:257, paragraph 44, and of 30 January 2019, *Planta Tabak*, C‑220/17, EU:C:2019:76, paragraph 60 and the case-law cited).

34      First, according to the wording of Article 10(3) of Regulation No 1924/2006, any reference to general, non-specific health benefits of a nutrient or food must be ‘accompanied’ by a specific health claim.

35      Secondly, as regards the objectives of Regulation No 1924/2006, it should be recalled that, under Article 1(1) of that Regulation, its purpose is to ensure the effective functioning of the internal market while providing a high level of consumer protection. Health protection is among the principal aims of the regulation. In order to attain that objective, it is necessary, in particular, to give the consumer the necessary information to make a choice in full knowledge of the facts (judgment of 14 July 2016, *Verband Sozialer Wettbewerb*, C‑19/15, EU:C:2016:563, paragraph 39 and the case-law cited). In that regard, it should also be recalled that recital 16 of Regulation 1924/2006 states that it is important that claims on foods be understood by the consumer and that all consumers should be protected against misleading claims, specifying that that regulation takes as a benchmark, inter alia, the average consumer, who is reasonably well informed and reasonably observant and circumspect, taking into account social, cultural and linguistic factors.

36      Finally, as regards the context in which Article 10(3) of Regulation No 1924/2006 is to be interpreted, it should be noted at the outset that Article 2(2)(5) of that regulation defines the concept of ‘health claim’, for the purposes of that regulation, as being ‘any claim that states, suggests or implies that a relationship exists between a food category, a food or one of its constituents and health.’

37      In addition, it should be pointed out that Article 10 of Regulation No 1924/2006, which is contained in Chapter IV of that Regulation, entitled ‘Health claims’, provides, in its paragraph 1, that health claims are to be prohibited unless they comply with the general requirements in Chapter II and the specific requirements in Chapter IV and are authorised in accordance with that regulation and included in the lists of authorised claims provided for in Articles 13 and 14 of that regulation. Thus, Article 10(1) of Regulation No 1924/2006 lays down a prohibition in principle of health claims, with the exception of those included in the lists of authorised claims referred to in Article 13 or 14 of that regulation.

38      Moreover, it follows from a systemic reading of Article 10 of Regulation No 1924/2006 that paragraph 3 thereof establishes a derogation from the principle established in paragraph 1, so that, according to the Court’s consistent case-law, the requirement for accompanying established in paragraph 3 must be strictly interpreted (see, to that effect, judgment of 16 March 2017, *AKM*, C‑138/16, EU:C:2017:218, paragraph 37 and the case-law cited). Article 10(3) of that regulation thus introduces a distinction between two categories of health claims, namely, on the one hand, the specific health claim included in the lists in question in accordance with the principle laid down in Article 10(1) of that regulation and, on the other hand, the ‘general’ health claim constituting a reference to those general, non-specific benefits which must be accompanied by a health claim appearing on those same lists.

39      Implementing Decision 2013/63, adopted by the Commission in the framework of the implementing powers conferred on it by the Union legislator under Articles 10(4) and Article 25 of Regulation No 1924/2006, provide, in that respect, in point 3 of its Annex, that Article 10(3) of that regulation allows the use of easy and attractive statements which make reference to such benefits, which could be misunderstood and/or misinterpreted by consumers, which is why any reference to such benefits are required to ‘accompany such references by a specific health claim from the lists of permitted health claims in the Union Register’. The same point specifies that, for the purposes of that regulation, the authorised health claim accompanying the statement making reference to those benefits must appear ‘next to’ or ‘following’ that statement.

40      It follows from those factors that the requirement of ‘accompanying’, within the meaning of Article 10(3) of that regulation, must be interpreted as requiring not only that the specific health claim should specify the content of the health claim worded in general terms, but also that the location of those two claims on the packaging of the product must enable an average consumer who is reasonably well informed and reasonably attentive and circumspect to understand the link between those claims. Accordingly, the concept of ‘accompanying’ within the meaning of that article, must be interpreted as including both a substantive and a visual dimension.

41      Thus, on the one hand, taken in its substantive dimension, this concept of ‘accompanying’ requires that content of the ‘general’ health claim and the specific health claim match, implying, in substance, that the former is fully supported by the latter.

42      Secondly, contrary to the defendant’s submission in the main proceedings, that the ‘accompanying’ requirement laid down in Article 10(3) of Regulation No 1924/2006 cannot be regarded as validly satisfied by the mere fact that there is, in substantive terms, a clear link in content between the ‘general’ health claim and the specific health claim intended to support it, irrespective of the respective locations of those claims on the packaging concerned and, therefore, of the visual dimension of that requirement.

43      In that respect, it should be noted that recital 29 of Regulation No 1924/2006 states that, in order to ensure that health claims are truthful, clear, reliable and capable of assisting the consumer in choosing a healthy diet, the wording and the presentation of health claims should be taken into account. Thus, the location, in visual terms, of the various elements on the packaging of a given product is a factor to be taken into account in order to assess whether the ‘accompanying’ requirement can be considered to be met.

44      In addition, it follows from recital 17 and Article 6(2) of that regulation that a food business operator making a nutrition or health claim must justify the use of that claim.

45      In that regard, point 3 of the Annex to Implementing Decision 2013/63 states that, to avoid misleading consumers, food business operators have the responsibility to demonstrate the link between the reference to general, non-specific benefits of the food and the specific, accompanying, permitted health claim.

46      It follows from these elements that food business operators must present, in a clear and accurate manner, the specific health claims supporting the references to general, non-specific benefits that they use.

47      Therefore, the visual dimension of the requirement of ‘accompanying’, within the meaning of Article 10(3) of Regulation No 1924/2006, should be understood as referring to the immediate perception by the average consumer, reasonably well informed and reasonably attentive and circumspect, of a direct visual link between the reference to general, non-specific health benefits and the specific health claim, which requires, in principle, spatial proximity or immediate vicinity between the reference and the claim.

48      However, in the particular case where the specific health claims do not appear in their entirety on the same side of the packaging as the reference which they are intended to substantiate due to their large size or length, it should be considered that the requirement for a direct visual link could be satisfied, exceptionally, by means of an explicit reference, such as an asterisk, where that ensures, in a manner that is clear and perfectly comprehensible to the consumer, that, in spatial terms, the content of the health claims and the reference match.

49      It is therefore for the national courts to verify and determine, in the light of all the circumstances of the case, whether the requirement of visual proximity arising from Article 10(3) of Regulation No 1924/2006 is satisfied by the use of a linking asterisk.

50      In the light of the foregoing, the answer to the first question is that Article 10(3) of Regulation No 1924/2006 must be interpreted as meaning that the requirement which it lays down, that any reference to general, non-specific benefits of a nutrient or food must be accompanied by a specific health claim included in the lists provided for in Articles 13 or 14 of that regulation, is not satisfied where the packaging of a food supplement contains a reference to general, non-specific health benefits of a nutrient or food on the front of the packaging, whereas the specific health claim intended to accompany it appears only on the back of that packaging and there is no clear reference, such as an asterisk, between the two.

 ***The second question***

51      By the second question, the referring court asks, in essence, whether references to general, non-specific benefits of the nutrient or food for overall good health or health-related well-being within the meaning of Article 10(3) of Regulation No 1924/2006 must be justified by scientific evidence within the meaning of Article 5(1)(a) and Article 6 of that regulation.

52      In that regard, it should be noted first of all that, as the referring court points out, the wording of Article 10(3) of Regulation No 1924/2006, unlike that of Article 10(1) of that regulation, does not contain an explicit reference to the general requirements of Chapter II of that regulation, which contains Articles 5 and 6 thereof.

53      However, it is important to note that the wording of Articles 5 and 6 makes it clear that any health claim, within the meaning of that regulation, must be scientifically substantiated.

54      Under Article 5(1)(a) of Regulation No 1924/2006, the use of nutrition and health claims is to only be permitted if the presence, absence or reduced content in a food or category of food of a nutrient or other substance in respect of which the claim is made has been shown to have a beneficial nutritional or physiological effect, as established by generally accepted scientific evidence. Article 6 of that regulation also contains a statement to that effect, by providing, in paragraph 1, that ‘nutrition and health claims shall be based on, and substantiated by, generally accepted scientific evidence’.

55      Such an interpretation is supported by the objectives pursued by Regulation No 1924/2006, which is intended to ensure, in particular, as is apparent from paragraph 35 of the present judgment, the protection of health and a high level of consumer protection, in particular against misleading claims. Furthermore, recital 14 of that regulation sets out the necessity to ensure that the substances for which a claim is made have been shown to have a beneficial nutritional or physiological effect. Moreover, recital 17 of that regulation states that the scientific substantiation should be the main aspect to be taken into account when making nutrition and health claims and recital 23 of that regulation further states that the use of health claims in the Union should only be authorised after scientific assessment of the highest possible standard.

56      Finally, Article 10(1) of Regulation No 1924/2006 expressly provides that health claims must comply with the general requirements in Chapter II of that regulation, in which Articles 5 and 6 appear. As is apparent from paragraphs 37 to 39 of the present judgment, Article 10(3) of Regulation No 1924/2006, in so far as it allows reference to a ‘general’ health claim not appearing on the lists of authorised claims referred to in that regulation but accompanied by a health claim included therein, establishes a derogation from the principle established in Article 10(1) of that regulation, according to which health claims are prohibited, with the exception of those appearing on such lists. Article 10(3) of that regulation must necessarily be interpreted strictly.

57      It follows that Article 10(3) must be interpreted as meaning that a ‘general’ health claim within the meaning of that article, such as that at issue in the main proceedings, must satisfy the evidential requirements laid down by that regulation.

58      However, as noted by the Advocate General in points 71 and 72 of his Opinion, it is sufficient, for that purpose, that references to general, non-specific benefits of a nutrient or food on the general state of health and health-related well-being be accompanied by specific health claims that are supported by generally accepted scientific evidence which has been verified and authorised, provided that the latter claims are included in the list provided for in Article 13 or Article 14 of that regulation.

59      Having regard to the foregoing considerations, the answer to the second question is that Article 10(3) of Regulation No 1924/2006 must be interpreted as meaning that references to general, non-specific benefits of the nutrient or food for overall good health or health-related well-being must be justified by scientific evidence within the meaning of Articles 5(1)(a) and 6(1) of that regulation. To that end, it suffices for those references to be accompanied by specific health claims included in the lists provided for in Article 13 or Article 14 of that regulation.

 **Costs**

60      Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

1.      **Article 10(3) of 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, as amended by Commission Regulation (EC) No 107/2008 of 15 January 2008 of the European Parliament and of the Council, must be interpreted as meaning that the requirement which it lays down that any reference to general, non-specific benefits of the nutrient or food must be accompanied by a specific health claim included in the lists provided for in Articles 13 or 14 of that regulation, is not satisfied where the packaging of a food supplement contains a reference to general, non-specific health benefits of a nutrient or food on the front of the packaging, whereas the specific health claim intended to accompany it appears only on the back of that packaging and there is no clear reference, such as an asterisk, between the two.**

2.      **Article 10(3) of Regulation No 1924/2006 as amended by Regulation No 107/2008 must be interpreted as meaning that references to general, non-specific benefits of a nutrient or food for overall good health or health-related well-being must be justified by scientific evidence within the meaning of Articles 5(1)(a) and 6(1) of that regulation. To that end, it suffices for such references to be accompanied by specific health claims included in the lists provided for in Article 13 or Article 14 of that regulation.**

[Signatures]

[\*](http://curia.europa.eu/juris/document/document.jsf?text=&docid=222888&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=2242734" \l "Footref*)      Language of the case: German.

Fine modulo