

Merchandise label “Made in....”

1. Development of the term “Made in Germany”

The merchandise label “Made in Germany” has been deemed proof of an especially high degree of product quality in numerous industries for decades. The label owes its creation to a British law, the Merchandise Marks Act from 1887. The original purpose of this law was to protect British consumers from any deception about the origin of German goods. Over time, the term “Made in Germany” developed into a seal of quality. In its function as a geographical designation of origin and quality for products made in Germany, the label is subject to national and international protective provisions.

2. Labelling obligation of goods “Made in Germany”

The provision of geographical information regarding the origin of a product is not mandatory in Germany. The designation of marketing of a product with a reference to German production (esp. “Made in Germany” but also simply “Germany”, “German production” etc.) is voluntary. Goods imported to Germany from other countries are not required to bear labels specifying the country of production either, except for products from the foods and beverage sector.

Within the European Union, the same provisions apply as for Germany. However, various states worldwide require merchandise to be labelled with information regarding the country of production. It is important to know that due to such regulations, the label “Made in the EU” is frequently not accepted by these states. This is the case, for example, for the United States.

Consequently, there is no obligation to label merchandise as “Made in Germany” if the product is solely distributed throughout the European Union. It is only compulsory for the export of goods to those countries, which require merchandise labels. The regulations of the manufacturing country will determine whether the merchandise label of the products is correct. These regulations are recognised by the importing country. Any import regulations abroad, which particularly differ for foodstuff, are listed in the Export Regulations of the Chamber of Commerce Hamburg. The Export Regulations also contain information about which documentation is required for the importing country and can be requested from the Schwerin Chamber of Commerce and Industry (CCI).

3. Legal foundations

Where manufacturers decide to label goods as “Made in Germany”, despite not being obligated to do so, they must do so in compliance with the relevant legal provisions applicable for the country in which the product is brought to market. A product, which was completely manufactured in Germany justifiably, carries the designation “Made in Germany”.

However, production in one country generally only occurs with raw materials and in agriculture while it is increasingly rare for manufactured goods in a world economy based on the division of labour. Therefore, it is important to consider the production processes when assessing the correctness of a label.

The underlying international agreement, the Arrangement of Madrid for the Prevention of False Indications of Origins of Goods, must be observed. Standards from the European Customs Code as well as national regulations of competition and trademark laws also apply.

4. Arrangement of Madrid

The Arrangement of Madrid plays a crucial role in the question of merchandise labels in international traffic. Concluded in 1891, this treaty not only regulates the use of country designations but also of information regarding geographical origin (such as Lübeck Marzipan) and corporate names. All regulations share one common element: false or misleading designations will result in the products being seized by customs.

It is necessary to define the somewhat vague term of “false or misleading designation” more closely. The regulations of the Federal Revenue Administration include the interpretation that the specification of an origin is deemed to be false and misleading if the involved markets and consumers understand it divergently from the actual circumstances. Article 24 of the Customs Code provides an important foundation to assess when this might be the case.

5. Customs Code of the EU

Article 60 of the Customs Code specifies when a product is considered to be originating from a certain country according to customs regulations. This provision is the foundation for the non-preferential origin of goods. That is the origin for the certificate of origin, issued by the CCI. Therefore, Article 60 may not be immediately applicable for the merchandise label “Made in Germany” but the simple provision regarding the “last essential and economically justified processing (...) in an enterprise established for this purpose” offers a practical path of achieving correct merchandise labels and generally precludes a deception of the involved markets and consumers.

6. Competition law

National regulations regarding the topic “Made in Germany” can be found in the Act Against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, UWG) which is fundamental to German competition law. The merchandise label may not deceive consumers about the origin of the product and thereby possibly create false expectations regarding quality and reliability of the product.

The crucial aspect for an assessment from the perspective of competition law is the question of deception of the addressed market and consumers. Since “Made in Germany” raises particular expectations regarding product quality and reliability, the label is reserved for products for which processing steps critical to the quality of the product were conducted in Germany.

Therefore, it must always be determined which product features are essential for the quality when it comes to the label “Made in Germany”. A ruling from the 27th of February 2003 by the Regional Court Stuttgart (WRP 2004, P.130 – Head Note) determined the label “Made in Germany” to be misleading for a multimedia PC. The essential components of the device, such as graphic boards, hard drive, DVD home drive, burner and main board were manufactured abroad. The court determined that these device elements define the valuation and quality expectations of consumers. The process of quality control and the conceptualisation of the computer as well as the selection of components, all of which took place in Germany, were apparently not pivotal for the valuation by the market. Instead, such a valuation concerns the components themselves, which can already be seen in the comparison of the price of a computer with the value of the individual components. According to the courts, the specification “Made in Germany” continues to raise the expectations of the general population regarding the quality of a product.

In a case concerning the production of silverware, the Higher Regional Court Düsseldorf made a ruling on 5th of April 2011 (Ref. No: I-20 U 110/10) that only such goods may be labelled as “Made in Germany” which were mainly produced in Germany and/or whose value properties according to the perception of markets and consumers originate in German production. A special emphasis on the country of origin sets the consumer’s expectation that all parts of the advertised silverware are produced in Germany, according to the courts. The consumers’ expectations of product quality represent only one aspect. The motivation to purchase a product made in Germany may have different reasons, for example concerns about German employment.

7. Trademark Act

The Trademark Act takes up the regulations of the Arrangement of Madrid concerning information about the geographical origin for Germany. It illustrates those as well as the consequences of false designations in more detail.

8. Concurrence of regulations

In rare cases, the assessment whether the designation “Made in Germany” is justified by the production processes, may come to contradictory conclusions. This is because the interpretation following the Customs Code addresses the last critical production step while the Law Against Unfair Competition considers the product quality to be the essential criterion. In cases where the last essential production step is not critical for the quality for the product, economic interests must be balanced. This contradiction becomes particularly problematic if a certificate of origin is required abroad. Foreign customs may seize goods in case different countries of origin are specified in the certificate of origin and on the merchandise label. This consideration should be included in the decision process regarding merchandise labels. In such cases, we recommend contacting your CCI.

It is recommended to document the reasoning which led to the decision of using a label “Made in Germany” to preclude deception in the event of comprehensible and reasonable grounds.

9. Legal consequences of false designation

Those who trade products with false designations may be subject to default and – in case of deliberate or negligent infringements – compensation (§128 MarkenG (Trademark Act) in association with §9 UWG (Act Against Unfair Competition)). Where the interests of beneficiaries and consumers are affected, the directly injured party, the competition, associations promoting commercial and industrial interests, and consumer groups all have legal standing. Furthermore, the import, export or transit of falsely labelled products as per §151 MarkenG (Trademark Act) and Arrangement of Madrid may be punished by seizure of the goods for the purpose of removing the unlawful designation.

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