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**BIO, ECO, ORGANIC**  
**on food and food supplements**

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# BIO is trendy

- The „bio“ foodstuff market together with the „fair trade“ foodstuff market represents the fastest growing market segment.
- The European bio foodstuff market turnover in 2006 was 15.5 billion EUR and it increased by 15%.
- One of the important conditions of success is communication of the „bio“ story about the origin of the products, methods of their production and advantages of bio foodstuff consumption - one must highlight the differences of bio foodstuff and help consumers to find easily bio foodstuff in his store.

# Consumer Protection

(23) For the sake of consumer protection and fair competition, the terms used to indicate organic products should be protected from being used on non-organic products throughout the Community and independently of the language used. The protection should also apply to the usual derivatives or diminutives of those terms, whether they are used alone or combined.

Council Regulation (EC) No 834/2007  
of 28 June 2007

on organic production and labelling of organic products  
and repealing Regulation (EEC) No 2092/91

# Summary

1. What are the conditions for use of bio, eco and organic on food?
2. Do these conditions also apply to food supplements?
3. Do the limits on use of the particular terms „bio, eco and organic“ apply universally throughout all member states of the EC, or is this limitation country specific?
4. Can bio, eco or organic marks be registered as a trademark?
5. What about use of bio, eco and organic on other products than food?

# Conditions for use of bio, eco and organic on food

- Organic food must be produced from organic agricultural ingredients.
- Processed organic food must be mainly produced from ingredients of agricultural origin.
- Non-organic agricultural ingredients may be used only if they have been authorised for use in organic production by the Commission.
- Additives, processing aids, minerals, vitamins and other components must be authorised by the Commission.

# Food

- Food or foodstuff shall mean:  
„Any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.“

# Food Supplements

- Food supplements shall mean:
  - „foodstuffs the purpose of which is to supplement the normal diet and which are concentrated sources of nutrients or other substances with a nutritional or physiological effect, alone or in combination, marketed in dose form, namely forms such as capsules, pastilles, tablets, pills and other similar forms, sachets of powder, ampoules of liquids, drop dispensing bottles, and other similar forms of liquids and powders designed to be taken in measured small unit quantities.“
- whereby nutrients shall mean vitamins, and minerals

## Food Supplements cont.

- Food supplements can also be besides minerals and vitamins other substances with a nutritional or physiological effect e.g. fiber, trace elements, active ingredients extracted from plants.
- These substances can be qualified either as food supplements or medicinal products on a national level, no harmonization on the EU level yet.

# Food Supplement or Medicinal Product?

- Medicinal Product:
  - a) PRESENTATION: Any substance or combination of substances **presented** as having properties for treating or preventing disease in human beings;
  - b) FUNCTION: Any substance or combination of substances which may be used in or administered to human beings either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

## Food Supplement or Medicinal Product? cont.

- No food supplement can present itself as a substance with having properties for treating or preventing disease in human beings, if done so, then this substance must obtain marketing authorisation for medicinal product.
- Food supplements can only function as supplements of necessary nutrients for human diet, which normally people would obtain from adequate and varied diet.

# Organic production and food supplements

Food supplements are part of foodstuff therefore any conditions of organic food production in particular organic processed food production shall apply also to food supplements.

Not all member states adhere yet to this conclusion, therefore there is no harmonized approach yet to this issue.

# BIO, ECO, ORGANIC

The terms „bio“, „eco“, „organic“ and the listed national terms and their derivatives or diminutives may be used **throughout the Community and in any Community language** for the labelling and advertising for products that satisfy the requirements of the Council Regulation (EC) No. 834/2007 on organic production.

# BIO, ECO, ORGANIC cont.

- BG: биологичен.
- ES: ecológico, biológico.
- CS: ekologické, biologické.
- DA: ekologisk.
- DE: ökologisch, biologisch.
- ET: mahe, ökoloogiline.
- EL: βιολογικό.
- EN: organic.
- FR: biologique.
- GA: orgánach.
- IT: biologico.
- LV: biolģisks, ekolģisks.
- LT: ekologiškas.
- LU: biologesch.
- HU: ökológiai.
- MT: organiku.
- NL: biologisch.
- PL: ekologiczne.
- PT: biológico.
- RO: ecologic.
- SK: ekologické, biologické.
- SL: ekološki.
- FI: luonnonmukainen.
- SV: ekologisk.

# Labelling of organic products



(24) In order to create clarity for consumers throughout the Community market, the EU-logo should be made obligatory for all organic pre-packaged food produced within the Community. It should otherwise be possible to use the EU-logo on a voluntary basis in the case of non pre-packaged organic products produced within the Community or any organic products imported from third countries.



(25) It is however considered appropriate to limit the use of the EU-logo to products which contain only, or almost only, organic ingredients in order not to mislead consumers as to the organic nature of the entire product. It should therefore not be allowed to use it in the labelling of in-conversion products or processed foodstuffs of which less than 95 % of its ingredients of agricultural origin are organic.

(26) The EU-logo should under no circumstances prevent the simultaneous use of national or private logos.

# BIO as a trademark?

Council Regulation (EC) No. 207/2009

Absolute grounds for refusal

Article 7 para 1 lett. (i):

„trade marks which include badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention and **which are of particular public interest**, unless the consent of the competent authority to their registration has been given“

Bio trade mark Czech Republic



Reg. No. 154 108, reg. Date 30 July 2001, in particular for: baby food, dietetic food preparations adopted for medical purposes in class 5, foodstuff in class 29, 30, 31, beverages in class 32 and 33; owner: KEZ (certification authority of ecological farming)

# BIO as a trademark? cont.

Trade Marks Act 1994

## *Certification marks*

A certification mark is a mark indicating that the goods ...in connection with which it is used are **certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods..., quality,** accuracy or other characteristics.

In relation to distinguishing goods ...of one undertaking from those of other undertakings it shall be construed as a reference to distinguishing goods ...**which are certified from those which are not.**

Council Regulation 40/94

## *Community Trade Mark*

A Community Trade Mark may consist of any signs ...capable of **distinguishing the goods ... or one undertaking** from those of other undertakings.

Community collective marks

...capable of distinguishing goods... **of the members of the association** which is the proprietor of the mark from those of other undertakings.

# Public and private marks

## Public marks

Official signs, hallmarks, badges, emblems or escutcheons, which use is regulated by public law and controlled by state authorities.

## Private marks

Trade marks, collective marks, certification marks, which use is regulated by conditions set out by the mark owner (license, rules of association, regulations on use).

## “BIO” trade marks applied in class 5

- Vitamins, minerals and other substances
- Other substances / nutritional additives for **medical purposes**

„...any terms, including terms used in trade marks liable to mislead the consumer suggesting that a product or its ingredients satisfy the requirements set out under the Council Regulation no. 834/2007 shall not be used“

# No Misleading Consumers

„bio cotton“ for socks, „eco“ for electronic devices etc.

The Council Regulation No. 834/2009 does not concern other products than plant production, livestock production, aquaculture production, wild plants, seaweeds, processed food and feed.

The use of „bio“, „eco“ or „organic“ may be misleading if an average consumer associates these terms with a special quality of the respective products, which it does not have.

# Laws on the level of the European Communities

- Council Regulation (EC) No. 40/94 on Community Trade Marks (codified version Council Regulation No. 207/2009)
- Regulation (EC) No. 178/2002 of the European Parliament and the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters on food safety
- Council Regulation (EEC) no. 2029/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs (replaced by Council Regulation (EC) no. 834/2007)
- Council Regulation (EC) no. 834/2009 on organic production and labelling of organic products and repealing Regulation (EEC) No. 2029/91
- Directive 2002/46/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to food supplements
- Directive 2001/83/EC of the European Parliament and of the Council on the Community Code relating to medicinal products for human use as amended by the Directive 2004/27/EC of the European Parliament and the Council
- Directive 2006/114/EC concerning misleading and comparative advertising

## Case Law

- Decision of the European Court of Justice C-135/03 (and the opinion of the advocat general)
- Decision of the European Court of Justice C-107/04
- Decision of the OHIM Board of Appeal case R 190/1999-3
- Decision of the OHIM Board of Appeal case R 1058/2007-2

Thank you.