



The “vis atractiva” of the classification as medicinal products does not apply to cosmetic products

Judgment of the Court of Justice of the European Union (CJEU), of 13 September 2015, Case C-321/14

Background

The company Karnevalservice markets non-corrective colour contact lenses in Germany. These products are designed to alter the user's appearance for recreational purposes, not to remedy any kind of visual deficiency. At the time of the events, the labelling of these lenses included a statement informing the user that they were a "cosmetic eye accessory, subject to the EU Cosmetics Directive".

The company Colena, a competitor, brought proceedings before a regional German Court seeking a precautionary injunction to prevent the marketing of these contact lenses. Colena alleged that the packaging did not provide certain compulsory information required under current cosmetics regulations. A higher Court granted the injunction sought by Colena, reasoning that the product's presentation could induce users to regard and treat it as a cosmetic product. Consequently, while expressing serious doubts that the lenses could be legally classified as "cosmetic products", the Court found that the requirements stipulated for such products should apply to these contact lenses as well.

Karnevalservice challenged such Court decision, and given the existence of conflicting positions regarding the nature of contact lenses, the Court of Appeal decided to refer the matter to the CJEU for a preliminary ruling. Specifically, it asked the CJEU to clarify whether contact lenses could be legally defined as a "cosmetic product" and, if not, whether the fact that they

were presented as such meant they should comply with European regulations on such products.

The position of the CJEU

In the opinion of the CJEU, the lenses at issue do not satisfy the three cumulative criteria set out in the legal definition of a cosmetic product: they are not a substance or mixture; they are not applied to a part of the human body contemplated in the definition of such products; and their purpose is not strictly cosmetic.

The Court also pointed out that the EU legislator has not deemed it necessary to create a category of cosmetic products defined by reference to their "presentation" as it has for medicinal products, allowing healthcare authorities to categorise a product as such if it is presented to users as having pharmacological properties, and to apply the controls and restrictions governing the marketing of medicinal products.

In summary, the European Court ruled that neither the objective properties of these lenses nor the fact that they are presented to users as a cosmetic product constitute sufficient grounds for classifying them in this category. Consequently, they cannot be obligated to meet the requirements established for cosmetic products. Another question altogether is whether presenting the lenses to consumers in this way could be considered deceptive and therefore subject to the penalty for violating fair advertising regulations.