


**DET KONGELIGE
LANDBRUKS- OG MATDEPARTEMENT**

The Royal Ministry of Agriculture and Food

European Commission
DG Agriculture and Rural Development
Brussels
BELGIUM

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Our ref
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Use of the geographical indication 'Norsk Vodka' in violation of the EEA Agreement (Council Regulation (EEC) No. 1576/89 of 29 May 1989)

1. Background

In March 2005, the Norwegian wine and spirits company Arcus informed the Norwegian authorities that a product called "Smirnoff Norsk Vodka" (Norsk Vodka being the Norwegian words for "Norwegian Vodka") was in production and circulation in the United Kingdom.

The producer of "Smirnoff Norsk Vodka" is the company Diageo. "Smirnoff Norsk" has been registered as a trademark in the UK (Community trade marks E3987534, E4020401 and E2357768).

Arcus is a producer of vodka in Norway. In Norway, the company sells 1,55 million litres per year of vodka with the geographical designation "Norsk Vodka". The total vodka market in Norway is 3,7 million litres per year. The company also sells "Norsk Vodka" in the USA (0,9 million litres estimated for 2006), and has plans of launching a vodka with the geographical designation "Norsk Vodka" on the British market during 2006.

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Arcus claimed that marketing and sale of "Smirnoff Norsk Vodka" is in violation of the EEA Agreement, more specifically Council Regulation (EEC) No. 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks, with the EEA adaptations found in Annex II Chapter XXVII point 1 of the Agreement. Arcus also claimed that the market value of Norwegian vodka would be decreased if consumers are misled as to the true origin of the products.

The Norwegian Ministry of Agriculture and Food recommended Arcus to present their case to the relevant UK food authorities responsible for Regulation (EEC) No. 1576/89. However, the Ministry offered to initiate that contact be established between the Norwegian and UK delegations to the EU, in order for Norwegian authorities to inform UK authorities of the present case. An informal meeting was held between representatives from the UK and Norwegian EU delegations on 10 November 2005.

Through legal representation, Arcus contacted relevant UK authorities during the winter of 2005/2006. The case did not proceed much at that time. During the spring of 2006 there has also been extensive contacts regarding the case between the Norwegian Embassy in London and relevant UK authorities. A summary of the contact made and outcome of this is enclosed in this letter. The final conclusion received indicates that the UK authorities consider the case to be determined by whether or not the consumers may be misled by the information found in the label and has concluded that this is not the case.

2. Legal basis

The EEA Agreement incorporates relevant EC regulations regarding spirit drinks. The relevant Regulation is found in the EEA Agreement Annex II Chapter XXVII, point 1: *Council Regulation (EEC) No 1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks.*

Article 5(3) of Council Regulation (EEC) No. 1576/89 reads in its relevant parts:

a) The geographical designations listed in Annex II may replace the designations referred to in paragraph 1 or supplement them, forming composite designations. These designations, whether composite or not, may if necessary be accompanied by additional particulars provided that the latter are regulated by the Member State of production.

...

b) These geographical designations shall be reserved for spirit drinks in the case of which the production stage during which they acquired their character and definitive qualities took place in the geographical area indicated.

The EEA Agreement Annex II Chapter XXVII, point 1 provides EEA adaptations to Council Regulation (EEC) No. 1576/89:

The provisions of the Regulation shall, for the purposes of the present Agreement, be read with the following adaptations:

...

(h) Annex II shall be completed as follows:

...

16. *Vodka* *“Islenskt Vodka/Icelandic Vodka
Norsk Vodka/Norwegian Vodka”*

The term “*these geographical designations*” in Article 5 (3) b) refers to “*the geographical designations listed in Annex II*” cf. Article 5 (3) a). Article 5 (3) thus states that geographical designations found in Annex II of Council Regulation (EEC) No. 1576/89 shall be reserved for spirit drinks in the case of which the production stage during which they acquired their character and definitive qualities took place in the geographical area indicated.

Considering the EEA adaptations to Annex II of the Regulation, the geographical designations “Norsk Vodka” and “Norwegian Vodka” may only be used for vodka which acquired its character and definitive qualities during a production stage which took place in Norway.

The UK authorities that have been contacted in the case seem to consider it to be a test whether or not the consumers are misled by the information provided by the label. In our view, Council Regulation (EEC) No. 1576/89, when dealing with geographical designations, does not provide for such a test. The test in this case must be whether the production took place in the country indicated in the designation at the time when the vodka acquired its character and definitive qualities.

It should also be noted that the TRIPS Agreement ensures protection of geographical indications for spirit drinks.

Article 23 (2) of the TRIPS Agreement reads in its relevant parts:

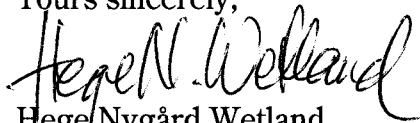
The registration of a trademark for [...] spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if a Member's legislation so permits or at the request of an interested party, with respect to such [...] spirits not having this origin.

As mentioned above, "Smirnoff Norsk" has been registered as a trademark in the UK in the category alcoholic beverages, even though the vodka on which the name is used does not have its origin in Norway.

3. Conclusions

The Norwegian authorities do not know all details regarding the production of "Smirnoff Norsk Vodka". However, we consider it questionable whether the product fulfils the requirements of Council Regulation (EEC) No. 1576/89 with the relevant EEA adaptations. We also consider it questionable whether the registration of "Smirnoff Norsk" as a trademark is valid. We ask the Commission to take this case under consideration and to proceed in the case as best suited.

Yours sincerely,



Hege Nygård Wetland
Deputy Director General

Astrid Zachariassen
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Adviser

Enclosure:

1. Summary of contacts made between the Norwegian Embassy in London and UK authorities regarding the case

Copy: Norwegian Ministry of Foreign Affairs

Smirnoff Norsk Vodka - Contact made between the Norwegian Embassy to the UK and the UK authorities

The Norwegian Embassy first contacted Mr. Anil Kanani, Head of Alcoholic Drinks Branch in DEFRA. He referred the request to Mr. Paul Passi at UK Trading Standards Authority (UKTSA).

13 March 2006:

Mr. Paul Passi at UKTSA Hertfordshire informs the Norwegian Embassy that UKTSA had contacted Diageo in the beginning of January 2006 to inform Diageo that the designation "Smirnoff Norsk Vodka" was a geographical indication which could only be used for vodka produced in Norway. Diageo was asked to change their labelling and provide a date for when this change would happen. Diageo had argued against this. Furthermore, UKTSA had asked their public analysts for a formal evaluation of the case, which they had not received at this date.

Early April 2006:

Mr. Passi at UKTSA informs the Norwegian Embassy that they have received an evaluation from a public analyst regarding the case. The evaluation concludes that the use of the designation "Smirnoff Norsk Vodka" is in violation with the EEA-agreement. UKTSA shares this view, but decides that it is necessary to wait for the evaluation of the other public analyst before formally contacting Diageo regarding changing the labelling of the product.

Early May 2006:

Mr. Passi at UKTSA informs the Norwegian Embassy that the evaluation of the other public analyst does not support UKTSA's view that the use of the designation "Smirnoff Norsk Vodka" is in violation with the EEA-agreement. The analyst considers the label to have enough information to distinguish Diageo's product from Norwegian vodka produced in Norway. He also considers the product Norwegian vodka (Norsk Vodka) to be covered by the Regulation, and not the designation "norsk" as such. UKTSA informs the Embassy that they will present the case to a national panel for labelling issues, before contacting Diageo again.

Mid-June 2006:

The Embassy receives final conclusions from UKTSA. UKTSA concludes that the public analysts and the national labelling panel do not believe that there is a realistic chance in putting a legal case together to show that the label is misleading and that the product Diageo sells under the brand name 'Norsk' is being passed off as Norsk Vodka. UKTSA states that the majority view is that the label gives enough information for a consumer to differentiate the Diageo product from true Norsk Vodka and as this is the case it is not misleading. UKTSA states that they will contact DEFRA and advise them of this outcome.