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***Definition of Packaging
Judgment of the Court of Cologne ('Landgericht') of March 23, 2000¹***

I. Judgment

Facts

The Court was asked to decide whether a company that marketed, through retailers, disposable cutlery and crockery to final consumers for their own use (for example, for garden or grill parties) was obliged to pay packaging waste license fees to the *Duales System Deutschland AG*. The Court analyzed whether such cutlery and crockery constitutes packaging under the German Packaging Ordinance. The Court ruled that in this case cutlery and crockery did not constitute packaging because they were marketed as goods (rather than as packaging). The Court held that if disposable cutlery and crockery is delivered as a sales unit with a good (i.e. with or containing food), it does constitute sales packaging. The Court explicitly stated that, for example, cutlery and crockery used to serve food at hot-dog stands, is sales packaging.

Legal Argumentation

The Court's reasoning was as follows:

The German Packaging Ordinance applies a broad definition of "packaging", which includes service packaging that is used for the delivery of a product to the final consumer. The definition, however, requires that the product in question fulfil a packaging function.

This definition is in line with the EU Packaging and Packaging Waste Directive ('Directive'). The Directive provides that non-returnable items that also fulfil a packaging function (according to Article 3(1) 1st sentence) shall be considered as packaging.

The only criteria whether a product constitutes a "sales packaging" is that it is offered as a sales unit with the good at the point of sale.

II. Conclusion

Products only constitute sales packaging if they are delivered with a good purchased as a sales unit at the point of sale. The same products are not packaging if they are marketed as goods to final consumers for their own use.

¹ 83 0 57/99