

## EU Court Aggressively Tackles Vitamin Health Claims

2 April 2009

Those that write about food supplements, which are actually classified as pharmaceuticals already in some European countries, risk having their published information viewed as illegal marketing materials and subject to criminal proceedings according to the European Court of Justice (ECJ) ruling on April 2, 2009.

In fact, the ECJ found that any information that promotes unauthorised medicinal claims can be construed as illegal product marketing, after a Danish journalist, Frede Damgaard, was found to have “illegally” disseminated information about a banned rosehip powder-based, multi-benefit product called Hyben Total.

MySpace'ers, Facebook'ers, Twitter'ers and Bloggers should also beware. This ruling could even apply to independent articles written by journalists as well as content provided on online social networks and product review sites by the likes of consumers, bloggers and Twitter'ers, said the defence counsel in the case, Susie S. Ekstrand, of the Danish law firm, Lett who said;

*“This ruling is significant because it means anything written about a product that may be deemed medicinal in one member state, can be deemed inappropriate and consequences may follow for the author. We were surprised by this ruling because we thought a commercial interest in the product in question would have to be demonstrated, but the ECJ has ruled otherwise,”* she added. *“It is a restriction of freedom of speech and journalists need to be careful now, especially those writing online across many member states.”*

Ekstrand gave an example of a journalist writing about the joint benefits of glucosamine, which is classed as a drug in Denmark. Since such claims are forbidden in Denmark, a writer in that situation could find herself in legal hot water.

The Court blatantly disavowed the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms stating that the freedom of expression rights contained within it were subject to; *“certain limitations justified by objectives in the public interest”*.

Further, the Court found that even unbiased, third party statements about products could also be construed as advertising under the 2001 Medicines Directive *“even though the third party in question is acting on his own initiative and completely independently, de jure and de facto, of the manufacturer and the seller of such a medicinal product.”*

The European Union's highest court said it was for member state jurisdictions to interpret its ruling although it agreed with an earlier Danish court ruling against Damgaard, which fined the freelance journalist about €1500. That verdict is certainly being appealed.

While this may appear to be the first major government move in support of the EU

Food Supplement Directive's ridiculous restrictions coming from Europe, the US, not to be eclipsed by its European allies, already launched its first volley when the FDA issued 'cease and desist' letters to natural health manufacturers for what THEY were saying about products on their web sites late last year.

And interestingly, the naysayers and a number of natural health associations have stopped enthusiastically asserting that the natural health industry is going to continue to do well even with the EU Food Supplement Directives and Codex moving forward. The ones that continue to say so – well, you'll find Merck, Pfizer, Lilly and Johnson and Johnson executives and employees on their boards.