

European Court Ruling spells an end to water fluoridation.

Doug Cross, 10th May 2009

Fluoridated water must be treated as a medicine, and cannot be used to prepare foods. That is the decision of the European Court of Justice, in a landmark case dealing with the classification and regulation of 'functional drinks' in member states of the European Community. (HLH Warenvertriebs and Orthica (Joined Cases C-211/03, C-299/03, C-316/03 and C-318/03) 9 June 2005)

Functional drinks are those products that have two different purposes – for example, nutrition and exerting a positive effect on some medical condition. They include 'near-water drinks with added minerals' and, in view of the properties claimed for fluoridated water by fluoride advocates, it must be classified as a 'functional food', and therefore falls within the scope of the relevant legislation.

Medicinal law takes precedent over food law.

The Court ruled that, where two different sets of rules appear to apply to a product, medicinal legislation must take precedent, and the product must be regulated as a medicine. It emphasised that medicines regulators in member states do not have the power to exercise discretion on the classification of such dual-function products. The repeated refusal of the British and Irish Regulators to recognise fluoridated water as a medicinal product is therefore an unlawful misuse of their powers, and one that requires immediate reversal.

ECJ rulings do not establish new laws, but clarify how existing ones should be applied, and are enforceable in the domestic legislation of all member states of the EC. In effect, this decision at last confirms the claim that I have made for many years – that existing medicinal law has always required that fluoridated water be regulated as a medicine. Fluoridated water has no medicinal marketing authorization ('product licence'), and because of this it is – and always has been - illegal to supply it to the public, as the 1968 Medicines Act confirms.

As a 'medicinal water', the protection afforded by the water quality regulations that shield consumers from hazardous substances in drinking water does not apply. Its use in the processing of foodstuffs is also prohibited, under the food safety legislation. As a direct result of this ruling, all English and Irish legislation providing for water fluoridation are at last exposed as having been in violation of that fundamental prohibition, and must now be repealed.

Prohibition of use of fluoridated water in foods

But the Court also ruled that such functional food products must not be used in the preparation of foods. As a 'medicinal water' the fluoridated product cannot be regarded as equivalent to the mandatory 'water for human consumption' specified for drinking and food preparation. So now every food wholesale and retail outlet in fluoridated areas of the UK and Ireland, from the corner chip-shop to the largest brewery, from the small high-street bakery to the largest supermarket retailers - all will now have to either cease production or install an alternative water supply.

Implications for international trade in food products

But the ruling also has an equally profound implication for export trade in processed foods and drinks. The Court stated that even if a functional food product (or a food containing it) is legally marketed as a food in one member state, it cannot be exported to any other member state unless it has a medicinal

licence. So any company making a consumable product using fluoridated water in its preparation or as an ingredient cannot now export that product to any other state in the EC, even if their product is permitted in their home state.

The economic implications are enormous. Not only does the ruling ban the use of fluoridated water for all retail catering and wholesale food processing in the UK and Ireland, it also prohibits such trade from these states to other member states of the EC. But it goes much further than even this, because if British and Irish processed foods from fluoridated areas cannot be exported to the EC, this prohibition must also apply to the importing of such products into EC member states from any other country that practices

water fluoridation. The decision effectively bans all processed food products from countries such as the USA, Australia and New Zealand, unless they can be positively proven to have been prepared using only water that was not fluoridated.

What does this mean for water undertakers who fluoridate their product?

Before British water undertakers allow Strategic Health Authorities to order them to start fluoridating their water they need to be fully aware of the implications to them and their shareholders should they agree to do so. Not only are medical damages compensation claims likely to be far higher, with charges of negligently supplying an unlawful product forming the basis of class actions, food processors who lose their markets will certainly hold their water undertaker accountable in law for their losses. This ruling means that Courts in other member states of the EC must support demands from competing food processors that an embargo be placed on British and Irish products unless they can be proven to have been manufactured using only non-fluoridated water.

I have previously warned that this illegal product substitution cannot be permitted to continue, and that members of the public are entirely entitled to demand to be supplied with water that complies with, and is regulated under, the drinking water quality standards that are enforceable under both EC and UK (and Irish) law. Since the ruling must be enforced in all EC member states, water companies will now have to come off the fence and accept that fluoridated water is not an acceptable alternative drinking water.

The only way out - repeal all fluoridation laws and ban the product.

This decision completely supports the challenge that I have issued repeatedly to the UK Regulator, the MHRA - identify the case law that justifies your perverse claim that this product is not a medicine. Ironically, it was the MHRA itself that finally gave the game away, in a formal response to another Regulator, the Advertising Standards Authority (ASA). In what I can only assume was a deliberate attempt to mislead the ASA, the MHRA actually cited this case in support of its continued perverse refusal to implement the medicines legislation that it is obliged to enforce!

The beginning of the end - fluoridation must now be banned, worldwide.

This ECJ ruling effectively puts the final nail in the coffin of water fluoridation, not only within the EC but worldwide. It establishes a very substantial but entirely justified obstacle to trade in food products that are prepared without proper regard to the protection of the public that is enshrined in law. The ruling must be recognised and enforced not only in every member state, but also in any external state that wishes to trade with the EC in processed foods. So just what can be done to resolve the present unacceptable situation?

One solution would be to grant a medicinal licence to fluoridated water. But the Court ruled that any evaluation of a functional drink may only be done under the rigorous procedures required to scrutinise

any pharmaceutical product. In the present state of scientific concern over the evidence of its lack of efficacy and safety it is impossible to imagine that such a licence could ever be granted. If it were, it would immediately result in a world-wide denunciation from the scientific community that is fully aware of the improper commercial influence that is at the heart of the international promotion of fluoridated products.

The only acceptable response is to call a halt to this controversial practice now. The experience of the past half century has shown that it is completely unjustified - indeed, it is responsible for what may reasonably be described as a pandemic of avoidable chronic fluoride poisoning. In ruling that this type of product must be regulated under medicinal law, the Court has taken the final step towards bringing this disreputable practice to a long-delayed end. Let us hope that national Governments all over the world will heed this decision - the economic consequences will be dire for those who continue to attempt to continue this discredited and illegal practice.

For my referenced review of this ruling
http://www.ukcaf.org/files/ecj_ruling_on_functional_foods.pdf

For the original European Court Judgement
<http://eur-lex.europa.eu/Notice.do?val=401136:cs&lang=en&list=483014:cs,459213:cs,450721:cs,424316:cs,401136:cs,401132:cs,287452:cs,357785:cs,250904:cs,250903:cs,&pos=5&page=1&nbl=24&pgs=10&hwords=&checktexte=checkbox&visu=#texte>

And the opinion of the Advocate-General
<http://eur-lex.europa.eu/Notice.do?val=401132:cs&lang=en&list=483014:cs,459213:cs,450721:cs,424316:cs,401136:cs,401132:cs,287452:cs,357785:cs,250904:cs,250903:cs,&pos=6&page=1&nbl=24&pgs=10&hwords=&checktexte=checkbox&visu=#texte>

For a popular review of the implications of the ruling to functional drinks by lawyers Steptoe and Johnson LLB
<http://www.step toe.com/assets/attachments/1048.pdf>