

A thin line between the rationalization of consumer choices and overburdening market participants. Are the courts able to keep the balance?

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Economic Foundations

Homo economicus



Modified model



Homo sapiens





Legal Implementation

- Behavioral economics = positive economics
 - How do human beings behave?
 - Why do they behave in a certain way?
 - No judging!



Legal Implementation

- Behavioral economics = positive economics
- Big incentive for legal measures
 - Homo sapiens appears even weaker
 - Protective instincts



Legal Implementation

- Behavioral economics = positive economics
- Big incentive for legal measures
- Two-Steps:
 - 1. Identify the relevant economic results
 - 2. Consideration in a legal evaluation process





OLG Karlsruhe, 14.03.2012 – 6 U 12/11 – Near-Water Mango Orangenblüte





OLG Frankfurt a.M., 20.10.2011 – 6 U 40/11 – Irreführende Gestaltung einer Nährwerttabelle

NÄHRSTOFFE pr	0 100 g p -		
Energiewert [kcal] [kJ]	533 2227) 335	44 44
Eiweiß [g]	6,9	1	-1v
Kohlenhydrate [g] davon Zucker [g]	56,6 55,4	8,5	3%
Fett [g]	30,4 31	8,3 4,7	9% 74
davon gesättigte Fettsauren [g]	9,9	. 1,5	8%
Ballaststoffe [g]	3,4	0,5	25
Natrium [mg]	40	6 Cauloch	03%
*GDA: Richtwert für die Tage end auf einer Ernährung m Bedarf an Nährstoffen kann	it durchschn	ittich 2.0	00 Galu
Aktivität und anderen Fak	toren höher o	der niedi	iger seit. RDA**
Vitamin E [mg]	pro 10 7	0 y 1	78%
Vitamin B ₁₂ [µg]	0,3	and the second	30% 15%
Calcium [mg] Magnesium [mg]	12	l. A	<u>26</u> %
Eisen [mg]	2		17%
***BDA: Prozentsatz dec e	molonianen	agosti i	ge -





	NÄHRSTOFFE p	0 100 0 0	
Nutrition	Energiewert [kcal]	533	H CURFIST
information	[КЛ]	2227 3	35 49
	Eiweiß [g]	6,9	1 2
	Kohlenhydrate [g] davon Zucker [g]	and the second	8,5 Jy 8,3 Jy
	Fett [g] davon gesättigte	31	4,7 7%
	Fettsauren [g]	9,9	1,5 8%
	Ballaststoffe [g]	3,4	0.5 2%
	Natrium [mg]	40	6 03%
	*GDA: Richfwert für die Tag end auf einer Ernährung n Bedarf an Nährstoffen kan Aktivität und anderen Fak	nit durchschnitt rnach Geschlech toren behovede	ch 2.000 kal Use 1. Ans. kopeliche miedinger sen
		pro 100	gRDA**
	Vitamin E [mg]	710	10.72
Vitamin	Vitamin B ₁₂ [µg]	0,30	30 %
information	Calcium (mg)	120	15% AC 10
	Magnesium [mg]	75	
	Eisen [mg]	24	
	***BDA: Prozentsatz der	immohilenen 180	Baur an





Critical Appraisal

- The critical consumer is the relevant consumer model
- Courts considered behavioral science
- Two-Step-Implementation process was applied
- All arguments have to be carefully balanced



ECJ, 18.10.2012 – C-428/11 – Purely Creative

- The average consumer test is not a statistical test (Recital 18)
- Forced rationalization of a consumer's choice
- Empirical data cannot justify legal measures





Thank you for your attention!