

Case report 01/2024: Online shop sells sodas in single-use beverage packaging subject to deposit – without charging deposit

Osnabrück, 15 February 2024

What is the reason for this case report?

Section 31 (1) VerpackG (Packaging Act) stipulates that single-use beverage packaging is generally subject to deposit. Unlike reusable packaging, single-use beverage packaging is not designed and intended to be used multiple times for the same purpose.

Companies placing single-use beverage packaging filled with beverages (e.g. sodas) on the German market are required to charge recipients with a deposit of at least 0.25 euros per article of packaging. This obligation is triggered the first-time that filled single-use beverage packaging is distributed in Germany and must be complied with at every retail level up to the point that packaging is handed over to the final consumer. This also applies if a product is being imported into Germany. Companies placing single-use beverage packaging subject to deposit on the German market are required to put a permanent, easily readable and clearly visible label on this packaging to mark it as subject to deposit **before** initial distribution. Also before initial distribution, the packaging must participate in the DPG deposit scheme (Deutsche Pfandsystem GmbH).

There are few exceptions to the deposit obligation. These exceptions relate to alcoholic or niche beverages, certain material types or unusual quantities (cf. section 31 (4) nos. 1-7 VerpackG for details). This exemption from the deposit obligation also applies to beverage packaging that is handed over to final consumers outside of Germany.

What happened in the case at hand?

An online shop for sweets, located in Germany, also distributes numerous beverages that it imports from abroad into Germany. Its product range includes single-use beverage packaging subject to deposit, filled mostly with sodas and energy drinks. The operator of this online shop is considered the importer of this packaging as they bear the legal responsibility for the goods at the time they cross the border. Being the importer makes the operator responsible for labelling the soda and energy-drink packaging as subject to deposit and charging the deposit.

When the competent state enforcement authority was informed that the online shop was not complying with the deposit obligation for the above-mentioned products, they checked the online shop and its warehouse. It was found that the operator was offering more than thirty different beverages in cans and single-use plastic beverage bottles that were subject to deposit, but bore no deposit label. The operator had also failed to charge a deposit.

The state enforcement authority asked the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR) if the company had registered in the LUCID Packaging Register and if so, for which packaging. The ZSVR responded that the online shop had registered for packaging subject to system participation. The online shop had not, however, indicated that it also distributed products in single-use beverage packaging subject to deposit.

The state enforcement authority informed the online-shop operator that the beverage packaging was a single-use beverage packaging subject to deposit and that the failure to participate in the deposit scheme was an administrative offence. Proceedings were then initiated.

What are the specific grounds for these breaches of German packaging law that are subject to a fine?

1. Non-compliance with deposit obligation

Single-use beverage packaging subject to deposit must participate in the DPG deposit scheme. If there is no contractual agreement in place and the packaging does not bear the DPG logo, it must not be placed on the German market. Single-use beverage packaging subject to deposit that does not bear this deposit label is banned from distribution.

In the case at hand, the online shop had offered and sold single-use beverage packaging of different kinds, all of which were subject to deposit and filled with soda or energy drinks. The distribution of this packaging without such a label, without participation or without charging a deposit constitutes a breach of the deposit obligation pursuant to section 31 (1) VerpackG.

2. Non-compliance with registration requirement

Companies that place products in their packaging on the German market are required to register with the LUCID Packaging Register. They must do so without exception before commencing distribution. During the registration process, they are required to give information about the packaging they are placing on the German market.

The online shop had only indicated in the LUCID Packaging Register that it was placing products in packaging subject to system participation on the market. This means that the online shop had only fulfilled the registration requirement as far as shipment packaging was concerned. The registration lacked the information that the online shop was also placing beverages – in single-use beverage packaging subject to deposit – on the German market.

Incomplete registration is an administrative offence under the Verpackungsgesetz (Packaging Act) and the packaging in question is banned from distribution.

What was the result of these proceedings?

The online shop was issued a five-figure fine. The competent authority checked the online shop once more and found that the operator is now offering the beverage packaging with a corresponding deposit. The operator under obligation presented evidence of participation in the DPG deposit scheme, combined with information about the sale and return of the sodas and energy drinks subject to deposit that the operator had distributed in single-use beverage packaging. The online shop has since also indicated in the LUCID Packaging Register that it is placing not only packaging subject to system participation (i.e. shipment packaging), but also single-use beverage packaging subject to deposit on the German market.

What are the consequences of administrative offences if they can be proven?

Administrative offences trigger fines as well as checks to see if packaging law obligations are now being complied with. Failure to comply with the deposit obligation is punishable with a fine of up to 100,000 euros per incident. The same fine can apply for incorrect or incomplete registration in the LUCID Packaging Register.

Read more

- **about the statutory deposit obligation** for single-use beverage packaging here: <https://www.verpackungsregister.org/en/information-orientation/knowledge-base/extended-deposit-obligation-for-single-use-beverage-packaging>
- **about the requirements under German packaging law** here: <https://www.verpackungsregister.org/en/information-orientation/knowledge-base/overview>