Online pharmacy has to make up for five years of non-compliance with the system participation requirement, paying millions

Osnabrück, 18 March 2025

What is the reason for our case report?

A large online pharmacy based outside of Germany had registered with the LUCID Packaging Register, but failed to fully meet its statutory obligations in Germany. For years, the pharmacy used shipment packaging to ship its goods to customers, i.e. private final consumers, without having concluded a system participation agreement for that packaging to fund its recycling. Under the Verpackungsgesetz (Packaging Act), the online pharmacy is under obligation as a producer or initial distributor – and is responsible for fulfilling its obligations. By failing to participate that packaging with a system, the company obtained an unfair advantage over lawful competitors by 'free riding'.

Retail packaging of all kinds, including that of medicinal, cosmetic and personal care products, is subject to system participation because it typically accumulates as waste with private final consumers – i.e. private households and comparable sources of waste generation (within the meaning of section 3 (11) VerpackG) such as hospitals, elderly care facilities, retirement homes and pharmacies.

The online pharmacy also failed to file declarations of completeness for the shipment packaging volumes it placed on the German market on an annual basis.

What happened?

Registration

While the online pharmacy was registered with the LUCID Packaging Register, it did not report its packaging subject to system participation to the Zentrale Stelle Verpackungsregister (Central Agency Packaging Register – ZSVR). That is why the ZSVR reached out to the company to inform it of its statutory duties.

System participation

Any party who fills retail, grouped or shipment packaging with goods and places it on the German market for the first time bears producer responsibility for it. If the shipment packaging typically accumulates as waste with private final consumers or comparable sources of waste generation, as it does in the case at hand, that packaging is subject to system participation. This means that mail order companies, such as the online pharmacy, not only have to register with the LUCID Packaging Register, they also have an obligation to participate that packaging with a system.

To assume extended producer responsibility, as required by law, mail order companies have to bear the cost for their packaging's subsequent recovery and recycling. In addition to the packaging itself (e.g. carboard box or shipping envelope), packaging components like labels, tape or filler material (e.g. bubble wrap, loose fill peanuts) are also considered part of shipment packaging.

When reviewing the online pharmacy's producer data in the LUCID Packaging Register, the ZSVR noticed that the online pharmacy had not participated its shipment packaging subject to system participation since 2019. This means that the company failed to comply with its producer responsibility for that packaging, breaking the law and committing an administrative offence. The ZSVR then informed the competent state enforcement authority about the case.

Late completion of system participation

Non-participation and under-participation triggers late system participation completion. Only once the ZSVR had contacted the online pharmacy in this matter did it enter into system participation agreements in 2023. From an economic point of view, completing system participation late is disadvantageous, if only for the fact that it often incurs much higher costs. In the case at hand, the costs for late system participation added up to at least two million euros following the high packaging volumes and the fact that the company had been acting unlawfully for five years. This is excluding any fines that the competent state authority may impose. If system participation had been completed lawfully and on time, the costs would have been much lower.

Filing declarations of completeness

In addition, the online pharmacy has to file declarations of completeness for the past five years. The correctness of the supplementary volumes has to be confirmed by an auditor registered in the LUCID Packaging Register.

About this obligation: Companies with high packaging volumes have to submit a declaration of completeness by no later than 15 May of any given year for the previous year. This declaration of completeness must have been checked by an auditor registered with the ZSVR. This obligation applies to companies whose packaging volumes in the previous calendar year reached or exceeded at least one of the following three volume thresholds.

— Glass: 80,000 kg;
— Paper, paperboard, cardboard (PPC) in total: 50,000 kg;
— Ferrous metals + aluminium + plastics + beverage cartons + other composites (lightweight packaging) in total: 30,000 kg.

The ZSVR and the competent state authorities also have the power to require the submission of a declaration of completeness at any time, even if these thresholds have not been reached.

It is to the online pharmacy's credit that it actively assisted in resolving the alleged breachesand acknowledged that it had to comply with the law quickly. The decision to impose a fine lies with the competent enforcement authority, which had been informed about the case by the ZSVR.

What are the grounds to suspect breaches of statutory packaging law obligations that are subject to a fine?

1. Non-compliance with system participation requirement

In breach of section 7 (1) VerpackG, the online pharmacy failed to participate packaging volumes with a (dual) system over a number of years. Breaches of this kind are punishable with a fine of up to 200,000 euros per breach.

2. The packaged goods were already banned from distribution.

Because the shipment packaging volumes had not undergone system participation, the online pharmacy was not allowed to place them on the German market with its goods (see section 7 (1) VerpackG). Breaches of this kind are punishable with a fine of up to 100,000 euros per breach.

What are the repercussions?

The ZSVR informed the responsible state enforcement authority about the identified grounds to suspect that administrative offences have been committed. The size of the fine depends on the severity of the breach. In addition, the competent state enforcement authorities can confiscate the economic proceeds gained by a company by not complying with its obligations under packaging law. They also monitor subsequent compliance.

Read more

For further information, please visit the ZSVR's website ↗ especially the pages for the packaging law obligations for mail order companies and online retailers ↗, for the system participation and data reporting requirements ↗ and for the obligation to file an audited declaration of completeness ↗.