

# Kluwer Trademark Blog

## The History and Entanglement of the “Spezi” Trademark; What did Riegele and Paulaner Agree Back Then?

Maike Lorenz (Hoffmann Eitle) · Thursday, October 27th, 2022

In Germany and specifically in Bavaria, a non-alcoholic mix drink with the ingredients Cola and Orange soda has reached cult status and may be recognized as one of the most popular non-alcoholic drinks. Among consumers this Cola and Orange mix drink is well-known as “Spezi”.

One significant manufacturer and distributor of “Spezi” is the brewery Paulaner Brauerei Gruppe GmbH & Co. KGaA (“**Paulaner**”). According to Paulaner, they sell about 90,000,000 litres of the mix drink every year. But there are also other manufacturers which produce the Cola and Orange mix drink and the relevant public also perceives those drinks as “Spezi”.

So, against that background, one could assume that “Spezi” is a generic name for Cola and Orange mix drinks.

But, the brewery Brauerei S.Riegele, Inh. Riegele KG (“**Riegele**”) objects to assumption, since 1957, “Spezi” is a registered trademark owned by Riegele. It is also undisputed that Riegele invented “Spezi” (colloquial in Bavarian for “friend”, derived from “special friend”).

### **So, how did Paulaner get to use “Spezi” for their Cola and Orange mix drink?**

Well, from a factual basis and as far as publicly communicated, in 1974 Riegele concluded a contract with Paulaner, which permitted Paulaner to use “Spezi” as a sign for the mix drink for 10,000 German Mark (roughly 5,000 Euro).

**The question currently being subject of a legal dispute before the Regional Court Munich I (Germany) is the nature of the contract between Riegele and Paulaner concerning the trademark “Spezi”.**

Given the success of Paulaner’s “Spezi” drink over the years and the one-time payment many years ago, Riegele terminated the original agreement with Paulaner, intending to conclude a fairer agreement, at least from Riegele’s perspective.

Should a licence be agreed upon, the court calculated that Paulaner would be obliged to pay an annual amount of approximately 5 million Euro, based on the amount of the “Spezi” drinks Paulaner sells within one year.

Paulaner is of the opinion, however, that the parties concluded a demarcation agreement in 1974

and that Riegele's termination was unjustified. Thus, Paulaner filed a lawsuit to have the original agreement declared to be valid. Riegele on the other hand is of the opinion that the parties concluded a licence agreement, or at least, that the termination was justified. Therefore, Riegele has filed a counterclaim predominantly seeking a cessation of the use of the sign "Spezi".

Thus, the question is whether a demarcation agreement or a licence agreement was originally concluded and with which provisions this was done.

### **Demarcation Agreement vs. Licence Agreement**

A demarcation agreement may be considered if the parties to the agreement have (potential) conflicting trademarks and would like to exclude trademark collisions as far as possible. The conclusion of a demarcation agreement is a commonly used instrument to efficiently eliminate (potential) trademark right conflicts and to further amortise the marketing investments made so far.

In the absence of a termination provision in the agreement, the demarcation agreement applies for an unlimited period of time.

Licence agreements grant the right to use a trademark by way of a contract. The licence agreement determines the scope of use for the licensee. Usually, licence agreements are agreed on only for a limited time.

If the licence agreements are not subject to a time limit, the licence agreements can be terminated without any reason. This does not apply to demarcation agreements.

### **Back to Spezi**

The Regional Court Munich I has now ruled that the original agreement between the parties is still valid and continues to exist and, thus, decided in Paulaner's favour. According to the Court, the agreement is to be interpreted as a co-existence and demarcation agreement and not as a licence agreement. Unlike a licence agreement, this coexistence and demarcation agreement cannot be terminated without any particular reason.

By the way, as of now the label of the mix drink Paulaner states: "Spezi licence" while naming the registration number of the trademark owned by Riegele. Also, apparently the agreement between the parties was originally designated as "licence" and later "licence" has been crossed out and replaced by "agreement".

The last word has not yet been spoken. Riegele considers filing an appeal against this decision.

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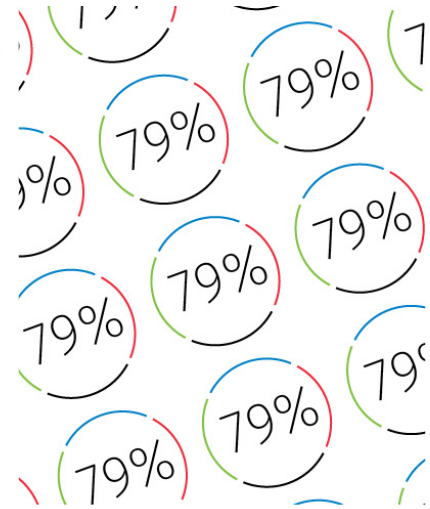
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