

Soap bubble container is not packaging within the meaning of the Packaging Act – Luther achieves landmark judgement for toy manufacturers

Düsseldorf, 30 June 2025 – In a high-profile administrative court case, Luther Rechtsanwaltsgesellschaft has obtained a landmark judgement before the Administrative Court of Osnabrück for a leading international toy manufacturer.

The subject of the dispute was the question of whether a plastic container for classic soap bubble products should be categorised as packaging subject to system participation within the meaning of the German Packaging Act (VerpackG). Such a categorisation would have meant that the manufacturer would have had to pay for the financing of recycling. The court denied this with detailed reasons and obliged the Central Agency Packaging Register to exempt the manufacturer from the system participation obligation (judgement of 17 June 2025, ref. 7 A 164/23).

The judgement provides legal clarity for manufacturers and distributors of classic toys beyond the individual case: According to the court, the soap bubble product – consisting of a plastic container with an integrated blowing device and game in the lid – is not a packaging material, but an integral part of the product itself. The container is absolutely necessary – both for transporting and storing the liquid and for the actual use of the product to produce soap bubbles. There is therefore no separate disposal obligation via packaging recycling; disposal can take place via residual waste.

"The Administrative Court has made it clear that functionality is the decisive factor when interpreting the term 'packaging'," explains Dr Stefan Altenschmidt, who led the proceedings as the responsible partner at Luther. "The mere possibility of alternative forms of use is not sufficient to justify a system participation obligation if, according to the objective view of the public, all components – container, blowing ring and liquid – are functionally related to each other and intended for joint use," adds lawyer Pauline Müller, Senior Associate at Luther and also representing the manufacturer in the proceedings.

The court also expressly stated that the product cannot be used for its intended purpose without the specific container – namely the production of soap bubbles. The Central Agency Packaging Register's reference to alternative forms of production was rejected as unrealistic. An appeal was not authorised.

The decision strengthens legal certainty, particularly for suppliers of combined products with a play and utility function. The distinction between packaging and product is of considerable economic importance, especially in the toy industry – for example in the case of refill products or reusable components. The system participation obligation under the Packaging Act is associated with considerable organisational and financial obligations; misclassifications regularly lead to burdensome administrative measures.

"The ruling is of great economic importance for manufacturers because it counteracts overstretched regulation that would not do justice to the nature of toys," says Dr Stefan Altenschmidt. "At the same time, the ruling sends an important signal for the appropriate application of the Packaging Act: environmental protection remains a key objective – but not on the basis of interpretations that are alien to life. The ruling is therefore also a contribution to reducing bureaucracy."

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Luther Rechtsanwaltsgesellschaft mbH

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