provided for in Articles 8 and 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, since the inclusion of the applicants' names in the contested measures has unlawfully ruined their reputation in Syrian society, among their friends, in the religious community and among trading partners.

Action brought on 25 July 2012 — Plantavis and NEM v Commission and EFSA

(Case T-334/12)

(2012/C 311/11)

Language of the case: German

Parties

Applicants: Plantavis GmbH (Berlin, Germany) and NEM, Verband mittelständischer europäischer Hersteller und Distributoren von Nahrungsergänzungsmitteln & Gesundheitsprodukten e.V. (Laudert, Germany) (represented by: T. Büttner, lawyer)

Defendants: European Commission and European Food Safety Authority

Form of order sought

— Annul the prohibitions laid down by Regulation (EC) No 1924/2006 ([1]) in conjunction with Regulation (EU) No 432/2012 ([2]) and the European Commission's Union Register in respect of permitted and prohibited health claims.

Pleas in law and main arguments

In support of the application the applicants claim, first, that the European legislature lacks the competence to adopt the contested regulations.

Second, the applicants submit that Regulations No 1924/2006 and No 432/2012 and the Union Register of nutrition and health claims made on foods interfere unlawfully in the food industry's legal positions, which are protected as fundamental rights, and in consumers' and the trade's right to information. In that regard, the applicants submit in particular that the prohibitions of nutrition and health claims laid down by the contested regulations are disproportionate. That applies above all to the prohibition of the use of factually accurate nutritional health claims such as, for example, 'better bioavailability'. Further, the Regulations are not appropriate to their intended purpose, as EFSA and the Commission have not established a clear, transparent or uniform approach in relation to the establishment of scientific standards. The applicants also complain about the undifferentiated unequal treatment of different substances and food businesses. Nor are the prohibitions necessary, as Directive 2003/13/EC ([3]) and Regulation (EU) No 1169/2011 ([4]) already prohibit the misleading advertising of food in all European Member States.

([1]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

([2]) Commission Regulation (EU) No 432/2012 of 16 May 2012 establishing a list of permitted health claims made on foods, other than those referring to the reduction of disease risk and to children's development and health (OJ 2012 L 136, p. 1).

([3]) Commission Directive 2003/13/EC of 10 February 2003 amending Directive 96/5/EC on processed cereal-based foods and baby foods for infants and young children (OJ 2003 L 41, p. 33).

([4]) Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ 2011 L 304, p. 18).

Action brought on 2 August 2012 — Evonik Degussa v Commission

(Case T-341/12)

(2012/C 311/12)

Language of the case: German

Parties

Applicant: Evonik Degussa GmbH (Essen, Germany) (represented by: C. Steinle, M. Holm-Hadulla and C. von Köckritz, lawyers)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2012) 3534 final of 24 May 2012 concerning the refusal of a request by Evonik Degussa for confidential treatment of information in the decision in Case COMP/F/38.620 — Hydrogen Peroxide and Perborate, in accordance with the fourth paragraph of Article 263 TFEU;

— order the Commission to pay the applicant's costs in accordance with Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging infringement of Article 8 of the terms of reference of the hearing officer, [1] and of the applicant's right to good administration and its right to be heard

   The applicant submits that the hearing officer did not examine its fundamental objections to publication, thereby failing to have regard to the scope of his powers and obligations, and infringing Article 8 of the terms of reference. Since neither the hearing officer nor any other Commission officer examined or took into consideration the applicant's fundamental objections to the planned publication, the applicant takes the view that the Commission failed to investigate all relevant aspects of the particular case, thereby breaching the principles of good administration and of an effective hearing (Article 41(1) of the Charter of Fundamental Rights of the European Union).

2. Second plea in law, alleging breach of the duty to state reasons

   The applicant submits that the contested decision does not contain any statement of reasons in relation to the applicant's objections to the publication of the extended version of the decision. The same applies as regards the Commission's reasons and the public interest in the publication of the extended version almost five years after the original non-confidential version was issued.

3. Third plea in law, alleging errors of law and of assessment by virtue of breach of the obligation of professional secrecy under Article 339 TFEU and Article 8 of the European Convention on Human Rights, and failure to have regard to the confidentiality of the information to be published.

   — In the context of this plea, the applicant submits that the passages which the Commission plans to publish in the extended non-confidential version of the decision are protected by professional secrecy and to some extent also contain business secrets. The publication of that information in the internet infringes the applicant's right to the maintenance of professional secrecy.

   — Further, the applicant submits that the planned publication of the information provided by the leniency applicants falls within the scope of Article 4(2) of Regulation (EC) No 1049/2001, [2] and that Regulation (EC) No 1/2003 [3] and the Leniency Notice [4] contain special rules on access to such information provided by leniency applicants. Therefore, according to the applicant, and in accordance with the case-law of the Court of Justice (Case C-139/07 P *Commission* v *Technische Glaswerke Ilmenau* [2010] ECR I-5885, and judgment of 28 June 2012 in Case C-404/10 P *Commission* v *Éditions Odile Jacob*, not yet published in the ECR), there is a presumption that publication of that information will harm the applicant's commercial interests and the purpose of the Commission's investigation. A special public interest in the publication of that information must therefore be specifically established. According to the applicant the hearing officer failed to do this, and thus made a manifest error of assessment.

4. Fourth plea in law, alleging breach of the applicant's legitimate expectations and of the principle of legal certainty

   The applicant submits that the Commission breached the principle of the protection of legitimate expectations when it refused the request for confidential treatment and decided to publish the contested version of the decision. Since making its applications for leniency the applicant has trusted in the confidentiality of the information transmitted. That trust is based on the leniency notices and the Commission's established practice and, in the applicant's view, merits protection. The principle of legitimate expectations is also breached by virtue of the fact that the Commission had already published a final non-confidential version of the decision in 2007, in respect of which it had accepted the applicant's wishes concerning text to be omitted. The applicant submits that there is no basis in law or in fact for a subsequent modification of that decision.

5. Fifth plea in law, alleging breach of the specific purpose requirement

   In the context of this plea the applicant submits that the use — for the purpose of informing the public — of information provided by leniency applicants is contrary to the specific purpose of that information provided for in Article 28(1) of Regulation No 1/2003 and paragraph 48 of the Commission's Notice on access to the file. [5] That is particularly the case where that use has occurred more than six years after the end of the administrative procedure.

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[1] Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011 L 275, p. 29).

[2] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

[3] Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles [101 TFEU] and [102 TFEU] (OJ 2003 L 1, p. 1).

[4] Commission Notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

[5] Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 [EC] and 82 [EC], Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ 2005 C 325, p. 7).