

2. Second plea in law, alleging a violation of Article 4(3) of Regulation (EC) No 1049/2001.
  - The ground of refusal of Article 4(3), first paragraph, of Regulation (EC) No 1049/2001 does not apply to the documents requested;
  - Disclosure of the documents requested does not seriously undermine the Commission's decision-making process;
  - Violation of Article 4(3) of Regulation (EC) No 1049/2001 where the Commission did not correctly balance the interests protected by non-disclosure against the public interest served with the disclosure of the documents concerned.
3. Third plea in law, alleging a violation of Article 7(1) and (3) and Article 8(1) and (2) of Regulation (EC) No 1049/2001.
4. Fourth plea in law, in relation to the action for damages under Article 340 TFEU, alleging the violation by the Commission of Article 7(1) and (3) and Article 8(1) and (2) of Regulation (EC) No 1049/2001.

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<sup>(1)</sup> Regulation (EC) No. 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 264 of 25.9.2006, p. 13.

<sup>(2)</sup> 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 L 145 of 31.5.2001, p. 43.

<sup>(3)</sup> Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, the Aarhus Convention, OJ L 124 of 17.5.2005, p. 1.

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**Action brought on 10 August 2015 — Foodcare v OHIM — Michalczewski (T.G.R. ENERGY DRINK)**

**(Case T-456/15)**

(2015/C 328/26)

*Language in which the application was lodged: English*

**Parties**

*Applicant:* Foodcare sp. z o.o. (Zabierzów, Poland) (represented by: A. Matusik, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

*Other party to the proceedings before the Board of Appeal:* Dariusz Michalczewski (Gdańsk, Poland)

**Details of the proceedings before OHIM**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* Community word mark 'T.G.R. ENERGY DRINK' –Community trade mark No 5 689 237

*Procedure before OHIM:* Proceedings for a declaration of invalidity

*Contested decision:* Decision of the Second Board of Appeal of OHIM of 12 May 2015 in Case R 265/2014-2

### **Form of order sought**

The applicant claims that the Court should:

- declare the contested decision invalid in its entirety;
- order OHIM to pay the costs.

### **Plea in law**

- Infringement of Article 52(1)(b) of Regulation No 207/2009.

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**Action brought on 11 August 2015 — Fakro v OHIM — Saint Gobain Cristalería (climaVera)**  
**(Case T-457/15)**  
(2015/C 328/27)

*Language in which the application was lodged: Polish*

### **Parties**

*Applicant:* Fakro Sp. z o.o. (Nowy Sącz, Poland) (represented by: J. Radłowski, lawyer)

*Defendant:* Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

*Other party to the proceedings before the Board of Appeal:* Saint Gobain Cristalería, SL (Madrid, Spain)

### **Details of the proceedings before OHIM**

*Applicant for the Community trade mark:* The applicant

*Trade mark at issue:* Community figurative mark containing the word element 'climaVera' — Community trade mark No 1 152 1366

*Procedure before OHIM:* Opposition proceedings

*Contested decision:* Decision of the Second Board of Appeal of OHIM of 12 May 2015 in Case R 2095/2014-2