



Purely plant-based products cannot, in principle, be marketed with designations such as ‘milk’, ‘cream’, ‘butter’, ‘cheese’ or ‘yoghurt’, which are reserved by EU law for animal products

The same is true if those designations are accompanied by clarifying or descriptive terms indicating the plant origin of the product concerned. However, there is a list of exceptions.

The German company TofuTown produces and distributes vegetarian and vegan foods. In particular, it promotes and distributes purely plant-based products under the designations ‘Soyatoo Tofu butter’, ‘Plant cheese’, ‘Veggie Cheese’, ‘Cream’ and other similar designations. The Verband Sozialer Wettbewerb is a German association, whose responsibilities include combatting unfair competition, takes the view that promoting those products infringes the EU legislation on designations for milk and milk products¹. Consequently, it brought an action against TofuTown for a prohibitory injunction before the Landgericht Trier (Regional Court, Trier, Germany).

However, TofuTown considers that its advertising does not infringe the relevant legislation. It argues that the way in which consumers understand those designations has changed considerably in recent years. Moreover, it does not use designations such as ‘butter’, or ‘cream’ on their own, but always in association with words referring to the plant origin of the products concerned, such as ‘tofu butter’ or ‘rice spray cream’.

In that context, the Landgericht asked the Court of Justice to interpret the relevant EU legislation.

In today’s judgment, the Court observes that, in principle, for the purposes of the marketing and advertising in question, the relevant legislation reserves the term ‘milk’ only for milk of animal origin. In addition, except where expressly provided², that legislation reserves designations like ‘cream’, ‘chantilly’³, ‘butter’, ‘cheese’ and ‘yoghurt’ solely for milk products, that is products derived from milk.

The Court concludes that the designations set out above cannot be legally used to designate a purely plant-based product unless that product is mentioned on the list of exceptions, which is not the case for soya or tofu.

The Court explains that the addition of descriptive or clarifying additions indicating the plant origin of the product concerned, such as those used by TofuTown, has no influence on that prohibition.

The Court also adds that that interpretation of the relevant legislation does not conflict with the principle of proportionality or the principle of equal treatment.

¹ Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ 2013 L 347, p. 671).

² As, for example, the product traditionally designated ‘crème de riz’ in French. Similarly, among those exceptions the use, in the designation of a product, of ‘cream’ is expressly permitted under certain conditions with an additional term, in particular in order to designate spirituous beverages or soups. The list of exceptions appears in Commission Decision 2010/791/EU of 20 December 2010 listing the products referred to in the second subparagraph of point III(1) of Annex XII to Council Regulation (EC) No 1234/2007 (OJ 2010 L 336, p. 55).

³ That is cream that can be whipped.

As far as concerns the principle of proportionality, the Court observes, in particular, that the addition of descriptive or explanatory terms cannot completely exclude the likelihood of confusion on the part of consumers.

As regards the principle of equal treatment, the Court finds that TofuTown cannot rely on unfair treatment by arguing that the producers of vegetarian or vegan substitutes for meat or fish are not subject to restrictions comparable to those to which producers of vegetarian or vegan substitutes for milk or milk products are subject. Those products are dissimilar and are subject to different rules.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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