Judgment of the General Court (Second Chamber) of 28 June 2011 — ATB Norte v OHIM — Bricocenter Italia (BRICOCENTER)

(Case T-480/09)

(Community trade mark — Opposition proceedings — Application for Community figurative mark BRICOCENTER — Earlier Community figurative marks ATB CENTROS DE BRICOLAGE Brico Centro and CENTROS DE BRICOLAGE BricoCentro — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an earlier identical or similar mark registered for identical or similar goods or services — Likelihood of confusion with the earlier mark (Council Regulation No 207/2009, Art. 8(1)(b)) (see paras 25, 33-34, 57, 66-67)

Re:

ACTION brought against the decision of the Fourth Board of Appeal of OHIM of 28 September 2009 (Case R 1045/2008-4) relating to opposition proceedings between ATB Norte, SL and Bricocenter Italia Srl.

Information relating to the case

Applicant for the Community trade mark:	Bricocenter Italia Srl
Community trade mark sought:	Figurative mark BRICOCENTER in respect of services in Class 35 — Application No 4935185

Proprietor of the mark or sign cited in the opposition proceedings:	ATB Norte, SL
Mark or sign cited in opposition:	Earlier figurative Community trade marks ATB CENTROS DE BRICOLAGE Brico Centro (No 989046) and CENTROS DE BRICOLAGE BricoCentro (No 3262623) in respect of services in Classes 35, 37 and 39
Decision of the Opposition Division:	Opposition upheld
Decision of the Board of Appeal:	Contested decision annulled; opposition dismissed in its entirety

Operative part

The Court:

1. Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 28 September 2009 (Case R 1045/2008-4) inasmuch as it upheld the appeal of Bricocenter Italia Srl before the Board of Appeal regarding the services of 'advertising', 'business management' and 'business administration' covered by the Community trade mark application;

2. Dismisses the remainder of the action;

3. Orders ATB Norte, SL, Bricocenter Italia and OHIM each to bear their own costs incurred during the proceedings before the General Court.