Operative part

1. The application for interim measures is dismissed.

2. Costs are reserved.

Judgment of the General Court (Fourth Chamber) of 2 February 2011 — Oyster Cosmetics v OHIM — Kadabell (Oyster cosmetics)

(Case T-437/09)

(Community trade mark — Opposition proceedings — Application for Community figurative mark Oyster cosmetics — Earlier Community figurative mark Kadus oystra AUTO STOP PROTECTION — Relative ground for refusal — Likelihood of confusion — Similarity of signs — 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 23, 51, 55)

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 5 August 2009 (Case R 1367/2008-1) concerning opposition proceedings between Kadabell GmbH & Co. KG and Oyster Cosmetics SpA.

Information relating to the case

Applicant for the Community trade mark:	Oyster Cosmetics SpA
Community trade mark sought:	Figurative mark Oyster cosmetics for goods in Class 3 — Application No 3791555
Proprietor of the mark or sign cited in the opposition proceedings:	Kadabell GmbH & Co. KG
Mark or sign cited in opposition:	Community trade mark registration of the figurative mark Kadus oystra AUTO STOP PROTECTION for goods in Class 3
Decision of the Opposition Division:	Opposition partially upheld
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;

2. Orders Oyster Cosmetics SpA to pay the costs.