2. Orders Zhejiang Xinshiji Foods and Hubei Xinshiji Foods to bear half of their own costs;

3. Orders the Council of the European Union to bear its own costs and to pay half of the costs incurred by Zhejiang Xinshiji Foods and Hubei Xinshiji Foods;

4. Orders the European Commission to bear its own costs.

Judgment of the General Court (Second Chamber) of 17 February 2011 — J & F Participações v OHIM — Plusfood Wrexham (Friboi)

(Case T-324/09)

(Community trade mark — Opposition proceedings — Application for the Community figurative mark Friboi — Earlier national word mark FRIBO — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Genuine use of the earlier mark — Article 42(2) and (3) of Regulation No 207/2009)

1. *Community trade mark — Observations of third parties and opposition — Examination of the opposition — Proof of use of the earlier mark — Genuine use — Concept — Criteria for assessment (Council Regulation No 207/2009, Art. 42(2) and (3)) (see paras 26-27)*

2. *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 45, 69)*

Re:

ACTION brought against the decision of the First Board of Appeal of OHIM of 22 April 2009 (Case R 824/2008-1), concerning opposition proceedings between Fribo Foods Ltd and Agropecuaria Friboi, Ltda.

Information relating to the case

Applicant for the Community trade mark:	J & F Participações SA
Community trade mark sought:	Figurative mark Friboi for goods in Class 29
Proprietor of the mark or sign cited in the opposition proceedings:	Plusfood Wrexham Ltd
Mark or sign cited in opposition:	United Kingdom trade mark registration of the word mark FRIBO for goods in Class 29; United Kingdom trade mark registration of the figurative mark Fribo for goods in Class 29; German trade mark registration of the word mark FRIBO for goods in Class 29; German trade mark registration of the figurative mark FRIBO for goods in Class 29; French trade mark registration of the word mark FRIBO for goods in Class 29; French trade mark registration of the figurative mark FRIBO for goods in Class 29; Italian trade mark registration of the word mark FRIBO for goods in Class 29; Italian trade mark registration of the figurative mark FRIBO for goods in Class 29

Decision of the Opposition Division:	Opposition upheld
Decision of the Board of Appeal:	Appeal partially upheld

Operative part

The Court:

1. Dismisses the action;

2. Orders J & F Participações SA to pay the costs.

Order of the General Court (First Chamber) of 17 February 2011 — RapidEye v Commission

(Case T-330/09)

(Action for annulment — State aid — Aid granted by the German authorities pursuant to the multi-sectoral framework on regional aid — Satellite-based geo-information services system project — Request for confirmation of the scope of a decision declaring aid to be compatible with the common market — Commission's response — Measure not open to appeal — Inadmissibility)

Actions for annulment — Actionable measures — Concept — Measures producing binding legal effects — Assessment of those effects by reference to the substance of the measure — Reply of the Commission to an application for confirmation of the scope of a decision declaring State aid compatible with the common market — Confirmatory decision — Not included (Arts 87 EC, 88 EC and 230 EC) (see paras 24-29, 32-37, 40, 44-47)