Re:

Article 74 of the Rules of Procedure – Application for taxation of costs following the judgment of the Court (Fifth Chamber), of 30 June 2010, in Case C-448/09 P *Royal Appliance International* v *OHIM*.

Operative part

The total amount of costs that Royal Appliance International GmbH must pay BSH Bosch und Siemens Hausgeräte GmbH is fixed at EUR 3 303.20.

Judgment of the Court (Eighth Chamber) of 19 May 2011 — Union Investment Privatfond v OHIM

(Case C-308/10 P)

(Appeal — Community trade mark — Opposition proceedings — Regulation (EC) No 40/94 — Article 74(2) — Evidence not submitted in support of the opposition within the period prescribed for that purpose — Failure to take account thereof — Discretion of the Board of Appeal)

Community trade mark — Appeals procedure — Appeal against a decision of the Opposition Division of OHIM — Examination by the Board of Appeal — Scope — Facts

and evidence not produced in support of the opposition within the period prescribed for that purpose — Taking into account — Discretion of the Board of Appeal (Council Regulation No 40/94, Art. 74(2)) (see paras 42-43)

Re:

Appeal brought against the judgment of the General Court (Third Chamber) of 27 April 2010 in Case T-392/06 *Union Investment Privatfonds* v *OHIM – Unicre-Cartão International De Crédito*, by which the General Court dismissed the action for annulment brought by the holder of the national figurative marks UniFLEXIO, UniVARIO and UniZERO for goods and services in Classes 35 and 36 against the decision of the Second Board of Appeal of OHIM of 10 October 2006 dismissing the appeal brought against the decision of the Opposition Division rejecting the appellant's opposition to registration of the Community figurative mark unibanco for goods in Classes 36 and 38 – Misinterpretation of Article 74(2) of Regulation (EC) No 40/94 – Discretion of the Board of Appeal in respect of evidence not submitted in support of the opposition within the period prescribed for that purpose.

Operative part

The Court:

1. Dismisses the appeal;

2. Orders Union Investment Privatfonds GmbH to pay the costs.