Judgment of the General Court (Third Chamber) of 11 May 2011 — Flaco-Geräte v OHIM — Delgado Sánchez (FLACO)

(Case T-74/10)

(Community trade mark — Opposition proceedings — Application for Community word mark FLACO — Earlier national word mark FLACO — Relative ground for refusal — Identical goods — Article 8(1)(a) and (b) of Regulation (EC) No 207/2009 — Request for proof of genuine use of the earlier mark submitted for the first time before the Board of Appeal — Article 42(2) and (3) of Regulation No 207/2009 and Rule 22 of Regulation (EC) No 2868/95)

1. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an identical earlier mark registered for identical goods and services (Council Regulation No 207/2009, Art. 8(1)(a)) (see paras 37, 48)*

2. *Community trade mark — Definition and acquisition of the Community trade mark — Relative grounds for refusal — Opposition by the proprietor of an identical earlier 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 37, 57)*

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 23 November 2009 (Case R 86/2009-2) concerning opposition proceedings between Mr Jesús Delgado Sánchez and Flaco Geräte GmbH.

Information relating to the case

Applicant for the Community trade mark:	Flaco-Geräte GmbH
Community trade mark sought:	Word mark FLACO for goods in Classes 7 to 9 and 11 — Application No 4108502
Proprietor of the mark or sign cited in the opposition proceedings:	Jesús Delgado Sánchez
Mark or sign cited in opposition:	Spanish trade mark registration of the mark FLACO for goods in Class 7
Decision of the Opposition Division:	Application for Community trade mark dismissed in part
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;

2. Orders Flaco-Geräte GmbH to pay the costs.