Judgment of the General Court (Fourth Chamber) of 24 March 2010 — 2nine v OHIM — Pacific Sunwear of California (nollie)

(Case T-363/08)

(Community trade mark — Opposition proceedings — Application for the Community figurative mark nollie — Earlier national and international word marks NOLI — Relative ground for refusal — No similarity between the goods — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009) — Article 74(1) of Regulation No 40/94 (now Article 76(1) of Regulation 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 40/94, Art. 8(1)(b)) (see paras 24, 43)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 16 June 2008 (Case R 1590/2007-2), relating to opposition proceedings between 2nine Ltd and Pacific Sunwear of California, Inc.

Information relating to the case

Applicant for the Community trade mark:	Pacific Sunwear of California, Inc.
Community trade mark sought:	Figurative mark nollie for goods and services in Classes 3, 9, 11, 14, 18, 20, 25 and 26 — application No 4602017

Proprietor of the mark or sign cited in the opposition proceedings:	2nine Ltd
Mark or sign cited in opposition:	International trade mark registration No 839740 of the word mark NOLI for goods in Classes 3, 18, 24 and 25; United Kingdom trade mark registration No 2361525 of the word mark NOLI for goods in Classes 3, 18, 24 and 25
Decision of the Opposition Division:	Opposition upheld; trade mark application refused
Decision of the Board of Appeal:	Contested decision partially annulled

Operative part

The Court:

1. Dismisses the action;

2. Orders 2nine Ltd to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM).

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