Mark or sign cited in opposition:	Word mark CLINAIR for goods in Classes 3 and 5 (Community trade mark No 1769850)
Decision of the Opposition Division:	Opposition rejected
Decision of the Board of Appeal:	Annulment of the Opposition Division's decision and rejection of the trade mark application

Operative part

The Court:

1. Dismisses the action;

2. Orders REWE-Zentral AG to pay the costs.

Judgment of the Court of First Instance (Fifth Chamber) of 11 November 2009 – Frag Comercio Internacional v OHIM – Tinkerbell Modas (GREEN by missako)

(Case T-162/08)

(Community trade mark — Opposition proceedings — Application for Community figurative mark GREEN by missako — Earlier national and Community figurative marks MI SA KO — 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))

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 27, 52)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 14 February 2008 (Case R 1527/2006-2) relating to opposition proceedings between Tinkerbell Modas LTDA and Frag Comercio Internacional, SL.

Information relating to the case

Applicant for the Community trade mark:	Tinkerbell Modas LTDA
Community trade mark sought:	Figurative mark GREEN by missako for goods and services in Classes 3, 25, 35 — Application No 3663234
Proprietor of the mark or sign cited in the opposition proceedings:	Frag Comercio Internacional, SL
Mark or sign cited in opposition:	The Community figurative trade mark MI SA KO for goods in Classes 18 and 25; the national figurative trade mark MI SA KO for services in Class 35
Decision of the Opposition Division:	Opposition dismissed
Decision of the Board of Appeal:	Appeal dismissed

Operative part

The Court:

1. Dismisses the action;

2. Orders Frag Comercio Internacional, SL, to pay the costs.