

Notification of *ex officio* provisional total refusal of protection (Article 5 of the Madrid Protocol, Rule 17(1) and (2) of the Common Regulations under the Madrid Agreement and Protocol, and Rule 113 EUTMR)

Alicante, 10/02/2017

International registration number: **1329455**

Name of the holder: **SÜDWEST LACKE + FARBEN GMBH & Co KG**

Trade mark: **EuroPremium**

Protection of the abovementioned mark is provisionally refused for the European Union for all the goods and services covered by the designation of the European Union.

I. Grounds

The trade mark you have applied for is not eligible for registration under Article 7(1) (b) and (c) EUTMR and Article 7(2) EUTMR.

The mark applied for consists of the words “EuroPremium” and is considered objectionable for:

- 1 *Chemicals used in industry; adhesives used in industry; solvents for varnishes.*
- 2 *Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists; glazes; solvents and thinners for paints; primers; lacquers for buildings; exterior wall paints; colouring matter; dyestuffs; dye pastes; thinners for lacquer and varnishes; lacquer concentrates; wood coatings [paints]; latex paints; floor paints; roof paints; interior paints.*
- 19 *Building materials (non-metallic); damp course materials (non-metallic -); intumescent construction materials; slabs, not of metal, for building; building materials made of rock fibres; mortar; mortar mass; spackling compound; putties [building materials].*

The distinctive character of a trade mark must be assessed, first, in relation to the goods or services in respect of which registration of the sign is sought and, second, in relation to the perception of the section of the public targeted, which is composed of the consumers of those goods or services (judgment of 27/11/2003, T-348/02, ‘Quick’, paragraph 29).

The average consumer's level of attention is likely to vary according to the category of goods or services in question (judgment of 22/06/1999, C-342/97, 'Lloyd Schuhfabrik Meyer', paragraph 26).

Furthermore, when assessing the distinctive character of a trade mark consisting of a combination of elements, the mark needs to be considered as a whole. However, that does not preclude prior examination of the trade mark's individual features (judgment of 09/07/2003, T-234/01, 'Stihl', paragraph 32).

In the present case, the objectionable goods covered by the mark applied for are aimed at both the average consumers whose awareness will be that of the average consumer who is reasonably well-informed and reasonably observant and circumspect and a professional public whose awareness will be high.

Moreover, since the mark "EuroPremium" consists of the abbreviation "euro" and the latin root "premium" both being understood and used in the European Union, the relevant public with reference to which the absolute ground for refusal must be examined is the consumer of the whole territory of the Union (judgment of 22/06/1999, C-342/97, 'Lloyd Schuhfabrik Meyer', paragraph 26; and judgment of 27/11/2003, T-348/02, 'Quick', paragraph 30).

The trade mark consists of the words "EuroPremium" with the following meanings:

EURO European, especially concerned with the European Union.
(information extracted from Oxford Dictionaries on 10/02/2017 at <https://en.oxforddictionaries.com/definition/us/euro#Euro>)

PREMIUM Relating to or denoting a commodity or product of superior quality and therefore a higher price.
(information extracted from Oxford Dictionaries on 10/02/2017 at <https://en.oxforddictionaries.com/definition/us/premium>)

The relevant consumer will understand the words applied for as a meaningful expression: European product of superior quality and therefore more expensive.

1) Descriptiveness

For the purposes of assessing descriptiveness, it must be determined whether the relevant public will make a sufficiently direct and specific association between the expression and the goods/services for which registration is sought (judgment of 20/07/2004, T-311/02, 'LIMO', paragraph 30).

Taken as a whole, the words "EuroPremium" immediately inform consumers without further reflection that the goods applied for are of superior quality and therefore more expensive and conform with European standards or intend to be for the European market.

Therefore, the mark conveys obvious and direct information regarding the quality of the goods in question.

It follows that the link between the words "EuroPremium" and the goods referred to in the application for registration is sufficiently close for the sign to fall within the scope of the prohibition laid down by Article 7(1)(c) EUTMR and Article 7(2) EUTMR.

2) Lack of distinctive character

For a finding that there is no distinctive character, it is sufficient that the semantic content of the word mark indicates to the consumer a characteristic of the goods relating to their market value which, whilst not specific, comes from promotional or advertising information which the relevant public will perceive first and foremost as such, rather than as an indication of the commercial origin of the goods (judgment of 30/06/2004, T-281/02, 'Mehr für Ihr Geld', paragraph 31).

The relevant public would perceive the words "EuroPremium" as a promotional laudatory message, the function of which is to describe a characteristic of the goods and services and communicate an promotional statement. Moreover, whilst accepting that a mark may be understood as both a promotional formula and an indication of commercial origin, in the present case the relevant public will not tend to perceive in the sign any particular indication of commercial origin beyond the promotional information conveyed, which merely serves to highlight positive aspects of the goods concerned, namely that they are of superior quality and therefore more expensive and also conform with European standards or intend to be for the European market (judgment of 21/01/2010, C-398/08 P, 'Audi', paragraph 45; and judgment of 12/07/2012, C-311/11 P, 'Smart Technologies', paragraph 34).

There is nothing about the words "EuroPremium" that might, beyond its obvious promotional laudatory meaning, enable the relevant public to memorise the sign easily and instantly as a distinctive trade mark for the goods in question (judgment of 05/12/2002, T-130/01, 'REAL PEOPLE, REAL SOLUTIONS', paragraph 28).

Consequently, taken as a whole, the mark applied for – EuroPremium – is devoid of any distinctive character and is not capable of distinguishing the goods for which registration is sought within the meaning of Article 7(1)(b) EUTMR and Article 7(2) EUTMR.

If you have any observations, they should be submitted within two months from the notification of this communication. If you do not submit any observations, the application will be rejected.

II.

The holder of the international registration is hereby given a time limit of two months to overcome the ground for refusing protection indicated. Failure to do so will mean that after expiry of the time limit, the EUIPO will render a decision in which it refuses the protection in whole or in part. Said decision may be appealed. The time limit of two months to reply to the present refusal will start on the day the present notification was issued by the EUIPO (Article 154(2), (3) and (4) EUTMR). Any such reply of the holder of the international registration shall be addressed to the EUIPO only.

Vinciane VAN DER MAESEN