



**OIFIG NA bPAITINNÍ
PATENTS OFFICE**

Oifigí an Rialtais
Bóthar Hebron
Cill Chainnigh
Éire

Government Buildings
Hebron Road
Kilkenny
Ireland

**WORLD INTELLECTUAL PROPERTY ORGANISATION
34, CHEMIN DES COLOMBETTES
PO BOX 18
1211 GENEVA 20
SWITZERLAND**

Date of Notification: 25 April 2017
(By registered Mail)

International Registration No: 1336551
Mark: boost my energy
Holder: Axanova AG of Switzerland

Notification of the Irish Patents Office of Total Provisional Refusal

Dear Sir/Madam,

This notification is issued pursuant to Article 5 of the Protocol relating to the Madrid Agreement concerning the International Registration of Marks and Rule 17(2) of the Common Regulations under the Agreement and Protocol, and is to inform you that protection for this mark is refused for the reasons set out below. Any references to Sections are to Sections of the Trade Marks Act, 1996 and to Rules are to Rules of the Trade Marks Rules, 1996.

1.

Section 8(1)(b)

The mark is devoid of distinctive character.

For a mark to possess distinctive character it must serve to identify the goods/services in respect of which protection is sought as originating from a particular undertaking, and thus to distinguish those goods/services from the goods/services of other undertakings.

It is contended that the mark, for which protection is sought, is incapable of performing the essential function of a trade mark, namely that of identifying the origin of the goods specified.

Section 8(1)(c)

The mark consists exclusively of signs or indications which may serve in trade to designate the kind and intended purpose of the goods in respect of which protection is sought. The wording should therefore remain free for all economic operators in that field to use.

Section 10(2)

There exists a likelihood of confusion on the part of the public between the mark and the following earlier mark(s):

Registered Mark No:226649
Mark:BOOST ENERGY
Proprietor:CADBURY UK LIMITED

Bournville
Birmingham
United Kingdom
Date of Application:28/02/2002
Date of Registration:28/02/2002
Class 30 : Chocolates, chocolate and confectionery; chewing gum, biscuits, cakes, wafers, cocoa, flour and preparations made from cereals, ice cream and ice confections.
Address for Service:MACLACHLAN & DONALDSON
2b Clonskeagh Square
Clonskeagh Road
Dublin 14
Ireland

2. This refusal is in respect of all of the goods for which protection is sought.
3. The holder may make representations in writing, or may request an extension of time for doing so, not later than **24 July 2017**. A request for an extension of time received after that date may be granted at the discretion of the Controller.
4. If representations or a request for an extension of time are not received by the specified date, protection of the mark will be refused.
5. Representations to the Controller or a request for a hearing in relation to this notification of refusal must be accompanied by an address for service within the European Economic Area as required by Rule 10(1)(a) as amended by Statutory Instrument No. 410 of 2010; failure to furnish such address will result in the holder being deemed to have abandoned his request for protection.
6. If, following the receipt of representations, it is considered that the requirements for protection are met, the mark will be published in the Official Journal and protection of it will be subject to opposition and observations by third parties. A refusal based on opposition or observations received may subsequently be issued.
7. Date of refusal: **25 April 2017**

Yours faithfully

Paula Murphy.

Paula Murphy
Trade Mark and Design Examination Division
Direct Line: (056) 7720135
Ext: 4135
tmexam@patentsoffice.ie