

The International Bureau, WIPO
34, chemin des Colombettes
1211 Geneva 20
Switzerland

Reykjavík, 21 June 2017

Our ref.: 201704-3100, 4.1.
Your ref.: 1336551

Provisional refusal of protection in Iceland according to Article 5 and Rule 17(1)

I. Office making the notification:

Icelandic Patent Office

II. Number of the international registration:

1336551

III. Name of the holder:

Axanova AG, Ottenhofenstrasse 110, CH-8738 Uetliburg

IV. ☒ Provisional refusal based on an *ex officio* examination:

V. ☒ Provisional refusal for all the goods and/or services

☐ Provisional refusal for some of the goods and/or services:

VI. Grounds for refusal (see further item VII if Article 14):

☒ Absolute grounds: The trademark is considered to be lacking a distinctive character and describing the quality of the goods. "Boost my energy" indicates to the average user that the goods applied for will enhance their energy. It therefore describes the quality of the goods.

☐ Relative grounds:

VII. Information relating to an earlier mark (see Item XIII):

VIII. Corresponding essential provisions of the applicable law (see Item XII):



Article 13 of the Icelandic Trademark Act No. 45/1997.

IX. Information relating to subsequent procedure:

(i) *Time limit for requesting review or appeal:*

4 months from the date of this notification, i.e. **23 October 2017**

(ii) *Authority to which such request for review or appeal should be made:*

The Icelandic Patent Office

(iii) *Indications concerning the appointment of a representative:*

According to Article 35(1) of the Icelandic Trademark Act No. 45/1997, a request for review has to be filed via the intermediary of a representative residing in the European Economic Area, a member state of the European Free Trade Association (EFTA) or the Faroe Islands.

The Icelandic Patent Office communicates with applicants and proprietors of trademark registrations or their representatives in Icelandic according to Article 35(4). The office may accept documentation in foreign languages in exceptional circumstances.

If the abovementioned time limit expires, without a request for review being made to the Icelandic Patent Office, the International Registration shall be considered abandoned in Iceland, cf. Article 19(2) of the Icelandic Trademark Act, No. 45/1997 (see Item XII). The holder will be notified about the final decision and informed of the possibility to appeal to the Board of Appeal for Industrial Intellectual Property Rights.

X. Date of the notification of provisional refusal:

21 June 2017

XI. Signature of the Office making the notification:

Jóhann Skúli Jónsson
Trademark Examiner

XII. Corresponding essential provisions of the applicable law:

Articles 13 and 19 of the Icelandic Trademark Act, No. 45/1997.

Article 13

It is a condition for registration that a trade mark be suitable for distinguishing the goods and services of the proprietor from those of other parties. A mark which indicates exclusively, or with only minor alterations or additions, the type of product or service, condition, quantity, use, price, origin or when it was produced or the service provided, shall not be deemed to possess sufficiently distinctive characteristics. The same shall apply to a sign or word combination which is common in trade or is used in everyday speech. In order to determine whether a mark has sufficiently distinctive characteristics all circumstances must be considered, in particular how long and to what extent the mark has been in use.

Article 19



If an application for the registration of a trade mark does not comply with legal provisions or if the Patent Office is of the opinion that other barriers should cause the rejection of the registration, the applicant shall be sent a reasoned statement of refusal and he shall be given the opportunity to express himself or emend the application within a specified time limit. Upon the expiry of this period the Patent Office will re-examine its position towards the application.

Should the applicant fail to submit comments or emend the application within the specified time limit referred to in the first paragraph, the application shall be cancelled.

At the request of the applicant, an application shall be re-examined if the applicant, within two months of the expiration of the time limit referred to in the first paragraph, expresses himself concerning the case or emends the application, and provided the re-examination fee is paid.
