


MADRID PROTOCOL

TOTAL PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1)

I.	Office making the notification:  Office des Brevets de la République de Bulgarie 52b, boul. Dr.G.M.Dimitrov, BG-1040 SOFIA, Bulgarie www.bpo.bg
II.	Number of the international registration: 1 336 551
III.	Name of the holder: Axanova AG.
IV.	Information concerning the type of provisional refusal: <input checked="" type="checkbox"/> Total provisional refusal based on an <i>ex officio</i> examination <input type="checkbox"/> Total provisional refusal based on an opposition ¹ <input type="checkbox"/> Total provisional refusal based on both an <i>ex officio</i> examination and an opposition ¹
V.	Information concerning the scope of the provisional refusal: Total provisional refusal affects all the goods.
VI.	<p>Grounds for refusal [(where applicable, see item VII)]:</p> <p>Motives for refuse:</p> <p>The mark applied for is a word mark and consists exclusively of the word elements “boost”, “my” and “energy”. According to Merriam-webster.com “boost” can be define as “increase, raise”, “my” as “of or relating to me or myself” and “energy” as “the capacity of acting or being active; vigorous exertion of power”.</p> <p>The goods covered by the applied mark are in classes 05: “Pharmaceutical products; dietetic substances and foods for medical use; food supplements for humans and animals”, 30: “Coffee, tea, cocoa; non-medicated confectionery and pastry products; cakes; biscuits, cookies” and 32: “Mineral and aerated waters and other non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages”. The awareness of the relevant public will be that of the average consumer who is reasonably well-informed and reasonably observant. They are everyday consumption goods.</p> <p>The awareness of the relevant public will be that of the average consumer who is reasonably well-informed and reasonably observant.</p> <p>The relevant public will perceive the sign only as informative expression which conveys obvious and direct information regarding the characteristics of the goods and expected result of thir use, namely that they will enhance ones energy . Given that the mark will be perceived by consumers as non-distinctive promotional statement and not as a trademark. It is not capable of distinguishing the goods of one propriety from another. Therefore it is devoid of distinctive character.</p> <p>The word elements “boost”, “my” and “energy” must be kept free for all competitors.</p>

¹ Where the refusal is based on an opposition, please indicate the name and address of the opponent.

VII. Information relating to an earlier mark²:

- (i) Filing date and number, and, if any, priority date:
- (ii) Registration date and number (if available):
- (iii) Name and address of the owner:
- (iv) Reproduction of the mark:
- (v) List of all or relevant goods and/or services:

VIII. Corresponding essential provisions of the applicable law [(see text under XII)]:

art. 11(1) 2 et art. 11(1) 4

IX. Information relating to subsequent procedure:

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

Deadline for filing a request for review or appeal:

The holder of the international registration may submit its request for review against this refusal to the Patent Office of the Republic of Bulgaria (at the address in item I above)

within three months

from the date of receipt of this refusal, **only through a representative** domiciled in Bulgaria.

- (ii) Authority to which such request for review or appeal should be made:
the **Patent Office of the Republic of Bulgaria**

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

See the list of representatives domiciled in Bulgaria - Internet page of the Office www.bpo.bg

Please also note that, despite the provisional refusal based on the ex officio examination, it is possible that an **opposition** is filed against the recognition of the effects of the international registration in the territory of the Republic of Bulgaria in the period from **28/10/2017** to **28/01/2018**.

X. Signature or official seal of the Office making the notification:


XI. Date of the notification to the International Bureau: **07/08/2017**

² Where the grounds on which the provisional refusal is based relate to an earlier mark, as indicated under item VI. The indication required under this item may be given by annexing a printout from the register or database.

XII. Corresponding essential provisions of the applicable law:

LAW ON MARKS AND GEOGRAPHICAL INDICATIONS

Prom. SG. 81/14 Sep 1999, corr. SG. 82/17 Sep 1999, amend. SG. 28/1 Apr 2005, amend. SG. 43/20 May 2005, amend. SG. 94/25 Nov 2005, amend. SG. 105/29 Dec 2005, amend. SG. 30/11 Apr 2006, amend. SG. 73/5 Sep 2006, amend. SG. 96/28 Nov 2006, amend. SG. 59/20 Jul 2007, amend. SG. 36/4 Apr 2008, amend. SG. 12/13 Feb 2009, amend. SG. 32/28 Apr 2009, amend. SG. 19/9 Mar 2010

Absolute Grounds for Refusal of Registration (title amend. - SG 73/06, in force from 06.10.2006)

Art. 11. (1) Not registered shall be:

1. a sign that is not a mark in the sense of art. 9, para 1;
 2. (amend. SG 43/05) a mark with no distinctive character;
 3. (suppl. SG 43/05) a mark consisting exclusively of signs and indications that have become usual in the spoken language or in the established commercial practice in the Republic of Bulgaria with regard to the declared goods or services;

4. (amend. SG 43/05) a mark consisting exclusively of signs or marks indicating the kind, the quality, the quantity, the designation, the geographic origin, the time or the method of production of the commodities, the way of rendering the services or other characteristics of the commodities or the services;

5. a sign consisting exclusively of:

- a) the form ensuing from the nature of the commodity itself;
- b) the form of the commodity which is necessary for achieving technical result;
- c) the form rendering significant value of the commodity;

6. a mark contradicting with the public order or the good ethics;

7. a mark that could mislead the users about the nature, the quality or the geographic origin of the commodities or the services;

8. (amend. SG 43/05; suppl. – SG 19/10, in force from 10.06.2010) a mark consisting of or including emblems, banners or other symbols, as well as their imitations of member-countries of the Paris convention, as well as emblems, banners or other symbols, abbreviations or names of international intergovernmental organisations announced under Art. 6ter of the Paris Convention;

9. (new – SG 19/10, in force from 10.06.2010) a mark containing signs, emblems or coat of arms other than those announced under Art. 6ter of the Paris Convention and representing significant public interest;

10. (revoked – SG 43/05; prev. text of Item 09 – SG 19/10) a mark consisting of or including official signs and stamps for control and guarantee when they are designated for indicating identical or similar commodities;

11. (amend. SG 28/05; amend. SG 94/05) a mark consisting of or including the name or the image of historic or cultural monuments of the Republic of Bulgaria determined by the Ministry of Culture;

12. (revoked – SG 43/05; new – SG 19/10, in force from 10.03.2011) mark exclusively consisting of applied or registered geographical indication, effective on the territory of the Republic of Bulgaria, or derivatives thereof;

13. (new – SG 19/10, in force from 10.03.2011) mark containing applied or registered geographical indication, effective on the territory of the Republic of Bulgaria, or derivatives thereof, when the applicant is not a registered user of the geographical indication.

(2) The provisions of para 1, items 2, 3 and 4 shall not be applied when the mark as a result of use has acquired distinguishing character with respect to the commodities or the services about which it has been declared.

(3) (amend. SG 43/05; amend. – SG 19/10, in force from 10.06.2010) The provisions of para 1, item 8, 9, 10 and 11 shall not be applied at consent by the corresponding competent body.

Extension of terms

Art. 47. (amend. SG 43/05; amend. – SG 19/10, in force from 10.03.2011) The terms of art. 36, para 3, art. 37, para 2, Art. 38c, Para 3 and Art. 38d, Para 4 and 6 may be extended once by the same period of time at the request of the applicant or the holder, filed before their expiration. The request shall not be granted when a document for paid fee has not been attached to it.