

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 Article 33 EUTMR)

Alicante, 16/11/2017

International registration number: **1373925**
Name of the holder: **PACIFIC PHARMACEUTICALS PTE LTD**
Trade mark: **NutriPerfect**

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

I. Grounds

The Office has examined your application for a European Union trade mark, to ensure that it complies with the legal requirements for registration as established in Article 7 EUTMR.

- The sign

The application consists of the word mark 'NutriPerfect'.

The sign you have applied for is ineligible for registration under Article 7(1)(b) and (c) and Article 7(2) EUTMR because it describes certain characteristics of the goods for which protection is sought, and it is also devoid of any distinctive character.

Descriptiveness

The goods to which this objection applies are:

Class 5 *Mineral dietary supplements for humans; pharmaceutical drugs.*

The assessment of descriptiveness is based on how the relevant consumer would perceive the sign in relation to the goods and services for which protection is sought. Regarding the goods to which an objection has been raised, the Office considers that they belong to a highly specialised market sector. In the present case, the English-speaking consumer, namely a professional in the fields of healing and pharmaceuticals, and the average English-speaking consumer would understand the sign as having the following meaning: perfect nutrition.

Therefore, the relevant consumers would perceive the sign as providing information

about the kind and the quality of the goods in question.

Lack of distinctiveness

Given that the sign has a clear descriptive meaning, it is also devoid of any distinctive character and therefore objectionable under Article 7(1)(b) EUTMR, as it is incapable of performing the essential function of a trade mark, which is to distinguish the goods or services of one undertaking from those of its competitors.

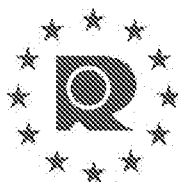
Consequently, taken as a whole, the sign for which protection is sought is descriptive and devoid of any distinctive character, and is not capable of distinguishing the goods to which an objection has been raised within the meaning of Article 7(1)(b) and (c) and Article 7(2) EUTMR.

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

The holder of the international registration is obliged to be represented before the Office by a legal practitioner or professional representative that is entitled to represent third parties before the EUIPO (Articles 119(2) and 120(1) EUTMR). Protection of the international registration for the European Union will be refused in whole if a representative is not appointed within the time limit indicated under II.

II. Time Limit

The holder of the international registration is hereby given a time limit of two months to overcome the ground for refusing protection indicated and to comply with the requirements indicated above. Failure to do so will mean that after expiry of the time limit, the Office 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 Office (Article 193(2), (3) and (4) EUTMR). Any such reply of the holder of the international registration shall be addressed to the EUIPO only.



KISS, SZABOLCS