

**Notification of provisional refusal of protection based on an opposition
(Article 5 of the Madrid Protocol and Rule 17(1) and (2) of the Common Regulations
under the Madrid Agreement and Protocol and Article 78 EUTMDR)**

Alicante, 20/11/2017

International registration No: **1353977**
Date of notification to EUIPO: **06-07-2017**
Trade mark: **AtomIC**
Holder: **Tetsuwan Pty Ltd
28 Margret St
Pahran VIC 3181**
Opposition number: **B2988767**

Protection of the abovementioned mark is provisionally refused for the European Union.

The provisional refusal is based on the fact that an opposition has been filed against the international registration.

I. The grounds for opposition are as follows.

Conflict with an earlier mark because of identity or similarity of the goods and services and identity or similarity of the marks concerned, and likelihood of confusion (Article 8(1)(a) and (b) EUTMR)

II. Name and address of the opposing party:

**Atomic Austria GmbH
Atomic Straße 1
A-5541 Altenmarkt
AUSTRIA**

III. The opposition is based on a mark which was the subject of an application or registration.

- type of mark : European Union registration mark
- filing date and registration date: 21/06/2012, 23/10/2012
- filing number and registration number: 010981975

- reproduction of the mark: (see annex)
- list of goods and services on which the opposition is based: (see annex)

IV. The provisional refusal relates to,

all the goods and services covered by the designation of the European Union.

The Office will notify the opposition separately to the holder of the international registration, including all evidence on which it is based, pursuant to Article 6(1) EUTMDR. The Office will set time limits for the holder. The notification will open an (extendable) cooling-off period of two months and a further period of two months for the opponent to substantiate the opposition. The notification will set a time limit of, in principle, six months for the holder of the international registration to submit observations.



Ana Serra

Enclosures (excluding the cover letter): 4 pages.

Date of receipt (DD/MM/YYYY) 07/11/2017	Number of pages (including this one) 4
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Acknowledgement of receipt of a Notice of opposition

Your notice of opposition has been submitted successfully.
We thank you for choosing to use the online OPPOSITION form.


Opposition number:	002988767
Date of submission:	07/11/2017
Time of submission:	13:00
Number of attached files:	0
Payment method:	Current account with EUIPO
Payment ID number:	
Account No:	0000001647

Please indicate the opposition number in any further communication with the EUIPO.

NOTICE OF OPPOSITION

Your reference:

OTM21299EU00-
11/dko

Opponent(s)		Opponent EUIPO ID:	3132
Name of legal entity or first name and surname:	Atomic Austria GmbH		
Type:	Legal Entity		
Street address:	Atomic Straße 1		
City:	Altenmarkt		
Postal Code:	5541		
Country:	Austria		
Postal address (if different):			
Telephone number:			
Fax number:	00 43-645239008693		
E-mail address:	atomic.trademarks@amersports.com		
Website:			
Representative(s)		EUIPO representative ID:	11068
Name or legal name:	BRANDSTOCK LEGAL RECHTSANWALTSGESELLSCHAFT MBH		
Type:	Association		
Street address:	Rückertstr. 1		
City:	München		
Postal Code:	80336		
Country:	Germany		
Postal address (if different):			
Telephone number:	00 49-8959918530		
Fax number:	00 49-8959918533		
E-mail address:	legal@brandstock.com		
Website:			
Challenged entity		Challenged registration ID:	W01353977
Type of entity	IR		
Name of the owner/holder:	Tetsuwan Pty Ltd		
Designation date:	14/04/2016		
Representation of the trade mark	AtomlC		
Trade mark type	Figurative		
Representation of mark			
Language of proceedings		<input checked="" type="checkbox"/> First language: EN (English) <input type="checkbox"/> Second language: FR (French)	
Extent of the application		<input checked="" type="checkbox"/> Against all the goods and services <input type="checkbox"/> Against some of the goods and services	

NOTICE OF OPPOSITION

Class	Goods and services
9 (EN)	Electronic and electric apparatus for displaying, editing, recording, encoding, storing, transferring or reproducing video and audio; scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signal ling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; data processing equipment and computers; photographic equipment and parts and accessories therefor; cameras and parts and accessories therefor; digital cameras and parts and accessories therefor; camera lenses; batteries and battery chargers for cameras and digital cameras; remote controls for cameras and digital cameras; cases for cameras and digital cameras; straps for cameras and digital cameras; binoculars; telescopes; range finders; computer software for editing and managing of photographs and movies; electronic publications; non-contact measuring machines and instruments; computer software, firmware and hardware; liquid crystal projectors; cameras with liquid crystal projectors; digital cameras with liquid crystal projectors; microscopes; electron microscopes; biological microscopes; X-ray electron microscopes; rifle scopes; telescopic sights; monoculars; spectacles; eyeglasses; glasses; eyewear; ophthalmic lenses; optical lenses; lenses for spectacles; lenses for eyeglasses; lenses for glasses; lenses for eyewear; eyeglass frames; solid state memory cards; flash memory cards; magnifying glasses; crossbow scopes; digital photo frames; telescopes for firearms; sighting telescopes for firearms; semiconductor exposure meters; liquid crystal exposure meters; semiconductor testing apparatus; liquid crystal testing apparatus; sensors; monitors; digital camera sensors; parts and accessories for semiconductor testing apparatus; parts and accessories for liquid crystal testing apparatus; cases especially made for photographic apparatus and instruments; filters for ultraviolet rays for cameras and digital cameras; filters for cameras and digital cameras; flash-bulbs for cameras and digital cameras; flashlights for cameras and digital cameras; shutter releases for cameras and digital cameras; shutters for cameras and digital cameras; slides (photography); spools for cameras and digital cameras; stands for photographic apparatus; transparencies (photography); viewfinders for cameras and digital cameras; tripods for cameras and digital cameras; epidiascopes; mobile phones; cellular phones; smartphones; scanners (data processing equipment); CCD (charge-coupled device) cameras; SD memory cards; flash memory cards; USB hubs; flash card readers.

Grounds for opposition

Selected ground number 1

Article 8(1)(a) EUTMR - The contested mark is identical to the earlier trade mark and covers identical goods and/or services
Article 8(1)(b) EUTMR - There exists a likelihood of confusion on the part of the public

Basis of opposition

Type of basis	EUTM/A
Name of the owner/applicant	Atomic Austria GmbH
Application date	21/06/2012
Filing number	010981975
Registration number	010981975
Registration date	23/10/2012
Expiry date	21/06/2022
Trade mark type	Word
Verbal elements	ATOMIC

☒ The opposing party accepts that the necessary information for this trade mark is imported from the relevant online official database, accessible through TMVIEW, and that this source is used for substantiation purposes without prejudice to its right or obligation to provide any additional information that may be necessary to comply with the substantiation requirements of Article 7(2) and (4) EUTMDR

Goods and services used as basis

- ☐ Based on all the goods and services
☒ Based on part of the goods and services, namely:

Class

NOTICE OF OPPOSITION

	Goods and services		
9 (EN)	Spectacles, snow goggles, sunglasses, helmets, back protectors, shine guard; protection devices against accidents for personal use, in particular protective reinforcements for shoulders and elbows, knees and other parts of the body; electronic search apparatus for buried people, electronic avalanche transceivers; mountaineering equipment, namely search probes.		
Entitlement		<input checked="" type="checkbox"/> Owner/Co-owner <input type="checkbox"/> Authorised licensee <input type="checkbox"/> Person authorised under the applicable law	
Statement of grounds			
Uploaded File(s)			
Title			Confidential
File(s) linked from other proceedings			
Procedure	Filing number	Subject	Date
Fees			
Payment method	Current account		
Opposition of EUTM fee	320.00 €		
Total amount	320.00 €		
Current account with EUIPO			
Account N°	0000001647		
Signature			
First name and Surname		Capacity of the signatory	
Dr. Alexander Gaul		Legal practitioner	

Annexes: