

## PROVISIONAL REFUSAL

according to rule 17(1) of the Common Regulations under the Madrid Agreement and Protocol

### Refusal not based on opposition

“EX OFFICIO”

#### I. Office:

INSTITUTO NACIONAL DA PROPRIEDADE INDUSTRIAL

DIREÇÃO DE MARCAS E PATENTES

Campo das Cebolas

1149-035 – LISBOA PORTUGAL

Fax.: 21 886 98 59

Tel.: 21 881 81 00

Link: <http://www.inpi.pt/>

E-mail: [atm@inpi.pt](mailto:atm@inpi.pt)

II. International registration number: 1204161

Trademark elements: The logo for BIOPLAST features a stylized leaf icon above the word "BIOPLAST" in a bold, sans-serif font.

III. Name and address of the holder: BIO-TEC BIOLOGISCHE NATURVERPACKUNGEN GMBH & CO. KG  
WERNER-HEISENBERG-STRASSE 32, 46446 EMMERICH, ALEMANHA

#### IV. Grounds for refusal.

Relative grounds:

a) - reproduction or imitation of all or part of a trademark previously registered by another person for identical or similar products or services that may mislead or confuse the consumer or comprise the risk of association with the already registered trademark;

a) Corresponding essential provisions of the applicable law under X: Artº. 239.º n.º 1 a) compared to the artº. 237.º n.º 5 from IPC.

#### V. Conflicting rights.

Application/registration number: EUTM 002962561

Filing Date: 05/12/2002

Registration date: 29/06/2006

**Priority date (if any):**

**Name and address of the owner:**

AQUAEL JANUSZ JANKIEWICZ Sp. z o.o.

ul. Krasnowolska 50

02-849 Warszawa

POLONIA

**Trademark:** bioplast

**List of goods on which the conflict is based:**

**Cl. 1:** Chemicals for treating water and adjusting pH, in particular for ponds and aquariums; pH indicators; manures; adsorbents for domestic animal waste; preparations for removing scum from ponds, included in class 01; test kits for determining pH; nitrite, nitrate; CO<sub>2</sub>, carbonate, total hardness and ammonia in water; filter media with a base of natural and synthetic materials, namely with a base of ceramic and ceramic foam, cotton wool, peat, activated carbons, hard coal and charcoal.

**Cl. 5:** Veterinary preparations for domestic animals and ornamental fish; vitamin preparations; algacides; disinfectants; all the aforesaid goods other than manufactured from thermoplastically-processable granules, mainly consisting of starch for pharmaceutical purposes.

**V. Conflicting rights.**

**Application/registration number:** EUTM 005408265

**Filing Date:** 23/10/2006

**Registration date:** 07/08/2007

**Name and address of the owner:**

SOCIETE D'EXTRUSION DU POLYETHYLENE A. BARBIER ET CIE, Société par actions simplifiée

La Guide

F-43600 Ste Sigolene

FRANCIA

**Trademark:** Bioplastic de Barbier

**List of goods on which the conflict is based:**

**Cl. 16:** Bags, sachets, envelopes, pouches, wrapping, covers made of paper, for packaging any goods and

objects; paper sheets; bags, wrapping, covers, small bags, envelopes, pouches of plastic for packaging all goods and items; rubbish bags.

**CI. 17:** Sheets of plastic; film, wrappings, covers, of plastic; semi-processed plastic substances; shrinkable films, shrinkable wrapping and covers, printed film, film, stretch covers and wrapping; film, wrapping and covers for soil mulching; plastic film for palletisation, ensilage, baling, agricultural use, storage and protection of fodder; greenhouse covers of plastic; films, covers and sheaths for irrigation; films, covers and sheaths for disinfecting the ground; film, covers and sheaths for solarisation; film, covers and sheaths for packaging and palletisation.

**V. Conflicting rights.**

**Application/registration number:** IR 960524

**Filing Date:** 03/03/2008

**Registration date:** 03/03/2008

**Name and address of the owner:**

BIOPLAST BIOLOJIK PLASTIK

TICARET VE SANAYI LIMITED SIRKETI

Bagdat Cad. Sumer Sok.

Veska Bloklari B Blok Ergin Ap. No: 16 D:10

Idealtepe/Istanbul

(TR)

**Trademark:**



**List of goods on which the conflict is based:**

**CI. 16:** Plastic materials for packaging; plastic garbage bags, plastic carrier bags, plastic polyethylene films and products, plastic film for wrapping.

**VI.**

**Refusal for all the goods and services.**

**VII. Answer to the decision of refusal:**

**a) Time limit to file an answer:** Within one (1) month following the date of the notification of provisional refusal sent by WIPO. Furthermore, this period can be extended once, for one (1) month, at the request of the interested party, online at <http://www.inpi.pt/>, by fax (+351 218 869 859), or by paper form.

**b) Authority to which the answer should be filed:**

**INSTITUTO NACIONAL DA PROPRIEDADE INDUSTRIAL**

DIREÇÃO DE MARCAS E PATENTES

Campo das Cebolas

1149-035 – LISBOA PORTUGAL

Fax.: 21 886 98 59

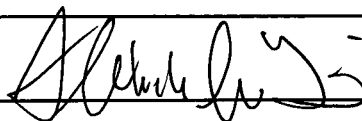
Tel.: 21 881 81 00

Link: <http://www.inpi.pt/>

E-mail: [atm@inpi.pt](mailto:atm@inpi.pt)

**VIII. Date of the decision:** 2017/12/18

**IX. Date and signature:** 2017.12.19 Alexandre Quintela Leitão



**X. Corresponding essential provisions of the applicable law:**

**Industrial Property Code**

(approved by Decree-Law 36/2003 of 5 March and amended by Decree-Law 318/2007 of 26 September, Decree-Law 360/2007 of 2 November, Decree-Law 143/2008 of 25 July and Law 16/2008 of 1 April)

**Art. 222<sup>nd</sup> – Composition of trademark**

- 1 – A trademark may consist of a sign or set of signs that can be represented graphically, namely words - including the names of persons - , drawings, letters, numbers and sounds, the form of the product or respective packaging, provided that they adequately distinguish the products and services of one company from those of others.
- 2 – A trademark may also consist of advertising phrases for the respective products or services, provided that they are distinct in character, regardless of the protection conferred upon them by copyright.

**Art. 223<sup>rd</sup> – Exceptions**

The conditions of [article 222<sup>nd</sup>] are not met by:

- a) - Trademarks that are devoid of any distinctive character;
- b) - Signs that exclusively consist of the form imposed by the nature of the product itself, the form of the product necessary for obtaining a technical result or the form that confers a substantial value on the product;
- c) - Signs that are exclusively made up of indications that may serve in commerce to designate the type, quality, quantity, purpose, value, geographic origin, period or means of production of the product or the service, or other characteristics thereof;
- d) - Trademarks that exclusively consist of signs or indications that have become common use in modern-day language or in the habitual and constant habits of commerce;
- e) - Colours, save where they are combined with each other or with graphics, wording or other particular and distinctive elements.

**Art. 238<sup>th</sup> – Grounds for refusal of a registration**

- 1 – [...] registration of a trademark is refused when:
  - a) - It consists of signs that cannot be represented graphically;
  - b) - It consists of signs devoid of any distinctive character;
  - c) - It consists exclusively of signs or indications referred to in Article 223(1) (b) to (e);
- [...]
- 4 – Registration of a trademark will also be refused if it contains in some or all of its constitutive elements:
  - a) - symbols, crests, emblems or distinctions of the state, municipalities or other Portuguese or foreign public or private bodies, the emblem and name of the Red Cross or other similar bodies and any signs covered by Article 6-ter of the Paris Convention for the Protection of Industrial Property;
  - b) - signs of a high symbolic value, such as religious symbols, unless these are authorised;
  - c) - expressions or figures that are contrary to the law, morals, public order and morality;
  - d) - signs that may mislead the public, namely as to the nature, properties, utility or geographic origin of the product or service for which the trademark is designed.
- 5 – Registration of a trademark that is made up exclusively of the national flag of the Portuguese Republic or some of its constitutive elements will also be refused.
- 6 – Registration will also be refused for a trademark that contains, amongst other elements, the national flag, wherever the trademark is likely to:
  - a) - mislead the public as to the geographic origin of the products or services for which it is designed;
  - b) - lead the consumer to erroneously think that the products or services come from an official body;
  - c) - generate disrespect or a diminution of prestige for the national flag or any of its elements.

**Art. 239<sup>th</sup> – Other grounds for refusal**

- 1 – Further grounds for refusal of registration of a trademark are:
  - a) - reproduction or imitation of all or part of a trademark previously registered by another person for identical or similar products or services that may mislead or confuse the consumer or comprise the risk of association with the already registered trademark;
  - b) - reproduction or imitation of all or part of a logotype already registered by another person to distinguish an entity whose activity is identical or similar to the products or services for which the trademark is designed, if it is likely to mislead or confuse the consumer;
  - c) - violation of other industrial property rights;
  - d) - the use of names, portraits or any other expressions or figurations without the authorisation of the persons they relate to or, if these are deceased, of their heirs or relatives to the fourth degree or, if authorisation is obtained, if it generates disrespect or diminution of prestige for those persons;
  - e) - recognition that the applicant's intent is one of unfair competition or that unfair competition is a possible outcome, regardless of the applicant's intention.
- 2 – When cited in an opposition, the following are also grounds for refusal:
  - a) - reproduction or imitation of a business or corporate name and other distinctive signs, or merely a characteristic part thereof, that do not belong to the applicant or where the applicant is not authorised to use them, if it is likely to mislead or confuse the consumer;
  - b) - violation of copyright;

[...]

The English version of the Industrial Property Code is available at: <http://www.inpi.pt/>