

MADRID PROTOCOL

Model Form 3B: Partial Provisional Refusal of Protection (Rule 17(1) of the Common Regulations)

I.	Office making the notification:  Patent Office of the Republic of Bulgaria 52b, bul.Dr.G.M.Dimitrov, BG-1797 Sofia, BULGARIA, www.bpo.bg
II.	Number of the international registration: 1 338 395
III.	Name of the holder: WÖRWAG PHARMA GmbH & Co. KG
IV.	Information concerning the type of provisional refusal: ☐ Partial provisional refusal based on an <i>ex officio</i> examination ☒ Partial provisional refusal based on an opposition ☐ Partial provisional refusal based on both an <i>ex officio</i> examination and an opposition (i) Name and address of the opponent: KENDY OOD ul. Sofia N 101, 1320 gr. Bankya, Bulgaria
V.	Information concerning the scope of the provisional refusal: ☒ Partial provisional refusal affects only the following goods and/or services: List of goods and/or services: Class 5: Pharmaceutical and veterinary preparations as well as preparations for health care; dietetic preparations adapted for medical purposes; nutritional supplements adapted for medical purposes; nutritional supplements adapted for non-medical purposes based on vitamins, minerals and trace elements and in combination with substances of animal and plant origin. ☐ Partial provisional refusal does NOT affect the following goods and/or services:

VI. Grounds for refusal [(where applicable, see item VII)]:
Art.38b in relation with Art.12(1)2 of the Law on Marks and Geographical Indications-earlier national registration

VII. Information relating to an earlier mark:

1. National Trade mark "Osteoactive" № 42515

- (i) Filing date and number, and, if any, priority date: 15/03/2001; 54061
- (ii) Registration date and number (if available): 10/07/2002; 42515
- (iii) Name and address of the owner: KENDY OOD
 ul. Sofia N 101, 1320 gr. Bankya, Bulgaria

Osteoactive

- (iv) Reproduction of the mark:

List of the relevant goods and/or services:

Class 05: "фармацевтични, ветеринарни и хигиенни препарати, диетични субстанции за медицинска употреба; бебешки храни; дезинфектанти; витаминни препарати"

VIII. 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

Representation

Art. 3. (1) Any person having the right under this Law to conduct business with the Patent Office may do so either in person or through a local industrial property agent.

(2) (amended - State Gazette No. 43/2005, in force since 21.08.2005) Those persons provided for in paragraph (1) who have no residence or headquarters in the Republic of Bulgaria shall conduct business with the Patent Office through a local industrial property agent.

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

Art. 12. (1) (amend. – SG 19/10, in force from 10.03.2011) In case of opposition filed under Art. 38b shall not be registered a mark:

1. (suppl. – SG 19/10, in force from 10.03.2011) which is identical with an earlier mark when the commodities or the services of the declared one and of the earlier mark are identical.

2. (suppl. – SG 19/10, in force from 10.03.2011) when, due to its identity or similarity with an earlier mark and the identity or the similarity of the commodities or the services of the two marks there is a probability for confusion of the users including the opportunity for connection with the earlier mark;

3. (revoked – SG 19/10, in force from 10.03.2011)

(2) (amend. – SG 19/10, in force from 10.03.2011) An earlier mark in the sense of para 1 shall be:

1. a mark with earlier filing date of the application or earlier priority, registered under this Law;

2. an applied mark with earlier filing date or earlier priority, in case being registered under this Law;

3. a mark registered under the Madrid Agreement or the Protocol with earlier date of registration or earlier priority and acknowledged effect on the territory of the Republic of Bulgaria;

4. a mark registered under the Madrid Agreement or the Protocol with earlier date of registration or earlier priority in case its effect being acknowledged on the territory of the Republic of Bulgaria;

5. a Community mark with earlier filing date of the application or earlier priority, or earlier seniority for the territory of the Republic of Bulgaria, acknowledged under the order of Regulation (EC) No 207/2009 of the Council of 26 February 2009 regarding the Community trademark (OJ, L 78/1 of 24 March 2009), hereinafter referred to as "Regulation (EC) No 207/2009";

6. an applied Community mark with earlier filing date of the application or earlier priority, or earlier seniority for the territory of the Republic of Bulgaria, acknowledged under Regulation (EC) No 207/2009, in case it being registered under this Regulation;

7. a mark which is widely known on the territory of the Republic of Bulgaria by the date of submitting an application for a mark, respectively by the date of priority.

(3) (amend. SG 43/05) A mark identical with or similar to an earlier mark and designated for commodities or services which are not identical with or similar to these for which the earlier mark has been registered when the earlier mark is well-known on the territory of the Republic of Bulgaria and the use of the declared mark would lead to unfair benefits from the distinctive character or the popularity of the earlier mark or will degrade them, shall not be registered.

(4) The provisions of para 1, item 2 and para 3 shall not be applied upon consent by the owner of the earlier mark.

(5) (new – SG 19/10, in force from 10.03.2011) In case of opposition filed by the actual holder of a mark, no mark shall be registered, if filed by the agent or the representative of the actual holder without the consent of the latter.

(6) (new – SG 19/10, in force from 10.03.2011) In case of opposition filed by the actual holder of a non-registered mark used in the commercial activity on the territory of the Republic of Bulgaria, no mark shall be registered which filing date is later than the date of the actual commercial use of the non-registered mark.

Objections by third parties

Art. 38a. (new – SG 19/10, in force from 10.03.2011) (1) Within three months from the date of publication of the application any natural or legal person, as well as associations representing manufacturers, producers, providers of services, merchants or consumers, may file an objection against the registration of a mark on the grounds of Art. 11.

(2) The objection shall be filed in writing and shall be grounded and reasoned.

(3) The person that has filed the objection shall not be deemed participant in the registration procedure.

(4) The objection shall be sent to the applicant who may state his opinion thereto.

(5) The objection shall be decided upon by the opposition department.

Opposition against the registration

Art. 38b. (new – SG 19/10, in force from 10.03.2011) (1) The holder of an earlier mark in the sense of Art.12, Para 2 and 3, the exclusive licensee of an earlier mark, the actual owner

of a non-registered mark, used in commercial activity on the territory of the Republic of Bulgaria and applied for registration, as well as a holder of a mark, applied for by an agent or representative of the holder without the consent of the latter, may file an opposition on the grounds of Art.12, Para 1 against:

1. the registration of a mark, applied for under this Law;
2. the recognition of the effect of an international registration on the territory of the Republic of Bulgaria.

(2) The opposition under Para 1, Item 1 shall be filed within three months from the publication of the applied mark in the official bulletin of the Patent Office.

(3) The opposition under Para 1, Item 2 shall be filed between the 6th and the 9th month after the publication of the international registration in the official bulletin of the Patent Office.

(4) The opposition shall be filed in two copies, it shall be reasoned, shall contain information of the filing person, of the opposed mark, the legal grounds it is based on, and shall be accompanied by evidence, if necessary. When the opposition is based on a well-known mark or on a mark with reputation, it shall be accompanied by evidence of its well known status or reputation.

(5) The opposition shall be accompanied by a document for paid fees.

(6) The applicant of the opposed mark shall be notified in case of opposition under Para 1, Item 1.

(7) The International Bureau shall be notified in case of opposition under Para 1, Item 2.

Check of the admissibility and the formal validity of the opposition

Art. 38c. (new – SG 19/10, in force from 10.03.2011) (1) Each opposition shall be checked for compliance with the requirements of Art. 38b, Para 1, 2 and 3.

(2) Any opposition not filed within the time limit, and/or lacking paid fees within the time limit under Art. 38b, Para 2, or not filed by a person under Para 1 shall be inadmissible and shall not give rise to a procedure, of which the filing person shall be notified.

(3) Each admissible opposition shall be checked for compliance with the requirements of Art. 38b, Para 4 and where deficiencies have been found the filing person shall be notified and given a two-month time limit for correcting them. Where the deficiencies are not corrected within the time limit, a decision for terminating the procedure shall be taken.

Opposition proceedings

Art. 38d. (new – SG 19/10, in force from 10.03.2011) (1) The opposition shall be considered by panels of the opposition department consisting of three experts, one being the chairman of the panel.

(2) One of the copies of the opposition, together with the evidence, shall be sent to the applicant of the mark being opposed. Simultaneously, a notification shall be sent to the both parties that they are provided a three-month time limit to reach an agreement commencing from the date of sending the notification. This time limit may be extended twice by three months at request in writing signed by the parties.

(3) When the parties submit an agreement on the dispute according to Para 2, the proceedings shall be terminated.

(4) When no agreement has been submitted within the time limit under Para 2, the applicant of the opposed mark shall be provided a two-month time limit to respond to the opposition. If the applicant of the opposed mark fails to respond within that time limit, a decision based on the opposition and the supplied evidence shall be delivered.

(5) The response of the applicant of the opposed mark shall be sent to the person that has filed the opposition and the latter shall be provided one month to state his opinion.

(6) At the request of the applicant of the opposed mark, the person that has filed the opposition shall present evidence for genuine use of the earlier mark during the 5 years preceding the publication of the application of the opposed mark, or evidence for the reasons

justifying the lack of use, provided that the earlier has been registered at least 5 years before the date of filing the opposition. The person that has filed the opposition shall be provided a two-month term to furnish such evidence. If no such evidence has been furnished, a decision for rejecting the opposition as groundless shall be taken.

(7) The request under Para 6 shall be made at the first opportunity given to the applicant to respond to the opposition.

(8) Within 6 months from the exchange of correspondence between the parties the panel from the opposition department shall consider the opposition, the opinion of the applicant of the opposed mark and of the person that has filed the opposition, as well as the supplied evidence, if available, and shall deliver a decision.

(9) When the opposition is unfounded, a decision for its rejection shall be taken.

(10) When the opposition is founded, a decision shall be taken for partial or full refusal to register the opposed mark.

(11) The order for drawing up, filing and considering oppositions shall be determined in an ordinance of the Council of Ministers.

IX. Information relating to subsequent procedure:

(i) Time limit for requesting review or appeal: **three months** from the date of issue of the refusal to reach an agreement with the opponent;

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

(iii) Indications concerning the appointment of a representative:

The agreement between the parties must be presented to the **Patent Office of the Republic of Bulgaria only through an Industrial Property Representatives (agents)** residing in Bulgaria.

See the list of agents resident in Bulgaria - web page of the Office www.bpo.bg

Note: The official language with the Patent Office of the Republic of Bulgaria is the Bulgarian.

In the absence of an agreement within the prescribed period, the holder of the international registration has an additional period of two months to submit to the Patent Office of the Republic of Bulgaria, through a representative domiciled in Bulgaria, its response to the provisional refusal based on opposition.

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



XI. Date of the notification to the International Bureau: 21/02/2018