

**THE PROTOCOL
RELATING TO THE MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS
PROVISIONAL REFUSAL OF PROTECTION**

Rule 17(1)

I. Office making the notification: STATE PATENT BUREAU OF THE REPUBLIC OF LITHUANIA Kalvarijų g. 3, LT-09310 Vilnius LITHUANIA	Tel.: (370-5) 27 80 267 Fax.: (370-5) 27 50 723
II. Number of the international registration:	1 359 193
III. Name of the holder and other indications of the international registration: Name of the holder: Amaxa Pharma LTD Verbal elements of the Mark: NASCAR Basic application: UA, 17.10.2016, m 2016 22809	
IV. Provisional refusal based on an opposition <u>Name and address of the opponent:</u> NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, Inc. International Motorsports Center, One Daytona Boulevard Daytona Beach FL 32114 (US) <u>Name and address of the representative:</u> Aurelija Šidlauskienė Dr. V.Šidlauskas ir partneriai, UAB K.Būgos g. 29 LT-44326 Kaunas Tel.+370 37 221 442, Fax.+370 37 221 442	
V. ☒ Provisional refusal for all the goods and services. ☐ Provisional refusal for some of the goods and services: [followed by an indication of the goods and/or services which are affected or are not affected]	
X. Date of the notification of provisional refusal:	02.03.2018
XI. Signature or official seal of the Office making the notification: Head of the Register Administration Subdivision  Stela Ivanova	

* - if the space available is insufficient, see a continuation sheet

Number of continuation sheets: 6

CONTINUATION SHEET

No: 1 of IV

VI. Grounds for refusal [(where applicable, see item VII)]:

- ☒ The mark would infringe rights acquired by third parties resulting from an earlier registration(s)
- ☐ Other grounds.

Opposition filed with the Division of Appeals of the State Patent Bureau on: 26.02.2018 No. PTZ-229

VII. Information relating to an earlier mark:*

Community Trade Marks (copy enclosed):

No 001479393

No 002157097

National registration (extract enclosed):

International registration (copy enclosed):

VIII. Corresponding essential provisions of the Lithuanian Law on Trade Marks [(see text under XII)]:*

Article 7 (1)(7)

IX. Information relating to subsequent procedure:

The proprietor of a mark of international registration against which an opposition has been filed must within a five months period from the date of this notification present a justified reply to opposition. The justified reply should be addressed to the Appeals Division of the State Patent Bureau. It should be presented in Lithuanian language and an address for the correspondence in the territory of the Republic of Lithuania should be indicated. Where the trademark owner is not a resident of the Republic of Lithuania or another member state of the European Union, neither he has subsidiary or representation registered in the Republic of Lithuania or another member state of the European Union, the justified reply should be presented through a patent attorney of the Republic of Lithuania. The list of patent attorneys is available on <http://www.vpb.gov.lt/engl/>. The time limit expires on **02.08.2018**.

XII. Corresponding essential provisions of the Lithuanian Law on Trade Marks:

Article 5. Signs of Which a Mark May Consist

Marks, with respect to which legal protection under this Law is applicable, may consist of any signs that can be represented graphically, for example:

- 1) words, personal surnames, names, artistic pseudonyms, names of the legal entities, slogans;
- 2) letters, numerals;
- 3) drawings, emblems;
- 4) three-dimensional forms (the shape of goods, their packaging or containers);
- 5) colours or combinations of colours, their compositions;
- 6) any combination of signs specified in subparagraphs 1-5 of this Article.

Article 6. Absolute Grounds for Refusal of Registration or Invalidation of a Mark

1. A sign shall not be recognised as a mark and shall be refused registration or the registration of a registered mark shall be declared invalid if:

- 1) the sign cannot constitute a mark under the requirements of Article 5;
- 2) the sign is devoid of any distinctive character;
- 3) it has become customary in the current language or in the *bona fide* and established practices of the trade;
- 4) it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, the mode of production or other characteristics of the goods and/or services;
- 5) the sign is of such a nature as to mislead the public, for instance as to the nature, quality or geographical origin of the goods and/or services;
- 6) the sign is contrary to accepted principles of morality or public policy, including ethics of society and humanitarian principles;
- 7) the sign consists exclusively of the shape which results from the nature of the goods themselves or the shape of goods which is necessary to obtain a technical result or the shape which gives substantial value to the goods;
- 8) the sign consists of the official or traditional (abbreviated) state name of the Republic of Lithuania, or armorial bearings, flag or other state heraldic objects or any imitation from a heraldic point of view, also official signs and hallmarks indicating control and warranty, stamps, medals or marks of distinction, unless the permission for their use in a mark has been issued according to the established procedure by the institution authorised by the Government of the Republic of Lithuania;
- 9) it consists of the signs the registration of which has not been authorised by the competent authorities of other states or international organisations and the registration of which is to be refused or invalidated pursuant to Article 6ter of the Paris Convention;
- 10) it is a sign of high symbolic value, in particular a religious symbol;
- 11) it contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in the Republic of Lithuania is of such a nature as to mislead the public as to the true place of origin of the goods. The above provision shall also be applicable against a geographical indication which, although literally true as to the place of origin of the goods, falsely represent to the public that the goods originate in another territory;
- 12) it contains or consists of a geographical indication identifying wines for wines or spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. In the cases provided for in subparagraphs 2, 3 or 4 of paragraph 1 of this Article, a sign may be recognised as a mark and its registration may not be invalidated if, before the date of application for registration, after the date of filing of the application or registration of the mark and following the use which has been made of it, it has acquired distinctive character.

Article 7. Other Grounds for the Invalidation of Registration

1. Registration of a mark shall be declared invalid if the mark is:

- 1) identical with an earlier mark, and the goods and/or services for which the mark is registered are identical with the goods and/or services for which the earlier mark is applied for or is registered;
- 2) identical with or similar to the earlier mark and because of the identity or similarity of the goods and/or services covered by the marks there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier mark;
- 3) identical with the mark recognised as well-known in the Republic of Lithuania in the manner prescribed by Article 9 of this Law, the proprietor of which is another person, or because of its similarity to the mark it is liable to mislead the public;
- 4) identical with the name of the legal entity or processing a misleading likelihood to the name of the legal entity, whose proprietor is another person who acquired the right to the name of the legal entity in the Republic of Lithuania before the date of filing of the application for the registration of the mark or the date of the priority, if on the specified date the firm had a right to engage in identical or similar trade to which the goods and/or services covered by the registered mark may be attributed;

5) identical with the geographical indication protected in the Republic of Lithuania or possessing a misleading likelihood thereto, except for the indication incorporated in the mark as the disclaimer, for which registration is applied for by a person entitled to use the geographical indication;

6) identical with the protected industrial design or any other object of industrial property, literary, scientific or artistic work protected under the copyright, the name or surname or artistic pseudonym of a famous person, or the portrait of another person or its likelihood to the above is misleading, except in cases where consent has been granted by the owner of the rights or the successor to them.

7) identical with, or similar to, an earlier Community trade mark and where the later mark has been registered for goods and (or) services which are not similar to those for which the earlier Community trade mark is registered, where the earlier Community trade mark has a reputation in the European Community and where the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark.

8) identical with, or similar to, an earlier trade mark and where the later mark has been registered for goods and (or) services which are not similar to those for which the earlier trade mark is registered, where the earlier trade mark has a reputation in the Republic of Lithuania and where the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark (...)

3. Registration of the mark may be declared invalid where it becomes evident that the application for the registration of a mark was made in bad faith by the applicant.

Article 11. Filing of an Application

2. (...) Foreign nationals who are not permanent residents of the Republic of Lithuania or another member state of the European Union, or another state of the European Economic Area and legal persons of foreign states who do not have a subsidiary or representation registered in the Republic of Lithuania or another member state of the European Union, or another state of the European Economic Area shall file applications to the State Patent Bureau and perform all actions relating to the registration of the mark with the State Patent Bureau, including also representation at the Appeals Division, through the patent attorney of the Republic of Lithuania (...)

Article 18. Opposition

1. Within a period of three months following the publication of the registered Mark in the Official Bulletin of the State Patent Bureau, the interested person may give to the Appeals Division a justified written opposition to registration of the mark on the grounds that it may not be registered under Articles 6 and 7 of this Law (...)

7. The decision made by the Appeals Division may be appealed against to the Vilnius County Court within six months from the day of adoption thereof.

8. Decisions made by the Appeals Division shall be published in the Official Bulletin of the State Patent Bureau.

Article 19. Appeal and Opposition Examination at the State Patent Bureau

1. Appeals and oppositions are examined at the written or public oral proceedings of the Appeals Division (...)

3. (...) Where appeals and oppositions are examined at the oral proceedings the applicant, the interested person, the proprietor of the mark against which opposition has been filed or the representatives of the above persons are invited to take part in the examination proceedings of the Appeals Division, however their absence shall not prevent from examination of the appeal or opposition (...)

Article 34. Special Provisions Applicable to International Registration of a Mark

(...)

4. The proprietor of a mark of international registration against which an opposition has been filed must within a five months period from the date of Notification of Refusal to the International Bureau appoint his representative in the manner laid down in paragraph 2 of Article 11 of this Law and present a justified reply to opposition. Failure to present a justified reply to the opposition shall be considered as a refusal to take part in the examination of the opposition and shall not prevent the Appeals Division from examining the opposition in the absence of the proprietor of the mark of international registration or his representative. If the proprietor of the mark of international registration to which the opposition is filed fails to appoint his representative, the decision made by the Appeals Division shall not be communicated to the proprietor of the mark of international registration (...)

Article 49. Institutions Having Jurisdiction in Disputes Relating to Marks

1. The Appeals Division of the State Patent Bureau shall deal with disputes provided for in Article 18 of this Law.

2. The Vilnius County Court shall deal with disputes relating to:

- 1) decisions of the Appeals Division of the State Patent Bureau;
- 2) invalidation of registration of a mark;
- 3) revocation of registration of a mark;
- 4) enforcement of the proprietor's rights;
- 5) recognition of the mark as well-known in the Republic of Lithuania;
- 6) Community trade marks as defined in the Council Regulation on Community Trade Mark.



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EUTM file information

NASCAR
001479393

Trade mark information

Name	NASCAR	Filing date	20/01/2000
Filing number	001479393	Registration date	11/06/2001
Basis	EUTM	Expiry date	20/01/2020
Date of receipt	27/01/2000	Designation date	
Type	Figurative	Filing language	English
Nature	Individual	Second language	French
Nice classes	16, 25, 28, 38, 41 (Nice Classification)	Application reference	NR/RL/C1124/MA17
Vienna Classification	25.07.21, 26.11.09 (Vienna Classification)	Trade mark status	Registered
		Acquired distinctiveness	No

Graphic representation



Goods and services

English (en) ☒

16 Paper, writing paper, printed matter, books, catalogues, booklets, printed publications, stationery, labels, cards, writing pads, postcards, posters, printed timetables, calendars, decalcomanias, stickers, pens, pencils, pen cases, photographs, adhesives for stationery, playing cards.

25 Clothing and headgear; hats, caps, sun visors, shirts, t-shirts, sweatshirts, tank tops, vests, sweaters, jackets, warm-up suits, rain suits, shorts, pants; shoes, socks.

28 Games and toys; sporting goods (excluding clothing, shoes and mats); toys namely die cast and plastic miniature cars, trucks, motorcycles and other vehicles; electronic driving and road racing games; electronic slot cars; additional tracks for racing games; plastic action figures depicting racing drivers, mechanics and officials; battery-operated pimple machines and dashboards driving games; board games; puzzles; miniature trophies; plush stuffed animals; pool cues; radio-controlled cars, trucks and other vehicles.

38 Broadcast services.

41 Entertainment services in the nature of regulating, governing, organizing, sanctioning and conducting stock car automobile and truck racing events and arranging for the broadcast of stock car automobile and truck racing events.

Owners

NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, Inc.

ID	28374	Country	US - United States	Correspondence address
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Organisation	NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, Inc.	State/county	FL	NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, Inc. International Motorsports Center	Can be accessed and changed by authorised user via the User Area
		Town	Daytona Beach	One Daytona Boulevard	
		Post code	32114	Daytona Beach FL 32114	Can be accessed and changed by authorised user via the User Area
Legal status	Legal entity	Address	International Motorsports Center One Daytona Boulevard	ESTADOS UNIDOS (DE AMÉRICA)	
State, district or ter...	Florida				Can be accessed and changed by authorised user via the User Area



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EUTM file information

NASCAR
002157097

Trade mark information

Name	NASCAR	Filing date	29/03/2001
Filing number	002157097	Registration date	15/11/2002
Basis	EUTM	Expiry date	29/03/2021
Date of receipt	29/03/2001	Designation date	
Type	Word	Filing language	English
Nature	Individual	Second language	Spanish
Nice classes	9, 16, 25, 28, 38, 41 (Nice Classification)	Application reference	SL/EMT61791A
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	No

Goods and services

English (en) ☒

9 Videotape and film recordings.

16 Writing paper, printed matter, books, catalogues, booklets, printed publications, stationery, labels, cards, writing pads, postcards, posters, printed timetables, calendars, decalcomanias, stickers, pens, pencils, pen cases, photographs, adhesives for stationery, playing cards.

25 Clothing and headgear; hats, caps, sun visors, shirts, t-shirts, sweatshirts, tank tops, vests, sweaters, jackets, warm-up suits, rain suits, shorts, pants; shoes, socks.

28 Games and toys; sporting goods (excluding clothing, shoes and mats); toys namely die cast and plastic miniature cars, trucks, motorcycles and other vehicles; electronic driving and road racing games; electronic slot cars; additional tracks for racing games; plastic action figures depicting racing drivers, mechanics and officials; battery-operated pinball machines and dashboards driving games; board games; puzzles; miniature trophies; plush stuffed animals; pool cues; radio-controlled cars, trucks and other vehicles.

38 Broadcasting services; broadcast of stock car, automobile and truck racing.

41 Entertainment services in the nature of regulating, governing, organizing, sanctioning and conducting stock car, automobile and truck racing events; arranging and conducting the broadcast of stock car, automobile and truck racing events; rental of recordings of stock car, automobile and truck racing events.

Owners

NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, Inc.

ID	28374	Country	US - United States	Correspondence address	
Organisation	NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, Inc.	State/county	FL	NATIONAL ASSOCIATION FOR STOCK CAR AUTO RACING, Inc. International Motorsports Center	Can be accessed and changed by authorised user via the User Area
		Town	Daytona Beach	One Daytona Boulevard	
Legal status	Legal entity	Post code	32114	Daytona Beach FL 32114	Can be accessed and changed by authorised user via the User Area
State, district or ter...	Florida	Address	International Motorsports Center One Daytona Boulevard	ESTADOS UNIDOS (DE AMÉRICA)	
					Can be accessed and changed by authorised user via the User Area