

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

II. International registration number: 1379865

Trademark elements: **EXEED**

III. Name and address of the holder: CHERY AUTOMOBILE CO., LTD., 8 CHANGCHUN ROAD, ECONOMY & TECHNOLOGY DEVELOPMENT ZONE, WUHU CITY, ANHUI PROVINCE, CHINA

IV. Grounds for refusal.

Relative grounds:

Art. 239th – 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;

V. Conflicting rights.


Application/registration number: European Trademark no. 7484876

Filing Date: 22/12/2008

Registration date (if available): 23/07/2009

Priority date (if any):

Name and address of the owner: Apollo International Limited, Apollo House, Plot No 7, Institutional Area, Sector – 32, Gurgaon 122 001, LA INDIA

Trademark: 

List of goods and/or services on which the conflict is based:

Classe 12 - *"tyres, tubes and flaps used in land vehicles";*

Application/registration number: European Trademark no. 9585845

Filing Date: 09/12/2010

Registration date (if available): 06/07/2011

Priority date (if any):

Name and address of the owner: Textron Innovations Inc., 40 Westminster Street, Providence, Rhode Island
02903, ESTADOS UNIDOS (DE AMÉRICA)

Trademark: EXCEED – HYBRID TECHNOLOGY

List of goods and/or services on which the conflict is based:

Classe 12 - *"drivetrain for use in vehicles used as plant personnel carriers, general utility and maintenance cars, motel and resort cars, baggage carriers, golf cars, turf maintenance vehicles and on-road and off-road light-transportation vehicles, augmenting an electric motorised powertrain with a gasoline-powered engine to augment the range and capabilities of the vehicle, both for new production line vehicles and as aftermarket kits for addition to existing vehicles; parts and fittings for the aforesaid goods";*

Application/registration number: European Trademark no. 9593401

Filing Date: 13/12/2010

Registration date (if available): 28/06/2011

Priority date (if any):

Name and address of the owner: Textron Innovations Inc., 40 Westminster Street, Providence, Rhode Island
02903, ESTADOS UNIDOS (DE AMÉRICA)



Trademark: EXCEED
HYBRID TECHNOLOGY

List of goods and/or services on which the conflict is based:

Classe 12 - *"drivetrain for use in vehicles used as plant personnel carriers, general utility and maintenance cars, motel and resort cars, baggage carriers, golf cars, turf maintenance vehicles and on-road and off-road light-transportation vehicles, augmenting an electric motorised powertrain with a gasoline-powered engine to augment the range and capabilities of the vehicle, both for new production line vehicles and as aftermarket kits for addition to existing vehicles; parts and fittings for the aforesaid goods";*

Application/registration number: International Trademark no. 1289892

Filing Date:

Registration date (if available): 15/12/2015

Priority date (if any):

Name and address of the owner: Canyon Bicycles GmbH, Karl-Tesche-Straße 12, 56073 Koblenz (DE)

Trademark: EXCEED CF

List of goods and/or services on which the conflict is based:

Classe 12 - *"bicycles; bicycle parts; bicycle accessories; bicycle frames; bicycle tires; rims for wheels of bicycles; wheel sprockets; tires; tubeless tires for bicycles; inner tubes for bicycles; chains for bicycles and chain accessories; chain rings; chain guides; chain cases; chain catchers; brakes for bicycles and cycles; brake levers; handlebars; handlebar tapes; handlebar extensions; handlebars for bicycles; handle grips; handlebar-end plugs; bicycle racks; saddles; bicycle seat posts; seat clamps; pedals; shock absorbers; vibration dampers; bicycle forks; bicycle hubs; inner bearings; quick releases; headsets; stems; shifting systems; shift handles; cranks for bicycles; gears for bicycles; bicycle bells; panniers adapted for bicycles; transporting bags adapted for bicycles and bicycle parts; air pumps and its parts; spokes for bicycles; bag and bottle holders adapted for bicycles; saddle covers for bicycles; bicycle stands and mudguards for bicycles; anti-theft devices for bicycles and anti-theft alarms for bicycles; all of the above only with regard to bicycles";*

Application/registration number: European Trademark no. 16606964

Filing Date: 13/04/2017

Registration date (if available): 02/08/2017

Priority date (if any):

Name and address of the owner: KIA MOTORS CORPORATION, 12, Heolleung-ro, Seocho-gu
Seoul 137-938, REPÚBLICA DE COREA (LA)

Trademark: Xceed

List of goods and/or services on which the conflict is based:

Classe 12 - "automobiles; vans [vehicles]; sports cars; structural parts for automobiles; automobile tires (tyres); shock absorbers for automobiles; brake systems for vehicles; axle bearings for land vehicles; wheel bearings for land vehicles; motors for land vehicles; tractors";

VI. Refusal for all the goods and/or services.

VII. Answer to the decision of refusal:

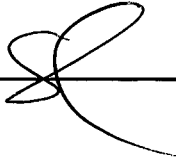
a) **Time limit to file an answer:** Within one (1) month following the date of the notification of provisional refusal sent by WIPO. Furthermore, this period can be extended once, for one (1) month, at the request of the interested party, online at <http://www.inpi.pt/>, by fax (+351 218 869 859), or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

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

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DIREÇÃO DE MARCAS E PATENTES
Campo das Cebolas
1149-035 – LISBOA PORTUGAL
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E-mail: atm@inpi.pt

VIII. Date of the decision: 2018/05/07

IX. Date and signature: 2018.05.10 Sara Osório



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. 222nd – 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. 223rd – Exceptions

The conditions of [article 222nd] 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. 238th – 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. 239th – Other grounds for refusal

- 2 – 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.
- 3 – 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/>