

**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 <div style="text-align: right;">Tel.: (370-5) 27 80 267 Fax.: (370-5) 27 50 723</div>	
II. Number of the international registration:	1 387 991
III. Name of the holder and other indications of the international registration: Name of the holder: GUANGZHOU DARING INTERNATIONAL FORWARDING CO., LTD. Verbal elements of the Mark: LUX, fig Basic registration: CN, 21.06.2017, 19838063	
IV. Provisional refusal based on an opposition <div style="display: flex; justify-content: space-between;"><div style="width: 40%;"><u>Name and address of the opponent:</u></div><div style="width: 60%; text-align: right;">Emil Lux GmbH & Co. KG Emil-Lux-Str. 1 42909 Wermelskirchen (DE)</div></div> <div style="display: flex; justify-content: space-between;"><div style="width: 40%;"><u>Name and address of the representative:</u></div><div style="width: 60%; text-align: right;">Aušra Pakėnienė AAA Law A. Goštauto g. 40B LT-03163 Vilnius Tel.+370 5 252 6676, Fax.+370 5 252 6670</div></div>	
V. <input checked="" type="checkbox"/> Provisional refusal for all the goods and services. <input type="checkbox"/> 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: 17.05.2018	
XI. Signature or official seal of the Office making the notification: Head of the Register Administration Subdivision <div style="text-align: right; margin-top: 20px;">Stela Ivanova</div>	



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

Number of continuation sheets: 7

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: 07.05.2018 No. PTZ-238

VII. Information relating to an earlier mark:*

Community Trade Marks (copy enclosed):

No 011147345

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)(2)

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 **17.10.2018**.

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

LUX LUX TOOLS
011147345

Trade mark information

Name	LUX LUX TOOLS	Filing date	29/08/2012
Filing number	011147345	Registration date	09/04/2014
Basis	EUTM on which IA is based	Expiry date	29/08/2022
Date of receipt	29/08/2012	Designation date	
Date of receipt of International Registrat...	30/01/2013	Filing language	German
IR number	1183565	Second language	English
Type	Figurative	Application reference	122033EMATss
Nature	Individual	Trade mark status	Registered
Nice classes	1, 3, 4, 6, 7, 8, 9, 10, 11, 12, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26 (Nice Classification)	Acquired distinctiveness	No
Vienna Classification	24.13.05, 26.01.03, 26.01.22 (Vienna Classification)		

Graphic representation



Goods and services

English (en)



- 1 Tempering and soldering preparations; Adhesives used in industry.
- 3 Cleaning, polishing and abrasive preparations; Abrasive paper.
- 4 Industrial oils and greases; Lubricants; Dust absorbing, wetting and binding compositions; Fuels (including motor spirit) and illuminants; Candles and wicks for lighting.
- 6 Common metals and their alloys; Materials of metal for railway tracks; Ores; Metal building materials; Transportable buildings of metal; Non-electric cables and wires of common metal; Ironmongery, small items of metal hardware; Pipes and tubes of metal; Goods of metal, included in class 6; Garage doors of metal; Tool chests of metal (empty); Statues of common metal; Safes; Fences of metal; Bird houses of metal; Locks (other than electric) of metal; Padlocks; Chains of metal; Hoppers (non-mechanical) of metal; Ladders of metal, stepladders of metal; Pegs of metal; Wall plugs of metal; Fittings of metal for building; Fittings of metal for windows; Fittings of metal for furniture; Door fittings, of metal; Metal door stops; Tensioning and lashing straps; Rods of metal for brazing and welding; Soldering wire of metal; Posts of metal; Wire rope; Workshop equipment, As far as included in international class 06, Including tool holders (aforesaid goods of metal); Tool boxes of

metal (empty); Handles of metal for tools and garden implements; Carry straps of metal; Oil cans, special-purpose containers, included in class 6 (the aforesaid goods being of metal); Posts of metal for attaching marking aids, in particular barrier tapes and warning tapes; Gates of metal; metal window screens; Locksets; Pegs of metal; Wall plugs of metal; Trellis and Espaliers; Clips; Clips and nails for hand tackers; Metal legs for furniture and Aluminium; Metal garage door rollers; Rollers of metal for sliding doors; Furniture casters of metal.

7 Machines and machine tools, Machine coupling and transmission components (except for land vehicles); Agricultural implements other than hand-operated; Machines and machine tools, Namely colour mixing machines, Building machines, In class 7; Mechanical tools for construction, horticultural and craft purposes, mechanical horticultural and agricultural equipment; Compressors [machines]; Spray guns for paint, Compressed air guns for the extrusion of mastics, Electric glue guns, ELECTRIC POWER STAPLERS; Pistols and pumps for applying paints, mastics and other viscous preparations; Gas-powered soldering irons; Drill chucks (parts of machines), Drilling machines, Electric hand drills, Nut-tapping machines, Drill stands for electric hand drills; Planing machines; Trueing machines, Grinding discs (being a machine part), Cutting discs (parts of machines), Grinding wheels (parts of machines); Saws (machines), Chain saws; Current generators; Welding apparatus, gas-operated; Welding machines, electric; Lawnmowers (machines), Scarifiers (other than hand-operated); Tillers (other than hand-operated); Soil ventilators (other than hand-operated); Snow blowers (other than hand-operated); Snow shovels (other than hand-operated); Snow sweepers (other than hand-operated); Parts for motors and engines, namely spark plugs for internal combustion engines, mufflers for motors and engines (exhausts), petrol and oil filters, filters for cleaning cooling air for motors and engines, cylinders for motors and engines, cylinder heads for motors and engines, pistons for motors and engines, piston rings; Electric roller blind drives, Electric drives for garage doors; Elevators, in particular hoists; Electric arc welding apparatus; Lathes (machine tools); Electric turning machines; Electric straw cutting machines, motorised straw cutting machines; Grindstones (machine parts); Machines for tile laying, gas concrete and dry construction, stone, screed and concrete works, electrical and sanitary installation, masonry, parquet floor, laminate and carpet laying, plastering, painting, wallpapering and welding; Electric tools for construction and DIY, including tool bits therefor; Cordless screwdrivers, chainsaws, grinders, polishers; Drilling hammers, Electric planers, Tile cutting machines, small electric tools, Electric staplers, Electric milling machines; Mechanical garden implements, including lawnmowers and grass-trimming machines; Border shears and chainsaws, and accessories for mechanical garden equipment, namely collecting devices and apparatus covers; Spare parts for mechanical garden tools, included in class 7; Driving machines for tools; Mobile generators; Soldering and welding machines (gas-operated); Compressed air tools; Lathes (machine-operated); Wood-turning lathes (machine-operated); Pressure spraying devices (machine-operated); Couplings other than for land vehicles; Grinding inserts, grindstones and replacement parts for the aforesaid goods; Rollers and wheels for machines; Soldering irons, electric; Welding apparatus.

8 Manually operated tools; Hand-operated implements for agricultural, horticultural and forestry purposes, and for structural engineering; Hand-operated vaporisers; Hand-operated guns for applying paints, mastics and other thick fluid products, Guns, hand-operated, for the extrusion of mastics; Spatulas [hand tools]; Cuttlery, cutlery of plastic or metal; Silver plate (cuttlery); Snow shovels (hand tools); Ice scrapers; Sharpening stones; Tackers (hand-operated); Hand-operated riveting tools; Trowels; Saws (hand tools); Files [hand tools]; Clamps for carpenters or coopers; Tongs [hand tools]; Screwdrivers; Wrenches (hand tools); Hammers (hand tools); Axes; Lawn clippers (hand instruments); Border shears; Planes; Stationery scissors; Riveting pincers; Scraping tools (hand tools); Hand tools for tile laying, gas concrete and dry mortarless construction, stone, screed and concrete works, electrical and sanitary installation, masonry, parquet floor, laminate and carpet laying, plastering; Painting and welding; Hand tools, including cutting, separating, embossing and striking tools, in particular Japanese chisels, borers, rasps, thread cutters, planes, trowels, chisels, screwdrivers, socket wrenches and socket wrench sets, vices, pliers, tool holders, hand-operated grippers and carrying equipment, including stone-carrying equipment, sanding blocks, ferrules of metal, hand riveters, eyelet pliers; Hand-operated tile-cutting apparatus, knives, in particular pocket knives, cutter blades, glass cutters, carpet knives, blades, cutters; Scissors, including household scissors, secateurs, branch, tree and hedge clippers, hand-operated garden implements, including forks, hoes, spades, shovels, rakes, sickles, scythes, trimmers and hand-operated lawnmowers; Hand-operated vaporisers; Hand-operated pneumatic apparatus; Spare parts for the aforesaid goods; electric flat irons.

9 Scientific, nautical, surveying, photographic, cinematographic, optical, weighing, measuring, signalling, 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; Fire-extinguishing apparatus; Electric installation material (included in class 9), Namely electric cables and Electrical wire; Material for electricity mains (wires, cables); Lustre terminals; Plugs, sockets and other contacts [electric connections]; Covers for electric outlets; Cable ducts; Volt meters; Electric welding apparatus; Welding electrode; Solderers' helmets; Electronic control systems for shutters, Time switches, automatic; Electronic monitoring and measuring apparatus, electronic security systems, namely motion detectors, gas, smoke and carbon monoxide alarms, radio transmitters and receivers for controlling light, electric burglar alarm installations, bells (alarm installations), door phones, telephone apparatus; Portable telephones; Answering machines; Vehicle radios, Compact disc players (CDP), Aerials and aerial accessories (included in class 09); Satellite receiving apparatus and aerials, optical data media, video cassettes; Bicycle computers; Solar energy collectors for electricity generation; Electric batteries, battery charging equipment; Measuring apparatus; Measuring tools; Thermostats; Thermometers (not for medical purposes); Scales; Signs, luminous; Work protection clothing (included in class 9); Protective helmets, protective sports helmets, Arm, knee and wrist guards (work safety); Gloves for protection against accidents; Locks, electric; Gloves for protection; Protective goggles and masks; Safety belts and fastening belts, except for vehicle seats, included in class 9; Voltage detectors; Intercommunication systems; Marking aids, in particular barrier tapes and warning tapes.

10 Hearing protectors.

11 Apparatus for lighting heating steam generating cooking refrigerating drying ventilating water supply and sanitary purposes; Sanitary apparatus.

12 Vehicles; Apparatus for locomotion by land, air or water; Load and transport rollers; Rollers and Wheels for vehicles; Hose carts; Rollers and Wheels for barrows and Sack-barrows.

16 Paper, cardboard and goods made from these materials (included in class 16); Printed matter; Bookbinding material; Photographs; Stationery; Adhesives for stationery or household purposes; Artists' materials; Paintbrushes; Typewriters and office requisites (except furniture); Instructional and teaching material (except apparatus); Plastic materials for packaging, included in class 16.

17 Rubber, gutta-percha, gum, mica and goods made from these materials and not included in other classes; Packing, stopping and insulating materials; Flexible pipes, not of metal; Insulating gloves; Self-adhesive tapes, other than stationery and not for medical or household purposes; Plastic film, Namely pond liners and Building membranes.

18 Leather and imitations of leather, and goods made of these materials and not included in other classes; Saddlery; Tool bags (empty); Tool chests of leather (empty); Tool bags (empty), not of metal, not of leather.

19 Building materials (non-metallic); Non-metallic rigid pipes for building; Asphalt, pitch and bitumen; Non-metallic transportable buildings; Monuments, not of metal.

20 Furniture, mirrors, picture frames; Goods (not including in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics; Dowels, not of metal; Wall plugs, not of metal; Window fittings, not of metal; Furniture fittings, not of metal; Door fittings, not of metal; Locks (other than electric), not of metal; Pasting tables; Racks [furniture]; Tool stands, Not of metal; Door stoppers, not of metal; Workshop equipment, included in class 20, including tool cabinets, small parts storage boxes, open storage boxes, sorting boxes, tool holders, machine tables, tool stands, workbenches (the aforesaid goods not of metal); Workshop equipment (furniture), including tool cabinets, storage boxes for small parts, open storage boxes, sorting boxes, machine tables, tool stands, workbenches (the aforesaid goods being of metal); Paste tables, clamping tables; Tool boxes and tool chests (empty), not of metal, not of leather; Handles for tools and garden implements, not of metal; Plastic chains, rope and chain clamps, bolts, plugs, screws, nuts, washers, hooks, rivets (the aforesaid goods all not of metal); Transport pallets; Special-purpose containers, not of masonry, not of metal, included in class 20; Ladders of wood or plastic, stepladders, not of metal; Furniture glides of felt and plastic; Furniture feet of wood and plastic; Coat hangers; Casters of metal for beds; Casters, not of metal, for beds; Furniture casters, not of metal.

21 Household or kitchen utensils and containers (not of precious metal or coated therewith); Combs and sponges; Brushes (except paint brushes); Articles for cleaning purposes; Steelwool; Brooms; Funnels.

22 Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (so far as included in class 22); Raw fibrous textile materials; Tensioning and lashing straps, not of metal.

24 Textiles and textile goods, not included in other classes.

25 Clothing, footwear, headgear.

26 Ribbons and braid; Buttons, hooks and eyes, pins and needles; Velcro.

Owners

Emil Lux GmbH & Co. KG

ID	111011	Country	DE - Germany	Correspondence address	
Organisation	Emil Lux GmbH & Co. KG	State/county	n/a	Emil Lux GmbH & Co. KG	Can be accessed and changed by authorised user via the User Area
		Town	Wermelskirch	Postfach 16 10	
		Post code	42929	D-42909 Wermelskirchen	
Legal status	Legal entity	Address	Emil-Lux-Str. 1	ALEMANIA	Can be accessed and changed by authorised user via the User Area
					Can be accessed and changed by authorised user via the User Area