

## PROVISIONAL REFUSAL

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

### Refusal not based on opposition

#### "EX OFFICIO"

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>I. Office:</b><br><b>INSTITUTO NACIONAL DA PROPRIEDADE INDUSTRIAL</b><br>DIREÇÃO DE MARCAS E PATENTES<br>Campo das Cebolas<br>1149-035 – LISBOA PORTUGAL<br>Fax.: 21 886 98 59<br>Tel.: 21 881 81 00<br>Link: <a href="http://www.inpi.pt/">http://www.inpi.pt/</a><br>E-mail: <a href="mailto:atm@inpi.pt">atm@inpi.pt</a>                                                                                                                                        |
| <b>II. International registration number:</b> 1418619<br><br><b>Trademark elements:</b> THE HEAT COMPANY                                                                                                                                                                                                                                                                                                                                                              |
| <b>III. Name and address of the holder:</b> THE HEAT COMPANY AKTIVWÄRME- UNDAKTIVKÜHLPRODUKTE<br>GMBH<br>ENNSPARK 20A-5541 ALTENMARKT IM PONGAU, ÁUSTRIA                                                                                                                                                                                                                                                                                                              |
| <b>IV. Grounds for refusal.</b><br><br>Relative grounds:<br><b>Art. 239<sup>th</sup> – Other grounds for refusal</b><br>1 – Further grounds for refusal of registration of a trademark are:<br>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>V. Conflicting rights.</b><br><br><b>Application/registration number:</b> IR 702188<br><br><b>Filing Date:</b> 10-12-1998<br><br><b>Registration date (if available):</b> 17-11-1999<br><br><b>Priority date (if any):</b>                                                                                                                                                                                                                                         |

**Name and address of the owner:**

The Heat company GmbH, Mr. Herwig Holzer  
Hofgasse 238  
Flachau (AT)  
AUSTRIA



Trademark:

**List of goods and/or services on which the conflict is based: Class 11** - Organic heat cells for sports, leisure, medical therapy and for use as work protection devices.

**V. Conflicting rights.**

**Application/registration number:** EUTM 004209458

**Filing Date:** 20/12/2004

**Registration date (if available):** 02/03/2006

**Priority date (if any):**

**Name and address of the owner:**

Vasco Group NV  
Kruishoefstraat 50  
B-3650 Dilsen  
BEKGUM

Trademark: **THE HEATING COMPANY**

**List of goods and/or services on which the conflict is based: Class 11** - Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating and water supply, in particular radiators and radiator caps; heating and sanitary installations, and parts for these installations.

**VI.**

**Refusal for the following goods:**

**Class 10** – all goods;

**Class 11** – all goods;

**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:** 2019/02/21

**IX. Date and signature:** 2019.02.22 Francisca Ribeiro Carvalho

*Francisca Ribeiro Carvalho*

## 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

- 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/>