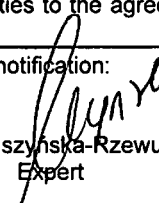


MADRID PROTOCOL

Total Provisional Refusal of Protection (Rule 17(1) of the Common Regulations)

DT-VII.IR1259963.2.pusz

| | |
|---|---|
| I. Office making the notification: | |
| Patent Office of the Republic of Poland Trade mark Department Aleja Niepodległości 188/192 P.O. Box 203 00-950 Warsaw, Poland | Phone number: (+48) 22 579 05 55 Fax: (+48) 22 579 00 01 |
| II. Number of the international registration: 1259963 | |
| III. Name of the holder: MLADEGS PAK d.o.o. Vijaka bb78430 Prnjavor, BA | |
| IV. Provisional refusal based on an opposition | |
| V. Total provisional refusal affects all the goods and/or services. | |
| VI. Grounds for refusal (see item VII) | |
| VII. Information related to the grounds of refusal: <input type="checkbox"/> Earlier European Union mark Article: 132¹ ust.1 pkt 3 BONITA, EUTM:013175278, 14/08/2014, FRUIT SHIPPERS LIMITED, Nassau, BAHAMAS Details concerning the earlier mark(s) – see appendix | |
| VIII. Corresponding essential provisions of the applicable law (see next pages) | |
| IX. Information related to further procedures: i) The Patent Office of the Republic of Poland will send the received notice of opposition relating to the international registration in question directly to the holder of that registration with information on the procedure. The cooling-off period is set to expire two months after receipt of the notice of opposition by the holder. The holder may submit comments on opposition within said two months. After the expiry of the cooling-off period The Patent Office of the Republic of Poland will invite the holder to file the observations on the opposition. The observations must be filed directly with The Patent Office of the Republic of Poland. ii) In proceedings before the Patent Office a patent agent, attorney, legal counsel or a person providing cross-border services within the meaning of the Act on Patent Agents may act as a representative of a party to proceedings. Any persons not having their domicile or seat in the Republic of Poland may only act by a representative. If they did not appoint a representative to conduct the proceedings who is domiciled in the Republic of Poland and do not act by the intermediary of a consul of the Republic of Poland, are obligated to designate a representative for service in the Republic of Poland. In the event of failure to designate a representative who is authorised to accept service of documents, the letters addressed to that party will be placed in the case-file and will be deemed to have been served. iii) The obligation shall not apply to persons having their domicile or seat in the European Union, a member state of the European Free Trade Association (EFTA) – parties to the agreement on the European Economic Area or the Swiss Confederation. | |
| X. Signature or official seal of the Office making the notification: <div style="text-align: center;"> Paulina Uszyńska-Rzewuska Expert /document signed electronically/</div> | |
| XI. Date of notification to the International Bureau: 31.07.2019 | |

Essential provisions of INDUSTRIAL PROPERTY LAW - ACT OF 30 JUNE 2000

Article 132¹

(1) After consideration of the opposition referred to in Article 152^{6a}(1) or Article 152¹⁷(1), and having deemed it justified, right of protection shall not be granted for sign:

- 1) whose use infringes third parties' personal or economic rights;
- 2) which is identical to a trade mark, which has been granted a right of protection with earlier priority to another party for identical products;
- 3) which is identical or similar to a trade mark, which has been granted a right of protection with an earlier priority to another party for identical or similar products, if there is a risk of misleading the public, which includes in particular the risk of associating the trade mark with an earlier trade mark;
- 4) which is identical or similar to a renowned trade mark for which a right of protection with an earlier priority has been granted to another person for any kind of goods, if the use of the trade mark filed without reasonable cause would bring unfair advantage to the applicant or be detrimental to the distinctive character or the repute of the earlier trade mark;
- 5) which is identical or similar to a trade mark which, prior to the date according to which the priority to obtain a right of protection is determined, has been commonly known in the Republic of Poland and used as a trade mark intended to mark products identical or similar to those of another party, if there is a risk of misleading the public, which includes in particular the risk of associating the trade mark with a commonly known trade mark;
- 6) if, pursuant to the national law or the European Union legislation providing for protection of a geographical indication or a designation of origin, a person authorised to exercise the rights arising from an earlier filing of an application for a geographical indication or a designation of origin, subject to its subsequent registration, is entitled to prohibit the use of a subsequent trade mark.

(2) The ground for the opposition referred to in Article 152^{6a}(1) or Article 152¹⁷(1) may also be trade mark applications with earlier priority, referred to in paragraph (1)(2)-(4), provided that they are granted the right of protection. Until final termination of earlier granting procedures, the opposition proceedings shall be suspended.

(3) Where an earlier trade mark has been applied for protection or registered according to the procedure provided for in Article 4, provisions of paragraph (1) and (2) shall apply accordingly.

(4) The protection of a trade mark containing signs referred to in Article 129¹(1)(8)-(11), or signs relating to the origin of the goods shall not exclude the possibility of obtaining the right of protection by another party for a trade mark containing the same elements for identical or similar goods if such trade marks can be easily distinguished in the course of trade.

Article 133

If the holder of the earlier trade mark or the holder of the earlier personal or economic right express written consent to the grant of a right of protection for later trade mark, the opposition referred to in Article 152^{6a}(1) or Article 152¹⁷(1) shall be dismissed.

Article 152^{6a}

(1) Within three months from the date of publication of the information on the designation of the Republic of Poland for the extension of the protection for an international trade mark, the holder of the right to an earlier trade mark or to an earlier personal or economic rights may file an opposition against the grant of the protection for an international trade mark in the territory of the Republic of Poland for the reasons referred to in Article 132¹(1)-(3). The said time limit shall be non-restorable.

(2) If an opposition against designation of the Republic of Poland for the extension of the protection of an international trade mark is filed, the Patent Office shall, when applying the procedure, form and language as provided for in the Agreement or the Protocol, notify the International Bureau of a statement of grounds which may prevent the protection of the international trade mark in whole or in part (provisional refusal of protection based on an opposition).

(3) The provisions of Article 152¹⁷(2)-(7) and Articles 152¹⁸-152²³ shall apply accordingly to the proceedings relating to the opposition against the designation of the Republic of Poland for the extension of the protection for an international trade mark.

Article 152⁷

The decision regarding grant of protection shall be liable to a party's request for re-examination of the matter. A time limit for submitting the request shall be 3 months from the date of service of the decision on the right holder. The provisions of Article 244 paragraphs (1¹) to (1⁴), and (5), Article 244¹ and Article 245 shall apply accordingly.

Article 152^{7a}

Following a final termination of the proceeding concerning the extension of protection of an international trade mark to the territory of the Republic of Poland, the Patent Office shall transmit to the International Bureau a notification of the decision issued as a result of the said proceedings, unless the decision along with notification, were transmitted under Article 152^{6b}(1).

Article 152¹⁹

(1) Patent Office shall, without delay, notify the applicant of an opposition and inform parties of the possibility of an amicable settlement of the dispute within two months of the date of delivery of the information.

(2) The time limit referred to in paragraph (1) may be extended to six months upon joint request of the parties.

(3) After the expiry of the time limit referred to in paragraph (1), the Patent Office shall invite the applicant to comment on the opposition within a fixed time limit. In the comments to the opposition the applicant shall include objections and cite all factual circumstances and supporting evidence.

(4) Within the time limit referred to in paragraph (3) the applicant may raise an objection of the lack of actual use of an earlier trade mark during an uninterrupted period of five years prior to the filing date of a trade mark being the subject of opposition for goods included in the opposition unless there are significant reasons for the lack of use or the period of five years from the registration of an earlier trade mark has not expired. If the objection is found to be justified, the Patent Office shall dismiss the opposition.

(5) Patent Office shall submit the comments on the opposition to the party filing the opposition and shall fix a time limit for him to react and to complete evidence. The provision of Article 169(6) shall apply accordingly.

(6) The applicant may make comments on the evidence and claims presented pursuant to paragraph (5) by the party filing the opposition within the time limit fixed by the Patent Office.

(7) Patent Office may invite the party to the proceedings to present within a fixed time limit, its position in respect of the materials presented by the other party or the Patent Office.

(8) Patent Office shall disregard claims and evidence which were not presented within the fixed time limit unless the party proves that they could not have been put forward or that the need to present them arose later. Further claims and supporting evidence shall be admitted within a month from the date on which the possibility or the need of presenting them arose.

Article 152²⁰

Patent Office shall consider the opposition within its limits and shall be bound by the legal basis indicated by the party submitting the opposition.

Article 152²¹

After the consideration of the opposition the Patent Office shall take a decision on dismissing the opposition or on finding it justified in whole or in part.

Article 236

(1¹) In proceedings before the Patent Office in matters relating to filing and processing of applications and maintaining the protection of trade marks a patent agent, attorney, legal counsel or a person providing cross-border services within the meaning of the Act on Patent Agents may act as a representative of a party to proceedings.

(3) In the matters referred to in paragraph (1) and (1¹), any persons not having their domicile or seat in the Republic of Poland may only act when represented by a patent agent, attorney or a legal counsel. The obligation shall not apply to persons having their domicile or seat in the European Union, a member state of the European Free Trade Association (EFTA) – parties to the agreement on the European Economic Area or the Swiss Confederation.

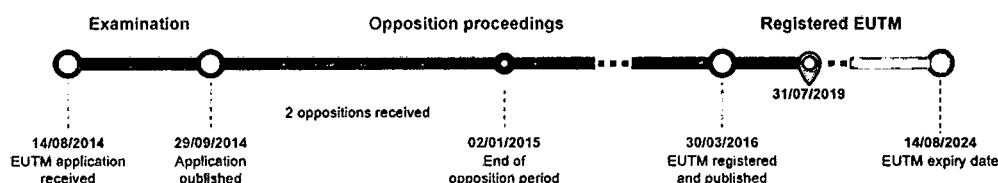


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EUTM file information

BONITA
013175278

Timeline



Trade mark information

| | | | |
|-----------------------|---|--------------------------|---------------------------|
| Name | BONITA | Filing date | 14/08/2014 |
| Filing number | 013175278 | Registration date | 25/03/2016 |
| Basis | EUTM | Expiry date | 14/08/2024 |
| Date of receipt | 14/08/2014 | Designation date | |
| Type | Word | Filing language | English |
| Nature | Individual | Second language | Italian |
| Nice classes | 29, 30, 31, 32 (Nice Classification) | Application reference | 306254-5279/JRO/FB |
| Vienna Classification | | Trade mark status | Registered |
| | | Acquired distinctiveness | No |

Goods and services

English (en) ☒

29 Meat, fish, poultry and game except in frozen form; meat extracts except in frozen form; milk and milk products except in frozen form; eggs except in frozen form; preserved, dried, baked, cooked and preserved fruits and vegetables; jellies, jams, compotes; Fruit salads; Fruit-based snack food.

30 Sugar except in frozen form; natural sweeteners except in frozen form; bakery products, bread, yeast except in frozen form; pasta, baking-powder, flour, spices, and flavourings except in frozen form; honey and honey substitutes except in frozen form; food products based on rice, flour or cereals, also in the form of cooked dishes except in frozen form; Coffee; coffee extracts and coffee-based preparations; coffee substitutes and extracts of coffee substitutes; coffee beans; unroasted coffee; ground coffee; decaffeinated coffee; instant coffee; coffee drinks; coffee beverages; coffee mixtures; flavoured coffee; roasted coffee beans; ground coffee beans; prepared coffee and coffee-based beverages; coffee based drinks; coffee in brewed; coffee in ground form; coffee beverages with milk; ice beverages with a coffee base; filters in the form of paper bags filled with coffee, tea, tea extracts and tea-based preparations; cocoa and preparations having a base of cocoa, chocolate, chocolate products; puddings; breakfast cereals, rice, pasta, also in the form of cooked dishes; fruit sauces; none of the afore-mentioned goods being confectionery, ice, ice cream, ice cream confections, chocolate spread, cakes, biscuits or mousses.

31 Fresh fruits and vegetables live animals; seeds; foodstuffs for animals, malt; agricultural, horticultural and forestry products and grains not included in other classes and excluding natural plants and flowers.

32 Beers; mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; fruit extracts; fruit nectars, non-alcoholic; smoothies.

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Owners

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FRUIT SHIPPERS LIMITED

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|--------------|-------------------------------|---------------|---|--|--|
| ID | 50464 | Country | BS - Bahamas | Correspondence address | Hidden. You can set your contact details to be publicly available via the User Area. |
| Organisation | FRUIT SHIPPERS LIMITED | State/country | n/a | FRUIT SHIPPERS LIMITED | |
| | | Town | Nassau | Third Floor, Charlotte House, Charlotte Street | |
| Legal status | Legal entity | Post code | 10051 | Nassau 10051 | Hidden. You can set your contact details to be publicly available via the User Area. |
| | | Address | Third Floor, Charlotte House, Charlotte Street | BAHAMAS | Hidden. You can set your contact details to be publicly available via the User Area. |

Correspondence

| | From | Procedure | Filing number | Subject | Date | Actions |
|--|------|-----------|---------------|---|------------|---------|
| | | Recordal | 015331500 | T65XA | 26/02/2019 | |
| | | Recordal | 015331500 | Application form and attachment | 22/02/2019 | |
| | | Recordal | 015331500 | Letter to the EUIPO | 22/02/2019 | |
| | | Recordal | 015331500 | Total/Partial surrender - deficiency/rejection | 07/02/2019 | |
| | | EUTM | 013175278 | LSU01 - Information to proprietors of earlier trade mark registrations or applications | 01/02/2019 | |
| | | Recordal | 015331500 | Letter to the EUIPO | 23/01/2019 | |
| | | Recordal | 015331500 | Total/Partial surrender - deficiency/rejection | 22/01/2019 | |
| | | Recordal | 015331500 | Application form and attachment | 02/01/2019 | |
| | | Recordal | 015283735 | H726A - Notification of entry of a change of representative in the Office - Register and database | 21/12/2018 | |
| | | Recordal | 015283735 | H726A - Notification of entry of a change of representative in the Office - Register and database | 21/12/2018 | |

Showing 1 to 10 of 65 entries

Oppositions

| Filing number | Date | Grounds | Opponent | Representative | Language | Reference | Status | Extent |
|---------------|------------|---|---------------------------|--------------------------|----------|--------------------|--------|--|
| 002454984 | 30/12/2014 | Identity of marks and G&S Likelihood of confusion | ANDRES LOPEZ E HIJO, S.A. | DAMASO GESTIÓN ASOCIADOS | English | 306254-5279/JRO/FB | Closed | Class fish, p and g meat prese dried, cooke prese and v jellies comp eggs, milk p Fruit Fruit-I snack Class coffee and c baseo prepa coffee subst extra coffee |

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| Filing number | Date | Grounds | Opponent | Representative | Language | Reference | Status | Extant |
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| 002453762 | 18/12/2014 | Likelihood of confusion | Boquoi Handels oHG | ORTH KLUTH RECHTSANWÄLTE PARTNERSCHAFTSGESELLSCHAFT MBB | English | 306254- 5279/JRO/FB | Withdrawn | Class 29 fish, poi and gan meat ex preserv dried, b cooked preserv and veg Fruit-ba snack fo Class 30 yeast; p baking-f flour, sp rice, pas product on rice, cereals, the form cooked fruit sal Class 31 fruits ar vegetab |
| Showing 1 to 2 of 2 entries | | | | | | | | |

Decisions

| Case number | Type | Case | Legal status | Keywords | Status | Decision date |
|-----------------------------|------------|------|---|----------|----------------------|---------------|
| ⊕ Opposition 002454984 | Opposition | | Article 8(1)(a) CTMR, Article 8(1)(b) CTMR | | Reject opposition | 15/06/2015 |
| Showing 1 to 1 of 1 entries | | | | | | |

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