

Notification de refus provisoire de protection fondée sur une opposition conformément à l'article 5 du protocole de Madrid, à la règle 17, paragraphes 1 et 2, du règlement d'exécution commun à l'arrangement et au protocole de Madrid, et à l'article 78 du RDMUE

Alicante, 20/09/2019

N° de demande internationale: **1463047**
Date de notification: **25-04-2019**
Marque: **Commander Global Supervision Operator**
Titulaire: **Commander Services s. r. o.
Žitná 23
SK-831 06 Bratislava**
Numéro d'opposition: **B 003088530**

La protection de la marque susmentionnée est provisoirement refusée pour l'Union européenne.

Le refus provisoire est fondé sur le fait qu'une opposition a été déposée contre l'enregistrement international.

I. Les motifs de l'opposition sont les suivants:

conflit avec une marque antérieure en raison d'un risque de confusion (article 8, paragraphe 1, point b), du RMUE).

II. Nom et adresse de l'opposante:

**STEINER-OPTIK GmbH
Dr.-Hans-Frisch-Str. 9
D-95448 Bayreuth
ALEMANIA**

III. L'opposition est fondée sur une marque qui a fait l'objet d'une demande ou d'un enregistrement.

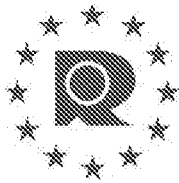
- type de marque: **Marque de l'Union européenne enregistrée.**
- date de dépôt, date d'enregistrement et, le cas échéant, date de priorité: **17/12/1999 ; 11/07/2001.**
- numéro de dépôt et, si différent, numéro d'enregistrement: **001429505.**
- représentation de la marque: (voir annexe)
- liste des produits et services sur lesquels se fonde l'opposition: (voir annexe)

IV. Le refus provisoire concerne

uniquement les produits et services suivants couverts par la désignation de l'Union européenne:

Cl. 09 monitoring apparatus other than for medical use; navigational instruments; navigation apparatus; satellite navigation apparatus; distance measuring apparatus.

- V. L'EU IPO notifiera l'opposition à la titulaire de l'enregistrement international séparément, y compris toute preuve sur laquelle elle est fondée, conformément à l'article 6 du RDMUE. L'EU IPO fixera des délais à la titulaire. Cette notification ouvrira une période de deux mois (prorogeable) – «cooling off», ainsi qu'une nouvelle période de deux mois pour permettre à l'opposante d'étayer son opposition. La notification fixera un délai de six mois – en principe – à la titulaire de l'enregistrement international pour qu'elle fasse part de ses observations.



Laurence DUBOIS-LUKOWIAK

Annexes (à l'exception de la lettre d'accompagnement): 06 pages.

Date of receipt (DD/MM/YYYY) 10/07/2019	Number of pages (including this one) 4
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Acknowledgement of receipt of a Notice of opposition

Your notice of opposition has been submitted successfully.
We thank you for choosing to use the online OPPOSITION form.

Opposition number:	003088530
Date of submission:	10/07/2019
Time of submission:	12:02
Number of attached files:	1
Payment method:	Current account with EUIPO
Payment ID number:	196VDMV6
Account No:	0000000651

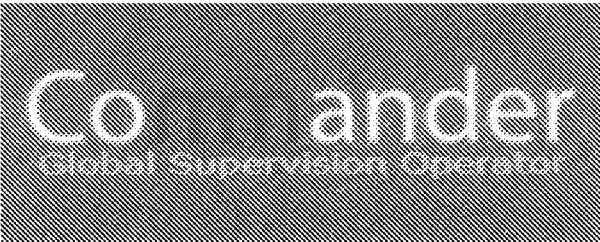
Please indicate the opposition number in any further communication with the EUIPO.

NOTICE OF OPPOSITION

Your reference: 20100124WI01

Opponent(s)	Opponent EUIPO ID: 75684
Name of legal entity or first name and surname:	STEINER-OPTIK GmbH
Type:	Legal Entity
Street address:	Dr.-Hans-Frisch-Str. 9
City:	Bayreuth
Postal Code:	95448
Country:	Germany
Postal address (if different):	
Telephone number:	00 49-92178790
Fax number:	00 49-921787988
E-mail address:	info@steiner.de
Website:	

Representative(s)	EUIPO representative ID: 11220
Name or legal name:	HAFNER & KOHL
Type:	Association
Street address:	Schleiermacherstr. 25
City:	Nürnberg
Postal Code:	90491
Country:	Germany
Postal address (if different):	
Telephone number:	00 49-911539920
Fax number:	00 49-9115399229
E-mail address:	office@hafner-kohl.de
Website:	

Challenged entity	Challenged registration ID: W01463047
Type of entity	IR
Name of the owner/holder:	Commander Services s. r. o.
Designation date:	30/11/2018
Representation of the trade mark	Commander Global Supervision Operator
Trade mark type	Figurative
Representation of mark	

Language of proceedings First language: FR (French) Second language: EN (English)

Extent of the application Against all the goods and services

NOTICE OF OPPOSITION

Against some of the goods and services

Class	Goods and services
9 (EN)	monitoring apparatus other than for medical use; navigational instruments; navigation apparatus; satellite navigation apparatus; distance measuring apparatus

Grounds for opposition

Selected ground number 1

Article 8(1)(b) EUTMR - There exists a likelihood of confusion on the part of the public

Basis of opposition

Type of basis	EUTM/A
Name of the owner/applicant	STEINER-OPTIK GmbH
Application date	17/12/1999
Filing number	001429505
Registration number	001429505
Registration date	11/07/2001
Expiry date	17/12/2019
Trade mark type	Word
Verbal elements	COMMANDER

The opposing party accepts that the necessary information for this trade mark is imported from the relevant online official database, accessible through TMVIEW, and that this source is used for substantiation purposes without prejudice to its right or obligation to provide any additional information that may be necessary to comply with the substantiation requirements of Article 7(2) and (4) EUTMDR

Goods and services used as basis Based on all the goods and services
 Based on part of the goods and services, namely:

Class	Goods and services
9 (EN)	Binoculars, binoculars with integrated compasses, telescopes, lenses.

Entitlement Owner/Co-owner Authorised licensee
 Person authorised under the applicable law

Statement of grounds

Uploaded File(s)

Title	Confidential
GROUNDS OF OPPOSITION Commander.pdf	<input type="checkbox"/>

File(s) linked from other proceedings

Procedure	Filing number	Subject	Date
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Fees

Payment method	Current account
Opposition of EUTM fee	320.00 €

NOTICE OF OPPOSITION

Total amount		320.00 €
Current account with EUIPO		
Account N°	0000000651	
Signature		
First name and Surname		Capacity of the signatory
Theresa Lenz		Legal practitioner

Annexes:

Selected ground number 1
No attachments
Annexes:
GROUNDS OF OPPOSITION Commander.pdf

GROUNDS OF OPPOSITION

1. Trademarks in conflict

The opposition against the IR 1 463 047 “Commander Global Supervision Operator” (word + device) designated in the EU is based on EUTM 001429505 “COMMANDER”. The earlier trademark covers the following goods in class 9:

9 Binoculars, binoculars with integrated compasses, telescopes, lenses

The opposition is directed against the following goods in class 9 of the application:

9 **monitoring apparatus other than for medical use; navigational instruments; navigation apparatus; satellite navigation apparatus; distance measuring apparatus;**

2. Likelihood of Confusion

Based on this earlier right, the opposition against the opposed mark is filed because there exists a high likelihood of confusion between the trademarks to compare on the part of the relevant public in the concerned European member states.

It is settled case law that a likelihood of confusion must be assessed globally according to the perception of the relevant public regarding the signs and the goods or services at issue by taking into account all relevant factors to the circumstances of the case, in particular the independence of the similarity between the signs and the similarity between the goods or services covered (ECJ case T-334/05-Limoncello).

Based on these principles, a likelihood of confusion must be affirmed because the goods to compare are very similar. A binocular is a kind of navigational instrument or navigation apparatus. It is sufficient for monitoring something and can be necessary for distance measuring apparatuses.

When considering the high similarity between the goods concerned, the contested mark has to maintain a significant distance, which is not the case here. The trademarks to compare are



and "Commander". The application comprises the earlier trademark "Commander". The additional term "Global Supervision Operator" is clearly descriptive for the claimed goods in class 9 and consequently has to be ignored when assessing the likelihood of confusion. The graphical elements are not dominating and not sufficient to avoid the risk of likelihood of confusion.

Because of the identity and high similarity of the goods and the high similarity of the marks, a high likelihood of confusion is given.

3. Summary

In summary, the contested mark must therefore be refused with respect to the goods above.