

NOTIFICATION OF CONFIRMATION OR
WITHDRAWAL OF PROVISIONAL REFUSAL BASED ON
AN OPPOSITION

Notified to the International Bureau of the World Intellectual Property Organization (WIPO)
in accordance with Rule 18ter of the Common Regulations
under the Madrid Agreement and the Madrid Protocol

1. Office sending the notification

National Intellectual Property Administration, PRC (CNIPA)
1, Chama Nanjie, Xicheng District,
Beijing, 100055,
People's Republic of China
Tel: 86-10-63219000
Fax: 86-10-63219000



2. Our reference number: GJYY20190000000393QRYW01

Date of notification: 2020/12/09

3. International Registration Number: 1488236

Holder of the international registration: DANVISTANO TRADING LTD.

Address of the international registration: Corner Hutson & Eyre Street, Blake Building, Suite 302
Belize City

4. All procedures before the Office relating to the protection of the mark have been completed.
Further to the notification of provisional refusal based on an opposition dated 14/04/2020, the
the National Intellectual Property Administration, PRC must advise that.

The mark is protected for the following goods/services:

Class 7: Belts for conveyors; hair clipping machines for animals; cigarette machines for industrial
purposes; tobacco processing machines; belts for machines; adhesive bands for pulleys; bicycle
assembling machines.

Class 9: Apparatus to check franking; holograms; dictating machines; decorative magnets; voting
machines; lightning rods; egg-candlers; electrified fences; dog whistles.

Class 11: Lava rocks for use in barbecue grills.

**National Intellectual Property Administration
People's Republic of China**

国家知识产权局

(2020)际异字第0000138020号

国际注册第1488236号“NATIONAL”商标异议决定书

异议人：松下电器产业株式会社

委托代理人：北京林达刘知识产权代理事务所（普通合伙）

被异议人：DANVISTANO TRADING LTD.

北京林达刘知识产权代理事务所（普通合伙）代理松下电器产业株式会社（以下称为异议人）对DANVISTANO TRADING LTD.（以下称为被异议人）在第7类、第8类、第9类及第11类商品上申请给予保护的第1488236号

“NATIONAL”国际注册商标提出异议，我局依据《中华人民共和国商标法》第三十三条、《中华人民共和国商标法实施条例》第十八条、第二十五条和第四十五条的规定予以受理。被异议人未在规定期限内作出答辩。

被异议的第1488236号“NATIONAL”国际注册商标在第7类、第8类、第9类及第11类上的领土延伸申请在我局依职权审查过程中被部分驳回，且被异议人未在法定期限内申请复审，因此本案仅就申请给予保护的的商品作出决定。

被异议的第1488236号“NATIONAL”国际注册商标核定使用在第7类“输送机传输带；动物剪毛机；工业用卷烟机；烟草加工机；机器传动带；滑轮胶带；自行车组装机”、第9类“邮戳检查装置；全息图；口述听写机；装饰磁铁；投票机；避雷针；照蛋器；电栅栏；叫狗哨子”及第11类“野餐烧烤用火山岩石”商品上。异议人引证在先注册的第988278号、第824377号、第

9137424号、第1497862号“NATIONAL”等系列商标核定使用商品为第7类

“电焊枪(机器); 机器人(机械); 芯片安装机; 半导体密封剂成型机; 等离子清洗机; 电子元件装配机器; 用来插入电子元件的机器; 榨汁机”、第9类“门用电动开关器; 印刷电路板; 电导线管; 电梯电线管道; 电动烫发器; 镇流器; 报警器; 防盗报警器”、第11类“白炽灯; 荧光灯; 矿灯; 荧光照明装置; 白炽灯装置; 照明器械及装置; 电灯泡; 灯泡”等, 双方商标指定使用的商品在功能、用途、销售渠道和消费对象等方面区别明显, 不属于类似商品, 故双方商标未构成使用于类似商品上的近似商标, 并存使用一般不易造成相关公众混淆误认。本案中, 异议人称被异议人违反诚实信用原则, 恶意摹仿和抄袭其知名商标等证据不足, 我局不予支持。

经审理, 我局认为:

依据《中华人民共和国商标法》第三十五条的规定, 我局决定: 异议人所提异议理由不成立, 第1488236号“NATIONAL”国际注册商标在第7类“输送机传输带, 动物剪毛机, 工业用卷烟机, 烟草加工机, 机器传动带, 滑轮胶带, 自行车组装机”、第9类“邮戳检查装置, 全息图, 口述听写机, 装饰磁铁, 投票机, 避雷针, 照蛋器, 电栅栏, 叫狗哨子”、第11类“野餐烧烤用火山岩石”商品上予以核准保护。

依据《中华人民共和国商标法》第三十五条的规定, 异议人如对本决定不服, 可以依照《中华人民共和国商标法》第四十四条、第四十五条的规定向国家知识产权局请求宣告该注册商标无效。

(此页无正文)



Relevant Provisions of the Law and the Regulations (Excerpts)

Trademark Law of China

Article 10 The following signs shall not be used as trademarks:

- (1) those identical with or similar to the State name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, or decorations etc, of the People's Republic of China, and those identical with the names or symbols of the Central State government organizations, or with the names of the particular venues, where the Central State government organizations are located, or with the names or graphs of the symbolic buildings of the Central State government organizations;
- (2) those identical with or similar to the State names, national flags, national emblems or military flags etc, of foreign countries, unless consent has been given by the government of the relevant country;
- (3) those identical with or similar to the names, flags or emblems etc, of international intergovernmental organizations, unless consent has been given by the relevant organization or the public is not likely to be misled by such use;
- (4) those identical with or similar to official signs or hallmarks indicating control and warranty, unless authorization has been given;
- (5) those identical with or similar to names or symbols of the Red Cross or the Red Crescent;
- (6) those having the nature of discrimination against any nationality;
- (7) those having the fraudulence, which will easily mislead the public as to the features such as qualities of the goods, or the places of the origins;
- (8) those detrimental to socialist morality or customs, or having other unhealthy influences.

The geographical names of the administrative divisions at or above the county level or the foreign geographical names well-known to the public shall not be used as trademarks, but such geographical names as have otherwise meanings or as an element of a

collective mark or a certification mark shall be exclusive. Where a trademark using any of the above-mentioned geographical name has been approved and registered, it shall continue to be valid.

Article 11 The following signs shall not be registered as trademarks:

- (1) those which consist exclusively of the generic names, designs, or models of the goods in respects of which the trademark is used;
- (2) those which consist exclusively of direct indications of the quality, primary raw material, functions, intended purpose, weight, quantity or other characteristics of goods;
- (3) other signs which are devoid of any distinctive character.

Where trademarks under the preceding paragraph have acquired distinctiveness through use and become easily distinguishable, they may be registered as trademarks.

Article 12 Where a three-dimensional sign is applied for registration of a trademark, it shall not be registered if it consists exclusively of the shape which results from the nature of the goods themselves, the shape of goods which is necessary to obtain a technical result, or the shape which gives substantial value to the goods.

Article 16 Where a trademark contains or consists of a geographical indication with respect to goods not originating in the place indicated, misleading the public as to the true place of origin, the application for registration shall be refused and the use of the mark shall be prohibited. But for those marks that have obtained registration in good faith shall continue to be valid.

Geographical indications mentioned in the preceding paragraph are indications that identify a particular good as originating in a region, where a given quality, reputation or other characteristics of the goods is essentially attributable to its natural or human factors.

Article 22 An applicant for the registration of a trademark shall, in accordance with the prescribed classification of goods, in the application, indicate the class(es) and the indications of goods in respect of which the trademark is to be used.

An applicant can apply for the registration of the same trademark on the

different classes of goods through one application.

Applications for trademark registration and other related documents shall be submitted in writing or electronic format.

Article 23 Where a registered trademark needs to acquire the exclusive right to be used in respect of goods beyond the approved range of use, a new application for registration shall be filed.

Article 30 Where a trademark the registration of which has been applied for is not in conformity with the relevant provisions of this Law, or it is identical with or similar to the trademark of another party that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark.

Article 31 Where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the preliminary approval, after examination, and the publication shall be made for the trademark that was first filed. Where applications are filed on the same day, the preliminary approval, after examination, and the publication shall be made for the trademark that was used earliest, and the applications of the others shall be refused and their trademarks shall not be published.

Article 33 The prior right owner or any interested party who believes that the trademark stands in violation of the provisions of second and third paragraphs of Article 13, Article 15, first paragraph of Article 16, Article 30, 31 and 32 of this law, or any party who believes that the trademark stands in violation of the provisions of Article 10, 11 and 12 of this law may, within three months from the date of the publication, file an opposition against the trademark that has, after examination, been preliminarily approved. If no opposition has been filed at the expiration of the specified period, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published.

Article 35 Where it is decided that the registration shall be approved by the

Trademark Office, a certificate of trademark registration shall be issued and the trademark shall be published. Where the Opponent is dissatisfied with the decision, he or it may, pursuant to Article 44 and 45 of this law, apply for a declaration that the trademark is invalid to the Trademark Review and Adjudication Board.

Where it is decided that the registration shall not be approved by the Trademark Office and the Opposed party is dissatisfied with the decision, he or it may, within fifteen days from receipt of the notification, apply for a review to the Trademark Review and Adjudication Board. The Trademark Review and Adjudication Board shall make a decision within twelve months from receipt of the application and notify both the Opponent and the Opposed party in writing. The administrative authority for industry and commerce under the State Council may grant a six-month extension under certain circumstances. Where the Opposed party is dissatisfied with the decision of the Trademark Review and Adjudication Board, he or it may, within thirty days from receipt of the notification, institute legal proceedings with the people's court. The people's court shall notify the Opponent as a third party to the litigation.

Article 42 Where a registered trademark is assigned, the assignor and assignee shall sign an agreement for the assignment and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods in respect of which the registered trademark is used.

When a registered trademark is to be assigned, the trademark registrant shall assign in a lump all of its similar trademarks in respect of the identical goods, or, identical or similar trademarks in respect of the similar goods.

With respect to applications for the assignment of registered trademarks, which may produce confusion or other adverse effects, the Trademark Office shall refuse them, and shall notify the applicants in writing and give the reasons therefor.

The assignment of a registered trademark shall be published after it has been approved.

The assignee shall enjoy the exclusive right to use the trademark from the date of publication.

Article 50 Where a registered trademark has been cancelled, invalidated or has not been renewed at the expiration, the Trademark Office shall, during one year from the date of the cancellation, invalidation or expiration, approve no application for the registration of a trademark that is identical with or similar to the said trademark.

Regulations for the Implementation of Trademark Law

Rule 13 Anyone who applies for registration of a trademark shall file an application based on the published Classification of Goods and Services. For each application for registration of a trademark, the applicant shall submit to the Trademark Office one copy of the Application for Trademark Registration and one copy of reproduction of the trademark; if applying for the registration of the combination of colors or a sign with the designated color or colors as a trademark, one copy of colored reproduction of the trademark and one copy of the black and white design shall be submitted; if applying for the registration of trademark without designated color or colors, the black and white design shall be submitted.

The reproductions of a trademark must be clear, easy to be pasted up, printed on smooth and clear durable paper or use photographs as a substitute, and the length and breadth of which shall be not more than ten centimeters and not less than five centimeters each.

If applying for the registration of a three-dimensional sign as a trademark, the applicant shall make a statement in the application, explain how to use the trademark, and submit a reproduction including perspectives of at least three different sides of the mark thereof by which the three-dimensional shape can be determined.

If applying for the registration of the combination of colors as a trademark, the applicant shall make a statement in the application, and explain how to use the trademark.

If applying for the registration of a sound

as a trademark, the applicant shall make a statement in the application, submit the audio reproduction as requested, describe the sound and explain how to use the trademark. The description shall describe the said sound by musical notation or numbered musical notation with explanatory words; if the said sound could not be described by musical notation or numbered musical notation, it shall be describe in words. The trademark description shall be in conformity with the sound sample.

If applying for the registration of a collective mark or a certification mark, the applicant shall make a statement in the application, and submit the documents certifying the qualifications of the subjects and the rules on the administration of the use of the mark.

Where a trademark is, or consists of, foreign words, their Chinese meanings shall be indicated.

Rule 15 The class(es) and indications of goods or services shall be listed in the application as specified in the Classification of Goods and Services; where any goods or services are not included in the Classification of Goods and Services, a description of the goods or services in question shall be attached to the application.

Applications for trademark registration and other related documents submitted in writing shall be typewritten or printed.

The preceding paragraph applies to other trademark affairs.

Rule 19 Where two or more applicants apply respectively on the same day for the registration of identical or similar trademarks in respect of the same or similar goods, both or all of the applicants shall, within 30 days from the date of receipt of the notification of the Trademark Office, submit the evidence of prior use of such trademarks before applying for registration. Where the use started on the same day or none is yet in use, both or all of the applicants may, within 30 days from the date of receipt of the notification of the Trademark Office, conduct consultations on their own and submit a written agreement to the Trademark Office; if they are not willing to conduct consultations or they fail to reach an agreement through consultations, the

Trademark Office shall notify both or all of the applicants to determine one of them by drawing lots and refuse the applications for registration filed by others. Where an applicant has been notified by the Trademark Office but fails to participate in the drawing of lots, the application filed by such an applicant shall be considered abandoned, and the Trademark Office shall notify the applicant in writing who does not participate in the drawing of lots.

Rule 43 Anyone who applies for the territorial extension to China, and requests for the protection of a three-dimensional sign, combination of colors or sound as a trademark, or the protection of collective trademark or certification trademark, within three months from the date of recording the trademark in the International Register, shall submit the materials required by Rule 13 through the trademark agency established in accordance with laws in China. If the applicant fails to submit the relevant materials within the time limit, such application shall be refused.

Rule 45 The opponent who is in conformity with Article 33 of The Trademark Law may file an opposition to the Trademark Office against a request for territorial extension to China within 3 months from the first day of the next month following the publication of the International Registration Gazette by the World Intellectual Property Organization.

The Trademark Office shall notify the International Bureau the opposition in the form of provisional refusal before the expiry of the applicable refusal period.

The Opposed party may make a response within 30 days from receipt of the provisional refusal transmitted by the International Bureau. The response and other related evidence shall be submitted through the trademark agency established in accordance with laws in China.

Rule 47 For the assignment of territorial extensions designating China, the assignee shall have a real and effective industrial or commercial establishment in, or be domiciled in a contracting party, or be a national of a contracting state or a state member of a contracting organization.

Where an assignor fails to assign in a lump all his or its identical or similar marks in

respects of the same or similar goods or services, the Trademark Office shall notify the holder of international registration to rectify the situation within 3 months from the date of the notification; if the situation is not rectified at the expiration of the time limit, or if the assignment of a trademark is likely to produce confusion or bears other adverse effects, the Trademark Office shall decide that the said assignment has no effect in China, and declare it to the International Bureau.

Rule 48 For the limitation of list of goods and services of territorial extensions designating China, if the limitation does not comply with the requirements on the classification of goods or services enforced in China, or enlarges the original list of goods and services, the Trademark Office shall decide that the limitation has no effect in China, and declare it to the International Bureau.

Administrative Reconsideration Law

Article 9 Any citizen, legal person or any other organization, who considers that a specific administrative act has infringed upon his or its lawful rights and interests, may file an application for administrative reconsideration within 60 days from the day when he or it knows the specific administrative act, except that the time limit prescribed in laws exceeds 60 days.

If the time limit prescribed by law is delayed due to force majeure or other special reasons, the time limit shall be accounted continuously from the day when the obstacle is removed.

Administrative Procedure Law

Article 46 If a citizen, a legal person or any other organization brings a suit directly before a people's court, he or it shall do so within six months from the day when he or it knows that a specific administrative action has been undertaken, except as otherwise provided for by law.