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World Intellectual Property Organisation (WIPO) International Bureau 34, Chemin des Colombettes 1211 Geneva 20 Switzerland Your Reference: International Registration No: WO0000001574371 Examiner: Charlotte Holloway

Direct Talanda and 1440402004

Direct Telephone: +44(0)1633814831

Date: 04 August 2021

Intl Reg No: WO000001574371 Mark: ARTEL (Figurative)

Holder: SCHWEIZER KAPITAL HOLDING AG Class(es): 3, 25, 28, 29, 30, 31, 32, 33, 45

Notification Of A Provisional Partial Refusal Of Protection Based On An Opposition By The United Kingdom Intellectual Property Office In Accordance With Article 5 Of The Madrid Protocol

I am writing to inform you that following receipt of an opposition to the above trade mark, it is necessary to issue this formal provisional refusal letter. This provisional refusal covers some the goods and services of the International Registration.

Please find attached a copy of the TM7 'Notice of Opposition', which includes details of any marks referred to in the statement of case, which was received by the United Kingdom Trade Mark Registry. Copies of these documents have been sent to the holder informing them of this provisional refusal.

If the holder of the International Registration wishes to file a counterstatement, they must complete the form TM8 'Notice of defence and counterstatement', which is available at ipo.gov.uk/tmforms and return it to this office within two months of the date of this letter that is on or before 4th October 2021. This period cannot be extended, except in the circumstances described below. The holder should note that failure to file a TM8 will result in the provisional refusal being upheld.

If both parties to this dispute wish to negotiate and want to enter a 'cooling off period' then the time for filing the TM8 can be extended for a further seven months by the filing the form TM9c 'Request for a cooling off period, which is available at ipo.gov.uk/tmforms

The TM8 should be received on or before the date requested above unless a cooling off period is entered into by the parties.

The holder of the International Registration must provide us with an address for correspondence in the United Kingdom, another EEA state or the Channel Islands on a form TM33 'Appointment or change of agent or contact address', which is available at <u>ipo gov uk/tmforms</u> within this two month period.

If one is not provided within this time the refusal will be made final.

Yours faithfully,

Charlotte Holloway

Trade Marks Registry



FD 09/07/2021 £200

OP000425464

IP0032662

Form TM7 Notice of opposition and statement of grounds

Fee		£100	Opposition ba	ased on Sec	tion 5(1) and/or 5(2) ONLY				
	\checkmark	£200	Opposition based on, or including, any other grounds Note: If you wish to oppose under Section 5(1) and/or 5(2) and one or more other grounds, the fee will be £200						
			ify of an oppositi u are basing this		e mark application or international	registration a	and to set out the		
Do	not us	e this forr	n if you wish to f	ile a Fast Tr	ack opposition under Section 5(1)	and/or 5(2):	use Form TM7F.		
	Number oppositio	on concerns a	ber nark you are opposir in International Regi rrect trade mark by a	stration,	IR WO000001574371				
			olicant/holder u are opposing		SCHWEIZER KAPITAL HOLDIN	IG AG			
3.	Address If the address is not within the United Kingdom, European Economic Area (EEA – which includes the European Union) or the Channel Islands you must have a representative in one of these regions and complete section 4 below PLEASE NOTE: Publication of name and address and other information you provide. We publish the owner's name and address and other information you provide in our searchable records. You should provide a business or PO Box address if you do not want your home address published. I understand that name and address details and other information I provide will be published. ADDITIONAL INFORMATION: It will no longer be possible for two				CHAMPAGNE G.H. MARTEL E	T CIE			
					69, Avenue de Champagne				
					Epernay				
					France				
						Postcode	51200		
	Complet		no representative a	nd would					
	Representative name If you have no representative, go to section 5.				Boult Wade Tennant LLP				
	in the Ul	ress provided K, European I	I in this section must Economic Area (EEA		Salisbury Square House				
Г	or the Cl	hannel Island	s.		8 Salisbury Square				
		entative if this	nunicate with the section has been		London				
L					United Kingdom	Postcode	EC4Y 8AP		

	Email address Complete if you would like us to correspond with you by email		boult@boult.com					
5.	Related proceedings If applicable, select location of any related proceedings and enter the case number allocated		IPO Registry	UK Courts	EUIPO			
	to the proceedings.	Nur	mber					
6.	Opposition notification date If you have informed the applicant/holder of an intention to oppose the trade mark application, designation – enter the date you notified them. [**See Note]	4 June 2021						
	**Note: An opposition launched without giving the applic designation or amendment may result in the opponent b				lication, international			
7.	Declaration		lieve that the facts ement of grounds a	stated in this form and are true.	d the attached			
	Signature	Bad Chara Town and LLT						
	Name (BLOCK CAPITALS) Date		Boult Wade Tennant LLP					
			ly 2021					
8.	Your reference Complete if you would like us to quote this in communications with you, otherwise leave blank.		FKH/AA/T226518GB00					
	Contact details Name, daytime telephone number of the person to contact in case of query.	020	sha Arunasalam 7430 7500 lt@boult.com					
	Number of sheets attached to this form							
	Checklist Please make sure you have remembered to:							
	Sign and date the form							
	Email your form to us:		If you cann	ot email your form,	post to:			

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https://www.gov.uk/government/publications/howto-file-documents-with-the-intellectual-propertyoffice/how-to-file-documents-with-the-intellectualproperty-office

Intellectual Property Office Trade Marks Registry Concept House Cardiff Road Newport South Wales NP10 8QQ

Please tick on what grounds you are opposing the trade mark and continue to the relevant section(s)



Opposition is based on Sections 5(1) or 5(2): The trade mark is either identical or similar to an earlier trade mark and is to be registered for identical and/or similar goods and services.

Note: Opposition on these grounds must be made by the 'proprietor' (owner) of the earlier trade mark.

> COMPLETE SECTION A



Opposition is based on Section 5(3): The trade mark is either identical or similar to an earlier trade mark which has a reputation. Using the later mark would take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier mark.

Note: Opposition on these grounds must be made by the 'proprietor' (owner) of the earlier trade mark. Ticking this box means that the total fee for this form is £200.

> COMPLETE SECTION B



Opposition is based on Section 5(4)(a): Where the use of the applicant's trade mark would be contrary to law, in particular, the law of passing off.

Note: Opposition on these grounds must be made by the 'proprietor' (owner) of the earlier right. Ticking this box means that the total fee for this form is £200.

> COMPLETE SECTION C

Opposition is based on Section 3: The trade mark is excluded from registration because it describes the goods/services, or is not distinctive, or consists of signs that are customary within the trade, or the application was made in bad faith.

Note: Ticking this box means that the total fee for this form is £200.

> COMPLETE SECTION D

Opposition is based on other grounds.

Note: Ticking this box means that the total fee for this form is £200.

> COMPLETE SECTION E

SECTION A: Opposition is based on sections 5(1) or 5(2) of the Trade Marks Act on the basis of an earlier registered or pending mark.

Please tick the relevant section(s) that apply.

	5(1) It is identical with an earlier mark and for identical goods or services as the earlier mark				
	5(2)(a) It is identical with an earlier mark and for similar goods or services as the earlier mark.				
√	5(2)(b) It is similar to an earlier mark and for identical or similar goods or services as the earlier mark.				

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark	006900518						
Type of mark Please tick			uĸ	√	EUTM		International

Representation of your trade mark

Enter your trade mark in the space provided - use a continuation sheet if necessary.

CHAMPAGNE G.H. MARTEL & CO.
BEV OCT 20 TM7

Which goods or services covered by the earlier trade mark are relied upon for the oppositio	11 7
All goods and services	
Some goods and services (please specify below, use a continuation sheet if necessary)	
les with the registered designation of origin Champagne	
STATEMENT OF USE - Was the registration or protection process for the earlier trade mark 5 years or more before the application date (or priority date, if applicable) of the application international registration you wish to oppose?	
Yes No > GO TO Q4	
Has the trade mark been used in the 5-year period ending on the date of application (or prior if applicable) of the opposed mark?	ority date,
Yes No > GO TO Q3b For which of the goods and services listed at Q1 is trade mark use being claimed?	
All goods and services	
Some goods and services (please specify below, use a continuation sheet if necessary)	
	All goods and services Some goods and services (please specify below, use a continuation sheet if necessary) as with the registered designation of origin Champagne STATEMENT OF USE - Was the registration or protection process for the earlier trade mark 5 years or more before the application date (or priority date, if applicable) of the application international registration you wish to oppose? Yes No > GO TO Q4 Has the trade mark been used in the 5-year period ending on the date of application (or priority applicable) of the opposed mark? Yes No > GO TO Q3b For which of the goods and services listed at Q1 is trade mark use being claimed? All goods and services

Q3b.	Please state any proper reasons for non-use.
DETA	AILS OF THE TRADE MARK YOU ARE OPPOSING
Q4.	Which goods or services in the application that you are opposing do you claim are identical or similar to those covered by the earlier mark which you have listed at Q1?
	,
	All goods and services
√	Some goods and services (please specify below, use a continuation sheet if necessary)
All g	goods in Classes 32 and 33.
Q 5.	Use this space to supply any further information about why you consider there is a likelihood of confusion and for example why you consider the respective marks or goods and/or services to be similar.
The	e dominant and distinctive part of the Opponent's mark is MARTEL, and this is how it is referred to by
cor	nsumers, e.g. as "Martel" or "Martel Champagne". The Applicant's mark consists of the word ARTEL in a
	nimally stylised font below a square device on a black background. The word ARTEL is the dominant and tinctive part of the Applicant's mark. It is therefore similar visually and orally and contains no conceptual
	ferences. The Applicant's mark is hence similar to a high degree to the Opponent's Mark.
The	e Opponent's goods are "Wines with the registered designation of origin Champagne", or Champagne in
cor	mmon parlance. These are identical and strongly similar to the opposed goods in Classes 32 and 33 in terms
	all of the factors of nature, intended purpose, method of use, complementarity, competition, distribution annels, the relevant public and the usual origin of the goods/services.
	annolo, alo rolovant public and alc usual origin of the goods/services.
	cause of the similarity of the mark and the identity and similarity of the respective goods, there exists a elihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade
ma	·

SECTION B: Opposition is based on section 5(3) of the Trade Marks Act on the basis of an earlier registered or pending trade mark, that is identical with or similar to an earlier mark which has a reputation.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER TRADE MARK

Trade mark number Your trade mark		00518			
Type of mark Please tick		UK	√	EUTM	International

Representation of your trade mark

CHAMPAGNE G.H. MARTEL & CO.

Enter your trade mark in the space provided - use a continuation sheet if necessary.

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4 1.	For which goods or services covered by your earlier trade mark does it have a reputation?
√	All goods and services
-	Some goods and services (please specify below, use a continuation sheet if necessary)
Q2 .	For which goods or services in the application (you are opposing) would use of the applicant's mark take unfair advantage of, or be detrimental to, the distinctive character or reputation of the earlier trade mark?
	All goods and services
	Some goods and services (please specify below, use a continuation sheet if necessary)
3.	Is it claimed that the similarity between the reputed earlier trade mark and the later trade mark is suc that the relevant public will believe that they are used by the same undertaking or think that there is
	an economic connection between the users of the trade marks?
	✓ Yes No
Use	this space to supply any further information
The con rela	e dominant and distinctive part of the Opponent's mark is MARTEL, and this is how it is referred to by sumers, e.g. as "Martel" or "Martel Champagne". The Opponent's mark has a reputation due to its use in ation to these goods in the United Kingdom since at least as early as the 1980s. Due to the similarity of the pective marks and respective goods, there will be a link made by consumers between the respective goods.
indi	en that consumers will perceive an economic link between the Opponent's mark and the Applicant's mark, rect confusion will occur and the Application should be refused for all opposed goods under Section 5(3) of Act.

QUESTIONS 4 TO 6 SHOULD BE ANSWERED IF THERE IS ANY OTHER BASIS FOR YOUR CLAIM OTHER THAN FOR YOUR ANSWER TO Q.3

Q4.	Is there any other basis for your claim of unfair advantage? If so, please explain what the
	advantage would be to the holder of the later mark, and why it is unfair.

Further and in the alternative, consumers will perceive the Applicant's mark as an extension to the Opponent's use of its mark, or otherwise authorised by the Opponent. The Application should therefore be refused for all opposed goods under Section 5(3) of the Act.

Use of the Applicant's mark in relation to the opposed goods will take unfair advantage of the distinctive character and repute of the Opponent's mark by attempting to ride on the coat-tails of the Opponent's mark in order to benefit from its power of attraction, reputation and prestige, and to exploit, without being required to make efforts of its own in that regard, the marketing effort expended by the Opponent in order to create and maintain the image of its mark. The use without due cause of the Later Trade Mark would take unfair advantage of the Opponent's mark by freeriding on the investment the Opponent has made through its extensive marketing efforts. The Application should therefore be refused for the opposed goods under Section 5(3) of the Act.

Q5. Is there any other basis for your claim of detriment to the reputation of the earlier mark? If so, please explain what the detriment would be and how it would occur.

Use of the Applicant's mark in relation to the opposed goods will result in detriment to the repute of the Opponent's mark. The Opponent's goods and services are of an extremely high quality and benefit from significant marketing and quality control by the Opponent. If the Applicant's goods are not of a similar quality they will taint the repute of the Opponent's mark and render the Opponent's goods less attractive to consumers, thereby changing their economic behaviour as they will choose not to purchase the Opponent's goods. In this regard it is not necessary to show consumers' actual change in behavior: a serious risk that it will change suffices.

Q6. Is there any other basis for your claim of detriment to the distinctive character of the earlier mark? If so, please explain what the detriment would be and how it would affect the economic behaviour of the relevant public.

Use of the Applicant's mark in relation to the opposed goods will also dilute the distinctive character of the Opponent's mark and will weaken its ability to identify the goods/services of the Opponent. Therefore, use of the Later Trade Mark will be detrimental to the distinctive character of the Earlier Trade Mark. The Application should therefore be refused for the opposed goods under Section 5(3) of the Act.

		fore the application date (or priority date, if applicable) of the gistration you wish to oppose?
	Yes	No > GO TO Q10
Q8.	Has the trade mark been used date, if applicable) of the oppo	in the 5-year period ending on the date of application (or priority osed mark?
	Yes	No > GO TO Q9b
Q9a.		ervices listed at Q1 is trade mark use being claimed?
✓	All goods and services	
	Some goods and services (please s	specify below, use a continuation sheet if necessary)
> G(O TO Q10 Please state any proper reaso	ns for non-use.
Q10.	Use this space to give any fur this ground.	ther information to explain why you are opposing the application on

STATEMENT OF USE - Was the registration or protection process for the earlier trade mark

Q7.

SECTION C: Opposition is based on Section 5(4)(a) of the Trade Marks Act, where the use of the applicant's trade mark would be contrary to law, in particular, the law of passing off.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

ABOUT THE EARLIER UNREGISTERED TRADE MARK

Representation of your trade mark Enter your trade mark in the space provided - use a continuation	n sheet if necessary.
MARTEL	
Q1. When and where was the earlier right fi	irst used in the UK?
Date used: Enter date of first use	at least 01/01/1990
Where used:	Throughout the United Kingdom.
Enter name of city/region or specify 'throughout UK' if used nationally	

Q 2.	On which goods or services has the earlier right been used for?
Wine	es, namely wines with the registered designation of origin Champagne.
DETAI	LS OF THE TRADE MARK YOU ARE OPPOSING
Q3.	For which goods or services (of the application that you are opposing) do you consider that use of the applicant's mark would amount to passing off?
√	All goods and services
	Some goods and services (please specify below, use a continuation sheet if necessary)
Q4 .	Why would use of the applicant's trade mark be contrary to law, particularly the law of passing off?
MAR early	Opponent's goods, namely wines with the registered designation of origin Champagne, have been known as RTEL wine or Champagne since at least as early as the 1980s, hence the date of first use given as at least as as as 01/01/1990. Due to this use in the United Kingdom, the sign MARTEL has led to the arising of significant levill in the United Kingdom owned by the Opponent, especially due to the prestige nature of the goods in stion.
perce	of the Applicant's mark in the United Kingdom would be a misrepresentation in that the consumer would eive the goods as originating from the Opponent, or to be otherwise authorised by them. Further, the icant's mark is so close to the MARTEL sign that it is likely to deceive the consumer as to the origin of the is.
ident whos	misrepresentation would cause serious damage to the Opponent in that its MARTEL sign's capacity to tify origin would be lessened, and more importantly in that the Opponent's goods are prestige, luxury products se allure will be damaged in the event of a lesser quality of goods produced by the Applicant under the icant's mark.
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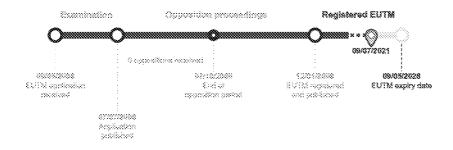


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EUTM file information

CHAMPAGNE G.H. MARTEL & CO. 006900518

Timeline



Trada	mark	inform	ation
5 7 705 5500	55545688	900859250	23429 82 25 5

Name CHAMPAGNE G.H. MARTEL & Filing date 09/05/2008 CO. Registration date 22/12/2008 Filing number 006900518 Expiry date 09/05/2028 Basis EUTM Designation date 09/05/2008 Date of receipt Filing language French Word Type Second language English Individual Nature Application reference HM/MC/08/064 Nice classes 33 (Nice Classification) Trade mark status Registered Vienna Classification Acquired distinctiveness No

Goods and services



33 Wine with the registered designation of origin Champagne.

Description

No data

Owners

CHAMPAGNE G.H. MARTEL ET CIE

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330550 Country FR - France Correspondence address
Click for more information X

n/a

Organisation State/county EUIPO - eSearch Page 2 of 4

> CHAMPAGNE G.H. MARTEL

Address Legal entity

Town

Epernay 51200

69, Avenue de

Champagne

CHAMPAGNE G.H. MARTEL ET 69, Avenue de Champagne

F-51200 Epernay FRANCIA

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Representatives

Legai status

CABINET @MARK

Organisation

Legal status

Type

18407 n/a

Legal person Town Association

Country State/county Post code

Address

FR - France n/a Paris 75009

16, rue Milton

Correspondence address

CABINET @MARK 16, rue Milton F-75009 Paris FRANCIA

info@mark-france.com

00 33-148244040

00 33-148244330

Correspondence

From	Pracedure	Fling number	Subject	Date	Action
	Recordal	017092167	T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register	11/12/2019	
	Recordal	017092167	Application form and attachment	06/12/2019	
	Recordal	013369890	1.607A	25/04/2018	
	EUTM	006900518	Application form and attachment	23/04/2018	
	EUTM	006900518	Letter to the EUIPO	23/04/2018	
	Recordal	013369890	Application form and attachment	20/04/2018	
	Recordal	013369890	L601A — Notification of the need to renew a EUTM registration AUTOMATIC	10/10/2017	
	EUTM	006900518	L304 – Cover letter for registration certificate	12/01/2009	
	EUTM	006900518	Certificate	12/01/2009	
	EUTM	006900518	L305 - Request for payment of the registration fee	05/11/2008	

IR transformation

No data

Seniority

X	Country	Filling number	Registration number	Priority date	Filing date	Registration date	international code	Status
	France	95567227	95567227		07/04/1995	07/04/1995	EU	ACCEPTED
1		***************************************	************************************			***************************************	***************************************	

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Exhibition priority

No data

Priority

No data

Publications

Bulletin number	Clarice	Spectioner	Description
2008/027	07/07/2008	A.1	Applications published under Article 44 EUTMR (Article 39 EUTMR before 01/10/2017)
2009/001	12/01/2009	B.1	Registrations with no amendments since the application was published
2018/080	27/04/2018	D.1	Renewals
2019/237	13/12/2019		Proprietor - Change of name and address
Showing 1 to 4 of		,,,,,,,,,,,,,,,	

Cancellation

No data

Recordals

Bulletin number	Date	Section	Filing number	Tide	Subtitle
2018/080	27/04/2018	D,1	013369890	Renewal	Total Renewal
2019/237	13/12/2019	C.1.3	017092167	Proprietor	Change of name and address
Showing 1 to 2 of 2 entri					

Oppositions

No data

Appeals

No data

Decisions

No data

Renewals

Tide	Filing number	Status	Status date
Renewal	013369890	Trade mark renewed	30/04/2018
Showing 1 to 1 of 1 entries			

Trade mark relations

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INTERNATIONALANNIIFATIONS	- 1
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Fees and payment

We will only process the form with this section completed (one form per payment)

To check	the correct fee for this fo	orm, search on <u>GOVUK for 'trade mark forms and fees'</u>		
Total Fee	Paying (£)	200		
Your own	reference (Optional)	FKH/AA/T226518GB00		
Your con	tact details should we	have a query		
Name	Mark Watson			
Email	boult@boult.com			
Phone	020 7430 7500			
How wou	ıld you like to pay?			
Tick one				
	Using a debit or cre	edit card – you will need the internet to pay by card		
	1 Go to our secu	re website – https://fees.ipo.gov.uk/pay		
	2 Enter your nam	e, email address and total amount to pay from above		
	online payment	ment, write below the 16-digit reference number displayed from the screen. your debit/credit card number		
✓	Deduct from IPO de	eposit account		
	IPO deposit account	number		
	D02882			
	Cheque – make pay	able to 'Intellectual Property Office'		
	Bank transfer			
		r IPO deposit account number if you have one or an or your name if you don't.		
	Use the following ba	nk account details		
	Sort code Account number Account name SWIFT code IBAN number	20-18-23 80531766 Intellectual Property Office BARCGB22 GB92 BARC 2018 2380 5317 66		

James Morgan

From: Forms

Sent:12 July 2021 11:45To:Trademark.ExaminationCc:ProcessedFeeBearingForms

Subject: FD 09/07/2021 TM7 OP000425464 FW: TM7-WO0000001574371-T226518GB00

[BWT-LIVE.FID6071174]

Attachments: TM7-WO000001574371-T226518GB00.pdf

Categories: James

From: Connor Thorogood < CThorogood@Boult.com>

Sent: 09 July 2021 15:48

To: Forms < Forms@ipo.gov.uk>

Cc: Tony Pluckrose <TPluckrose@Boult.com>; Felicity Hide <FHide@Boult.com>; Anusha Arunasalam

<AArunasalam@Boult.com>; Hayley Kenny <HKenny@Boult.com>

Subject: TM7-WO0000001574371-T226518GB00 [BWT-LIVE.FID6071174]

Dear Sir or Madam,

Opposition to UK Designation of IR No. WO0000001574371 ARTEL (STYLISED) in the name of Schwizer Kapital Holding AG

Our Ref: AWP/FKH/AA/T226518GB00

We write in relation to the above-mentioned matter.

Please find **attached** Form TM7 Notice of Opposition against UK Designation of IR No. WO0000001574371. Please also find enclosed the necessary fee sheet enabling the appropriate fee to be deducted from our Deposit Account No. D02882.

We look forward to receiving confirmation that the opposition has been received and processed.

Yours faithfully,

Connor Thorogood

For and on behalf of BOULT WADE TENNANT LLP

Connor Thorogood

Senior Associate

Boult Wade Tennant LLP

Salisbury Square House, 8 Salisbury Square, London EC4Y 8AP T: +44 (0)20 7430 7500 F: +44 (0)20 7430 7600 E: <u>QThorogood@Boult.com</u>

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