

## PROVISIONAL REFUSAL OF PROTECTION

**I. Office notifying the refusal:**

**Tel.: (370-5) 27 80 267**  
**Fax.: (370-5) 27 50 723**

**III. Other indications concerning international registration which is the subject of refusal:**

Basic registration:

#### IV. Grounds for refusal:

☒ The mark would infringe rights acquired by third parties resulting from an earlier registration(s) and/or application(s) \*

☐ Other grounds.

**V. Provisions of the Lithuanian Law on Trade Marks (enclosed):** Article 7, paragraph 1, subparagraph 2.

**VI.** ☒ Refusal for all goods and services.

☐ Refusal for the following goods and services:

**VII. Actions to be taken by the holder:**

The proprietor of a mark of international registration against which an opposition has been filed must within a five months period from the date of this notification present a justified reply to opposition. The justified reply should be addressed to the Appeals Division of the State Patent Bureau. It should be presented in Lithuanian language and an address for the correspondence in the territory of the Republic of Lithuania should be indicated. Where the trademark owner is not a resident of the Republic of Lithuania or another member state of the European Union, neither he has subsidiary or representation registered in the Republic of Lithuania or another member state of the European Union, the justified reply should be presented through a patent attorney of the Republic of Lithuania. The list of patent attorneys is available on <http://www.vpb.gov.lt/engl/>. The time limit expires on **19/10/2005**.

**VIII. Date on which the refusal was pronounced:** 19/05/2005

**IX. Signature:**

Deputy Head of the Trademarks and  
Designs Division



*[Signature]*

**Jūratē Kaminskienē**

\* - if the space available is insufficient, see a continuation sheet

Number of continuation sheets: 5

## CONTINUATION SHEET

No: 1 of IV

## IV. Grounds for refusal

Opposition filed with the Division of Appeals of the State Patent Bureau on: 13/04/2005 No. 1575.

(The opposition hearing is appointed on 13/01/2006).

Motive: Article 7, paragraph 1, subparagraph 2:

Registration of a mark shall be declared invalid if the mark is identical with or similar to the earlier mark and because of the identity or similarity of the goods and/or services covered by the marks there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier mark.

Name and address of the opponent:

Lidl Stiftung & Co. KG

Stiftsbergstrasse 1

74167 Neckarsulm

Germany (DE)

Name and address of the representative:

Leonas Antanas Kučinskas

Dr. Leono A.Kučinsko patentinių paslaugų firma

Kaštonų g. 5-7

LT-01107 Vilnius

Lithuania (LT)

Tel. (370 5) 262 67 23.

Fax. (370 5) 260 96 65, (370 5) 272 48 50.

E-mail: leopat@is.lt.

International registration (copy enclosed):

No. 610 993.

610993

**151 Date of the registration**

10.11.1993

**180 Expected expiration date of the registration/renewal**

10.11.2013

**270 Language of the application**

French

**Current Status****732 Name and address of the holder of the registration**

Lidl Stiftung &amp; Co. KG

Stiftsbergstrasse 1

74167 Neckarsulm (DE)

**811 Contracting State of which the holder is a national**

DE

**740 Name and address of the representative**

Hansmann &amp; Vogeser,

Patent- und Rechtsanwälte

Albert-Roßhaupter-Strasse 65

81369 München (DE)

**770 Name and address of the previous holder**

Lidl Stiftung &amp; Co. KG

Heiner-Fleischmann-Strasse 2

Neckarsulm (DE)

**540 Mark****PRIMADONNA****566 Translation of the mark or of words contained in the mark**

PRIMADONNA

PRIMADONNA

**511 International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) - NCL(6)**

- 29** Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruit and vegetables; meat, fish, fruit and vegetable jellies; jams; eggs; milk and dairy products, namely butter, cheese, cream, yogurt, powdered milk for food; edible oils and fats; canned meat, fish, fruit and vegetables.

Viande, poisson, volaille et gibier; extraits de viande; fruits et légumes conservés, séchés et cuits; gelées de viande, de poisson, de fruits et de légumes; confitures; oeufs; lait et produits laitiers, à savoir beurre, fromage, crème, yoghourt, lait en poudre à usage alimentaire; huiles et graisses comestibles; conserves de viande, de poisson, de fruits et de légumes.

Carne, pescado, aves y caza; extractos de carne; frutas y legumbres en conserva, secas y cocidas; gelatinas de carne, de pescado, de frutas y de legumbres; confituras; huevos; leche y productos lácteos, a saber, mantequilla, queso, nata, yogur, leche en polvo para uso alimenticio; aceites y grasas comestibles; conservas de carne, de pescado, de frutas y de verduras.

- 30** Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals (except fodder); pasta; bread, pastry and confectionery, edible ice; honey, treacle; yeast, baking powder; edible salt; mustard; vinegar, sauces (condiments), fruit sauces; spices.

Café, thé, cacao, sucre, riz, tapioca, sagou, succédanés du café; farines et préparations faites de céréales (à l'exception des fourrages); pâtes alimentaires; pain, pâtisserie et confiserie, glaces comestibles; miel, sirop de mélasse; levure, poudre pour faire lever; sel comestible; moutarde; vinaigre, sauces (condiments), sauces de fruits; épices.

Café, té, cacao, azúcar, arroz, tapioca, sagú, sucedáneos del café; harinas y preparaciones hechas de cereales (excepto piensos); pastas alimenticias; pan, pastelería y confitería, helados comestibles; miel, jarabe de melaza; levaduras, polvos para esponjar; sal comestible; mostaza; vinagre, salsas (condimentos), salsas de frutas especias.

- 32** Beers; mineral and sparkling water and other non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Bières; eaux minérales et gazeuses et autres boissons non alcooliques; boissons de fruits et jus de fruits; sirops et autres préparations pour faire des boissons.

Cervezas; aguas minerales y gaseosas y otras bebidas no alcohólicas; bebidas y zumos de frutas; siropes y otras preparaciones para hacer bebidas.

**822 Basic registration**

DE, 17.08.1993, 2 042 559

**822 Basic registration**

DE, 17.09.1993, 2 045 252

**300 Data relating to priority under the Paris Convention and other data relating to registration of the mark in the country of origin**

DE, 16.06.1993, 2 042 559

pour une partie des produits de la classe 30

**300 Data relating to priority under the Paris Convention and other data relating to registration of the mark in the country of origin**

DE, 04.08.1993, 2 045 252

**831 Designation(s) under the Madrid Agreement**

AT - BA - BG - BX - BY - CH - CZ - ES - FR - HR - HU - IT - LI - LV - MC - MK - PL - PT - RO - RU - SI - SK - UA - YU

**832 Designation(s) under the Madrid Protocol**

AU - DK - EE - FI - GB - LT - NO - SE - TR

**527 Indications regarding use requirements**

GB

**History Summary**

Registration : 1993/12 LMi, 22.02.1994, AT, BG, BX, CH, CZ, ES, FR, HR, HU, IT, LI, MC, PL, PT, RO, RU, SI, SK, YU

Subsequent designation : 1994/3 LMi, 20.05.1994, MK

Limitation : 1994/11 LMi, 23.01.1995, AT, BG, BX, CH, CZ, ES, FR, HR, HU, IT, LI, MC, MK, PL, PT, RO, RU, SI, SK, YU

Total refusal of protection : ES

Partial refusal of protection : HU

Partial refusal of protection : RO

Statement indicating that the mark is protected for all the goods and services requested : 1995/7 LMi, 19.09.1995, ES

Statement indicating that the mark is protected for all the goods and services requested : 1995/8 LMi, 18.10.1995, HU

Subsequent designation : 1997/10 Gaz, 03.07.1997, BA

Other final decision : 2001/2 Gaz, 01.03.2001, RO

Subsequent designation : 2001/6 Gaz, 26.04.2001, DK, FI, NO, SE, TR

Grant of protection subject to opposition : 2002/6 Gaz, 02.05.2002, TR

Partial refusal of protection : 2002/5 Gaz, 18.04.2002, NO

Subsequent designation : 2002/10 Gaz, 27.06.2002, EE, LT, LV

Statement indicating that the mark is protected for all the goods and services requested : 2002/16 Gaz, 19.09.2002, RO

Opposition possible after the 18 months time limit : 2002/16 Gaz, 19.09.2002, NO

Grant of protection : 2002/18 Gaz, 17.10.2002, TR

Opposition possible after the 18 months time limit : 2003/3 Gaz, 20.03.2003, NO

Subsequent designation : 2003/5 Gaz, 17.04.2003, BY, UA

Other final decision : 2003/13 Gaz, 07.08.2003, NO

Designated contracting party(ies) for which the second installment has been paid (Rule 40(3)) : 2003/24 Gaz, 08.01.2004

Subsequent designation : 2004/25 Gaz, 16.09.2004, AU, GB

Partial refusal of protection : 2004/35 Gaz, 25.11.2004, AU

Grant of protection : 2005/6 Gaz, 17.03.2005, GB

## **X. Relevant provisions of national law:**

### **Article 5. Signs of Which a Mark May Consist**

Marks, with respect to which legal protection under this Law is applicable, may consist of signs, in particular:

- 1) words, personal surnames, names, artistic pseudonyms, names of the legal entities, slogans;
- 2) letters, numerals;
- 3) drawings, emblems;
- 4) three-dimensional forms (the shape of goods, their packaging or containers);
- 5) colours or combinations of colours, their compositions;
- 6) any combination of signs specified in subparagraphs 1-5 of this Article.

### **Article 6. Absolute Grounds for Refusal of Registration or Invalidation of a Mark**

1. A sign shall not be recognised as a mark and shall be refused registration or the registration of a registered mark shall be declared invalid if:

- 1) the sign cannot constitute a mark under the requirements of Article 5;
- 2) the sign is devoid of any distinctive character;
- 3) it has become customary in the current language or in the *bona fide* and established practices of the trade;
- 4) it consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, the mode of production or other characteristics of the goods and/or services;
- 5) the sign is of such a nature as to mislead the public, for instance as to the nature, quality or geographical origin of the goods and/or services;
- 6) the sign is contrary to accepted principles of morality or public policy, including ethics of society and humanitarian principles;
- 7) the sign consists exclusively of the shape which results from the nature of the goods themselves or the shape of goods which is necessary to obtain a technical result or the shape which gives substantial value to the goods;
- 8) the sign consists of the official or traditional (abbreviated) state name of the Republic of Lithuania, or armorial bearings, flag or other state heraldic objects or any imitation from a heraldic point of view, also official signs and hallmarks indicating control and warranty, stamps, medals or marks of distinction, unless the permission for their use in a mark has been issued according to the established procedure by the institution authorised by the Government of the Republic of Lithuania;
- 9) it consists of the signs the registration of which has not been authorised by the competent authorities of other states or international organisations and the registration of which is to be refused or invalidated pursuant to Article 6ter of the Paris Convention;
- 10) it is a sign of high symbolic value, in particular a religious symbol;
- 11) it contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in the Republic of Lithuania is of such a nature as to mislead the public as to the true place of origin of the goods. The above provision shall also be applicable against a geographical indication which, although literally true as to the place of origin of the goods, falsely represent to the public that the goods originate in another territory;
- 12) it contains or consists of a geographical indication identifying wines for wines or spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. In the cases provided for in subparagraphs 2, 3 or 4 of paragraph 1 of this Article, a sign may be recognised as a mark and its registration may not be invalidated if, before the date of application for registration, after the date of filing of the application or registration of the mark and following the use which has been made of it, it has acquired distinctive character.

### **Article 7. Other Grounds for the Invalidation of Registration**

1. Registration of a mark shall be declared invalid if the mark is:

- 1) identical with an earlier mark, and the goods and/or services for which the mark is registered are identical with the goods and/or services for which the earlier mark is applied for or is registered;
- 2) identical with or similar to the earlier mark and because of the identity or similarity of the goods and/or services covered by the marks there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier mark;
- 3) identical with the mark recognised as well-known in the Republic of Lithuania in the manner prescribed by Article 9 of this Law, the proprietor of which is another person, or because of its similarity to the mark it is liable to mislead the public;
- 4) identical with the name of the legal entity or processing a misleading likelihood to the name of the legal entity, whose proprietor is another person who acquired the right to the name of the legal entity in the Republic of Lithuania before the date of filing of the application for the registration of the mark or the date of the priority, if on the specified date the firm had a right to engage in identical or similar trade to which the goods and/or services covered by the registered mark may be attributed;

5) identical with the geographical indication protected in the Republic of Lithuania or possessing a misleading likelihood thereto, except for the indication incorporated in the mark as the disclaimer, for which registration is applied for by a person entitled to use the geographical indication;

6) identical with the protected industrial design or any other object of industrial property, literary, scientific or artistic work protected under the copyright, the name or surname or artistic pseudonym of a famous person, or the portrait of another person or its likelihood to the above is misleading, except in cases where consent has been granted by the owner of the rights or the successor to them.

7) identical with, or similar to, an earlier Community trade mark and where the later mark is to be, or has been registered for goods and (or) services which are not similar to those for which the earlier Community trade mark is registered, where the earlier Community trade mark has a reputation in the European Community and where the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark (...)

#### **Article 11. Filing of an Application**

(...) Foreign nationals who are not permanent residents of the Republic of Lithuania or another member state of the European Union, and legal persons of foreign states who do not have a subsidiary or representation registered in the Republic of Lithuania or another member state of the European Union, shall file applications to the State Patent Bureau and perform all actions relating to the registration of the mark with the State Patent Bureau, including also representation at the Appeals Division, through the patent attorney of the Republic of Lithuania (...)

#### **Article 18. Opposition**

1. Within a period of three months following the publication of the registered Mark in the Official Bulletin of the State Patent Bureau, the interested person may give to the Appeals Division a justified written opposition to registration of the mark on the grounds that it may not be registered under Articles 6 and 7 of this Law (...)

7. The decision made by the Appeals Division may be appealed against to the Vilnius County Court within six months from the day of adoption thereof.

8. Decisions made by the Appeals Division shall be published in the Official Bulletin of the State Patent Bureau.

#### **Article 19. Appeal and Opposition Examination at the State Patent Bureau**

(...)

2. The applicant, the interested person, the proprietor of the mark against which opposition has been filed or the representatives of the above persons shall have the right to take part in the appeal or opposition proceedings at the Appeal Division (...)

#### **Article 34. Special Provisions Applicable to International Registration of a Mark**

(...)

4. The proprietor of a mark of international registration against which an opposition has been filed must within a five months period from the date of Notification of Refusal to the International Bureau appoint his representative in the manner laid down in paragraph 2 of Article 11 of this Law and present a justified reply to opposition. Failure to present a justified reply to the opposition shall be considered as a refusal to take part in the examination of the opposition and shall not prevent the Appeals Division from examining the opposition in the absence of the proprietor of the mark of international registration or his representative. If the proprietor of the mark of international registration to which the opposition is filed fails to appoint his representative, the decision made by the Appeals Division shall not be communicated to the proprietor of the mark of international registration (...)

#### **Article 49. Institutions Having Jurisdiction in Disputes Relating to Marks**

1. The Appeals Division of the State Patent Bureau shall deal with disputes provided for in Article 18 of this Law.

2. The Vilnius County Court shall deal with disputes relating to:

1) decisions of the Appeals Division of the State Patent Bureau;

2) invalidation of registration of a mark;

3) revocation of registration of a mark;

4) enforcement of the proprietor's rights;

5) recognition of the mark as well-known in the Republic of Lithuania;

6) Community trade marks as defined in Articles 90-101 of the Council Regulation on Community trade mark.