

World Intellectual Property Organisation (WIPO)
International Bureau
34, chemin des Colombettes
1211 Geneva 20
Switzerland



Fax No: 0015 41 22 7335428

No. of pages: 7

Dear Sir/Madam

NOTIFICATION OF REFUSAL OF PROTECTION BASED ON AN OPPOSITION

**THIS REFUSAL IS ISSUED PURSUANT TO RULE 17(1) TO 17(3) OF THE
COMMON REGULATIONS UNDER THE MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND
THE PROTOCOL RELATING TO THAT AGREEMENT**

International Registration number:	638458
For the mark:	Sunrise
In the name of:	Lidl Stiftung & Co. KG
Opposition by:	Vina Concha Y Toro SA
Our ref:	963757

We advise that following receipt of a Notice of Opposition to the above Trade Mark on 11 August 2006, it is necessary to issue this formal refusal letter. This refusal covers all of the goods of the International Registration (**Rule 17(2)(vi)**).

Please find attached a copy of the Notice of Opposition including the grounds for opposition (**Rule 17(2)(iv)**).

We also attach:

- Copies of the trade mark(s) upon which the opposition is based, (if conflicting trade mark numbers have been provided in the notice of opposition) showing all relevant details (**Rule 17(2)(v)**, **Rule 17(3)**).
- A copy of subdivision 3 of Part 17A of the *Trade Marks Regulations 1995* (**Rule 17(2)(iv)**).

Subdivision 3 points to other relevant sections of the *Trade Marks Act 1995* (the Act) and the *Trade Marks Regulations 1995* (the Regulations). Both the Act and the Regulations may be accessed at the following website address:

www.ipaustralia.gov.au/resources/legislation_index.shtml

The following information can also be accessed at
www.ipaustralia.gov.au/resources/forms_trademarks.shtml:

- * brochures about opposition matters giving an overview of opposition proceedings and representation at a hearing
- * the *Trade Marks Office Manual of Practice and Procedure*.

The trade marks opposition process can be lengthy, as 3 months is nominally allowed for each of the 3 evidence stages - evidence in support of the opposition, evidence in answer and evidence in reply - and these periods may be extended. The due date for serving and filing evidence in answer to the opposition (unless an extension of time is requested) will be **3 months** from the date on which the opponent serves its evidence in support on the holder at its address for services in Australia (**Rule 17(2)(vii) or Rule 18(1)(e) as applicable**).

For answers to questions regarding any opposition matter please email:

assist@ipaustralia.gov.au

ADDRESS FOR SERVICE IN AUSTRALIA: *important information for the holder of an opposed international registration designating Australia*

If the holder wishes to make written representations or to be heard in relation to the opposition, then the holder **must** notify the Registrar, in writing, of the holder's address for service in Australia. This must be done within 3 months after the notice of opposition is filed. (See subregulation 17A.33(3) of the Regulations.) Under certain circumstances, this time may be extended, under the provisions of section 224 of the Act.

Please also note that the opponent will **not** be required to serve a copy of its evidence in support of the opposition on the holder, if the holder has not provided an address for service in Australia within the time allowed (subregulation 17A.33(3)).

Yours faithfully



Robert MacRae
Trade Marks and Designs Hearings
IP Australia
Direct dial: +61 2 6283 2933

16 August 2006

IP AUSTRALIA
Trade Marks Act 1995

NOTICE OF OPPOSITION

Trade Mark No. 963757 (International Registration No. 638458)
in the name of Lidl Stiftung & Co. KG

Details of person opposing:

Name: Vina Concha Y Toro SA
Address: Nueva Tajamar 481, Torre Norte Piso 15, Las Condes, Santiago, Chile

Our address for Service in Australia: c/o WATERMARK PATENT & TRADE MARK ATTORNEYS, of 290
Burwood Road, Hawthorn, Victoria 3122, Australia. Phone: (03) 9819 1664, Fax: (03) 9819 6010, Our
Ref: OT1727AU00

Notice of Opposition is given under the *Trade Marks Act 1995* to the registration of the above trade mark.

The grounds of opposition are as follows:

1. THAT the Applicant's trade mark is not qualified for registration or extension of protection under the Trade Marks Act 1995.
2. THAT the Applicant's trade mark is not qualified for registration or extension of protection under the provisions of Sections 57, 58, 59, 60, 61 and 62 of the Trade Marks Act 1995.
3. THAT the Applicant's trade mark is not capable of distinguishing the Applicant's goods for which registration is sought.
4. THAT the Opponent is the registered proprietor of the following trade mark under the Australian Trade Marks Act 1995 Trade Mark Registration No. 1025165.
5. THAT the Applicant's trade mark is either substantially identical with or deceptively similar to the Opponent's aforesaid trade mark registration such that it is likely to deceive or cause confusion.
6. THAT use by the Applicant of its trade mark on goods for which registration is sought would be likely to deceive or cause confusion in the trade having regard to the Opponent's aforementioned trade mark registration and use and reputation of the Opponent's trade mark.

7. THAT the Applicant's trade mark is not capable of distinguishing the Applicant's goods for which registration is sought having regard to the Opponent's aforementioned trade mark registration and use and reputation of the Opponent's trade marks.
8. THAT use by the Applicant of its trade mark on goods for which registration is sought would be likely to deceive or cause confusion in the trade having regard to the Opponent's unregistered trade marks and use and reputation of the Opponent's trade marks
9. THAT the Applicant's trade mark is not capable of distinguishing the Applicant's goods for which registration is sought having regard to the Opponent's aforementioned trade mark registration and use and reputation of the Opponent's unregistered trade marks.

A copy of this notice has been served on:

Name of Applicant:

Lidl Stiftung & Co KG

Place of Service:

Freehills Patent & Trade Mark Attorneys
Level 43,
101 Collins Street
MELBOURNE VIC 3000
Fax: (03) 9288 1567

Date of Service:

11 August 2006

Service by:

Fax and Registered Post

Vina Concha Y Toro SA

By our Patent & Trade Mark Attorneys

WATERMARK PATENT & TRADE MARK ATTORNEYS


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Karen Sinclair
Registered Trade Mark Attorney

DATED: 11 August 2006

Trade Mark Details**Trade Mark : 1025165**

Word: SUNRISE
Image:
Lodgement Date: 14-OCT-2004
Registered From: 14-OCT-2004
Acceptance Advertised: 05-MAY-2005
Registration Advertised: 25-AUG-2005
Sealing Date: 15-AUG-2005
Renewal Due: 14-OCT-2014
Class/es: 33
Status: Registered/Protected
Kind: n/a
Type: Word

Precedents:

1. Divisional claim is invalid, s44 - Citations: 241891, 279277, 963757, ATE in spec 2.clear

Annotation:

Owner/s: **Vina Concha Y Toro S.A.**

Nueva Tajamar 481,
Torre Norte Piso 15,
Las Condes, Santiago,
CHILE

Address for Service: WATERMARK PATENT & TRADEMARK ATTORNEYS

Locked Bag 5
HAWTHORN
3122,VIC

Goods & Services

Class: 33 Wines and sparkling wines

Endorsements: Provisions of paragraphs 44(3)(a) and 44(4) applied.*

Indexing Details - Word Constituents

SUNRISE

Indexing Details - Image Constituents

TRADE MARKS REGULATIONS 1995

17A.29 Opposition

- (1) If the Registrar has notified in the *Official Journal* the acceptance of an IRDA, a person may oppose the extension of protection in Australia to the trade mark that is the subject of the IRDA by filing a notice of opposition.
- (2) The notice of opposition must:
 - (a) be in an approved form; and
 - (b) be filed with the Registrar:
 - (i) within 3 months from the day on which the acceptance of the IRDA is notified in the *Official Journal*; or
 - (ii) if an extension of time is granted under regulation 17A.30, within the extended time allowed.
- (3) The Registrar must notify the International Bureau of the opposition in accordance with rule 16 or 17, as applicable, of the Common Regulations.

17A.30 Extension of time for filing

- (1) A person may apply to the Registrar for an extension of time in which to file a notice of opposition.
- (2) Regulations 5.2, 5.3 and 5.4 (except subregulations 5.4 (2) and (3)) apply, with the necessary modifications, to an application for extension of time under subregulation (1).
- (3) Subsection 52 (5) of the Act applies to an application for extension of time under subregulation (1).

17A.31 Grounds for opposing IRDA

- (1) The extension of protection may be opposed on any of the grounds on which an IRDA may be rejected under Subdivision 2, except the ground that the trade mark cannot be represented graphically.
- (2) The extension of protection may also be opposed on any of the grounds set out in sections 58 to 61 of the Act, as affected by subregulation (3).
- (3) Sections 58 to 61 apply in relation to an IRDA as if:
 - (a) a reference in those sections:
 - (i) to an application for the registration of a trade mark were a reference to the IRDA; and
 - (ii) to an applicant were a reference to the holder of the IRDA; and
 - (iii) to the registration of a trade mark were a reference to the extension of protection in Australia to the trade mark that is the subject of the IRDA; and
 - (b) the reference in paragraph 60 (a) to the priority date for the registration of the trade mark were a reference to the priority date for the trade mark that is the subject of the IRDA.

- (4) The extension of protection may also be opposed on the grounds that:
- (a) a document filed in support of the IRDA was amended contrary to the Act; or
 - (b) the Registrar accepted the IRDA on the basis of evidence provided, or a representation made, by the holder that was false in a material particular.

Note Section 66 of the Act makes provision in relation to amendment of documents filed with the Registrar.

17A.32 Circumstances in which opposition may proceed in name of a person other than the person who filed the notice

Section 53 of the Act applies in respect of a notice of opposition filed under this Subdivision.

17A.33 Opposition proceedings

- (1) The Registrar must give to the opponent and to the holder of the IRDA an opportunity of being heard on the opposition.
- (2) Regulations 5.7 to 5.17 apply, with the necessary modifications, for the purposes of the opposition.
- (3) Despite subregulations (1) and (2), a requirement to serve a document on the holder, or to give the holder an opportunity to make written representations or to be heard, does not apply unless, within 3 months after the notice of opposition is filed, the holder has notified the Registrar, in writing, of the holder's address for service in Australia.

17A.34 Decision on opposition

- (1) Unless the opposition proceedings are discontinued or dismissed, the Registrar must decide:
 - (a) to refuse protection in respect of all of the goods or services listed in the IRDA; or
 - (b) to extend protection in respect of some or all of the goods or services listed in the IRDA (with or without conditions or limitations);having regard to the extent (if any) to which any ground on which the IRDA was opposed has been established.
- (2) Unless subregulation 17A.35 (2) applies, the Registrar must tell the International Bureau of his or her decision as soon as practicable after the end of the appeal period mentioned in subregulation 17A.36 (1).

17A.35 Appeal

- (1) Section 56 of the Act applies in relation to the Registrar's decision on the opposition as if a reference in that section:
 - (a) to an applicant were a reference to the holder of an IRDA; and
 - (b) to a decision under section 55 of the Act were a reference to a decision under regulation 17A.34.
- (2) If an appeal is made, the Registrar must tell the International Bureau of the decision on the appeal as soon as practicable after that decision is made.