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**O/Ref:** 958170/TM Inter/BPRIC  
**Y/Ref:** International Registration Number 958170  
**Date:** 3 June 2008

**Please reply by 3 August 2008 quoting our reference.**

Dear Sir or Madam,

**Intl. Reg. No:** 958170 in Classes 29, 35  
**For the Mark:** ALIBONA  
**Holder:** Alibona AG

**NOTIFICATION OF A PROVISIONAL PARTIAL REFUSAL OF PROTECTION  
(NOT BASED ON AN OPPOSITION) BY THE UNITED KINGDOM  
INTELLECTUAL PROPERTY OFFICE.**

I have provisionally partially refused protection of this mark for some of the services.  
My reasons are given in the enclosed Examination Report.

I have examined the designation and carried out a search of earlier national trade marks  
and Community and International trade marks which cover the UK.

The examination report includes a Classification objection, in respect of **Class 35**. The  
holder may provide further information in support of the designation, or contact me to  
discuss it.

The holder has the right to request a hearing before a senior officer of the Registry to  
argue their case in relation to the objection raised under Section 3. A hearing can take  
place in person or over the telephone. If they would like a hearing, they should let me  
know as soon as possible.

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Please note that if this objection is not resolved by the date given above, I will publish it in the Trade Marks Journal, but only for:

**Class 29: Full list of goods filed.**

The provisional refusal of all other services will then become final.

**INFORMATION REGARDING EARLIER MARKS**

The holder will see from my report that I have identified an earlier mark that they should be aware of because it appears to be similar to this mark and to cover goods or services that are the same as, or similar to, goods/services listed in the designation.

It is now up to the holder to decide whether or not they wish the designation to proceed as it stands notwithstanding this earlier mark. However, if they decide to proceed in this way, I am obliged to notify the holder of the earlier mark accordingly. Notifications go automatically to the holders of marks protected specifically in the UK and also to those holders of marks protected at EU level who have asked to receive such notifications.

If the holder proceeds, the designation will be published in the Trade Marks Journal to provide any third party with the opportunity to lodge an opposition. The holder should also know that if an opposition were to be successful, this would be likely to result in a costs award against the holder, which if the holder contests the opposition could be as much as several thousand pounds.

If the holder disagrees that the marks I have identified are confusingly similar, or they wish to delete some of their goods or services to try and avoid any notifications being sent, they should contact me and I will consider their comments. I should point out, however, that I can only allow them one opportunity to write to me. If they want to telephone me first to discuss these issues before they reply in writing, they should feel free to do so. After I have considered any written comments or amendments that they make, I will reply to them with my decision as to who, if anyone, should be notified about this designation and that decision will be final and not open to appeal.

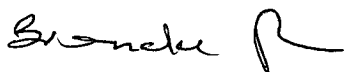
**International Registration No: 958170**

The holder should be aware that even if I am persuaded not to send notification to the earlier mark holder, they or anyone else may still successfully oppose the designation.

If the holder does not reply before the date shown overleaf, I will assume that they wish the designation to proceed as indicated above.

If this is not the case and the holder does not wish the designation to proceed, they must tell me by this date. The holder must also complete form MM7 (available at [http://www.wipo.int/edocs/formdocs/form-madrid/en/form\\_mm7.pdf](http://www.wipo.int/edocs/formdocs/form-madrid/en/form_mm7.pdf)) which should be forwarded to me and I will submit it to WIPO, on their behalf, to formally withdraw the UK designation.

Yours faithfully,



Brenda Price  
**Trade Marks Examiner**

**International Registration No: 958170**

## **EXAMINATION REPORT**

International Registration No. 958170 in Classes 29, 35 has been examined under the UK Trade Marks Act 1994. References to 'section' in this report mean that section of the Act.

### **Class 29- Information regarding earlier rights**

Based solely on a comparison of the marks and goods/services, I consider the earlier mark(s) listed to be confusingly similar to your trade mark. It is now up to you to decide whether or not you wish your application to proceed as it stands. However, if you decide to proceed in this way, I am obliged to notify the earlier mark(s) accordingly. Notifications go automatically to the holders of marks protected specifically in the UK and also to those holders of marks protected at EU level who have asked to receive such notifications.

U00000923505 (29)

### **Class 35- Information regarding earlier rights and Specification**

Based solely on a comparison of the marks and goods/services, I consider the earlier mark(s) listed to be confusingly similar to your trade mark. It is now up to you to decide whether or not you wish your application to proceed as it stands. However, if you decide to proceed in this way, I am obliged to notify the earlier mark(s) accordingly. Notifications go automatically to the holders of marks protected specifically in the UK and also to those holders of marks protected at EU level who have asked to receive such notifications.

U00000923505 (29)

The term '**Retailing of milk and dairy products, in particular of cheese**' is unacceptable under Section 1(1) and 3(1)(a) of the Act in that it is too vague and lacks legal clarity. As the specification is unclear in this respect, it will not be possible for the sign to distinguish the goods/services of one undertaking from those of another.

The objection can be overcome by amending the term to read, "**Retail services relating to the sale of milk and dairy products, in particular cheese.**"

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At the back of this report you will see details of the above marks which I consider would be confused with the mark applied for. As regards these earlier marks, those headed with:-

"Madrid (EU)" indicates an International Registration designating the EU.

All have protection in the UK.

Any without a heading indicate protection only in the UK.

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**(Madrid(EU)) U00000923505**

(PENDING)

Designation of the EU for IR 0923505

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**U00000923505** (29, 30)

Office of origin: Germany

Date of international registration: 16 March 2007

Date of protection in the EU: 16 March 2007

## **Albona**

International priority date claimed: 5 October 2006 (Germany).

**Class 29:** Convenience food and partially processed food mainly consisting of some or all of the following goods, meat, poultry, game, fish, seafood, crustaceans, molluscs, fruit and vegetables, milk and milk products.

**Aldi Einkauf GmbH & Co. oHG**, Eckenbergstrasse 16, 45307 Essen, Germany.

**WIPO Representative:** Schmidt, von der Osten & Huber, Haumannplatz 28/30, 45130 Essen, Germany.