

Alicante, 20/10/2008

Notification of provisional refusal of protection based on an opposition pursuant to Article 5 of the Madrid Protocol and Rule 17 (1), (2) of the Common Regulations under the Madrid Agreement and Protocol and to Rule 115*

International Registration No:	0929733
Date of notification to OHIM:	16-08-2007
Trade mark:	o.k.
Applicant/Holder:	MIP METRO Group Intellectual Property GmbH & Co. KG Metro-Strasse 1 40235 Düsseldorf
<i>Opposition number:</i>	B 1277567

Protection of the above-mentioned mark is provisionally refused for the European Community.

The provisional refusal is based on the fact that an opposition has been filed against the international registration.

I. The grounds for the opposition are as follows:

Conflict with an earlier mark and likelihood of confusion (Article 8(1) and (2) CTMR*).

II. Name and address of the opposing party: **GOYA EN ESPAÑA SAU**

Ctra. Sevilla-Málaga, Km 5,4
E-41500 Alcalá de Guadaira (Sevilla)
Spain

III. The opposition is based on a mark which was the subject of an application or registration.

- type of mark : **Community trade mark**
- filing date, registration date and, if applicable, priority date:
25/05/2005; 20/06/2006
- filing number and, if different, registration number: **4470209**
- reproduction of the mark: (see annex)
- list of goods and services on which the opposition is based: (see annex)

IV. The provisional refusal relates to

All the goods and services covered by the designation of the EC.

* Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.
Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark.

Regulations on the internet:

CTM (<http://oami.europa.eu/en/mark/aspects/reg.htm>)
(<http://oami.europa.eu/en/mark/madrid/default.htm>)

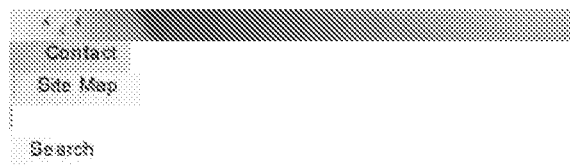
Madrid Protocol

V. The OHIM will notify the opposition separately to the holder of the international registration, including all evidence on which it is based, pursuant to Rule 18(1)*. The OHIM will set time limits for the holder. The notification will open an (extendable) cooling-off period of two months and a further period of two months for the opponent to substantiate the opposition. The notification will set a time limit of, in principle, six months for the holder of the international registration to submit observations.

GROENEVELD, Macarena

Examiner

Annex: 37 pages



[Overview](#)

[Trade mark](#)

[Graphic representation](#)

[List of goods and services](#)

[Description of the mark](#)

[Owner](#)

[Representative](#)

[Seniority](#)

[Exhibition priority](#)

[Priority](#)

[Publication](#)

[Opposition](#)

[Cancellation](#)

[Appeals](#)

[Records](#)

[Renewals](#)

[Download trade mark details](#)

[Link to CTM Bulletin On-line](#)



Enter the search name::



CTM-ONLINE

-

Detailed

trade

mark







Trade mark name :
OK BOLIVIA

Trade mark No :
004470209

Trade mark basis:
CTM


Number of results:
1 of 1



Filing date:
25/05/2005


Date of registration:
20/06/2006

Expiry Date:
25/05/2015

Nice Classification:
29, 30, 31, 32 (
 [Nice classification](#))


Trade mark:
Individual


Type of mark:
Figurative

Vienna Classification:
26.4.2, 26.4.7,
26.4.22 ( [Vienna Classification](#))

Acquired distinctiveness:
No

Applicant's reference:
CE-20050351

Status of trade mark:
[CTM registered](#)
( [Glossary](#))

( [History of](#)...



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

Trade Marks Department

W211

NARANJO

PATENTES Y MARCAS

Pº de la Habana 200-28088 Madrid-ESPAÑA
Tlf.: 91.345.22.77/345.28.53 - Fax.: 91.359.25.10
naranjo@naranjo-sl.com - www.e-naranjo.com

Letter + facsimile 96 513 13 44.
Madrid: January 22, 2008.
Our ref :4000-119 K 18.524.

OHIM.
Avenida de Europa nº4, 03080
ALICANTE.
Opposition Division

Subject: Opposition to IR OK nº 929733
In the UE.

Dear Colleagues ;

Please herein find enclosed in order to begin the opposition procedure against the above referenced subject CTM Application the following documents :

- Opposition fees payment (2 pages).
- Opposition form (16 pages).
- Power attorney form (1 page).
- Written grounds of the opposition (17 pages).

Making a total number of pages of 37 pages.

Together with the post confirmation of this letter we are enclosing evidences of prior rights CTM registration nº 4470209 OK BOLIVIA.

Please be so kind to confirm safe receipt of this letter and enclosures and begin the opposition procedure.

Thanking very much your kind attention to this matter and your cooperation with our firm and looking forward to ear from you.

Sincerely Yours,
Paola Alesci.

Agencias - Agentes Propiedad Industrial - Agentes Patentes Europeas - Agentes Autorizados OAMI
Mª Antonia Naranjo(colegiado 155) - Paola Alesci Naranjo(colegiado 638) - Magdalena Alesci Naranjo(colegiado 637)



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

NOTICE OF OPPOSITION

Number of pages (including this one) <input type="text"/>	Opponent's/representative's reference number (not more than 20 characters) 4000-119												
Opponent													
Name of legal entity or first name and surname		ID number <input type="text"/> <input type="checkbox"/> multiple opponents											
Tel, fax, e-mail		GOYA EN ESPAÑA S.A.U											
Address		95-56 32 032 95-563-41 34 RAFAEL.MARQUEZ@GOYASPAIN.COM											
Street and number		CRTA SEVILLA -MALAGA KM 5,4											
City and postal code		41500 ALCALA DE GUADAIRA											
Country		ESPAÑA											
Postal address (if different)													
Nationality													
Representative													
Name		ID number 5733 <input type="checkbox"/> multiple representatives											
Tel, fax, e-mail		paola alesci naranjo											
Address		913452277 913592510 naranjo@naranjo-sl.com											
Street and number		Paseo de la Habana n° 200											
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<input type="checkbox"/> against part of the goods and services in the application, namely:													
<p>Class 29; Meat, fish, poultry and game, products made from meat, fish, poultry and game, sausage and sausage products, meat extracts, meat jellies, preparations made from meat and minced meat, all aforementioned goods also in the form of preserves or deep-frozen; convenience food and half-finished convenience food as well as ready-to-serve salads, essentially consisting of meat and/or fish and/or poultry and/or sausage and/or game;</p> <p style="text-align: right;"><input checked="" type="checkbox"/> continuation sheet(s)</p>													
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Signature		Name paola alesci naranjo Signature 											

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soups, soup preparations, beef tea; preserved, dried and cooked fruits and vegetables, mixed pickles, finished and half-finished goods as well as ready-to-serve salads, essentially consisting of fruits and/or vegetables, preserved pot herbs, prepared potato products, included in this class, potato dumplings, potato fritters, mashed potatoes, croquettes, French fries, fried grated potatoes; jellies, jams, stewed fruits, fruit													
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<p>purposes and made by extrusion, included in this class, potato chips, potato sticks, onion rings made from potatoes; dried fruits, raisins, processed nuts, hazelnuts, peanuts, macadamia nuts, cashew nuts, shelled pistachios and almonds, dried, roasted, salted, gratinated and/or spiced; dietetic food or nutritional supplements for non-medical use on the basis of egg white, fats, fatty acids, under addition of vitamins,</p> <p style="text-align: right;"><input checked="" type="checkbox"/> continuation sheet(s)</p>													
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Extent of the opposition <input checked="" type="checkbox"/> against all the goods and services in the application <input type="checkbox"/> against part of the goods and services in the application, namely: <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> mineral nutrients, trace elements, singly or in combination, included in this class. Class 30; Coffee, coffee substitutes, coffee-based beverages, espresso, tea, tea-based beverages, iced tea, aromatic preparations of vegetable origin for use in beverages (except ethereal oils), essences for alimentary purposes (except ethereal essences and oils), cocoa, cocoa-based beverages, sugar, natural sweeteners, rice, convenience food </div> <div style="text-align: right; margin-top: 5px;"> <input checked="" type="checkbox"/> continuation sheet(s) </div>													
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<p>and half-finished convenience food, essentially consisting of rice, nasi goreng (included in this class), sushi, tapioca, sago; flour and preparations made from cereals, baking-powder, oat flakes, muesli, cornflakes, cereal-based snacks, bread, bread rolls, toast, bread for sandwiches, croissants and baguettes, all filled or unfilled, crisp bread and breadcrumbs, pizza with or without topping, hamburgers, vegetable burgers,</p> <p style="text-align: right;"><input checked="" type="checkbox"/> continuation sheet(s)</p>													
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ES	DE	EN	FR	IT									
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Extent of the opposition													
<input checked="" type="checkbox"/> against all the goods and services in the application													
<input type="checkbox"/> against part of the goods and services in the application, namely:													
<p>hotdogs, meat pastries; pastry and confectionery, pies, cakes, cookies, biscuits, waffles, cake mixtures (in powder form), cake dough; products on the basis of wheat, rice and corn, for alimentary purposes and made by extrusion, corn chips, onion rings made from corn, popcorn, salt sticks, savory biscuits, pretzels; candies and confectioneries, meringue products, chocolate and chocolate products, chocolate-covered marshmallows, wine</p> <p style="text-align: right;"><input checked="" type="checkbox"/> continuation sheet(s)</p>													
Payment of fee													
Total		€ 350											
Current account with OHIM													
<input type="checkbox"/> Account No <input type="text"/>		Signature											
<input type="checkbox"/> Do not use my current account with OHIM		Name paola alesci naranjo											
Transfer to account of OHIM		Signature											
<input checked="" type="checkbox"/> Banco Bilbao Vizcaya Argentaria													
<input type="checkbox"/> La Caixa													
Date of transfer (DD/MM/YYYY)		22/01/2008											

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

NOTICE OF OPPOSITION

Number of pages (including this one)	Opponent's/representative's reference number (not more than 20 characters)	
	4000-119	

Opponent	ID number	<input type="checkbox"/> multiple opponents
Name of legal entity or first name and surname	GOYA EN ESPAÑA S.A.U	
Tel, fax, e-mail	95-56 32 032	95-563-41 34 RAFAEL.MARQUEZ@GOYASPAIN.COM
Address Street and number	CRTA SEVILLA -MALAGA KM 5,4	
City and postal code	41500 ALCALA DE GUADAIRA	
Country	ESPAÑA	
Postal address (if different)		
Nationality		

Representative	ID number	<input type="checkbox"/> multiple representatives
Name	paola alesci naranjo	
Tel, fax, e-mail	913452277	913592510 naranjo@naranjo-sl.com
Address Street and number	Paseo de la Habana n° 200	
City and postal code	Madrid 28036	
Country	ESPAÑA	
Postal address (if different)		
Type of representative	<input type="checkbox"/> legal practitioner <input checked="" type="checkbox"/> professional representative <input type="checkbox"/> association of representatives <input type="checkbox"/> employee	

Challenged application	CTMA / IR No	Date of publication (DD/MM/YYYY)	20/08/2007										
Name of CTM applicant or IR holder	OK	Language of the opposition	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td>ES</td> <td>DE</td> <td>EN</td> <td>FR</td> <td>IT</td> </tr> <tr> <td></td> <td></td> <td>X</td> <td></td> <td></td> </tr> </table>	ES	DE	EN	FR	IT			X		
ES	DE	EN	FR	IT									
		X											

Extent of the opposition	<input checked="" type="checkbox"/> against all the goods and services in the application <input type="checkbox"/> against part of the goods and services in the application, namely: <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> gum and fruit gum, liquorice (sweets); sweet spreads, included in this class, sweets and desserts (on the basis of wheat), puddings and pudding powders, half-liquid jelly from red fruits, rice pudding; pasta, noodles of any type, gnocchi, convenience food and semi-finished convenience food, essentially consisting of pasta, tortellini, lasagna, spaghetti, ravioli, spaetzle, pasta case filled with forcemeat, cheese or vegetables, </div> <div style="text-align: right; margin-top: 5px;"> <input checked="" type="checkbox"/> continuation sheet(s) </div>
---------------------------------	---

Payment of fee	Total	€ 350	Signature
Current account with OHIM			Name: paola alesci naranjo Signature:
<input type="checkbox"/> Account No <input type="checkbox"/> Do not use my current account with OHIM			
Transfer to account of OHIM			
<input checked="" type="checkbox"/> Banco Bilbao Vizcaya Argentaria <input type="checkbox"/> La Caixa			
Date of transfer (DD/MM/YYYY)	22/01/2008		

#1400/EN01V2C

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

NOTICE OF OPPOSITION

Number of pages (including this one) <input type="text"/>	Opponent's/representative's reference number (not more than 20 characters) 4000-119												
Opponent													
Name of legal entity or first name and surname		ID number <input type="text"/> <input type="checkbox"/> multiple opponents											
Tel, fax, e-mail		95-56 32 032 95-563-41 34 RAFAEL.MARQUEZ@GOYASPAIN.COM											
Address Street and number		C/TA SEVILLA -MALAGA KM 5,4											
City and postal code		41500 ALCALA DE GUADAIRA											
Country		ESPAÑA											
Postal address (if different)													
Nationality													
Representative													
Name		ID number 5733 <input type="checkbox"/> multiple representatives											
Tel, fax, e-mail		913452277 913592510 naranjo@naranjo-sl.com											
Address Street and number		Paseo de la Habana nº 200 Madrid 28036											
City and postal code		ESPAÑA											
Country													
Postal address (if different)													
Type of representative <input type="checkbox"/> legal practitioner <input checked="" type="checkbox"/> professional representative <input type="checkbox"/> association of representatives <input type="checkbox"/> employee													
Challenged application													
CTMA / IR No 929733		Date of publication (DD/MM/YYYY) 20/08/2007											
Name of CTM applicant or IR holder OK		Language of the opposition											
		<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td>ES</td> <td>DE</td> <td>EN</td> <td>FR</td> <td>IT</td> </tr> <tr> <td></td> <td></td> <td>X</td> <td></td> <td></td> </tr> </table>		ES	DE	EN	FR	IT			X		
ES	DE	EN	FR	IT									
		X											
Extent of the opposition													
<input checked="" type="checkbox"/> against all the goods and services in the application													
<input type="checkbox"/> against part of the goods and services in the application, namely:													
spring rolls; ice cream; honey, molasses; yeast, salt, mustard; vinegar, sauces (condiments), soy sauce, fruit sauces, salad dressings, ready-to-use sauces, tomato sauce, ketchup, mayonnaise, remoulade, spices, spice mixtures, nutmegs; ice for cooling purposes; dietetic foodstuffs or nutritional supplements for non-medical use on the basis of carbohydrates, roughage, under addition of vitamins, mineral nutrients, trace													
<input checked="" type="checkbox"/> continuation sheet(s)													
Payment of fee													
Total		€ 350											
Current account with OHIM													
<input type="checkbox"/> Account No <input type="text"/>													
<input type="checkbox"/> Do not use my current account with OHIM													
Transfer to account of OHIM													
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<input type="checkbox"/> La Caixa													
Date of transfer (DD/MM/YYYY)		22/01/2008											
Signature		Name											
		paola alesci naranjo											
Signature													

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

NOTICE OF OPPOSITION

Number of pages (including this one) <input type="text"/>	Opponent's/representative's reference number (not more than 20 characters) 4000-119																																		
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">Opponent</td> <td colspan="3">ID number <input type="text"/> <input type="checkbox"/> multiple opponents</td> </tr> <tr> <td>Name of legal entity or first name and surname</td> <td colspan="3">GOYA EN ESPAÑA S.A.U</td> </tr> <tr> <td>Tel, fax, e-mail</td> <td>95-56 32 032</td> <td>95-563-41 34</td> <td>RAFAEL.MARQUEZ@GOYASPAIN.COM</td> </tr> <tr> <td>Address Street and number</td> <td colspan="3">CRTA SEVILLA -MALAGA KM 5,4</td> </tr> <tr> <td>City and postal code</td> <td colspan="3">41500 ALCALA DE GUADAIRA</td> </tr> <tr> <td>Country</td> <td colspan="3">ESPAÑA</td> </tr> <tr> <td>Postal address (if different)</td> <td colspan="3"></td> </tr> <tr> <td>Nationality</td> <td colspan="3"></td> </tr> </table>				Opponent	ID number <input type="text"/> <input type="checkbox"/> multiple opponents			Name of legal entity or first name and surname	GOYA EN ESPAÑA S.A.U			Tel, fax, e-mail	95-56 32 032	95-563-41 34	RAFAEL.MARQUEZ@GOYASPAIN.COM	Address Street and number	CRTA SEVILLA -MALAGA KM 5,4			City and postal code	41500 ALCALA DE GUADAIRA			Country	ESPAÑA			Postal address (if different)				Nationality			
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Extent of the opposition <input checked="" type="checkbox"/> against all the goods and services in the application <input type="checkbox"/> against part of the goods and services in the application, namely: <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> elements, singly or in combination, included in this class, meat pastries; spreads on vegetarian basis (chocolate and nougat crème). Class 31 ; Agricultural, horticultural and forestry products and grains, included in this class, seeds, flower bulbs and tubers, straw mulch and litter peat, animal litter, cat litter, bird sand; living animals; fresh fruits and vegetables, nuts; living plants and </div> <input checked="" type="checkbox"/> continuation sheet(s)																																			
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">Payment of fee</td> <td style="width:25%;">Total</td> <td style="width:25%;"><input type="text"/> € 350</td> <td style="width:25%;">Signature</td> </tr> <tr> <td>Current account with OHIM</td> <td colspan="2"></td> <td rowspan="2" style="vertical-align: top;"> Name <input type="text"/> paola alesci naranjo Signature <div style="border: 1px solid black; height: 80px; width: 100%;"></div> </td> </tr> <tr> <td> <input type="checkbox"/> Account No <input type="text"/> <input type="checkbox"/> Do not use my current account with OHIM </td> <td colspan="2"></td> </tr> <tr> <td>Transfer to account of OHIM</td> <td colspan="2"></td> <td></td> </tr> <tr> <td> <input checked="" type="checkbox"/> Banco Bilbao Vizcaya Argentaria <input type="checkbox"/> La Caixa </td> <td colspan="2"></td> <td></td> </tr> <tr> <td>Date of transfer (DD/MM/YYYY)</td> <td colspan="2"><input type="text"/> 22/01/2008</td> <td></td> </tr> </table>				Payment of fee	Total	<input type="text"/> € 350	Signature	Current account with OHIM			Name <input type="text"/> paola alesci naranjo Signature <div style="border: 1px solid black; height: 80px; width: 100%;"></div>	<input type="checkbox"/> Account No <input type="text"/> <input type="checkbox"/> Do not use my current account with OHIM			Transfer to account of OHIM				<input checked="" type="checkbox"/> Banco Bilbao Vizcaya Argentaria <input type="checkbox"/> La Caixa				Date of transfer (DD/MM/YYYY)	<input type="text"/> 22/01/2008											
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#IM00/IN01V2C

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

NOTICE OF OPPOSITION

Number of pages (including this one) <input type="text"/>	Opponent's/representative's reference number (not more than 20 characters) 4000-119		
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Opponent	ID number <input type="text"/>	<input type="checkbox"/> multiple opponents	
Name of legal entity or first name and surname	GOYA EN ESPAÑA S.A.U		
Tel, fax, e-mail	95-56 32 032	95-563-41 34	RAFAEL.MARQUEZ@GOYASPAIN.COM
Address Street and number	CRTA SEVILLA -MALAGA KM 5,4		
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Representative	ID number <input type="text" value="5733"/>	<input type="checkbox"/> multiple representatives	
Name	paola alesci naranjo		
Tel, fax, e-mail	913452277	913592510	naranjo@naranjo-sl.com
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Type of representative	<input type="checkbox"/> legal practitioner <input checked="" type="checkbox"/> professional representative <input type="checkbox"/> association of representatives <input type="checkbox"/> employee		

Challenged application	CTMA / IR No <input type="text" value="929733"/>	Date of publication (DD/MM/YYYY)	<input type="text" value="20/08/2007"/>										
Name of CTM applicant or IR holder	<input type="text" value="OK"/>	Language of the opposition	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td>ES</td> <td>DE</td> <td>EN</td> <td>FR</td> <td>IT</td> </tr> <tr> <td></td> <td></td> <td>X</td> <td></td> <td></td> </tr> </table>	ES	DE	EN	FR	IT			X		
ES	DE	EN	FR	IT									
		X											

Extent of the opposition	
<input checked="" type="checkbox"/> against all the goods and services in the application <input type="checkbox"/> against part of the goods and services in the application, namely: natural flowers; feedstuff, pet food, malt. Class 32; Beers; mineral waters, aerated waters and other non-alcoholic drinks; fruit drinks, fruit nectars and fruit juices, isotonic beverages, lemonades, vegetable-based beverages, vegetable-based juices; syrups and other preparations for making beverages, preparations for making liqueurs, sherbet powder and fizzy tablets for beverages, <input checked="" type="checkbox"/> continuation sheet(s)	

Payment of fee	Total	€ 350	Signature
Current account with OHIM		Name <input type="text" value="paola alesci naranjo"/> Signature <div style="border: 1px solid black; height: 100px; width: 100%;"></div>	
<input type="checkbox"/> Account No <input type="text"/> <input type="checkbox"/> Do not use my current account with OHIM			
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<input checked="" type="checkbox"/> Banco Bilbao Vizcaya Argentaria <input type="checkbox"/> La Caixa Date of transfer (DD/MM/YYYY) <input type="text" value="22/01/2008"/>			

#TM00/ENG1V2C

OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

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Opponent													
Name of legal entity or first name and surname		ID number <input type="text"/> <input type="checkbox"/> multiple opponents											
Tel, fax, e-mail		GOYA EN ESPAÑA S.A.U											
Address		95-56 32 032 95-563-41 34 RAFAEL.MARQUEZ@GOYASPAIN.COM											
Street and number		CRTA SEVILLA -MALAGA KM 5,4											
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Extent of the opposition													
<input checked="" type="checkbox"/> against all the goods and services in the application													
<input type="checkbox"/> against part of the goods and services in the application, namely:													
essences for making beverages, products for making mineral waters and/or aerated waters													
<input checked="" type="checkbox"/> continuation sheet(s)													
Payment of fee													
Total		€ 350											
Current account with OHIM													
<input type="checkbox"/> Account No <input type="text"/>		Signature Name paola alesci naranjo Signature <div style="border: 1px solid black; height: 100px; width: 100%;"></div>											
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Date of transfer (DD/MM/YYYY)		22/01/2008											

#TMOO/EN01V2C

NOTICE OF OPPOSITION

BASIS OF OPPOSITION: TRADE MARK REGISTRATION / APPLICATION

Identification of the earlier mark

☒ Trade mark registration ☐ Trade mark application

☒ Community trade mark ☐ National trade mark ☐ International registration with effect in one or more Member State(s)

Member State(s)

EM	BX	CZ	DK	DE	EE	GR	ES	FR	IE	IT	CY	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	GB
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Filing date (DD/MM/YYYY)

25/05/2005

Representation of the mark (in colour if applicable)

Filing number

4470209

Registration date (DD/MM/YYYY)

20/06/2006

Registration number

4470209

Type of mark

☐ Word mark☒ Figurative mark☐ Other (specify)

Goods and services on which the opposition is based:

☒ all the goods and services covered by the registration / application☐ part of the goods and services, namely:

class 29; Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs; edible oils and fats.

☒ continuation sheet(s)☒ attached

Entitlement of opponent

☒ Owner☐ Authorised licensee

Copy of registration / application

☒ attached ☐ to follow

Translation

☒ attached

Grounds for opposition

☐ Article 8(1)(a) CTMR - the CTMA IR is identical to the earlier mark and covers identical goods and/or services☒ Article 8(1)(b) CTMR - there exists a likelihood of confusion on the part of the public☐ Article 8(5) CTMR - the use without due cause of the contested mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark

Explanation of grounds and other remarks:

Identity of initial term OK , same phonemes O and K in the same order. Common colours blue, red and white in the logo device. Identical classes of goods 29,30,31 and 32. Total

☒ continuation sheet(s)

Territory where the earlier mark has a reputation:

EM	BX	CZ	DK	DE	EE	GR	ES	FR	IE	IT	CY	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	GB
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Goods and services for which the trade mark has a reputation

☐ all the goods and services covered by the registration / application☐ part of the goods and services covered by the registration/application, namely:☐ continuation sheet(s)

Evidence of reputation

☐ attached☐ to follow

Translation

☐ attached

page number

of

NOTICE OF OPPOSITION

BASIS OF OPPOSITION: TRADE MARK REGISTRATION / APPLICATION

Identification of the earlier mark

☒ Trade mark registration

☐ Trade mark application

☒ Community trade mark

☐ National trade mark

☐ International registration with effect in one or more Member State(s)

Member State(s)

EM	BX	CZ	DK	DE	EE	GR	ES	FR	IE	IT	CY	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	GB
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Filing date (DD/MM/YYYY)

25/05/2005

Representation of the mark (in colour if applicable)

Filing number

4470209

Registration date (DD/MM/YYYY)

20/06/2006

Registration number

4470209

Type of mark

☐ Word mark

☒ Figurative mark

☐ Other (specify)

Goods and services on which the opposition is based:

☒ all the goods and services covered by the registration / application

☐ part of the goods and services, namely:

Class 30 ; Coffee, tea, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle;

☒ continuation sheet(s)

Entitlement of opponent

☒ Owner

Copy of registration / application

☒ attached ☐ to follow

☐ Authorised licensee

Translation

☒ attached

Grounds for opposition

☐ Article 8(1)(a) CTMR

- the CTMA IR is identical to the earlier mark and covers identical goods and/or services

☒ Article 8(1)(b) CTMR

- there exists a likelihood of confusion on the part of the public

☐ Article 8(5) CTMR

- the use without due cause of the contested mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark

Explanation of grounds and other remarks:

Identity of initial term OK , same phonemes O and K in the same order. Common colours blue, red and white in the logo device. Identical classes of goods 29,30,31 and 32. Total

☒ continuation sheet(s)

Territory where the earlier mark has a reputation:

EM	BX	CZ	DK	DE	EE	GR	ES	FR	IE	IT	CY	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	GB
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Goods and services for which the trade mark has a reputation

☐ all the goods and services covered by the registration / application

☐ part of the goods and services covered by the registration/application, namely:

☐ continuation sheet(s)

Evidence of reputation

☐ attached

☐ to follow

Translation

☐ attached

page number

of

NOTICE OF OPPOSITION

BASIS OF OPPOSITION: TRADE MARK REGISTRATION / APPLICATION

Identification of the earlier mark

☒ Trade mark registration

☐ Trade mark application

☒ Community trade mark

☐ National trade mark

☐ International registration with effect in one or more Member State(s)

Member State(s)

EM	BX	CZ	DK	DE	EE	GR	ES	FR	IE	IT	CY	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	GB
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Filing date (DD/MM/YYYY)

25/05/2005

Filing number

4470209

Registration date (DD/MM/YYYY)

20/06/2006

Registration number

4470209

Representation of the mark (in colour if applicable)



Type of mark

☐ Word mark

☒ Figurative mark

☐ Other (specify)

Goods and services on which the opposition is based:

☒ all the goods and services covered by the registration / application

☐ part of the goods and services, namely:

yeast, baking-powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

Class 31; Agricultural, horticultural and forestry products and grains not included in

☒ continuation sheet(s)

☒ attached

Entitlement of opponent

☒ Owner

☐ Authorised licensee

Copy of registration / application

☒ attached

☐ to follow

Translation

☒ attached

Grounds for opposition

☐ Article 8(1)(a) CTMR

- the CTMA IR is identical to the earlier mark and covers identical goods and/or services

☒ Article 8(1)(b) CTMR

- there exists a likelihood of confusion on the part of the public

☐ Article 8(5) CTMR

- the use without due cause of the contested mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark

Explanation of grounds and other remarks:

Identity of initial term OK, same phonemes O and K in the same order. Common colours blue, red and white in the logo device. Identical classes of goods 29, 30, 31 and 32. Total

☒ continuation sheet(s)

Territory where the earlier mark has a reputation:

EM	BX	CZ	DK	DE	EE	GR	ES	FR	IE	IT	CY	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	GB
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Goods and services for which the trade mark has a reputation

☐ all the goods and services covered by the registration / application

☐ part of the goods and services covered by the registration/application, namely:

☐ continuation sheet(s)

Evidence of reputation

☐ attached

☐ to follow

Translation

☐ attached

page number

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NOTICE OF OPPOSITION

BASIS OF OPPOSITION: TRADE MARK REGISTRATION / APPLICATION

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Filing date (DD/MM/YYYY)

25/05/2005

Filing number

4470209

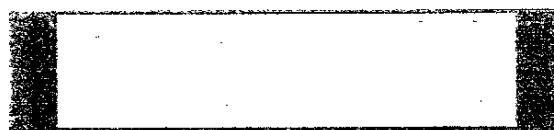
Registration date (DD/MM/YYYY)

20/06/2006

Registration number

4470209

Representation of the mark (in colour if applicable)



Type of mark

☐ Word mark

☒ Figurative mark

☐ Other (specify)

Goods and services on which the opposition is based:

☒ all the goods and services covered by the registration / application

☐ part of the goods and services, namely:

other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

☒ attached

☒ continuation sheet(s)

Entitlement of opponent

☒ Owner

☐ Authorised licensee

Copy of registration / application

☒ attached ☐ to follow

Translation

☒ attached

Grounds for opposition

☐ Article 8(1)(a) CTMR

- the CTMA IR is identical to the earlier mark and covers identical goods and/or services

☒ Article 8(1)(b) CTMR

- there exists a likelihood of confusion on the part of the public

☐ Article 8(5) CTMR

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Explanation of grounds and other remarks:

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☒ continuation sheet(s)

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EM	BX	CZ	DK	DE	EE	GR	ES	FR	IE	IT	CY	LV	LT	HU	MT	AT	PL	PT	SI	SK	FI	SE	GB
----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----

Goods and services for which the trade mark has a reputation

☐ all the goods and services covered by the registration / application

☐ part of the goods and services covered by the registration/application, namely:

☐ continuation sheet(s)

Evidence of reputation

☐ attached

☐ to follow

Translation

☐ attached

page number

☐ of ☐

NARANJO

Patentes y Marcas 913592510 Madrid-ESPAÑA
Tlf.: 91.345.22.77/345.28.53 - Fax.: 91.359.25.10
naranjo@naranjo-sl.com - www.e-naranjo.com

N/Ref. **4000-119**
Fecha: **21.01.2008**

**OFICINA DE ARMONIZACION DEL
MERCADO INTERIOR "OAMI"**
Avda. de Europa, 4 E
(03080 ALICANTE)

Ref.: Tasa de Oposición a Marca Internacional n° 929.733 "O.K." por cuenta de GOYA EN ESPAÑA, S.A.U.

Estimados colegas:

De acuerdo con sus instrucciones de hemos realizado las gestiones arriba referencias. Me es grato remitir adjunto los comprobantes oficiales y nota de débito correspondiente.

Atentamente.

Messieurs,

D' accord avec vos instructions du j' ai fait les demarches concernant le cas ci-dessus. Vous trouverez le récépissé officiel et ma note de débit au sujet.

Votre bien devouée

Dear Sirs,

According with your instructions of I have made the necessary steps concerning the above matter. Herewith I send you the Official receipt and my debit note on this matter.

Yours very truly

NOTA DE DEBITO	NOTE DE DEBIT	DEBIT NOTE
Ref.	Concepto - Concept	Importe Montant Amount
4000-119	<input type="checkbox"/> Solicitud, tramitación <input type="checkbox"/> Dépôt, cours de la demande <input type="checkbox"/> Filing the application, prosecution <input type="checkbox"/> Reivindicación de prioridad y unión del documento <input type="checkbox"/> Revendication de priorité et dépôt du Document <input type="checkbox"/> Claiming priority and filing the document <input type="checkbox"/> Traducción y mecanografiado de memorias <input type="checkbox"/> Traduction et dactylographiée des Memoires <input type="checkbox"/> Translation and typing the Specification Tasa de Oposición a Marca Internacional n° 929.733 "O.K." por cuenta de GOYA EN ESPAÑA, S.A.U. Official research..... <input type="checkbox"/> Presentación de documentos <input type="checkbox"/> Dépôt de documents après la demande <input type="checkbox"/> Filing documents after the application	€ 350

(A. NARANJO - SIVIDANES)

Agencias de Propiedad Industrial - Agencias Europeas - Agentes Autorizados OAMI
Mª Antonia Naranjo(colegiado 155) - Paola Alesci Naranjo(colegiado 638) - Magdalena Alesci Naranjo(colegiado 637)



BANCO POPULAR			TIPO DE APUNTE	
CL. BANCO	CL. SUCUR. Y DÍG.	SUCURSAL	FECHA	
0075	0733-12	MADRID, URB. 58	22-01-2008	ADEUDOC 150
CONCEPTO				
IMPORTE TOTAL QUE LE ADEUDAMOS RESUMEN DE 1 TRANSFERENCIA SEGUN ORDEN DE FECHA 22-01-2008				
Mandante: PATENTES Y MARCAS NARANJO SL			Nominal:	*****350,00 EUR
Beneficiario: OF ARMONIZACION MERCADO INT DAMI			Comisión:	*****0,00 EUR
CCC: 0182 5596 90 0092222222			Correo/Tfno:	*****10,00 EUR
Concepto: TASA OPOSICION MARCA INTERNAC 929733			Conforme el cliente	
"O.K." POR CUENTA DE GOYA ESPAÑA SAU				
0440			IMPORTE *****350,00 EUR	
ADEUDADO EN CUENTA				
D./D ^a . PATENTES Y MARCAS NARANJO SL			CÓDIGO CUENTA CLIENTE (C.C.C.) / CLAVE	
MADRID, URB. 58 - BUZON 11			ENT. OF. D.C. CUENTA	
80733 MADRID			0075 0733 41 060/03452/56	
AVISO PARA			VALOR	
			22-01-2008	000260 1 004

Asentamos en su cuenta el importe detallado.

BANCO POPULAR ESPAÑOL
P. P.



Oficina de Armonización del
Mercado Interior

Avenida de Aguilera, 20
E-03080 Alicante

Tel. +34-965 139 100
Fax +34-965 131 344

☐ Poder general
☒ Poder específico

Espacio reservado a la
OAMI
Número ID del poder

Número de referencia del
representante

4000-229.

Yo / Nosotros

Nombre/s
N ID del poderdante/s

García del Espinosa S.L.
C/ra. Sevilla - Nalaga Km 514

Dirección
Calle y número
Localidad, código postal
País
Número/s de teléfono
Número/s de fax

41500 Alcañal de Guadalupe
Sevilla
España

autorizo / autorizamos por el presente a

Naturaleza del
representante

☒ Representante autorizado

Número en la lista de representantes
autorizados

8733

☐ Abogado
☐ Asociación de representantes
☐ Empleado

Nombre del representante o
de la asociación de
representantes

PACOS BLESSE NARANJO (NARANJO SL)

Dirección profesional
Calle y número
Localidad, código postal
País
Número/s de teléfono
Número/s de fax

Paseo de la Habana 200
22036 Noya
Gipuzkoa
91 345 22 77 - 91 345 23 83
91 355 25 10

para representarme/nos ante la Oficina de Armonización del Mercado Interior (marcas, dibujos y modelos)

Poder general

☐ en todo tipo de procedimientos, como solicitante o propietario, en relación con cualesquiera solicitudes o registros de marca comunitaria presentes o futuros, así como en cualesquiera otros procedimientos ante la Oficina.

Poder específico

☒ en los siguientes
procedimientos:

OPUS ~~8733~~ TR CL N° 92973 en ~~10~~ 11

Este poder

☐ se puede delegar

☒ no se puede delegar

Firma/s

Lugar y fecha

Firma

Nombre y apellidos del/de
los firmante/s

[Firma manuscrita]

Opposition to IR Application
Covering UE Number 929733
Classes 29 ,30, 31 and 32 .

Written grounds of the opposition

In application of the contents of the regulation of Community Trademark 40/94, article number 42 file within the prescribed terms and ways opposition against IR registration nº 92973 OK devicie filed on 19/06/2006 and published on CTM bulletin number 044/2007 dated 20/08/2007.

According to the provisions of Rule 8.1 b) of said regulation which states, among relative grounds of refusal of a CTM Application, that a CTM Application will be refused to registrations or denied upon opposition of third parties when existing an identity or similarity of the new brand in confrontation with a prior registered or filed registration or application also in relation with identical or similar goods or products there shall exists a serious and objective risk of association and or confusion between them by the part of the public and consumers, specially those of the nation or country on which the prior sign was protected.

Basing on this regulation we can state in the present case that the following prior rights in name of Goya en España SAU

Prior rights on which the opposition is to based ;

- CTM registration number 4470209 **OK** bolivia, device lodged on date 25/05/2005 and granted on 20/06/2006 covering the following classes and goods or sevicees ;

Class 29 ; Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs; edible oils and fats.

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

Classs 31 ; Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

Class 32 ; Beers; mineral and aerated waters and other non-alcoholic drinks.

In base of all this prior registered sign, we hereby state that IR registration OK nº 929733 is incompatible with the opponent signs in relation with alimentary goods and drinks included in classes 29, 30 , 31 and 32 of the Nice Classification.

1) Confrontation of signs :

First of all, we must state the both phonetically and graphically the word element which is the main and dominant in both contentes signs ;

Opposing CTM registration nº 4470209 **OK** bolivia.

Contested IR registration nº 929733 **OK**.

Both from a phonetic and graphic point of view the identic term OK are the most relevant elements, in the case of the contested IR nº 929733 furthermore the initial letters OK are the ONLY distinctive element and reference to name the brand

To this aural identity of the terms O and K OK are a common link that might of course lead consumers and public to errors, association and or confussion among them

Not only from an aural point fo view the collission of the signs must be analised but also from a visual or graphic point of view on which we must state that unfortunately the contested TM registration chosed a type letter as well as a colour and device combination so close as to increase the risk of confussion and or association among them by the part of the public and consumers .

The graphic device elements of both contested signs are common in the colour selection ;

Blue tone for the background in both cases similar to a rectangular shape.

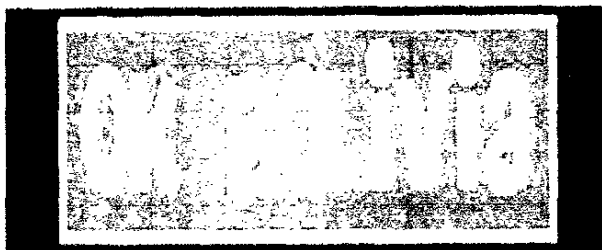
Red color in the inside.

White line trace colour in the inner elements of the device /desing .

Similary typology of letters

As it can be clearly seem , studying the contested device elements of the signs;

- Opponent CTM registration 4470209;



- Contested IR registration nº 929733 ;



From a visual overall impression of the signs, taking into consideration the normal consumers do not analyse the brands with details and do not have the graphical labellings together to establish the differences but merely respond to the image they have in their mind of the signs attending globally and also to the colour ensemble which in this case is so close as ; same tones , very similar type of letters same shape rectangular impression , and also the same identical terms ; OK and OK as main and dominant elements of the signs, thus also from a visual point of view the device elements of the brands results to be incompatible and contributes not to clarify but to increase the risk of confusion and or association among them.

Finally from a conceptual point of view (semantic field) the idea or meaning of the terms OK / O.K is one and only the initial OK together or separated by . O.K are generally known and identified by the public and consumers WORLDWIDE without the necessity to have a special knowledge of the English language , in fact the terms OK are synonym of all is good , therefore also from a semantic focus the identity of the idea

meaning transmitted by the terms OK is the same and we can state that from a semantic point of view the signs are incompatible.

These arguments can be based and grounded in prior resolutions issued by the OHIM in other cases which circumstances are similar, among which and as a kind of example we can quote ;

**DECISION
of 30/05/2007
RULING ON OPPOSITION No B 722 068**

OKI-ni

vs



Comparison of the marks

In determining the existence of likelihood of confusion, trade marks have to be compared by making an overall assessment of the visual, aural and conceptual similarities between the marks. The comparison must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (see Case C-251/95 *Sabèl BV v Puma AG, Rudolf Dassler Sport* [1997] ECR I-6191, paragraph 22 et seq.).

The earlier mark is protected in the European Union. Therefore, it is the impression that the marks make on the public, and their pronunciation and semantic meaning throughout the whole European Union which is relevant for their comparison. The earlier mark comprises the word element "oki-ni" written in a stylised script. The contested mark is a composite mark made up of the word element "OKIHI", in ochre colour, and the device element above the said word element, represented in red, ochre and white colours. It is well established that the consumer, in general, tends to refer to a composite trade mark consisting of both figurative and word elements by its word element as this is the easiest way to do so. In the present case, the word "OKIHI" is the only word element in the contested mark. Moreover, it is eye-catching and occupies the prominent position in the mark. Therefore, when seeing the mark, the eye will particularly focus on the word "OKIHI" to identify it. Undoubtedly, also in the oral communication the consumers will refer to the contested mark by the word element

"OKIHI". Thus, although the device element cannot be disregarded, it is none the less clear that the word element "OKIHI" will play more significant role in the perception of the contested mark.

In the light of the above the Office considers that the conflicting marks are similar from a visual point of view because the word element "oki-ni" which constitutes the earlier mark is highly similar to the word "OKIHI" which is the prominent element of the contested mark. These words share four identical letters in identical position. Further, the typeface of initial letters "OKI" is almost identical since the figurative character of the earlier mark is limited to the rounded script of the letters. Thus, the only visual differences between these words are the hyphen contained in the earlier mark and the letter "n" in fourth position which is the letter "H" in the contested mark. The latter difference has a minor importance since the letter "n" is visually similar to the letter "h". Moreover, it is well established that consumers generally take more note of the beginning of a mark than its ending (see, to that effect, Case T-112/03 *L'Oréal SA v OHIM - Revlon (Suisse) SA* (FLEXI AIR) [2005] ECR-949, paragraph 64). In the present case the words "oki-ni" and "OKIHI" share the same beginning "OKI", and also the final letter "I". The above common features render the marks similar visually, regardless the addition of the device element in the contested mark.

From a phonetic perspective, the earlier mark will be pronounced /o-ki-ni/ whereas the contested mark as /o-ki-hi/. Both words consist of three syllables and they share the same vowel sequence, have the same rhythm and are stressed in the same way. The first two syllables are identical. The only phonetic difference can be found at the beginning of the last syllable. However, the sounds /n/ and /h/ in this position are phonetically similar due to the fact that both are soft consonants. Since phonetically the consumers also tend to pay more attention to the beginnings of trade marks, the difference in this last consonant will rather go unnoticed. Therefore, it is held that the marks are highly similar phonetically.

Conclusion

It constitutes a likelihood of confusion within the meaning of Article 8(1)(b) CTMR if there is a risk that the public might believe that the goods or services in question, under that assumption that they bear the marks in question, come from the same undertaking or, as the case may be, from economically-linked undertakings (see *Canon*, cited above, paragraph 29).

Likelihood of confusion within the meaning of Article 8(1)(b) CTMR must be assessed globally, taking into account all the circumstances of the case. Likelihood of confusion implies some interdependence between the relevant factors, and in particular a similarity between the trade marks and between the goods or services. Accordingly, a lesser degree of similarity between the goods or services may be offset by a greater degree of similarity between the marks, and vice versa. Furthermore, the more distinctive the earlier mark, the greater the risk of confusion. Marks with a highly distinctive character, either *per se* or because of the reputation they possess on the market, enjoy broader protection than marks with a less distinctive character (see *Canon*, cited above, paragraph 17 *et seq.*).

In the present case, as follows from the analysis made under section 1 b) of the present decision, the trade marks in dispute, when considering their overall impression and taking into account their dominant elements, are similar visually and highly similar aurally, as the principal element "OKIHI" in the contested mark is highly similar to the earlier mark "oki-ni". In fact, they differ only in one letter being placed at the end of the words. Clearly, such a minor difference can easily pass unnoticed when seeing and hearing the marks. The Office deems that the visual differences existing between the

marks due to the presence of the device element and colours in the contested mark are not of such a nature and significance to counteract the above analysed similarities. In addition, there is no any concept in either of the marks which could help to distinguish between them.

It also follows from the analysis carried out under section 1 a) of the present decision that that all the contested goods in classes 18 and 25, and the contested goods "gymnastic and sporting articles not included in other classes", in class 28, are in part identical and in part similar to the goods protected by the earlier mark. Moreover, these goods are targeted at the public at large. Therefore, the level of attentiveness of the relevant public is regarded as average.

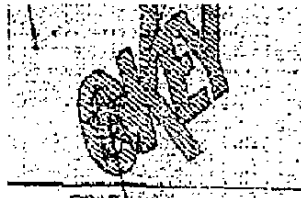
Thus, under the principle of the interdependence set about above, the degree of similarity between the marks is sufficient to establish that the relevant consumer would think that the respective goods which have been found identical or similar are manufactured by the same undertaking or, as a case may be, by economically-linked undertakings. It is held that the differences existing between the contested mark and the earlier mark are not such as to dispel the likelihood of confusion. It also has to be noted that the average consumer has only occasionally the opportunity to carry out a direct comparison of the various trade marks but must rely on his imperfect mental image of them (see, *Lloyd*, cited above, paragraph 26).

DECISION
of 30/04/2007
RULING ON OPPOSITION No B 907 263

a)



b)



c) OKEY

vs

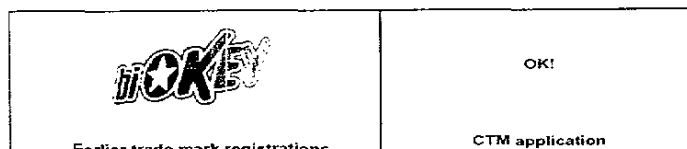
OK!

Comparison of the signs

In determining the existence of likelihood of confusion, trade marks have to be compared by making an overall assessment of the visual, phonetic and conceptual similarities between the marks. The comparison must be based on the overall

impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (see judgment of the Court of 11 November 1997 in Case C-251/95 *Sabèl BV v Puma AG, Rudolf Dassler Sport* ('*Sabèl*') [1997] ECR I-6191, at paragraph 22 et seq.).

The signs to be compared are:



The earlier trade mark is protected in Spain. Therefore, it is the impression that the signs make on the public in Spain and their meaning and pronunciation in the Spanish language which are relevant for their comparison.

Since the average consumer retains only an imperfect image of the mark, the predominant component of the mark in question is of major importance (see judgment of the Court of First Instance of 23 October 2002 in Case T-104/01 *Claudia Oberhauser v OHIM* ('*Fifties*') [2002] ECR II-4359, at paragraph 47). As a general rule, when a sign consists of both word and figurative elements, the word component tends to have a stronger impact on the consumer than the figurative element because the public usually refers to a sign by its word element as this is the easiest way to refer to the goods and services in question (see, to that effect, judgment of the Court of First Instance of 18 February 2004 in Case T-10/03 *Jean-Pierre Koubi v OHIM* ('*Conforflex*') [2004] ECR II-719, at paragraph 45). Nevertheless the device component cannot be ignored in a comparison of the signs, which is based on their overall impression. Furthermore, with regard to the assessment of the dominant character of one or more given components of a complex trade mark, account must be taken, in particular, of the intrinsic qualities of each of those components by comparing them with those of other components. In addition and accessorially, account may be taken of the relative position of the various components within the arrangement of the complex mark (see judgment of the Court of First Instance of 23 October 2002 in Case T-6/01 *Matratzen Concord GmbH v OHIM* ('*Matratzen*') [2002] ECR II-4335, at paragraph 35).

In the present case, the CTM application consists of the verbal element "OK!", while the earlier mark is a figurative sign. Nevertheless, the figurative elements of the contested mark are limited to a stylisation of its verbal elements "biOKEY": the first part of the sign, "bi", is written in small letters, while the term "OKEY" is written in capital letters.

Visually, the marks coincide in the letters "O", "K" which are in the same order. In the CTM application, these letters are followed by an exclamation point. In the earlier mark, they are placed in the central position of the sign, preceded by the additional letters "b", "i" and followed by the letters "E", "Y". The element "bi", the only one written in small letters, even if placed in the first position, will be perceived as a subsidiary prefix of a minor importance. Moreover the common letters "OK" in the earlier mark produce an especially eye-catching effect. It is mainly due to their bigger size, mainly of the letter "K" which is an unusual letter in the Spanish language, and to their stylisation; the letter "O" is the only one which contains a device, i.e. a star. In light of the above, the Office finds that there is a visual similarity to a low degree between the signs in question.

Aurally, the signs "OK!" and "biOKEY" are, according to the pronunciation rules in the Spanish language, pronounced as [o-kei] and "[bi-o-kei]. The signs only differ in as far as the earlier right begins with the syllable [bi]. Taking into account that the pronunciation of the CTMA is identical to two out of three syllables of the earlier rights, it must be concluded that the signs are similar from a phonetic point of view.

Conceptually, "okey" and "OK" are two different transcriptions of a widely used English term expressing assent, concession, or approval (*The Oxford English Dictionary Online, Second Edition 1989*). Given that this term is extensively used throughout the Community, it will be understood as such by the relevant Spanish consumers. Therefore,

the concepts of the CTM application and the dominant element of the earlier mark are identical. As far as the prefix "bi" in the earlier mark is concerned, it stands in Spanish for "two" or "twice" (*Diccionario de la Lengua Española de la Real Academia Española, Vigésima segunda edición*). The presence of this common prefix does not avoid the recognition of this concept of approval in both signs. Therefore, the two marks are conceptually almost identical.

DECISION
of 24/04/2007
RULING ON OPPOSITION No B 745 622

a) KOKA

b)

KOKA

KOKA

KOKA

vs



Comparison of the signs

In determining the existence of likelihood of confusion, trade marks have to be compared by making an overall assessment of the visual, phonetic and conceptual similarities between the marks. The comparison must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components (cf. Judgment of the Court of Justice, Case C-251/95, Sabèl BV v. Puma AG, Rudolf Dassler Sport [1997] OJ OHIM 1/98, p. 91, paragraph 22 et seq.). Likelihood of confusion in only one part of the Community is sufficient as a relative ground for the rejection of the application at issue. This follows from the unitary character of the Community trade mark (see judgment of the Court of First Instance of 9.3.2005 in case T-33/03, "Hai/Shark", par. 39).

Visually, the earlier mark contains three out of four letters ("k", "o" and "k") in common with the dominant element of the contested application running in the same order. It is not considered that the differing letter, "a" as opposed to "o" at the end of these words (which do not have as great an impact as the beginnings on the consumer), the hyphen in the word "KO-KO" and the device of a cow and leaves of the CTM application are sufficient to distinguish between the marks and thus they are considered to be visually similar overall.

From a phonetic point of view the marks differ only in the last vowel of the marks. However, it must be remembered that the endings of words do not attract the consumer's attention as much as their beginnings and it is considered that different vowel at the end of the marks will trail off in speech and not be noticed very much. Therefore the marks are considered to be phonetically similar.

DECISION
of 01/06/2006
RULING ON OPPOSITION No B 672 271

OKEY



VS

Oke

Comparison of the signs

According to the case-law of the Court of Justice, in determining the existence of likelihood of confusion, trade marks have to be compared by making an overall assessment of the visual, phonetic and conceptual similarities between the marks. The

comparison "must be based on the overall impression given by the marks, bearing in mind, in particular, their distinctive and dominant components" (see Judgment of the Court of Justice, Case C-251/95 *Sab l BV v Puma AG, Rudolf Dassler Sport* [1997] OJ OHIM 1/98, p.91, paragraph 23).

The comparison has to be made between the following signs:



OKEY

Earlier trade mark

CTM application

From a visual point of view, the figurative features in the application are not prominent but rather simple and weak consisting of the slightly stylised letter script and the almost squared background; thus the word component is the dominant and distinctive element of the mark. The earlier right consists of the four letters-word "OKEY". The application consists of three letters "oke". In the case of word signs, the word as such is protected and not its written form. Therefore, it is irrelevant whether word marks are represented in small or capital letters. The same applies to different letter types at least insofar as they are common in the market. Both signs have identical beginnings the first three letters "oke". In fact, the application is wholly included in the earlier mark. Their only difference lies in the extra letter "y" at the end of the prior right. However, the difference of the addition of the "y" at the ending is not significant enough to eliminate the similarity created by the fact that the essential part "oke" is identical. Moreover, the common letter "k" produces an especially eye-catching effect, as it is not very common in some EU countries as for example Spain. As a result, the overall impression created is that the marks exhibit a considerable degree of visual similarity at least in Spain.

Phonetically, the earlier right will be pronounced in two syllables, as "o-key". The application will be pronounced in two syllables as "o-ke". The signs have the first syllable identical and also coincide in the beginning of the second syllable "ke", the foremost part thereof. They only differ in as far as the earlier right ends with the vowel "y". However, although the vowel "y" renders the earlier mark somewhat longer in sound this difference is not enough to counteract the effect of phonetic identity produced by the longest part of the signs "o-ke" which is furthermore in the beginning of the signs. Therefore, from a phonetic point of view the marks exhibit a substantial degree of similarity.

From a conceptual point of view, *oke* in English is another term for *O.K.*=an informal expression of approval, agreement, etc. This term is extensively used throughout the Community and therefore will be understood as such. As regards the expression *oke* this is also another term for *O.K.* in English although less common. Thus from the perspective of the English-speaking public the words are identical. Moreover, given the wide use of word *oke* in the current vocabulary of various languages it is reasonable to assume that this will be recognized and understood as such in the Community. As for *oke* the average consumer will be most probably inclined to perceive it as a variant of *ok* and thus will attribute the same meaning.

2) Similarity of the classes and goods ;

Furthermore to the very close similarity existing between the conflicting brands we must also make reference to the similarity or identity of goods included in the confronted signs.

CTM Application number 4470209 **OK** bolivia is registered for the followings goods and classes , involving all alimentary products ;

Class 29 ; Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs; edible oils and fats.

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

Classes 31 ; Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

Class 32 ; Beers; mineral and aerated waters and other non-alcoholic drinks.

This list of goods and products is completely incompatible with the applicative field of the contested international trademark registration OK nº 929733 ;

Class 29; Meat, fish, poultry and game, products made from meat, fish, poultry and game, sausage and sausage products, meat extracts, meat jellies, preparations made from meat and minced meat, all aforementioned goods also in the form of preserves or deep-frozen; convenience food and half-finished convenience food as well as ready-to-serve salads, essentially consisting of meat and/or fish and/or poultry and/or sausage and/or game; soups, soup preparations, beef tea; preserved, dried and cooked fruits and vegetables, mixed pickles, finished and half-finished goods as well as ready-to-serve salads, essentially consisting of fruits and/or vegetables, preserved pot herbs, prepared potato products, included in this class, potato dumplings, potato fritters, mashed potatoes, croquettes, French fries, fried grated potatoes; jellies, jams, stewed fruits, fruit jellies, fruit purees; eggs, milk and milk products, milk beverages (milk predominating), butter, cream, curd, yoghurt, crème fraîche, heavy sour cream, buttermilk, cheese, cheese products and cheese preparations; edible oils and fats, margarine; fatty spreads and spreads on vegetarian basis (except chocolate crème and nougat crème); soy dishes as meat surrogate,

tofu; nibbles, included in this class, potato based products for alimentary purposes and made by extrusion, included in this class, potato chips, potato sticks, onion rings made from potatoes; dried fruits, raisins, processed nuts, hazelnuts, peanuts, macadamia nuts, cashew nuts, shelled pistachios and almonds, dried, roasted, salted, gratinated and/or spiced; dietetic food or nutritional supplements for non-medical use on the basis of egg white, fats, fatty acids, under addition of vitamins, mineral nutrients, trace elements, singly or in combination, included in this class.

Class 30 ; Coffee, coffee substitutes, coffee-based beverages, espresso, tea, tea-based beverages, iced tea, aromatic preparations of vegetable origin for use in beverages (except ethereal oils), essences for alimentary purposes (except ethereal essences and oils), cocoa, cocoa-based beverages, sugar, natural sweeteners, rice, convenience food and half-finished convenience food, essentially consisting of rice, nasi goreng (included in this class), sushi, tapioca, sago; flour and preparations made from cereals, baking-powder, oat flakes, muesli, cornflakes, cereal-based snacks, bread, bread rolls, toast, bread for sandwiches, croissants and baguettes, all filled or unfilled, *crisp bread and breadcrumbs*, pizza with or without topping, hamburgers, vegetable burgers, hotdogs, meat pastries; pastry and confectionery, pies, cakes, cookies, biscuits, waffles, cake mixtures (in powder form), cake dough; products on the basis of wheat, rice and corn, for alimentary purposes and made by extrusion, corn chips, onion rings made from corn, popcorn, salt sticks, savory biscuits, pretzels; candies and confectioneries, meringue products, chocolate and chocolate products, chocolate-covered marshmallows, wine gum and fruit gum, liquorice (sweets); sweet spreads, included in this class, sweets and desserts (on the basis of wheat), puddings and pudding powders, half-liquid jelly from red fruits, rice pudding; pasta, noodles of any type, gnocchi, convenience food and semi-finished convenience food, essentially consisting of pasta, tortellini, lasagna, spaghetti, ravioli, spaetzle, pasta case filled with forcemeat, cheese or vegetables, spring rolls; ice cream; honey, molasses; yeast, salt, mustard; vinegar, sauces (condiments), soy sauce, fruit sauces, salad dressings, ready-to-use sauces, tomato sauce, ketchup, mayonnaise, remoulade, spices, spice mixtures, nutmegs; ice for cooling purposes; dietetic foodstuffs or nutritional supplements for non-medical use on the basis of carbohydrates, roughage, under addition of vitamins, mineral nutrients, trace elements, singly or in combination, included in this class, meat pastries; spreads on vegetarian basis (chocolate and nougat cr me).

Class 31 ; Agricultural, horticultural and forestry products and grains, included in this class, seeds, flower bulbs and tubers, straw mulch and litter peat, animal litter, cat litter, bird sand; living animals; fresh fruits and vegetables, nuts; living plants and natural flowers; feedstuff, pet food, malt.

Class 32 ; Beers; mineral waters, aerated waters and other non-alcoholic drinks; fruit drinks, fruit nectars and fruit juices, isotonic beverages, lemonades, vegetable-based beverages, vegetable-based juices; syrups and other preparations for making beverages, preparations for making liqueurs, sherbet powder and fizzy tablets for beverages, essences for making beverages, products for making mineral waters and/or aerated waters.

Goods incompatibility is the same and identical, same classes and same goods , the risk of confusion and or association by the public and consumers is total considering the existence of the terms OK identic in both signs. The brand OK shall be rejected in relation with all the goods and classes contested that are class 29 to class 32 as the items and contents of the goods contained are the same and incompatible with prior opponent CTM registration OK bolivia.

In this sense we must quote important precedents such as the one issued by the OHIM Opposition Division in similar prior cases such as the followings ;

**DECISION
of 01/06/2006
RULING ON OPPOSITION No B 672 271**



VS

Comparison of the goods

According to the case law of the Court of Justice, "In assessing the similarity of the goods and services... all the relevant factors relating to those goods themselves should be taken into account. Those factors include, *inter alia*, their nature, their end users and their method of use, and whether they are in competition with each other or are complementary" (see Judgment of the Court of Justice, C-39/97, *Canon Kabushiki Kaisha v Metro Goldwyn-Mayer, Inc.*, [1998] OJ OHIM, 12/98, p. 1419, paragraph 23). The goods on which the opposition is based are:

- All kind of alimentary goods, fish and shellfish preserves and saltings, meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes, eggs, milk and milk products, specially milk based beverages; edible oils and fats in class 29.

- *Coffee, tea, cocoa, chocolate, chocolate, cocoa or coffee-based beverages and preparations; sugar, rice, tapioca, sago, artificial coffee, flour and preparations made from cereals, bread, biscuits, cakes, pastry and confectionery, ices; honey, golden syrup; yeast, baking-powder; salt, mustard; vinegar, sauces; spices in class 30.*

The opposition is directed against the following goods of the CTM application:

- *Emping and prawn crackers (crupuk), included in this class; soy beans and products made thereof such as tempe and tofu; potato chips and potato crisps in class 29.*

- *Crackers and rice crackers; sago and products made therefrom, including crackers; flour and preparations made from cereal and products made therefrom, including crackers and biscuits, made from tapioca (cassava flour), wheat meal, rice meal and/or corn flour, with or without the addition of prawns, fish, cuttlefish, crab, onion and or flavorings; emping and prawn crackers included in this class in class 30.*

Class 29

The opponent's specification *all kind of alimentary goods* is a broad category that comprises the applicant's *emping and prawn crackers (crupuk), included in this class; soy beans and products made thereof such as tempe and tofu; potato chips and potato crisps*. Therefore, these goods are considered identical.

Class 30

The opponent's *flour and preparations made from cereals* is a broad term that encompasses the applicant's *flour and preparations made from cereal and products made therefrom, including crackers and biscuits, made from tapioca (cassava flour), wheat meal, rice meal and/or corn flour, with or without the addition of prawns, fish, cuttlefish, crab, onion and or flavorings*; therefore these goods are found identical. The applicant's *sago* is identically reproduced in the opponent's specification.

The applicant's *products made from sago, including crackers* compared to the opponent's *sago* contain the latter as basic ingredient. Although they do not have the same nature or purpose of use, however they are normally offered in the market by the same traders. Such products mostly originate from countries like Malaysia, India etc where it is quite common for the sago factories to produce the starchy cereal (sago) and other goods like crackers etc made of sago. Moreover, the relevant consumer will expect to find these products placed together or very closely in the same sections (for instance in healthy product section) of the supermarkets or related stores. Therefore, these goods are quite closely connected.

Similarly, the applicant's *crackers and rice crackers; emping and prawn crackers included in this class* are different kinds of crackers which are similar or closely connected to the opponent's *rice, flour and preparations made from cereals, biscuits*.

From the above, it is concluded that the contested goods are either identical or similar.

Conclusion

According to the seventh recital of the CTMR the appreciation of the likelihood of Confusion "...depends on numerous elements and, in particular, on the recognition of the trade mark on the market, the association which can be made with the used or registered sign, the degree of similarity between the trade mark

and the sign and between the goods or services identified..."

As already mentioned, the first part of a mark is generally very important in catching the consumer's attention. The predominant verbal component "oke" is of major importance when analysing the sign as a whole because the average consumer, looking at a label, takes in and remembers the predominant word element which enables him to make the same choice on the occasion of a subsequent purchase. Moreover, the goods in question are foodstuffs, that is, on the shelf everyday consumer items freely available to the general public; thus, the relevant consumer can directly pick them up from the shelf.

In the present case the signs are visually and phonetically similar and conceptually identical and the contested goods are found partly identical or similar. It follows from the foregoing that, considered on its own, the level of identity/similarity between the goods and the signs is sufficiently high to induce a likelihood of confusion between the....

DECISION
of 30/04/2007
RULING ON OPPOSITION No B 907 263

a)



b)



c) OKEY

vs

OK!

Comparison of the goods

When making an assessment of similarity of the goods concerned, all relevant factors relating to these goods should be taken into account. These factors include, *inter alia*, their nature, their purpose and method of use and whether they are in competition with each other or are complementary (see judgment of the Court of 29 September 1998 in

Case C-39/97 *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer, Inc.*, formerly *Pathe Communications Corporation* ('Canon') [1998] ECR I-5507, at paragraph 23). Further factors include the pertinent distribution channels (in particular the sales outlets), the relevant public, and the usual origin of the goods.

The goods of the earlier mark are:

Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, compotes; eggs, milk and milk products; edible oils and fats; precooked dishes made from meat and fish, gazpacho; milky drinks with milk predominating, in class 29.

Beers, mineral and aerated waters and other non-alcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages; drinks made from whey; isotonic drinks; refreshing non-alcoholic drinks with fruit juice with milk and ginseng predominating; fruit juice; fruit nectar, in class 32.

The contested goods are:

Mineral water (beverages); aerated waters; must; non-alcoholic fruit drinks; nonalcoholic fruit nectars; grape must; cider; fruit drinks and fruit juices; isotonic beverages, non-alcoholic drinks and aperitifs; syrups and other preparations for making beverages; beers, in class 32.

Both marks cover *mineral water, aerated waters, non-alcoholic drinks, fruit drinks and fruit juices, isotonic beverages, syrups and other preparations for making beverages, beers*. Moreover, the contested goods *non-alcoholic aperitifs* are encompassed by the larger category *other non-alcoholic drinks* covered by the earlier mark. Further, the contested goods *non-alcoholic fruit drinks* are a different formulation of the same goods covered by the earlier mark under the specification: *non-alcoholic drinks with fruit juice*.

Finally, the contested goods *non-alcoholic fruit nectars* are included in the broader category *fruit nectar* covered by the earlier mark.

Therefore, these goods are identical.

The contested goods *must* and *grape must* consist of the juice of freshly pressed grapes before or during fermentation into wine. Given their intended purpose and nature, these goods are at least similar to the *fruit juices* and *other preparations for making beverages* covered by the earlier mark.

Furthermore, *cider* in the contested application, which consists of a beverage made from the juice of apples (or pears) expressed and fermented, is similar to *fruit drinks* and *fruit juices* covered by the earlier mark. In fact, the apple juice is the basic and main ingredient used in the preparation of the cider. Moreover, given its low alcoholic content, comparable to the *beer*, it can be an alternative for it, as well as it may be in competition with other *fruit drinks* drunk as the *aperitif* drinks.

Furthermore, *cider* in the contested application, which consists of a beverage made from the juice of apples (or pears) expressed and fermented, is similar to *fruit drinks* and *fruit juices* covered by the earlier mark. In fact, the apple juice is the basic and

main ingredient used in the preparation of the cider. Moreover, given its low alcoholic content, comparable to the *beer*, it can be an alternative for it, as well as it may be in competition with other *fruit drinks* drunk as the aperitif drinks.

In sight of existence of these prior decisions in very similar cases in which contested signs were OKEY OK Also in the present case now studied between OK and OK bolivia and their device images having the same colors red, blue, white and typology of letters and also taking into consideration the TOTAL INCOMPATIBILITY existing considering the applicative field and the goods covered in alimentary products classes identic as 29,30,31 and 32, the risk of confusion including risk of association by the part of the public and consumers between the confronted signs OK and OK bolivia, due to the very close similarity existing not only in relation with the phonetic or ensemble impact of the signs but also in relation with the applicative field, in relation with the goods and products covered. Accordingly, in sight of all of this arguments we hereby request the OHIMS Opposition Division to hold a decision for acceptance of this opposition and accordingly for refusal of IR registration OK nº 929733 in the European Community Territory as CTM trademark in relation with all goods included in classes 29, 30, 31 and 32.

Madrid, October, 2007.

