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World Intellectual Property Organisation
34, Chemin des Colombettes
PO Box 18
1211 Geneva 20
Switzerland

Date of Notification: 28 September 2009
Our Reference: TMOPP 2453

International Registration No: 0950870
Mark: METRO
Device
Holder: MIP METRO Group Intellectual Property GmbH & Co. KG

**Notification of the Irish Patents Office of refusal of protection
based on opposition**

Dear Sir/Madam,

This notification is issued pursuant to Article 5 of the Protocol relating to the Madrid Agreement concerning the International Registration of Marks and Rule 17(3) of the Common Regulations under the Agreement and Protocol, and is to inform you that protection for this mark is refused for the reasons set out below. *[Any references to Sections are to Sections of the Trade Marks Act, 1996 and to Rules are to Rules of the Trade Marks Rules, 1996.]*

Opposition to the granting of protection to the mark has been filed under Section 43 and Rule 18. A copy of the Notice of Opposition is enclosed.

The following are the Opponent's details:

Name: METRO INDUSTRIES INC.

Address: One East First Street
Suite 1411
Reno, Nevada 89501
United States of America

Address for Service: FRKelly
27 Clyde Road
Dublin 4
Ireland

1. Where the Opponent has cited an earlier registration or pending application as grounds for the opposition, the details of the relevant mark(s) are as outlined in the enclosed printout(s). ***Please see attached printout in respect of National Trade Mark Registration Numbers 177064, 177062, 177063 and 177065.***
2. The refusal is in respect of all the services for which protection is sought.
3. The Holder may file a counter-statement, under Rule 19(1), in duplicate, not later than 27 December 2009.
4. If a counter-statement is not received within the time allowed, the Holder will be deemed to have withdrawn his request for protection of the mark. Under Rule 63(2) an extension of time for the purpose of filing a counter-statement is not allowed.
5. A counter-statement must be accompanied by an address for service within the European Community as required by Rule 10 as amended by Statutory Instrument 621 of 2007; failure to furnish such address will result in the Holder being deemed to have abandoned his request for protection.

Please quote our reference in all future correspondence.

Yours faithfully,



Margaret Cahill
Trade Marks Opposition Section
Direct Line (00 353 56) 7720185

TRADE MARKS ACT, 1996

**IN THE MATTER OF
International Trade Mark
Registration No. 950870
METRO (stylised) in Class 35
MIP METRO Group Intellectual
Property GmbH & Co. KG
and Opposition thereto
METRO INDUSTRIES, INC.**

NOTICE OF OPPOSITION

We, METRO INDUSTRIES INC., a corporation organized and existing under the laws of the State of Nevada, United States of America, of One East First Street, Suite 1411, Reno, Nevada 89501, United States of America, hereby give notice of our intention to oppose the registration of the Trade Mark advertised under the number 950870 in the Trade Marks Journal of the 24th day of June, 2009, No. 2127 at Page 4096. Our opposition is directed against all of the services Class 35.

The Grounds of Opposition are as follows:-

1. We are the proprietor of Irish Trade Mark Registrations – METRO. Particulars of our registered Trade Marks are scheduled hereto. All of these constitute earlier Trade Marks under Section 11 of the Trade Marks Act, 1996.
2. The Mark for which protection is requested is identical or similar to our earlier Trade Marks as defined in Section 11 of the Trade Marks Act, 1996, and the services for which registration is sought in Class 35 are identical or similar to the goods for which our earlier Trade Marks are protected, to the extent that there exists a likelihood of confusion on the part of the public which includes the likelihood of association. The Application offends against Section 10(2)(b) of the Trade Marks Act, 1996.
3. Our earlier Trade Marks have a reputation in the State. Use of the Mark for which protection is requested would take unfair advantage of, or be detrimental to, the distinctive character or reputation of our earlier Trade Marks. The Application offends against Section 10 (c) of the Trade Marks Act, 1996.
4. We own earlier rights to the METRO Trade Mark as defined in Section 10(5) of the Trade Marks Act, 1996. Use in the State is liable to be prevented by virtue of the law of passing off. The Mark applied for should be refused in accordance with Section 10(4) of the Trade Marks Act, 1996.


5. Protection of this Mark is contrary to Council Directive No. 89/104 EEC to approximate the laws of the Member States relating to Trade Marks.
6. The request for protection in respect of the Trade Mark of the Applicant ought in the discretion of the Controller to be refused and costs awarded to the opponent.

SCHEDULE REFERRED TO IN PARAGRAPH 1

Trade Mark	Number	Country	Classes	Date
METRO	177064	IRELAND	12	04/02/1994
METRO	177062	IRELAND	6	04/02/1994
METRO	177063	IRELAND	10	04/02/1994
METRO	177065	IRELAND	20	04/02/1994

Dated this 23rd day of September, 2009

FRKelly

BY: 
Agents for the Opponents.

REGISTER OF TRADE MARKS

**Registrability of this mark was determined
by reference to Section 17 the Trade Mark
Act, 1963.**

Registered

Registration No.: **177064**

Name & Address of Proprietor(s)	METRO INDUSTRIES, INC. One East First Street Suite 1411 Reno, Nevada, 89501 United States of America
Description of mark	METRO
Date of application	04/02/1994
Date of registration	04/02/1994
Date of Publication of Registration	05/05/1999
Priority Claimed	
Address for Service :	TOMKINS & CO. 5 Dartmouth Road Dublin 6 Ireland
Notings:	
Goods:	Class:12 Carts, trucks, dollies and trolleys; linen hampers; rubbish bag carriers; parts and fittings for all the aforesaid goods.
Representation of mark:	
Registration renewed:	19/01/2001

REGISTER OF TRADE MARKS

**Registrability of this mark was determined
by reference to Section 17 the Trade Mark
Act, 1963.**

Registered

Registration No.: **177062**

Name & Address of Proprietor(s)	METRO INDUSTRIES, INC. One East First Street Suite 1411 Reno, Nevada, 89501 United States of America
Description of mark	METRO
Date of application	04/02/1994
Date of registration	04/02/1994
Date of Publication of Registration	05/05/1999
Priority Claimed	
Address for Service :	TOMKINS & CO. 5 Dartmouth Road Dublin 6 Ireland
Notings:	
Goods:	Class:6 Ironmongery; small items of metal hardware; shelf support posts, shelf post clamps, post levelling feet, shelf joining clamps, shelf wall mounts, coat hanger tubes and brackets, shelf brackets, reel holders, sway braces, corner braces, shelf spacers, shelf dividers, shelf slides, casters, shelf rods and joining tabs all made primarily of metal; wire baskets used in burning rubbish; and parts and fittings included in Class 6 for all the aforesaid goods.
Representation of mark:	
Registration renewed:	19/01/2001

REGISTER OF TRADE MARKS

**Registrability of this mark was determined
by reference to Section 17 the Trade Mark
Act, 1963.**

Registered

Registration No.: **177063**

Name & Address of Proprietor(s)	METRO INDUSTRIES, INC. One East First Street Suite 1411 Reno, Nevada, 89501 United States of America
Description of mark	METRO
Date of application	04/02/1994
Date of registration	04/02/1994
Date of Publication of Registration	05/05/1999
Priority Claimed	
Address for Service :	TOMKINS & CO. 5 Dartmouth Road Dublin 6 Ireland
Notings:	
Goods:	Class:10 Medical, surgical apparatus; hospital crash carts, catheter carts; surgical case carts and suture carts; catheter baskets; all the aforesaid goods included in Class 10; and parts and fittings included in Class 10 for all the aforesaid goods.
Representation of mark:	
Registration renewed:	19/01/2001

REGISTER OF TRADE MARKS

**Registrability of this mark was determined
by reference to Section 17 the Trade Mark
Act, 1963.**

RegisteredRegistration No.: **177065**

Name & Address of Proprietor(s)	METRO INDUSTRIES, INC. One East First Street Suite 1411 Reno, Nevada, 89501 United States of America
Description of mark	METRO
Date of application	04/02/1994
Date of registration	04/02/1994
Date of Publication of Registration	05/05/1999
Priority Claimed	
Address for Service :	TOMKINS & CO. 5 Dartmouth Road Dublin 6 Ireland
Notings:	
Goods:	Class:20 Shelves, shelf supports, baskets, boxes and bins; plastic bin markers; work counters; cabinets, work stations; parts and fittings for all the aforesaid goods all included in Class 20.
Representation of mark:	
Registration renewed:	19/04/2001