

# UNITED STATES PATENT AND TRADEMARK OFFICE

**SERIAL NO:** 79/078053

**MARK:** 28RED

**\*79078053\***

**CORRESPONDENT ADDRESS:**

Axer Partnerschaft  
Dürener Straße 295  
50935 Köln  
FED REP GERMANY

**RESPOND TO THIS ACTION:**

<http://www.uspto.gov/teas/eTEASpageD.htm>

**GENERAL TRADEMARK INFORMATION:**

<http://www.uspto.gov/main/trademarks.htm>

**APPLICANT:** Calidris 28 AG (SA)

**CORRESPONDENT'S**

**REFERENCE/DOCKET NO:**

N/A

**CORRESPONDENT E-MAIL ADDRESS:**

## OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

**ISSUE/MAILING DATE:**

**INTERNATIONAL REGISTRATION NO. 1026734**

This is a **PROVISIONAL FULL REFUSAL** of the trademark and/or service mark in the above-referenced U.S. application. *See* 15 U.S.C. §1141h(c).

**WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL:**

Applicant may respond directly to this provisional refusal Office action if applicant is not represented by an authorized attorney. *See* 37 C.F.R. §2.193(e)(2)(ii). Otherwise, applicant's authorized attorney must respond on applicant's behalf. *See* 37 C.F.R. §2.193(e)(2)(i). However, **the only attorneys who are authorized to sign responses and practice before the USPTO in trademark matters are as follows:**

- (1) **Attorneys in good standing with a bar of the highest court of any U.S. state**, the District of Columbia, Puerto Rico, and other federal territories and possessions of the United States; and
- (2) **Canadian agents/attorneys** who represent applicants located in Canada and (a) are registered with the USPTO and in good standing as patent agents or (b) have been granted reciprocal recognition by the USPTO.

*See* 37 C.F.R. §§2.17(e), 2.62(b), 11.1, 11.5(b)(2), 11.14(a), (c); TMEP §§602, 712.03.

Foreign attorneys, other than authorized Canadian attorneys, are not permitted to represent applicants before the USPTO. *See* 37 C.F.R. §§2.17(e), 11.14(c), (e); TMEP §602.03-.03(b). That is, foreign

attorneys may not file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal, among other things. *See* 37 C.F.R. §11.5(b)(2); TMEP §§602.03(c), 608.01. If applicant is represented by such a foreign attorney, applicant must respond directly to this provisional refusal Office action. *See* 37 C.F.R. §2.193(e)(2)(ii).

## THE APPLICATION HAS BEEN PROVISIONALLY REFUSED AS FOLLOWS:

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

**Please note the following: All issues raised in this office action may be resolved by calling or emailing the undersigned examining attorney (tasneem.hussain@uspto.gov) and authorizing changes consistent with the suggestions/questions in this office action.** Upon calling or emailing the examining attorney and authorizing the changes by signing an authorized signatory's name with forward slashes, an examiner's amendment will be promptly issued.

## SEARCH OF OFFICE'S DATABASE OF MARKS

The trademark examining attorney has searched the Office's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2 (d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

## IDENTIFICATION AND CLASSIFICATION OF GOODS

The identification of goods must be clarified because the wording identified below is indefinite and could include goods in more than one International Class. *See* TMEP §1402.01.

### **International Class 003**

The wording is acceptable

### **International Class 025**

The wording "***Clothing, namely sports and leisure clothing***" in the identification of goods must be clarified because it is too broad and could include goods in several international classes. *See* TMEP §§1402.01, 1402.03. Examples of acceptable identifications include the following: "protective clothing" in International Class 9, "surgical gowns" in International Class 10, "pet clothing" in International Class 18, and "shirts, shorts and pants" in International Class 25. Therefore, applicant must amend the identification to specify the type of clothing in International Class 25 only. Applicant should insert the word "namely," after "clothing" and indicate the common commercial or generic names for the goods (e.g., shirts, pants, coats, dresses).

### **International Class 032**

The wording "***non-alcoholic, vitamin-containing and isotonic beverages***" encompasses goods in more than one International Class and thus is indefinite. Specifically, while "isotonic beverages" are acceptable in International Class 032, "Vitamin fortified beverages" are goods in International Class 005. If accurate, applicant may amend the wording to "non-alcoholic isotonic beverages containing vitamins" to remain in International Class 032.

The wording "***refreshing beverages containing caffeine; taurine beverages containing caffeine***" requires clarification as to the common commercial name of the beverages in International Class 032 only because "Beverages made of coffee" are in International Class 030 but "Alcoholic coffee-based beverage" are in International Class 033. Applicant may clarify that these goods are "energy drinks" to remain in International Class 032.

The wording “*other preparations*” requires clarification as to the common commercial name of the beverages in International Class 032 only because preparations for beverages in other International Classes are not classified in International Class 032.

### **International Class 033**

The wording “*Alcoholic beverages (except beers)*” is unacceptable because the identification of goods contains parentheses. Generally, parentheses and brackets should *not* be used in identifications. Parenthetical information is permitted in identifications only if it serves to explain or translate the matter immediately preceding the parenthetical phrase in such a way that it does not affect the clarity of the identification, e.g., “obi (Japanese sash).” TMEP §1402.12. Therefore, applicant must remove the parentheses from the identification of goods and/or services and incorporate the parenthetical information into the description.

Applicant may adopt the following identification, if accurate:

“Perfumery, essential oils, hair lotions, cosmetics” in International Class 003; and/or

“Clothing, namely sports and leisure clothing, *namely, shirts and pants*; shoes, footwear and boots, namely sports and leisure shoes and boots; stockings, pants, socks; suspenders, also made of leather; ties, namely bow ties; gloves; headgear, namely forehead bands and sweatbands; belts” in International Class 025; and/or

“Mineral waters and aerated waters; non-alcoholic isotonic beverages *containing vitamins*; refreshing *energy drinks* containing caffeine; taurine *energy drinks* containing caffeine; soft drinks for energy supply; fruit drinks and fruit juices; syrups and other preparations for making beverages, *namely, fruit drinks*” in International Class 032; and/or

“Alcoholic beverages *except beers*” in International Class 033

Periodically the Office revises its international classification system and the policy regarding acceptable identifications of goods and services. Identifications are examined in accordance with Rules of Practice and Office policies and procedures in effect on the application filing date. 37 C.F.R. §2.85(e)(1); TMEP §1402.14. However, an applicant may voluntarily choose to follow policies and procedures adopted after the application was filed. 37 C.F.R. §2.85(e)(2).

Descriptions of goods and/or services found in earlier-filed applications and registrations are not necessarily considered acceptable identifications when a later-filed application is examined. *See* TMEP §§702.03(a)(iv), 1402.14.

For guidance on writing identifications of goods and/or services, please use the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netathtml/tidm.html>, which is continually updated in accordance with prevailing rules and policies. *See* TMEP §1402.04.

Identifications can be amended only to clarify or limit the original wording; adding to or broadening the scope is not permitted. 37 C.F.R. §2.71(a); *see* TMEP §§1402.06 *et seq.*, 1402.07. Therefore, applicant may not amend the identification to include goods and/or services that are not within the scope of the wording set forth in the present identification.

### **ADVISORY REGARDING CLASS**

The international classification of goods and/or services in applications filed under Trademark Act

Section 66(a) cannot be changed from the classification given to the goods and/or services by the International Bureau in the corresponding international registration. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1904.02(b).

## ENGLISH TRANSLATION NOT REQUIRED

Applicant submitted an English translation of the mark but the mark does not include any foreign wording. 37 C.F.R. §2.32(a)(9); *see* TMEP §809. In the present case, the translation is not required and will not be printed.

## CLAIM OF OWNERSHIP OF REGISTRATIONS

If applicant is the owner of U.S. Registration Nos. 3493029 and 3598677 (see attached), then applicant must submit a claim of ownership. *See* 37 C.F.R. §2.36; TMEP §812. The following standard format is suggested:

**Applicant is the owner of U.S. Registration Nos. 3493029 and 3598677.**

## RESPONSE GUIDELINES

There is no required format or form for responding to an Office action; however, applicant must explicitly address each refusal and/or requirement raised in this Office action. If a refusal has issued, applicant may wish to argue against the refusal, i.e., submit arguments and/or evidence as to why the refusal should be withdrawn and the mark should register. To respond to requirements, applicant should set forth in writing the required changes or statements and request that the Office enter them into the application record.

The response must be signed by the individual applicant or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). *See* 37 C.F.R. §§2.62(b), 2.193(e)(2)(ii); TMEP §§611.03(b), 611.06 *et seq.*, 712.01. In the case of joint applicants, all must sign. 37 C.F.R. §2.193(e)(2)(ii); TMEP §611.06(a). In addition, the proper signatory must personally sign or personally enter his/her electronic signature. *See* 37 C.F.R. §2.193(a), (e)(2)(ii); TMEP §§611.01(b), 611.02.

The Office recommends applicants use the Trademark Electronic Application System (TEAS) to respond to Office actions online at <http://www.uspto.gov/teas/index.html>. If applicant responds on paper via regular mail, the response should include the title "Response to Office Action" and the following information: (1) the name and law office number of the examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

Applicant may wish to hire a trademark attorney to assist in prosecuting this application because of the legal technicalities involved. The Office, however, cannot aid in the selection of an attorney. 37 C.F.R. §2.11.

Foreign attorneys, other than authorized Canadian attorneys, are not permitted to represent applicants before the USPTO. *See* 37 C.F.R. §§2.17(e), 11.14(c), (e); TMEP §602.03-.03(b). That is, foreign attorneys may not file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal, among other things. *See* 37 C.F.R. §11.5(b)(2); TMEP §§602.03(c), 608.01.

**The only attorneys who may practice before the USPTO in trademark matters are as follows:**

- (1) **Attorneys in good standing with a bar of the highest court of any U.S. state, the**

District of Columbia, Puerto Rico, and other federal territories and possessions of the United States; and

(2) **Canadian agents/attorneys** who represent applicants located in Canada and (a) are registered with the USPTO and in good standing as patent agents or (b) have been granted reciprocal recognition by the USPTO.

See 37 C.F.R. §§2.17(e), 11.1, 11.5(b)(2), 11.14(a), (c); TMEP §602.

If applicant has questions about its application or needs assistance in responding to this Office Action, please contact the assigned trademark examining attorney directly at the number below or at [Tasneem.Hussain@uspto.gov](mailto:Tasneem.Hussain@uspto.gov). Please note, however, that substantive matters must be addressed in a formal manner; see below for further instructions on how to respond to this Office Action.

/Tasneem Hussain/  
Trademark Examining Attorney  
Law Office 105  
(571) 272-8273

**RESPOND TO THIS ACTION:** Applicant should file a response to this Office action online using the form at <http://www.uspto.gov/teas/eTEASpageD.htm>, waiting 48-72 hours if applicant received notification of the Office action via e-mail. For *technical* assistance with the form, please e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned examining attorney. **Do not respond to this Office action by e-mail; the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

Print: Mar 18, 2010

78050885

**DESIGN MARK**

**Serial Number**  
78050885

**Status**  
REGISTERED

**Word Mark**  
DOSE 28

**Standard Character Mark**  
Yes

**Registration Number**  
3598677

**Date Registered**  
2009/03/31

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(4) STANDARD CHARACTER MARK

**Owner**  
Calidrie 28 AG (S.A.) UNKNOWN 30, Esplanade de la Moselle L-6637  
Wasserbillig LUXEMBOURG

**Goods/Services**  
Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic  
beverages except beers.

**Goods/Services**  
Class Status -- ACTIVE. IC 025. US 022 039. G & S: Sports and  
leisure clothing, namely, shirts, jerseys, jackets; shoes, footwear  
and boots, including sports and leisure shoes and boots; stockings,  
pants, socks; suspenders, also made of leather; ties, including bow  
ties; gloves; headgear, namely, forehead bands and sweatbands; belts.

**Goods/Services**  
Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Mineral  
waters and aerated waters; non-alcoholic, isotonic, beverages  
containing vitamins; energy drinks containing caffeine; energy drinks  
containing taurine and caffeine; energy drinks; fruit drinks and fruit  
juices; syrups for making beverages; preparations for making  
beverages, namely, soft drinks and fruit drinks.

**Print: Mar 18, 2010**

**78050885**

**Priority Date**  
2007/06/26

**Filing Date**  
2007/12/20

**Examining Attorney**  
HERMAN RUSS

DOSE 28



Print: Mar 18, 2010

78050886

**DESIGN MARK**

**Serial Number**  
79050886

**Status**  
REGISTERED

**Word Mark**  
DOSE 28

**Standard Character Mark**  
No

**Registration Number**  
3493029

**Date Registered**  
2009/09/26

**Type of Mark**  
TRADEMARK

**Register**  
PRINCIPAL

**Mark Drawing Code**  
(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

**Owner**  
Calidrie 28 AG (S.A.) UNKNOWN 30, Esplanade de la Moselle L-6637  
Wasserbillig LUXEMBOURG

**Goods/Services**  
Class Status -- ACTIVE. IC 025. US 022 039. G & S: Sports and leisure clothing, namely, shirts, jerseys, jackets; shoes, footwear and boots, including sports and leisure shoes and boots; stockings, pants, socks; suspenders, also made of leather; ties, including bow ties; gloves; headgear, namely, forehead bands and sweatbands; belts.

**Goods/Services**  
Class Status -- ACTIVE. IC 032. US 045 046 048. G & S: Mineral waters and aerated waters; non-alcoholic, isotonic beverages containing vitamins; energy drinks containing caffeine; energy drinks containing taurine and caffeine; energy drinks; fruit drinks and fruit juices; syrups for making beverages; preparations for making beverages, namely, soft drinks and fruit drinks.

**Goods/Services**  
Class Status -- ACTIVE. IC 033. US 047 049. G & S: Alcoholic beverages except beers.

Print: Mar 18, 2010

78050886

**Priority Date**  
2007/06/26

**Colors Claimed**  
Color is not claimed as a feature of the mark.

**Filing Date**  
2007/12/20

**Examining Attorney**  
HERMAN RUSS

