



**INTELLECTUAL
PROPERTY OFFICE**

Trade Marks Registry

Cardiff Road
Newport
South Wales
NP10 8QQ

Switchboard: 01633 814000
Direct Line: 01633 814386
Fax: 01633 811175
Minicom: 0645 222250
Website: www.ipo.gov.uk

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

Our Ref: INT OPP 72156/TS/EC
Your Ref: T/M 4 MOVE
Date: 19 July 2010

Please quote our complete reference on all correspondence

Dear Sirs

**NOTIFICATION OF A TOTAL REFUSAL OF PROTECTION BASED ON AN
OPPOSITION BY THE UNITED KINGDOM INTELLECTUAL PROPERTY
OFFICE IN ACCORDANCE WITH ARTICLE 5 OF THE MADRID PROTOCOL**

**RE: International Registration number : 1031791
For the mark : 4 MOVE
Holder of the International Registration : FOODCARE SPÓLKA Z.O.O.
Opposition number : 72156**

I must advise you that following receipt of an opposition to the above Trade Mark, it is necessary to issue this formal provisional refusal letter. This provisional refusal covers all of the goods and services of the International Registration.

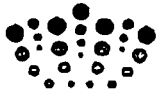
Please find attached a copy of the Form TM7 (Notice of Opposition) that was received by the United Kingdom Trade Mark Registry. Copies of these documents have been sent to the holder informing them of this provisional refusal.

We also attach:

Copies of the marks referred to in the statement of case.
Form TM8, for any reply to this opposition to be filed.

If the holder of the International Registration wishes to file a counterstatement, they must complete the attached Form TM8 and return it to this office together with the counterstatement within **two months** of the date of this letter. This period cannot be extended, except in the circumstances described below. The holder should note that failure to file a Form TM8 and counterstatement will result in the provisional refusal being upheld.

If both parties to this dispute wish to negotiate and want to enter a 'cooling off period' then the time for filing the Form TM8 can be extended for a further seven months by the filing of a Form TM9c.



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The Form TM8 and counterstatement should be received on or before **19 September 2010** unless a cooling off period is entered into by the parties.

The Office actively encourages parties to mediate as a swifter and less costly alternative to litigation. If you feel that this option is of interest, the Office can either provide a member of its own team of accredited mediators, each with extensive experience of dealing with intellectual property disputes, or can provide a list of other mediation providers. For more information, please visit the website, or contact mediation@ipo.gov.uk telephone 01633 811010.

Yours faithfully

Esther Cummings

TRIBUNAL SECTION ASSISTANT CASEWORK EXAMINER

14-JUL-2010 14:38 FROM 01732450346

TO 01633811176

P.002



INTELLECTUAL PROPERTY OFFICE
SP

14 JUL 2010

RECEIVED BY FAX

Form TM7

Official Fee £200 due with this form

J517990/ 0001 D00032 TM07.....
 15 JUL 10 200.00 ACCOUNT 1031791

Tribunal Section
 14 JUL 2010

Tribunal Section
 Trade Marks Registry
 Cardiff Road
 Newport
 South Wales
 NP10 8QQ

RECEIVED
RECEIVED

Notice of opposition and statement of grounds
 Please read the notes below before filling in this form

1. Trade Mark number.	1031791 (M)
2. Full name of the applicant, international registration holder, or registered proprietor.	FOODCARE SPÓLKA Z O.O.
3. Full name and address (including postcode) of the opponent.	SUMOL + COMPAL MARCAS, S.A. Estrada da Portela, No 9 Portela de Camaxide Oelras Camaxide 2790-124 Portugal
4. Full name and address (including postcode) of the opponent's representative (if any).	Elkington and Fife LLP Prospect House, 8 Pembroke Road Sevenoaks Kent TN13 1XR United Kingdom
5. Are there any related proceedings currently with the Registry or the courts? If so, give application, registration or opposition number.	No
6. State the date that you notified the applicant, international registration holder, or registered proprietor that you intended to oppose the trade mark application, international designation or amendment. (Please see note below)	16 June 2010 (TM7a)
7. Do you want a Preliminary Indication on section 5(1) and/or (2) grounds to be issued?	No
8. Declaration	I believe that the facts stated in this notice and in the attached statement of grounds are true
Your signature.	
Your name in BLOCK CAPITALS.	ELKINGTON AND FIFE LLP
Date.	14 July 2010
9. Name and daytime phone number of the person we should contact in case of query	Peter Chariton 01732 458881
10. Your reference.	PJC/SW/R72349OP
11. Number of sheets attached to this form.	This is sheet 1 of: 4

Notes Number every extra sheet and say in question 11 above how many you have used.

An opposition launched without giving the applicant, international registration holder or the registered proprietor a reasonable opportunity to withdraw the application, international designation or amendment, may result in the opponent being ineligible for an award of costs.

Filing a form TM7a, notice of threatened opposition, may qualify as giving notice subject to the applicant being provided with a reasonable opportunity to withdraw the application.

(REV APR09)

UK Intellectual Property Office is an operating name of the Patent Office

Form TM7

14-JUL-2010 14:38 FROM 01732450346

TO 01633811175

P.003

Use this sheet if you are basing your opposition on sections 5(1) or 5(2) of the Trade Mark Act on the basis of an earlier registered or pending mark.

Please note that opposition based on these grounds can only be made by the proprietor of an earlier mark.

You must use a separate sheet for each earlier mark, so copy this sheet as many times as you need.

- 5(1) It is identical with an earlier mark and for identical goods or services as the earlier mark
- 5(2)(a) It is identical with an earlier mark and for similar goods or services as the earlier mark.
- 5(2)(b) It is similar to an earlier mark and for identical or similar goods or services as the earlier mark.

Details of earlier trade mark

Number:
4194437

Is it a UK, Community or International mark?
CTM

Representation of the mark:

MOOVE

1. What goods or services covered by the earlier trade mark are relied upon for the grounds stated above?

- All
- Some (please specify)

2. **Statement of use provision-** Was the registration or protection process for the earlier trade mark completed 5 years or more before the publication date of the opposed application?

Yes No

3(a). If yes, and the mark has been used, for which of the goods and services listed at question 1 is use claimed?

All
 Some (please specify)

Or,

3(b). If yes and the mark has not been used, please state any proper reasons for non use.

Details of the mark you are opposing

4. Which goods or services in the application do you claim are identical or similar to those covered by the earlier mark and listed at question 3 (or at question 1 if the statement of use does not apply)?

All
 Some (please specify)

Use this space to give any further information to explain why you consider that there is a likelihood of confusion e.g. why you consider the respective marks or goods and/or services to be similar?

See continuation sheet

14-JUL-2010 14:38 FROM 01732450346

TO 01633811175

P.005

Part 4 continued/...

TM7 Grounds of Opposition under Section 5(2)(b)

The earlier mark is MOOVE; the later mark is "4 MOVE" plus a graphical element. That graphical element has no conceptual significance and therefore the later mark can for the purposes of comparison be considered as 4 MOVE.

Comparison of Marks

The verbal elements MOOVE and MOVE are visually highly similar and they are phonetically and conceptually identical. The addition of the numeral 4 to the later mark does not remove the similarity as the word MOVE is the dominant element. Insofar as the numeral 4 in the mark 4 MOVE is acknowledged by the public, it would be seen as a descriptor, suggesting for example four ingredients or four flavours etc. The mark 4 MOVE would thus be seen as a variant of the mark MOOVE and would be assumed to come from the same trade origin.

Comparison of Goods

The goods of the earlier mark are:

Class 05: Dietetic, organic and diet beverages; vitamin energy drinks and tonic and fortified drinks.

Class 30: Coffee, tea and artificial coffee-based beverages, and beverages based on other cereals.

Class 32: Beverages; namely drinking waters, flavoured waters, mineral and aerated waters and other non-alcoholic beverages; energy drinks and sports drinks, soft drinks, fruit drinks and aerated fruit juice drinks, vegetable and plant juices, syrups for beverages, concentrates, powders and other preparations for the manufacture of beverages.

The goods of the later mark are:

Class 32: Essences for making beverages; lemonades; lemonades powder; non alcoholic beverages; effervescing beverages; powder for effervescing beverages; fruit nectars; pastilles for effervescing beverages; products and preparations for making energizers; products and preparations for making refreshing beverages and micro-elements concentrated beverages; fruit juices; vegetable juices; sorbets; syrups for beverages; mineral water; aerated water; isotonic and energizing beverages.

It is beyond argument that the respective goods in class 32 are identical. The class 5 and 29 goods of the earlier mark are also in the nature of beverages and so the goods of the later mark are similar to these (though this fact may not require analysis due to the identity of the class 32 goods).

Likelihood of Confusion

Given the high degree of similarity between the marks and the identity of the goods, a likelihood of confusion on the part of the public is inevitable and accordingly the later mark must be refused under Section 5(2)(b).

OHIM

The Trade Marks and Designs Registration Office of the European Union

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CTM-ONLINE - Detailed trade mark information

- 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

CTM-ONLINE - Detailed trade mark information



Trade mark name : MOOVE
 Trade mark No : 004194437
 Trade mark basis : CTM
 Number of results : 1 of 1
[Online Inspection Request form \(for MyPage users with current account only\)](#)

Trade mark	
Filing date:	19/01/2005
Date of registration:	13/02/2006
Expiry Date:	19/01/2015
Nice Classification:	5, 30, 32 (↔ Nice classification)
Trade mark:	Individual
Type of mark:	Word
Acquired distinctiveness:	No
Applicant's reference:	CTM1.524/MOOVE
Status of trade mark:	CTM registered (↔ Glossary)
	CTM registration published (31)
	(↔ Publication B1 or Publication O2)
	(↔ History of statuses)
Filing language:	Portuguese
Second language:	English

Graphic representation

No entry for application number: 004194437.

List of goods and services

Nice Classification:	5
List of goods and services	Dietetic, organic and diet beverages; vitamin energy drinks and tonic and fortified drinks.
Nice Classification:	30
List of goods and services	Coffee, tea and artificial coffee-based beverages, and beverages based on other cereals.
Nice Classification:	32
List of goods and services	Beverages, namely drinking waters, flavoured waters, mineral and aerated waters and other non-alcoholic beverages; energy drinks and sports drinks, soft drinks, fruit drinks and aerated fruit juice drinks, vegetable and plant juices, syrups for beverages, concentrates, powders and other preparations for the manufacture of beverages.

Description

Description of the mark: -

Owner

Name:	SUMOL + COMPAL MARCAS, S.A.
ID No:	294199
Natural or legal person:	Legal entity
Address:	Estrada da Portela, Nº 9 Portela de Carnaxide
Post code:	2790-124
Town:	Oeiras Carnaxide
Country:	PORTUGAL
Correspondence address:	SUMOL + COMPAL MARCAS, S.A. Estrada da Portela, Nº 9 Portela de Carnaxide P-2790-124 Oeiras Carnaxide PORTUGAL
Telephone:	00 351-214243300
Fax:	00 351-214243426

Representative

Name:	J. PEREIRA DA CRUZ, S.A.
ID No:	15273
Address:	Rua Victor Gordon, 14
Post code:	1249-103

Town: Lisboa
Country: PORTUGAL
Correspondence address: J. PEREIRA DA CRUZ, S.A. Rua Victor Gordon, 14 P-1249-103 Lisboa PORTUGAL
Telephone: 00 351-213475020
Fax: 00 351-213421885
E-mail: info@jpcruz.pt

Seniority

No entry for application number: 004194437.

Exhibition priority

No entry for application number: 004194437

Priority

No entry for application number: 004194437.

Publication

Bulletin no.: 2005/037
Date of publication: 12/09/2005
Part: A.1
Bulletin no.: 2006/021
Date of publication: 22/05/2006
Part: B.1

Opposition

No entry for application number: 004194437.

Cancellation

No entry for application number: 004194437

Appeals

No entry for application number: 004194437.

Records

Title: Owners
Sub-title: Total Transfer
ID No: 003611871
Bulletin no.: 2009/002
Date of publication: 19/01/2009
Part: C.1.1
Title: Owners
Sub-title: Total Transfer
ID No: 003611905
Bulletin no.: 2009/002
Date of publication: 19/01/2009
Part: C.1.1
Title: Owners
Sub-title: Change of name and adress of owner
ID No: 003612093
Bulletin no.: 2009/002
Date of publication: 19/01/2009
Part: C.1.3

Renewals

No entry for application number: 004194437.





**INTELLECTUAL
PROPERTY OFFICE**

Form TM8

Nil Fee

Notice of defence and counterstatement

Trade Marks Registry
Concept House
Cardiff Road
Newport
South Wales
NP10 8QQ

Please read the guidance notes on the next page before filling in this form.

1. Trade mark number.	
2. Full name of the applicant or registered proprietor.	
3. Opposition, invalidation, revocation or rectification number.	
4. Name and address (including postcode) of the agent (if any).	
5. Do you want the opponent to provide proof of use? (see note)	
6. If you answered "yes" to question five, please state for which goods and services you require proof.	
7. Counterstatement	

Counterstatement (continued from previous sheet)

8. Are there any related proceedings currently with the Registry or Courts? If so, please provide details.	
9. Do you want a Preliminary Indication on section 5(1) and/or (2) grounds to be issued?	
10. Declaration Your signature. Your name in BLOCK CAPITALS. Date.	I believe that the facts stated in this notice of defence and counterstatement are true.
11. Name and daytime phone number of the person we should contact in case of query.	
Your reference.	
Number of sheets attached to this form.	

Notes If you need more space for your counterstatement you may attach separate sheets. Number each one and say in question 11 how many sheets you have used.

Boxes 2 and 4: At least one of these should be located in the European Economic Area (EEA) or the Channel Islands

Box 5: Only applies in opposition, or similarly in the case of invalidation proceedings, where the person opposing or invalidating your mark may have provided a statement of use and only applies to grounds of opposition or invalidation raised under sections 5(1) and 5(2) and 5(3) of the Trade Marks Act. If more than one trade mark is being relied upon, please indicate in respect of which trade mark you would like the opponent to provide proof of use.



**INTELLECTUAL
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**UNITED KINGDOM TRADE MARKS REGISTRY
CONCEPT HOUSE, CARDIFF ROAD
NEWPORT, SOUTH WALES, NP10 8QQ, UK
(SWITCHBOARD: 01633 814000 / OVERSEAS: 44 1633 814000)**

DIRECT LINE: (UK) 01633 814386 (OVERSEAS) 44 1633 814386

FAX: (UK) 01633 811437 (OVERSEAS) 44 1633 811437

DATE: 19 July 2010

FAX INFORMATION SHEET

TO: WIPO

FROM: Esther Cummings

NUMBER OF PAGES TO FOLLOW: 10

COMMENTS: Please note: New contact name, fax and telephone number.

Please confirm receipt of this information for International Registration number 1031791, Opposition number 72156, for the mark '4 MOVE' by return of fax on fax number 44 1633 811437 for the attention of Esther Cummings.

Thank You

Esther Cummings

This fax transmission and the information it contains are confidential and intended for the addressee only. It may contain privileged information. If you are not the person or organisation to whom it is addressed, you must not look at or disclose its contents, nor copy or distribute or take any action in reliance upon it. If you have received this fax in error, please notify us immediately by telephone (44 1633 814386) or fax. (44 1633 811437) or return it to us by post. Thank you in advance for your cooperation and assistance.