

Notification of Provisional Refusal based on an Ex Officio Examination (to WIPO)

Pursuant to Rule 17(2) of the Common Regulations under the Madrid Agreement concerning the international registration of marks and the Protocol relating to that Agreement.

I. Name and address of the Office making the notification:

Norwegian Industrial Property Office Telephone: +47 22 38 73 00
P.O.Box 8160 Dep., N-0033 OSLO, NORWAY Telefax: +47 22 38 73 01

II. International registration: 1033667 28BLACK

III. Date of Subsequent Designation (if any):(yyyy.mm.dd)

IV. Holder of the international registration:

Calidris 28 AG (SA), 30, Esplanade de la Moselle, LU-6637 WASSERBILLIG, Luxembourg

V. The scope of the refusal:

☐ **Provisional refusal for all goods and/or services**

☒ **Provisional partial refusal for some of the goods - see under X**

VI. Grounds for refusal:

☒ **Absolute grounds: Trademark Act Section 14** - The trademark is considered to be devoid of any distinctive character and/or it can be used in trade to designate the goods in question. The mark consists of the term 28BLACK. Placed on goods such as shoes or clothes the mark may merely be perceived as indicating the size and colour of the shoe or garment. When placed on cosmetics it is likely to be perceived as a product code or colour code which is commonly used on such products. Furthermore, the mark also fails to differentiate between the goods of different suppliers and therefore does not fulfil the function of guaranteeing the origin of the products claimed. Consequently, the mark must be refused.

☐ **Relative grounds:**
Likelihood of confusion with:

VII. The relevant provisions of the Norwegian Trademarks Act are under XII.

VIII. Date of provisional refusal: (yyyy.mm.dd) **2011.02.04**

Response must be received within: (yyyy.mm.dd) **2011.05.04**

See more information under XI about the time limit and which actions you need to take if you want to request a review of the provisional refusal.

IX. Signature by the Office:

THE NORWEGIAN INDUSTRIAL PROPERTY OFFICE

Morten Westlie

(National reference no.: 201003962)

Number of continuation sheets: 2

X. Scope of the provisional refusal in respect of goods:

If the holder does not contest the refusal within 3 months, protection is given for:

Class 32 and 33 as filed

Class 3 limited to: Perfumery, essential oils.

The international registration will be published for protection with the above-reduced list of goods.

Rapid publication of the limited list

If the holder accepts the proposed limitation of the goods/services, and wishes a publication of the mark for these goods/services as soon as possible, he/she may confirm this in writing to The Norwegian Industrial Property Office. If The Norwegian Industrial Property Office does not receive any such confirmation from the holder, the mark will however be published for protection of the limited list of goods/services, after the expiry of all the time limits.

- XI.** The holder of the registration may request a review of the provisional refusal. The Norwegian Industrial Property Office must receive the request no later than 3 months from the date of this provisional refusal (The time limit is indicated under point VIII). Such request must provide an address of correspondence and be filed in Norwegian, Danish, Swedish or English. The Norwegian Industrial Property Office will respond in Norwegian. Please note that if The Norwegian Industrial Property Office, either subsequent to review or appeal, accept the designation of Norway, a post grant opposition may be filed against the mark within 3 months from the publication of the mark.

If the holder does not respond to this provisional refusal within the time limit, the international registration shall be considered abandoned in Norway for the goods/services that are excluded (Trademark Act Section 70 and 23). The international registration shall be resumed if the holder, within two months from the expiration of the time limit responds to the provisional refusal and pays the stipulated fee (NOK 500,-). Please note that The Norwegian Industrial Property Office does not send any notifications to the holder that the international registration is abandoned in Norway.

- XII.** The relevant provisions of the Norwegian Trademarks Act regarding the grounds of this provisional refusal:

§ 2. Signs that may be trademarks

A trademark may consist of any sign capable of distinguishing the goods or services of one undertaking from those of another, such as words and combinations of words, including slogans, names, letters, numerals, figures and pictures, or the shape of the goods, their get-up or their packaging.

A trademark right may not be acquired for signs that consist exclusively of a shape that results from the nature of the goods themselves, is necessary to obtain a technical result or adds substantial value to the goods.

§ 14. General conditions of registration

A trademark to be registered shall consist of a sign which is capable of being protected pursuant to Section 2 and capable of being represented graphically. It shall have distinctive character as a sign for the relevant goods or services.

A trademark cannot be registered if it exclusively, or only with insignificant changes or

additions, consists of signs or indications that:

a) indicate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of the rendering of the services or other characteristics of the goods or services, or

b) constitute customary designations for the goods or services according to normal linguistic usage or to loyal, established business practice.

The conditions in paragraphs one and two shall be met on both the date of application and the date of registration. When assessing a proposed trademark pursuant to paragraph one, sentence two, and paragraph two, it is necessary to take into consideration all circumstances that prevailed on the date of application, in particular effects of use of the trademark prior to this time.

A sign that is used in an industrial or commercial undertaking to indicate the geographical origin of goods or services may, without impediment by the provisions in paragraph two, be registered as a collective mark.