

MADRID AGREEMENT AND PROTOCOL
PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1)

I.	Office making the notification: Ukrainian Institute of Industrial Property 1 Hlazunova str. Kyiv-42, 01601 Ukraine
II.	Number of the international registration: 1038475
III.	Name of the holder: Gimborn Česká republika s.r.o. Do Čertous 2634/7 CZ-193 00 Praha 9 (CZ)
IV.	☒ Provisional refusal based on an <i>ex officio</i> examination ☐ Provisional refusal based on an opposition ☐ Provisional refusal based on both an <i>ex officio</i> examination and an opposition
V.	☐ Provisional refusal for all the goods and/or services ☒ Provisional refusal for the following goods and/or services: Refused for all the goods and services in classes 31 and 35.
VI.	Grounds for refusal: The sign shall not be registered as mark because it is misleadingly similar to marks that were earlier registered in Ukraine on behalf of another person for similar goods or services.
VII.	Information relating to an earlier mark: International registration № 986406 of 21.07.2008 on the name of H. VON GIMBORN GMBH; Albert-Einstein-Strasse 6 46446 EMMERICH (DE) International registration № 1029647 of 27.01.2010 on the name of H. VON GIMBORN GMBH; Albert-Einstein-Strasse 6 46446 EMMERICH (DE)
VIII.	Corresponding essential provisions of the applicable law (see text under XII): Article 6.3.1
IX.	Information relating to subsequent procedure: (i) Time limit for requesting review or appeal: 3 months from the date of the notification of provisional refusal. This period may be extended for no more than 6 months provided that the relevant request is submitted and the fee in connection with the request is paid before the date of expiry of this period. (ii) Indications concerning the appointment of a representative: http://www.sdip.gov.ua/en/attorneys_register_2.html
X.	Date of the notification of provisional refusal: 18.02.2011
XI.	Signature or official seal of the Office making the notification:  Head of the Department of International Trademark Registrations Svitlana Sukhinova

XII. Corresponding essential provisions of the applicable law:

SECTION II
LEGAL PROTECTION OF MARKS

Article 5. Conditions of Granting the Legal Protection

1. The legal protection is granted to a mark that does not contradict the public order, humane and moral principles and is not subject to the refusal of the rights protection according to the grounds defined by this Law.

Article 6. Grounds for Refusal of the Legal Protection

1. According to this Law, the legal protection shall not be granted for marks that represent or imitate:
State armorial bearings, flags, and other state symbols (emblems); official names of States; symbols and abbreviated or full names of international intergovernmental organizations; official control, guarantee, or testing seals, stamps; decorations and other honorary signs.
The said signs may be included in a mark as non-protected elements, provided that the consent of the relevant authorized body or of the sign owners was obtained. The authorized body with respect to the name of a State is the collegial body established by the Office.
2. According to this Law, the legal protection shall not be granted for marks that:
 - 1) are usually devoid of distinguishing capacity and did not obtain such a capacity through their use;
 - 2) consist exclusively of signs that are commonly used as the signs of goods and services of a certain type;
 - 3) consist exclusively of signs or data that are descriptive while using for goods and services defined in the application or with respect to them, in particular signs or data that indicate kind, quality, composition, quantity, properties, purposes, value of goods and services, the place and time of manufacturing or sale of goods or rendering of services;
 - 4) are deceptive or liable to mislead as to goods, services, or the person producing goods or rendering services;
 - 5) consist exclusively of signs that are commonly used symbols and terms;
 - 6) present only the form caused by the natural state of goods, or by the necessity to get a specific technical result, or the form imparting the essential value to the goods.The signs mentioned in Items 1, 2, 3, 5 and 6 of this Paragraph may be used in a mark as non-protected elements if these signs are not dominative in the reproduction of a mark.
3. Signs shall not be registered as marks if they are identical or misleadingly similar to:
 - 1) marks that were earlier registered or filed for the registration in Ukraine on behalf of another person for identical or similar goods and services;
 - 2) marks of other persons if these marks are protected without registration according to the international agreements to which Ukraine is a party, in particular the marks recognized as well-known marks according to Article 6-bis of the Paris Convention for the Protection of Industrial Property;
 - 3) trade names that are known in Ukraine and belong to other persons who have acquired the right to the said names before the date of filing the applications to the Office with respect to identical or similar goods and services;
 - 4) qualified indications of the origin of goods (including alcohols and alcohol drinks) that are protected according to the Law of Ukraine "On the Protection of Rights to Indication of the Origin of Goods"; the said signs may be used only as non-protected elements of the marks of the persons who have the right to use the said indications;
 - 5) conformity marks (certification marks) that have been registered under the determined procedure.

4. Signs shall not be registered if they represent:

- 1) industrial designs, the rights to which in Ukraine belong to other persons;
- 2) titles of scientific, literary, and artistic works known in Ukraine or quotations and characters from the said works as well as the artistic works and their fragments without the consent of copyright holders or their successors in title;
- 3) surnames, first names, pseudonyms and their derivatives, portraits and facsimiles of persons known in Ukraine without their consent.

(151) **21.07.2008**

(180) 21.07.2018

(270) English

(539) per

(732) **H. VON GIMBORN GMBH**

Albert-Einstein-Strasse 6

46446 EMMERICH; DE

(812) EM

(740) **WESTENDORP SOMMER**

Uhlandstr. 2

80336 München; DE

(821) EM, 31.10.2007, 006336267

(832) Ukraine is designated under the Madrid Protocol

(511) **Cl.: 05, 31, 35**

- 05 Pharmaceutical and veterinary preparations; sanitary preparations for medical purposes; dietetic substances adapted for medical and veterinary use; pharmaceutical and medicinal complementary foodstuffs for animals and additives for foodstuffs for animals; vitamin concentrates, protein concentrates, calcium preparations, minerals, trace elements and electrolyte preparations, all for medical purposes and as additives for foodstuffs for animals, all the aforesaid goods in particular for administering to small animals, including rodents, dogs and cats; disinfectants; fungicides; disinfection preparations for household pets and cattle, including in the form of powders, sprays or collars; shampoos and cleaning preparations for animals for medical purposes.

03.01.00	03.01.06	03.01.08	03.05.01
03.07.00	03.07.15	27.05.00	27.05.02
27.05.08	27.05.12	28.05.00	28.11.00

Produits pharmaceutiques et vétérinaires; produits hygiéniques à usage médical; substances diététiques à usage médical et vétérinaire; compléments alimentaires médicinaux et pharmaceutiques pour animaux et additifs pour alimentation animale; concentrés de vitamines, concentrés de protéines, préparations de calcium, minéraux, oligo-éléments et préparations à base d'électrolytes, tous à usage médical et en tant qu'additifs pour alimentation animale, tous les produits précités étant destinés aux petits animaux, y compris rongeurs, chiens et chats; désinfectants; fongicides; produits de désinsectisation pour animaux domestiques et bétail, y compris sous forme de poudres, sprays ou colliers; shampooings et produits de nettoyage pour animaux à usage médical.

Productos farmacéuticos y veterinarios; preparaciones higiénicas para uso médico; sustancias dietéticas especialmente adaptadas para uso médico y veterinario; suplementos alimenticios para animales de uso farmacéutico y médico, así como aditivos para alimentos de animales; concentrados vitamínicos, concentrados proteínicos, preparaciones de calcio, minerales, oligoelementos y preparaciones electrolíticas, todos éstos para uso médico y como aditivos para alimentos de animales, todos los productos antes mencionados son, en particular, para animales pequeños, incluidos roedores, perros y gatos; desinfectantes; fungicidas; preparaciones desinfectantes para animales de compañía y ganado, también en forma de polvos, sprays o collares; champús y preparaciones medicinales para bañar animales.

- 31 Agricultural, horticultural and forestry products and grains, included in this class; live animals, fresh fruits and vegetables, potatoes, and preparations made from these goods being non-medical supplements for foodstuffs for animals; seeds, natural plants and flowers; foodstuffs for animals, including foodstuffs for rodents, dogs, cats, birds and fish, and biscuits, small delicacies and reward snacks; foodstuffs for animals, mixed feed, strengthening feed, rearing feed, mineral feed; complementary foodstuffs for animals and additives for foodstuffs for animals, mineral feed supplements, not for medical purposes; edible toys for animals, in particular chewing bones, digestible chewing bones and sticks for pets, feed supplements not for veterinary purposes; malt; bedding for animals.

Graines ainsi que produits agricoles, horticoles et forestiers, compris dans cette classe; animaux vivants, fruits et légumes frais, pommes de terre et préparations en étant composées, étant des compléments alimentaires non médicaux pour animaux; semences, plantes et fleurs naturelles; aliments pour animaux, y compris aliments pour rongeurs, chiens, chats, oiseaux et poissons, ainsi que biscuits, petites friandises et snacks-récompenses; aliments pour animaux, aliments composés, aliments fortifiants, aliments d'élevage, aliments minéraux; compléments alimentaires pour animaux et additifs pour alimentation animale, compléments alimentaires minéraux, non à usage médical; jouets comestibles pour animaux, notamment os à mâcher, os et bâtonnets digestibles à mâcher pour animaux domestiques, compléments alimentaires pour animaux, autres qu'à usage vétérinaire; malt; litières pour animaux.

Productos agrícolas, hortícolas y forestales y semillas, comprendidas en esta clase; animales vivos, frutas, hortalizas y patatas frescas, así como preparaciones a base de estos productos como suplementos alimenticios no medicinales para animales; semillas, plantas y flores naturales; alimentos para animales, incluidos alimentos para roedores, perros, gatos, pájaros y peces, así como galletitas, pequeñas golosinas y premios; alimentos para animales, alimentos mixtos, alimentos reconstituyentes, alimentos de cría, alimentos minerales; complementos alimenticios y aditivos para alimentos de animales, suplementos alimenticios minerales que no sean para uso médico; juguetes comestibles para animales de compañía, en particular huesos masticables, huesos masticables digeribles y barras masticables para animales de compañía, suplementos alimenticios que no sean para uso veterinario; malta; lechos para animales.

- 35 Advertising, business management, business administration, office functions; sales promotion; retailing of foodstuffs for animals, animal requisites, pet products and products for domestic animals; business management of outlets selling products for animals; online services, namely retail services in relation to animal foodstuffs, animal requisites, pet products, via the

Internet, mail order, catalogues and other media; provision of business advice to customers at the point of sale; sales promotion (for others).

Publicité, gestion d'activités commerciales, administration commerciale, travaux de bureau; promotion des ventes; service de vente au détail d'aliments pour animaux, articles pour animaux, produits pour animaux domestiques et de compagnie; gestion commerciale de points de vente de produits pour animaux; services en ligne, à savoir services de vente au détail d'aliments pour animaux, articles pour animaux et produits pour animaux domestiques par Internet, par correspondance, sur catalogue et autres supports; prestation de conseils commerciaux à la clientèle dans des points de vente; promotion des ventes pour des tiers.

Publicidad, gestión de negocios comerciales, administración comercial, trabajos de oficina; promoción de ventas; venta minorista de alimentos para animales, artículos para animales, productos para animales de compañía y productos para animales domésticos; gestión comercial de tiendas de productos para animales; servicios en línea, a saber, servicios de venta minorista de alimentos para animales, artículos para animales, productos para animales de compañía, por Internet, mediante pedidos por correspondencia, catálogos y otros medios; asesoramiento comercial a clientes en puntos de venta; promoción de ventas (para terceros).

Registration

(450) 2008/50 Gaz, 15.01.2009

(832) BY - RU - **UA**

(580) 25.12.2008

Data as of 31.01.2011

(151) **27.01.2010**

(180) 27.01.2020

(270) English

(300) EM, 29.09.2009, 008581894

(732) **H. VON GIMBORN GMBH**

Albert-Einstein-Strasse 6

46446 EMMERICH; DE

(812) EM

(842) Limited Liability Company, Germany

(740) **WESTENDORP SOMMER**

Uhlandstr. 2

80336 München; DE

(821) EM, 29.09.2009, 008581894

(832) Ukraine is designated under the Madrid Protocol

(511) **Cl.: 31, 35, 44**

pet center

27.03.03

28.11.00

- 31 Agricultural, horticultural and forestry products and grains, included in this class; live animals, fresh fruits and vegetables, potatoes, and preparations made from these goods being non-medical supplements for foodstuffs for animals; seeds, natural plants and flowers; foodstuffs for animals, including foodstuffs for rodents, dogs, cats, birds and fish, and biscuits, small delicacies and reward snacks; foodstuffs for animals, mixed feed, strengthening feed, rearing feed, mineral feed; complementary foodstuffs for animals and additives for foodstuffs for animals, mineral feed supplements, not for medical purposes; edible toys for animals, in particular chewing bones, digestible chewing bones and sticks for pets, feed supplements not for veterinary purposes; malt; bedding for animals.

Graines ainsi que produits agricoles, horticoles et forestiers, compris dans cette classe; animaux vivants, fruits et légumes frais, pommes de terre et préparations en étant composées, étant des compléments alimentaires non médicinaux pour animaux; semences, plantes et fleurs naturelles; aliments pour animaux, y compris aliments pour rongeurs, chiens, chats, oiseaux et poissons, ainsi que biscuits, petites friandises et snacks-récompenses; aliments pour animaux, aliments composés, aliments fortifiants, aliments d'élevage, aliments minéraux; compléments alimentaires pour animaux et additifs pour alimentation animale, compléments alimentaires minéraux, autres qu'à usage médical; jouets comestibles pour animaux, en particulier os à mâcher, os et bâtonnets digestibles à mâcher pour animaux domestiques, compléments alimentaires pour animaux, autres qu'à usage vétérinaire; malt; litières pour animaux.

Productos agrícolas, hortícolas, forestales y granos, comprendidos en esta clase; animales vivos, frutas y hortalizas frescas, patatas y preparaciones elaboradas a partir de estos productos como suplementos no medicinales para alimentos de animales; semillas, plantas y flores naturales; alimentos para animales, incluidos productos alimenticios para roedores, perros, gatos, pájaros y peces, así como galletas, pequeñas golosinas y galletitas de premio; alimentos para animales, piensos compuestos, piensos fortificantes, piensos de cría, piensos minerales; suplementos de alimentos para animales y aditivos de alimentos para animales, suplementos alimenticios minerales, que no sean para uso médico; juguetes comestibles para animales, en particular huesos para masticar, barras y huesos masticables digestibles para animales de compañía, suplementos alimenticios que no sean para uso veterinario; malta; bandejas higiénicas para animales.

- 35 Wholesale and retail of agricultural, horticultural and forestry products and grains, live animals, fresh fruits and vegetables, seeds, natural plants and flowers, Advertising, business management, business administration, office functions; sales promotion; retailing of foodstuffs for animals, animal requisites, pet products and products for domestic animals, including cages for animals, cushions for animals, leashes, toys for pets, litter box for pets, beddings, veterinary products, sanitary products for animals, preparations for destroying vermin; Business management of outlets selling products for animals; online services, namely retail services in relation to animal foodstuffs, animal requisites, pet products, via the Internet, mail order, catalogues and other media; provision of business advice to customers at the point of sale; sales promotion (for others).

Services de vente en gros et au détail de produits agricoles, horticoles, forestiers et grains, animaux vivants, fruits et légumes frais, semences, plantes et fleurs naturelles, publicité, gestion d'activités commerciales, administration commerciale, travaux de bureau; promotion des ventes; service de vente au détail d'aliments pour animaux, articles pour animaux, produits pour animaux domestiques et de compagnie, y compris cages pour animaux, coussins pour animaux, laisse, jouets pour animaux de compagnie, bacs de propreté pour animaux, litières, produits vétérinaires, produits hygiéniques pour animaux, produits pour la destruction des animaux nuisibles; gestion commerciale de points de vente de produits pour animaux; services en ligne, à savoir services de vente au détail d'aliments pour animaux, articles pour animaux et produits pour animaux domestiques par Internet, par correspondance, sur catalogue et autres supports; prestation de conseils commerciaux à la clientèle dans des points de vente; promotion des ventes pour des tiers.

Venta mayorista y minorista de productos agrícolas, hortícolas, forestales y granos, animales vivos, frutas y hortalizas frescas, semillas, plantas y flores naturales, publicidad, gestión de negocios comerciales, administración comercial, trabajos de oficina; promoción de ventas; venta al por menor de alimentos para animales, artículos para animales, productos para animales domésticos y productos para animales domésticos, incluidos jaulas para animales, cojines para animales, correas, juguetes para animales domésticos, lechos higiénicos para animales, ropa de cama, productos veterinarios, productos higiénicos para animales, preparaciones para eliminar animales dañinos; gestión comercial de tiendas de productos para animales; servicios en línea, a saber, servicios de venta minorista de alimentos para animales, artículos para animales, productos para animales de compañía, por Internet, mediante pedidos por correspondencia, catálogos y otros medios; asesoramiento comercial a clientes

en puntos de venta; promoción de ventas (para terceros).

- 44 Services of a veterinary pharmacy; veterinary assistance; animal breeding; veterinary services, veterinary dentistry, hygienic and beauty care for animals.

Services de pharmacies vétérinaires; assistance vétérinaire; élevage d'animaux; services vétérinaires, dentisterie vétérinaire, soins d'hygiène et de beauté pour animaux.

Servicios prestados por una farmacia veterinaria; asistencia veterinaria; cría de animales; servicios veterinarios, servicios de odontología veterinaria, cuidados de higiene y de belleza para animales.

Registration

(450) 2010/7 Gaz, 11.03.2010

(832) BA - BY - CH - HR - ME - RS - RU - **UA**

(580) 04.03.2010

Data as of 31.01.2011