



**Notification of ex officio provisional total refusal of protection (Article 5 of the Madrid Protocol, Rule 17(1) and (2) of the Common Regulations under the Madrid Agreement and Protocol, and to Rule 113 CTMIR)**

Alicante, 13/06/2014

*International registration number:* **1204161**  
*Name of the Holder:* **Bio-tec Biologische Naturverpackungen GmbH & Co. KG**  
*Trade Mark:* **BIOPLAST**

Protection of the above-mentioned mark is provisionally refused for the European Community for **all of the goods and services** covered by the designation.

**I. GROUNDS**

The mark is devoid of any distinctive character (Article 7(1)(b) CTMR);

The mark consists exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services (Article 7(1)(c) CTMR);

The above shall apply notwithstanding that the grounds of non-registrability obtain in only part of the Community (Article 7(2) CTMR).

**II. REASONS**

The trade mark you have applied for is not eligible for registration under Article 7(1) (b) and (c) and Article 7(2) CTMR.

The mark applied for consists of the expression '**BIOPLAST**' and is considered objectionable for:

- Class 1 *Chemicals used in industry, in particular pre-processed products and auxiliary agents for the manufacture of plastics; foaming agents for plastics; unprocessed plastics, in particular biodegradable unprocessed plastics, chemicals used in form of thermoplastically processable granules for pharmaceutical purposes.*
- Class 5 *Sanitary products (included in this class) capsules (filled) for medical purposes (included in this class); pharmaceutical and veterinary products.*

- Class 16 *Plastic materials for packaging (included in this class), in particular packaging material of biodegradable plastic; plastic film for wrapping, in particular film of biodegradable plastic; starch containing packaging material; bags (envelopes, pouches) of paper or plastics, for packaging; waste bags of plastic.*
- Class 17 *Semi-processed plastic substances, including biodegradable plastics, in the form of granules; plastics in extruded form for use in manufacture; rubber envelopes and pouches for packaging; packing, stopping and insulating materials; plastic film, not for wrapping.*
- Class 20 *Packaging containers of plastic, in particular biodegradable plastic; packaging containers for foodstuffs of plastic, in particular biodegradable plastic; plastic tubes.*
- Class 42 *Scientific and technological services and research and design relating thereto; industrial analysis and research services; services of a chemico-physical laboratory for testing and development of biodegradable plastics; scientific and technological consultancy in the field of testing and development of biodegradable plastics.*

The distinctive character of a trade mark must be assessed, first, in relation to the goods or services in respect of which registration of the sign is sought and, second, in relation to the perception of the section of the public targeted, which is composed of the consumers of those goods or services (judgment of 27/11/2003, T-348/02, 'Quick', paragraph 29).

The average consumer's level of attention is likely to vary according to the category of goods or services in question (judgment of 22/06/1999, C-342/97, 'Lloyd Schuhfabrik Meyer', paragraph 26).

Furthermore, when assessing the distinctive character of a trade mark consisting of a combination of elements, the mark needs to be considered as a whole. However, that does not preclude prior examination of the trade mark's individual features (judgment of 09/07/2003, T-234/01, 'Stihl', paragraph 32).

In the present case, the objectionable goods covered by the mark applied for encompass both everyday consumption goods and services and specialised goods and services and are aimed both at average consumers and at a professional public. In view of the nature of the goods and services in question, the awareness of the relevant public will be that of the average consumers in some cases and high in others. Moreover, since the mark 'BIOPLAST' is composed of Czech and Slovak words, the relevant public with reference to which the absolute ground for refusal must be examined is the Czech and Slovak-speaking consumer in the Community (judgment of 22/06/1999, C-342/97, 'Lloyd Schuhfabrik Meyer', paragraph 26; and judgment of 27/11/2003, T-348/02, 'Quick', paragraph 30).

The trade mark consists of the term 'BIOPLAST' with the following meaning:

**BIO** 'bio' (Information extracted from the Multilingual dictionary vícejazyčný slovník, on 12/06/2014, at <http://www.slovník.cz/> and at <http://slovník.azet.sk/preklad/slovensko-anglicky/?q=bio>).

**PLAST** 'Plastic, plastic material' (Information extracted from the Multilingual dictionary vícejazyčný slovník, on 12/06/2014, at <http://www.slovník.cz/> and at <http://slovník.azet.sk/preklad/slovensko->

*anglicky/?q=plast).*

**BIOPLASTIC** Noun ‘type of biodegradable plastic derived from biological substances rather than petroleum.’ (Information extracted from the Oxford English Dictionary, on 12/06/2014, at <http://www.oxforddictionaries.com/definition/english/bioplastic>).

‘moldable plastic material made up of chemical compounds that are derived from or synthesized by microbes such as bacteria or by genetically modified plants. Unlike traditional plastics, which are derived from petroleum, bioplastics are obtained from renewable resources, and they are biodegradable.’ (Information extracted from the Encyclopaedia Britannica Online, on 12/06/2014, at <http://www.britannica.com/EBchecked/topic/1007896/bioplastic>).

An additional definition of ‘bioplastic’ extracted from the online dictionary Whatis.com, extracted on 12/06/2014, is included in annex 1

The relevant Czech and Slovak consumer will understand the term ‘**BIOPLAST**’ as a meaningful term: bioplastic that is, as a type of biodegradable plastic derived from biological substances rather than petroleum.

## 1) **Descriptiveness**

For the purposes of assessing descriptiveness, it must be determined whether the relevant public will make a sufficiently direct and specific association between the expression and the goods/services for which registration is sought (judgment of 20/07/2004, T-311/02, ‘LIMO’, paragraph 30).

Taken as a whole, the term ‘**BIOPLAST**’ immediately informs consumers without further reflection that the goods applied for in Classes 1, 5, 16, 17 and 20 are, are made of or are intended for biodegradable plastics (bioplastics) and that the services in Class 42 are intended for or are specifically concerned with bioplastics.

Therefore, the mark conveys obvious and direct information regarding the kind, intended purpose and other characteristics, such as information on the technical features of the goods and services in question.

It follows that the link between the term ‘**BIOPLAST**’ and the goods and services referred to in the application for registration is sufficiently close for the sign to fall within the scope of the prohibition laid down by Article 7(1)(c) and Article 7(2) CTMR.

## 2) **Lack of distinctive character**

According to the case-law of the Court of Justice, the fact that a sign is composed of generic words that inform the public of a characteristic of the goods and services leads to the conclusion that the sign is devoid of distinctive character (judgment of 19/09/2002, C 104/00 P, ‘DKV’, paragraph 21). This is clearly applicable to the present case.

Given that the mark has a clear descriptive meaning in relation to the goods and services applied for, the impact of the mark on the relevant public will be primarily descriptive in nature, thus eclipsing any impression that the mark could indicate a

trade origin.

Consequently, taken as a whole, the mark applied for – ‘**BIOPLAST**’ – is devoid of any distinctive character and is not capable of distinguishing the goods and services for which registration is sought within the meaning of Article 7(1)(b) and Article 7(2) CTMR.

III. The holder of the international registration is hereby given a time limit of **two months** to overcome the ground for refusing protection indicated. Failure to do so will mean that after expiry of the time limit, the OHIM will render a decision in which it refuses the protection **in whole**. Said decision may be appealed. **The time limit of two months to reply to the present refusal shall start on the day of notification (Rule 112(1)).** Any such reply of the holder of the international registration shall be addressed to the OHIM only.



Isabel DE ALFONSETI HARTMANN

## DEFINITION

## bioplastic



Part of the Personal computing glossary:

A bioplastic is a substance made from organic biomass sources, unlike conventional plastics which are made from petroleum.

Bioplastics are made through a number of different processes. Some use a microorganism to process base materials, such as vegetable oils, cellulose, starches, acids and alcohols.

While almost all bioplastics produce less carbon dioxide in production than conventional plastics, they are not necessarily completely green. The methods by which their base materials are grown and the processing involved both impact their product footprint. Many bioplastics also release carbon dioxide or monoxide when biodegrading. Nevertheless, their overall environmental impact is typically lower than that of conventional plastics, and as oil costs rise, their cost becomes more and more competitive.

Some biodegradable bioplastics can break down in 180 days, given the right conditions. Others are not biodegradable at all. This capacity is desirable, for example, for outdoors applications where longevity and a reduced carbon footprint in production may be the goals.

Bioplastics, like petroleum-based ones, differ in make up to address different needs. The bioplastics used to make disposable cutlery, food containers, grocery bags, electronics casings and conductive bioplastics for electronics are all very different from one another.

Bioplastics were mainly developed in an effort to find a replacement for conventional plastics whose problems include:

- They can take thousands of years to decompose.
- Plastics are a major contributor to landfills and pollution, and especially problematic to sea life.
- Conventional plastics are made from a non-renewable resource, petroleum, which is increasing in cost as it becomes more scarce.
- Toxic and carcinogenic chemicals are used in their production, such as BPA and many other plasticizers.
- Plastics have a large carbon footprint in both production and recycling.

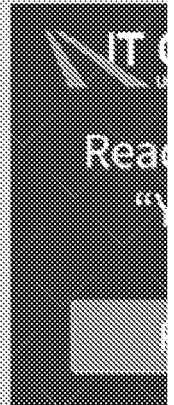
This was last updated in January 2014

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## Browse Definitions

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## Word of the Week

## ransomware

Ransomware is a kidnapping, an e... encrypts the victi... for the ...

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## 20 Newest Terms

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<http://whatis.techtarget.com/definition/bioplastic>