



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

Your Reference:
International Registration No:
WO0000001132742
Examiner: Darren Smith
Direct Telephone: +44(0)1633814264
Date: 03 December 2014

Please reply by **03 February 2015** quoting the International Registration number

Dear Sir/Madam,

Intl Reg No: WO0000001132742
Mark: (Figurative)
Holder: Birkenstock Sales GmbH
Classes: 10, 18, 25

Notification of a Provisional Total Refusal of Protection (not based on an opposition) by the Intellectual Property Office

I have examined your designation under the Trade Marks Act 1994 and carried out a search of the relevant trade mark registers. Your designation does not appear to meet the requirements for Protection for the following reasons.

Absolute grounds for refusal

Section 3(1)(b)

The designation is not acceptable in Classes 10, 18 or 25. There is an objection under Section 3(1)(b) of the Act as the mark is devoid of any distinctive character. This is because the mark consists of a non distinctive pattern that would be perceived by the average consumer as mere decoration when applied to the packaging or surface the goods.

Overcome Objection

The objection relating to Section 3(1)(b) may be overcome if you are able to demonstrate use of the mark being used as a trade mark.

You are requested under Rule 62 of the Trade Mark Rules (2008), to provide examples of how the mark is used, or intended to be used.

Suitable examples may be in the form of leaflets, advertising literature, pamphlets and/or brochures showing the mark. The objection may be reconsidered in light of any examples provided.

Specification too wide

The list of goods are so wide that there is some doubt that the mark is being used, or intended to be used on all the goods applied for. There is therefore an objection under Section 1(1) and 3(1)(a) of the Act which relates to the following term:

Class 18: and goods made from these materials and included in the class.

To overcome this objection, you should list the goods by name and/or restrict them. Alternatively, you should supply information to show that the list of goods accurately describes the range of goods that you are using the mark on, or that you intend to use the mark on.

Next step

If you disagree with my assessment of your designation, you can write or telephone me. My contact details are shown at the top of this letter.

If following this discussion, you still disagree with my findings you have the right to request a hearing with a senior officer to argue against the absolute grounds issues raised. You cannot request a hearing in respect of the earlier trademarks as these are not formal objections.

If your address is outside of the European Community, the Isle of Man or the European Economic Area you must provide us with a contact address in one of the above areas. This can be done by filling in and returning a Form TM33 (Request to appoint an agent or address for service). This form is available at:

ipo.gov.uk/tmforms

If the issues raised in the examination report are not resolved by the date shown above, the designation will be refused under the provisions of Section 37(4) of the Trade marks Act 1994.

Yours faithfully

Darren Smith

Trade Marks Registry