



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET
(TRADE MARKS AND DESIGNS)

OPERATIONS DEPARTMENT

W211

Notification of provisional refusal of protection based on an opposition pursuant to Article 5 of the Madrid Protocol and Rule 17(1) and (2) of the Common Regulations under the Madrid Agreement and Protocol and to Rule 115 CTMIR

Alicante, 04/03/2015

International Registration No: **1203418**
Date of notification to OHIM: **22-05-2014**
Trade mark: **Evod**
Holder: **Shenzhen Kanger Technology Co., Ltd.
Floor 4 B, Plant 5,
Heyu Industrial Park,
Peace Community,
Fuyong Street, Baoan Dist
Shenzhen City**
Opposition number: **2468117**

Protection of the above-mentioned mark is provisionally refused for the European Community.

The provisional refusal is based on the fact that an opposition has been filed against the international registration.

I. The grounds for the opposition are as follows:

Conflict with an earlier mark because of similarity of the goods and services and similarity of the marks concerned, and likelihood of confusion (Article 8 (2) CTMR);

Conflict with an earlier identical or similar trade mark registered for goods or services which are not similar to those for which the international registration is registered, where the earlier mark has a reputation and where the use without due cause of the international registration would take unfair advantage of or be detrimental to, the distinctive character or the repute of the earlier trademark (Article 8(5) CTMR).

II. Name and address of the opposing party:

Nicopure Labs. LLC
5909 NW 18th Dr.
Gainesville Florida 32653
ESTADOS UNIDOS (DE AMÉRICA)

III. The opposition is based on a mark which was the subject of an application or registration.

- type of mark : **international registration**

- filing date, registration date and, if applicable, priority date: **17/05/2013**;
17/05/2013
- filing number and, if different, registration number: **1173444**
- reproduction of the mark: (see annex)
- list of goods and services on which the opposition is based: (see annex)

IV. The provisional refusal relates to

All the goods and services covered by the designation of the EC.

V. The OHIM will notify the opposition separately to the holder of the international registration, including all evidence on which it is based, pursuant to Rule 18(1) CTMIR. The OHIM will set time limits for the holder. The notification will open an (extendable) cooling-off period of two months and a further period of two months for the opponent to substantiate the opposition. The notification will set a time limit of, in principle, six months for the holder of the international registration to submit observations.

The OHIM will also set a time limit of two months for the holder to appoint a representative within the meaning of Article 93(1) CTMR. Protection of the international registration for the European Community will be refused in whole if the holder fails to appoint a representative within the time limit.

Olga VALDELOMAR

Annex: notice of opposition of 5 pages.



OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET (OHIM)

NOTICE OF OPPOSITION

Number of pages (including this one) <input type="text" value="5"/>	Opponent's/representative's reference number (not more than 20 characters) CFS/OB14-1141 Opposition against CTMA <input type="checkbox"/> Opposition against IR <input checked="" type="checkbox"/>	Mod.007										
Opponent												
Name of legal entity or first name and surname Legal form of the entity Tel, fax, e-mail Address Street and number City and postal code Country Postal address (if different) Nationality	ID number <input type="text"/> <input type="checkbox"/> multiple opponents Nicopure Labs. LLC Limited Liability Company 5909 NW 18th Dr. Gainesville, FL 32653 USA US (Florida)											
Representative												
Name Tel, fax, e-mail Address Street and number City and postal code Country Postal address (if different)	ID number <input type="text" value="10095"/> <input type="checkbox"/> multiple representatives WILDBORE & GIBBONS LLP +44 20 300 500 10 +44 20 714 714 20 info@wildbore.eu Sycamore House, 5 Sycamore Street London EC1Y 0SG UNITED KINGDOM											
Type of representative <input type="checkbox"/> legal practitioner <input type="checkbox"/> professional representative <input checked="" type="checkbox"/> association of representatives <input type="checkbox"/> employee												
Challenged application												
CTMA / IR No <input type="text" value="1203418"/> Date of publication (DD/MM/YYYY) <input type="text" value="16 / 05 / 2014"/>												
Name of CTM applicant or IR holder <input type="text" value="Shenzhen Kanger Technology Co., Ltd."/>												
Language of the opposition <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td>ES</td> <td>DE</td> <td>EN</td> <td>FR</td> <td>IT</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input checked="" type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>			ES	DE	EN	FR	IT	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ES	DE	EN	FR	IT								
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>								
Extent of the opposition <input checked="" type="checkbox"/> against all the goods and services in the application <input type="checkbox"/> against part of the goods and services in the application, namely:												
<input type="checkbox"/> continuation sheet(s)												
Payment of fee												
Total € 350												
Current account with OHIM <input checked="" type="checkbox"/> Account No <input type="text" value="00013"/> <input type="checkbox"/> Do not use my current account with OHIM Transfer to account of OHIM <input type="checkbox"/> Banco Bilbao Vizcaya Argentaria <input type="checkbox"/> La Caixa Date of transfer (DD/MM/YYYY) <input type="text" value="/ /"/>		Signature Name <input type="text" value="WILDBORE & GIBBONS LLP - Camilla Sexton (ID 6426)"/> Signature <input type="text" value="Wildbore & Gibbons"/> 20 January 2015										

#TMO07EN



NOTICE OF OPPOSITION

BASIS OF OPPOSITION: TRADE MARK REGISTRATION / APPLICATION

Identification of the earlier mark

☒ Trade mark registration

☐ Trade mark application

☐ Community trade mark

☐ National trade mark

☒ International registration with effect in one or more Member State(s)

Member State(s)

☒ EM
 ☐ BG
 ☐ BX
 ☐ CZ
 ☐ DK
 ☐ DE
 ☐ EE
 ☐ GR
 ☐ ES
 ☐ FR
 ☐ HR
 ☐ IE
 ☐ IT
 ☐ CY
 ☐ LV
 ☐ LT
 ☐ HU
 ☐ MT
 ☐ AT
 ☐ PL
 ☐ PT
 ☐ RO
 ☐ SI
 ☐ SK
 ☐ FI
 ☐ SE
 ☐ UK

Filing date (DD/MM/YYYY)

17 / 05 / 2013

Filing number

1173444

Registration date (DD/MM/YYYY)

17 / 05 / 2013

Registration number

1173444

Representation of the mark (in colour if applicable)

☐ attached

Type of mark

☒ Word mark

EVO

☐ Figurative mark

☐ Other (specify)

Goods and services on which the opposition is based:

☒ all the goods and services covered by the registration / application

☐ part of the goods and services, namely:

☐ continuation sheet(s)

Entitlement of opponent

☒ Owner

Copy of registration / application

☐ attached

☒ to follow

☐ Authorised licensee

Translation

☐ attached

Grounds for opposition

☐ Article 8(1)(a) CTMR - the CTMA IR is identical to the earlier mark and covers identical goods and/or services

☒ Article 8(1)(b) CTMR - there exists a likelihood of confusion on the part of the public

☒ Article 8(5) CTMR - the use without due cause of the contested mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark

Explanation of grounds and other remarks:

EVOD is a confusingly similar trade mark to EVO.

The Opponent claims an enhanced scope of protection for its trade mark EVO through extensive use of it in the EU which has enhanced its distinctiveness

☐ continuation sheet(s)

Territory where the earlier mark has a reputation:

☒ EM
 ☒ BG
 ☒ BX
 ☒ CZ
 ☒ DK
 ☒ DE
 ☒ EE
 ☒ GR
 ☒ ES
 ☒ FR
 ☒ HR
 ☒ IE
 ☒ IT
 ☒ CY
 ☒ LV
 ☒ LT
 ☒ HU
 ☒ MT
 ☒ AT
 ☒ PL
 ☒ PT
 ☒ RO
 ☒ SI
 ☒ SK
 ☒ FI
 ☒ SE
 ☒ UK

Goods and services for which the trade mark has a reputation

☒ all the goods and services covered by the registration / application

☐ part of the goods and services covered by the registration/application, namely:

☐ continuation sheet(s)

Evidence of reputation

☐ attached

☒ to follow

Translation

☐ attached

page number

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Simple search

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MADRID

The International Trademark System

Printed : 16/01/2015

1173444 - Evo

Countries All | Granted | Refusal | Final decision | No longer designated

AU BX CH CN EM GB IL JP KR MX PH RU SG

151 Date of the registration

17.05.2013

160 Expected expiration date of the registration/renewal

17.05.2023

270 Language of the application

English

Current Status

732 Name and address of the holder of the registration

Nicopure Labs, LLC
5909 NW 18th Dr
Gainesville FL 32653 (US)

811 Contracting State of which the holder is a national

US

740 Name and address of the representative

Mark J. Ingber
374 Milburn Avenue,
Suite 301
Milburn NJ 07041 (US)

770 Name and address of the previous holder

Nicopure Labs, LLC
Unit 123
2 Kiel Avenue
Kinnelon NJ 07405 (US)

540 Mark

EVO

541 Reproduction of the mark where the mark is represented in standard characters

511 International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) - NCL(10-2013)

30

Chemical flavorings in liquid form used to refill electronic cigarette cartridges

34

Cartridges acid filled with propylene glycol for electronic cigarettes

821 Basic application

US, 27.11.2012, 85788057

832 Designation(s) under the Madrid Protocol

AU - BX - CH - CN - EM - GB - IL - JP - KR - MX - PH - RU - SG

527 Indications regarding use requirements

GB - SG

Registration : 2013/35 Gaz. 19.09.2013, AU, CH, EM, GB, IL, KR, PH, RU, SG

Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2013/38 Gaz. 10.10.2013, EM

Total provisional refusal of protection : 2013/45 Gaz. 28.11.2013, IL

Partial provisional refusal of protection : 2013/44 Gaz. 21.11.2013, AU

Statement of grant of protection made under Rule 18ter(1) : 2013/49 Gaz. 26.12.2013, GB

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Partial provisional refusal of protection : 2014/9 Gaz. 13.03.2014, SG

Total provisional refusal of protection : 2014/11 Gaz. 27.03.2014, KR

Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2014/26 Gaz. 10.07.2014, IL

Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1) : 2014/25 Gaz. 03.07.2014, AU

Statement of grant of protection made under Rule 18ter(1) : 2014/23 Gaz. 19.06.2014, PH

Statement of grant of protection made under Rule 18ter(1) : 2014/29 Gaz. 31.07.2014, EM

└ EM

450 Publication number and date
2014/29 Gaz. 31.07.2014

Date of receipt by the International Bureau
15.07.2014

Statement indicating the goods and services for which protection of the mark is granted under Rule 18ter(2)(ii) : 2014/37 Gaz. 25.09.2014, AU

Statement of grant of protection made under Rule 18ter(1) : 2014/34 Gaz. 04.09.2014, RU

Statement of grant of protection following a provisional refusal under Rule 18ter(2)(ii) : 2014/39 Gaz. 09.10.2014, IL

Statement of grant of protection made under Rule 18ter(1) : 2014/36 Gaz. 18.09.2014, CH

Subsequent designation : 2014/40 Gaz. 16.10.2014, BX, CN, JP, MX

Confirmation of total provisional refusal under Rule 18ter(2) : 2014/42 Gaz. 30.10.2014, KR

Total provisional refusal of protection : 2015/3 Gaz. 29.01.2015, BX

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MADRID

The International Trademark System

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1173444 - Evo

Australia (AU)

Benelux (BX)

Switzerland (CH)

China (CN)

European Community (EM)

Registration

2013/35 Gaz. 19 09 2013

Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1)

2013/38 Gaz. 10 10 2013

Statement of grant of protection made under Rule 18ter(1)

2014/29 Gaz. 31 07 2014

United Kingdom (GB)

Israel (IL)

Japan (JP)

Republic of Korea (KR)

Mexico (MX)

Philippines (PH)

Russian Federation (RU)

Singapore (SG)

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