



IR 74/2016/W1

MADRID AGREEMENT AND PROTOCOL
MADRIDER ABKOMMEN UND PROTOKOLL

PROVISIONAL REFUSAL OF PROTECTION Rule 17 (1)

VORLÄUFIGE SCHUTZVERWEIGERUNG Regel 17 (1)

I.	Authority pronouncing the refusal: Austrian Patent Office Dresdner Straße 87 A – 1200 Vienna (Austria)	Behörde, die die Schutzverweigerung erlassen hat: Österreichisches Patentamt Dresdner Straße 87 A – 1200 Wien (Österreich)
II.	Number of the international registration: Nr. der internationalen Registrierung:	1 269 362
	Number of the basic registration / application and country of origin: Nr. der Basisregistrierung / -anmeldung und Ursprungsland:	55202 Bulgaria
III.	<input checked="" type="checkbox"/> Provisional refusal based on opposition(s) Vorläufige Schutzverweigerung wegen eines(mehrerer) Widerspruchs(-sprüche)	
IV.	<input checked="" type="checkbox"/> Provisional refusal for all the goods and/or services Vorläufige Schutzverweigerung für alle Waren und/oder Dienstleistungen	
V.	Grounds for refusal Gründe der vorläufigen Schutzverweigerung	
	<input type="checkbox"/> Absolute grounds	
	<input checked="" type="checkbox"/> Opposition(s) by opponent(s): see VI. Eingelangte Widersprüche: siehe VI.	
VI.	Information relating to earlier mark(s) or application(s) Informationen betreffend die ältere(n) Marke(n) oder Anmeldung(en)	
	Type / Registration number / Mark / Filing date / Art / Registernummer / Marke / Anmeldedatum /	
	Word Mark / CTM 11631983 / SENSI / 06.03.2013 Wortmarke / CTM 11631983 / SENSI / 06.03.2013	
	Name and address of the owner(s): Name und Adresse des(der) Inhaber(s):	
	Sensi Vigne & Vini S.R.L. Via Cerbaia, 107 – Fraz. Cerbaia I-51035 Lamporecchio (PT) Italy	
	Name and address of the representative: Name und Adresse des Vertreters:	
	Patentanwälte Mag. Dr. Paul N. Torggler, Dr. Dipl.-Ing. Stephan Hofinger, Mag. Dr. Markus Gangl, MMag. Dr. Christoph Maschler, Dipl.-Ing. (FH) Dr. Bernhard Hechenleitner, Dipl.-Phys. Dr. Almar Lercher Wilhelm-Greif-Str. 16 6020 Innsbruck AUSTRIA	
	Goods and services on which the opposition is based: Waren und Dienstleistungen, auf die sich der Widerspruch stützt:	
	CI 33: Wine; Spirits; Liqueurs; Alcoholic beverages (except beers).	

Type / Registration number / Mark / Filing date /
Art / Registernummer / Marke / Anmeldedatum /

Figurative Mark / CTM 12167409 / K SENSI / 24.09.2013
Wortmarke / CTM 12167409 / 18 K SENSI / 24.09.2013

Name and address of the owner(s):
Name und Adresse des(der) Inhaber(s):

Sensi Vigne & Vini S.R.L.
Via Cerbaia, 107 – Fraz. Cerbaia
I-51035 Lamporecchio (PT)
Italy

Name and address of the representative:
Name und Adresse des Vertreters:

Patentanwälte Mag. Dr. Paul N. Torggler, Dr. Dipl.-Ing. Stephan Hofinger, Mag. Dr. Markus Gangl, MMag. Dr. Christoph Maschler, Dipl.-Ing. (FH) Dr. Bernhard Hechenleitner, Dipl.-Phys. Dr. Almar Lercher
Wilhelm-Greil-Str. 16
6020 Innsbruck
AUSTRIA

Goods and services on which the opposition is based:
Waren und Dienstleistungen, auf die sich der Widerspruch stützt:

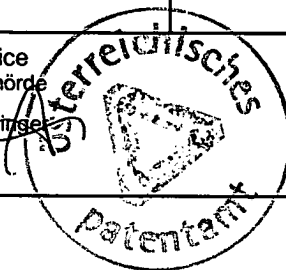
All goods in Cl. 33

☒ see annexes (extract from register or opposition form)
siehe Annex(e) (Auszug aus dem Register oder Widerspruchsformular)

VII. Applicable provisions of the national law (see text last pages)
Anwendbare Bestimmungen des nationalen Gesetzes (siehe Gesetzesauszug auf den letzten Seiten)
Section 29a and the following § 29a ff

VIII. Information relating to subsequent procedure / Information über das weitere Verfahren
Reply/response to the provisional refusal / Äußerung auf die Schutzverweigerung

- (i) Time limit for reply / Äußerungsfrist: **22/05/2016**
- (ii) The appointment of a representative or – if applicable - a person domiciled in Austria and entitled to receive communications is compulsory (Section 61 Subsections 1 and 4 Trade Mark Act).
Die Benennung eines Vertreters oder – sofern anwendbar – eines im Inland wohnhaften Zustellungsbevollmächtigten verpflichtend (§ 61 Abs. 1 und 4 MSchG).
- (iii) The original opposition request(s) and any accompanying documents will then be communicated to the person or representative appointed once a written reply has been received.
Der/die Original-Widersprüche und allfällige Beilagen werden dann an die benannte Person oder den benannten Vertreter zugestellt, sobald eine schriftliche Äußerung eingelangt ist.
- (iv) In case the trademark holder does not file within the time limit set out in (i) a written statement, which fulfills the requirements of (ii), the refusal will be declared final without further proceedings by the Austrian Patent Office. In case of more than one opposition the trademark holder has to submit one written statement responding to each opposition raised, otherwise the opposition, to which the trademark holder does not respond, will be granted in total. The same applies if no response to the absolute grounds raised –if applicable- has been submitted. Within the time limit set out in (i) the holder of the trademark also has the opportunity to request the opponent/s to furnish proof of use of the trademark/s the opposition/s is/are based on (§ 29 b (3) MSchG). The written statement and any attachment/s shall be accompanied by copies corresponding to the number of oppositions raised.
Bringt der Markeninhaber der angegriffenen Marke innerhalb der unter (i) gesetzten Frist keine schriftliche Äußerung, die die Vorgaben aus (ii) erfüllt, ein, so hat das Österreichische Patentamt ohne weiteres Verfahren die endgültige Schutzverweigerung zu verfügen. Im Falle von mehreren Widersprüchen muss sich der Markeninhaber in einem gemeinsamen Schriftsatz erkennbar zu jedem der zugestellten Widersprüche inhaltlich äußern, andernfalls wird einem Widerspruch, auf welchen keine Äußerung des Markeninhabers erfolgt ist, im vollen Umfang stattgegeben. Innerhalb der in (i) genannten Frist hat der Markeninhaber auch die Möglichkeit, den Widersprechenden aufzufordern, den Nachweis der Benutzung für die Widerspruchsmarke/n zu erbringen (§ 29 b Abs. 3 MSchG). Der schriftlichen Äußerung und allfälligen Beilagen sind Kopien in der entsprechenden Anzahl der Widersprüche anzuschließen.
- (v) Authority to address the reply: see I.

Behörde, an die die Äußerung zu richten ist: siehe I.	
IX. Date of provisional refusal Datum der vorläufigen Schutzverweigerung 22/02/2016	Number of Annexes: Zahl der Anhänge: 2
X. Signature or official seal of the Office Unterschrift oder Amtsstempel der Behörde Rechtskundiges Mitglied Katrin Aichinger 	
XI. Supplementary information Zusätzliche Information Data concerning the trademark(s) cited as base for opposition may be found using the following links: Registerdaten der Widerspruchsmarke(n) finden Sie unter: http://www.patentamt.at http://www.wipo.int/ipdl/en/madrid http://oami.europa.eu/CTMOnline/RequestManager/de_SearchBasic	
XII. I. Corresponding essential provisions of the applicable law: Austrian Trade Mark Act (Federal Law Gazette No. 260/1970 in its current version / Bundesgesetzblatt Nr. 260/1970 idgF) Section 1 A trade mark may consist of any sign capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings. Section 4 (1) Excluded from registration shall be signs which 1. consist exclusively (a) of state coats of arms, national flags or other national emblems or of the coats of arms of Austrian provincial or local authorities; (b) of official certification or guarantee signs which are used in Austria or – pursuant to a notice to be published in the Federal Law Gazette (Section 6 subsection 2) – in a foreign state, for the same goods or services as those for which the mark is intended for, or for similar goods or services; (c) of signs of international organizations to which a member state of the Paris Union for the Protection of Industrial Property belongs, provided the signs have been promulgated in the Federal Law Gazette. The last sentence of Section 6(2) shall apply to such promulgation; 2. cannot constitute a trade mark in accordance with Section 1; 3. are devoid of any distinctive character; 4. consist 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; 5. consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade to designate the good or service; 6. consist exclusively of the shape which results from the nature of the goods themselves, or of the shape of goods which is necessary to obtain a technical result, or of the shape which gives substantial value to the goods; 7. are contrary to public policy or to accepted principles of morality; 8. are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the good or service; 9. contain or consist of a geographical indication identifying wines and intended for wines which do not have that origin, or identifying spirits and intended for spirits which do not have that origin. (2) Registration shall, however, be admissible in the cases of subsection 1 clauses 3, 4 and 5, if the sign has acquired a distinctive character in Austria in the circles concerned following the use which has been made of it prior to application. Section 29a (1) Within a period of three months following the date of publication of the registration of a mark (Section 17 subsection 5), opposition to this registration may be raised. It shall only be based on a mark fulfilling the conditions of Section 30 subsection 1. The same applies for applications subject to their registration. (2) In case of registration of a mark under the Madrid Agreement concerning the international registration of marks, Federal Law Gazette No. 400/1973 and under the Protocol relating to the Madrid Agreement concerning the international registration of marks, Federal Law Gazette No. 32/1999, the publication in the gazette, issued by the International Bureau of the World Intellectual Property Organization, replaces the publication referred to in subsection 1. The opposition period starts on the first day of the month following the month the gazette has been issued, in which the publication of the international registration is contained. (3) The substantiated opposition must be received by the Patent Office at the last day of the time period at the latest. It shall be filed	

in writing and along with all attachments also in duplicate.

(4) ...

(5) ...

(6) The opportunities to file a request for cancellation with the Cancellation Department remain unaffected.

Section 29b

(1) Upon expiration of the opposition period the owner of the mark shall be informed about all oppositions timely received and be invited to submit a written reply within a reasonable period of time which may be extended upon justified reasons. Within this period, the trademark holder has the possibility to request the opponent/s to furnish proof of use of the trademark/s the opposition/s is/are based on according to section 29b subsection 3. If the owner of a contested mark does not file a written statement within the time limit, the relevant legal department shall, in accordance with the request, without any further proceedings order the total or partial invalidity of the mark, even if the opposition is based on an application not registered yet at the date the decision is taken. The provisions for the cancellation procedures in section 35 subsection 5 shall apply mutatis mutandis unless otherwise indicated hereinafter.

(2) ...

(3) If opposition is based on a mark which, at the date of the registration of the mark opposed, has been registered more than 5 years ago, the opposition shall only be granted if, following a request by the owner of the mark opposed, satisfactory evidence is provided within a reasonable period of time that the conditions for cancellation of Section 33a (no genuine use) do not apply. If within the period of 2 months following the transmittal of the documents presented to furnish evidence of genuine use the owner of the mark files a request for cancellation based on Section 33a with the competent authorities directed at the mark of the opponent and, within a reasonable period of time, furnishes evidence about this fact the opposition procedure shall be adjourned and resumed ex officio or upon request after the decision in the cancellation procedure has become final.

(4) ...

(5) ...

(6) As far as a mark has been finally declared invalid, or, as far as, following ex officio legal examination (Section 20), protection of an international registration has been refused finally, or, as far as a mark has been cancelled based on a final decision concerning a request to the Cancellation Department with retroactive effect to the beginning of the period of protection, a pending opposition to the mark shall be deemed settled to the respective extent and the parties shall be informed about this fact. The opposition procedure shall be closed in the same manner if during the pendency of the opposition procedure the procedure to register the application, the opposition is based on, is closed without leading to registration, or, if the mark, opposition is based on, finally loses protection in Austria.

(7) Costs of the opposition procedure shall be borne by each party on its own.

Section 30 subsection 1

(1) The owner of an earlier mark being still valid may request the cancellation of a mark provided that either

1. the two marks and the goods and services the marks are registered for are identical,

or

2. the two marks and the goods and services the marks are registered for are identical or similar so that there exists a likelihood of confusion on the part of the public which includes the likelihood of association with the earlier mark.

Section 61 subsections 1 and 4

(1) Anyone acting as representative before the Patent Office or the Supreme Patent and Trademark Senate shall have his domicile or principal place of business in Austria; in regard to attorneys at law, patent attorneys and notaries public though the respective professional regulations shall apply. The representative shall demonstrate his authorisation by a written power of attorney which shall be presented in original version or by way of a duly certified copy. If several individuals are authorised collectively, each of them shall also be authorised to represent individually.

(4) A person having neither domicile nor principal place of business in Austria may claim rights under this Federal Act before the Patent Office only, when being represented by a representative fulfilling the requirements of subsection 1. Before the Cancellations-Department of the Patent Office such persons may only claim rights when being represented by an attorney at law, a patent attorney or a notary public. If domicile or principal place of business are within the EEA or in the Swiss Confederation the appointment of a person domiciled in Austria and authorized to receive communications will suffice to claim rights under this Federal Act.



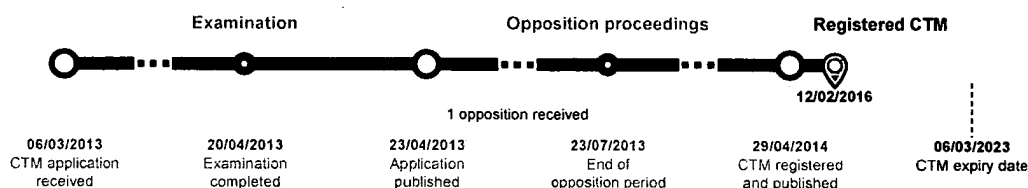
**OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET**
(TRADE MARKS AND DESIGNS)

Protect your intellectual property in the European Union

CTM file information

SENSI
011631983

Timeline



Graphic representation

SENSI

Trade mark information

Name	SENSI	Filing date	06/03/2013
Filing number	011631983	Registration date	25/04/2014
Basis	CTM	Expiry date	06/03/2023
Date of receipt	06/03/2013	Designation date	
Type	Figurative	Filing language	Italian
Nature	Individual	Second language	French
Nice classes	29, 33, 35 (Nice Classification)	Application reference	DOTT.FC2013/16/COM
Vienna Classification	27.05.01 (Vienna Classification)	Trade mark status	Registered
		Acquired distinctiveness	No

Goods and services

English (en)



29 Olive oil for food.

33 Wine; Spirits; Liqueurs; Alcoholic beverages (except beers).

35 Services carried out for and/or on behalf of others in the advertising and business sectors; Public relations and market research; Advertising and promotion for the marketing of wines, spirits, aperitifs and liqueurs.

Description

English (en)



Description The trademark consists of the word "SENSI" written in fanciful letters.
Colour

Owners

SENSI VIGNE & VINI S.R.L.

ID	587494	Country	IT - Italy	Correspondence address	
Organisation	SENSI VIGNE & VINI S.R.L.	State/country	n/a	SENSI VIGNE & VINI S.R.L. VIA CERBAIA, 107 - FRAZ. CERBAIA	Can be accessed and changed by authorised user via the User Area
Legal status	Legal entity	Town	LAMPORECCHI (PT)	I-51035 LAMPORECCHIO (PT) ITALIA	
		Post code	51035		Can be accessed and changed by authorised user via the User Area
		Address	VIA CERBAIA, 107 - FRAZ. CERBAIA		Can be accessed and changed by authorised user via the User Area

Representatives

DOTT. FRANCO CICOGLA & C.SRL

ID	14838	Country	IT - Italy	Correspondence address	
Organisation	n/a	State/country	n/a	DOTT. FRANCO CICOGLA & C.SRL	00 39-0276000209
Legal status	Legal person	Town	Milano	Via Visconti di Modrone, 14/A	00 39-0276009604
Type	Association	Post code	20122	I-20122 Milano ITALIA	
		Address	Via Visconti di Modrone, 14/A		ufficio@brevetticicogna.com

Correspondence

	From	Procedure	Filing number	Subject	Date	Actions
		CTM	011631983	Surveillance letter	19/10/2015	
		CTM	011631983	Surveillance letter	17/02/2015	
		Recordal	009241111	C.2.1. - Representative - change of name & address - entry on the register - automatic template	12/02/2015	
		CTM	011631983	Cover letter for registration certificate.	30/04/2014	
		CTM	011631983	Certificate of Registration	29/04/2014	

	From	Procedure	Filing number	Subject	Date	Actions
		Opposition	002222928	Notification to opponent following withdrawal of opposition after commencement of adversarial part (no limitation).	23/04/2014	
		Opposition	002222928	Notification to applicant/holder conclusion of opposition proceedings following withdrawal of the opposition (no limitation).	23/04/2014	
		Opposition	002222928	Letter to OHIM	03/04/2014	
		Opposition	002222928	Suspension of proceedings - to the opponent.	06/02/2014	
		Opposition	002222928	Suspension of proceedings - to the applicant.	06/02/2014	
Showing 1 to 10 of 27 entries						

IR transformation

No entry

Seniority

No entry

Exhibition priority

No entry

Priority

No entry

Publications

Publication number	Date	Section	Description
2013/076	23/04/2013	A.1	Applications published under article 40 CTMR
2014/079	29/04/2014	B.2	Registrations with amendments since the application was published
2015/031	16/02/2015	C.2.1	Representative - Change of name and professional address
Showing 1 to 3 of 3 entries			

Cancellation

No entry

Recordals

Publication number	Date	Section	Filing number	Title	Subtitle
2015/031	16/02/2015	C.2.1	009241111	Representative	Change of name and professional address
Showing 1 to 1 of 1 entries					

Oppositions

Filing number	Date	Grounds	Opponent	Representative	Language	Reference	Status	Extent of opposition
002222928	23/07/2013	Likelihood of confusion	Sensi Seed B.V.	V.O.	French	DOTT.FC2013/16/COM	Withdrawn	Class 35 Activité, pour le compte de tiers et/ou en faveur de tiers, dans le secteur de la publicité et des affaires; Activité de

Filing number	Date	Grounds	Opponent	Representative	Language	Reference	Status	Extent of opposition
								relations publiques et d'étude de marché; ACTIVITE CONSISTANT EN LA PUBLICITE ET LA PROMOTION DE LA COMMERCIALISATION DE VINS, DE SPIRITUEUX, D'APERITIFS ET DE LIQUEURS. Class 29 Huile d'olive comestible. Class 33 Vins; Spiritueux; Liqueurs; Boissons alcoolisées à l'exception des bières.

Showing 1 to 1 of 1 entries

Appeals

No entry

Decisions

No entry

Renewals

No entry

Trade mark relations

No entry



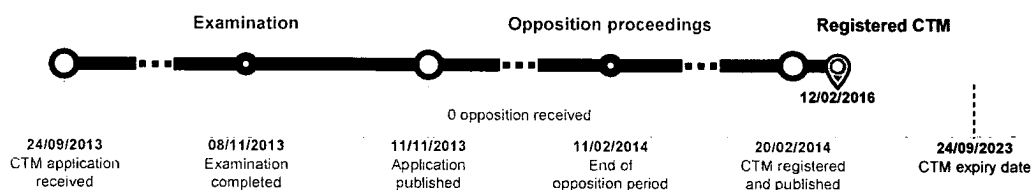
**OFFICE FOR HARMONIZATION
IN THE INTERNAL MARKET**
TRADE MARKS AND DESIGNS

Protect your intellectual property in the European Union

CTM file information

18 K SENSI
012167409

Timeline



Trade mark information

Name	18 K SENSI	Filing date	24/09/2013
Filing number	012167409	Registration date	18/02/2014
Basis	CTM	Expiry date	24/09/2023
Date of receipt	24/09/2013	Designation date	
Type	Word	Filing language	Italian
Nature	Individual	Second language	French
Nice classes	33 (Nice Classification)	Application reference	DOTT.AT2013/102/COM
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	No

Goods and services

English (en) ☒

33 Wine; Alcoholic aperitifs; Sparkling wine; Liqueurs and alcoholic beverages (except beers).

Description

No entry

Owners

SENSI VIGNE & VINI S.R.L.

ID	587494	Country	IT - Italy	Correspondence address	
Organisation	SENSI VIGNE & VINI S.R.L.	State/country	n/a	SENSI VIGNE & VINI S.R.L. VIA CERBAIA, 107 - FRAZ. CERBAIA	Can be accessed and changed by authorised user via the User Area
Legal status	Legal entity	Town	LAMPORECCHI (PT)	I-51035 LAMPORECCHIO (PT) ITALIA	Can be accessed and changed by authorised user via the User Area
		Post code	51035		
		Address			

VIA CERBAIA,
107 - FRAZ.
CERBAIA

Can be accessed and
changed by authorised user
via the User Area

Representatives

DOTT. FRANCO CICOGNA & C.SRL

ID	14838	Country	IT - Italy	Correspondence address	00 39-0276000209
Organisation	n/a	State/county	n/a	DOTT. FRANCO CICOGNA & C.SRL	
Legal status	Legal person	Town	Milano	Via Visconti di Modrone, 14/A	00 39-0276009604
Type	Association	Post code	20122	I-20122 Milano	
		Address	Via Visconti di Modrone, 14/A	ITALIA	ufficio@brevetticicogna.com

Correspondence

	From	Procedure	Filing number	Subject	Date	Actions
		CTM	012167409	Surveillance letter	19/10/2015	
		Recordal	009241111	C.2.1. - Representative - change of name & address - entry on the register - automatic template	12/02/2015	
		CTM	012167409	Cover letter for registration certificate.	21/02/2014	
		CTM	012167409	Certificate of Registration	20/02/2014	
		CTM	012167409	Search report transmitted (Article 38(1) and (6))	02/10/2013	
		CTM	012167409	Application form and attachment	24/09/2013	

Showing 1 to 6 of 6 entries

IR transformation

No entry

Seniority

No entry

Exhibition priority

No entry

Priority

Country	Filing number	Date	Status
Italy	MI2013C006484	28/06/2013	Accepted

Showing 1 to 1 of 1 entries

Publications

Publication number	Date	Section	Description
2013/214	11/11/2013	A.1	Applications published under article 40 CTMR

Bulletin number	Date	Section	Description
2014/034	20/02/2014	B.2	Registrations with amendments since the application was published
2015/031	16/02/2015	C.2.1	Representative - Change of name and professional address
Showing 1 to 3 of 3 entries			

Cancellation

No entry

Recordals

Bulletin number	Date	Section	Filing number	Title	Subtitle
			008064720	Representative	Replacement of representative
2015/031	16/02/2015	C.2.1	009241111	Representative	Change of name and professional address
Showing 1 to 2 of 2 entries					

Oppositions

No entry

Appeals

No entry

Decisions

No entry

Renewals

No entry

Trade mark relations

No entry