

**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 Rule 113 EUTMR)**

Alicante, 11/04/2016

*International registration number:* **1293468**  
*Name of the holder:* **Centoventipercento S.r.l.**  
*Trade mark:* **120 % cashmere**

Protection of the abovementioned mark is provisionally refused for the European Union for all the goods and services covered by the designation of the European Union.

**I. Grounds**

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

The mark applied for consists of the expression “120 % cashmere” and is considered objectionable for:

- 24 *Textile goods, namely bed sheets; bed blankets; bed linen; cushion covers; sheets.*
- 25 *Clothing; namely; coats; trench coats; mantles; raincoats; overcoats; greatcoats; dusters; cloaks; stoles; dresses; gowns; suits; skirts; jackets; winter jackets; wind jackets; knitwear; namely; knit jackets; knitted caps; knitted gloves and polo knit tops; trousers; shorts sets; Bermuda shorts; pants; waistcoats; shirts; polo shirts; T-shirts; tops; blouses; jerseys; sweaters; vests; cardigans; stockings; socks; underpants; night gowns; shifts; pajamas; singlets; petticoats; clothing articles for children; sport overalls; sport jackets; blazers; anoraks; ties; neckties; scarves; shawls; mufflers; foulards; gloves; sashes; belts; headwear; hats; hoods; caps; berets; top hats; footwear; boots; slippers.*

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 are everyday consumption goods and are mainly aimed at the average public whose awareness is that of the average consumer who is reasonably well-informed and reasonably observant and circumspect.

Moreover, since the mark “120 % cashmere” consists of English words, the relevant public with reference to which the absolute ground for refusal must be examined is the English-speaking consumer in the Union (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 expression “120 % cashmere” with the following meanings:

120 the cardinal number that is the product of ten and twelve  
(information extracted from Vocabulary.com Dictionary on 05/04/2016  
at  
<https://www.vocabulary.com/dictionary/120> )

PERCENT for or out of every 100, shown by the symbol %  
(information extracted from Cambridge Dictionaries Online  
on 05/04/2016 at  
<http://dictionary.cambridge.org/dictionary/english/percent?a=british>)

CASHMERE                      very soft, expensive wool material that is made from the  
hair of goats from Kashmir  
(information extracted from Cambridge Dictionaries Online  
on                                  05/04/2016                                  at  
<http://dictionary.cambridge.org/dictionary/english/cashmere?a=british> )

The relevant consumer will understand the expression applied for as a meaningful expression: extremely soft wool material.

For a finding that there is no distinctive character, it is sufficient that the semantic content of the word mark indicates to the consumer a characteristic of the goods relating to their market value which, whilst not specific, comes from promotional or advertising information which the relevant public will perceive first and foremost as such, rather than as an indication of the commercial origin of the goods (judgment of 30/06/2004, T-281/02, 'Mehr für Ihr Geld', paragraph 31).

The relevant public would perceive the expression “120 % cashmere” as a promotional laudatory message, the function of which is to communicate a value statement. Moreover, whilst accepting that a mark may be understood as both a promotional formula and an indication of commercial origin, in the present case the relevant public will not tend to perceive in the sign any particular indication of

commercial origin beyond the promotional information conveyed, which merely serves to highlight positive aspects of the goods concerned, namely that they are textiles and items of clothing that are extremely soft, softer than normal (judgment of 21/01/2010, C-398/08 P, 'Audi', paragraph 45; and judgment of 12/07/2012, C-311/11 P, 'Smart Technologies', paragraph 34).

There is nothing about the expression "120 % cashmere" that might, beyond its obvious promotional laudatory meaning, enable the relevant public to memorise the sign easily and instantly as a distinctive trade mark for the goods in question (judgment of 05/12/2002, T-130/01, 'REAL PEOPLE, REAL SOLUTIONS', paragraph 28).

Although the mark applied for contains certain figurative elements that confer upon it a degree of stylisation, these elements are so minimal in nature that they do not endow the trade mark applied for as a whole with any distinctive character. Those elements do not possess any feature, as regards the way in which they are combined, that allows the mark to fulfil its essential function in relation to the goods and services covered by the trade mark application (judgment of 15/09/2005, C-37/03 P, 'BioID', paragraph 74).

Consequently, taken as a whole, the mark applied for – 120 % cashmere – is devoid of any distinctive character and is not capable of distinguishing the goods for which registration is sought within the meaning of Article 7(1)(b) EUTMR and Article 7(2) EUTMR.

If you have any observations, they should be submitted within two months from the notification of this communication. If you do not submit any observations, the application will be rejected.

## **II.**

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 EUIPO will render a decision in which it refuses the protection in whole or in part. Said decision may be appealed. The time limit of two months to reply to the present refusal will start on the day the present notification was issued by the EUIPO (Article 154(2), (3) and (4) EUTMR). Any such reply of the holder of the international registration shall be addressed to the EUIPO only.

**Vinciane VAN DER MAESEN**