

Model Form 3

MADRID AGREEMENT AND PROTOCOL
PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1)

This form is to be used in the following situation: the Office considers that protection cannot be granted in the Contracting Party concerned (ex officio provisional refusal) or protection cannot be granted in the Contracting Party concerned because an opposition has been filed, or both. In due course, once all the procedures before the Office have been completed, the Office shall send to the International Bureau a statement regarding the final disposition on the status of the mark, using Model Forms 5 or 6, as the case may be.

I.	Office making the notification: Montenegrin Intellectual Property Office Rimski trg 46, 81000 Podgorica, Montenegro Tel: 00382 20 234 591, Fax: 00382 20 234 592
II.	Number of the international registration: IR 1290457
III.	Name of the holder (or other indication enabling the identity of the international registration to be confirmed): Ilona Olejniczak Stare Bielice 142c-2 PL-75-039 Biesiekierz (PL)
IV.	☐ Provisional refusal based on an <i>ex officio</i> examination ☒ Provisional refusal based on an opposition ¹ ☐ Provisional refusal based on both an <i>ex officio</i> examination and an opposition ¹
V.	☒ Provisional refusal for all the goods and/or services ☐ Provisional refusal for some of the goods and/or services

¹ The name and address of the opponent should also be provided.

VI. Grounds for refusal [(where applicable, see item VII)]:

Trademark Law (the Official Gazette of Montenegro No. 72/2010, 44/2012 and 18/2014),
Relative grounds for refusal - article 7, par.1, p. 2; par. 2, p. 1 and 3; par. 6
Articles 31 and 50a
Article 6bis of the Paris Convention

VII. Information relating to an earlier mark² :

- (i) Filing date and number, and, if any, priority date: AT, 27.09.2007, AM6723/2007
AT, 26.05.2010, AM3152/2010
- (ii) Registration date and number (if available): 19.03.2008, IR 961854
18.11.2010, IR 1064924
- (iii) Name and address of the owner: Red Bull GmbH
Am Brunnen 1
A-5330 Fuschl am See (AT)
- (iv) Reproduction of the mark:

IR 961854

RED BULL

IR 1064924

BULL
- (v) List of all or relevant goods and/or services: Class 32: energy drinks.

VIII. Corresponding essential provisions of the applicable law [(see text under XII)]:

IX. Information relating to subsequent procedure:

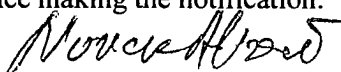
- (i) Time limit for requesting review or appeal:
If the opposition has been preliminary refused under the opposition on international trademark registration, the competent authority shall notify in writing the holder of internationally registered trademark about preliminary refusal and invite him / her to nominate the representative who shall, within four months from the date of the notification of refusal, submit a power of attorney.
A copy of opposition shall be submitted to the representative upon the submission of the power of attorney.
The deadline for declaration onto the opposition shall be 60 days from the date of receipt of a copy of opposition by the representative.

² Where the grounds on which the provisional refusal is based relate to an earlier mark, as indicated under item VI. The indication required under this item may be given by annexing a printout from the register or database.

- (ii) Authority to which such request for review or appeal should be made: Montenegrin Intellectual Property Office, Rimski trg 46, 81000 Podgorica, Montenegro
- (iii) Indications concerning the appointment of a representative: a domestic representative from Montenegro, the list can be found at: <http://www.advokatskakomora.me/>

X. Date of the notification of provisional refusal:
05.07.2016.

XI. Signature or official seal of the Office making the notification:



XII. Corresponding essential provisions of the applicable law:

II. REGISTRATION PREREQUISITES

Relative Grounds for Refusal of a Trademark Registration Based on Earlier Trademarks

Article 7

Based on an opposition a trademark shall not be registered:

1) Should such trademark be identical to an earlier registered trademark for the same type of goods and/or services for which the new registration is applied for;

2) Should, because of its identity or similarity with goods and/or services covered by the trademark, there exists a likelihood of confusion on the part of the public due to the likelihood of associating with the earlier trademark;

An earlier trademark referred to in paragraph 1 of the present Article shall be considered:

1) A trademark registered in Montenegro which enjoys priority right stipulated in Articles 22, 23 and 24 of the present Law;

2) A trademark registered on the basis of ratified international treaties effective in Montenegro;

3) A trademark which is notorious and/or well-known in Montenegro on the day of application for the registration of a trademark or on the day of priority right, if the priority has been claimed, pursuant to Article 6^{bis} of the Paris Convention.

An earlier trademark shall be also understood to include a an application for the registration of a trademark referred to in paragraph 2 items 1 and 2 of the present Article, provided that it becomes registered.

In establishing whether the mark referred to paragraph 2 item 3 of the present Article is a well known mark, the familiarity of the relevant part of the public with the mark shall be taken into account, including their familiarity with the mark as a consequence of mark-related marketing activities.

The relevant part of the public shall be understood to mean actual and potential users of goods and/or services designated by such mark, as well as the persons involved in the process of distribution and trade of the respective goods and/or services.

Based on an opposition a new trademark for which the registration application has been filed shall not be registered if such trademark is identical or similar to an earlier trademark which has reputation in Montenegro, and the registration of goods and/or services has been sought which are not similar to those goods and/or services for which the previous trademark has been registered, should the utilization of such trademark be detrimental to the reputation of the earlier registered trademark.

Opposition against Trademark Registration

Article 31

An opposition against the registration of a trademark due to reasons referred to in Articles 7 and 8 of the present Law shall be filed with the competent authority within a time period of ninety days from the date of publication of an application in the Official Gazette.

Opposition referred to in paragraph 1 of the present Article may be filed by the holder of the earlier trademark or acquirer of the license, based on the authorization of the trademark holder.

If the procedure for the removal of earlier trademark or for invalidating the trademark has been initiated before a competent court, the competent authority shall stay the opposition examination procedure until the court decision has become final.

The time limit for filing the opposition referred to in paragraph 1 of the present Article shall not be subject to extension.

The opposition referred to in paragraph 1 of the present Article shall be subject to the payment of administrative fees.

Opposition of international trademark registration

Article 50 a

Publication of international trademark registration in the Gazette of the International Bureau of the World Intellectual Property Organization shall be deemed as publication of the trademark application in Montenegro.

The time limit for submission of the opposition starts from the first day in the month following the month designated in the edition of the Gazette of the International Bureau of the World Intellectual Property Organization in which such international trademark registration has been published.

If the opposition has been preliminary refused under the opposition on international trademark registration, the competent authority shall notify in writing the holder of internationally registered trademark about preliminary refusal and invite him / her to nominate the representative who shall, within four months from the date of the notification of refusal, submit a power of attorney.

A copy of opposition shall be submitted to the representative upon the submission of the power of attorney.

The deadline for declaration onto the opposition shall be 60 days from the date of receipt of a copy of opposition by the representative.