

DECISIONS OF THE QUARTER

Important Decisions of the Boards of Appeal
December 2017 - February 2018

Christoph Bartos

Member, Boards of Appeal - EUIPO

Menu

- A. Procedural Questions
- B. Absolute Grounds for Refusal
- C. Relative Grounds for Refusal
- D. Proof of use
- E. My New Number

My new number

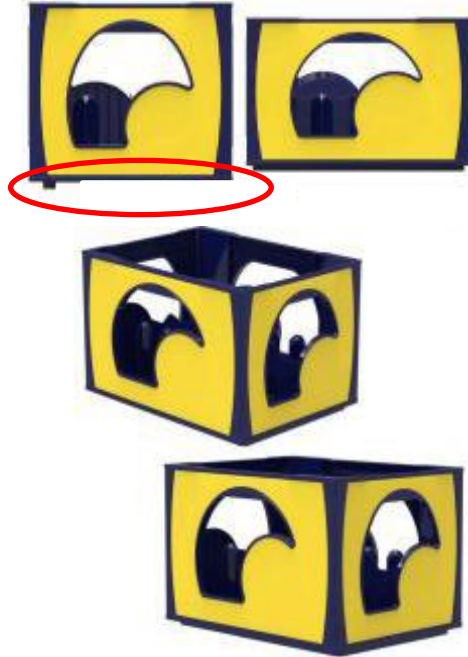
33123

A. Procedural Questions

Correction of the application

R0820/2017-2

Sign filed



Sign after correction

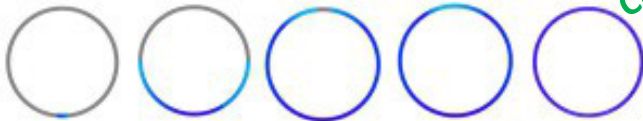
Acceptable



Clear and Precise

R0820/2017-2

EUTMA



Description:

The mark consists of a motion mark consisting of a flowing circular blue ring. The colour(s) blue is/are claimed as a feature of the mark. The white circular disc inside the ring is not claimed as a feature of the mark, and is intended to show background only.

Cl. 9, 35, 41, 42, 45

Clear and Precise

R 0200/2017-2

EUTMA



Neither Clear nor precise

Description:

The colour orange is applied to the top of the housing of the chainsaw and the colour grey is applied to the bottom of the housing of the chainsaw



Cl. 7

Admissibility of the appeal

R2198/2016-4

Facts

- Opposition filed by party 'A'
- 07/09/2016: request to transfer opposing trade mark from 'A' to 'B'
- 30/09/2016: Opposition Division renders decision against 'A'
- 29/11/2016: 'A' files Notice of Appeal
- 09/12/2016: transfer of opposing trade mark to 'B' registered
- 13/12/2016: publication of transfer in EUTM Bulletin
- 30/01/2017: Statement of Grounds filed by 'A'

no locus standi

Belated facts and evidence

R2421/2016-4

Facts

- Request to submit proof of use (Revocation)
- No proof of use submitted
- Together with Statement of Grounds, proof of use submitted

Evidence submitted is belated

My new number

18/12/1997

B. Absolute Grounds for Refusal?

Images and photographs

R 2063/2016-4

EUTMA



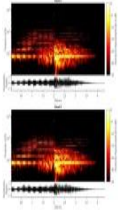
Distinctive – Not descriptive

Cl. 3, 9, 14, 16, 18, 25, 35, 41, 42, 44

What is banal?

R2059/2016-4

EUTMA



Cl. 9, 10, 25, 28



Not Distinctive

R0087/2014-5

EUTMA



Cl. 9, 16, 35, 36, 41, 42



Example of a distinctive sound

Russian

R1311/2017-5

EUTMA

Ромашка

*Descriptive
for 'tea' & 'tea-based beverages'*

EN: Camomile

Cl. 30

R0656/2017-1

Вкус года

Not distinctive

EN: taste of the year

Cl. 29 - 33

R0631/2017-1

EUTMA

Сила злаков

Not distinctive

EN: strength of the crop/grain

Cl. 29 - 33

R0937/2017-1

EUTMA

Хлебный спас

Not distinctive

EN: 'Redeemer of bread'

PDO/PGI's

R1588/2017-5

EUTMA



Cl. 33

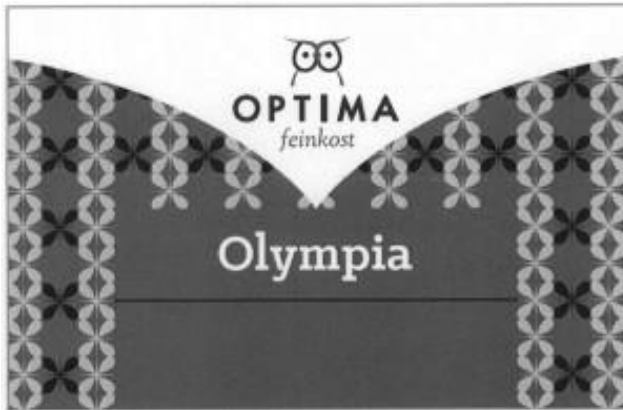
- Wine in general

Contains PDO 'Atliplano de Sierra Nevada'

PDO/PGI's

R1229/2017-5

EUTMA



Cl. 29

– Olive oil and oil products with respect PDO `Olympia

acceptable reference to PDO/PGI – not descriptive

PDO/PGI's

R1320/2017-2

EUTMA

BLANC DE BLANCS CENTINELA CONO SUR

Does not refer to GI 'REGION DEL SUR'

Cl. 33

My new number

28/02/2018

C. Relative grounds for refusal

Single letters

R0779/2017-2

EUTMA



Cl. 14

Earlier TM_(EU)



Cl. 14

LoC

R0359/2017-5

EUTMA



Cl. 25

Earlier TM_(EU)



Cl. 25

LoC

What is dominant?

R1700/2016-4

EUTMA

Earlier TM_(EU, DE)

ZBlue

No LoC

AdBlue

Cl. 1, 20, 35

Cl. 1, 20, 35

What is co-dominant?

R0369/2017-1

EUTMA



Cl. 14, 18, 25

Earlier TM_(IR)



Cl. 14

LoC

What is co-dominant?

R1435/2016-1

EUTMA

Earlier TM_(IT)

Gebrüder T 1819

LoC



Cl. 20

Cl. 20

My new number

7377

D. Proof of use

Use in the EU or outside

R1780/2016-1

EUTM

Question

Use for lottery services in USA?

Powerball

No Proof of Use

Cl. 41

Use with other elements

R1780/2016-1

EUTM

美心

No Proof of Use

Example of use



Cl. 6, 16, 20, 25, 26, 28, 29, 30, 35, 38

Use with other elements

R2403/2016-4

EUTM

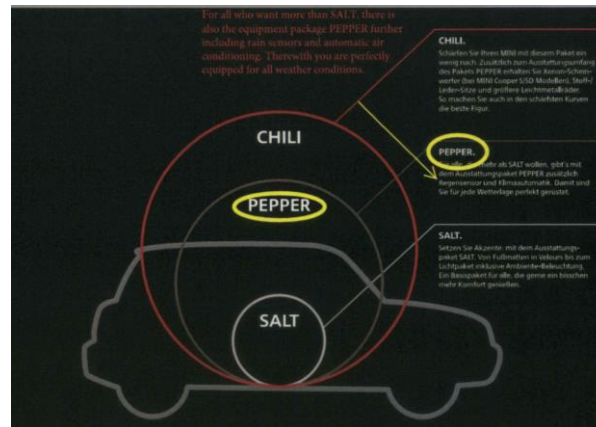
Example of use

MINI Countryman Pepper

PEPPER

Proof of Use

Cl. 12



E. Number

My new number

One decision of the Boards of Appeal
every

**5 hours 20 min 36
sec**

Thanks for your attention



CONTACT :

Christoph Bartos
(+ 34) 965 139 743

christoph.bartos@euipo.europa.eu
mediator-bartos@euipo.europa.eu

María del Mar Baldares
(+ 34) 965 139 673

maria.baldares@euipo.europa.eu

CONTACT

US:



(+ 34) 965 139 100 (switchboard)

(+ 34) 965 139 400 (e-business technical incidents)

(+ 34) 965 131 344 (main fax)

information@euipo.europa.eu

e-businesshelp@euipo.europa.eu



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www.euipo.europa.eu

Thank You!