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LENZING GERBER STUTE	
PARTNERSCHAFTSGESELLSCHAFT VON PATENTANWÄLTEN m.b.B.	
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By registered mail

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Bahnstraße 9
40212 Düsseldorf
Germany

Our reference: 812/1179653101

Geneva, 12/09/2018

International registration No. 1416911 (SECOND WAVE)

Madam,
Sir,

In accordance with Rule 17(4) of the Common Regulations,
please find herewith a copy of a notification of provisional
refusal of protection concerning the above-mentioned
international registration.

Contracting Party whose Office issued the notification	: EM
Date on which the notification was sent to WIPO	: 31/08/2018
Date of receipt by WIPO	: 31/08/2018
Date of notification by WIPO to the holder	: 12/09/2018

International Bureau of the World Intellectual
Property Organization (WIPO)

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 Article 33 EUTMR)

Alicante, 31/08/2018

International registration number: **1416911**

Name of the holder: **SCHNITTPUNKT UG
(haftungsbeschränkt)**

Trade mark: **Second Wave**

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

I. Grounds

The Office has examined your application for a European Union trade mark, to ensure that it complies with the legal requirements for registration as established in Article 7 EUTMR.

The sign

The application consists of the words **Second Wave** and is objectionable for part of the goods/services applied for, namely

Class 9 *Photographic, cinematographic, optical, measuring, signalling and checking (supervision) apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating and controlling electric current; appliances for recording, transmission and reproduction of sound and image; magnetic data media; data processing hardware, computers; computer software; illuminometers, illumination regulators, lighting control appliances, lighting ballasts, computer software for remote control of electrical lighting appliances, tripods for cameras and lights; power supplies, in particular for lights; all of the aforesaid goods in particular in the field of photography and video technology; bags for cameras and other appliances for recording, transmission or reproduction of sound and image.*

Class 11 *Lights; lamp glasses, luminaires, lighting appliances, lamps, lighting tracks [lighting appliances], lighting installations, flat panel lighting apparatus, lighting fittings, lighting units, lighting armatures, diffusers being part of lighting installations; all of the aforesaid goods for use in the field of photography and video technology (terms considered too vague by the*

International Bureau - rule 13 (2) (b) of the Common Regulations); bags and other cases tailored for lights and their accessories for use in the field of photography and video technology (terms considered too vague by the International Bureau - rule 13 (2) (b) of the Common Regulations).

Legal basis - Article 7(1)(b) and Article 7(2) EUTMR

The sign you have applied for is ineligible for registration under Article 7(1)(b) and Article 7(2) EUTMR because it is devoid of any distinctive character in relation to the above mentioned goods for which protection is sought.

Lack of distinctiveness

The distinctive character of a trade mark is assessed in relation to the goods or services for which protection is sought and the perception of the relevant public.

The trade mark consists of words with inter alia the following meaning(s)

Second wave Stage in the progression and adoption of a new technology where the emphasis shifts from experimentation to result-oriented commercial application.

(Information extracted on 30/08/2018 under <http://www.businessdictionary.com/definition/second-wave.html>)

When applied to the goods and services at issue, the expression **Second Wave** will be understood as reference that the goods represent a modern and advanced technology where the stage of experimentation has turned into and is reflected in modern and advanced products.

In the present case, the relevant public will not tend to perceive any particular indication of commercial origin in the sign beyond the promotional information conveyed, which merely serves to highlight positive aspects of the goods in question, namely that the goods offered are made for result-oriented modern and advanced commercial application.

Potential consumers will not see the expression **Second Wave** as a fanciful trade term or a trade mark denoting a particular source of the goods concerned, but just as a common advertising slogan to invite customers to buy and use the goods offered.

Therefore, the sign in question is devoid of any distinctive character within the meaning of Article 7(1)(b) and Article 7(2) EUTMR.

Deadline for a reply

If you have any observations, they should be submitted within two months of the notification of this communication. If you do not submit any observations, the application will be rejected for the following goods/services:

Class 9 *Photographic, cinematographic, optical, measuring, signalling and checking (supervision) apparatus and instruments; apparatus and instruments for conducting, switching, transforming, accumulating, regulating and controlling electric current; appliances for recording,*

transmission and reproduction of sound and image; magnetic data media; data processing hardware, computers; computer software; illuminometers, illumination regulators, lighting control appliances, lighting ballasts, computer software for remote control of electrical lighting appliances, tripods for cameras and lights; power supplies, in particular for lights; all of the aforesaid goods in particular in the field of photography and video technology; bags for cameras and other appliances for recording, transmission or reproduction of sound and image.

Class 11 *Lights; lamp glasses, luminaires, lighting appliances, lamps, lighting tracks [lighting appliances], lighting installations, flat panel lighting apparatus, lighting fittings, lighting units, lighting armatures, diffusers being part of lighting installations; all of the aforesaid goods for use in the field of photography and video technology (terms considered too vague by the International Bureau - rule 13 (2) (b) of the Common Regulations); bags and other cases tailored for lights and their accessories for use in the field of photography and video technology (terms considered too vague by the International Bureau - rule 13 (2) (b) of the Common Regulations).*

The application may proceed for the remaining goods/services:

Class 18 *Luggage, bags, pocket wallets and other carries (terms considered too vague by the International Bureau - rule 13 (2) (b) of the Common Regulations).*

Class 35 *Advertising; business management; business administration; clerical services; retail and wholesale services relating to illuminometers, illumination regulators, lighting control appliances, lighting ballasts, computer software for remote control of electrical lighting appliances, tripods for cameras and lights, power supplies, in particular for lights, luggage, bags and other cases for transporting of lights and their accessories in the field of photography and video technology, lights, lamp glasses, luminaires, lighting appliances, lamps, lighting tracks [lighting appliances], lighting installations, flat panel lighting apparatus, lighting inventory, lighting fittings, lighting units, lighting armatures, diffusers being part of lighting installations; all of the aforesaid services in particular in the field of photography and video technology.*

II. Time Limit

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 Office 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 Office (Article 193(2), (3) and (4) EUTMR). Any such reply of the holder of the international registration shall be addressed to the EUIPO only.



HASSENPFUG EZQUERRO,Alma - Lydia