

BESLUT

Internationell registrering skall inte gälla i Sverige
IR 825348

Groth & Co KB
Box 6107
102 32 Stockholm

INNEHAVARE

Elbodan A/S
Omega 3, Søften
DK-8382 Hinnerup
Danmark

Exp. Patent- och registreringsverket

2006 -06- 2 0

OMBUD

Groth & Co KB
Box 6107
102 32 Stockholm

BESLUT

Patent- och registreringsverket (PRV) har med stöd av 56 § 2 stycket varumärkeslagen (1960:644) denna dag beslutat att den under ovanstående nummer angivna internationella registreringen inte skall gälla i Sverige.

ÄRENDET

Giltighet i Sverige av den internationella varumärkesregistreringen punkt 1, se nedan, för bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices, shaving preparations, after-shave lotions, bleaching salts, bleaching soda, javalle water, blue and blueing for laundry, laundry soaking preparations, laundry glaze and starch for laundry purposes, colour-brightening chemicals for household purposes (laundry), soap for brightening textile, refurbishing preparations, cleaning preparations, detergents other than for use in manufacturing operations and for medical use, fabric softeners (for laundry use), klass 3, electrical blenders for domestic purposes, bread slicers, centrifuges (machines), centrifugal drying machines, electrical tin-openers, electrical grinders for domestic purposes, electrical food processors, electrical fruit presses for domestic purposes, mincing machines, high-pressure flushers, coffee grinders (not hand-operated), electrical cutting machines, knife sharpener machines, electrical crushing machines for domestic purposes, compressors for refrigerators, electrical kitchen appliances, electric machines and apparatus for carpet shampooing, mechanical mangles for laundry, dishwashers, electrical whisks for household purposes, grating machines for vegetables, electric scissors, electrical shoe polishing machines, peeling machines, ironing machines, vacuum cleaners, vacuum cleaner bags, vacuum cleaner hoses, vacuum cleaner attachments for disseminating perfumes and disinfectants, central vacuum cleaning installations, sewing machines, drying machines, washing machines, including coin-operated washing machines, wringing machines for laundry, parts and accessories (not included in other classes) for the aforementioned goods,

klass 7, hand tools and implements (hand-operated), cutlery, razors, electric and non-electric, hair clippers (hand instruments), parts and accessories (not included in other classes) for the aforementioned goods, klass 8, apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity, switchboxes, electric switches, electricity limiters, electric accumulators, including for vehicles, electric batteries including for vehicles, electric light dimmers (regulators), battery chargers, solar batteries, electric igniting apparatus for igniting at a distance, audiovisual teaching apparatus, barometers, hygrometers, electric devices for attracting and killing insects, electric flat irons, electrically heated hair-curlers, data processing equipment, computers, notebook computers, portable computers, printers for use with computers, computer memories, computer software (recorded), computer programs (downloadable), recorded computer programmes, computer game programmes, interfaces for computers, magnetic and optical data carriers, computer keyboards, disk drives for computers, optical discs, magnetic diskettes, floppy disks, modems, mouse (data processing equipment), mouse pads, electronic pens (visual display units), scanners (data processing equipment), computer peripheral devices, apparatus for recording, transmission or reproduction of sound or images, recording discs, radios, television apparatus, amplifiers, personal stereos, loudspeakers, cabinets for loudspeakers, horns for loudspeakers, tape recorders, portable tape recorders, compact disc players, DVD recorders and players, cassette players, video recorders, videotapes, video cassette tapes, video game cartridges, compact discs (read-only memory), compact discs (audio-video), record players, video screens, amusement apparatus adapted for use with television receivers only, aerials, alarms, acoustic alarms, fire alarms, whistle alarms, electric alarm bells, electric buzzers, anti-theft warning apparatus, electric theft prevention installations, electric door bells, electric door openers, electric door closers, photovoltaic cells, detectors, smoke detectors, intercommunication apparatus, telephone apparatus; portable telephones, telephone receivers, video telephones, telefax machines, facsimile machines, radiotelephony sets, answering machines, telephone wires, cameras (photography), cinematographic cameras, camcorders, video cameras, parts and accessories (not included in other classes) for the aforementioned goods, klass 9, apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply and sanitary purposes, lamps, electric lamps, lamp mantles, luminous tubes for lightning, electric light bulbs, electric lights for Christmas trees, lanterns, electric pocket torches, torches for lightning, bicycle lights, Chinese lanterns, lamp globes, lamp hanging supports, lamp chimneys, lanterns for lighting, lamp shades, lampshade holders, ceiling lights, oil lamps, projector lamps, lamps for reflectors, light diffusers, floor lamps, chandeliers, luminous house numbers, filaments for electric lamps, safety lamps, tanning apparatus (sun beds), electrically heated carpets, electric heating cushions (not for medical use), pocket warmers, electric radiators, electric heating apparatus, heating radiators, water heaters, heating installations, hot water bottles, heating elements, heating boilers, hot air apparatus, electrically heated foot muffs, foot warmers (electric or non-electric), plate warmers, heaters for heating irons, steam facial apparatus, cooking apparatus and installations, kitchen ranges, cookers, hot plates, immersion heaters, bread toasters, coffee filters, shaped fittings for furnaces, electric deep fryers, coffee roasters, roasting apparatus, roasting jacks, barbecues, rotisseries, consoles for gas burners, stoves, stoves (heating apparatus), hot air ovens, microwave ovens (cooking apparatus, furnace grates, structural plates for ovens, oven fittings made of fireclay, electric appliances for making yogurt, electric waffle irons, roasters, autoclaves (electric pressure cookers), electric heaters for feeding bottles, electric cooking utensils, refrigerators, freezers, ice machines and apparatus, refrigerating apparatus and machines, cooling appliances and installations, ice boxes, beverage cooling apparatus, drying apparatus and installations, kilns, electric laundry dryers, hand drying apparatus for washrooms, air driers, extractor hoods for

kitchens, fruit roasters, ventilation (air conditioning) installations and apparatus, ventilation hoods, electric fans for personal use, air conditioning installations, filters for air conditioning, air filtering installations, sinks, wash-hand basins (parts of sanitary installations), bath installations, bath tubs, shower cubicles, sanitary apparatus and installations, taps (faucets), mixing taps, toilets (water-closets), toilet seats, parts and accessories (not included in other classes) for the aforementioned goods, klass 11, furniture, cupboards, including kitchen cupboards and kitchen units (furniture), bathroom furniture, cupboard door and doors for furniture, drawers, tables including kitchen tables (furniture), racks (furniture), shelves for storage, chests of drawers, mirrors, parts and accessories (not included in other classes) for the aforementioned goods, klass 20, household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steelwool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes, baking plates, frying pans, ice cube moulds, cake moulds, moulds (kitchen utensils), cookery moulds, cooking pots, cooking pot sets, stew-pans, frying pans, cauldrons, non-electric deep fryers, grills (cooking utensils), grill supports, non-electric coffee pots (not of precious metal), non-electric coffee filters, hand-operated coffee grinders, non-electric coffee grinders for household purposes, coffee percolators (non-electric), mixing spoons (kitchen utensils), basting spoons for kitchen use, strainers for household purposes, sifters (household utensils), cooking skewers (of metal), cutting boards for the kitchen, non-electric whisks for household purposes, plates to prevent milk boiling over, non-electric mixing machines for household purposes, non-electric waffle irons, non-electric fruit presses for household purposes, portable coolers, non-electric portable coldboxes, heat insulated containers for beverages, refrigerating bottles, insulating flasks, manual mixers (cocktail shakers), cocktail stirrers, food cooling devices for household purposes (containing heat exchange fluids), ice buckets, fitted picnic baskets (including dishes), heat insulated containers for food, non-electric heaters for feeding bottles, electric toothbrushes, iron boards, shaped ironing board covers, flat iron stands, trouser pressers, trouser stretchers, carpet sweepers, klass 21, business management; business administration; office functions; (retail distribution of household appliances (white goods), household utensils, household machines, of building materials and of kitchen and bathroom equipment and devices; information and intermediary services regarding the sale of goods,) klass 35, financial affairs, lending, leasing of household appliances and household machines, insurance, financial information on and operation of the aforementioned services, klass 36, building construction, installation services, repair, information on and operation of the aforementioned services, rental of washing machines, dishwashers, drying apparatus and electric laundry dryers, klass 37, telecommunications, including telephony, telecommunications information and operation, rental of telecommunication equipment, rental of telephones, rental of apparatus for sending messages, klass 38, transport, rental of refrigerating chambers, rental of refrigerators and freezers, klass 39, rental of apparatus for recording, transmission or reproduction of sound or images, including rental of radios and television apparatus, rental of music systems, rental of compact disc players, rental of video recorders, rental of video cameras, rental of DVD recorders and players, rental of videotapes, rental of cameras (photography), video cameras, klass 41, rental of data processing equipment, including computers, printers, monitors, computer programs, magnetic and optical data carriers, klass 42, och rental of ovens, microwave ovens, kitchen ranges, cookers, klass 43. Innehavaren har begränsat varuförteckningen till att endast avse ovan nämnda varor och tjänster.



PRV har anfört att innehavarens märke är förväxlingsbart med gemenskapsvarumärket PUNKT 1 EINS med registreringsnummer 3120235, se nedan, för bland annat annons- och reklamverksamhet samt marknadsföring i klass 35.



Innehavaren har anfört att de båda märkena inte längre är förväxlingbara när tjänsterna i klass 35 begränsats till business management; business administration; office functions; retail distribution of household appliances (white goods), household utensils, household machines, of building materials and of kitchen and bathroom equipment and devices; information and intermediary services regarding the sale of goods.

SKÄL

Hinder mot att en internationell varumärkesregistrering skall gälla i Sverige finns enligt 54 § 2 stycket varumärkeslagen om det varumärke som den internationella registreringen avser inte uppfyller förutsättningarna enligt 13 § eller om något hinder mot en nationell registrering skulle ha funnits enligt 14 §.

Ett varumärke får enligt 14 § 1 stycket 9 punkten varumärkeslagen inte registreras om märket är förväxlingsbart med ett gemenskapsvarumärke som innehas av någon annan och är registrerat efter en tidigare ansökan. Enligt 6 § 1 stycket samma lag skall kännetecknen anses förväxlingsbara endast om de avser varor eller tjänster av samma eller liknande slag.

Frågan om förväxlingsbarhet skall avgöras vid en helhetsbedömning vid vilken alla omständigheter av betydelse i sammanhanget skall beaktas, framför allt märkenas likhet samt likheten i de varor eller tjänster som avses.

Det föreligger tjänsteslagslikhet mellan de tjänster som omfattas av föreliggande internationella registrering och vissa av de tjänster som är registrerade för det motanförda varumärket. Den begränsning av tjänsterna i klass 35 som innehavaren gjort har inte bedömts räcka för att undanröja hindret eftersom tjänsterna i de båda märkena även efter begränsningen är av liknande slag. PRV:s förslag till begränsning av tjänsterna i klass 35 har inte godtagits av innehavaren. Beträffande märkeslikheten konstateras att de motstående märkena är lika såväl uttalsmässigt som visuellt. Ordalydelsen i innehavarens märke är delvis identisk med det mothållna märkets lydelse och siffran 1 är i båda fallen placerad i en cirkel. Vid en helhetsbedömning finner PRV därmed att märkena är förväxlingsbara.

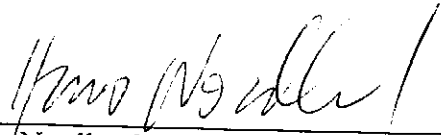
Med hänsyn till vad PRV anfört ovan skall den internationella registreringen inte gälla i Sverige.

Beslutat den

20 JUN 2006



Sara Winther



Hans Nordlund

HUR BESLUTET ÖVERKLAGAS

Den som vill överklaga beslutet skall göra det skriftligt. Skrivelsen skall vara ställd till Patentbesvärsrätten, men sändas till Patent- och registreringsverket, Box 530, 826 27 Söderhamn. I skrivelsen skall anges det beslut som överklagas och den ändring beslutet som begärs. Skrivelsen skall ha kommit in till verket **inom två (2) månader** från beslutsdagen.