



IR 33/2017-6

MADRID AGREEMENT AND PROTOCOL
MADRIDER ABKOMMEN UND PROTOKOLL
PROVISIONAL REFUSAL OF PROTECTION
VORLÄUFIGE SCHUTZVERWEIGERUNG

 Rule 17 (1)
 Regel 17 (1)

I. Authority pronouncing the refusal: Austrian Patent Office Dresdner Straße 87 A – 1200 Vienna (Austria)	Behörde, die die Schutzverweigerung erlassen hat: Österreichisches Patentamt Dresdner Straße 87 A – 1200 Wien (Österreich)
II. Number of the international registration: Nr. der internationalen Registrierung: 1 323 354 Number of the basic registration / application and country of origin: Nr. der Basisregistrierung / -anmeldung und Ursprungsland: 87012838 United States of America	
III. Grounds of the provisional refusal: Gründe der vorläufigen Schutzverweigerung: Devoid of any distinctive character; the mark only consists of the three-dimensional representation of the goods at issue without any particularity. The mark consists only of the three-dimensional representation of the goods which does not have a sufficiently unique and memorable design. Keine Unterscheidungskraft; die Marke besteht nur aus der dreidimensionalen Darstellung der Ware, die keine hinreichend eigenartige und einprägsame Ausgestaltung aufweist, die sich von den praktischen oder ästhetisch üblichen oder von den allgemein verwendeten typischen Produktausgestaltungen deutlich abheben würde. Die dreidimensionale Darstellung der Marke erschöpft sich lediglich in bestimmten gebräuchlichen oder nahe liegenden Gestaltungsmerkmalen und fällt nicht aus dem verkehrsüblichen Rahmen, weshalb dieser dreidimensionalen Darstellung keine Unterscheidungskraft zukommt.	
IV. Applicable provisions of the national law (see text next page) Anwendbare Bestimmungen des nationalen Gesetzes (siehe Gesetzesauszug auf der nächsten Seite)	Section 4 subsection 1 clause 3 § 4 Absatz 1 Ziffer 3
V. *) ☒ Refusal for all goods and/or services Schutzverweigerung für alle Waren und/oder Dienstleistungen	
VI. Reply to the refusal: Äußerung auf die Schutzverweigerung: a) Time limit / Äußerungsfrist: 14/07/2017 b) The appointment of a representative or – if applicable – a person domiciled in Austria and entitled to receive communications is compulsory (Section 61 subsections 1 and 4 Trade Mark Act). Die Benennung eines Vertreters oder – sofern anwendbar – eines im Inland wohnhaften Zustellungsbevollmächtigten ist verpflichtend (§ 61 Abs. 1 und 4 MSchG). c) Authority to address the reply to : see I. Behörde, an die die Äußerung zu richten ist: : siehe I.	
VII. Date of the provisional refusal / Datum der vorläufigen Schutzverweigerung: 14/04/2017	

*) Indicated in the appropriate box / Zutreffendes ist angekreuzt

ÖSTERREICHISCHES PATENTAMT

 Rechtsabteilung
 Internationales Markenwesen
 Rechtskundiges Mitglied *Walter*
 Walter Ledermüller


I. Corresponding essential provisions of the applicable law: Austrian Trade Mark Act
(Federal Law Gazette No. 260/1970 in its current version / Bundesgesetzblatt Nr. 260/1970 idgF)

Section 1

A trade mark may consist of any sign capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.

Section 4

(1) Excluded from registration shall be signs which

1. consist exclusively

- (a) of state coats of arms, national flags or other national emblems or of the coats of arms of Austrian provincial or local authorities;
- (b) of official certification or guarantee signs which are used in Austria or – pursuant to a notice to be published in the Federal Law Gazette (Section 6(2)) – in a foreign state, for the same goods or services as those for which the mark is intended for, or for similar goods or services;
- (c) of signs of international organizations to which a member state of the Paris Union for the Protection of Industrial Property belongs, provided the signs have been promulgated in the Federal Law Gazette. The last sentence of Section 6(2) shall apply to such promulgation;

2. cannot constitute a trade mark in accordance with Section 1;

3. are devoid of any distinctive character;

4. consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services;

5. consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade to designate the good or service;

6. consist exclusively of the shape which results from the nature of the goods themselves, or of the shape of goods which is necessary to obtain a technical result, or of the shape which gives substantial value to the goods;

7. are contrary to public policy or to accepted principles of morality;

8. are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the good or service;

9. contain or consist of a geographical indication identifying wines and intended for wines which do not have that origin, or identifying spirits and intended for spirits which do not have that origin.

(2) Registration shall, however, be admissible in the cases of subsection 1 clauses 3, 4 and 5, if the sign has acquired a distinctive character in Austria in the circles concerned following the use which has been made of it prior to application.

Section 16

(1)

(2) For the registration of a trade mark a written application has to be filed with the Patent Office. Where the trade mark does not consist exclusively of figures, letters or words having no pictorial design and claiming no specific form of writing a reproduction of the trade mark shall be submitted, in case of a sound mark in addition to an acoustic presentation of the mark either in musical notation or by means of a sonogram also a tonal presentation of the trade mark on a data carrier. The number of reproductions of the trade mark to be submitted, their characteristics and dimensions as well as the data carriers to be used and details for acoustic presentation shall be determined by regulation.

(3) The application shall indicate the goods and services for which the trade mark is intended (list of goods and services); detailed requirements in respect to the list of goods and services and the number of copies to be submitted shall be determined by regulation.

Section 61

(1) Anyone acting as representative before the Patent Office shall have his domicile or principal place of business in Austria; in regard to attorneys at law, patent attorneys and notaries public though the respective professional regulations shall apply. The representative shall demonstrate his authorisation by a written power of attorney which shall be presented in original version or by way of a duly certified copy. If several individuals are authorised collectively, each of them shall also be authorised to represent individually.

(2)

(3)

(4) A person having neither domicile nor principal place of business in Austria may claim rights under this Federal Act before the Patent Office only when being represented by a representative fulfilling the requirements of subsection 1. Before the Cancellation Department such persons may only claim rights when being represented by an attorney at law, a patent attorney or a notary public. If domicile or principal place of business are within the EEA or in the Swiss Confederation the appointment of a person domiciled in Austria and authorized to receive communications will suffice to claim rights under this Federal Act.