



FINNISH PATENT AND
REGISTRATION OFFICE

Int.reg. 1336551

**THE PROTOCOL RELATING TO THE MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS**

EX OFFICIO PROVISIONAL TOTAL REFUSAL

notified to the International Bureau of the World Intellectual Property Organization (WIPO) according to
Art. 5 of the Madrid Protocol

I. Office refusing protection:

**Finnish Patent and Registration Office
Trademarks
P.O. Box 1170
FIN-00101 HELSINKI
Telephone: +358-29-509 5000
Telefax: +358-29-509 5328**

II. Number of the international registration which is the subject of the refusal: 1336551

III. Other information concerning the international registration which is subject of the refusal: boost my energy

IV. The grounds for this refusal are the following:

The mark is not distinctive as it indicates the quality and the intended use of the goods in question in classes 5, 30 and 32. The word BOOST means to increase, improve or revitalize. The mark as a whole merely describes that the goods in question are intended for boosting the consumer's energy. The mark is therefore not likely to distinguish the goods of the holder from those of others.

V. Provisions of the Finnish Trademarks Act applicable on the subject (enclosed):

Art. 3 and 13

VI. Total refusal.

VII. The holder of the registration may request a review of the refusal. The request shall be received by the Finnish Patent and Registration Office no later than within 12 weeks from the date of the refusal. **The time limit expires 31.01.2018 (dd.mm.yyyy).**

Please use the following reference number when submitting the request: W201700220

The request, which is to be drawn up in Finnish or Swedish, has to be filed through the intermediary of a representative resident in the European Economic Area (Art. 56 f)

If the holder of the registration has not within the time limit given above requested for the review, the registration shall not take effect in Finland for the goods/services which are affected by the refusal (Art.56 b paragraph 3).

If the grounds for this refusal include EU trademarks, EU trademark applications or international registrations designating Finland or the European Union, they can remain as grounds for refusal also in cases where they are transformed into national applications or, specifically in the case of designations concerning the European Union, the designations are transformed either into designations concerning Finland or into EU trademark applications, and the said applications or designations are ultimately accepted.

Please note that if the designation is accepted subsequent to reviewal or appeal an opposition may be filed against the mark within 2 months of the publication of the mark (Art. 56 c).

Oppositions may be filed after the end of the 18-month period (Art. 5(2)(c)(i) of the Madrid Protocol, Rule 16(1) of the Common Regulations).

VIII. Date on which the refusal was pronounced: 08.11.2017 (dd.mm.yyyy)

IX. Signature of the Office: 08.11.2017

Finnish Patent and Registration Office

Sara Henriksson

Legal Officer

+358295095523

This document has been electronically signed.

Extract from the Finnish Trademarks Act
No. 7 of January 10, 1964, as amended
(Unofficial translation)

Article 1

This act lays down provisions on an exclusive right to a trademark used in the course of trade for goods and services. This act also lays down provisions on the Community trademark and the international registration of trademarks.

The provisions on goods laid down in this act also apply to services.

Article 2

A trademark can be any distinctive mark that is used in the course of trade and can be represented graphically.

Article 3

A mark is deemed to be distinctive if it can be used to distinguish goods from those of others in the course of trade. A mark denoting the kind, quality, quantity, purpose, price, or place or time of manufacture either exclusively or with only minor modifications or additions cannot as such be deemed to be distinctive. When evaluating the distinctiveness of a mark, attention must be paid to all circumstances; particularly to how long and how broadly the mark has been used.

Article 5

An exclusive right cannot be obtained to a mark that is solely formed by the characteristic shape of the goods, the shape of the goods necessary for achieving a technical result, or a shape that has essential effect on the value of the goods.

Article 5a

The name or company name of another party may not be included in a trademark. Nor may the auxiliary company name or secondary symbol of another party be included in a trademark, unless they are devoid of distinctive character or are from different lines of business or of a different type of goods.

Article 6

With the exceptions laid down later, the exclusive right to a trademark includes that no-one other than the proprietor of the trademark may use the following as a mark of their goods in the course of trade without the proprietor's consent:

- 1) a mark that is identical with the protected trademark for identical goods;
- 2) a mark that, due to its identicalness with or similarity to the protected trademark for identical or similar goods causes a risk of confusion among the public, which also includes a risk of association between the mark and the trademark.

If the trademark has a reputation in Finland, and the use of the mark without due cause would take unfair advantage of the distinctive character or the repute of the trademark, or be detrimental to the distinctive character or the repute of the trademark, no-one other than the proprietor of the exclusive right to the trademark may in the course of trade use a mark that is identical with or similar to the trademark with a reputation without the consent of the proprietor, even if the goods for which the mark is used are not identical or similar to those for which the trademark with a reputation is protected.

The following are deemed to be usage in the course of trade:

- 1) affixing the mark to the goods or to the packaging thereof;
- 2) offering the goods or putting them on the market, or stocking them for those purposes, under the mark;
- 3) importing or exporting the goods under the mark, or importing the goods for transport to a third country;
- 4) using the mark on business papers in marketing; and
- 5) other corresponding use of the mark.

Verbal usage is also deemed to be the usage of the mark in the course of trade referred to in subsection 3 above.

Article 7

An exclusive right to a trademark does not prevent another party from using any of the following in the course of trade in accordance with good business practices:

- 1) one's own name, company name, auxiliary company name, secondary symbol or address;
- 2) markings indicating the kind, quality, quantity, purpose, value, geographical origin, manufacturing time or other characteristics of the goods; and
- 3) the trademark, if its use is necessary for indicating the purpose of the goods.

Article 13

A mark that is not distinctive in accordance with section 3 or for which an exclusive right cannot be obtained under section 5 does not meet the conditions of registration.

A trademark may not however be refused registration on the grounds of lack of distinctive character, if the trademark has become distinctive through use prior to the date on which the application for registration was filed.

Article 14

A trademark is not registered, if:

- 1) it is contrary to law and order or morality;
- 2) it is liable to mislead the public;
- 3) without proper permission, it includes state armorial bearings, a state flag or other state emblem; an official sign or hallmark, indicating control and warranty, for goods for which the mark is to be registered or for goods similar to them; the armorial bearings of a Finnish municipality, or the flag, armorial bearings or other emblem, name or abbreviation of an international intergovernmental organisation; or some other device, name or abbreviation, if its inclusion in the trademark can cause a risk of the public confusing the trademark with said emblem, sign, hallmark, name or abbreviation;
- 4) it is formed of something, or includes something, that is likely to give the impression that it is another party's protected company name or another party's auxiliary company name or secondary symbol of the kind referred to in section 5a, or the name or likeness of another person, unless the name or likeness is evidently that of someone deceased a long time ago;
- 5) it is formed of something, or includes something, that is likely to give the impression that it is the name of another's protected literary or artistic work, if the name is of a special nature, or if it infringes another's copyright in a work or another's rights in a photograph or a protected design;
- 6) it causes a risk that the public confuses it with the name, protected company name or auxiliary company name of another trader in such a manner that the confusion could be invoked under section 5 of the Trade Names Act (128/1979);
- 7) the proprietor of an earlier trademark possesses the exclusive right to using the mark as a sign of the goods in the course of trade;
- 8) the trademark applicant has made the application for registration in bad faith;
- 9) it causes a risk of confusion with the name of a plant variety protected in Finland or in the European Union;
- 10) there is an obstacle to the registration as referred to in Regulation (EU) No 1151/2012 of the European Parliament and of the Council on quality schemes for agricultural products and foodstuffs; Regulation (EU) No 1308/2013 of the European Parliament and of the Council establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007; Regulation (EC) No 110/2008 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89; or Regulation (EU) No 251/2014 of the European Parliament and of the Council on the definition, description, presentation, labelling and the protection of geographical indications of aromatised wine products and repealing Council Regulation (EEC) No 1601/91.

An earlier trademark referred to above in paragraph 7 of subsection 1 means:

- 1) a national trademark that was registered based on an earlier application, or that otherwise has earlier priority than the trademark applicant;
- 2) a trademark that is protected by an international registration and is valid in Finland or in the European Union, and that based on this registration has an earlier right in Finland or the European Union than the trademark applicant;
- 3) a Community trademark referred to in section 57, registered based on an earlier application than the trademark application, or that has seniority from Finland under Article 34 or 35 of the Council Regulation mentioned in section 57;
- 4) a trademark that is established when the registration is applied for.

In cases referred to in paragraphs 4—8 of subsection 1, the trademark can be registered with the consent of the party whose right is in question, and there is, according to subsection 1, otherwise no obstacle to registration.

Article 15

The exclusive rights in a trademark acquired by registration do not cover any part of the mark that cannot be registered as such.

If the trademark contains any such part and there are special reasons to believe that its registration may cause uncertainty regarding the extent of the exclusive rights granted, protection of the part may be specifically disclaimed when the registration is made.

If a part of a trademark excluded from protection later becomes registrable, a new registration may be made to cover that part or the entire trademark without the exclusion of the part from protection.

Article 17

The application for registration of a trademark shall be filed in writing with the registering authority. The application shall indicate the name or trade name of the applicant and the goods and classes of goods for which the mark is intended. The mark shall be clearly shown in the application.

A filing fee shall be paid on the filing of the application. The application shall not be considered filed until the fee has been paid.

Article 51a

Provisions on appeals against a decision of the Finnish Patent and Registration Office in a trademark matter are laid down in section 6 of the Act on the Finnish Patent and Registration Office (578/2013).

Article 56a

When the registration authority receives a notification of an international registration having effect in Finland from the International Bureau, it shall examine whether there is any obstacle to the registration.

Article 56b

If the registration authority finds that a trademark filed for international registration does not comply with the conditions of registration laid down in this Act, it shall notify the International Bureau that the international registration has no effect in Finland. The registration authority shall notify its refusal, together with a statement of all grounds, to the International Bureau before the expiry of a period of 18 months from the date of the International Bureau notification referred to in Article 56a.

If the statement issued by the proprietor of an international registration commenting on the notification by the registration authority referred to in the foregoing paragraph does not present any grounds on which the trademark could be deemed to comply with the conditions of registration laid down in this Act, the registration authority shall rule that the international registration has no or only a partial effect in Finland.

If the proprietor of an international registration has not within the given time limit submitted his statement commenting on the registration authority's notification referred to in paragraph 1, the international registration shall not take effect in Finland. If the said notification only concerned some of the goods in the international registration, the international registration shall take effect in Finland in respect of those of the goods that the notification did not concern.

Article 56c

If no obstacle to registration is found, the registration authority shall give public notice of the International Bureau notification referred to in Article 56a as laid down in the first paragraph of Article 20. The public notice shall specify the date accorded to the international registration by the International Bureau.

Any opposition to an international registration in Finland shall be filed in writing with the registration authority within two months of the date of the public notice.

Article 56d

The Finnish Patent and Registration Office sends a notification of an opposition referred to in section 56c, and grounds of it, to the International Bureau referred to in section 53. Regardless of whether the proprietor of the international registration has given a statement due to the notification, the Finnish Patent and Registration Office must examine the opposition.

Due to the opposition, the Finnish Patent and Registration Office must make a decision that the international registration has no effect in Finland, if the registration does not meet the conditions of registration under this act. If the registration meets the conditions of registration under this act only in part, the Finnish Patent and Registration Office must make a decision that the registration has effect only in part. The Finnish Patent and Registration Office must reject the opposition, if there is no obstacle to the international registration in Finland.

If the Finnish Patent and Registration Office decides that the international registration has no effect in Finland or has effect only in part, it makes an entry of this in the record referred to in section 53(2) and gives public notice of the decision once it has become final.

Article 56f

If the proprietor of an international registration who is not domiciled in Finland wishes to submit a statement to the Finnish Patent and Registration Office, the proprietor must appoint a representative resident in the European Economic Area. A corporate body domiciled in the European Economic Area may also act as a representative.

Article 56l

An appeal against a decision by the registration authority may be lodged by the applicant for or proprietor of an international registration who has sought such registration in Finland if the decision has been unfavorable to him or if the case has been dismissed.

An appeal against a decision taken by the registration authority declaring an international registration effective in Finland despite an opposition filed may be lodged by the person who filed the opposition. Even if the person who filed the opposition withdraws his appeal, the case may be examined if there are special reasons for doing so.

Article 51a shall apply as appropriate to appeals under the foregoing two paragraphs.

Article 57a

A request which concerns the conversion of a Community trade mark, an application therefor or an international registration designating the European Community into an application for a national trademark and which the Community Trade Mark Office has forwarded to the office, shall be treated as a national application provided that the applicant:

pays the prescribed fees; (2) submits the registering authority a translation in Finnish or Swedish of the conversion request and the accompanying annex filed in a foreign language; (3) gives the address at which the applicant can be reached in Finland; and (4) provides a representation of the trademark.

An application based on conversion of a Community trade mark or an application therefor is considered to have the same filing date, priority and seniority from Finland as the Community trade mark or the application therefor. An application based on conversion of an international registration designating the European Community has as its filing date the date of the international registration or that of a subsequent designation of the European Community, and it enjoys the priorities and seniorities of the international registration.