

MADRID AGREEMENT AND PROTOCOL
PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1)

I.	Office making the notification: Ukrainian Intellectual Property Institute 1 Hlazunova str. Kyiv-42, 01601 Ukraine
II.	Number of the international registration: 1342685
III.	Name of the holder: Toruńskie Zakłady Materiałów Opatrunkowych, Spółka Akcyjna Żółkiewskiego 20/26 PL-87-100 Toruń (PL)
IV.	☒ Provisional refusal based on an <i>ex officio</i> examination ☐ Provisional refusal based on an opposition ☐ Provisional refusal based on both an <i>ex officio</i> examination and an opposition
V.	☒ Provisional refusal for all the goods and/or services ☐ Provisional refusal for the following goods and/or services:
VI.	Grounds for refusal: The sign shall not be registered as mark because the sign consists exclusively of signs or data that are descriptive while using for goods defined in the application or with respect to them, in particular signs or data that indicate quality, value of goods.
VII.	Information relating to an earlier mark:
VIII.	Corresponding essential provisions of the applicable law (see text under XII): Article 6.2.3
IX.	Information relating to subsequent procedure: (i) Time limit for requesting review or appeal: 3 months from the date of the notification of provisional refusal. This period may be extended for no more than 6 months provided that the relevant request is submitted and the fee in connection with the request is paid before the date of expiry of this period. (ii) Authority to which such request for review or appeal should be made: Ukrainian Intellectual Property Institute (iii) Foreign and other persons residing or having a permanent location outside Ukraine exercise their rights in relations with the Office through representatives registered under the Regulations for Representatives on Intellectual Property Matters, approved by the Cabinet of Ministers of Ukraine. (iv) Indications concerning the appointment of a representative: http://www.sdip.gov.ua/en/attorneys_register_2.html

X. Date of the notification of provisional refusal: 11.01.2018

XI. Signature or official seal of the Office making the notification:

A handwritten signature in black ink, appearing to read 'Sukhinova', enclosed within a faint, irregular oval shape.

Head of the Department of
International Trademark Registrations

Svitlana Sukhinova

XII. Corresponding essential provisions of the applicable law:

**SECTION II
LEGAL PROTECTION OF MARKS**

Article 5. Conditions of Granting the Legal Protection

1. The legal protection is granted to a mark that does not contradict the public order, humane and moral principles, requirements of the Law of Ukraine "On the condemnation of the communist and national socialist (Nazi) totalitarian regimes in Ukraine and prohibition of propaganda of their symbols" and is not subject to the refusal of the rights protection according to the grounds defined by this Law.
2. The object of a mark may be any sign or any combination of signs such as words including personal names, letters, numerals, figurative elements, colors and combinations of colors as well as any combination of such signs. Objects of a mark may not be proper names or pseudonyms of the persons who held senior positions in the Communist Party (the District Committee Secretary position and higher), in the higher governmental and management bodies of the Union of Soviet Socialist Republics, the Ukrainian Soviet Socialist Republic (the Ukrainian Socialist Soviet Republic), other Union or Autonomous Soviet Republics (except the cases related to the Ukrainian science and culture development) and who worked in the Soviet state security bodies; names of the Union of Soviet Socialist Republics ("CPCP"), the Ukrainian Soviet Socialist Republic ("YPCP") (the Ukrainian Socialist Soviet Republic ("YCPP")), other Union or Autonomous Soviet Republics and their derivatives; names associated with the Communist Party activity, the Soviet power establishment within the territory of Ukraine or within its individual administrative territories, persecution of those who struggled for independence of Ukraine in the 20th century.

Article 6. Grounds for Refusal of the Legal Protection

1. According to this Law, the legal protection shall not be granted for marks that represent or imitate:
State armorial bearings, flags, and other state symbols (emblems); official names of States; symbols and abbreviated or full names of international intergovernmental organizations; official control, guarantee, or testing seals, stamps; decorations and other honorary signs.
The said signs may be included in a mark as non-protected elements, provided that the consent of the relevant authorized body or of the sign owners was obtained. The authorized body with respect to the name of a State is the collegial body established by the Office.
2. According to this Law, the legal protection shall not be granted for marks that:
 - 1) are usually devoid of distinguishing capacity and did not obtain such a capacity through their use;
 - 2) consist exclusively of signs that are commonly used as the signs of goods and services of a certain type;
 - 3) consist exclusively of signs or data that are descriptive while using for goods and services defined in the application or with respect to them, in particular signs or data that indicate kind, quality, composition, quantity, properties, purposes, value of goods and services, the place and time of manufacturing or sale of goods or rendering of services;
 - 4) are deceptive or liable to mislead as to goods, services, or the person producing goods or rendering services;
 - 5) consist exclusively of signs that are commonly used symbols and terms;
 - 6) present only the form caused by the natural state of goods, or by the necessity to get a specific technical result, or the form imparting the essential value to the goods.The signs mentioned in Items 1, 2, 3, 5 and 6 of this Paragraph may be used in a mark as non-protected elements if these signs are not dominative in the reproduction of a mark.
3. Signs shall not be registered as marks if they are identical or misleadingly similar to:
 - 1) marks that were earlier registered or filed for the registration in Ukraine on behalf of another

person for identical or similar goods and services;

2) marks of other persons if these marks are protected without registration according to the international agreements to which Ukraine is a party, in particular the marks recognized as well-known marks according to Article 6-bis of the Paris Convention for the Protection of Industrial Property;

3) trade names that are known in Ukraine and belong to other persons who have acquired the right to the said names before the date of filing the applications to the Office with respect to identical or similar goods and services;

4) qualified indications of the origin of goods (including alcohols and alcohol drinks) that are protected according to the Law of Ukraine "On the Protection of Rights to Indication of the Origin of Goods"; the said signs may be used only as non-protected elements of the marks of the persons who have the right to use the said indications;

5) conformity marks (certification marks) that have been registered under the determined procedure.

4. Signs shall not be registered if they represent:

1) industrial designs, the rights to which in Ukraine belong to other persons;

2) titles of scientific, literary, and artistic works known in Ukraine or quotations and characters from the said works as well as the artistic works and their fragments without the consent of copyright holders or their successors in title;

3) surnames, first names, pseudonyms and their derivatives, portraits and facsimiles of persons known in Ukraine without their consent.

5. Signs shall not be subject to legal protection and shall not be registered as marks that contradict the requirements of Paragraph 2 of Article 5 of this Law and the requirements of the Law of Ukraine "On the condemnation of the communist and national socialist (Nazi) totalitarian regimes in Ukraine and prohibition of propaganda of their symbols".