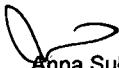


MADRID PROTOCOL

**Final Disposition on Status of a Mark – Confirmation of Total Provisional Refusal (Rule 18ter(3) of the Common Regulations)**

DT-V.IR1269362.5.asul

I. Office sending the statement:	
Patent Office of the Republic of Poland Trade mark Department Aleja Niepodległości 188/192 P.O. Box 203 00-950 Warsaw, Poland	Phone number: (+48) 22 579 05 55 Fax: (+48) 22 579 00 01
II. Number of the international registration: <b>1269362</b>	
III. Name of the holder:	
VP BRANDS INTERNATIONAL SA, 5 Dunav Blvd. BG-4003 Plovdiv, BG	
IV. Protection of the mark is refused for <u>all</u> the goods and/or services.	
V. Information related to the grounds of refusal: [X] Earlier national mark See the provisional refusal 2016-02-09 [X] Earlier European Union mark See the provisional refusal 2016-02-09	
VI. Corresponding essential provisions of the applicable law (see pages 2-4)	
VII. Information related to further procedures: i) The decision may be the subject of a request for re-examination of the matter. The request shall be filled within two months from the date of delivery of the decision by the International Bureau to the holder. The fee for the request in question amounts to PLN 100 and is subject to payment to the Account of the Office. If the party does not wish to use their right to file a request for re-examination of the matter, they may lodge a complaint through the intermediary of the Office with the Voivodship Administrative Court in Warsaw within 30 days from the Party being served with the decision. The fee for filing a claim amounts to PLN 1,000 and is payable to the account of the court. Pursuant to the Act - Law on Proceedings before Administrative Courts the Party may apply for a release from payment of the court fees or grant of legal aid. ii) In proceedings before the Patent Office a patent agent, attorney, legal counsel or a person providing cross-border services within the meaning of the Act on Patent Agents may act as a representative of a party to proceedings. Any persons not having their domicile or seat in the Republic of Poland may only act by a representative. If they did not appoint a representative to conduct the proceedings who is domiciled in the Republic of Poland and do not act by the intermediary of a consul of the Republic of Poland, are obligated to designate a representative for service in the Republic of Poland. In the event of failure to designate a representative who is authorised to accept service of documents, the letters addressed to that party will be placed in the case-file and will be deemed to have been served. The obligation shall not apply to persons having their domicile or seat in the European Union, a member state of the European Free Trade Association (EFTA) – parties to the agreement on the European Economic Area or the Swiss Confederation.	
VIII. Signature or official seal of the Office sending the statement:	
 Anna Sulko expert /document signed electronically/	
IX. Date of notification to the International Bureau: 10.08.2018	

Essential provisions of INDUSTRIAL PROPERTY LAW - ACT OF 30 JUNE 2000		
Article 120:	1.	Any sign capable of being represented graphically may be considered as trademark, provided that such signs are capable of distinguishing the goods of one undertaking from those of other undertakings.
	3.	Any references in this Law to: 3) counterfeit trademarks shall mean identical trademarks illegally used or trademarks which in the course of trade can not be distinguished from the trademarks registered for the goods covered by the right of protection, 4) earlier trademarks shall mean the trademarks applied for registration or registered basing on the earlier priority.
Article 122:	1.	The provision of Article 120(1) shall not prevent a sign from being considered as a trademark, if the sign is intended for concurrent use by several undertakings who have jointly applied for the protection thereof, provided that such use is not contrary to public interests and is not intended to mislead the public, in particular as to the nature, intended purpose, quality, properties or origin of the goods (joint right of protection).
	2.	The principles of the use of a trademark on the basis of a joint right of protection shall be determined by the regulations governing use of trademarks adopted by the undertakings referred to in paragraph (1).
Article 129:	1.	Rights of protection shall not be granted for signs which: 1) cannot constitute a trademark, 2) are devoid of sufficient distinctive character.
	2.	Subject to Article 130, the following shall be considered as being devoid of sufficient distinctive character: 1) signs which are not capable of distinguishing, in trade, the goods for which they have been applied, 2) signs which consist exclusively or mainly of elements which may serve, in trade, to designate the kind, origin, quality, quantity, value, intended purpose, manufacturing process, composition, function or usefulness of the goods, 3) signs which have become customary in the current language and are used in fair and established business practices.
Article 131:	1.	Rights of protection shall not be granted for signs: 1) whose use infringes third parties' personal or economic rights, or 2) that are contrary to law, public order or morality, or 3) which, as for their nature, may mislead the public, in particular as to the nature, properties of the goods or, with regard to paragraph (3), as to the geographic origin thereof.
	2.	A right of protection shall not be granted for a sign, if: 1) it has been applied for protection with the Patent Office in bad faith, 2) it incorporates the name or abbreviated name of the Republic of Poland, or its symbols (emblem, national colours or national anthem), the names or armorial bearings of Polish voivodships, towns or communities, the insignia of the armed forces, paramilitary organisations or police forces, reproductions of Polish decorations, honorary distinctions or medals, military medals or military insignia, or other official or generally used distinctions and medals, in particular those of government administration, local self-administration or social organisations performing activities in vital public interests, where these organisations' activities extend to the entire territory of the State or to a substantial part thereof, unless the applicant is able to produce evidence of his right, in particular in a form of an authorisation issued by a competent State agency or a permission given by an organisation, to use the sign in the course of trade, 3) it incorporates the abbreviated names or symbols (armorial bearings, flags, emblems) of other countries, international organisations, as well as official signs, hallmarks indicating control and warranty adopted in other countries, if the prohibition of registration follows from international agreements, unless the applicant is able to produce an authorisation issued by a competent authority, which authorises him to use such signs in the course of trade, 4) it incorporates officially recognised signs accepted for the use in trade, in particular: safety marks, quality marks or hallmarks of legalisation – to the extent to which it could mislead the public as to the nature of such signs, unless the applicant is able to prove his right to use them, 5) it incorporates elements being symbols, in particular of a religious, patriotic or cultural nature whose use could hurt religious feelings, sense of patriotism or national tradition, 6) it constitutes a form or another feature of the goods or their packaging, which is dictated exclusively by their nature, is necessary to achieve a technical result or it gives substantial value to the goods.
	3.	In the case of wines and spirits, any trademark, which incorporates geographical elements discordant with the true origin of the good, shall be considered as a trademark misleading the public.
	4.	A right of protection shall not be granted for a trademark that contains geographical elements which, although literally true as to the territory, region or locality, in which the goods originate, are of such a nature as to mislead the public by false representing that the goods originate in another territory famous of given goods. In the case of homonymous geographical indications for wines and beers, protection shall be accorded on the condition that the subsequent applicant, who has later filed his application alters his trademark at the invitation of the Patent Office so as to make it distinguishable from the earlier trademark.

	5.	The filing, as a trademark, of a sign which is used by another person as the name under which that person's business activity is run, in particular where the name in question is an ordinary word, shall not constitute an autonomous ground for refusal to grant a right of protection, where the applicant has acted in good faith and: 1) the name is not used as a notorious trademark on the territory of the Republic of Poland for the goods of the same kind, or 2) at the date of filing of the trademark application there were no conflicting interests due, in particular, to a different sphere of activity, the range of activity limited to a local territory, or different forms of use of the both signs.
<u>Article 132:</u>	1.	A right of protection shall not be granted for a trademark in respect of identical or similar goods, if the trademark is identical or similar to: 1) a registered geographical indication, unless the applicant is entitled to use that indication and the grant of a right of protection for the trademark is not supposed to excessively restrain other entitled parties from using the registered geographical indication, 2) a trademark which, before the date according to which priority to obtain a right of protection is determined, has been well-known and used as a trademark in respect of the goods of another party, 3) a trademark earlier registered in the Republic of Poland, whose registration has terminated, provided that an interval between the date of lapse of the right of protection for the trademark and the date on which a similar trademark has been applied for by another party, is, subject to Article 133, no longer than two years.
	2.	A right of protection for a trademark shall not be granted, if the trademark: 1) is identical to a trademark registered or applied for registration with an earlier priority date (provided that the latter is subsequently registered) on behalf of another party for identical goods, 2) is identical or similar to a trademark for which a right of protection was granted or which has been applied for protection with an earlier priority date (provided that the latter is subsequently granted a right of protection) on behalf of another party for identical or similar goods, if a risk of misleading the public exists, in particular by evoking associations with the earlier mark, 3) is identical or similar to a renown trademark registered or applied for registration with an earlier priority (provided that the latter is subsequently registered) on behalf of another party for any kind of goods, if it without due cause would bring unfair advantage to the applicant or be detrimental to the distinctive character or the repute of the earlier trademark. The above provision shall apply to well-known trademarks accordingly.
	3.	The protection of a trademark which contains the signs referred to in Article 131(2)(2)-(4) and the symbols referred to in Article 131(2)(5), or signs which relate to the origin of the goods, shall not prevent a trademark containing the same elements from being granted a right of protection on behalf of another undertaking for identical or similar goods, provided that the both trademarks remain easily distinguishable in the course of trade.
	4.	Paragraph (3) shall apply accordingly to press-titles as trademarks that contain words or combinations of words customary used in the press-market.
	5.	The provisions of paragraphs (1) and (2) shall apply accordingly where a trademark or a geographical indication has been applied for or registered under the procedure referred to in Article 4.
<u>Article 133:</u>		The provision of Article 132(1)(3) shall not apply where the protection has terminated under Article 169(1)(1) or the right holder of the earlier right has given his consent for the later trademark being granted a right of protection.
<u>Article 136:</u>	1.	Any organisation enjoying the status of legal entity and created in order to represent interests of the undertakings, may be granted a right of protection for a trademark intended for use in the course of trade by that organisation and the entities grouped therein (collective trademark).
	2.	The principles of the use of a trademark in the course of trade by the organisation referred to in paragraph (1) and by the entities grouped therein shall be determined by the regulations governing use of trademarks adopted by that organisation.
<u>Article 137:</u>	1.	Any organisation enjoying the status of legal entity, which itself refrains from using the trademark, may be granted a right of protection for a trademark intended for use by the undertakings, which follow the rules laid down in the regulations governing use of trademarks adopted by the entitled organisation and are liable to control by that organisation to this extent (collective guarantee trademark).
	2.	A holder of the right of protection for a collective guarantee trademark may not, without important reasons, deny the undertakings, which meet the conditions specified in the regulations referred to in paragraph (1), the right to use that trademark.
<u>Article 138:</u>	3.	An application concerning a collective trademark, collective guarantee trademark or an application concerning a trademark filed in order to obtain a joint right of protection shall be accompanied by the regulations governing use of trademarks.
	4.	The regulations referred to in paragraph (3) shall, in particular, specify the manner of use of the trademark, common properties of the goods for which the mark is intended, the principles of verifying those properties, and the consequences of failure to comply with the rules of the regulations. The regulations governing use of collective guarantee trademarks shall additionally be required to specify the detailed conditions for and the procedure of admission by the entitled organisation of other undertakings to use the trademark.

<u>Article 152<sup>2</sup>.</u>	<ol style="list-style-type: none"> <li>1. Where the Patent Office finds that the statutory requirements for the recognition on the territory of the Republic of Poland of the protection for a international trademark have not been satisfied, the Office shall, subject to paragraph (2), take a decision on definitive refusal to recognize the protection.</li> <li>2. Before the decision, referred to in paragraph (1), is taken, the Patent Office shall, when applying the procedure, form and language as provided for in the Agreement or the Protocol, transmit to the International Bureau a notification of the grounds which prevent the protection of an international trademark to be recognised on the territory of the Republic of Poland (preliminary refusal to recognise the protection), and shall fix the time limit for the holder of the international trademark registration, within which he is expected to submit his observations in this matter.</li> </ol>
<u>Article 152<sup>3</sup>.</u>	Where the statutory requirements for the recognition on the territory of the Republic of Poland of the protection for an international trademark have not been satisfied only in respect of certain goods, the Patent Office shall take a definite decision on refusal to recognize the protection for the international trademark on the territory of the Republic of Poland in respect of these goods. The provision of Article 152 <sup>2</sup> (2) shall apply accordingly.
<u>Article 162:</u>	<ol style="list-style-type: none"> <li>3. The right of protection for a collective trademark may be assigned as a joint right of protection to the undertakings grouped in the organisation referred to in Article 136. The contract of assignment shall determine the rules governing the use of such trademark to the extent to which it is practised in respect of the regulations referred to in Article 122(2)</li> <li>4. The right of protection for a trademark may also be assigned in respect of certain goods for which the right of protection has been granted, if the goods for which the trademark remains registered on behalf of the vendor are not of the same kind. Once assigned, the right in question shall be dealt with as independent of the right enjoyed by the vendor.</li> <li>5. The contract of assignment of a share in the joint right of protection shall be valid subject to the consent given by all of the joint owners.</li> <li>6. Paragraphs (1), (3) to (5) shall apply accordingly to the right deriving from an application filed with the Patent Office, for which no right of protection has yet been granted.</li> </ol>
<u>Article 236:</u>	<ol style="list-style-type: none"> <li>1<sup>1</sup>. In proceedings before the Patent Office in matters relating to filing and processing of applications and maintaining the protection of trade marks a patent agent, attorney, legal counsel or a person providing cross-border services within the meaning of the Act on Patent Agents may act as a representative of a party to proceedings.</li> <li>3. In the matters referred to in paragraph (1) and (1<sup>1</sup>), any persons not having their domicile or seat in the Republic of Poland may only act when represented by a patent agent, attorney or a legal counsel. The obligation shall not apply to persons having their domicile or seat in the European Union, a member state of the European Free Trade Association (EFTA) – parties to the agreement on the European Economic Area or the Swiss Confederation.</li> </ol>
<u>Article 244:</u>	<ol style="list-style-type: none"> <li>1. Decisions of the Patent Office shall be liable to a party's request for re-examination of the matter within the meaning of the Code of Administrative Procedure. <ol style="list-style-type: none"> <li>1.1 Subject to paragraphs 1<sup>2</sup> to 1<sup>4</sup>, the provisions of the Code of Administrative Procedure governing deciding on appeals from decisions shall apply accordingly to proceedings on re-examination of the matter.</li> <li>1.2 Requests for re-examination of the matter shall require to be substantiated.</li> <li>1.3 In the case referred to in Article 89§2 of the Code of Administrative Procedure a hearing shall also be conducted at the applicant's request.</li> <li>1.4 The matter shall be re-examined by an expert appointed by the President of the Patent Office.</li> </ol> </li> <li>3. Paragraphs (1) and (1<sup>1</sup>) to (1<sup>4</sup>) shall apply accordingly to orders.</li> <li>4. A time limit for submitting a request for re-examination of the matter, in which a decision has been made or an order issued, shall be, accordingly, two months and one month from a day on which the party has been served with the decision or the order.</li> </ol>
<u>Article 248:</u>	Decisions made and orders issued by the Patent Office shall be subject to complaint to the administrative courts.
<u>Article 254:</u>	Any final decision of the Patent Office, which terminates the proceedings and grossly violates law may be subject to complaint lodged by the President of the Patent Office, the General Prosecutor of the Republic of Poland and the Ombudsman to the administrative court within a period of six months from the party being served with the decision.
<u>Article 315:</u>	<ol style="list-style-type: none"> <li>1. Rights conferred in respect of inventions, utility models, ornamental designs, topographies of integrated circuits, trademarks and rationalisation projects, existing at the time of entry into force of this Law, shall remain effective. To these rights the previous provisions are applicable, unless the provisions of this Part stipulate otherwise.</li> <li>2. Legal relationships established prior to the entry into force of this Law shall continue to be governed by the previous provisions.</li> <li>3. Statutory requirements for the grant of a patent, a right of protection or a right in registration shall be assessed under the provisions effective at a date of filing of an application concerning an invention, a utility model, a trademark or topography of an integrated circuit with the Patent Office. However, the provision of Article 37(2) shall apply to patent and utility model applications pending at the date of entry into force of this Law.</li> </ol>