



ESTONIAN PATENT OFFICE
TRADEMARK DEPARTMENT

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

NOTIFICATION OF *EX OFFICIO* PROVISIONAL REFUSAL

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

I. Name and address of the office refusing protection: 1 (2)

The Estonian Patent Office
Trademark Department
Toompuiestee 7
15041 Tallinn
ESTONIA
Telephone: + 372 62 77 931
Telefax: + 372 62 77 912

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

1395646

III. Other information concerning the international registration which is the subject of the provisional refusal:
figurative and verbal elements of the mark: **TVplay**

IV. The grounds for this provisional refusal are the following:

The sign **TVplay** only indicates the kind and characteristics of the goods and services in classes 9 and 38 indicated in item VI, namely that direct or delayed streaming of TV content is provided. The figurative element included on the mark is commonly used and customary in regard to the goods and services indicated.

The sign **TVplay** is not distinctive for the goods and services in classes 9 and 38 indicated in item VI, because it is devoid of any distinctive character. The figurative element included does not add distinctive character to the mark as a whole.

Therefor the IR 1395646 cannot be registered in Estonia for goods indicated in item VI.

V. Provision of the Estonian Trademark Act applicable on the subject (enclosed):
Section 9 subsections 1(2), 1(3) and 1(6).

VI. The grounds referred to in item IV affect:

a) following goods in class 9: Computer peripheral devices; routers; television apparatus; audio- and video-receivers; data processing apparatus; smart cards (integrated circuit cards); computer programs, recorded; computer programs (downloadable software); data storage devices; USB flash drives; portable flash memory devices; compact discs (audio-video); compact discs (read-only memory); optical disc drives; disk drives for computers; magnetic data media; computer memory devices; computer operating programs, recorded; transmitters (telecommunication).

b) following services in class 38: Telecommunications; communications by cellular phones; message sending; transmission of electronic mail; computer aided transmission of messages and images; electronic data interchange services; streaming of data; transmission of digital files; remote transmission of data by means of telecommunications; providing user access to global computer networks; providing telecommunications connections to a global computer network; rental of access time to global computer networks; communications by computer terminals; data broadcasting services; information about telecommunication; information, consultancy and advisory services relating to telecommunications; television broadcasting; news agency services; satellite transmission; video-ondemand transmission; wireless broadcasting.

VII. The owner of the registration may request a review of the provisional refusal. The request shall be received by Estonian Patent Office no later than within 4 months from the date of the provisional refusal.

The time limit expires **22/03/2019** (dd/mm/yyyy).

The request has to be filed through the authorized patent attorney of the Republic of Estonia (section 13 subsection 2 of the Estonian Trademark Act). List of patent attorneys is available at <http://www.epa.ee/>

Please note that if the owner of the registration fails to respond by the due date, the registration shall be deemed to be withdrawn for goods and services mentioned in item VI (section 38 subsection 2 of the Estonian Trademark Act). The owner may request that processing be resumed if the owner failed to perform the acts due to force majeure or some other impediment independent of the owner or the representative of the owner (section 47 subsection 3 of the Estonian Trademark Act).

Please note that if the mark is protected subsequent to reviewal of the provisional refusal an interested person may contest the owners right to a trade mark within two months as of the publication of the trade mark (section 41 subsection 2 of the Estonian Trademark Act).

VIII. Date on which the provisional refusal was pronounced: 22/11/2018 (dd/mm/yyyy).

IX. Signature of the Office:

Ekke-Kristian Erilaid
Senior Examiner

Extract from the Estonian Trademark Act

§ 9. Absolute circumstances which preclude legal protection

(1) Legal protection shall not be granted to the following signs:

- 2) signs which are devoid of any distinctive character, including single letters in non-stylised form, single numbers in non-stylised form and single colours;
- 3) signs which consist exclusively of signs or indications which designate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of rendering of the services, or other characteristics of the goods or services, or which describe the goods or services in another manner, or which consist of the above-mentioned signs or indications which are not considerably altered;
- 6) signs which are of such a nature as to mislead the consumer as to the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of rendering of the services, or other characteristics of the goods or services;

§ 13. Representative for performing acts related to legal protection of trade marks

(2) A person with no residence, seat or commercial or industrial enterprise operating in Estonia shall authorise a patent attorney as the person's representative to perform procedures related to trade marks at the Patent Office and at the Board of Appeal, except the filing of an application.

§ 41. Adjudication of appeals and revocation applications

(2) An interested person may contest an applicant's right to a trade mark at the Industrial Property Board of Appeal if circumstances specified in subsection 9 (1) or § 10 of this Act which preclude legal protection exist. The term for filing a revocation application is two months from the publication of the notice of the decision to register a trade mark.

§ 38. Examination of trade marks

(2) If an examination reveals circumstances which preclude the legal protection of a trade mark, the Patent Office shall notify the applicant thereof and set a term of at least two months for the elimination of the said circumstances or provision of explanations. If the applicant fails to respond by the due date, the application is deemed to be withdrawn.

§ 47. Withdrawal of applications, termination and resumption of processing

(3) An applicant may request that processing be resumed if the Patent Office terminated processing having deemed the application to be withdrawn pursuant to §§ 37, 38 or 46 of this Act and the applicant failed to perform the acts due to *force majeure* or some other impediment beyond the control of the applicant or a representative of the applicant.

