



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:

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:

1395893

III. Other information concerning the international registration which is the subject of the provisional refusal:

Figurative mark / verbal elements of the mark: **PLAY THE GAME**

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

The trademark cannot be protected, because the word combination PLAY THE GAME is devoid of any distinctive character regarding the goods named in the list of goods and services. The trademark consists of indication, which may serve, in trade, to designate the kind, quality, intended purpose, value and other characteristics of the goods. The figurative element is not sufficient to render the trademark distinctive.

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

VI. The ground referred to in item IV. affects the following goods in **class 9**: *computer programmes [programs], recorded; computer operating programs, recorded; computer peripheral devices; computer software, recorded; monitors [computer programs]; video game cartridges; computer programs [downloadable software]; computer game software; computer software applications, downloadable; 3d spectacles; memory cards for video game machines; smartglasses; smartwatches*

and the following goods in **class 28**: *bladders of balls for games; caps for pistols [toys]; toys for pets; ring games; balls for games; play balloons; billiard table cushions; rocking horses; batting gloves [accessories for games]; dolls' feeding bottles; billiard balls; chalk for billiard cues; billiard markers; skittles; marbles for games; toys; building blocks [toys]; playing balls; bowling apparatus and machinery; boxing gloves; gut for rackets; golf clubs; kites; kite reels; targets; counters [discs] for*

games; building games; strings for rackets; novelties for parties, dances [party favors, favours]; cricket bags; hockey sticks; draughts [games]; dice; discuses for sports; dominoes; chess games; chessboards; draughtboards; toy pistols; golf bags, with or without wheels; practical jokes [novelties]; nets for sports; tennis nets; darts; foosball tables; gloves for games; cups for dice; rattles [playthings]; parlor games; games; rackets; dolls' beds; dolls' houses; puppets; dolls; theatrical masks; carnival masks; scale model vehicles; quoits; dolls' clothes; dolls' rooms; conjuring apparatus; skittles [games]; tables for table tennis; spinning tops [toys]; backgammon games; shuttlecocks; toy air pistols; percussion caps [toys]; billiard cues; billiard cue tips; billiard tables; coin-operated billiard tables; apparatus for games; fencing weapons; fencing masks; fencing gloves; baseball gloves; mobiles [toys]; slides [playthings]; teddy bears; golf gloves; board games; flying discs [toys]; horseshoe games; mah-jong; plush toys; soap bubbles [toys]; toy vehicles; butterfly nets; jigsaw puzzles; paintball guns [sports apparatus]; paintballs [ammunition for paintball guns] [sports apparatus]; tennis ball throwing apparatus; bingo cards; divot repair tools [golf accessories]; roulette wheels; pinatas; punching bags; remote-controlled toy vehicles; sling shots [sports articles]; amusement machines, automatic and coin-operated; kaleidoscopes; playing cards; confetti; electronic targets; scale model kits [toys]; pachinkos; gaming machines for gambling; slot machines [gaming machines]; paper party hats; chips for gambling; scratch cards for playing lottery games; stuffed toys; video game machines; portable games with liquid crystal displays; arcade video game machines; controllers for game consoles; toy models; toy figures; ball pitching machines; masks [playthings]; matryoshka dolls; controllers for toys; golf bag carts; gyroscopes and flight stabilizers for model aircraft; joysticks for video games; protective films adapted for screens for portable games; drones [toys]; toy robots; needles for pumps for inflating balls for games; pumps specially adapted for use with balls for games; baby gyms; plush toys with attached comfort blanket; tricycles for infants [toys]; dolls' furniture; doll's utensils; sets for role playing games; toy musical instruments; badminton sets; beach baskets for sand [toys for kids]; boomerangs; darts [sets for game]; inflatable balls; tennis balls; water guns [toys]; blindfolds [accessories for games]; skipping rope; rubbers for jumping; sand molds [toys]; playing balls for filling water for games.

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 **16/05/2019** (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: 16/01/2019 (dd/mm/yyyy).

IX. Signature of the Office:

Jana Redkin
Senior Examiner

Number of continuation sheets: 1

Extract from the Estonian Trademark Act

§ 9. Absolute circumstances which preclude legal protection

(1) Legal protection is not 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.

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

[RT I 2004, 20, 141 – entry into force 01.05.2004]

(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.

[RT I 2004, 20, 141 – entry into force 01.05.2004]

§ 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.

§ 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.

§ 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.

[RT I 2009, 4, 24 – entry into force 01.03.2009]

§ 69. Effect of international registration

(1) Legal protection arising from an international registration valid in Estonia is equal to legal protection arising from a national registration and the rights and obligations arising from an internationally registered trade mark are equal to those arising from a nationally registered trade mark.