

MADRID AGREEMENT AND PROTOCOL
PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1)

I.	Office making the notification:  Patent Office of the Republic of Bulgaria 52b, boul. Dr.G.M.Dimitrov, BG-1040 SOFIA, Bulgaria www.bpo.bg
II.	Number of the international registration: 1 479 352
III.	Name of the holder: INDIVIDUAL ENTREPRENEUR TALAGAEVA ELENA VLADIMIROVNA
IV.	☒ Provisional refusal based on an <i>ex officio</i> examination ☐ Provisional refusal based on an opposition ¹ ☐ Provisional refusal based on both an <i>ex officio</i> examination and an opposition ¹
V.	☒ Provisional refusal for all the goods and/or services ☐ Provisional refusal for some of the goods and/or services: [followed by an indication of the goods and/or services which are affected or are not affected] ²

¹ The name and address of the opponent should also be provided.

² Where all the goods or services included in a given class are to be mentioned, the indication should read "all goods (or all services) in class X". In all cases, a clear indication should be given as to whether those goods and/or services are affected, or are NOT affected.

VI. Grounds for refusal [(where applicable, see item VII)]:

Motives for refuse:

The mark applied for consists of the words “henna” and “cream” which are written together as one word and the word elements “fito”, “cosmetic”. The word elements are written in Latin characters.

The word element "henna" means, "a reddish-brown dye made from the powdered leaves of a tropical shrub, used to colour the hair and decorate the body". The word “cream” means “a soft substance that you rub into your skin”. The word element "Fito", is a phonetic equivalent of the word "phyto". The prefix "phyto-" has a Greek origin ("phyton") and means a relation to plants: for example, "phytotherapy". The word element "cosmetic" means “a cream or other substance that you put on your skin, hair, etc. in order to improve its appearance”.

The awareness of the relevant public will be that of the average consumer who is reasonably well informed and reasonably observant. The relevant public will perceive the sign only as informative expression, which conveys obvious and direct information regarding the kind and the purpose of some of the goods – e.g. that the goods are plant-based hennas, dyes.

In respect of the other applied goods from class 03, the applied mark “HENNACREAM fito cosmetic” may mislead the customers.

Consequently, the mark applied for is devoid of distinctive character and can not serve as an indication of the commercial origin of the goods and services in question.

The element “HENNACREAM fito cosmetic” must be kept free for all competitors.

VII. Information relating to an earlier mark³ :

- (i) Filing date and number, and, if any, priority date:
- (ii) Registration date and number (if available):
- (iii) Name and address of the owner:
- (iv) Reproduction of the mark:
- (v) List of all or relevant goods and/or services:

VIII. Corresponding essential provisions of the applicable law [(see text under XII)]:

Art. 11(1) 2, art. 11(1) 4 and art. 11(1) 7

³

Where the grounds on which the provisional refusal is based relate to an earlier mark, as indicated under item VI. The indication required under this item may be given by annexing a printout from the register or database.

IX. Information relating to subsequent procedure:

(i) Time limit for requesting review or appeal:

Deadline for filing a request for review:

The holder of the international registration may submit its request for review against this refusal to the Patent Office of the Republic of Bulgaria (at the address in item I above)

within **two months**

from the date of receipt of this refusal.

During this period, the refusal is provisional. In the absence of a request for review, this refusal will become final without further notice (Art. 47(3)).

After this period the holder may lodge an appeal against this final refusal to the Patent Office of the Republic of Bulgaria (at the address in item I above)

within **two months (Art. 70(1))**.

The persons, which do not have a permanent address or registered office in the Republic of Bulgaria, shall perform activity before the Patent Office through an industrial property representative (Art. 3(2)).

The official language for correspondence with the Patent Office of the Republic of Bulgaria is the Bulgarian language.

(ii) Authority to which such request for review or appeal should be made:

the **Patent Office of the Republic of Bulgaria**

(iii) Indications concerning the appointment of a representative:

See the list of representatives in Bulgaria – Internet page of the Office www.bpo.bg

Please also note that, despite the provisional refusal based on the ex officio examination, it is possible that an **opposition or objection by third parties** is filed against the recognition of the effects of the international registration in the territory of the Republic of Bulgaria in the period from **16/10/2019 to 15/01/2020**

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



XI. Date of the notification of provisional refusal: **16/07/2020**

XII. Corresponding essential provisions of the applicable law:

LAW ON MARKS AND GEOGRAPHICAL INDICATIONS

Prom. SG.98/13 Dec 2019

Absolute grounds for refusal of registration

Art. 11. (1) The following shall not be registered:

1. a sign, which is not a trademark in the meaning of Art. 9, Para. 1;
2. a mark, which is not distinctive;
3. a mark, consisting exclusively of signs or indications, which have become customary in the spoken language or in established commercial practice in the Republic of Bulgaria in respect of the goods or services claimed;
4. a mark consisting exclusively of signs or indications, indicating the type, quality, quantity, purpose, value, geographical origin, time or method of production of the goods, the manner, in which the services are provided or other characteristics of the goods or services;
5. a sign, consisting exclusively of:
 - a) the shape of the goods or any other characteristic, that arises from the nature of the goods itself;
 - b) the shape of the goods or other characteristic, necessary to achieve a technical result;
 - c) the shape of the goods or other characteristic, that gives significant value to the goods;
6. a mark, that is contrary to public policy or to good morals;
7. a mark, which may mislead consumers as to the nature, quality, geographical origin or other characteristics of the goods or services;
8. a mark, consisting of, or incorporating, the emblems, flags or other symbols, and imitations thereof, of a Member State of the Paris Convention for the Protection of Industrial Property of 20 March 1883, as amended and supplemented pursuant to the Decision of the Council of Ministers on the accession of the People's Republic of Bulgaria to the Lisbon Edition of the Convention (ratified by Decree No. 663 of the Presidium of the National Assembly - SG, 75/65), hereinafter referred to as "the Paris Convention", as well as the emblems, flags or other symbols, abbreviations or names of international intergovernmental organizations, declared under Art. 6 of the Paris Convention;
9. a mark, which consists of or includes signs, emblems or heraldry, other than those, declared under Art. 6, from the Paris Convention, and of particular public interest;
10. a mark, consisting of, or incorporating, official marks and the control mark and guarantee, where they are intended to mean identical or similar goods;
11. a mark, consisting of or incorporating a name or image of a cultural property or parts of a cultural property, defined in accordance with the Cultural Heritage Act;
12. a mark, whose registration is in breach of Bulgarian law, European Union law or international agreements, to which the Republic of Bulgaria or the European Union is a party, providing legal protection of geographical indications;
13. a mark, whose registration is in breach of European Union law or international agreements, to which the European Union is a party, providing legal protection for foods of traditional specific nature;
14. a mark, whose registration is in breach of European Union law or of international agreements, to which the European Union is a party, providing for the legal protection of traditional wine names;
15. a mark, which consists of, or reproduces in its essential elements the name of an earlier plant variety, registered under national legislation, European Union law or international instruments, to which the Republic of Bulgaria and the European Union are parties, providing legal protection to the plant variety rights, where the mark and the plant variety refer to identical or closely related species.

(2) The provisions of Para. 1, items 2, 3 and 4 shall not apply where, prior to the date of application, the mark as a result of use, has acquired distinctiveness in respect of the goods or services, for which it has been claimed.

(3) The provisions of Para. 1, items 8, 9, 10 and 11 shall not apply, when the applicant presents evidence of consent of the relevant competent authority

(4) The provision of Para. 1, item 12 shall not apply, when the applicant of a mark, containing a geographical indication, previously claimed or registered under this Act, is a registered user of the geographical indication.

The provisions of Para. 1, items 12, 13 and 14 shall not apply, when the applicant restricts the list of goods, for which the mark has been applied for, to those, corresponding to the specification of registered in accordance with the legislation of the European Union or international agreements, to which the European Union is a party, geographical indications, foods with traditional specific nature and traditional names of wines.

Continuation of terms

Art. 80. The terms under Art. 46, Para. 2, sentence three, Art. 47, Para. 2, Art. 55, Para. 3, Art. 57, Para. 4 and Art. 58, Para. 5 may be extended once, with the same duration, at the request of the applicant or the holder submitted before their expiry. The request shall not be considered, where a state fee payment document has not been attached to it, if it is paid by a bank transfer.