



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: + 372 715 1735

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

1514350

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

Figurative mark / verbal elements of the mark: **Herba-Imuno RAPID**

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

The sign Herba-Imuno RAPID only indicates the kind and intended purpose of the goods in class 5 indicated in item VI, namely that these goods are made of herbs or herbal extracts, these goods improve immunity and are intended for rapid, fast effect. The sign Herba-Imuno RAPID is not distinctive for goods in class 5 indicated in item VI, because it is devoid of any distinctive character. 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) and 1(6).

VI. The ground referred to in item IV. affects the following goods: *Pharmaceutical products, vitamins, minerals and trace elements; food supplements for medical purposes, dietetic food and substances adapted for medical or veterinary use, food for babies, dietary supplements for humans and animals, vitamin preparations in the nature of food supplements, medicated dentifrices; herbal teas and extracts for medicinal purposes; extracts of medicinal herbs; combined preparations of vitamins, minerals, trace elements and herbal extracts; herbal supplements for medical purposes; nutritional supplements consisting primarily of vitamins and herbal extracts; medicated tablets; capsules, mineral waters and dietetic beverages adapted for medical purposes; balms, creams and ointments for medical purposes, medicated dentifrices; all the above mentioned goods not related to medicated candies and sweets; candies and sweets for medical purposes; vitamin candies and sweets for medicinal purposes.*

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 **20/11/2020** (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 (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: 20/07/2020 (dd/mm/yyyy).

IX. Signature of the Office:

Jana Redkin
Senior Examiner

Number of continuation sheets: 1

Extract from the Trade Marks Act

§ 9. Absolute circumstances which preclude legal protection

(1) Legal protection is not afforded to the following signs:

2) signs which are devoid of any distinctive character;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

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;

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

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.

[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 eliminating said circumstances or giving explanations. If the applicant fails to respond within the set term, the application is deemed to be partially or fully withdrawn.

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

§ 41. Adjudication of appeals and revocation applications

(2) An interested person may contest an applicant's right to a trade mark at the Board of Appeal if any circumstances specified in subsection § 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.

[RT I, 19.03.2019, 5 – entry into force 01.04.2019]

§ 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 partially or fully withdrawn pursuant to subsection 37 (3) or 38 (2) of this Act.

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]

§ 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.

[RT I, 19.03.2019, 4 – entry into force 29.03.2019]