

**MADRID AGREEMENT AND PROTOCOL
MADRIDER ABKOMMEN UND PROTOKOLL**
**PROVISIONAL REFUSAL OF PROTECTION
VORLÄUFIGE SCHUTZVERWEIGERUNG**

 Rule 17 (1)
 Regel 17 (1)

I. Authority pronouncing the refusal: Austrian Patent Office Dresdner Straße 87 A – 1200 Vienna (Austria)	Behörde, die die Schutzverweigerung erlassen hat: Österreichisches Patentamt Dresdner Straße 87 A – 1200 Wien (Österreich)
II. Number of the international registration: 1 505 998 TOP NOTCH Nr. der internationalen Registrierung: Number of the basic registration / application and country of origin: 302018000032893 Italy Nr. der Basisregistrierung / -anmeldung und Ursprungsland:	
III. Grounds of the provisional refusal: Gründe der vorläufigen Schutzverweigerung: Devoid of distinctive character; "Top Notch" will only be seen as a laudatory promotional message, that the goods are "first class" or "outstanding". Mangelnde Unterscheidungskraft; "Top Notch" wird lediglich als lobender werblicher Hinweis dahingehend verstanden werden, dass die so bezeichneten Waren „erstklassig“ bzw. „hervorragend“ sind.	
IV. Applicable provisions of the national law (see text next page) Anwendbare Bestimmungen des nationalen Gesetzes (siehe Gesetzesauszug auf der nächsten Seite)	Section 4 subsection 1 clause 3 § 4 Absatz 1 Ziffer 3
V. *) ☒ Refusal for all goods and/or services Schutzverweigerung für alle Waren und/oder Dienstleistungen ☐ Refusal for the following goods and/or services: Schutzverweigerung für die folgenden Waren und/oder Dienstleistungen: ☐ Admission only for the following goods and/or services: Zulassung nur für folgende Waren und/oder Dienstleistungen:	
VI. Reply to the refusal: Äußerung auf die Schutzverweigerung: a) Time limit / Äußerungsfrist: 21/10/2020 b) Representative -see annex "Provisions of the applicable law" (Section 61 subsections 1 and 4 Trade Mark Act). Vertreterregelungen - siehe Annex „Provisions of the applicable law“ (§ 61 Abs. 1 und 4 MSchG). c) Authority to address the reply to : see I. Behörde, an die die Äußerung zu richten ist: : siehe I.	
VII. Date of the provisional refusal / Datum der vorläufigen Schutzverweigerung: 21/07/2020	

*) Indicated in the appropriate box / Zutreffendes ist angekreuzt

- I. Corresponding essential provisions of the applicable law: Austrian Trade Mark Act
(Federal Law Gazette No. 260/1970 in its current version / Bundesgesetzblatt Nr. 260/1970 idgF)

Section 1

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of their packaging, or sounds, provided that such signs are capable of

- 1) distinguishing the goods or services of one undertaking from those of other undertakings; and
- 2) being represented on the trademark register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Section 4

(1) Excluded from registration shall be signs which

1. consist exclusively
 - (a) of state coats of arms, national flags or other national emblems or of the coats of arms of Austrian provincial or local authorities;
 - (b) of official certification or guarantee signs which are used in Austria or – pursuant to a notice to be published in the Federal Law Gazette (Section 6 subsection 2) – in a foreign state, for the same goods or services as those for which the mark is intended for, or for similar goods or services;
 - (c) of signs of international organizations to which a member state of the Paris Union for the Protection of Industrial Property belongs, provided the signs have been promulgated in the Federal Law Gazette and their registration is capable of conveying the impression of an existing connection to that organization or of misleading the public in regard to the existence of such a connection. The last sentence of Section 6(2) shall apply to such promulgation;
2. cannot constitute a trade mark in accordance with Section 1;
3. are devoid of any distinctive character;
4. consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services;
5. consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade to designate the good or service;
6. consist exclusively of the shape or any other characteristic which results from the nature of the goods themselves, or which is necessary to obtain a technical result, or of the shape which gives substantial value to the goods;
7. are contrary to public policy or to accepted principles of morality;
8. are of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the good or service;
9. pursuant to Union legislation or national law including international agreements to which Austria is party, providing for protection of designations of origin and geographical indications, are excluded from registration;
10. pursuant to Union legislation or national law including international agreements to which Austria is party, providing for protection of traditional terms for wine, are excluded from registration;
11. pursuant to Union legislation or national law including international agreements to which Austria is party, providing for protection of traditional specialities, are excluded from registration;
12. consist of, or reproduce in their essential elements, an earlier plant variety denomination registered in accordance with Union legislation or national law including international agreements to which Austria is party, providing for protection of plant variety rights, and which are in respect of plant varieties of the same or closely related species.

(2) Registration shall, however, be admissible in the cases of subsection 1 clauses 3, 4 and 5, if the sign has acquired a distinctive character in Austria in the circles concerned following the use which has been made of it prior to application.

Section 16

(1)

(2)

(3) The application shall indicate the goods and services for which protection is sought with sufficient clarity and precision (list of goods and services) to enable everyone on that sole basis to determine the extent of protection. General terms, including the general indications in the Nice Classification (Nice Agreement concerning the International Classification of Goods and Services for the Purpose of the Registration of Marks, Federal Law Gazette No. 401/1973 in its current version) shall be interpreted as including all the goods and services clearly covered by the literal meaning of the indication or term. Detailed requirements in respect to the list of goods and services shall be determined by regulation.

(4)

Section 61

(1) Anyone acting as representative before the Patent Office shall have his domicile or principal place of business in the European Economic Area (EEA) or in the Swiss Confederation; in regard to attorneys at law, patent attorneys and notaries public though the respective professional regulations shall apply. The representative shall demonstrate his authorisation by a written power of attorney which shall be presented in original version or by way of a duly certified copy. If several individuals are authorised collectively, each of them shall also be authorised to represent individually.

(2)

(3)

(4) A person having neither domicile nor principal place of business in the European Economic Area (EEA) or in the Swiss Confederation may claim rights under this Federal Act before the Patent Office only when being represented by a representative fulfilling the requirements of subsection 1. Before the Cancellation Department such persons may only claim rights when being represented by an attorney at law, a patent attorney or a notary public. [.....].