

MADRID AGREEMENT/MADRID PROTOCOL
CONCERNING THE INTERNATIONAL REGISTRATION OF TRADE MARKS
REFUSAL OF PROTECTION
notified to the International Bureau of the World Intellectual Property Organization (WIPO)
under Article 5 of the Madrid Agreement/Madrid Protocol

The boxes are crossed off when applicable ☒

I.	Office having declared refusal of protection: Deutsches Patent- und Markenamt D-80297 München (Federal Republic of Germany)	Telephone Teleprinter Extension no.	+49 (0)89 2195-0 +49 (0)89 2195-4000 +49 (0)89 2195-4047
II.	No. of the international registration in respect of which protection has been refused: 1 547 225 No. of basic national registration: 3 688 572		
III.	Name and address of the holder of the registration in respect of which protection has been refused: HISPALCO, S.A., C/ Barranco Pascual, 45, Pol. Ind. Campo Aníbal, E-46530 Puzol (Valencia), ES		
IV.	Provisional/final refusal (<i>see item VIII below</i>)		
V.	Grounds for refusal (earlier opposed trade marks and/or other grounds): – <i>see item X</i> –		
VI.	Applicable sections of the national law: – <i>see item X</i> –		
VII.	<input checked="" type="checkbox"/> Refusal for all products/services. <input type="checkbox"/> Refusal for all products/services excepting: <input type="checkbox"/> Refusal for products/services as follows: – <i>see item X</i> –		
VIII.	Objection to and legal remedies concerning the decision to refuse protection (<i>please quote the international registration no./cl. 31 in all correspondence</i>): <p>The holder of the trade mark may submit his objections to the present refusal to Deutsches Patent- und Markenamt (<i>address as indicated in item I above</i>) within four months from the date on which the notification of refusal was dispatched by WIPO, exclusively through the agency of a representative (<i>Patentanwalt</i> or <i>Rechtsanwalt</i>) who is authorised and empowered to represent the holder of the trade mark in proceedings before the German Patent and Trade Mark Office, before the Federal Patent Court and in civil litigation affecting this trade mark, as well as to file motions for criminal prosecution. The details of the refusal will be communicated to that representative.</p> <p>During the above time limit, the refusal of protection is provisional. In the absence of objections to the refusal within the time limit of four months, the latter will become final without further notification.</p> <p>Within an additional time limit of one month the holder may, however, file an objection (<i>Erinnerung</i>) together with the fee of EUR 150 for objection.</p> <p>In the absence of an objection refusal shall become final.</p> <p>The special motion (<i>Erinnerung</i>) shall be addressed directly to Deutsches Patent- und Markenamt (<i>address as indicated in item I above</i>) through the agency of a representative (<i>Patentanwalt</i> or <i>Rechtsanwalt</i>) who is authorised and empowered to represent the holder of the trade mark in proceedings before the German Patent and Trade Mark Office, before the Federal Patent Court and in civil litigation affecting this trade mark, as well as to file motions for criminal prosecution.</p>		
IX.	Date of pronouncement of refusal: December 21, 2020		



IRIS47225

X. (Title and date of the applicable national law)

Extract from the Trade Mark Law

Version of 19/10/2013, Section 96 updated

Absolute obstacles to protection

8. - (1) Signs eligible for protection as a trade mark within the meaning of section 3 which cannot be depicted graphically shall be excluded from registration.
- (2) The following trade marks shall be excluded from registration
1. those which are devoid of any distinctive character for the goods or services,
 2. which consist exclusively of signs or indications which may serve, in the course of trade, to designate the nature, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering of the services or to designate other characteristics of the goods or services,
 3. which consist exclusively of signs or indications which have become customary in the current usage or in the bona fide and established practices of the trade to designate the goods or services,
 4. which are of such a nature to mislead the public, in particular with regard to the nature, the quality or the geographical origin of the goods or services,
 5. which are contrary to public policy or to accepted principles of morality,
 6. which contain state coats of arms, state flags or other sovereign state symbols or coats of arms of a domestic locality or of a domestic municipal or other local authority association,
 7. which contain official certification marks or hallmarks which are excluded from registration as a trade mark in accordance with a notice made by the Federal Ministry of Justice in the Federal Law Gazette (BGBl.),
 8. which contain coats of arms, flags or other symbols, seals or designations of international intergovernmental organisations which are excluded from registration as a trade mark in accordance with a notice made by the Federal Ministry of Justice in the Federal Law Gazette,
 9. the use of which can evidently be prohibited in the public interest in accordance with other provisions, or
 10. which have been applied for in bad faith.
- (3) Subs. 2 Nos. 1, 2 and 3 shall not apply if, prior to the point in time of the decision on registration, the trade mark has become established in the trade circles involved as a result of its use for the goods or services for which the application was filed.
- (4) Subs. 2 Nos. 6, 7 and 8 shall also be applied if the trade mark contains the imitation of a sign listed there. Subs. 2 Nos. 6, 7 and 8 shall not be applied if the applicant is empowered to include in the trade mark one of the signs listed therein, even if it can be confused with one of the other signs listed therein. Subs. 2 No. 7 shall furthermore not be applied if the goods or services for which the trade mark application was filed are neither identical with nor similar to those for which the certification mark or hallmark has been introduced. Subs. 2 No. 8 shall further not be applied if the trade mark applied for is not suitable to create among the public the incorrect impression of a connection with the international intergovernmental organisation.

Trade marks that have been filed or registered as relative obstacles to protection

9. - (1) The Registration of a trade mark may be cancelled
1. if it is identical to a trade mark applied for or registered which has older seniority and the goods or services for which it was registered are identical with the goods or services for which the trade mark with older seniority was filed or registered,
 2. if the likelihood of confusion exists, including the likelihood of association between the trade marks, for the public because of its identity with or similarity to a trade mark applied for or registered with older seniority and owing to the identity or similarity of the goods or services covered by both trade marks, or
 3. if it is identical with or similar to a trade mark applied for or registered with older seniority and has been registered for goods or services which are not similar to those for which the trade mark with older seniority has been filed or registered, if the trade mark with older seniority is a trade mark which has a reputation in this country and the use of the registered trade mark would without due cause take unfair advantage of, or be detrimental to, the distinctive character or the repute of the trade mark which has a reputation.
- (2) Applications for trade marks shall only constitute a ground for refusal within the meaning of subs. 1 if they are registered.

Opposition

42. - (1) Within a three-month period after the date of the publication of the registration of the trade mark in accordance with section 41, the proprietor of a trade mark or of a commercial designation with older seniority may lodge an opposition against the registration of the trade mark.
- (2) The opposition may only invoke that the trade mark may be cancelled
1. because of a trade mark applied for or registered with older seniority in accordance with section 9,
 2. because of a well-known mark with older seniority in accordance with section 10 in conjunction with section 9,
 3. because of its registration for an agent or representative of the trade mark proprietor in accordance with section 11, or
 4. because of a trade mark not registered with older seniority in accordance with section 4 No. 2 or of a commercial designation with older seniority in accordance with section 5 in conjunction with section 12.
- (3) (repealed)

Objection of insufficient use, decision on the opposition

43. - (1) If the opposition has been lodged by the proprietor of a registered trade mark with older seniority, he/she shall, if the other party disputes the use of the trade mark, make a plausible case that he/she, within the last five years prior to the publication of the registration of the trade mark which is targeted by the opposition, has been used in accordance with section 26 insofar as it has been registered for at least five years at this point in time. If the period of five years of non-use ends after the publication of the registration, the opponent, if the other party disputes the use, must make a plausible case that the trade mark has been used in accordance with section 26 within the past five years prior to the decision on the opposition. Only those goods or services shall be taken into consideration in the decision with respect to which a plausible case has been made for use.
- (2) If the examination of the opposition reveals that the trade mark is to be cancelled for all or part of the goods or services in respect of which it is registered, the registration shall be cancelled in full or in part. If the registration of the trade mark cannot be cancelled, the opposition shall be refused.
- (3) If the registered trade mark is to be cancelled because of one or several trade marks with older seniority, the proceedings on further objections may be suspended until a decision has been handed down with legal force on the registration of the trade mark.
- (4) Section 52 subs. 2 and 3 shall be applied mutatis mutandis in the event of cancellation in accordance with subs. 2.

Domestic representative

96. - (1) Any person who has neither their residence nor principal place of business nor an establishment in Germany may participate in the proceedings before the German Patent and Trade Mark Office or the Federal Patent Court which are regulated under this Act and assert the rights deriving from a trade mark only if he has appointed as his representative a lawyer or patent attorney who is authorised and empowered to represent him in proceedings before the German Patent and Trade Mark Office, before the Federal Patent Court and in civil litigation affecting this trade mark, as well as to file motions for criminal prosecution.
- (2) The place where a representative appointed pursuant to subsection (1) has his commercial premises shall be deemed, within the meaning of section 23 of the Code of Civil Procedure, to be the place where the asset is located; if there are no such commercial premises, the place where the representative is residing in Germany shall be decisive or, if there is no such place, the place where the German Patent and Trade Mark Office has its seat.
- (3) The legal termination of the appointment of a representative in accordance with subsection (1) shall not become effective until the German Patent and Trade Mark Office or the Federal Patent Court has been informed of both the termination of this appointment and the appointment of another representative.

Application of the provisions of this Act; language

107. (1) The provisions of this Act shall be applied mutatis mutandis to the international registration of trade marks in accordance with the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement on Marks) carried out through the intermediary of the Patent Office or whose protection covers the territory of the Federal Republic of Germany unless provided otherwise in this Chapter or in the Madrid Agreement on Marks.
- (2) All and any applications, as well as other communications in the proceedings for international registration and the list of goods and services, shall be submitted in either French or English, at the choice of the applicant.

Opposition

114. - (1) The publication of the registration (section 41) for internationally-registered trade marks shall be substituted by publication in the Information Notice published by the International Bureau of the World Intellectual Property Organisation.
- (2) The time limit to lodge the opposition (section 42 subs. 1) against the granting of protection for internationally-registered trade marks shall commence on the first day of the month following the month stated as the issue month of the edition of the Information Notice containing the publication of the internationally-registered trade mark.
- (3) Refusal of protection shall take the place of the cancellation of the registration (section 43 subs. 2).

Extract from the Trade Mark Ordinance version of 11 May 2004

Section 46 Refusal of Protection

(1) Where protection is, in full or in part, refused to an international registration the protection of which has been extended to the territory of the Federal Republic of Germany under Article 3^{ter} of the Madrid Agreement or under Article 3^{ter} of the Protocol Relating to the Madrid Agreement, and where this refusal is communicated to the International Bureau of the World Intellectual Property Organization to be transmitted to the proprietor of the international registration, the time limit for appointing a representative in Germany shall, to avoid final refusal, be fixed to four months from the date on which notification of refusal was dispatched by the International Bureau of the World Intellectual Property Organization.

(2) Where the refusal of protection has become final because the proprietor of the international registration has failed to appoint a representative in Germany, a special motion (*Erinnerung*) or an appeal from the refusal shall be filed with the German Patent and Trade Mark Office within one further month after the time limit under subsection (1). Instructions about the proprietor's right to appeal shall be attached to the refusal. Section 61(2) of the Trade Mark Act shall apply *mutatis mutandis*.

still
X. grounds for refusal – *item V* –

International Trade Mark **1 547 225**

The company (companies) mentioned below has (have) lodged opposition to the admission of the trade mark because of earlier national or international application or registration of its (their) trade mark(s) listed below (Sec. 119, 124, 114, 42 Trade Mark Law; Art. 5 Protocol Relating to the Madrid Agreement; Art. 6 quinquies B Paris Convention):

1. GODIVA BELGIUM B V/S R.L. IR1385117

Veeartsenstraat 42D

B-1070 Anderlecht

Belgien (BE)

GODIVA

2. GODIVA BELGIUM B V/S R.L., 1070 Anderlecht, BE EM000184622 GODIVA

Note:

If no representative has been appointed within the provisional time limit of the first four months, this fact constitutes in itself a ground for refusal after the notification concerning the refusal of protection has become final (Sec. 119, 96 Trade Mark Law)

XII. Annexes (crossed off below)

- ☒ 1 reproduction of 1 opposed trade mark including a figurative element or a special graphic design
- ☒ List specifying the registration number as well as the relevant goods/services in respect of each opposed trade mark
- ☐ List of professional representatives
- ☐ List of goods/services

XI. Signature or official seal of the administration which pronounced the refusal



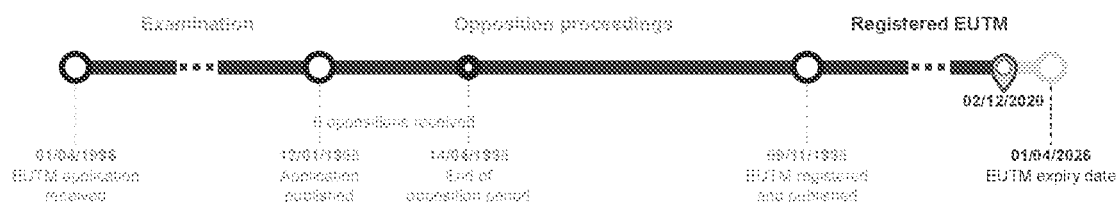


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EUTM file information

GODIVA
000184622

Timeline



Trade mark information

Name	GODIVA	Filing date	01/04/1996
Filing number	000184622	Registration date	25/09/1998
Basis	EUTM	Expiry date	01/04/2026
Date of receipt	01/04/1996	Designation date	
Type	Word	Filing language	Dutch
Nature	Individual	Second language	English
Nice classes	29, 30, 33 (Nice Classification)	Application reference	292340
Vienna Classification		Trade mark status	Registered
		Acquired distinctiveness	No

Goods and services

English (en)

29 Preserved, dried and cooked fruits; jellies, jams, milk products.

30 Coffee, tea, cocoa, sugar; chocolate products, biscuits, cakes, pastry and confectionery, ice; honey, treacle, sauces (except salad dressings).

33 Alcoholic beverages (except beer).

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Description

No data

Owners

GODIVA BELGIUM B.V./S.R.L.

ID	516752	Country	BE - Belgium	Correspondence address	
Organisation	GODIVA BELGIUM B.V./S.R.L.	State/county	n/a	GODIVA BELGIUM B.V./S.R.L. Veeartsenstraat 42 D B-1070 Anderlecht BÉLGICA	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal entity	Town	Anderlecht		
		Post code	1070		
		Address	Veeartsenstra 42 D		Hidden. You can set your contact details to be publicly available via the User Area.
					Hidden. You can set your contact details to be publicly available via the User Area.

Representatives

Würtenberger Rechtsanwälte

ID	95623	Country	DE - Germany	Correspondence address	
Organisation	n/a	State/county	n/a	Würtenberger Rechtsanwälte Maximiliansplatz 12b D-80333 München ALEMANIA	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal person	Town	München		
Type	Association	Post code	80333		
		Address	Maximilianspl 12b		Hidden. You can set your contact details to be publicly available via the User Area.
					Hidden. You can set your contact details to be publicly available via the User Area.

Correspondence

	From	Procedure	Filing number	Subject	Date	Actions
		Recordal	018331226	T72RW - Change in the name and/or address of the applicant/proprietor - notification of entry in the Register	14/08/2020	
		Recordal	018331226	Application form and attachment	11/08/2020	
		Recordal	018331226	Letter to the EUIPO	11/08/2020	
		Recordal	017697668	H726A - Notification of entry of a change of representative in the Office - Register and database	10/04/2020	

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	From	Procedure	Filing number	Subject	Date	Actions
		EUTM	000184622	LSU02 — Information to proprietors of earlier trade mark registrations or applications (Article 195(4) EUTMR)	24/01/2018	
		EUTM	000184622	LSU01 — Information to proprietors of earlier trade mark registrations or applications (Article 43(7) EUTMR)	09/01/2018	
		EUTM	000184622	LSU02 — Information to proprietors of earlier trade mark registrations or applications (Article 195(4) EUTMR)	11/10/2016	
		EUTM	000184622	LSU02 — Information to proprietors of earlier trade mark registrations or applications (Article 195(4) EUTMR)	11/10/2016	
Showing 1 to 10 of 83 entries						

IR transformation

No data

Seniority

Country	Filing number	Registration number	Priority date	Filing date	Registration date	International code	Status
Benelux		516642			26/05/1992	EU	ACCEPTED
Showing 1 to 1 of 1 entries							

Exhibition priority

No data

Priority

No data

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Publications

Bulletin number	Date	Section	Description
1998/004	12/01/1998	A.1	Applications published under Article 44 EUTMR (Article 39 EUTMR before 01/10/2017)
1998/085	09/11/1998	B.2	Registrations with amendments since the application was published
2006/024	12/06/2006	D.1	Renewals
2007/043	20/08/2007	C.2.2	Representative - Appointment / Replacement of representative
2007/043	20/08/2007	C.2.1	Representative - Change of name and professional address
2007/045	27/08/2007	C.2.1	Representative - Change of name and professional address
2007/047	03/09/2007	C.2.2	Representative - Appointment / Replacement of representative
2008/045	10/11/2008	C.2.2	Representative - Appointment / Replacement of representative
2008/045	10/11/2008	C.2.2	Representative - Appointment / Replacement of representative
2009/004	02/02/2009	C.1.3	Proprietor - Change of name and address
Showing 1 to 10 of 16 entries			

Cancellation

No data

Records

Bulletin number	Date	Section	Filing number	Title	Subtitle
2006/024	12/06/2006	D.1	001441701	Renewal	Total Renewal
2007/043	20/08/2007	C.2.2	000723067	Representative	Appointment / Replacement of representative
2007/043	20/08/2007	C.2.1	001706756	Representative	Change of name and professional address
2007/045	27/08/2007	C.2.1	002285206	Representative	Change of name and professional address
2007/047	03/09/2007	C.2.2	001001026	Representative	Appointment / Replacement of representative
2008/045	10/11/2008	C.2.2	003478669	Representative	Appointment / Replacement of representative
2008/045	10/11/2008	C.2.2	003478933	Representative	Appointment / Replacement of representative
2009/004	02/02/2009	C.1.3	003640722	Proprietor	Change of name and address
2009/005	09/02/2009	C.2.2	003657551	Representative	Appointment / Replacement of representative
2012/007	11/01/2012	C.2.2	006192671	Representative	Appointment / Replacement of representative
Showing 1 to 10 of 14 entries					

Oppositions

No data

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Appeals

No data

Decisions

No data

Renewals

Title	Filing number	Status	Status date
Renewal	001441701	Trade mark renewed	12/06/2006
Renewal	010039603	Trade mark renewed	11/05/2016
Showing 1 to 2 of 2 entries			

Trade mark relations

No data

International Applications

No data

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Romarin**(111) IR 1 385 117**

151 Date of registration 18.09.2017
 180 Expected expiration date 18.09.2027
 270 Language English

Current Status

732	Name and address of the holder of the registration	GODIVA BELGIUM B.V./S.R.L. Veeartsenstraat 42D B-1070 Anderlecht Belgium	CLID: 1239707
812	Contracting state/organization of which the holder has an industrial or commercial establishment	TR – Turkey	
842	Legal nature of the holder	Private Limited Company Belgium	
740	Name and address of the representative	YILDIZ HOLDİNG ANONİM ŞİRKETİ Kısıklı Mahallesi, Çeşme Çıkmazı Sokak, No:6/1 Üsküdar İstanbul Turkey	CLID: 1035258
770	Name and address of the previous holder	GODIVA BELGIUM B.V.B.A./S.P.R.L. Wapenstilstandstraat 5 Brussel Belgium	CLID: 1074526

540 Mark

GODIVA

540 Verbal elements

GODIVA

511	International classification of goods and services for the purposes of the registration of marks (Nice Classification)	<p>30. Coffee, tea, cocoa and artificial coffee, confectionery, chocolate, biscuits, crackers, wafers, cakes.</p> <p><i>Café, thé, cacao et succédanés de café, confiseries, chocolat, biscuits, crackers, gaufrettes, gâteaux.</i></p> <p><i>Café, té, cacao y sucedáneos del café, productos de confitería, chocolate, galletas, galletas saladas, barquillos, pasteles.</i></p>
821	Basic application	<p>TR – Turkey</p> <p>05.09.2017, 2017/78083</p>
832	Designations under the Madrid Protocol	<ul style="list-style-type: none"> • AL – Albania • BA – Bosnia and Herzegovina • EM – Office for Harmonization in the Internal Market • KG – Kyrgyzstan • MD – Republic of Moldova • ME – Montenegro • MK – The former Yugoslav Republic of Macedonia • RS – Republic of Serbia • TJ – Tajikistan

Registration

450	Publication number	2018/1 Gaz, 18.01.2018
832	Designations under the Madrid Protocol	<ul style="list-style-type: none"> • AL – Albania • BA – Bosnia and Herzegovina • EM – Office for Harmonization in the Internal Market • MD – Republic of Moldova • ME – Montenegro • MK – The former Yugoslav Republic of Macedonia • RS – Republic of Serbia
580	Date of recording	18.01.2018

Subsequent designation

450	Publication number	2018/4 Gaz, 08.02.2018
832	Designations under the Madrid Protocol	<ul style="list-style-type: none"> • KG – Kyrgyzstan • TJ – Tajikistan
580	Date of recording	08.02.2018
891	Date of subsequent designation (Rule 24(6) of the Common Regulations)	15.01.2018

Ex Officio examination completed but opposition or observations by third parties still possible, under Rule 18bis(1)

		EM – Office for Harmonization in the Internal Market
450	Publication number	2018/4 Gaz, 08.02.2018
	Opposition end date	19.05.2018

Statement of grant of protection made under Rule 18ter(1)

		EM – Office for Harmonization in the Internal Market
450	Publication number	2018/25 Gaz, 05.07.2018
	Our date of reception	20.06.2018
	Notification to holder	22.06.2018

Statement of grant of protection made under Rule 18ter(1)

		RS – Republic of Serbia
450	Publication number	2018/44 Gaz, 15.11.2018
	Our date of reception	01.11.2018
	Notification to holder	05.11.2018

Statement of grant of protection made under Rule 18ter(1)

		MD – Republic of Moldova
450	Publication number	2018/49 Gaz, 20.12.2018
	Our date of reception	06.12.2018
	Notification to holder	10.12.2018

Statement of grant of protection made under Rule 18ter(1)

		ME – Montenegro
450	Publication number	2018/52 Gaz, 10.01.2019
	Our date of reception	20.12.2018
	Notification to holder	26.12.2018

Statement of grant of protection made under Rule 18ter(1)

		TJ – Tajikistan
450	Publication number	2019/2 Gaz, 24.01.2019
	Our date of reception	08.01.2019
	Notification to holder	11.01.2019

Statement of grant of protection made under Rule 18ter(1)

		BA – Bosnia and Herzegovina
450	Publication number	2019/2 Gaz, 24.01.2019
	Our date of reception	07.01.2019
	Notification to holder	11.01.2019

Statement of grant of protection made under Rule 18ter(1)

		KG – Kyrgyzstan
450	Publication number	2019/12 Gaz, 04.04.2019
	Our date of reception	15.02.2019
	Notification to holder	25.03.2019