

MADRID AGREEMENT AND PROTOCOL

PROVISIONAL REFUSAL OF PROTECTION

RULE 17.1) OF THE REGULATIONS UNDER THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

I. Office notifying the refusal: **National Center of Intellectual Property**
20, ul. Kozlova, Minsk 220034, Belarus
Telephone (Department of Trademarks): (+375 17) 392 51 97, (+375 17) 272 87 22
Fax: (+375 17) 272 98 34, <http://www.ncip.by>

II. Number of the international registration: 1 531 391

III. Name and address of the holder of the international registration:

JSC LOMISI
Village Natakhtari
3308 Mtskheta Region (Georgia)

IV. Provisional refusal based on an *ex-officio* examination

V. Grounds for refusal:

The claimed designation consists exclusively of a bottle being the packaging of the claimed goods which results mainly from the nature of the goods themselves or is necessary to obtain a technical result and is devoid of distinctive character and therefore cannot be registered as a trademark.

VI. Applicable provisions of the national law (see text under X): 4.1.1.; 4.1.5.

VII.

☒ Refusal for all the goods and/or services: Cl. 32.

☐ Refusal for the following goods and/or services:

☐ Protection for the following goods and/or services:

VIII. Appeal against the decision of refusal:

- a) time limit for requesting appeal: 3 months from the date on which the notification was received by the holder of the international registration;
 - b) authority to which request for appeal should be made: National Center of Intellectual Property (see address under I);
 - c) for applicants with permanent location or permanent residence in the territory of foreign states, representation by a patent attorney of the Republic of Belarus is mandatory if international treaties to which the Republic of Belarus is party do not provide otherwise (a list of the registered patent attorneys is available at <https://ncip.by/en/bazy-dannykh/bazy-dannykh/patentnye-poverennye/>).
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IX. Date: 2021.02.05

1. Trademarks and Service Marks

1. Trademarks and service marks (hereinafter referred to as «trademarks») are signs which serve to distinguish the goods, works and/or services (hereinafter referred to as «goods», if not provided for otherwise) of one person from goods of the same type of other persons.

2. Signs which may be registered as trademarks are words including personal names, combinations of colors, letters, numerals, figurative elements, three-dimensional signs including the shape of goods or their packaging as well as combinations of such signs. Other signs may be registered as trademarks in cases defined by the legislative acts of the Republic of Belarus.

3. A trademark may be registered in any color or combination of colors.

2. Legal Protection of Trademarks

3. The right to the trademark is protected by the State. The registration of a trademark shall give rise to the issue of a trademark certificate. The trademark certificate shall attest the priority date of the trademark and the owner's exclusive rights in the trademark in relation to the goods specified in the certificate; it shall contain a representation of the trademark.

4. Absolute Grounds for Refusal of Registration

1. Those signs may not be registered as trademarks:

1.1. that are devoid of any distinctive character;

1.2. that have become the generic designation of products of a particular type;

1.3. that are symbols or terms in common use;

1.4. a dominant position in which are taken by signs and/or indications which are used to designate the kind, quality, quantity, properties, intended purpose or value of the goods, or the time, place or manner of their manufacture or sale;

1.5. that are the shape of the goods or their packaging which results exclusively or mainly from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods.

2. The signs or indications referred to in subparagraphs 1.1 to 1.3 and subparagraph 1.5 of paragraph 1 of this Article may be incorporated in the trademark as unprotected elements, insofar as they do not take a dominant position in the trademark.

2-1. Conditions on which designations, signs and/or indications take a dominant position are established by the Council of Ministers of the Republic of Belarus.

3. The dispositions stipulated by point 1 of this Article might not be applied to designations which on date of the filing of application for registration of a trademark have actually acquired distinctiveness as a result of use.

4. §1 Those trademarks may not be registered that consist exclusively of signs or indications which constitute armorial bearings, flags or emblems of States, official names of States, flags, emblems or abbreviated or full names of international intergovernmental organizations, official control signs, assay marks or hallmarks indicating control or warranty, or decorations or other honorary insignia, or that are confusingly similar to such signs or indications. Such signs or indications may be included in the trademark as unprotected elements, subject to the consent of the relative competent body or of their owner.

5. Those signs or indications may not be registered as trademarks:

5.1. that are false or liable to mislead the consumer as to the product or its place of origin or its producer;

5.2. that consist in or include an appellation of origin of wines or spirits which is protected under international treaties to which the Republic of Belarus is party, for identifying wines or spirits not originating in the place indicated by the appellation of origin in question;

5.3. that are contrary to public interest, humanitarian principles or morality.

5. Other Grounds for Refusal of Registration

1. Those signs or indications may not be registered as trademarks that are identical or confusingly similar to:

1.1. trademarks that are registered or for which an application for registration in the Republic of Belarus has been filed on behalf of a third party, and which benefit from an earlier priority date, for goods of the same type;

1.2. trademarks of third parties that are protected in the Republic of Belarus by virtue of international treaties to which the Republic of Belarus is party, for goods of the same type;

1.3. trademarks of third parties that are considered to be well known in the Republic of Belarus according to the procedure established by the State Committee on Science and Technology of the Republic of Belarus, for goods of any type.

3. Those signs may not be registered as trademarks for goods of any type that are identical or confusingly similar to a geographical indication protected in the Republic of Belarus or to a sign filed for registration as a geographical indication and having an earlier priority date, except in cases where this geographical indication or a sign confusingly similar thereto is included as an unprotected element in the trademark to be registered in the name of a person having an exclusive right to this geographical indication, if registration of the trademark is fulfilled in respect of the goods for the distinguishing of which the geographical indication is registered.

XI. Annexes (tick if necessary)

☐ Reproduction(s) of the presumably conflicting trademark(s) containing a figurative element or having a special graphic representation

☐ List indicating the goods and/or services to which each of the presumably conflicting trademarks is applied

XII. Signature or official seal of the Office sending the notification

First Deputy Director General
Aliaksei KURMAN



Head of the Department of Trademarks
Natalia SINISHOVA

