MADRID PROTOCOL

TOTAL PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1) of the Regulations

I. Name of the Office: Patent Office of the Republic of Bulgaria

52b, boul. Dr.G.M.Dimitrov, BG-1040 SOFIA, Bulgaria

www.bpo.bg

II. International registration number: 1 520 869

III. Name of the holder: Henkel AG & Co. KGaA

IV. Information concerning the type of provisional refusal:

Please indicate the type of refusal by checking only one of the following options:

- ☒ **Total provisional refusal based on an *ex officio* examination**
- ☐ Total provisional refusal based on an opposition
- ☐ Total provisional refusal based on both an *ex officio* examination and an opposition

V. Information concerning the scope of the provisional refusal:

*The provisional refusal affects **all** the goods and services.*

VI. Grounds for refusal:

Motives for refuse:

The mark applied for "NutriBalance Repair" is a word mark and consists exclusively of the word elements "Nutri", "Balance" and "Repair". The first two word elements "Nutri" and "Balance" are written together. "Nutri" can be perceived as an abbreviation of the English word "nutrition". According to „Dictionary by Merriam-Webster", the word "nutrition" means: "the act or process of nourishing or being nourished". According to "LEXICO dictionary Powered by Oxford" the word element "Balance" means: "An even distribution of weight enabling someone or something to remain upright and steady" and the word element "Repair" means: "Restore to a good condition".

The distinctive character of a trademark is assessed in relation to the goods and / or services for which it is applied for and from the point of view of their consumers. A trademark is distinctive when it can perform its main function - to ensure that consumers identify the commercial origin of the goods or services.

The relevant public comprises of people of different age, gender and education. They are well informed, observant when choosing the goods they want. The mark as a whole is able to inform the consumer that the relevant goods can provide nutrition, balance and repair. They will not perceive the sign as an indication of commercial origin of the goods, but as an indication of the purpose and other expected, desired characteristics of the applied goods.

Given that, the mark has a clear descriptive meaning in relation to the applied goods. Therefore, it is devoid of distinctive character.

VII. Information relating to an earlier mark:

(i) Printout from the register or database containing details of earlier mark attached.
Or
(ii) Details of earlier mark indicated below:
(iii) Filing date and number, and, if any, priority date:
(iv) Registration date and number (if available):
(v) Name and address of the owner:
(vi) Reproduction of the mark:
(vii) List of the relevant goods and services (this list may be in the language of the earlier application or registration):

VIII. Provisions of the applicable law:

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

IX. Information relating to the possibility to request a review or file an appeal otherwise respond to the opposition:

(i) Time limit to request a review or file an appeal and calculation of time limit:
The holder of the international registration may submit a request for review against this refusal to the Patent Office of the Republic of Bulgaria 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 within **two months** (Art. 70(1)).

Person, which is not established in the Republic of Bulgaria or in another Member State of the European Union, in a state party to the Agreement on the European Economic Area, or in the Swiss Confederation, shall act before the Patent Office through an industrial property representative; association of industrial property representatives; industrial property representatives' society; lawyers; association of lawyers; lawyers' society; a person providing services once or temporarily in the Republic of Bulgaria (Art. 3(2).
See the list of representatives in Bulgaria – Internet page of the Office www.bpo.bg

(ii) Authority to which such request for review, appeal or response should be made:
the **Patent Office of the Republic of Bulgaria** (at the address in item I above)

(iii) Whether the request for review, appeal or response has to be filed in a specific language or through a local representative:
The official language for correspondence with the Patent Office of the Republic of Bulgaria is the Bulgarian language.

(iv) Other requirements, if any:
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 **30/07/2020** to **29/10/2020.**

X. Date and signature of the Office: 10/03/2021

Патентно Ведомство на Р.България
Bulgarian Patent Office

XI. Corresponding essential provisions of the applicable law:

LAW ON MARKS AND GEOGRAPHICAL INDICATIONS

Prom SG.92/27.10.2020

Representation

Art. 3(2) Person, which is not established in the Republic of Bulgaria or in another Member State of the European Union, in a state party to the Agreement on the European Economic Area, or in the Swiss Confederation, shall act before the Patent Office through a lawyer or an industrial property representative.

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 byDecree 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.

Substantive examination

Art. 47(3) When the applicant does not respond, does not make reasonable objections and/or does not restrict the list of goods or services, a decision on total or partial refusal shall be taken.

Deadlines

Art. 70. (1) The appeals shall be lodged within two months of the notification of the decision.

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.