

**THE PROTOCOL
RELATING TO THE MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS**

PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1)

I. Office making the notification: STATE PATENT BUREAU OF THE REPUBLIC OF LITHUANIA Kalvariju g. 3, LT-09310 Vilnius LITHUANIA Tel.: (370-5) 27 80 267 Fax.: (370-5) 27 50 723																	
II. Number of the international registration:	1 579 492																
III. Name of the holder and other indications of the international registration: Name of the holder: F&I Beverages AG Verbal elements of the Mark: FIRE & ICE, fig Basic application: RU, 25.12.2020, 2020774887																	
IV. Provisional refusal based on an opposition <table style="width: 100%; border: none;"><tr><td style="width: 40%;"><u>Name and address of the opponent:</u></td><td>Bacardi & Company Limited</td></tr><tr><td></td><td>267 Route de Meyrin</td></tr><tr><td></td><td>CH-1217 Meyrin (CH)</td></tr><tr><td> <u>Name and address of the representative:</u></td><td> Reda Žabolienė</td></tr><tr><td></td><td>METIDA</td></tr><tr><td></td><td>Verslo centras VERTAS, Gynėjų g. 16</td></tr><tr><td></td><td>LT-01109 Vilnius</td></tr><tr><td></td><td>Tel.+370 5 249 0831, Fax.+370 5 249 0833</td></tr></table>		<u>Name and address of the opponent:</u>	Bacardi & Company Limited		267 Route de Meyrin		CH-1217 Meyrin (CH)	 <u>Name and address of the representative:</u>	 Reda Žabolienė		METIDA		Verslo centras VERTAS, Gynėjų g. 16		LT-01109 Vilnius		Tel.+370 5 249 0831, Fax.+370 5 249 0833
<u>Name and address of the opponent:</u>	Bacardi & Company Limited																
	267 Route de Meyrin																
	CH-1217 Meyrin (CH)																
 <u>Name and address of the representative:</u>	 Reda Žabolienė																
	METIDA																
	Verslo centras VERTAS, Gynėjų g. 16																
	LT-01109 Vilnius																
	Tel.+370 5 249 0831, Fax.+370 5 249 0833																
V. ☒ Provisional refusal for all the goods and services. ☐ Provisional refusal for some of the goods: [followed by an indication of the goods and/or services which are affected or are not affected]																	
X. Date of the notification of provisional refusal:	09.07.2021																
XI. Signature or official seal of the Office making the notification: <table style="width: 100%; border: none;"><tr><td style="width: 60%;">Chief specialist of the Trade Marks and Designs Division</td><td style="text-align: right; vertical-align: bottom;">Edita Pusvaškė</td></tr></table>		Chief specialist of the Trade Marks and Designs Division	Edita Pusvaškė														
Chief specialist of the Trade Marks and Designs Division	Edita Pusvaškė																

* - if the space available is insufficient, see a continuation sheet

Number of continuation sheets: 6

CONTINUATION SHEET

No: 1 of IV

VI. Grounds for refusal [(where applicable, see item VII)]:

- ☒ The mark would infringe rights acquired by third parties resulting from an earlier registration(s)
- ☐ Other grounds.

Opposition filed with the Division of Appeals of the State Patent Bureau on: 11.06.2021 No. PTZ-320

VII. Information relating to an earlier mark:*

Community Trade Marks (copy enclosed):

No 017563801

National registration (extract enclosed):

International registration (copy enclosed):

VIII. Corresponding essential provisions of the Lithuanian Law on Trade Marks [(see text under XII)]:*

Article 8 (1)(2) and 8(1)(3)

IX. Information relating to subsequent procedure:

The proprietor of a mark of international registration against which an opposition has been filed must within a two months period from the date of this notification present a justified reply to opposition. The justified reply should be addressed to the Appeals Division of the State Patent Bureau. It should be presented in Lithuanian language and an address for the correspondence in the territory of the Republic of Lithuania should be indicated. Where the trademark owner is not a resident of the Republic of Lithuania or another member state of the European economic area, neither he has subsidiary or representation registered in the Republic of Lithuania or another member state of the European economic area, the justified reply should be presented through a patent attorney of the Republic of Lithuania. The list of patent attorneys is available on <https://vpb.lrv.lt/en/structure-and-contacts-1/patent-attorneys>. The time limit expires on **09.09.2021**.

XII. Corresponding essential provisions of the Lithuanian Law on Trade Marks:

Article 5. Signs of Which a Mark May Consist

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 the packaging of goods, or sounds, provided that such signs are capable of:

- 1) distinguishing the goods or services of one undertaking from those of other undertakings;
- 2) being represented on the Register of Trade Marks of the Republic of Lithuania (hereinafter referred to as the 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.

Article 8. Relative Grounds for Refusal or Invalidity of Registration

1. A trade mark shall not be registered or, if registered, shall be declared invalid where the person concerned objects the application or the registration of a mark in accordance with Article 56 or 58 of this Law, if:

1) it is identical with an earlier mark, and the goods and/or services for which the mark is registered are identical with the goods and/or services for which the earlier mark is applied for or is registered;

2) because of its identity with or similarity to the earlier mark and the identity or similarity of the goods and/or services covered by the marks there exists a likelihood of confusion on the part of the public; the likelihood of confusion includes the likelihood of association with the earlier mark;

3) it is identical with or similar to an earlier trade mark irrespective of whether the goods or services for which it is applied for or registered are identical with, similar to or not similar to those for which the earlier trade mark is registered, where the earlier trade mark has a reputation in the Republic of Lithuania or, in the case of an EU trade mark, has a reputation in the European Union and the use of the later trade mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark;

4) an agent or representative, or a patent attorney of the proprietor of the trade mark applies for registration thereof in his own name without the proprietor's authorisation, unless the agent or patent attorney justifies his action;

5) it infringes other earlier rights, in particular:

- a) a right to a name, artistic pseudonym of a known person;
- b) a right of personal portrayal;
- c) a copyright;
- d) an industrial property right.

2. Earlier mark within the meaning of subparagraphs 1, 2 and 3 of paragraph 1 of this Article means:

1) a mark the date of filing of application for registration in the Republic of Lithuania of which is earlier than the date of filing of application for registration of the mark specified in paragraph 1 of this Article, taking account, where appropriate, of the priorities granted or claimed in respect of that mark;

2) a mark the date of registration whereof for the Republic of Lithuania under the Madrid Protocol is earlier than the date of filing of application for registration of the mark specified in paragraph 1 of this Article, taking account, where appropriate, of the priorities granted or claimed in respect of that mark;

3) a EU trade mark with a date of application for registration pursuant to the EU Trade Mark Regulation, which is earlier than the date of application for registration of the trade mark referred to paragraph 1 of this Article, taking account, where appropriate, of the priority claimed or granted;

4) a EU trade mark which claims seniority in accordance with the EU Trade Mark Regulation, from a trade mark referred to in subparagraph 1 or 2 of paragraph 2 of this Article, even when the latter trade mark has been surrendered or allowed to lapse;

5) applications for the trade marks referred to in subparagraphs 1 - 4, subject to their registration;

6) a mark which, on the date of application for registration of the trade mark specified in paragraph 1 of this Article, where appropriate, of the priority claimed in respect of the application for registration of the trade mark, is well known in the Republic of Lithuania.

3. If the person concerned contests the trade mark application or registration in accordance with Article 56 or 58 of this Law, the mark shall not be registered or, if registered, shall be liable to be declared invalid in the cases and to the extent that, pursuant to European Union legislation or the law of the Republic of Lithuania providing for protection of designations of origin and geographical indications when the following conditions are met:

1) an application for a designation of origin or a geographical indication had already been submitted in accordance with European Union legislation or the law of the Republic of Lithuania prior to the date of application for registration of the trade mark or the date of the priority claimed for the application, subject to its subsequent registration;

2) that designation of origin or geographical indication confers on the person the right to prohibit the use of a subsequent trade mark.

4. A mark shall be registered or registration of a trade mark shall not be declared invalid where the proprietor of the earlier trade mark or other earlier right consents to the registration of the later trade mark.

Article 38. Filing of an Application and Application Requirements

2. A representative may also file an application on behalf of an applicant. Foreign natural persons who are not permanent residents of the Republic of Lithuania or any other EU Member State or any other State of the European Economic Area and legal persons of foreign states who do not have a branch office or representative office registered in the Republic of Lithuania or a head office, a branch office or a representative office in any other EU Member State or in any other State of the European Economic Area, shall, through a patent attorney of the

Republic of Lithuania, file applications with the State Patent Bureau and perform all actions relating to the registration of a mark and international mark, including also representation at the Appeals Division.

Article 56. Opposition Procedure

1. Within a period of three months following the publication of the application, the interested persons may object to the application by filing a reasoned written opposition to the Appeals Division in accordance with paragraph 1 of Article 46 of this Law and pursuant to paragraphs 1, 2 and 3 Article 8 of this Law (...)

6. The decision taken by the Appeals Division may be appealed against to the Vilnius Regional Court within three months from the day of adoption thereof.

Article 61. Procedure for Examination of Oppositions and Applications for Declaration of Invalidity or Revocation of the Registration of a Trade Mark at the State Patent Bureau

2. The applicant or proprietor of the contested trade mark, or his representative must, within two months of the date of the opposition notice or the application for a declaration of invalidity or revocation, submit a justified reply. Failure to file a justified reply shall be considered as a refusal to participate in the examination of the opposition or the application for a declaration of invalidity or revocation and shall not prevent the Appeals Division from examining the relevant dispute in the absence of the applicant or proprietor of the contested mark, or his representative.

Article 69. Institutions having Jurisdiction in Disputes relating to Marks

1. The Appeals Division of the State Patent Bureau shall examine appeals in accordance with the mandatory pre-trial dispute resolution procedure against the decisions of the State Patent Bureau referred to in this Law, oppositions and applications for a declaration of invalidity or revocation of the registration of the mark in the manner prescribed by this Law, unless a counterclaim is filed with court for a declaration of invalidity or revocation of the registration of mark in examining the dispute concerning the infringement of the rights of the proprietor of the mark.

2. Vilnius Regional Court shall examine disputes relating to:

- 1) decisions of the Appeals Division of the State Patent Bureau;
- 2) infringement of the rights of the proprietor of the mark;
- 3) invalidation or revocation of the registration of a mark when a counterclaim is filed with court for a declaration of invalidity or revocation of the registration of mark in examining the dispute concerning the infringement of the rights of the proprietor of the mark;
- 4) recognition of the mark as well-known in the Republic of Lithuania;
- 5) European Union trade marks under the EU Trade Mark Regulation.

EUTM file information

(Trade mark without text)

017563801

Trade mark information

Name	(Trade mark without text)	Filing date	05/12/2017
Filing number	017563801	Registration date	23/03/2018
Basis	EUTM	Expiry date	05/12/2027
Date of receipt	05/12/2017	Designation date	
Type	Figurative	Filing language	English
Nature	Individual	Second language	French
Nice classes	33 (Nice Classification)	Application reference	TM13193EU00
Vienna Classification	03.07.06, 03.07.16, 03.07.24, 03.07.26, 19.07.01, 24.07.01, 24.07.23 (Vienna Classification)	Trade mark status	Registered
		Acquired distinctiveness	No

Graphic representation



Goods and services

English (en)



33 Alcoholic beverages (except beers).

Owners

Bacardi & Company Limited

ID	79581	Country	LI - Liechtenstein	Correspondence address	
Organisation	Bacardi & Company Limited	State/county	n/a	Bacardi & Company Limited 267 Route de Meyrin CH-1217 Meyrin SUIZA	Hidden. You can set your contact details to be publicly available via the User Area.
Legal status	Legal entity	Town	Vaduz		
		Post code	FL-9490		Hidden. You can set your contact details to be publicly available via the User Area.
		Address	Aeulestrasse 5		Hidden. You can set your contact details to be publicly available via the User Area.