



**ESTONIAN PATENT OFFICE
TRADEMARK DEPARTMENT**

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

NOTIFICATION OF PROVISIONAL REFUSAL BASED ON AN OPPOSITION

notified to the International Bureau of the World Intellectual Property Organization (WIPO)
according to Article 5 of the Madrid Protocol

I. Name and address of the office refusing protection:

**The Estonian Patent Office
Trademark Department
Toompuiestee 7
15041 Tallinn
ESTONIA
Telephone: + 372 62 77 931
Telefax: + 372 62 77 912**

II. Number of the international registration which is the subject of the provisional refusal:
820397

III. Other information concerning the international registration which is the subject of the provisional refusal: Figurative mark/verbal elements of the mark: **FRESHway**

IV. The grounds for this provisional refusal are the following:

Opposition made 14.03.2005 by Julius Sämann Ltd. on the ground that the trademark is liable to be confused with the company's earlier figurative trademark which is registered for the same kind of goods in classes 3 and 5.

The name and the address of the opponent are:

Name - Julius Sämann Ltd.
Address - Weidstrasse 14
CH-6300 Zug
Country - CH

V. Provision of the Estonian Trademark Act applicable on the subject (enclosed):
Section 10 subsection 1(2), section 41 subsection 2, 3 and section 70 subsection 7

VI. The ground referred to in item IV. affects all goods in classes 3 and 5.

VII. The holder of the registration has right to participate in the procedure at the Board of Appeal of Intellectual Property of Estonia.

The request has to be filed through the patent agent of the Republic of Estonia (section 13 subsection 2 of the Estonian Trademark Act). List of patent agents is available at <http://www.epa.ee/eng/14attorn.htm>.

The request for participation in the procedure, written observations and the power of attorney must be received by the Board of Appeal no later than within 3 months from the date of the acceptance of the opposition for processing.

Name and address of the Board of Appeal:

Board of Appeal of Intellectual Property

Ministry of Economic Affairs and Communications

Harju str. 11

15072 Tallinn

ESTONIA

The time limit expires 24/06/2005 (dd/mm/yyyy). The extension of the time limit is not possible.

Please note that the matter will be examined by the Board of Appeal even if the holder of the registration does not request participation in the procedure at the Board of Appeal.

VIII. Date on which the refusal was pronounced: 30/03/2005 (dd/mm/yyyy).

IX. Signature of the Office:



Maris Verbiaš

Senior Examiner of the Second International Trademark Examination Group

Extract from the Estonian Trademark Act

§ 10. Relative circumstances which preclude legal protection

(1) Legal protection shall not be granted to the following trade marks:

2) trade marks which are identical or similar to an earlier trade mark which has been granted legal protection with regard to identical goods or services or goods or services of a similar kind designated by the trade mark, if there exists a likelihood of confusion on the part of the public, which includes association of the trade mark with the earlier trade mark.

§ 41. Adjudication of appeals and revocation applications

(2) An interested person may contest an applicant's right to a trade mark in the Industrial Property Board of Appeal if circumstances specified in subsection 9 (1) or § 10 of this Act which preclude legal protection exist. The term for the filing of a revocation application is two months as of the publication of the notice of the decision to register a trade mark.

(3) In case an appeal or revocation application is allowed in whole or in part, the Board of Appeal shall annul the decision of the Patent Office and require the Patent Office to continue proceedings taking into account the facts set out in the decision of the Board of Appeal.

§ 70. Processing of international registration

(7) Decisions on international registrations made by the Patent Office and the rights of applicants shall be contested pursuant to the provisions of this Act, taking account of the specifications arising from the Madrid Protocol and its Common Regulations. The Bureau shall be notified of a contestation and the decision made in the matter.