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

Notification of provisional refusal according to rule 17 (2)

I. National office notifying the provisional refusal of protection::

The Danish Patent and Trademark Office
Helgeshøj Allé 81
DK-2630 Taastrup
Denmark

Telephone: **int. + 45 43 50 80 00**
Telefax: **int. + 45 43 50 80 01**

II. Number of the international registration which is subject to provisional refusal: **843663**

III. Name and address of the holder of the international registration which is subject to provisional refusal:

JEMAKO International GmbH
Robert-Bosch-Straße 4
46414 Rhede

IV. Grounds for provisional refusal:

☒ Lack of distinctive character

☐ Liable to mislead (e.g. the nature or geographical origin of the goods and services)

☐ Contrary to law, public order or morality

☐ Other grounds #

Ground for refusal: The mark lacks distinctive character for goods where the product may be used for cleaning purposes and where it may take form as a stick.

V. Provisions of the Danish Trade Marks Act *(enclosed)*: Section **13**

VI. (i) ☐ Provisional refusal for all the goods and services

(ii) ☒ Provisional refusal for some of the goods and services:

☒ Goods and services affected by the refusal: Class 3: Washing and bleaching preparations; cleaning, polishing, scouring and abrasive preparations; soaps; cosmetics. Class 21: Cleaning utensils.

or

☐ Goods and services not affected by the refusal:

VII. GENERAL INFORMATION:

The holder of the designation may request a review of this provisional refusal. The request must be received by the Danish Patent and Trademark Office no later than 4 months from the date of the provisional refusal. If no request is received within the time limit, the designation will be refused protection in Denmark in accordance with the provisional refusal.

If the designation is accepted subsequent to a review or an appeal, the designation will be published in the Danish Trademark Gazette.
This allows a third party to file an opposition within 2 months from the date of publication. Consequently, the designation may be subject to a further refusal.

VIII. Date of the provisional refusal: **30 May 2005** (dd/mm/yyyy)

IX. Signature by the Office: **THE DANISH PATENT AND TRADE MARK OFFICE** **Kaj Kramer Pedersen**

Number of continuation sheets: 1

Extract from the Danish Trade Marks Act

Grounds for refusal

Section 13

(1) For a trade mark to be registered it shall be of the nature referred to in section 2, including a distinctive character.

(2) The following trade marks shall not be registered:

(i) trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of the goods or of rendering the services or other characteristics of the goods or services;

(ii) trade marks which consist exclusively of signs or indications which are customarily used to designate the goods or services in the current language or in the established practices of the trade.

(3) Irrespective of the provisions of subsections (I) and (2) a trade mark may be registered if, before the filing of the application in consequence of the use which has been made thereof, it has acquired a distinctive character.

Section 14

Furthermore, the following shall not be registered:

(i) trade marks which are contrary to law, public order or morality;

(ii) trade marks which are liable to mislead the public, for instance as to the nature, quality or geographical origin of the goods or services;

(iii) trade marks which have not been authorized by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention for the Protection of Industrial Property, and trade marks which include badges, emblems, and escutcheons which are of public interest, unless the consent of the appropriate authority to their registration has been given;

(iv) trade marks which without permission consist of or contain an element which can be construed as a personal name or company name to which another party has a legal title, or as a portrayal provided allusion is not made to persons long dead, or which without permission contain a distinctive name of or a picture of the real property of another party;

(v) trade marks which without permission consist of or contain an element which can be construed as a distinctive title of the protected literary or artistic work of another party or which infringe the copyright in such works or the right to a photograph of another party or the industrial property rights of another party.

Section 15

(1) A trade mark shall not be registered if:

(i) it is identical with an earlier trade mark, and the goods or services for which the trade mark is sought registered are identical with the goods or services for which the earlier trade mark is protected, or

(ii) there exists a likelihood of confusion including a likelihood of association with the earlier trade mark, because the later trade mark is identical with or similar to the earlier trade mark and the goods or services are identical or similar.

(2) For the purpose of subsection (1) earlier trade marks mean:

(i) marks of the following categories in respect of which the date of application for registration is earlier than the date of application for registration of the trade mark, taking account, where appropriate, of the priorities claimed in respect of those marks:
a) Community trade marks;
b) trade marks registered in this country; or
c) trade marks registered under international agreements and having effect in this country;

(ii) Community trade marks which claim seniority, in accordance with the Regulation on the Community trade mark, in relation to a trade mark referred to under (i) b) and c), even if the latter trade mark has been surrendered or has lapsed;

(iii) applications for trade marks referred to under (i) and (ii), subject to their registration;

(iv) trade marks which, on the date of application for registration of the trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the trade mark, are well known in this country, in the sense in which the words »well known« are used in Article 6bis ofthe Paris Convention.

(3) A trade mark shall, furthermore, not be registered if

(i) it is identical with or similar to an earlier Community trade mark, cf. subsection (2) and is sought registered for goods or services which are not similar to those for which the earlier Community trade mark is registered, provided that the earlier Community trade mark is well known in the European Union and the use of the later trade mark will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trade mark.

(ii) it is identical with or similar to a »well known« trade mark, cf. subsection (2) (IV), and is sought registered for goods or services which are not similar to those for which the earlier trade mark is well known, provided that the use of the later trade mark may lead to a likelihood of association between the marks, and the use will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark, or

(iii) it is identical with or only insignificantly distinct from a trade mark, which at the date of filing of the application for registration or, where appropriate, of the priority claimed in respect of the application for registration, has commenced to be used in another country and is still in use there for goods or services which are identical with or similar to those for which the later trade mark is sought registered, and the applicant at the date of the filing had, or should have had, knowledge of the foreign trade mark.

(4) A trade mark shall moreover not be registered if:

(i) the trade mark is identical with or similar to an earlier Danish trade mark within the meaning of subsection (2) and is sought registered for goods or services which are not similar to those for which the earlier trade mark is registered, where the earlier trade mark is well known in this country and where the use of the later trade mark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark; or

(ii) in consequence of use in this country a right has been acquired to an identical or confusingly similar trade mark or to another identical or confusingly similar sign used in the course of trade prior to the date of filing of the application for registration of the later trade mark, or, where appropriate, of the priority claimed in respect of the application for registration of the later trade mark, if the proprietor of the earlier right can prohibit the use of the later trade mark.

(5) A trade mark shall not be excluded from registration pursuant to the provisions of subsections (1) to (4) where the proprietor of the earlier trade mark or other earlier rights consents to the registration of the later trade mark.

Opposition

Section 23

(1) When the registration has been published, opposition may be filed against the validity of the registration. The opposition, which shall be reasoned, shall be filed with the Patent Office within two months from the date of publication. A fee, the amount of which shall be fixed by the Minister of Business and Industry, shall accompany the opposition.

(2) If opposition has been filed, the Patent Office shall examine the registration in accordance with section 20. Section 28 (5) shall also apply during the examination. The proprietor of the registered right shall be notified of the opposition and be given an opportunity to submit his observations.

(3) If the registration is maintained, the person having filed the opposition and the proprietor of the right shall be given notice hereof.

(4) If the registration is declared void in part or in full, the decision to that effect shall be published when it is final.