



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

**PROVISIONAL REFUSAL OF PROTECTION**

notified to the World Intellectual Property Organisation (WIPO)  
according to article 5 of the Madrid Agreement and Madrid Protocol

|   |                                      |
|---|--------------------------------------|
| <b>I. Office making the notification of refusal</b><br><b>PATENT OFFICE OF THE REPUBLIC OF LATVIA</b><br>7, Citadeles iela, PO Box 824<br>LV 1010, Rīga<br>LATVIA   | phone 371 7027604<br>Fax 371 7027690 |
| <b>II. Number of the international registration concerning object of refusal 839972</b>   |                                      |
| <b>III. Name of holder of the international registration concerning object of refusal</b><br><b>Obschestvo s ogranichennoi otvetstvennostyu 'Torgovy dom po vozrozhdeniyu traditsyi Postavschika Dvora Ego Imperatorskago Velichestva P.A. Smirnova'</b><br><b>M. Tatarskiy per., 5 str.1, RU-113184 Moscow, Russian Federation</b>   |                                      |
| <b>IV. Motives of refusal</b><br>Opposition of <b>Diageo North America, Inc [ 801 Main Avenue, Norwalk CT 06851-1127, US ]</b> holder of national registration <b>M 30 285 /Smirnoff/ , M 39 719 /SMIRNOFF/ , M 47 182 /SMIRNOFF/ , M 47 184 /SMIRNOFF/ M 47 640 /SMIRNOFF/ , M 47 638 /SMIRNOFF/ , M 49 352 /SMIRNOFF/</b>   |                                      |
| <b>V. Reference to the corresponding essential provisions of the law (see materials attached)</b><br><b>ARTICLE. 18., 39. Opposition has based on Article 6(2), 7.(1)2); 8(1), 8(2), 8(3) , 6 bis of Paris Convention, and 16.2 of TRIPS</b>  |                                      |
| <b>VI.</b><br><input checked="checked" type="checkbox"/> <b>Refusal for all the goods and services</b><br><br><input type="checkbox"/> <b>Refusal for the following goods and services:</b>   |                                      |
| <b>VII. Possibilities to review or appeal</b><br>The holder of the mark has the right, within 3 month from the date of receipt of present decision and upon payment of a fee, to submit a substantiated appeal to the Patent Office through a professional local patent attorney. After expiration of the said period the Board of Appeal shall take a decision to satisfy the opposition, fully or in part, or to dismiss it. The decision of the Board of Appeal can be appealed, within three months from the date of receipt of the copy of the decision to the Administrative district Court |                                      |
| <b>VIII. Date on which the refusal was pronounced 27.05.2005.</b>   |                                      |
| <b>IX. Signature and seal of the office making the notification of refusal</b><br><div style="text-align: right;"><br/> <b>B. Graube</b></div>   |                                      |

839972

- 151 Date of the registration  
22.10.2004
- 180 Expected expiration date of the registration/renewal  
22.10.2014
- 270 Language of the application  
English

**Current Status**

- 732 Name and address of the holder of the registration  
Obschestvo s organichennoi  
otvetstvennostyu "Torgovy dom po  
vozhrozhdeniyu traditsyi Postavschika  
Dvora Ego Imperatorskago  
Velichestva P.A. Smimova"  
M. Tatarskiy per., 5, str. 1  
RU-113184 Moscow (RU)
- 812 Contracting State or Contracting Organization in the territory of which the holder has a real and effective  
industrial or commercial establishment  
RU
- 740 Name and address of the representative  
S. Lovtsov,  
Patent & Law Firm "YUS"  
Box 184  
RU-125009 Moscow (RU)

**540 Mark**

- 550 Indication relating to the nature or kind of mark  
Three-dimensional mark
- 531 International Classification of the Figurative Elements of Marks (Vienna Classification) - VCL(5)  
19.07.01 ; 28.05.00 ; 29.01.13
- 591 Information concerning colors claimed  
Red, white, black, dark yellow.  
Rouge, blanc, noir, jaune foncé.  
Rojo, blanco, negro y amarillo oscuro.
- 561 Transliteration of the mark

Smimov, Torgovy dom, po vozhrozhdeniyu traditsyi, P.A. Smimova, vodka, vedra, sdelano v Rossii, Torgovy dom po

vozrozhdeniyu traditsyi P.A. Smimova.

**511 International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification) - NCL(8)**

**33** Vodka.

Vodka.

Vodka.

**822 Basic registration**

RU, 21.05.2004, 268951

**831 Designation(s) under the Madrid Agreement**

AM - AT - AZ - BA - BY - CH - CN - CY - CZ - DE - FR - HR - HU - IT - KG - KZ - LI - LV - MD - PL - SI - SK - TJ -  
UA - UZ - YU

**832 Designation(s) under the Madrid Protocol**

EE - GE - GR - IS - LT - TM - TR

**Registration**

**450 Publication number and date**

2005/3 Gaz, 24.02.2005

**831 Designation(s) under the Madrid Agreement**

AM - AT - AZ - BA - BY - CH - CN - CY - CZ - DE - FR - HR - HU - IT - KG - KZ - LI - LV - MD - PL - SI - SK - TJ -  
UA - UZ - YU

**832 Designation(s) under the Madrid Protocol**

EE - GE - GR - IS - LT - TM - TR

**580 Date of recording (date of notification from which the time limit to notify the refusal starts)**

03.02.2005



**LATVIJAS REPUBLIKAS  
PATENTU VALDE**

Valsts preču zīmju reģistrs  
IZRAKSTS NO REĢISTRA, 01.06.2005

- (111) Reģ. nr. M 30 285  
(151) Reģ. dat. 20.07.1995  
(156) Atjaunoš. dat. 09.04.2002  
(210) Pieteik. M-92-74  
(220) Pieteik. dat. 09.04.1992  
(732) Īpašnieks DIAGEO NORTH AMERICA, INC., 801 Main Avenue, Norwalk CT 06851-1127, US  
(740) Pārstāvis Armins PĒTERSONS, Aģentūra 'PĒTERSONA PATENTS', Ausekļa iela 2 - 2, a/k 61, Rīga LV-1010, LV  
(540) Smirnoff  
(511)

33 vīni, stiprie destilētie alkoholiskie dzērieni un liķieri



**IZRAKSTS PAREIZS**

LR Patentu valdes Valsts reģistru un  
dokumentācijas departamenta direktors

Rīgā, 01-06-2005

*M. Strautze*  
M. Strautze



**LATVIJAS REPUBLIKAS  
PATENTU VALDE**

Valsts preču zīmju reģistrs  
IZRAKSTS NO REĢISTRA, 01.06.2005

(111) Reģ. nr. M 39 719  
(151) Reģ. dat. 20.02.1998  
(156) Atjaunoš. dat. . . .  
(210) Pieteik. M-96-464  
(220) Pieteik. dat. 15.03.1996  
(531) CFE ind. 25.1.9-15; 27.5.1  
(732) Īpašnieks DIAGEO NORTH AMERICA, INC., 801 Main Avenue, Norwalk CT 06851-1127, US  
(740) Pārstāvis Armins PĒTERSONS, Aģentūra 'PĒTERSONA PATENTS', a/k 61, Rīga LV-1098, LV  
(540) SMIRNOFF /lig/  
(511)  
33 vīni, stiprie destilētie alkoholiskie dzērieni, liķieri



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Rīgā, 01-06-2005

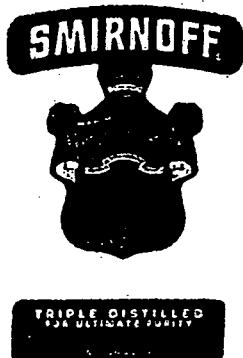
*M. Strautzele*  
M. Strautzele



**LATVIJAS REPUBLIKAS  
PATENTU VALDE**

Valsts preču zīmju reģistrs  
IZRAKSTS NO REĢISTRA, 01.06.2005

- (111) Reģ. nr. M 47 182  
(151) Reģ. dat. 20.01.2001  
(156) Atjaunoš. dat. . . .  
(210) Pieteik. M-99-1647  
(220) Pieteik. dat. 13.10.1999  
(531) CFE ind. 24.1.18-20; 24.9.1; 25.1.15; 26.4.7; 27.5.2; 29.1.14  
(591) Krāsu sal. sarkans, melns, balts, zelta  
(732) Īpašnieks DIAGEO NORTH AMERICA, INC., 801 Main Avenue, Norwalk CT 06851-1127, US  
(740) Pārstāvis Armins PĒTERSONS, Aģentūra 'PĒTERSONA PATENTS', Ausekļa iela 2 - 2, a/k 61, Rīga LV-1010, LV  
(540) SMIRNOFF /fig/  
(511)  
33 alkoholiskie dzērieni, proti, degvīns



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dokumentācijas departamenta direktora  
Rīgā, 01-06-2005 *M. Strautzele*  
**M. Strautzele**



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Valsts preču zīmju reģistrs  
IZRAKSTS NO REĢISTRA, 01.06.2005

- (111) Reģ. nr. M 47 184  
(151) Reģ. dat. 20.01.2001  
(156) Atjaunoš. dat. . .  
(210) Pieteik. M-99-1651  
(220) Pieteik. dat. 13.10.1999  
(531) CFE ind. 24.1.18-20; 24.9.1; 25.1.15; 26.4.7; 27.5.2; 29.1.15  
(591) Krāsu sal. sarkans, tumši sarkans, dzeltens, melns, balts, sudraba  
(732) Īpašnieks DIAGEO NORTH AMERICA, INC., 801 Main Avenue, Norwalk CT 06851-1127, US  
(740) Pārstāvis Armins PĒTERSONS, Aģentūra 'PĒTERSONA PATENTS', Ausekļa iela 2 - 2, a/k 61, Rīga LV-1010, LV  
(540) SMIRNOFF BLOODY /fig/  
(511)  
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**SMIRNOFF**



**BLOODY SMIRNOFF**  
SPICED PEPPER  
VODKA



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Rīga, 01-06-2005 *M. Strautzele*



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Valsts preču zīmju reģistrs  
IZRAKSTS NO REĢISTRA, 01.06.2005

- (111) Reģ. nr. M 47 640  
(151) Reģ. dat. 20.04.2001  
(156) Atjaunoš. dat. . . .  
(210) Pieteik. M-99-1860  
(220) Pieteik. dat. 12.11.1999  
(531) CFE ind. 24.1.15-18-20; 24.9.1; 25.1.15; 26.4.7-22; 27.5.1; 29.1.14  
(591) Krāsu sal. sarkans, melns, balts, zeltaini dzeltens  
(732) Īpašnieks DIAGEO NORTH AMERICA, INC., 801 Main Avenue, Norwalk CT 06851-1127, US  
(740) Pārstāvis Armins PĒTERSONS, Aģentūra 'PĒTERSONA PATENTS', Ausekļa iela 2 - 2, a/k 61, Rīga LV-1010, LV  
(540) SMIRNOFF VODKA /fig/  
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Rīgā, 01-06-2005 *M. Strautzele*  
M. Strautzele





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Valsts preču zīmju reģistrs  
IZRAKSTS NO REĢISTRA, 01.06.2005

- (111) Reģ. nr. M 47 638  
(151) Reģ. dat. 20.04.2001  
(156) Atjaunoš. dat. . . .  
(210) Pieteik. M-99-1648  
(220) Pieteik. dat. 13.10.1999  
(531) CFE ind. 24.1.15-18-20; 24.9.1; 25.1.15; 26.4.7-22; 27.5.1; 29.1.15  
(591) Krāsu sal. krēmkrāsa, dzeltens, gaiši brūns, melns, sudraba, zelta  
(732) Īpašnieks DIAGEO NORTH AMERICA, INC., 801 Main Avenue, Norwalk CT 06851-1127, US  
(740) Pārstāvis Armins PĒTERSONS, Aģentūra 'PĒTERSONA PATENTS', Ausekļa iela 2 - 2, a/k 61, Rīga LV-1010, LV  
(540) SMIRNOFF CREAMED /fig/  
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33 alkoholiskie dzērieni, proti, degvīns



IZRAKSTS PAREIZS

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Rīgā, 01-06-2005

*M. Strautņele*  
M. Strautņele



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PATENTU VALDE**

Valsts preču zīmju reģistrs  
IZRAKSTS NO REĢISTRA, 01.06.2005

(111) Reģ. nr. M 49 352  
(151) Reģ. dat. 20.04.2002  
(156) Atjaunoš. dat. . .  
(210) Pieteik. M-01-636  
(220) Pieteik. dat. 20.04.2001  
(732) Īpašnieks DIAGEO NORTH AMERICA, INC., 801 Main Avenue, Norwalk CT 06851-1127, US  
(740) Pārstāvis Armins PĒTERSONS, Aģentūra 'PĒTERSONA PATENTS', Ausekļa iela 2 - 2, a/k 61, Rīga LV-1010, LV  
(540) SMIRNOFF  
(511)  
33 alkoholiskie dzērieni, to skaitā vīni, stiprie destilētie alkoholiskie dzērieni, liķieri



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Rīgā, 01-06-2005

*M. Strautzele*  
M. Strautzele

**Extracts of the Law of the Republic of Latvia On Trademarks and Indications of Geographical Origin.**

**Article 18. Opposition to the Registration of Trademarks**

(1) Within three months from the date of the publication of a trademark, interested persons may, upon payment of the applicable fee, submit an opposition to the registration of a trademark. The opposition shall be filed with the Board of Appeals in writing, substantiated by appropriate arguments and citations to the provisions of law. After the expiration of the previously mentioned term, the opponent does not have the right to change (expand) the initial legal basis of the opposition, but may, up until the decision of the Board of Appeals is taken, submit additional documents and materials, that confirm (detail) the facts on which the opposition is based.

**Article 39. Validity of an International Registration in the Republic of Latvia**

(5) Opposition to the entry into effect of an international registration of a trademark in Latvia, as provided for in Section 18 of this Law, shall be filed within four months from the date of publication of an notice of trademark registration with respect to the Republic of Latvia (territorial extension to the Republic of Latvia) in the official gazette of international registration of trademarks.

**Article 6. Absolute Grounds for Refusal and Invalidation of a Trademark Registration**

(1) The following signs shall not be registered as trademarks (if they have been registered, these registrations may be declared invalid pursuant to the provisions of this Law):

- 1) those which cannot constitute a trademark, that is, which do not comply with the provisions of Article 3 of this Law;
  - 2) those which lack any distinctive character with respect to the applied goods or services;
  - 3) those which consist solely of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of providing the services, or other characteristics of the goods or services;
  - 4) those which consist solely of signs or indications which have become customary in the current language or in fair and established practices of the trade to designate the goods or services applied for (general designations);
  - 5) those which consist solely of a shape which is directly determined by the kind of goods (which results directly from the nature of the goods themselves), or which is necessary to obtain a particular technical result, or which gives substantial value to the goods;
  - 6) those which are contrary to public policy or to socially accepted principles of morality;
  - 7) those which are of such a nature as to mislead the consumers, for example, as to the nature, quality or geographical origin of the goods or services;
  - 8) those which contain signs, the registration of which would be refused or invalidated pursuant to Article 6-ter of the Paris Convention, including coats of arms and flags of the member countries of the Paris Union, their official marks indicating control or warranty, and hallmarks, as well as emblems, flags, names of international organisations and their abbreviations, without authorization by the competent authorities;
  - 9) those which, without authorization by the competent authorities given pursuant to the procedures set out in the statutory enactments of Latvia, contain the official heraldry approved by the State, national decorations, official Service insignia, as well as official marks indicating control, quality and warranty, official hallmarks, and signs indicating the safety of utilising goods which are used with respect to identical or similar goods or services in Latvia, or any other marks of high symbolic value, as well as religious symbols;
  - 10) with respect to wines - those which contain or consist of an indication of geographical origin identifying wines of particular origin, or with respect to spirits which contain or consist of an indication of geographical origin identifying spirits of particular origin, if such is not the genuine place of origin of the wines or spirits for which the trademark registration has been applied for;
  - 11) those which are intended for designation of agricultural products and foodstuffs and which contain an indication of geographical origin protected in relation to the same agricultural products and foodstuffs or which consist of such protected indication of geographical origin, if the products in relation to which the trademark registration has been applied for are not of the relevant origin, or if the use of the sign applied for registration in relation to these products is contrary to the statutory enactments governing the protection of geographical indications and designations of origin for agricultural products and foodstuffs.
- (2) A trademark also shall not be registered or, if registered, may be liable to be declared invalid pursuant to the provisions of this Law if the application for registration of the trademark was clearly made in bad faith by the applicant.
- (3) (3 pplied for.) A trademark registration may not be refused on the basis of the provisions of Paragraph 1, Sub-paragraphs 2, 3 or 4 of this Article, and shall not be declared invalid on the basis of the same provisions if, as a result of the use of the mark, it has acquired a distinctive character in the perception of the relevant consumers in Latvia with respect to the goods and services for which registration has been a

**Section 7. Earlier Trademarks as Grounds for Invalidation of a Registration**

(1) A trademark registration may be declared invalid pursuant to the provisions of this Law in the following cases:

- 1) if it is identical to an earlier trademark, and the goods or services for which the trademark was registered are identical to the goods or services with respect to which the earlier trademark was registered;
- 2) if because of its identity or similarity to, an earlier trademark belonging to another person and the identity or similarity of the respective goods or services, there exists a likelihood of confusion of the trademarks by consumers, which includes the likelihood of association with the earlier trademark.

**Section 8. Well-known Trademarks as Grounds for Refusal or Invalidation of Trademark Registrations**

(1) Notwithstanding and in addition to the provisions of Section 7 concerning earlier trademarks, a trademark registration may be rejected or, if registered, the registration may be invalidated under the provisions of this Law, if the trademark is identical or

similar to, a trademark of another person, which, even though unregistered, was well-known, within the meaning of Article 6-bis of the Paris Convention, in the Republic of Latvia with respect to identical or similar goods or services, on the filing date of the applied for (opposed) registration of trademark (or the date of priority if priority has been granted).

(2) In addition to the provisions of Paragraph 1 of this Section, a trademark registration may be rejected or, if registered, the registration may be invalidated pursuant to the provisions of this Law irrespective of whether the goods or services covered by this trademark are similar or dissimilar to those of the previously mentioned trademark that is well-known in the Republic of Latvia, on the basis that the use of the trademark applied for (opposed) in the absence of appropriate justification takes unfair advantage of, or is detrimental to, the distinctive character or the reputation of the well-known trademark.

(3) In determining whether a trademark is well-known, account shall be taken of the knowledge of this trademark in the relevant group of consumers, including such knowledge in Latvia that has been obtained as a result of the advertising activities or any other circumstances that have contributed to its publicity.

(4) In determining whether the provisions of Paragraphs 1 and 2 of this Article shall apply with respect to a sign that has been applied for registration or with respect to a registered trademark, account shall be taken of the provisions of Article 6-bis of the Paris Convention on well-known marks, including the provision on the inadmissibility of a reproduction or imitation of the well-known mark in an essential part of another trademark; the said provisions shall also apply, *mutatis mutandis*, to service marks.

(5) The provisions of Paragraphs 1 and 2 of this Article with respect to refusal of registration shall not apply during the examination procedure if the application for trademark registration has been filed with the consent of the owner of the well-known trademark.

#### **Section 9. Other Earlier Rights as Grounds for Invalidation of Trademark Registration**

(1) A trademark registration may be also declared invalid if the trademark is identical or similar to, an earlier collective trademark for which the period of validity has expired no earlier than three years preceding the application date of the contested trademark.

(2) A trademark registration may be also declared invalid on the basis of the trademark being identical or similar to, an earlier trademark which was registered for identical or similar goods or services and for which the period of validity has expired (for failure to renew) no earlier than two years preceding the application date of the opposed trademark, except in cases where the owner of the earlier trademark has consented to the registration of the opposed mark or has not used the trademark.

(3) A trademark registration may be also declared invalid on the basis that another person has, prior to the trademark application date (also taking into account its priority date), acquired in the Republic of Latvia other rights which allow the prohibition of the use of the trademark, including the following rights which may be invoked against the registration:

1) the forename, surname, pseudonym, portrait or facsimile of a person well-known to the general public, unless this person has been deceased for 50 or more years;

2) copyright;

3) a trade name (commercial designation, name of a mass medium, or other similar sign) that is used in an identical or similar business sector, if its fair and lawful use in the course of trade in the Republic of Latvia was commenced before the date of application for registration of the trademark (priority date), or a trade name (commercial designation, name of a mass medium, other similar sign) of the Republic of Latvia or of a foreign country that was well known in the Republic of Latvia before that date;

4) other industrial property rights, including rights pertaining to a non-registered trademark or another sign used to distinguish goods or services, as well as a domain name, if the non-registered trademark, other sign aforementioned or domain name has been used in Latvia before the date of application of the registered trademark (or its priority date respectively) in the course of fair trading in relation to identical or similar goods or services for so long and to such an extent that the use of the registered trademark may mislead the consumers as to the origin of the relevant goods or services.

(4) A person who is the owner of a trademark in any country of the Paris Union shall also be entitled to request invalidation of the trademark, if an agent or representative of the owner has registered the mark in their own name in Latvia without the owner's authorization, except in cases where such agent or representative has sufficient justification for their action.