



2005-0-189885  
TPE 18.08.2005 15:43:30  
Bsvr No: TM

**TURKISH PATENT INSTITUTE  
TRADEMARKS DEPARTMENT**

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

Notification of a refusal of protection based on an opposition pursuant to Rule 17(3) of the Common Regulations.

Our Reference: **2004/26080 AY**

<b>I- Name and address of the Office making the notification:</b> <b>TURKISH PATENT INSTITUTE</b> <b>Trademarks Department</b> <b>Hipodrom Caddesi No:115</b> <b>06330 Yenimahalle ANKARA</b> <b>TURKEY</b>		<b>Telephone:+90 312 3031000</b> <b>Telefax: +90 312 3031333</b>
<b>II- The international registration which is subject to the refusal :</b> <b>827554          happy day</b>		
<b>III- Name and address of the holder of the international registration which is subject to the refusal:</b> <b>Rauch Fruchtsäfte GmbH</b> <b>Langgasse 1</b> <b>A-6830 Rankweil (AT)</b>		
<b>IV- Name and address of the opponent:</b> <b>A.A.K GIDA SAN. VE DIŞ TİC. AŞ.</b> <b>Tem Otoyolu Hadımköy Sapağı İsoo Küçük Sanayi Sitesi Yanı Hadımköy-İstanbul TURKEY</b>  <b>(the opposition has been filed on 15/02/2005)</b>		
<b>V- Grounds for refusal based on an opposition:</b>  <input checked="" type="checkbox"/> Confusingly similar to the following mark(s) (extract(s) enclosed):  <b>National Registration Number: 156907 HAPPY DAYS</b>		
<b>VI- Provisions of the Decree-Law No.556 pertaining to the Protection of Trademarks: Article 8</b>  <b>(The relevant provisions of the Turkish Trademarks Act are enclosed.)</b>		

VII-

(i) ☒ Refusal for all the goods and services.

(ii) ☐ Refusal for some of the goods and services:

☐ Goods and services affected by the refusal:

or

☐ Goods and services not affected by the refusal:

VIII- GENERAL INFORMATION:

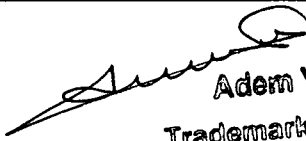
Appeals may be lodged against the refusals of the Institute.

The holder of the international registration may lodge an appeal against this refusal. The appeal has to be lodged through the intermediary of a representative who must be registered as a trademark agent at TPI and who is domiciled in Turkey. The appeal must be received by the Turkish Patent Institute no later than 2 months after the notification date of this refusal by WIPO to the applicant or his representative. If no appeal is received within this time limit, the designation will be considered as refused protection in Turkey in accordance with this refusal.

If the designation is accepted subsequent to appeal, the designation will be published in the Turkish Official Trademark Bulletin. This allows – 3 months from the date of publication - a party to file an opposition, which means that the designation may be the subject of a further refusal.

IX- Notification Date of Refusal (dd/mm/yyyy):

18/08/2005

X- Signature by the Office:   
TURKISH  
TRADEMARK DEPARTMENT

Adem YILDIZ  
Trademark Examiner

Number of continuation sheets: 4

**Registration Number**

156907

**Date of Registration**

27/01/2005

**Mark**

happy days

**Holder and his Address**

A.A.K. GIDA SANAYİ VE DIŞ TİCARET ANONİM ŞİRKETİ

Tem Otoyolu Hadımköy Sapağı Isoso Küçük Sanayi Sitesi Yanı Hadımköy İSTANBUL

TURKEY

**Reproduction of the Mark**

**HAPPY DAYS**

**Nice Classes**

03, 29, 30, 32

(list of goods and/or services is attached)

**List of goods and/or services**

**Registration Number : 156907**

**Page: 1**

Sakız, ikolata, bisküvi, kuruyemiřler (findık, fıstık, leblebi, ekirdek, deterjan, sabun.

**RELEVANT SECTIONS OF THE  
DECREE-LAW NO.556 PERTAINING TO  
THE PROTECTION OF TRADEMARKS**

**Relative Grounds for Refusal for Registration of a Trademark**

**Article 8** - Upon opposition by the proprietor of an application for registration of a trademark or of a registered trademark, the trademark applied for shall not be registered under following conditions:

- a) If the trademark applied for is identical with a registered trademark or a trademark that has an earlier application date and the protection is sought for the identical goods and services,
- b) If because of its identity with or similarity to a trademark which has an earlier application date or a registered trademark and because of the identity or similarity of the goods and services covered by the trademarks there exists a likelihood of confusion on the part of the public and the likelihood of confusion includes the likelihood of association with the registered trademark or with the trademark which has an earlier application date.

Upon opposition by the proprietor of a trademark, a trademark shall not be registered where an agent or representative of the proprietor of the trademark has applied for registration thereof his own name without the proprietor's consent and without a valid justification.

Upon opposition by the proprietor of a non-registered trademark or of another sign used in the course of trade, the trademark applied for shall not be registered provided that;

- a) the rights to the sign were acquired prior to the date of filing for registration of the trademark, or the date of priority claimed for the application for registration,
- b) the sign confers on its proprietor the right to prohibit the use of a subsequent trademark,

A trademark applied for which is identical or similar to a registered trademark or to a trademark with an earlier filing date may be used for different goods and services. However, where in the case of a registered trademark or of a trademark which has an earlier filing date for registration, the trademark has a reputation and where the use without due cause of trademark applied for would take unfair advantage of, or be detrimental to the distinctive character or repute of the registered trademark or of the trademark with an earlier application date, upon opposition by the proprietor of the earlier trademark, the trademark applied for shall not be registered even to be used for goods and services which are not similar to those for which the earlier trademark is registered.

Upon opposition by the holder of the relevant right, the trademark applied for shall not be registered if it contains the name, photograph, copyright, or any industrial property rights of the third parties.

Upon opposition, trademark applied for which is identical or similar to a collective or a guarantee mark shall not be registered within three years from the date of expiry of the collective or of the guarantee mark.

Trademark applied for which is identical or similar and which is to be registered for the identical or similar goods and services of a trademark which has not been renewed, upon opposition shall not be registered within two years of the expiry date.

## **PART SIX**

### **Appeals Against the Decisions of the Institute**

#### **Appeals**

**Article 47** - Appeals may be placed against the decisions of the Institute.

Where an appeal is made for an interim decision, a separate appeal shall be allowed upon decision becoming final.

#### **Persons Entitled to Appeal**

**Article 48** - Any party adversely affected by a decision of the Institute may appeal. Others party to the procedures with respect to the decisions shall have natural right of appeal

#### **Form of Appeal**

**Article 49** - Notice of appeal must be filed in writing at the Institute within two months after the date of notification of the decision. The fee for appeal has to be paid when filing of the notice for the appeal to be examined. The grounds for appeal must be filed in a written statement within two months of the notification of the decision. Where the statement of grounds for appeal has not been submitted within this period the appeal shall be deemed not to have been filed.

#### **Rectifying a Decision**

**Article 50** - The related department of the Institute upon deciding that the appeal is true and right may rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

If the appeal is not found acceptable by the related department, the appeal shall be forwarded to the Re-examination and Evaluation Board by the department without comment as to its merits.

#### **Examination of Appeals**

**Article 51** - The Re-examination and Evaluation Board shall consider the appeal if the appeal is admissible.

The Re-examination and Evaluation Board shall invite the parties to submit their observations within the period prescribed by the Implementing Regulation, on the observations of the other parties or those of itself.

#### **Decision in Respect of Appeal**

**Article 52** - After the examination, the Re-examination and Evaluation Board shall deliver its decision.

## **PART NINE**

### **Persons Authorized to Act and Trademark Agents**

#### **Persons Authorized to Act**

**Article 80** - The following are authorised to act before the Institute with respect to trademarks:

- a) natural or legal persons who have filed the application. Legal persons may only be represented by those duly empowered by their respective authorised bodies.
- b) trademark agents.

Those who are domiciled outside the country can only be represented by trademark agents.

Where an agent has been appointed, all procedures are executed through the agent. All notices made to the agent shall be considered to have been made to the assignee.