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

EX OFFICIO PROVISIONAL REFUSAL

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

I. Office refusing protection:

National Board of Patents and Registration of Finland
Trademarks
P.O. Box 1170
FIN-00101 HELSINKI
Telephone: +358-9-6939500
Telefax: +358-9-69395585

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

III. Other information concerning the international registration which is subject of the refusal:
Verbal elements of the mark: Cleanstick (word mark).

IV. The grounds for this refusal are the following:

The trademark is not distinctive as it indicates the kind, the quality and the intended use of the goods in question in classes 8 and 21. The trademark is therefore not likely to distinguish the goods of the holder from those of others.

V. Provisions of the Finnish Trademarks Act applicable on the subject (enclosed):
Art. 13

VI. Refusal for the following goods in class 8 "washing and bleaching preparations; cleaning, polishing, scouring and abrasive preparations; soaps; cosmetics" and for the following goods in class 21 "brushes (except paint brushes); cleaning utensils".

VII. The holder of the registration may request a review of the refusal. The request shall be received by the National Board of Patents and Registration of Finland no later than within 16 weeks from the date of the refusal. **The time limit expires 22.02.2006 (dd.mm.yyyy).**

The request, which is to be drawn up in Finnish or Swedish, has to be filed through the intermediary of a representative resident in the European Economic Area.

If the holder of the registration has not within the time limit given above requested for the review, the registration shall not take effect in Finland for the goods which are affected by the refusal (Article 56 b paragraph 3).

If the grounds for this refusal include Community trademarks or Community trademark applications or international registrations they can remain as grounds for this refusal even if the Community trademark or the Community trademark application is converted into a national trademark application and it leads to registration (Art. 57 a and Art. 14 paragraph 1 item 6) or if the international registration is transformed into a national trademark application and it leads to registration (Art. 56 i and Art. 14 paragraph 1 item6).

Please note that if the designation is accepted subsequent to reviewal or appeal an opposition may be filed against the mark within 2 months of the publication of the mark (Article 56 c).

Oppositions may be filed after the end of the 18-month period (Article 5(2)(c)(i) of the Protocol, Rule 16(1)).

VIII. Date on which the refusal was pronounced: 02.11.2005 (dd.mm.yyyy)

IX. Signature of the Office

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PATENTTI- JA REKISTERIHALLITUS
PATENT- OCH REGISTERSTYRELSEN

Extract from the Finnish Trademarks Act

Art. 6.
Trade symbols shall be regarded under this Act as liable to cause confusion only if they apply to goods of identical or similar type.
Notwithstanding the foregoing, the confusability of trade symbols may be judged in favor of a symbol that has a reputation in Finland where the use of another's trade symbol without due cause would constitute unfair exploitation of, or action detrimental to, the distinctive character or fame of the earlier trade symbol.
The second paragraph of this Article shall apply also to the auxiliary trade names and secondary symbols referred to in the third paragraph of Article 3.

Art. 13.
To be eligible for registration, a trademark must be capable of distinguishing its proprietor's goods from those of others. A mark that denotes either alone or with only few alterations or additions, the kind, quality, quantity, use, price or place or time of manufacture of the goods shall not, as such, be regarded as distinctive. Neither shall a mark be regarded as distinctive, if it is solely composed of a form that is characteristic of the goods, necessary for achieving a technical result or that substantially increases the value of the goods. In assessing whether a trademark possesses distinguishing power, all the factual circumstances shall be borne in mind, particularly the lenght of time and extent to which the mark has been used.

Art. 14.
A trademark shall not be registered:
(1) if it is contrary to law and order, or to morality;
(2) if it is liable to mislead the public;
(3) if, without proper permission, it incorporates national armorial bearings, a national flag or other emblem, a sign or hallmark indicating control and warranty used by the State for goods of the same type as those for which the trademark is sought or a similar type, the armorial bearings of a Finnish commune, or the flag, armorial bearings or other emblem, name or abbreviated name of an international organization or any device or emblem, name or abbreviated name liable to be confused with the symbols or emblems, marks, names or abbreviations referred to in this item;
(4) if it is composed of or contains anything likely to give the impression of being the protected trade name of another or the auxiliary trade name or secondary symbol of another as referred to in the third paragraph of Article 3, or of being the name or likeness of another person, unless such name or likeness plainly relates to a person long dead;
(5) if it is composed of or contains anything likely to give the impression of being the title of another's protected literary or artistic work, such title being original in character, or if it constitutes an infringement of another's copyright in such a work or of his rights in a photographic illustration or a protected design;
(6) if it is liable to be confused with the name or protected trade name of another trade, with an auxiliary trade name or secondary symbol of the kind referred to in the third paragraph of Article 3, with the trademark of another which has been registered on the basis of an earlier application or with the trade symbol of another party that is already established when registration is sought;
(7) if it is liable to be confused with a trade symbol being used by another party for his goods at the time of the application, and if the applicant was aware of that use at the time of his application and had not used his own mark before the other trade symbol came into use;
(8) if it is liable to be confused with a trademark protected by an international registration valid in Finland or European Community that on basis of this registration enjoys an earlier right in Finland or European Community;
(9) if it is liable to be confused with a Community trade mark within the meaning of Article 57 that has been registered on the basis of an earlier application or that has seniority from Finland under Article 34 or 35 of the Council Regulation referred to in Article 57;
(10) if it is liable to be confused with a registered name of a plant variety; or
(11) if there is an obstacle to registration within the meaning of Council Regulation (EEC) No. 2081/92 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs.
In the cases referred to in items (4) to (9), registration may be granted if the person whose right is concerned agrees thereto, and provided that the registration does not contravene any of the other provisions of the first paragraph of this Article.

Art. 15.
The exclusive rights in a trademark acquired by registration do not cover any part of the mark that cannot be registered as such.
If the trademark contains any such part and there are special reasons to believe that its registration may cause uncertainty regarding the extent of the exclusive rights granted, protection of the part may be specifically disclaimed when the registration is made.
If a part of a trademark excluded from protection later becomes registrable, a new registration may be made to cover that part or the entire trademark without the exclusion of the part from protection.

Art. 56b paragraph 3.
If the proprietor of an international registration has not within the given time limit submitted his statement commenting on the registration authority's notification referred to in paragraph 1, the international registration shall not take effect in Finland. If the said notification only concerned some of the goods in the international registration, the international registration shall take effect in Finland in respect of those of the goods that the notification did not concern

Art. 56c.
If no obstacle to registration is found, the registration authority shall give public notice of the International Bureau notification referred to in Article 56a as laid down in the first paragraph of Article 20. The public notice shall specify the date accorded to the international registration by the International Bureau.
Any opposition to an international registration in Finland shall be filed in writing with the registration authority within two months of the date of the public notice.