

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

PROVISIONAL REFUSAL OF PROTECTION (*EX OFFICIO*)

notified to the International Bureau of the World Intellectual Property Organization (WIPO)
in accordance with Article 5(1) of the Protocol Relating to the Madrid Agreement

I. STATE PATENT BUREAU OF THE REPUBLIC OF LITHUANIA Kalvariju g. 3, LT-09310 Vilnius, LITHUANIA	Tel.: (370-5) 27 80 271 Fax.: (370-5) 27 50 723
II. Number of the international registration which is the subject of the refusal:	823 677
III. Other indications concerning international registration which is the subject of refusal: Verbal elements of the mark: SHAKE Basic registration: Ukraine, 15.08.2003, 34447.	
IV. Absolute grounds for refusal: ☒ The sign is devoid of any distinctive character. ☒ It consists exclusively 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 rendering of the service, the mode of production or other characteristics of the goods and/or services.*	
V. Provisions of the Lithuanian Law on Trade Marks (enclosed):	Article 6.1 (2), (4).
VI. ☐ Refusal for all goods and services. ☒ Refusal for the following goods and services: Refused for all the goods in classes 32 and 33. ☐ Disclaimer: *	
VII. Actions to be taken by the holder: The proprietor of a mark of the international registration may argue against the decision of the State Patent Bureau within five months from the day of making of the decision. The request for the re-examination should be addressed to the Trademarks and Designs Division. The set time limit expires on 10/04/2006. If no request is received within this time limit, the decision of the State Patent Bureau will become final. The request should be presented in Lithuanian language and an address for the correspondence in the territory of Lithuania should be indicated. There the trademark owner is not a resident of Lithuania or another member state of the European Union, neither he has subsidiary or representation registered in the Republic of Lithuania or another member state of the European Union, the request for the re-examination should be filed through a patent attorney of the Republic of Lithuania. The list of patent attorneys of the Republic of Lithuania is available on http://www.vpb.lt/engl/. If the proprietor of a mark of international registration objects the decision made by the State Patent Bureau in the course of re-examination he may file an appeal to the Appeal Division within three months from the day of making of the decision.	
VIII. Date on which the refusal was pronounced:	10/11/2005
IX. Signature: Examiner of the Trademarks and Designs Division  Sigita Kim-Taisan	

* - if the space available is insufficient, see a continuation sheet

Number of continuation sheets: III

IV. Absolute grounds for refusal

The grounds on which the refusal is based under the Lithuanian Law on Trade Marks are the absolute grounds of refusal, Article 6.1 (2), (4).

A sign shall not be recognised as a mark and shall be refused registration or the registration of a registered mark shall be declared invalid if:

- 1) the sign is devoid of any distinctive character;
- 2) it consists exclusively 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 rendering of the service, the mode of production or other characteristics of the goods and/or services.

Motives:

The mark consists of the word 'shake'. According to the dictionary (*) it means 'to briskly move something to and fro or up and down especially in order to mix'. Therefore, such a mark merely describes the process used in the production of the goods applied for in classes 32 and 33. Besides, all blended drinks alcoholic and non-alcoholic are mixed with various ingredients and should be thoroughly shaken before using and some of them are even called 'shake'. For example 'milk shake' (*) – 'a thoroughly shaken or blended drink made of milk, flavouring syrup, and often ice cream'. Thus, the consumer, seeing on sale goods claimed with the word 'shake' will certainly think, that it designates the kind of the beverage, or presents only some kind of instruction to the particular usage. Consequently, the mark is devoid of any distinctive character and designates the kind of some goods, or barely describes the process used in the mode of production of some goods for which the registration is sought. For these reasons such a mark is incapable to identify that the goods are coming from a particular undertaking. It is worth to mention, that presented word as such should be kept free for the general use of all producers.

* Merriam-Webster Online dictionary.

X. Relevant provisions of national law:

Article 5. Signs of Which a Mark May Consist

Marks, with respect to which legal protection under this Law is applicable, may consist of signs, in particular:

- 1) words, personal surnames, names, artistic pseudonyms, names of the legal entities, slogans;
- 2) letters, numerals;
- 3) drawings, emblems;
- 4) three-dimensional forms (the shape of goods, their packaging or containers);
- 5) colours or combinations of colours, their compositions;
- 6) any combination of signs specified in subparagraphs 1-5 of this Article.

Article 6. Absolute Grounds for Refusal of Registration or Invalidation of a Mark

1. A sign shall not be recognised as a mark and shall be refused registration or the registration of a registered mark shall be declared invalid if:

- 1) the sign cannot constitute a mark under the requirements of Article 5;
- 2) the sign is devoid of any distinctive character;
- 3) it has become customary in the current language or in the *bona fide* and established practices of the trade;
- 4) it consists exclusively 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 rendering of the service, the mode of production or other characteristics of the goods and/or services;
- 5) the sign is of such a nature as to mislead the public, for instance as to the nature, quality or geographical origin of the goods and/or services;
- 6) the sign is contrary to accepted principles of morality or public policy, including ethics of society and humanitarian principles;
- 7) the sign consists exclusively of the shape which results from the nature of the goods themselves or the shape of goods which is necessary to obtain a technical result or the shape which gives substantial value to the goods;
- 8) the sign consists of the official or traditional (abbreviated) state name of the Republic of Lithuania, or armorial bearings, flag or other state heraldic objects or any imitation from a heraldic point of view, also official signs and hallmarks indicating control and warranty, stamps, medals or marks of distinction, unless the permission for their use in a mark has been issued according to the established procedure by the institution authorised by the Government of the Republic of Lithuania;
- 9) it consists of the signs the registration of which has not been authorised by the competent authorities of other states or international organisations and the registration of which is to be refused or invalidated pursuant to Article 6ter of the Paris Convention;
- 10) it is a sign of high symbolic value, in particular a religious symbol;
- 11) it contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the mark for such goods in the Republic of Lithuania is of such a nature as to mislead the public as to the true place of origin of the goods. The above provision shall also be applicable against a geographical indication which, although literally true as to the place of origin of the goods, falsely represent to the public that the goods originate in another territory;
- 12) it contains or consists of a geographical indication identifying wines for wines or spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

2. In the cases provided for in subparagraphs 2, 3 or 4 of paragraph 1 of this Article, a sign may be recognised as a mark and its registration may not be invalidated if, before the date of application for registration, after the date of filing of the application or registration of the mark and following the use which has been made of it, it has acquired distinctive character.

Article 8. Disclaimers

1. A mark may not be constituted of elements, which are ineligible for registration as separate (independent) marks.

2. Where the mark contains elements referred to in paragraph 1 of this Article and where there is special reason to assume that the registration of the mark may cause doubts as to the scope of protection of the mark, the elements may, at the applicant's request or proprietor's of the mark, on the decision of the State Patent Bureau or court decision, be recognised as disclaimers...

Article 14. Examination of the mark

1. Having conducted an examination to the application the State Patent Bureau shall carry out an examination of the mark with a view to ascertaining whether or not it satisfies the requirements of Article 6 of this Law.

2. Where, under Article 6 of this Law, a mark is not registrable, the State Patent Bureau shall adopt a decision to refuse the registration of the mark in respect of all or some of the goods and/or services...

Article 15. Filing of Appeal

1. An applicant or his representative who objects to the decision adopted by the State Patent Bureau after the re-examination shall have the right to file with the Appeals Division of the State Patent Bureau (hereinafter – Appeals Division), within **three months** from the day of sending of the decision, a written appeal with a substantiated request for a review of the findings of the examination and a document certifying the payment of the fixed fee...

3. Where the applicant or his representative objects to the decision made by the Appeals Division, he shall have the right to appeal against the decision of the Appeals Division to the Vilnius County Court within six months from the date of adoption of the decision by the Appeals Division.

Article 19. Appeal and Opposition Examination at the State Patent Bureau

...

2. The applicant, the interested person, the proprietor of the mark against which opposition has been filed or the representatives of the above persons shall have the right to take part in the appeal or opposition proceedings at the Appeal Division...

Article 26. Time Limit

1. Following the filing of a written request and payment of the fixed fee by the applicant or his representative, the time limits provided for in paragraphs 5 and 6 of Article 13, paragraph 3 of Article 14, paragraph 1 of Article 15, paragraph 1 of Article 17, paragraph 4 of Article 18, paragraph 1 of Article 25, paragraphs 1, 2 and 4 of Article 34 may be extended once but not longer than two months from the day of expiry of initial time limit...

Article 34. Special Provisions Applicable to International Registration of a Mark

1. If the proprietor of a mark of international registration opposes the decision of the State Patent Bureau to refuse to grant protection on the grounds that the mark does not satisfy the requirements of Article 6 of this Law, he shall be entitled to request re-examination **within five months** from the day of making of the decision. If he fails to file the request within the set time limit, the decision of the State Patent Bureau shall be deemed final.