

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: **876426**

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

Dr. August Oetker Nahrungsmittel KG
Lutterstraße 14
D-33617 Bielefeld

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 the distinctive character, which is required in order to be granted validity in Denmark BISTRO may serve to designate the quality of the goods and/or services.

V. Provisions of the Danish Trade Marks Act (*enclosed*): Section 13, 15

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 29: Savory frozen ready-to-serve meals, namely and/or primarily consisting of meat and/or meat products, sausages, poultry and/or poultry parts, vegetables and/or fruit products, cheese, spices and herbs; burgers as meat; soups; all the aforesaid goods not for further processing by other similar restaurant enterprises.

Class 30: Savory frozen ready-to-serve meals, namely as and/or filled baguette-breads, pizzas, aforesaid goods mainly consisting of bread, rolls and dough; all the aforesaid goods not for further processing by other similar restaurant enterprises.

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:

10 May 2006

IX. Signature by the Office: **THE DANISH PATENT AND TRADE MARK OFFICE** **Anette Haslund**

Number of continuation sheets: 1

Extract from the Danish Trade Marks Act

Grounds for refusal

Section 13

- (1) For a trademark to be registered it shall be of the nature referred to in section 2, including a distinctive character.
- (2) The following trademarks 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) trademarks 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 sub-sections (1) and (2) a trademark 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) trademarks which are contrary to law, public order or morality;
- (ii) trademarks which are liable to mislead the public, for instance as to the nature, quality or geographical origin of the goods or services;
- (iii) trademarks 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 trademarks 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) trademarks 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) trademarks 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 trademark shall not be registered if:
 - (i) it is identical with an earlier trademark, and the goods or services for which the trademark is sought registered are identical with the goods or services for which the earlier trademark is protected, or
 - (ii) there exists a likelihood of confusion including a likelihood of association with the earlier trademark, because the later trademark is identical with or similar to the earlier trademark and the goods or services are identical or similar.
- (2) For the purpose of subsection (1) earlier trademarks 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 trademark, taking account, where appropriate, of the priorities claimed in respect of those marks:
 - (a) Community trademarks;
 - (b) Trademarks registered in this country, or
 - (c) Trademarks registered under international agreements and having effect in this country;
 - (ii) Community trademarks which claim seniority, in accordance with the Regulation on the Community trademark, in relation to a trademark referred to under (i)(b) and c), even if the latter trademark has been surrendered or has lapsed;
 - (iii) Applications for trademarks referred to under (i) and (ii), subject to their registration;

- (iv) Trademarks which, on the date of application for registration of the trademark, or, where appropriate, of the priority claimed in respect of the application for registration of the trademark, are well known in this country, in the sense in which the words "well known" are used in Article 6bis of the Paris Convention.

- (3) A trademark shall, furthermore, not be registered if:
 - (i) it is identical with or similar to an earlier Community trademark, cf. Subsection (2) and is sought registered for goods or services which are not similar to those for which the earlier Community trademark is registered, provided that the earlier Community trademark is well known in the European Union and the use of the later trademark will take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier Community trademark;
 - (ii) it is identical with or similar to a "well known" trademark, cf. Subsection (2) (iv), and is sought registered for goods or services which are not similar to those for which the earlier trademark is well known, provided that the use of the later trademark 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 trademark, or
 - (iii) it is identical with or only insignificantly distinct form a trademark, 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 trademark is sought registered, and the applicant at the date of the filing had, or should have had, knowledge of the foreign trademark.
- (4) A trademark shall moreover not be registered if:
 - (i) the trademark is identical with or similar to an earlier Danish trademark within the meaning of subsection (2) and is sought registered for goods or services which are not similar to those for which the earlier trademark is registered, where the earlier trademark is well known in this country and where the use of the later trademark would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trademark, or
 - (ii) in consequence of use in this country a right has been acquired to an identical or confusingly similar trademark 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 trademark, or, where appropriate, of the priority claimed in respect of the application for registration of the later trademark, if the proprietor of the earlier right can prohibit the use of the later trademark.
- (5) A trademark shall not be excluded from registration pursuant to the provisions of subsections (1) to (4) where the proprietor of the earlier trademark or other earlier rights consents to the registration of the later trademark.

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.