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World Intellectual Property
Organization(WIPO)International Bureau

## NOTIFICATION OF EX OFFICIO PROVISIONAL REFUSAL

TO THE INTERNATIONAL BUREAU OF WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

UNDER RULE 17(1) OF THE COMMON REGULATIONS

1. Office Making the Notification:

Korean Intellectual Property Office (KIPO)

189 Cheongsa-ro, Seo-gu, Daejeon Metropolitan City, 302-701, Republic of Korea

2. International Registration Number (Date of Registration/Subsequent Designation):

929733 (27/01/2012)

3. Name and Address of the Holder:

MIP METRO Group Intellectual Property GmbH & Co. KG Metro-Strasse 1 40235 Düsseldorf Germany

4. Goods/Services Affected by this Provisional Refusal:

All the designated goods/services

- \* Please note that there is no provision in the Korean Trademark Act allowing the examiner to delete Ex Officio the designated goods/services refused by the ground(s) for the Provisional Refusal and to grant protection for the remaining goods/services.
- 5. Grounds for the Decision:

Lack of	distinctiveness	
Conflict	with another person's earlier ap	nlia

 $\sqcup$  Conflict with another person's earlier application(s) and/or registration(s)

■ V;	adueness	and/or	broadness	of	the	designated	aoods/	services
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☐ Unconformity to "a single application for a single trademark rule"

□ Other grounds

\* Please refer to item 9 for the details

6. Provisions of the Korean Trademark Act applicable to the Grounds:

Article 10(1)

7. Date on which the Provisional Refusal was pronounced (Time Limit):

11/09/2012(11/11/2012)

## 8. Guidance as to Future Procedure:

- 1. Where the holder receives this notification, the protection of the international registration is to be refused as a whole unless the holder submits to KIPO, through a representative whose address is in the Republic of Korea, a written opinion (amendment) within two months from the date on which this provisional refusal was pronounced. The holder may also submit to the International Bureau MM6 (Request for the Recording of a Limitation of the List of Goods/Services) within the above time limit.
- 2. Regarding the time limit, the holder may request the extension of time to submit a written opinion (amendment) to KIPO. The extension will be granted twice for a period of one month, respectively. This request should be made within the given time limit through the above representative.
- 3. If a request for Limitation is presented to the International Bureau so as to get over the ground for refusal mentioned below, we wish that it could also be informed by e-mail (kipomadrid@kipo.go.kr) at the same time for your convenience.

#### 9. Details of the Provisional Refusal:

The assigned examiner refuses registration, because the identification of some designated goods (services), which are listed below (the underlined parts), is not specific or is too broad a definition to accept. Korean Trademark Act, Article 10(1).

However, this ground for refusal could be avoided if the applicant amends (or deletes) the identification to specify the definite commercial names of the goods (services), as is shown in <examples> below.

## <Broad/Vague identification>

- [Class 02] <u>precoating compositions</u>, metal and wood preserving agents, coating preserving agents, (colors):
- [Class 03] abrasive agents, <u>underbody protection agents for motor vehicles</u>; <u>cleaning</u> agents and care products for furniture.
- [Class 06] <u>ironmongery</u>; <u>small items of metal hardware</u>, <u>in particular nails</u>, <u>rivets</u>, <u>nuts</u>, <u>screws</u>, <u>hooks</u>, ends;
- [Class 07] Machines for use in kitchens and canteen kitchens; electrical kitchen machines and apparatus for processing foods; electrical juice squeezers, electrical mixers, electrical centrifuges, electrical cutting machines, washing machines, dishwashers (all aforementioned apparatus included in this class); sewing machines and parts therefor, knitting machines and parts therefor, vacuum cleaner accessories, namely vacuum cleaner bags, vacuum cleaner filters and vacuum cleaner hoses, electrical cleaning apparatus for the household, vacuum cleaners and (electrical) floor waxing machines, electrical shoe cleaners, electrical machines for furniture care and floor care; accessories for all aforementioned goods, included in this class; binding apparatus; electrical and battery-powered cleaning machines and apparatus as well as parts therefor; apparatus for compressing, mixing, pumping and electric power generation; air filters and oil filters for automobiles; electrical and pneumatic tools for the building industry, for the timber industry, for craftsmen and do-it-yourself, in

particular drilling machines, hammer drills, power screwdrivers, suction devices, grinders, saws (machines), hot air blowers, smoothing planes, hot glue guns, milling machines, scissors, thread cutters, nibbling machines, agitators, tackers, soldering guns, scrapers, paint spraying pistols, wallpaper removers, chaff cutters, hedge shears and high-pressure cleaners, as well as insert tools therefor, namely drills, drill bits, chisels, adapters, abrasive sheets, abrasive disks, abrasive belts, polishing sponges, disk wheels, saw blades, planer blades, milling cutters, drive belts, screwdriver blades; machines and apparatus for making beverages and/or meals; kitchen machines (electric), paper cutting machines.

- [Class 08] hand-operated tools for bicycles and other pieces of sports equipment:
- [Class 09] Scientific, nautical, surveying, electric, photographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments: electric flat irons, batteries of any kind and size, rechargeable batteries of any kind and size, charging sets for electric accumulators, electric foil welding apparatus, computer hardware, computer, notebooks, desktop computers, monitors, projectors, printers, scanners, digital sound reproducing apparatus, digital video units, computer peripheral devices, in particular printers, keyboards, mouse: recorded and writeable storage media, namely disks, CDs, DVDs, audio and video cassettes: photographic and optical apparatus and instruments, including digital cameras: cash registers and text printers.
- [Class 11] Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating and water supply: percolators:
- [Class 12] vehicles;
- [Class 14] Watches; chronometric instruments; <u>containers and vessels of precious metal</u>

  <u>for household and kitchen:</u> <u>tea sets,</u> table decorations and <u>dinner services of precious metal</u>;
- [Class 16] Paper, paperboard, paper and paperboard goods, included in this class, exercise books, cut size paper, photocopy paper, copy paper, continuous paper, carbon copy paper; office supplies (except furniture), namely non-electric office machines; writing utensils, in particular pencils, ball pens as well as felt-tip pens and fibre-tip pens; supplies for writing utensils, namely ink pens, refills, ink, refill cartridges for stylographs, pencil cases, erasers and eraser pens, pencil sharpeners, ink erasers, highlighters, colored pencils; requisites for painting and drawing, namely board chalk, wax crayon, finger colors, colored crayons, water-based fibre-tip pens, water colors, poster colors, oil paints, brushes, painter's palettes, painter's canvas and easels; coloring and sketch pads, colored fancy paper, metal paper, handicraft folders, pastel chalks, aquarelle colors, crayons and refills thereof, ink pens for use with Indian ink, Indian ink; drawing equipment, in particular writing and drawing stencils, rulers, set squares, protractors, set of drawing instruments, drawing paper; scale paper, transparent paper, stationeries, writing paper, writing cases, pads for writing on; ring binders and loose sheets therefore; sliding rules and disc calculators, booklet organization folders, letter paper and envelopes, bill pads and delivery note pads, ticketing equipment, namely manual embossing

- <u>devices and ticketing devices (office machines)</u>, embossing tapes of paper, paper rolls for ticketing devices, labels (not of textile materials), letters and numbers, pinboards and magnetic boards as well as letters and numbers for pinboards and magnetic boards: <u>adhesive and stapling material for office use</u>, stapling machines for office use, hole punchers;
- [Class 17] <u>Sealants, packaging and insulating means; hoses (non-metallic):</u> rubber, mica and goods made of these, not included in other classes, insulating mats.
- [Class 18] Leather and imitations of leather, and goods made of these materials, included in this class, small articles of leather, included in this class, animal skins and hides; t
- [Class 20] Furniture, mirrors, frames;
- [Class 21] Ironing boards, rotary clothes drier, laundry baskets, clothes pegs, drying racks for laundry purposes and other devices for drying laundry (not included in other classes), storage and sorting systems for laundry use, namely devices and containers for the household (not of precious metal or plated), garbage cans, baskets for household use (not of precious metal), washtubs, cleaning utensils, household sponges, steel wool, shoddy wool, cotton waste for cleaning purposes, leather for cleaning purposes, polishing leather, wet mops, apparatus for waxing parquet flooring (non-electric), wipes, polishing apparatus and machines (non-electric) for household purposes, cleaning devices (hand-operated), window cleaning equipment (hand-operated), scrapers for cleaning containers, scrubbing brushes, dusters, feather dusters, furniture dusters, household appliances (not of precious metal), carpet sweepers (non-electric), brushes (except paint brushes), brooms, hand brushes, dust pans, goods of earthenware, glass and similar ceramic materials (included in this class): apparatus and containers for household and kitchen (not of precious metal or plated): non-electrical and hand-operated appliances and machines for household and kitchen, sieves, tumblers, egg beaters, graters, corkscrews, cookie cutters; lids, knife-blocks, egg cutters, microwave crockery;
- [Class 22] Tents, ropes, tow ropes, <u>belts</u>, awnings and sails, included in this class; wind protection fabrics, visual protection fabrics, dismountable garden pavilions of metal braces covered with fabric of textile or plastic; strings and ribbons (non-metallic) for binding and packaging;
- [Class 24] <u>fabrics and textile goods, not included in other classes.</u> bed linen and table linen, quilts, net <u>curtains</u>, <u>curtains</u>, decoration <u>curtains</u>, eiderdowns, bedding (included in this class), blankets, bed linen, <u>sheets</u>, coverlets, bed linen, duvets, bedcovers, pillow cases, plaids for furniture, <u>curtains</u>, textile towels, bath towels, sauna towels, textile washcloths, table linen, <u>napkins</u>, table cloths, table mats made of cloth or plastic, dishrags, dishtowels, glass towels, face cleaning towels, pillow cases, textile <u>napkins</u>, bathroom rugs and toilet rugs, toilet seat covers, upholstery cloths and blankets, textile wall paneling and window shades; textile sunshades for indoor use, bedspreads, <u>coverings for ironing boards</u>, dress handkerchiefs.
- [Class 28] Games, playthings, gymnastic and sporting equipment (included in this class); gymnastic and sporting equipment (included in this class) for tennis, squash,

golf and badminton, home exercisers, fitness trainers, steppers, skateboards, inline skates, roller skates: wheels for skateboards and roller skates, skates, scooters: equipment for playing, climbing and swinging for outdoor use.

[Class 31] Agricultural, horticultural and forestry products and grains, included in this class, seeds, flower bulbs and tubers, straw mulch and litter peat, animal litter, cat litter, bird sand; feedstuff, pet food, malt.

### <Examples>

- 10. Official Seal or Signature by the Office:

KIPO Examiner LEE, Kyung Lim



### << Information >>

If the holder has any questions or needs assistance in responding to this notification, please contact the examiner.

E-mail: kipomadrid@kipo.go.kr, telephone: (82) (42) 481 8642 or Fax: (82) (42) 472 3507

## Extract from the Korean Trademark Act

Article 5 Mutatis Mutandis Application of the Patent Act
Articles 3 to 26 and 28 to 28 and 2 Act reads "trademark right and trademark" and "international application under Article 2(vii) of the Patent Cooperation Treaty (hereinafter referred to as 'an international application')" reads "international application under Article 2(2) of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as 'an international application')." ("The Protocol Relating the Madrid Agreement Concerning the International Registration of Marks" is referred hereinafter to as 'the Protocol').

#### Article 6 Requirements for Trademark Registration

- (1) Trademark registration may be obtained except any of the following cases:
  - (i) where the trademark consists solely of a mark indicating, in a

common way, the usual name of the goods;
(ii) where the trademark is customarily used on the goods;

- (iii) where the trademark consists solely of a mark indicating, in a common way, the place of production, quality, raw materials, efficacy, use, quantity, shape (including the shape of the packaging), price, production method, processing method, usage or using time of the goods:
- (iv) where the trademark consists solely of a conspicuous geographical name, an abbreviation of it or a map;
- (v) where the trademark consists solely of a mark indicating, in a
- common way, a common surname or a title; (vi) where the trademark consists solely of a simple and
- commonplace mark; or
- (vii) in addition to the cases mentioned in sub-paragraphs (i) to (vi) of this Article, where the trademark does not enable consumers to discriminate whose goods are indicated.
- (2) Notwithstanding a trademark falls under paragraphs (1)(iii) to (vi) of this Article, where the trademark has become, as a result of using it before the application for registration under Article 9 of this Act, especially recognized by consumers whose goods are indicated, it may be registered for the designated goods (i.e. designated goods and supplementary designated goods as defined in Articles 10(1) and 47(2) (iii) of this Act; The same shall apply hereinafter.) on which the trademark has been used;
- (3) Notwithstanding a mark falls under paragraph (1)(iii) (restricted to the place of production) or (1)(iv) of this Article, where the mark is a geographical indication on specific goods, it may be registered as a collective mark for a geographical indication for the designated goods on which the geographical indication has been used.

Article 7 Unregistrable Trademarks

(1) Notwithstanding Article 6, trademark registration may not be obtained in any of the following cases:

(i) trademarks that are identical or similar to the following: the national flag, the national emblem, military flags, medals, decorations or badges of the Republic of Korea; the national flags or emblems of foreign countries: the medals, decorations or badges of the countries of the union of the Paris Convention for the Protection of Intellectual Property (hereinafter referred to as 'the Paris Convention'), the members of the World Trade Organization or the contracting parties to the Trademark Law Treaty; the names or marks of the Red Cross, Olympic organizations or other well-known international organizations; seals or signs that are used for supervision or certification by the Republic of Korea, the countries of the union of the Paris Convention, the members of the World Trade Organization, the contracting parties to the Trademark Law Treaty or the public organizations of these;

(ii) trademarks that falsely indicate a connection with, or that criticize, insult or are liable to defame any nation, race, ethnic group, public organization, religion or well-known deceased person;

(iii) trademarks that are identical or similar to well-known marks that indicate nonprofit businesses of a nation, a public organization or its agencies or a public corporation, or that indicate nonprofit public services: However, this provision does not apply where the nation, the public organization or its agencies, the public corporation or the body of nonprofit public services applies to register its own marks;

(iv) trademarks that are liable to disturb public order or morality;

(v) trademarks comprising a mark that is identical or similar to a medal, certificate of merit or decoration awarded at an exhibition held by or with the authorization of the government of the Republic of Korea or of the government of a foreign country; However, this provision does not apply where the person who has been awarded the medal, certificate of merit or decoration use it as part of the trademark on the goods for which the medal, certificate of merit or decoration was awarded at the exhibition;

(vi) trademarks containing the name, title, trade name, portrait, signature, seal, literary name, stage name, pen name or an abbreviation thereof of a well-known person, unless the consent of the person concerned has been obtained;

(vii) trademarks that are identical or similar to another person's registered trademark (excluding a registered collective mark for a geographical indication) when the former are applied for registration after the latter has been registered and when the former are to be used on goods that are identical or similar to the designated goods of the latter;

(viibis) trademarks that are identical or similar to another person's registered collective mark for a geographical indication when the former are applied for registration after the latter has been registered and when the former are to be used on goods that are identical with

the designated goods of the latter;

(viii) trademarks that are identical or similar to another person's registered trademark (excluding a registered collective mark for a geographical indication) when not more than a year has elapsed since the date on which the latter trademark right expired (that is, in case of a trial decision invalidating a trademark registration, the date on which the trial decision became final) and when the former are to be used on goods that are identical or similar to the designated goods of the latter;

<sup>iis</sup>) trademarks that are identical or similar to another person's registered collective mark for a geographical indication when not more than a year has elapsed since the date on which the right of the registered collective mark for a geographical indication expired (that is, in case of a trial decision invalidating the registration of a collective mark for a geographical indication, the date on which the trial decision became final) and when the former are to be used on goods that are identical with the designated goods of the latter;

(ix) trademarks that are identical or similar to a trademark (excluding a geographical indication) that is especially recognized among consumers as to indicate the other person's goods, when the former are to be used on goods that are identical or similar to those of the

person:
(ix<sup>bis</sup>) trademarks that are identical or similar to another person's geographical indication that is especially recognized among consumers as to indicate a certain region's goods, when the trademarks are to be used on goods that are identical with those using the geographical indication:

(x) trademarks that are liable to cause confusion with the goods or services of another person's that are especially recognized among

consumers;

(xi) trademarks that are liable to mislead or deceive consumers on the quality of the goods;

(xii) trademarks that are identical or similar to a trademark that is especially recognized among consumers inside or outside the Republic of Korea as to indicate the goods of a particular person, and that are used with unjust purposes such as to obtain unfair profits or to inflict harm on that person;

(xii<sup>bis</sup>) trademarks that are identical or similar to a geographical indication that is especially recognized among consumers inside or outside the Republic of Korea as to indicate the goods of a certain region, and that are used with unjust purposes such as to obtain unfair profits or to inflict harm on the legitimate users of that geographical indication;

(xiii) trademarks that consist solely of three-dimensional shapes which are essential for securing the functions of goods to be

registered or their packaging;

(xiv) trademarks that consist of, or include, a geographical indication of the origin of wines or spirits in a member state of the World Trade Organization, to be used on wines, spirits or the like; However, this provision does not apply where a legitimate user of a geographical indication applies to register a collective mark for the geographical indication designating the relevant goods under Article 9(3) of this Act.

(2) Notwithstanding a trademark falls under paragraphs (1)(vi), (ix), (ix) and (x) of this Article, the respective provisions do not apply where the trademark does not fall under the respective sub-paragraphs at the

time the applicant applies for trademark registration.
(3) Paragraph (1)(vii), (vii<sup>a)(s)</sup>, (viii) and (viii<sup>a)(s)</sup> of this Article apply where the trademark falls under the respective sub-paragraphs at the time the applicant applies for trademark registration (or where the registered trademark of another person is invalidated under Article 71(3) of this Act). However, this provision does not apply where the owner of the trademark and the applicant for the trademark registration (hereinafter referred to as 'the applicant') has become the same person after filing the application.

(4) Paragraphs (1)(viii) and (viiibis) of this Article do not apply to the

following cases:

- (i) where the registered trademark has not been used for more than one year retroactively from the date on which the trademark right is
- (ii) where a rightful applicant applies to register the trademark after a decision on invalidation or revocation becomes final for the reason that the registered trademark violates paragraphs (1)(vi), (ix), (ix' (x), (xii) and (xii) of this Article or Articles 8 or 73(1)(vii) of this

(iii) where an applicant applies to register the trademark after the period of six months as prescribed in proviso of Article 43(2) of this Act has elapsed without applying to renew the duration term of the registered trademark.

- (5) Where a trial for cancellation of a trademark registration is requested under Article 73(1)(ii), (iii), and (v) to (xii) of this Act, and where any of the following sub-paragraphs occurs after the date on which the cancellation trial is requested, the owner of the trademark right and any person using the trademark may not obtain registration for a trademark that is identical or similar to the extinguished trademark with respect to goods that are identical or similar (restricted to 'identical' in the case of a collective mark for geographical indication) to the designated goods of the extinguished trademark, unless three years has elapsed since the date on which each of the following sub-paragraphs occurs:
  - (i) where the trademark right has been extinguished because the duration term has expired;
  - (ii) where the owner of the trademark right abandons the trademark right for all or some of the designated goods; or (iii) where the trial decision to cancel the trademark registration has
  - become final.
- (6) Paragraph (1)(vii<sup>bis</sup>), (viii<sup>bis</sup>) and (ix<sup>bis</sup>) may not be applicable between the collective marks for homonymous geographical indications.

#### Article 8 First-to-File Rule

(1) Where two or more applications for registration are filed on different dates for identical or similar trademarks that are to be used on identical or similar goods, only the applicant having the earlier filing date may obtain registration for the trademark.

Article 10 A Single Application for a Single Trademark

(1) The person seeking to register a trademark shall file an application for each trademark, designating one or more classes of goods from the classification of goods prescribed by ordinance of the Ministry of Commerce, Industry and Energy. In this case, goods and services may be designated together in a single application.

(2) The classes of goods referred to in paragraph (1) of this Article may not be construed to decide the scope of the similarity of goods.

#### Article 23 Decision to Refuse Trademark Registration and Notification of Reasons for Refusal

(1) The examiner shall refuse trademark registration in any of the

following cases:

- (i) where the trademark is unregistrable under the proviso of Article 3, Articles 6 to 8, 10(1), 12(2) (second sentence), (5) and (7) to (9) of this Act or Article 25 of the Patent Act applied under Article 5 of this Act;
- (ii) where the trademark violates a treaty;
- (iii) where the trademark is identical or similar to a trademark registered in the territory of a country that is a party to a treaty and has been filed by a person who is an agent or a representative (or who was an agent or a representative within one year before the filing date) of the owner of the trademark, without any rightful reason such as obtaining the owner's authorization, for designated goods that are identical or similar to those of the owner's trademark. However, this provision applies only when an opposition or information under Article 22(3) of this Act has been filed by the
- (iv) where the trademark does not conform to the definition of a mark under Article 2(1)(i) to (iii) or (iv) of this Act; or where, in the case of a collective mark for a geographical indication, the geographical indication and the mark do not conform to the definitions of a geographical indication or a mark under paragraphs (iii <sup>bis</sup>) and (iii <sup>guatos</sup>) of the Article 2(1) of this Act;
- (v) where, in case of an application to register a collective mark for a geographical indication, a person, who conducts business activities such as producing, manufacturing or processing goods that are eligible for the geographical indication, is in fact prohibited from ioining an association by the articles of association, or by provisions in the articles of association providing conditions for subscription that are too difficult for the person to fulfill and so on;
- (vi) where the articles of association, referred to in Article 9(3) of this Act, fail to mention all or some of the provisions that govern the use of the collective mark as prescribed by Presidential Decree.
- (2) When refusing trademark registration under paragraph (1) of this Article, the examiner shall notify the applicant of the reasons for refusal and give the applicant an opportunity to submit a written opinion within a designated period.

Article 70<sup>bis</sup> Trial against Decision of Refusal

Any person dissatisfied with a decision to refuse registration of a trademark, to refuse supplementary registration of designated goods, to refuse to renew the term of a registered trademark or to refuse registration of the reclassification of goods (hereinafter referred to as 'a decision of refusal') may file a request for trial within thirty days from the date of receiving a certified copy of the decision of refusal.

Article 70ter Trial against a Decision to Reject an Amendment

Any person dissatisfied with a decision to reject an amendment under Article 17(1) may file a request for trial within thirty days from the date of receiving a certified copy of the decision.

## Extract from the Korean Patent Act

Article 5 Patent Administrator for Nonresidents

(1) A person who has neither a residential nor business address in the Republic of Korea (hereinafter referred to as 'a nonresident') may not, except when the nonresident (or a representative of a legal entity) is sojourning in the Republic of Korea, initiate any procedure or appeal any decision made by an administrative agency in accordance with this Act or any decree under this Act, unless the person is represented by an agent (hereinafter referred to as 'a patent administrator') who has a residential or business address in the Republic of Korea.

(2) A patent administrator may, within the scope of powers conferred on the patent administrator, represent the principal in all procedures related to a patent and in any appeal against a decision made by an administrative account in a coordance with this fact and administrative accounts in a coordance with this fact are represented in the coordance with the coo administrative agency in accordance with this Act or any decree under

Article 26 Effects of a Treaty

Where a treaty contains a patent-related provision that differs from this Act, the treaty prevails.

#### Article 92 Decision etc., on Registration for Extending the Term of a Patent Right

(1) Where the examiner finds no grounds under any subparagraph of Article 91(1) to refuse an application to extend the term of a patent right, the examiner shall grant the extension.

- (2) Where a decision to extend has been made under paragraph (1), the Commissioner of the Korean Intellectual Property Office shall register the extension of the term of the patent right in the Patent Register.
- (3) Where the registration under paragraph (2) has been made, the information prescribed in the following sub-paragraphs must be published in the Patent Gazette:
- (i) the name and address of the patentee (if the patentee is a legal entity, the title and address of the business);

(ii) the patent number;

- (iii) the date of registration of the extension;
- (iv) the period of the extension; and
- (v) the contents of the authorization and so on under Article 89.

Article 220 Transmittal of Documents to Nonresidents

- (1) Documents to be transmitted to a nonresident who has a patent administrator must be transmitted to the patent administrator.
- (2) Documents to be transmitted to a nonresident who does not have a patent administrator may be sent to the nonresident by registered
- (3) When documents have been sent by registered airmail under paragraph (2), the documents are deemed to have been served on the mailing date.

# Korean Trademark Act URL: http://www.kipo.go.kr/eng/