

MADRID AGREEMENT
CONCERNING THE INTERNATIONAL REGISTRATIONS OF MARKS AND
THE PROTOCOL RELATING TO THE MADRID AGREEMENT
PROVISIONAL REFUSAL OF PROTECTION

notified to the International Bureau of the World Property Organization (WPO)

in accordance with Article 5 of the Madrid Agreement and the Protocol Relating to the Madrid Agreement

1. Office notifying the Provisional Refusal

Intellectual Property Agency, Government House 3, Central Avenue, Yerevan, 0010, Republic of Armenia

2. Number of the international registration, which is the subject of the refusal: **1091641**

(540) Mark

(821/822) Basic app. or reg. **RU/20041203, 279686**

3. Name and address of the holder of the international registration, which is the subject of the refusal:

Obchtchestvo s ogranichennoi otvetstvennostiou "Laboratoria sovremennogo zdorovia", ul. Khimzavodskaja, 11/20BU-633004 Berdsk, Novosibirskaia obl.

Provisional refusal based on an ex-officio examination

4. The grounds on which the provisional refusal is based (See text overleaf):

10.4.3

The mark cannot be subject to registration if it is liable to be confused with a mark which was in use abroad on the filing date of the application and which is still in use there, provided that at the date of the application the applicant was acting in bad faith. The applicant's actions are considered to be in bad faith as at the moment of filing the application the applicant knew or could know about the existence of a trademark "VITAMAMA" belonging to the "NASU AMERICA" (www.nasuamerica.com).

5.

☒ Refusal for all goods and/or services.

☐ Refusal for the following goods and/or services:

6.

☐ Non-protected elements of the mark:

7.[Time Limit for appeal provided for the national law against the declaration of refusal pronounced by Intellectual Property Agency of the Republic of Armenia]:

In accordance with paragraph 10 of Article 45 of the Law, within a period of two months from the day of receiving of the decision on refusal of the registration or the decision on a partly registration of a trademark, the applicant or his representative shall have the right to submit a request, containing solid arguments, on re-examination to the State Authorised Body.

In accordance with paragraph 2 of Article 55 of the Law, in case of non-compliance with a time within two months from the date of expiry of the initial time limit, submit a request to the State Authorised Body on restoration of lapse of time and continuation of the process to provide the unexecuted action within a period of two month.

In accordance with paragraph 2 of Article 40 of the Law, Natural persons, who do not have permanent residence in the Republic of Armenia, and foreign legal persons, which do not have a real and effective commercial or industrial entity in the Republic of Armenia, shall file the application and conduct proceedings provided by the procedure for the examination of applications in the State Authorised Body through trademark attorneys or other representatives. The authority of a patent attorney shall be validated by a power of attorney given by the person in the name of whom the registration of trademark is sought.

8. Date on which the refusal was pronounced **04.10.2012**

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9. Signature or official seal of the Office notifying the provisional refusal:



Oct 5 2012 3:59 PM

Article 9. Absolute Grounds for Refusal of Trademark Registration

1. A sign shall not be eligible for registration where it:

- (1) does not meet the requirements of Article 8 of this Law;
- (2) is devoid of any distinctive character;
- (3) consists exclusively of indexes or signs which serve, in trade, to indicate the time of production of the goods or of rendering of the service, type, quality, quantity, intended purpose, value, geographical origin or other characteristics of the goods and/or services;
- (4) consists exclusively of signs or indexes which have become common in the current language or acquire the fair reputation in trade practices;
- (5) represents exclusively the outward appearance of the goods which results from the nature (features) of the goods that is necessary to obtain a technical result or depict the purpose (functionality) of the goods, or gives substantial value to the goods;
- (6) is contrary to public policy or to principles of humanism or morality, or undermines national or spiritual values;
- (7) is liable for deceiving the public in regard to the geographical origin, quality, nature, or producer of the goods or services;
- (8) reproduces or includes state emblems, flags or symbols, official state names or their abbreviations, full or abbreviated names of international and intergovernmental organisations, official symbols, as well as hallmarks denoting state control, guarantee and fineness, stamps, seals, awards, and other distinguishing signs (in accordance with Article 6ter of the Paris Convention), or is resemble to them so as to create a likelihood of confusion;
- (9) reproduces marks or emblems, which are not protected by Article 6ter of the Paris Convention, but represents particular public interest;
- (10) includes symbols of great importance, in particular religious or cultural heritage, if it contains elements disgracing religious or moral values;
- (11) reproduces or includes elements which are identical with or which possess a confusingly resemble with the images or official names of the cultural heritage of the Republic of Armenia or the international cultural heritage, or confusingly resemble with images of cultural values kept in funds and collections, where the registration is claimed in the name of a person who is not the proprietor thereof and does not hold a relevant authorisation;
- (12) consists of or includes a geographical indication and has been filed for such goods, which are not originated from the area bearing this indication, if the use of that mark in the Republic of Armenia misleads the public as for the real origin of the goods. This provision shall also apply to the geographical indication which, despite that indicates the real origin of the goods, nevertheless confuse the public so as if the goods are originated from another area;
- (13) consists of or contains a geographical indication ascertaining wines, for wines not originated from the area bearing the geographical indication specified or a geographical indication ascertaining spirits, for spirits not originated from the area bearing the geographical indication specified, even if the real origin of the product is specified or the geographical indication is used in a translated version or in conjunction with such expressions as "sort", "type", "style", "imitation" and similar to them.

2. Subparagraphs 1. (2) - (4) of this Article shall not apply if the applicant produces sufficient evidence, that as a result of use, before the filing of the application, the mark assumed the distinctive feature with respect to the goods and/or services for which it was filed for registration.

3. Signs referred to in subparagraphs 1(8) and (9) of this Article may be included in the trademark as non protected elements, if they do not prevail over and there exists an authorisation by the appropriate Authorized Body;

4. Geographical indication and appellations of origin protected in the Republic of Armenia may be included in the trademark only in the case, when the applicant has acquire the right to use it, in accordance with the order established by law. The use of a geographical indication of other countries shall be permitted in the trademark if it is not contrary to the requirements of this Law, is registered in the country of origin and the applicant holds an authorisation to use it. Geographical indications and appellations of origin included in the trademark shall be considered as non protected elements in the trademark.

Article 10. Relative Grounds for Refusal of Trademark Registration

1. A sign shall not be subject to registration where it:

- (1) is identical to an earlier trademark, which is registered for the same goods and/or services;
- (2) If because of its identity with or similarity to an earlier trademark when the goods and/or services denoted by it, as well as its identity and similarity, is creating likelihood of confusion for the consumers, including correlation with the earlier trademark (confusingly similar);
- (3) is identical or similar to an earlier trademark and is to be registered for goods and/or services which are not similar to those goods and/or services, for which the earlier trademark is registered, in the case the earlier trademark has a reputation in the Republic of Armenia and if the use of the claimed trademark would lead to unfair advantages due to the distinctive feature or the reputation of the earlier trademark, or would be prejudicial to the distinctive feature or the reputation of the earlier trademark;
- (4) is identical or confusingly similar to the trade name of a person, which in the territory of the Republic of Armenia has acquired rights to that name prior to the date of application for the registration of the trademark or prior to the date of priority and which has, prior to that date, carried out actual activities in the field of production or services of the same or similar products (which the registration of the trademark has been applied for), where such identity or similarity will be prejudicial to the reputation of the trade name;
- (5) is identical or similar to a geographical indication or appellations of origin of goods protected in the Republic of Armenia, with the exception of cases when in the trademark, which is applied for registration, those goods are included as non protected elements and the application is filed by a person authorized to use the geographical indication or the designation of origin of goods;
- (6) reproduces or includes, with an earlier date of priority, subject matters of industrial design, utility model or any other subject matters of Industrial Property protected in the Republic of Armenia;
- (7) reproduces or includes literary, scientific or artistic works protected under the Law on Copyright, the names thereof, quotations, extracts (fragments) and characters thereof, if the rights have been acquired before the date of priority of the filing trademark (if there is an existence of such priority date).
- (8) reproduces or includes the name, surname or pseudonym of a well-known person or a portrait of any other person where the similarity to them leads to confusion.

2. For the purposes of paragraph 1 of this Article, earlier trademarks shall be the following:

- (1) trademarks, which date of filing application precedes the priority date of the filing trademark that is in the discussion, or if a priority has been claimed in accordance with Article 42 of this Law, or if, in accordance with Article 42 of this Law, it has been claimed a priority to that priority date, shall be constituted as:
 - (a) trademarks protected in the territory of the Republic of Armenia by virtue of registration;
 - (b) trademarks protected in the territory of the Republic of Armenia by virtue of an international registration;

(2) trademark applications claimed for registration as referred to in subparagraphs (1) (a) and

(b) of this paragraph, subject to granting of legal protection to them in the future;

(3) trademarks which have, by the date of filing application of trademarks or by the date of priority claimed in accordance with Article 42 of this Law, been declared as well-known in the Republic of Armenia in accordance with the order established by this Law.

3. The registration of a sign, under paragraph 1 of this Article, as a trademark may not be refused if an earlier trademark or the proprietor of an earlier trademark, or his/her successor or, in some cases, the appropriate State Authority has confirmed their consent thereto, with the exception of identical trademarks, which have been claimed for similar goods and/or services.

4. A trademark shall be subject to refusal if:

- (1) the it is filed by the agent or representative of a third person who is the proprietor of the trade or service mark in a country party to Paris Convention or member to the World Trade Organization, without the authorisation of that proprietor, unless the agent or representative justifies his action.
- (2) the trade mark is identical with, or similar to, an earlier trade mark which was registered for identical or similar goods or services and conferred on them a right which has expired for failure to renew within a period of a maximum of two years preceding application, unless the proprietor of the earlier trade mark gave his agreement for the registration of the later mark or did not use his trade mark;
- (3). The trade mark is liable to be confused with a mark which was in use abroad on the filing date of the application and which is still in use there, provided that at the date of the application the applicant was acting in bad faith. The applicant's actions are considered to be in bad faith if at the moment of filing the application the applicant knew or could know about the existence of such a trademark. The applicant's actions are considered to be in bad faith as well if for the purpose of registration of the trademark the applicant has provided such fake and groundless documents without the presence of which the registration of the trademark would not be possible.