

MADRID AGREEMENT AND PROTOCOL

PROVISIONAL REFUSAL OF PROTECTION

RULE 17.1) OF THE COMMON REGULATIONS UNDER THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS AND THE PROTOCOL RELATING TO THAT AGREEMENT

I. Office notifying the refusal: **National Center of Intellectual Property**

20, ul. Kozlova, Minsk 220034, Belarus

Telephone (Department of Trademarks): (+375 17) 294 36 99, (+375 17) 294 81 99

Fax: (+375 17) 294 36 56

II. Number of the international registration: 1 104 026

III. Name and address of the holder of the international registration:

Obschestvo s ogranichennoy otvetstvennost'yu "Laboratoriya sovremennogo zdoroviya"
ul. Khimzavodskaya, 11/20, RU-633004 Berdsk, Novosibirskaya obl. (Russian Federation)

IV. Provisional refusal based on an *ex-officio* examination

V. Grounds for refusal:

The trademark is misleadingly similar to the word trademark in Cyrillic «КАРДИОФИТ» being the object of national registration No. 34034 (filing date 2007.07.19.) registered in the name of Obschestvo s ogranichennoy otvetstvennost'yu "Nauchno-proizvodstvennaya farmatsevticheskaya kompaniya "EYM" (address: d. 20, ul. Harkovskih diviziy, UA-61091 g.Harkov, Ukraine) for the goods of cl. 05: препараты бактериологические для медицинских или ветеринарных целей, препараты биологические для медицинских целей, медикаменты для человека, препараты фармацевтические, корни лекарственные, травы лекарственные, чаи травяные для медицинских целей, сборы лекарственные, напитки диетические для медицинских целей, настои лекарственные, настойки для медицинских целей, отвары для фармацевтических целей, микстуры, сиропы для фармацевтических целей.

VI. Applicable provisions of the national law (see text under X): 5.1.1.

VII.

☐ Refusal for all the goods and/or services:

☒ Refusal for the following goods and/or services: cl. 05: dietetic beverages adapted for medical purposes.

☐ Protection for the following goods and/or services:

VIII. Appeal against the decision of refusal:

a) time limit for requesting appeal: 3 months from the date on which the notification was received by the holder of the international registration;

b) authority to which request for appeal should be made: National Center of Intellectual Property (see address under I);

c) appeal may be filed through a patent attorney registered with the National Center of Intellectual Property (a list of the registered patent attorneys is available at

http://www.belgospatent.org.by/index.php?option=com_content&view=article&id=136&Itemid=54)

IX. Date: 2012.12.21

X.

**Law on Trademarks and Service Marks
of the Republic of Belarus
of February 5, 1993
(Latest Edition of July 15, 2009)**

(Extract)

1. Trademarks and Service Marks

1. Trademarks and service marks (hereinafter referred to as «trademarks») are signs which serve to distinguish the goods or services (hereinafter referred to as «goods») of one person from those of the same type of another person.
2. Signs which may be registered as trademarks are words including personal names, combinations of colors, letters, numerals, figurative elements, three-dimensional signs including the shape of the goods or their packaging as well as any combination of such signs. Other signs may be registered as trademarks in cases defined by the laws of the Republic of Belarus.
3. A trademark may be registered in any color or in any combination of colors.

2. Legal Protection of Trademarks

3. The right to the trademark is protected by the State. The registration of a trademark shall give rise to the issue of a trademark certificate. The trademark certificate shall attest the priority date of the trademark and the owner's exclusive rights in the trademark in relation to the goods specified in the certificate; it shall contain a representation of the trademark.

4. Absolute Grounds for Refusal of Registration

1. Those trademarks may not be registered:
 - 1.1. that are devoid of any distinctive character;
 - 1.2. that have become the generic designation of products of a particular type;
 - 1.3. that are symbols or terms in common use;
 - 1.4. that consist exclusively of signs or indications which are used to designate the kind, quality, quantity, properties, intended purpose or value of the goods, or the place, time or manner of their manufacture or sale;
 - 1.5. that are the shape of the goods or their packaging which results exclusively or mainly from the nature of the goods themselves or which is necessary to obtain a technical result or which gives substantial value to the goods.
2. The signs or indications referred to in paragraph (1) of this Article may be incorporated in the trademark as unprotected elements, insofar as they do not predominate.
4. Those trademarks may not be registered that consist exclusively of signs or indications which constitute armorial bearings, flags or emblems of States, official names of States, flags, emblems or abbreviated or full names of international intergovernmental organizations, official signs, assay marks or hallmarks indicating control or warranty or decorations or other honorary insignia, or are confusingly similar to such signs or indications. Such signs or indications may be included in the trademark as unprotected elements, subject to the consent of the owner thereof or of the relative competent body.
5. Those signs or indications may not be registered as trademarks:
 - 5.1. that are inaccurate or liable to mislead the consumer as to the product or its place of origin or its producer;
 - 5.2. that constitute or consist of an indication of origin for wines or spirits which is protected under international treaties to which the Republic of Belarus is party, identifying wines for wines or spirits for spirits not originating in the place indicated by the indication of origin in question;
 - 5.3. that are contrary to public order, humanitarian principles or morality.

5. Other Grounds for Refusal of Registration

1. Those signs or indications may not be registered as trademarks that are identical with or confusingly similar to:
 - 1.1. trademarks that are registered or for which an application for registration in the Republic of Belarus has already been filed on behalf of a third party, and which benefit from earlier priority dates, for goods of the same type;
 - 1.2. trademarks of third parties that are protected in the Republic of Belarus by virtue of international treaties to which the Republic of Belarus is party for goods of the same type;
 - 1.3. trademarks of third parties that are considered to be well known in the Republic of Belarus according to the procedure established by the Patent Authority for goods of any type.

XI. Annexes (tick if necessary)

- ☐ Reproduction(s) of the presumably conflicting trademark(s) containing a figurative element or having a special graphic representation
- ☐ List indicating the goods and/or services to which each of the presumably conflicting trademarks is applied

XII. Signature or official seal of the Office
sending the notification

Head of the Department of Trademarks


Natallia Shashkova

Examiner : **Alena Cheklu-Pauliushyna (+375 17) 294 81 99**