

MADRID PROTOCOL

PROVISIONAL REFUSAL OF PROTECTION

Rule 17(1)

I.	Office making the notification: Israeli Patent Office, Trademarks Department 1 Agudat Sport Hapoel St., Technological Garden, Building No. 5, Jerusalem, 9695101, Israel Fax: 972-2-6467026 E-mail: trademarks@justice.gov.il
II.	Number of the international registration: 0669394
III.	Name of the holder: CHAMPAGNE LOUIS ROEDERER (CLR)
IV.	☒ Provisional refusal based on an <i>ex officio</i> examination ☐ Provisional refusal based on an opposition ☐ Provisional refusal based on both an <i>ex officio</i> examination and an opposition
V.	☒ Provisional refusal for all the goods and/or services ☐ Provisional refusal for some of the goods and/or services:

VI. Grounds for refusal [(where applicable, see item VII)]:

A second search has revealed further grounds for refusal:

This office action is in addition to our action dated 2/4/2012 and does not in anyway conflict with the irregularities mentioned there.

The mark is refused because of likelihood of confusion with a rival identical marks 246292 & 243717 in respect of the same goods/services.

A similar notice of refusal has been sent to the applicant of the rival mark.

According to article 29

The mark resembles in a way liable to create confusion with a prior mark no. 16500 for similar or identical goods or services.

According to article 11 (9).

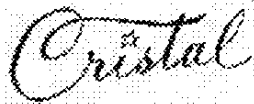
VII. Information relating to an earlier registered mark/s :

(i) Filing date and number, and, if any, priority date:
15/12/1957, 16500

(ii) Registration date and number (if available):
12/09/1960

(iii) Name and address of the owner:
Tabori Enterprises Ltd., Tel Aviv, Israel;

(iv) Reproduction of the mark:



(v) List of all or relevant goods and/or services:
32: Mineral water and soda water.

VIII. Information relating to the identical or similar trade mark application/s :

- (i) Filing date and number, and, if any, priority date:

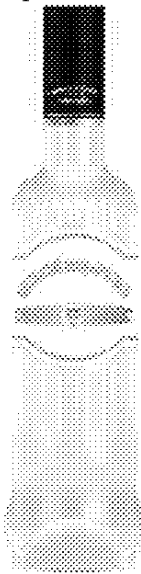
28/06/2011, 243717; 30/12/2010

- (ii) Registration date and number (if available):

- (iii) Name and address of the owner:

Otkryetoe aktsionernoe obshchestvo "Moskovsky zavod "Cristall", 4 Samokatnaya ulitsa, RU-111033 Moscow, Russian Federation;

- (iv) Reproduction of the mark:



- (v) List of all or relevant goods and/or services:

33: vodka.

- (i) Filing date and number, and, if any, priority date:

09/02/2012, 246292; 31/01/2012

- (ii) Registration date and number (if available):

- (iii) Name and address of the owner:

Proizvodstvenno-torgovoe respublikanskoe unitarnoe predpriyatie "MINSK KRISTALL" RUP "MINSK KRISTALL", d.15, ul. Oktyabrskaya, 220030 Minsk, Belarus;

- (iv) Reproduction of the mark:

MINSK KRISTALL

- (v) List of all or relevant goods and/or services:
- 32: Aperitifs, non-alcoholic; non-alcoholic beverages, waters (beverages) including aerated, mineral, table waters; kvass (non-alcoholic beverage); cocktails non-alcoholic; lemonades; vegetable juices (beverages); fruit juices including non-alcoholic fruit nectars; preparations for making mineral water, aerated water, preparations for making liqueurs and beverages; non-alcoholic fruit extracts, essences for making beverages.
- 33: Alcoholic beverages, except beers; alcoholic beverages containing fruit; aperitifs; arak (arrack); brandy; wine; piquette; whisky; vodka; gin; digesters (liqueurs and spirits); cocktails; liqueurs; spirits (beverages); distilled beverages; hydromel (mead); peppermint liqueurs; bitters; rum; sake; cider; rice alcohol; alcoholic extracts; fruit extracts, alcoholic; alcoholic essences.
- 35: Demonstration of goods; presentation of goods on communication media, for retail purposes; sales promotion for others; distribution of samples; advertising; on-line advertising on a computer network; procurement services for others (purchasing goods and services for other businesses).

IX. Corresponding essential provisions of the applicable law [(see text under XII)]:

According to article 11 (9).
According to article 29

X. Information relating to subsequent procedure:

- (i) Time limit for requesting review or appeal begins: 03/02/2013.
Time limit for requesting review or appeal end: 03/05/2013.
- (ii) Authority to which such request for review or appeal should be made:
Israeli Patent Office, Trademarks Department
1 Agudat Sport Hapoel St., Technological Garden, Building No. 5,
Jerusalem, 9695101, Israel
Phone: 972-2-5651627, Fax: 972-2-6467026
E-mail: trademarks@justice.gov.il
- (iii) Indications concerning the appointment of a representative:
In order to file a request for review or appeal, you will need to appoint a representative domiciled in Israel.

XI. Date of the notification of provisional refusal: 03/02/2013

XII. Signature or official seal of the Office making the notification:



Orly Markus, Trademarks examiner

XIII. Corresponding essential provisions of the applicable law:

Definition	1. In this ordinance – "Trademark"- means a mark used, or intended to be used, by a person in relation to goods he manufactures or deals in.
Marks eligible for registration	8. (a) No mark is eligible for registration as a trade mark unless it is adapted to distinguish the goods of the proprietor of the mark from those of other persons (a mark so adapted being hereinafter referred to as a "distinctive mark"). (b) In determining whether a trade mark is distinctive, the Registrar or the Court may, in the case of a trade mark in actual use, take into consideration the extent to which such use has rendered such trade mark in fact distinctive for goods in respect of which is registered or intended to be registered.
Limitations to certain colours.	9. A trade mark may be limited in whole or in part to one or more specific colours, and in such case the fact that it is so limited shall be taken into consideration by the Registrar or Court having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitations of colour, it shall be deemed to be registered for all colours.
Scope of application of registration.	10. (a) A trade mark must be registered in respect of particular goods or classes of goods. (b) Any question as to the class within which any good fall shall be determined by the Registrar, whose decision shall be final.
Marks incapable of registration	11. The following marks are not capable of registration: (1) a mark referring to some connections with the President of the State or his household or to presidential patronage or a mark from which any connection or patronage might be involved. (2) flags and emblems of the State or its institutions, flags and emblems of foreign states or international organisations, and any mark resembling any of these; (3) public armorial bearings, official signs or seals used by any state to indicate control or warranty, and any sign resembling any of these and any signs from which it might be inferred that its proprietor enjoys the patronage of or supplies goods or renders services to a head of state or a government, unless it is proved to the registrar that the proprietor of the mark is entitled to use it; (4) a mark in which any of the following words appear: "Patent", "Patented", "By Royal Letters Patent", "Registered", "Registered Design", "Copyright", "To counterfeit this is forgery" or words to like effect; (5) a mark which is or may be injurious to the public or morality; (6) a mark likely to deceive the public, a mark which contains a false indication of origin, and marks which encourages unfair trade competition; (6A) a mark containing a geographical indication in respect of goods <u>not</u> originating in the geographical area indicated, if the geographical indication may be misleading as to the real geographical area in which the goods originated; (6B) a mark containing a geographical indication that is literally correct, however that contains a

	false representation to the effect that the goods originated in a different area; (7) a mark identical with or similar to emblems of exclusively religious significance. (8) a mark on which the representation of a person appears, unless the consent of that person has been obtained; in the case of representation of a deceased person, the Registrar shall request the consent of his survivors unless, in his opinion, reasonable grounds exist for not doing so; (9) a mark identical with one belonging to a different proprietor which is already on the register in respect of the same goods or description of goods, or so nearly resembling such a mark as to be calculated to deceive; (10) a mark consisting of numerals, letters or words which are in common use in trade to distinguish or describe goods or classes of goods or which bear direct reference to their character or quality, unless the mark has a distinctive character within the meaning of section 8(b) or 9; (11) a mark whose ordinary significance is geographical or a surname, unless represented in a special manner or unless having a distinctive character within the meaning of section 8 (b) or 9; (12) a mark identifying wines or spirits that contains a geographical indication, if such wine or spirit did not originate in that geographical area; (13) a mark identical to, or misleadingly similar with, a well known trade mark even if the mark is not registered in respect of goods for which the mark is well known or in respect of goods of the same description; (14) a mark identical to or similar to a well-known trade mark being a registered trade mark, even in respect of goods not of the same description, if the mark sought to be registered might indicate a connection between the goods in respect of which the mark is sought and the registered proprietor of the trade mark, and the registered proprietor of the trade mark might be harmed as a result of using the mark sought.
Mark identical with name of other person.	12. The Registrar may refuse an application for registration of a trade mark identical with or resembling the name of business name of another person, or containing a name identical or resembling as aforesaid, if the mark is likely to deceive the public or to cause unfair competition.
Name or description of goods.	13. Where a mark contains also a name or description of any goods, the Registrar may refuse to register it in respect of other goods; but he may so register it if in actual use the mark varies according to the goods for which it is used and the applicant adds a note to such effect in his application.
Registration of marks registered abroad	16. (a) Notwithstanding the provisions of Section 8-11, the Registrar shall not refuse to register a trademark that is registered as a trademark in its country of origin unless any of the following apply – (1) Registration of the mark in Israel will infringe rights acquired in Israel by another person; (2) The mark lacks any dimension that gives it a distinctive characteristic; a trade mark will not be disqualified for registration if it is distinct from the trademark registered in its country of origin in respect of details that do not alter its distinctive characteristic and do not adversely affect the identification of the registered mark in its country of origin. (3) The mark consists exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity place of origin, intended purpose, time of production or value of the goods;

	(4) The mark is customary in current language or bona fide and established trade practices in Israel; (5) The mark is contrary to public policy or to normality; (6) The mark is likely to deceive the public. (b) "Country of origin", in relation to a trademark whose registration is requested under this Section – means a Member State in which the Applicant has an effective or serious industrial or commercial establishment, and if he has no such establishment within the territory of such State – a Member State in which he is domiciled, and if he does not have a domicile within the territory of such State – the Member State of which he is a national. (c) Where the Registrar accepts for registration a mark which would not have been registered but for the provisions of subsection (a), such fact shall be indicated in the publication of the application and in the Register.
Powers of Registrar.	18. Subject to the provisions of this Ordinance, the Registrar may refuse an application or accept it absolutely of subject to conditions, amendments or modifications, or to such limitations as to mode or place of use or otherwise as he may think right to impose.
Requirement disclaimer	21. (a) If a trade mark contains matter common to the trade or of otherwise of a non-distinctive character, and it appears to the Registrar or the supreme Court that the proprietor of the mark is not entitled to the exclusive use of such matter or of part thereof, they may, in deciding whether such trade mark shall be entered or shall remain upon the Register, as a condition thereof require that the proprietor disclaim any right to the exclusive use of such matter or make such other disclaimer as they consider necessary in order to define his rights under the registration. (b) A disclaimer under this section shall not affect any rights of the proprietor of the trade mark except such as arise out of the registration of the mark.
Opposition.	24. (a) Any person may within three months, or within such other time as may be prescribed, from the date of the advertisement, file with the Registrar a notice of opposition to the registration of the mark. (a1) the following are causes for opposition to the registration of a mark: 1) there is a reason for which the registrar may, under the provisions of this Ordinance, refuse the application for registration; 2) the opponent, and the applicant, is the owner of the mark; (b) The notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition. (c) The Registrar shall send a copy of the notice to the applicant. (d) The applicant shall send to the Registrar, in the prescribed manner and within the prescribed time, a counter statement to the opposition, setting forth the grounds on which he relies for his application. (e) If the applicant does not send a counterstatement as aforesaid, he shall be deemed to have abandoned his application.

(f) If the applicant sends a counterstatement, the Registrar shall furnish a copy thereof to the person who has given notice of opposition and shall, after hearing the parties if so required, and subject to what conditions, registration is to be permitted.

**Rival claims to
identical marks.**

29. Where separate claims are made by different persons to be registered as proprietors respectively of identical or similar trade mark in respect of the same goods or description trade marks in the respect of the same goods or description of goods, the Registrar may refrain from registering any such persons until their rights have been determined by agreement between them approved by the Registrar. In the absence of such agreement, the Registrar shall refer the dispute to the Supreme Court.

**Un-renewed
trademark**

34. Where a trademark has been removed from the register for non-payment of the fee for renewal, such trademark shall, never the less, for the purpose any application for registration for a period of one year after such removal be deemed to be a registered trademark.

**Circular m.n. 39
of the Registrar**

Dealing with the list of goods relating to pharmaceutical and medical preparations in class 5.

**Circular m.n. 61
of the Registrar**

Dealing with the eligible for registration as a trade mark of three dimension marks.