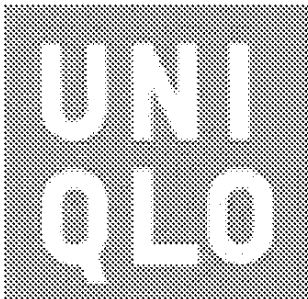


MADRID PROTOCOL AND AGREEMENT

PROVISIONAL REFUSAL

Rule 17.1)

I.	Sending OFFICE : Intellectual Property Office of New Zealand
II.	International registration number : 1156890 New Zealand trade mark number : 1018722
III.	Holder: FAST RETAILING CO., LTD.
IV.	Mark Reproduction : 
V.	Provisional refusal based on an office check.
VI.	Official sign or seal of sending office : Intellectual Property Office of New Zealand

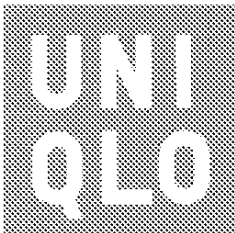


INTELLECTUAL
PROPERTY
OFFICE

VII.

Date : **21/05/2015**

**NOTIFICATION OF PROVISIONAL REFUSAL OF AN INTERNATIONAL REGISTRATION
DESIGNATING NEW ZEALAND**

1.	Office making the notification: Intellectual Property Office of New Zealand						
2.	Date of the notification of provisional refusal: 21 May 2015						
3.	Number of the international registration: 1156890 Our reference: 1018722						
4.	<p>Representation of the mark:</p> 						
5.	Name of the holder: FAST RETAILING CO., LTD.						
6.	Basis for refusal: Provisional refusal based on an <i>ex officio</i> examination.						
7.	Scope of refusal: Provisional refusal for some of the goods and/or services – the indication of the goods/services follows below. Class 3 and 16.						
8.	<p>Grounds for refusal:</p> <p><u>Identical or confusingly similar trade marks</u></p> <p>Section 25(1) – Similar trade mark</p> <table border="1"> <tr> <td>Objection</td> <td>Our search of the trade marks register has revealed at least one trade mark that is similar to yours, and covers the same or similar goods or services. This mark has priority over yours. For details of the similar mark(s), please see the attached search report.</td> </tr> <tr> <td>Goods and/or services</td> <td>Class 3 and 16.</td> </tr> <tr> <td>Relevant law</td> <td>The relevant provisions of New Zealand law are listed below at 11.</td> </tr> </table>	Objection	Our search of the trade marks register has revealed at least one trade mark that is similar to yours, and covers the same or similar goods or services. This mark has priority over yours. For details of the similar mark(s), please see the attached search report.	Goods and/or services	Class 3 and 16.	Relevant law	The relevant provisions of New Zealand law are listed below at 11.
Objection	Our search of the trade marks register has revealed at least one trade mark that is similar to yours, and covers the same or similar goods or services. This mark has priority over yours. For details of the similar mark(s), please see the attached search report.						
Goods and/or services	Class 3 and 16.						
Relevant law	The relevant provisions of New Zealand law are listed below at 11.						

9. **Information relating to subsequent procedure:**

Responding to this refusal

The Holder may respond in writing to this refusal. Any response made to the Office must be filed using the Commissioner's website at www.iponz.govt.nz. You will also need to provide an address for service in New Zealand.

Timeframe for responding

If the Holder does not respond by **30 April 2016**, this refusal becomes final for the specified goods and/or services.

Refusal still possible following opposition

If we subsequently accept the designation in New Zealand refusal may still result from an opposition. The opposition period runs for 3 months from the publication of the mark. It is possible that an opposition may be filed more than 18 months from the date we were notified of the International Registration.

10. **Signature by the Office:**

Intellectual Property Office of New Zealand



Amelia Knight
Senior Trade Mark Examiner
+64 4 978 3637
For the Commissioner of Trade Marks

11. **Provisions of relevant law:**

Trade Marks Act 2002

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
collective association means a body (whether incorporated or not) that has or is able to have members, and is—
(a) constituted for the joint benefit of its members for the time being; and
(b) so constituted that its membership at any time can be ascertained

5 Interpretation

- (1) In this Act, unless the context otherwise requires,—
trade mark—
(a) means any sign capable of—
(i) being represented graphically; and
(ii) distinguishing the goods or services of one person from those of another person; and

- (b) includes,—
 - (i) except in section 85, a certification trade mark; and
 - (ii) except in section 85, a collective trade mark

17 Absolute grounds for not registering trade mark: general

- (1) The Commissioner must not register as a trade mark or part of a trade mark any matter—
 - (a) the use of which would be likely to deceive or cause confusion; or
 - (b) the use of which is contrary to New Zealand law or would otherwise be disentitled to protection in any court; or
 - (c) the use or registration of which would, in the opinion of the Commissioner, be likely to offend a significant section of the community, including Māori.
- (2) The Commissioner must not register a trade mark if the application is made in bad faith.
- (3) Despite subsection (1)(b), the Commissioner may register a trade mark even if use of the trade mark is restricted or prohibited under the Smoke-free Environments Act 1990.

18 Non-distinctive trade mark not registrable

- (1) The Commissioner must not register—
 - (a) a sign that is not a trade mark;
 - (b) a trade mark that has no distinctive character;
 - (c) a trade mark that consists only of signs or indications that may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, time of production of goods or of rendering of services, or other characteristics of goods or services;
 - (d) a trade mark that consists only of signs or indications that have become customary in the current language or in the bona fide and established practices of trade.
- (2) The Commissioner must not refuse to register a trade mark under subsection (1)(b), (c), or (d) if, before the date of application for registration, as a result of either the use made of it or of any other circumstances, the trade mark has acquired a distinctive character.

19 Relevance of colour to distinctive character of trade mark

- (1) In determining the distinctive character of a trade mark, the Commissioner or the court, as the case may be, must consider whether or not the trade mark is, or is to be, limited in whole or in part to 1 or more specified colours.
- (2) A trade mark that is, or is to be, registered without limitation of colour is, or will be, registered for all colours.

20 Trade mark that contains protected geographical indication must not be registered

- The Commissioner must not register a trade mark that—
- (a) contains a protected geographical indication in respect of specified goods; and

- (b) relates to specified goods that do not originate from the place indicated in the protected geographical indication.

21 Trade mark that contains commonly used chemical names must not be registered

- (1) The Commissioner must not register, in respect of a chemical substance or preparation, a trade mark that contains the commonly used and accepted name of any single chemical element or single chemical compound.
- (2) Subsection (1) does not apply to a word that is used to denote only a brand or make of the element or compound made by the owner or a licensee of the trade mark, together with a suitable name or description open to the public use.

22 Registrability of trade mark that contains certain words

The Commissioner may register a trade mark that contains the words “copyright”, “layout design”, “patent”, “patented”, “plant variety right”, “registered”, “registered design”, or “trade mark”, or any abbreviations of those words, or any similar words.

23 Registrability of trade mark that contains person's name

If a person applies for registration of a sign as a trade mark and the sign contains the name or representation of a person, the Commissioner may require the written consent of—

- (a) that person unless the person died 10 years or more before the making of the application; or
- (b) the person's legal representative if—
 - (i) the person died within 10 years before the making of the application; or
 - (ii) the Commissioner thinks the person's consent cannot for any other reason be obtained.

24 Registrability of trade mark that contains representations of Royal Family

The Commissioner must not register a trade mark that contains a representation of Her Majesty or any member of the Royal Family, or an imitation of any such representation, unless the applicant has obtained the consent of Her Majesty or the relevant member of the Royal Family to the registration of the trade mark.

25 Registrability of identical or similar trade mark

- (1) The Commissioner must not register a trade mark (**trade mark A**) in respect of any goods or services if—
 - (a) it is identical to a trade mark (**trade mark B**) belonging to a different owner and that is registered, or has priority under section 34 or section 36,—
 - (i) in respect of the same goods or services; or
 - (ii) in respect of goods or services that are similar to those goods and services, and its use is likely to deceive or confuse; or
 - (b) it is similar to a trade mark (**trade mark C**) that belongs to a different owner and that is registered, or has priority under section 34 or section 36, in respect of the same goods or services or goods or services that are similar to those goods or services, and its use is likely to deceive or confuse; or
 - (c) it is, or an essential element of it is, identical or similar to, or a translation

of, a trade mark that is well known in New Zealand (trade mark D), whether through advertising or otherwise, in respect of those goods or services or similar goods or services or any other goods or services if the use of trade mark A would be taken as indicating a connection in the course of trade between those other goods or services and the owner of trade mark D, and would be likely to prejudice the interests of the owner.

(2) Section 26 overrides subsection (1).

27 Registrability of trade mark that contains representation of flag, etc, generally

(1) If a person applies for registration of a sign as a trade mark and the sign includes a representation of the flag, armorial bearing, insignia, orders of chivalry, or decorations of any entity, the Commissioner may require that the applicant obtain the written consent of the person who appears to the Commissioner to be entitled to consent to the registration and use of the sign as a trade mark.

(2) Subsection (1) does not apply if section 28 or section 29 applies.

28 Registrability of trade mark that contains flag, State emblems, etc, of convention country

The Commissioner must not, without the authorisation of the competent authorities of the country concerned, register a trade mark that contains a representation of—

- (a) the flag of a convention country unless the Commissioner considers that the use of the flag in the manner proposed is permitted without that authorisation; or
- (b) the armorial bearings or any other State emblem of a convention country that is protected under the Paris Convention or the TRIPS Agreement; or
- (c) an official sign or hallmark—
 - (i) adopted by a convention country; and
 - (ii) that indicates control and warranty in relation to goods or services of the same, or similar, kind as those goods or services in relation to which the trade mark is to be registered; and
 - (iii) that is protected under the Paris Convention or the TRIPS Agreement.

29 Registrability of trade mark that contains armorial bearings, etc, of certain international organisations

(1) The Commissioner must not, without the authorisation of the international organisation concerned, register a trade mark that contains a representation of the armorial bearing, flag, or other emblem, or the abbreviation or name, of an international intergovernmental organisation of which 1 or more convention countries are members if the armorial bearing, flag, or other emblem, or the abbreviation or name, of the international organisation concerned is protected under the Paris Convention or the TRIPS Agreement.

(2) Despite subsection (1), the Commissioner may register a trade mark if the Commissioner considers that the use of the armorial bearing, flag, or other emblem, or the abbreviation or name, of the international organisation concerned in the manner proposed—

- (a) is not likely to suggest to the public that a connection exists between the organisation and the trade mark; or
- (b) is not likely to mislead the public as to the existence of a connection between the user and the organisation.

30 When emblems, etc, are protected under Paris Convention or TRIPS Agreement

For the purposes of sections 28 and 29, the State emblems (other than the national flag) of, or the official signs or hallmarks adopted by, a convention country, or the emblems, abbreviations, or names, of an international organisation, as the case may be, are protected under the Paris Convention or the TRIPS Agreement only if, or to the extent that,—

- (a) the country or the organisation concerned has notified New Zealand in accordance with Article 6ter (3) of the Paris Convention, or under that Article as applied by the TRIPS Agreement, that it desires to protect the State emblem, official sign, or hallmark, or the emblem, abbreviation, or name, as the case may be; and
- (b) the notification remains in force; and
- (c) New Zealand has not objected to it in accordance with Article 6ter (4) of the Paris Convention, or under that Article as applied by the TRIPS Agreement, or any such objection has been withdrawn.

32 Application: how made

- (1) A person claiming to be the owner of a trade mark or series of trade marks may, on payment of the prescribed fee (if any), apply in the prescribed manner (if any) for the registration of the trade mark or series of trade marks used or proposed to be used in respect of the following:
 - (a) particular goods or services within 1 or more classes:
 - (b) particular goods and services within 1 or more classes.
- (2) The Commissioner must not register a trade mark in respect of all of the goods and services included in a class, or a large variety of goods or services, unless the specification is justified by the use or intended use of the sign.

Trade Mark Regulations 2003

42 Information required in application for registration on filing

- (1) The application must contain the following information when it is filed:
 - (a) the applicant's name and address or, in the case of joint applicants, the name and address of each applicant unless regulation 13(2) applies:
 - (b) a clear representation of the trade mark:
 - (c) if the application is for registration of a series of trade marks, a clear representation of each trade mark in the series:
 - (d) the goods and services for which registration is required.
- (2) The information provided under subclause 1(a) relating to the applicant's address may also contain any or all of the following:
 - (a) a telephone number

- (b) a fax number
 - (c) an email address
 - (d) an alternative address
- (3) In this regulation, **address** means a postal address that is sufficiently detailed to enable the Commissioner to contact the applicant at that address.

44 Information that must be supplied before acceptance of application

An applicant must supply the following information before the application can be accepted, and may supply it after filing the application:

- (a) the applicant's address for service
- (b) whether the application is for a certification or a collective trade mark; and
- (c) the class or classes of the edition of the Nice Classification in effect at the time of the application in which registration is sought; and
- (d) in the case of a certification trade mark, the regulations governing the use of the trade mark approved by the Commissioner; and
- (e) a transliteration of any foreign characters in the trade mark; and
- (f) a translation of any foreign words in the trade mark; and
- (g) if the trade mark is a colour or colours, a description acceptable to the Commissioner of the colour or colours; and
- (h) if the trade mark is limited as to colour, a description acceptable to the Commissioner of the colour or colours in the trade mark; and
- (i) if the applicant has made a claim for convention priority, the information specified in regulation 47; and
- (j) a statement by the applicant that the trade mark is being used or is proposed to be used.

45 Commissioner may request further information


The Commissioner may request further information from an applicant that will assist in the examination of the application.


59 Requirements for collective trade mark application

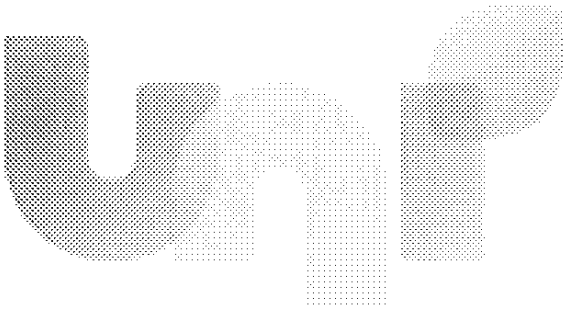
An application for registration of a collective trade mark must—

- (a) comply with the requirements of regulations 41, 42, and 44; and
- (b) contain a declaration that the applicant is a collective association as defined in section 5(1) of the Act.

Search Report

Trademark Number	93537
Name of Owner	Mitsubishi Pencil Co., Ltd.
Address of Owner	5-23-37, Higashi-ohi, Shinagawa-ku, Tokyo, Japan
Mark Name	UNI
Representation	
Mark Description	N/A
Status	100 Registered
Application date	04.05.1970
Registration date	30.10.1972
Priority date	
Domain	Trade Mark
Nice classes	16
Goods/Services	<p>Class 16 writing pens, pencils (including mechanical pencils or clutch pencils, propelling pencils, sliding pencils), refills for writing instruments, points for pens and pencils, ink, pencil leads; felt-tip, fibre-tip, or plastic-tip markers; pencil sharpeners and their cutting blades, lead pointers, rubber or plastic erasers, writing and drawing chinks, crayons, pastels, and other art materials, paper and paper articles, cardboard and cardboard articles, stationery, artists' materials, paint brushes and office requisites (other than furniture), adhesive materials (stationery), instructional and teaching material (other than apparatus).</p>

Trademark Number	130705
Name of Owner	MITSUBISHI PENCIL CO., LTD
Address of Owner	5-23-37, Higashiohi, Shingawa-ku, Tokyo, Japan
Mark Name	UNI
Representation	
Mark Description	N/A
Status	100 Registered
Application date	13.12.1979
Registration date	09.11.1983
Priority date	
Domain	Trade Mark
Nice classes	16
Goods/Services	Class 16 stationery; pencils, pencil-sharpeners and note-books.

Trademark Number	1009895
Name of Owner	ECZACIBASI HIJYEN URUNLERI SANAYI VE TICARET ANONIM SIRKETI
Address of Owner	Istiklal Mah. Ataturk Cad. Ekin Sok. No:5, Kirac/Istanbul, Turkey
Mark Name	uni
Representation	
Mark Description	N/A
Status	70 Accepted
Application date	18.09.2014
Registration date	
Priority date	
Domain	Trade Mark
Nice classes	3
Goods/Services	Class 3 Bleaching and cleaning preparations; perfumery, cosmetics, deodorants for personal use; soaps; dentifrices; abrasives (abrasive cloth, abrasive paper, pumice stone, abrasive paste), polishing and care preparations (creams, polishes and wax for leather, vinyl, wood, etc); tissues impregnated with cosmetic lotions, impregnated hair bonnet impregnated with cleaning lotions, pads impregnated with lotions, cloths impregnated with lotions or cleaning preparations; make-up removing preparations; cotton pads and cotton wool for cosmetic purposes, swabs, cotton sticks for cosmetic purposes; shampoos, hair care products (hair lotion, hair colorant, hair spray, hair waving preparations); hand and body oils, creams, lotions, waxes, milk.