

**PROSECUTION OFFICE OF THE REPUBLIC OF BULGARIA**

**REGIONAL PROSECUTION OFFICE – VARNA**

**REGIONAL PROSECUTION OFFICE, VARNA**

**No. 15846/2004**

**Varna, 20.11.2006**

**ENACTMENT**

**of termination of criminal proceeding**

**city of Varna, 13.11.2006**

MONIKA ZHEKOVA – prosecutor at Regional Prosecution Office in the city of Varna, after acquainting with the materials as per preliminary investigation No. 26/2005 as per the inventory of Legal Executive Service – Regional Police Direction, city of Varna.

**D E T E R M I N E D:**

The criminal proceeding had been established by Varna Regional Prosecution Office on 21.01.2005, based on materials, contained in correspondences with numbers sample I, 26/2005. 433/05 and 444/05 as per the inventory of Regional Direction of Home Affairs Varna, against:

GEORGI GEORGIEV YORDANOV, civil ID No. 4602231100

- therewith in 2001 – 2005 in the city of Varna, without the consent of the holder – “Guinness United Distillers and Vintners” had used the brand with regard to his commercial activity.

Criminal offence pursuant to article 227 of the Criminal Code.

Throughout the investigation, the following procedural and investigation actions had been undertaken:

- On 21.01.2005, following a due approval by a magistrate, a **search and seizure** had been conducted from a store and a customs store of “BeGeIn” Ltd. – Varna, located in the Western Industrial Zone, base “Nova”, upon which **77 000 bottles of alcohol of varied import brands** had been seized.
- On 26.01.2005, following a due approval of a magistrate a **search and seizure** had been conducted in the customs store of “BeGeIn” Ltd. – Varna, located in the Western Industrial Zone, base “Nova”, upon which **16 000 bottles of alcohol of varied import brands** had been seized.
- On 01.02.2005 Varna Regional Prosecution Office had received a reference with regard to the brands and the quantities of seized alcohol from a store and customs store of “BeGeIn” Ltd..
- On 02.02.2005 a letter of request for presentation of the original customs documents of the import of alcohol for the period between 2001 and 2005 by “BeGeIn” Ltd. and for notification of LED of RDHA Varna upon new import by “BeGeIn” Ltd.

In his capacity as a witness on 03.02.2005, Damyan Georgiev Yordanov – head of Customs Office “Port Varna” – Customs Direction – Varna had been interviewed regarding import of alcohol, accomplished by “BeGeIn” Ltd.

Under a similar capacity on 07.02.2005 Yuriy Markov KARAIVANOV – “Currency Exchange” promoter at “SeaCom” JSC – Varna had been interviewed with regard to the availability of alcohol, property of the joint-stock company, specified herewith in the customs store of “BeGeIn” Ltd. The witness Karaivanov, by means of a due protocol, had presented documentary evidence to the preliminary investigation.

On 07.02.2005 in his capacity as a witness Rumen Traykov RUSINOV – accountable official key clients at “Maxim Bulgaria” Ltd. – Sofia had been interviewed with regard to violation of the company rights of brands of alcohol on behalf of “BeGeIn” Ltd – Varna. The

witness Rusinov had presented documentary evidence throughout the progress of the preliminary investigation proceeding.

In her capacity as a witness, dated 08.02.2005, Genoveva Petrova CHORBADZHIEVA, representative and customs agent of “Sofcom” Ltd. Kostinbrod had been interviewed with regard to availability of alcohol, property of the limited liability company, specified herewith, in the customs store of “BeGeIn” Varna. The witness Chorbazhieva, had presented documentary evidence as per due regulations.

On 08.02.2005 in his capacity as a witness Georgi Ignatov GAMZAKOV – representative of “Guinness United and Vintners Amsterdam B.V” – regarding violation of rights of alcohol brands on behalf of “BeGeIn” Ltd. The witness Gamzakov had presented documentary evidence throughout the progress of the preliminary investigation proceeding.

On 15.02.2005 in her capacity as a witness Silviya Tencheva IGNATOVA – representative of “Ost Trading” Ltd. had been interviewed with regard to availability of alcohol brands, property of the company specified herewith in the store of “BeGeIn” Ltd. The witness Ignatova had submitted documentary evidence to the preliminary investigation proceeding.

On 15.02.2005 in her capacity as a witness Eli Zheleva GERANOVA – representative of “Diageo Bulgaria” Ltd. had been interviewed with regard to violation of their rights over alcohol brands, property of the company specified herewith on behalf of “BeGeIn” Ltd. - Varna, The witness Geranova by means of a written protocol had submitted documentary evidence to the preliminary legal proceeding.

By means of protocol dated 16.02.2005, Silviya Ignatova had submitted additional documentary evidence to the preliminary legal proceeding.

On 22.02.2005 in his capacity as a witness Aleksandar Kirilov LILOV – representative of “Allied Domec Agncies Bulgaria” Ltd. – Sofia, had been interviewed.

On 23.02.2005 in his capacity as a witness Surrey Andrew David – representative of “Pernot Ricard Europe” had been interviewed. On 23.02.2005 an additional interview of witness Rumen Traykov RUSINOV – accountable official key clients at “Maxim Bulgaria” Ltd. – Sofia.

**On 25.02.2005 the investigator in charge had received the customs declarations of the alcohol beverages, imported by “BeGeIn” Ltd. – Varna by the Customs Office – Varna.**

In his capacity as a witness on 26.02.2005 Dimitar Petrov MILKOV – commercial representative of “Avendi” Ltd. had been interviewed and had submitted documentary evidence with the due protocol.

By means of a duly formed protocol, dated 10.03.2005 the witness G. Gamzakov had presented additional documents.

On 12.03.2005, in her capacity as a witness Sofiya Zhivkova BOYADZHIEVA – customs representative of “Diageo BULGARIA” Ltd. – city of Sofia had been interviewed and had submitted documentary evidence to the needs of the preliminary legal proceeding.

On 17.03.2005 Varna Regional Court, by means of a Resolution, had abolished an Enactment of the Regional Prosecution Office in the city of Varna, by means of which a traverse of the alcohol, seized pursuant to the preliminary legal proceeding. On 31.03.2005 Prosecution Office – Varna had submitted a Private protest to Varna Regional Court against the Resolution of Varna Regional Court. On 01.04.2005 by means of a Ruling, Varna Regional Court had suspended the preliminary execution of its resolution dated 17.03.2005.

**On 13.04.2005 Prosecution Office – Varna had sent a cross-request to the Customs Agency for conduct of cross-inspections, along the line of international cooperation, of the foreign trade invoices, submitted to the Customs Office – Varna by “BeGeIn” Ltd.**

On 13.04.2005 in his capacity as a witness Galin Yordanov Rusev – senior inspector of Customs Office “Varna Port” – Customs Varna had been interviewed.

On 14.04.2005 in her capacity as a witness Antoanela Antonova Nedelcheva – senior inspector of Customs Office “Varna Port” – Customs Varna had been interviewed. The witness Nedelcheva had submitted documentary evidence by means of a protocol of voluntary disclosure.

**On 27.05.2005 the preliminary legal proceeding had been returned to Legal Executive Service – Regional Police Direction, city of Varna – together with Resolution**

**No. 359/04.05.2005 of Varna District Court, approving the Resolution of Varna Regional Court for return of the alcohol, with the exception of the brand Johnny Walker.**

In January 2006, acting through Prosecution Office – Varna, Customs Agency had sent copies of documents along the line of international cooperation to the preliminary investigation. The documents constitute the official response of foreign Customs to the Customs Agency for conducted inspections along the line of Customs investigation. None of these responses does not disclose information as per requested with regard to the preliminary legal proceeding, as the commodities – varied brands of alcohol products, subject of the inspections, have reference invoices from offshore regions Lichtenstein and Delaware, the USA, with which the Republic of Bulgaria has no contract of legal assistance.

On 15.02.2006 as a result of a fire, occurred in the official premise, used by the investigator in charge of the preliminary investigation, all above-specified protocol and documents had been destroyed.

To conclude the preliminary investigation, Prosecution Office – Varna had required and received an observance report correspondence on the preliminary investigation. Among documents, sent by Prosecution Office – Varna to Legal Executive Service – Regional Police Direction, city of Varna are copies of the protocols from the conducted search and seizure dated 21.01 and 26.01.2005.

Throughout the investigation, a Declaration by attorney Svetlomira Zhelyazkova – attorney of Georgi Yordanov – had been received, as the declaration had been accompanied with the validated decision of Supreme Court of Cessations No. 249/2006.

The attorney Zhelyazkova had presented legal arguments, referring to the Resolution of the Supreme Court of Cessations for lack of criminal offence pursuant to article 227 of the Criminal Code, perpetrated by her client – G. Yordanov.

The declaration, together with the Resolution, had been sent to the Regional Prosecution Office – Varna as per due regulations. The observing thitherto prosecutor of Regional Prosecution Office – Varna, had instructed the preliminary investigator to conclude the investigation pursuant to the Resolution of the Supreme Court of Cessations.

**In view of conclusion of the case, additional interview with Georgi Yordanov had been conducted, dated 20.09.2006 and at this interview Yordanov had delivered to the investigator in charge of the preliminary investigation documents, certifying the legal import and authenticity of bottles of whisky with the brand “Johnny Walker”, seized pursuant to the case.**

On 25.09.2006, a new declaration had been submitted to the case for suspension of the criminal proceeding and return of the detained bottles of whiskey with the brand “Johnny Walker” to the store of “BeGeIn” Ltd. thereto.

To this declaration, legally and correctly, the leading investigator had rated that the Prosecution Office – Varna should announce a resolution.

Referring to the above-specified facts and proof /although the originals had been destroyed, but submitted to the case despite their scorched look/, the investigating authority had consented to the lack of a criminal offence, perpetrated by Georgi Yordanov, specified pursuant to article 227 of the Criminal Code.

Following the acquaintance with the materials, available on the case, I express my consent with the leading investigator that the criminal proceeding should be terminated.

The arguments go as it follows:

The proceeding had been conducted based on litigations on behalf of companies, proprietors of commercial brands: “Allied Domec Agencies” Ltd. Sofia, “Diageo Bulgaria” Ltd. Sofia, “Maxim Bulgaria” Ltd. Sofia and “Guinness United Distillers and Vintners” due to “BeGeIn” Ltd. Varna implements unauthorized commercial activities with goods of commercial brand, property of the litigants. This criminal proceeding had been instituted as per the litigations of the proprietors of the commercial brands and throughout the proceeding, as a result of the conducted search and seizures, conducted by Legal Executive Service – Regional Police Direction, city of Varna, a total of 93 600 bottles of alcohol had been seized from the stores of “BeGeIn” Ltd. Varna.

Interviewed in the position of a witness, throughout the legal proceeding Georgi Yordanov, defendant in the criminal proceeding, had declared he had not effectively perpetrated the criminal offence, determined pursuant to article 227 of the Criminal Code and

the so-called “parallel import” is not a crime pursuant the regulations of the Criminal Code. In support of the above-stated, Georgi Yordanov acting on his behalf and through his representative, had presented explicit evidence of the authenticity of the stored alcohol, the implemented import and the trademark over the alcohol. Presented copies of decisions and resolutions of Varna Regional Court, Varna District Court, Supreme Court of Cessations, leading to the conclusion of lack of a criminal offence, perpetrated by Yordanov.

In conformity to the Resolution of Varna Regional Court, dated 17.03.2005 – 22 composition of members as per PCC No. 1283/2005 ABOLISHES Enactment of Regional Prosecution Office – Varna, dated 17.02.2005, refusing “Seacom” JSC city of Varna, represented by Nikola Borisov Buchkov, “Sofcom” Ltd., town of Kostinbrod, represented by Vasil Georgiev, and “Ost Trading” Ltd. Varna, represented by Ognyan Ignatov – the return of the seized pursuant to preliminary investigation No. 26/2005 as a factual evidence by means of protocols of search and seizure, dated 21.01.2005 and 26.01.2005 by customs store of “BeGeIn” Ltd – city of Varna alcohol beverages, property of the company – litigant.

By means of this Resolution, Varna Regional Court had ENACTED THE FULL RETURN of the seized alcohol pursuant to preliminary investigation No. 26/2005 of RDHA Varna, property of “Seacom” JSC, city of Varna, represented by Nikola Borisov Buchkov, “Sofcom” Ltd. – town of Kostinbrod, represented by Vasil Georgiev and “Ost Trading” Ltd., city of Varna, represented by Ognyan Ignatov.

By means of this Resolution, Varna Regional Court had abolished the quoted Enactment of Regional Prosecution Office – Varna, proving the traverse of return to “BeGeIn” Ltd., city of Varna the seized alcoholic beverages, property of the company – litigant and bearing the specified 36 trademarks and had ENACTED the return of alcohol from the specified 36 trademarks to “BeGeIn” Ltd., city of Varna.

The sole part, in which the Enactment of Regional Prosecution Office – Varna had confirmed is the part, in which Regional Prosecution Office – Varna refuses to return to “BeGeIn” Ltd. – city of Varna, ALCOHOLIC BEVERAGES WITH THE BRANDS “JOHNNY WALKER” and “GORDONS”, seized at the above specified dates by the company.

Upon enactment of the Resolution, Varna Regional Court had established factually and legally that documentary evidence had been presented for two of the commercial companies “Seacom” JSC – Varna and “Ost Trading” Ltd. that the import of alcohol had been implemented by them with the explicit consent of the holders of trademark rights. Said written proof – invoice and letters to CUSTOMS OFFICE VARNA had been confirmed and upon interviewing the physical entities, representative of the trademark rights of the incriminated brands /quoting the specified lists from the case, containing said proof/. **The Court had acknowledged that the sole relevant fact /regarding the return of the seized alcohol/ is the consent of the holders of trademark rights for import, implemented by said two companies, in view of which the Court had ruled return of the alcohol.**

**In order to announce a resolution, the court had established evidence, establishing the statement of “Allied Domec Spirits and Wine Limited”, Great Britain of holding exclusive rights to trade with alcohol beverages of the brand “TULLAMORE DEW” within the territory of the country, had not been presented to the legal proceeding. As far as “Guinness United Distillers and Vintners Amsterdam B.V” the Netherlands and “Allied Domec Spirits and Wine Limitef” Great Britain HAD NOT established their identity as holders of the rights over the trademarks Bailes, J&B, Tullamore Dew – and their declaration for lack of consent of import of said commodities and brands is not relevant. Due to those arguments, the court had abolished the enactment of Regional Prosecution Office – Varna with regard to the section, returning the alcoholic beverages to the importing company In the Republic of Bulgaria.**

With regard to the 23 trademarks, quoted by the Resolution of Varna Regional Court, lacking any proof of registration with regard to the legal proceeding, the court had established the following: “Conforming to the regulations of article 10, paragraph 1 of the Trademarks and Geographic Symbols Act, the right over a trademark is acquired through registration, considered from the date of submitting the declaration, i.e. the registration is a requirement for occurrence of the right and respectively claims of its reservation. Unregistered brands may not use the reservation against unauthorized use pursuant to article 13 of TGSA, as it is a legal consequence of registration. In view of the quoted arguments, Varna Regional Court had established that subject of a criminal offence pursuant to article 227 of the Criminal Code might solely be the utilization of a trademark, registered pursuant to TGSA and liable to protection by this Act. Due to

**said reasons Varna Regional Court had abolished the Regional Prosecution Office – Varna Act in its section, traversing the return of seized alcohol and had adopted a resolution for return to the importers.**

**Finally for this resolution, Varna Regional Court had approved the Regional Prosecution Office – Varna decision in its section, traversing the return to “BeGeIn” Ltd. – city of Varna, the seized alcoholic beverages, property of the company – litigant and bearing the trademarks “Johnny Walker” and “Gordons”, as by means of Resolution of Sofia City Court, valid from 14.10.2004, except for acknowledging the fact of violation of the trademark rights, “BeGeIn” Ltd. – city of Varna had been sentenced to suspend all import of goods with the trademark “Johnny Walker” and “Gordons” without the consent of “Guinness United Distillers and Vintners Amsterdam B.V”, the Netherlands. Due to this reason, Varna Regional Court had accepted that “BeGeIn” Ltd. had been “obligated to consider the company activity with regard to the mandatory enacting of the valid court resolution, with regard to which violation of the intellectual property rights had been established”.**

Against this decision of Varna Regional Court, analyzing in detail the material Act – TGSA and drawing conclusions as of when, in case of violation of the material Act a criminal liability is incurred pursuant to article 227 of the Criminal Code, a Private litigation had been submitted by the representative of Regional Prosecution Office – Varna and especially request for termination of preliminary implementation of the resolution.

**On 01.04.2006 – the 22 composition of members at Varna Regional Court, by means of Resolution had terminated the execution of the objected act.**

**On 04.05.2005 – Varna District Court, by means of Resolution No. 359/2005 had passed a sentence to PCC No. 620/2005, pursuant to the regulations of article 348 of Criminal Procedural Code. Subject of the legal proceeding – Resolution dated 13.03.2005 pursuant to PCC No. 1283/2005 of Varna Regional Court, 22 composition of members, by means of which the Enactment of Regional Prosecution Office – Varna had been partially abolished, dated 15.02.2005. The composition of members of Varna District Court had accepted the protest and litigation of Regional Prosecution Office – Varna against the resolution concerned as UNFOUNDED. The court motives are as it follows: “Varna Regional Court, 22 composition of members, had extensively and**

comprehensively dealt with the norm of article 227 of the Criminal Code, with the actions of Regional Prosecution Office – Varna and the representatives – owners of various brands of alcohol, registered in the Republic of Bulgaria and located in the store of “BeGeIn” Ltd. – city of Varna, had commented upon the collected documentary proof by the preliminary investigation with regard to the located alcohol, its import in the Republic of Bulgaria and proof of registration to the Patent administration of the Republic of Bulgaria of varied brands of alcohol out of the total 38. Based on correctly assessed facts and circumstances, relevant to the subject of proof in the legal proceeding pursuant to article 108 of the Criminal Procedural Code, it had legally adopted its resolutions in their factual and legal aspects”. Due to which the Resolution of Varna Regional Court had been fully upheld. The RESOLUTION of Varna District Court is final and not liable to appeal.

With regard to this case, except the decisions of Varna Regional Court and Varna District Court, a resolution of a legal composition of members of the Supreme Court of Cessations is available.

By means of RESOLUTION No. 249/22.03.2006, the Supreme Court of Cessations, pursuant to the regulations of article 218 a, paragraph 1, item B of the Civil Procedural Code had passed a resolution on the Cessation litigation of “BeGeIn” Ltd. – city of Varna against RESOLUTION dated 08.06.2005 on civil proceeding No. 424/ 2005 of Sofia Court of Appeals.

Pursuant to this Resolution of the Supreme Court of Cessations A RESOLUTION dated 08.06.2005 of Sofia Court of Appeals had been abolished and instead it had been resolved: “REJECTS the claims of “Jestern and Brooks Limited” London, Great Britain, legal address in Bulgaria – attorney Boyanov, city of Sofia, No. 24 “Evtimiy” blvd. against “BeGeIn” Ltd. – city of Varna claim of establishment pursuant to article 76, paragraph 1, item 1 of TGSA in relation to article 73, parahrph 1 and article 13, paragraph 2, item 3 of TGSA the FACT of violation of trademark rights “J&B”, registry No. 27 694, property of “Jestern and Brooks Limited” London, Great Britain, through import of 1200 bottles of whisky of this brand by “BeGeIn” Ltd. – city of Varna, sans the consent of the claimant, holder of the trademark, claim for conviction pursuant to article 76, paragraph 1, item 2 of TGSA, the defendant to suspend the violation and not implement, without the consent of the claimant, any and all import of

**goods with the brand “J&B” and the claim pursuant to article 72, paragraph 2, item 1 of the TGSA for destruction of the subject of the criminal offence – 1200 bottles of whisky. The RESOLUTION is final”.**

To reach the decision for abolishment of the act of Sofia Court of Appeals and decree the Resolution of the above-specified content, the Supreme Court of Cessations had made the following conclusions – legal and relevant to the specified subject of the case:

“In order for **use of trademark in commercial activity** to occur, pursuant to article 13, paragraph 2 of the TGSA, including import and export of goods, bearing said trademark pursuant to article 2, item 3, the basic norm – article 13, paragraph 1 of TGSA should be available, determining the content of trademark ownership rights, which generally means the right of the trademark holder to forbid third parties, without providing his explicit consent, to use a symbol, identical to the trademark he had registered or due to similarity of the brand or identity of the goods and services a probability exists of confusion of the consumers, relating the commercial sign with the trademark, registered by the claimant”.

- **Import of original whisky in the country**, bearing the trademark, registered by the claimant, is not a violation of article 73, paragraph 1 of the TGSA, as no activity of the defendant without the consent of the owner had occurred, constituting an illegal use of a trademark of whisky J&B, registered by the claimant. No violation of article 13 of TGSA occurs in case a third party imports the original brand, registered by the claimant, and import brands, illegally marked with the foreign trademark /property of the claimant/.
- Regardless of the fact the defendant had implemented import of goods, this is not the import pursuant article 13, paragraph 2, in relation to paragraph 2 of TGSA, as the regulation of **article 13, paragraph 2, in relation to paragraph 1 of TGSA had been established to protect the right of trademarks, used in the way, indicated by the Act, including import and export of goods bearing this trademark**, which would lead to confusion of consumers and adoption that all goods are illegally bearing assumed trademark, said legal decree not applicable in case of import of original goods and not goods, marked illegally by the trademark J&B, registered by the claimant. Import on behalf of the defendant of original goods and not goods, marked illegally with an assumed trademark does not constitute “use” of the trademark right pursuant to article 13, paragraph 1 and 2 of TGSA, provisioning legal protection, due to which the claim

pursuant article 76, paragraph 1, item 1 in relation to article 73 of the TGSA had been granted incorrectly, said claim is unfounded.

- **“Exhaustion of rights over trademark pursuant to article 15, paragraph 1 of the TGSA** occurs legally and is mandatory with regard to everyone and this is the reason the trademark holder or his representative, following the market release of the good, exhausting the brand rights, to require the deposit of his good to be limited and implemented only through his consent”.

**Due to the above-specified arguments, the court had enacted the quoted decision.**

**With regard to interpretation of the material act, except for court resolutions, the Patent Administration of the Republic of Bulgaria had also expressed its standpoint, provided as documentary evidence on the case.**

**This standpoint outlines the content of the concept “PARALLEL IMPORT” should be interpreted from the regulations of article 16 of TGSA. The law founds this concept not a commodity in and of itself, but a commodity marked with a brand and protected within the state territory. The meaning of the specified regulation /according to this standpoint/ is in case a trademark holder releases to the market, by himself or by means of another entity, a commodity marked with his trademark, this holder may not forbid the use of the trademark with regard to the commodities, released to the market by him or by his mutual consent. Pursuant to article 15 of TGSA, the so-called PARALLEL IMPORT does not lead to VIOLATION of rights. In this case the holder of the exclusive right may not oppose to utilization of trademark of the goods, marked by it and released to the market by the trademark holder or by means of his consent.**

With regard to the seized material evidence alcohol products, evident from the materials on the case - /l. 89 Volume I/ - based on a provision warrant, issued pursuant to civil proceeding No. 4100264/2005 of Sofia Regional Court, however pursuant to executive proceeding No. 4120/2005 AS PER INVENTORY OF LEC VARNA, V district, a provision had been allowed to the benefit of Guinness United Distillers and Vintners Amsterdam B.V” and movable property of “BeGeIn” Ltd. – city of Varna and “Sofcom” Ltd., located in the West Industrial Zone, base “Nova”, floor 2, had been distrained. The claims have legal foundation article 76, paragraph 1, item 1 and 2 and article 76, paragraph 2, item 1 in relation

to article 75, paragraph 1 of the TGSA as per request of “Guinness United Distillers and Vintners Amsterdam B.V”, a distraint of 10 688 bottles of whisky, 888 bottles of Gin, 2 456 bottles of whisky and 2 291 bottles of liqueur with detailed trademarks, specified in this standpoint.

Again, in relation to the goods, seized by the storage premises of “BeGeIn” Ltd. several litigations had been submitted to the company representative and the last in chronological order had been addressed to the Supreme Prosecution Office of Cessations by means of reference No. 54895/19.08.2005. By means of this litigation, the company representative, through his attorney, had approached Supreme Prosecution Office of Cessations REGARDING his wish to suspend the legal proceeding due to structuring inconformity of the deed pursuant to article 227 of the Criminal Code. One of the arguments /we consider relevant/ is the reference to the **Resolution of Supreme Prosecution Office of Cessations No. 1071/03.12.2004**, explicating article 13 of TGSA refers to protection of IMITATION of the brand in case the imported goods bear the brands, registered by the trademark holders, NO ACTIONS ARE EXECUTED, constituting UTILIZATION of the trademark rights pursuant to article 13, paragraph 1 and 2 of the Criminal Code. This litigation also indicates that by means of TGSA and the Regulation of border measures for protection of intellectual property rights, a special procedure exists for protection of civil rights of the trademark holders, due to which the argument is civil and is of competence of Sofia City Court.

**The observing prosecutor at Regional Prosecution Office – Varna, on 16.11.2005 had passed an Enactment by traversing its consideration due to the fact that at the moment of the enactment by Regional Prosecution Office – Varna, the investigation on the case had not been full, objective and comprehensive.**

**On the proceeding dated 12.05.2006 Georgi Georgiev – representative of “BeGeIn” Ltd. – city of Varna, had submitted a declaration to Regional Prosecution Office – Varna, requesting suspension of the criminal proceeding against him due to lack of objective and subjective structuring inconformity.** In his declaration Georgiev had referred to Resolution of Supreme Court of Cessations No. 249/06, in which the Court had accepted the lack of perpetrated offence of TGSA, due to which the claim pursuant to article 76 and paragraph 13 of TGSA of “Jestipity and Brooks Limited” – London, from the “Diageo Group”, had been rejected by the Supreme Court of Cessations.

At a conducted additional interview with witness Yordanov, dated 20.09.2006/writ 229 and following volume 1 of the case /he had testified that the company “BeGeIn” Ltd. – city of Varna, had been importing alcohol drinks since 2002. The products the company deposits are original and accompanied by the required official documents.

The company had not had any issues with regards to the implemented trade activity. On 21.01 and 26.01 from the company store base imported alcohol – of about 90 000 bottles – had been seized. The witness Yordanov approached Regional Prosecution Office – Varna in order to return the alcohol, but following a traverse by the observing prosecutor by means of Resolution dated 17.03.2005, Varna Regional Court had enacted return of the alcohol, approved by Varna District Court, with the exception of 481 bottles of “Johnny Walker”, remaining in their store, for an accountable preservation and at the moment had been located at a special contained premise.

For the remaining bottles Yordanov indicates the legal proceeding against him continues. He declares in his testimony that the goods have a statute of foreign goods pursuant to the meaning of the Customs Act, as it is under a regime of customs storage. Export of the goods from the store could solely be implemented following consent of the Customs Agency.

With regard to the remaining quantity of alcohol, the witness declared that throughout the whole preliminary legal proceeding, the issue of the authenticity of the specified goods had not been mentioned. The witness Georgiev declares he had presented all documents with regard to said goods, certifying the legal import, said documents submitted to the legal proceeding. By means of Protocol of voluntary delivery on 20.09.2006 the witness Yordanov had presented copies of the official documents, certifying the origin and legal import of the goods.

On 25.09.2006 the witness Yordanov had submitted a declaration to Legal Executive Service – Regional Police Direction to return the alcohol – 486 bottles /although the protocol of seizure indicates 481 bottles/ with the brand “Johnny Walker”, subject of the preliminary investigation, due to lack of composition of criminal offence.

**With regard to the established facts I consider that actually witness YORDANOV, in his capacity as a representative of “BeGeIn” Ltd. – city of Varna had not violated the regulations of TGSA with regard to import of alcoholic beverages, including the brand**

**“Johnny Walker”, respectively and objectively no illegal action ad been executed pursuant to article 227 of the Criminal Code. The lack of objective structural inconformity of the action pursuant article 227 of the Criminal Code, subject of a legal proceeding, leads to termination of the legal proceeding with regard to YORDANOV.**

**Following a detailed study of the analysis of TGSA, executed by the court pursuant to the quoted acts, I consider that at the moment of institution of the legal proceeding a stable court practice had not been available with regard to application of this material Act and the permissibility of implementation of the so-called “parallel import”. Following the availability of legal resolutions on this issue and accepting the lack of violation of TGSA in case of “parallel import” of goods, the conclusion is no criminal offence pursuant to article 227 of the Criminal Code has been perpetrated.**

**Due to said considerations, I enact that within the period 2001 – 2005 GEORGI GEORGIEV YORDANOV had not implemented violation of YGSA and respectively had not perpetrated an illegal action pursuant article 227 of the Criminal Code.**

With regard to the above-specified, pursuant to article 199 and article 243, paragraph 1, item 1 of the Criminal Procedural Code,

## **I H E R E B Y E N A C T E D**

I suspend the legal proceeding pursuant to preliminary investigation No. 26/2005 against GEORGI GEORGIEV YORDANOV for a criminal offence pursuant article 227 of the Criminal Code.

**The 481 bottles of whisky with the brand “Johnny Walker”, seized by means of protocol of search and seizure as material evidence shall be returned to their proprietor “BeGeIn” Ltd.**

**Execution of this Enactment for this section is assigned to Legal Executive Service – Regional Police Direction Varna. After return of the goods, a protocol of their delivery to the company owner should be sent to Regional Prosecution Office – Varna, pursuant article 111, paragraph 2 of the Criminal Code.**

The decree pursuant article 244, paragraph 5 of the Criminal Procedural Code is liable to appeal within 7 days before Varna Regional Court.

A COPY of the Enactment, pursuant to article 244, paragraph 1, item 2 of the Criminal Procedural Code shall be **sent by registered mail to:**

GEORGI GEORGIEV YORDANOV – through his attorney, lawyer from Varna Lawyers Association – Svetlomira ZHELYAZKOVA – city of Varna, No. 54 “Al. Batenberg” street

ALEKSANDAR KIRILOV LILOV “Allied Domec Agencies” Ltd. –Sofia, city of Varna, “Mladost” district, block 150, entrance 1A, floor 6

ELI ZHELEVA GERGANOVA “Diageo Bulgaria” Ltd. Sofia – city of Sofia, No. 115 “Arsenalski” blvd., floor 2

RUMEN TRAYKOV RUSINOV – “Maxim Bulgaria” Ltd. Sofia – city of Varna, No. 9 “Samuil” street

ATTORNEY BORISLAV BOYANOV – “Guinness United Distillers and Vintners” – city of Sofia, No. 24 “P. Evtimiy” blvd.

HEAD OF LEGAL EXECUTIVE SERVICE – REGIONAL POLICE DIRECTION VARNA – for implementation of the section of the enactment, regarding the material evidence.

PROSECUTOR RPO: *signature illegible*

/M. ZHEKOVA/

*Affixed round seal of Regional Prosecution Office, city of Varna, Republic of Bulgaria*