

Notification of Provisional Refusal based on an Ex Officio Examination (to WIPO)

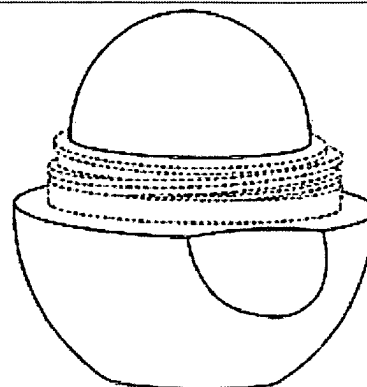
Pursuant to Rule 17(2) of the Common Regulations under the Madrid Agreement concerning the international registration of marks and the Protocol relating to that Agreement.

I. Name and address of the Office making the notification:

Norwegian Industrial Property Office
P.O.Box 8160 Dep., N-0033 OSLO, NORWAY

Telephone: +47 22 38 73 00
Telefax: +47 22 38 73 01
E-mail: mail@patentstyret.no

II. International registration: 1323354



III. Date of Subsequent Designation (if any):(yyyy.mm.dd)

IV. Holder of the international registration:

EOS PRODUCTS, LLC, 19 West 44th Street, Suite 811, US-NY10036 NEW YORK, USA

V. The scope of the refusal:

☒ **Provisional refusal for all goods**

☐ **Provisional partial refusal for some of the goods and/or services**

VI. Grounds for refusal:

☒ **Absolute grounds: Trademark Act Section 14** - The trademark is considered to be devoid of any distinctive character and/or it can be used in trade to designate the goods in question. As a whole, the mark is incapable of conferring ideas of a commercial origin on the goods claimed in classes 3 and 5. The mark consists of a three-dimensional configuration of a container comprised of half an ovoid. The shape of the container is in itself ordinary for the goods claimed in the international registration, namely lip balms, and does not distinguish the goods of the holder from those of others commonly used in trade for the goods at issue. Since the mark has not any distinctive elements and has not been composed in a way that will make the average consumer perceive it as a designation of a particular commercial undertaking for the goods in classes 3 and 5, it fails to guarantee the commercial origin of the goods claimed. And as a consequence, it must be refused.

☐ **Relative grounds:**
Likelihood of confusion with

VII. The relevant provisions of the Norwegian Trademarks Act are under XI.

VIII. Date of provisional refusal: (yyyy.mm.dd) **2017.03.24**
Response must be received within: (yyyy.mm.dd) **2017.06.24**

Continuation sheet no: 1

Int. reg. Number: 1323354

See more information under X about the time limit and which actions you need to take if you want to request a review of the provisional refusal.

IX. Signature by the Office:
THE NORWEGIAN INDUSTRIAL PROPERTY OFFICE

Anne Hilstad Eid

(National reference no.: 201614914)

Number of continuation sheets: 2

- X.** The holder of the registration may request a review of the provisional refusal. The Norwegian Industrial Property Office must receive the request no later than 3 months from the date of this provisional refusal (The time limit is indicated under point VIII). Such request must provide an address of correspondence and be filed in Norwegian, Danish, Swedish or English. The Norwegian Industrial Property Office will respond in Norwegian. Please note that if The Norwegian Industrial Property Office, either subsequent to review or appeal, accept the designation of Norway, a post grant opposition may be filed against the mark within 3 months from the publication of the mark.

If the holder does not respond to this provisional refusal within the time limit, the international registration shall be considered abandoned in Norway for the goods/services that are excluded (Trademark Act Section 70 and 23). The international registration shall be resumed if the holder, within two months from the expiration of the time limit responds to the provisional refusal and pays the stipulated fee (NOK 550,-). Please note that The Norwegian Industrial Property Office does not send any notifications to the holder that the international registration is abandoned in Norway.

- XI.** The relevant provisions of the Norwegian Trademarks Act regarding the grounds of this provisional refusal:

§ 2. Signs that may be trademarks

A trademark may consist of any sign capable of distinguishing the goods or services of one undertaking from those of another, such as words and combinations of words, including slogans, names, letters, numerals, figures and pictures, or the shape of the goods, their get-up or their packaging.

A trademark right may not be acquired for signs that consist exclusively of a shape that results from the nature of the goods themselves, is necessary to obtain a technical result or adds substantial value to the goods.

§ 14. General conditions of registration

A trademark to be registered shall consist of a sign which is capable of being protected pursuant to Section 2 and capable of being represented graphically. It shall have distinctive character as a sign for the relevant goods or services.

A trademark cannot be registered if it exclusively, or only with insignificant changes or additions, consists of signs or indications that:

- a) indicate the kind, quality, quantity, intended purpose, value or geographical origin of the goods or services, the time of production of the goods or of the rendering of the services or other characteristics of the goods or services, or
- b) constitute customary designations for the goods or services according to normal linguistic usage or to loyal, established business practice.

The conditions in paragraphs one and two shall be met on both the date of application and the date of registration. When assessing a proposed trademark pursuant to paragraph one, sentence two, and paragraph two, it is necessary to take into consideration all circumstances that prevailed on the date of application, in particular effects of use of the trademark prior to this time.

A sign that is used in an industrial or commercial undertaking to indicate the geographical origin of goods or services may, without impediment by the provisions in paragraph two, be registered as a collective mark.