

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. National office that notifies the refusal of protection:
The Swedish Patent and Registration Office
Box 530, S-826 27 SÖDERHAMN, SWEDEN

Telephone: + 46 8 782 25 00
Telefax: + 46 270 173 51

II. International registration: No: 1336550, boost my brain

III. Holder of the international registration:
Axanova AG
Ottenhofenstrasse 110
CH-8738 Uetliburg
Schweiz

IV. The scope of the refusal:
Provisional refusal for ALL goods

V. Grounds for refusal:

Relative grounds:

Trademark Act Chapter 5 Article 8:2 and Chapter 2 Article 8:1, item 2:

The mark is confusingly similar to the Community Trademark(s):
008941981 BOOST YOUR BRAIN

In respect of all the goods in classes 5, 30 and 32

VI. You will find more information about the conflicting mark(s) (if any) enclosed under XII.
The relevant provisions of the Swedish Trademark Act are under XII.

VII. Date of provisional refusal: 16/10/2017
Response must be received within: 16/01/2018

VIII. Signature by the Office:
THE SWEDISH PATENT AND REGISTRATION OFFICE

Marta Hugosson

IX. If the holder does not contest the provisional refusal within 3 months, protection is given for:

-

Rapid publishing of the limited list

If the holder wishes for rapid publishing of the designated trade mark – for the goods/services which are not subject to refusal – the holder may send an explicit request to PRV that the designation of Sweden is partially withdrawn for the goods/services which are subject to the provisional refusal. This request must be signed in original.

-

X. Request for a review

The holder of the registration may request a review of the provisional refusal. The Swedish Patent and Registration Office must receive the request no later than 3 months from the date of this provisional refusal. Such request must provide an address for correspondence and be filed in Swedish, Danish, Norwegian or English. The Swedish Patent and Registration Office will respond in Swedish.

XI. Final decision

If this provisional refusal is not contested, or if any of the invoked grounds remain after a request for review, the Swedish Patent and Registration Office will issue a final decision in this matter.

Only applicable to partial refusals: once the final decision takes legal effect (no appeal is filed), the international registration designating Sweden will be published for protection with this above list of goods and services. If the final decision is appealed the case will be remitted to the Patent and Market Court.

Post grant opposition

Please note that to the extent the designation of Sweden is accepted, a post grant opposition may be filed against the mark within 3 months from the publication of the mark.

XII. The relevant provisions of the Swedish Trademarks Act regarding the grounds of this provisional refusal:
Trademark Act Chapter 5 Article 8:2 and Chapter 2 Article 8:1, item 2

Number of continuation sheets: 4

Chapter 1. Basic Provisions

Article 5. A trade symbol shall be considered to be distinctive if it is able to distinguish goods or services that are being made available in one business activity from those that are being made available in another one.

Lack of distinctiveness may be caused by the fact that a trade symbol consists only of signs or indications that

1. in the course of trade show the kind, quality, quantity, intended use, value, geographical origin or other characteristics, or the time of production, of the goods or services, or
2. in common language or according to established practice in trade have become a customary denomination for the goods or services.

In the determination of whether a symbol is distinctive, consideration shall be given to whether it can acquire distinctiveness thorough use.

Chapter 2. National Registration of Trademarks

Article 5. In order for a trademark to be registered, it must have distinctiveness in respect of the goods or services to which it relates.

Article 7. A trademark may not be registered if it

1. is contrary to law or other statutory provisions or to morality or public order,
2. is likely to deceive the public as regards the kind, quality, geographical origin or any other circumstance related to the goods or services,
3. contains, without permission, such a State or international emblem or such a municipal coat of arms that, by law or other statute, must not be used unwarrantedly as a trademark, or something that might be easily confused with such an emblem or such a coat of arms.

A trademark may, furthermore, not be registered if it contains or consists of something that is likely to be regarded as a geographical indication for wines or spirits and is related to wines or spirits of a different origin.

Article 8. A trademark may not be registered if it

1. is identical with an earlier trade symbol for goods or services of the same kind,
2. is identical with or is similar to an earlier trade symbol for goods or services of the same or similar kind, if there is, due to this fact, a risk of confusion, including the risk that the use of the trademark gives the impression that there is a link between the party using the trademark and the holder of the trade symbol,
3. is identical with or similar to an earlier trade symbol which is known in a considerable portion of those to whom it is addressed, and the use of the trademark would attract undue advantage of, or without legitimate reason cause damage to, the distinctiveness or reputation of the trade symbol, or
4. may easily be confused with a symbol that is used in this country or in a foreign country at the time of the application and is still in use, if the applicant was in bad faith at the time of the application.

As a trade symbol referred to in the first Paragraph, 1 to 3, is deemed

1. a trademark that is registered pursuant to this Chapter,
2. a trademark that is registered on the basis of an international trademark registration which is valid in Sweden pursuant to Chapter 5,
3. a trade symbol that is established on the market, if the protection based on the establishment on the market is valid within a considerable part of the country, and
4. a Community Trade Mark.

Article 9. The obstacles to registration referred to in Article 8, first Paragraph, 1- 3, apply *mutatis mutandis* also as regards

1. a registered trade name that is being used in commercial activities,
2. such a name or a business symbol other than one protected pursuant to Chapter 1, Article 8, if the protection applies within a considerable part of the country.

Article 10. A trademark may not be registered if it contains or consists of

1. something that is likely to convey the impression of being someone else's trade name,
2. something that is likely to convey the impression of being someone else's distinctive family name, generally known artistic name or similar name, if the use of the trademark would cause disadvantage for the holder of the name and if the name does not obviously relate to someone who is long deceased,
3. a picture of someone else that does not obviously relate to someone who is long deceased,
4. something that violates someone else's copyright in a literary or artistic work or some else's right in a photographic picture or in a design.

Article 11. The provisions of Articles 8 to 10 do not constitute an obstacle to registration if the holder of the earlier right consents to the registration.

Chapter 5. International Trademark Registration

Article 8. If the Patent and Registration Office receives a notification from the International Bureau to the effect that someone has applied for an international trademark registration to be extended to Sweden, the Office shall examine whether there exists any obstacle to this.

An obstacle to the extension to Sweden of the international trademark application exists if there would have been an obstacle to a national registration of the trademark pursuant to Chapter 2, Articles 4 to 11.

If the Patent and Registration Office considers that an obstacle exists under the second Paragraph, the Office shall inform the International Bureau that the international trademark registration cannot, wholly or in part, be extended to Sweden. Such information shall be given within 18 months from the date of the notification and contain the grounds why the registration cannot be extended here.

Article 9. If the Patent and Registration Office has informed the International Bureau under Article 8, third Paragraph, the Office shall not earlier than three months after the information was transmitted decide that the international trademark registration shall not, wholly or in part, extend to Sweden if at that point in time an obstacle referred to in Chapter 2, Articles 4 to 11 still exists.

Article 10. If no obstacle referred to in Chapter 2, Articles 4 to 11 exists, the Patent and Trademark Office shall enter the trademark in the Trademark Register and publish a notice that the international trademark registration is valid in Sweden.

If the Patent and Trademark Office has decided that the international trademark registration shall partly not be valid in Sweden, the entry of the trademark in the Trademark Register and the publication of a notice shall concern only the remainder of the goods or services when the decision has taken legal force.

Article 15. After an opposition has been filed, the Patent and Registration Office shall decide that the international trademark registration shall, wholly or in part, not extend to Sweden if an obstacle referred to Chapter 2, Articles 4 to 11, exists to its extension here. If no such obstacle exists, the opposition shall be rejected. An opposition that is wholly or in part based on an obstacle referred to in Chapter 2, Articles 8 to 10, shall be rejected in those parts if it has been filed by someone who does not act in his own interest and the holder of the registration so requests.

A decision that the registration shall not extend to Sweden may be based only on a circumstance that has been communicated to the International Bureau within 18 months from the date of the notification under Article 8, first Paragraph. If the time for opposition has expired after that time limit, the decision may nevertheless be based on circumstances that have been communicated to the International Bureau within a month from the expiry of the time limit for opposition. This applies on condition that the Patent and Registration Office within the time limit of 18 months has informed the International Bureau that a notification about such a decision may be communicated later.

If, due to an opposition, the Patent and Registration Office, decides that the registration shall, wholly or in part, not extend to Sweden, the trademark shall to a corresponding extent be removed from the Trademark Register when the decision has taken legal force. A notice about the decision shall be published.

BILAGA

Registreringsnummer: 1336550
Registreringsdatum: 2016-11-30
Ansökningsnummer: 1336550
Ingivningsdatum: 2016-11-30

Märkestyp: Ord
Text i märket: boost my brain

Klassificering:

5: Pharmaceutical products; dietetic substances and foods for medical use; food supplements for humans and animals.
30: Coffee, tea, cocoa; non-medicated confectionery and pastry products; cakes; biscuits, cookies.
32: Mineral and aerated waters and other non-alcoholic beverages; fruit drinks and fruit juices; syrups and other preparations for making beverages.

Innehavare: Axanova AG , Ottenhofenstrasse 110
CH-8738 Uetliburg, Schweiz.

BILAGA

Registreringsnummer: 008941981

Registreringsdatum: 2010-10-26

Ansökningsnummer: 008941981

Ingivningsdatum: 2010-03-10

boost your brain

Märkestyp: Figur

Text i märket: BOOST YOUR BRAIN

Klassificering:

5: Dietiska drycker, dietiska livsmedel och livsmedelstillskott för medicinska ändamål.

30: Spannmålssnacks; mysli; spannmålspreparat; bageriprodukter och bakverk, speciellt bröd, småkakor, kakor, biskvier, briocher, kex; efterrätter, som i huvudsak består av degvaror; Färdiglagade spannmålsbaserade måltider; Sötsaker; mjöllivsmedel; smörgåsar; glass; Drycker baserade på te; kaffe- och kakaodrycker; kakaoprodukter; tuggummi, ej för medicinska ändamål.

35: Annons- och reklamverksamhet; presentation av varor och tjänster för reklam- och försäljningsändamål; säljfrämjande verksamhet; sponsring i form av annons- och reklamverksamhet.

Innehavare: OCTAIN GmbH, Wipplingerstr. 35
1010 Wien, Österrike.

Ombud: HAUSMANINGER KLETTER RECHTSANWÄLTE - GESELLSCHAFT MBH,
Franz Josefs-Kai 3
1010 Wien, Österrike.