

NOTIFICATION OF CONFIRMATION OR
WITHDRAWAL OF PROVISIONAL REFUSAL BASED ON
AN OPPOSITION

Notified to the International Bureau of the World Intellectual Property Organization (WIPO)
in accordance with Rule 18ter of the Common Regulations
under the Madrid Agreement and the Madrid Protocol

1. Office sending the notification

Trademark Office

State Administration for Industry and Commerce

1, Chama Nanjie, Xicheng District,

Beijing, 100055,

People's Republic of China

Tel: 86-10-63219000

Fax: 86-10-63219000



2. Our reference number: GJYY20170000000230QRYW01

Date of notification: 2018/11/16

3. International Registration Number: 1351999

Holder of the international registration: OTKRYTOIE AKTSIONERNOIE OBSHCHESTVO
"PUSHKINSKII ZAVOD"

Address of the international registration: Yaroslavskoie shossie, 1, lit.A., h.Pushkino RU-141200
Moskovskaia obl.

4. All procedures before the Office relating to the protection of the mark have been completed.
Further to the notification of provisional refusal based on an opposition dated 25/01/2018, the
Trademark Office must advise that.

The mark is protected for the following goods/services:

Class 1: All the goods;

Class 3: Abrasives; polishing wax; polishing creams; polishing preparations; polish for furniture and
flooring; shining preparations (polish);

Class 4: Gasoline; kerosene; methylated spirit; charcoal (fuel); diesel oil; additives, non-chemical,
to motor fuel; carnauba wax; firelighters; mineral fuel; motor fuel; oil-gas; fuel gas; vaporized fuel
mixtures; fuel; fuel with an alcoholic base; alcohol (fuel);

Class 35: Sponsorship search;

Class 42: Technical project studies; material testing; research in the field of environmental protection; chemical research; surveying; consultancy in the field of energy-saving; chemistry services; quality control; vehicle roadworthiness testing; research and development of new products for others; industrial design; styling (industrial design); chemical analysis.

Trademark Office

State Administration for Industry and Commerce

People's Republic of China



国家工商行政管理总局商标局

(2018)际异字第0000056906号

国际注册第1351999号“LUXOIL”商标异议决定书

异议人：卢克伊尔石油公开合股公司

委托代理人：众仕德知识产权代理（北京）有限公司

被异议人：OTKRYTOIE AKTSIONERNOIE OBSHCHESTVO"
PUSHKINSKII ZAVOD"

众仕德知识产权代理（北京）有限公司代理卢克伊尔石油公开合股公司（以下称为异议人）对OTKRYTOIE AKTSIONERNOIE OBSHCHESTVO" PUSHKINSKII ZAVOD"（以下称为被异议人）在第1类、第3类、第4类、第35类及第42类商品（服务）上申请给予保护的第1351999号“LUXOIL”国际注册商标提出异议，我局依据《中华人民共和国商标法》第三十三条、《中华人民共和国商标法实施条例》第十八条、第二十五条和第四十五条的规定予以受理。被异议人未在规定期限内作出答辩。

经审理，我局认为：

被异议商标“LUXOIL”指定使用商品（服务）为第1类“内燃机抗爆剂；非家用抗静电剂；防冻剂；丙酮；蒸馏水”、第3类“擦亮用剂；浸去污剂的清洁布；消毒皂；洗衣浸泡剂，浸洗衣服制剂”、第4类“石油挥发油；粗制苯；汽油；煤油；润滑石墨”、第35类“成本价格分析；商业信息代理；拍卖；市场分析”及第42类“技术项目研究；材料测试；恢复计算机数据；环境

保护领域的研究”等商品上。异议人引证在先注册的第678644号、第699736号及第699471号“LUKOIL”商标指定使用商品（服务）为第1类“未加工塑料物质；未加工人造树脂；肥料；纸浆”、第3类“清洁；擦亮；去渍及研磨用制剂；家庭用去垢剂”、第4类“工业用油及油脂；润滑剂；切削油；润滑脂”、第35类“广告；市场调研；商务信息及统计；拍卖；进出口代理；资料复制”及第42类的“计算机程序服务”等，双方商标指定使用的部分商品在功能、用途、销售渠道、消费对象等方面已构成相同或类似商品，且被异议商标的字母部分与引证商标在字母构成、整体外观和视觉效果等方面均较为相似，双方商标已构成使用在相同或类似商品上的近似商标，并存使用易使消费者产生混淆误认。异议人称被异议人申请注册被异议商标是侵犯其商号权，但异议人在本案中就该异议理由提供的事实证据不足，我局不予支持。

依据《中华人民共和国商标法》第三十五条的规定，我局决定：异议人所提异议理由部分成立，第1351999号“LUXOIL”国际注册商标在第1类、第3类“研磨材料，擦亮用剂，抛光蜡，抛光乳膏，抛光制剂，家具或地板用抛光剂”、第4类“汽油，煤油，甲基化酒精，木炭（燃料），柴油，发动机燃料用非化学添加剂，棕榈蜡，引火物，矿物燃料，发动机燃料，石油气，气体燃料，挥发性混合燃料，燃料，以酒精为主的燃料，酒精（燃料）”、第35类“寻找赞助”、第42类“技术项目研究，材料测试，环境保护领域的研究，化学研究，测量，节能领域的咨询，化学服务，质量控制，车辆性能检测，替他人研究和开发新产品，工业品外观设计，造型（工业品外观设计），化学分析”等商品（服务）上予以核准保护，其余商品（服务）上不予核准注册。

依据《中华人民共和国商标法》第三十五条的规定，被异议人如对本决定不服，可在收到本决定之日起十五日内向商标评审委员会申请复审。

(此页无正文)



Relevant Provisions of the Law and the Regulations (Excerpts)

Trademark Law of China

Article 10 The following signs shall not be used as trademarks:

- (1) those identical with or similar to the State name, national flag, national emblem, national anthem, military flag, military emblem, military anthem, or decorations etc, of the People's Republic of China, and those identical with the names or symbols of the Central State government organizations, or with the names of the particular venues, where the Central State government organizations are located, or with the names or graphs of the symbolic buildings of the Central State government organizations;
- (2) those identical with or similar to the State names, national flags, national emblems or military flags etc, of foreign countries, unless consent has been given by the government of the relevant country;
- (3) those identical with or similar to the names, flags or emblems etc, of international intergovernmental organizations, unless consent has been given by the relevant organization or the public is not likely to be misled by such use;
- (4) those identical with or similar to official signs or hallmarks indicating control and warranty, unless authorization has been given;
- (5) those identical with or similar to names or symbols of the Red Cross or the Red Crescent;
- (6) those having the nature of discrimination against any nationality;
- (7) those having the fraudulence, which will easily mislead the public as to the features such as qualities of the goods, or the places of the origins;
- (8) those detrimental to socialist morality or customs, or having other unhealthy influences.

The geographical names of the administrative divisions at or above the county level or the foreign geographical names well-known to the public shall not be used as trademarks, but such geographical names as have otherwise meanings or as an element of a

collective mark or a certification mark shall be exclusive. Where a trademark using any of the above-mentioned geographical name has been approved and registered, it shall continue to be valid.

Article 11 The following signs shall not be registered as trademarks:

- (1) those which consist exclusively of the generic names, designs, or models of the goods in respects of which the trademark is used;
- (2) those which consist exclusively of direct indications of the quality, primary raw material, functions, intended purpose, weight, quantity or other characteristics of goods;
- (3) other signs which are devoid of any distinctive character.

Where trademarks under the preceding paragraph have acquired distinctiveness through use and become easily distinguishable, they may be registered as trademarks.

Article 12 Where a three-dimensional sign is applied for registration of a trademark, it shall not be registered if it consists exclusively of the shape which results from the nature of the goods themselves, the shape of goods which is necessary to obtain a technical result, or the shape which gives substantial value to the goods.

Article 16 Where a trademark contains or consists of a geographical indication with respect to goods not originating in the place indicated, misleading the public as to the true place of origin, the application for registration shall be refused and the use of the mark shall be prohibited. But for those marks that have obtained registration in good faith shall continue to be valid.

Geographical indications mentioned in the preceding paragraph are indications that identify a particular good as originating in a region, where a given quality, reputation or other characteristics of the goods is essentially attributable to its natural or human factors.

Article 22 An applicant for the registration of a trademark shall, in accordance with the prescribed classification of goods, in the application, indicate the class(es) and the indications of goods in respect of which the trademark is to be used.

An applicant can apply for the registration of the same trademark on the

different classes of goods through one application.

Applications for trademark registration and other related documents shall be submitted in writing or electronic format.

Article 23 Where a registered trademark needs to acquire the exclusive right to be used in respect of goods beyond the approved range of use, a new application for registration shall be filed.

Article 30 Where a trademark the registration of which has been applied for is not in conformity with the relevant provisions of this Law, or it is identical with or similar to the trademark of another party that has, in respect of the same or similar goods, been registered or, after examination, preliminarily approved, the Trademark Office shall refuse the application and shall not publish the said trademark.

Article 31 Where two or more applicants apply for the registration of identical or similar trademarks for the same or similar goods, the preliminary approval, after examination, and the publication shall be made for the trademark that was first filed. Where applications are filed on the same day, the preliminary approval, after examination, and the publication shall be made for the trademark that was used earliest, and the applications of the others shall be refused and their trademarks shall not be published.

Article 33 The prior right owner or any interested party who believes that the trademark stands in violation of the provisions of second and third paragraphs of Article 13, Article 15, first paragraph of Article 16, Article 30, 31 and 32 of this law, or any party who believes that the trademark stands in violation of the provisions of Article 10, 11 and 12 of this law may, within three months from the date of the publication, file an opposition against the trademark that has, after examination, been preliminarily approved. If no opposition has been filed at the expiration of the specified period, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published.

Article 35 Where it is decided that the registration shall be approved by the

Trademark Office, a certificate of trademark registration shall be issued and the trademark shall be published. Where the Opponent is dissatisfied with the decision, he or it may, pursuant to Article 44 and 45 of this law, apply for a declaration that the trademark is invalid to the Trademark Review and Adjudication Board.

Where it is decided that the registration shall not be approved by the Trademark Office and the Opposed party is dissatisfied with the decision, he or it may, within fifteen days from receipt of the notification, apply for a review to the Trademark Review and Adjudication Board. The Trademark Review and Adjudication Board shall make a decision within twelve months from receipt of the application and notify both the Opponent and the Opposed party in writing. The administrative authority for industry and commerce under the State Council may grant a six-month extension under certain circumstances. Where the Opposed party is dissatisfied with the decision of the Trademark Review and Adjudication Board, he or it may, within thirty days from receipt of the notification, institute legal proceedings with the people's court. The people's court shall notify the Opponent as a third party to the litigation.

Article 42 Where a registered trademark is assigned, the assignor and assignee shall sign an agreement for the assignment and jointly file an application with the Trademark Office. The assignee shall guarantee the quality of the goods in respect of which the registered trademark is used.

When a registered trademark is to be assigned, the trademark registrant shall assign in a lump all of its similar trademarks in respect of the identical goods, or, identical or similar trademarks in respect of the similar goods.

With respect to applications for the assignment of registered trademarks, which may produce confusion or other adverse effects, the Trademark Office shall refuse them, and shall notify the applicants in writing and give the reasons therefor.

The assignment of a registered trademark shall be published after it has been approved.

The assignee shall enjoy the exclusive right to use the trademark from the date of publication.

Article 50 Where a registered trademark has been cancelled, invalidated or has not been renewed at the expiration, the Trademark Office shall, during one year from the date of the cancellation, invalidation or expiration, approve no application for the registration of a trademark that is identical with or similar to the said trademark.

Regulations for the Implementation of Trademark Law

Rule 13 Anyone who applies for registration of a trademark shall file an application based on the published Classification of Goods and Services. For each application for registration of a trademark, the applicant shall submit to the Trademark Office one copy of the Application for Trademark Registration and one copy of reproduction of the trademark; if applying for the registration of the combination of colors or a sign with the designated color or colors as a trademark, one copy of colored reproduction of the trademark and one copy of the black and white design shall be submitted; if applying for the registration of trademark without designated color or colors, the black and white design shall be submitted.

The reproductions of a trademark must be clear, easy to be pasted up, printed on smooth and clear durable paper or use photographs as a substitute, and the length and breadth of which shall be not more than ten centimeters and not less than five centimeters each.

If applying for the registration of a three-dimensional sign as a trademark, the applicant shall make a statement in the application, explain how to use the trademark, and submit a reproduction including perspectives of at least three different sides of the mark thereof by which the three-dimensional shape can be determined.

If applying for the registration of the combination of colors as a trademark, the applicant shall make a statement in the application, and explain how to use the trademark.

If applying for the registration of a sound

as a trademark, the applicant shall make a statement in the application, submit the audio reproduction as requested, describe the sound and explain how to use the trademark. The description shall describe the said sound by musical notation or numbered musical notation with explanatory words; if the said sound could not be described by musical notation or numbered musical notation, it shall be describe in words. The trademark description shall be in conformity with the sound sample.

If applying for the registration of a collective mark or a certification mark, the applicant shall make a statement in the application, and submit the documents certifying the qualifications of the subjects and the rules on the administration of the use of the mark.

Where a trademark is, or consists of, foreign words, their Chinese meanings shall be indicated.

Rule 15 The class(es) and indications of goods or services shall be listed in the application as specified in the Classification of Goods and Services; where any goods or services are not included in the Classification of Goods and Services, a description of the goods or services in question shall be attached to the application.

Applications for trademark registration and other related documents submitted in writing shall be typewritten or printed.

The preceding paragraph applies to other trademark affairs.

Rule 19 Where two or more applicants apply respectively on the same day for the registration of identical or similar trademarks in respect of the same or similar goods, both or all of the applicants shall, within 30 days from the date of receipt of the notification of the Trademark Office, submit the evidence of prior use of such trademarks before applying for registration. Where the use started on the same day or none is yet in use, both or all of the applicants may, within 30 days from the date of receipt of the notification of the Trademark Office, conduct consultations on their own and submit a written agreement to the Trademark Office; if they are not willing to conduct consultations or they fail to reach an agreement through consultations, the

Trademark Office shall notify both or all of the applicants to determine one of them by drawing lots and refuse the applications for registration filed by others. Where an applicant has been notified by the Trademark Office but fails to participate in the drawing of lots, the application filed by such an applicant shall be considered abandoned, and the Trademark Office shall notify the applicant in writing who does not participate in the drawing of lots.

Rule 43 Anyone who applies for the territorial extension to China, and requests for the protection of a three-dimensional sign, combination of colors or sound as a trademark, or the protection of collective trademark or certification trademark, within three months from the date of recording the trademark in the International Register, shall submit the materials required by Rule 13 through the trademark agency established in accordance with laws in China. If the applicant fails to submit the relevant materials within the time limit, such application shall be refused.

Rule 45 The opponent who is in conformity with Article 33 of The Trademark Law may file an opposition to the Trademark Office against a request for territorial extension to China within 3 months from the first day of the next month following the publication of the International Registration Gazette by the World Intellectual Property Organization.

The Trademark Office shall notify the International Bureau the opposition in the form of provisional refusal before the expiry of the applicable refusal period.

The Opposed party may make a response within 30 days from receipt of the provisional refusal transmitted by the International Bureau. The response and other related evidence shall be submitted through the trademark agency established in accordance with laws in China.

Rule 47 For the assignment of territorial extensions designating China, the assignee shall have a real and effective industrial or commercial establishment in, or be domiciled in a contracting party, or be a national of a contracting state or a state member of a contracting organization.

Where an assignor fails to assign in a lump all his or its identical or similar marks in

respects of the same or similar goods or services, the Trademark Office shall notify the holder of international registration to rectify the situation within 3 months from the date of the notification; if the situation is not rectified at the expiration of the time limit, or if the assignment of a trademark is likely to produce confusion or bears other adverse effects, the Trademark Office shall decide that the said assignment has no effect in China, and declare it to the International Bureau.

Rule 48 For the limitation of list of goods and services of territorial extensions designating China, if the limitation does not comply with the requirements on the classification of goods or services enforced in China, or enlarges the original list of goods and services, the Trademark Office shall decide that the limitation has no effect in China, and declare it to the International Bureau.

Administrative Reconsideration Law

Article 9 Any citizen, legal person or any other organization, who considers that a specific administrative act has infringed upon his or its lawful rights and interests, may file an application for administrative reconsideration within 60 days from the day when he or it knows the specific administrative act, except that the time limit prescribed in laws exceeds 60 days.

If the time limit prescribed by law is delayed due to force majeure or other special reasons, the time limit shall be accounted continuously from the day when the obstacle is removed.

Administrative Procedure Law

Article 46 If a citizen, a legal person or any other organization brings a suit directly before a people's court, he or it shall do so within six months from the day when he or it knows that a specific administrative action has been undertaken, except as otherwise provided for by law.