



**WORLD INTELLECTUAL PROPERTY ORGANISATION  
34, CHEMIN DES COLOMBETTES  
PO BOX 18  
1211 GENEVA 20  
SWITZERLAND**

Date of Notification: 20 February 2020

**International Registration No: 1505998  
Mark: TOP NOTCH  
Holder: GAON S.r.l. of Italy**

**Notification of the Intellectual Property Office of Ireland of Total Provisional  
Refusal**

Dear Sir/Madam,

This notification is issued pursuant to Article 5 of the Protocol relating to the Madrid Agreement concerning the International Registration of Marks and Rule 17(2) of the Common Regulations under the Agreement and Protocol, and is to inform you that protection for this mark is refused for the reasons set out below. Any references to Sections are to Sections of the Trade Marks Act, 1996 and to Rules are to Rules of the Trade Marks Rules, 1996.

1.

**Section 8(1)(b)**

Section 8(1)(b) of the Act prohibits the registration of marks that are devoid of any distinctive character. The distinctive character required of a mark in order to qualify for registration is that which allows it to perform its essential function, i.e., to guarantee the origin of the marked goods or services to the consumer or end user by enabling him, without any possibility of confusion, to distinguish the product or service from others which have a different origin. In order to qualify for registration, a trade mark must, therefore, be of such a nature as to sufficiently impress itself on the mind of the consumer as being the mark of a particular undertaking so that the consumer will know that any goods or services carrying that mark are those of that undertaking alone. In the present case the word mark TOP NOTCH will not perform this function as there is nothing unusual about the mark and the relevant consumer would not recognise the mark applied for as a trade mark.

**Section 8(1)(c)**

Section 8(1)(c) of the Act prohibits the registration of trade marks that consist exclusively of indications that are descriptive of the goods or services or of their essential characteristics. In this case, the mark is descriptive of the kind and intended purpose of the goods on offer. The purpose of that prohibition is to ensure that such indications remain free for use by all undertakings and that they are not monopolised through registration as trade marks.

The Office considers that the designation TOP NOTCH is a laudatory term expressing praise and commendation of the beauty preparations. It would not enable the relevant public to distinguish the goods that are included in the application from those of a different commercial origin. It is considered that the term applied for would not be perceived by relevant consumers as a badge of trade origin without them being educated to the fact. In the present case when presented with the word mark TOP NOTCH for the first time the average consumer would view the mark as a description of the kind and intended purpose of the goods on offer.

2. This refusal is in respect of all of the goods for which protection is sought.
3. The holder may make representations in writing, or may request an extension of time for doing so, not later than **19 May 2020**. A request for an extension of time received after that date may be granted at the discretion of the Controller.
4. If representations or a request for an extension of time are not received by the specified date, protection of the mark will be refused.
5. Representations to the Controller or a request for a hearing in relation to this notification of refusal must be accompanied by an address for service within the European Economic Area as required by Rule 10(1)(a) as amended by Statutory Instrument No. 410 of 2010; failure to furnish such address will result in the holder being deemed to have abandoned his request for protection.
6. If, following the receipt of representations, it is considered that the requirements for protection are met, the mark will be published in the Official Journal and protection of it will be subject to opposition and observations by third parties. A refusal based on opposition or observations received may subsequently be issued.
7. Date of refusal: **20 February 2020**

**Yours faithfully**

*Elsie Buggy*

---

**Elsie Buggy**  
**Trade Mark and Design Examination Division**  
**Direct Line: (056) 7720140**  
**Ext: 4140**  
**tmexam@ipoi.gov.ie**

As of 2<sup>nd</sup> December 2019, the Patents Office changed its name to the **Intellectual Property Office of Ireland (IPOI)**.

Our email addresses have changed to [name.surname@ipoi.gov.ie](mailto:name.surname@ipoi.gov.ie) and our email address for general enquiries has also changed to [ipinfo@ipoi.gov.ie](mailto:ipinfo@ipoi.gov.ie)