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Danish Patent
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Ministry of Industry, Business
and Financial Affairs

 Partner
nordic patent institute

Our ref: MP1536673
Your Reference:
International Registration: 1536673
Holder: Neauvia North America, Inc.
Mark: SKIN CHEMISTRY
Time limit: 1 January 2021

1 September 2020

Dear Madam/Sir

Notification of Total Provisional Refusal of IR 1536673 according to Rule 17(2)

The above-mentioned mark is provisionally refused protection in Denmark for all of the goods covered by the designation.

The reasons for the refusal are given in the enclosed examination report. The holder may request a review of the refusal before 1 January 2021. Further information about procedures is found in the report.

Yours faithfully

Dorte Hummelshøj Højland
Legal adviser, Master of Laws (LL.M.), Trademark and Design

Examination Report

Grounds for refusal

We have found that the mark is descriptive with respect to all of the goods in the designation, namely:

Class 03: Non-medicated skin care preparations; non-medicated hair care preparation; non-medicated nail care preparations; non-medicated eye lash care preparations; non-medicated eyebrow care preparations; non-medicated body skin care preparations; cosmetics; make-up products; cosmetic preparations; blush; face foundation; face powder; mascara; lip color; lipstick; eyeliner; mascara; non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; skin and body topical lotions, creams and oils for cosmetic use; skin creams; skin lotions; skin cleansers; skin soaps skin, nail and cuticle moisturizers, cream and lotions (terms considered too vague by the International Bureau - Rule 13(2)(b) of the Common Regulations); skin polishers, namely, body polish; skin care preparations to protect the skin from wind, cold, heat and environmental pollution; skin tone, texture and firming creams and lotions; after sun creams; sun damage repair creams; anti-aging creams; age spot reducing creams; exfoliant creams; skin care preparations, namely, chemical skin peeling solutions; skin firming creams; eye creams and serums; beauty masks; anti-aging cream containing a retinoic ingredient not for medical purposes; anti-freckle creams; anti-wrinkle cream; non-medicated skin care preparations, namely, body and facial mists and sprays; sun block; sunscreens hair shampoos (terms considered too vague by the International Bureau - Rule 13(2)(b) of the Common Regulations); hair conditioners; exfoliants for hair, skin and nails; natural essential oils; essential oils for use in aromatherapy; fragrances; reed diffusers comprised of scented oils and also including reeds and a diffuser container (terms considered too vague by the International Bureau - Rule 13(2)(b) of the Common Regulations).

Class 05: Medicated skin care preparations; medicated dermatological preparations and substances; medicated hair care preparation; medicated nail care preparations; medicated eye lash care preparations; medicated eyebrow care preparations; medicated body skin care preparations; medicated skin care preparations, namely, astringents, bleaching agents, blenders, clarifiers, cleansers, correcting agents, creams, emollients, exfoliants, gels, lighteners, liquids, lotions, masks, moisturizers, sunblocks, sunscreens, serums, and toners; medicated skin care mixtures applied to skin for smoothing skin surface, or for improving tone and color, or for diminishing wrinkles, blood vessels, pores and dead skin cells; pharmaceutical preparations for skin treatment, skin protection and skin health restoration; preparations for use in the treatment of dermatosis and for use as skin and scalp creams; pharmaceutical products and preparations for use in dermatology; dietary and nutritional supplements; cosmeceuticals, namely, medicated skin cleansers, toners, moisturizers, rejuvenators, rehydrating creams, and lotions for the face and body; pharmaceutical preparations for use in dermatology; pharmaceutical preparations for skin care, skin treatment, skin protection and skin health restoration.

The mark consists of the words SKIN CHEMISTRY. According to The Merriam Webster Dictionary the word chemistry means “a science that deals with the composition, structure, and properties of substances and with the transformations that they undergo”. It is our evaluation your mark SKIN CHEMISTRY will be perceived as an indication that the goods are based on skin chemistry which means the composition, structure and properties of the goods have been examined as well as the way they affect the skin.

Consequently, the mark may serve to designate the quality of all the goods.

We refer to Section 13(1)(3) of the Danish Trademarks Act.

Please be informed that the Danish Trade Marks Act Section 13(2) allows for the registration of marks, which have acquired distinctiveness through use.

We have found that the mark is descriptive with respect to all of the goods/services in the designation, namely:

Class 03: Non-medicated skin care preparations; non-medicated hair care preparation; non-medicated nail care preparations; non-medicated eye lash care preparations; non-medicated eyebrow care preparations; non-medicated body skin care preparations; cosmetics; make-up products; cosmetic preparations; blush; face foundation; face powder; mascara; lip color; lipstick; eyeliner; mascara; non-medicated skin care preparations, namely, creams, lotions, gels, toners, cleaners and peels; skin and body topical lotions, creams and oils for cosmetic use; skin creams; skin lotions; skin cleansers; skin soaps skin, nail and cuticle moisturizers, cream and lotions (terms considered too vague by the International Bureau - Rule 13(2)(b) of the Common Regulations); skin polishers, namely, body polish; skin care preparations to protect the skin from wind, cold, heat and environmental pollution; skin tone, texture and firming creams and lotions; after sun creams; sun damage repair creams; anti-aging creams; age spot reducing creams; exfoliant creams; skin care preparations, namely, chemical skin peeling solutions; skin firming creams; eye creams and serums; beauty masks; anti-aging cream containing a retinoic ingredient not for medical purposes; anti-freckle creams; anti-wrinkle cream; non-medicated skin care preparations, namely, body and facial mists and sprays; sun block; sunscreens hair shampoos (terms considered too vague by the International Bureau - Rule 13(2)(b) of the Common Regulations); hair conditioners; exfoliants for hair, skin and nails; natural essential oils; essential oils for use in aromatherapy; fragrances; reed diffusers comprised of scented oils and also including reeds and a diffuser container (terms considered too vague by the International Bureau - Rule 13(2)(b) of the Common Regulations).

Your list of goods and services

We have found that the list of goods and services is too vague, cf. the Danish Trade Marks Act, Section 12.

According to the Danish Trade Mark Act and the ruling of the ECJ in C-418/02, a trademark application must contain a precise list of the goods and services covered by the registration of the mark.

If you should prove that the mark is not descriptive or you prove that your mark has acquired distinctiveness through use, you must specify some of the goods in your list of goods and services.

Request for review of the provisional refusal

You may request a review of the provisional refusal **within 4 months** from the date of issue of the provisional refusal.

Please observe that documents or evidence submitted by you will be available to the public according to the regulations of The Danish Access to Public Administration Files Act.

A request for review should be sent by post or e-mail to:

Address

Patent- og Varemærkestyrelsen
Helgeshøj Allé 81
DK-2630 Taastrup
Denmark

E-mail

pvs@dkpto.dk

Final refusal and appeal

If you do not reply within the time limit, we will issue a final refusal, which is subject to appeal to the Board of Appeal for Patents and Trademarks.

Appendix A: Abstract of the Danish Trade Marks Act

Appendix A

Abstract of the Danish Trade Marks Act

Signs of which a trade mark may consist

Section 2

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- i) distinguishing the goods or services of one undertaking from those of other undertakings; and
- ii) being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

Application and registration of trade marks

Section 11

- (1) An application for the registration of a trade mark shall be filed with the Patent and Trade mark Office. The application shall contain information in accordance with the provisions laid down pursuant to section 48. The application fee prescribed by section 60(a)(1) shall be paid.

Section 12

- (1) The goods and services in respect of which trade mark registration is applied for shall be classified in conformity with the Nice Classification. Where the applicant requests registration for more than one class, the applicant shall group the goods and services according to the classes of the Nice Classification, each group being preceded by the number of the class to which that group of goods or services belongs, and shall present them in the order of the classes.
- (2) The goods and services for which protection is sought shall be identified by the applicant with sufficient clarity and precision to enable the Office and economic operators, on that sole basis, to determine the extent of the protection sought.
- (3) The general indications included in the class headings of the Nice Classification or other general terms may be used, provided that they comply with the requisite standards of clarity and precision set out in this provision.

Examination of applications

Section 16

- (1) If the application does not comply with this Act or the provisions laid down pursuant to this Act, or if the Patent and Trade mark Office has other objections to the acceptance of the application, the Patent and Trade mark Office shall notify the applicant accordingly and invite him to file his observations within a specified time limit.

Section 13

(1) The following shall not be registered:

- (i) Signs which cannot constitute a trade mark.
- (ii) Trade marks which are devoid of any distinctive character.
- (iii) Trade marks which consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin, or the time of production of the goods or of rendering of the service, or other characteristics of the goods or services.
- (iv) Trade marks which consist exclusively of signs or indications which have become customary in the current language or in the bona fide and established practices of the trade.

(2) A trade mark shall not be excluded from registration in accordance with paragraph 1(2)-(4), if, before the date of application for registration, following the use which has been made of it, it has acquired a distinctive character.

Section 14

Furthermore, the following shall not be registered:

- 1) signs which consist exclusively of:
 - a) the shape, or another characteristic, which results from the nature of the goods themselves,
 - b) the shape, or another characteristic, of goods which is necessary to obtain a technical result,
 - c) the shape, or another characteristic, which gives substantial value to the goods.
- 2) Trade marks which are contrary to law, public order or morality.
- 3) Trade marks which are liable to mislead the public, for instance as to the nature, quality or geographical origin of the goods or services.
- 4) Trade marks which have not been authorized by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention for the Protection of industrial Property, and trade marks which include badges, emblems and escutcheons which are of public interest, unless the consent of the appropriate authority to their registration has been given.
- 5) Trade marks which are excluded from registration pursuant to Union legislation or the national law of the Member State concerned, or to international agreements to which the Union or the Member State concerned is party, providing for protection of designations of origin and geographical indications.
- 6) Trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional terms for wine.
- 7) Trade marks which are excluded from registration pursuant to Union legislation or international agreements to which the Union is party, providing for protection of traditional specialities guaranteed.
- 8) Trade marks which consist of, or reproduce in their essential elements, an earlier plant variety denomination protected by plant variety sort rights and which are in respect of plant varieties of the same or closely related species.