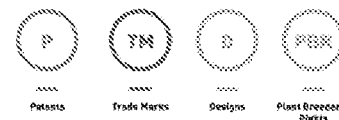




22 October 2020



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34, chemin des Colombettes
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1211 Geneva 20,
SWITZERLAND



International registration number: 1531791

Australian Trade mark Number: 2090023

Holder's name: Individual entrepreneur Bogatyrev
Vasily Alexandrovich

**NOTIFICATION OF PROVISIONAL REFUSAL OF AN INTERNATIONAL REGISTRATION
DESIGNATING AUSTRALIA (IRDA) THIS REFUSAL IS ISSUED IN ACCORDANCE WITH RULE
17(1) TO 17(3)**

The application does not meet the requirements of *Trade Marks Act 1995*. The issues currently preventing acceptance of the International Registration are explained in the attached Adverse Examination Report number 1 and where possible, the ways in which the holder may be able to resolve the issues.

The holder has until **22 January 2022** to overcome all the issues otherwise this refusal will take effect.

The holder may respond in writing to this refusal. Any response needs to be sent through an address for service in Australia or New Zealand. Please allow time for me to consider any responses by ensuring they are received by this office no later than 20 business days prior to 22 January 2022.

This provisional refusal will be reviewed if the holder:

- makes written submissions in support of the claim to protection of the trade mark in Australia; and/or
- submits evidence in support of the claim to protection of the trade mark in Australia; and/or
- applies for a hearing

The trade mark examiner who produced this report is **Thomas Wilson** whose direct line is **+61262832610** and team contact point is +61262832211.

Details of the trade mark can be viewed using our [Australian trade mark search](#) on our website.

Sincerely,

IP Australia

IP Australia recognises that many of our customers may be struggling with the impacts of COVID-19. We remain open for business and our staff are working from home to ensure that our services can continue. We are committed to supporting you and we are here to help you through these difficult times. We have put in place a streamlined process for extension of time requests and associated fee waivers or refunds to assist customers impacted by the COVID-19 outbreak. Please visit our [website \(www.ipaustralia.gov.au\)](http://www.ipaustralia.gov.au) for guidance and Frequently Asked Questions (FAQs) related to your IP Right. If you would like to discuss your particular circumstances, please [contact us](#) directly. We will continue to update our website and FAQs with the latest information.

Adverse Examination Report

The following issues have been raised under the Trade Marks Act 1995 and will need to be addressed before your IRDA can be accepted.

- Issues raised under Section 41 of the Trade Marks Act 1995.

Issues raised under Section 41 of the Trade Marks Act 1995.

To be protected in Australia, your trade mark must be capable of distinguishing your goods/services from the similar goods/services of other traders in the market place. (For more details, see Section 41 of the Trade Marks Act 1995.)

Your IRDA is refused because your trade mark is not capable of distinguishing the specified goods/services. This is because your trade mark is, or has as its main feature, the chemical formula C10H14N2.

This indicates that all your goods and retail services contain and/or are connected to the chemical C10H12N2.

Consumers are therefore unlikely to associate C10H12N2 with one particular trade source because it is relevant to the goods/services claimed. As such, your mark as a whole is unable, by itself, to distinguish your goods/services from those of other traders operating in the same industry.

Other traders should be able to use C10H12N2 in connection with goods or services similar to yours.

The refusal applies to the following goods/services:

Class 3: *Abrasives; amber [perfume]; descaling preparations for household purposes; antistatic preparations for household purposes; aromatics [essential oils]; air fragrancing preparations; cake flavorings [essential oils]; flavorings for beverages [essential oils]; food flavorings [essential oils]; breath freshening sprays; canned pressurized air for cleaning and dusting purposes; balms, other than for medical purposes; basma [cosmetic dye]; lip glosses; nail glitter; polishing stones; abrasive paper; emery paper; polishing paper; petroleum jelly for cosmetic purposes; shoe polish; cobblers' wax; cotton wool for cosmetic purposes; sachets for perfuming linen; drying agents for dishwashing machines; adhesives for cosmetic purposes; scented water; javelle water; lavender water; toilet water; wax for parquet floors; floor wax; non-slipping wax for floors; depilatory wax; mustache wax; tailors' wax; creams for leather; polish for furniture and flooring; shoemakers' wax; polishing wax; massage gels, other than for medical purposes; heliotropine; dental bleaching gels; geraniol; make-up; deodorants for pets; depilatory preparations; air fragrance reed diffusers; scented wood; perfumes; non-slipping liquids for floors; windshield cleaning liquids; greases for cosmetic purposes; volcanic ash for cleaning; perfumery; decorative transfers for cosmetic purposes; ionone [perfumery]; shaving stones [astringents]; smoothing stones; eyebrow pencils; cosmetic pencils; silicon carbide [abrasive]; carbides of metal [abrasives]; alum stones [astringents]; tripoli stone for polishing; adhesives for affixing false eyelashes; adhesives for affixing false hair; hair conditioners; quillaia bark for washing; corundum [abrasive]; beard dyes; colorants for toilet purposes; cosmetic dyes; laundry starch; laundry glaze; shoe cream; polishing creams; cosmetic creams; skin whitening creams; polishing rouge; incense; hair spray; nail polish; hair lotions; lotions for cosmetic purposes; after-shave lotions; beauty masks; oils for perfumes and scents; oils for cosmetic purposes; oils for toilet purposes; essential oils; essential oils of cedarwood; essential oils of lemon; essential oils of citron; oils for cleaning purposes; bergamot oil; gaultheria oil; jasmine oil; lavender oil; almond oil; rose oil; oil of turpentine for degreasing; whiting; cleaning chalk; almond milk for cosmetic purposes; cleansing milk for toilet purposes; musk [perfumery]; soap; deodorant soap; shaving soap; soap for brightening textile; cakes of toilet soap; antiperspirant soap; soap for foot perspiration; almond soap; mint for perfumery; cosmetic kits; emery; gel eye patches for cosmetic purposes; nail art stickers; false nails; eau de Cologne; bases for flower perfumes; joss sticks; pastes for razor strops; dentifrices; pumice stone; lipstick cases; hydrogen peroxide for cosmetic*

purposes; breath freshening strips; teeth whitening strips; abrasive cloth; glass cloth [abrasive cloth]; lipsticks; pomades for cosmetic purposes; shaving preparations; cosmetic preparations for baths; bath preparations, not for medical purposes; hair straightening preparations; hair waving preparations; laundry soaking preparations; grinding preparations; smoothing preparations [starching]; color-removing preparations; leather bleaching preparations; polishing preparations; denture polishes; mouthwashes, not for medical purposes; cosmetic preparations for slimming purposes; starch glaze for laundry purposes; preparations to make the leaves of plants shiny; eye-washes, not for medical purposes; fabric softeners for laundry use; laundry bleach; dry-cleaning preparations; paint stripping preparations; lacquer-removing preparations; make-up removing preparations; floor wax removers [scouring preparations]; varnish-removing preparations; rust removing preparations; nail care preparations; cleaning preparations; preparations for cleaning dentures; wallpaper cleaning preparations; preparations for unblocking drain pipes; chemical cleaning preparations for household purposes; collagen preparations for cosmetic purposes; bleaching preparations [decolorants] for household purposes; laundry preparations; aloe vera preparations for cosmetic purposes; sunscreen preparations; color-brightening chemicals for household purposes [laundry]; breath freshening preparations for personal hygiene; shining preparations [polish]; make-up powder; diamantine [abrasive]; stain removers; nail varnish removers; vaginal washes for personal sanitary or deodorant purposes; scouring solutions; false eyelashes; baby wipes impregnated with cleaning preparations; tissues impregnated with cosmetic lotions; tissues impregnated with make-up removing preparations; safrol; massage candles for cosmetic purposes; laundry blueing; turpentine for degreasing; potpourris [fragrances]; bleaching soda; bath salts, not for medical purposes; bleaching salts; fumigation preparations [perfumes]; preservatives for leather [polishes]; ammonia [volatile alkali] [detergent]; astringents for cosmetic purposes; eyebrow cosmetics; make-up preparations; sun-tanning preparations [cosmetics]; hair dyes; neutralizers for permanent waving; cosmetic preparations for eyelashes; cosmetic preparations for skin care; cosmetics; cosmetics for children; cosmetics for animals; mascara; cleansers for intimate personal hygiene purposes, non medicated; douching preparations for personal sanitary or deodorant purposes [toiletries]; detergents, other than for use in manufacturing operations and for medical purposes; degreasers, other than for use in manufacturing processes; bleaching preparations [decolorants] for cosmetic purposes; toiletry preparations; antiperspirants [toiletries]; phytocosmetic preparations; talcum powder, for toilet use; cotton sticks for cosmetic purposes; terpenes [essential oils]; emery cloth; cloths impregnated with a detergent for cleaning; henna [cosmetic dye]; shampoos; shampoos for animals [non-medicated grooming preparations]; shampoos for pets [non-medicated grooming preparations]; dry shampoos; sandpaper; soda lye; herbal extracts for cosmetic purposes; extracts of flowers [perfumes]; ethereal essences; badian essence; mint essence [essential oil].

Class 5: Acaricides; aconitine; alkaloids for medical purposes; alginates for pharmaceutical purposes; algicides; aldehydes for pharmaceutical purposes; dental amalgams of gold; dental amalgams; amino acids for veterinary purposes; amino acids for medical purposes; analgesics; anaesthetics; antibiotics; antiseptics; medicine cases, portable, filled; first-aid boxes, filled; aluminium acetate for pharmaceutical purposes; acetates for pharmaceutical purposes; germicides; balms for medical purposes; bandages for dressings; diagnostic biomarker reagents for medical purposes; biocides; bracelets impregnated with insect repellent; bromine for pharmaceutical purposes; paper for mustard plasters; fly catching paper; reagent paper for veterinary purposes; reagent paper for medical purposes; mothproofing paper; petroleum jelly for medical purposes; vaccines; oxygen baths; antiseptic cotton; aseptic cotton; absorbent cotton; wadding for medical purposes; cotton for medical purposes; dietetic substances adapted for medical use; radiological contrast substances for medical purposes; nutritive substances for microorganisms; radioactive substances for medical purposes; melissa water for pharmaceutical purposes; sea water for medicinal bathing; mineral waters for medical purposes; thermal water; dietary fiber; molding wax for dentists; gases for medical purposes; guaiacol for pharmaceutical purposes; sexual stimulant gels; hematogen; hemoglobin; hydrastine; hydrastinine; glycerine for medical purposes; glycerophosphates; glucose for medical purposes; gentian for pharmaceutical purposes; hormones for medical purposes; mustard for pharmaceutical purposes; mustard plasters; mud for baths; medicinal mud; gamboge for medical purposes; gurgun balsam for medical purposes; disinfectants; air deodorising preparations; deodorants, other than for human beings or for animals; deodorants for clothing and textiles; diastase for medical purposes; digitalin; vitamin supplement patches; mineral food supplements; nutritional supplements; albumin dietary supplements; dietary supplements for animals; yeast dietary supplements; alginate dietary supplements; glucose dietary supplements; casein dietary supplements; lecithin dietary supplements; linseed oil dietary supplements; propolis dietary supplements; protein dietary supplements; protein supplements for animals; royal jelly dietary supplements; pollen dietary supplements; wheat germ dietary supplements; linseed dietary supplements; acai powder dietary supplements; dietary

supplements with a cosmetic effect; enzyme dietary supplements; yeast for pharmaceutical purposes; gelatine for medical purposes; cod liver oil; isotopes for medical purposes; immunostimulants; insecticides; iodine for pharmaceutical purposes; iodides for pharmaceutical purposes; alkaline iodides for pharmaceutical purposes; iodoform; calomel [fungicide]; tartar for pharmaceutical purposes; camphor for medical purposes; capsules for medicines; cachets for pharmaceutical purposes; capsules made of dendrimer-based polymers, for pharmaceuticals; hemostatic pencils; wart pencils; caustic pencils; carbolineum [parasiticide]; caustics for pharmaceutical purposes; cachou for pharmaceutical purposes; quassia for medical purposes; quebracho for medical purposes; oxygen for medical purposes; gallic acid for pharmaceutical purposes; acids for pharmaceutical purposes; adhesives for dentures; surgical glues; stem cells for veterinary purposes; stem cells for medical purposes; cocaine; collagen for medical purposes; collodion for pharmaceutical purposes; corn rings for the feet; medicated sweets; barks for pharmaceutical purposes; cedar wood for use as an insect repellent; croton bark; mangrove bark for pharmaceutical purposes; myrobalan bark for pharmaceutical purposes; quinquina for medical purposes; medicated animal feed; medicinal roots; rhubarb roots for pharmaceutical purposes; lint for medical purposes; starch for dietetic or pharmaceutical purposes; creosote for pharmaceutical purposes; blood for medical purposes; cultures of microorganisms for medical or veterinary use; curare; dental lacquer; liquorice for pharmaceutical purposes; lactose for pharmaceutical purposes; adhesive plasters; medicines for alleviating constipation; lecithin for medical purposes; lotions for veterinary purposes; medicated hair lotions; lotions for pharmaceutical purposes; medicated after-shave lotions; personal sexual lubricants; lupulin for pharmaceutical purposes; magnesia for pharmaceutical purposes; liniments; ointments for pharmaceutical purposes; sunburn ointments; mercurial ointments; frostbite salve for pharmaceutical purposes; gauze for dressings; medicinal oils; mustard oil for medical purposes; camphor oil for medical purposes; castor oil for medical purposes; oil of turpentine for pharmaceutical purposes; dill oil for medical purposes; dental mastics; dental abrasives; dental impression materials; teeth filling material; dressings, medical; surgical dressings; drugs for medical purposes; medicines for veterinary purposes; serotherapeutic medicines; medicines for human purposes; medicines for dental purposes; menthol; medicinal drinks; moleskin for medical purposes; almond milk for pharmaceutical purposes; powdered milk for babies; royal jelly for pharmaceutical purposes; milk ferments for pharmaceutical purposes; Irish moss for medical purposes; flour for pharmaceutical purposes; linseed meal for pharmaceutical purposes; fish meal for pharmaceutical purposes; fly glue; antibacterial soap; disinfectant soap; medicated soap; freeze-dried meat adapted for medical purposes; mint for pharmaceutical purposes; dietetic beverages adapted for medical purposes; malted milk beverages for medical purposes; injectable dermal fillers; narcotics; medicinal infusions; tincture of iodine; eucalyptol for pharmaceutical purposes; tinctures for medical purposes; opium; opodeldoc; decoctions for pharmaceutical purposes; antiparasitic collars for animals; stick liquorice for pharmaceutical purposes; sulfur sticks [disinfectants]; pastilles for pharmaceutical purposes; medicated dentifrices; pectin for pharmaceutical purposes; pepsins for pharmaceutical purposes; peptones for pharmaceutical purposes; hydrogen peroxide for medical purposes; pesticides; food for babies; leeches for medical purposes; blood plasma; nicotine patches for use as aids to stop smoking; eyepatches for medical purposes; poultices; compresses; scapulars for surgical purposes; babies' diapers; diapers for pets; diapers for incontinence; bunion pads; breast-nursing pads; pomades for medical purposes; powder of cantharides; pyrethrum powder; anti-uric preparations; bacterial preparations for medical and veterinary use; bacteriological preparations for medical and veterinary use; balsamic preparations for medical purposes; albuminous preparations for medical purposes; biological preparations for veterinary purposes; biological preparations for medical purposes; veterinary preparations; bismuth preparations for pharmaceutical purposes; vitamin preparations; diagnostic preparations for medical purposes; bath preparations for medical purposes; therapeutic preparations for the bath; hemorrhoid preparations; preparations for callouses; lice treatment preparations [pediculicides]; acne treatment preparations; preparations to facilitate teething; preparations for the treatment of burns; fumigation preparations for medical purposes; opotherapy preparations; air purifying preparations; bronchodilating preparations; preparations for reducing sexual activity; sterilising preparations; soil-sterilising preparations; corn remedies; pharmaceutical preparations for treating dandruff; preparations for destroying noxious animals; herbicides; preparations for destroying dry rot fungus; larvae exterminating preparations; fly destroying preparations; preparations for destroying mice; slug exterminating preparations; vermin destroying preparations; pharmaceutical preparations for skin care; contact lens cleaning preparations; preparations of microorganisms for medical or veterinary use; lime-based pharmaceutical preparations; medicated eye-washes; medicinal hair growth preparations; nutraceutical preparations for therapeutic or medical purposes; opiates; anticryptogamic preparations; aloe vera preparations for pharmaceutical purposes; preparations of trace elements for human and animal use; sulfonamides [medicines]; pharmaceutical preparations; pharmaceutical preparations for treating sunburn; enzyme preparations for veterinary purposes; enzyme

preparations for medical purposes; phytotherapy preparations for medical purposes; chemico-pharmaceutical preparations; chemical preparations for veterinary purposes; chemical preparations for the diagnosis of pregnancy; chemical preparations for medical purposes; chemical preparations for treating diseases affecting cereal plants; chemical preparations for treating wheat blight; chemical preparations for treating diseases affecting vine plants; chemical preparations for treating mildew; chemical preparations for treating phylloxera; chemical preparations for pharmaceutical purposes; chilblain preparations; mothproofing preparations; collyrium; lead water; chemical conductors for electrocardiograph electrodes; albuminous foodstuffs for medical purposes; dietetic foods adapted for medical purposes; by-products of the processing of cereals for dietetic or medical purposes; homogenized food adapted for medical purposes; freeze-dried food adapted for medical purposes; pharmaceuticals; sanitary towels; panty liners [sanitary]; propolis for pharmaceutical purposes; pearl powder for medical purposes; radium for medical purposes; hydrated chloral for pharmaceutical purposes; solvents for removing adhesive plasters; vaginal washes for medical purposes; solutions for contact lenses; chemical reagents for medical or veterinary purposes; gum for medical purposes; rubber for dental purposes; chewing gum for medical purposes; nicotine gum for use as an aid to stop smoking; insect repellents; insect repellent incense; repellents for dogs; tissues impregnated with pharmaceutical lotions; sarsaparilla for medical purposes; sugar for medical purposes; asthmatic tea; fumigating sticks; massage candles for therapeutic purposes; linseed for pharmaceutical purposes; tobacco-free cigarettes for medical purposes; siccatives [drying agents] for medical purposes; syrups for pharmaceutical purposes; turpentine for pharmaceutical purposes; greases for veterinary purposes; greases for medical purposes; lacteal flour for babies; infant formula; soporifics; bicarbonate of soda for pharmaceutical purposes; bath salts for medical purposes; salts for mineral water baths; salts for medical purposes; potassium salts for medical purposes; sodium salts for medical purposes; smelling salts; mineral water salts; malt for pharmaceutical purposes; semen for artificial insemination; alcohol for pharmaceutical purposes; medicinal alcohol; alloys of precious metals for dental purposes; ergot for pharmaceutical purposes; cooling sprays for medical purposes; antibacterial handwashes; adjuvants for medical purposes; astringents for medical purposes; vermifuges; disinfectants for hygiene purposes; disinfectants for chemical toilets; appetite suppressants for medical purposes; medical preparations for slimming purposes; parasitocides; mouthwashes for medical purposes; febrifuges; depuratives; animal washes [insecticides]; detergents for medical purposes; cattle washes [insecticides]; dog washes [insecticides]; insecticidal veterinary washes; vesicants; purgatives; remedies for perspiration; remedies for foot perspiration; chemical contraceptives; antiparasitic preparations; sedatives; laxatives; tonics [medicines]; medicated toiletry preparations; digestives for pharmaceutical purposes; nervines; media for bacteriological cultures; steroids; strychnine; serums; tanning pills; appetite suppressant pills; slimming pills; jujube, medicated; antioxidant pills; sanitary tampons; vulnery sponges; thymol for pharmaceutical purposes; biological tissue cultures for veterinary purposes; biological tissue cultures for medical purposes; smoking herbs for medical purposes; medicinal herbs; surgical implants comprised of living tissues; pants, absorbent, for incontinence; sanitary panties; babies' diaper-pants; charcoal for pharmaceutical purposes; fennel for medical purposes; porcelain for dental prostheses; phenol for pharmaceutical purposes; enzymes for veterinary purposes; enzymes for medical purposes; ferments for pharmaceutical purposes; formic aldehyde for pharmaceutical purposes; phosphates for pharmaceutical purposes; fungicides; quinine for medical purposes; chinoline for medical purposes; diabetic bread adapted for medical use; chloroform; flowers of sulfur for pharmaceutical purposes; cement for animal hooves; bone cement for surgical and orthopaedic purposes; dental cements; medicinal tea; herbal teas for medicinal purposes; insecticidal animal shampoos; medicated shampoos; medicated shampoos for pets; pediculicidal shampoos; medicated dry shampoos; pre-filled syringes for medical purposes; eucalyptus for pharmaceutical purposes; herbal extracts for medical purposes; plant extracts for pharmaceutical purposes; tobacco extracts [insecticides]; extracts of hops for pharmaceutical purposes; elixirs [pharmaceutical preparations]; ethers for pharmaceutical purposes; esters for pharmaceutical purposes; cellulose esters for pharmaceutical purposes; rat poison; poisons; bacterial poisons; jalap; cotton sticks for medical purposes.

Class 34: Flavorings, other than essential oils, for tobacco; flavorings, other than essential oils, for use in electronic cigarettes; gas containers for cigar lighters; absorbent paper for tobacco pipes; cigarette paper; lighters for smokers; tobacco pouches; books of cigarette papers; humidors; matchboxes; firestones; cigar cutters; cigar holders; cigarette holders; mouthpieces for cigarette holders; tips of yellow amber for cigar and cigarette holders; ashtrays for smokers; spittoons for tobacco users; pipe racks for tobacco pipes; pipe cleaners for tobacco pipes; liquid solutions for use in electronic cigarettes; electronic cigarettes; cigarettes; cigarettes containing tobacco substitutes, not for medical purposes; cigarillos; cigars; tobacco jars; match holders; matches; oral vaporizers for smokers; tobacco; chewing tobacco; snuff; snuffboxes; herbs for smoking; tobacco

pipes; pocket machines for rolling cigarettes; cigarette filters; wicks adapted for cigarette lighters; cigarette tips; cigar cases; cigarette cases.

Class 35: *provision of an online marketplace for buyers and sellers of goods and services; wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; online retail and wholesale services for goods.*

What you can do now

Grounds for rejecting this International Registration Designating Australia (IRDA) exist under subsection 41(4) of the Trade Marks Act 1995.

You may respond to this refusal by:

- Making submissions and/or
- Providing evidence of use showing that the trade mark is capable of distinguishing the goods/services in Australia and/or
- Requesting a hearing.

Before deciding whether to provide evidence you should consider the following:

- Evidence must be supplied as a declaration and should be accompanied by supporting evidence and information regarding the extent of the use of your trade mark in Australia.
- Gathering and compiling this evidence may be time-consuming and expensive
- The evidence you provide may be insufficient to overcome the refusal

If you wish to respond in any of these ways, you must do so in writing and supply an address for service in Australia or New Zealand. If you do not respond by the date mentioned on the first page of this report, this IRDA will be refused for the above goods/services.

REQUIREMENTS FOR EVIDENCE OF USE

Subsection 41(4) *Trade Marks Act 1995*

Evidence of use must be in declaratory form. This may be made by the holder, a principal officer of the holder company or by a person authorised to make it on behalf of the holder. **If the declaration is not in English, it must be accompanied by a certified translation into English.** The evidence must incorporate any exhibits or appendices. If they are not incorporated, they do not form part of the declaration.

Where possible evidence should be submitted in electronic form, through IP Australia's online services. In particular, providing clear digital images of objects bearing the trade mark will be as effective as providing the objects themselves.

Under subsection 41(4) use **may be before or after the date on which Australia was designated in the international application or registration.** The evidence may include use by a predecessor in title of the holder, use by an authorised user, and use on goods and/or services for export. Evidence of use of the trade mark in similar markets in countries other than Australia can be taken into account.

EVIDENCE REQUIRED

For evidence of **actual** use the declaration should include:

- the international registration number;
- our reference;
- a representation of the trade mark;
- the holder's name;
- the name and address of the person making the declaration;
- the position and length of service in that position of the person making the declaration (if the holder is a company);
- a brief history of the trade mark, including:
 - the goods and/or services for which the trade mark has been used;
 - when the trade mark was first used in Australia in connection with the goods and/or services claimed in your IRDA (please give the year and, if possible, the month), and whether this use has been continuous since then;
 - where the trade mark has been used in Australia and/or countries overseas (please give States or regions);
 - examples of how the trade mark has been used in Australia in connection with the goods and/or services claimed in your IRDA (please attach copies of advertising, promotional material and/or packaging and outline how each of these have been used);
 - annual expenditure (in Australian Dollars) on advertising and promoting the trade mark in Australia in connection with the goods and/or services claimed in your IRDA;
 - annual turnover figures (in Australian Dollars) for the specific goods and/or services claimed in your IRDA sold or provided in Australia using the trade mark; and
 - any other information or materials which will help show how the trade mark has been used (please attach copies of these materials).

For evidence of **intended** use, the declaration should include:

- Comprehensive details of business plans and/or other documents demonstrating a definite intention to use the trade mark (please attach copies of these documents).
- Details of the goods or services this planned use relates to.
- Figures in Australian dollars for any costs already incurred in preparing to use the trade mark.

- Any other information or materials which will help show how the trade mark is intended to be used (please attach copies of these materials).

Please note:

- The evidence you provide must relate to your trade mark as it is shown in your IRDA, without any major changes.
- The evidence you provide must clearly demonstrate that your IRDA is used and promoted as a trade mark, and that it is recognised by consumers as a trade mark.
- If you can only show use of your trade mark on some of the goods or services in your IRDA, please agree to limit your IRDA to cover only those goods or services.

Grounds for rejecting IRDA

Regulation 17A.28

- 1) The grounds for rejecting an IRDA are the grounds set out in sections 39 to 44 of the Act, as affected by subregulation (2).
- 2) Sections 39 to 44 apply in relation to an IRDA as if:
 - a) a reference in those sections:
 - i) to an application for the registration of a trade mark were a reference to the IRDA; and
 - ii) to an applicant were a reference to the holder of the IRDA; and
 - b) the reference in paragraph 41 (3) (b) to the filing date in respect of an application were a reference to the date of international registration or the date of recording, as applicable, in respect of the IRDA; and
 - c) each reference in subparagraphs 44 (1) (a) (i) and (2) (a) (i) to a trade mark registered by another person included a protected international trade mark held by another person; and
 - d) each reference in subparagraphs 44 (1) (a) (ii) and (2) (a) (ii) to a trade mark whose registration is being sought by another person included a trade mark in respect of which the extension of protection to Australia is being sought by another person.

Section 39 Trade mark containing etc. certain signs

- 1) An application for the registration of a trade mark must be rejected if the trade mark contains or consists of a sign that, under regulations made for the purposes of section 18, is not to be used as a trade mark.
- 2) An application for the registration of a trade mark may be rejected if the trade mark contains or consists of:
 - a) a sign that is prescribed for the purposes of this subsection; or
 - b) a sign so nearly resembling:
 - i) a sign referred to in paragraph (a); or
 - ii) a sign referred to in subsection (1);as to be likely to be taken for it.

Section 40 Trade mark that cannot be represented graphically

- 1) An application for the registration of a trade mark must be rejected if the trade mark cannot be represented graphically.

Section 41 Trade mark not distinguishing applicant's goods or services

- 1) An application for the registration of a trade mark must be rejected if the trade mark is not capable of distinguishing the applicant's goods or services in respect of which the trade mark is sought to be registered (the designated goods or services) from the goods or services of other persons.

Note: For goods of a person and services of a person see section 6.

- 2) A trade mark is taken not to be capable of distinguishing the designated goods or services from the goods or services of other persons only if either subsection (3) or (4) applies to the trade mark.
- 3) This subsection applies to a trade mark if:
- a) the trade mark is not to any extent inherently adapted to distinguish the designated goods or services from the goods or services of other persons; and
 - b) the applicant has not used the trade mark before the filing date in respect of the application to such an extent that the trade mark does in fact distinguish the designated goods or services as being those of the applicant.
- 4) This subsection applies to a trade mark if:
- a) the trade mark is, to some extent, but not sufficiently, inherently adapted to distinguish the designated goods or services from the goods or services of other persons; and
 - b) the trade mark does not and will not distinguish the designated goods or services as being those of the applicant having regard to the combined effect of the following:
 - i) the extent to which the trade mark is inherently adapted to distinguish the goods or services from the goods or services of other persons;
 - ii) the use, or intended use, of the trade mark by the applicant;
 - iii) any other circumstances.

Note 1: Trade Marks that are not inherently adapted to distinguish goods or services are mostly trade marks that consist wholly of a sign that is ordinarily used to indicate:

- a) the kind, quality, quantity, intended purpose, value, geographical origin, or some other characteristic, of goods or services; or
- b) the time of production of goods or of the rendering of services.

Note 2: For goods of a person and services of a person see section 6.

Note 3: Use of a trade mark by a predecessor in title of an applicant and an authorised use of a trade mark by another person are each taken to be use of the trade mark by the applicant (see subsections (5) and 7(3) and section 8).

- 5) For the purposes of this section, the use of a trade mark by a predecessor in title of an applicant for the registration of the trade mark is taken to be use of the trade mark by the applicant.

Note 1: For applicant and predecessor in title see section 6.

Note 2: If a predecessor in title had authorised another person to use the trade mark, any authorised use of the trade mark by the other person is taken to be use of the trade mark by the predecessor in title (see subsection 7(3) and section 8).

Section 42 Trade mark scandalous or its use contrary to law

An application for the registration of a trade mark must be rejected if:

- a) the trade mark contains or consists of scandalous matter; or
- b) its use would be contrary to law.

Section 43 Trade mark likely to deceive or cause confusion

An application for the registration of a trade mark in respect of particular goods or services must be rejected if, because of some connotation that the trade mark or a sign contained in the trade mark has, the use of the trade mark in relation to those goods or services would be likely to deceive or cause confusion.

Section 44 Identical etc. trade marks

- 1) Subject to subsections (3) and (4), an application for the registration of a trade mark (applicant's trade mark) in respect of goods (applicant's goods) must be rejected if:
 - a) the applicant's trade mark is substantially identical with, or deceptively similar to:
 - i) a trade mark registered by another person in respect of similar goods or closely related services; or
 - ii) a trade mark whose registration in respect of similar goods or closely related services is being sought by another person; and
 - b) the priority date for the registration of the applicant's trade mark in respect of the applicant's goods is not earlier than the priority date for the registration of the other trade mark in respect of the similar goods or closely related services.

Note 1: For deceptively similar see section 10.

Note 2: For similar goods see subsection 14(1).

Note 3: For priority date see section 12.

Note 4: The regulations may provide that an application must also be rejected if the trade mark is substantially identical with, or deceptively similar to, a protected international trade mark or a trade mark for which there is a request to extend international registration to Australia: see Part 17A.

- 2) Subject to subsections (3) and (4), an application for the registration of a trade mark (applicant's trade mark) in respect of services (applicant's services) must be rejected if:
 - a) it is substantially identical with, or deceptively similar to:
 - i) a trade mark registered by another person in respect of similar services or closely related goods; or
 - ii) a trade mark whose registration in respect of similar services or closely related goods is being sought by another person; and
 - b) the priority date for the registration of the applicant's trade mark in respect of the applicant's services is not earlier than the priority date for the registration of the other trade mark in respect of the similar services or closely related goods.
 - c) *Note 1:* For deceptively similar see section 10.
 - d) *Note 2:* For similar services see subsection 14(2).
 - e) *Note 3:* For priority date see section 12.
 - f) *Note 4:* The regulations may provide that an application must also be rejected if the trade mark is substantially identical with, or deceptively similar to, a protected international trade mark or a trade mark for which there is a request to extend international registration to Australia: see Part 17A.

- 3) If the Registrar in either case is satisfied:
 - a) that there has been honest concurrent use of the 2 trade marks; or
 - b) that, because of other circumstances, it is proper to do so;the Registrar may accept the application for the registration of the applicant's trade mark subject to any conditions or limitations that the Registrar thinks fit to impose. If the applicant's trade mark has been used only in a particular area, the limitations may include that the use of the trade mark is to be restricted to that particular area.

Note: For limitations see section 6.

- 4) If the Registrar in either case is satisfied that the applicant, or the applicant and the predecessor in title of the applicant, have continuously used the applicant's trade mark for a period:

- a) beginning before the priority date for the registration of the other trade mark in respect of:
 - i) the similar goods or closely related services; or
 - ii) the similar services or closely related goods; and
 - b) ending on the priority date for the registration of the applicant's trade mark;
- the Registrar may not reject the application because of the existence of the other trade mark.

Note 1: An authorised use of the trade mark by a person is taken to be a use of the trade mark by the owner of the trade mark (see subsection 7(3)).

Note 2: For predecessor in title see section 6.

Note 3: For priority date see section 12.

Regulation 17A.13 Use of trade mark

- 1) The holder of an IRDA:
 - a) must be using, or must intend to use, the trade mark that is the subject of the IRDA in relation to the goods, services or goods and services listed in the IRDA; or
 - b) must have authorised, or intend to authorise, another person to use the trade mark in relation to those goods, services or goods and services; or
 - c) must intend to assign the trade mark to a body corporate that is about to be constituted with a view to the use by the body corporate of the trade mark in relation to the goods, services or goods and services.
- 2) If there is reason to suspect that the holder does not meet a requirement of subregulation (1) in relation to any of the goods or services mentioned in the IRDA, the Registrar may require the holder to make a declaration to the Registrar that those provisions apply to all of those goods and services.

Regulation 4.15 Trade marks containing etc certain signs

For the purposes of paragraph 39 (2) (a) of the Act (which deals with signs), the following signs are prescribed:

- a) the words "Patent", "Patented", "By Royal Letters Patent", "Registered", "Registered Design", "Copyright", "Plant Breeder's Rights", "EL rights", or words or symbols to the same effect (including the symbols © and ®);
- b) the words "To counterfeit this is a forgery", or words to the same effect;
- c) a representation of the Arms, or of a flag or seal, of the Commonwealth or of a State or Territory;
- d) a representation of the Arms or emblem of a city or town in Australia or of a public authority or public institution in Australia;
- e) a representation of a mark notified by the International Union for the Protection of Industrial Property as not entitled to registration under international arrangements;
- f) a sign specified in Schedule 2.

Note 1: For the meaning of EL rights, see section 5 of the Circuit Layouts Act 1989.

Note 2: A list of the marks mentioned in paragraph 4.15 (e) is available at the Trade Marks Office and sub-offices.