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Your reference : N.A.
Our reference : 2021/8235692902U
Date : 08 April 2021
Writer's direct number : +65 6339 8616

WORLD INTELLECTUAL PROPERTY ORGANIZATION
INTERNATIONAL REGISTRATIONS DEPARTMENT
34, CHEMIN DES COLOMBETTES, 1211 GENEVA 20
SWITZERLAND

Dear Sir/Madam

NOTIFICATION OF PROVISIONAL REFUSAL OF PROTECTION TO THE INTERNATIONAL BUREAU OF THE WORLD INTELLECTUAL PROPERTY ORGANIZATION ACCORDING TO ARTICLE 5 OF THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

1. Office making the notification:

Intellectual Property Office of Singapore (IPOS)

2. International Registration Number:

1574744

3. Trade Mark Number(s) issued by IPOS for this International Registration:

Trade Mark Number : 40202103415X

Class Number(s) : 10

4. Name of holder of the International Registration:

BIOSOFT (AUSTRALIA) PTY LTD

5. Ground(s) of the Provisional Refusal:

Provisions of Singapore Law: The relevant provisions of Singapore law are attached.

5.1 Section 7

The mark is objectionable under section 7(1) of the Trade Marks Act (Cap. 332, 2005 Rev. Ed.) as:

Section 7(1)(b)

it is devoid of any distinctive character. Based on our online preliminary searches, the mark "DERMAPEN" refers to a skin needling treatment and the term "DERMA" is a combining word that is defined as "skin" while "pen" is "a long thin instrument for writing" (please refer to the

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attached documents for reference). Thus, the mark is a direct connotation describing the intended purpose and the type of goods claimed in Class 10. As such, it is unlikely that the consumers will recognize it as a badge or origin without educating them to recognize it as such.

5.2 **Section 7(1)(c)**

it consists exclusively of signs or indications which may serve, in trade, to designate the of goods claimed. The mark connotes the direct message that the goods claimed refer to a form of skin needling treatment that uses tiny needles to penetrate the skin in the treatment area in the form of a pen. As such, we are of the view that such descriptor will not be able to function as a trade source as it is origin neutral.


How to overcome our objection(s) under section 7(1)(b), (c) and/or (d)

Please file evidence showing that the mark has, before the date of application, in fact acquired a distinctive character as a result of the use made of it in Singapore. The evidence should relate to at least 5 years of use prior to the date of application of the mark. The evidence of use should be filed by way of a statutory declaration. For guidance as to how the evidence of use should be presented, please refer to <https://go.gov.sg/tm-sampleSD>.

5.3 **Section 8(2)(b)**

The mark is objectionable under section 8(2)(b) of the Trade Marks Act (Cap. 332, 2005 Rev. Ed.) which states that a trade mark shall not be registered if because it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected, there exists a likelihood of confusion on the part of the public.

The mark is in conflict with the following trade mark(s) in respect of the indicated class(es):

S.No	Cited Trade Mark No	International Reg No	Mark Status	Trade Mark	Subject Class No Objected To
1	40202002556W	1513095	Registered		10

The earlier mark is cited due to the presence of the textual element "DERMAPEN". While the earlier mark comprises of other elements e.g. the "M" device and the words "DERMA" and "BY", we are of the view that it would not be sufficient to offset the similarity between the two marks as the earlier mark conveys the message that the goods originate from "DERMAPEN".

Due to the notion of imperfect recollection, consumers are unlikely to compare the marks side by side and would therefore remember the distinctive element. The goods claimed by the holder also overlaps with the goods claimed by the cited proprietor. As such, we believe that it is likely that a substantial portion of the relevant public will be confused into believing that the holder's goods originate from the same economic source as the cited proprietor, or from a

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source which is economically linked to the cited proprietor.

In view of the above, based on a holistic comparison between the marks, we believe that the subject mark is similar to the cited mark.

5.4 **How to overcome our objection(s) under section 8(2)(a) and/or (b)**

You may consider the following options:

- (a) Obtain a letter of consent from the cited proprietor; or
- (b) File evidence to show honest concurrent use in Singapore.

In other words, you may file evidence to show that before the date of this application, your mark has been put to use for the goods and/or services applied for at the same time as the cited mark(s) according to honest practices in commercial and industrial standards. This evidence may show that the public is used to distinguishing between your mark and the cited mark(s) and there is no likelihood of confusion in the public.

The evidence should show concurrent use of your mark and the cited mark(s) for a period of at least 5 years before the date of this application. The evidence should be presented by way of a statutory declaration.

For guidance as to how the letter of consent or evidence of honest concurrent use should be presented, please refer to <https://go.gov.sg/tm-sampleLOC> or <https://go.gov.sg/tm-sampleSD> respectively.

6. **Goods and/or services affected by the refusal:**

This refusal applies to all the goods in Class 10 of the international registration.

7. **Request for review:**

The holder of the international registration may file a request for a review of this refusal with IPOS.

The request for review must comply with the following:

- (a) quote the International Registration number, relevant trade mark number(s), corresponding class number(s) and Singapore reference number(s).
- (b) furnish an address for service in Singapore. The holder may appoint an agent by filing Form CM1.

Please note that any form(s) filed with the International Bureau of the World Intellectual Property Organization in response to this refusal, will not be treated as a request for a review of this refusal unless the above has been complied with.

8. **Extension of time:**

The holder may seek an extension of time to request for a review of this refusal by filing Form CM5.

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9. Deadline to observe:

If the holder does not file a request for review or apply for an extension of time to do so by **8 August 2021**, the application for the refused goods and/or services indicated in paragraph 6 of this refusal will be treated as withdrawn (reinstatable). Please refer to paragraph 10 on reinstatement of an application that is treated as withdrawn (reinstatable).

10. Reinstatement of an application that is treated as withdrawn (reinstatable):

If the application for the refused goods and/or services indicated in paragraph 6 of this refusal becomes treated as withdrawn (reinstatable), the holder may request to reinstate the application by filing Form CM13 together with the request for review within six months from the deadline in paragraph 9.

Please note that reinstatement is not automatic. Reinstatement will be allowed only after we have conducted a new conflicting mark search and are satisfied that the mark to be reinstated does not conflict with any trade mark applications filed with IPOS prior to the filing of the required documents.

If the holder also does not request to reinstate the application in time, the application for goods and/or services that are not refused will proceed to publication.

11. Forms and fees:

The forms referred to in this provisional refusal and the relevant fees may be found at <https://ip2sg.ipos.gov.sg>.

12. Further refusal of protection:

Please note that a further refusal of protection may result from an opposition, which may be filed after the expiry of 18 months from the date on which the Intellectual Property Office of Singapore was notified of the international registration. This applies to all goods and/or services claimed in the international registration.

This refusal is issued by:

Ms Christine Chow
Assistant Registrar
for Registrar of Trade Marks
Singapore

Encl:Supporting Documents - dermapen what is it - Google Search
Encl:Supporting Documents - Dermato- definition and meaning _ Collins English Dictionary
Encl:Supporting Documents - Pen definition and meaning _ Collins English Dictionary

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PROVISIONS OF SINGAPORE LAW

TRADE MARKS ACT (CHAPTER 332)

Section 2(1) Interpretation

"earlier trade mark" means -

- (a) a registered trade mark or international trade mark (Singapore), the application for registration of which was made earlier than the trade mark in question, taking account (where appropriate) of the priorities claimed in respect of the trade marks; or
- (b) a trade mark which, at the date of application for registration of the trade mark in question or (where appropriate) of the priority claimed in respect of the application, was a well known trade mark,

and includes a trade mark in respect of which an application for registration has been made and which, if registered, would be an earlier trade mark by virtue of paragraph (a) subject to its being so registered.

"sign" includes any letter, word, name, signature, numeral, device, brand, heading, label, ticket, shape, colour, aspect of packaging or any combination thereof.

"trade mark" means any sign capable of being represented graphically and which is capable of distinguishing goods or services dealt with or provided in the course of trade by a person from goods or services so dealt with or provided by any other person.

Section 7 Absolute grounds for refusal of registration

(1) The following shall not be registered:

- (a) signs which do not satisfy the definition of a trade mark in section 2(1);
- (b) trade marks which are devoid of any distinctive character;
- (c) 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, the time of production of goods or of rendering of services, or other characteristics of goods or services; and
- (d) 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 refused registration by virtue of subsection (1) (b), (c) or (d), if, before the date of application for registration, it has in fact acquired a distinctive character as a result of the use made of it.

Section 8 Relative grounds for refusal of registration

(1) A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is sought to be registered are identical with the goods or services for which the earlier trade mark is registered.

(2) A trade mark shall not be registered if because -

- (a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected; or
- (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

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CITED MARK DETAILS

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Current Applicant or Proprietor Details
1) Name Dermapen IP Holdings, LLC UEN/Company Code M00033782S Country/Territory of Incorporation United States of America State of Incorporation Delaware Address 1975 West Bay Dr. Suite 301, Largo, Florida 33770, United States of America
Mark Clauses
1) The following claim is made in the International Registration: Colour(s) claimed: The color(s) grey, orange, light blue is/are claimed as a feature of the mark. The mark consists of a letter "M" in grey stylized in 3D format followed by the letter "D" stylized in a 3D format organized to form the logo "MDerma" in orange followed by the the wording "by Dermapen" in light blue color.

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<https://dermapen.com> › Microneedling information

What is Dermapen – Dermapen Microneedling Pen is ...

4 May 2017 — What is Dermapen? Dermapen is a small medical device that and is used for microneedling treatments on people with common skin problems.

<https://www.beautycrew.com.au> › Skin Care › Article

Does Dermapen Skin Needling Work? We Review The ...

28 Aug 2020 — What is Dermapen Skin Needling (also called Dermapen Skin Resurfacing)? Is it an actual, literal pen? Well, kind of. But it's a pen of tiny needles.

<https://skinsciencedclinic.co.uk> › Blog

What is dermapen micro-needling? - Skin Science Clinic

A dermapen consists of 12 needles which are used to pierce the skin. The pen is held vertically over the skin and once the pen is in the right position, a small motor ...

Images for dermapen what is it



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Dermapen Treatment and Its Benefits on the Skin ...

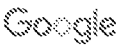
Dermapen treatment presents a simple and straightforward treatment to fight off common skin problems among men and women. It is a minimally-invasive skin ...

<https://www.dermapenworld.com>

Dermapen World: Micro Needling Treatment - Skin Needling ...

The results are excellent! I treat wrinkles, pigmentation problems, acne scars and other skin conditions with Dermapen alone, or by combining the microneedling ...





dermapen what is it



<http://skinradianceclinics.co.uk> › what-is-dermapen-mic...

What is Dermapen micro-needling and what to expect? - Skin ...

1 Feb 2019 — Dermapen is a non-surgical instrument which includes a disposable needle-tip cartridge with 12 micro-needles. It is used in the repair, renewal ...

<https://beginningsaal.com> › med-spa-blog › what-is-der...

What is Dermapen®? - Red Bank, NJ MedSpa

6 Dec 2017 — Dermapen® is a precise, safe, and highly effective treatment option for reducing the appearance of acne scars, and reducing unwanted facial ...

<https://www.healthline.com> › health › microneedling

Benefits and Side Effects of Microneedling: Cost, Results, and ...

30 May 2018 — According to estimates by Dermapen, microneedling costs from \$100 to \$700 per session. Most face treatments run around \$300 each session.

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English: dermat- American: dermat- dermato-

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English: dermat- American: dermat- dermato-

Definition of 'dermato-'

dermato-



in British English

or **derma-**, before a vowel **dermat-** or **derm-**
COMBINING FORM

- indicating skin
- dermatology
- dermatome
- dermal
- dermatitis

Collins English Dictionary. Copyright © HarperCollins Publishers

Word origin

from Greek *derma* skin

Quick Word Challenge

Question: 1 ~ Score: 0 / 5

road or rode?

Drag the correct answer into the box.

road rode

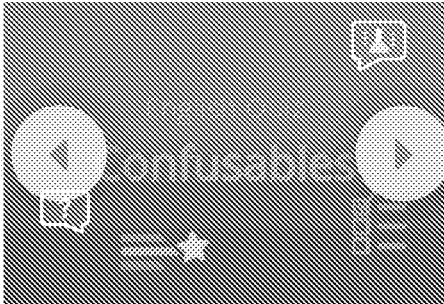
There was very little traffic on the

road

rode

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Definition of 'pen'

Quick Word Challenge

Question: 1 - Score: 0 / 5

larva or lava?

Which version is correct?

Rivers of **larva** flowed down the volcano.

Rivers of **lava** flowed down the volcano.

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