

Japan Patent Office (JPO)  
 4-3, Kasumigaseki 3-chome  
 Chiyoda-ku  
 Tokyo 100-8915  
 JAPAN



日本国特許庁  
 〒100-8915  
 東京都千代田区霞が関3-4-3

## NOTIFICATION OF PROVISIONAL REFUSAL

This notification is issued by the Japan Patent Office (JPO) in accordance with Rule 17(1) and (2) of the Regulations under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and Section 15-2 and 15-3 of the Japanese Trademark Law.

I. International registration number: 1531791

Mark: (figurative elements)

Date of international registration: 2020/02/07

Holder of the international registration:

Individual entrepreneur Bogatyrev Vasily Alexandrovich

II. This trademark application\* shall be totally refused protection. The grounds for refusal are indicated under Item V. A copy of the corresponding provisions of the Japanese Trademark Law is attached to this notification.

III. This refusal is issued on May/26/2021 by

Oda Akira (Mr.)

Examiner

Madrid Protocol Division

Facsimile: +81-3-3588-8506

Telephone: +81-3-3501-2392

IV. The holder may submit to the JPO a written opinion and/or an amendment against this provisional refusal within three months from the date of pronouncement. The written opinion and/or amendment must be submitted through a representative domiciled in Japan. The trademark claimed in this application can be protected, subject to amendments to be made by the holder of the international registration, as suggested under Item VI. Even if the above-mentioned time limit has past, the holder may submit to the JPO an amendment of the list of goods and/or services as long as the case is pending in examination, trial or retrial in JPO, provided that the date indicated in Item I is on and after April/01/2020. Alternatively, the holder may request a limitation of the list of goods and/or services in accordance with Rule 25(1)(a) of the Regulations under the Madrid Protocol. Such request must be submitted to the International Bureau of WIPO on Official Form MM6.

### <Note>

All communications via facsimile and email except for general inquiries will be recorded and stored in the file wrapper disclosed upon request in order to secure transparency.

Any inquiries about this notification should be addressed to the examiner of the JPO <PAIT40@jpo.go.jp>, or the FAX number: +81-3-3588-8506.

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\* A request for territorial extension to Japan under the Protocol relating to the Madrid Agreement is deemed as a trademark application made in Japan in accordance with Section 68-9 of the Japanese Trademark Law.

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## V. The grounds for refusal

## Ground 1

This application does not conform to the requirements provided for under Section 6(1) of the Trademark Law because some of the designated goods and services are inappropriately described in this application in a vague/broad manner(see below).

[vague/broad description]

Class 05 Nutraceutical preparations for therapeutic or medical purposes.

Class 35 Business management of reimbursement programs for others; commercial lobbying services; tax filing services; outsourcing services [business assistance]; online retail and wholesale services for goods.

## Ground 2

The trademark of this application does not conform to the requirements as provided in the main paragraph of Section 3(1) of the Trademark Law because of the following reason:

The main paragraph of Section 3(1) requires that registerable trademarks either be currently in use or will be put into use in the near future; however, there is reasonable doubt as to whether the applicant currently uses or will use in the near future this trademark on the retail/wholesale services (regarding services provided for in Section 2(2) of the Trademark Law) designated in this application, because two or more retail/wholesale services have been designated in this application, which are not similar to each other depending on the goods dealt in the said retail/wholesale services.

However, the above reason for refusal will be resolved if the above-mentioned doubt, as to the use of or the intent to use this trademark, is eliminated by the applicant's taking any of the following procedures (a), (b) or (c):

(a) Proving that the applicant is conducting business connected with the above-mentioned designated services in Japan by submitting some documents such as newspaper articles, catalogs, business documents etc.;

(b) Proving that the applicant is planning to conduct business connected with the above-mentioned designated services in Japan within three to four years from the date of the international registration or the subsequent designation by submitting both of the following documents:

(i) A written Declaration of Intention to Use stating when this trademark will begin to be used and what services this trademark will be used for in Japan; and

(ii) Documents of Business Plan stating the current status of the applicant's business preparations; or

(c) Limiting the above-mentioned designated services to an appropriate range. [ For your reference, examples of amendments/limitations can be found in Item VI.]

<Important notes for proving (a) or (b) above>

(1) The Examination Guidelines are available on the JPO website at <https://www.jpo.go.jp/e/system/laws/rule/guideline/trademark/kijun/document/index/0102.pdf>

(2) The main points for filing an application regarding retail services or wholesale services are available on the JPO website at [https://www.jpo.go.jp/e/system/trademark/gaiyo/document/notice\\_services/points.pdf](https://www.jpo.go.jp/e/system/trademark/gaiyo/document/notice_services/points.pdf)

(3) The above-mentioned documents for proving (a) or (b) must be accompanied with a Japanese translation and submitted to the JPO through the intermediary of a representative domiciled in Japan.

VI. The trademark of this application will be protected if the goods and services are amended/limited as follows: (Examples are underlined. The underlined goods/services are the examples of amendment/limitation of the goods/services shown in V. Sometimes there are no underlined goods/services.)

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Classes 3, 34 and 40 remain unchanged.

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; gurjun 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

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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; 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

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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; vulnerary 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.

- 35 Arranging subscriptions to telecommunication services for others; import-export agency services; commercial information agency services; advertising agency services; cost price analysis; rental of office equipment in co-working facilities; rental of advertising space; business auditing; financial auditing; business intermediary services relating to the matching of potential private investors with entrepreneurs needing funding; employment agency services; computerized file management; book-keeping; invoicing; demonstration of goods; transcription of communications [office functions]; opinion polling; market studies; business investigations; business research; marketing research; personnel recruitment; business management and organization consultancy; business organization consultancy; business management consultancy; personnel management consultancy; professional

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business consultancy; consultancy regarding advertising communication strategies; consultancy regarding public relations communication strategies; layout services for advertising purposes; marketing; marketing in the framework of software publishing; targeted marketing; business management of performing artists; business management of sports people; writing of resumes for others; scriptwriting for advertising purposes; news clipping services; updating and maintenance of information in registries; updating and maintenance of data in computer databases; updating of advertising material; word processing; online retail services for downloadable and pre-recorded music and movies; online retail services for downloadable ring tones; online retail services for downloadable digital music; organization of exhibitions for commercial or advertising purposes; arranging newspaper subscriptions for others; organization of fashion shows for promotional purposes; shop window dressing; business appraisals; payroll preparation; data search in computer files for others; sponsorship search; administrative assistance in responding to calls for tenders; business management assistance; commercial or industrial management assistance; commercial intermediation services; providing business information via a web site; providing commercial and business contact information; provision of an online marketplace for buyers and sellers of goods and services; web indexing for commercial or advertising purposes; presentation of goods on communication media, for retail purposes; media relations services; economic forecasting; auctioneering; wholesale services for pharmaceutical, veterinary and sanitary preparations and medical supplies; retail services for works of art provided by art galleries; retail services for pharmaceutical, veterinary and sanitary preparations and medical supplies; sales promotion for others; promotion of goods and services through sponsorship of sports events; production of teleshopping programmes; production of advertising films; office machines and equipment rental; rental of advertising time on communication media; publicity material rental; rental of billboards [advertising boards]; rental of vending machines; rental of sales stands; rental of photocopying machines; publication of publicity texts; radio advertising; bill-posting; distribution of samples; dissemination of advertising matter; direct mail advertising; registration of written communications and data; writing of publicity texts; advertising; online advertising on a computer network; advertising by mail order; television advertising; compilation of statistics; compilation of information into computer databases; business inquiries; systemization of information into computer databases; advisory services for business management; corporate communications services; negotiation of business contracts for others; negotiation and conclusion of commercial transactions for third parties; compiling indexes of information for commercial or advertising purposes; tax preparation; drawing up of statements of accounts; telemarketing services; psychological testing for the selection of personnel; interim business management; business management of hotels; business management for freelance service providers; business project management services for construction projects; commercial administration of the licensing of the goods and services of others; business administration of medication reimbursement programmes and services; administration of consumer loyalty programs; administration of frequent flyer programs; administrative processing of purchase orders; public relations; lobbying services for commercial purposes, namely, public relations and professional business consultancy for the benefit of the real estate sector towards governments, governmental bodies and other parties; competitive intelligence services; modelling for advertising or sales promotion; typing; market intelligence services; appointment reminder services [office functions]; web site traffic optimization; tax preparation; search engine optimization for sales promotion; appointment scheduling services [office functions]; gift registry services; price comparison services; pay per click advertising; secretarial services; procurement services for others [purchasing goods and services for other businesses]; shorthand; business assistance relating to outsourcing; telephone answering for unavailable subscribers; photocopying services; business efficiency expert services; online retail and wholesale services for cosmetics.

## Extract from the Japanese Trademark Law

### Article 3 Requirements for trademark registration

- (1) Any trademark to be used in connection with goods or services pertaining to the business of an applicant may be registered, unless the trademark:
- (i) consists solely of a mark indicating, in a common manner, the common name of the goods or services;
  - (ii) is customarily used in connection with the goods or services;
  - (iii) consists solely of a mark indicating, in a common manner, in the case of goods, the place of origin, place of sale, quality, raw materials, efficacy, intended purpose, shape (including shape of packages; the same shall apply in Article 26(1)(ii) and (iii)), the method or features including time of production or use, quantity, price, or, in the case of services, the location of provision, quality, articles to be used in such provision, efficacy, intended purpose, modes, method or features including time, quantity or price of provision;
  - (iv) consists solely of a mark indicating, in a common manner, a common surname or name of a juridical person;
  - (v) consists solely of a very simple and common mark; or
  - (vi) is in addition to those listed in each of the preceding items, a trademark by which consumers are not able to recognize the goods or services as those pertaining to a business of a particular person.
- (2) Notwithstanding the preceding paragraph, a trademark that falls under any of items (iii) to (v) of the preceding paragraph may be registered if, as a result of the use of the trademark, consumers are able to recognize the goods or services as those pertaining to a business of a particular person.

### Article 4 Unregistrable trademarks

- (1) Notwithstanding the preceding Article, no trademark shall be registered if the trademark:
- (i) is identical with, or similar to, the national flag, the imperial chrysanthemum crest, a decoration, a medal or a foreign national flag;
  - (ii) is identical with, or similar to, the coats of arms or any other State emblems (except national flags of any country of the Union to the Paris Convention, member of the World Trade Organization or Contracting Party to the Trademark Law Treaty) of a country of the Union to the Paris Convention (refers to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958 and at Stockholm on July 14, 1967; the same shall apply hereinafter), a member of the World Trade Organization or a Contracting Party to the Trademark Law Treaty designated by the Minister of Economy, Trade and Industry;
  - (iii) is identical with, or similar to, a mark indicating the United Nations or any other international organization (referred to as "international organization" in (b)) which has been designated by the Minister of Economy, Trade and Industry (excluding those listed in the following);
  - (a) is identical with, or similar to, a trademark which is well known among consumers as that indicating goods or services in connection with the applicant's business, if such a trademark is used in connection with such goods or services or goods or services similar thereto; and
  - (b) is identical with, or similar to, a mark indicating abbreviation of any international organization, which has been used for goods or services that is not likely to mislead as to connection to the international organization;
  - (iv) is identical with, or similar to, the emblems or titles in Article 1 of the Act Concerning Restriction on the Use of Emblems and Titles of the Red Cross and Others (Act No.159 of 1947) or the distinctive emblem in Article 158(1) of the Act Concerning Measures to Protect Japanese Citizens During Armed Attacks and Others (Act No.112 of 2004);
  - (v) is comprised of a mark identical with, or similar to, an official hallmark or sign indicating control or warranty by the national or a local government of Japan, a country of the Union to the Paris Convention, a member of the World Trade Organization or a Contracting Party to the Trademark Law Treaty which has been designated by the Minister of Economy, Trade and Industry, if such a trademark is used in connection with goods or services identical with, or similar to, the goods or services in connection with which the hallmark or sign is used;
  - (vi) is identical with, or similar to, a famous mark indicating the State, a local government, an agency thereof, a non-profit organization undertaking a business for public interest, or a non-profit enterprise undertaking a business for public interest;
  - (vii) is likely to cause damage to public policy;
  - (viii) contains the portrait of another person, or the name, famous pseudonym, professional name or pen name of another person, or famous abbreviation thereof (except those the registration of which has been approved by the person concerned);
  - (ix) is comprised of a mark identical with, or similar to, a prize awarded at an exhibition held by the national or a local government (hereinafter referred to as the "Government, etc.") or by those who are not the Government, etc. that conforms to the standards specified by the Commissioner of the Patent Office, or at an international exhibition held in a foreign country by the Government, etc. of the foreign country or those authorized thereby (except those used by the recipient of such a prize as part of his/her own trademark);
  - (x) is identical with, or similar to, another person's trademark which is well known among consumers as that indicating goods or services in connection with the person's business, if such a trademark is used in connection with such goods or services or goods or services similar thereto;
  - (xi) is identical with, or similar to, another person's registered trademark which has

- been filed prior to the filing date of an application for registration of the said trademark, if such a trademark is used in connection with the designated goods or designated services relating to the said registered trademark (referring to goods or services designated in accordance with Article 6(1) (including cases where it is applied mutatis mutandis pursuant to Article 68(1)); the same shall apply hereinafter), or goods or services similar thereto;
- (xii) is identical with a registered defensive mark of another person (referring to a mark registered as a defensive mark; the same shall apply hereinafter), if such a trademark is used in connection with designated goods or designated services relating to the defensive mark;
  - (xiii) deleted
  - (xiv) is identical with, or similar to, the name of a variety registered in accordance with Article 18(1) of the Plant Variety Protection and Seed Act (Act No. 83 of 1998), if such a trademark is used in connection with seeds and seedlings of the variety or goods or services similar thereto;
  - (xv) is likely to cause confusion in connection with the goods or services pertaining to a business of another person (except those listed in items (x) to (xiv) inclusive);
  - (xvi) is likely to mislead as to the quality of the goods or services;
  - (xvii) is comprised of a mark indicating a place of origin of wines or spirits of Japan which has been designated by the Commissioner of the Patent Office, or a mark indicating a place of origin of wines or spirits of a member of the World Trade Organization which is prohibited by the said member from being used on wines or spirits not originating from the region of the said member, if such a trademark is used in connection with wines or spirits not originating from the region in Japan or of the said member;
  - (xviii) consists solely of features provided by Cabinet Order among features that are naturally provided to goods, etc. (goods, or packages of goods, or services; the same shall apply in Article 26(1)(v)); or
  - (xix) is identical with, or similar to, a trademark which is well known among consumers in Japan or abroad as that indicating goods or services pertaining to a business of another person, if such trademark is used for unfair purposes (referring to the purpose of gaining unfair profits, the purpose of causing damage to the other person, or any other unfair purposes, the same shall apply hereinafter) (except those provided for in each of the preceding items);
- (2) Where the State or a local government, an agency thereof, a non-profit organization undertaking a business for public interest, or a person undertaking a non-profit activity for public interest files an application for trademark registration falling under item (vi) of the preceding paragraph, the provision of the said item shall not apply.
- (3) Items (viii), (x), (xv), (xvii) and (xix) of paragraph (1) shall not apply to a trademark falling under any of the said items which does not fall under the said item at the time of filing of an application for trademark registration.

### Article 5 Application for trademark registration

- (4) Where a person desires to register any trademark provided by Cabinet Order of the Ministry of Economy, Trade and Industry, the application shall state the detailed description of the trademark in the application pursuant to Ordinance of the Ministry of Economy, Trade and Industry, or affix materials provided by Ordinance of the Ministry of Economy, Trade and Industry to the application.
- (5) The statement and materials in the preceding paragraph shall specify the trademark for which a registration is sought.

### Article 6 Single trademark on each application

- (1) An application for trademark registration shall be filed for each trademark and designate one or more goods or services in connection with which the trademark is to be used.
- (2) The designation provided for in the preceding paragraph shall be made in accordance with the class of goods and services provided by Cabinet Order.
- (3) The class of goods and services provided for in the preceding paragraph shall not be perceived as prescribing the scope of similarities of goods or services.

### Article 7 Collective trademarks

- (1) A general incorporated association or other association (except those which do not have juridical personality, and companies), or any other association established pursuant to a special Act including business cooperative (except those which do not have juridical personality), or a foreign juridical person equivalent thereto shall be entitled to obtain a collective trademark registration with respect to a trademark to be used by their members.
- (2) For the purpose of the application of Article 3(1), in the case of the preceding paragraph, "applicant" in the said paragraph shall read "applicant or its members."
- (3) Any person who desires to register a collective trademark pursuant to paragraph (1) shall, at the time of filing of an application for trademark registration pursuant to Article 5(1), submit to the Commissioner of the Patent Office a document certifying that the applicant for trademark registration is a juridical person that falls under paragraph (1).

### Article 7-2 Regional collective trademarks

- (1) Any association established by a special Act, including a business cooperative (those which do not have juridical personality are excluded, and limited to those which are established by a special Act providing, without a just cause, that the association shall not refuse the enrollment of any person who is eligible to become a member or that the association shall not impose on any of its prospective members any condition that is heavier than those imposed on its existing members), a commerce and industry association, chambers of commerce and industry or specified non-profit corporation specified in Article 2(2) of Act on

- (i) a trademark consisting solely of characters indicating, in a common manner, the name of the region and the common name of the goods or services pertaining to the business of the applicant or its members;
- (ii) a trademark consisting solely of characters indicating, in a common manner, the name of the region and the name customarily used as a name indicating the goods or services pertaining to the business of the applicant or its members; or
- (iii) a trademark consisting solely of characters indicating, in a common manner, the name of the region and the common name of the goods or services pertaining to the business of the applicant or its members or the name customarily used as a name indicating thereof, and characters customarily added in indicating, in a common manner, the place of origin of the goods or the location of provision of the services.

(2) The term "name of the region" as used in the preceding paragraph means, even prior to the filing of the said application, the name of the place of origin of the goods, the location of provision of services, or the name of the region which is considered to have a close relationship with the said goods or services to the equivalent extent, for which the trademark pertaining to the said application has been used by the applicant or its members, or abbreviation thereof.

(3) For the purpose of the application of Article 3(1) {limited to the part pertaining to items (i) and (ii)} in the case of paragraph (1), "applicant" in the said paragraph shall read "applicant or its members."

(4) Any person who desires to register a regional collective trademark pursuant to paragraph (1) shall, at the time of filing of an application for trademark registration pursuant to Article 5(1), submit to the Commissioner of the Patent Office a document certifying that the applicant for trademark registration is an Association, etc. and documents necessary to prove that the trademark for which the registration is sought contains the name of a region as provided in paragraph (2).

- (1) Where two or more applications for trademark registration relating to identical or similar trademarks which are to be used in connection with identical or similar goods or services have been filed on different dates, only the applicant who filed the application for trademark registration on the earlier date shall be entitled to register the trademark in question.
- (2) Where two or more applications for trademark registration relating to identical or similar trademarks which are to be used in connection with identical or similar goods or services have been filed on the same date, only one applicant who is to be determined by consultations among the applicants who filed such applications shall be entitled to register the trademark in question.
- (3) Where an application for trademark registration is abandoned, withdrawn or dismissed, or an examiner's decision or a trial decision on an application for trademark registration becomes final and binding, such application shall, for the purposes of the application of the preceding two paragraphs, be deemed never to have been filed.
- (4) In the case of paragraph (2), the Commissioner of the Patent Office shall require the applicants for trademark registration to arrange consultations among the applicants as set forth in the said paragraph and to report the result thereof, designating a reasonable time limit for such purpose.
- (5) Where no agreement is reached in the consultations held pursuant to paragraph (2) or no report is submitted within the designated time limit set forth in the preceding paragraph, only one applicant, selected by a lottery in a fair and just manner conducted by the Commissioner of the Patent Office, shall be entitled to register the trademark in question.

Where an application for trademark registration falls under any of the following items, the examiner shall render a decision to the effect that the application is to be refused:

- (i) the trademark pertaining to an application for trademark registration is not registrable pursuant to the provisions of Articles 3, 4(1), 7-2(1), 8(2), 8(5), 51(2) (including the case of its *mutatis mutandis* application under Article 52-2(2)), 53(2) of this Act or Article 25 of the Patent Act as applied *mutatis mutandis* under 77(3) of this Act;
- (ii) the trademark pertaining to an application for trademark registration is not registrable pursuant to the provisions of a relevant treaty; or
- (iii) the application for trademark registration does not comply with the requirements provided in Article 5(5), or Article 6(1) or 6(2).

(1) Where a trademark pertaining to an application for trademark registration is identical with, or similar to, another person's trademark pertaining to an application for trademark registration filed prior to the filing date of the said application, if the said trademark is used for goods or services identical with, or similar to, the designated goods or designated services pertaining to such other person's trademark, the examiner may notify the applicant for trademark registration of the fact that the said application for trademark registration will fall under Article 15(i) when the said other person's trademark is registered, and provide the applicant with an opportunity to submit a written opinion, designating a

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