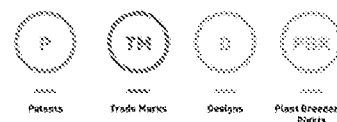




8 August 2022



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International Bureau, WIPO
34, chemin des Colombettes
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1211 Geneva 20,
SWITZERLAND



International registration number: 1672527
Australian Trade mark Number: 2283398
Holder's name: IOTA Stiftung

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 Australian Designation of the International Registration 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 **8 November 2023** 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 8 November 2023. For assistance with our online lodgement services please contact **1300 65 10 10**.

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 **Michael Yoon** and their direct line is **+61 2 6283 2571**. If you have been unable to reach your examiner directly, another examiner who may be able to assist you can be reached on +61 2 6283 2211.

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

Sincerely,

IP Australia

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 44 of the Trade Marks Act 1995.

Issues raised under Section 44 of the Trade Marks Act 1995.

Cited Trade Mark Number(s): 1698523, 2084270

What are the issues with your trade mark?

Trade Mark Numbers: 1698523, 2084270

Your trade mark is substantially identical with, or deceptively similar to, the following trade marks, and is for similar or closely related goods and/or services:

The refusal applies to the following goods/services:

Class 9: All goods in this class.

Class 42: All services in this class.

I have enclosed details of the trade marks mentioned above.

What you can do now

You may respond to this refusal by:

- Making submissions and/or
- Providing evidence of use of the trade mark 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.

Trade mark: 1698523

Trade mark details:

Trade mark:	SHIMMER
Class(es):	9, 38, 41, 42, 45
Status:	Registered
Filed on:	9 June 2015
Property type:	Word
Entered on register:	23 February 2017
Registered from:	9 June 2015

Owner Details

Owner name:	Fallyn LLC a Delaware company
Owner address:	103 Foulk Road Suite 202 Wilmington Delaware 19803 United States of America

Representative details:

Representative name:	King & Wood Mallesons
Representative address:	Governor Phillip Tower 1 Farrer Place NSW 2000 Australia

Goods and services:

Class: 9	Electronic publications, including downloadable electronic publications in the nature of books, magazines and periodicals in the field of fiction and non-fiction and television entertainment; audio books in the field of fiction and non-fiction and television entertainment; cinematic and television programmes recorded on disc, tape and electronic form; apparatus for electronic distributing, electrical apparatus for use in television programme creation; portable electronic devices for receiving, transmitting and reading text, images and sound through wireless internet access; audio books; electronic books; downloadable MP3 files, MP3 recordings, MP4 files, MP4 recordings, digital audio files, digital multimedia files and podcasts featuring music and audio books; electronic publications featuring images, photographs, magazines, newspapers, periodicals, newsletters, and journals all relating to television entertainment; video cameras; DVD players; DVD recorders; remote controllers for DVD recorders and players; remote controllers for video disc recorders and players; remote controllers for recording devices; digital audio players; audio recorders; digital video players;
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portable apparatus for recording, transmission and reproduction of music; portable apparatus for recording, transmission and reproduction of video; other apparatus for recording, transmission and reproduction of video; monitors for television receiver; television receivers (TV sets) and television transmitters; remote controllers for television receiver (TV set); television tuners; remote controllers for radio set; computer, electronic and video games equipment; electronic instructional and teaching apparatus and instruments; television and radio signal transmitters and receivers; game controllers; cinematographic machines and apparatus; set-top boxes; television receivers and transmitters; electronic controllers; electronic controllers to impart sensory feedback, namely, sounds and vibrations that are perceptible to the user; motion sensitive interactive video game remote control units; interactive video game remote control units; parental control software; headphones and earphones; remote controls for portable and handheld electronic devices and computers; software for use in connection with electronic publications in the nature of television entertainment; software tool in the nature of television entertainment exploration guide; computer and electronic publishing software; downloadable audio works, visual works and audiovisual works featuring books, magazines, newspapers, periodicals, newsletters, guides, quizzes, tests, journals, manuals and television entertainment on a variety of topics; parts and fittings for all the aforesaid goods; personal digital assistants, electronic organizers, electronic notepads; magnetic data carriers; telephones, mobile phones, videophones, cameras; radio receivers; radio transmitters; video cameras; computer hardware and software; computer software and firmware, namely, operating system programs, data synchronization programs, in the nature of application development tool programs for personal and handheld computers and mobile digital electronic devices; character recognition software, telephony management software, mobile telephone, smartphone and tablet software; telephone-based information retrieval software and hardware; software for the redirection of messages; computer application software for mobile phones, smart phones and tablet devices featuring mobile phone functionality; computer application software and embedded computer application software for mobile phones, smart phones and tablet devices namely, software that enables photos and videos from cameras found on mobile phones, smart phones and tablet devices to be shared in social media for social networking purposes; computer programs for accessing, browsing and searching online databases; computer hardware and software for providing integrated telephone communication with computerized global information networks; parts and accessories for handheld and mobile digital electronic devices; parts and accessories for mobile telephones, smartphones and tablets in the nature of covers, cases, cases made of leather or imitations of leather, covers made of cloth or textile materials, batteries, rechargeable batteries, chargers, chargers for electric batteries, data cables, power cables, headphones, stereo headphones, in-ear headphones, stereo speakers, audio speakers, audio speakers or home, headsets for wireless communication apparatus; personal stereo speaker apparatus; microphones; car audio apparatus; apparatus for connecting and charging portable and handheld digital electronic devices; user manuals in electronically readable, machine readable or computer readable form for use with, and sold as a unit with, all the aforementioned goods; parts and fittings for all the aforesaid goods; downloadable software for accessing and managing of computer applications over a global computer network: character recognition software; voice recognition software; electronic mail and messaging

software

Telecommunications; telecommunications services, namely, electronic transmission of streamed and downloadable audio and video files via computer and other communications networks, providing on-line electronic bulletin boards for the transmission of messages among computer users in the field of consumer product information, web casting services, delivery of messages by electronic transmission, telecommunication services, namely, electronic transmission of streamed and downloadable audio and video and multimedia content files via computer and other communications networks, audio broadcasting of spoken word, music, concerts and radio programs, wireless broadband communications services, text and numeric digital wireless messaging services, communication via wireless electronic book reader, providing access to an interactive database for transmission of messages among computer users and subscribers concerning music, books, movies, motion pictures, television programs, games, toys, sporting goods, electronics, multimedia presentations, videos and DVDs, and other household and consumer goods, product reviews and purchase information on the internet, electronic transmission of information and data, audio broadcasting and transmission of educational and entertainment digital media, communication services for transmitting, caching, accessing, receiving, downloading, streaming, broadcasting, sharing, displaying, formatting, mirroring and transferring text, images, audio, video and data via telecommunications networks, wireless communications networks, and the internet, providing an internet forum, online chat rooms and online communities for the transmission of messages among computer users, providing access to online directories, databases, current events websites and blogs, and on-line reference materials, providing access to auxiliary devices or electronic devices in the nature of providing telecommunication connectivity services for the transfer of images, messages, audio, visual, audiovisual and multimedia works among e-readers, mobile phones, smartphones, portable electronic devices, portable digital devices, tablets or computers, streaming of audio, visual and audiovisual material via the Internet or other computer or communications network, providing online chat rooms, internet forums and online communities for the transmission of photos, videos, text, data, images and other electronic works, transmission of podcasts, transmission of webcasts, providing an online network that enables users to access and share content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works, providing on-line network services that enable users to share content, photos, videos, text, data, images and other electronic works relating to entertainment, including, movies, television, audiovisual works, music, audio works, books, theatre, literary works, sporting events, recreational activities, leisure activities, tournaments, art, dance, musicals, exhibitions, sports instruction, clubs, radio, comedy, contests, visual works, games, gaming, festivals, museums, parks, cultural events, concerts, publishing, animation, current events, fashion, multimedia presentations, history, language, liberal arts, math, business, science, technology, hobbies, culture, sports, arts, psychology, and philosophy, providing a web site that gives computer users the ability to transmit, cache, receive, download, stream, broadcast, display, format, transfer and share content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works, providing a web site that gives computer users the ability to transmit, cache, receive, download, stream, broadcast, display, format, transfer and share photos, videos, text, data, images and other

electronic works, providing on-line portals for entertainment in the field of movies, television, audiovisual works, music, audio works, books, theatre, literary works, sporting events, recreational activities, leisure activities, tournaments, art, dance, musicals, exhibitions, sports instruction, clubs, radio, comedy, contests, visual works, games, gaming, festivals, museums, parks, cultural events, concerts, publishing, animation, current events, fashion shows, and multimedia presentations, telecommunications services, namely, providing online electronic bulletin boards for the transmission of messages among computer users concerning entertainment, providing interactive chat rooms for transmission of messages among computer users and subscribers concerning a wide variety of topics, electronic transmission of entertainment reviews and information through computer and communications networks, providing electronic communication of blogs; providing online chat rooms and electronic bulletin boards, providing online forums for communication in the field of electronic games, providing video on-demand transmission of computer games, providing users with telecommunication access time to electronic communications networks with means of identifying, locating, grouping, distributing, and managing data and links to third-party computer servers, computer processors and computer users, press agencies, providing directories for telephone numbers, business addresses, electronic mail addresses, network home page addresses, addresses and telephone number of people, places, and organizations, providing an online interactive electronic bulletin board in the field of comic book publishing, entertainment and the entertainment industry, information access, and remote data management for wireless delivery of content to handheld computers, laptops and mobile electronic devices; provision of information, consultancy and advisory services relating to the aforesaid; electronic transmission of voice, data and images through a global communications network

Class: 41

Education, providing of training, entertainment, sporting and cultural activities; entertainment services in the nature of a television series; entertainment services, namely an ongoing series provided through television, cable, the Internet and wireless communication networks; entertainment services, providing images from the Internet, provision of information relating to entertainment, publication of periodicals, providing online electronic publications (not downloadable), publication of electronic books, journals, publication of material on magnetic or optical data media, publication of music online, rental of videos, audio recordings and games including game cartridges for use with electronic games apparatus, distribution of radio and television entertainment, games, films, music, interactive advertising and/or services and video recordings, hire, leasing and rental of television, television time shift, or radio apparatus, games, films, interactive television programmes and/or services, sound or video recordings, distribution or rental of motion pictures, rental of apparatus for receiving cinematographic films, sound or video, provision of information in the field of entertainment online, organisation of competitions, all the aforesaid services also provided online from a computer database, the Internet or by an Internet-enabled phone, information relating to entertainment or education provided on-line from a computer database or a global computer network relating to movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, videos and DVDs, high density optical discs and other audiovisual works, providing on-line electronic publications (not downloadable) relating to movies, motion pictures, documentaries, films, television programs, graphics, animation

and multimedia presentations, videos, DVDs, high density optical discs, and other audiovisual works, entertainment services, namely movies, motion pictures, documentaries, films, television programs, graphics, animation, and multimedia presentations, and other audiovisual works viewable over computer networks and global communication networks, providing information concerning movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, videos, DVDs, high density optical discs and other audiovisual works over computer networks and global communication networks, entertainment information services, namely providing opportunities for exchange of information and conversation regarding a wide variety of topics by means of live events and mailed information, information provided on-line from a computer database or from a global computer network relating to movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, videos, and DVDs, high density optical discs and other audiovisual works, providing databases featuring general news and information regarding movies, motion pictures, documentaries, films, television programs, graphics, animation and multimedia presentations, videos and DVDs, high density optical discs and other audiovisual works, rental services, namely, rental of cinema films, documentary films, motion pictures, films, sound recordings, video games, multimedia presentations, electronic books and publications, video recordings, prerecorded videotapes, digital video disks, musical recordings, multimedia recordings, and computer games, rental services, namely, rental of cinema films, documentary films, motion pictures, films, sound recordings, video games, multimedia presentations, electronic books and publications, video recordings, pre-recorded videotapes, digital video disks, musical recordings, multimedia recordings, and computer games via global communications networks, providing information, reviews and personalized recommendations in the field of entertainment, providing information, reviews and personalized recommendations in the field of entertainment via global communications networks, providing information relating to contests and games, providing recognition and incentives by the way of awards and contests to demonstrate excellence in the field of entertainment, providing online non-downloadable comic books and graphic novels, providing a website that allows users to review screenplays, movies, television shows, graphic images, storyboards and entertainment properties, providing a website featuring blogs and non-downloadable publications in the field of entertainment, comics, screenplays, books, short stories, providing a website featuring information, contests, text, video, audio, publications all related to entertainment, providing news and information in the field of entertainment relating to information, contests, text, video, audio, publications all related to entertainment, providing reviews for television, movies, and entertainment, providing a website featuring non-downloadable movies and videos, consultancy in the field of entertainment and the entertainment industry, providing information on entertainment, movies and television shows via social networks, providing images from the Internet, provision of information relating to entertainment, publication of periodicals, providing online electronic Publications (not downloadable), publication of electronic books, journals, publication of material on magnetic or optical data media, publication of music online, rental of videos, audio recordings and games including game cartridges for use with electronic games apparatus, distribution of radio and television entertainment, games, films, music, interactive advertising and/or services and video recordings,

hire, leasing and rental of television, television time shift, or radio apparatus, games, films, interactive television programmes and/or services, sound or video recordings, distribution or rental of motion pictures, rental of apparatus for receiving cinematographic films, sound or video, provision of information in the field of entertainment online, organisation of competitions, all the aforesaid services also provided online from a computer database, the Internet or by an Internet-enabled phone, information relating to entertainment or education provided online from a computer database or a global computer network relating to movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos and DVDs, and other audiovisual works, providing on-line electronic publications (not downloadable) relating to movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos and DVDs, and other audiovisual works, entertainment services, namely movies, motion pictures, documentaries, films, television programs, graphics, animational, and multimedia presentations, and other audiovisual works viewable over computer networks and global communication networks, providing information concerning movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos and DVDs, and other audiovisual works over computer networks and global communication networks, entertainment information services, namely providing opportunities for exchange of information and conversation regarding a wide variety of topics by means of live events and mailed information, information provided on-line from a computer database or from a global computer network relating to movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos, and DVDs, and other audiovisual works, providing databases featuring general news and information regarding movies, motion pictures, documentaries, films, television programs, graphics, animational and multimedia presentations, videos and DVDs, and other audiovisual works, rental services, namely, rental of cinema films, documentary films, motion pictures, films, sound recordings, video games, multimedia presentations, electronic books and publications, video recordings, pre-recorded videotapes, digital video disks, musical recordings, multimedia recordings, and computer games, rental services, namely, rental of cinema films, documentary films, motion pictures, films, sound recordings, video games, multimedia presentations, electronic books and publications, video recordings, pre-recorded videotapes, digital video disks, musical recordings, multimedia recordings, and computer games via global communications networks, providing information, reviews and personalized recommendations in the field of entertainment, providing information, reviews and personalized recommendations in the field of entertainment via global communications networks, providing information and commentary in the field of entertainment or education via a global computer network, namely information in the field of music, books, movies, motion pictures, television programs, games, toys, sporting goods, electronics, multimedia presentations, videos and DVDs, and other household and consumer goods, entertainment services, namely, providing online prerecorded audio programs in the field of music, books, movies, motion pictures, television programs, games, toys, sporting goods, electronics, multimedia presentations, videos and DVDs, and other household and consumer goods, entertainment services, namely, providing on-line reviews, ratings and recommendations of music, books, movies, motion pictures, television programs, games, toys, sporting goods, electronics, multimedia

presentations, videos and DVDs, and other household and consumer goods, entertainment services, namely, providing portions of prerecorded audio, visual and audiovisual works via the internet, publishing of books, magazines, periodicals, literary works, visual works, audio works, and audiovisual works providing non-downloadable pre-recorded audio, visual and audiovisual works via wireless networks, providing on-line computer games and on-line interactive stories, providing online newsletters and blogs featuring entertainment, movies, television, audiovisual works, music, audio works, books, theatre, literary works, sporting events, recreational activities, leisure activities, tournaments, art, dance, musicals, exhibitions, sports instruction, clubs, radio, comedy, contests, visual works, games, gaming, festivals, museums, parks, cultural events, concerts, publishing, animation, current events, fashion shows, and multimedia presentations, publication of excerpts from books, periodicals, and literary works, and providing virtual environments in which users can interact for recreational, leisure, or entertainment purposes, providing information, news, articles and commentary in the field of entertainment, including, movies, television, audiovisual works, music, audio works, books, theatre, literary works, sporting events, recreational activities, leisure activities, tournaments, art, dance, musicals, exhibitions, sports instruction, clubs, radio, comedy, contests, visual works, games, gaming, festivals, museums, parks, cultural events, concerts, publishing, animation, current events, fashion shows, and multimedia presentations, providing information, news, articles and commentary in the field of education and educational institutions, education services in the nature of classroom instruction and on-line distance learning on topics of current events, education, history, language, liberal arts, math, business, science, hobbies, technology, culture, sports, arts, psychology, and philosophy, interactive educational services in the nature of computer-based and computer-assisted instruction on topics of current events, education, history, language, liberal arts, literature, math, business, science, hobbies, technology, culture, sports, arts, psychology, and philosophy, educational and entertainment services in the nature of podcasts, webcasts, and continuing programs featuring news and commentary in the field of movies, television programs, audiovisual works, music, audio works, books, theatre, literary works, sporting events, recreational activities, leisure activities, tournaments, art, dance, musicals, exhibitions, sports instruction, clubs, radio, comedy, contests, visual works, games, gaming, festivals, museums, parks, cultural events, concerts, publishing, animation, current events, fashion, and multimedia presentations accessible via the internet or other computer on communications networks, providing prerecorded audio, audiovisual, and multimedia works featuring entertainment, movies, television, audiovisual works, music, audio works, books, theatre, literary works, sporting events, recreational activities, leisure activities, tournaments, art, dance, musicals, exhibitions, sports instruction, clubs, radio, comedy, contests, visual works, games, gaming, festivals, museums, parks, cultural events, concerts, publishing, animation, current events, fashion shows, and multimedia presentations via the internet or other computer or communications networks, film production, movie studio, production of radio and television program, production of shows, radio entertainment, recording studio services, theatre productions, video editing, video film production, scriptwriting services, movie studio, theatre production, videotape editing, organization of competitions, radio and television programmers, club services (entertainment) dubbing, editing of films, music composition services, recording studio services, sound recording

Class: 42

services, entertainment services, namely, providing online computer games, entertainment services, namely, providing online electronic games, entertainment services, namely, providing online video games, electronic games services provided by means of the internet, providing a computer game for use network-wide by network users, providing information on-line relating to computer games and computer enhancements for games, providing a searchable online entertainment database featuring online non-downloadable digital games, movies, television shows, music and other digital text, audio and video files featuring books, magazines, news and information, providing a website featuring entertainment information and product reviews in the field of audio, video and audiovisual content, namely movies, TV shows, videos and music, providing news and information in the field of entertainment relating to product reviews and recommendations, all regarding audio, video and audiovisual content in the nature of movies, TV shows, videos and music, providing a website featuring non-downloadable audio, video and audiovisual content in the nature of recordings featuring movies, TV shows, videos and music, providing a searchable database featuring audio, video and audiovisual content available through the Internet, telecommunications networks and wireless telecommunications networks in the field of entertainment, providing entertainment information regarding audio, video and audiovisual content via social networks, consultancy in the field of entertainment and the entertainment industry, providing information on entertainment, movies and television shows via social networks, provision of information, consultancy and advisory services relating to the aforesaid Scientific and technological services and research and design relating thereto, industrial analysis and research services, design and development of computer hardware and software, computer services, namely remote hosting of operating systems and computer applications, hosting operating systems and computer applications through the Internet, providing a virtual computing environment accessible via the Internet, rental of computing and data storage facilities of variable capacity, providing software, non-downloadable, accessible over a global computer network, for managing computer applications, constructing an Internet platform for electronic commerce, designing, managing and monitoring on-line forums for discussion, creating electronically stored web pages for on-line services and the Internet, data warehousing, elaboration and maintenance of web sites for third parties, managing web sites for others, rental of web servers, web site maintenance, creation and hosting services, application service provider, namely, providing, hosting, managing, developing and maintaining applications, software, websites and databases in the fields of e-commerce, on-line payments, order queuing, website design, data storage, shared computing capacity scaling, messaging services and calculation of website ranking based on user traffic, computer programming, consultancy services relating to multimedia applications management, presentation and control, computer programming, hardware, software and computer system design, specification and selection and electronic communication, editing, updating, maintenance and support services for hardware, software and computer systems, computer services relating to multimedia applications management, presentation and control, research, database management, facilities management and outsourcing, computer services, namely hosting a computerized on line search and ordering service featuring the wholesale and retail distribution of music, books, movies, motion pictures, television programs, games, toys, sporting goods, electronics, multimedia presentations, videos and DVDs,

and other household and consumer goods, hosting an online service for analysing personal preferences and generating recommendations, computer services, namely hosting an online database featuring a wide range of general interest information via the Internet, computer services, namely, providing search engines for obtaining general interest information, hosting an interactive database for transmission of messages among computer users and subscribers concerning music, books, movies, motion pictures, television programs, games, toys, sporting goods, electronics, multimedia presentations, videos and DVDs, and other household and consumer goods, product reviews and purchase information on the internet, providing on-line non-downloadable internet browser software, providing non-downloadable mobile communications device software for enhancing mobile access to the internet via computers, mobile computers, and mobile communications devices, technical support, namely, troubleshooting of computer hardware and software problems and mobile computer and mobile communications device hardware and software problems, computer hardware and software consultation and design, computer software design for others, mobile computer and mobile communications device hardware and software consultation and design, mobile computer and mobile communications device software design for others, hosting of third party content, photos, videos, text, data, images, web sites and other electronic works, providing search engines, providing search platforms to allow users to request and receive photos, videos, text, data, images and electronic works, interactive hosting services which allow users to publish and share their own photos, videos, text, data, images online, computer services, namely, creating virtual communities for users to participate in discussions, obtain feedback, form virtual communities, and engage in social networking, maintenance and updating of software relating to computer, Internet and password security and prevention of computer, Internet and password risks, providing information in the field of astronomy, weather, the environment, interior design, technology, computers, software, computer peripherals, computer hardware, geology, engineering, architecture, medical research, and product research and testing via the internet or other computer or communications networks, computer software installation and maintenance, providing a website featuring technical information relating to computer software and hardware, computer hardware, software, application, and network consulting services, computer consulting, computer programming, document data transfer from one computer format to another, hosting of digital content on global computer networks, wireless networks, and electronic communications networks, providing search platforms to allow users to request and receive, content, text, visual works, audio works, audiovisual works, literary works, data, files, documents and electronic works, providing temporary use of non-downloadable computer software and online facilities to enable users to access and download computer software, providing temporary use of online non-downloadable computer software that generates customized recommendations of software applications based on user preferences, monitoring of computerized data and computer systems and networks for security purposes, hosting, scaling and maintaining on-line databases for others, cloud computing featuring software for use in database management, cloud hosting of electronic databases, application service provider (ASP) featuring software for use in database management, platform as a service (PAAS) featuring computer software platforms for use in database management, software as a service (SAAS) services featuring software for

use in database management, computer services, namely, providing database servers of variable capacity to others, providing a website featuring non-downloadable software for database management, computer services, namely remote hosting of operating systems and computer applications, providing hosted operating systems and computer applications through the internet, rental of computing and data storage facilities of variable capacity, providing, developing and designing software, non-downloadable, accessible over a global computer network, for managing computer applications, constructing an internet platform for electronic commerce, designing, managing and monitoring online forums for discussion, creating electronically stored web pages for online services and the internet, data warehousing, elaboration and maintenance of web sites for third parties, managing web sites for others, rental of web servers, web site maintenance, creation and hosting services, application service provider, namely, providing, hosting, managing, developing and maintaining applications, software, websites and databases in the fields of ecommerce, online payments, order queuing, website design, data storage, shared computing capacity scaling, massaging services and calculation of website ranking based on user traffic, hosting a website that gives users the ability to review various print, photographic, graphic image, and audio and video content and utilize a custom template to provide input, likes, dislikes, edits, changes, modifications, opinions, suggestions, and comments and engage in social, business and community networking, computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking all in the field of entertainment and the entertainment industry, providing temporary use of on-line non-downloadable software and applications for accessing streaming audio and video files, games, social networks, text files and multimedia files, design and development of computer game software, video and computer game design and development services, providing temporary use of on-line non-downloadable software development tools for the design and development of electronic games, providing temporary use of on-line non-downloadable software and applications for accessing streaming audio and video files, games, social networks, text files and multimedia files, video game development services, technical support services, namely, troubleshooting of computer game software problems, application service provider (ASP) featuring software for use in relation to visual images, namely, software for digital animation and special effects of images, video games, and motion pictures, application service provider (ASP) featuring application programming interface (API) software including such software for the streaming, storage, and sharing of video games, content, data and information, providing non-downloadable software applications, providing temporary use of on-line non-downloadable cloud computing software for use in electronic storage of data, computer software development in the field of mobile applications, application service provider, namely, hosting, managing, developing, and maintaining applications, software, and web sites, in the fields of personal productivity, wireless communication, mobile, providing technical support services regarding the usage of communications equipment, production of video and computer game software, creating an on-line community for registered users to participate in discussions, to share content, photos, videos, text, data, images and other electronic works, and engage in social networking, provision of information, consultancy and advisory services relating to the aforesaid

Class: 45

Online social networking services; online social networking services in the field of entertainment; social networking services provided via a website and communications networks; providing on-line computer databases and on-line searchable databases in the field of social networking; providing a social networking website for entertainment purposes; licensing of intellectual property; consulting in the field of intellectual property licensing; fictional character licensing; legal services; security services for the protection of property and individuals; personal and social services rendered by others to meet the needs of individuals; social networking services; providing a website on the internet for the purpose of social networking

Convention details

Convention date:	12 December 2014
Trade mark number:	013575816
Country:	European Union Intellectual Property Office (EUIPO)

Trade mark: 2084270

Trade mark details:

International registration number:	1563582
Trade mark:	SHIMMR
Class(es):	9, 35, 41, 42
Status:	Registered
Filed on:	27 April 2020
Property type:	Word
Entered on register:	07 December 2020
Registered from:	27 April 2020

Owner Details

Owner name:	SCIMIAN PTY LTD
Owner address:	PO BOX 586 NORTH CARLTON VIC 3054 Australia

Representative details:

Representative name:	Media Arts Lawyers
Representative address:	633 Queensberry St VIC 3051 Australia

Goods and services:

Class: 9	Advertising display apparatus (electric or luminous) for use in displaying advertisements within lightshow spectacles, shown at sporting or entertainment events; Computer software, computer software (programs) and computer software applications (downloadable) for using mobile electronic devices to generate and display lightshow spectacles, derived from video files, at sporting and entertainment events; Instruments for the projection of graphic images, being instruments for projecting lightshow spectacles at sporting and entertainment events; Visual display apparatus and Visual display screens for use in lightshow spectacles displayed at sporting and entertainment events; Illuminated advertisements featured within lightshow spectacles displayed at sporting and entertainment events; Video editing apparatus for use in creating and editing video files for use in a mobile software application to generate lightshows for display at sporting and entertainment events
Class: 35	Advertising services being the production and display of advertisements at lightshow entertainment events and within lightshow spectacles displayed at sporting and entertainment events, and the rental of

Class: 41

advertising space within such displays; Arranging exhibitions for advertising purposes, namely, the display of advertisements within lightshow spectacles or at lightshow entertainment events
Multimedia production, other than for advertising purposes; Production of audio and/or video recordings, other than advertising; Production of sound recordings, other than advertising; Video editing; Video editing services for events; Digital imaging services (editing of images); Production of entertainment videos; all of the foregoing services only being in relation to producing and editing lightshow spectacles for display at sporting and entertainment events; Organisation of promotions (entertainment events); Organisation of promotions (sporting events); Advisory services relating to entertainment; Arranging of entertainment; Event management services in relation to the organisation of educational, entertainment, sporting or cultural events; Organisation of competitions (education or entertainment); Production of live entertainment; all of the foregoing services only being in relation to lightshow spectacles displayed at sporting and entertainment events; rental of entertainment apparatus; Rental of electrical apparatus for the recording of video signals; Rental of electrical apparatus for the reproduction of video signals; Video equipment hire; Video rental services; Hire of sound recording apparatus; Hire of sound reproducing apparatus; all of the foregoing only relating to the hire and rental of equipment for use in displaying lightshow spectacles at sporting and entertainment events; Sound engineering services for events and sound recording services relating only to the display of lightshow spectacles at sporting and entertainment events

Class: 42

Advisory services relating to computer software; Computer software design; Computer software development; Computer software engineering; Consultancy in the design and development of computer software; Development of computer software application solutions; Installation and maintenance of computer software; Rental of computer software; Upgrading of computer software; Writing of computer software; Platform as a Service (PaaS); Hosting of software as a service (SaaS); Software as a service (SaaS); all the foregoing services only being in relation to software that enables the creation and generation of lightshows by electronic mobile devices for display at sporting and entertainment events; Transfer of images between different media, to use images in video files within lightshows that are generated through mobile electronic devices, for display at sporting and entertainment events; Graphic design of promotional materials; Graphic design of promotional matter; Visual design; all the foregoing design services only being in relation to designing the content of lightshow displays to be shown in sporting and entertainment venues

Other trade mark information:

Other trade mark information: Provisions of paragraph 44(3)(b) and/or Reg 4.15A(3)(b) applied.

EVIDENCE OF HONEST CONCURRENT USE, PRIOR USE or OTHER CIRCUMSTANCES

Subsections 44(3) and 44(4) *Trade Marks Act 1995*

Introduction

Your International Registration Designating Australia (IRDA) cannot be accepted for protection because it conflicts with another trade mark, or trade marks.

The refusal of your IRDA under section 44 may be overcome if you can show **one** of the following:

- **honest concurrent use**; or
- **prior use**; or
- **other circumstances**

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.

The **declaration** provides the information I need to determine whether the use of your trade mark in Australia is sufficient to accept your trade mark for protection. The declaration should clearly set out the following:

- the number of your IRDA;
- the name of the holder;
- any submissions and evidence in support of your IRDA

The **declaration** should be made out by:

- you; or
- if the holder is a company, a principal officer or other authorised employee of the company (for example a director); or
- someone else who is authorised by you to make the declaration (for example, a lawyer)

Honest Concurrent Use

Evidence required – The following information should be included in the **declaration**:

- 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);
- when the trade mark was chosen (this must be **before your filing date**);

- why the trade mark was chosen;
- who has used the trade mark:
 - you or your company;
 - someone you or your company has authorised or allowed to use the trade mark; or
 - a predecessor in title (the person from whom you acquired the trade mark);
- whether you knew of the earlier filed trade mark;
- the goods and/or services for which the trade mark has been used in Australia;
- 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);
- whether this use has been continuous since then (or, if it has not been used continuously, when and for how long it has been used);
- where the trade mark has been used in Australia (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 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).

Prior Use

Evidence required – The following information should be included in the **declaration**:

- 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);
- 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;
- how the trade mark was first used. You should provide examples of how the trade mark was applied and advertised or, where these are no longer available, explain exactly what actions you claim amount to “use”. An unsupported statement such as “I first used this trade mark in 1990” is not sufficient, and you should go on to explain just what actions you rely on as being use.
- whether the trade mark has been used continuously in Australia since its first use. The declaration should provide factual information, e.g. sales value by year, that will allow an examiner to be satisfied that use has been continuous;
- whether the trade mark was still being used when you lodged your IRDA;
- the goods and/or services for which the trade mark has been used in Australia.

Other Circumstances

There may be other circumstances that are relevant. A common example would be if you were using your trade mark with the permission of the owner of the earlier filed trade mark and/or that owner is prepared to consent to the protection of your trade mark.

You should be aware

If your own IRDA is accepted under one of the above provisions, the trade mark owner of any earlier registration or application may oppose protection of your trade mark. You will then be required to defend the opposition. This will involve serving evidence. If you are not successful, costs may be awarded against you.

You should also be aware that if you are infringing a registered trade mark you run a serious risk of legal action being taken against you by the owner of that registration.

Confidential Information

IP Australia will accept your declaration in confidence. IP Australia will not accept an accompanying letter in confidence.

Please do not put any information which you consider to be confidential into an accompanying letter.

Release of Information

Other people may request access to information you have provided to the Trade Marks Office. Please take into account that **letters** will become available for public inspection (API). **Declarations** may be API. Copies of declarations may also be requested under the *Freedom of Information Act 1982* (FOI Act). If this occurs, IP Australia may seek your comments prior to release of declarations.

Legal Advice

A trade mark attorney may be able to assist you with advice and outline the likely costs, risks and benefits of the trade mark options available for your business.

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.