



MADRID PROTOCOL

Total Provisional Refusal of Protection

(Rule 17(1) of the Regulations under the Protocol)

I. Name of the Office:

Canadian Intellectual Property Office

II. International registration number:

1636409

III. Name of the holder:

Varsagodis LLC

IV. Information concerning the type of provisional refusal:

Total provisional refusal based on an ex officio examination.

V. Information concerning the scope of the provisional refusal:

The provisional refusal affects all the goods and services.

VI. Grounds for refusal (where applicable, see item VII):

This examiner's report concerns the above identified Protocol application. To avoid abandonment proceedings, a proper response must be received by this office by November 1, 2023. All correspondence respecting this Protocol application must indicate the file number.

This Protocol application has been examined under the provisions of the Trademarks Act and Trademarks Regulations.

In view of paragraph 37(1)(c) of the Trademarks Act, the applicant does not appear to be entitled to registration. Specifically, the entitlement date of November 29, 2021 of the subject Protocol application is later than the entitlement date of June 12, 2019 of co-pending and confusing applications nos. 1969753 and 1970219, particulars of which are attached.

The objections apply to all the goods in the subject Protocol application.

In assessing whether there is a reasonable likelihood of confusion between the trademark and the cited trademarks, the Registrar must have regard to the provisions of subsection 6(2) of the Trademarks Act, which provides that:

The use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

The Registrar must consider all the surrounding circumstances including those stated in subsection 6(5) of the Act

- (a) the inherent distinctiveness of the trademarks or tradenames and the extent to which they have become known;
- (b) the length of time the trademarks or tradenames have been in use;
- (c) the nature of the goods, services or business;
- (d) the nature of the trade;
- (e) the degree of resemblance between the trademarks or tradenames in appearance or sound or in the ideas suggested by them.

Confusion is tested in terms of the average consumer's first impression of the one trademark and imperfect recollection of the other trademark(s), and not by a side-by-side scrutiny. The "average consumer" is a likely buyer of the associated goods or services who has an average education in English and/or French.

Any comments submitted in writing will be considered.

If the applicant has any specific questions in respect of this Office action, please contact the assigned examiner. Please note that for general inquiries, including assistance with filing of the revised Protocol application, queries about the status of an application or receipt of correspondence, you may contact our Client Service Centre toll free at 1-866-997-1936.

Yours truly,

Michael Weybrecht
Examination Section
819-665-2908
fax: 819-953-2476

VII. Information relating to an earlier mark:

1970219
1969753

-
- (i) Filing date and number, and, if any, priority date:
2019-06-12, **1970219**
 - (ii) Registration date and number (if available):
Not applicable

(iii) Name and address of the owner:

MJardin Group, Inc.
1 Toronto Street, Suite 801
Toronto
CANADA

(iv) Reproduction of the mark:

FLINT & EMBERS

(v) List of the relevant goods and services (this list may be in the language of the earlier application or registration):

(Class 1) Growing media for plants; nutrients for plants; plant food; planting soil.

(Class 3) Cosmetics; skin care preparations; skin creams and lotions; skin soap; massage oils; lip balm; bath and shower oils, gels and cleansers; bath bombs; body sprays; essential oils for personal use; fragrances and perfumery; hair care preparations; hair styling preparations; scalp treatment preparations; sunscreen preparations; toothpaste; breath freshening sprays; all-purpose cleaning preparations.

(Class 5) Topical creams, lotions, skin salves, balms, oils, sprays, and transdermal patches for the relief of pain, burns, itching and for the treatment of skin conditions, namely dermatitis, eczema, psoriasis, sunburn, rashes and sores on the skin; eye drops; medicinal, herbal, botanical and nutritional preparations and supplements in the form of oils, lozenges and sprays for the treatment and relief of nausea, muscle spasms, muscle tension, headaches, anxiety, stress, fatigue, pain and vomiting.

(Class 30) Bakery items namely brownies, cupcakes, cookies and muffins; mixes for namely brownies, cupcakes, cookies and muffins, candy, chocolate and gum; coffee and tea.

(Class 31) Seedlings; agriculture seeds.

(Class 32) Beverages, namely soda pop, fruit drinks, fruit juice, energy drinks, smoothies, shakes; beverage mixes in liquid and powder form for making soda pop, fruit drinks, fruit juice, energy drinks, smoothies, shakes.

(Class 34) Smokers articles, namely pipes, water pipes, vapes, electronic cigarettes, rolling papers, ashtrays, tobacco, electronic cigarette liquid, re-fills for vapes and electronic cigarettes, cigarette cases; pouches and containers for tobacco, tobacco grinders, lighters.

(Class 35) Retail and online store featuring smokers articles, namely pipes, water pipes, vapes, electronic cigarettes, rolling papers, ashtrays, tobacco, tobacco substitutes, electronic cigarette liquid, re-fills for vapes and electronic cigarettes, cigarette cases, pouches and containers for tobacco, tobacco grinders, lighters, air freshening sprays and incense; retail and online store featuring dietary supplements, clothing, skin care preparations, body and beauty care cosmetics, room scents, air freshening sprays and incense; retail and online store featuring topical homeopathic preparations and homeopathic dietary supplements.

(Class 42) Scientific research and development in the field of plant cultivation and propagation.

(i) Filing date and number, and, if any, priority date:

2019-06-12, **1969753**

(ii) Registration date and number (if available):

Not applicable

(iii) Name and address of the owner:

MJardin Group, Inc.
1 Toronto Street, Suite 801
Toronto
CANADA

(iv) Reproduction of the mark:

FLINT & EMBERS

(v) List of the relevant goods and services (this list may be in the language of the earlier application or registration):

(Class 1) Growing media for plants; nutrients for plants; plant food; planting soil.

(Class 3) Cannabis oil and extracts for cosmetic purposes; cannabis oils and extracts for skin care preparations; cannabis oils and extracts for skin creams, lotions and oils; cosmetics; skin care preparations; skin creams and lotions; skin soap; massage oils; cannabis oils and extracts for lip balm; lip balm; cannabis oils and extracts for bath and shower oils, gels and cleansers; bath and shower oils, gels and cleansers; cannabis oils and extracts for body sprays and essential oils for personal use; cannabis oils and extracts for fragrances and perfumery; body sprays; essential oils for personal use; fragrances and perfumery; cannabis oils and extracts for hair care preparations, hair styling preparations and for scalp treatment preparations; hair care preparations; hair styling preparations; scalp treatment preparations; cannabis oils and extracts for sunscreen preparations; sunscreen preparations; cannabis oils and extracts for toothpaste and for breath freshening sprays; toothpaste; breath freshening sprays; cannabis oils and extracts for all-purpose cleaning preparations; all-purpose cleaning preparations.

(Class 4) Candles, incense.

(Class 5) Skin care preparations for cleansing and moisturizing for medical use containing derivatives of cannabis; dietary and nutritional supplements for weight loss and to promote sleep and relaxation; topical creams, lotions, skin sauves, balms, oils, sprays and transdermal patches for the relief of pain, burns, itching and for the treatment of skin conditions, namely dermatitis, eczema, psoriasis, sunburn, rashes and sores on the skin; eye drops; medicinal, herbal, botanical and nutritional preparations and supplements in the form of wax, oils, tinctures, lozenges, capsules, gummies, pills, tablets, suppositories and sprays for the treatment and relief of nausea, muscle spasms, warts, moles, migraine headaches, asthma, loss of appetite, anxiety, stress, fatigue, pain, vomiting, muscle tension, epilepsy, glaucoma, multiple sclerosis, arthritis, Parkinson's disease, cancer, gastrointestinal illness, bi-polar disorder, depression, insomnia, autoimmune disorders, gastrointestinal disorders, muscular disorders and to enhance mood and improve general state of well-being; cannabis based supplements in the form of wax, oils, tinctures, lozenges, capsules, gummies, pills, tablets, suppositories, inhalers and sprays for the treatment and relief of nausea, muscle spasms, warts, moles, migraine headaches, asthma, loss of appetite, anxiety, stress, fatigue, pain, vomiting, muscle tension, epilepsy, glaucoma, multiple sclerosis, for the treatment of skin conditions, namely dermatitis, eczema, psoriasis, sunburn, rashes and sores on the skin, arthritis, Parkinson's disease, cancer, gastrointestinal illness, bi-polar disorder, depression, insomnia, autoimmune disorders, gastrointestinal disorders, muscular disorders and to enhance mood and improve general state of well-being.

(Class 16) Printed publications, namely brochures on the benefits of medical cannabis and marijuana and research related to medical cannabis and marijuana.

(Class 29) Cannabis oil for food.

(Class 30) Food products containing cannabis namely brownies, cupcakes, cookies, bread, pancakes, muffins, candy, chocolate and gum; coffee and tea; coffee and tea containing cannabis; mixes containing cannabis for brownies, cupcakes, cookies, bread, pancakes and

muffins; beverage mixes in liquid and powder form for making tea, coffee.

(Class 31) Agricultural seeds; cannabis seeds; hemp seeds; fresh herbs; herbs for food purposes; cannabis plants; seedlings; fresh cannabis; fresh hemp.

(Class 32) Beverages, namely soda pop, fruit drinks, fruit juice, energy drinks, smoothies, shakes; cannabis based beverages, namely soda pop, fruit drinks, fruit juice, energy drinks, smoothies, shakes; beverage mixes in liquid and powder form for making soda pop, fruit drinks, fruit juice, energy drinks, smoothies, shakes; beer; beer containing cannabis.

(Class 33) Wine, rum, vodka, gin, liqueurs and sherry; wine, rum, vodka, gin, liqueurs and sherry containing cannabis; alcoholic cocktail mixes; alcoholic cocktail mixes containing cannabis; cider; cider containing cannabis.

(Class 34) Dried cannabis; dried hemp; pre-rolled cannabis cigarettes; cannabis and hemp oils for vaping, electronic cigarettes and for use as incense; smokers articles, namely pipes, water pipes, vapes, electronic cigarettes, rolling papers, bongs, ashtrays, tobacco, dried cannabis, herbs for smoking, electronic cigarette liquid, re-fills for vapes and electronic cigarettes, including re-fills containing cannabis and cannabis extracts, cigarette cases; pouches and containers for tobacco, tobacco and herb grinders, lighters; herbs for smoking.

(Class 35) Consulting services in the field of market research and analysis and the sale of cannabis; consulting services for others in the operation of a cannabis production facility and operation of retail stores featuring cannabis, skincare products, food and beverages; retail and wholes sale of cannabis and cannabis extracts, including for medical purposes; distributorship in the field of cannabis and cannabis extracts, including for medical purposes; distributorship in the field of skin care products, nutritional supplements, food and beverages and alcoholic beverages; distributorship in the field of cannabis based food products, cannabis based beverages, cannabis based cosmetics, personal care and beauty products; distributorship in the field of herbal, botanical and nutritional supplements; operation of a retail cannabis store; operation of a retail store featuring clothes, food, beverages, nutritional supplements and skin care products; retail and whole sale of smokers articles, namely pipes, water pipes, vapes, electronic cigarettes, rolling papers, bongs, ashtrays, tobacco, dried cannabis, herbs for smoking, electronic cigarette liquid, re-fills for vapes and electronic cigarettes, including re-fills containing cannabis and cannabis extracts, cigarette cases, pouches and containers for tobacco, dried herbs and cannabis, tobacco and herb grinders, lighters; retail and online sales of cannabis, cannabis derivatives and cannabis-based food products and beverages; wholesale of cannabis, cannabis based food products, cannabis based beverages, cannabis based cosmetics, personal care and beauty products; marketing services in the field of cannabis, namely business marketing consulting services and design of marketing strategies and concepts for others; advertising agency services.

(Class 38) Providing access to a web site featuring the ratings, reviews and recommendations on products and services in the field of marijuana and cannabis; providing access to a web site featuring educational information in the field of cannabis.

(Class 40) Custom manufacturing, namely extracting plant extracts and oils from cannabis; custom manufacturing of cannabis infused beverages, cannabis infused nutritional and herbal supplements, cannabis infused skin care products and confectionery.

(Class 41) Educational services, namely, seminars, workshops, classes and training sessions in all fields of cannabis, including medical, health and wellness and recreational uses; seminars and educational services regarding cannabis usage, cultivation, production and marketing.

(Class 42) Research and development of pharmaceutical preparations and medicines; research and development of medical and homeopathic uses for cannabis; research and development in the field of engineering, breeding and genetically modifying cannabis strains; research and development of processes for cannabis extraction and related products; research and development in the field of product packaging for cannabis products, including medical

cannabis; scientific research and development in the field of plant tissue cultivation and propagation; scientific research and development services for the identification of cannabis specific diseases; laboratory testing of cannabis extracts; laboratory testing of cannabis and cannabis extracts in order to determine the presence and proportion of cannabinoid compounds contained therein; product development services in the field of cannabis and cannabis-based products.

(Class 44) Cultivation, breeding and processing of cannabis, cannabis seeds, plant tissue cultures and cannabis derivatives; services related to the cultivation of cannabis, namely, breeding, growing, harvesting and extraction of marijuana and cannabis; cannabis drying and cutting services; the operation of a marijuana and cannabis production facility; recreational and medical cannabis dispensary services; consulting services in the field of cannabis cultivation and agriculture.

VIII. Provisions of the applicable law:

Paragraph 37(1)(c) of the *Trademarks Act*

IX. Information relating to the possibility to request a review or file an appeal or otherwise respond to the opposition:

- (i) Time limit to request a review or file an appeal or otherwise respond to the opposition:
2023-11-01
- (ii) Calculation of time limit (the time limit runs from):
2023-05-01
- (iii) Authority to which such request for review, appeal or response should be made:
Registrar of Trademarks
- (iv) Whether the request for review, appeal or response has to be filed in a specific language or through a local representative:
Correspondence must be in French or English
- (v) Other requirements, if any:
Not applicable

X. Date and signature of the Office:

Registrar of Trademarks

2023-05-01



1 mai/May 2023
Votre référence Your File

Notre référence Our File
2157528
Numéro EI IR Number
1636409

Varsagodis LLC
Unit IR
329 Warren Street
Brooklyn NY 11201
UNITED STATES OF AMERICA

RE: Trademark: FLINTTS
Applicant: Varsagodis LLC

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In view of paragraph 37(1)(c) of the *Trademarks Act*, the applicant does not appear to be entitled to registration. Specifically, the entitlement date of November 29, 2021 of the subject Protocol application is later than the entitlement date of June 12, 2019 of co-pending and confusing applications nos. 1969753 and 1970219, particulars of which are attached.

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- (a) the inherent distinctiveness of the trademarks or tradenames and the extent to which they have become known;
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