



## 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:**

1639034

**III. Name of the holder:**

OSSYX PTY LTD

**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 4, 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.

Pursuant to paragraph 30(2)(a) of the Trademarks Act, an application for the registration of a trademark must contain a statement in ordinary commercial terms of the associated goods or services. Furthermore, section 29 of the Trademarks Regulations requires that the statement must describe each of those goods or services in a manner that identifies a specific good or service. It is considered that the following goods are not in specific and ordinary commercial terms:

1. [...]; limb compression apparatus; limb compression instruments; [...]; orthopaedic compression supports; orthopaedic strapping; alternating pressure supports for medical use; [...]; pressure relief members being medical apparatus or parts of medical apparatus; [...]; elasticised supports for the ankle; joint and muscle supports (elastic and supportive bandages); [...]; apparatus for the corrective treatment of conditions of the feet; apparatus for the corrective treatment of conditions of the lower limbs; apparatus for the therapeutic stimulation of the body; apparatus for the

therapeutic stimulation of the muscles; apparatus for the therapeutic treatment of patients; apparatus for therapy; instruments for massage; massage apparatus; apparatus for use in massaging; massaging apparatus; apparatus for use in the repair of bones; articles of rubber for medical purposes; alternating pressure pads for medical use; apparatus for medical and therapeutic stimulation of the body; apparatus for medical purposes; apparatus for medical rehabilitation; apparatus for medical use; apparatus for orthopaedic purposes; apparatus for physiotherapeutic treatment; apparatus for the stimulation of acupuncture points; articles for medical use; bandages (elastic or supportive) for joints; bandages (elastic or supportive) for medical purposes; bandages (elastic); bandages (supportive) for anatomical joints; bandages for joints (anatomical); [...]; bandages for support purposes; bandages for supporting the human body; [...]; body rehabilitation apparatus for medical purposes; braces (supports) for medical purposes; [...]; braces for the human body for medical purposes; [...]; compressors for medical (treatment) purposes; [...]; stockings for therapeutic purposes; elasticised socks for medical purposes; medical support hosiery; [...]; therapeutic hosiery; instruments for patient rehabilitation; medical apparatus for the relief of pain; medical apparatus for use in the treatment of injuries; medical supports for the body; medical therapy apparatus; medical therapy instruments; muscle building apparatus for medical use; orthopaedic apparatus; [...]; orthopaedic healing aids; orthopaedic instruments; orthopaedic medical devices; orthopaedic supports; supports for orthopaedic use; orthotic apparatus; orthotic devices; physiotherapy apparatus; rehabilitation apparatus for medical use; remedial apparatus for medical use; support articles for medical purposes; [...]; support garments for medical use; orthopedic supportive pads (other than sports articles); [...]; supports for medical use; therapeutic apparatus (medical); [...]; therapeutic support devices (class 10).

Please note that section 29 of the Trademarks Regulations requires that the statement of goods or services must describe each of those goods or services in a manner that identifies a specific good or service. Therefore, statements of goods or services cannot include such indefinite terms as "or". Accordingly, the applicant is requested to amend the term "or" with commercially acceptable terms, such as "and".

In addition, while brackets or parentheses in goods or services can be used to provide additional clarification of specific terms, their use is only acceptable if the contents of the parentheses further specify an aforementioned acceptable good or service.

Further, a statement in more specific terms of the goods presently designated as "instruments", "apparatus" and "devices" is required pursuant to section 29 of the Trademarks Regulations. The goods must also be defined in ordinary commercial terms in compliance with the provisions of paragraph 30(2)(a) of the Trademarks Act. As a general rule, goods described by the terms "instruments", "apparatus" and "devices" are not considered acceptable without further specification since they are considered to include different types of goods with different channels of trade which are not necessarily sold in close proximity.

The following three-part test is considered when determining whether the statement of goods or services is considered to be "specific" within the meaning of section 29 of the Trademarks Regulations:

1. Are the goods or services sufficiently specific so that it is possible to assess whether the trademark is clearly descriptive of those goods or services?
2. Are the goods or services sufficiently specific so that it is possible to assess confusion with another trademark?
3. Are the goods or services sufficiently specific to ensure that the applicant will not have an unreasonably wide ambit of protection?

For further guidance on redefining the statements of goods, please refer to the Goods and Services Manual available on our website. This searchable tool is not an exhaustive list of acceptable terms, but it may be used as a guide to the specificity and ordinary commercial term requirements of the Trademarks Act and its Regulations.

The applicant is required to file an amended Protocol application, using the e-service on the CIPO website at [www.cipo.ic.gc.ca](http://www.cipo.ic.gc.ca), by fax at 819-953-2476 or by mail at the following address:

Registrar of Trademarks  
Place du Portage I  
50 Victoria Street, room C-114  
Gatineau, QC K1A 0C9

Upon satisfactory compliance with the above-mentioned requirements, further office action will be undertaken.

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,

Cristina Nevado  
Examination Section  
819-230-0581  
fax: 819-953-2476

## VII. Information relating to an earlier mark:

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- (i) Filing date and number, and, if any, priority date:  
Not applicable
  - (ii) Registration date and number (if available):

- Not applicable
- (iii) Name and address of the owner:  
Not applicable
- (iv) Reproduction of the mark:  
Not applicable
- (v) List of the relevant goods and services (this list may be in the language of the earlier application or registration):  
Not applicable

**VIII. Provisions of the applicable law:**

Paragraph 30(2)(a) of the Trademarks Act

Section 29 of the Trademarks Regulations

**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:  
2023-11-04
- (ii) Calculation of time limit (the time limit runs from):  
2023-05-04
- (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

2023-05-04



4 mai/May 2023  
Votre référence Your File

Notre référence Our File  
2159741  
Numéro EI IR Number  
1639034

OSSYX PTY LTD  
108 Daley Avenue  
Daleys Point NSW 2257  
AUSTRALIA

RE: Trademark: SOLUSHIN  
Applicant: OSSYX PTY LTD

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Further, a statement in more specific terms of the goods presently designated as “instruments”, “apparatus” and “devices” is required pursuant to section 29 of the *Trademarks Regulations*. The goods must also be defined in ordinary commercial terms in compliance with the provisions of paragraph 30(2)(a) of the *Trademarks Act*.

As a general rule, goods described by the terms “instruments”, “apparatus” and “devices” are not considered acceptable without further specification since they are considered to include different types of goods with different channels of trade which are not necessarily sold in close proximity.

The following three-part test is considered when determining whether the statement of goods or services is considered to be “specific” within the meaning of section 29 of the *Trademarks Regulations*:

1. Are the goods or services sufficiently specific so that it is possible to assess whether the trademark is clearly descriptive of those goods or services?
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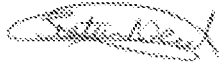
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