



## 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:**

1692961

**III. Name of the holder:**

Aztec Secret Health and Beauty, 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.

In view of paragraph 37(1)(c) of the Trademarks Act, the trademark does not appear to be entitled to registration. Specifically, the entitlement date of September 1, 2022 of the subject Protocol application is later than the entitlement date of July 26, 2019 of co-pending and confusing application no. 1,977,642, the particulars of which are attached.

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.

The applicant's written comments with respect to this matter are invited. The applicant is invited to file a written response 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

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,

Angela Felker  
Examination Section  
873-355-9184  
fax: 819-953-2476

## **VII. Information relating to an earlier mark:**

1977642

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

2019-07-26, **1977642**

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

Not applicable

(iii) Name and address of the owner:

Mohammad Akbar U Maniyar  
Maniyar Building, Near Astpeal Bungalow,  
J.M. Road, Bijapur,  
Bijapur, Karnataka, 586101  
INDIA

(iv) Reproduction of the mark:

AZTEC SECRET Indian Healing Clay & Design



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

(Class 3) bath powders for cosmetic purposes; body and beauty care cosmetics; body cleansers; cosmetic bath powder; facial cleansers; hand cleansers; skin cleansers; wrinkle-minimizing cosmetic preparations for topical facial use

(Class 35) computerized on-line ordering services in the field of cosmetics; mail order services in the field of cosmetics; marketing research in the fields of cosmetics, perfumery and beauty products; online sales of cosmetics; providing home shopping services of cosmetics by means of television; retail sale of cosmetics

### **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:

2023-11-04

(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  
2219790  
Numéro EI IR Number  
1692961

Aztec Secret Health and Beauty, Ltd.  
Attn: LISA R WALTON  
921 S HIGHWAY 160 STE 103  
Pahrump NV 89048  
UNITED STATES OF AMERICA



RE: Trademark: AZTEC SECRET Indian Healing Clay  
Applicant: Aztec Secret Health and Beauty, Ltd.

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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;
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