

## UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 79/041685

MARK: IMUNO GLUKAN BETA -

**\*79041685\***

## CORRESPONDENT ADDRESS:

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## RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

## GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

APPLICANT: PLEURAN, s.r.o.

## CORRESPONDENT'S

REFERENCE/DOCKET NO:

N/A

CORRESPONDENT E-MAIL ADDRESS:

## OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE:

INTERNATIONAL REGISTRATION NO. 0797407.

This is a **PROVISIONAL FULL REFUSAL** of the trademark and/or service mark in the above-referenced U.S. application. 15 U.S.C. §1141h(c).

## WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL:

Applicant may respond directly to this provisional refusal Office action, or applicant's attorney may respond on applicant's behalf. However, **the only attorneys who can practice before the USPTO** in trademark matters are as follows:

- (1) **Attorneys in good standing with a bar of the highest court of any U.S. state, and**
- (2) **Canadian attorneys who have applied for and received reciprocal recognition** by the USPTO under 37 C.F.R. §10.14(c). Canadian attorneys can only represent Canadian applicants.

37 C.F.R. §10.14; TMEP §602.

Foreign attorneys are *not* permitted to practice before the USPTO, other than properly authorized Canadian attorneys. Preparing a paper, authorizing an amendment to an application, or submitting legal arguments in response to a requirement or refusal constitutes representation of a party in a trademark matter. *A response signed by an unauthorized foreign attorney is considered an incomplete response.* TMEP §§602, 602.03, 603.05.

## THE APPLICATION HAS BEEN PROVISIONALLY REFUSED AS FOLLOWS:

### Search Results

The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

Nevertheless, the applicant's mark cannot be approved for publication unless and until the following requirements are satisfactorily addressed. Applicant must respond to each refusal and requirement raised below.

### Identification of Goods and Services

The wording "Food supplements containing extracts of fungus enriched by vitamins, minerals or trace elements, not for medical use" in the identification of goods is indefinite and must be clarified because applicant must list the specific class 29 processed food item(s) to be included in the identification. TMEP §1402.01.

The wording "Intermediary services in commerce relating to the goods included in classes 5 and 29" in the identification of services is indefinite and must be clarified because applicant must list its "intermediary services" and specify the names of the "goods included in classes 5 and 29" to be included as features of the services in the identification. TMEP §1402.01.

**Applicant may adopt the following format for its identification of goods and services, if accurate.**

"Food supplements intended for reinforcement of the immune system," in International Class 5;

"Food supplements containing extracts of fungus enriched by vitamins, minerals or trace elements, not for medical use, namely, {**specify, e.g.,** extracts for soups}," in International Class 29;

"Intermediary services in commerce, **namely, {specify, e.g.,** retail store services} **featuring {specify, e.g.,** food supplements}," in International Class 35.

Please note that, while the identification of goods and services may be amended to clarify or limit the goods and services, adding to the goods and services or broadening the scope of the goods and services is not permitted. 37 C.F.R. §2.71(a); TMEP §1402.06. Therefore, applicant may not amend the identification to include goods and services that are not within the scope of the goods and services set forth in the present identification.

The international classification of goods and services in applications filed under Trademark Act Section 66(a) cannot be changed from the classification given to the goods and/or services by the International Bureau of the World Intellectual Property Organization in the corresponding international registration. TMEP §§1401.03(d), 1401.04 and 1904.02(b).

Applicant must remove any parentheses from the identification of goods and incorporate the parenthetical information into the description. Parentheses are used in the suggested wording above only where the applicant must provide more specific information. Generally, parentheses and brackets should not be used in identifications. Parenthetical information is only permitted in identifications if it serves to explain or translate the matter immediately preceding the parenthetical phrase in such a way that it does not affect the clarity of the identification, e.g., "obi (Japanese sash)." TMEP §1402.12.

For assistance with identifying goods and/or services in trademark applications, please see the online searchable *Manual of Acceptable Identifications of Goods and Services* at <http://tess2.uspto.gov/netahtml/tidm.html>.

### **Legal Nature/Place Incorporated**

The application does not include applicant's "Legal Nature" and "Legal Nature: Place Incorporated." Applicant must specify its entity type ("Legal Nature") and citizenship ("Place Incorporated"). 37 C.F.R. §2.32(a)(3)(ii)-(iii); TMEP §§803.01, 803.03 and 803.04.

Acceptable entity types include an individual, a partnership, a corporation or a joint venture. 37 C.F.R. §2.32(a)(3); TMEP §803.03 *et seq.*

If applicant's entity type is an individual, applicant must indicate his or her national citizenship for the record. 37 C.F.R. §2.32(a)(3)(i). If applicant's entity type is a partnership or joint venture, applicant must list the names and the national citizenship or the country of organization or incorporation of all the general partners or joint venturers, as well as specify the country under whose laws the partnership or joint venture is organized. 37 C.F.R. §§2.32(a)(3)(ii) and (iii). If applicant's entity type is a corporation or association, applicant must set forth the country under whose laws applicant is organized. 37 C.F.R. §2.32(a)(3)(ii).

### **Color Claim and Description**

Applicant must submit a color claim for all of the colors that appear in the mark, and describe where in the mark they appear. Applicant must therefore submit the following color claim and color description: (1) a statement that "the colors RED, WHITE, and BLUE are claimed as a feature of the mark;" and (2) a separate description of where the colors appear in the mark, i.e., "the color RED appears in the first row of squares; the color BLUE appears in the second row of square and the wording 'BETA – (1,3) – D – GLUKAN'; the color WHITE appears in the wording 'iMUNO' and 'GLUKAN'." 37 C.F.R. §2.52(b)(1); TMEP §807.07 *et seq.* Common color names should be used to describe the colors in the mark, e.g., red, yellow, blue. TMEP §807.07(a)(ii).

### **Disclaimers**

The Office can require an applicant to disclaim exclusive rights to an unregistrable part of a mark, rather than refuse registration of the entire mark. Trademark Act Section 6(a), 15 U.S.C. §1056(a). Under Trademark Act Section 2(e), 15 U.S.C. §1052(e), the Office can refuse registration of the entire mark where it is determined that the entire mark is merely descriptive, deceptively misdescriptive, or primarily geographically descriptive of the goods. Thus, the Office may require the disclaimer of a portion of a mark which, when used in connection with the goods or services, is merely descriptive, deceptively misdescriptive, primarily geographically descriptive, or otherwise unregistrable (e.g., generic). TMEP §1213.03(a). If an applicant does not comply with a disclaimer requirement, the Office may refuse registration of the entire mark. TMEP §1213.01(b).

A disclaimer does *not* physically remove the disclaimed matter from the mark, but rather is a written statement that applicant does not claim exclusive rights to the disclaimed wording and/or design separate and apart from the mark as shown in the drawing.

The following cases explain the disclaimer requirement more fully: *Dena Corp. v. Belvedere Int'l Inc.*, 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991); *In re Kraft, Inc.*, 218 USPQ 571 (TTAB 1983); *In re EBS Data Processing, Inc.*, 212 USPQ 964 (TTAB 1981); *In re National Presto Industries, Inc.*, 197 USPQ 188 (TTAB 1977).

Applicant must disclaim the descriptive wording "GLUCAN" apart from the mark as shown because it merely describes or misdescribes applicant's goods or a feature of applicant's services, namely,

that the goods feature a derivative of glucose. See attached dictionary evidence showing that “glucan” refers to a derivative of glucose. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a).

The computerized printing format for the Office’s *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use “GLUCAN” apart from the mark as shown.

See *In re Owatonna Tool Co.*, 231 USPQ 493 (Comm’r Pats. 1983).

### **Information Requirement**

The nature of the goods in connection with which the applicant uses the mark is not clear from the present record. The applicant must submit samples of advertisements or promotional materials. If such materials are not available, the applicant must describe the nature, purpose and channels of trade for the goods. 37 C.F.R. Section 2.61(b); TMEP section 814.

In all cases, the submitted factual information must make clear the nature of the goods or services, how they will operate, the salient features, and the prospective customers and channels of trade. This information is not readily available to the examining attorney and is necessary for proper examination of the application. Conclusory statements from the applicant or its attorney are not sufficient to meet this requirement for information.

Applicant must also specifically answer the following:

1. Does the term IMUNO have any meaning in a foreign language or in relation to the goods?
2. Does the term GLUKAN have any meaning in a foreign language?
3. Does the term BETA have any meaning in relation to the goods?
4. Do the letters and numbers “(1,3)” and/or “D” have any meaning in relation to the goods?
5. Do any combination of the above terms, letters, and/or numbers have any meaning in relation to the goods or in any foreign language?
6. If the answers to any of questions #1-5 is “yes,” please completely and concisely explain the meaning for the record.

Trademark Rule 2.61(b) states, “The examiner may require the applicant to furnish such information and exhibits as may be reasonably necessary to the proper examination of the application.” The Trademark Trial and Appeal Board has upheld a refusal of registration based on the applicant’s failure to provide information requested under this rule. *In re Babies Beat Inc.*, 13 USPQ2d 1729 (TTAB 1990)(failure to submit patent information regarding configuration).

### **Response Guidelines**

There is no required format or form for responding to this Office action. The Office recommends applicants use the Trademark Electronic Application System (TEAS) to respond to Office actions online at <http://www.uspto.gov/teas/index.html>. However, if applicant responds on paper via regular mail, the response should include the following information: (1) the name and law office number of the examining attorney; (2) the serial number of this application; (3) the mailing date of this Office action; and (4) applicant's telephone number.

The response should address each refusal and/or requirement raised in the Office action. If a refusal has issued, applicant may wish to argue against the refusal, i.e., submit arguments and/or evidence as

to why the refusal should be withdrawn and why the mark should register. To respond to requirements, applicant should simply set forth in writing the required changes or statements and request that the Office enter them into the application record.

The response *must* be signed by applicant or someone with legal authority to bind applicant (i.e., a corporate officer of a corporate applicant, the equivalent of an officer for unincorporated organizations or limited liability company applicants, a general partner of a partnership applicant, each applicant for applications with multiple individual applicants, etc.). TMEP §§712 *et seq.*

To expedite prosecution of this application, applicant is encouraged to file any response to this Office action through the Trademark Electronic Application System (TEAS), available at <http://www.uspto.gov/teas/index.html>.

/kristindahling/  
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(571) 272-8277

**RESPOND TO THIS ACTION:** If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office Action should be filed using the Office's Response to Office action form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

**STATUS CHECK:** Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

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↑

glow stick  
glower  
glowing  
glowworm  
gloxinia  
glaze  
gluc-  
glucagon  
► **glucan**  
gluco-  
glucocorticoid  
gluconeogenesis  
glucosamine  
glucosamine sulfate  
glucose  
glucosidase  
glucoside

↓

### glucan

**glu·can** [ *glōōkən* ] (*plural* glu·cans)

noun

**Definition:**

**polymer derived from glucose:** a polymer derived from glucose that occurs naturally, e.g. in cellulose, starch, and glycogen

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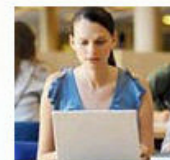
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