



Australian Government

IP Australia

6 May, 2010

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**NOTIFICATION OF PROVISIONAL REFUSAL OF AN INTERNATIONAL  
REGISTRATION DESIGNATING AUSTRALIA (IRDA)**

**THIS REFUSAL IS ISSUED IN ACCORDANCE WITH RULE 17(1) TO 17(3)**

**International Registration No:** 1031242

**Our Reference No:** 1352410

**Applicant:** Christian LOUBOUTIN

**Trade mark:**

**Your ref:** 535189601



**Examiner:** Steven MARINCESKI

**Report No.** 1

The above trade mark has been examined and the following attachment(s) explain the matters which at present prevent the International Registration from being accepted and, where possible, the ways in which the holder may be able to resolve the issues. The holder has until **6 August 2011** (15 months) in which to do so. This refusal takes effect after that date.

The holder may respond in writing to this refusal, however, any response must be sent through an address for service in Australia.

**Review**

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.



## 1. TRADE MARKS NOT CAPABLE OF DISTINGUISHING - SECTION 41

**Grounds for rejecting this International Registration Designating Australia (IRDA) exist under sub section 41(6) of the Trade Marks Act.**

To be protected in Australia, your trade mark must be capable of distinguishing your goods/services from the similar goods/services of other traders in the market place.

Your IRDA is refused as the trade mark is not capable of distinguishing the specified goods/services because it is simply the colour RED applied to the sole of shoes and Internet research indicates that it is not uncommon for that colour to be used in that manner.

Other traders should be able to use the colour RED in relation to the sole of shoes during the course of trade.

This refusal applies to:

**All the goods claimed in the application**

*You may respond to this refusal by:*

- Making written submissions and/or
- Providing evidence of use in Australia showing that the trade mark did distinguish the specified goods and/or services in Australia on the day you designated Australia, and/or
- Requesting a hearing in this matter.

If you wish to respond in any of the above ways, you **must** do so in writing and supply an address for service in Australia.

*Before deciding whether to provide evidence you should consider the following:*

- a) *Evidence is usually in the form of a statutory declaration giving a history and indication of the extent of the use of your trade mark*
- b) *Evidence must establish that, because of the extent to which you have used your trade mark in Australia, **before the date Australia was designated**, it distinguished your goods/services from those of other traders, at that date.*
- c) *gathering and compilation of this material may be time-consuming and expensive*
- d) *the evidence you provide may still be insufficient to overcome the objection*

for  
REGISTRAR OF TRADE MARKS

Examiner's Telephone Contact: (02) 6283 2669