



Australian Government

IP Australia

21 June, 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: 1038183
Our Reference No: 1363623
Applicant: PAUL HARTMANN AG
Trade mark: Ideal-Fit
Your ref: 539921101

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 **21 September 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(5) 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 because it describes an attribute of those goods and is therefore one that other traders are likely to need to use.

Your trade mark is the words IDEAL FIT and this indicates that your goods fit their subject ideally. Given that the goods in your application must or can be fitted to something to perform their function the idea of an IDEAL FIT is an attractive one and is likely to be needed by other traders.

The 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 showing that the trade mark is capable of distinguishing the goods/services in Australia, and
- 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.

I have attached an information sheet that indicates the type of evidence needed.

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

- *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*
- *gathering and compilation of this material may be time-consuming and expensive*
- *the evidence you provide may still be insufficient to overcome the objection*

for
REGISTRAR OF TRADE MARKS

Examiner's Telephone Contact: (02) 6283 2669

REQUIREMENTS FOR EVIDENCE OF USE UNDER SUBSECTION 41(5)

Evidence of use must be in declaratory form, preferably in the form of a statutory declaration. This may be made by the holder, a principal officer of the holder company or by a person authorised to make it on behalf of the holder. **If the declaration is not in English, the declaration must be accompanied by a certified translation into English.** The evidence must incorporate any exhibits or appendices. If they are not incorporated, they do not form part of the declaration.

Under subsection 41(5) use **may be before or after the date on which Australia was designated in the international application or registration.** . The evidence may include use by a predecessor in title of the holder, use by an authorised user, and use on goods or services for export. Evidence of use of the trade mark in similar markets in countries other than Australia can be taken into account.

EVIDENCE REQUIRED

The following information should be included in the declaration:

- the international registration number;
- our reference
- a representation of the trade mark;
- the holder's name;
- the declarant's name and address;
- the declarant's position within the holder company and length of service in that position;
- when the trade mark was first used (preferably the month and year) and the period of use;
- the names of the states or regions within Australia, and/or other countries in which the trade mark has been used;
- the goods or services in respect of which the trade mark has been used;
- annual turnover figures in Australian dollars which, in relation to use on a wide range of classes of varied goods or services, should be broken down to refer to goods or services of a similar nature;
- advertising of the trade mark, the means by which it was advertised, and the annual expenditure involved in Australian dollars;
- exhibits showing actual use of the trade mark;
- any other relevant information.