

23 July, 2012

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International Bureau, WIPO
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P.O. Box 18
1211 Geneva 20,
SWITZERLAND

**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: 1081336
Our Reference No: 1497580
Applicant: Kurt Krannich
Trade mark: K2 SYSTEMS
Your ref: 666151201



Examiner: David White

Report No. 1

I have examined the above trade mark. 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 **23 October 2013** (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**. Please allow time for me to consider any responses by ensuring they are received by this office **at least four weeks** before the above date.

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.

SECTION 44 – TRADE MARKS WHICH ARE SIMILAR TO OTHER TRADE MARKS

Grounds for rejecting this IRDA exist under the provisions of section 44 of the *Trade Marks Act 1995*.

Your trade mark is substantially identical with, or deceptively similar to, the following trade marks, and is for similar or closely related goods and/or services:

912286, 981627, 984911, 984953, 1039132, 1102799, 1103022, 1103023, 1165609, 1174054, 1176624, 1176650, 1188018, 1192863, 1200115, 1200116, 1200117, 1200118, 1200119, 1200120, 1200121, 1200122, 1200123, 1200124, 1200125, 1220758, 1249637, 1328267, 1343092, 1386158, 1405154, 1451728, 1451734

The refusal applies to the following goods/services:

Class 4: “Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and lighting fuels; candles and wicks for lighting”

Class 6: “building materials of metal; small items of metal hardware; pipes and tubes of metal; goods of common metal not included in other classes”

Class 9: “teaching apparatus and instruments; magnetic data carriers; data processing apparatus and computers”

Class 35: “advertising; business management; business administration; business project management, in particular for systems and plants in the field of renewable energy”

Class 42: “Scientific and technological services and research and design relating thereto; design and development of computer hardware and software; quality testing of products for certification purposes, design, planning and engineering of as well as development services for third parties in the field of renewable energy”

I have enclosed details of the trade marks mentioned above.

You may respond to this refusal by:

- Making submissions and/or
- Providing evidence of use of the trade mark in Australia and/or
- Requesting a hearing.

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

- *Evidence must be supplied as a witnessed declaration and should be accompanied by supporting evidence and information regarding the extent of the use of your trade mark in Australia.*
- *Gathering and compiling this evidence may be time-consuming and expensive*
- *The evidence you provide may be insufficient to overcome the refusal*

If you wish to respond in any of these ways, you **must** do so in writing and supply an address for service in Australia. If you do not respond by the date mentioned on the first page of this report, this IRDA will be refused for the above goods/services.

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

David White for
REGISTRAR OF TRADE MARKS

Examiner's Telephone Contact: +61 -2 6283 2997

EVIDENCE OF HONEST CONCURRENT USE, PRIOR USE or OTHER CIRCUMSTANCES

Subsections 44(3) and 44(4) *Trade Marks Act 1995*

Introduction

Your International Registration Designating Australia (IRDA) cannot be accepted for protection because it conflicts with another trade mark, or trade marks.

The refusal of your IRDA under section 44 may be overcome if you can show **one** of the following:

- **honest concurrent use**; or
- **prior use**; or
- **other circumstances**

Evidence of use must be in declaratory form. 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, it 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.

Where possible, evidence should be supplied in electronic form. In particular, providing clear digital images of objects bearing the trade mark will be as effective as providing the objects themselves

The **declaration** provides the information I need to determine whether the use of your trade mark in Australia is sufficient to accept your trade mark for protection. The declaration should clearly set out the following:

- the number of your IRDA;
- the name of the holder;
- any submissions and evidence in support of your IRDA

The **declaration** should be made out by:

- you; or
- if the holder is a company, a principal officer or other authorised employee of the company (for example a director); or someone else who is authorised by you to make the declaration (for example, a lawyer)

Honest Concurrent Use

Evidence required – The following information should be included in the **declaration**:

- the name and address of the person making the declaration;

- the position and length of service in that position of the person making the declaration (if the holder is a company);
- when the trade mark was chosen (this must be **before your filing date**);
- why the trade mark was chosen;
- who has used the trade mark:
- you or your company;
- someone you or your company has authorised or allowed to use the trade mark; or
- a predecessor in title (the person from whom you acquired the trade mark);
- whether you knew of the earlier filed trade mark;
- the goods and/or services for which the trade mark has been used in Australia;
- when the trade mark was first used in Australia in connection with the goods and/or services claimed in your IRDA (please give the year and, if possible, the month);
- whether this use has been continuous since then (or, if it has not been used continuously, when and for how long it has been used);
- where the trade mark has been used in Australia (please give States or regions);
- examples of how the trade mark has been used in Australia in connection with the goods and/or services claimed in your IRDA (please attach copies of advertising, promotional material and/or packaging and outline how each of these have been used);
- annual expenditure (in Australian Dollars) on advertising and promoting the trade mark in Australia in connection with the goods and/or services claimed in your IRDA;
- annual turnover figures (in Australian Dollars) for the goods and/or services claimed in your IRDA sold or provided in Australia using the trade mark; and any other information or materials which will help show how the trade mark has been used (please attach copies of these materials).

Prior Use

Evidence required – The following information should be included in the **declaration**:

- the name and address of the person making the declaration;
- the position and length of service in that position of the person making the declaration (if the holder is a company);
- when the trade mark was first used in Australia in connection with the goods and/or services claimed in your IRDA (please give the year and, if possible, the month), and whether this use has been continuous since then;
- how the trade mark was first used. You should provide examples of how the trade mark was applied and advertised or, where these are no longer available, explain exactly what actions you claim amount to “use”. An unsupported statement such as “I first used this trade mark in 1990” is not sufficient, and you should go on to explain just what actions you rely on as being use.

- whether the trade mark has been used continuously in Australia since its first use. The declaration should provide factual information, e.g. sales value by year, that will allow an examiner to be satisfied that use has been continuous;
- whether the trade mark was **still being used when you lodged your IRDA**; the goods and/or services for which the trade mark has been used in Australia.

Other Circumstances

There may be other circumstances that are relevant. A common example would be if you were using your trade mark with the permission of the owner of the earlier filed trade mark and/or that owner is prepared to consent to the protection of your trade mark.

You should be aware

If your own IRDA is accepted under one of the above provisions, the trade mark owner of any earlier registration or application may oppose protection of your trade mark. You will then be required to defend the opposition. This will involve serving evidence. If you are not successful, costs may be awarded against you.

You should also be aware that if you are infringing a registered trade mark you run a serious risk of legal action being taken against you by the owner of that registration.

Confidential Information

IP Australia will accept your declaration in confidence. IP Australia will not accept an accompanying letter in confidence.

Please do not put any information which you consider to be confidential into an accompanying letter.

Release of Information

Other people may request access to information you have provided to the Trade Marks Office. Please take into account that **letters** will become available for public inspection (API). **Declarations** will not become API. However, copies of declarations may be requested under the *Freedom of Information Act 1982* (FOI Act). If this occurs, IP Australia will seek your comments prior to release of declarations.

Legal Advice

A trade mark attorney may be able to assist you with advice and outline the likely costs, risks and benefits of the trade mark options available for your business.

IP Australia

Trade Mark : 912286

Word: K2

Image:

Class/es: 36

Status: Registered/Protected

Kind: n/a

Lodgement date: 10 May 2002

Sealing date: 13 February 2003

Acceptance adv: 12 September 2002

Registered from: 10 May 2002

Registration adv: 27 February 2003

Renewal due: 10 May 2022

Owners: K2 Advisors, LLCa Delaware limited liability company
570 Lexington Avenue,
42nd Floor, New York, New York 10022,
UNITED STATES OF AMERICA

Address for service: Lord & Company
4 Douro Place
WEST PERTH 6005 WA

Goods & Services:

Class: 36

Investment advisory and management services; investment of funds for others; hedge fund investment; none of the foregoing services relating to sport

Endorsements:

IP Australia

Trade Mark : 981627

Word: K2 ASSET MANAGEMENT
Image:

Class/es: 36
Status: Registered/Protected
Kind: n/a
Lodgement date: 10 December 2003
Sealing date: 19 December 2005
Acceptance adv: 8 September 2005
Registered from: 10 December 2003
Registration adv: 12 January 2006
Renewal due: 10 December 2013

Owners: K2 Asset Management Ltd.
Level 32
101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: Lander & Rogers
Level 12
600 Bourke Street
MELBOURNE 3000 VIC

Goods & Services:

Class: 36

Investment and financial advisory services including securities trading services and asset and fund management services; investment and trading of securities for others; financial analysis services

Endorsements:

Provisions of subsection 44(4) applied.*

IP Australia

Trade Mark : 984911

Word: K2 AUSTRALIAN ABSOLUTE RETURN FUND

Image:

Class/es: 36

Status: Registered/Protected

Kind: n/a

Lodgement date: 15 January 2004

Sealing date: 19 December 2005

Acceptance adv: 8 September 2005

Registered from: 15 January 2004

Registration adv: 12 January 2006

Renewal due: 15 January 2014

Owners: K2 Asset Management Ltd.
Level 32
101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: Lander & Rogers
Level 12
600 Bourke Street
MELBOURNE 3000 VIC

Goods & Services:

Class: 36

Investment and financial advisory services including securities trading services and asset and fund management services; investment and trading of securities for others; financial analysis services

Endorsements:

Provisions of subsection 44(4) applied.*

IP Australia

Trade Mark : 984953

Word: K2 ASIAN ABSOLUTE RETURN FUND

Image:

Class/es: 36

Status: Registered/Protected

Kind: n/a

Lodgement date: 15 January 2004

Sealing date: 19 December 2005

Acceptance adv: 8 September 2005

Registered from: 15 January 2004

Registration adv: 12 January 2006

Renewal due: 15 January 2014

Owners: K2 Asset Management Ltd.
Level 32
101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: Lander & Rogers
Level 12
600 Bourke Street
MELBOURNE 3000 VIC

Goods & Services:

Class: 36

Investment and financial advisory services including securities trading services and asset and fund management services; investment and trading of securities for others; financial analysis services

Endorsements:

Provisions of subsection 44(4) applied.*

IP Australia

Trade Mark : 1039132

Word: K2 ALLIANCE

Image:

Class/es: 35, 36, 41

Status: Registered/Protected

Kind: n/a

Lodgement date: 25 January 2005

Convention date: 29 July 2004

Sealing date: 4 July 2005

Acceptance adv: 24 March 2005

Registered from: 25 January 2005

Registration adv: 14 July 2005

Renewal due: 25 January 2015

Owners: K-2 Corporationan Indiana corporation
19215 Vashon Highway Southwest,
Vashon,
Washington, 98070,
UNITED STATES OF AMERICA

Address for service: PHILLIPS ORMONDE FITZPATRICK
367 Collins Street
MELBOURNE 3000 VIC

Goods & Services:

Class: 35

Promoting women specific technology by arranging and conducting personal appearances by sports personalities in the area of skiing

Class: 36

Sponsoring women's ski athletes; sponsoring ski schools, ski camps, and ski classes

Class: 41

Educational courses and clinics in skiing; conducting ski schools, ski camps, and ski classes

Endorsements:

Convention priority claimed: 29 July 2004, United States of America, No. 78/458,954 in respect of SPONSORING WOMEN'S SKI ATHLETES; PROMOTING WOMEN SPECIFIC TECHNOLOGY BY ARRANGING AND CONDUCTING PERSONAL APPEARANCES BY SPORTS PERSONALITIES IN THE AREA OF SKIING; EVENT TOURS FEATURING EDUCATIONAL COURSES AND CLINICS IN SKIING; CONDUCTING AND SPONSORING SKI SCHOOLS, SKI CAMPS, AND SKI CLASSES.*

IP Australia

Trade Mark : 1102799

Word: K2.NET
Image:

Class/es: 9, 42
Status: Registered/Protected
Kind: n/a
Lodgement date: 8 March 2006
Convention date: 18 November 2005
Sealing date: 19 September 2007
Acceptance adv: 26 April 2007
Registered from: 8 March 2006
Registration adv: 4 October 2007
Renewal due: 8 March 2016

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington, 98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software

Class: 42

Computer and computing services; computer software design and programming

Endorsements:

Convention priority claimed: 18 November 2005, United States of America, No. 78/757558 in respect of COMPUTER SOFTWARE, NAMELY, APPLICATION SOFTWARE FOR WORKFLOW AND PROCESS AUTOMATION.*

IP Australia

Trade Mark : 1103022

Word: K2.NET
Image: 3 SQUARES IN RECT. 1 DISPLACED CUTS RECT. FORM WINDOW,STYL.

Class/es: 9, 42
Status: Registered/Protected
Kind: n/a
Lodgement date: 9 March 2006
Sealing date: 29 November 2006
Acceptance adv: 13 July 2006
Registered from: 9 March 2006
Registration adv: 14 December 2006
Renewal due: 9 March 2016

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington, 98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

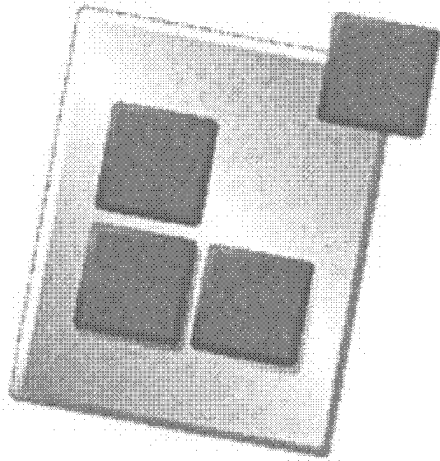
Class: 9

Computer software

Class: 42

Computer and computing services; computer software design and programming

Endorsements:



K2.net



K2.net

IP Australia

Trade Mark : 1103023

Word: K2.NET
Image: 3 SQUARES IN RECT. 1 DISPLACED CUTS RECT. FORM WINDOW,STYL.

Class/es: 42
Status: Linked Registration
Kind: n/a
Lodgement date: 9 March 2006
Sealing date: 29 November 2006
Acceptance adv: 13 July 2006
Registered from: 9 March 2006
Registration adv: 14 December 2006
Renewal due: 9 March 2016

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington, 98052,
UNITED STATES OF AMERICA

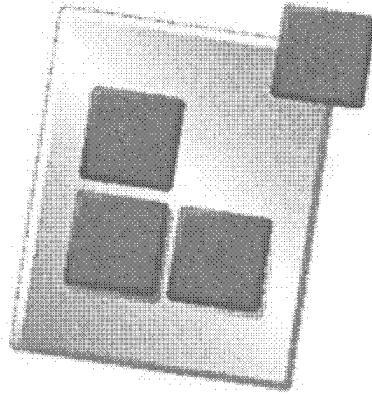
Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 42
Computer and computing services; computer software design and programming

Endorsements:

Linked with Trade Mark 1103022 *



K2.net



IP Australia

Trade Mark : 1165609

Word: K2
Image: 3 RECTS 1 DISPLACED FORM WINDOW,STYL.

Class/es: 9, 35, 41, 42
Status: Registered/Protected
Kind: n/a
Lodgement date: 8 March 2007
Sealing date: 15 January 2009
Acceptance adv: 4 September 2008
Registered from: 8 March 2007
Registration adv: 29 January 2009
Renewal due: 8 March 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE, Redmond,
Washington, 98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software, namely, application software for workflow and process automation

Class: 35

Business consultation and business workflow analysis relating to computer system implementation and system integration for workflow and process automation

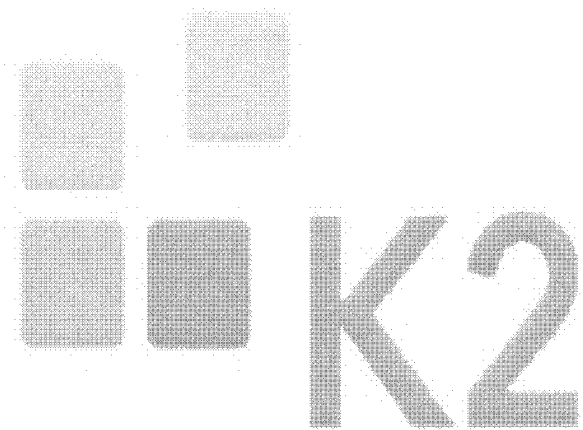
Class: 41

Educational services, namely, providing training to users in the field of business process automation and management

Class: 42

Computer services, namely, computer consultation services in the field of design, selection, implementation and use of computer software systems for others, consulting services in the field of computer software solutions for office and workplace automation; technical support services, namely, troubleshooting of computer software problems; maintenance of computer software

Endorsements:



IP Australia

Trade Mark : 1174054

Word: K2 Select International Absolute Return Fund

Image:

Class/es: 36

Status: Registered/Protected

Kind: n/a

Lodgement date: 1 May 2007

Sealing date: 12 December 2007

Acceptance adv: 30 August 2007

Registered from: 1 May 2007

Registration adv: 3 January 2008

Renewal due: 1 May 2017

Owners: K2 Asset Management Ltd.
Level 32
101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: Lander & Rogers
Level 12
600 Bourke Street
MELBOURNE 3000 VIC

Goods & Services:

Class: 36

Investment and financial advisory services including securities trading services and asset and fund management services; investment and trading of securities for others; financial analysis services

Endorsements:

IP Australia

Trade Mark : 1176624

Word: K2 Recruitment

Image:

Class/es: 35

Status: Registered/Protected

Kind: n/a

Lodgement date: 17 May 2007

Sealing date: 24 July 2009

Acceptance adv: 20 September 2007

Registered from: 17 May 2007

Registration adv: 13 August 2009

Renewal due: 17 May 2017

Owners: K2 International Pty Limited as trustee
124-488-704
Level 6
32 Martin Place
SYDNEY 2000 NSW
AUSTRALIA

Address for service: K2 International Pty Limited as trustee
Level 6
32 Martin Place
SYDNEY 2000 NSW

Goods & Services:

Class: 35

Recruitment consultancy services

Endorsements:

IP Australia

Trade Mark : 1176650

Word: K2 RECRUITMENT
Image: 2 ARCS

Class/es: 35
Status: Registered/Protected
Kind: n/a
Lodgement date: 17 May 2007
Sealing date: 24 July 2009
Acceptance adv: 20 September 2007
Registered from: 17 May 2007
Registration adv: 13 August 2009
Renewal due: 17 May 2017

Owners: K2 International Pty Limited
124-488-704
Level 6
32 Martin Place
SYDNEY 2000 NSW
AUSTRALIA

Address for service: K2 International Pty Limited as trustee
Level 6
32 Martin Place
SYDNEY 2000 NSW

Goods & Services:
Class: 35
Personnel recruitment consultancy

Endorsements:



IP Australia

Trade Mark : 1188018

Word: K2

Image:

Class/es: 6, 7

Status: Registered/Protected

Kind: n/a

Lodgement date: 19 July 2007

Convention date: 11 June 2007

Sealing date: 12 December 2008

Acceptance adv: 4 September 2008

Registered from: 19 July 2007

Registration adv: 8 January 2009

Renewal due: 19 July 2017

Owners: Newfrey LLC
1207 Drummond Plaza
Newark Delaware 19711
UNITED STATES OF AMERICA

Address for service: Davies Collison Cave
Level 15
1 Nicholson Street
MELBOURNE 3000 VIC

Goods & Services:

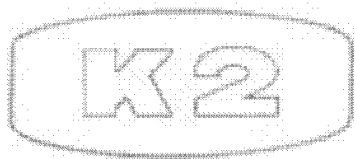
Class: 6

Metal door hardware, including door levers and lever sets, door handles and handle sets, locks, and deadbolts in international class 06

Class: 7

Non-electric door openers and door closers, including mechanical door openers and hydraulic door closers in international class 07

Endorsements:



IP Australia

Trade Mark : 1192863

Word: IPLEX K2

Image:

Class/es: 11, 17

Status: Registered/Protected

Kind: n/a

Lodgement date: 10 August 2007

Sealing date: 31 March 2008

Acceptance adv: 13 December 2007

Registered from: 10 August 2007

Registration adv: 24 April 2008

Renewal due: 10 August 2017

Owners: Iplex Pipelines Australia Pty Limited
079-613-308
Level 14 Philips House
15 Blue Street
NORTH SYDNEY 2060 NSW
AUSTRALIA

Address for service: SPRUSON & FERGUSON
GPO Box 3898
SYDNEY 2001 NSW

Goods & Services:

Class: 11

Pipes and conduits in this class including water pipes; parts and fittings for the aforesaid goods

Class: 17

Pipes and conduits included in this class; parts and fittings for the aforesaid goods

Endorsements:

IP Australia

Trade Mark : 1200115

Word: K2UNDERGROUND
Image:

Class/es: 9, 35, 42, 45
Status: Registered/Protected
Kind: n/a
Lodgement date: 19 September 2007
Convention date: 11 June 2007
Sealing date: 28 February 2008
Acceptance adv: 18 October 2007
Registered from: 19 September 2007
Registration adv: 13 March 2008
Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Downloadable software and online discussion boards

Class: 35

Online business networking services

Class: 42

Computer services, namely, creating an online community for registered users to participate in discussion of ideas, ask questions, and share solutions and feedback related to applicant's software

Class: 45

Online social networking services

Endorsements:

IP Australia

Trade Mark : 1200116

Word: K2 BLACKPEARL

Image:

Class/es: 9

Status: Registered/Protected

Kind: n/a

Lodgement date: 19 September 2007

Convention date: 19 July 2007

Sealing date: 2 April 2008

Acceptance adv: 22 November 2007

Registered from: 19 September 2007

Registration adv: 24 April 2008

Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software for collaborative application development, composite applications and workflow and process automation

Endorsements:

IP Australia

Trade Mark : 1200117

Word: K2[BLACKPEARL]
Image: 4 SQUARES, 1 DISPLACED FORM WINDOW,STYL.

Class/es: 9
Status: Registered/Protected
Kind: n/a
Lodgement date: 19 September 2007
Convention date: 24 July 2007
Sealing date: 2 April 2008
Acceptance adv: 22 November 2007
Registered from: 19 September 2007
Registration adv: 24 April 2008
Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

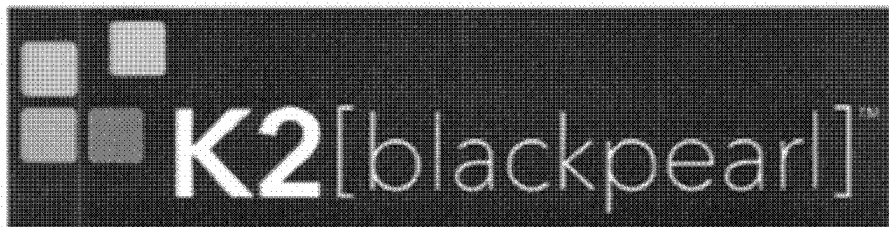
Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:
Class: 9

Computer software for collaborative application development, composite applications and workflow and process automation

Endorsements:

The second trade mark in the series of trade marks is depicted in the colour GREEN as shown in the representation attached to the application form.* The third trade mark in the series of trade marks is depicted in the colours GREEN, BLACK and WHITE as shown in the representation attached to the application form.*



IP Australia

Trade Mark : 1200118

Word: K2 BLACKPOINT

Image:

Class/es: 9

Status: Registered/Protected

Kind: n/a

Lodgement date: 19 September 2007

Convention date: 19 July 2007

Sealing date: 13 May 2008

Acceptance adv: 3 January 2008

Registered from: 19 September 2007

Registration adv: 22 May 2008

Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software for workflow and process automation

Endorsements:

IP Australia

Trade Mark : 1200119

Word: K2[BLACKPOINT]
Image: 4 SQUARES, 1 DISPLACED FORM WINDOW,STYL.

Class/es: 9
Status: Registered/Protected
Kind: n/a
Lodgement date: 19 September 2007
Convention date: 24 July 2007
Sealing date: 2 April 2008
Acceptance adv: 22 November 2007
Registered from: 19 September 2007
Registration adv: 24 April 2008
Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

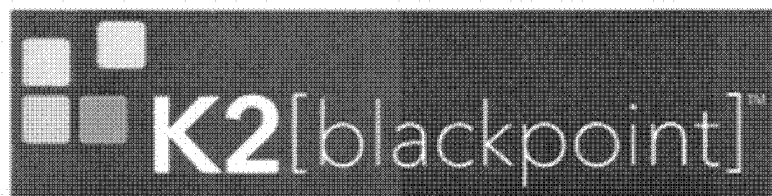
Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9
Computer software for workflow and process automation

Endorsements:

The second trade mark in the series of trade marks is depicted in the colour GREEN as shown in the representation attached to the application form.* The third trade mark in the series of trade marks is depicted in the colours GREEN, BLACK and WHITE as shown in the representation attached to the application form.*



IP Australia

Trade Mark : 1200120

Word: K2 BLACKJAX

Image:

Class/es: 9

Status: Registered/Protected

Kind: n/a

Lodgement date: 19 September 2007

Convention date: 19 July 2007

Sealing date: 2 April 2008

Acceptance adv: 22 November 2007

Registered from: 19 September 2007

Registration adv: 24 April 2008

Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software for collaborative application development, composite applications and workflow and process automation

Endorsements:

IP Australia

Trade Mark : 1200121

Word: K2[BLACKJAX]
Image: 4 SQUARES, 1 DISPLACED FORM WINDOW,STYL.

Class/es: 9
Status: Registered/Protected
Kind: n/a
Lodgement date: 19 September 2007
Convention date: 24 July 2007
Sealing date: 2 April 2008
Acceptance adv: 22 November 2007
Registered from: 19 September 2007
Registration adv: 24 April 2008
Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:
Class: 9

Computer software for collaborative application development, composite applications and workflow and process automation

Endorsements:

The second trade mark in the series of trade marks is depicted in the colour GREEN as shown in the representation attached to the application form.* The third trade mark in the series of trade marks is depicted in the colours GREEN, BLACK and WHITE as shown in the representation attached to the application form.*



IP Australia

Trade Mark : 1200122

Word: K2 CONNECT

Image:

Class/es: 9

Status: Registered/Protected

Kind: n/a

Lodgement date: 19 September 2007

Convention date: 19 July 2007

Sealing date: 2 April 2008

Acceptance adv: 22 November 2007

Registered from: 19 September 2007

Registration adv: 24 April 2008

Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software for collaborative application development and assembling and creating composite applications

Endorsements:

IP Australia

Trade Mark : 1200123

Word: K2[CONNECT]
Image: 3 SQUARES,1 DISPLACED FORM WINDOW,STYL.

Class/es: 9
Status: Registered/Protected
Kind: n/a
Lodgement date: 19 September 2007
Convention date: 24 July 2007
Sealing date: 2 April 2008
Acceptance adv: 22 November 2007
Registered from: 19 September 2007
Registration adv: 24 April 2008
Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9
Computer software for collaborative application development and assembling and creating composite applications

Endorsements:

The second trade mark in the series of trade marks is depicted in the colour GREEN as shown in the representation attached to the application form.* The third trade mark in the series of trade marks is depicted in the colours GREEN, BLACK and WHITE as shown in the representation attached to the application form.*



IP Australia

Trade Mark : 1200124

Word: K2 PLAY

Image:

Class/es: 9

Status: Registered/Protected

Kind: n/a

Lodgement date: 19 September 2007

Convention date: 24 July 2007

Sealing date: 2 April 2008

Acceptance adv: 22 November 2007

Registered from: 19 September 2007

Registration adv: 24 April 2008

Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software for collaborative application development, composite applications and workflow and process automation

Endorsements:

IP Australia

Trade Mark : 1200125

Word: K2[PLAY]
Image: 3 SQUARES,1 DISPLACED FORM WINDOW,STYL.

Class/es: 9
Status: Registered/Protected
Kind: n/a
Lodgement date: 19 September 2007
Convention date: 24 July 2007
Sealing date: 2 April 2008
Acceptance adv: 22 November 2007
Registered from: 19 September 2007
Registration adv: 24 April 2008
Renewal due: 19 September 2017

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9

Computer software for collaborative application development, composite applications and workflow and process automation

Endorsements:

The coloured trade mark in the series of trade marks is depicted in the colour GREEN as shown in the representation attached to the application form.*



IP Australia

Trade Mark : 1220758

Word: K2 NOW

Image:

Class/es: 42

Status: Registered/Protected

Kind: n/a

Lodgement date: 21 January 2008

Convention date: 17 January 2008

Sealing date: 31 August 2009

Acceptance adv: 21 May 2009

Registered from: 21 January 2008

Registration adv: 17 September 2009

Renewal due: 21 January 2018

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: Ashurst Australia
GPO Box 9938
SYDNEY 2001 NSW

Goods & Services:

Class: 42

Online service offering various composite software applications and capabilities for collaborative composite software application development

Endorsements:

IP Australia

Trade Mark : 1249637

Word: K2[BLACKPOINT]
Image: WORD IN BRACKETS; LTR O IS TARGET

Class/es: 9, 42
Status: Registered/Protected
Kind: n/a
Lodgement date: 1 July 2008
Convention date: 10 June 2008
Sealing date: 17 June 2009
Acceptance adv: 29 January 2009
Registered from: 1 July 2008
Registration adv: 2 July 2009
Renewal due: 1 July 2018

Owners: SourceCode Technology Holdings, Inc.a Delaware corporation
4042 148th Avenue NE,
Redmond, Washington,
98052,
UNITED STATES OF AMERICA

Address for service: FB Rice
Level 23
44 Market Street
SYDNEY 2000 NSW

Goods & Services:

Class: 9
Computer software for workflow and process automation

Class: 42
Online composite software application development services and collaborative
composite software application development services

Endorsements:

K2[blackpoint]

K2[blackpoint]

K2[blackpoint]

K2[blackpoint]

K2[blackpoint]

IP Australia

Trade Mark : 1328267

Word: K2 Global High Alpha Fund

Image:

Class/es: 36

Status: Registered/Protected

Kind: n/a

Lodgement date: 28 October 2009

Sealing date: 28 June 2010

Acceptance adv: 18 March 2010

Registered from: 28 October 2009

Registration adv: 15 July 2010

Renewal due: 28 October 2019

Owners: K2 Asset Management Ltd
085-445-094
Level 32
101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: K2 Asset Management Ltd
Level 32
101 Collins Street
MELBOURNE 3000 VIC

Goods & Services:

Class: 36

Financial asset management; financial fund management; financial investment;
financial investment management services

Endorsements:

Provisions of subsection s44(4) and/or Reg 4.15A(5) applied. *

IP Australia

Trade Mark : 1343092

Word: K2 Asset Management Holdings Ltd

Image:

Class/es: 36

Status: Registered/Protected

Kind: n/a

Lodgement date: 1 February 2010

Sealing date: 13 September 2010

Acceptance adv: 3 June 2010

Registered from: 1 February 2010

Registration adv: 30 September 2010

Renewal due: 1 February 2020

Owners: K2 Asset Management Ltd
085-445-094
Level 32
101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: K2 Asset Management Ltd
Level 32
101 Collins Street
MELBOURNE 3000 VIC

Goods & Services:

Class: 36

Investing of funds; investment management of funds; management of funds; financial fund management; financial investment; financial investment management services; financial services; management of financial assets; financial asset management

Endorsements:

Provisions of subsection s44(4) and/or Reg 4.15A(5) applied. *

IP Australia

Trade Mark : 1386158

Word: K2
Image: LTR & NUM IN BADGE

Class/es: 1, 4, 5
Status: Registered/Protected
Kind: n/a
Lodgement date: 22 April 2010
Sealing date: 10 May 2012
Acceptance adv: 2 February 2012
Registered from: 22 April 2010
Registration adv: 17 May 2012
Renewal due: 22 April 2020

Owners: "INTER-GLOBAL" FRANCISZEK, ZOFIA, GRZEGORZ, PAWEL
NOWAK SPOLKA JAWNA
ul. Stary Staw 9
PL-63-400 Ostrow Wielkopolski
POLAND

Address for service: Refer to WIPO Address for Correspondence

Goods & Services:

Class: 1

Cooling liquids for internal combustion engines, brake fluids; chemical refining supplements for diesel, engine and gear oils, chemical refining supplements for fuels; refining preparations for car radiators, ignition preparations for engine; waterproof, mineral, and fast drying adhesives, other than for stationery and household use; silicones and repair kits with basic ingredients in the form of adhesive and/or silicone; fillers; preparations for protecting rubber and artificial and natural leather and plastic elements

Class: 4

Car oils, diesel oils and engine oils, gearbox oils, industrial oils and fats; non chemical additives for refining engine oils, namely non chemical additives for improving the parameters of combustion engines; lubricants, dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles and wicks for lighting

Class: 5

Preparations for disinfecting air-conditioning systems of motor vehicles

Endorsements:

Colour Claimed: BLACK, WHITE, RED and GREY; Parts Colour Claimed: The word "K2" - WHITE and GREY; the graphic elements - BLACK, GREY and RED.*



IP Australia

Trade Mark : 1405154

Word: K2 SOLO

Image:

Class/es: 9

Status: Accepted

Kind: n/a

Lodgement date: 19 January 2011

Acceptance adv: 17 May 2012

Sealing due: 17 November 2012

Owners: GVBB Holdings S.A.R.L.incorporated in Luxembourg
412 F, route d'Esch,
L-2086, Luxembourg,
LUXEMBOURG

Address for service: SPRUSON & FERGUSON
GPO Box 3898
SYDNEY 2001 NSW

Goods & Services:

Class: 9

Professional apparatus and instruments for generating, switching, editing and routing television, video, and audio signals, including file servers; servers for professional use, namely media servers, video servers and broadcasting servers; media storage devices for professional use, including media servers, solid-state media recorders and removable media drives and discs; all of the foregoing excluding personal computers

Endorsements:

IP Australia

Trade Mark : 1451728

Word: K2
Image: TRIANGLE

Class/es: 36
Status: Accepted
Kind: n/a
Lodgement date: 3 October 2011
Acceptance adv: 21 June 2012
Sealing due: 21 December 2012

Owners: K2 Asset Management Ltd
085-445-094
32/101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: K2 Asset Management Ltd
32/101 Collins Street
MELBOURNE 3000 VIC

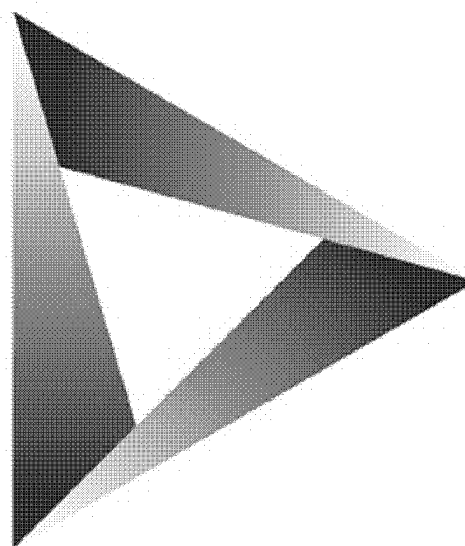
Goods & Services:

Class: 36

Financial asset management; financial fund management; financial investment management services; fund investments; investment asset management; investment fund management; investment management of funds; investment trust management

Endorsements:

Provisions of paragraph 44(3)(b) and/or Reg 4.15A(3)(b) applied.*



IP Australia

Trade Mark : 1451734

Word: K2 ASSET MANAGEMENT
Image: TRIANGLE

Class/es: 36
Status: Accepted
Kind: n/a
Lodgement date: 3 October 2011
Acceptance adv: 21 June 2012
Sealing due: 21 December 2012

Owners: K2 Asset Management Ltd
085-445-094
32/101 Collins Street
MELBOURNE 3000 VIC
AUSTRALIA

Address for service: K2 Asset Management Ltd
32/101 Collins Street
MELBOURNE 3000 VIC

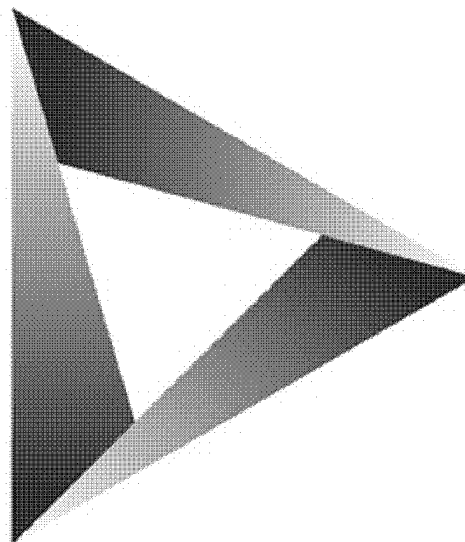
Goods & Services:

Class: 36

Financial asset management; financial fund management; financial investment management services; fund investments; investment asset management; investment fund management; investment management; investment management of funds; investment trust management

Endorsements:

Provisions of paragraph 44(3)(b) and/or Reg 4.15A(3)(b) applied.*



Grounds for rejecting IRDA

Regulation 17A.28

- 1) The grounds for rejecting an IRDA are the grounds set out in sections 39 to 44 of the Act, as affected by subregulation (2).
- 2) Sections 39 to 44 apply in relation to an IRDA as if:
 - a) a reference in those sections:
 - i) to an application for the registration of a trade mark were a reference to the IRDA; and
 - ii) to an applicant were a reference to the holder of the IRDA; and
 - b) the reference in paragraph 41 (6) (a) to the filing date in respect of an application were a reference to the date of international registration or the date of recording, as applicable, in respect of the IRDA; and
 - c) each reference in subparagraphs 44 (1) (a) (i) and (2) (a) (i) to a trade mark registered by another person included a protected international trade mark held by another person; and
 - d) each reference in subparagraphs 44 (1) (a) (ii) and (2) (a) (ii) to a trade mark whose registration is being sought by another person included a trade mark in respect of which the extension of protection to Australia is being sought by another person.

Section 39 Trade mark containing etc. certain signs

- 1) An application for the registration of a trade mark must be rejected if the trade mark contains or consists of a sign that, under regulations made for the purposes of section 18, is not to be used as a trade mark.
- 2) An application for the registration of a trade mark may be rejected if the trade mark contains or consists of:
 - a) a sign that is prescribed for the purposes of this subsection; or
 - b) a sign so nearly resembling:
 - i) a sign referred to in paragraph (a); or
 - ii) a sign referred to in subsection (1);as to be likely to be taken for it.

Section 40 Trade mark that cannot be represented graphically

- 1) An application for the registration of a trade mark must be rejected if the trade mark cannot be represented graphically.

Section 41 Trade mark not distinguishing applicant's goods or services

- 1) For the purposes of this section, the use of a trade mark by a predecessor in title of an applicant for the registration of the trade mark is taken to be a use of the trade mark by the applicant.

Note 1: For applicant and predecessor in title see section 6.

Note 2: If a predecessor in title had authorised another person to use the trade mark, any authorised use of the trade mark by the other person is taken to be a use of the trade mark by the predecessor in title (see subsection 7(3) and section 8).
- 2) An application for the registration of a trade mark must be rejected if the trade mark is not capable of distinguishing the applicant's goods or services in respect of which the trade mark is sought to be registered (designated goods or services) from the goods or services of other persons.

Note: For goods of a person and services of a person see section 6.
- 3) In deciding the question whether or not a trade mark is capable of distinguishing the designated goods or services from the goods or services of other persons, the Registrar must first take into account the extent to which the trade mark is inherently adapted to distinguish the designated goods or services from the goods or services of other persons.
- 4) Then, if the Registrar is still unable to decide the question, the following provisions apply.
- 5) If the Registrar finds that the trade mark is to some extent inherently adapted to distinguish the designated goods or services from the goods or services of other persons but is unable to decide, on that basis alone, that the trade mark is capable of so distinguishing the designated goods or services:
 - a) the Registrar is to consider whether, because of the combined effect of the following:
 - i) the extent to which the trade mark is inherently adapted to distinguish the designated goods or services;
 - ii) the use, or intended use, of the trade mark by the applicant;
 - iii) any other circumstances;

the trade mark does or will distinguish the designated goods or services as being those of the applicant; and

- b) if the Registrar is then satisfied that the trade mark does or will so distinguish the designated goods or services-the trade mark is taken to be capable of distinguishing the applicant's goods or services from the goods or services of other persons; and
- c) if the Registrar is not satisfied that the trade mark does or will so distinguish the designated goods or services-the trade mark is taken not to be capable of distinguishing the applicant's goods or services from the goods or services of other persons.

Note 1: For goods of a person and services of a person see section 6.

Note 2: Use of a trade mark by a predecessor in title of an applicant and an authorised use of a trade mark by another person are each taken to be use of the trade mark by the applicant (see subsections (1) and 7(3) and section 8).

- 6) If the Registrar finds that the trade mark is not inherently adapted to distinguish the designated goods or services from the goods or services of other persons, the following provisions apply:
 - a) if the applicant establishes that, because of the extent to which the applicant has used the trade mark before the filing date in respect of the application, it does distinguish the designated goods or services as being those of the applicant-the trade mark is taken to be capable of distinguishing the designated goods or services from the goods or services of other persons;
 - b) in any other case-the trade mark is taken not to be capable of distinguishing the designated goods or services from the goods or services of other persons.

Note 1: Trade marks that are not inherently adapted to distinguish goods or services are mostly trade marks that consist wholly of a sign that is ordinarily used to indicate:

- a) the kind, quality, quantity, intended purpose, value, geographical origin, or some other characteristic, of goods or services; or
- b) the time of production of goods or of the rendering of services.

Note 2: Use of a trade mark by a predecessor in title of an applicant and an authorised use of a trade mark by another person are each taken to be use of the trade mark by the applicant (see subsections (1) and 7(3) and section 8).

Section 42 Trade mark scandalous or its use contrary to law

An application for the registration of a trade mark must be rejected if:

- a) the trade mark contains or consists of scandalous matter; or
- b) its use would be contrary to law.

Section 43 Trade mark likely to deceive or cause confusion

An application for the registration of a trade mark in respect of particular goods or services must be rejected if, because of some connotation that the trade mark or a sign contained in the trade mark has, the use of the trade mark in relation to those goods or services would be likely to deceive or cause confusion.

Section 44 Identical etc. trade marks

- 1) Subject to subsections (3) and (4), an application for the registration of a trade mark (applicant's trade mark) in respect of goods (applicant's goods) must be rejected if:
 - a) the applicant's trade mark is substantially identical with, or deceptively similar to:
 - i) a trade mark registered by another person in respect of similar goods or closely related services; or
 - ii) a trade mark whose registration in respect of similar goods or closely related services is being sought by another person; and
 - b) the priority date for the registration of the applicant's trade mark in respect of the applicant's goods is not earlier than the priority date for the registration of the other trade mark in respect of the similar goods or closely related services.

Note 1: For deceptively similar see section 10.

Note 2: For similar goods see subsection 14(1).

Note 3: For priority date see section 12.

Note 4: The regulations may provide that an application must also be rejected if the trade mark is substantially identical with, or deceptively similar to, a protected international trade mark or a trade mark for which there is a request to extend international registration to Australia: see Part 17A.

- 2) Subject to subsections (3) and (4), an application for the registration of a trade mark (applicant's trade mark) in respect of services (applicant's services) must be rejected if:
 - a) it is substantially identical with, or deceptively similar to:
 - i) a trade mark registered by another person in respect of similar services or closely related goods; or

- ii) a trade mark whose registration in respect of similar services or closely related goods is being sought by another person; and
 - b) the priority date for the registration of the applicant's trade mark in respect of the applicant's services is not earlier than the priority date for the registration of the other trade mark in respect of the similar services or closely related goods.
 - c) *Note 1*: For deceptively similar see section 10.
 - d) *Note 2*: For similar services see subsection 14(2).
 - e) *Note 3*: For priority date see section 12.
 - f) *Note 4*: The regulations may provide that an application must also be rejected if the trade mark is substantially identical with, or deceptively similar to, a protected international trade mark or a trade mark for which there is a request to extend international registration to Australia: see Part 17A.
- 3) If the Registrar in either case is satisfied:
- a) that there has been honest concurrent use of the 2 trade marks; or
 - b) that, because of other circumstances, it is proper to do so;
- the Registrar may accept the application for the registration of the applicant's trade mark subject to any conditions or limitations that the Registrar thinks fit to impose. If the applicant's trade mark has been used only in a particular area, the limitations may include that the use of the trade mark is to be restricted to that particular area.
- Note*: For limitations see section 6.
- 4) If the Registrar in either case is satisfied that the applicant, or the applicant and the predecessor in title of the applicant, have continuously used the applicant's trade mark for a period:
- a) beginning before the priority date for the registration of the other trade mark in respect of:
 - i) the similar goods or closely related services; or
 - ii) the similar services or closely related goods; and
 - b) ending on the priority date for the registration of the applicant's trade mark;
- the Registrar may not reject the application because of the existence of the other trade mark.
- Note 1*: An authorised use of the trade mark by a person is taken to be a use of the trade mark by the owner of the trade mark (see subsection 7(3)).
- Note 2*: For predecessor in title see section 6.
- Note 3*: For priority date see section 12.

Regulation 17A.13 Use of trade mark

- 1) The holder of an IRDA:
 - a) must be using, or must intend to use, the trade mark that is the subject of the IRDA in relation to the goods, services or goods and services listed in the IRDA; or
 - b) must have authorised, or intend to authorise, another person to use the trade mark in relation to those goods, services or goods and services; or
 - c) must intend to assign the trade mark to a body corporate that is about to be constituted with a view to the use by the body corporate of the trade mark in relation to the goods, services or goods and services.
- 2) If there is reason to suspect that the holder does not meet a requirement of subregulation (1) in relation to any of the goods or services mentioned in the IRDA, the Registrar may require the holder to make a declaration to the Registrar that those provisions apply to all of those goods and services.

Regulation 4.15 Trade marks containing etc certain signs

For the purposes of paragraph 39 (2) (a) of the Act (which deals with signs), the following signs are prescribed:

- a) the words "Patent", "Patented", "By Royal Letters Patent", "Registered", "Registered Design", "Copyright" "Plant Breeder's Rights", "EL rights", or words or symbols to the same effect (including the symbols © and ®);
- b) the words "To counterfeit this is a forgery", or words to the same effect;
- c) a representation of the Arms, or of a flag or seal, of the Commonwealth or of a State or Territory;
- d) a representation of the Arms or emblem of a city or town in Australia or of a public authority or public institution in Australia;
- e) a representation of a mark notified by the International Union for the Protection of Industrial Property as not entitled to registration under international arrangements;
- f) a sign specified in Schedule 2.

Note 1: For the meaning of *EL rights*, see section 5 of the Circuit Layouts Act 1989.

Note 2: A list of the marks mentioned in paragraph 4.15 (e) is available at the Trade Marks Office and sub-offices.