



30 August 2013

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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: 1128501
Our Reference No: 1516723
Applicant: Comite International Olympique
Trade mark: OLYMPIC
Your ref: 643540901

Examiner: Daria Sigma

Report No. 2

The examination of the above trade mark has been reviewed. The following attachment(s) explain additional 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. I apologise for identifying new problems at this time. The holder now has until **30 November 2014** (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.



REPORT

SECTION 41 - TRADE MARKS NOT CAPABLE OF DISTINGUISHING

Grounds for rejecting this International Registration Designating Australia (IRDA) exist under sub section 41(6) of the *Trade Marks Act 1995*.

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.

A trade mark is used to distinguish the goods or services sold by one trader from those sold by other traders. A trade mark may be difficult to protect if the main feature of the trade mark is the name of a particular plant, as other traders will need to use it to identify that plant. Such a trade mark will not be able to distinguish the plant sold by one trader from the same type of plant sold by other traders. (For more details, see Section 41 of the *Trade Marks Act 1995*.)

Your IRDA is refused because your trade mark is not capable of distinguishing the specified goods/services. This is because your trade mark is, or has as its main feature, OLYMPIC.

This is the name of a particular plant in the following genera: *Allium, Alstroemeria, Avena, Brassica, Cucumis, Festuca, Guzmania, Helianthus, Hordeum, Medicago, Phaseolus, Pisum, Rubus* and *Lycopersicum*.

Other traders should be able to use OLYMPIC in connection with goods similar to yours.

You may overcome this refusal by agreeing, in writing, to amend the specification in Class 31 to:

Agricultural, horticultural and forestry products and grains, not included in other classes fresh fruit and vegetables; seeds, natural plants and flowers; animal foodstuffs, malt; none of the foregoing being plants or plant material of the genera Allium, Alstroemeria, Avena, Brassica, Cucumis, Festuca, Guzmania, Helianthus, Hordeum, Medicago, Phaseolus, Pisum, Rubus and Lycopersicum; live animals

The refusal applies to the following goods/services:

Class 31: *Agricultural, horticultural and forestry products and grains, not included in other classes; fresh fruit and vegetables; seeds, natural plants and flowers; animal foodstuffs, malt*

You may respond to this refusal by:

- Making written submissions 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. 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.

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

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

SECTION 43 - TRADE MARKS LIKELY TO DECEIVE OR CAUSE CONFUSION

Grounds for rejecting this IRDA exist under the provisions of section 43 of the *Trade Marks Act 1995*.

A trade mark will be difficult to protect if its use would be likely to deceive or cause confusion. This would usually be because of some meaning or implication the trade mark has in relation to the plant or plant related material being claimed. For example, if the name of a plant is used on a different but similar variety of plant, this would be likely to cause confusion. (For more details, see Section 43 of the *Trade Marks Act 1995*.)

Your IRDA is refused because your trade mark is OLYMPIC. This is the name of plants in the following genera: *Allium, Alstroemeria, Avena, Brassica, Cucumis, Festuca, Guzmania, Helianthus, Hordeum, Medicago, Phaseolus, Pisum, Rubus* and *Lycopersicum*. If this was used on plants or plant material of other members of these genera it would be misleading to buyers of your goods and would cause confusion in the marketplace.

The holder may overcome this refusal by agreeing, in writing, to:

- Amend the specification in **Class 31** to:

Agricultural, horticultural and forestry products and grains, not included in other classes; fresh fruit and vegetables; seeds, natural plants and flowers; animal foodstuffs, malt; none of the foregoing being plants or plant material of the genera Allium, Alstroemeria, Avena, Brassica, Cucumis, Festuca, Guzmania, Helianthus, Hordeum, Medicago, Phaseolus, Pisum, Rubus and Lycopersicum; live animals

This matter has been considered since my first report. There is a minor difference in the amendment described above. This supercedes the option described in my report of 1 February 2013. This matter is otherwise identical.

The refusal applies to the following goods/services:

Class 31: *Agricultural, horticultural and forestry products and grains, not included in other classes; fresh fruit and vegetables; seeds, natural plants and flowers; animal foodstuffs, malt*

You may respond to this refusal by:

- Making written submissions 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. 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.

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

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

SECTION 41 – TRADE MARKS NOT CAPABLE OF DISTINGUISHING

**Grounds for rejecting this International Registration Designating Australia (IRDA)
exist under sub section 41(5) of the *Trade Marks Act 1995*.**

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 because your trade mark is not capable of distinguishing the specified goods/services. This is because your trade mark is, or has as its main feature, OLYMPIC.

OLYMPIC is the name of a cocktail. This indicates that your claim for *alcoholic beverages* includes this cocktail.

Other traders should be able to use OLYMPIC in connection with goods or services similar to yours:

The refusal applies to the following goods:

Class 33: *Alcoholic beverages (except beers)*

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/or
- Requesting a hearing in this matter.

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

- *Evidence must be supplied as a 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 still be insufficient to overcome the objection*

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. 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 required.

Please note these issues are in addition to issues raised in the first report which also must be overcome in addition to these issues.

Daria Sigma for
REGISTRAR OF TRADE MARKS

Examiner's Telephone Contact: 02 62832852