

BESLUT

Internationell registrering ska inte gälla i Sverige

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Exo. Patent- och registreringsverket

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OMBUD

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BESLUT

Patent- och registreringsverket (PRV) beslutar med stöd av 56 § 2 stycket varumärkeslagen (1960:644) att den under ovanstående nummer angivna internationella registreringen inte ska gälla i Sverige.

ÄRENDET

Ärendet avser giltighet i Sverige av den internationella varumärkesregistreringen, i figur återgiven nedan, registrerad för body and beauty care products; cosmetic skin and hair care products; hair lotions; cosmetic goods, particularly bath preparations, shower preparations; soaps in solid and liquid form, particularly medical soaps; perfumery; ethereal oils; scented oils; preparations for cleaning teeth; cotton wool, swabs and products made of cotton wool for cosmetic use, included in this class; cosmetic wipes pre-moistened with cosmetic lotions, klass 3, pharmaceutical and veterinary products; preparations for health and body care for medical purposes and personal hygiene; chemical products for medical purposes; biological products for medical purposes; medicated skin and oral care products; medications for human medicine and veterinary medicine purposes; medicament sets (filled), medication sets (filled); ointments for pharmaceutical purposes; tinctures for medical purposes; dietetic products for human medicine and veterinary medicine purposes, food for babies; health food for medical purposes; medicinal teas and beverages; food supplements and chewing gums for medical purposes; vitamin and multivitamin preparations; minerals and mineral preparations for medical purposes; sweets for medical purposes, particularly chest and cough drops; disaccustoming preparations for smokers; diagnostic agents for medical purposes, test strips for diabetes and pregnancy tests, strips for cholesterol tests; plasters and materials for dressings; cotton wool for medical use; hygienic articles for women, namely sanitary towels, panty liners, tampons, sanitary pants; incontinence pants; adhesives for dentures; material for filling teeth and moulding compounds for dental purposes; dental mastics; disinfectants for hygiene purposes; detergents for medical purposes; biological and chemical preparations for

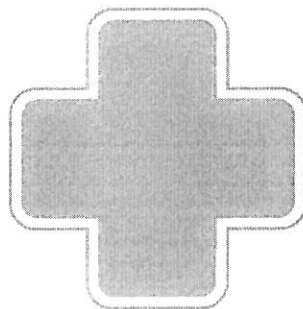
medical or veterinary medical purposes for laboratories, pharmacies, and physicians' practices; chemical testing preparations for medical purposes, particularly reagents, standard solutions, indicators and nutrient media; air freshening preparations; yeast and yeast preparations for pharmaceutical purposes; glucose for medical purposes; pastilles for pharmaceutical purposes; adhesive tapes for medical purposes, class 5, hand-operated packaging, mixing, and filling devices for medicines and goods usually sold in pharmacies, included in this class, particularly filling and closing devices for bottles and tubes, devices to fill prescriptions in tubes, sealing pliers for tubes, squeezing and filling devices for tubes, feeder hoppers and spoons, pouring disks, devices to fill and close caps, tube fillers, pouring dishes; hand-operated tools, particularly nail scissors and manicure instruments; hand-operated tools for pharmacies, namely pestles; wooden hammers; scoops; mortars; manual filling devices, class 8, scientific, electrical, electronic, and photographic, weighing, measuring, signaling, checking, teaching, and life-saving apparatus and instruments (included in this class), particularly for use in laboratories, pharmacies, and drug stores, including electronic emergency call, display, and signaling systems and devices; optical instruments, namely spectacles, sunglasses, corrective spectacles, frames for spectacles, lenses for spectacles, contact lenses; cases for spectacles, sheath cases for spectacles; scales, particularly pharmacist scales and scale cases; calibration beakers and bowls; dosing devices; data processing devices and computers, particularly for applications in the preparation, packaging, dispensing and analysis of pharmaceutical products and other goods usual in pharmacies; computer peripheral devices, computer programs, computer software, particularly for use in pharmacies, drug stores, laboratories and physician practices; computer programs recorded on recording media, apparatus for recording, transmission and reproduction of sound and images; records, video cassettes, CDs (ROM, fixed memory), CDs (sound, imagery), DVDs; magnetic recording media inventory control apparatus, namely text processing devices, particularly for pharmacies, laboratories, and drug stores; electrical, electronic, and chemical measuring and checking apparatus and instruments for scientific research in laboratories; computer software (recorded) for the adjustment of hearing aids; powder shuttles (measuring devices); melting point measuring devices (measuring devices); burettes and burette stands (measuring devices); drop counters (measuring devices); measuring cylinders (measuring devices); distillation devices for scientific purposes, class 9, surgical, medical, dental, and veterinary instruments and apparatus; blood pressure, blood glucose, and cholesterol meters; artificial limbs, eyes and teeth; orthopedic articles, particularly orthopedic bandages and surgical stockings; suture materials; furniture especially made for medical purposes; medical diagnostic and therapy equipment, medical analysis equipment, physical exercise apparatus for medical purposes; hot-air vibrators for medical purposes; spirometers (medical devices); hearing aids; hearing protection equipment, namely tinnitus masks for medical personnel; lamps for medical purposes, massage apparatus, massage gloves, electric heating cushions and electric blankets for medical purposes; condoms, gloves for medical purposes, in particular those made of rubber and rubber substitutes; bathing aids for medical purposes, included in this class; special devices for the administration of medicines; clothing incorporating protective hoods, especially for use in operating rooms; receptacles for applying medicines, namely spray bottles/vaporizers and dropper bottles for medical purposes; sterile cloths for operations; thermometers for medical purposes, class 10, apparatus for lighting, heating, steam generating, cooking, cooling, drying, ventilating, and water supply and apparatus for sanitary purposes; hot water bottles, water filters, and water filtering apparatus; water treatment devices and machinery; water-softening apparatus and equipment, water distillation apparatus; distillation apparatus, air humidifiers for central heating radiators, class 11, printed matter; books, periodicals, journals, newspapers, catalogues, prospectuses,

brochures, office equipment (except furniture); babies' diapers of paper or cellulose, paper tissues; packaging made of paper or cardboard or predominantly of paper or cardboard combined with other materials, as far as included in this class, particularly for medicines or other pharmaceutical products and other goods usually available at pharmacies; signs made of paper and cardboard; office equipment for pharmacies, namely celluloid covers, celluloid card sheets, celluloid protective signs, printed prescription labels, label moisteners; adhesive tapes and self-adhesive tapes for paper and stationery or for household purposes; packaging films made only of plastic or predominantly of plastic combined with other materials, as far as included in this class, particularly for medicines or other pharmaceutical products and other goods usually available at pharmacies; instruction and teaching materials (except for equipment); hand labelling appliances; containers made of paper and cardboard for the storage and safe transport of medicines, class 16, containers of rubber for the storage and safe transport of medicines, class 17, boxes of plastic; containers of plastic and wood for the storage and safe transport of medicines, class 20, brushes (with the exception of paint brushes); toothbrushes (also electric toothbrushes), combs and sponges, shaving brushes; utensils for body and beauty care (included in this class); household and kitchen utensils and containers; baby baths (portable); glassware, porcelain, earthenware (included in this class); packaging made of glass or predominantly of glass combined with other materials, as far as included in this class, for medicines or other pharmaceutical products and other goods usually available at pharmacies; cleaning cloths made of fleece for eyeglasses; signs made of porcelain or glass; gardening, household, and polishing gloves made of rubber and rubber substitutes; ointment containers made of glass; glass balloons (containers); milk bottles; drainers (dishracks), class 21, clothing made of rubber and rubber substitutes, class 25, dietetic foodstuffs for non-medical purposes based on fats, with added fatty acids, vitamins, minerals, trace elements, either singly or in combination, included in this class; preserved, dried, and cooked fruits and vegetables; food supplements for non-medical purposes based on fruit or vegetable concentrates; food supplements for non-medical purposes based on proteins and fats, with added fatty acids, vitamins, minerals, trace elements, either singly or in combination, class 29, dietetic foodstuffs or food supplements for non-medical purposes based on carbohydrates, roughage, with added vitamins, minerals, trace elements, either singly or in combination, included in this class; coffee, tea, and products based on tea; seasonings; honey; yeast and yeast preparations in tablet form, not for medical purposes; table salt; cereal preparations; confectionery; seasonings; confectionery, particularly confectionery in various shapes and forms; cocoa-based products, chocolate, milk chocolate, chocolate bars, filled chocolates; sugar, glucose for food, candy sticks; jellied fruits (confectionery); fruit sauces; fruit gums (confectionery) also in various shapes and forms, including bears; liquorice (confectionery), stick liquorice (confectionery); sweets, caramels, peppermint sweets; pastry and fine pastry, particularly cookies, cakes, macaroons, almond confectionery, biscuits, rice cakes, waffles, rusks; ices, ice cream; marzipan; popcorn; puddings and chewing gums not for medical purposes; food supplements for non-medical purposes based on carbohydrates, roughage, with added vitamins, minerals, trace elements, either singly or in combination, class 30, dietetic beverages for non-medical purposes, included in this class; energy drinks; mineral and aerated waters and other non-alcoholic drinks, fruit drinks and fruit juices, particularly fruit nectars; vegetable juices (beverages); syrups and other non-alcoholic preparations for making beverages, class 32, company consultation and business management consultation, particularly for pharmacies, drug stores, physician practices, clinics and dispatch centers, and particularly for turnover, cost, and results management; solicitation of contracts for third parties on the purchase and sale of goods; solicitation of contracts for third parties on the provision of services; provision of business management information on the Internet; business management and business

administration for third parties, particularly for pharmacies, drug stores, physicians' practices, clinics and dispatch centers; organizational consultancy on business matters; assistance in the management of commercial or trade businesses; sales promotion for third parties; marketing (sales research); inventory administration; arrangement of trade transactions for third parties, including in the course of e-commerce; invoicing (office work); technical administrative processing of orders; invoice administration, payment monitoring and preparing reminders for third parties (office work); invoice processing for electronic ordering systems; data entry relating to the aforementioned services for the placement of orders and for the placement, administration and charging of electronic prescriptions; retail store services regarding the goods of classes 3, 5 and 10; provision of commercial and business contact information, including via the Internet; procurement services for third parties (purchasing of goods and services for other companies); price comparison services for goods and services; compilation of cost price analyses; advertising, including on the Internet; television advertising; radio advertising; advertising by mail order; advertising agency services; distribution of advertisements; online advertising on a computer network; rental of advertising time with communications media; rental of advertising space, including on the Internet; dissemination of advertising matter to attract and maintain relationships with new clients; presentation of goods for advertising purposes; presentation of goods and services, and presentation of companies, including on the Internet and in other communications media; presentation of goods for third parties for presentation and sales purposes; distribution of goods samples for advertising purposes; distribution of advertising materials (flyers, brochures, printed matter, goods samples); updating of advertising materials; compilation and publication of advertising texts; rental of advertising material; arrangement of advertising contracts for third parties; advertising through advertising communication; shop window decoration; personnel management consultation; personnel recruitment; preparation of inventories for third parties; updating, entry, organisation and collection of data in computer databases; processing of all the above services including with the use of electronic media and the Internet; stock control, class 35, real estate; finance; insurance; real estate brokerage services for third parties; real estate management for third parties, particularly for pharmacies, drug stores, warehouses and dispatch centers; investment transactions; brokerage, rental and leasing of real estate, in particular of offices, for pharmacies, drug stores, warehouses and dispatch centers; financial consultancy; financial consultancy for franchising concepts; real estate management of warehouse buildings for pharmaceutical wholesalers, class 36, construction, particularly construction of buildings for pharmacies, drug stores, warehouses and dispatch centers; repair work on buildings, particularly for pharmacies, drug stores, warehouses and dispatch centers; and underground construction work; installation and maintenance of hardware for the operation of network servers and network systems, class 37, telecommunications; broadcasting of television broadcasts/programs; broadcasting of radio programs; press agency services; provision of telecommunications connections and access to a worldwide computer network; provision of access to a computer network; electronic message transmission; rental of equipment used for message transmission; rental of telecommunications equipment; provision of access to information on the Internet, particularly for e-commerce (warehouse movements, sales data, delivery chain information) and to current results of pharmaceutical research, and information on medications; forwarding of messages and information of all types to Internet addresses (web messaging); e-mail services; telecommunication by means of platforms and portals on the Internet; transmission of messages; transmission of messages, particularly by means of computers and networks; transmission of digital data for order placement and for the submission, management, and billing of electronic prescriptions; rental of message sending apparatus; rental of telecommunication apparatus; e-commerce

services, namely providing access to information on the Internet, providing platforms on the Internet, particularly for others, forwarding messages of all kinds to Internet addresses (web messaging); providing access to information with regard to current findings of pharmaceutical research on the Internet; direct electronic data exchange; providing access to information on the movement of goods in inventory, purchase data and supply chain data for others; providing Internet chat rooms; providing access to portals on the Internet; operating chat lines, chat rooms and forums; providing access to information on Internet pages for others; providing access to pharmaceutical information on the Internet; provision of access to information on Internet sites; provision of access to databases; rental of access time to databases; provision of access to Internet search engines, class 38, transport; packaging and storage of goods; delivery of goods, particularly of medicines, body care and beauty products, dietetic foods and drinks and food supplements to pharmacies, drug stores, clinics, wholesalers, physicians' practices and medical representatives; delivery of goods to patients and end consumers; logistics services in the transport sector; inspection of goods before dispatch and upon receipt, for third parties; storage of goods, particularly of medicines, body care and beauty products, dietetic foods and drinks and food supplements; warehousing of goods (included in this class), including packaging of goods, particularly of medicines, body care and beauty products, dietetic foods and drinks and food supplements; preparation of orders for dispatch, namely order picking of goods for third parties; preparation of packages ready for delivery; unloading of goods; rental of warehouse space; carrier services (goods transport); delivery of goods to customers; logistics services in the transport sector for clinical trials; courier services; provision of information on the Internet on warehouse movements and the location of goods, class 39, custom assembling of materials for orders from third parties, class 40, provision of training and further training; teaching; conducting of seminars, teaching, training and further training measures, particularly in the field of providing medical and pharmaceutical products for industrial and test purposes, arrangement and conducting of workshops (training); sporting and cultural activities; personnel development through training and further training; e-learning, particularly training via the Internet; organisation of live events; organisation of exhibitions for cultural or educational purposes; training consultancy and further training consultancy, and education consultancy; coaching; radio entertainment; publication of books, newspapers and magazines; publication of printed matter in electronic form (including on the Internet), except for advertising purposes; publication of texts, except for advertising purposes; information about events (entertainment); production of articles for radio and television programs, films and videos, as well as other image and sound programs of a training, instructional and entertainment nature; production of Internet television programs; personal consultancy with regard to training and further training; career guidance; editorial supervision of Internet sites, namely editing of texts for publication on the Internet, except for advertising purposes; online publication of electronic books and periodicals; production of texts, except advertising texts for information CDs; editorial services, class 41, development of computer programs, particularly in the health field; updating computer software; computer consultancy services; computer data recovery; installation of computer programs; copying of computer programs; rental of computer software; computer software maintenance; rental of data processing equipment; development of operating systems for computers; EDP programming services; technical performance monitoring and analysis of network operation, included in this class; implementation of EDP programs on networks, configuration of computer networks using software, security services for protecting against illegal network access; production of software for Internet portals and Internet platforms; design and maintenance of web sites for third parties; consultancy on the design of homepages and Internet sites; development and design of homepages and Internet sites, particularly for pharmacies, drug stores, physicians'

practices and clinics; technical project management in the EDP field; rental of computer software; rental of data processing equipment; rental of web servers; rental and maintenance of electronic storage facilities for use as web sites for third parties (hosting); configuration of computer networks by means of software; social science consultation, particularly scientific project studies with regard to current tendencies in health and economic policy within human society; medical/pharmaceutical research; medication research, in particular the development of new medications and forms of administration for third parties; quality testing of medications for third parties; certification of medications for third parties; follow-up research and research in databases and on the Internet for scientific and research purposes; electronic data storage; storage of data in computer databases; provision or rental of electronic storage space (web space) on the Internet; styling (industrial design); editing, formatting and copying of data onto CD blanks (pre-mastering); installation, maintenance and updating of database software; scientific analysis of pharmaceutical products; scientific and technical consultation on the approval of medications for third parties; chemical laboratory services; services of a medical laboratory; civil engineering, klass 42, samt consultancy relating to pharmaceutical products, namely through a pharmacist or drug store operator; pharmacist services, namely preparation of pharmaceutical preparations and medicines for third parties on the basis of medical prescriptions; pharmacist services, namely preparation of medical prescriptions for third parties; health and nutrition consultancy, particularly in the field of care and hygiene of the sick and babies; hygienic and beauty care for human beings and animals; performance of medical testing; psychological consultation of personnel for medical purposes; medical consultation for the approval of medications for third parties, klass 44.



Märket i den internationella registreringen är utför i grönt och vitt

PRV har som hinder för den internationella registreringens giltighet i Sverige anfört att märket saknar särskiljningsförmåga.

Innehavaren har bestridit att märket saknar särskiljningsförmåga och har i allt väsentligt anfört följande. Den sedan länge främsta symbolen för sjukvård, första hjälpen, apoteksvaror och liknande är ett rött kors, eventuellt i kombination med en ormfigur. Samtidigt har olika figurer i grön färg ofta fått symbolisera en anknytning till naturen och till att erbjudna produkter och tjänster är miljövänliga. Innehavaren menar då att det gröna figurmärket i förevarande ärende avviker från gängse normer, vilket är distinktivitetshöjande ur ett varumärkesperspektiv. Den relativt enkla och strama designen i märket framhäver figurmärkets individualitet och ger därmed märket en särprägel visavi ett grönt kors i ordinarie grundutförande.

SKÄL

Hinder mot att en internationell varumärkesregistrering ska gälla i Sverige finns enligt 54 § 2 stycket varumärkeslagen om det varumärke som den internationella registreringen avser inte uppfyller förutsättningarna enligt 13 § eller om något hinder mot en nationell registrering skulle ha funnits enligt 14 §.

Ett varumärke får enligt 13 § varumärkeslagen registreras endast om det har särskiljningsförmåga. Ett märke som uteslutande eller med endast mindre ändring eller tillägg anger varans art, beskaffenhet, mängd, användning, pris eller geografiska ursprung eller tiden för dess framställande, ska inte i och för sig anses ha särskiljningsförmåga.

Vad som ovan angetts gäller även tjänster.

PRV gör följande bedömning

Innehavarens registrering består av ett grönt kors där bredd och längd är lika kantad med en smal ram i samma gröna nyans. Det är vanligt förekommande att ett grönt kors alternativt vita kors på grön bakgrund symboliserar sjukvård, första hjälpen och farmaceutiska varor och/eller tjänster. Märket avviker i alltför ringa grad från ett grönt kors i sitt grundutförande och uppvisar inte sådana utseendemässiga särdrag att omsättningskretsen kan anses ha anledning att utan vidare uppfatta detta som ett kännetecken för varornas/tjänsternas kommersiella ursprung. Märket uppfyller därför inte kravet på särskiljningsförmåga för de farmaceutiska och sjukvårdsrelaterade varor och tjänster som registreringen omfattar.

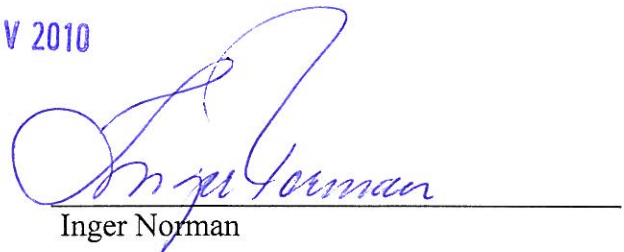
Med hänsyn till de skäl som ovan anförts ska den internationella registreringen inte gälla i Sverige.

Beslutat den



15 NOV 2010


Sara Dahlberg


Inger Norman

HUR BESLUTET ÖVERKLAGAS

Den som vill överklaga beslutet ska göra det skriftligt. Skrivelsen ska vara ställd till Patentbesvärsrätten, men sändas till Patent- och registreringsverket, Box 530, 826 27 Söderhamn. I skrivelsen ska anges det beslut som överklagas och den ändring av beslutet som begärs. Skrivelsen ska ha kommit in till verket inom två (2) månader från beslutsdagen.