

To: Emosis LLC (jsafranek@ralaw.com)
Subject: TRADEMARK APPLICATION NO. 77183390 - BRUISE RX - 113879.0011
Sent: 8/30/2007 9:17:38 AM
Sent As: ECOM109@USPTO.GOV
Attachments:

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/183390

MARK: BRUISE RX

77183390

CORRESPONDENT ADDRESS:

JAMES C. SCOTT
ROETZEL & ANDRESS
1375 EAST NINTH STREET
ONE CLEVELAND CENTER, 9TH FL
CLEVELAND, OH 44114

RESPOND TO THIS ACTION:

<http://www.uspto.gov/teas/eTEASpageD.htm>

GENERAL TRADEMARK INFORMATION:

<http://www.uspto.gov/main/trademarks.htm>

-

APPLICANT: Emosis LLC

**CORRESPONDENT'S
REFERENCE/DOCKET NO:**
113879.0011

CORRESPONDENT E-MAIL ADDRESS:
jsafranek@ralaw.com

OFFICE ACTION

TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE ISSUE/MAILING DATE.

ISSUE/MAILING DATE: 8/30/2007

PLEASE NOTE: All of the issues raised can be resolved by telephone. The applicant may telephone the examining attorney, instead of submitting a written response, to expedite the application.

The assigned examining attorney has reviewed the referenced application and determined the following.

Search Results

- The Office records have been searched and no similar registered or pending mark has been found that would bar registration under Trademark Act Section 2(d), 15 U.S.C. §1052(d). TMEP §704.02.

However, before the mark can be published for opposition, the applicant must address the following informalities.

Disclaimer

- Applicant must disclaim the descriptive wording “BRUISE” apart from the mark as shown because it merely describes the main function or feature of the goods – treatment of bruises. Trademark Act Section 6, 15 U.S.C. §1056; TMEP §§1213 and 1213.03(a).

A disclaimer does *not* physically remove the disclaimed matter from the mark, but rather is a written statement that applicant does not claim exclusive rights to the disclaimed wording and/or design separate and apart from the mark as shown in the drawing.

The computerized printing format for the Office’s *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

No claim is made to the exclusive right to use “BRUISE” apart from the mark as shown.

See In re Owatonna Tool Co., 231 USPQ 493 (Comm’r Pats. 1983).

Inquiry of Meaning or Significance

- Applicant must specify whether the letters “RX” have any significance in the relevant trade or industry or as applied to the goods described in the application. 37 C.F.R. §2.61(b). Specifically, the applicant must state if its treatment bandages will require a prescription for use.

The applicant is advised that if its goods are in fact only available by prescription, the examining attorney may refuse registration under Section 2(e)(1) of the Trademark Act based on a finding of descriptiveness.

If the applicant has any questions or needs assistance in responding to this Office action, please telephone the assigned examining attorney.

/Julie A. Watson/
Trademark Attorney

Law Office 109
(571) 272-9236
(571) 273-9109 (fax)

RESPOND TO THIS ACTION: If there are any questions about the Office action, please contact the assigned examining attorney. A response to this Office Action should be filed using the Office's Response to Office action form available at <http://www.uspto.gov/teas/eTEASpageD.htm>. If notification of this Office action was received via e-mail, no response using this form may be filed for 72 hours after receipt of the notification. **Do not attempt to respond by e-mail as the USPTO does not accept e-mailed responses.**

If responding by paper mail, please include the following information: the application serial number, the mark, the filing date and the name, title/position, telephone number and e-mail address of the person signing the response. Please use the following address: Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451.

STATUS CHECK: Check the status of the application at least once every six months from the initial filing date using the USPTO Trademark Applications and Registrations Retrieval (TARR) online system at <http://tarr.uspto.gov>. When conducting an online status check, print and maintain a copy of the complete TARR screen. If the status of your application has not changed for more than six months, please contact the assigned examining attorney.

To: Emosis LLC (jsafranek@ralaw.com)
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Attachments:

IMPORTANT NOTICE
USPTO OFFICE ACTION HAS ISSUED ON 8/30/2007 FOR
APPLICATION SERIAL NO. 77183390

Please follow the instructions below to continue the prosecution of your application:

VIEW OFFICE ACTION: Click on this link http://portal.uspto.gov/external/portal/tow?DDA=Y&serial_number=77183390&doc_type=OOA&... (or copy and paste this URL into the address field of your browser), or visit <http://portal.uspto.gov/external/portal/tow> and enter the application serial number to [access](#) the Office action.

PLEASE NOTE: The Office action may not be immediately available but will be viewable within 24 hours of this notification.

RESPONSE MAY BE REQUIRED: You should carefully review the Office action to determine (1) if a response is required; (2) how to respond; and (3) the applicable [response time period](#). Your response deadline will be calculated from **8/30/2007**.

Do NOT hit "Reply" to this e-mail notification, or otherwise attempt to e-mail your response, as the USPTO does NOT accept e-mailed responses. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System response form at <http://www.uspto.gov/teas/eTEASpageD.htm>.

HELP: For *technical* assistance in accessing the Office action, please e-mail TDR@uspto.gov. Please contact the assigned examining attorney with questions about the Office action.

WARNING

- 1. The USPTO will NOT send a separate e-mail with the Office action attached.**
- 2. Failure to file any required response by the applicable deadline will result in**

the ABANDONMENT of your application.