

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: VIAHART, LLC

Serial No.: 87021780

Filed: May 3, 2016

Mark: BRAIN FLAKES

**PETITION TO MAKE SPECIAL**

Applicant, VIAHART, LLC, hereby petitions the Director to advance the examination of the above-referenced application in accordance with 37 C.F.R. §2.146. According to 37 C.F.R. §2.146, applicant may request that the initial examination of an application be expedited based upon a statement of facts showing special action is justified. In support of this petition, Pursuant to TMEP §1710, Applicant submits herewith the following statement of facts.

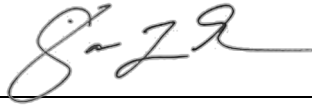
1. In November, 2013, VIAHART, LLC (“Applicant”) designed a toy, consisting of an interlocking plastic disk, in various colors, which allows children to connect the disks to build an endless variation of designs. The BRIAN FLAKES mark is original and distinctive.
2. In February, 2014, VIAHART launched its product under the BRAIN FLAKES mark at the New York Toy Fair to great commercial success and critical acclaim.
3. On May 3, 2016, the applicant filed an application for Registration on the Principal Register for the BRAIN FLAKES mark, in International Class 028 for "Children's educational toys for developing fine motor skills and engineering skills; Construction toys; Stacking toys; Toy building blocks; Toy building blocks capable of interconnection; Toy construction sets", U.S. Serial No. 87021780. See Exhibit 1.
4. Applicant has evidence of actual infringement by BeautyMood, an Amazon Reseller, for interlocking plastic discs and infringing the BRAIN FLAKES mark. See Exhibit 2, a website page.
5. Applicant has evidence of actual infringement by EMIDO, an Amazon Reseller, for interlocking plastic discs and infringing the BRAIN FLAKES mark. See Exhibit 3, a website page.
6. Applicant has evidence of actual infringement by Goodlucky365, an Amazon Reseller, for interlocking plastic discs and infringing the BRAIN FLAKES mark. See Exhibit 4, a website page.

7. Applicant has evidence of actual infringement by LoveS, an Amazon Reseller, for interlocking plastic discs and infringing the BRAIN FLAKES mark. See Exhibit 5, a website page.

Based on the evidence of actual infringement, Applicant respectfully requests that the Director grant this petition to make special. In accordance with 37 C.F.R. §2.6, the required petition fee of \$100 is being submitted electronically herewith.

Respectfully submitted,

VIAHART, LLC

By:   
\_\_\_\_\_  
David Gulbransen  
Attorney of Record for the Applicant

David Gulbransen  
Law Office of David Gulbransen  
159 N. Marion Street, Suite 172  
Oak Park, IL 60302  
(312) 361-0825 p.  
(312) 873-4377 f.  
david@gulbransenlaw.com

# EXHIBIT 1

## Trademark Electronic Application System (TEAS) filing receipt

1. **YOUR MARK:** Brain Flakes (Standard Characters, mark.jpg)  
The literal element of the mark consists of Brain Flakes.  
The mark consists of standard characters, without claim to any particular font, style, size, or color.
2. **YOUR SERIAL NUMBER:** We have received your U.S. Trademark Application and assigned serial number '87021780' to your submission. A summary of your application data is provided at the bottom of this message and serves as your official filing receipt. Please keep a copy of this information for your records. All correspondence concerning the application should reference your assigned serial number.

Please read all of the important information below. Not every mark is registrable with the USPTO and we do not refund the application filing fee(s) if a registration does not ultimately issue.

3. **RECEIVING E-MAIL COMMUNICATIONS/FILING DOCUMENTS ON-LINE:** Because you have authorized receipt of correspondence by e-mail, please make sure that your server will accept USPTO e-mail and not treat it as SPAM. If you must submit correspondence to us, please use the Trademark Electronic Application System (TEAS) forms, available at <http://www.uspto.gov/trademarks/teas/index.jsp>. Applicants who filed their application online using the TEAS Plus application form must (1) continue to submit certain documents online using TEAS, including responses to Office actions (see [http://www.uspto.gov/trademarks/teas/required\\_tegas\\_filings.jsp](http://www.uspto.gov/trademarks/teas/required_tegas_filings.jsp) for a complete list of these documents); (2) accept correspondence from the USPTO via e-mail throughout the examination process; and (3) maintain a valid e-mail address. TEAS Plus applicants who do not meet these three requirements must submit an additional processing fee of \$50 per international class of goods/services. However, in certain situations, authorizing an examiner's amendment by telephone will not incur this additional fee.
4. **KEEP YOUR ADDRESS CURRENT IN USPTO RECORDS:** We do not extend filing deadlines due to a failure to receive USPTO mailings/e-mailings. You must update the correspondence and/or owner's address if a postal address and/or e-mail address changes, using the form(s) available at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.
5. **WARNING ABOUT UNSOLICITED COMMUNICATIONS:** You may receive trademark-related communications from private companies not associated with the USPTO. These communications frequently display customer-specific information, including your USPTO serial number or registration number and owner name, and request fees for trademark-related services, such as monitoring, listings in international publications, and document filing. None of the companies offering these services are affiliated with the USPTO or any other federal agency. All official correspondence will be from the "United States Patent and Trademark Office" in Alexandria, VA, and if by e-mail, specifically from the domain "@uspto.gov." Please consult the

"Warning" page on the Trademarks section of the USPTO's website for further information about unsolicited communications and to view representative examples of them. For general information on filing and maintenance requirements for trademark applications and registrations, including fees required by law, please consult [www.uspto.gov](http://www.uspto.gov), contact the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199.

6. **LEGAL EXAMINATION PROCESS:** Your application is now pending examination. In approximately 3 months, your application will be assigned to a USPTO examining attorney for review. The application cannot mature into a registration unless all legal requirements are met, and many applications never satisfy these requirements and therefore never register. The overall process can take up to 18 months.
7. **CHECK STATUS AND REVIEW DOCUMENTS OR YOUR APPLICATION MAY BE UNINTENTIONALLY ABANDONED:** You **must** check the status and review all documents associated with your application at least every 3-4 months using Trademark Status and Document Retrieval (TSDR), available at <http://tsdr.uspto.gov/>.

Promptly e-mail the [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or telephone 1-800-786-9199 (select option #1) if an Office action (letter from the USPTO) or notice has issued for your application that you did not receive or do not understand. Failure to respond timely to any Office action or notice may result in the abandonment of your application, requiring you to pay an additional fee to have your application revived even if you did not receive the Office action or notice.

8. **FILING ERRORS:** If you discover an error in the application data, you must file a Voluntary Amendment at <http://www.uspto.gov/trademarks/teas/miscellaneous.jsp>. Do **not** submit any proposed amendment to [TEAS@uspto.gov](mailto:TEAS@uspto.gov), because the TEAS technical support team may not make any data changes. Please wait approximately 7 days after the filing date of your application to submit a Voluntary Amendment in order to allow for initial upload of your application data into the USPTO database. The assigned examining attorney will determine the acceptability of any Voluntary Amendment during examination. Not all errors may be corrected. For example, if you submitted the wrong mark or if the proposed correction would be considered a material alteration to your original filing, it will not be accepted. In this situation, your only recourse would be to file a new application, with a new fee and no refund of your original filing fee.
9. **REQUEST FOR REFUND AND/OR CANCELLATION:** Since your application has already been assigned a serial number, please do not contact [TEAS@uspto.gov](mailto:TEAS@uspto.gov) to request a refund or to cancel the filing. We will only cancel the filing and refund the filing fee if the application does not meet minimum filing requirements. The fee is a processing fee that the USPTO does not refund, even if your mark does not proceed to registration.

In the limited situation where you inadvertently filed identical applications, one immediately after the other, because no confirmation of the first filing was received, please provide both serial numbers to the technical support team at [TEAS@uspto.gov](mailto:TEAS@uspto.gov).

10. **SelectUSA:** The United States represents the largest, most dynamic marketplace in the world and is an unparalleled location for business investment, innovation, and commercialization of new technologies. The U.S. offers tremendous resources and advantages for those who invest and manufacture goods here. Through SelectUSA, our nation works to promote and facilitate business investment. SelectUSA provides information assistance to the international investor

community; serves as an ombudsman for existing and potential investors; advocates on behalf of U.S. cities, states, and regions competing for global investment; and counsels U.S. economic development organizations on investment attraction best practices. To learn more about why the United States is the best country in the world to develop technology, manufacture products, deliver services, and grow your business, visit [SelectUSA.gov](http://SelectUSA.gov) or call +1-202-482-6800.

### **SUMMARY OF APPLICATION DATA FOLLOWS:**

**APPLICATION DATA:** You have filed a **Trademark/Service Mark Application** for registration on the **Principal Register** using a **TEAS Plus** application form.

The applicant, VIAHART LLC, a limited liability company legally organized under the laws of Connecticut, having an address of

1321 Upland Dr. #6481  
Houston, Texas 77043  
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 028: Children's educational toys for developing fine motor skills and engineering skills; Construction toys; Stacking toys; Toy building blocks; Toy building blocks capable of interconnection; Toy construction sets

Use in Commerce: The applicant is using the mark in commerce on or in connection with the identified goods/services. The applicant attaches, or will later submit, one specimen as a JPG/PDF image file showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, regardless of whether the mark itself is in the standard character format or is a stylized or design mark. The specimen image file may be in color, and the image must be in color if color is being claimed as a feature of the mark.

In International Class 028, the mark was first used by the applicant or the applicant's related company or licensee predecessor in interest at least as early as 11/19/2013, and first used in commerce at least as early as 02/16/2014, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Photograph of product packaging featuring the mark..  
Specimen-1 [SPE0-128135240115-20160502160436443814\_.\_2015-04-27-Amazon-39.pdf ]

The applicant's current Attorney Information:

David Gulbransen of Law Office of David Gulbransen  
159 N. Marion St., Suite 172  
Oak Park, Illinois 60301  
United States

The applicant's current Correspondence Information:

David Gulbransen

Law Office of David Gulbransen

159 N. Marion St., Suite 172

Oak Park, Illinois 60301

3123610825(phone)

david@gulbransenlaw.com (authorized)

**E-mail Authorization:** I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$225 has been submitted with the application, representing payment for 1 class(es).

### **Declaration**

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

### **Declaration Signature**

Signature: /David Gulbransen/ Date: 05/02/2016

Signatory's Name: David Gulbransen

Signatory's Position: Attorney of Record, Illinois Bar Member

Signatory's Phone Number: (312) 361-0825

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Thank you,

The TEAS support team

Tue May 03 10:43:32 EDT 2016

STAMP: USPTO/FTK-128.135.240.115-20160503104332153459-87021780-  
55066443747c936afcac050ede234a935f4f5a51a1dea5a58dfa3f77c172ffe2-CC-23194-  
20160502160436443814

Prime Now \$10 Off your first order WITH FREE 2-HOUR DELIVERY



Back to search results for "brain flakes"



Roll over image to zoom in

## BeautyMood Brain Flakes Snowflake 300 Piece Interlocking Plastic Disc Set 12 Colors | Package with Reusable Bag | Kids Safe Material

by BeautyMood

Be the first to review this item

Price: **\$10.36** ✓ Prime

Only 15 left in stock.

Want it tomorrow, May 4? Order within 4 hrs 32 mins and choose **One-Day Shipping** at checkout. [Details](#)

Sold by **USLUCK STORE** and Fulfilled by Amazon.

- DURABLE! Pieces easily snap together and are designed to withstand rough play. Your child can explore their wild imagination with this high quality innovative building set.
- CREATIVE! With 300 bold & brightly colored flakes to choose from, the options are endless. Build flowers, animals, cars, worlds and more by clicking discs in place.
- EDUCATIONAL! Link together discs while improving independent play, hand eye coordination, spatial skills & dexterity. Great for sensory development, occupational therapy and autistic individuals.
- SAFE! Toys are stored in adorable reusable bag for easy clean up. Awesome flakes are made from non-toxic, BPA free polyethylene. LAB TEST APPROVED! Ideal from age 3 to adult. Please supervise small children.
- CUSTOMER GUARANTEE! If you are unhappy with the quality of your product, please contact us within 30 days for your money back.

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Qty: 1

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Ship to:  
David Gulbransen- OAK PARK

**STAR WARS DAY** Coming May 4th

Learn more

### Customers Who Viewed This Item Also Viewed





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Roll over image to zoom in

## EMIDO Brain Flakes 500 Piece Interlocking Plastic Disc Set Snowflakes Connect - Foster children's creativity, imagination, color recognition and teamwork!

by **EMIDO** ★★★★★ 5 customer reviews

List Price: \$49.99  
 Price: **\$19.99** Prime  
 You Save: \$29.90 (60%)

**Only 1 left in stock.**

**Want it tomorrow, May 4? Order within 2 hrs 32 mins and choose One-Day Shipping at checkout.** [Details](#)

Sold by **EMIDO** and Fulfilled by Amazon.

- Excellent Value | Hours of Play and Tons of Awesome Creations | With 500 pieces colorful snowflake shape blocks, the options are endless. Build flowers, animals, cars, worlds and more. Encourages creativity, easy for all ages, for baby gifts. Your child can explore their wild imagination with this high quality innovative building set.
- Every Jar Has More Than 500 (!) Pieces! | Discs Click Together Easily For All Ages | Discs measure 1.3 Inches (3.3cm) across
- Teaches Spatial Thinking | Engineers Start Here! Give Your Child The Skills Today! Great for sensory development, occupational therapy and autistic individuals. Endless creative combinations teaches spatial thinking.
- Size And Weight | Product Measures 5.3 x 6.9 x 6.1 in inches | 13.5 x 17.7 x 15.6 in centimeters | Product Weights Approximately 1.7 lbs / 0.75 kgs | These dimensions and weight do not include the packaging
- Customer Guarantee! 30 day no questions asked return policy and FREE returns! Engineers start here! Give your child the skills today! Unique shape, infinite originality, free mosaic, free combination. Also can be used for decoration, good-looking and fun.

2 new from **\$19.99**



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**Ship to:**  
David Gulbransen- OAK PARK

Add to List

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**Other Sellers on Amazon**

2 new from **\$19.99**

Have one to sell? [Sell on Amazon](#)

**EXHIBIT 3**

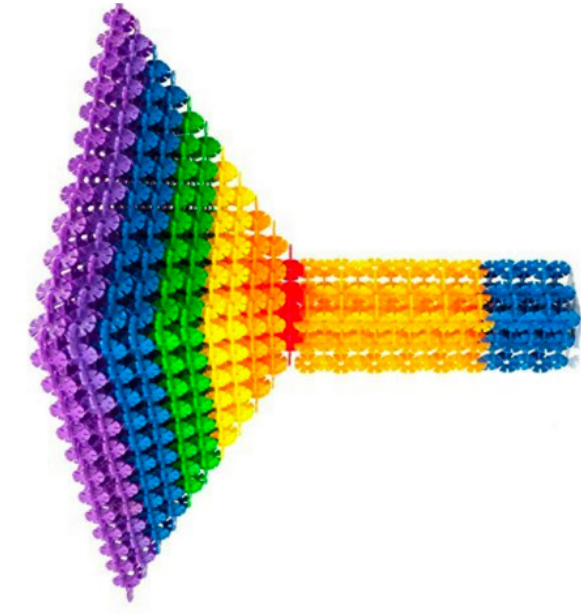
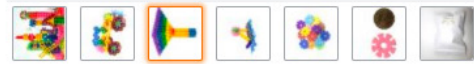
**Frequently Bought Together**

Total price: **\$31.98**

[Add both to Cart](#)



< Back to search results for "brain flakes"



### Goodlucky365 Brain Flakes 600 Piece Interlocking Plastic Disc Set

by Goodlucky365 ★★★★☆ 7 customer reviews

List Price: \$24.99

Price: \$24.99

**Sale: \$16.99** Prime | FREE Same-Day

Delivered today for FREE with qualifying orders over \$35. [Details](#)

You Save: \$18.00 (51%)

**In Stock.**

**Want it TODAY, May 3?** Order within **1 hr 19 mins** and choose **Same-Day Delivery** at checkout. [Details](#)

Sold by [GoodLucky365](#) and Fulfilled by Amazon.

- Every Package Has About 600 (!) Pieces! | Discs Click Together Easily | Discs measure 1.3 Inches (3.2cm) across
- Packing: plastic bag
- Teaches Spatial Thinking | Engineers Start Here! Give Your Child The Skills Today!
- Children three years of age or older, pay attention to the risk of suffocation
- 30 day no questions asked return policy and FREE returns!

Share

Qty: 1

Add to Cart

[Turn on 1-Click ordering for this browser](#)

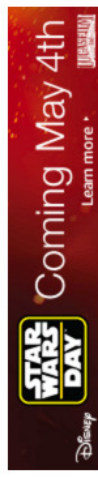
Ship to:

David Gulbransen- OAK PARK

Add to List

Have one to sell?

[Sell on Amazon](#)



[Click to open expanded view](#)

#### Frequently Bought Together



Total price: **\$53.97**

[Add all three to Cart](#)

[Add all three to List](#)



### LoveS Brain Flakes 400 Piece Interlocking Plastic Disc Set

by LoveS  
 Be the first to review this item

List Price: \$19.99  
 Price: \$14.99  
 Sale: **\$12.88** ✓Prime  
 + \$0.00 estimated tax  
 You Save: **\$7.11 (36%)**

**In Stock.**

**Want it tomorrow, May 7?** Order within **2 hrs 6 mins** and choose **Saturday Delivery** at checkout. [Details](#)  
 Sold by **LoveS** and Fulfilled by **Amazon**.

- Every Package Has About 400 (!) Pieces! | Discs Click Together Easily For All Ages | Discs measure 1.3 Inches (3.2cm) across
- Excellent Value | Hours of Play and Tons of Awesome Creations!
- Teaches Spatial Thinking | Engineers Start Here! Give Your Child The Skills Today!
- Link together discs while improving independent play, hand eye coordination, spatial skills & dexterity. Great for sensory development, occupational therapy and autistic individuals.
- 30 day no questions asked return policy and **FREE** returns!

[Click to open expanded view](#)

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Qty: 1 ▾

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**Ship to:**

David Gulbransen- OAK PARK ▾

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Have one to sell?

