

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**Applicant: Fromm International, Inc.**

**App. No.: 88116560**

**Filing Date: 09/13/2018, Filed Electronically**

**Mark: FROMM APPAREL STUDIO**

**Examiner: Julie M. Guttadauro**

RESPONSE TO WRITTEN OFFICE ACTION

In response to the Examining Authorities' Written Office Action, mailed electronically on 05/21/19, the Applicant respectfully submits the following remarks.

**REMARKS**

The Applicant respectfully thanks the Examiner for the Written Office Action. With regard to the substantive portion of the Written Office Action, registration for the mark, FROMM APPAREL STUDIO, was refused as being primarily merely a surname. Trademark Act Section 2(e)(4), 15 U.S.C. §1052(e)(4); *see* TMEP §1211. Further, the term “Studio” is subject to a disclaimer requirement. In response to the Examining Authorities Written Office Action, the Applicant respectfully submits the following remarks.

The Applicant respectfully submits that the mark, FROMM APPAREL STUDIO, should not be refused registration since FROMM APPAREL STUDIO is not primarily merely a surname. Specifically, the Applicant respectfully submits that the primary significance of the mark to the purchasing public when viewed in relation to the goods or services for which registration is sought is not significance as primarily merely a surname. Further, applicant submits that the term “studio” as used in the present application, is not generic in the context of the applicants goods and therefore does not need to be disclaimed. Applicant provides the following and accompanying evidence and arguments.

As set forth by the Examiner in the Written Office Action, the TTAB has identified the following factors in determining whether a mark is primarily merely a surname:

1. Whether the surname is rare;
2. Whether the mark is the surname of anyone connected with the applicant;

3. Whether the mark has any alternate meanings other than as a surname;
4. Whether the mark has the structure and pronunciation of a surname; and
5. Whether the stylization of lettering is distinctive enough to create a separate commercial impression.

The Examiner also states that, “These inquiries are not exclusive and any of these circumstances—singly or in combination—and any other relevant circumstances may be considered when making the determination.” *Referring to In re Eximius Coffee, LLC*, 120 USPQ2d 1332 at 1277-78; TMEP §1211.01.

### **1. Whether the Surname is Rare**

In the Written Office Action, the Examiner states that the surname FROMM appears 26,390 times in online White Pages, and that these occurrences establish surname significance. Given that the population of the United States is over 329,000,000, and assuming that the White Pages listing is accurate, the occurrence of the surname FROMM constitutes only approximately .008% of the surnames in the United States. However, the occurrence of FROMM in the White Pages does not take into account multiple listings for individuals who have moved, or who have listings for their place of business. Further, the White Pages may not also take into account listings of persons who are deceased.

In fact, in the “Frequently Occurring Surnames from the Census 2010” report, shows that the surname FROMM occurred 3,105 times, and was ranked 10,377<sup>th</sup> with respect to commonality. Accordingly, the “Frequently Occurring Surnames from the Census 2010” shows that common surnames occur millions of times, while FROMM

occurs in the low thousand times. This means that FROMM is approximately a thousand times more rare than the most common surnames.

While, Applicant is unaware of any particular numerical ranges given by the courts to determine if a name is rare or not, something being 100 – 1,000 times more rare than the common peers seems to at least fit the usage of the term that is given in practice by the public in the United States. Indeed, collectible card games, lottery cards, and the like will often list the consumers chances of finding a “rare” as being 1/20, 1/100, 1/150, etc. when comparing the “common” results to the “rare” results. Therefore, the Applicant respectfully submits that the mark FROMM is rarely encountered as a surname in the United States.

Additionally, a Google® search of the mark FROMM does not generate results that show widespread media attention or publicity of persons with that surname. A Google® search of the mark does generate an Erich Fromm, who was a psychoanalyst and author who lived in the United States. However, Erich Fromm was born in Germany in 1900, immigrated to the United States in 1934, and passed away almost 40 years ago, in 1980. As a result, it is not likely that there are any current news stories regarding Erich Fromm. Also, the services provided by Erich Fromm as a psychoanalyst and author are separate and distinct from the goods provided by Applicant. Since Erich Fromm has most likely not received recent media attention or publicity, or widespread publication, the current purchasing public relevant to the goods/services of the present application is most likely unaware of Erich Fromm, or FROMM as a surname.

The Applicant respectfully submits that based on the 2010 U.S. Census, the occurrence of FROMM as a surname in the United States is rare. Also, there is little to

no evidence of media attention or publicity of persons having FROMM as a surname.

For these reasons, the Applicant respectfully submits that the occurrence of FROMM as a surname is rare, and as a result, FROMM is not viewed by the purchasing public as primarily merely a surname.

## **2. Whether the Mark is the Surname of Anyone Connected with the Applicant**

The mark, FROMM, is not the surname of anyone connected with the Applicant, neither is this issue contested by the Examiner. Hence, the Applicant asserts that the purchasing public would not view the mark, FROMM, as primarily merely a surname, but as a trade name associated with Applicant's goods.

## **3. Whether the Mark has Any Alternate Meanings Other than as a Surname**

In the Written Office Action, the Examiner cites dictionary.com to demonstrate that FROMM only appears as a surname and has no other significance. However, in contrast to this, a Google Translate® search and a Wikipedia® search of the mark, FROMM, recorded on 07/25/2019, indicates alternate meanings of FROMM. Based on these alternate meanings, Applicant respectfully submits that FROMM has meanings other than as a surname.

Google Translate® (accessed July 29, 2019) defines FROMM as German for “religious, pious, devout, god-fearing, upright, and sanctimonious.” Wikipedia® further lists alternate forms of FROMM, including the Yiddish, FRUM, which is defined similarly. Wikipedia® further explains that the Yiddish form, FRUM, “is a word that describes Jewish religious devotion.” *Frum*, available at <https://en.wikipedia.org/wiki/Frum>, last edited July 23, 2019. Moreover, dictionary.com defines “FRUM” as Yiddish for “religious” or “observant.” Since Yiddish is a German

dialect, and because there is no audible difference between “FROMM” and “FRUM” when spoken in their native languages, it is believed that the Yiddish spelling, “FRUM” may be used to expound upon, and interpret the meaning of its German counterpart “FROMM.” For these reasons, it is believed the purchasing public would view the mark FROMM to mean “pious” or “religious,” rather than to associate the mark as a surname. Hence, the Applicant respectfully submits that the purchasing public is not likely to recognize the mark FROMM as primarily merely a surname.

#### **4. Whether the Mark has the Structure and Pronunciation of a Surname**

In the Written Office Action, the Examiner provides no evidence as to whether the mark has the structure and pronunciation of a surname. As a result, the Applicant respectfully submits that FROMM does not have the look and feel, or structure and pronunciation, of a surname, and is therefore not likely to be recognized as primarily merely a surname.

#### **5. Distinctive Lettering**

Applicant makes no arguments with regards to distinctive lettering.

**The term “studio” is not generic for applicants goods and therefore does not need to be disclaimed**

Applicant’s goods are “aprons; capes for use in salons and barber shops; jackets; hairdressing capes.”

While “studio” may be defined, in part, as “a room where a painter, photographer, or designer works” the term “FROMM” is not the name of a famous designer, not the

name of anyone associated with applicant's products (James Simon founded Applicant's company in 1907), and not the name of any individual associated with designing the claimed products. Further, it is not common for artists/designers to create tools for professionals. Craftsmen make tools for artists and professionals in their workshops, while artists and professionals use their tools to create their art and designs and do so in their studios. Accordingly, the "studio" mentioned in the present application is not primarily a reference to applicant's workshop, but the studio of applicant's customers. The mark is not read by the relevant consuming public as the term STUDIO modified by both FROMM and APPAREL, but instead as FROMM (pious) modifying each of APPAREL and STUDIO separately, as in there is apparel that is "fromm" and a studio that is "fromm" and they go together, such that the implicit messaging is that the professionals "pious" or "upright" studio deserves similarly "pious" or "upright" apparel.

Indeed, "FROMM" is a German adjective meaning "religious, pious, devout, god-fearing, upright, and sanctimonious." Accordingly, the position taken in the Written Office Action, that "the wording merely describes applicant's goods because the goods consist of items, created by a designer, for consumers to wear" is not accurate. Instead, the wording describes a sense of art and design **by the consumer themselves**, when using applicant's goods, that is "religious, pious, devout, god-fearing, upright," and perhaps even "sanctimonious" to precision, reliability, and quality.

Further, even if "FROMM" were the name of a designer, "studio" does not fall to the level of being generic for the applied for goods. Designers primarily produce consumer products, while applicant's products are for use by professionals (i.e. hair dressers and barbers) who provide artistic and design services for consumers in their own

studios (i.e. salons and barber shops). The “studio” mentioned in the branding is not applicant’s own studio, but a nod to the studios of their customers, the professionals who cut and style hair. Therefore, there is a mental leap that must be taken and applicant’s use of “studio” is not generic for applicant’s goods and need not be disclaimed.



## CONCLUSION

As stated above, a number of factors go into the determination of whether a mark is viewed as primarily merely a surname by the purchasing public, and any number of circumstances may shape the analysis. In this instance, because the use of FROMM as a surname is rare, because FROMM is not the surname of someone associated with the Applicant, because FROMM has alternate meanings other than as a surname, because FROMM does not have the structure and pronunciation of s surname, and because of additional factors, it is believed that FROMM is not primarily merely a surname.

For these reasons, it is believed that the mark, FROMM APPAREL STUDIO, should not be barred from registration as primarily merely a surname and that the disclaimer requirement of “studio” should be withdrawn. Applicant believes the remarks have addressed each of the issues pointed out by the Examiner in the Written Office Action. In light of the remarks, the mark should be in a condition for allowance, and the Applicant respectfully requests that the rejection be withdrawn. Should the Examiner wish to discuss any of the remarks, the Applicant again invites the Examiner to do so by telephone conference.

Respectfully Submitted,

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