

The Examining Attorney has refused registration of Applicant's mark COLORWAYS in Classes 9, 14, 16 and 26 as being "merely descriptive" under Section 2(e)(1) of the Lanham Act, 15 U.S.C. § 1052(e)(1). The Examining Attorney has also requested the response to certain questions regarding the proposed goods, and has objected to the descriptions of some of the goods. Applicant has amended the description of the goods and, as amended, Applicant respectfully traverses the rejection.

Requested Information

Applicant responds as follows to the questions of the Examining Attorney:

(1) Explain whether the wording in the mark "COLORWAYS" has any meaning or significance in the trade or industry in which applicant's goods and/or services are manufactured or provided, any meaning or significance as applied to applicant's goods and/or services, or if such wording is a term of art within applicant's industry.

No.

(2) Respond to the following questions:

Does the term "COLORWAYS" describe any feature of the applicant's goods? If so, please explain?

No.

What is the meaning of "COLORWAYS" when used on the applicant's goods?

The mark is not intended to have any specific meaning.

Will the applicant's goods be provided in a variety of colors? If so, please explain.

Some of Applicant's goods will likely be made in more than one color, but no more so than products sold by others for similar type goods.

Will the applicant's goods be colorful? If so, please explain.

As stated above, some of Applicant's goods may be made in more than one color, but no more so than products sold by others for similar type goods.

Applicant's Mark Is Not Merely Descriptive

It is well established that a mark will be deemed to be merely descriptive only if it "immediately conveys information" about an ingredient, characteristic, function or feature of a product or service." *See, e.g., In re MBNA America Bank N.A.*, 67 USPQ2d 1778, 1780 (Fed.

Cir. 2003); *In re Time Solutions Inc.*, 33 USPQ2d 1156, 1157 (TTAB 1994); *see also Abercrombie & Fitch Co. v. Hunting World, Inc.*, 189 USPQ 759, 765 (2d Cir. 1976) ("A term is descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods."). It is not sufficient, however, that the term may convey an indefinite scrap of information about the goods or services, it must provide the consumer with an unambiguous idea as to the nature of those goods or services. *See Blisscraft of Hollywood v. United Plastics Co.*, 131 USPQ 55, 60 (2d Cir. 1961) ("Unless a word gives some reasonably accurate — some tolerably distinct knowledge — as to [the goods], it is not descriptive within the meaning of trademark terminology.").

By contrast, a mark is suggestive if, when the goods or services are encountered under the mark, a multi-stage reasoning process, or the utilization of imagination, thought or perception, is required in order to determine what attributes of the goods or services the mark indicates. *See, e.g., In re Abcor Development Corp.*, 200 USPQ 215, 218 (CCPA 1978); *In re Mayer-Beaton Corp.*, 223 USPQ 1347, 1349 (TTAB 1984). Indeed, the Board has often recognized that there is a thin line of demarcation between a suggestive mark and a merely descriptive one, with the determination of which category a mark falls into frequently being a difficult matter involving a good measure of subjective judgment. *See, e.g., In re Atavio*, 25 USPQ2d 1361 (TTAB 1992); *In re TMS Corp. of the Americas*, 200 USPQ 57, 58 (TTAB 1978). And, unfortunately, this distinction is often made on an intuitive basis rather than as a result of precisely logical analysis susceptible of articulation. *See In re George Weston Ltd.*, 228 USPQ 57, 58 (TTAB 1985). As a result, to the extent any doubt exists as to whether a mark is descriptive, that doubt must be resolved in the applicant's favor, and the mark will not then be refused registration on descriptiveness grounds. *See, e.g., Atavio*, 25 USPQ2d at 1363; *In re Aid Laboratories, Inc.*, 221 USPQ 1215, 1216 (TTAB 1983), and *In re Gourmet Bakers, Inc.*, 173 USPQ 565 (TTAB 1972).

The Examining Attorney asserts that Applicant's COLORWAYS mark is descriptive because it is asserted to immediately tell the consumer the products come in a "color or arrangement of colors" or come in a "combination of colors". Applicant respectfully disagrees. Rather, at most, Applicant's mark is suggestive.

Indeed, the Trademark Office has routinely concluded that the term COLORWAYS and COLORWAY is not descriptive. The following is a list of all "COLORWAY" bearing marks

that are currently registered, are pending, but have been approved for registration on the Principal Register, and all marks that were registered, but are now canceled, but only because required Section 8/renewal declarations were not filed:

Echo Colorway – Reg. No. 5639759 in Class 17 for Caulking; Sealants for buildings; Adhesive sealants for use in roofing; Adhesive sealant and caulking compound

COLORWAY - Reg. No. 5368582 in Class 12 for Mopeds; bicycles; Motor scooters; Push scooters; Electric bicycle; Moped bicycles; Electric vehicles, namely, electric cars; mobility scooters; Remotely controlled land vehicle; Strollers; pneumatic tires; tires for vehicle wheels; tyres for vehicle wheels; Air vehicles, namely, airplanes; civilian drones; Water vehicles, namely boats; Vehicles for locomotion by land, air, water or rail, namely, automobiles, planes, boats and trains; Motorcycles; motor scooters

COLORWAY – Reg. No. 4848475 for

Class 3 - Cleaning, polishing, scouring preparations in the form of paste, spray, liquid, for electric and electronic office equipment and surfaces

Class 21 - Sponges for household purposes; cleaning brushes for household use; brush-making materials; cleaning instruments for household use; polishing gloves; cleaning cloths of microfiber; cleaning nano-cloths; dusting cloths; cloths for cleaning

COLORWAY – App. No. 88139701 for (allowed)

Class 21 – Mug

Class 25 - Clothing, namely, shirts, tee-shirts, shorts, hats

COLORWAY ARTS – App. No. 88503565 in Class 16 for Bookbinding materials kits, comprised of poster board, craft paper, chipboard paper for craft use, binding sheets and an instruction guide, all sold as a unit; Cartonnage kits comprised of poster board, craft paper, chipboard paper for craft use, binding sheets and an instruction guide, all sold as a unit; Cartonnage kits, namely, comprised of poster board, craft paper, chipboard paper for craft use, binding sheets, an instruction guide and closures, namely, clasps for bookbinding, binders, and handles, all sold as a unit; Bookbinding materials; Cartonnage materials, namely, chipboard paper for craft use, poster board, and craft paper (published, disclaiming "Arts")

COLORWAY – Reg. No. 4273948 for (among others):

Class 2 - Paints, colorants

Class 16 - Paper, cardboard and goods made from these materials, namely, banners of paper, paper labels, posters, folders, notebooks, boxes, cartons, storage containers, and packaging containers

Canceled August 16, 2019 as Section 7 not filed

COLORWAY – Reg. No. 2859682 in Class 24 for fabric for wearing apparel (canceled in 2011)

COLORWAYS – Reg. No. 2689546 in Class 25 for clothing, namely, dresses (Supplemental Register, canceled in 2009)

COLORWAYS – Reg. No. 2370362 in Class 20 for upholstered furniture (canceled in 2007)

COLORWAYS – Reg. No. 2055559 in Class 21 for dinnerware; kitchen utensils, namely, forks, spoons, spatulas, meat tenderizers, and whisks (canceled in 2004)

COLORWAYS – Reg. No. 1399502 in Class 24 for tablecloths (canceled in 1993)

COLORWAYS – Reg. No. 1081782 in Class 24 for fabric for wearing apparel (canceled in 1998)

Printouts from the TESS database for each of the above marks are attached as Exhibit 1. As these show, in only one instance, and then in 2002/2003 and not since, has any other Examining Attorney concluded that the term was descriptive. And, each of the above marks includes goods that could, and likely would, be available in a variety of colors. The reason is clear. While "colorway" may mean a collection of colors, it is descriptive only of the collection of colors themselves, not the underlying goods themselves.

Accordingly, Applicant submits that, just as the term "Colorways" and "Colorway" have not been found to be descriptive of other goods that may conceivably be available in a variety of colors, Applicant's COLORWAYS mark is not descriptive of the goods in the present application.

EXHIBIT 1



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Echo Colorway

Word Mark ECHO COLORWAY
Goods and Services IC 017. US 001 005 012 013 035 050. G & S: Caulking; Sealants for buildings; Adhesive sealants for use in roofing; Adhesive sealant and caulking compound. FIRST USE: 20180926. FIRST USE IN COMMERCE: 20180926
Standard Characters Claimed
Mark Drawing Code (4) STANDARD CHARACTER MARK
Serial Number 87838411
Filing Date March 17, 2018
Current Basis 1A
Original Filing Basis 1B
Published for Opposition July 31, 2018
Registration Number 5639759
Registration Date December 25, 2018
Owner (REGISTRANT) Mule-Hide Products Co., Inc. CORPORATION TEXAS 1195 Prince Hall Dr Beloit WISCONSIN 53511
Assignment

Recorded ASSIGNMENT RECORDED
Attorney of Record Todd Whitney Burkett
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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COLORWAY

Word Mark COLORWAY

Translations The wording "Colorway" has no meaning in a foreign language.

Goods and Services IC 012. US 019 021 023 031 035 044. G & S: Mopeds; bicycles; Motor scooters; Push scooters; Electric bicycle; Moped bicycles; Electric vehicles, namely, electric cars; mobility scooters; Remotely controlled land vehicle; Strollers; pneumatic tires; tires for vehicle wheels; tyres for vehicle wheels; Air vehicles, namely, airplanes; civilian drones; Water vehicles, namely boats; Vehicles for locomotion by land, air, water or rail, namely, automobiles, planes, boats and trains; Motorcycles; motor scooters. FIRST USE: 20170403. FIRST USE IN COMMERCE: 20170403

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 87429299

Filing Date April 28, 2017

Current Basis 1A

Original Filing Basis 1A

Published for October 17, 2017

Opposition

Registration Number 5368582

Registration Date January 2, 2018

Owner (REGISTRANT) Shenzhen Yun Tongda Technology&Service CO.,LTD. limited company (ltd.) CHINA Rm.201,Blk.A,No.1,Qianwan 1stRd.,Qianhai Shenzhen Hongkong Cooperation Zone, Shenzhen CHINA

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the wording "Colorway" in stylized format.

Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator LIVE

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COLORWAY

Word Mark COLORWAY

Goods and Services IC 003. US 001 004 006 050 051 052. G & S: Cleaning, polishing, scouring preparations in the form of paste, spray, liquid, for electric and electronic office equipment and surfaces

IC 021. US 002 013 023 029 030 033 040 050. G & S: Sponges for household purposes; cleaning brushes for household use; brush-making materials; cleaning instruments for household use; polishing gloves; cleaning cloths of microfiber; cleaning nano-cloths; dusting cloths; cloths for cleaning

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 79155576

Filing Date June 10, 2014

Current Basis 66A

Original Filing Basis 66A

Published for Opposition August 25, 2015

Registration Number 4848475

International Registration Number 1224255

Registration Date November 10, 2015

Owner (REGISTRANT) Gasaenko Igor Maratovych INDIVIDUAL UKRAINE vul. Sviatoshynska, 6 kv. 126,m Kyiv 03115 UKRAINE

Attorney of Record Alexander Lazouski

Description of Mark Color is not claimed as a feature of the mark. The mark consists of the invented word "COLORWAY".

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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COLORWAY ARTS

Word Mark COLORWAY ARTS**Goods and Services** IC 016. US 002 005 022 023 029 037 038 050. G & S: Bookbinding materials kits, comprised of poster board, craft paper, chipboard paper for craft use, binding sheets and an instruction guide, all sold as a unit; Cartonnage kits comprised of poster board, craft paper, chipboard paper for craft use, binding sheets and an instruction guide, all sold as a unit; Cartonnage kits, namely, comprised of poster board, craft paper, chipboard paper for craft use, binding sheets, an instruction guide and closures, namely, clasps for bookbinding, binders, and handles, all sold as a unit; Bookbinding materials; Cartonnage materials, namely, chipboard paper for craft use, poster board, and craft paper. FIRST USE: 20150301. FIRST USE IN COMMERCE: 20150301**Standard Characters Claimed****Mark****Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 88503565**Filing Date** July 8, 2019**Current Basis** 1A**Original Filing Basis** 1A**Published for** December 3, 2019**Opposition****Owner** (APPLICANT) ColorWay Arts, LLC LIMITED LIABILITY COMPANY MICHIGAN c/o Claudia Squio 13033 Woodrush Dr. Grand Haven MICHIGAN 49417**Attorney**

of Record Eric A. Hultman

Disclaimer NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ARTS" APART FROM THE MARK AS SHOWN

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator LIVE

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COLORWAY

Word Mark	COLORWAY
Goods and Services	IC 021. US 002 013 023 029 030 033 040 050. G & S: Mug
	IC 025. US 022 039. G & S: Clothing, namely, shirts, tee-shirts, shorts, hats
Standard Characters Claimed	
Mark Drawing Code	(4) STANDARD CHARACTER MARK
Serial Number	88139701
Filing Date	October 2, 2018
Current Basis	1B
Original Filing Basis	1B
Published for Opposition	June 11, 2019
Owner	(APPLICANT) COLORWAY, INC. CORPORATION DELAWARE 160 Greentree Drive, Suite 101 Dover DELAWARE 19904
Attorney of Record	James C. Yang
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

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COLORWAY

Word Mark COLORWAY

Goods and Services (CANCELLED) IC 001. US 001 005 006 010 026 046. G & S: Chemicals used in industry, science and photography

(CANCELLED) IC 002. US 006 011 016. G & S: Paints, colorants

(CANCELLED) IC 009. US 021 023 026 036 038. G & S: Apparatus for recording, transmission or reproduction of images, namely, continuous ink supply system to refill printer cartridges; computer peripheral devices

(CANCELLED) IC 016. US 002 005 022 023 029 037 038 050. G & S: Paper, cardboard and goods made from these materials, namely, banners of paper, paper labels, posters, folders, notebooks, boxes, cartons, storage containers, and packaging containers

(CANCELLED) IC 037. US 100 103 106. G & S: Installation, maintenance and repair of computers

(CANCELLED) IC 042. US 100 101. G & S: Computer programming; computer rental; computer software design; computer system design; computer systems analysis; consultancy in the field of computer hardware; conversion of data or documents from physical to electronic media; creating and maintaining Web sites for others; duplication of computer programs; installation of computer software; maintenance of computer software; recovery of computer data; updating of computer software; design and development of computer hardware and software

Mark Drawing Code (5) WORDS, LETTERS, AND/OR NUMBERS IN STYLIZED FORM

Serial Number 79112839

Filing Date March 22, 2012

Current Basis 66A

Original Filing Basis 66A

Published

for October 30, 2012

Opposition

Registration Number 4273948

International Registration Number 1047223

Registration Date January 15, 2013

Owner (REGISTRANT) Gasaenko Igor Maratovych INDIVIDUAL UKRAINE vul. Sviatoshynska, 6, kv. 126 m. Kyiv 03115 UKRAINE

(REGISTRANT) Krystiuk Oleg Anatoliyovych INDIVIDUAL UKRAINE vul. V. Getmana, 22-b, kv. 19 m. Kyiv 03058 UKRAINE

Attorney of Record Alexander S. Lazouski

Description of Mark Color is not claimed as a feature of the mark.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date August 16, 2019

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COLORWAY

Word Mark	COLORWAY
Goods and Services	(CANCELLED) IC 024. US 042 050. G & S: Fabric for wearing apparel. FIRST USE: 19981001. FIRST USE IN COMMERCE: 19981001
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76520334
Filing Date	May 21, 2003
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	April 13, 2004
Registration Number	2859682
Registration Date	July 6, 2004
Owner	(REGISTRANT) Atashkari, Nasrin INDIVIDUAL UNITED STATES 1301 Channing Street Los Angeles CALIFORNIA 90021
Attorney of Record	Darin Margules
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead Indicator	DEAD

Cancellation Date February 11, 2011

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COLORWAYS

Word Mark	COLORWAYS
Goods and Services	(CANCELLED) IC 025. US 022 039. G & S: clothing, namely, dresses. FIRST USE: 20020110. FIRST USE IN COMMERCE: 20020110
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	76367511
Filing Date	February 7, 2002
Current Basis	1A
Original Filing Basis	1A
Date Amended to Current Register	November 18, 2002
Registration Number	2689546
Registration Date	February 18, 2003
Owner	(REGISTRANT) SFM Buying Services Inc. CORPORATION NEW JERSEY 1324B Paterson Plank Road Secaucus NEW JERSEY 07094
Attorney of Record	Eric Weiss, Esq.
Type of Mark	TRADEMARK
Register	SUPPLEMENTAL
Live/Dead Indicator	DEAD
Cancellation Date	September 26, 2009

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COLORWAYS

Word Mark	COLORWAYS
Goods and Services	(CANCELLED) IC 020. US 002 013 022 025 032 050. G & S: UPHOLSTERED FURNITURE. FIRST USE: 19981031. FIRST USE IN COMMERCE: 19981031
Mark Drawing Code	(1) TYPED DRAWING
Serial Number	75629535
Filing Date	January 28, 1999
Current Basis	1A
Original Filing Basis	1A
Published for Opposition	May 2, 2000
Registration Number	2370362
Registration Date	July 25, 2000
Owner	(REGISTRANT) Klaussner Corporate Services, Inc. CORPORATION IOWA 405 Lewallen Street Asheboro NORTH CAROLINA 27203
Attorney of Record	Jack B. Hicks
Type of Mark	TRADEMARK
Register	PRINCIPAL
Live/Dead	DEAD

Indicator

**Cancellation
Date**

April 28, 2007

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Typed Drawing

Word Mark COLORWAYS
Goods and Services (CANCELLED) IC 021. US 002 013 023 029 030 033 040 050. G & S: dinnerware; kitchen utensils, namely, forks, spoons, spatulas, meat tenderizers, and whisks. FIRST USE: 19960601. FIRST USE IN COMMERCE: 19960601

Mark Drawing Code (1) TYPED DRAWING

Serial Number 75138526

Filing Date July 23, 1996

Current Basis 1A

Original Filing Basis 1A

Published for Opposition January 28, 1997

Registration Number 2055559

Registration Date April 22, 1997

Owner (REGISTRANT) Frederick Atkins Inc. CORPORATION NEW YORK 1515 Broadway New York NEW YORK 10036

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Parker H. Bagley

Type of Mark TRADEMARK

Register PRINCIPAL

Live/Dead Indicator DEAD

Cancellation Date January 24, 2004

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Typed Drawing

Word Mark COLORWAYS
Goods and Services (CANCELLED) IC 024. US 042. G & S: TABLECLOTHS. FIRST USE: 19850600. FIRST USE IN COMMERCE: 19850600
Mark Drawing Code (1) TYPED DRAWING
Serial Number 73570820
Filing Date November 29, 1985
Current Basis 1A
Original Filing Basis 1A
Published for Opposition April 8, 1986
Registration Number 1399502
Registration Date July 1, 1986
Owner (REGISTRANT) DECOR HOME FASHIONS, INC. CORPORATION NEW YORK 358 FIFTH AVE. NEW YORK NEW YORK 10001
Attorney of Record ALAN H. LEVINE
Type of Mark TRADEMARK
Register PRINCIPAL
Live/Dead Indicator DEAD
Cancellation Date January 4, 1993

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Typed Drawing

Word Mark **COLORWAYS**

Goods and Services (EXPIRED) IC 024. US 042. G & S: FABRIC FOR WEARING APPAREL. FIRST USE: 19770302. FIRST USE IN COMMERCE: 19770302

Mark Drawing Code (1) TYPED DRAWING

Serial Number 73123451

Filing Date April 19, 1977

Current Basis 1A

Original Filing Basis 1A

Registration Number 1081782

Registration Date January 10, 1978

Owner (REGISTRANT) STEVCOKNIT, INC. CORPORATION DELAWARE 1450 BROADWAY NEW YORK NEW YORK 10018

Type of Mark TRADEMARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR).

Live/Dead Indicator DEAD

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