

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application of:

MerchSource, LLC

Serial No.: 77/713,799

Examining Attorney: Aisha Y. Salem

Filed: April 14, 2009

Law Office: 113

Mark: THE BLACK SERIES

**APPEAL BRIEF**

Trademark Trial and Appeal Board  
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## **I. DESCRIPTION OF THE RECORD**

The record consists of U.S. Application, Serial No. 77/713,799, including an Examiner's Amendment, a Notice of Publication, a Notice of Allowance, a Statement of Use, a first Office Action, a response to the first Office Action, a second Office Action, a response to the second Office Action and a request for reconsideration, a Notice of Appeal, and the denial of the request for reconsideration. In addition to the arguments, the record is comprised of exhibits attached to communications from both the Office and the Applicant.

## **II. STATEMENT OF THE ISSUES**

The issue presented in this appeal is whether the mark THE BLACK SERIES is merely descriptive when used in connection with "electric massage appliances, namely, hand-held massagers, massage mechanism for chairs, and foot spa massagers," and thus is not entitled to registration on the Principal Register. Applicant contends that the mark is not merely descriptive, and that this application should be allowed and passed to publication.

## **III. RECITATION OF THE FACTS**

The application was filed on April 14, 2009. On or about June 30, 2009, the Examining Attorney telephoned Applicant's attorney Jennifer Hamilton, and stated that the Office required a disclaimer of the term SERIES, that this disclaimer requirement was the only open issue, and that if Applicant accepted the disclaimer the Examiner would pass the application to publication. Ms. Hamilton accepted the disclaimer of the term SERIES based on her understanding it would advance the application and allow the Examiner to close prosecution of the application. Furthermore, Ms. Hamilton understood that the disclaimer of SERIES was based on Applicant's related applications for the following marks:

- U.S. Ser. No. 85057318 THE BLACK SERIES (Int. Class 28)
- U.S. Ser. No. 77713796 THE BLACK SERIES (Int. Class 9)<sup>1</sup>
- U.S. Reg. No. 3779334 THE BLACK SERIES (Int. Class 25)<sup>2</sup>

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<sup>1</sup> Applicant disclaimed the term SERIES for the same reasons it disclaimed the term SERIES in the instant application. See Exhibit M to 05/17/2011 Response to OA2 (Declaration of Jennifer Hamilton)

- U.S. Ser. No. 77713815 THE BLACK SERIES (Int. Class 21)<sup>3</sup>
- U.S. Ser. No. 77713812 THE BLACK SERIES (Int. Class 9)<sup>4</sup>
- U.S. Ser. No. 77713823 THE BLACK SERIES BY SHIFT3 (Int. Classes 9, 10 and 25)<sup>5</sup>
- U.S. Ser. No. 77713829 THE BLACK SERIES BY SHIFT3 (Int. Class 21)<sup>6</sup>

Applicant submitted the Declaration of Jennifer Hamilton, in which she attests to her understanding as set forth above. (See Exhibit M to 05/17/2011 Response to OA2.)

The Examiner's Amendment was entered and the application was approved for publication on June 30, 2009. On November 10, 2009, a Notice of Allowance was issued, and on February 22, 2010, Applicant filed a Statement of Use and supporting specimen, which shows the mark on a portion of Applicant's massage product.

After the submission of the Statement of Use, the Office issued a first Office Action ("OA1") on April 23, 2010. The Office found no conflicting marks, but refused registration of the mark under 15 U.S.C. §1052(e)(1) ("Section 2(e)(1)"). OA1, p. 2. The Office concluded that the entire mark THE BLACK SERIES is merely descriptive based on Applicant's disclaimer of the term SERIES and the Office's finding that the term BLACK is "descriptive of a feature or characteristic of the goods." *Id.* The

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<sup>2</sup> Applicant disclaimed the term SERIES for the same reasons it disclaimed the term SERIES in the instant application. See Exhibit M to 05/17/2011 Response to OA2 (Declaration of Jennifer Hamilton)

<sup>3</sup> The Office refused registration of this application on descriptiveness grounds. Applicant filed a Request for Reconsideration and Notice of Appeal on 04/29/2011. The Office denied Applicant's Request for Reconsideration on 05/24/2011. Although Applicant traverses the Office's refusal to register the mark, Applicant amended this application to the Supplemental Register to preserve its rights in the mark pending the outcome of the instant appeal. Applicant's amendment of this mark to the Supplemental Register should not be construed as an admission that the term BLACK or SERIES or THE BLACK SERIES is descriptive in the context of the application at issue (U.S. Serial No. 77/713,799).

<sup>4</sup> Applicant abandoned this application due to non-use.

<sup>5</sup> Applicant disclaimed the term SERIES for the same reasons it disclaimed the term SERIES in the instant application. See Exhibit M to 05/17/2011 Response to OA2 (Declaration of Jennifer Hamilton).

<sup>6</sup> The Office refused registration of this application based on the alleged descriptiveness of the term THE BLACK SERIES. Applicant filed a Request for Reconsideration and Notice of Appeal on 04/29/2011. The Office denied Applicant's Request for Reconsideration on 05/24/2011. Although Applicant traverses the Office's refusal to register the mark, Applicant made a business decision not to file an appeal brief in support of this application. Applicant's decision not to pursue the appeal of U.S. Serial No. 77/713,829 should not be construed as an admission that the term BLACK or SERIES or THE BLACK SERIES is descriptive in the context of the instant application (U.S. Serial No. 77/713,799).

Office attached an Internet article showing Applicant's massage product in black, and stated that "the goods are black." The Office also contended that a mark may be descriptive if it "identifies a group of users to whom an applicant directs its goods and/or services is also merely descriptive" (*id*), but did not offer any arguments or evidence to support this statement.

Applicant filed a response to the first Office Action on October 25, 2010. Applicant offered arguments against the refusal to register the mark. Applicant stated, *inter alia*, that since the Office had contended that the applications for the marks THE BLACK SERIES and THE BLACK SERIES BY SHIFT3 are, as a whole, descriptive of a series of products, then the products under the related registration and applications must be considered as a whole in determining whether the term BLACK is descriptive and requires a disclaimer. Applicant submitted an exhibit with its response showing Applicant's massagers in gray and silver, and other products under the marks THE BLACK SERIES and THE BLACK SERIES BY SHIFT3 in various colors. Accordingly, Applicant requested that the Office withdraw the refusal under Section 2(e)(1).

A second (final) Office Action ("OA2") issued on November 17, 2010. The Office maintained the same bases for refusal as in OA1. In addition, the Office asserted that it does not matter that the goods are available in colors other than black "because it is enough if the term describes only one significant attribute of the goods." OA2, p. 2. Regarding Applicant's references to the various colored goods under the related marks THE BLACK SERIES and THE BLACK SERIES BY SHIFT3, the Office affirmed its refusal because "the goods in this particular case *are* black." OA2, p. 3 (emphasis in original). Regarding the Office's statement that a mark may be descriptive if it "identifies a group of users to whom an applicant directs its goods" (OA2, p. 2), again the Office did not offer any supporting evidence or arguments. The Office provided Applicant the option to amend the application to the Supplemental Register.

A response and request for reconsideration was filed on May 17, 2011. Applicant presented further arguments and evidence that the mark is not merely descriptive and withdrew its disclaimer of the term SERIES. Applicant filed a Notice of Appeal on May 17, 2011. The Office issued a letter denying

Applicant's request for reconsideration ("Denial Letter") on June 7, 2011. In compliance with the schedule set by the Trademark Trial and Appeal Board ("Board"), this appeal brief is now submitted for consideration.

#### IV. ARGUMENT

##### A. The Mark "THE BLACK SERIES" Is Not Merely Descriptive of Applicant's Goods

The mark THE BLACK SERIES, as applied to Applicant's goods – *i.e.*, electric massage appliances, is arbitrary or, at most, suggestive. In no instance is the mark descriptive of the goods.

A term is descriptive if it "forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [and/or services]." *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 189 USPQ 759, 765 (2d Cir. 1976) (emphasis added). *See, e.g., In re Gyulay*, 820 F.2d 1216, 1217 (Fed. Cir. 1987); *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215 (C.C.P.A. 1978). Moreover, in order to be descriptive, the mark must immediately convey information as to the qualities, features or characteristics of the goods and/or services with a "degree of particularity." *Plus Products v. Medical Modalities Assocs., Inc.*, 211 USPQ 1199, 1204-1205 (TTAB 1981).

However, if one must "follow a multi-stage reasoning process to determine what product or service characteristics the term indicates, the term is suggestive rather than merely descriptive." *In re Tennis in the Round, Inc.*, 199 USPQ 496, 497 (TTAB 1978) (TENNIS IN THE ROUND held not descriptive of tennis facilities). *See also In re Shutts*, 217 USPQ 363, 364-365 (TTAB 1983); *In re Universal Water Sys., Inc.*, 209 USPQ 165, 166 (TTAB 1980). "Thus, a suggestive term differs from a descriptive term, which immediately tells something about the goods or services." TMEP 1209.01(a) (citing *In re George Weston Ltd.*, 228 USPQ 57 (TTAB 1985) (SPEEDI BAKE for frozen dough found to fall within the category of suggestive marks because it only vaguely suggests a desirable characteristic of frozen dough, namely, that it quickly and easily may be baked into bread); *In re Pennwalt Corp.*, 173 USPQ 317 (TTAB 1972) (DRI-FOOT held suggestive of antiperspirant deodorant for feet in part because, in the singular, it is not the usual or normal manner in which the purpose of an antiperspirant and deodorant for the feet would be described)).

Whether a mark is merely descriptive or suggestive is a question of fact as determined by the perception of the relevant purchasing public. *In re Bed & Breakfast Registry*, 791 F.2d 157, 160, 229 USPQ2d 818, 819 (Fed. Cir. 1986). This determination should not be made in the abstract. Rather, it should be made in relation to the goods or services for which registration is sought, “the context in which the mark is used or intended to be used in connection with those goods/services, and the possible significance that the mark would have to the average purchaser of the goods or services in the marketplace.” TMEP §1209.01(b). *See, e.g., In re Omaha Nat’l Corp.*, 819 F.2d 1117, 119, 2 USPQ2d 1859 (Fed. Cir. 1987); *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215 (C.C.P.A. 1978); *In re Venture Lending Assocs.*, 226 USPQ 285 (TTAB 1985). The issue is whether a prospective purchaser who knows the goods or services will understand the mark to convey information about such goods or services. *In re Tower Tech, Inc.*, 64 USPQ2d 1314, 1316-1317 (TTAB 2002); *In re Patent & Trademark Services Inc.*, 49 USPQ2d 1537, 1539 (TTAB 1998); *In re Home Builders Ass’n of Greenville*, 18 USPQ2d 1313, 1317 (TTAB 1990); *In re Am. Greetings Corp.*, 226 USPQ 365, 366 (TTAB 1985).

The examining attorney bears the burden of showing that a mark is merely descriptive of Applicant’s goods. *In re Merrill, Lynch, Pierce, Fenner, and Smith Inc.*, 828 F.2d 1567, 4 USPQ2d 1141, 1143 (Fed. Cir. 1987). Here, the Office failed to meet its burden of showing that the mark THE BLACK SERIES forthwith conveys an immediate idea of any of the ingredients, qualities or characteristics of Applicant’s goods with any degree of particularity. Moreover, the Office failed to prove that the terms BLACK and SERIES, which comprise the mark, are merely descriptive of Applicant’s goods.

**1. “BLACK” Is Not Merely Descriptive of Applicant’s Goods**

There is nothing in the identification of goods that limits Applicant’s goods to black items or excludes them. The term BLACK is arbitrary in relation to the goods, or suggestive, at best. However, in no instance, is it descriptive of the goods.

Applicant traverses and disputes the Office’s claim that the term BLACK “conveys an immediate idea of a feature or characteristic of the identified goods, specifically the black color of the goods.”

Denial Letter, p. 3. In support of its contention, the Office cited a definition of the term black and

searched the Internet to find Applicant's products in black. The Office attached 4 images of Applicant's goods (2 images of 2 products) to its Denial Letter and asserted that the "goods are clearly black in color." *Id.*

As a preliminary matter, the goods are not "clearly black in color" as the Office claims. Although one product (a vibrating back cushion) is shown in black in two of the images, the other two images show a handheld massager that is a combination of gray and light gray colors. The selected images of the handheld massager display the darker portions of the product. Applicant submits and directs the Boards attention to images of the same product that were attached as an exhibit to Applicant's 10/25/2010 Response to OA1 and Exhibit J to the 05/17/2011 Response to OA2. Those images clearly show that this is not a black product. Thus, the Applicant objects to the Office's mischaracterization of this handheld massager as being "clearly black in color," and its failure to include or address the images that Applicant had submitted of the gray handheld massager.

Further, Applicant traverses the Office's reliance on the definition of the term BLACK as color. Denial Letter, p. 3. While the term BLACK is defined as an adjective ("of the color black") (*see* Exhibit M to 05/17/2011 Response to OA2, definition of "black" by Free Merriam-Webster Dictionary) that may be used to describe things that are black in color, BLACK also has several connotations that are unrelated to color. For example, although "black tie" may refer to a tie that is black in color, it is commonly understood as referring to semi-formal clothing or an "occasion when a dinner jacket should be worn," regardless of the color of the tie. *See* Exhibit B to 05/17/2011 Response to OA2, definitions of "black tie" by Free Merriam-Webster Dictionary and The Free Dictionary, respectively. *See* Exhibit L to 05/17/2011 Response to OA2 (U.S. Registration No. 3,755,442 for the mark BLACK TIE, which is registered in connection with various elegant crystal bowls in various colors, *including* the color black).

In the context of Applicant's goods, the term BLACK is suggestive of the quality of the goods, *i.e.*, elegant design and premium quality. Applicant selected this mark to create an image of elegance and sophistication for its electric massage appliances. Applicant utilizes the mark to distinguish its elegantly designed premium quality massagers from other massagers that are sold at a lower price point. *See, e.g.*,

collective Exhibit J to 05/17/2011 Response to OA2, computer screenshots of selected pages from Amazon.com showing Applicant's hand-held massager and competitor's hand-held massagers. Given the upscale nature of the goods, Applicant markets its massagers toward discriminating consumers who seek high quality massagers. It distributes such goods through retailers and department stores such as Bed Bath & Beyond and JCPenney, where competitive quality massagers are also available for sale. In this context, the term BLACK in the mark THE BLACK SERIES is suggestive of the qualities of luxury, elegance, distinction and style.

Various product manufacturers and service providers have been utilizing the term BLACK to create an image of a good or service that prospective purchasers will associate with elegance, luxury, premium quality and/or exclusivity, regardless of the actual color of such product or product ancillary to such service. For example:

- Luxury automaker Mercedes-Benz markets its sophisticated high-performance AMG model cars as the "AMG Black Series." *See* Exhibit C to 05/17/2011 Response to OA2, a computer screenshot from the Mercedes-Benz website showing the AMG Black Series model offered in silver.
- Premium automaker Infiniti has been reported as offering a limited run of the Infiniti EX Black Premium Edition vehicle in Europe only. *See* Exhibit D to 05/17/2011 Response to OA2, article from Luxist website.
- Card-carrying members of the Visa-branded "Black Card" credit card receive prestigious benefits such as Limited Membership, 24-Hour Concierge Service, Exclusive Rewards Program, VIP Airport Lounge Access, Luxury Gifts, and a Patent Pending Carbon Card for a sizable annual fee of \$495. *See* Exhibit E to 05/17/2011 Response to OA2, a computer screenshot of the homepage for the Visa-branded "Black Card."
- Mattress maker Simmons offers a luxury line of mattresses called the Beautyrest Black Collection. Simmons advertises these mattresses as "the ultimate in comfort" for those

“who simply seek the best, every night.” *See* Exhibit F to 05/17/2011 Response to OA2, computer screenshots of selected pages from the Beautyrest Black website.

- Online retailer BLACK.CO.UK ([www.black.co.uk](http://www.black.co.uk)) calls itself “The home of luxury accessories and gifts.” They sell fine quality home and personal goods, which are sold at a higher price point. *See* Exhibit G to 05/17/2011 Response to OA2, computer screenshots of selected pages from BLACK.CO.UK website.

In all of the above examples, the term BLACK has been used to create a notion of premium quality and/or elegance. Indeed, in the article reported on [www.luxist.com](http://www.luxist.com), “a web site dedicated to covering the best the world has to offer on a variety of luxury and fine living topics” (*see* Exhibit H to 05/17/2011 Response to OA2), the reporter asks the question: “Is black the new gold?” *See* Exhibit D to 05/17/2011 Response to OA2. The BLACK CARD by Visa, akin to the GOLD CARD by American Express, is for the discerning purchasers “who demand only the best of what life has to offer.” *See* Exhibit E to 05/17/2011 Response to OA2.

Likewise, Chipotle Mexican Grill’s “golden gift card” promotion utilizes the colors gold and black as a measure or standard of high quality. In-store displays show a gold gift card and the words “Gold is the New Black.” By inference, the meaning of “black” is high quality. Indeed, Chipotle’s website states “We have spent the last 18 years sourcing and meticulously preparing the finest, most sustainable ingredients we can find. They’re as good as gold. And we think that deserves a bit of celebration.” *See* collective Exhibit I to 05/17/2011 Response to OA2, computer screenshots of selected pages from Chipotle Mexican Grill’s website and a photograph of an in-store display taken on or about April 12, 2011, by Applicant’s counsel. Clearly, marketing the term BLACK in association with goods and services to consumers is equated with marketing elegance, prestige and/or high quality.

Accordingly, as seen from these advertisements, consumers in the marketplace do not immediately associate color with the term BLACK, but rather, perceive the term BLACK in association with a product or services as a metaphor for upscale quality, prestige or elegance. For example, the Visa Black Card immediately evokes an association with high socio-economic status, superfluity and

exclusivity. The AMG Black Series conjures an image of driving a powerful vehicle at an accelerated speed and hugging mountain roads in comfort, confidence and style. The actual color of the products and services above is inconsequential or ancillary to the ideas conjured by the term BLACK.

In its Denial Letter, the Office discounted the Internet articles that Applicant had submitted with its Response to the second Office Action<sup>7</sup> by stating “there is no evidence to support applicant’s contention that the term “black” suggests high quality in relation to its own goods.” Denial Letter, p. 3.

Applicant objects to the Office’s attempt to shift the burden of proof to the Applicant. The burden is on the Office to provide compelling evidence that establishes a significant number of the relevant public would readily view the term BLACK as being merely descriptive of Applicant’s goods. The Office has failed to meet this burden. Applicant, however, has provided evidence showing that its products are high-quality goods, and that purchasing consumers of high-quality goods are likely to be familiar with the term BLACK as a metaphor for high quality, as demonstrated by the Internet articles submitted by Applicant. A relevant purchaser of Applicant’s products is someone who would likely purchase high-quality goods and is familiar with the term BLACK as a metaphor to high quality. Moreover, Applicant is not required to advertise or tell relevant prospective purchasers that the mark is a suggestive of high quality or elegance.

Also, massage appliances are generally available in different colors. In its Response to the second Office Action, Applicant submitted articles from websites to demonstrate the differences in design and prices between Applicant’s elegantly designed hand-held massager to competitors’ massagers at lower price points.<sup>8</sup> Significantly, there are several images of massagers throughout the exhibit that show massagers in various colors. As such, purchasers understand that massagers are available in different colors and are not likely to perceive the mark as being merely descriptive of a color of one of Applicant’s goods.

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<sup>7</sup> See Exhibits C through I to 05/17/2011 Response to OA2.

<sup>8</sup> See Exhibit J to 05/17/2011 Response to OA2.

Applicant respectfully disputes the Office's statement that "the fact that the goods are black in color is a *significant* factor in a descriptiveness determination." Denial Letter, p.3 (emphasis added). Citing a dictionary definition of the term "significant" as meaning "important or noticeable," the Office contends that color is one of the "*first* features a consumer will perceive is a product's color," and that "the color of a product is highly *noticeable* and is therefore significant." *Id.* (emphasis in original)

In the present case, in contrast to the Office's contention, color is not a *significant* factor in determining whether the mark is descriptive of Applicant's goods. Although color may be an attribute of a good, it is not necessarily a "significant" feature of that good. According to the Free Merriam-Webster Dictionary, the term "SIGNIFICANT" means "having or likely to have influence or effect: important <a significant piece of legislation>; also: probably caused by something other than mere chance." *See* Exhibit K to 5/17/2011 Response to OA2 (definition of "significant" by Free Merriam-Webster Dictionary). In the present case, the color black does not "have or likely to have influence or effect" on the use or technology of the product, nor is it "important" to the product's use or technology, or "caused by something other than mere chance," or necessarily the "*first* feature" that a consumer would notice, as the Office claims. Instead, the color black is merely one color in the color wheel, whereas the significant features of the goods are the product's style and technology. The color of the product does not affect these significant features. Further, the color of the electric massage appliances does not affect the nature of the goods or the relevant purchasing public's perception of the style or massaging features of the goods. Rather, it is the source identifier, that is, the mark, as used in association with the goods that denotes the premium quality and elegant style of the goods associated therewith.

Indeed, several registrations have issued on the Principal Register for marks incorporating the term BLACK and that did not require a disclaimer of BLACK, despite the black color of the goods shown in the respective specimens for each application. *See, for example*, collective Exhibit L, U.S. Registration Numbers 2857989, 3755442, 3610879, 3695503, 2968269, and 3023344, and respective specimens. These registrations further demonstrate that color is not necessarily a significant feature of the goods that would require a disclaimer of the term BLACK. For example, U.S. Reg. No. 2,857,989 for BLACK

DIAMOND clearly shows a black comb as a specimen; U.S. Reg. No. 3,755,442 for BLACK TIE shows various crystal bowls, in various colors, including the color black; and U.S. Reg. No. 3,610,879 for BLACK GRANITE, which shows various pans, all of which are black in color. Clearly, if the term BLACK in these marks do not require a disclaimer or are not considered descriptive, then the term BLACK in the present mark should not either as it is merely a substitution of the associated goods and not the use of the term BLACK that differs in each of these marks.

In denying Applicant's Request for Reconsideration, the Office dismissed these third party registrations and claimed they are not analogous. In each case, the Office claimed that the term BLACK was not disclaimed because the mark allegedly has a separate meaning that rendered the term arbitrary as applied to the goods. However, the Office failed to provide any evidence to support the alleged meanings for each mark. As Applicant cannot verify or comment on the evidence, Applicant objects to the Office's introduction of such evidence at this time, and respectfully requests that the Board disregard the unsupported comments about such registrations as being irrelevant. Moreover, assuming *arguendo* that the marks do have other meanings, Applicant maintains that the Office's logic is inconsistent, as Applicant's mark has no meaning and is arbitrary as applied to its goods.

Further, Applicant notes several other marks that the Office allowed to be registered on the Principal Register without a disclaimer of the term BLACK. The specimens submitted for each of the following registered marks show the color black on the product. *See, for example*, BLACK STEEL (U.S. Reg. No. 2,631,215), BLACK THUNDER (U.S. Reg. No. 2,815,690) and BLACK MAX (U.S. Reg. No. 3,473,070) (attached as collective Exhibit A to the Appeal Brief).

Finally, the Applicant notes that in the first and second Office Actions, the Office commented that "a mark that identifies a group of users to whom an applicant directs its goods and/or services is also merely descriptive." *See* OA1, p. 2 and OA2, p. 2. In each case, the Office did not provide any arguments or evidence in support of this statement. In its response to the second Office Action, Applicant stated that the goods associated with the mark are not directed to any specific group of users, including people of dark pigmented skin, such as, African Americans. The Office did not comment on or object to

registration on this basis in the Denial Letter. Accordingly, the Office's comment should not be considered as a basis for refusing registration of the mark.

For all the reasons set forth above, the Applicant contends that the term BLACK is not descriptive of Applicant's goods, nor is the mark as a whole descriptive.

**2. The Office's Evidence Does Not Support the Claim that the Word "SERIES" Is Merely Descriptive of Applicant's Goods**

Applicant contends that the term is not descriptive of its goods, and respectfully disputes and traverses the Office's assertion that it is descriptive. As explained in the Recitation of Facts of this Appeal Brief above, Applicant has withdrawn its disclaimer of the term SERIES as it is inappropriate as applied to the identified goods in this application, namely, "Electric massage appliances, namely, hand-held massagers, massage mechanism for chairs, and foot spa massagers."

The term SERIES is defined as "a number of things or events of the same class coming one after another in spatial or temporal succession." *See* Exhibit N to 5/17/2011 Response to OA2 (definition of "series" by Free Merriam-Webster Dictionary). Thus, items in a 'series' are defined as "a number of things ...coming one after another in ...temporal succession." For example, car companies identify various groups of cars as a series, *e.g.*, the BMW 5 Series, which includes the 528i, 535i, 535i xDrive, 550i, and 550i xDrive. These five distinct model numbers create the series and are intentionally grouped in a single class, namely, the 5 Series. *See* Exhibit O to 5/17/2011 Response to OA2 (screen shot from the BMW-USA website). That is not the case in the present application. Here, the application merely identifies "Electric massage appliances, namely, hand-held massagers, massage mechanism for chairs, and foot spa massagers" as the goods. Nothing in the application suggests or implies that this general identification of goods comprise a group of items that would constitute a series, nor suggest or imply any specific succession in product release. They are simply electric massage appliances. Selling an identified type of item in association with the same trademark does not transform those items into a series of products.

In its Denial Letter, the Office did not object to Applicant's withdrawal of the disclaimer. Instead, the Office stated "third-party registrations featuring the *same goods* as applicant's goods are probative on the issue of descriptiveness where the relevant word or term is disclaimed, registered under Trademark Act Section 2(f) based on a showing of acquired distinctiveness, or registered on the Supplemental Register." Denial Letter, p. 4 (emphasis added). In support of this statement, the Office attached 6 third-party registrations containing the term SERIES "for *massage appliances and massage related services*, all with the wording 'SERIES' disclaimed" (*id.*) and that the "term 'SERIES' has *consistently* been held by the Office to be descriptive of massage appliances and of services featuring massage." Denial Letter, p. 5 (emphasis added)

Applicant respectfully submits that the Office has misstated the evidence because, as explained below, the registrations for 5 out of 6 of the cited marks do not feature the "same goods."<sup>9</sup> Applicant objects to consideration of such registrations in support of the Office's descriptiveness determination for this reason, as well as, Applicant's contention that the disclaimer of the term SERIES in these registrations is not analogous. Accordingly, these registrations provide no support for the Office's position.

For example, US Reg. No. 3,776,618 for the mark SOULSTICE SEMINAR SERIES, was registered in International Class 16 in connection with "*training manuals* for peri-operative massage therapy." Significantly, this mark was not registered in connection with massager appliances or massage services, as the Office claims, but with training manuals. Further, the registrant disclaimed the combined term SEMINAR SERIES. The term SEMINAR SERIES creates a separate and distinct commercial impression as compared with the term SERIES by itself in that it is reasonable for a consumer to perceive the term SEMINAR SERIES implies a set of related courses, some of which are to be taken in a particular sequence or may require a prerequisite course. Indeed, the goods are *training manuals*, whereby the words SEMINAR SERIES implies a set of related or a number of things or events coming one after

---

<sup>9</sup> See U.S. Reg. No. 3,776,618 for the mark SOULSTICE SEMINAR SERIES; U.S. Reg. No. 3,965,168 for the mark EARTH SERIES; U.S. Reg. No. 3,965,169 for the mark METAL SERIES; U.S. Reg. No. 3,965,170 for the mark WOOD SERIES; and U.S. Reg. No. 3,965,171 for the mark FIRE SERIES.

another in spatial or temporal succession, namely, a set of training manuals for a seminar series.

Accordingly, the disclaimer of the term SEMINAR SERIES in this registration is not analogous to Applicant's use of the term SERIES in its mark, as Applicant's goods are for massage apparatus. Unlike the cited registration however, Applicant's goods do not form or even suggest a set of related products and do not form a sequence of products.

Similarly, the Office has misplaced its reliance on the following cited registrations: U.S. Reg. No. 3,965,168 for the mark EARTH SERIES; U.S. Reg. No. 3,965,169 for the mark METAL SERIES; U.S. Reg. No. 3,965,170 for the mark WOOD SERIES; and U.S. Reg. No. 3,965,171 for the mark FIRE SERIES. These marks are owned by the same registrant, Sunstone Yoga, and were registered in International Class 41 for the following services:

Education services, namely, providing classes, seminars, conferences and workshops in the fields of yoga, fitness, health, and massage therapy, including educational and training pre-certification courses for yoga instructors, and distributing course materials in connection therewith

As a preliminary matter, the cited registrations above relate to education services and do not relate to massage products. Thus, Applicant objects to consideration of these registrations in determining whether Applicant's mark is descriptive. Moreover, these registrations are not analogous. The relevant purchaser may reasonably infer from the cited marks, as with the SOULSTICE SEMINAR SERIES mark above, that they each refer to a set of classes that are related and may be sequential, unlike Applicant's goods.

Also, in the mark FETISH FANTASY SERIES, U.S. Reg. No. 3,556,369, registered in International Classes 6, 10 and 20, the terms FANTASY and SERIES were disclaimed. The disclaimer of the term SERIES in this registration for various goods is distinguishable and not analogous because the registrant's goods all relate to fetishes. A consumer would reasonably perceive the term SERIES in the context of the registrant's goods as a set of products that all relate to sexual fetishes and are used in succession as sexual aids, whereas Applicant's goods are massage products that are sold separately and not necessarily related in any way.

Thus, the registrations cited by the Office are not probative on the issue of whether the term SERIES is descriptive in the context of Applicant's goods. The allegedly analogous registrations are not supportive of the Office's argument, or are weak at best. Further, the Office has offered absolutely no other reasoned argument to support why Applicant's proposed mark for its proposed goods would require a disclaimer of the word SERIES. The Office bears the burden of proving that this term is descriptive in this application. Applicant contends that the Office's evidence is woefully deficient, and that the Office has failed to meet its burden of proof.

Further, the Office has allowed multiple marks to be registered without a disclaimer, despite containing the term SERIES. Since only January 1, 2010, the Office has registered at least 20 marks in which the term SERIES was not disclaimed. See Exhibit B to this Appeal Brief. These third-party registrations illustrate that the Office does not require a disclaimer of the term SERIES simply because the applicant is seeking registration for a particular type of good such as beverages (G SERIES, G SERIES PRO 01 PRIME, G SERIES PRO 02 PERFORM), or for clothing (FREEWAY SERIES), or "a *series* of books and written articles" and "*series* of non-fiction books" (THE INSTRUCTINS FOR USE TRAVEL SERIES), or for an *ongoing* radio program directed to sexuality and health (OPRAH'S SOUL SERIES). It is interesting to note that the mark THE INSTRUCTIONS FOR USE TRAVEL SERIES, which specifically identifies a *series* of books and articles, did not require a disclaimer of the term SERIES. In addition, the mark OPRAH'S SOUL SERIES, which is directed to an *ongoing* radio program directed to similar topics, did not require a disclaimer of the term SERIES. If these marks did not require a disclaimer of the term SERIES, then Applicant's mark, which is directed to a category of goods that do not suggest a relationship between those goods, *e.g.*, they are not described as successive, (or ongoing,) should also not require a disclaimer. Respectfully, Applicant contends that the Office's determination that the term SERIES as being descriptive is baseless and is not supported by anything found in the application or record. Accordingly, Applicant respectfully requests the Board find that the term SERIES is not descriptive of Applicant's goods.

**3. The Mark When Considered as a Whole Is Not Merely Descriptive of Applicant's Goods**

Applicant traverses the Office's dissection of the mark to support its argument that the mark is merely descriptive. In determining whether the term BLACK in Applicant's mark THE BLACK SERIES is suggestive or merely descriptive, the Office must consider the mark in its entirety. Although common words may be descriptive when standing alone, combining them may evoke a new and unique commercial impression. TMEP § 1209.03(d). *See, e.g., In re Tower Tech.*, 64 USPQ2d at 1317-1318; *Concurrent Technologies*, 12 USPQ2d at 1057.

Here, THE BLACK SERIES does not immediately convey information about the nature or type of goods offered under the mark, or the significant qualities of the goods. Indeed, the combination of the terms BLACK and SERIES is arbitrary as applied to Applicant's goods. The mark is at best suggestive of the quality of the goods and, thus, not merely descriptive as the Office argues. Rather, Applicant is combining BLACK with THE and SERIES to market electric massage appliances that are distinguishable as a result of their sleek and elegant design and high quality, thus creating a distinct commercial impression of a higher-end consumer product. Even if the significant of each individual component of the mark is considered separately, the terms BLACK and SERIES, as discussed above, are not merely descriptive of Applicant's goods. Accordingly, the Office has not met its burden of establishing that a significant number of the relevant public would readily view THE BLACK SERIES as being merely descriptive of a significant aspect of the goods.

**4. Applicant's Use of the Mark Will Not Inhibit Competition**

In addition to the arguments set forth above, another factor that may be considered in determining whether a mark is merely descriptive is whether Applicant's use of the mark will inhibit competition by depriving competitors of the use of common language needed to describe the goods. *In re Reynolds Metals Co.*, 480 F.2d 902, 904 (CCPA 1973); *Minnesota Mining & Mfg. Co. v. Johnson & Johnson*, 454 F.2d 1179, 1180, 172 USPQ 491 (CCPA 1972). Here, there is no evidence to suggest that others in the massage appliance field have used or would need to use THE BLACK SERIES, BLACK or SERIES to

describe their goods. Since the Office did not dispute this issue in its Denial Letter, Applicant submits that the Office has waived any arguments on this issue. Accordingly, Applicant requests that the Board find that Applicant's mark, if registered, would not preclude others from using the term BLACK to describe a color in which they offer products.

**5. All Doubts Must Be Resolved in Applicant's Favor**

As the Board has noted on a number of prior occasions, there is a thin line of demarcation between a suggestive and a merely descriptive designation. *See, In re Recovery, Inc.*, 196 USPQ 830 (TTAB 1977). To the extent that Applicant's arguments raise doubt about the merely descriptive nature of term BLACK, the term SERIES or the mark THE BLACK SERIES, the law is clear that all doubt must be resolved in Applicant's favor. *In re Merrill Lynch*, 828 F.2d at 1571, 4 USPQ2d at 1144. Anyone who believes that the mark is merely descriptive will have the opportunity to oppose and present evidence on this issue to the Board. Accordingly, Applicant requests that any potential doubts be resolved in Applicant's favor so that the terms BLACK, SERIES and the mark THE BLACK SERIES need not be disclaimed.

**B. Alternative Positions**

The Office provided Applicant the option to amend the mark to the Supplemental Register. Applicant maintains that the mark THE BLACK SERIES, and portions thereof (*i.e.*, the term BLACK or the term SERIES) are not merely descriptive. Notwithstanding the foregoing, Applicant takes the following alternative positions in order to maintain Applicant's rights and also continue prosecution of this application: (i) if on appeal the Board determines the term BLACK is merely descriptive, in the alternative, Applicant disclaims the term BLACK; (ii) if on appeal the Board determines the term SERIES is merely descriptive, in the alternative, Applicant disclaims the term SERIES; (iii) if on appeal the Board determines that either the term BLACK SERIES or THE BLACK SERIES is merely descriptive, in the alternative, Applicant requests that the matter be remanded to allow Applicant to seek registration of the mark THE BLACK SERIES on the Supplemental Register.

**V. SUMMARY**

Based on the foregoing, it is respectfully submitted that THE BLACK SERIES is arbitrary or, at most, suggestive of the quality of the goods, and is not merely descriptive. Accordingly, Applicant requests that the Board reverse the Office's refusal of registration of the mark and to allow the application to proceed to publication.

Respectfully submitted,

Dated: August 8, 2011

By Connie P. Limperis

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**Typed Drawing**

**Word Mark** BLACK STEEL  
**Goods and Services** IC 028. US 022 023 038 050. G & S: Golf Playing Equipment, Namely Woods, Irons And Putters. FIRST USE: 19990205. FIRST USE IN COMMERCE: 19990205  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 76308636  
**Filing Date** August 27, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** July 16, 2002  
**Registration Number** 2631215  
**Registration Date** October 8, 2002  
**Owner** (REGISTRANT) MasterGrip, Inc. CORPORATION TEXAS 3410 Century Circle Irving TEXAS 75062  
**Attorney of Record** Lewis T. Steadman, Jr.  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "STEEL" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator** LIVE

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**EXHIBIT A**



08-27-2001

U.S. Patent & TMO/TM Mail Rcpt Ct #57

# Black, bimetal, low-profile Black Steel™ outperform the big-name brands!

**B**lack Steel is our answer to the hottest-selling golf clubs on the market today—the low-profile, multimetal marvels that are sweeping the pro Tours and helping golfers of all abilities tame the longest, toughest holes in golf.

Now you can get the distance-boosting advantages of the latest in club design ... even better performance than the famous-name brands ... for less than half the price!

## Stroke-Saving Technology

Our Black Steel woods utilize an aerodynamic, low-profile design that makes it easy to get the ball flying high and hot out of any lie, even hard-to-hit thin lies.

By lowering the profile of the clubhead, the center of gravity is also lowered so it's easy to get below the ball's center of gravity. That makes the

ball get airborne fast. Very fast. It also gives you a margin of forgiveness not found in most oversize woods—which often require such a precise swing to avoid hitting those worm-burners.



woods are as wide as most oversize steel drivers. You get a huge sweet spot for extra forgiveness on off-center hits.

The Black Steel clubhead is a *bimetal design* that is the ultimate result of exhaustive testing at the MasterGrip Test Center.

After testing six separate casting designs, several insert materials (including titanium and premium stainless steel), plus numerous shaft and head combinations, we arrived at the most effective total club design.

The body is cast of the finest stainless steel for both strength and precise weight distribution.

But the clubface is what sets our Black Steel fairway woods apart. It is made of Maraging™ Steel, an alloy 39% harder than the 6Al-4V titanium used in the top-performing drivers! This makes the ball explode off the clubface with incredible velocity!

What's more, lowering the profile focuses the clubhead's mass tighter on the point of impact with the ball for hotter launch speed.

This doesn't mean our Black Steel clubhead is small. In fact, our 3- and 5-



76308636

The unique Black Steel sole features a smooth leading edge and rounded, convex shape to let the clubhead glide through tough lies as easily as freshly-cut fairway grass.

Our Black Steel fairway woods were designed by one of golf's premier club designers, Pat Simmons, designer of the famous Alien Ultimate Wedge. His skills as a PGA Tour pro and inventor have combined to create some of the most user-friendly, game-improving clubs on the market today.

### Great Selection

We have a Black Steel wood to help any golfer knock off strokes. Choose from three driver lofts: 9°, 10.5° or 12°. We recommend 9° for the strong player who generates a lot of clubhead speed and usually hits the ball high. 10.5° is best for the majority of golfers to get the optimum combination of height and distance. 12° is for those who need more height off the tee. (The women's driver comes in 12° only.)

In the fairway woods, you get a great selection: strong 3-wood (13° loft for a lower trajectory), 3-wood (16°), strong 5-wood (19°), 7-wood (24°), and a 9-wood (28°).

You also get to choose from three high-performance shafts. Our premium Black Gold™ shaft by True Temper® is a lightweight, low-torque graphite shaft that produces a medium-high shot trajectory and helps golfers of all abilities generate more clubhead speed for greater distance. It's available for men and women.

In steel we offer the True Temper Dynamic Gold™ shaft. Available for men's clubs only, it produces a lower, more penetrating trajectory resulting in maximum distance for the stronger golfer. For women, we also have the lighter True Temper Gold Plus™ steel shaft.

### Top Performance, Low Price

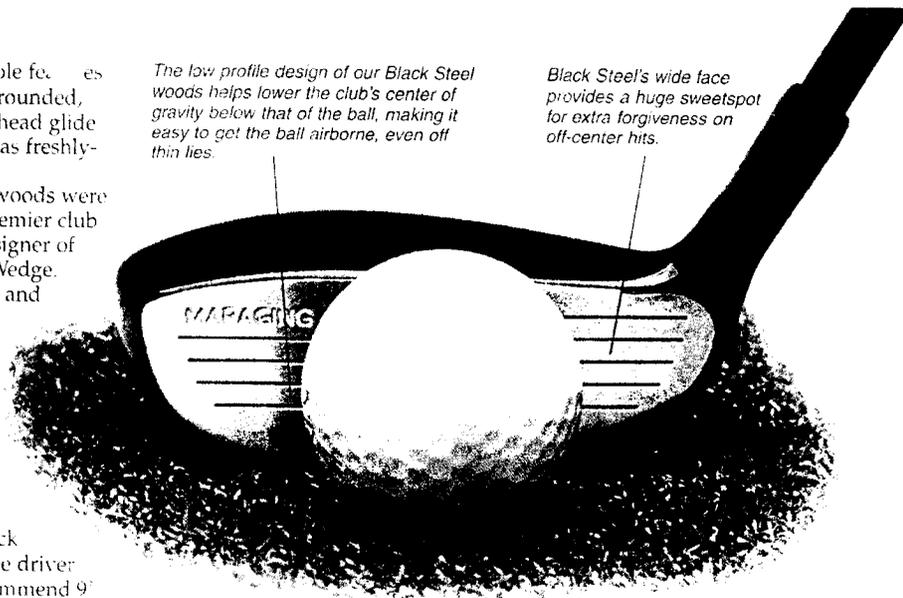
Test results prove that Black Steel outdistances golf's big-name brands!

In fact the difference between Black Steel and the two longest competitors (8 and 17 yards, respectively, with a 3-wood) is so great that it could mean reaching the green or falling short into a bunker ... or taking a full club less on an approach shot!

But don't take just our word for it. Here are the actual test results:

The low profile design of our Black Steel woods helps lower the club's center of gravity below that of the ball, making it easy to get the ball airborne, even off thin lies.

Black Steel's wide face provides a huge sweetspot for extra forgiveness on off-center hits.



### Test Results:

Club Brand & Price	Carry (yards)	Carry + Roll (yards)
Orlimar Tri-Metal™ 17° graphite shaft \$199.99	215.08	222.9
Adams Tight Lies™ 16° graphite shaft \$149.99	209.58	214.67
<b>Black Steel</b> 16° graphite shaft <b>\$69.95</b>	<b>220.33</b>	<b>231.25</b>

Test was carried out under no-wind conditions using a mechanical iron Byron™ machine at a constant swing effort which produced swing speeds of approximately 90 mph. The same shaft flex was used on each club tested. Distances are the average of 12 center hits using new, interest® D1 90 golf balls.

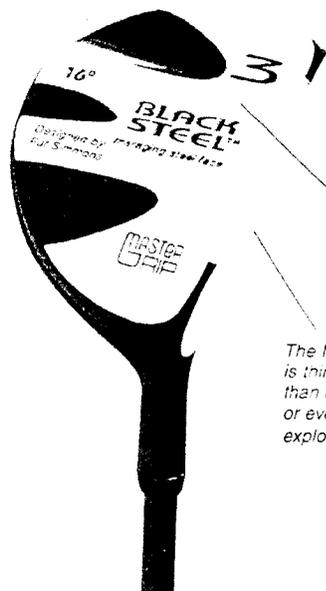
Black Steel Driver, graphite shaft .....	<b>\$79<sup>95</sup></b>
Black Steel Driver, steel shaft .....	<b>\$64<sup>95</sup></b>
Black Steel Fairway Woods, graphite shaft .....	<b>\$69<sup>95</sup></b>
Black Steel Fairway Woods, steel shaft .....	<b>\$54<sup>95</sup></b>

Item BS1WL (Driver, 9°); BS1WS (Driver, 10.5°); BS1WH (Driver, 12°); BSS3W (Strong 3-wood); BS3W (3-Wood); BSS5W (Strong 5-Wood); BS7W (7-Wood); BS9W (9-Wood)

### TRUE TEMPER™

Available shafts:

Black Gold (graphite)  
Regular Stiff Senior Ladies  
Dynamic Gold (steel)  
Regular Stiff  
Gold Plus (steel)  
Ladies



The unique soleplate design allows the club to slip through tough lies easily.

The Maraging Steel face is thinner, yet harder than conventional steel or even titanium for explosive distance!

\*\*\*\*\*

Recently I purchased #3 and #5 Black Steel fairway metals. With the Black Steel I find that I no longer need to use a driver since the #3 goes as far and better than my old #1. I am 75 years old and have shot my age and lower many times. These are great clubs at a price the average guy can afford.

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Blacksburg, VA

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*Customer Service*

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T-Rex Xtreme  
Forged Beta Titanium  
Driver, page 3

Tour Series  
Wedges,  
page 11

Black Steel  
Maraging™  
Steel Woods,  
pages 6 and 7

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GRIP®**

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**Most  
Orders  
Shipped  
Within 24  
Hours!**



76308636

Applicant: MasterGrip, Inc.  
Mark: BLACK STEEL  
Atty.: Lewis T. Steadman, Jr.  
Holland & Knight, LLP  
SPECIMEN - Photo of Golf Club Bearing Mark



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**Typed Drawing**

**Word Mark** BLACK THUNDER  
**Goods and Services** IC 028. US 022 023 038 050. G & S: Golf equipment, namely, golf clubs. FIRST USE: 20021231. FIRST USE IN COMMERCE: 20021231  
**Mark Drawing Code** (1) TYPED DRAWING  
**Serial Number** 78055399  
**Filing Date** March 27, 2001  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** July 2, 2002  
**Registration Number** **2815690**  
**Registration Date** February 17, 2004  
**Owner** (REGISTRANT) BETTINARDI, ROBERT J. INDIVIDUAL UNITED STATES 7800 Graphics Drive Tinley Park ILLINOIS 60477  
**Attorney of Record** Thomas G. Gardiner  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Affidavit Text** SECT 15. SECT 8 (6-YR).  
**Live/Dead Indicator** LIVE

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# BLACK MAX

<b>Word Mark</b>	BLACK MAX
<b>Goods and Services</b>	IC 028. US 022 023 038 050. G & S: Golf equipment, namely, golf clubs, golf club headcovers. FIRST USE: 20070800. FIRST USE IN COMMERCE: 20070800
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77112241
<b>Filing Date</b>	February 21, 2007
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	August 28, 2007
<b>Registration Number</b>	<b>3473070</b>
<b>Registration Date</b>	July 22, 2008
<b>Owner</b>	(REGISTRANT) DICK'S SPORTING GOODS, INC. CORPORATION DELAWARE 300 INDUSTRY DRIVE RIDC PARK WEST PITTSBURGH PENNSYLVANIA 15275  (LAST LISTED OWNER) AMERICAN SPORTS LICENSING, INC. CORPORATION DELAWARE 1101 CENTRE ROAD, SUITE 339 WILMINGTON DELAWARE 19805
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Attorney of Record</b>	Bassam N. Ibrahim
<b>Prior Registrations</b>	1106190
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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PTO Form 1553 (Rev 9/2005)  
OMB No. 0651-0054 (Exp. 11/30/2008)

**Trademark/Service Mark Statement of Use  
(15 U.S.C. Section 1051(d))**

**Handwritten Signature**

**To the Commissioner for Trademarks:**

**MARK: BLACK MAX**  
**SERIAL NUMBER: 77112241**

This Allegation of Use is being filed after a Notice of Allowance has issued.

The applicant, DICK'S SPORTING GOODS, INC., having an address of 300 INDUSTRY DRIVE RIDC PARK WEST, PITTSBURGH, Pennsylvania United States 15275, is using or is using through a related company or licensee the mark in commerce on or in connection with the goods and/or services as follows:

For International Class 028:

Current identification: Golf equipment, namely, golf clubs, golf club headcovers

The applicant, or the applicant's related company or licensee, is using the mark in commerce on or in connection with all goods and/or services listed in the application or Notice of Allowance.

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 08/00/2007, and first used in commerce at least as early as 08/00/2007, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) Photographs of the mark appearing on the goods.

Specimen-1 [SPN0-127116199-100453918\_.\_pG01-4440872p275w\_1\_.jpg ]

Specimen-2 [SPN0-127116199-100453918\_.\_BLACK\_MAX\_WEDGE\_1\_.jpg ]

The applicant hereby appoints Bassam N. Ibrahim and Parker Livingston, Jennifer Williston, Bryce Maynard, Holly Ford, and Fred Hathaway of Buchanan Ingersoll & Rooney PC, P.O. Box 1404, Alexandria, Virginia United States 22313-1404 to submit this Trademark/Service Mark Statement of Use on behalf of the applicant. The attorney docket/reference number is 0039805-168.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for 1 class.

**Declaration**

Applicant requests registration of the above-identified trademark/service mark 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). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

**Signature Section:**

Signature: Manny Goldstein  
Signatory's Name: Manny Goldstein  
Signatory's Position: SRVP Product Development  
Date Signed: 6/5/08

**NOTE TO APPLICANT:** When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.



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# The Instructions for Use Travel Series

<b>Word Mark</b>	THE INSTRUCTIONS FOR USE TRAVEL SERIES
<b>Goods and Services</b>	IC 016. US 002 005 022 023 029 037 038 050. G & S: A series of books and written articles in the field of travel; Series of non-fiction books in the field of travel. FIRST USE: 20040115. FIRST USE IN COMMERCE: 20040215
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77655910
<b>Filing Date</b>	January 24, 2009
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	December 29, 2009
<b>Registration Number</b>	<b>3759982</b>
<b>Registration Date</b>	March 16, 2010
<b>Owner</b>	(REGISTRANT) Illustrata, Inc. TA Illustrata Press CORPORATION GEORGIA 269 E Lake Drive Decatur GEORGIA 30030
<b>Type of Mark</b>	TRADEMARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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**EXHIBIT B**



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**BEACON LIGHT STEAM SERIES**

**Word Mark** BEACON LIGHT STEAM SERIES  
**Goods and Services** IC 029. US 046. G & S: frozen fish and shellfish. FIRST USE: 20090501. FIRST USE IN COMMERCE: 20090501  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 77680464  
**Filing Date** February 27, 2009  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** June 23, 2009  
**Registration Number** **3755984**  
**Registration Date** March 2, 2010  
**Owner** (REGISTRANT) Sea Star Seafood Corp. CORPORATION MASSACHUSETTS 128 Bartlett Street Marlborough MASSACHUSETTS 01752  
**Attorney of Record** aoi nawashiro  
**Prior Registrations** 1219317;3557003  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**FREEWAY SERIES**

**Word Mark** FREEWAY SERIES  
**Goods and Services** IC 025. US 022 039. G & S: Clothing, namely, shirts. FIRST USE: 19980711. FIRST USE IN COMMERCE: 20020628  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 77849313  
**Filing Date** October 15, 2009  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** February 2, 2010  
**Registration Number** **3851501**  
**Registration Date** September 21, 2010  
**Owner** (REGISTRANT) Major League Baseball Properties, Inc. CORPORATION NEW YORK 30th Floor 245 Park Avenue New York NEW YORK 10167  
**Attorney of Record** Mary L. Kevlin,  
**Prior Registrations** 2234605  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**G SERIES**

**Word Mark** G SERIES

**Goods and Services** IC 032. US 045 046 048. G & S: Non-alcoholic, non-carbonated fruit flavored beverages. FIRST USE: 20100205. FIRST USE IN COMMERCE: 20100205

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Trademark Search Facility Classification Code** LETS-1 G A single letter, multiples of a single letter or in combination with a design SHAPES-MISC Miscellaneous shaped designs

**Serial Number** 77247652

**Filing Date** August 6, 2007

**Current Filing Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** February 12, 2008

**Registration Number** 3767941

**Registration Date** March 30, 2010

**Owner** (REGISTRANT) Stokely-Van Camp, Inc. CORPORATION INDIANA Suite 11-10 555 West Monroe Street Chicago ILLINOIS 60661

**Attorney of Record** Janet Silverberg

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**G SERIES**

**Word Mark** G SERIES  
**Goods and Services** IC 005. US 006 018 044 046 051 052. G & S: Non-alcoholic vitamin and/or nutritionally fortified beverages. FIRST USE: 20100430. FIRST USE IN COMMERCE: 20100430  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Trademark Search Facility Classification Code** LETS-1 G A single letter, multiples of a single letter or in combination with a design SHAPES-MISC Miscellaneous shaped designs  
**Serial Number** 77787631  
**Filing Date** July 23, 2009  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** December 8, 2009  
**Registration Number** 3829459  
**Registration Date** August 3, 2010  
**Owner** (REGISTRANT) Stokely-Van Camp, Inc. CORPORATION INDIANA Suite 11-10 555 West Monroe Street Chicago ILLINOIS 60661  
**Attorney of Record** Janet Silverberg  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**Word Mark** G SERIES PRO 01 PRIME  
**Goods and Services** IC 030. US 046. G & S: Grain based bars. FIRST USE: 20100430. FIRST USE IN COMMERCE: 20100430  
 IC 032. US 045 046 048. G & S: Non-alcoholic, non-carbonated fruit flavored beverages. FIRST USE: 20100430. FIRST USE IN COMMERCE: 20100430  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 01.15.02 - Electricity; Lightning; Sparks (jagged lines)  
**Trademark Search Facility Classification Code** INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames  
 LETS-1 G A single letter, multiples of a single letter or in combination with a design  
 NUM-COMBO Numeral Combinations (More than one number)  
 NUM-1 Marks containing 1ST or the word First  
**Serial Number** 77925986  
**Filing Date** February 2, 2010  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** May 18, 2010  
**Registration Number** 3848963  
**Registration Date** September 14, 2010  
**Owner** (REGISTRANT) Stokely-Van Camp, Inc. CORPORATION INDIANA 555 West Monroe Street Chicago ILLINOIS 60661

**Attorney of Record** Janet Silverberg

**Prior Registrations** 3659283;3681341;3689415;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a stylized letter "G" containing a lightning bolt design within the letter "G" and the words "SERIES PRO 01 PRIME".

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**TARR Status** **ASSIGN Status** **TDR** **TTAB Status** ( Use the "Back" button of the Internet Browser to return to TESS)



<b>Word Mark</b>	G SERIES PRO 02 PERFORM
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Non-alcoholic, non-carbonated fruit flavored beverages. FIRST USE: 20100430. FIRST USE IN COMMERCE: 20100430
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.15.02 - Electricity; Lightning; Sparks (jagged lines)
<b>Trademark Search Facility Classification Code</b>	INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames LETS-1 G A single letter, multiples of a single letter or in combination with a design LETTER-3-OR-MORE PRO Combination of three or more letters as part of the mark NUM-0-ZERO Marks containing "0" or the word Zero NUM-2 The number 2 or the word Two SHAPES-MISC Miscellaneous shaped designs
<b>Serial Number</b>	77926091
<b>Filing Date</b>	February 2, 2010
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	May 25, 2010
<b>Registration Number</b>	<b>3855002</b>
<b>Registration Date</b>	September 28, 2010
<b>Owner</b>	(REGISTRANT) Stokely-Van Camp, Inc. CORPORATION INDIANA 555 West Monroe Street Chicago ILLINOIS 60661
<b>Attorney of Record</b>	Janet Silverberg

**Prior Registrations** 3659283;3681341;3689415;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a stylized letter "G" containing a lightning bolt design within the "G" and the words "SERIES PRO 02 PERFORM".

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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<b>Word Mark</b>	G SERIES PRO 01 PRIME
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Non-alcoholic, non-carbonated fruit flavored beverages. FIRST USE: 20100430. FIRST USE IN COMMERCE: 20100430
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.15.02 - Electricity; Lightning; Sparks (jagged lines)
<b>Trademark Search Facility Classification Code</b>	INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames LETS-1 g A single letter, multiples of a single letter or in combination with a design NUM-0-ZERO Marks containing "0" or the word Zero NUM-1 Marks containing 1ST or the word First SHAPES-GEOMETRIC Geometric figures and solids including squares, rectangles, quadrilaterals and polygons
<b>Serial Number</b>	77929095
<b>Filing Date</b>	February 5, 2010
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	May 25, 2010
<b>Registration Number</b>	<b>3855003</b>
<b>Registration Date</b>	September 28, 2010
<b>Owner</b>	(REGISTRANT) Stokely-Van Camp, Inc. CORPORATION INDIANA 555 West Monroe Street Chicago ILLINOIS 60661
<b>Attorney of Record</b>	Janet Silverberg

**Prior Registrations** 3659283;3681341;3689415;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a stylized letter "G" containing a lightning bolt design within the "G" and the words "SERIES PRO 01 PRIME".

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**SERIES**  
PRO  
02  
PERFORM

**Word Mark** G SERIES PRO 02 PERFORM  
**Goods and Services** IC 032. US 045 046 048. G & S: Non-alcoholic, non-carbonated fruit flavored beverages. FIRST USE: 20100430. FIRST USE IN COMMERCE: 20100430  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 01.15.02 - Electricity; Lightning; Sparks (jagged lines)  
**Trademark Search Facility Classification Code** INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames  
 LETS-1 G A single letter, multiples of a single letter or in combination with a design  
 NUM-0-ZERO Marks containing "0" or the word Zero  
 NUM-2 The number 2 or the word Two  
**Serial Number** 77929390  
**Filing Date** February 5, 2010  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** May 25, 2010  
**Registration Number** 3855004  
**Registration Date** September 28, 2010  
**Owner** (REGISTRANT) Stokely-Van Camp, Inc. CORPORATION INDIANA 555 West Monroe Street Chicago ILLINOIS 60661  
**Attorney of Record** Janet Silverberg

**Prior Registrations** 3659283;3681341;3689415;AND OTHERS  
**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a stylized letter "G" containing a lightning bolt design within the "G" and the words "SERIES PRO 02 PERFORM".  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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**SERIES**

<b>Word Mark</b>	G SERIES
<b>Goods and Services</b>	IC 032. US 045 046 048. G & S: Non-alcoholic, non-carbonated fruit flavored beverages. FIRST USE: 20100330. FIRST USE IN COMMERCE: 20100330
<b>Mark Drawing Code</b>	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
<b>Design Search Code</b>	01.15.02 - Electricity; Lightning; Sparks (jagged lines)
<b>Trademark Search Facility Classification Code</b>	INAN Inanimate objects such as lighting, clouds, footprints, atomic configurations, snowflakes, rainbows, flames LETS-1 G A single letter, multiples of a single letter or in combination with a design SHAPES-MISC Miscellaneous shaped designs
<b>Serial Number</b>	77857095
<b>Filing Date</b>	October 26, 2009
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	February 16, 2010
<b>Registration Number</b>	<b>3858168</b>
<b>Registration Date</b>	October 5, 2010
<b>Owner</b>	(REGISTRANT) Stokely-Van Camp, Inc. CORPORATION INDIANA 555 West Monroe Street Chicago ILLINOIS 60661
<b>Attorney of Record</b>	Janet Silverberg

**Prior Registrations** 3659283;3681341;3689415;AND OTHERS

**Description of Mark** Color is not claimed as a feature of the mark. The mark consists of a stylized letter "G" containing a lightning bolt design within the "G" and the word "SERIES" in a stylized form.

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**1 SERIES – BPS**

<b>Word Mark</b>	1 SERIES - BPS
<b>Goods and Services</b>	IC 006. US 002 012 013 014 023 025 050. G & S: Steel. FIRST USE: 20100215. FIRST USE IN COMMERCE: 20100215
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Trademark</b>	LETTER-3-OR-MORE BPS Combination of three or more letters as part of the mark
<b>Search Facility Classification Code</b>	NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks NUM-1 Marks containing 1ST or the word First
<b>Serial Number</b>	77938342
<b>Filing Date</b>	February 17, 2010
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 13, 2010
<b>Registration Number</b>	3901970
<b>Registration Date</b>	January 4, 2011
<b>Owner</b>	(REGISTRANT) Commercial Metals Company CORPORATION DELAWARE 6565 N. MacArthur Blvd. Irving TEXAS 75039
<b>Attorney of Record</b>	Jeffrey M. Becker

**Type of Mark**    TRADEMARK  
**Register**        PRINCIPAL  
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Indicator**        LIVE

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**THE WORLD SERIES OF BEER PONG**

**Word Mark** THE WORLD SERIES OF BEER PONG

**Goods and Services** IC 021. US 002 013 023 029 030 033 040 050. G & S: Cups not relating to baseball or softball or a baseball or softball team. FIRST USE: 20061219. FIRST USE IN COMMERCE: 20061219

IC 025. US 022 039. G & S: Shirts not relating to baseball or softball or a baseball or softball team. FIRST USE: 20060102. FIRST USE IN COMMERCE: 20060102

IC 028. US 022 023 038 050. G & S: Game tables not relating to baseball or softball or a baseball or softball team. FIRST USE: 20060102. FIRST USE IN COMMERCE: 20060102

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Serial Number** 77071122

**Filing Date** December 25, 2006

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** July 17, 2007

**Registration Number** 3791794

**Registration Date** May 25, 2010

**Owner** (REGISTRANT) BEER PONG EVENTS, LLC LIMITED LIABILITY COMPANY ILLINOIS PO BOX 10609 CHICAGO ILLINOIS 606100609

**Attorney of Record** Alain Villeneuve

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

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**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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**WORLD SERIES OF BILLIARDS**

**Word Mark** WORLD SERIES OF BILLIARDS  
**Goods and Services** IC 028. US 022 023 038 050. G & S: BILLIARD BALLS; BILLIARD BRIDGES; BILLIARD BUMPERS; BILLIARD CHALK; BILLIARD CUE RACKS; BILLIARD CUES; BILLIARD CUSHIONS; BILLIARD GAME PLAYING EQUIPMENT; BILLIARD NETS; BILLIARD TABLES; BILLIARD TALLY BALLS; BILLIARD TIPS; BILLIARD TRIANGLES; CHALK FOR BILLIARD CUES; CUE STICKS; POOL BRIDGES; POOL BUMPERS; POOL CHALK HOLDERS; POOL CUE CASES; POOL CUE CEMENT; POOL CUE CHALK; POOL CUE CLAMPS; POOL CUE RACKS; POOL CUE REPAIR KITS; POOL CUE TIPS; POOL CUES; POOL CUSHIONS; POOL TALLY BALLS; ALL OF THE FOREGOING RELATING TO THE SPORTS OF POOL AND BILLIARDS AND NOT RELATING TO ANY OTHER SPORTS OR A SPORTS TEAM. FIRST USE: 20070401. FIRST USE IN COMMERCE: 20070401

**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 77149990  
**Filing Date** April 5, 2007  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** September 29, 2009  
**Registration Number** 3845564  
**Registration Date** September 7, 2010

**Owner** (REGISTRANT) World Series of Billiards, Inc. Michael Knupp, President CORPORATION FLORIDA 10182 Pennsylvania Avenue Bonita Spring FLORIDA 341354725

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

**Type of Mark** TRADEMARK

**Register** PRINCIPAL

**Live/Dead Indicator** LIVE

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# World Series of Poker

<b>Word Mark</b>	WORLD SERIES OF POKER
<b>Goods and Services</b>	IC 016. US 002 005 022 023 029 037 038 050. G & S: Books featuring information, news, and entertainment related to gaming and the game of poker. FIRST USE: 20100731. FIRST USE IN COMMERCE: 20100731
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77673812
<b>Filing Date</b>	February 19, 2009
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	June 2, 2009
<b>Registration Number</b>	<b>3868170</b>
<b>Registration Date</b>	October 26, 2010
<b>Owner</b>	(REGISTRANT) Harrah's Interactive Entertainment, Inc. CORPORATION DELAWARE One Caesars Palace Drive Las Vegas NEVADA 89109  (LAST LISTED OWNER) CAESARS INTERACTIVE ENTERTAINMENT, INC. CORPORATION DELAWARE ONE CAESARS PALACE DRIVE LAS VEGAS NEVADA 89109
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Prior Registrations</b>	1025395;3250424;3537943;AND OTHERS

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POKER" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# World Series of Poker

<b>Word Mark</b>	WORLD SERIES OF POKER
<b>Goods and Services</b>	IC 009. US 021 023 026 036 038. G & S: Downloadable electronic game software for cellular telephones; downloadable electronic game software for wireless devices; and downloadable electronic game software for use with social networking applications and on social networking websites. FIRST USE: 20091031. FIRST USE IN COMMERCE: 20091031
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	85170566
<b>Filing Date</b>	November 5, 2010
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1A
<b>Published for Opposition</b>	April 12, 2011
<b>Registration Number</b>	<b>3985276</b>
<b>Registration Date</b>	June 28, 2011
<b>Owner</b>	(REGISTRANT) CAESARS INTERACTIVE ENTERTAINMENT, INC. CORPORATION DELAWARE ONE CAESARS PALACE DRIVE LAS VEGAS NEVADA 89109
<b>Assignment Recorded</b>	ASSIGNMENT RECORDED
<b>Prior Registrations</b>	2119064;3150504;3250424;AND OTHERS

**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "POKER" APART FROM THE MARK AS SHOWN  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
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**World Series of Archery**

**Word Mark** WORLD SERIES OF ARCHERY

**Goods and Services** IC 028. US 022 023 038 050. G & S: Action-type target games; Archery targets; Target games; Targets. FIRST USE: 20091010. FIRST USE IN COMMERCE: 20091010

IC 041. US 100 101 107. G & S: Arranging and conducting athletic competitions; Entertainment in the nature of competitions in the field of archery; Entertainment in the nature of archery tournaments; Entertainment services, namely, arranging and conducting of competitions for archery; Entertainment services, namely, participation in archery tournaments; Organizing sporting events, namely, archery tournaments; Recreational services in the nature of archery tournaments. FIRST USE: 20091010. FIRST USE IN COMMERCE: 20091010

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Trademark Search Facility Classification Code** SHAPES-MISC Miscellaneous shaped designs

**Serial Number** 77814981

**Filing Date** August 28, 2009

**Current Filing Basis** 1A

**Original Filing Basis** 1B

**Published for Opposition** February 2, 2010

**Registration Number** 3874618

**Registration Date** November 9, 2010  
**Owner** (REGISTRANT) Braden, Michael Ray INDIVIDUAL UNITED STATES 1802 Candlelight Place Drive  
Houston TEXAS 77018  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ARCHERY" APART FROM THE MARK AS  
SHOWN  
**Type of Mark** TRADEMARK. SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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# SERIES

<b>Word Mark</b>	SERIES
<b>Goods and Services</b>	IC 037. US 100 103 106. G & S: Consultation in the field of building construction IC 042. US 100 101. G & S: Cosmetic research; research and development of new products for others; industrial design; packaging design services; graphic arts designing; textile testing; architectural design; material testing
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77978630
<b>Filing Date</b>	April 6, 2009
<b>Current Filing Basis</b>	44E
<b>Original Filing Basis</b>	1B;44D
<b>Published for Opposition</b>	November 16, 2010
<b>Registration Number</b>	<b>3913146</b>
<b>Registration Date</b>	February 1, 2011
<b>Owner</b>	(REGISTRANT) Szwajcer, Marc INDIVIDUAL BELGIUM Maria Theresialei 4 Antwerp BELGIUM B-2018
<b>Attorney of Record</b>	George A. Pelletier, Jr.
<b>Type of Mark</b>	SERVICE MARK
<b>Register</b>	PRINCIPAL
<b>Live/Dead Indicator</b>	LIVE

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# SERIES PASS

<b>Word Mark</b>	SERIES PASS
<b>Goods and Services</b>	IC 038. US 100 101 104. G & S: video on demand cable television transmission services featuring automatic downloading of programming content; electronic transmission of text, data, audio and video via cable, wireless communications networks and the Internet. FIRST USE: 20100218. FIRST USE IN COMMERCE: 20100218
<b>Standard Characters Claimed</b>	
<b>Mark Drawing Code</b>	(4) STANDARD CHARACTER MARK
<b>Serial Number</b>	77099347
<b>Filing Date</b>	February 5, 2007
<b>Current Filing Basis</b>	1A
<b>Original Filing Basis</b>	1B
<b>Published for Opposition</b>	July 15, 2008
<b>Registration Number</b>	<b>3785133</b>
<b>Registration Date</b>	May 4, 2010
<b>Owner</b>	(REGISTRANT) Home Box Office, Inc. CORPORATION DELAWARE 1100 Avenue of the Americas New York NEW YORK 10036
<b>Attorney of Record</b>	Judith McCool
<b>Type of Mark Register</b>	SERVICE MARK PRINCIPAL

**Live/Dead  
Indicator**

LIVE

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**OPRAH'S SOUL SERIES**

**Word Mark** OPRAH'S SOUL SERIES

**Goods and Services** IC 041. US 100 101 107. G & S: Entertainment services, namely, providing an on-going radio program in the fields of sex, sexuality, health and anatomy, relationships, emotions and lifestyle, via satellite and the Internet; providing information regarding the foregoing via a global computer network. FIRST USE: 20071004. FIRST USE IN COMMERCE: 20071004

**Standard Characters Claimed**

**Mark Drawing Code** (4) STANDARD CHARACTER MARK

**Trademark Search Facility Classification Code** NOTATION-SYMBOLS Notation Symbols such as Non-Latin characters,punctuation and mathematical signs,zodiac signs,prescription marks

**Serial Number** 77721205

**Filing Date** April 23, 2009

**Current Filing Basis** 1A

**Original Filing Basis** 1A

**Published for Opposition** November 10, 2009

**Registration Number** 3741987

**Registration Date** January 26, 2010

**Owner** (REGISTRANT) Harpo, Inc. CORPORATION ILLINOIS 110 North Carpenter Street Chicago ILLINOIS 60607

**Attorney of Record** Brooke Erdos Singer  
**Prior Registrations** 1726373;3337149;3435292;AND OTHERS  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Other Data** The name "OPRAH" identifies a living individual whose consent is of record.  
**Live/Dead Indicator** LIVE

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**World Series of Fishing**

**Word Mark** WORLD SERIES OF FISHING  
**Goods and Services** IC 035. US 100 101 102. G & S: Providing an interactive website that manages fishing tournaments. FIRST USE: 20100318. FIRST USE IN COMMERCE: 20100318  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 77113587  
**Filing Date** February 22, 2007  
**Current Filing Basis** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** August 28, 2007  
**Registration Number** 3793491  
**Registration Date** May 25, 2010  
**Owner** (REGISTRANT) 4390890 Canada Inc. CORPORATION CANADA Suite 700 999 De Maisonneuve West Montreal, Quebec CANADA H3A 3L4  
**Attorney of Record** Harris A. Wolin  
**Disclaimer** NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "FISHING" APART FROM THE MARK AS SHOWN  
**Type of Mark** SERVICE MARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE

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