

ESTTA Tracking number: **ESTTA338830**

Filing date: **03/24/2010**

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

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Crayola Properties, Inc.
Granted to Date of previous extension	03/24/2010
Address	1100 Church Lane Easton, PA 18042 UNITED STATES
Attorney information	Albert P. Mauro, Jr., Esq. Hallmark Cards, Incorporated 2501 McGee Trafficway Legal Division, Mail Drop #339 Kansas City, MO 64108 UNITED STATES Ischuv1@hallmark.com Phone:816-545-3187

Applicant Information

Application No	77761133	Publication date	11/24/2009
Opposition Filing Date	03/24/2010	Opposition Period Ends	03/24/2010
Applicant	Krayolo LLC #A 35 Shippin Avenue Stamford, CT 06902 UNITED STATES		

Goods/Services Affected by Opposition

<p>Class 025. First Use: 2009/03/02 First Use In Commerce: 2009/03/02 All goods and services in the class are opposed, namely: Belts; caps; clothing for athletic use, namely, padded shorts; clothing for athletic use, namely, padded pants; clothing for athletic use, namely, padded shirts; clothing for athletic use, namely, padded elbow compression sleeves; outer wear; jackets; coats; gloves; footwear; sandals; shoes; sneakers; slippers; clothing, namely, arm warmers; clothing, namely, base layers; shorts; pants; jeans; denim shorts; pajamas; clothing, namely, hand-warmers; clothing, namely, khakis; clothing, namely, knee warmers; clothing, namely, neck tubes; clothing, namely, thobes; clothing, namely, wrap-arounds; corsets; dusters; eyeshades; dress shirts; polo shirts; t-shirts; short-sleeved shirts; sweaters; turtle neck sweaters; foulards; hoods; infant and toddler one piece clothing; baby bibs not of paper; infant tee shirts; jerseys; cotton belts; leather belts; mantles; mufflers; headwear; hats; head bands; winter hats; parts of clothing, namely, socks, gussets for tights, gussets for stockings, gussets for bathing suits, gussets for underwear, gussets for leotards and gussets for footlets; parts of clothing, namely, underarm gussets; party hats; perspiration absorbent underwear clothing; shifts; short sets; shoulder wraps; suits; ties; tops; travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; underarm clothing shields; wearable garments and clothing, namely, shirts; wraps</p>

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1303791	Application Date	09/07/1982
Registration Date	11/06/1984	Foreign Priority Date	NONE
Word Mark	CRAYOLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1981/08/00 First Use In Commerce: 1981/08/00 Children's Clothing-Namely, [ANKLETS,] SHIRTS, [SHORTS, SLACKS, JOGGING SUITS, DRESSES AND OVERALLS]		

U.S. Registration No.	644752	Application Date	08/15/1956
Registration Date	04/30/1957	Foreign Priority Date	NONE
Word Mark	CRAYOLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U037 (International Class 016). First use: First Use: 1905/07/00 First Use In Commerce: 1905/07/00 CRAYONS		

U.S. Registration No.	987896	Application Date	06/08/1973
Registration Date	07/09/1974	Foreign Priority Date	NONE
Word Mark	CRAYOLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U037 (International Class 016). First use: First Use: 1973/05/14 First Use In Commerce: 1973/05/14 CHALK FOR DRAWING AND WRITING PURPOSES		

U.S. Registration No.	641294	Application Date	05/18/1956
Registration Date	02/12/1957	Foreign Priority Date	NONE
Word Mark	CRAYOLA		
Design Mark			
Description of Mark	NONE		

Goods/Services	Class U016 (International Class 002). First use: First Use: 1956/05/02 First Use In Commerce: 1956/05/02 FINGER PAINT		
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U.S. Registration No.	1090330	Application Date	07/18/1977
Registration Date	05/02/1978	Foreign Priority Date	NONE
Word Mark	CRAYOLA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1977/05/26 First Use In Commerce: 1977/05/26 MARKERS		

U.S. Registration No.	1279429	Application Date	11/04/1981
Registration Date	05/29/1984	Foreign Priority Date	NONE
Word Mark	CRAYOLA		
Design Mark			
Description of Mark	NONE		

Goods/Services	<p>Class 002. First use: First Use: 1956/00/00 First Use In Commerce: 1956/00/00 Paints; Colors</p> <p>Class 016. First use: First Use: 1905/00/00 First Use In Commerce: 1905/00/00 Chalk; Crayons; Crayon Sharpeners; Markers; Modeling Clay; Art Kits, Art Supplies and Art Materials Comprising Art Brushes, Art Rubbing Boards, Art Supplies and Materials Carrying Cases, Art Drawing Paper, Art Guide Sheets and Instructions, Chalkboards, Tables Constructed to Hold Easels Upright, Easels, Erasers, Paint and Color Mixing Cups, Picture Transfer Sheets, Pencils, Retainer Trays for Art Materials and Supplies, Sketch Pads, Sketch Pad Holding Clips, Stencils, Tracing Paper, Wipe-Off Crayoning Pads; Coloring Kits, Supplies and Materials Comprising Coloring Instructions, Coloring Books, Coloring Supplies and Materials Polymeric Storage Bags, Coloring Scroll Story Box, Drawing Transfer Sheets, Drawing Transfer Rubbing Sticks, Punch-Out and Pre-Cut Coloring Designs, Pre-Printed Drawing Sheets, Wipe Clean Coloring Surfaces; Play Books; Coloring Books; Craft Kits, Craft Supplies and Craft Materials for Children and Young People Comprising Art and Craft Glue, Clay Sculpting Boards, Clay Sculpting Tools, Craft Project Booklets, Worksheets and Instructions, Craft Brushes, Clay Glazing Material, Craft Materials and Supplies Carrying Pouches, Craft Card Games, Craft Drawing Boards, Construction Paper, Clay Modeling Mats, Clay Modeling Material Storage Trays, Pre-Printed and Plain Drawing Paper, Modeling Forms, Painting Medium, Painting Medium Dispensers, Playboards, Scissors, Tracing Paper, Tracing Workboards, Coloring Mugs, Coloring Dining Plates, Coloring Dining Plates Display Stands, Coloring Dining Polymer Placemats, Coloring Dining Placesettings, Wipe-Off Game Boards</p> <p>Class 028. First use: First Use: 1979/00/00 First Use In Commerce: 1979/00/00 Hobby Kits Comprising Crayoning and Coloring Games, Game Materials Retainer Trays, Game Instructions</p>		
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Attachments	krayolo.pdf (4 pages)(182969 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Albert P. Mauro, Jr./
Name	Albert P. Mauro, Jr., Esq.
Date	03/24/2010

gussets for underwear, gussets for leotards and gussets for footlets; parts of clothing, namely, underarm gussets; party hats; perspiration absorbent underwear clothing; shifts; short sets; shoulder wraps; suits; ties; tops; travel clothing contained in a package comprising reversible jackets, pants, skirts, tops and a belt or scarf; triathlon clothing, namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; underarm clothing shields; wearable garments and clothing, namely, shirts; wraps,” Application Serial No. 77-761,133, filed by Krayolo LLC (hereinafter called Applicant), published in the Official Gazette of November 24, 2009, and hereby opposes the same under the provisions of Section 13 of the Trademark Act of 1946 (15 U.S.C. § 1063).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the trademark CRAYOLA and licenses said trademark to Crayola LCC, and other third parties, for the manufacture and distribution of various products, including, but not limited to, childrens art materials and clothing, bearing the CRAYOLA trademark.

2. Opposer, and Opposer’s predecessors in interest, have, since 1903, used and continue to use the trademark CRAYOLA on and in connection with a variety of products, including, but not limited to, childrens art materials and clothing children’s art and educational products and clothing.

3. Opposer is the owner of all right, title and interest to the trademark CRAYOLA for use in connection with the aforementioned goods. Opposer owns US Trademark registrations for the mark CRAYOLA, including, but not limited to, No. 1,303,791 for “children’s clothing – namely, shirts”, No. 644,752 for “crayons,” No. 987,896 for “chalk,” No. 1,090,330 for “markers,” No. 641,294 for “finger paints” and No. 1,279,429 for “paints; colors; chalk; crayons; crayon sharpeners; markers; modeling clay; art kits, art supplies and art materials comprising art brushes, art rubbing boards, art supplies and materials carrying cases, art drawing paper, art guide sheets and instructions, chalkboards, tables constructed to hold easels upright, easels, erasers, paint and color mixing cups, picture transfer sheets, pencils, retainer trays for art materials and supplies, sketch pads, sketch pad holding clips, stencils, tracing paper, wipe-off crayoning pads; coloring kits, supplies and materials comprising coloring instructions, coloring books, coloring supplies and materials, polymeric storage bags, coloring scroll story box, drawing transfer sheets, drawing transfer rubbing sticks, punch-out and pre-cut coloring

designs, pre-printed drawing sheets, wipe clean coloring surfaces; play books; coloring books; craft Kits, craft supplies and craft materials for children and young people comprising art and craft glue, clay sculpting boards, clay sculpting tools, craft project booklets, worksheets and instructions, craft brushes, clay glazing material, craft materials and supplies, carrying pouches, craft card games, craft drawing boards, construction paper, clay modeling mats, clay modeling material, storage trays, pre-printed and plain drawing paper, modeling forms, painting medium, painting medium dispensers, playboards, scissors, tracing paper, tracing workboards, coloring mugs, coloring dining plates, coloring dining plates display stands, coloring dining polymer placemats, coloring dining placesettings, wipe-off game boards; hobby kits comprising crayoning and coloring games, game materials retainer trays, game instructions. Each of the listed registrations evidences a date of first use predating Applicant's date of filing its KRAYOLO application.

4. The mark KRAYOLO which Applicant seeks to register so resembles Opposer's trademark CRAYOLA that the use and registration of KRAYOLO in connection with Applicant's goods is likely to cause confusion, mistake or deception and, therefore, the granting of the registration would injure Opposer and Opposer's goodwill in its trademark.

5. Applicant's use and registration of KRAYOLO is likely to cause the public to assume erroneously that Applicant's goods are sponsored by Opposer or that they are in some way connected with Opposer, when in fact they are not, all to Opposer's irreparable damage.

6. Opposer's CRAYOLA trademark has become famous and Applicant's registration of KRAYOLO would dilute the distinctive quality of Opposer's mark.

For the reasons set forth in the foregoing paragraphs 1-6, Opposer believes and asserts that the goodwill of its CRAYOLA trademark will be damaged and that Applicant should be denied registration of the mark which it seeks to register.

WHEREFORE, Opposer prays that this Opposition be sustained and that Application Serial No. 77-761,133 be refused registration.

Crayola Properties, Inc.

By /Albert P. Mauro, Jr./
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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of March, 2010, the foregoing Notice of Opposition is being served on Applicant by causing a copy to be mailed via first class mail, postage prepaid, to:

Gibson Lamour
Krayolo LLC
35 Shippan Avenue, #A
Stamford, CT 06902

By /Albert P. Mauro, Jr./
Albert P. Mauro, Jr.