

ESTTA Tracking number: **ESTTA1080262**

Filing date: **09/08/2020**

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	Wayfair LLC		
Entity	Limited Liability Company	Citizenship	Delaware
Address	4 COPLEY PLACE, 7TH FLOOR BOSTON, MA 02116 UNITED STATES		
Attorney information	JOSHUA M. DALTON, ESQ. MORGAN, LEWIS & BOCKIUS LLP ONE FEDERAL STREET BOSTON, MA 02110 UNITED STATES Primary Email: trademarks@morganlewis.com Secondary Email(s): josh.dalton@morganlewis.com, amelia.pennington@morganlewis.com, rachel.dubow@morganlewis.com 6179518939		
Docket Number	107525-0034		

Applicant Information

Application No.	88872854	Publication date	08/11/2020
Opposition Filing Date	09/08/2020	Opposition Period Ends	09/10/2020
Applicant	XIE WANLI TIANHE DISTRICT GUANGZHOU, 510520 CHINA		

Goods/Services Affected by Opposition

Class 020. First Use: 2020/01/12 First Use In Commerce: 2020/01/12 All goods and services in the class are opposed, namely: Furniture; Furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, coat racks, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, sofa, non-metal ladder, shelves, dressers and chests of drawers, bed headboards, nightstands, bath vanities, dining sets comprising tables, chairs and benches, ottoman
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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.	5400044	Application Date	05/11/2017
Registration Date	02/13/2018	Foreign Priority Date	NONE
Word Mark	BIRCH LANE		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 006. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Baskets of common metal</p> <p>Class 008. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Cutlery; Flatware, namely, knives, forks, and spoons; kitchen knives</p> <p>Class 011. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Lamps; floor lamps; table lamps; lighting fixtures</p> <p>Class 014. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Jewelry armoires; jewelry boxes; wall clocks</p> <p>Class 016. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Art prints; framed art prints</p> <p>Class 020. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Furniture; furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, dressers and chests of drawers, bed headboards, and nightstands, dining sets comprising tables, chairs and benches, dining chairs, tables, sideboards, buffets, entertainment centers, television stands, bookcases, office furniture, computer desks, computer carts, namely, wheeled computer desks, desks, filing cabinets, storage cabinets, guest chairs, reception chairs, office chairs, chaise lounges, futons, rocking chairs, loveseats, ottomans, recliners, sectional sofas, sleeper sofas, and sofas; kitchen furniture, namely, ready to assemble mobile kitchen carts and kitchen islands; accent pillows, nesting tables, side tables; picture frames; wine racks; room dividers; works of art of wood, plaster or plastic; coat racks; shelving, cabinets for display purposes, bathroom furniture, namely, cabinets, shelving, towel stands, bath stools</p> <p>Class 021. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Baskets for domestic use, not of metal; flower baskets; waste baskets; bowls; works of art made of glass or porcelain; serving trays; candle holders; dinnerware; cutting boards; beverage glassware; mixing bowls; glass jars and canisters; counter top holders for paper towel; laundry hampers for domestic or household use</p> <p>Class 024. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Bed sheets, pillow cases, pillow shams, bed skirts, comforters, bed blankets and blanket throws, bedspreads, duvets; drapery; curtains; shower curtains, bath linens</p> <p>Class 027. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 Carpets, rugs, mats and matting for covering existing floors</p> <p>Class 035. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 On-line retail store services in the field of home furnishings, home goods and home accessories</p>		
U.S. Registration No.	5317332	Application Date	11/01/2013

Registration Date	10/24/2017	Foreign Priority Date	NONE
Word Mark	BIRCH LANE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2014/12/24 First Use In Commerce: 2014/12/24 E-commerce retail store services and mail order catalog services featuring, electric appliances, baking and cooking gadgets, Christmas ornaments, wall coverings, window shades, fabric, namely, curtain fabric, upholstery fabric, fabric made of cotton and fabric made of gauze		

U.S. Registration No.	4848097	Application Date	11/01/2013
Registration Date	11/03/2015	Foreign Priority Date	NONE
Word Mark	BIRCH LANE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2014/03/11 First Use In Commerce: 2014/03/11 E-commerce retail store services and mail order catalog services featuring, housewares, glassware, tableware, plates, saucers, cups, serving knives, forks, spoons, glasses, serving trays, vases, bowls, imported gift items, flatware, indoor and outdoor furniture, pillows, slipcovers, rugs, lamps and lighting fixtures, curtains, curtain rods, table linens, bed linens, bath linens, kitchen towels, bakeware, cookware, plastic, thermoplastic synthetic resin, known as methyl methacrylate, and polyurethane items, candle holders, picture frames, mirrors, vases, baskets and basketware, ceramics, tablecloths, placemats, napkins, desk accessories, picnic accessories, barbecues and barbecue accessories, gardening accessories, beach chairs, umbrellas, tables, wooden items, wine racks and storage containers, decorative accents, window coverings		

U.S. Application No.	88097470	Application Date	08/29/2018
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	BIRCH LANE HERITAGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 006. First use: First Use: 0 First Use In Commerce: 0 Baskets of common metal Class 008. First use: First Use: 0 First Use In Commerce: 0 Table cutlery; Flatware, namely, knives, forks, and spoons; kitchen knives Class 011. First use: First Use: 0 First Use In Commerce: 0 Lamps; floor lamps; table lamps; lighting fixtures; bathroom lighting fixtures Class 014. First use: First Use: 0 First Use In Commerce: 0 Jewelry armoires; jewelry boxes; clocks; wall clocks Class 016. First use: First Use: 0 First Use In Commerce: 0 Art prints; framed art prints		

	<p>Class 020. First use: First Use: 0 First Use In Commerce: 0</p> <p>Furniture; furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, dressers and chests of drawers, bed headboards, and nightstands, dining sets comprising tables, chairs and benches, dining chairs, tables, sideboards, buffets, entertainment centers, television stands, bookcases, office furniture, computer desks, computer carts, namely, wheeled computer desks, desks, filing cabinets, storage cabinets, guest chairs, reception chairs, office chairs, chaise lounges, futons, rocking chairs, loveseats, ottomans, recliners, sectional sofas, sleeper sofas, and sofas; kitchen furniture, namely, ready to assemble mobile kitchen carts and kitchen islands; accent pillows, nesting tables, side tables; picture frames; wine racks; room dividers; works of art of wood, wax, plaster or plastic; coat racks; shelving, bathroom furniture, namely, cabinets, shelving, towel stands, bathstools; outdoor furniture</p> <p>Class 021. First use: First Use: 0 First Use In Commerce: 0</p> <p>Kitchen and serving utensils namely, kitchen tongs, ladles, turners, mixing spoons, graters, sieves, pouring and straining spouts, spatulas, spoon rests, trivets, whisks, ice cream scoops, carving and serving forks, silicone basting brushes for cooking, rolling pins, melon ballers, cheese board and knife sets; baskets for domestic use, not of metal; flower baskets; waste baskets; bowls; works of art made of glass or porcelain; serving trays; serving platters; candle holders; Kitchenware, namely, dishes, serving platters, plates, bowls, cups, saucers, pitchers and mugs, mixing bowls, salt and pepper shakers, salad spinners, pizza pans, spice racks; tea pots, food storage bowls, thermally insulated food storage containers; non-insulated household food storage containers, lazy susans; cookware, namely, casserole dishes, dutch ovens, non-electric griddles, pots and pans, non-electric pressure cookers, skillets, roasting pans and roasting dishes, non-electric cooking steamers, frying pans and non-electric woks; bakeware; dinnerware; cutting boards; beverage glassware; jars and canisters namely, glass storage jars and canister sets; countertop paper towel holders; mounted paper towel holders; napkin rings, napkin holders; oven mitts and pot holders; ice buckets; plastic coasters; vinyl and plastic placemats</p> <p>Class 024. First use: First Use: 0 First Use In Commerce: 0</p> <p>Bed sheets, pillow cases, pillow shams, bed skirts, comforters, bed blankets and blanket throws, bedspreads, duvets, crib sheets, baby blankets, crib and bed canopies; diaper changing pads not of paper and changing pad covers not of paper; draperies; curtains; shower curtains; beach towels, bath linens; kitchen linens; table linens, table dinner napkins of textile, cocktail napkins of textile, tablecloths, not of paper, fabric table runners</p> <p>Class 027. First use: First Use: 0 First Use In Commerce: 0</p> <p>Carpets, rugs, mats and matting for covering existing floors</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0</p> <p>On-line retail store services in the field of home furnishings, home goods, home accessories and general consumer goods and general consumer merchandise</p>
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Attachments	BIRCH LANE_Notice of Opposition_BIRCH VILLA.pdf(166843 bytes) BIRCH LANE exhibit A.pdf(191671 bytes)
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Signature	/Joshua M. Dalton/
Name	Joshua M. Dalton, Esq.
Date	09/08/2020

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

WAYFAIR LLC,

Opposer,

v.

XIE WANLI,

Applicant.

In re Application Serial No. 88/872,854

Mark: BIRCH VILLA

Opposition No. _____

CONSOLIDATED NOTICE OF OPPOSITION

Opposer Wayfair LLC (“Opposer”), by and through its counsel, hereby files this Notice of Opposition against Xie Wanli (“Applicant”). Opposer believes that it will be damaged by registration of the mark BIRCH VILLA (“Applicant’s Mark”), applied for in connection with “Furniture; Furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, coat racks, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, sofa, non-metal ladder, shelves, dressers and chests of drawers, bed headboards, nightstands, bath vanities, dining sets comprising tables, chairs and benches, ottoman” in International Class 20, as shown in Application Serial No. 88/872,854 (the “Application”), and hereby opposes the registration of Applicant’s Mark pursuant to Section 13(a) of the Trademark Act of 1946, as amended (the “Lanham Act”), 15 U.S.C. § 1063(a).

As grounds for the opposition, Opposer alleges that:

1. Opposer is a private limited liability company organized under the laws of Delaware with its principal place of business located at 4 Copley Place, Boston, MA 02116.

2. Opposer is an e-commerce company that offers a wide variety of furniture, home goods and home accessories. Opposer has used its BIRCH LANE mark in commerce continuously since 2014.

3. In addition to Opposer’s extensive common law rights in Opposer’s BIRCH LANE mark, Opposer owns several active U.S. federal trademark registrations and application (collectively the “BIRCH LANE Marks”), for BIRCH LANE-formative marks, specifically:

Mark	Goods	First Use Date
<p>BIRCH LANE</p> <p>(Reg. No. 5,400,044)</p>	<p>Class 06: Baskets of common metal.</p> <p>Class 08: Cutlery; Flatware, namely, knives, forks, and spoons; kitchen knives.</p> <p>Class 11: Lamps; floor lamps; table lamps; lighting fixtures.</p> <p>Class 14: Jewelry armoires; jewelry boxes; wall clocks.</p> <p>Class 16: Art prints; framed art prints.</p> <p>Class 20: Furniture; furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, dressers and chests of drawers, bed headboards, and nightstands, dining sets comprising tables, chairs and benches, dining chairs, tables, sideboards, buffets, entertainment centers, television stands, bookcases, office furniture, computer desks, computer carts, namely, wheeled computer desks, desks, filing cabinets, storage cabinets, guest chairs, reception chairs, office chairs, chaise lounges, futons, rocking chairs, loveseats, ottomans, recliners, sectional sofas, sleeper sofas, and sofas; kitchen furniture, namely, ready to assemble mobile kitchen carts and kitchen islands; accent pillows, nesting tables, side tables; picture frames; wine racks; room dividers; works of art of wood, plaster or plastic; coat racks; shelving, cabinets for display purposes, bathroom furniture, namely, cabinets, shelving, towel stands, bath stools.</p> <p>Class 21: Baskets for domestic use, not of metal; flower baskets; waste baskets; bowls; works of art made of glass or porcelain; serving trays; candle holders; dinnerware; cutting boards; beverage glassware;</p>	<p>03/2014</p>

	<p>mixing bowls; glass jars and canisters; counter top holders for paper towel; laundry hampers for domestic or household use.</p> <p>Class 24: Bed sheets, pillow cases, pillow shams, bed skirts, comforters, bed blankets and blanket throws, bedspreads, duvets; drapery; curtains; shower curtains, bath linens.</p> <p>Class 27: Carpets, rugs, mats and matting for covering existing floors.</p> <p>Class 35: On-line retail store services in the field of home furnishings, home goods and home accessories.</p>	
<p>BIRCH LANE (U.S. Reg. 5,317,332)</p>	<p>Class 35: E-commerce retail store services and mail order catalog services featuring, electric appliances, baking and cooking gadgets, Christmas ornaments, wall coverings, window shades, fabric, namely, curtain fabric, upholstery fabric, fabric made of cotton and fabric made of gauze.</p>	<p>12/2014</p>
<p>BIRCH LANE (U.S. Reg. 4,848,097)</p>	<p>Class 35: E-commerce retail store services and mail order catalog services featuring, housewares, glassware, tableware, plates, saucers, cups, serving knives, forks, spoons, glasses, serving trays, vases, bowls, imported gift items, flatware, indoor and outdoor furniture, pillows, slipcovers, rugs, lamps and lighting fixtures, curtains, curtain rods, table linens, bed linens, bath linens, kitchen towels, bakeware, cookware, plastic, thermoplastic synthetic resin, known as methyl methacrylate, and polyurethane items, candle holders, picture frames, mirrors, vases, baskets and basketware, ceramics, tablecloths, placemats, napkins, desk accessories, picnic accessories, barbecues and barbecue accessories, gardening accessories, beach chairs, umbrellas, tables, wooden items, wine racks and storage containers, decorative accents, window coverings.</p>	<p>03/2014</p>
<p>BIRCH LANE HERITAGE (U.S. App. 88/097,470)</p>	<p>Class 06: Baskets of common metal.</p> <p>Class 08: Table cutlery; Flatware, namely, knives, forks, and spoons; kitchen knives.</p> <p>Class 11: Lamps; floor lamps; table lamps; lighting fixtures; bathroom lighting fixtures.</p> <p>Class 14: Jewelry armoires; jewelry boxes; clocks; wall clocks.</p> <p>Class 16: Art prints; framed art prints.</p>	<p>ITU Application Filed on 08/2018</p>

	<p>Class 20: Furniture; furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, dressers and chests of drawers, bed headboards, and nightstands, dining sets comprising tables, chairs and benches, dining chairs, tables, sideboards, buffets, entertainment centers, television stands, bookcases, office furniture, computer desks, computer carts, namely, wheeled computer desks, desks, filing cabinets, storage cabinets, guest chairs, reception chairs, office chairs, chaise lounges, futons, rocking chairs, loveseats, ottomans, recliners, sectional sofas, sleeper sofas, and sofas; kitchen furniture, namely, ready to assemble mobile kitchen carts and kitchen islands; accent pillows, nesting tables, side tables; picture frames; wine racks; room dividers; works of art of wood, wax, plaster or plastic; coat racks; shelving, bathroom furniture, namely, cabinets, shelving, towel stands, bath stools; outdoor furniture.</p> <p>Class 21: Kitchen and serving utensils namely, kitchen tongs, ladles, turners, mixing spoons, graters, sieves, pouring and straining spouts, spatulas, spoon rests, trivets, whisks, ice cream scoops, carving and serving forks, silicone basting brushes for cooking, rolling pins, melon ballers, cheese board and knife sets; baskets for domestic use, not of metal; flower baskets; waste baskets; bowls; works of art made of glass or porcelain; serving trays; serving platters; candle holders; Kitchenware, namely, dishes, serving platters, plates, bowls, cups, saucers, pitchers and mugs, mixing bowls, salt and pepper shakers, salad spinners, pizza pans, spice racks; tea pots, food storage bowls, thermally insulated food storage containers; non-insulated household food storage containers, lazy susans; cookware, namely, casserole dishes, dutch ovens, non-electric griddles, pots and pans, non-electric pressure cookers, skilletts, roasting pans and roasting dishes, non-electric cooking steamers, frying pans and non-electric woks; bakeware; dinnerware; cutting boards; beverage glassware; jars and canisters namely, glass storage jars and canister sets; countertop paper towel holders; mounted paper towel holders; napkin rings, napkin holders; oven mitts and pot holders; ice buckets; plastic coasters; vinyl and plastic placemats.</p> <p>Class 24: Bed sheets, pillow cases, pillow shams, bed skirts, comforters, bed blankets and blanket throws, bedspreads, duvets, crib sheets, baby blankets, crib and bed canopies; diaper changing pads not of paper and changing pad covers not of paper; draperies; curtains; shower curtains; beach towels, bath linens; kitchen linens;</p>	
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	<p>table linens, table dinner napkins of textile, cocktail napkins of textile, tablecloths, not of paper, fabric table runners.</p> <p>Class 27: Carpets, rugs, mats and matting for covering existing floors.</p> <p>Class 35: On-line retail store services in the field of home furnishings, home goods, home accessories and general consumer goods and general consumer merchandise.</p>	
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Copies of the certificates of registration and electronic status records for these registrations and application are attached hereto as Exhibit A.

4. The Birch Lane Registrations and Application are valid and subsisting, are in full force and effect, and constitute *prima facie* and/or conclusive evidence of Opposer’s exclusive right to use the BIRCH LANE Marks in commerce in connection with the goods and services specified therein.

5. During its longstanding, continuous use of the BIRCH LANE Marks, Opposer has expended considerable time, effort and money in advertising and promoting its online retail store services, offering a wide variety of home goods under the BIRCH LANE Marks in the United States.

6. As a result of these efforts, Opposer has developed substantial goodwill in its BIRCH LANE Marks.

7. Upon information and belief, Applicant is an individual located in Guangzhou China.

8. Applicant seeks to register BIRCH VILLA in connection with “Furniture; Furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, coat racks, benches, bar stools,

pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, sofa, non-metal ladder, shelves, dressers and chests of drawers, bed headboards, nightstands, bath vanities, dining sets comprising tables, chairs and benches, ottoman” in International Class 20.

9. Applicant filed the Application on April 15, 2020, long after Opposer commenced use of the BIRCH LANE Marks in the United States.

10. Applicant’s Mark was published for opposition in the *Official Gazette* on August 11, 2020.

11. Opposer’s rights in and to the BIRCH LANE Marks are superior to those of the Applicant.

12. Applicant’s application for and any use of Applicant’s Mark is without the consent, authorization, or license of Opposer.

13. Applicant’s Mark is confusingly similar in appearance, sound, and commercial impression to Opposer’s BIRCH LANE Marks, in particular because the dominant feature of both marks is BIRCH and “VILLA” and “LANE” have similar commercial impressions signifying an address or property. Further, “VILLA” in connection with furniture is descriptive, making the use of BIRCH the distinctive feature of Applicant’s Mark, which enhances the likelihood of confusion between BIRCH LANE and BIRCH VILLA.

14. The goods covered by the Application are identical to and thus overlap with, and are likely to be perceived as identical to and/or overlapping with, the goods and services with which Opposer uses and has used, and has applied to register, Opposer’s BIRCH LANE Marks in the United States.

15. Upon information and belief, the goods and services sold in connection with Opposer's BIRCH LANE Marks and the goods set forth in the Application are intended to be directed to identical or similar classes of purchasers and to be distributed through the same or similar channels of trade in the United States.

16. Opposer will be damaged by the registration sought by Applicant because Applicant's Mark so resembles Opposer's BIRCH LANE Marks as to be likely, when used on or in connection with the services identified in the Application, to cause confusion, mistake or to deceive consumers, with consequent injury to Opposer and to the public, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

WHEREFORE, Opposer believes it will be damaged by registration of Applicant's Mark shown in Application Serial No. 88/872,854 and respectfully requests that the registration sought by Applicant be refused.

Dated: September 8, 2020

Respectfully submitted,



By: _____

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Attorneys for Wayfair LLC

EXHIBIT A

United States of America

United States Patent and Trademark Office

BIRCH LANE

Reg. No. 5,400,044

Registered Feb. 13, 2018

**Int. Cl.: 6, 8, 11, 14, 16,
20, 21, 24, 27, 35**

Service Mark

Trademark

Principal Register

Wayfair LLC (DELAWARE LIMITED LIABILITY COMPANY)
4 Copley Place, 7th Floor
Boston, MASSACHUSETTS 02116

CLASS 6: Baskets of common metal

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 8: Cutlery; Flatware, namely, knives, forks, and spoons; kitchen knives

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 11: Lamps; floor lamps; table lamps; lighting fixtures

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 14: Jewelry armoires; jewelry boxes; wall clocks

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 16: Art prints; framed art prints

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 20: Furniture; furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, dressers and chests of drawers, bed headboards, and nightstands, dining sets comprising tables, chairs and benches, dining chairs, tables, sideboards, buffets, entertainment centers, television stands, bookcases, office furniture, computer desks, computer carts, namely, wheeled computer desks, desks, filing cabinets, storage cabinets, guest chairs, reception chairs, office chairs, chaise lounges, futons, rocking chairs, loveseats, ottomans, recliners, sectional sofas, sleeper sofas, and sofas; kitchen furniture, namely, ready to assemble mobile kitchen carts and kitchen islands; accent pillows, nesting tables, side tables; picture frames; wine racks; room dividers; works of art of wood, plaster or plastic; coat racks; shelving, cabinets for display purposes, bathroom furniture, namely, cabinets, shelving, towel stands, bath stools

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 21: Baskets for domestic use, not of metal; flower baskets; waste baskets; bowls; works of art made of glass or porcelain; serving trays; candle holders; dinnerware; cutting boards; beverage glassware; mixing bowls; glass jars and canisters; counter top holders for paper towel; laundry hampers for domestic or household use



Andrei Iancu

Director of the United States
Patent and Trademark Office

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 24: Bed sheets, pillow cases, pillow shams, bed skirts, comforters, bed blankets and blanket throws, bedspreads, duvets; drapery; curtains; shower curtains, bath linens

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 27: Carpets, rugs, mats and matting for covering existing floors

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

CLASS 35: On-line retail store services in the field of home furnishings, home goods and home accessories

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

OWNER OF U.S. REG. NO. 4848097

SER. NO. 87-445,550, FILED 05-11-2017

United States of America

United States Patent and Trademark Office

BIRCH LANE

Reg. No. 5,317,332

Registered Oct. 24, 2017

Int. Cl.: 35

Service Mark

Principal Register

Wayfair LLC (DELAWARE LIMITED LIABILITY COMPANY)
4 Copley Place, 7th Floor
Boston, MASSACHUSETTS 02116

CLASS 35: E-commerce retail store services and mail order catalog services featuring, electric appliances, baking and cooking gadgets, Christmas ornaments, wall coverings, window shades, fabric, namely, curtain fabric, upholstery fabric, fabric made of cotton and fabric made of gauze

FIRST USE 12-24-2014; IN COMMERCE 12-24-2014

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 86-107,619, FILED 11-01-2013



Joseph Matol

Performing the Functions and Duties of the
Under Secretary of Commerce for
Intellectual Property and Director of the
United States Patent and Trademark Office

United States of America

United States Patent and Trademark Office

BIRCH LANE

Reg. No. 4,848,097

Registered Nov. 3, 2015

Int. Cl.: 35

SERVICE MARK

PRINCIPAL REGISTER

WAYFAIR LLC (DELAWARE LIMITED LIABILITY COMPANY)
4 COPLEY PLACE, 7TH FLOOR
BOSTON, MA 02116

FOR: E-COMMERCE RETAIL STORE SERVICES AND MAIL ORDER CATALOG SERVICES FEATURING, HOUSEWARES, GLASSWARE, TABLEWARE, PLATES, SAUCERS, CUPS, SERVING KNIVES, FORKS, SPOONS, GLASSES, SERVING TRAYS, VASES, BOWLS, IMPORTED GIFT ITEMS, FLATWARE, INDOOR AND OUTDOOR FURNITURE, PILLOWS, SLIPCOVERS, RUGS, LAMPS AND LIGHTING FIXTURES, CURTAINS, CURTAIN RODS, TABLE LINENS, BED LINENS, BATH LINENS, KITCHEN TOWELS, BAKEWARE, COOKWARE, PLASTIC, THERMOPLASTIC SYNTHETIC RESIN, KNOWN AS METHYL METHACRYLATE, AND POLYURETHANE ITEMS, CANDLE HOLDERS, PICTURE FRAMES, MIRRORS, VASES, BASKETS AND BASKETWARE, CERAMICS, TABLECLOTHS, PLACEMATS, NAPKINS, DESK ACCESSORIES, PICNIC ACCESSORIES, BARBECUES AND BARBECUE ACCESSORIES, GARDENING ACCESSORIES, BEACH CHAIRS, UMBRELLAS, TABLES, WOODEN ITEMS, WINE RACKS AND STORAGE CONTAINERS, DECORATIVE ACCENTS, WINDOW COVERINGS, IN CLASS 35 (U.S. CLS. 100, 101 AND 102).

FIRST USE 3-11-2014; IN COMMERCE 3-11-2014.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

SN 86-977,415, FILED 11-1-2013.

KIMBERLY PARKS, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

Trademark/Service Mark Application, Principal Register

Serial Number: 88097470

Filing Date: 08/29/2018

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	88097470
MARK INFORMATION	
*MARK	BIRCH LANE HERITAGE
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	BIRCH LANE HERITAGE
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Wayfair LLC
*STREET	4 Copley Place, Floor 7
*CITY	Boston
*STATE (Required for U.S. applicants)	Massachusetts
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. and certain international addresses)	02116
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Delaware
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	006
*IDENTIFICATION	Baskets of common metal
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	008
*IDENTIFICATION	Cutlery; Flatware, namely, knives, forks, and spoons; kitchen knives
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	011
*IDENTIFICATION	Lamps; floor lamps; table lamps; lighting fixtures; bathroom lighting fixtures

FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	014
*IDENTIFICATION	Jewelry armoires; jewelry boxes; clocks; wall clocks
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	016
*IDENTIFICATION	Art prints; framed art prints
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	020
*IDENTIFICATION	Furniture; furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, dressers and chests of drawers, headboards, and nightstands, dining sets comprising tables, chairs and benches, dining chairs, tables, sideboards, buffets, entertainment centers, television stands, bookcases, office furniture, computer desks, computer carts, namely, wheeled computer desks, desks, filing cabinets, storage cabinets, guest chairs, reception chairs, office chairs, chaise lounges, futons, rocking chairs, loveseats, ottomans, recliners, sectional sofas, sleeper sofas, and sofas; kitchen furniture, namely, ready to assemble mobile kitchen carts and kitchen islands; accent pillows, nesting tables, side tables; picture frames; wine racks; room dividers; works of art of wood, wax, plaster or plastic; coat racks; shelving, bathroom furniture, namely, cabinets, shelving, towel stands, bath stools; outdoor furniture
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	021
*IDENTIFICATION	Kitchen and serving utensils namely, kitchen tongs, ladles, turners, mixing spoons, graters, sieves, pouring and straining spouts, spatulas, spoon rests, trivets, whisks, ice cream scoops, carving and serving forks, silicone basting brushes for cooking, rolling pins, melon ballers, cheese board and knife sets; baskets for domestic use, not of metal; flower baskets; waste baskets; bowls; works of art made of glass or porcelain; serving trays; serving platters; candle holders; Kitchenware, namely, dishes, platters, plates, bowls, cups, saucers, pitchers and mugs, mixing bowls, salt and pepper shakers, salad spinners, pizza pans, spice racks; tea pots, food storage bowls, thermally insulated food storage containers; non-insulated household food storage containers, lazy susans; cookware, namely, casserole dishes, dutch ovens, non-electric griddles, pots and pans, non-electric pressure cookers, skillets, roasting pans and roasting dishes, non-electric cooking steamers, frying pans and non-electric woks; bakeware; dinnerware; cutting boards; beverage glassware; jars and canisters namely, glass storage jars and canister sets; countertop paper towel holders; mounted paper towel holders; napkin rings, napkin holders; oven mitts and pot holders; ice buckets; plastic coasters; vinyl and plastic placemats
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	024

*IDENTIFICATION	Bed sheets, pillow cases, pillow shams, bed skirts, comforters, bed blankets and blanket throws, bedspreads, duvets, crib sheets, baby blankets, crib and bed canopies; diaper changing pads and changing pad covers; drapes; curtains; shower curtains; beach towels, bath linens; kitchen linens; table linens, table dinner napkins of textile, cocktail napkins of textile, tablecloths, not of paper, fabric table runners.
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	027
*IDENTIFICATION	Carpets, rugs, mats and matting for covering existing floors
FILING BASIS	SECTION 1(b)
INTERNATIONAL CLASS	035
*IDENTIFICATION	On-line retail store services in the field of home furnishings, home goods, home accessories and general consumer goods and general consumer merchandise
FILING BASIS	SECTION 1(b)
ADDITIONAL STATEMENTS SECTION	
ACTIVE PRIOR REGISTRATION(S)	The applicant claims ownership of active prior U.S. Registration Number(s) 5400044, 4848097, 5317332, and others.
ATTORNEY INFORMATION	
NAME	Rachelle A. Dubow, Esq.
ATTORNEY DOCKET NUMBER	107525-0034
FIRM NAME	Morgan, Lewis & Bockius LLP
INTERNAL ADDRESS	Attn: TMSU
STREET	One Federal Street
CITY	Boston
STATE	Massachusetts
COUNTRY	United States
ZIP/POSTAL CODE	02110
PHONE	617-951-8000
FAX	6179518736
EMAIL ADDRESS	trademarks@morganlewis.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	the firm of Morgan, Lewis & Bockius LLP, RON N. DREBEN, KAREN A. BUTCHER, ANITA B. POLOTT, CAROLE R. KLEIN, JOSEPH E. WASHINGTON, KRISTIN H. ALTOFF, DANA S. GROSS, DANIEL S. MARKS, JORDANA S. RUBEL, JANE W. WISE, SETH A. RAPPAPORT, CONSTANCE BOUTSIKARIS and REBECCA E. MCDUGALL, members of the District of Columbia Bar and RACHEL FERTIG, member of the New York Bar, all located at 1111 Pennsylvania Ave., NW, Washington, D.C. 20004, ROCHELLE D. ALPERT, CARLA B. OAKLEY and SHARON R. SMITH, members of the

	California Bar, PETER BYRNE, member of the California Bar and Massachusetts Bar, and GENE K. PARK, member of the District of Columbia Bar, all located at One Market, Spear Street Tower, San Francisco, California 94105, ANDREW J. GRAY IV, member of the California Bar, located at 1400 Page Mill Road, Palo Alto, California 94304, and RACHELLE A. DUBOW, DAVID O. JOHANSON and SARAH PAIGE, members of the Massachusetts Bar, all located at One Federal Street, Boston, Massachusetts 02110, all of whom should receive correspondence and documents related to this application through the offices
CORRESPONDENCE INFORMATION	
NAME	Rachelle A. Dubow, Esq.
FIRM NAME	Morgan, Lewis & Bockius LLP
INTERNAL ADDRESS	Attn: TMSU
STREET	One Federal Street
CITY	Boston
STATE	Massachusetts
COUNTRY	United States
ZIP/POSTAL CODE	02110
PHONE	617-951-8000
FAX	6179518736
*EMAIL ADDRESS	trademarks@morganlewis.com; rachelle.dubow@morganlewis.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	10
APPLICATION FOR REGISTRATION PER CLASS	275
*TOTAL FEE DUE	2750
*TOTAL FEE PAID	2750
SIGNATURE INFORMATION	
SIGNATURE	/Enrique Colbert/
SIGNATORY'S NAME	Enrique Colbert
SIGNATORY'S POSITION	General Counsel
SIGNATORY'S PHONE NUMBER	6175326801
DATE SIGNED	08/29/2018

Trademark/Service Mark Application, Principal Register

Serial Number: 88097470

Filing Date: 08/29/2018

To the Commissioner for Trademarks:

MARK: BIRCH LANE HERITAGE (Standard Characters, see [mark](#))

The literal element of the mark consists of BIRCH LANE HERITAGE.

The mark consists of standard characters, without claim to any particular font style, size, or color.

The applicant, Wayfair LLC, a limited liability company legally organized under the laws of Delaware, having an address of
4 Copley Place, Floor 7
Boston, Massachusetts 02116
United States

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

International Class 006: Baskets of common metal

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 008: Cutlery; Flatware, namely, knives, forks, and spoons; kitchen knives

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 011: Lamps; floor lamps; table lamps; lighting fixtures; bathroom lighting fixtures

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 014: Jewelry armoires; jewelry boxes; clocks; wall clocks

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 016: Art prints; framed art prints

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 020: Furniture; furniture, namely, multimedia storage cabinets, accent chests and accent cabinets, chairs, coffee tables, console tables, end tables, mirrors, sideboards and buffets, benches, bar stools, pub and bar tables, bed frames, bedroom sets comprising bedroom furniture, beds, bunk beds, daybeds, armoires, dressers and chests of drawers, headboards, and nightstands, dining sets comprising tables, chairs and benches, dining chairs, tables, sideboards, buffets, entertainment centers, television stands, bookcases, office furniture, computer desks, computer carts, namely, wheeled computer desks, desks, filing cabinets, storage cabinets, guest chairs, reception chairs, office chairs, chaise lounges, futons, rocking chairs, loveseats, ottomans, recliners, sectional sofas, sleeper sofas, and sofas; kitchen furniture, namely, ready to assemble mobile kitchen carts and kitchen islands; accent pillows, nesting tables, side tables; picture frames; wine racks; room dividers; works of art of wood, wax, plaster or plastic; coat racks; shelving, bathroom furniture, namely, cabinets, shelving, towel stands, bath stools; outdoor furniture

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 021: Kitchen and serving utensils namely, kitchen tongs, ladles, turners, mixing spoons, graters, sieves, pouring and straining spouts, spatulas, spoon rests, trivets, whisks, ice cream scoops, carving and serving forks, silicone basting brushes for cooking, rolling pins, melon ballers, cheese board and knife sets; baskets for domestic use, not of metal; flower baskets; waste baskets; bowls; works of art made of glass or porcelain; serving trays; serving platters; candle holders; Kitchenware, namely, dishes, platters, plates, bowls, cups, saucers, pitchers and mugs, mixing bowls, salt and pepper shakers, salad spinners, pizza pans, spice racks; tea pots, food storage bowls, thermally insulated food

storage containers; non-insulated household food storage containers, lazy susans; cookware, namely, casserole dishes, dutch ovens, non-electric griddles, pots and pans, non-electric pressure cookers, skillets, roasting pans and roasting dishes, non-electric cooking steamers, frying pans and non-electric woks; bakeware; dinnerware; cutting boards; beverage glassware; jars and canisters namely, glass storage jars and canister sets; countertop paper towel holders; mounted paper towel holders; napkin rings, napkin holders; oven mitts and pot holders; ice buckets; plastic coasters; vinyl and plastic placemats

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 024: Bed sheets, pillow cases, pillow shams, bed skirts, comforters, bed blankets and blanket throws, bedspreads, duvets, crib sheets, baby blankets, crib and bed canopies; diaper changing pads and changing pad covers; drapes; curtains; shower curtains; beach towels, bath linens; kitchen linens; table linens, table dinner napkins of textile, cocktail napkins of textile, tablecloths, not of paper, fabric table runners.

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 027: Carpets, rugs, mats and matting for covering existing floors

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

International Class 035: On-line retail store services in the field of home furnishings, home goods, home accessories and general consumer goods and general consumer merchandise

Intent to Use: The applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the identified goods/services.

Claim of Active Prior Registration(s)

The applicant claims ownership of active prior U.S. Registration Number(s) 5400044, 4848097, 5317332, and others.

The applicant's current Attorney Information:

Rachelle A. Dubow, Esq. and the firm of Morgan, Lewis & Bockius LLP, RON N. DREBEN, KAREN A. BUTCHER, ANITA B. POLOTT, CAROLE R. KLEIN, JOSEPH E. WASHINGTON, KRISTIN H. ALTOFF, DANA S. GROSS, DANIEL S. MARKS, JORDANA S. RUBEL, JANE W. WISE, SETH A. RAPPAPORT, CONSTANCE BOUTSIKARIS and REBECCA E. MCDOUGALL, members of the District of Columbia Bar and RACHEL FERTIG, member of the New York Bar, all located at 1111 Pennsylvania Ave., NW, Washington, D.C. 20004, ROCHELLE D. ALPERT, CARLA B. OAKLEY and SHARON R. SMITH, members of the California Bar, PETER BYRNE, member of the California Bar and Massachusetts Bar, and GENE K. PARK, member of the District of Columbia Bar, all located at One Market, Spear Street Tower, San Francisco, California 94105, ANDREW J. GRAY IV, member of the California Bar, located at 1400 Page Mill Road, Palo Alto, California 94304, and RACHELLE A. DUBOW, DAVID O. JOHANSON and SARAH PAIGE, members of the Massachusetts Bar, all located at One Federal Street, Boston, Massachusetts 02110, all of whom should receive correspondence and documents related to this application through the offices of Morgan, Lewis & Bockius LLP

Attn: TMSU

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United States

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trademarks@morganlewis.com (authorized)

The attorney docket/reference number is 107525-0034.

The applicant's current Correspondence Information:

Rachelle A. Dubow, Esq.

Morgan, Lewis & Bockius LLP

Attn: TMSU

One Federal Street

Boston, Massachusetts 02110

617-951-8000(phone)

6179518736(fax)

trademarks@morganlewis.com;rachelle.dubow@morganlewis.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant, the applicant's attorney, or the applicant's domestic representative at the e-mail address provided in this application. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in the loss of TEAS Reduced Fee status and a requirement to

submit an additional processing fee of \$125 per international class of goods/services.

A fee payment in the amount of \$2750 has been submitted with the application, representing payment for 10 class(es).

Declaration

Basis:

If the applicant is filing the application based on use in commerce under 15 U.S.C. § 1051(a):

- The signatory believes that the applicant is the owner of the trademark/service mark sought to be registered;
- The mark is in use in commerce on or in connection with the goods/services in the application;
- The specimen(s) shows the mark as used on or in connection with the goods/services in the application; and
- To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.

And/Or

If the applicant is filing the application based on an intent to use the mark in commerce under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e):

- The signatory believes that the applicant is entitled to use the mark in commerce;
 - The applicant has a bona fide intention to use the mark in commerce on or in connection with the goods/services in the application; and
 - To the best of the signatory's knowledge and belief, the facts recited in the application are accurate.
- To the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive.
- To the best of the signatory's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.
- The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or submission or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Enrique Colbert/ Date: 08/29/2018

Signatory's Name: Enrique Colbert

Signatory's Position: General Counsel

Payment Sale Number: 88097470

Payment Accounting Date: 08/30/2018

Serial Number: 88097470

Internet Transmission Date: Wed Aug 29 14:58:25 EDT 2018

TEAS Stamp: USPTO/BAS-XX.XXX.XX.XXX-2018082914582566

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A-1257-20180829114258600495

BIRCH LANE HERITAGE