ESTTA Tracking number: **ESTTA1184246**

Filing date: **01/12/2022**

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

Proceeding no.	91266935
Party	Plaintiff Thomvest Seed Capital Inc.
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Date	01/12/2022
Attachments	ResponsewExhibits.pdf(1305139 bytes)

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

Thomvest Seed Capital Inc.

Opposer,

v. Opposition No.: 91266935

IMVU, Inc.

Applicant.

RESPONSE TO APPLICANT'S MOTION FOR INVOLUNTARY DISMISSAL FOR FAILURE TO TAKE TESTIMONY UNDER 37 C.F.R. § 2.132(a)

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The present Opposition was filed January 7, 2021 by Thomvest Seed Capital Inc., a multi-national investment and ventures company with offices in Canada and Silicon Valley, against the applicant IMVU, Inc., which according to Wikipedia, owns and operates IMVU, an online metaverse and social networking site that contains its own economy with a currency system based on IMVU credits and promo-credits.

On August 24, 2019, IMVU filed U.S. Serial No. 88/591,563 for the mark VCOIN used in connection with "Downloadable virtual goods, namely computer programs featuring digital tokens for use in online virtual worlds and computer games; Downlodable computer programs and computer software for electronic transfer of digital tokens; Downloadable computer programs and computer software to facilitate the use of blockchain to execute and record transactions; Downloadable computer software platforms for developing, building, and operating and distributing applications" in Class 9 and "Issuance of tokens of value, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic transfer of a virtual currency, namely, digital tokens for use by members of an online community via a global computer network; Providing electronic processing of electronic

payments via a global computer network; Cryptocurrency payment and trading services, namely, issuance of digital tokens with cryptographic protocols used to operate and build applications and blockchains on decentralized and centralized computer platforms and as a method of payment for goods and services." This application has been allowed – See Exhibit B-1.

On July 20, 2020, an application was filed for the VCOIN logo mark that is the subject of this opposition as U.S. Serial No. 90/062,254, and essentially the same goods and services in Classes 9 and 36.

On September 29, 2020, IMVU, Inc. filed U.S. Application Serial Nos. 90/223,222 and 90/223,186 for the word mark VCOIN with a VCOIN logo (See Exhibits B-2 and B-3) for essentially the same goods and services and also THE REAL VCOIN as Serial No. 90/223,125. See Exhibit B-4.

In November, 2020, IMVU, Inc. wrote the Securities Exchange Commission requesting a "No Action Letter" with respect to its proposed VCOIN product that would be transferable on and off of IMVU's platform without requiring registration under Section 5 of the Securities Act or Section 12(g) of the Exchange Act. Exhibit A-1. The SEC provided the attached No Action Letter on November 19, 2020 (Exhibit A-2), articulating its position not to recommend enforcement action based particularly on its observations that:

- IMVU will not use proceeds from the sale of VCOIN to finance its Upgrade, which has been fully developed and will be fully functional and operational immediately upon its launch and before any VCOIN is sold;
- VCOIN will be immediately usable for its intended purpose at the time it is sold;
- IMVU will impose specified limits on VCOIN purchases, conversions, and transfers;

- VCOIN holders will be subject to KYC/AML checks when they establish Open Wallets and thereafter on an ongoing basis;
- VCOIN will be made continuously available in unlimited quantities and at a fixed price, and IMVU will always generate enough supply of VCOIN to maintain VCOIN's fixed price;
- IMVU will not promote or support listing or trading of VCOIN on any third-party trading platform;
- IMVU will market and sell VCOIN to Users solely for consumptive use as a means of exchanging value on, and in connection with, The Platform; and
- IMVU will require Users who purchase VCOIN from IMVU to affirm that, among other things, they are acquiring VCOIN for consumptive use and not for speculative purposes.

Both Exhibits A-1 and A-2 are public documents hosted at www.sec.gov.

At publication of Ser. No.90/062,254, the opposer noted the near mirror image reflection of this VCOIN design mark (Left) to its logo (Right) and instituted the present Opposition.

At the preliminary conference on March 17, 2021, between the undersigned and then counsel for IMVU, Mitesh Patel, the SEC No Action Letter was discussed in connection with the possibility of settlement. Thomvest indicated that it was looking for a proposal that was more specific with regard to IMVU's actual business model. IMVU provided this information on

about May 20, 2021 and Thomvest indicated a willingness to proceed on about June 29, 2021. Unfortunately for achieving a resolution, the press of handling other seemingly more immediate legal matters and dealing with familial and business adjustments to the pandemic intervened and it was not until October 20, 2021 that the undersigned provided a general acceptance of the scope outlined by IMVU on May 20, 2021 with the proposed addition of a dispute resolution procedure. IMVU's counsel provided a draft settlement document on October 28, 2021. This document not only reflected a change of name of IMVU to Together Labs Inc. (a change of name is actually recorded from October 6, 2021 at Reel 7445/ Frame 0168), but also the assignment of the application to a new entity, Kadre Holdings, Inc., a Delaware corporation. Exhibit C. This was the first notice provided of the assignment to Kadre Holdings, Inc., over a month after the close of discovery.

As recited in Applicant's motion, Opposer (and indeed neither party) took any discovery, and Opposer introduced no evidence during its testimony period. Instead, Opposer completed a mark-up of the October 28, 2021 draft settlement proposal to incorporate reference to the SEC No Action Letter and make other clarifications and returned a mark-up to Mitesh Patel on about January 5, 2022, after the present motion to dismiss was filed. At January 5, Opposer became aware that Mitesh Patel was no longer with counsel for IMVU. IMVU rejected the revised settlement agreement and accordingly this motion proceeds.

The Opposer believes that the record with a status copy of its plead registration attached to the Notice of Opposition, is sufficient to warrant rejection of at least the class 36 services since the marks are nearly identical mirror images and at least the cryptocurrency trading services (unrestricted to IMVU's platform or the SEC No Action Letter representations) fall within the financial services of the plead U.S. Reg. No. 3,997,506. Also, U.S. Reg. No.

3,997,506 is indisputably senior to the VCOIN design mark in the opposed application. Applicant's averment that the status copy is not properly authenticated is unavailing without any citation to authority from the Board, the TMBP, or applicable Code of Federal Regulations. Indeed, Applicant's position is directly contrary to both 37 C.F.R.2.122 (d)(1) and TMBP 704.03(b)(1)(A) ("As an alternative to submitting status and title copies of registrations, 37 C.F.R. § 2.122(d) allows a party to submit copies of its registrations taken from the Office's electronic database records such as TSDR or TESS.") This is exactly as plead in paragraph 12 of the Notice of Opposition with the attached status copy bearing the legend "This page was generated by TSDR on 2021-01-07 15:27:37 EST".

Accordingly, Applicant's motion should be denied, and if Applicant no longer wishes to settle this Opposition, it should proceed to produce its pretrial disclosures that were due on December 28, 2021 followed by the evidence upon which it intends to rely and to which Opposer may subsequently offer rebuttal.

Alternatively, the Board may wish to order the Applicant to record its assignment to Kadre Holdings, Inc. and to reopen discovery and reset all testimony periods.

Respectfully submitted,

/Douglas T. Johnson/
Douglas T. Johnson
MILLER & MARTIN PLLC
832 Georgia Ave., Suite 1200
Chattanooga, TN 37402

DECLARATION OF DOUGLAS JOHNSON

I, Douglas Johnson, declare as follows:

1. I am an attorney licensed to practice law in the State of Tennessee and before this Board, and I am an attorney with the law firm of Miller & Martin PLLC, counsel of record for Opposer Thomvest Seed Capital, Inc. All facts stated within this declaration are of my own personal knowledge, and if called to testify I could and would competently testify thereto.

2. Attached as Exhibit A-1 is a "No Action Letter Request" on behalf of applicant IMVU that I retrieved from https://www.sec.gov/divisions/corpfin/cf-noaction/2020/imvu-111920-2a1-incoming.pdf. Attached as Exhibit A-2 is an SEC No Action Letter that I retrieved from https://www.sec.gov/corpfin/imvu-111920-2a1#.

3. Discussions or communications with respect to settlement took place between the parties on at least March 17, 2021, May 20, 2021, June 29, 2021, October 20, 2021, and October 28, 2021 (and January 5, 2022). Applicant has made no expert disclosures, nor has Applicant conducted any discovery.

4. I learned of the assignment of the present application to Kadre Holdings, Inc. in the draft settlement document provided by former counsel for IMVU on about October 28, 2021.

5. I received an email from Lynn Humphreys dated December 15, 2021, to which I did not respond as I was awaiting comments on a markup of the settlement agreement from my client, and of course the holidays. I have no record of receiving a phone call from Ms. Humphreys, nor does she aver any phone call was made.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 12, 2022 in Chattanooga Tennessee.

/Douglas T. Johnson/
Douglas T. Johnson
MILLER & MARTIN PLLC
832 Georgia Ave., Suite 1200
Chattanooga, TN 37402

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Response to be served this 12th day of January 2022 via email upon:

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Christine B. Redfield
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November 17, 2020

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VIA ELECTRONIC SUBMISSION

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: IMVU, Inc.

Dear Sir or Madam:

IMVU, Inc. (together with its affiliates and subsidiaries, "IMVU"), a privately held Delaware corporation with its principal place of business in the State of California, is a software development company and a leader in developing online communities. IMVU proposes to offer and sell VCOIN™ (as defined below) without registration under the Securities Act of 1933, as amended (the "Securities Act"), and the Securities Exchange Act of 1934, as amended (the "Exchange Act," and, together with the Securities Act, the "Securities Acts").

On behalf of IMVU, Perkins Coie LLP respectfully requests that the Division of Corporation Finance (the "Division") confirm that it will not recommend to the Securities and Exchange Commission (the "Commission") that the Commission take any enforcement action against IMVU if IMVU offers and sells VCOIN in the manner and under the circumstances described below without registration under Section 5 of the Securities Act and Section 12(g) of the Exchange Act.

I. Factual Background

A. IMVU

Founded in 2004, IMVU is a Redwood City, California-based software development company with over 200 employees. A leader in developing online communities, IMVU's mission is to spread the power of friendship by helping people across the globe connect and develop meaningful relationships through shared virtual experiences. IMVU believes that virtual world platforms, where people can connect, interact, and distribute user-generated content, can bring people together in a more enriching way than traditional social media platforms.

To fulfill its mission, IMVU designs, develops, and manages virtual world platforms, including "IMVU" (the "Platform"), which is one of the largest online three-dimensional avatar-based social communities in the world.

B. The Platform and Current Economy

1. *The Platform*

The Platform is an online software application that people use to connect, socialize, interact in virtual venues, play games, explore their creativity with free-to-use tools, and offer and obtain virtual goods and services. Released more than a decade ago, the Platform has over 7 million monthly active users[1] from more than 140 countries and features a user-generated virtual goods catalog of more than 40 million items.

2. *Becoming a Platform User*

People can access the Platform by downloading IMVU's software application to a mobile device or desktop computer or by going directly to IMVU's website.[2] To use the Platform, a person must become a registered user (a "User") by completing a registration process with IMVU.

In the registration process, Users provide their date of birth, choose a Platform username, and create a three-dimensional character, or "avatar." The avatar serves as the User's virtual identity on the Platform. Users can express themselves by tailoring their avatar to their liking with whatever style of hair, skin color, eye color, and clothing they desire. Through their avatars, Users can interact with each other as virtual characters that can, for example, express emotions, dance, shop, and vacation together, allowing for meaningful engagement. Unlike traditional social media platforms, the avatar-based Platform provides Users with a sense of social presence: they feel as though they are spending time with friends in real life.

There are three general types of Users. Many Users are consumers who simply "play and connect" with others on the Platform. Such Users participate on the Platform via their avatar solely by socializing with other Users, obtaining virtual goods and services, or visiting virtual venues. As described further below, other Users take on more active roles in the Platform's virtual economy by designing and providing virtual goods (such Users, "Creators") or offering virtual services to other Users (such Users, "Service Providers").[3] Users can participate in multiple capacities by consuming virtual goods and services as well as offering them as a Creator or Service Provider.

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[1] In contrast to a "registered user," which is any person who has registered a user account, a "monthly active user" is a registered user who accesses the service at least once each month.

[2] IMVU's website is accessible at https://www.imvu.com.

[3] The term "User" refers herein to a registered user of the Platform, who may be a consumer, Creator and/or Service Provider. The terms "Creator" and "Service Provider" refer herein to a User who designs and provides virtual goods or offers virtual services, respectively.

3. *The Platform's Virtual Economy*

The heart of the Platform is its comprehensive and User-driven virtual economy. Unlike traditional gaming platforms, nearly all the goods and services that Users obtain on the Platform are created, hosted, or managed by other Users, and only a small portion are created, hosted, or managed by IMVU.[4]

Currently, Users can acquire goods and services on the Platform only by using IMVU's digital credits ("Credits") and cannot transfer or use Credits off the Platform. Therefore, Credits have no value off the Platform.[5]

Users obtain Credits in the following ways: (i) purchasing them from IMVU,[6] (ii) earning them from IMVU by participating in specified activities on the Platform, such as viewing advertisements, entering daily contests, and answering polling questions, or (iii) receiving them from other Users as compensation for goods or services or as a gift. Users cannot sell their Credits to IMVU or otherwise exchange them for fiat currency. All goods and services on the Platform are priced in Credits. Currently, 13.8 billion Credits are exchanged in 27.5 million unique Credit transactions on the Platform each month.

Users who offer goods and services in the Platform's virtual economy play roles paralleling those in the real-world economy. Users who create and offer their *virtual goods* on the Platform are known as Creators. Creators offer their virtual goods to Users through the virtual marketplace (the "Marketplace") that IMVU operates on the Platform. Currently, the Marketplace features more than 40 million unique virtual goods created and designed by Creators, including, among other things, avatar clothing, furniture, hairstyles, accessories, and animations. When obtaining virtual goods in the Marketplace, Users pay Credits directly to IMVU for the goods. In turn, IMVU pays royalties to the Creator in either Credits or fiat currency, at the Creator's choice. Many Creators supplement their incomes or make a living from fiat currency royalties they receive from providing their virtual goods through the Marketplace.

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4 IMVU sets and enforces policies for the content that minors and other Users can generate, share and access on the Platform. IMVU vigilantly enforces its content policies to protect minors who use the Platform and complies fully with laws applicable to minors' Platform access, including the Children's Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506. IMVU has designed its content policies to meet or exceed Federal Trade Commission regulations and guidance applicable to virtual world and social network platforms. IMVU takes and will continue to take significant measures to police Platform use, which include, among other things, monitoring of User activity, utilization of a 24x7 fraud prevention team, removal of inappropriate content, age verification measures and response hotlines.

5 It is the opinion of counsel that Credits are not "securities" under Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act. We are not seeking relief with respect to Credits.

6 IMVU currently sells Credits on the Platform for $0.001 each and accepts fiat currency as payment for Credits. Users may use a credit card, among other authorized payment methods, to purchase Credits.

Users who offer *virtual services* on the Platform are known as Service Providers. Unlike Creators, Service Providers offer their services to other Users in exchange for Credits directly from the User. Some Service Providers build and manage virtual "rooms" on the Platform where Users can congregate to dance, chat in multiple languages, play games, vacation, share photos, and even get married. Other Service Providers serve on the Platform as personal shoppers, stylists, wedding planners and DJs, among other things. A Service Provider can, for example, design and host a nightclub for other Users to enter, socialize, meet, and dance with other Users, while other Service Providers can offer services within the nightclub, such as acting as a DJ. The Service Provider who designs and builds the nightclub is able to charge a cover fee to enter the nightclub and Users can gift the DJ—all using Credits.

Unlike Creators, Service Providers do not have the option of earning fiat currency royalties or converting their Credits into fiat currency. Service Providers therefore have no way to transfer their earned Credits off the Platform, and they are limited to using these Credits to obtain virtual goods or services on the Platform. As a result, some Service Providers only accept payment for their on-Platform services through an off-Platform payment method in order to receive fiat currency. For example, the host of the virtual nightclub mentioned above could require Users to send her the cover fee via a third-party payment processor to enter the venue rather than accept Credits on the Platform.

Some Creators and Service Providers also engage non-Users, including professional computer programmers, graphic designers, marketers and entrepreneurs, as contractors to build, market, or provide support related to the virtual goods and services they offer on the Platform in exchange for fiat currency. Among other things, these non-Users design websites, engineer virtual goods and venues, promote virtual goods and venues via social media, and perform graphic design work. Because they have chosen not to become Users, non-User contractors cannot accept Credits as payment for their work and have to be compensated through an off-Platform payment method.

The Platform currently has over 75,000 active Creators and Service Providers serving the Platform's more than seven million monthly active Users. On any given day that a User is active on the Platform, that User's Platform activity averages 55 minutes over the course of the day. Further, Users typically spend the Credits that they purchase from IMVU within seven days.[7] This high level of User engagement drives significant demand for virtual goods and services from Creators and Service Providers.

Creators and Service Providers set the prices for their virtual goods and services on the Platform. Prices are subject only to certain minimums (which are due to IMVU's transaction processing costs) and policies designed to prevent fraudulent or accidental transactions.

[7] Users typically spend Credits that they earn on the Platform at a slightly slower pace.

IMVU does not charge Users any fees to purchase Credits but does charge an 18% fee to Users each time that they transfer Credits peer-to-peer on the Platform using the IMVU mobile application, including to Service Providers in exchange for virtual services. IMVU does not charge any fees to Users who transfer Credits peer-to-peer on the Platform using a desktop computer. Additionally, IMVU does not charge any fees to Users when Users purchase virtual goods through the Marketplace.

C. How a Blockchain-Based Digital Asset Can Address the Limitations of the Credit System and Enable Platform Growth

1. *Limitations of the Credit System*

To date, IMVU has operated the Platform as a "closed" Credits-based economy that does not extend off the Platform, largely because the proprietary technology underlying the Platform does not readily support off-Platform usage of Credits. Accordingly, Credits can only be used by Users to obtain virtual goods and services on the Platform. While Users are generally satisfied with their ability to use Credits for these purposes, the current Credit system generates several frictions that disincentivize Users from continuing or increasing their participation in the Platform's virtual economy.

IMVU has received Users' feedback that they would like the ability to use their Credits for certain Platform-related uses that they are forced to address off the Platform. In particular, Creators and Service Providers would like to be able to earn something of real value that can be used to compensate non-User contractors off the Platform and converted into fiat currency. Non-User contractors make indispensable contributions to the Platform and its virtual economy through the Creators and Service Providers who hire them. For example, although a Service Provider may be an influencer who is able to leverage a large social media presence to launch and run a successful virtual nightclub, he or she may lack the technical skills to design, develop and build a virtual nightclub. Such a Service Provider would typically seek out a non-User contractor to perform this work and compensate him or her with fiat currency. As a result, the Service Provider might require Users to pay the nightclub cover charge in fiat currency using a third-party payment processor to meet the Service Provider's obligations to the non-User contractor. Although these transactions are vital to the Platform's virtual economy, they currently occur via off-Platform payment methods because Credits have no practical use to non-User contractors and do not hold any value off the Platform.

While there is a fiat currency royalty option available to Creators, as discussed above, significant transactional costs and inefficiencies have prevented IMVU from providing this option to Service Providers. IMVU maintains a dedicated team of three full-time employees plus three to five additional team members who spend 20% or more of their time assisting with the processing of royalty payouts each month. These employees must perform comprehensive usage checks,

bookkeeping and operations records management for all royalty payout requests. By requiring significant amounts of operational time and resources, these manual processes effectively restrict the volume of fiat currency royalties that IMVU can process in a commercially practical way. In turn, IMVU must set high transaction limits on its existing royalty program, which limits the amount of fiat currency that Creators can realize each month based on their sales. Moreover, these frictions have prevented IMVU from expanding the royalty program beyond its current focus on Creators. As a result, Service Providers have no path to earning real value in the current system, and less than 1% of all Users receive fiat currency royalties on the Platform.

2. *Blockchain Technology Addresses the Limitations of the Credit System and Creates New Opportunities for Platform Growth*

In an upgrade that integrates blockchain technology with the Platform (the "Upgrade"), IMVU plans to introduce a blockchain-based digital asset, VCOIN, that can be used to conduct commerce on the Platform.[8] IMVU believes that utilizing blockchain technology, and the Ethereum blockchain specifically, as the foundation for the Upgrade, will address the limitations of the Credit system and create new opportunities for Platform growth.

As a result of the Upgrade, VCOIN will enable Users to purchase or earn and use a digital asset that—unlike Credits—has real value and can be transacted both on and off the Platform. VCOIN will benefit Users in the following key ways:

- *Ability to Compensate Service Providers and Non-User Contractors*: Users will be able to compensate Service Providers and non-User contractors with VCOIN for providing services to them. This solves the current inability of Users to compensate non-User contractors using value they earn on the Platform and gives Users a second and more versatile way of transacting with each other. IMVU expects that this will drive growth of its User-driven economy by encouraging new and existing Service Providers to contribute to the Platform's service economy by offering skills and services to Users, which will keep Users engaged with the Platform and attract new Users. Although transactions between Users and non-User contractors will occur off the Platform, such transactions will benefit the Platform economy by reducing friction (*e.g.*, as explained below). Moreover, Users will be able to more efficiently and cost-effectively transfer

[8] IMVU will conduct all VCOIN activities in compliance with applicable money services business ("MSB"), money transmission, anti-money laundering, and sanctions-related legal and regulatory requirements, including, but not limited to, applicable requirements under the federal Bank Secrecy Act, federal sanctions laws, and state money transmitter and virtual currency business laws and their implementing regulations. If conducting VCOIN activities requires registration as an MSB with the Financial Crimes Enforcement Network ("FinCEN") and/or a money transmitter or virtual currency business license in any state, IMVU may engage a third-party service provider that is registered with FinCEN as an MSB and maintains appropriate state licenses to assist with the VCOIN activities requiring registration or licensure until IMVU has obtained the required registration or license itself.

VCOIN that they earn on the Platform to non-User contractors as compensation without relying on an intermediary.

- *Improved Royalty System for Creators*: Creators will have the option of receiving royalty payments from the sale of their virtual goods in the Marketplace in VCOIN. This will enable IMVU to pass along value to its Creators more quickly than the existing fiat currency royalty system because this process will be largely automated, will not require use of a third-party payment processor and will involve minimal transaction fees.

- *Convertibility to Fiat Currency*: IMVU will allow VCOIN holders, including Service Providers, to sell their VCOIN to IMVU for its fixed price. This will enable Users to easily convert their VCOIN into currency that they are able to use in the real world, which is not possible with Credits. IMVU will continuously sell and repurchase VCOIN at the same fixed price of $0.004, subject to the transaction fees and limitations set forth in Sections I.D.5 and I.D.6 below.

Beyond these key features, IMVU expects blockchain technology and VCOIN to improve the Platform experience for Users in several additional ways:

- *Immutable and Verifiable Transactions.* Blockchain technology will make it possible for VCOIN transactions to be immutable and immediately verifiable. IMVU will have a record of nearly every VCOIN transaction, which will enable it to better understand User behavior and thereby offer products and features targeted to meet the demands of its Users. Additionally, this data will allow IMVU to more effectively prevent fraud, abuse and other illegal behavior on the Platform. For example, IMVU will have the ability to use blockchain analytics software to track the flow of VCOIN off the Platform and back onto the Platform and analyze whether any such transactions involve misconduct.[9] Additionally, IMVU will be able to use transaction data to efficiently and cost-effectively prepare tax documentation for Users when needed. Finally, Users for the first time will have a complete record of their transaction activity both on and off the Platform.

- *Distributed Network as Source of Trust.* Blockchain technology will allow VCOIN holders to trust the Ethereum network, with its more than 750,000 nodes across the world maintaining the veracity of its ledger, as a record of ownership rather than

[9] Blockchain analytics software can be used to identify patterns of fraudulent activity by analyzing the transaction history of each digital asset and considering whether it was ever maintained in a digital wallet associated with scams or darknet activity, involved in anomalous transactions, or sent to a blacklisted or sanctioned address. IMVU will have the ability to monitor transactions on its Platform using its existing infrastructure and to use blockchain analytics software to obtain greater insight into Platform-related transactions that occur off the Platform, which it currently has little visibility into.

IMVU. Users and non-Users can therefore trust that IMVU will not be able to alter the amount of VCOIN that they maintain in their external digital wallet or otherwise interfere with their ownership of VCOIN after they transfer it off the Platform.

- *Automatable Payments.* VCOIN will be Ethereum-based and comply with the ERC-20 standard, which enables interoperability across applications built on the Ethereum blockchain.[10] VCOIN, as an ERC-20 digital asset, will be a programmable form of value that is compatible with self-executing programs on the Ethereum blockchain, popularly referred to as "smart contracts." Users will be able to build smart contracts that facilitate automatable and conditional payments to others, such as Creators and Service Providers.

D. Deploying VCOIN on the Platform

1. *Manner of Sale and Deployment*

IMVU will sell VCOIN to Users through the Platform in the same manner that it currently sells Credits.[11] Users will be able to log into their account on the Platform, input payment information, and purchase VCOIN from IMVU directly on the Platform using fiat currency. IMVU will also, similar to what it currently does with Credits, allow Users to earn VCOIN from IMVU by participating in specified activities on the Platform.[12] These are the only ways that VCOIN can be purchased or obtained from IMVU.

Users will be able to hold the VCOIN they purchase or obtain from IMVU in a digital wallet that IMVU makes available on the Platform. IMVU will market VCOIN together with the Platform to Users and the general public. It will not market VCOIN to the public, directly or implicitly, as an investment. IMVU will advertise VCOIN solely as a digital asset intended for Platform-related use, and in the same manner as it currently markets Credits. IMVU will also require VCOIN purchasers to represent, warrant and acknowledge, among other matters, substantially the following:

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[10] ERC-20 is a technological standard (such as ".pdf," ".docx" and ".mp3") for digital assets on the Ethereum blockchain. Digital assets that meet the ERC-20 standard all have basic coding to enable them to "plug in" and function in the same types of applications and software environments on the Ethereum blockchain.

[11] IMVU will not discontinue selling Credits on the Platform but will instead sell VCOIN alongside Credits as a separate product.

[12] Historically, Users have earned small amounts of Credits by participating in specified activities on the Platform, typically several dollars' worth of Credits from any single activity. IMVU anticipates that Users will earn similarly small amounts of VCOIN from these activities. For brevity, references to VCOIN "purchasers" in this letter include Users who earn VCOIN from IMVU.

- the User is acquiring VCOIN solely for consumptive use in connection with the Platform and not for distribution;

- the User is not acquiring VCOIN as an investment and has no expectation of economic benefit or profit as a VCOIN holder;

- the User is purchasing VCOIN for the User's own use and not with a view to sell the VCOIN to anyone else;

- the User will not acquire any equity or other ownership interest in IMVU by virtue of owning VCOIN; and

- the User will not portray VCOIN as an investment or an opportunity to obtain an economic benefit or profit.

VCOIN will be an ERC-20 digital asset and transferable peer-to-peer on the Ethereum blockchain. However, IMVU will ***not*** promote or support listing or trading VCOIN on any third-party trading venue.

2. *Key Economic Characteristics of VCOIN*

The key economic characteristics of VCOIN, as explained below, are its fixed price and unlimited supply. These characteristics should enhance VCOIN's usefulness as a Platform-related digital asset and eliminate the possibility of price appreciation in VCOIN.

(a) *Fixed Price*

IMVU will sell VCOIN on the Platform at a fixed price of $0.004 per VCOIN or 250 VCOIN per $1.00, which is four times the price at which IMVU sells Credits. A holder of VCOIN will also be able to convert his or her VCOIN into fiat currency by selling VCOIN to IMVU at the same fixed price. As mentioned above, IMVU will continuously sell and repurchase VCOIN at this fixed price, subject to the transaction fees and limitations set forth in Sections I.D.5 and I.D.6 below.

(b) *Unlimited Supply*

IMVU will initially create 12.5 billion VCOIN, which is approximately equivalent to the implied value of Credits currently in the Platform's virtual economy. While IMVU believes that this initial VCOIN supply should satisfy foreseeable User demand, IMVU will always generate enough supply of VCOIN to maintain VCOIN's fixed price.

3. *Immediate Use*

As soon as IMVU deploys the Upgrade and begins selling VCOIN, Users will be able to immediately use VCOIN in transactions, both on and off the Platform. To minimize disruption to existing Platform operations and address Users' highest priority needs first, IMVU will implement the Upgrade in two phases. The first phase, beginning in late 2020, will enable use of VCOIN for Service Provider and non-User contractor compensation, as well as convertibility of VCOIN to fiat currency. The second phase, beginning in early 2021, will enable Creators to receive payments in VCOIN for virtual goods sold in the Marketplace.[13]

After VCOIN is introduced, Creators and Service Providers will continue to set prices for virtual goods and services on the Platform and IMVU will not mandate price controls. Prices will be subject only to certain minimums (which are due to IMVU's transaction processing costs) and policies designed to prevent fraudulent or accidental transactions that are materially similar to such minimums and policies currently in place.

4. *Wallets for VCOIN Use*

IMVU will provide all Users with a digital wallet that is limited to use on the Platform (a "Closed Wallet") to store their VCOIN. Users who wish to transfer their VCOIN off the Platform will need to establish a separate digital wallet (an "Open Wallet") and transfer their VCOIN from their Closed Wallet to their Open Wallet. Whereas the Closed Wallet maintains the User's VCOIN for use on the Platform, the Open Wallet is for transactions that occur off the Platform.

Only Users may establish a Closed Wallet, whereas both Users and non-Users can establish an Open Wallet. Persons must pass through know-your-customer screening to establish an Open Wallet and all Open Wallet transactions will be subject to ongoing anti-money laundering controls, including transaction monitoring and suspicious activity reporting.[14] Users will not be able to transfer VCOIN to non-Users or sell their VCOIN to IMVU for fiat currency using a Closed

[13] While IMVU anticipates that its Creators will want to receive royalties in the form of VCOIN and IMVU is keen to eliminate the frictions associated with its royalty system, Creators already have the ability to receive fiat currency in lieu of Credits through this system. Service Providers do not have this option and, as a result, they may only earn Credits. Moreover, non-User contractors cannot even earn Credits. The first phase of VCOIN implementation therefore addresses immediate and unmet needs of a larger base of Users, while enabling IMVU to address any unforeseen technical issues before it deploys the second phase. Although IMVU has the resources and capability to implement both phases at the same time, IMVU has determined that the planned approach is more prudent from a business and technical perspective, since the second phase requires changes to existing Marketplace technology that Creators expect to operate on an uninterrupted basis. Nevertheless, the Upgrade will be fully functional and operational upon its initial deployment.

[14] IMVU or a third-party vendor will perform know-your-customer screening and implement ongoing anti-money laundering controls in compliance with applicable law.

Wallet. Further, Open Wallets will not be compatible with the Platform and therefore every User will be required to use a Closed Wallet for transactions on the Platform.

When conducting peer-to-peer transactions on the Platform, Users will be able to transfer VCOIN from their Closed Wallet to any other User's Closed Wallet in the same general way that they currently transfer Credits from one account to another. IMVU will charge a transaction fee, as set forth in Section I.D.6 below, each time that a User transfers VCOIN from his or her Closed Wallet to another User's Closed Wallet in a peer-to-peer transaction.

With an Open Wallet, Users can transfer VCOIN to external Ethereum network digital wallets, such as those established by non-User contractors, or sell VCOIN to IMVU for fiat currency. This will enable Creators, Service Providers and other Users to pay non-User contractors in VCOIN and obtain fiat currency for the value that they earn on the Platform, as discussed above.

5. *Limits on Purchase, Conversion, and Transfer*

IMVU will implement limits on VCOIN purchase, conversion and transfer of VCOIN to deter User fraud. Similar fraud prevention controls are already in place with respect to Credits. Consistent with those existing controls, IMVU's compliance team will assign limits on an individual basis through risk-based due diligence and assessed fraud risk. Although these limits are intended principally to deter fraud, IMVU believes that they will also deter investment and speculative activity, since they are broadly designed to prevent Users from buying or using VCOIN for purposes unrelated to the Platform's virtual economy. These limits, and the specific effect each will have in encouraging and discouraging User behavior, will be as follows:

- *Daily Purchase Limits*: IMVU will place a daily purchase limitation of up to $500 per day on each User's account (the "Purchase Limit"). The Purchase Limit amount of $500 reflects the approximate upper band of daily Credit purchases on the Platform today, adjusted to account for the possibility that Users will use VCOIN more actively than Credits. The Purchase Limit will encourage purchases of VCOIN for use in connection with the Platform and discourage Users from purchasing VCOIN for fraudulent purposes or off-Platform uses.

- *Holding Period*: After a User purchases VCOIN from IMVU, IMVU will restrict such VCOIN to the User's Closed Wallet and in-Platform use for a specified holding period of up to 45 days (the "Holding Period"), after which point the User will be able to transfer the VCOIN to his or her Open Wallet.[15] Like the Purchase Limit, the Holding

[15] Although there will be no technical requirement that a User who purchases VCOIN on the Platform will use or consume the VCOIN, as a practical matter, a User would not likely purchase VCOIN on the Platform for the purpose of leaving the Platform with it because the User would need to first satisfy the Holding Period and then pay a transaction fee of 10-15% to transfer it off the Platform.

Period will encourage purchases of VCOIN for consumptive use in connection with the Platform and discourage Users from purchasing VCOIN from IMVU for fraudulent purposes.

- *Exit Limit*: In addition to the Holding Period, IMVU will limit the amount of VCOIN that Users will be able to move from their Closed Wallet to their Open Wallet per month (the "Exit Limit"). IMVU will assign Exit Limits to each User of up to $20,000 per month.[16] Like the Purchase Limit and Holding Period, the Exit Limit will discourage Users from purchasing VCOIN from IMVU for fraudulent purposes.

- *Fiat Conversion Limit*: IMVU will only convert VCOIN held in Open Wallets into fiat currency and will limit the amount of VCOIN that a holder will be able to convert into fiat currency per month (the "Fiat Conversion Limit"). IMVU will assign a Fiat Conversion Limit to each VCOIN holder who maintains an Open Wallet of up to $20,000 per month. The Fiat Conversion Limit will enable VCOIN holders to convert reasonable amounts of VCOIN into fiat currency, in line with VCOIN amounts that such holders earn in the Platform, while discouraging persons from acquiring VCOIN merely for the purpose of selling it to IMVU for fiat currency. IMVU will maintain adequate fiat currency reserves to satisfy fiat conversion requests at any given time, considering Fiat Conversion Limits then in effect. Such fiat currency reserves will be held with a U.S. depository institution that is insured by the Federal Deposit Insurance Corporation, and IMVU will not provide any holders of VCOIN with legal recourse against the fiat currency reserves.

IMVU will consider a variety of factors in assigning these limits, including (i) how long a person has been an active User, (ii) a User's history of purchasing VCOIN from IMVU and converting VCOIN to fiat currency with IMVU, and (iii) a User's VCOIN transactional history on the Platform. IMVU anticipates, for example, that Users who earn significant amounts of VCOIN on the Platform as Creators or Service Providers will likely have higher Exit Limits and Fiat Conversion Limits than Users who are not Creators or Service Providers. IMVU will regularly monitor the appropriateness of each User's limits according to ongoing activity and adjust limits as needed.

[16] Based on User surveys, IMVU understands that Users typically compensate non-User contractors in amounts ranging from roughly $5 to $80 in exchange for their services, which include designing custom virtual goods and virtual worlds, promoting a Creator or Service Provider's virtual goods or virtual services through social media, creating custom graphics for posting on social channels, or modeling a Creator's virtual goods on the Platform. IMVU will maintain an Exit Limit that enables its Users to compensate non-User contractors for these typical types of services.

6. *Fees*

IMVU will charge two types of fees in connection with VCOIN transactions on and off the Platform.[17] Specifically, IMVU will charge (i) Users a fee of 5-10% of the amount transferred when they transfer VCOIN to another User, including as payment to a Service Provider, on the Platform (*i.e.*, Closed Wallet to Closed Wallet transfers), and (ii) Open Wallet VCOIN holders a fee of 10-15% of the amount converted when they convert their VCOIN into fiat currency with IMVU. After setting or resetting a fee within these ranges, IMVU will apply that fee uniformly, without preferences or discounts. Consistent with its fee structure for Credits, IMVU will not charge a transaction fee to Users when they purchase VCOIN from IMVU or when they use VCOIN to purchase virtual goods from the Marketplace.

7. *Proceeds from Sale*

IMVU will not use proceeds from the sale of VCOIN to finance the Upgrade, which has been fully developed and will be fully functional and operational immediately upon its launch and before any sale of VCOIN. IMVU will generate revenue related to the Upgrade primarily from transaction fees and other products and services it sells to Users. If IMVU chooses to supplement existing resources with funds to finance the Upgrade, it intends to raise such funds from accredited investors in private capital markets and in compliance with the federal securities laws. Any such privately placed securities will not entitle the investor to receive VCOIN.

II. Legal Discussion

For the reasons set forth below, we are of the opinion that IMVU's proposed offer and sale of VCOIN, if offered and sold in the manner and under the circumstances described above, will not involve the offer and sale of a "security" within the meaning of Section 2(a)(1) of the Securities Act or Section 3(a)(10) of the Exchange Act and, therefore, that registration under the Securities Acts is not required. In particular, we conclude that VCOIN is not an investment contract, and consequently not a security, because Users will purchase VCOIN for use as a Platform-related digital asset and not based on a reasonable expectation of profit from the efforts of IMVU or others.

A. Legal Framework

Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act each define the term "security" and list a variety of instruments that are securities. Because blockchain-based tokens like VCOIN are not specifically included in the definition of "security," we analyze VCOIN

[17] A comprehensive inventory of fees associated with Credits and VCOIN is included in the Appendix hereto.

under the *Howey* "investment contract" test (the "*Howey* test") and seek no-action relief only with regard to classification as an investment contract.[18]

Federal courts have found all manner of schemes to involve investment contracts under the *Howey* test.[19] The test requires an assessment of whether there is (i) an investment of money; (ii) in a common enterprise; (iii) with an expectation of profits derived from the efforts of others.[20] If any element of this test is missing, then the scheme in question is not an investment contract. "[I]n searching for the meaning and scope of the word 'security' . . . form should be disregarded for substance and the emphasis should be on the economic reality."[21]

While purchasers of VCOIN will arguably make an investment of money in a common enterprise because they will pay fiat currency to IMVU when they purchase VCOIN, they will not do so with a reasonable expectation of profits derived from the efforts of others, but rather to use VCOIN in connection with the Platform. Because an "expectation of profits" is absent, our analysis focuses solely on that third element of the *Howey* test.[22]

B. No Reasonable Expectation of Profits Derived from the Efforts of Others

It is an essential element of the *Howey* test for the purchaser to be reasonably led to expect profits from the entrepreneurial or managerial efforts of others. This element is not satisfied where such purchaser either does not reasonably expect to profit from their purchase in any event or does not reasonably expect to profit, in particular, "from the entrepreneurial or managerial efforts of others."[23]

Under a *Howey* test analysis, "profit" may take two basic forms. In *United Housing Foundation, Inc. v. Forman*, the U.S. Supreme Court elaborated on the "profits" prong of the *Howey* test, noting that "[b]y profits, the Court has meant either capital appreciation resulting from the development of the initial investment . . . or a participation in earnings resulting from the use of investors' funds."[24] A VCOIN purchaser would not reasonably expect profits in either of these

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18 *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293 (1946).

19 *See, e.g.*, *Gary Plastic Packaging Corp. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 756 F.2d 230 (2d Cir. 1985) (so holding with respect to a certificate of deposit ("CD") program offered by Merrill Lynch).

20 *S.E.C. v. Edwards*, 540 U.S. 389, 393 (2004).

21 *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967) (citing *Howey*, 328 U.S. at 298).

22 We do not specifically address the other aspects of the *Howey* test analysis because we do not believe such an analysis is necessary to demonstrate that IMVU's proposed offer and sale of VCOIN is not an investment contract.

23 *Edwards*, 540 U.S. at 395 (citation omitted).

24 *United Housing Foundation, Inc. v. Forman*, 421 U.S. 837, 852 (1975).

forms. VCOIN will not provide holders with any right to dividends or any other distributions or payments of income or profits from any entity whatsoever.

No User who purchases VCOIN would reasonably expect profits or capital appreciation resulting from IMVU's efforts. VCOIN is a digital asset that IMVU's millions of Users will purchase as a means of engaging in virtual commerce in connection with the Platform. IMVU will generate an unlimited supply of VCOIN, sell each VCOIN at the fixed price of $0.004, and repurchase VCOIN at the same price, making it irrational for any VCOIN purchaser to expect capital appreciation in VCOIN. As the Court reasoned in *Forman*, "when a purchaser is motivated by a desire to use or consume the item purchased," rather than "the prospects of a return on investment . . . the securities laws do not apply."[25]

1. *Users Will View VCOIN as a Digital Asset Intended for Consumptive Use*

Over a decade of Platform activity, and millions of Credit transactions each month, IMVU's Users have demonstrated that their primary purpose for purchasing Credits is to obtain virtual goods and services for consumption. Users' experience with Credits will inform their view of VCOIN, which IMVU has designed and will market with the same purpose: consumptive use in connection with the Platform.

Despite the success of Credits, Users have demonstrated a need for a transferable digital asset that—unlike Credits—allows Users to spend value that they earn or purchase on the Platform in peer-to-peer transactions with Users and non-User contractors and easily convert such value to fiat currency. IMVU has designed VCOIN to satisfy these unmet User demands, focusing on the most critical shortcoming of Credits, while still serving the same core function of the Credit: enabling Users to engage in virtual commerce on the Platform. Users will, therefore, view VCOIN as an improved version of the Credit, which they already know and have used for more than a decade.[26]

IMVU's marketing will reinforce that VCOIN is a digital asset for use in connection with the Platform and explain that VCOIN cannot be purchased or obtained from IMVU without first registering an account on the Platform.[27] Where VCOIN's features overlap with what the Credit

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[25] *Id.* at 852–53.

[26] *See TurnKey Jet, Inc., SEC Staff No-Action Letter* (Apr. 3, 2019) (incoming letter at p. 2) (SEC Staff No-Action Letter provided to air charter provider whose token for prepaid on-demand air charter services "allows for settlement via blockchain which decreases the settlement time and improves the efficiencies of paying for and obtaining air charter services for both [c]onsumers and [the company]").

[27] *See id.* (in SEC Staff response, noting that the token "is marketed in a manner that emphasizes the functionality" of the token and "not the potential for the increase in the market value" of the token); *see also Forman*, 421 U.S. at 853 (apartment co-operative's marketing materials attracted investors "by the prospect of acquiring a place to live, and not by financial returns on their investments").

already does, IMVU's marketing of such features will mirror how the Credit is marketed—namely, as a means to transfer value solely in connection with the Platform, not as an investment. When explaining how VCOIN differs from the Credit, IMVU will focus on how VCOIN's additional features provide Users greater ability to use the digital asset. IMVU will never characterize VCOIN as, or imply that VCOIN is, an investment.

IMVU's terms of sale will comport with these marketing descriptions and formalize VCOIN's purpose as a digital asset for Platform-related use. Specifically, IMVU will require Users who purchase VCOIN from IMVU to affirm that: (i) they are acquiring the VCOIN for consumptive use in connection with the Platform and not for distribution, (ii) they are not purchasing the VCOIN on behalf of any other person or entity, and (iii) they are not purchasing the VCOIN for any other purposes, including for speculative purposes. IMVU's terms will also disclose to Users the full scope of available VCOIN features, including the virtual goods and services that VCOIN can be used to obtain, and will emphasize that VCOIN is not and should not be viewed as an investment.

2. *VCOIN Will Be Immediately Usable on the Platform When Sold*

At the time it is sold, VCOIN will be immediately usable on the Platform to compensate Service Providers and, subject to the limitations described above in Section I.D.5, to compensate non-User contractors and be converted into fiat currency. In early 2021, IMVU will also enable Creators to opt to receive royalties in VCOIN and Users to obtain virtual goods from the Marketplace with VCOIN. As explained above, no proceeds from VCOIN sales will be used to finance the Upgrade, which has been fully developed and will be fully functional and operational immediately upon its launch and before any sale of VCOIN.[28]

Historical patterns of Credit use support that Users will use VCOIN for its intended purpose promptly after purchase. The average User spends the Credits that he or she purchases from IMVU within seven days. Given that VCOIN will be marketed and sold as a digital asset for consumptive use in connection with the Platform, like the Credit, IMVU expects that Users will similarly use their VCOIN shortly after purchasing it. These facts materially distinguish VCOIN from cases where purchasers were attracted "by a return on investment" as opposed to use.[29]

Although IMVU plans in 2021 to allow Creators to opt to receive royalty payments in VCOIN and Users to purchase virtual goods from the Marketplace with VCOIN, these additional features of VCOIN will not reasonably lead VCOIN purchasers to expect profits. It would not be

[28] *See Pocketful of Quarters, Inc., SEC Staff No-Action Letter* (July 25, 2019) (SEC Staff response noting that token seller would "not use any funds from" token sales to build the token platform, "which has been fully developed and will be fully functional and operational immediately upon its launch and before any of the [tokens] are sold").

[29] *See, e.g., Howey*, 328 U.S. at 300 (speculative purchasers of undeveloped farmland had "no desire to occupy the land or develop it themselves").

reasonable for VCOIN purchasers to expect VCOIN to increase in value after the introduction of these features because IMVU will continuously sell and repurchase VCOIN at the same fixed price, less a transaction fee. Moreover, IMVU will generate additional VCOIN to satisfy any increase in demand for VCOIN that may result from Creators opting to receive royalties in VCOIN or from Users purchasing VCOIN to obtain virtual goods from the Marketplace. Finally, the Platform will continue to support Credits, meaning that Users can continue to choose to earn and use Credits on the Platform, and IMVU will not require Users to purchase VCOIN to replace their Credits.

3. *IMVU Will Sell and Repurchase VCOIN at a Fixed Price*

IMVU will sell VCOIN to Users at a fixed price of $0.004 per VCOIN and repurchase VCOIN at the same fixed price, less a transaction fee. IMVU will always generate enough VCOIN to maintain its fixed price.

IMVU's commitment to maintain a fixed price makes it unreasonable for any VCOIN purchaser to expect profit from VCOIN appreciation. No reasonable person would be willing to sell VCOIN at a price lower than IMVU will pay to repurchase it. Because IMVU will only repurchase VCOIN at its fixed sale price, less a transaction fee, no VCOIN purchaser could reasonably expect to profit by reselling VCOIN to IMVU.[30] Rather, a reasonable VCOIN purchaser would view IMVU's willingness to repurchase VCOIN as a service to Users, enabling them to convert VCOIN they earn or purchase into fiat currency. IMVU's repurchasing of VCOIN will therefore not be the type of managerial service, activity or efforts designed to generate profits for investors contemplated by the *Howey* test.[31]

VCOIN's fixed price also furthers its use case as a digital asset to conduct commerce in connection with the Platform.[32] Today, many Creators supplement their incomes or make a living from fiat currency royalties on virtual goods they sell through the Marketplace. IMVU anticipates that, with VCOIN, many more Users will be able to supplement their incomes in IMVU's virtual

[30] *See Pocketful of Quarters, Inc., SEC Staff No-Action Letter*, *supra* note 28 (in SEC Staff response, noting that tokens "will be made continuously available to gamers in unlimited quantities at a fixed price").

[31] *See Forman*, 421 U.S. at 854 (co-operative stock purchasers not offered "the kinds of profits traditionally associated with securities" because, among other reasons, the co-operative would only repurchase stock "at the price . . . paid for it").

[32] *Board of Governors of the Federal Reserve System*, Speech by Governor Lael Brainard on Digital Currencies, Stablecoins and the Evolving Payments Landscape (Oct. 16, 2019) (noting the "substantial volatility exhibited by first-generation cryptocurrencies," such as Bitcoin, "which limits their reach in payments"), www.federalreserve.gov/newsevents/speech/brainard20191016a.htm.

economy. Unless VCOIN has a reliable value and stable price, these Users and non-User contractors will lose confidence in VCOIN.[33]

While IMVU will not promote or support the trading of VCOIN on third-party trading platforms, the transferable nature of VCOIN means that it can be transacted off the Platform, whether bilaterally or on a third-party trading platform. Nonetheless, it would still be irrational for VCOIN purchasers to expect that they could sell VCOIN at a higher price to an off-Platform counterparty. IMVU will publicly state that it will continue selling and repurchasing VCOIN at a fixed price, that it is willing to create more VCOIN to maintain that price, and that only IMVU can create more VCOIN. Knowing these facts about the economics of VCOIN, no reasonable person—on or off the Platform—would pay more for VCOIN than VCOIN's fixed price.

4. *IMVU Will Implement Controls to Encourage VCOIN Use and Deter Speculation*

Since IMVU will not intermediate or otherwise control VCOIN activity that occurs off the Platform, it is possible that, in some circumstances, parties transacting VCOIN off the Platform could agree to buy and sell it at a different price than VCOIN's fixed price. However, IMVU will not encourage, induce, sanction or enable VCOIN purchasers to engage in these types of transactions, or any activity that could constitute a distribution or market making, and any profit derived from such transactions will not be profit within the scope of the *Howey* test.

First, any price differential between IMVU's price and any off-Platform price is likely to be small and momentary because of IMVU's unilateral control over VCOIN supply and commitment to maintaining a fixed price by continuously selling and repurchasing VCOIN at the price of $0.004. Profits from such a momentary price differential, if any, would be far too "speculative and insubstantial" to bring VCOIN sales "within the Securities Acts."[34] Rather, they would be incidental to a critical consumptive feature of VCOIN, namely, the transferability that enables Users to use the value they earn and purchase both on and off the Platform.[35]

Second, IMVU will continue to sell Credits on the Platform for $0.001 per unit (*i.e.*, one-quarter of the price of VCOIN) and Users will continue to be able to use Credits to obtain virtual goods and services on the Platform. In the unlikely event that VCOIN's price were to appreciate such that one VCOIN would no longer be worth four Credits, then Users could choose to purchase

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[33] The fact that IMVU will continue selling Credits will also help maintain VCOIN's fixed price, as explained below in Section II.B.4.

[34] *See Forman*, 421 U.S. at 856 (so holding, with respect to net income that co-operative stock holders could potentially realize from co-operative's leasing of rights to operate commercial facilities established for the use of the Co-Op City tenants and services).

[35] *See id.* (commercial facilities established for the use of the Co-Op City tenants and services "were established not as a means of returning profits to tenants, but for the purpose of making essential services available" to residents).

and use Credits to obtain virtual goods and services on the Platform in lieu of VCOIN, which would bring the value of VCOIN back into alignment with that of Credits.

Third, VCOIN purchasers would have to rely on their own efforts to generate any profits in reselling VCOIN off the Platform. IMVU, far from exercising managerial or entrepreneurial efforts to generate profit, will be taking active steps to maintain a fixed VCOIN price and refusing to support or encourage third-party trading platforms for VCOIN.[36] Beyond that, as discussed above, IMVU will implement a Purchase Limit, a Holding Period, an Exit Limit and a Fiat Conversion Limit that will encourage consumptive use in connection with the Platform, deter speculative VCOIN purchases and prevent speculative VCOIN activity.

The Purchase Limit will not only prevent Users from obtaining more VCOIN than they could realistically use but also deter arbitrageurs from purchasing VCOIN from IMVU to resell at a higher price off-Platform. Because any opportunity to obtain arbitrage profits off-Platform is likely to be small and momentary in nature, arbitrageurs would likely need to purchase far more than the Purchase Limit (a maximum of $500 per User per day) to realize meaningful profits by reselling VCOIN at a higher price off-Platform. By the same logic, if VCOIN's off-Platform price were to fall below VCOIN's fixed price, the Fiat Conversion Limit would substantially limit the incentive for arbitrageurs to seek profits by purchasing VCOIN off the Platform and selling it to IMVU on-Platform.

Further, Users who obtain VCOIN on-Platform will be required to transfer their VCOIN from their Closed Wallet to an Open Wallet before they can sell their VCOIN to IMVU for fiat currency or transfer it to persons off the Platform. After purchasing VCOIN from IMVU, Users will be subject to a Holding Period of up to 45 days before they can move such VCOIN from a Closed Wallet to an Open Wallet. In addition, the Exit Limit caps the aggregate amount of VCOIN that Users can move from their Closed Wallet to their Open Wallet per month, limiting the ability of Users to transfer more VCOIN off the Platform. These controls will minimize the ability of any User to act quickly enough to capture an arbitrage opportunity between the price of VCOIN on the Platform and off the Platform should an inconsistency in price occur.

Taken together, these Platform controls should eliminate any reasonable incentive to pursue arbitrage profits from a differential between IMVU's fixed VCOIN price and an off-Platform VCOIN price. VCOIN purchasers will therefore have no economic reason to speculate in such price differentials which, in any event, would not result from capital appreciation recognized by *Howey* and its progeny or otherwise be "profit" under *Howey* or derived from the "efforts of others." This is because any arbitrage profits derived from purchases and sales of

[36] *Cf. Gary Plastic*, 756 F.2d at 240–42 (investment contract where Merrill Lynch maintained a secondary CD market and promised CD purchasers liquidity and capital appreciation).

VCOIN will result from market dynamics that IMVU will not encourage, induce, sanction or enable.

III. Conclusion

In view of the foregoing, we respectfully request confirmation that the Division will not recommend any enforcement action to the Commission against IMVU if IMVU offers and sells VCOIN in the manner and under the circumstances described herein without registration under Section 5 of the Securities Act and Section 12(g) of the Exchange Act.

IMVU plans to commence selling VCOIN following receipt of a response from the Division, in the event that the Division grants this request. If for any reason the Division concludes that it cannot respond affirmatively to our request, we would appreciate the opportunity to discuss the matter with the Division prior to the preparation of its response and ask that the Division please contact the undersigned by email at mdidiuk@perkinscoie.com or by phone at (212) 261-6847. Please let us know if you have any questions or need any additional information. Thank you for your assistance.

Sincerely,

Michael S. Didiuk

cc: Joshua L. Boehm – Perkins Coie LLP
Michael S. Selig – Perkins Coie LLP

Appendix

Transaction Fees Received by IMVU

Activity	On the Platform		Off the Platform
	Credits	VCOIN	VCOIN
Purchases	Purchaser does not pay any fees	Purchaser does not pay any fees	IMVU will only sell VCOIN to Users on the Platform
Peer-to-Peer Transfers	Transferor pays an 18% fee on mobile application; no fee on desktop application	Transferor pays a 5-10% fee	Transferor does not pay any fees
Exiting the Platform	Users cannot transfer Credits off the Platform	User does not pay any fees to transfer VCOIN off the Platform	Not applicable
Transfers on to the Platform	Not applicable	Not applicable	User does not pay any fees to transfer VCOIN on to the Platform
Conversion to Fiat Currency	Users cannot convert Credits into fiat currency	Users cannot convert VCOIN into fiat currency on the Platform	User pays a 10-15% fee
Purchases of Virtual Goods from Marketplace	Purchaser does not pay any fees	Purchaser does not pay any fees	Users cannot purchase virtual goods from the Marketplace off the Platform

IMVU, Inc.

Response of the Division of Corporation Finance

Securities Act of 1933
Section 2(a)(1)

Re: IMVU, Inc.
Incoming letter dated November 17, 2020

Based on the facts presented, the Division will not recommend enforcement action to the Commission if, in reliance on your opinion as counsel that VCOIN is not a security, IMVU offers and sells VCOIN, which is transferable both on and off of IMVU's platform, without registration under Section 5 of the Securities Act and does not register VCOIN as a class of equity securities under Section 12(g) of the Exchange Act. Capitalized terms have the same meanings as defined in your letter.

In reaching this position, we particularly note that:

- IMVU will not use proceeds from the sale of VCOIN to finance its Upgrade, which has been fully developed and will be fully functional and operational immediately upon its launch and before any VCOIN is sold;
- VCOIN will be immediately usable for its intended purpose at the time it is sold;
- IMVU will impose specified limits on VCOIN purchases, conversions, and transfers;
- VCOIN holders will be subject to KYC/AML checks when they establish Open Wallets and thereafter on an ongoing basis;
- VCOIN will be made continuously available in unlimited quantities and at a fixed price, and IMVU will always generate enough supply of VCOIN to maintain VCOIN's fixed price;
- IMVU will not promote or support listing or trading of VCOIN on any third-party trading platform;
- IMVU will market and sell VCOIN to Users solely for consumptive use as a means of exchanging value on, and in connection with, the Platform; and
- IMVU will require Users who purchase VCOIN from IMVU to affirm that, among other things, they are acquiring the VCOIN for consumptive use and not for speculative purposes.

This position is based on the representations made to the Division in your letter. Any different facts or conditions might require the Division to reach a different conclusion. Further, this response expresses the Division's position on enforcement action only and does not express any legal conclusion on the question presented or on the applicability of any other laws, including the Bank Secrecy Act and anti-money laundering and related frameworks.

Sincerely,

Jonathan A. Ingram
Legal Advisor, FinHub
Division of Corporation Finance

Related Materials

- Incoming Letter

Modified: Nov. 19, 2020

Exhibit B-1

Generated on: This page was generated by TSDR on 2022-01-12 18:16:40 EST

Mark: VCOIN

VCOIN

US Serial Number: 88591563

Application Filing Date: Aug. 24, 2019

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:

LIVE/APPLICATION/Under Examination

The trademark application has been accepted by the Office (has met the minimum filing requirements) and that this application has been assigned to an examiner.

Status: A third request for extension of time to file a Statement of Use has been granted.

Status Date: Oct. 29, 2021

Publication Date: Feb. 25, 2020**Notice of Allowance Date:**Apr. 21, 2020

Mark Information

Mark Literal Elements: VCOIN

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Related Properties Information

International Registration Number: 1500652, 1499714

International Application(s) /Registration(s) Based on this Property: A0089119/1500652, A0089155/1499714

Goods and Services

Note:
The following symbols indicate that theÂ registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Downloadable virtual goods, namely, computer programs featuring digital tokens for use in online virtual worlds and computer games; Downloadable computer programs and computer software for electronic transfer of digital tokens; Downloadable computer programs and computer software to facilitate the use of blockchain to execute and record transactions; Downloadable computer software platforms for developing, building, and operating distributed applications

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

For: Issuance of tokens of value, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic transfer of a virtual currency, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic processing of electronic payments via a global computer network; Cryptocurrency payment and trading services, namely, issuance of digital tokens with cryptographic protocols used to operate and build applications and blockchains on decentralized and centralized computer platforms and as a method of payment for goods and services

International Class(es):	036 - Primary Class	**U.S Class(es):**	100, 101, 102
Class Status:	ACTIVE		
Basis:	1(b)		

Basis Information (Case Level)

Filed Use:	No	**Currently Use:**	No
Filed ITU:	Yes	**Currently ITU:**	Yes
Filed 44D:	No	**Currently 44E:**	No
Filed 44E:	No	**Currently 66A:**	No
Filed 66A:	No	**Currently No Basis:**	No
Filed No Basis:	No		

Current Owner(s) Information

Owner Name: TOGETHER LABS, INC.

Owner Address: 1001 MARSHALL ST., SUITE 100
REDWOOD CITY, CALIFORNIA UNITED STATES 94063

Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name:	Lynn M. Humphreys	**Docket Number:**	36134-027
Attorney Primary Email Address:	trademark@hopkinscarley.com	**Attorney Email Authorized:**	Yes

Correspondent

Correspondent Name/Address: Lynn M. Humphreys
HOPKINS & CARLEY
70 S 1ST ST
SAN JOSE, CALIFORNIA UNITED STATES 95113

Phone: 4082869800

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 31, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 31, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 31, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Dec. 31, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 31, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 31, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Oct. 30, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Oct. 29, 2021	EXTENSION 3 GRANTED	67534
Oct. 21, 2021	EXTENSION 3 FILED	67534
Oct. 29, 2021	CASE ASSIGNED TO INTENT TO USE PARALEGAL	67534
Oct. 21, 2021	TEAS EXTENSION RECEIVED	
Oct. 13, 2021	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Sep. 29, 2021	ASSIGNED TO EXAMINER	95871
Jul. 12, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 12, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Jul. 12, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jul. 12, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Apr. 21, 2021	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	

Apr. 19, 2021	EXTENSION 2 GRANTED	98765
Apr. 19, 2021	EXTENSION 2 FILED	98765
Apr. 19, 2021	TEAS EXTENSION RECEIVED	
Oct. 14, 2020	NOTICE OF APPROVAL OF EXTENSION REQUEST E-MAILED	
Oct. 12, 2020	EXTENSION 1 GRANTED	98765
Oct. 12, 2020	EXTENSION 1 FILED	98765
Oct. 12, 2020	TEAS EXTENSION RECEIVED	
Apr. 21, 2020	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Feb. 25, 2020	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 25, 2020	PUBLISHED FOR OPPOSITION	
Feb. 05, 2020	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jan. 23, 2020	APPROVED FOR PUB - PRINCIPAL REGISTER	
Jan. 22, 2020	EXAMINER'S AMENDMENT ENTERED	88888
Jan. 22, 2020	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Jan. 22, 2020	EXAMINERS AMENDMENT E-MAILED	6328
Jan. 22, 2020	EXAMINERS AMENDMENT -WRITTEN	93976
Jan. 08, 2020	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Jan. 07, 2020	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Jan. 07, 2020	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 27, 2019	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 27, 2019	NON-FINAL ACTION E-MAILED	6325
Nov. 27, 2019	NON-FINAL ACTION WRITTEN	93976
Nov. 24, 2019	ASSIGNED TO EXAMINER	93976
Sep. 08, 2019	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 28, 2019	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: MACDOUGALL, KIERRA RYN
Law Office Assigned: LAW OFFICE 126

File Location

Current Location: INTENT TO USE SECTION
Date in Location: Oct. 29, 2021

Assignment Abstract Of Title Information

Summary

Total Assignments: 1
Applicant: IMVU, Inc.

Assignment 1 of 1

Conveyance: CHANGE OF NAME
Reel/Frame: 7445/0168
Pages: 4
Date Recorded: Oct. 06, 2021
Supporting Documents: assignment-tm-7445-0168.pdf

Assignor

Name: IMVU, INC.
Execution Date: Mar. 15, 2021
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Assignee

Name: TOGETHER LABS, INC.
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE
Address: 1001 MARSHALL ST., SUITE 100
REDWOOD CITY, CALIFORNIA 94063

Correspondent

Correspondent Name:	MITESH PATEL
Correspondent Address:	70 S 1ST ST SAN JOSE, CA 95113

Domestic Representative - Not Found

Exhibit B-2

Generated on: This page was generated by TSDR on 2022-01-12 18:15:41 EST

Mark: VCOIN

US Serial Number: 90223222

Application Filing Date: Sep. 29, 2020

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:

LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: Notice of Allowance (NOA) sent (issued) to the applicant. Applicant must file a Statement of Use or Extension Request within six months of the NOA issuance date.

Status Date: Nov. 16, 2021

Publication Date: Mar. 30, 2021**Notice of Allowance Date:**Nov. 16, 2021

Mark Information

Mark Literal Elements: VCOIN

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a mirrored check mark with a horizontal trapezoid above the right side all enclosed in a circle directly centered above the wording "VCOIN" in all capital letters.

Design Search Code(s): 24.17.15 - Check marks
26.01.21 - Circles that are totally or partially shaded.
26.13.02 - Quadrilaterals (single line or multiple line); Plain single or multiple line quadrilaterals

Related Properties Information

International Registration Number: 1580876

International Application(s) /Registration(s) Based on this Property: A0103158/1580876

Goods and Services

Note:
The following symbols indicate that theÂ registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Downloadable virtual goods, namely, computer programs featuring digital tokens for use in online virtual worlds and computer games; Downloadable computer programs and computer software for electronic transfer of digital tokens; Downloadable computer programs and computer software to facilitate the use of blockchain to execute and record transactions; Downloadable computer software platforms for developing, building, and operating distributed applications

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

For: Issuance of tokens of value, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic transfer of a virtual currency, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic processing of electronic payments via a global computer network; Cryptocurrency payment and trading services, namely, issuance of digital tokens with cryptographic protocols used to operate and build applications and blockchains on decentralized and centralized computer platforms and as a method of payment for goods and services

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: TOGETHER LABS, INC.

Owner Address: 1001 MARSHALL ST., SUITE 100
REDWOOD CITY, CALIFORNIA UNITED STATES 94063

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Lynn M. Humphreys

Docket Number: 36134-234

Attorney Primary Email Address: trademark@hopkinscarley.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Lynn M. Humphreys
HOPKINS & CARLEY
70 S 1ST ST
SAN JOSE, CALIFORNIA UNITED STATES 95113

Phone: 4082869800

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 31, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 31, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 31, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Dec. 31, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 31, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 31, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Nov. 16, 2021	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 13, 2021	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 07, 2021	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Apr. 28, 2021	EXTENSION OF TIME TO OPPOSE RECEIVED	
Mar. 30, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 30, 2021	PUBLISHED FOR OPPOSITION	
Mar. 10, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 22, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	

Feb. 22, 2021	ASSIGNED TO EXAMINER	81878
Nov. 13, 2020	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Nov. 12, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Oct. 02, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BAKER, JORDAN A
Law Office Assigned: LAW OFFICE 130

File Location

Current Location: INTENT TO USE SECTION
Date in Location: Nov. 16, 2021

Assignment Abstract Of Title Information

Summary

Total Assignments: 1
Applicant: IMVU, Inc.

Assignment 1 of 1

Conveyance: CHANGE OF NAME
Reel/Frame: 7445/0168
Pages: 4
Date Recorded: Oct. 06, 2021
Supporting Documents: assignment-tm-7445-0168.pdf

Assignor

Name: IMVU, INC.
Execution Date: Mar. 15, 2021
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Assignee

Name: TOGETHER LABS, INC.
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE
Address: 1001 MARSHALL ST., SUITE 100
REDWOOD CITY, CALIFORNIA 94063

Correspondent

Correspondent Name: MITESH PATEL
Correspondent Address: 70 S 1ST ST
SAN JOSE, CA 95113

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Extension of Time

Proceeding Number: 90223222
Filing Date: Apr 28, 2021
Status: Terminated
Status Date: Oct 07, 2021
Interlocutory Attorney:

Defendant

Name: IMVU, Inc.
Correspondent Address: GAIL M. HASHIMOTO
HOPKINS & CARLEY
70 SO. FIRST ST.,, THE LETITIA BLDG.
SAN JOSE CA UNITED STATES , 95113

Correspondent e-mail:	trademark@hopkinscarley.com , mpatel@hopkinscarley.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
VCOIN	Notice of Allowance - Issued	90223222	

Potential Opposer(s)

Name:	Thomvest Seed Capital Inc.
Correspondent Address:	/DOUGLAS T. JOHNSON/ MILLER & MARTIN PLLC SUITE 1200, 832 GEORGIA AVE., ATTN: TRADEMARK PARALEGAL CHATTANOOGA TN UNITED STATES , 37402
Correspondent e-mail:	doug.johnson@millermartin.com , trademarknotices@millermartin.com

Prosecution History

Entry Number	History Text	Date	Due Date
6	EXT GRANTED	Jul 29, 2021	
5	FINAL 60-DAY REQUEST TO EXT TIME TO OPPOSE	Jul 28, 2021	
4	EXT GRANTED	May 31, 2021	
3	ADD'L 60-DAY REQUEST TO EXT TIME TO OPPOSE	May 31, 2021	
2	EXT GRANTED	Apr 28, 2021	
1	FIRST 30-DAY REQUEST TO EXT TIME TO OPPOSE	Apr 28, 2021	

Exhibit B-3

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Mark: VCOIN

VCOIN

US Serial Number: 90223186

Application Filing Date: Sep. 29, 2020

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:

LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: Notice of Allowance (NOA) sent (issued) to the applicant. Applicant must file a Statement of Use or Extension Request within six months of the NOA issuance date.

Status Date: Nov. 16, 2021

Publication Date: Mar. 30, 2021**Notice of Allowance Date:**Nov. 16, 2021

Mark Information

Mark Literal Elements: VCOIN

Standard Character Claim: No

Mark Drawing Type: 3 - AN ILLUSTRATION DRAWING WHICH INCLUDES WORD(S)/ LETTER(S)/NUMBER(S)

Description of Mark: The mark consists of a mirrored check mark with a horizontal trapezoid above the right side all enclosed in a circle to the left of the wording "VCOIN" in all capital letters.

Design Search Code(s): 24.17.15 - Check marks
26.01.21 - Circles that are totally or partially shaded.
26.13.02 - Quadrilaterals (single line or multiple line); Plain single or multiple line quadrilaterals

Related Properties Information

International Registration Number: 1580673

International Application(s) /Registration(s) Based on this Property: A0103159/1580673

Goods and Services

Note:
The following symbols indicate that theÂ registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Downloadable virtual goods, namely, computer programs featuring digital tokens for use in online virtual worlds and computer games; Downloadable computer programs and computer software for electronic transfer of digital tokens; Downloadable computer programs and computer software to facilitate the use of blockchain to execute and record transactions; Downloadable computer software platforms for developing, building, and operating distributed applications

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

For: Issuance of tokens of value, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic transfer of a virtual currency, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic processing of electronic payments via a global computer network; Cryptocurrency payment and trading services, namely, issuance of digital tokens with cryptographic protocols used to operate and build applications and blockchains on decentralized and centralized computer platforms and as a method of payment for goods and services

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: TOGETHER LABS, INC.

Owner Address: 1001 MARSHALL ST., SUITE 100
REDWOOD CITY, CALIFORNIA UNITED STATES 94063

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Lynn M. Humphreys

Docket Number: 36134-255

Attorney Primary Email Address: trademark@hopkinscarley.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Lynn M. Humphreys
HOPKINS & CARLEY
70 S 1ST ST
SAN JOSE, CALIFORNIA UNITED STATES 95113

Phone: 4082869800

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 31, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 31, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 31, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Dec. 31, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 31, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 31, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Nov. 16, 2021	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Oct. 13, 2021	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Oct. 07, 2021	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Apr. 28, 2021	EXTENSION OF TIME TO OPPOSE RECEIVED	
Mar. 30, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 30, 2021	PUBLISHED FOR OPPOSITION	
Mar. 10, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 22, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	

Feb. 22, 2021	ASSIGNED TO EXAMINER	81878
Nov. 13, 2020	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Nov. 12, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Oct. 02, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BAKER, JORDAN A
Law Office Assigned: LAW OFFICE 130

File Location

Current Location: INTENT TO USE SECTION
Date in Location: Nov. 16, 2021

Assignment Abstract Of Title Information

Summary

Total Assignments: 1
Applicant: IMVU, Inc.

Assignment 1 of 1

Conveyance: CHANGE OF NAME
Reel/Frame: 7445/0168
Pages: 4
Date Recorded: Oct. 06, 2021
Supporting Documents: assignment-tm-7445-0168.pdf

Assignor

Name: IMVU, INC.
Execution Date: Mar. 15, 2021
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE

Assignee

Name: TOGETHER LABS, INC.
Legal Entity Type: CORPORATION
State or Country Where Organized: DELAWARE
Address: 1001 MARSHALL ST., SUITE 100
REDWOOD CITY, CALIFORNIA 94063

Correspondent

Correspondent Name: MITESH PATEL
Correspondent Address: 70 S 1ST ST
SAN JOSE, CA 95113

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 1

Type of Proceeding: Extension of Time

Proceeding Number: 90223186
Filing Date: Apr 28, 2021
Status: Terminated
Status Date: Oct 07, 2021
Interlocutory Attorney:

Defendant

Name: IMVU, Inc.
Correspondent Address: GAIL M. HASHIMOTO
HOPKINS & CARLEY
70 SO. FIRST ST.,, THE LETITIA BLDG.
SAN JOSE CA UNITED STATES , 95113

Correspondent e-mail: trademark@hopkinscarley.com , mpatel@hopkinscarley.com

Associated marks

Mark	Application Status	Serial Number	Registration Number
VCOIN	Notice of Allowance - Issued	90223186	

Potential Opposer(s)

Name: Thomvest Seed Capital Inc.

Correspondent Address: DOUGLAS T. JOHNSON
MILLER & MARTIN PLLC
SUITE 1200, 832 GEORGIA AVE., ATTN: TRADEMARK PARALEGAL
CHATTANOOGA TN UNITED STATES , 37402

Correspondent e-mail: doug.johnson@millermartin.com , trademarknotices@millermartin.com

Prosecution History

Entry Number	History Text	Date	Due Date
6	EXT GRANTED	Jul 29, 2021	
5	FINAL 60-DAY REQUEST TO EXT TIME TO OPPOSE	Jul 28, 2021	
4	EXT GRANTED	May 31, 2021	
3	ADD'L 60-DAY REQUEST TO EXT TIME TO OPPOSE	May 31, 2021	
2	EXT GRANTED	Apr 28, 2021	
1	FIRST 30-DAY REQUEST TO EXT TIME TO OPPOSE	Apr 28, 2021	

Exhibit B-4

Generated on: This page was generated by TSDR on 2022-01-12 18:16:18 EST

Mark: THE REAL VCOIN

THE REAL VCOIN

US Serial Number: 90223125

Application Filing Date: Sep. 29, 2020

Register: Principal

Mark Type: Trademark, Service Mark

TM5 Common Status Descriptor:

LIVE/APPLICATION/Published for Opposition

A pending trademark application has been examined by the Office and has been published in a way that provides an opportunity for the public to oppose its registration.

Status: Notice of Allowance (NOA) sent (issued) to the applicant. Applicant must file a Statement of Use or Extension Request within six months of the NOA issuance date.

Status Date: May 25, 2021

Publication Date: Mar. 30, 2021**Notice of Allowance Date:**May 25, 2021

Mark Information

Mark Literal Elements: THE REAL VCOIN

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:
The following symbols indicate that theÂ registrant/owner has amended the goods/services:

- Brackets [..] indicate deleted goods/services;
- Double parenthesis ((..)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Downloadable virtual goods, namely, computer programs featuring digital tokens for use in online virtual worlds and computer games; Downloadable computer programs and computer software for electronic transfer of digital tokens; Downloadable computer programs and computer software to facilitate the use of blockchain to execute and record transactions; Downloadable computer software platforms for developing, building, and operating distributed applications

International Class(es): 009 - Primary Class

U.S Class(es): 021, 023, 026, 036, 038

Class Status: ACTIVE

Basis: 1(b)

For: Issuance of tokens of value, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic transfer of a virtual currency, namely, digital tokens for use by members of an on-line community via a global computer network; Providing electronic processing of electronic payments via a global computer network; Cryptocurrency payment and trading services, namely, issuance of digital tokens with cryptographic protocols used to operate and build applications and blockchains on decentralized and centralized computer platforms and as a method of payment for goods and services

International Class(es): 036 - Primary Class

U.S Class(es): 100, 101, 102

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: No

Currently Use: No

Filed ITU: Yes

Currently ITU: Yes

Filed 44D:	No	**Currently 44E:**	No
Filed 44E:	No	**Currently 66A:**	No
Filed 66A:	No	**Currently No Basis:**	No
Filed No Basis:	No		

Current Owner(s) Information

Owner Name: TOGETHER LABS, INC.

Owner Address: 1001 MARSHALL ST., SUITE 100
REDWOOD CITY, CALIFORNIA UNITED STATES 94063

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Lynn M. Humphreys

Docket Number: 36134-277

Attorney Primary Email Address: trademark@hopkinscarley.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: Lynn M. Humphreys
HOPKINS & CARLEY
70 S 1ST ST
SAN JOSE, CALIFORNIA UNITED STATES 95113

Phone: 4082869800

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Dec. 31, 2021	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Dec. 31, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Dec. 31, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Dec. 31, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Dec. 31, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 31, 2021	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Dec. 01, 2021	CASE ASSIGNED TO INTENT TO USE PARALEGAL	71034
Nov. 23, 2021	TEAS EXTENSION RECEIVED	
Oct. 13, 2021	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
Jul. 12, 2021	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jul. 12, 2021	TEAS WITHDRAWAL OF ATTORNEY RECEIVED-FIRM RETAINS	
Jul. 12, 2021	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jul. 12, 2021	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
May 25, 2021	NOA E-MAILED - SOU REQUIRED FROM APPLICANT	
Mar. 30, 2021	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Mar. 30, 2021	PUBLISHED FOR OPPOSITION	
Mar. 10, 2021	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Feb. 22, 2021	APPROVED FOR PUB - PRINCIPAL REGISTER	
Feb. 22, 2021	ASSIGNED TO EXAMINER	81878
Nov. 13, 2020	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Oct. 02, 2020	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: BAKER, JORDAN A

Law Office Assigned: LAW OFFICE 130

File Location

Current Location:	INTENT TO USE SECTION	**Date in Location:**	May 25, 2021

Assignment Abstract Of Title Information

Summary

Total Assignments:	1	**Applicant:**	IMVU, Inc.

Assignment 1 of 1

Conveyance:	CHANGE OF NAME		
Reel/Frame:	7445/0168	**Pages:**	4
Date Recorded:	Oct. 06, 2021		
Supporting Documents:	assignment-tm-7445-0168.pdf		

Assignor

Name:	IMVU, INC.	**Execution Date:**	Mar. 15, 2021
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	DELAWARE

Assignee

Name:	TOGETHER LABS, INC.		
Legal Entity Type:	CORPORATION	**State or Country Where Organized:**	DELAWARE
Address:	1001 MARSHALL ST., SUITE 100 REDWOOD CITY, CALIFORNIA 94063		

Correspondent

Correspondent Name:	MITESH PATEL
Correspondent Address:	70 S 1ST ST SAN JOSE, CA 95113

Domestic Representative - Not Found

Exhibit C

Department of State: Division of Corporations

Allowable Characters

HOME

Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

File Number:	**3950686**	Incorporation Date / Formation Date:	**10/22/2020** (mm/dd/yyyy)
Entity Name:	**KADRE HOLDINGS, INC.**		
Entity Kind:	**Corporation**	Entity Type:	**General**
Residency:	**Domestic**	State:	**DELAWARE**

REGISTERED AGENT INFORMATION

Name:	**INCORPORATING SERVICES, LTD.**		
Address:	**3500 S DUPONT HWY**		
City:	**DOVER**	County:	**Kent**
State:	**DE**	Postal Code:	**19901**
Phone:	**302-531-0855**		

Additional Information is available for a fee. You can retrieve Status for a fee of $10.00 or more detailed information including current franchise tax assessment, current filing history and more for a fee of $20.00.

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