

ESTTA Tracking number: **ESTTA987996**

Filing date: **07/16/2019**

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

**Petition for Cancellation**

Notice is hereby given that the following party has filed a petition to cancel the registration indicated below.

**Petitioner Information**

Name	Sybo ApS		
Entity	Limited Liability Company	Citizenship	Denmark
Address	Jorcks Passage 1 A, 4 KÅbenhavn, DK-1162 DENMARK		

Attorney information	John D. Cook Barclay Damon LLP 125 E. Jefferson Street Syracuse, NY 13202 UNITED STATES ip@barclaydamon.com, jcook@barclaydamon.com, ecomin- olli@barclaydamon.com, kmorrison@barclaydamon.com no phone number provided
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**Registration Subject to Cancellation**

Registration No.	5579026	Registration date	10/09/2018
Registrant	Sybo International LLC 105 Infinity Way Mountain View, CA 94043 UNITED STATES Email: sybosales@gmail.com		

**Goods/Services Subject to Cancellation**

Class 035. First Use: 2016/01/10 First Use In Commerce: 2016/01/10 Goods and services in the class that are subject to cancellation: Retail store services featuring a wide variety of consumer goods of others;
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**Grounds for Cancellation**

Other	Partial Cancellation and/or Modification; 15 U.S.C. 1068
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Attachments	Petition to Cancel Reg No 5579026 -- SYBO stylized - 7.16.19 Final with Exhibits .pdf(2169405 bytes )
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Signature	/ Kaleigh P. Morrison /
Name	Kaleigh P. Morrison

Date	07/16/2019
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re U.S. Reg. No. 5,579,026  
Trademark: SYBO  
Registered: October 9, 2019

**Sybo ApS,**

**Petitioner,**

**v.**

**Sybo International LLC,**

**Registrant.**

**Cancellation No.** \_\_\_\_\_

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**PETITION FOR PARTIAL CANCELLATION AND/OR MODIFICATION**

Sybo ApS (“Petitioner”), a foreign limited liability company organized and existing under the laws of Denmark, and located and doing business at Jorcks Passage 1 A, 4 København K Denmark 1162, believes it will be damaged by the continued registration of the mark SYBO (stylized) shown in Registration No. 5,579,026 (the “SYBO Int’l Mark”), issued on October 9, 2019, to and currently owned by Sybo International LLC (“Registrant”), and hereby petitions the Board to partially cancel and/or otherwise restrict or modify the services specified in the SYBO Int’l Mark pursuant to 15 U.S.C. § 1068 and allow Petitioner’s mark to proceed to registration in accordance with 37 C.F.R. § 2.111(b).

As grounds for its Petition for partial cancellation, Petitioner, through its undersigned counsel, alleges as follows:

1. Petitioner is the owner of U.S. Serial No. 88/088,325 (“Petitioner’s ’325 Application”), for the mark SYBO, filed on August 22, 2018 and published for opposition on February 5, 2019, for use in connection with “Apparatus for recording, transmission or reproduction of sound or images; prerecorded magnetic data carriers featuring computer games; blank recording discs; pre-recorded recording discs featuring computer games and films and movies featuring characters from computer games; compact discs, DVDs and other digital recording media featuring computer games or films and movies featuring characters from computer games; mechanisms for coin-operated apparatus; calculating machines, computers; computer games software; computer software programs for games, including computer games, video games and electronic games for use on mobile phones, tablet computers and wireless communication devices; computer game software, including recorded and interactive computer game programs and computer game programs downloaded via the internet; downloadable application software with games for computers, tablet computers, mobile phones and wireless communication devices; not pre-recorded blank USB flash drives; USB chargers; power units and packs in the nature of batteries; selfie sticks used as smartphone accessories; films, exposed, including motion pictures, tv-films and animated cartoons; downloadable films, including motion pictures, tv-films and animated cartoons in the field of comedy, adventure and fantasy; tablet covers; covers for mobile phones; bags adapted for laptops; mouse pads; computer mice, including wireless computer mice; 3D glasses; smart glasses, namely, wearable computer devices; cameras for photography; webcams; loudspeakers; digital video recorders; joy sticks for use with computers, other than for video games; spectacles; sunglasses; cases for spectacles and sunglasses” in International Class 9; “Providing of training in the field of electronic computer games; entertainment, namely, providing an on-line computer game; organizing and arranging

sporting and cultural activities; provision of on-line computer games; providing on-line computer games; arranging of games, namely, arranging live, interactive computer games; computer game services provided on-line from a computer network; electronic games services, namely, provision of computer games on-line or by means of a global computer network; providing interactive multi-player computer games via the internet and electronic communication networks; educational services, namely, provision of instruction relating to computer programming; training services in the field of computer software; providing on-line information in the field of computer gaming entertainment; providing information on-line relating to computer games and computer enhancements for games; entertainment services, namely, providing information to game players about the ranking of their scores of games through the web sites; rental of electronic game equipment; entertainment by film, namely, displaying a series of films; services for the production, presentation or rental of films, including motion pictures, TV films and animated cartoons; organisation of electronic game competitions, including via the internet; entertainment services, namely, fan club services” in International Class 41; and “Design and development of computer hardware and software; computer programming of computer games; design, development, testing, implementation, maintenance, adaption, up-dating and repair of computer game software; web site hosting services and software as a service (SaaS) services namely, hosting software for use by others for use in computer games and rental of computer software, including software for computer games; computer games software consultancy; providing temporary use of web-based software for computer games; providing temporary use of web-based software applications for computer games; providing temporary use of non-downloadable software applications accessible via a website in the field of computer games software” in International Class 42. Attached as **Exhibit**

1 is a copy of the USPTO TSDR Extract showing the current status of Petitioner's '325 Application.

2. Petitioner also owns U.S. Application Serial No. 79/247,901 ("Petitioner's '901 Application"), filed on September 3, 2018 for the mark SYBO in connection with "Paper and cardboard; printed matter, namely, paper signs, books, manuals, curricula, newsletters, magazines, informational cards and brochures in the field of computer games; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials, namely, artists' pens, pencils, pastels and brushes; paintbrushes; instructional and teaching material except apparatus, in the field of computer games; printers' type; printing blocks; books in the field of computer games; computer game hint books; comics; drawings; posters; calendars; notebooks; diaries, including pocket diaries; photo albums and collectors' albums; colouring books; pen and pencil cases; pencils; ball pens; India ink pens; pencil sharpeners; rubber erasers; rulers, namely, drawing rulers; pads in the nature of stationery; bookbindings; gift wrap paper; instruction sheets in the field of computer games; manuals for instructional purposes in the field of computer games; stickers in the nature of stationery; decalcomania; notepaper; cards and envelopes in the nature of stationery" in International Class 16; "Clothing, namely, shirts, blouses, T-shirts, tops, sweaters, jeans, pants, shorts, coats, jackets, dresses, skirts, shirts, rainwear, hosiery, nightwear, underwear, ties, belts, scarves, gloves, socks and stockings; footwear, headgear, namely, hats and caps; sportswear, namely, skating outfits, jogging outfits and running suits; sports shoes; bathwraps in the nature of clothing; costumes for use in children's dress up play" in International Class 25; and "Games and playthings, namely, tabletop games, building games, trading card games, educational card games, party games, arcade games, manipulative games and board games; gymnastic and sporting articles, namely,

sleds, bob-sleighs and springboards; video game apparatus, namely, joysticks and interactive remote control units; handheld computer games, namely, handheld game consoles; arcade video game machines; electronic games, namely, arcade-type electronic video games; amusement video game machines; slot machines in the nature of gaming machines; battery-powered computer games with LCD screen; controllers for game consoles; video game joysticks; handheld units for playing electronic games and video games; games relating to fictional characters, namely, role playing games; toy action figurines; playsets for action figures; action figure toys; toy figures; clothing for toy figures; playing pieces in the nature of miniatures for use in games; remote control toys, namely, cars, race cars, airplanes, boats and trains; electronic action and learning toys; skateboards, roller skates and in-line roller skates; bags specially adapted for sports equipment; bags for skateboards; costume masks being children's playthings; protective knee and elbow pads and guards for skateboarding” in International Class 28 (collectively, “Petitioner’s Goods”). Attached is a copy of the USPTO TSDR Extract showing the current status of Petitioner’s ’901 Application as **Exhibit 2**.

3. An Office Action issued in connection with Petitioner’s ’901 Application on January 18, 2019 which cited the SYBO Int’l Mark as a basis for refusal to register Petitioner’s ’901 Application under Trademark Act Section 2(d), 15 U.S.C. § 1052(d) because of an alleged likelihood of confusion between Petitioner’s Application and the SYBO Int’l Mark. A copy of the Office Action is attached as **Exhibit 3**.

4. According to USPTO records, the SYBO Int’l Mark was registered on October 8, 2018 to Sybo International LLC with an address of 105 Infinity Way, Mountain View, California 94043. Attached as **Exhibit 4** is a copy of the USPTO TSDR Extract for the Sybo Int’l Mark.

5. The SYBO Int'l Mark is registered in connection with "Retail outlets featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; Retail store services featuring a wide variety of consumer goods of others; Retail store services featuring Refrigeration, Heating, and Cooking equipment; Wholesale and retail store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; On-line wholesale store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine" (collectively, the "SYBO Int'l Services") in International Class 35.

6. Upon information and belief, Registrant utilizes the SYBO Int'l Mark in connection with some of the SYBO Int'l Services in furtherance of its business as a professional restaurant equipment supplier.

7. Petitioner has been and continues to be damaged by the SYBO Int'l Mark because Petitioner's '901 Application is refused registration based on the alleged likelihood of confusion with the registered SYBO Int'l Mark.

#### **Ground for Partial Cancellation**

#### **The SYBO Int'l Goods and Services are Unreasonably Broad and Indefinite**

8. Petitioner repeats and re-alleges every allegation set forth in the foregoing paragraphs, as if fully set forth herein.

9. Upon information and belief, the SYBO Int'l Services are overly broad and indefinite, and as a result, do not accurately describe the specific nature of goods and services offered under the SYBO Int'l Mark as required in T.M.E.P. §1402.01.

10. Upon information and belief, the Examiner based the refusal of Petitioner's '901 Application on a likelihood of confusion with the following SYBO Int'l Services: "Retail store services featuring a wide variety of consumer goods of others" (the "Conflicting Services").

11. Upon information and belief, the Conflicting Services, are overly broad, indefinite, and should be deleted or clarified to sufficiently specify the type or nature of the "consumer goods" of others, that Registrant features as part of its retail store services and result in a more specific identification.

12. Upon information and belief, there is no actual likelihood of confusion between Petitioner's Mark and the SYBO Int'l Mark in the marketplace or otherwise because the SYBO Int'l Services and Petitioner's Goods are provided in vastly different industries through different channels of trade.

13. Upon information and belief, consumers will seek out Petitioner's Goods and the SYBO Int'l Services for unrelated purposes and are therefore highly unlikely to be confused as to the source of the goods and services provided under the respective marks.

14. Petitioner, through its undersigned counsel, has attempted multiple times to request consent to register Petitioner's '901 Application from Registrant ahead of filing this Petition for Partial Cancellation in light of Petitioner's belief there is no likelihood of confusion between Petitioner's Mark and the SYBO Int'l Mark. Attached are copies and screenshots of the unanswered correspondence sent to Registrant as **Exhibit 5**.

15. Upon information and belief, the entry of a restriction, limitation, modification, or partial cancellation of the Conflicting Services will more accurately reflect the services provided by Registrant under the SYBO Int'l Mark.

16. Petitioner's attempt to register its SYBO mark is being impaired by the overly broad description of services, namely, the Conflicting Services, in the registration of the SYBO Int'l Mark. In view of the overly broad and indefinite Conflicting Services, Petitioner submits that the Sybo Int'l Mark should be partially cancelled.

17. The entry of a restriction or clarification in the identification of the SYBO Int'l Services, more specifically, clarification of the nature of type of "consumer goods" intended by the nature of the language "a wide variety of consumer goods" or deletion of this language in its entirety will avoid a likelihood of confusion refusal that currently exists with regard to Petitioner's '901 Application and allow Petitioner's '901 Application to proceed to registration.

Petitioner reserves the right to amend this Petition to allege other claims in the event discovery of information indicates an appropriate amendment.

#### **Relief Requested**

WHEREFORE, Petitioner prays and respectfully requests the Board exercise its equity power and partially cancel, restrict, or modify the identification of the SYBO Int'l Services in U.S. Reg. No. 5,579,026 to read as follows (**amendments in bold**):

"Retail outlets featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; [~~delete: Retail store services featuring a wide variety of consumer goods of others;~~] Retail store services featuring Refrigeration,

Heating, and Cooking equipment; Wholesale and retail store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; On-line wholesale store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine.”

Please recognize John D. Cook, Elizabeth A. Cominolli, and Kaleigh P. Morrison, and the law firm Barclay Damon LLP, as attorneys for Petitioner in connection with this cancellation proceeding. Please address all correspondence regarding this proceeding to John D. Cook at Barclay Damon LLP, 1270 Avenue of the Americas, Suite 600, New York, New York 10020.

Respectfully submitted,

Dated: July 16, 2019

By \_\_\_\_\_

John D. Cook  
Elizabeth A. Cominolli  
Kaleigh P. Morrison

**BARCLAY DAMON LLP**  
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New York, New York 10020  
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*Attorneys for Petitioner, Sybo ApS*

# **EXHIBIT 1**

Generated on: This page was generated by TSDR on 2019-07-10 16:23:32 EDT

Mark: SYBO

SYBO

US Serial Number: 88088325

Application Filing Date: Aug. 22, 2018

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Trademark, Service Mark

Status: Application has been published for opposition. The opposition period begins on the date of publication.

Status Date: Jun. 17, 2019

Publication Date: Feb. 05, 2019

## Mark Information

Mark Literal Elements: SYBO

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

Translation: The wording "SYBO" has no meaning in a foreign language.

## Foreign Information

Foreign Registration Number: 016085698

Foreign Registration Date: Mar. 14, 2017

Foreign Application/Registration Country: EUROPEAN UNION

Foreign Expiration Date: Nov. 25, 2026

## Goods and Services

### Note:

The following symbols indicate that the 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:** Apparatus for recording, transmission or reproduction of sound or images; prerecorded magnetic data carriers featuring computer games; blank recording discs; pre-recorded recording discs featuring computer games and films and movies featuring characters from computer games; compact discs, DVDs and other digital recording media featuring computer games or films and movies featuring characters from computer games; mechanisms for coin-operated apparatus; calculating machines, computers; computer games software; computer software programs for games, including computer games, video games and electronic games for use on mobile phones, tablet computers and wireless communication devices; computer game software, including recorded and interactive computer game programs and computer game programs downloaded via the internet; downloadable application software with games for computers, tablet computers, mobile phones and wireless communication devices; not pre-recorded blank USB flash drives; USB chargers; power units and packs in the nature of batteries; selfie sticks used as smartphone accessories; films, exposed, including motion pictures, tv-films and animated cartoons; downloadable films, including motion pictures, tv-films and animated cartoons in the field of comedy, adventure and fantasy; tablet covers; covers for mobile phones; bags adapted for laptops; mouse pads; computer mice, including wireless computer mice; 3D glasses; smart glasses, namely, wearable computer devices; cameras for photography; webcams; loudspeakers; digital video recorders; joy sticks for use with computers, other than for video games; spectacles; sunglasses; cases for spectacles and sunglasses

International Class(es): 009 - Primary Class

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

Class Status: ACTIVE

Basis: 1(b) 44(e)

**For:** Providing of training in the field of electronic computer games; entertainment, namely, providing an on-line computer game; organizing and arranging sporting and cultural activities; provision of on-line computer games; providing on-line computer games; arranging of

games, namely, arranging live, interactive computer games; computer game services provided on-line from a computer network; electronic games services, namely, provision of computer games on-line or by means of a global computer network; providing interactive multi-player computer games via the internet and electronic communication networks; educational services, namely, provision of instruction relating to computer programming; training services in the field of computer software; providing on-line information in the field of computer gaming entertainment; providing information on-line relating to computer games and computer enhancements for games; entertainment services, namely, providing information to game players about the ranking of their scores of games through the web sites; rental of electronic game equipment; entertainment by film, namely, displaying a series of films; services for the production, presentation or rental of films, including motion pictures, TV films and animated cartoons; organisation of electronic game competitions, including via the internet; entertainment services, namely, fan club services

**International Class(es):** 041 - Primary Class

**U.S Class(es):** 100, 101, 107

**Class Status:** ACTIVE

**Basis:** 1(b) 44(e)

**For:** Design and development of computer hardware and software; computer programming of computer games; design, development, testing, implementation, maintenance, adaption, up-dating and repair of computer game software; web site hosting services and software as a service (SaaS) services namely, hosting software for use by others for use in computer games and rental of computer software, including software for computer games; computer games software consultancy; providing temporary use of web-based software for computer games; providing temporary use of web-based software applications for computer games; providing temporary use of non-downloadable software applications accessible via a website in the field of computer games software

**International Class(es):** 042 - Primary Class

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

**Class Status:** ACTIVE

**Basis:** 1(b) 44(e)

## Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** No

**Amended Use:** No

**Filed ITU:** Yes

**Currently ITU:** Yes

**Amended ITU:** No

**Filed 44D:** No

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** Yes

**Currently 44E:** Yes

**Amended 44E:** No

**Filed 66A:** No

**Currently 66A:** No

**Filed No Basis:** No

**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** SYBO ApS

**Owner Address:** Jorcks Passage 1 A, 4  
København K 1162  
DENMARK

**Legal Entity Type:** anpartsselskab (aps)

**State or Country** DENMARK  
**Where Organized:**

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Elizabeth A. Cominoli

**Docket Number:** SYBO - US

**Attorney Primary Email Address:** [ip@barclaydamon.com](mailto:ip@barclaydamon.com)

**Attorney Email Authorized:** Yes

### Correspondent

**Correspondent Name/Address:** Elizabeth A. Cominoli  
Barclay Damon LLP  
1270 Avenue of the Americas, Suite 600  
New York, NEW YORK 10020  
UNITED STATES

**Phone:** 212-784-5800

**Fax:** 212-784-5777

**Correspondent e-mail:** [ip@barclaydamon.com](mailto:ip@barclaydamon.com)

**Correspondent e-mail Authorized:** Yes

**Domestic Representative - Not Found**

## Prosecution History

Proceeding

Date	Description	Number
Jun. 16, 2019	EXTENSION OF TIME TO OPPOSE PROCESS - TERMINATED	
Jun. 04, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jun. 04, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Mar. 01, 2019	EXTENSION OF TIME TO OPPOSE RECEIVED	
Feb. 05, 2019	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Feb. 05, 2019	PUBLISHED FOR OPPOSITION	
Jan. 16, 2019	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Dec. 31, 2018	ASSIGNED TO LIE	70138
Dec. 11, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
Dec. 11, 2018	EXAMINER'S AMENDMENT ENTERED	88888
Dec. 11, 2018	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
Dec. 11, 2018	EXAMINERS AMENDMENT E-MAILED	6328
Dec. 11, 2018	EXAMINERS AMENDMENT -WRITTEN	93983
Dec. 07, 2018	ASSIGNED TO EXAMINER	93983
Aug. 30, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 25, 2018	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information

**TM Attorney:** REID, MONICA R

**Law Office Assigned:** LAW OFFICE 126

### File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Jun. 17, 2019

## Proceedings

### Summary

**Number of Proceedings:** 1

### Type of Proceeding: Extension of Time

**Proceeding Number:** [88088325](#)

**Filing Date:** Mar 01, 2019

**Status:** Terminated

**Status Date:** Jun 16, 2019

**Interlocutory Attorney:**

### Defendant

**Name:** SYBO ApS

**Correspondent Address:** MARY FRANCES LOVE

ASPIRE IP  
444 EAST PIKES PEAK AVE. SUITE 105  
COLORADO SPRINGS CO , 80903

**Correspondent e-mail:** [maryfran@aspireip.com](mailto:maryfran@aspireip.com) , [sherri@aspireip.com](mailto:sherri@aspireip.com)

### Associated marks

Mark	Application Status	Serial Number	Registration Number
SYBO	Published For Opposition	<a href="#">88088325</a>	

### Potential Opposer(s)

**Name:** Sybo Corporation

**Correspondent Address:** Elliott Alderman, Esq.

The Alderman Law Office  
1455 Pennsylvania Avenue, NW, Suite 400  
Washington DC , 20004  
UNITED STATES

**Correspondent e-mail:** [elliott@thecontentlawyer.com](mailto:elliott@thecontentlawyer.com)

**Prosecution History**

<b>Entry Number</b>	<b>History Text</b>	<b>Date</b>	<b>Due Date</b>
1	FIRST 90-DAY REQUEST TO EXT TIME TO OPPOSE	Mar 01, 2019	
2	EXT GRANTED	Mar 01, 2019	

# **EXHIBIT 2**

Generated on: This page was generated by TSDR on 2019-07-10 16:15:43 EDT

Mark: SYBO

# SYBO

US Serial Number: 79247901

Application Filing Date: Sep. 03, 2018

Register: Principal

Mark Type: Trademark

Status: A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

Status Date: Jan. 18, 2019

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## Mark Information

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Mark Literal Elements: SYBO

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

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## Related Properties Information

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International Registration Number: 1440269

International Registration Date: Sep. 03, 2018

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## Goods and Services

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**Note:**

The following symbols indicate that the 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:** Paper and cardboard; printed matter, namely, paper signs, books, manuals, curricula, newsletters, magazines, informational cards and brochures in the field of computer games; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials, namely, artists' pens, pencils, pastels and brushes; paintbrushes; instructional and teaching material except apparatus, in the field of computer games; printers' type; printing blocks; books in the field of computer games; computer game hint books; comics; drawings; posters; calendars; notebooks; diaries, including pocket diaries; photo albums and collectors' albums; colouring books; pen and pencil cases; pencils; ball pens; India ink pens; pencil sharpeners; rubber erasers; rulers, namely, drawing rulers; pads in the nature of stationery; bookbindings; gift wrap paper; instruction sheets in the field of computer games; manuals for instructional purposes in the field of computer games; stickers in the nature of stationery; decalomania; notepaper; cards and envelopes in the nature of stationery

International Class(es): 016 - Primary Class

U.S Class(es): 002, 005, 022, 023, 029, 037, 038, 050

Class Status: ACTIVE

Basis: 66(a)

**For:** Clothing, namely, shirts, blouses, T-shirts, tops, sweaters, jeans, pants, shorts, coats, jackets, dresses, skirts, shirts, rainwear, hosiery, nightwear, underwear, ties, belts, scarves, gloves, socks and sockings; footwear, headgear, namely, hats and caps; sportswear, namely, skating outfits, jogging outfits and running suits; sports shoes; bathwraps in the nature of clothing; costumes for use in children's dress up play

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 66(a)

**For:** Games and playthings, namely, tabletop games, building games, trading card games, educational card games, party games, arcade

games, manipulative games and board games; gymnastic and sporting articles, namely, sleds, bob-sleighs and springboards; video game apparatus, namely, joysticks and interactive remote control units; handheld computer games, namely, handheld game consoles; arcade video game machines; electronic games, namely, arcade-type electronic video games; amusement video game machines; slot machines in the nature of gaming machines; battery-powered computer games with LCD screen; controllers for game consoles; video game joysticks; hand-held units for playing electronic games and video games; games relating to fictional characters, namely, role playing games; toy action figurines; playsets for action figures; action figure toys; toy figures; clothing for toy figures; playing pieces in the nature of miniatures for use in games; remote control toys, namely, cars, race cars, airplanes, boats and trains; electronic action and learning toys; skateboards, roller skates and in-line roller skates; bags specially adapted for sports equipment; bags for skateboards; costume masks being children's playthings; protective knee and elbow pads and guards for skateboarding

**International Class(es):** 028 - Primary Class

**U.S Class(es):** 022, 023, 038, 050

**Class Status:** ACTIVE

**Basis:** 66(a)

## Basis Information (Case Level)

**Filed Use:** No

**Currently Use:** No

**Amended Use:** No

**Filed ITU:** No

**Currently ITU:** No

**Amended ITU:** No

**Filed 44D:** No

**Currently 44D:** No

**Amended 44D:** No

**Filed 44E:** No

**Currently 44E:** No

**Amended 44E:** No

**Filed 66A:** Yes

**Currently 66A:** Yes

**Filed No Basis:** No

**Currently No Basis:** No

## Current Owner(s) Information

**Owner Name:** SYBO ApS

**Owner Address:** Jorcks Passage 1 A, 4.  
DK-1162 Copenhagen K  
DENMARK

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** DENMARK

## Attorney/Correspondence Information

### Attorney of Record

**Attorney Name:** Elizabeth A. Cominoli

**Docket Number:** 3097606

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## Prosecution History

Date	Description	Proceeding Number
Mar. 01, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Mar. 01, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	

Feb. 08, 2019	REFUSAL PROCESSED BY IB	
Jan. 18, 2019	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	
Jan. 18, 2019	REFUSAL PROCESSED BY MPU	67445
Jan. 08, 2019	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
Jan. 07, 2019	NON-FINAL ACTION WRITTEN	91164
Jan. 04, 2019	APPLICATION FILING RECEIPT MAILED	
Dec. 31, 2018	ASSIGNED TO EXAMINER	91164
Dec. 31, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Dec. 27, 2018	LIMITATION FROM ORIGINAL APPLICATION ENTERED	67445
Dec. 20, 2018	SN ASSIGNED FOR SECT 66A APPL FROM IB	

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## International Registration Information (Section 66a)

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<p><b>International Registration Number:</b> 1440269</p> <p><b>Intl. Registration Status:</b> REQUEST FOR EXTENSION OF PROTECTION PROCESSED</p> <p><b>Notification of Designation Date:</b> Dec. 20, 2018</p> <p><b>International Registration Renewal Date:</b> Sep. 03, 2028</p> <p><b>First Refusal Flag:</b> Yes</p>	<p><b>International Registration Date:</b> Sep. 03, 2018</p> <p><b>Date of International Registration Status:</b> Dec. 20, 2018</p> <p><b>Date of Automatic Protection:</b> Jun. 20, 2020</p>
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## TM Staff and Location Information

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### TM Staff Information

<b>TM Attorney:</b> EISNACH, MICHAEL PATRI	<b>Law Office Assigned:</b> LAW OFFICE 104
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### File Location

<b>Current Location:</b> TMEG LAW OFFICE 104 - EXAMINING ATTORNEY ASSIGNED	<b>Date in Location:</b> Jan. 07, 2019
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# **EXHIBIT 3**

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)  
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION  
SERIAL NO. 79247901

MARK: SYBO

**\*79247901\***

**CORRESPONDENT**

**ADDRESS:**

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Ø

DENMARK

**APPLICANT:** SYBO  
ApS

**CLICK HERE TO RESPOND TO THIS  
LETTER:**

[http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp)

**CORRESPONDENT'S  
REFERENCE/DOCKET  
NO:**

N/A

**CORRESPONDENT E-  
MAIL ADDRESS:**

**OFFICE ACTION**

**INTERNATIONAL REGISTRATION NO. 1440269**

**STRICT DEADLINE TO RESPOND TO THIS NOTIFICATION:** TO AVOID ABANDONMENT OF THE REQUEST FOR EXTENSION OF PROTECTION OF THE INTERNATIONAL REGISTRATION, THE USPTO MUST RECEIVE A COMPLETE RESPONSE TO THIS PROVISIONAL FULL REFUSAL NOTIFICATION **WITHIN 6 MONTHS** OF THE "DATE ON WHICH THE NOTIFICATION WAS SENT TO WIPO (MAILING DATE)" LOCATED ON THE WIPO COVER LETTER ACCOMPANYING THIS NOTIFICATION.

In addition to the Mailing Date appearing on the WIPO cover letter, a holder (hereafter "applicant") may confirm this Mailing Date using the USPTO's Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. To do so, enter the U.S. application serial number for this application and then select "Documents." The Mailing Date used to calculate the response deadline for this provisional full refusal is the "Create/Mail Date" of the "IB-1rst Refusal Note."

This is a **PROVISIONAL FULL REFUSAL** of the request for extension of protection of the mark in the above-referenced U.S. application. See 15 U.S.C. §1141h(c). See below in this notification (hereafter "Office action") for details regarding the provisional full refusal.

The referenced application has been reviewed by the assigned trademark examining attorney. Applicant must respond timely and completely to the issue(s) below. 15 U.S.C. §1062(b); 37 C.F.R. §§2.62(a), 2.65(a); TMEP §§711, 718.03.

**SUMMARY OF ISSUES:**

- Section 2(d) Refusal
- Section 2(d) Refusal – Class 25
- Identification of Goods

**SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION**

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 5579026. Trademark

Act Section 2(d), 15 U.S.C. §1052(d); see TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. See 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Only those factors that are “relevant and of record” need be considered. *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 1382, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (citing *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1241, 73 USPQ2d 1350, 1353 (Fed. Cir. 2004)); see *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. See *In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

Here, applicant seeks registration of **SYBO** in connection with the flowing goods:

Cass 16: Paper and cardboard; printed matter, namely, paper signs, books, manuals, curricula, newsletters, magazines, informational cards and brochures in the field of computer games; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials, namely, artists' pens, pencils, pastels and brushes; paintbrushes; instructional and teaching material except apparatus, in the field of computer games; printers' type; printing blocks; books in the field of computer games; computer game hint books; comics; drawings; posters; calendars; notebooks; diaries, including pocket diaries; photo albums and collectors' albums; colouring books; pen and pencil cases; pencils; ball pens; India ink pens; pencil sharpeners; rubber erasers; rulers, namely, drawing rulers; pads in the nature of stationery; bookbindings; gift wrap paper; instruction sheets in the field of computer games; manuals for instructional purposes in the field of computer games; stickers in the nature of stationery; decalcomania; notepaper; cards and envelopes in the nature of stationery

Class 25: Clothing, namely, shirts, blouses, T-shirts, tops, sweaters, jeans, pants, shorts, coats, jackets, dresses, skirts, shirts, rainwear, hosiery, nightwear, underwear, ties, belts, scarves, gloves, socks and stockings; footwear, headgear, namely, hats and caps; sportswear, namely, skating outfits, jogging outfits and running suits; sports shoes; bathwraps in the nature of clothing; costumes for use in children's dress up play

Class 28: Games and playthings, namely, tabletop games, building games, trading card games, educational card games, party games, arcade games, manipulative games and board games; gymnastic and sporting articles, namely, sleds, bob-sleighs and springboards; video game apparatus, namely, joysticks and interactive remote control units; handheld computer games, namely, handheld game consoles; arcade video game machines; electronic games, namely, arcade-type electronic video games; amusement video game machines; slot machines in the nature of gaming machines; battery-powered computer games with LCD screen; controllers for game consoles; video game joysticks; hand-held units for playing electronic games and video games; games relating to fictional characters, namely, role playing games; toy action figurines; playsets for action figures; action figure toys; toy figures; clothing for toy figures; playing pieces in the nature of miniatures for use in games; remote control toys, namely, cars, race cars, airplanes, boats and trains; electronic action and learning toys; skateboards, roller skates and in-line roller skates; bags specially adapted for sports equipment; bags for skateboards; costume masks being children's playthings; protective knee and elbow pads and guards for skateboarding

The mark in the cited registration is **SYBO and design**, which is registered in connection with “Retail store services featuring a wide variety of consumer goods of others,” among other services.

### Comparison of the Marks

Marks are compared in their entirety for similarities in appearance, sound, connotation, and commercial impression. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); TMEP §1207.01(b)-(b)(v). “Similarity in any one of these elements may be sufficient to find the marks confusingly similar.” *In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1746 (TTAB 2018) (citing *In re Davia*, 110 USPQ2d 1810, 1812 (TTAB 2014)); TMEP §1207.01(b).

Marks may be confusingly similar in appearance where similar terms or phrases or similar parts of terms or phrases appear in the compared marks and create a similar overall commercial impression. See *Crocker Nat’l Bank v. Canadian Imperial Bank of Commerce*, 228 USPQ 689, 690-91 (TTAB 1986), *aff’d sub nom. Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat’l Ass’n*, 811 F.2d 1490, 1495, 1 USPQ2d 1813, 1817 (Fed. Cir. 1987) (finding COMMASH and COMMUNICASH confusingly similar); *In re Corning Glass Works*, 229 USPQ 65, 66 (TTAB 1985) (finding CONFIRM and CONFIRMCELLS confusingly similar); *In re Pellerin Milnor Corp.*, 221 USPQ 558, 560 (TTAB 1983) (finding MILTRON and MILLTRONICS confusingly similar); TMEP §1207.01(b)(ii)-(iii).

In this case, the word portions of the marks are identical in appearance, sound, connotation, and commercial impression; therefore, the addition of a design element does not obviate the similarity of the marks in this case. *See In re Shell Oil Co.*, 992 F.2d 1204, 1206, 26 USPQ2d 1687, 1688 (Fed. Cir. 1993); TMEP §1207.01(c)(ii).

### **Relatedness of the Goods and Services**

The compared goods and/or services need not be identical or even competitive to find a likelihood of confusion. *See On-line Careline Inc. v. Am. Online Inc.*, 229 F.3d 1080, 1086, 56 USPQ2d 1471, 1475 (Fed. Cir. 2000); *Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000); TMEP §1207.01(a)(i). They need only be “related in some manner and/or if the circumstances surrounding their marketing are such that they could give rise to the mistaken belief that [the goods and/or services] emanate from the same source.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 1369, 101 USPQ2d 1713, 1722 (Fed. Cir. 2012) (quoting *7-Eleven Inc. v. Wechsler*, 83 USPQ2d 1715, 1724 (TTAB 2007)); TMEP §1207.01(a)(i).

The attached Internet evidence, consisting of screen shots from J Crew, Anthropologie, and Williams Sonoma, establishes that companies that sell a wide variety of goods of others also make and sell their own goods under the same mark as the retail services are provided under. Thus, applicant’s and registrant’s goods and/or services are considered related for likelihood of confusion purposes. *See, e.g., In re Davey Prods. Pty Ltd.*, 92 USPQ2d 1198, 1202-04 (TTAB 2009); *In re Toshiba Med. Sys. Corp.*, 91 USPQ2d 1266, 1268-69, 1271-72 (TTAB 2009).

The use of similar marks on or in connection with both products and retail-store services has been held likely to cause confusion where the evidence showed that the retail-store services featured the same type of products. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1051 (Fed. Cir. 2018) (holding the use of similar marks for various clothing items, including athletic uniforms, and for retail shops featuring sports team related clothing and apparel likely to cause confusion); *In re House Beer, LLC*, 114 USPQ2d 1073, 1078 (TTAB 2015) (holding the use of identical marks for beer and for retail store services featuring beer likely to cause confusion); *In re Thomas*, 79 USPQ2d 1021, 1023 (TTAB 2006) (holding the use of similar marks for jewelry and for retail-jewelry and mineral-store services likely to cause confusion); TMEP §1207.01(a)(ii).

Thus, upon encountering applicant’s and registrant’s marks, consumers are likely to be confused and mistakenly believe that the respective goods and services emanate from a common source. Accordingly, applicant’s mark must be refused registration under Section 2(d) of the Lanham Act.

*Applicant should note the following additional ground for refusal.*

### **SECTION 2(d) REFUSAL – LIKELIHOOD OF CONFUSION – CLASS 25**

*The stated refusal refers to International Class 25 only and does not bar registration in the other classes.*

Registration of the applied-for mark is refused because of a likelihood of confusion with the mark in U.S. Registration No. 4828873. Trademark Act Section 2(d), 15 U.S.C. §1052(d); *see* TMEP §§1207.01 *et seq.* See the attached registration.

Trademark Act Section 2(d) bars registration of an applied-for mark that is so similar to a registered mark that it is likely consumers would be confused, mistaken, or deceived as to the commercial source of the goods and/or services of the parties. *See* 15 U.S.C. §1052(d). Likelihood of confusion is determined on a case-by-case basis by applying the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973) (called the “*du Pont* factors”). *In re i.am.symbolic, llc*, 866 F.3d 1315, 1322, 123 USPQ2d 1744, 1747 (Fed. Cir. 2017). Only those factors that are “relevant and of record” need be considered. *M2 Software, Inc. v. M2 Commc’ns, Inc.*, 450 F.3d 1378, 1382, 78 USPQ2d 1944, 1947 (Fed. Cir. 2006) (citing *Shen Mfg. Co. v. Ritz Hotel Ltd.*, 393 F.3d 1238, 1241, 73 USPQ2d 1350, 1353 (Fed. Cir. 2004)); *see In re Inn at St. John’s, LLC*, 126 USPQ2d 1742, 1744 (TTAB 2018).

Although not all *du Pont* factors may be relevant, there are generally two key considerations in any likelihood of confusion analysis: (1) the similarities between the compared marks and (2) the relatedness of the compared goods and/or services. *See In re i.am.symbolic, llc*, 866 F.3d at 1322, 123 USPQ2d at 1747 (quoting *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1164-65, 64 USPQ2d 1375, 1380 (Fed. Cir. 2002)); *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1103, 192 USPQ 24, 29 (C.C.P.A. 1976) (“The fundamental inquiry mandated by [Section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.”); TMEP §1207.01.

Here, applicant seeks registration of **SYBO** in connection with “Clothing, namely, shirts, blouses, T-shirts, tops, sweaters, jeans, pants, shorts, coats, jackets, dresses, skirts, shirts, rainwear, hosiery, nightwear, underwear, ties, belts, scarves, gloves, socks and stockings; footwear, headgear, namely, hats and caps; sportswear, namely, skating outfits, jogging outfits and running suits; sports shoes; bathwraps in the nature of clothing;

costumes for use in children's dress up play.”

The mark in the cited registration is **SYBO**, which is registered in connection with “Clothing, namely, t-shirts, shirts, hats, sweatshirts, pants, shorts, jackets, and wrist bands.”

### **Comparison of the Marks**

In a likelihood of confusion determination, the marks in their entireties are compared for similarities in appearance, sound, connotation, and commercial impression. *In re i.am.symbolic, llc*, 866 F.3d 1315, 1323, 123 USPQ2d 1744, 1748 (Fed. Cir. 2017); *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 1321, 110 USPQ2d 1157, 1160 (Fed. Cir. 2014) (quoting *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 396 F.3d 1369, 1371, 73 USPQ2d 1689, 1691 (Fed. Cir. 2005)); *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973); TMEP §1207.01(b)-(b)(v).

In the present case, applicant’s mark is SYBO and registrant’s mark is SYBO. These marks are identical in appearance, sound, and meaning, “and have the potential to be used . . . in exactly the same manner.” *In re i.am.symbolic, llc*, 116 USPQ2d 1406, 1411 (TTAB 2015), *aff’d*, 866 F.3d 1315, 123 USPQ2d 1744 (Fed. Cir. 2017). Additionally, because they are identical, these marks are likely to engender the same connotation and overall commercial impression when considered in connection with applicant’s and registrant’s respective goods and/or services. *Id.*

Therefore, the marks are confusingly similar.

### **Relatedness of the Goods**

Determining likelihood of confusion is based on the description of the goods and/or services stated in the application and registration at issue, not on extrinsic evidence of actual use. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 1307, 128 USPQ2d 1047, 1052 (Fed. Cir. 2018) (citing *In re i.am.symbolic, llc*, 866 F.3d 1315, 1325, 123 USPQ2d 1744, 1749 (Fed. Cir. 2017)).

In this case, the application uses broad wording to describe its various types of clothing, which presumably encompasses all goods and/or services of the type described, including registrant’s more narrow items of clothing. *See, e.g., In re Solid State Design Inc.*, 125 USPQ2d 1409, 1412-15 (TTAB 2018); *Sw. Mgmt., Inc. v. Ocinomled, Ltd.*, 115 USPQ2d 1007, 1025 (TTAB 2015). Thus, applicant’s and registrant’s goods are legally identical. *See, e.g., In re i.am.symbolic, llc*, 127 USPQ2d 1627, 1629 (TTAB 2018) (citing *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp., Inc.*, 648 F.2d 1335, 1336, 209 USPQ 986, 988 (C.C.P.A. 1981); *Inter IKEA Sys. B.V. v. Akea, LLC*, 110 USPQ2d 1734, 1745 (TTAB 2014); *Baseball Am. Inc. v. Powerplay Sports Ltd.*, 71 USPQ2d 1844, 1847 n.9 (TTAB 2004)).

Additionally, the goods and/or services of the parties have no restrictions as to nature, type, channels of trade, or classes of purchasers and are “presumed to travel in the same channels of trade to the same class of purchasers.” *In re Viterra Inc.*, 671 F.3d 1358, 1362, 101 USPQ2d 1905, 1908 (Fed. Cir. 2012) (quoting *Hewlett-Packard Co. v. Packard Press, Inc.*, 281 F.3d 1261, 1268, 62 USPQ2d 1001, 1005 (Fed. Cir. 2002)). Thus, applicant’s and registrant’s goods and/or services are related.

Thus, upon encountering applicant’s and registrant’s marks, consumers are likely to be confused and mistakenly believe that the respective goods emanate from a common source. Accordingly, applicant’s mark must be refused registration under Section 2(d) of the Lanham Act.

If applicant responds to the refusals, applicant must also respond to the requirements set forth below.

### **IDENTIFICATION OF GOODS AND SERVICES**

In Class 16, the wording “artists' materials, namely, . . . brushes” in the identification of goods is indefinite and must be clarified to indicate the specific type of brush(es). *See* 37 C.F.R. §2.32(a)(6); TMEP §1402.01. Applicant must amend this wording to specify the common commercial or generic name of the goods. *See* TMEP §1402.01. If the goods have no common commercial or generic name, applicant must describe the product, its main purpose, and its intended uses. *See id.* Similarly, the wording “instructional and teaching material except” is indefinite and must be clarified to indicate the specific nature of the good(s). Applicant may indicate that the goods are printed or indicate specific good(s). Finally in Class 16, the wording “collector’s albums” is indefinite and must be clarified to indicate the specific type of album.

In Class 25, the wording “tops” is indefinite and must be clarified to indicate the goods are articles of clothing. Similarly, the wording “hats and caps” is indefinite and must be clarified to make clear that the cap are articles of clothing. In addition, the wording “shirts” appears twice in the Class 25 identification. Applicant must delete one entry or make that entry more narrow. Finally in Class 25, the wording “sockings” is unclear and must be clarified.

Applicant may adopt the following identification, if accurate (changes in bold):

Class 16: Paper and cardboard; printed matter, namely, paper signs, books, manuals, curricula, newsletters, magazines, informational cards and brochures in the field of computer games; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials, namely, artists' pens, pencils, pastels and **{indicate type e.g., paint}** brushes; paintbrushes; **printed** instructional and teaching material except apparatus, in the field of computer games; printers' type; printing blocks; books in the field of computer games; computer game hint books; comics; drawings; posters; calendars; notebooks; diaries, including pocket diaries; photo albums and collectors' albums **in the nature of {indicate specific type of album e.g., stamp albums, scrapbook album}**; colouring books; pen and pencil cases; pencils; ball pens; India ink pens; pencil sharpeners; rubber erasers; rulers, namely, drawing rulers; pads in the nature of stationery; bookbindings; gift wrap paper; instruction sheets in the field of computer games; manuals for instructional purposes in the field of computer games; stickers in the nature of stationery; decalomania; notepaper; cards and envelopes in the nature of stationery

Class 25: Clothing, namely, shirts, blouses, T-shirts, tops **as clothing**, sweaters, jeans, pants, shorts, coats, jackets, dresses, skirts, ~~shirts~~, rainwear, hosiery, nightwear, underwear, ties, belts, scarves, gloves, socks and **stockings**; footwear, headgear, namely, hats and caps **being headwear**; sportswear, namely, skating outfits, jogging outfits and running suits; sports shoes; bathwraps in the nature of clothing; costumes for use in children's dress up play

Class 28: is definite

An applicant may only amend an identification to clarify or limit the goods and/or services, but not to add to or broaden the scope of the goods and/or services. 37 C.F.R. §2.71(a); *see* TMEP §1904.02(c)(iv). In an application filed under Trademark Act Section 66(a), the scope of the identification for purposes of permissible amendments is limited by the international class assigned by the International Bureau of the World Intellectual Property Organization (International Bureau). 37 C.F.R. §2.85(f); TMEP §§1402.07(a), 1904.02(c). If an applicant amends an identification to a class other than that assigned by the International Bureau, the amendment will not be accepted because it will exceed the scope and those goods and/or services will no longer have a basis for registration under U.S. law. TMEP §§1402.01(c), 1904.02(c).

In addition, in a Section 66(a) application, an applicant may not change the classification of goods and/or services from that assigned by the International Bureau in the corresponding international registration. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1402.01(c). Further, in a multiple-class Section 66(a) application, an applicant may not transfer goods and/or services from one existing international class to another. 37 C.F.R. §2.85(d); TMEP §§1401.03(d), 1402.01(c).

For assistance with identifying and classifying goods and services in trademark applications, please see the USPTO's online searchable [U.S. Acceptable Identification of Goods and Services Manual](#). *See* TMEP §1402.04.

## **TRADEMARK COUNSEL**

Because of the legal technicalities and strict deadlines involved in the USPTO application process, applicant may wish to hire a qualified U.S. attorney specializing in trademark matters to represent applicant in this process and provide legal advice. Although the undersigned trademark examining attorney is permitted to help an applicant understand the contents of an Office action as well as the application process in general, no USPTO attorney or staff is permitted to give an applicant legal advice or statements about an applicant's legal rights. TMEP §§705.02, 709.06.

For attorney referral information, applicant may consult the [American Bar Association's Consumers' Guide to Legal Help](#) or an online directory of legal professionals, such as [FindLaw®](#). The USPTO, however, may not assist an applicant in the selection of an attorney. 37 C.F.R. §2.11.

Please note that foreign attorneys, other than duly authorized Canadian attorneys, are not permitted to represent applicants before the USPTO. *See* 37 C.F.R. §§2.17(e), 11.14(c), (e); TMEP §602.03-.03(c). The only attorneys who may practice before the USPTO in trademark matters are (1) attorneys in good standing with a bar of the highest court of any U.S. state, the District of Columbia, Puerto Rico, and other U.S. commonwealths/territories; and (2) duly authorized Canadian agents/attorneys. *See* 37 C.F.R. §§2.17(e), 11.14(a), (c); TMEP §602.

## **ASSISTANCE**

Please call or email the assigned trademark examining attorney with questions about this Office action. Although the trademark examining attorney cannot provide legal advice or statements about applicant's rights, the trademark examining attorney can provide applicant with additional explanation about the refusal(s) and/or requirement(s) in this Office action. *See* TMEP §§705.02, 709.06. Although the USPTO does not accept emails as responses to Office actions, emails can be used for informal communications and will be included in the application record. *See* 37 C.F.R. §§2.62(c), 2.191; TMEP §§304.01-.02, 709.04-.05.

**WHO IS PERMITTED TO RESPOND TO THIS PROVISIONAL FULL REFUSAL:** Any response to this provisional refusal must be personally signed by an individual applicant, all joint applicants, or someone with legal authority to bind a juristic applicant (e.g., a corporate officer or general partner). 37 C.F.R. §§2.62(b), 2.193(e)(2)(ii); TMEP §712.01. If applicant hires a qualified U.S. attorney to respond on his or her behalf, then the attorney must sign the response. 37 C.F.R. §§2.193(e)(2)(i), 11.18(a); TMEP §§611.03(b), 712.01. Qualified U.S. attorneys include those in good standing with a bar of the highest court of any U.S. state, the District of Columbia, Puerto Rico, and other U.S.

commonwealths or U.S. territories. *See* 37 C.F.R. §§2.17(a), 2.62(b), 11.1, 11.14(a); TMEP §§602, 712.01. Additionally, for all responses, the proper signatory must personally sign the document or personally enter his or her electronic signature on the electronic filing. *See* 37 C.F.R. §2.193(a); TMEP §§611.01(b), 611.02. The name of the signatory must also be printed or typed immediately below or adjacent to the signature, or identified elsewhere in the filing. 37 C.F.R. §2.193(d); TMEP §611.01(b).

In general, foreign attorneys are not permitted to represent applicants before the USPTO (e.g., file written communications, authorize an amendment to an application, or submit legal arguments in response to a requirement or refusal). *See* 37 C.F.R. §11.14(c), (e); TMEP §§602.03-.03(b), 608.01.

**DESIGNATION OF DOMESTIC REPRESENTATIVE:** The USPTO encourages applicants who do not reside in the United States to designate a domestic representative upon whom any notice or process may be served. TMEP §610; *see* 15 U.S.C. §§1051(e), 1141h(d); 37 C.F.R. §2.24(a)(1)-(2). Such designations may be filed online at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

/Michael Eisnach/  
Examining Attorney  
Law Office 104  
(571) 272-2592  
Michael.Eisnach@uspto.gov

**TO RESPOND TO THIS LETTER:** Go to [http://www.uspto.gov/trademarks/teas/response\\_forms.jsp](http://www.uspto.gov/trademarks/teas/response_forms.jsp). Please wait 48-72 hours from the issue/ mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail [TEAS@uspto.gov](mailto:TEAS@uspto.gov). For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

**All informal e-mail communications relevant to this application will be placed in the official application record.**

**WHO MUST SIGN THE RESPONSE:** It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

**PERIODICALLY CHECK THE STATUS OF THE APPLICATION:** To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at <http://tsdr.uspto.gov/>. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov) or call 1-800-786-9199. For more information on checking status, see <http://www.uspto.gov/trademarks/process/status/>.

**TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS:** Use the TEAS form at <http://www.uspto.gov/trademarks/teas/correspondence.jsp>.

# WILLIAMS SONOMA

CALIFORNIA

Registry | Stores | eCatalog | Blog | Recipes | Wine Club | Gifts | Food Gifts | New Brands | Open Kitchen | Garden | Valentine's Day

SEARCH

COOKWARE | COOKS' TOOLS | CUTLERY | ELECTRICS | BAKEWARE | FOOD | TABLETOP & BAR | HOMEKEEPING | OUTDOOR | [SALE](#) | WILLIAMS SONOMA HOME

**20% Off One Item\***  
\*FREE FAST SHIPPING Use Code **UPICK**

**Over 50% Off**  
Instant Pot Duo Plus\*

**Up to 75% Off**  
Semi-Annual Clearance Event\*

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- [Global](#)
- [GreenPan™](#)
- [Hestan](#)
- [iXL](#)

THE WORLD OF  
**WILLIAMS SONOMA**

**THOUGHTFULLY DESIGNED.**  
To create our collection, we harnessed our 60 years of experience in the kitchen. Every item is designed by our in-house engineers in San Francisco.

**THOROUGHLY TESTED.**  
Each product goes through dozens of trials in our Test Kitchens to get it just right. We consider every detail to deliver exactly what cooks want most.

**MADE WITH CARE.**  
Drawing on our manufacturing knowledge, we turn to the best makers in the world to craft each piece with quality materials.

**WATCH THE VIDEO**

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CUTLERY >



FOOD >



TABLETOP >



LINENS >

## Williams Sonoma Cookware

Our exclusive cookware lines are a direct result of years of experience using the highest-quality pots and pans from around the world. Designed to be the very best for the home cook, these are the only cookware collections we'd put our name on.

[SHOP WILLIAMS SONOMA COOKWARE >](#)



WATCH THE VIDEO

### WILLIAMS SONOMA PROFESSIONAL THERMO-CLAD STAINLESS-STEEL

Our top-rated Thermo-Clad Stainless-Steel Cookware has a proprietary aluminum core that conducts heat 35% more efficiently than competitors. Also features ergonomic



WATCH THE VIDEO

### PROFESSIONAL STAINLESS-STEEL NONSTICK

We designed our professional tri-ply cookware to combine the beauty of stainless steel with the efficient heat conduction of aluminum.

BACK TO TOP



**AN INSIDE LOOK**  
Browse Our New eCatalog >

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- Cookware Sets
- Square Searing Cookware Sets
- Fry Pans & Skillets
- Sauté Pans
- Saucepans & Saucepans
- Grill Pans & Griddles
- Dutch Ovens & Braisers
- Stock & Muffin Pots
- Roasting Pans
- Ovens
- Specialty Cookware
- Breakfast Pans
- Pressure Cookers
- Tea Kettles
- Woks
- Tapines & Paella Pans
- Outdoor Cookware
- Pot Racks

SHOP BY MATERIAL

- Stainless-Steel Cookware
- Cast-Iron Cookware
- Nordic Cookware
- Ceramic Nonstick Cookware
- Copper Cookware
- Induction Cookware

FEATURED

- New Arrivals
- Healthy Nonstick Cookware
- European Cookware
- Cookware Under \$100
- Top Rated
- Top Gifts
- Registry Favorites

SHOP BY BRAND

- Williams Sonoma
- Signature Thermo-Clad™ Stainless-Steel
- Professional Nonstick
- Professional Stainless-Steel Nordic
- Professional Copper
- Professional Ceramic Nonstick
- Hydro-Anodized Copper-Core Dutch-Oven-Style
- Cast-Iron
- Open Kitchen
- Specialty



ThermoClad™ Stainless-Steel Professional Stainless-Steel Nordic Professional Copper Professional Ceramic Nonstick Professional Nonstick Cast-Iron Open Kitchen

LIMITED TIME ONLY!  
**20% Off Fry Pans** >  
 + FREE FAST SHIPPING  
\*Some exclusions apply.

Filter By: PRICE RANGE ▾ RATING ▾

WILLIAMS SONOMA THERMO-CLAD™ STAINLESS-STEEL COOKWARE



**QUICKLOOK**  
 Williams Sonoma Signature Thermo-Clad™ Stainless-Steel 10-Piece Cookware Set  
 ★★★★★ (57)  
 Sugg. Price \$1,500  
 Our Price \$1,199.95



**QUICKLOOK**  
 Williams Sonoma Signature Thermo-Clad™ Stainless-Steel 15-Piece Cookware Set  
 ★★★★★ (1)  
 \$1,699.95



**QUICKLOOK**  
 Williams Sonoma Signature Thermo-Clad™ Stainless-Steel Nonstick One-Ristote Pan  
 ★★★★★ (11)  
 Sugg. Price \$99.95  
 Our Price \$79.95  
 Special Savings + Free Fast Shipping!



COMPARISON CHART  
 Which Williams Sonoma Collection Is Right For You?  
 VIEW NOW >

BACK TO TOP

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 AN INSIDE LOOK  
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EXTRA 9% OFF MEN'S SALE STYLES\*

EXTRA 10% OFF GIRLS' SALE STYLES\*

EXTRA 10% OFF BOYS' SALE STYLES\*

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Great finds, great style, handpicked from all around the world.

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BRANDS WE LOVE

### Ariana Bohling®

This Brooklyn-based shoe label teamed up with skilled Peruvian artisans to dream up a cozy collection of slippers crafted from supersoft alpaca fur that's ethically sourced and cruelty-free.

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BRANDS WE LOVE

Boarding Pass NYC™

From luggage tags to grooming kits (and everything in between), this Brooklyn-based label's travel-inspired goods are all designed and made in the USA.

[Shop now](#)

BRANDS WE LOVE

Fisher + Baker™

We love when form meets function. Started by a furniture designer and an outdoorsman, this menswear label crafts premium, classic pieces made with high-performance materials that can withstand the elements—and the test of time.

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More Brands We Love





BRANDS WE LOVE

**Boarding Pass NYC™**

From luggage tags to grooming kits (and everything in between), this Brooklyn-based label's travel-inspired goods are all designed and made in the USA.

[Shop now](#)

BRANDS WE LOVE

**Fisher + Baker™**

We love when form meets function. Started by a furniture designer and an outdoorsman, this menswear label crafts premium, classic pieces made with high-performance materials that can withstand the elements—and the test of time.

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More Brands We Love

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EXTRA 10% OFF MEN'S SALE STYLES\*

EXTRA 10% OFF GIRLS' SALE STYLES\*

EXTRA 10% OFF BOYS' SALE STYLES\*

# WOMEN'S SHOP ALL

**HIDE FILTERS**

Shop All  
**Women (341)**  
 Men  
 Gifts  
 Boys  
 Home

**CATEGORY**

- Accessories (375)
- Bags (126)
- Beauty (100)
- Blazers (65)
- Brands We Love (1052)
- Coats & Jackets (117)
- Dresses (114)
- Dresses & Jumpsuits (210)

+ Show 16 More

**SIZE**

**COLOR**

**PRICE**

**TRENDING**

**BRAND**

**DISCOUNT**

- 70% And Above (45)
- 40% - 70% Off (99)

SORT BY

1 of 57 VIEW 120

Women X Clear all



**NEW**  
Puff-sleeve top in leopard print cotton poplin  
\$69.50



**NEW**  
Colored tee-sleeve popover shirt in stripe  
\$79.50



**BEST SELLER**  
Point Sur short-sleeve ruffle top in panted dot  
\$79.50  
available in 3 colors





limited time

THE HOUSE & HOME REFRESH

**25% OFF**

furniture, décor + select bedding

[SHOP THE EVENT](#)

Shop By Brand

#	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T	U	V	W	X	Y	Z																						
#																																																
<b>A</b>	Abeego (1)	ABLE (1)	Able Coexistence (2)	Ara (1)	Adeyln Ree (2)	Sabriana Paper (7)	AG Jeans (29)	Ageml (later) (5)	Aidan Mattox (2)	Zimda Wilcox (3)	Arami + Kin (23)	Alice 1913 (1)	Alberta (1)	Aloha (1)	Alidomercina (4)	Alpexel (2)	Ariaia (5)	Arianda Blair Daxheimer (2)	Amber Seese (17)	AMO (12)	Along The Flowers (2)	Ahaa (1)	Anamx (3)	Anche (15)	Angelal (2)	Angiopose (3)	Annie Melhous (1)	Anna Sui (4)	Alyna Westerlund (3)	Anna-Lise Schmidt (1)	Anne Smith For Culturalabel (1)	Antelope (1)	Archive New York (31)	Ariana Bohling (3)	Ariana Ott (1)	Artfuly Walls (34)	Arthur Kleckner (4)	Artis (2)	Artisan Quilts by Anthropologie (57)	AS by DF (1)	As You Are (1)	Ashley Mary (1)	Ashley Mary for Framebridge (2)	Aspen Bay (1)	ASTR The Label (1)	Atelier Choue (1)	Atelier Paulin (2)	Attelle Dexter (1)

New Arrivals

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- Room Decor
- Stationery, Tech & Travel
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- Rugs
- Curtains
- Lighting
- Wall Art & Mirrors
- Wallpaper
- Hardware
- Organizing & Storage

Anthropologie 4 X

CLEAR ALL

Featured

1 / 1



Mineral Dessert Plates

\$16.00

Filter by:

Brand 1 Selected

Anthropologie

Conversations by A...

Alberta (1)

Alicia Galer (4)

Allense (1)

All Across Africa (3)

All Roads Design (3)

Filter by:

**Brand**

- 52 Conversations by A...
- Alberte (1)
- Alicia Galar (4)
- Alimrose (1)
- All Across Africa (2)
- All Roads Design (3)
- Among The Flowers (2)
- Anna Westerlund (2)
- Anthropologie (1)
- Apriet (2)
- Artfully Wells (27)

**Color** +

**Price** +

VIEW ALL FILTERS



Veris Dinner Plate  
\$18.00



Waterfall Wine Glasses, Set of 4  
\$64.00



Old Havana Dinner Plates, Set of 4  
\$72.00



Amira Napkins, Set of 4  
\$49.00



Print: Jan 7, 2019

86475354

**DESIGN MARK**

**Serial Number**

86475354

**Status**

REGISTERED

**Word Mark**

SYBO

**Standard Character Mark**

Yes

**Registration Number**

4828873

**Date Registered**

2015/10/06

**Type of Mark**

TRADEMARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(4) STANDARD CHARACTER MARK

**Owner**

Hamilton, Michael INDIVIDUAL UNITED STATES 4190 E La Cara St Long Beach CALIFORNIA 90815

**Owner**

Hamilton, Jesse INDIVIDUAL UNITED STATES 4190 E La Cara St Long Beach CALIFORNIA 90815

**Goods/Services**

Class Status -- ACTIVE. IC 025. US 022 039. G & S: Clothing, namely, t-shirts, shirts, hats, sweatshirts, pants, shorts, jackets, and wrist bands. First Use: 2008/06/30. First Use In Commerce: 2015/08/18.

**Filing Date**

2014/12/09

**Examining Attorney**

DUKOVIC, JOANNA

**SYBO**

**DESIGN MARK**

**Serial Number**

87796190

**Status**

REGISTERED

**Word Mark**

SYBO

**Standard Character Mark**

No

**Registration Number**

5579026

**Date Registered**

2018/10/09

**Type of Mark**

SERVICE MARK

**Register**

PRINCIPAL

**Mark Drawing Code**

(3) DESIGN PLUS WORDS, LETTERS AND/OR NUMBERS

**Owner**

Sybo International LLC LIMITED LIABILITY COMPANY CALIFORNIA 105  
Infinity Way Mountain View CALIFORNIA 94043

**Goods/Services**

Class Status -- ACTIVE. IC 035. US 100 101 102. G & S: Retail outlets featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; Retail store services featuring a wide variety of consumer goods of others; Retail store services featuring Refrigeration, Heating, and Cooking equipment; Wholesale and retail store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; On-line wholesale store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine. First

**Print: Jan 7, 2019**

**87796190**

Use: 2016/01/10. First Use In Commerce: 2016/01/10.

**Prior Registration(s)**

4004446

**Description of Mark**

The mark consists of the word "SYBO", stylized, within a rectangular carrier.

**Colors Claimed**

Color is not claimed as a feature of the mark.

**Filing Date**

2018/02/13

**Examining Attorney**

BATT, JAIME LEE

**SYBO**

# **EXHIBIT 4**

Generated on: This page was generated by TSDR on 2019-07-11 12:11:48 EDT

Mark: SYBO



US Serial Number: 87796190

Application Filing Date: Feb. 13, 2018

US Registration Number: 5579026

Registration Date: Oct. 09, 2018

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Oct. 09, 2018

Publication Date: Jul. 24, 2018

## Mark Information

Mark Literal Elements: SYBO

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 the word "SYBO", stylized, within a rectangular carrier.

Color(s) Claimed: Color is not claimed as a feature of the mark.

Design Search Code(s): 26.11.20 - Rectangles inside one another  
26.11.21 - Rectangles that are completely or partially shaded

## Related Properties Information

Claimed Ownership of US Registrations: 4004446

## Goods and Services

### Note:

The following symbols indicate that the 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:** Retail outlets featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; Retail store services featuring a wide variety of consumer goods of others; Retail store services featuring Refrigeration, Heating, and Cooking equipment; Wholesale and retail store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine; On-line wholesale store services featuring refrigerator, freezer, ice machine, juice machine, Electric refrigerating or freezing showcases, bain marie, soup kettle, coffee maker, chafing dish, electric fryer, electric griddle, waffle maker, cone maker, popcorn machine, hamburger machine, meat processing machine

International Class(es): 035 - Primary Class

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

Class Status: ACTIVE

Basis: 1(a)

First Use: Jan. 10, 2016

Use in Commerce: Jan. 10, 2016

## Basis Information (Case Level)

<b>Filed Use:</b> Yes	<b>Currently Use:</b> Yes	<b>Amended Use:</b> No
<b>Filed ITU:</b> No	<b>Currently ITU:</b> No	<b>Amended ITU:</b> No
<b>Filed 44D:</b> No	<b>Currently 44D:</b> No	<b>Amended 44D:</b> No
<b>Filed 44E:</b> No	<b>Currently 44E:</b> No	<b>Amended 44E:</b> No
<b>Filed 66A:</b> No	<b>Currently 66A:</b> No	
<b>Filed No Basis:</b> No	<b>Currently No Basis:</b> No	

## Current Owner(s) Information

**Owner Name:** Sybo International LLC

**Owner Address:** 105 Infinity Way  
Mountain View, CALIFORNIA 94043  
UNITED STATES

**Legal Entity Type:** LIMITED LIABILITY COMPANY

**State or Country Where Organized:** CALIFORNIA

## Attorney/Correspondence Information

### Attorney of Record - None Correspondent

**Correspondent Name/Address:** SYBO INTERNATIONAL LLC  
105 INFINITY WAY  
MOUNTAIN VIEW, CALIFORNIA 94043  
UNITED STATES

**Phone:** 408-477-9794

### Domestic Representative - Not Found

## Prosecution History

Date	Description	Proceeding Number
Oct. 09, 2018	REGISTERED-PRINCIPAL REGISTER	
Jul. 24, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 24, 2018	PUBLISHED FOR OPPOSITION	
Jul. 04, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
Jun. 13, 2018	ASSIGNED TO LIE	66121
May 30, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 30, 2018	EXAMINER'S AMENDMENT ENTERED	88888
May 30, 2018	NOTIFICATION OF EXAMINERS AMENDMENT E-MAILED	6328
May 30, 2018	EXAMINERS AMENDMENT E-MAILED	6328
May 30, 2018	EXAMINERS AMENDMENT -WRITTEN	93644
May 29, 2018	ASSIGNED TO EXAMINER	93644
Feb. 23, 2018	NOTICE OF DESIGN SEARCH CODE E-MAILED	
Feb. 22, 2018	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 16, 2018	NEW APPLICATION ENTERED IN TRAM	

## TM Staff and Location Information

### TM Staff Information - None File Location

**Current Location:** PUBLICATION AND ISSUE SECTION

**Date in Location:** Oct. 09, 2018

# **EXHIBIT 5**

Message Nuance PDF

Ignore X Delete Reply Reply All Forward Meeting IM More

TULSI To Manager Done Create New

Team E-mail Reply & Delete

Rules OneNote Actions

Move Mark Unread Categorize Follow Up

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Zoom Show/Hide EM Toolbar Properties

Save Attachments Where Filed

Delete Respond Quick Steps Move Tags Editing Zoom iManage

## iManage E-Mail Management

Search for Folder (shortcut) - (Ctrl+9) File Delete Print Private Save Attachments

From: Cominoli, Elizabeth A.  
To: 'cs@sybo.us'  
Cc: IP  
Subject: Request for Consent to Registration of "SYBO" [IWOV-Active.FID2768267]

Sent: Thu 4/11/2019 1:59 PM



Message SYBO - US Ser. 79247901.pdf (30 KB)

Good Afternoon:

I am intellectual property counsel for Sybo ApS, a software and mobile game developer with headquarters in Copenhagen, Denmark. More information on my client's business can be located here: <https://sybogames.com/>. I am writing to you because the U.S. Patent and Trademark Office ("USPTO") has cited Sybo International LLC's registration for the stylized "SYBO" logo (U.S. Reg. 5,579,026) as an initial bar to the registration of my client's application for the mark "SYBO" (U.S. Ser. 79/247,901). A copy of my client's application data taken from the USPTO website is attached for your reference.

The USPTO bases the initial refusal upon the overly broad language recited in Sybo International's registration, which includes retail store services featuring a wide variety of consumer goods of others. However, I have reviewed what I understand to be Sybo International's website (<https://sybo.us/>) and it is apparent that my client and Sybo International operate in very different channels of trade and do not offer the same types of goods or services. Whereas Sybo International is a professional restaurant equipment supplier, my client's business is in designing, producing, and selling game software, mobile gaming applications, and clothing, toys, and stationery products related to said games. Thus, it appears that the potential conflict is merely on paper and given the differences in the goods, trade channels, and likely consumers of the respective goods and services, this conflict does not extend to the actual marketplace.

In view of the foregoing, I respectfully request that Sybo International consent to my client's use and registration of the SYBO mark in connection with its goods and services. I, of course, would prepare and send a draft consent agreement for your review.

I look forward to receiving your prompt reply.

Sincere regards,  
Elizabeth

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Ignore X Reply Reply All Forward IM More Meeting

Junk - Delete

Team E-mail To Manager Done Create New

Reply & Delete

Quick Steps

Move OneNote Actions

Mark Unread Categorize Follow Up

Translate

Find Related Select

Zoom

Show/Hide EM Toolbar Properties

Save Attachments Where Filed iManage

## iManage E-Mail Management

Search for Folder (shortcut) - (Ctrl+9) File Delete Print Private Save Attachments

From:  Cominoli, Elizabeth A.  
To:  'sybosales@gmail.com'  
Cc:  IP  
Subject: Request for Consent to Registration of "SYBO" [WOV-Active.FID2768267]

Sent: Thu 4/11/2019 1:58 PM



Message SYBO - US Ser. 79247901.pdf (30 KB)

Good Afternoon:

I am intellectual property counsel for Sybo ApS, a software and mobile game developer with headquarters in Copenhagen, Denmark. More information on my client's business can be located here: <https://sybogames.com/>. I am writing to you because the U.S. Patent and Trademark Office ("USPTO") has cited Sybo International LLC's registration for the stylized "SYBO" logo (U.S. Reg. 5,579,026) as an initial bar to the registration of my client's application for the mark "SYBO" (U.S. Ser. 79/247,901). A copy of my client's application data taken from the USPTO website is attached for your reference.

The USPTO bases the initial refusal upon the overly broad language recited in Sybo International's registration, which includes retail store services featuring a wide variety of consumer goods of others. However, I have reviewed what I understand to be Sybo International's website (<https://sybo.us/>) and it is apparent that my client and Sybo International operate in very different channels of trade and do not offer the same types of goods or services. Whereas Sybo International is a professional restaurant equipment supplier, my client's business is in designing, producing, and selling game software, mobile gaming applications, and clothing, toys, and stationery products related to said games. Thus, it appears that the potential conflict is merely on paper and given the differences in the goods, trade channels, and likely consumers of the respective goods and services, this conflict does not extend to the actual marketplace.

In view of the foregoing, I respectfully request that Sybo International consent to my client's use and registration of the SYBO mark in connection with its goods and services. I, of course, would prepare and send a draft consent agreement for your review.

I look forward to receiving your prompt reply.

Sincere regards,  
Elizabeth

BARCLAY DAMON<sup>LLP</sup>

Elizabeth A. Cominoli  
Counsel

April 18, 2019

VIA OVERNIGHT MAIL & EMAIL: [sybosales@gmail.com](mailto:sybosales@gmail.com)

Sybo International LLC  
105 Infinity Way  
Mountain View, CA 94043

Re: **Request for consent to Registration of SYBO**

Good Afternoon:

I am intellectual property counsel for Sybo ApS, a software and mobile game developer with headquarters in Copenhagen, Denmark. More information on my client's business can be located here: <https://sybogames.com/>. I am writing to you because the U.S. Patent and Trademark Office ("USPTO") has cited Sybo International LLC's registration for the stylized "SYBO" logo (U.S. Reg. 5,579,026) as an initial bar to the registration of my client's application for the mark "SYBO" (U.S. Ser. 79/247,901). A copy of my client's application data taken from the USPTO website is attached for your reference.

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I look forward to receiving your prompt reply.

Sincere regards,



Elizabeth A. Cominoli

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Mark: SYBO

# SYBO

US Serial Number: 79247901

Application Filing Date: Sep. 03, 2018

Register: Principal

Mark Type: Trademark

**Status:** A non-final Office action has been sent (issued) to the applicant. This is a letter from the examining attorney requiring additional information and/or making an initial refusal. The applicant must respond to this Office action. To view all documents in this file, click on the Trademark Document Retrieval link at the top of this page.

**Status Date:** Jan. 18, 2019

## Mark Information

**Mark Literal Elements:** SYBO

**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:** 1440269

**International Registration Date:** Sep. 03, 2018

## Goods and Services

Note: The following symbols indicate that the 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:** Paper and cardboard; printed matter, namely, paper signs, books, manuals, curricula, newsletters, magazines, informational cards and brochures in the field of computer games; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials, namely, artists' pens, pencils, pastels and brushes; paintbrushes; instructional and teaching material except apparatus, in the field of computer games; printers' type; printing blocks; books in the field of computer games; computer game hint books, comics; drawings; posters; calendars; notebooks; diaries, including pocket diaries; photo albums and collectors' albums; colouring books; pen and pencil cases; pencils; ball pens; India ink pens; pencil sharpeners; rubber erasers; rulers, namely, drawing rulers; pads in the nature of stationery; bookbindings; gift wrap paper; instruction sheets in the field of computer games; manuals for instructional purposes in the field of computer games; stickers in the nature of stationery; decalcomania; notepaper; cards and envelopes in the nature of stationery

**International Class(es):** 016 - Primary Class

**U.S Class(es):** 002, 005, 022, 023, 029, 037, 038, 050

**Class Status:** ACTIVE

**Basis:** 66(a)

**For:** Clothing, namely, shirts, blouses, T-shirts, tops, sweaters, jeans, pants, shorts, coats, jackets, dresses, skirts, shirts, rainwear, hosiery, nightwear, underwear, ties, belts, scarves, gloves, socks and stockings; footwear, headgear, namely, hats and caps; sportswear, namely, skating outfits, jogging outfits and running suits; sports shoes; bathwraps in the nature of clothing; costumes for use in children's dress up play

**International Class(es):** 025 - Primary Class

**U.S Class(es):** 022, 039

**Class Status:** ACTIVE

**Basis:** 66(a)

**For:** Games and playthings, namely, tabletop games, building games, trading card games, educational card games, party games, arcade

games, manipulative games and board games; gymnastic and sporting articles, namely, sleds, bob-sleighs and springboards; video game apparatus, namely, joysticks and interactive remote control units; handheld computer games, namely, handheld game consoles; arcade video game machines; electronic games, namely, arcade-type electronic video games; amusement video game machines; slot machines in the nature of gaming machines; battery-powered computer games with LCD screen; controllers for game consoles; video game joysticks; hand-held units for playing electronic games and video games; games relating to fictional characters, namely, role playing games; toy action figurines; playsets for action figures; action figure toys; toy figures; clothing for toy figures; playing pieces in the nature of miniatures for use in games; remote control toys, namely, cars, race cars, airplanes, boats and trains; electronic action and learning toys; skateboards, roller skates and in-line roller skates; bags specially adapted for sports equipment; bags for skateboards; costume masks being children's playthings; protective knee and elbow pads and guards for skateboarding

International Class(es): 028 - Primary Class

U.S Class(es): 022, 023, 038, 050

Class Status: ACTIVE

Basis: 66(a)

## Basis Information (Case Level)

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

## Current Owner(s) Information

Owner Name: SYBO ApS

Owner Address: Jorcks Passage 1 A, 4.  
DK-1162 Copenhagen K  
DENMARK

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country DENMARK  
Where Organized:

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Elizabeth A. Cominoli

Docket Number: 3097606

Attorney Primary Email Address: [ip@barclaydamon.com](mailto:ip@barclaydamon.com)

Attorney Email Authorized: Yes

### Correspondent

Correspondent Name/Address: Elizabeth A. Cominoli  
Barclay Damon LLP  
1270 Avenue of the Americas, Suite 600  
New York, NEW YORK 10020  
UNITED STATES

Phone: 212-784-5800

Fax: 212-784-5777

Correspondent e-mail: [ip@barclaydamon.com](mailto:ip@barclaydamon.com)

Correspondent e-mail Authorized: Yes

### Domestic Representative

Domestic Representative Name: Barclay Damon LLP

Phone: 212-784-5800

Fax: 212-784-5777

Domestic Representative e-mail: [ip@barclaydamon.com](mailto:ip@barclaydamon.com)

Domestic Representative e-mail Authorized: Yes

## Prosecution History

Date	Description	Proceeding Number
Mar. 01, 2019	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Mar. 01, 2019	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	

Feb. 08, 2019	REFUSAL PROCESSED BY IB	
Jan. 18, 2019	NON-FINAL ACTION MAILED - REFUSAL SENT TO IB	
Jan. 18, 2019	REFUSAL PROCESSED BY MPU	67445
Jan. 08, 2019	NON-FINAL ACTION (IB REFUSAL) PREPARED FOR REVIEW	
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### International Registration Information (Section 66a)

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<b>International Registration Number:</b>	1440269	<b>International Registration Date:</b>	Sep. 03, 2018
<b>Intl. Registration Status:</b>	REQUEST FOR EXTENSION OF PROTECTION PROCESSED	<b>Date of International Registration Status:</b>	Dec. 20, 2018
<b>Notification of Designation Date:</b>	Dec. 20, 2018	<b>Date of Automatic Protection:</b>	Jun. 20, 2020
<b>International Registration Renewal Date:</b>	Sep. 03, 2028		
<b>First Refusal Flag:</b>	Yes		

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### TM Staff and Location Information

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<b>TM Attorney:</b>	EISNACH, MICHAEL PATRI	<b>TM Staff Information</b>	
		<b>Law Office Assigned:</b>	LAW OFFICE 104
<b>Current Location:</b>	TMEG LAW OFFICE 104 - EXAMINING ATTORNEY ASSIGNED	<b>File Location</b>	
		<b>Date in Location:</b>	Jan. 07, 2019

Elizabeth A. Cominoli  
Counsel

April 18, 2019

**VIA OVERNIGHT MAIL & EMAIL: [es@sybo.us](mailto:es@sybo.us)**

Sybo International LLC  
2284 Old Middlefield Way  
Mountain View, CA 94043

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**Basis:** 66(a)

**For:** Clothing, namely, shirts, blouses, T-shirts, tops, sweaters, jeans, pants, shorts, coats, jackets, dresses, skirts, shirts, rainwear, hosiery, nightwear, underwear, ties, belts, scarves, gloves, socks and stockings; footwear, headgear, namely, hats and caps; sportswear, namely, skating outfits, jogging outfits and running suits; sports shoes; bathwraps in the nature of clothing; costumes for use in children's dress up play

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## Basis Information (Case Level)

Filed Use: No

Currently Use: No

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: Yes

Currently 66A: Yes

Filed No Basis: No

Currently No Basis: No

## Current Owner(s) Information

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Owner Address: Jorcks Passage 1 A, 4.  
DK-1162 Copenhagen K  
DENMARK

Legal Entity Type: LIMITED LIABILITY COMPANY

State or Country DENMARK  
Where Organized:

## Attorney/Correspondence Information

### Attorney of Record

Attorney Name: Elizabeth A. Cominoli

Docket Number: 3097606

Attorney Primary Email Address: [ip@barclaydamon.com](mailto:ip@barclaydamon.com)

Attorney Email Authorized: Yes

### Correspondent

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<p><b>International Registration Number:</b> 1440269</p> <p><b>Intl. Registration Status:</b> REQUEST FOR EXTENSION OF PROTECTION PROCESSED</p> <p><b>Notification of Designation Date:</b> Dec. 20, 2018</p> <p><b>International Registration Renewal Date:</b> Sep. 03, 2028</p> <p><b>First Refusal Flag:</b> Yes</p>	<p><b>International Registration Date:</b> Sep. 03, 2018</p> <p><b>Date of International Registration Status:</b> Dec. 20, 2018</p> <p><b>Date of Automatic Protection:</b> Jun. 20, 2020</p>
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### TM Staff and Location Information

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<p><b>TM Attorney:</b> EISNACH, MICHAEL PATRI</p> <p><b>Current Location:</b> TMEG LAW OFFICE 104 - EXAMINING ATTORNEY ASSIGNED</p>	<p style="text-align: center;"><b>TM Staff Information</b></p> <p><b>Law Office Assigned:</b> LAW OFFICE 104</p> <p style="text-align: center;"><b>File Location</b></p> <p><b>Date in Location:</b> Jan. 07, 2019</p>
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