

To: JOHN F. ROLLINS(jfr@rollinsip.com)
Subject: U.S. Trademark Application Serial No. 97087351 - FLAVOR CARTRIDGE - CIRKUL.00178
Sent: April 26, 2023 11:43:20 AM EDT
Sent As: tmng.notices@uspto.gov

Attachments

[screenshot-www-amazon-com-PUR-FC-500G-Flavor-Cartridge-2-Pack-dp-B001973CXU-ref-cm_cr_ar_p_d_product_top-16775336645211](#)
[screenshot-www-cokesolutions-com-coca-cola-freestyle-articles-coca-cola-freestyle-smartpak-cartridges-reduce-waste-html-16775337466001](#)
[Lexis-Flavor Cartridge & Flavored Water.pdf](#)
[Thirst for Water_1.jpg](#)
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[screenshot-ahdictionary-com-word-search-html-16817769160591](#)

United States Patent and Trademark Office (USPTO)
Office Action (Official Letter) About Applicant's Trademark Application

U.S. Application Serial No. 97087351

Mark: FLAVOR CARTRIDGE

Correspondence Address:

John F. Rollins
ROLLINS IP
210 N ELLIS AVENUE
WHEATON IL 60187 UNITED STATES

Applicant: Cirkul, Inc.

Reference/Docket No. CIRKUL.00178

Correspondence Email Address: jfr@rollinsip.com

REQUEST FOR RECONSIDERATION AFTER FINAL ACTION DENIED

Issue date: April 26, 2023

Applicant's request for reconsideration ("Request") is denied. *See* 37 C.F.R. §2.63(b)(3). The trademark examining attorney has carefully reviewed applicant's request and determined the request did not: (1) raise a new issue, (2) resolve all the outstanding issue(s), (3) provide any new or compelling evidence with regard to the outstanding issue(s), or (4) present analysis and arguments that

were persuasive or shed new light on the outstanding issue(s). TMEP §§715.03(a)(ii)(B), 715.04(a).

Accordingly, the Descriptiveness Refusal under Trademark Act Section 2(e)(1) made final in the Office action dated August 9, 2022 is **maintained and continued**. See TMEP §§715.03(a)(ii)(B), 715.04(a).

Applicant's Arguments

In its Request, applicant argues that, "all of the goods identified in each of the three classes for which registration is sought should be considered ... [but the Office Action] does not appear to have considered or analyzed each of the applied-for goods ... separately." Applicant explains that the descriptiveness analysis is different for its bottle closures for storing and dispensing additives to water in Class 020 and bottles with closures for storing and dispensing additives in Class 021 from applicant's flavored beverages in Class 032. Applicant states that the examining attorney has provided, "a blanket rejection of all the goods identified in the application without regard to distinctions among the identified goods." See Request at 5. This is the same argument applicant provided in its communication filed on May 23, 2022: "Applicant respectfully requests that the examining attorney reconsider the applicability of asserted descriptiveness analysis with reference to each class of identified goods. See TMEP §1213." See Response to Office action at 8.

A mark does not need to be merely descriptive of all the goods or services specified in an application. *In re Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012); *In re Zuma Array Ltd.*, 2022 USPQ2d 736, at *5-6 (TTAB 2022). "A descriptiveness refusal is proper 'if the mark is descriptive of any of the [goods or] services for which registration is sought.'" *In re Chamber of Commerce of the U.S.*, 675 F.3d at 1300, 102 USPQ2d at 1219 (quoting *In re Stereotaxis Inc.*, 429 F.3d 1039, 1040, 77 USPQ2d 1087, 1089 (Fed. Cir. 2005)). Thus, applicant's argument fails.

As stated in the prior Office action, applicant's reference to TMEP §1213 to support its assertion that the Trademark Manual of Examining Procedure requires analysis of each of the applied-for goods separately is inapposite. TMEP §1213 pertains to disclaimers, making it inapposite to applicant's arguments. There is no support for applicant's assertion. Thus, applicant's argument fails.

In its Request, applicant requests guidance so that it might propose amendments to the identification of goods that might overcome the descriptiveness refusal.

A more granular analysis will not overcome the descriptiveness of FLAVOR CARTRIDGE in the context of applicant's plastic bottle closures or its plastic water bottles with caps that store and dispense additives or its flavored beverages.

As stated in the prior Office action, the evidence from *The American Heritage Dictionary* shows FLAVOR means, "flavoring"; and CARTRIDGE means, "A small modular unit designed to be inserted into a larger piece of equipment: [e.g.] an ink cartridge; a disposable cartridge of caulking compound." Therefore, the wording merely describes closures or dispensers that are inserted into a larger piece of equipment and used to deliver flavoring. FLAVOR CARTRIDGE also describes a primary feature of applicant's *flavored* waters and related beverages, i.e. the goods feature cartridges to dispense flavor into drinking water.

The trademark examining attorney refers to the Internet website excerpts attached to the prior Office action in which FLAVOR CARTRIDGE and/or FLAVOR and/or CARTRIDGE is used in reference to

goods such as applicant's bottles, closures, dispensers, flavorings and related goods.

According to applicant's own website: "Fill your Cirkul bottle with drinking water and attach the lid. Unwrap your flavor cartridge, insert it in the lid opening, and fasten it by turning clockwise into place." See <https://drinkcirkul.com/pages/getting-started>. "Flavor Cartridge: Refill with ANY liquid water enhancer. Compatible with Mio, Crystal Light, Stur." See <https://www.amazon.com/Infuze-Hydration-Water-BottleStraw/dp/B08KWP63HR?th=1> (gathered November 23, 2021).

"Flavor cartridges" See <https://drinkfission.com/products/flavors/?variant=37206860988582> (gathered November 23, 2021).

The examining attorney also directs applicant's attention to the excerpts from makers and sellers of bottles for beverages as well as beverages themselves attached to the present Office action. See www.amazon.com, www.cokesolutions.com, www.thirstforwater.com. For example, PUR Flavor Options Pitcher features a flavor cartridge, an attachment to its water bottles that add fruit flavoring to a user's water. See attached.

Applicant next argues that FLAVOR CARTRIDGE has an incongruous aspect.

Applicant explains that in the Final Office action, the examining attorney asserted that the presence of a space between the terms, "FLAVOR" and "CARTRIDGE" undercuts applicant's position that the mark creates an incongruity. The reference to the presence or absence of a space pertained to a unitary, not descriptiveness analysis: "While 'FLAVORCARTRIDGE' might be unitary because there is no space between the terms, 'FLAVOR CARTRIDGE' is not incongruous but merely descriptive of applicant's bottles [...]." See Final Office action.

Applicant asserts that FLAVOR CARTRIDGE is incongruous in the context of its goods. The attached excerpt from *The American Heritage Dictionary* shows that "incongruous" means, "Not in keeping with what is correct, proper, or logical; inappropriate: incongruous behavior." There is no incongruity in the term FLAVOR CARTRIDGE. In the context of applicant's plastic bottle closures that feature cartridges that dispense flavorings as well as its water bottles with closures for dispensing flavorings, and in the context of applicant's flavored waters, there is nothing illogical about a FLAVOR CARTRIDGE that is part of a bottle or dispenser or flavored waters that feature a flavor cartridge. There is no incongruity between the terms.

Thus, applicant's argument fails.

Summary

It may help applicant to consider that two major reasons for not protecting descriptive marks are (1) to prevent the owner of a descriptive mark from inhibiting competition in the marketplace and (2) to avoid the possibility of costly infringement suits brought by the trademark or service mark owner. *In re Abcor Dev. Corp.*, 588 F.2d 811, 813, 200 USPQ 215, 217 (C.C.P.A. 1978); TMEP §1209. Businesses and competitors should be free to use descriptive language when describing their own goods and/or services to the public in advertising and marketing materials. See *In re Styleclick.com Inc.*, 58 USPQ2d 1523, 1527 (TTAB 2001).

In other words, applicant is barred from preventing other market participants from using the term, FLAVOR CARTRIDGE for, "Plastic bottle closures, namely, dispensing closures for water bottles; dispensing closures not of metal for water bottles for storing and dispensing additives to water dispensed from the bottle; bottle closures not of metal; bottle and container closures of plastic; plastic closure components for containers, namely, dispensing closures with features for storing and dispensing additives to be added as liquid is dispensed from a container," because applicant's competitors need to use the term, FLAVOR CARTRIDGE to describe their own plastic bottle closures. Similarly, applicant may not prevent market participants from using the term FLAVOR CARTRIDGE to describe their, "Reusable plastic water bottles, sold empty, with closures for storing and dispensing additives as water is dispensed from the bottle; portable beverage dispensers," because competitors' plastic bottles with dispensers and beverage dispensers may also feature FLAVOR CARTRIDGES.

With respect to applicant's, "Flavored waters, sports and energy drinks, soft drinks, fruit drinks, fruit-based beverages, and mineral waters; Syrups and liquid concentrates for making flavored waters, sports and energy drinks, soft drinks, fruit drinks, fruit-based beverages, and mineral waters; Beverage ingredient cartridges containing liquid ingredients, namely, syrups and liquid concentrates for making flavored waters, sports and energy drinks, soft drinks, fruit drinks, fruit-based beverages, and mineral waters," market competitors need to be able to describe how their beverages feature flavor cartridges.

Determining the descriptiveness of a mark is done in relation to an applicant's goods, the context in which the mark is being used, and the possible significance the mark would have to the average purchaser because of the manner of its use or intended use. *See In re The Chamber of Commerce of the U.S.*, 675 F.3d 1297, 1300, 102 USPQ2d 1217, 1219 (Fed. Cir. 2012) (citing *In re Bayer Aktiengesellschaft*, 488 F.3d 960, 963-64, 82 USPQ2d 1828, 1831 (Fed. Cir. 2007)); TMEP §1209.01(b). Descriptiveness of a mark is not considered in the abstract. *In re Bayer Aktiengesellschaft*, 488 F.3d at 963-64, 82 USPQ2d at 1831.

If applicant has already filed an appeal with the Trademark Trial and Appeal Board, the Board will be notified to resume the appeal. *See* TMEP §715.04(a).

If applicant has not filed an appeal and time remains in the response period for the final Office action, applicant has the remainder of that time to (1) [file another request for reconsideration](#) that complies with and/or overcomes any outstanding final requirement(s) and/or refusal(s), and/or (2) [file a notice of appeal](#) to the Board. TMEP §715.03(a)(ii)(B).

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Home & Kitchen › Kitchen & Dining › Water Coolers & Filters › Pitcher Water Filters



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PUR Flavor Cartridge, 2-Pack, Grape

Visit the PUR Store
★★★★☆ 26 ratings

Currently unavailable.
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- Only for use with PUR Flavor Options Systems
- No calories, no sugar, no dyes
- Grape flavored concentrate with other natural flavors
- Up to 75 servings per flavor cartridge



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Amazon Basics Replacement Water Filter for Water



Overbest OB7010 Replacement for Pur Pitcher and Dispenser



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Amazon Basics Tritan Water Bottle with Action Lid



WODINYM Large Water Bottle 71 oz Leak Proof BPA Free BPA Free BPA Free

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Filter, 2-Pack, Standar...
★★★★★ 25
Amazon's Choice in
Replacement Water Filters
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Get it as soon as **Sunday, Mar 5**
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Product information

Package Dimensions	3.4 x 3.1 x 0.8 inches
Item Weight	2.4 ounces
Manufacturer	PUR
ASIN	B001973CXU
Item model number	FC-500G
Customer Reviews	★★★★★ 26 ratings 3.3 out of 5 stars
Date First Available	November 3, 2008

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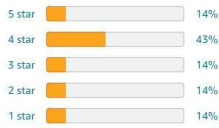
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Customer reviews

★★★★☆ 3.3 out of 5

26 global ratings



How customer reviews and ratings work

Review this product

Share your thoughts with other customers

Write a customer review

Read reviews that mention



Top reviews

Top reviews from the United States

MissLizzie

★★★★★ So Worth it!!!

Reviewed in the United States us on July 31, 2009

Verified Purchase

I pretty much only drink flavored water (although i do enjoy Blue Mtn Dew & Coffee) so i thought I'd buy the cartridges and the pitcher to save money & cut down on my plastics consumption in an effort to do my own part.

i have had little to no problems with this product and will continue to buy these cartridges as long as they are on the market. :-)

**The very minor problems i have had with this product include:

-the short life of the cartridges...they lasted about a week each, BUT i was drinking nearly a pitcher full (or more) a day, so that's actually pretty good seeing as how i like to add quite a bit of flavor.

-it takes a while to get used to, because you can't easily tell how much flavor your adding, but once you get use to it that stops being a problem.

Read more

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C. Trepanier

★★★★☆ Disappointed

Reviewed in the United States us on September 12, 2007

Verified Purchase

We purchased the Pur Water Pitcher with Flavor Cartridge because we were so often buying bottled flavored water. The first cartridge that came with the pitcher worked only half of the time and like the previous reviewer said, you have to use a lot of pumps to flavor the water sufficiently. When I ordered replacement cartridges, the same thing happened as with the first one: the cartridge worked only half of the time. Each cartridge lasted about a week and we were constantly having to open the lid of the pitcher to readjust the cartridge to try to get it to work. previous reviewer said, you have to use a lot of pumps to flavor the water sumciently. when i ororeed replacement cartridges, the same thing happened as with the first one: the cartridge worked only half of the time. Each cartridge lasted about a week and we were constantly having to open the lid of the pitcher

to readjust the cartridge to try to get it to work.

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 StephN26

★★★★☆ **A little chemical tasting but still good**

Reviewed in the United States us on September 26, 2007

Verified Purchase

I love the PUR faucet mounted water filter and saw the commercial for the flavorings and they seemed interesting. I have to say, I was a little dissapointed. I was expecting more of a realistic fruit taste and instead it tastes very artificial with that sort of fake sweetener aftertaste (a lot like those Fruit2O water bottles). All in all, its nice to have the option to add a little flavoring to the water, and I have found that the colder the water, the better the flavoring tastes. I don't think I will buy this again but I will continue using what I have.

One person found this helpful

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 WitchDoktor CCLayla

★★★★☆ **It's alright...**

Reviewed in the United States us on September 8, 2007

Verified Purchase

Great flavor, kids like the taste. They especially loved the raspberry. However, I was disappointed with: 1) how many pumps it takes sufficiently flavor in the water (3-4 pumps/8 oz. cup), hence, 2) how often cartridges need replacement (about every 1-2 weeks in my house of 6). It says it's good for 75 uses... My kids are opposed to drinking plain water constantly and I purchased this as an alternative. Looks like I'll need more than 2 cartridges to keep the sanity around here. Although at this price... it might be worth it.

2 people found this helpful

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 stubborncricket

★★★★☆ **Not very good flavor**

Reviewed in the United States us on December 29, 2010

Verified Purchase

This is the third flavor of these that I have tried (raspberry and lemon were the others). I would say it's better than the lemon, but definitely worse than the raspberry. The lemon tastes like cleaning fluid, so it's not hard to beat. It might have been because I bought this from a 3rd party seller and it was expired----not sure how that would affect the taste. However, it tastes pretty fake and slightly like cleaner. I would recommend raspberry over the peach.

Helpful | Report abuse

 MonaLS

★★★★★ **Love These! Completely Gave Up Sodas and Bottled Water**

Reviewed in the United States us on August 13, 2010

Verified Purchase

Got the faucet mount Pur filter on sale for a great price and tried the raspberry flavor cartridge. Press the button twice for a 16 ounce glass, and the flavor level is perfect for me. A nice light delicate flavor. So far I have tried the strawberry (wonderful aroma) and the peach and have been very happy with both. I have had no problems with the flavor dispensing except for the very first time after inserting a new flavor cartridge - which is to be expected. What surprised me was how I have so easily switched from carbonated flavored waters and sodas to just the Pur water with these flavor cartridges. And I'm drinking more water - a nice plus. I highly recommend these!

Over seven found this helpful

One person found this helpful

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Amazon Customer

★★★★★ **Great Tasting with no calories**
Reviewed in the United States us on February 6, 2010
Verified Purchase

I love these flavor cartridges. You have the option to have as much flavor in your water as you want. I have a nephew that he drinks so much more water now with the flavors. The fact that they are sugar free is great. I am not a great water drinker myself and with these cartridges, I enjoy drinking water more. The only draw back to these cartridges is that you only get up to 150 "squirts" from the dispenser. Depending on how much flavor you want and how much water you are drinking sometimes the cartridges don't seem to last very long at all. But instead of buying sodas at the store, this seems to be a better alternative.

One person found this helpful

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Maria Rainbow Rubatino

★★★★☆ **Too Sweet**
Reviewed in the United States us on December 17, 2010
Verified Purchase

I tend to like strawberry more than raspberry, but this is too sweet. I would only use 1 "squirt" in my 8oz cup of water and it was still too sweet. It's more like strawberry gum or candy than a real strawberry flavor. I much prefer the raspberry cartridges.

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★★★★☆ 130,218
#1 Best Seller in Digital Kitchen Scales



BlenderBottle Classic V2 Shaker Bottle Perfect for Protein Shakes and Pre Workout, 20-Ounce...
★★★★☆ 85,560
#1 Best Seller in Cocktail Shakers



Four Leaf TrustyMate 40 Oz Tumbler with Handle and Built-In Straw Lid, Insulated Leak Proof Stainless Steel Tumbler (Cream)
#1 Best Seller in Tumblers



Simple Modern 40 oz Tumbler with Handle and Straw Lid | Insulated Reusable Stainless Steel Water Bottle Travel Mug Iced Coffee Cup | Gifts...
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Whole Foods Market
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EQUIPMENT

Coca-Cola Freestyle® SmartPAK™ Cartridges Reduce Waste

Customers value sustainability as much as Coca-Cola® does



SHARE



SHARE



SHARE



SHARE



SHARE



SHARE



Coca-Cola customers and consumers often say they value sustainability improvement, especially when it cuts waste. That's why Coca-Cola Freestyle® beverage dispensers now feature all-new SmartPAK™ ingredient cartridges for most Coca-Cola Freestyle brands and flavor cartridges.

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recycler, but the new SmartPAK product cartridges are even easier to recycle. Operators simply remove the empty inner pouch and recycle the outer paperboard shell in-outlet after use, since paperboard is more widely accepted at recycling centers than polypropylene.

SmartPAK one-time-use cartridges slide into reusable plastic trays (shipped separately) before being inserted into the dispenser. Bold package graphics identify

VENDING

Coca-Cola is transitioning to SmartPAK at a measured pace in order to provide operators plenty of time to adapt to the enhanced cartridges and reusable trays. To keep things simple, there is no change to the ordering process, the cost, product integrity or procedures for proper handling and disposal.

Environmentally Beneficial

New SmartPAK cartridges give retailers the ability to **send less waste to landfills** as more of the outer shells are recycled. Additionally, the carbon footprint will be reduced at Coca-Cola manufacturing plants on a per cartridge basis. Paperboard cartridge shells contain 15% to 30% recycled content, and the paperboard cartridge and shipping material are certified as responsibly sourced by the Sustainable Forestry Initiative.

"Our cartridge technology and dispenser engineering keeps getting better and better, guided by principles in our Vision 2020 to reduce waste throughout the supply chain," notes Joel Bishop, general manager, Coca-Cola Freestyle, North America. "We already manufacture cartridges in our gold-LEED certified facility that features renewable power and water conservation technology. Now this initiative offers customers tangible ways to reduce product waste and make the process even more efficient," Bishop says.

To see crew-training materials on how to properly install cartridges, go to learn.coca-colafreestyle.com/cartridge. For questions, please call 1-800-241-2653, 24 hours a day, seven days a week.

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User Name: Heather Wietlisbach

Date and Time: Thursday, March 2, 2023 1:43:00PM EST

Job Number: 191621156

Document (1)

1. [*Flavored water*](#)

Client/Matter: -None-

Search Terms: "flavor cartridge" AND "flavored water"

Search Type: Terms and Connectors

Narrowed by:

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Sources: U.S. Publications

Flavored water

Contra Costa Times (California)

July 27, 2007 Friday

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Section: HOME AND GARDEN; Lifestyle

Length: 107 words

Byline: Contra Costa Times

... This is sure to stir up the water wars. The newest gadget in water filtration comes from Procter & Gamble, who've found a way to add a **squirt of flavor into your water**, right from the tap filter.

The PUR Flavor Options melds a home filtration system with a **flavor cartridge**, or in a filtration pitcher. You can add as much or as little of the fruity flavors as your want.

The flavors contain no calories, sugars or dyes, and come in three flavors: raspberry, strawberry and peach.

The various-sized pitchers sell in the \$20 to \$30 range, while the ...

End of Document



Fancy a Glass of Flavoured Water from Your Filter?

Water Filters



Water filters don't just dispense clean water nowadays. Check out these filters that add a dash of flavor, albeit with questionable chemicals included, to your water as well

If clean, filtered water sounds boring to you, how about a glass of clean, filtered *and* fruity flavored

water?

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PUR water filtration systems, by Proctor and Gamble, have kitchen faucet-mounted water filter and filter pitcher that don't just filter your water, but also add some fruity flavor into your glass as well.

The **PUR Flavor Options faucet-mounted filter** looks like any other similar products in the market, except that you can insert a flavor cartridge into the front cap of the filter. To add flavor to your water, simply push the button on the filter to release the flavor into your glass.

In addition, this tap-mounted filter has a **3-stage filter** that can cleanse up to **100 gallons**, or 378 liters of water and will last for about two to three months.

For the **PUR Flavor Options Pitcher**, the **flavor cartridge** fits into the lid of the pitcher. Whenever you feel like having **flavored water**, just push the button on the handle to release tasty flavor into your glass, while keeping the remaining water in the pitcher unflavored.

Each pitcher cartridge filters up to **40 gallons**, or 151 liters of water, typically lasting up to two months.

For both the faucet and pitcher filters, one raspberry flavored cartridge comes with either purchase. Other flavors, like grape, peach, strawberry and lemon which are sold separately, are also available.

Every cartridge provides up to 75 servings of flavor which contain no dyes,

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sugar and calories. However, note that all the flavors contain Propylene Glycol and artificial sweetener, Acesulfame Potassium, which may have adverse effects on your health if they are consumed for extended period of time.

But apparently, the presence of questionable chemicals in the flavors don't seem to concern most people as the PUR Flavor Options filtration system has been voted Product of the Year for 2009.

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in·con·gru·ous (in-kŏng'grü-əs)

adj.

1. Lacking in harmony; incompatible: a joke that was *incongruous* with polite conversation.
2. Not in agreement, as with principles; inconsistent: a plan *incongruous* with reason.
3. Not in keeping with what is correct, proper, or logical; inappropriate: *incongruous* behavior.

[From Latin *incongruus*: in-, not; see in- + *congruus*, congruous; see [CONGRUOUS](#).]

in·con'gru-ous-ly adv.
in·con'gru-ous-ness n.

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