Trademark Analysis Report

# Trademark Office Opinion

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REFINED TRADEMARK OPINION: BLACK MARSHMALLOW

Class: 03

Goods and Services: DEODORANTS, ANTIPERSPIRANTS, SHOWER GEL

## Section I: Comprehensive Trademark Hit Analysis

(a) Identical Marks:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Trademark | Owner | Goods & Services | Status | Class | Class Match | Goods & Services Match |

(b) One Letter and Two Letter Analysis:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Trademark | Owner | Goods & Services | Status | Class | Difference Type | Class Match | Goods & Services Match |

(c) Phonetically, Semantically & Functionally Similar Analysis:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Trademark | Owner | Goods & Services | Status | Class | Similarity Type | Class Match | Goods & Services Match |
| MARSHMALLOW SPONGE | CLOMANÁ BEAUTY LIMITED | Personal care products and sponges | PENDING | 3 | Semantic | True | True |
| BLACK OPIUM | YVES SAINT LAURENT PARFUMS | Perfumes and cosmetics | REGISTERED | 3 | Semantic | True | True |

## Section II: Component Analysis

(a) Component Analysis:

Component 1: BLACK

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Trademark | Owner | Goods & Services | Status | Class | Class Match | Goods & Services Match |
| BLACK OPIUM | YVES SAINT LAURENT PARFUMS FRANCE SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE (SAS) | Perfumes; eau de toilette; eau de parfum; deodorants for personal use. | REGISTERED | 3 | True | True |
| BLACKXS | PUIG FRANCE NOT PROVIDED SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE | Perfumes; eau de toilette; eau de parfum; deodorants for personal use. | REGISTERED | 3 | True | True |
| BLACK VANITY | BLACK VANITY LLC PENNSYLVANIA LIMITED LIABILITY CO. | Cosmetics; non-medicated skin care preparations; deodorants for personal use. | REGISTERED | 3 | True | True |
| BLACK LEOPARD | BLACK LEOPARD SKINCARE PTY LTD AUSTRALIA PROPRIETARY LIMITED COMPANY (P/L OR PTY. LTD.) | Non-medicated skin care preparations; deodorants for personal use. | REGISTERED | 3 | True | True |
| BLACK HAWK | MASTERPET AUSTRALIA PTY LTD AUSTRALIA PROPRIETARY LIMITED COMPANY (P/L OR PTY. LTD.) | Non-medicated skin care preparations; deodorants for personal use. | REGISTERED | 3 | True | True |

Component A: MARSHMALLOW

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Trademark | Owner | Goods & Services | Status | Class | Class Match | Goods & Services Match |
| MARSHMALLOW SPONGE | CLOMANÁ BEAUTY LIMITED | Cosmetic sponges; bath sponges. | PENDING | 3 | True | False |
| MARSHMALLOW | FAITH A. CHIPMAN DBA SHAGGY-DAWG DOG GROOMING | Pet grooming preparations. | CANCELLED | 3 | True | False |

(b) Crowded Field Analysis:

- **Total compound mark hits found**: 7

- **Marks with different owners**: 5 (71.43%)

- **Crowded Field Status**: YES

- **Analysis**:

The field is considered crowded as more than 50% of the marks are owned by different entities. This reduces the risk of trademark conflict because the presence of many similar marks suggests that the term 'BLACK' is commonly used in the industry, potentially weakening the exclusivity of any single mark.

## Section III: Risk Assessment and Summary

Descriptiveness:

- The term 'MARSHMALLOW' in the proposed trademark may suggest a descriptive quality related to softness or texture, which is common in personal care products. However, it does not appear to be a generic industry term.

Aggressive Enforcement and Litigious Behavior:

- **Known Aggressive Owners**:

\* CLOMANÁ BEAUTY LIMITED: Pending trademark applications suggest active interest in expanding brand presence. No known history of aggressive enforcement or litigation.

\* YVES SAINT LAURENT PARFUMS: Known for maintaining a broad trademark portfolio. History of oppositions and enforcement actions in the cosmetics industry.

- **Enforcement Landscape**:

\* YVES SAINT LAURENT PARFUMS has a history of enforcing trademark rights, which could pose a risk for similar marks.

\* CLOMANÁ BEAUTY LIMITED's pending status indicates potential future enforcement but lacks current aggressive behavior.

Risk Category for Registration:

- **MEDIUM-HIGH**

- The risk level for registration is MEDIUM-HIGH due to the presence of semantic similar marks 'MARSHMALLOW SPONGE' and 'BLACK OPIUM' with class and goods/services matches.

Risk Category for Use:

- **MEDIUM-HIGH**

- The risk level for use is MEDIUM-HIGH, driven by the potential for consumer confusion with existing marks that share semantic similarities and class matches.

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# Web Common Law Opinion

## WEB COMMON LAW OPINION: BLACK MARSHMALLOW

## Section IV: Comprehensive Cited Term Analysis

(a) Identical Cited Terms:

|  |  |  |  |
| --- | --- | --- | --- |
| Cited Term | Owner | Goods & Services | Goods & Services Match |

|------------------|------------|--------------------------------------|------------------------|

|  |  |  |  |
| --- | --- | --- | --- |
| Black Marshmallow | CocoaPink | Scented personal care products | True |
| Black Marshmallow | Empress Me | Youth-boosting natural mud mask | True |
| Black Marshmallow | TK Maxx | Scented candles | False |
| Black marshmallow | Not specified | Peeling salt scrub (cosmetic exfoliant) | True |

(b) One Letter and Two Letter Analysis:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Cited Term | Owner | Goods & Services | Difference Type | Goods & Services Match |

|------------|-------|------------------|-----------------|------------------------|

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| None | None | None | None | None |

(c) Phonetically, Semantically & Functionally Similar Analysis:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Cited Term | Owner | Goods & Services | Similarity Type | Goods & Services Match |

|---------------------------------|------------------------|------------------------------------------------------|-----------------|------------------------|

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Marshmallow Black | Golden Paws Candle Company | Soy candles | Semantic | False |
| BLACK AMBER | Mistral | Bar soap, eau de parfum, body wash | Semantic | True |
| BLACK RASPBERRY VANILLA SOAP | Buff City Soap | Handmade plant-based soap | Semantic | True |
| BLACK HATCHET | Latika | Men's grooming products, including activated charcoal bar soap and organic charcoal body wash | Semantic | True |
| Black Tie | Bath & Body Works | 3-in-1 hair, face & body wash | Semantic | True |
| Black Forest Body Wash | RM Soap Market | Body wash | Semantic | True |
| Toasted Marshmallow Body Wash | Hickory Ridge Soaps | Body wash | Semantic | True |
| Vanilla Marshmallow | The Body Shop | Shower gel | Semantic | True |
| Summer Marshmallow | Bath & Body Works | Shower gel | Semantic | True |
| Keff Body Wash Marshmallow | Rockland | Body wash, bath lotion, personal care products | Semantic | True |
| Vegan Marshmallow Body Wash | FLOURYSH | Body wash | Semantic | True |

Evaluation Guidelines:

- Goods/services match if they overlap with proposed trademark's intended use

- One letter difference = exactly one character changed/added/removed

- Two letter difference = exactly two characters changed/added/removed

- Phonetic similarity = sounds similar when spoken

- Semantic similarity = similar meaning

- Functional similarity = similar purpose/use

- State "None" when no results are found

- Filter out rows where both match criteria are False

- Always include complete goods/services text

## Section V omitted due to identical cited terms

## Section VI: Web Common Law Risk Assessment

Market Presence:

- The term "Black Marshmallow" is present in the market with multiple identical uses across various personal care products, including scented personal care products, youth-boosting natural mud masks, and peeling salt scrubs.

Enforcement Patterns:

- No specific enforcement patterns identified from the provided data.

Risk Category for Use:

- **MEDIUM-HIGH**

- Clear justification based on strict rules above: Identical cited terms found in Section IV(a), elevating risk to MEDIUM-HIGH. Crowded field analysis omitted due to identical cited terms.

III. COMBINED RISK ASSESSMENT

Overall Risk Category:

- **MEDIUM-HIGH**

- Detailed explanation: Identical cited term(s) found, elevating risk to MEDIUM-HIGH. Crowded field analysis not performed.