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 including sponges | PENDING | 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; cosmetics; non-medicated skin care preparations; hair care preparations; deodorants for personal use | REGISTERED | 3 | True | True |
| BLACKXS | PUIG FRANCE NOT PROVIDED SOCIÉTÉ PAR ACTIONS SIMPLIFIÉE | Perfumes; cosmetics; non-medicated skin care preparations; hair care preparations; deodorants for personal use | REGISTERED | 3 | True | True |
| BLACK LEOPARD SKINCARE | BLACK LEOPARD SKINCARE PTY LTD AUSTRALIA PROPRIETARY LIMITED COMPANY (P/L OR PTY. LTD.) | Cosmetics; non-medicated skin care preparations; hair care preparations; deodorants for personal use | REGISTERED | 3 | True | True |
| BLACK VANITY | BLACK VANITY LLC PENNSYLVANIA LIMITED LIABILITY CO. | Cosmetics; non-medicated skin care preparations; hair 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 | Cosmetics; non-medicated skin care preparations; sponges for applying cosmetics | PENDING | 3 | True | True |
| MARSHMALLOW | FAITH A. CHIPMAN DBA SHAGGY-DAWG DOG GROOMING | Cosmetics; non-medicated skin care preparations; sponges for applying cosmetics | CANCELLED | 3 | True | True |

(b) Crowded Field Analysis:

- **Total compound mark hits found**: 6

- **Marks with different owners**: 5 (83.33%)

- **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 MARSHMALLOW' may not be strongly associated with a single source, allowing for coexistence.

## Section III: Risk Assessment and Summary

Descriptiveness:

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

Aggressive Enforcement and Litigious Behavior:

- **Known Aggressive Owners**:

\* CLOMANÁ BEAUTY LIMITED: No known aggressive enforcement patterns; pending trademark status suggests potential for future enforcement.

- **Enforcement Landscape**:

\* CLOMANÁ BEAUTY LIMITED does not have a known history of aggressive enforcement, but the pending status of their mark indicates they may enforce rights upon registration.

\* The enforcement landscape is not currently litigious, but caution is advised due to the pending status of the similar mark.

Risk Category for Registration:

- **MEDIUM-HIGH**

- The risk level for registration is MEDIUM-HIGH due to the presence of a semantic similar mark 'MARSHMALLOW SPONGE' with a class match and goods/services overlap.

Risk Category for Use:

- **MEDIUM-HIGH**

- The risk level for use is MEDIUM-HIGH because of the semantic similarity and class match with 'MARSHMALLOW SPONGE', which could lead to consumer confusion.

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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 | Not specified | Scented products (blend of sweet marshmallow fluff and rich ambers) | False |
| Black Marshmallow | Empress Me | Youth-boosting natural mud mask | False |
| Black Marshmallow | TK Maxx | Scented candles | False |
| Black marshmallow | Not specified | Exfoliating salt body scrub | False |

(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 | False |
| BLACK RASPBERRY VANILLA SOAP | Buff City Soap | Handmade plant-based soap | Semantic | False |
| BLACK HATCHET | Latika | Men's grooming products, including activated charcoal bar soap and organic charcoal body wash | Semantic | False |
| Black Tie | Bath & Body Works | 3-in-1 hair, face & body wash | Semantic | False |
| Black Forest Body Wash | RM Soap Market | Body wash | Semantic | False |
| Toasted Marshmallow Body Wash | Hickory Ridge Soaps | Body wash | Semantic | False |
| Vanilla Marshmallow | The Body Shop | Shower gel | Semantic | False |
| Summer Marshmallow | Bath & Body Works | Shower gel | Semantic | False |
| Keff Body Wash Marshmallow | Rockland | Body wash | Semantic | False |
| Vegan Marshmallow Body Wash | FLOURYSH | Body wash, personal care products | Semantic | False |

Evaluation Guidelines:

- None of the cited terms have goods/services that match the proposed trademark's intended use directly.

- No one or two letter differences were identified.

- Semantic similarities were identified, but none of the goods/services overlap with the proposed trademark's intended use.

## Section V omitted due to identical cited terms

## Section VI: Web Common Law Risk Assessment

Market Presence:

- The term "Black Marshmallow" appears in various product categories, including scented products, masks, candles, and body scrubs. However, none of these uses directly match the proposed trademark's intended use.

Enforcement Patterns:

- No specific enforcement patterns were identified that would impact the assessment of the proposed trademark.

Risk Category for Use:

- **MEDIUM-HIGH**

- Clear justification based on strict rules above: Identical cited term(s) found, elevating risk to MEDIUM-HIGH. Crowded field analysis not performed.

III. COMBINED RISK ASSESSMENT

Overall Risk Category:

- **MEDIUM-HIGH**

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