

To: The Registrar of Trademarks
Place du portage I
50 Victoria Street, Room C-114
Gatineau, Quebec, CANADA, K1A 0C9

**IN THE MATTER OF
Canadian Trademark Application No. 1986544 for CRAYON SCENT MARK**

AFFIDAVIT OF ALBERT P. MAURO, JR.

I, Albert P. Mauro, Jr., of the City of Kansas City, Missouri, the United States, also with an office at 2501 McGee Trafficway #339, Kansas City, Missouri, 64108 the United States, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Vice President, General Counsel and Secretary of Crayola Properties, Inc., a Delaware corporation with an address at 1100 Church Lane, Easton, Pennsylvania, 18044 the United States, (“**Crayola**”). Attached as **Exhibit “A”** to my affidavit is a copy of the Certificate of Incorporation for Crayola.
2. I am also the Vice President of Crayola Canada, a business registration of William E. Coutts Company, Limited that is an amalgamated Ontario corporation formed from Binney & Smith (Canada) Ltd and William E. Coutts Company, Limited (“**Crayola Canada**”). Attached as **Exhibit “B”** to my affidavit is a copy of the Corporate record for William E. Coutts Company, Limited.
3. Crayola is the owner and licensor of the intellectual property rights associated with the Crayola brand. Crayola Canada is the Crayola subsidiary that is licensed by Crayola to distribute, market, promote, advertise, perform, and sell the products and services of Crayola in Canada.
4. I have been an employee of Crayola companies since August 1999. I have been the Vice President, General Counsel and Secretary of Crayola since April 2018 and the Vice President of Crayola Canada since November 2019. Prior to that, I was the Assistant General Counsel of Crayola since August 1999.
5. In my capacity as the Vice President, General Counsel and Secretary of Crayola and the Vice President of Crayola Canada, I oversee all legal matters of Crayola and Crayola Canada, including the management of the portfolio, protection and enforcement of Crayola’s trademarks and other intellectual property rights in Canada.

6. By virtue of my position and role with Crayola and Crayola Canada, I am familiar with the products of Crayola, their branding and marketing and have access to various current and historical files and records of Crayola and Crayola Canada, including the ones that are relevant for the purpose of swearing this affidavit. Because of my role, I regularly interact with the marketing and sales departments at Crayola and Crayola Canada to obtain and exchange information relating to branding, marketing, sales, product development. Because of my role, I am also familiar with the history of Crayola and its corporate structure.
7. I make this affidavit in the context of Crayola and Crayola Canada's evidence for the subject trademark application.
8. I am aware of the matters to which I refer in this affidavit either from my personal knowledge or from data and information extracted from the current and historical files and records of Crayola and Crayola Canada made in the usual and ordinary course of business that I believe to be true. I am authorized by Crayola and Crayola Canada to swear this affidavit for the purpose of the subject trademark application.

I. The Subject Application and the Applied-for Scent.

9. Crayola is the owner of Canadian trademark application no. 1986544 for CRAYON SCENT MARK for use in association with:

Class 16 – (1) Crayons

10. Crayola has meticulously manufactured quality crayons having the same consistent and uniquely identifying scent since as early as 1905. The same consistent and uniquely identifying scent is the CRAYON SCENT MARK in the subject application, which consists of a scent reminiscent of a slightly earthy soap with pungent, leather-like clay undertones.
11. Canadian trademark application no. 1986544 was filed on September 24, 2019. Attached as **Exhibit "C"** to my affidavit is a printout from the Canadian Trademarks Register showing the trademark details for the subject application.

II. Crayola and its Product Offering.

12. Crayola (which in this paragraph refers to the Crayola group of companies, including Crayola, Crayola LLC, Crayola Canada, predecessors in title, subsidiaries, and affiliates) is a private

company and a world leader in creating, developing, manufacturing and distributing colouring and crafts products (the “**Crayola Products**”).

13. Attached as **Exhibit “D”** to my affidavit is a printout from Crayola’s Canadian website at <https://www.crayola.ca/about-us/history>, providing a brief corporate history of Crayola.
14. Information about Crayola’s current product offerings in Canada can be found online at <https://www.crayola.ca/shop>. Attached as **Exhibit “E”** to this affidavit is a sampling of pages of Crayola’s Canadian website. This sampling is representative of the categories and types of products currently sold by Crayola and that Crayola has sold in the past, at least for the past ten years, in Canada.

III. The Manufacturing and Distribution of the Crayola Products and Crayola’s Control of their Character and Quality.

15. In the ordinary course of trade, the Crayola Products, including its crayons bearing the CRAYON SCENT MARK, are manufactured in various countries as well as in Easton, Pennsylvania in the United States by Crayola. Only certain selected licensed third parties are permitted to market, distribute and sell CRAYOLA® branded products, including crayons bearing the CRAYON SCENT MARK around the world, including in Canada. These products are manufactured according to specifications, controls and product quality standards set by or approved by Crayola.
16. At all material times, Crayola has controlled and continues to control the quality of the Crayola Products that are manufactured for, amongst others, the Canadian market.
17. The Crayola Products are distributed, sold, promoted and advertised in Canada through licensed and wholly owned Canadian subsidiary, Crayola Canada. Some Crayola Products are also sold by authorized third party retailers, who obtain Crayola Products from Crayola Canada.
18. After manufacture, the Crayola Products that are for the Canadian market are provided to Crayola Canada by or with the authorization of Crayola.
19. Under its license agreement with Crayola, Crayola Canada has the obligation to distribute, sell, market, promote and advertise the Crayola Products, and provide, promote and advertise Crayola’s services and use Crayola’s trademarks including the CRAYON SCENT MARK in strict compliance with the specifications, controls and quality standards of Crayola.

20. Under its license agreement with Crayola Canada, Crayola has the right to conduct periodic inspections to verify that the following comply with its quality standards and other specifications: (a) the packaging, storing, inventory and distribution of the Crayola Products; (b) the advertising and promotion of the Crayola Products; and (c) the provision, advertising and promotion of Crayola's services. Under the aforementioned license agreement, Crayola also has the right to review Crayola Canada's records relating to the foregoing, and to review, for approval purposes, all packaging, advertising materials, and promotional material, that need to be modified or adapted to conform to local Canadian market conditions or laws.
21. Under its license agreement with Crayola, Crayola Canada cannot sub-license its rights to use the Crayola trademarks without the prior approval of Crayola, and any sub-license has to impose on the sub-licensee the same obligations that are imposed on Crayola Canada under its license with Crayola.
22. At all material times, Crayola has controlled (and continues to control) per its license agreement with Crayola Canada, the use in Canada of Crayola's trademarks, and the quality and character of the Crayola Products, including the crayons having the CRAYON SCENT MARK, as well as Crayola's services, that are provided, distributed, sold and advertised in Canada.

IV. Hundred Years of Use and Well-Known Status of CRAYON SCENT MARK.

23. The CRAYON SCENT MARK has been used in commerce in connection with crayons since 1905.
24. Crayola's crayons having the CRAYON SCENT MARK have become a treasured and iconic product for children and adults of all ages. The CRAYON SCENT MARK is one of the most widely recognized scents among consumers. Due to Crayola crayons' history and popularity, consumers have come to associate the CRAYON SCENT MARK solely with Crayola. Consumers expect that crayons sold under the CRAYON SCENT MARK will have the high level of quality and consistency expected from no other crayon but a Crayola brand crayon.
25. Crayola has made intensive, continuous, and substantially exclusive use of the CRAYON SCENT MARK in commerce for more than 110 years, and as a result, the CRAYON SCENT MARK has become distinctive of Crayola's quality crayons.
26. Crayola crayons having the CRAYON SCENT MARK are manufactured in Easton, Pennsylvania as well as in other countries, with over 13.5 million crayons manufactured per day, and over 3 billion crayons manufactured per year.

27. Crayola crayons having the CRAYON SCENT MARK are sold worldwide, through Crayola's U.S. website (<https://shop.crayola.com/>) and Canadian website (<https://www.crayola.ca/shop>) and through large retailers, including Walmart, Target, Amazon, Michaels, and others.

28. The CRAYON SCENT MARK has been noted in scholarly articles as being one of the world's most famous scents, and is recognized by consumers as being exclusively tied to Crayola. Attached as **Exhibits "F" to "Z"** to this affidavit are a sampling of scholarly articles, press coverage and public comments regarding the CRAYON SCENT MARK:

- Exhibit "F": "Odor identification by males and females: predictions vs performance" authored by William S. Cain and published in Chemical Senses;
- Exhibit "G": "Dive Into the Colorful World of A Childhood Favorite: Crayola" published by LIP;
- Exhibit "H": "The Colors of Childhood – Crayola crayons take us all back with their fondly remembered look, scent and feel on paper" published by Smithsonian;
- Exhibit "I": "Crayola Crayons – What kids want! The names, the 120 colors – even the smell is irresistible" published by the People magazine;
- Exhibit "J": Facebook users' comments about the CRAYON SCENT MARK;
- Exhibit "K": Instagram users' comments about the CRAYON SCENT MARK;
- Exhibit "L": Facebook users' comments about the CRAYON SCENT MARK;
- Exhibit "M": Facebook users' comments about the CRAYON SCENT MARK;
- Exhibit "N": Instagram users' comments about the CRAYON SCENT MARK;
- Exhibit "O": "A scent of crayons crosses time" published in the Baltimore Sun;
- Exhibit "P": "Stop and Smell the Crayons" published by Smithsonian;
- Exhibit "Q": "Art in the Everyday: Crayola Crayons" authored Maxwell Tielman and published by Design Sponge;
- Exhibit "R": "29 Smells from Your Childhood You Forgot You Loved Smelling, Because You Weren't The Only One with Strawberry Shortcake Stickers" authored by Jill Layton and published in bustle.com;
- Exhibit "S": "Just smelling crayons can reduce your blood pressure by 10%" authored by Molly Headd and published in linkedin.com;
- Exhibit "T": "The magic touch" published in the MediaWeek;
- Exhibit "U": "Crayola Smell is One of the Most Recognizable Scents to Americans" authored by Rich Powell and published in funfactz.com;
- Exhibit "V": "The smell of crayons" authored by Mara Rasure and published in omaha.com;

- Exhibit “W”: “Crayola Crayons” published in retroland.com;
- Exhibit “X”: a YouTube video about how crayons are made;
- Exhibit “Y”: a Twitter post about the CRAYON SCENT MARK; and
- Exhibit “Z”: a Twitter post about the CRAYON SCENT MARK.

29. Crayola advertises its crayons having the CRAYON SCENT MARK through its various social media platforms, the details of which are below:

Platform	Link	Followers or Likes (in excess of)
Facebook	https://www.facebook.com/crayola/	3,800,000
Instagram	https://www.instagram.com/crayola/?hl=en	553,000
	https://www.instagram.com/crayola_canada/?hl=en	13,700
Twitter	https://twitter.com/Crayola	68,200
YouTube	https://www.youtube.com/channel/UCGEA1vUDxgkwsToRTEACsvA	617,000 (and 326,000,000 views)
Pinterest	https://www.pinterest.com/crayola/	82,300 (with 4,000,000 monthly views)
TikTok	https://www.tiktok.com/@crayola?lang=en	62,000 followers and 128,800 likes

30. Attached as Exhibits “AA” to “GG” to this affidavit are screenshots of Crayola and Crayola Canada’s official social media accounts.

V. The Sale and Distribution of the Crayola Products in Canada.

31. In the ordinary course of trade, Crayola Products, including Crayola crayons having the CRAYON SCENT MARK destined for the Canadian market, are transferred to Crayola Canada, by or with the authorization of Crayola, to be distributed, as applicable, in or via (a) Crayola Canada’s online store at <https://www.crayola.ca/shop> operated by Chanel Canada and/or (b) third party authorized retailer stores.

32. The Crayola Products have been continuously sold through these or very similar channels in Canada for many years, beginning well before September 24, 2019 (the filing date of the subject application),

and they continue to be sold through said channels today. The brand presence of the Crayola Canada business itself began in 1934 and exhibits an extensive history of continuous market presence of crayons bearing the CRAYON SCENT MARK since that time (for almost 9 decades).

33. Crayola crayons having the CRAYON SCENT MARK are sold in the ordinary course of trade directly to Canadian consumers via Crayola Canada's online store at <https://www.crayola.ca/shop>, beginning well before September 24, 2019. Attached as **Exhibit "HH"** to this affidavit is a screenshot of Crayola Canada's online store marketing and selling the Crayola crayons having the CRAYON SCENT MARK. The screenshot is representative of Crayola Canada's online store for at least the past decade.

34. Crayola crayons having the CRAYON SCENT MARK are sold in the ordinary course by third party authorized retailer stores, beginning well before September 24, 2019. The authorized retailer stores include:

- major retail chains, including Walmart, Canadian Tire, and Costco;
- office supplies retail chains, including Staples;
- toy stores, including Toys R Us and Mastermind;
- home improvement stores, including Home Hardware;
- craft stores, including Michaels and DeSerres;
- book stores, including Indigo/Chapters and Librairie Renaud Bray;
- grocery stores, including Loblaws, Sobeys, Overwaitea Food Group, and Fed. Coop;
- drug stores, including Shoppers Drug Mart, Jean Coutu, and London Drugs;
- department stores, including Hudson's Bay Company;
- dollar stores, including Dollarama and Dollar Tree; and
- discount stores, including Winners, Giant Tiger, and Red Apple.

35. To further illustrate how Crayola crayons having the CRAYON SCENT MARK are sold in the ordinary course by third party authorized retailer stores, attached as **Exhibits "II" to "VV"** to this affidavit are screenshots showing typical point of sale materials on online stores that have been used in Canada. The typical point of sale materials represent how Crayola crayons having the CRAYON SCENT MARK are sold in the ordinary course by third party authorized retailer stores for at least the past decade.

36. In Canada, Crayola Canada's unit sales (unit sales made by Crayola Canada to its authorized retailers in Canada and unit sales made by Crayola Canada directly to Canadian consumers through

its online store) of Crayola crayons having the CRAYON SCENT MARK between 2014 and 2019 are summarized in the table below on a unit basis. The numbers indicated in the table below have been reduced for confidentiality reasons. Actual numbers were higher:

	2014	2015	2016	2017	2018	2019	Total
BC	1 million	1 million	500,000	750,000	1 million	750,000	5 million
AB	1 million	1 million	500,000	750,000	1 million	1 million	5.2 million
SK	200,000	250,000	150,000	200,000	300,000	200,000	1.3 million
MB	275,000	300,000	150,000	225,000	325,000	250,000	1.5 million
ON	3 million	4 million	2 million	3 million	4 million	3 million	19 million
QC	1 million	2 million	1 million	1 million	2 million	1 million	8 million
NB	250,000	300,000	150,000	200,000	325,000	250,000	1.2 million
NS	300,000	325,000	175,000	225,000	350,000	275,000	1.6 million
NL	175,000	200,000	100,000	125,000	200,000	150,000	950,000
PEI	40,000	45,000	20,000	30,000	45,000	35,000	215,000
NWT	9,000	10,000	5,000	7,000	11,000	8,000	50,000
YT	9,000	10,000	5,000	7,000	11,000	8,000	50,000
Total	7 million	9 million	4.7 million	6.5 million	9.5 million	6.9 million	44 million

37. Over the years, Crayola crayons having the CRAYON SCENT MARK have been widely and continuously promoted by way of high-quality advertising in print, audio visual (at point of sale), public signage, the internet, articles, newspapers, social media and so on for many decades around the world and in Canada.

38. Crayola and Crayola Canada have run prominent national campaigns in Canada to promote Crayola crayons having the CRAYON SCENT MARK for at least the past decade.

39. Attached hereto as **Exhibit “WW”** to my affidavit is a slide deck that outlines a prominent national campaign from 2017 evidencing the scope and level of outreach when marketing the Crayola crayons to Canadian consumers. The campaign was broadcasted on major Canadian commercial networks, including CTV, CBC News, Global News, Citytv Breakfast Television, 680 News, and CP24. There were media mentions in 54 Canadian cities and the campaign was shared in every province in Canada: see Slide 8. Slide 10 includes a media clip from the Breakfast Television Morning Show where the CRAYON SCENT MARK was discussed around the 4:45 mark and Slide 12 includes a direct reference to where the CRAYON SCENT MARK.
40. Attached hereto as **Exhibit “XX”** to my affidavit is a slide deck that outlines a prominent national campaign from 2018 evidencing the scope and level of outreach when marketing the Crayola crayons to Canadian consumers. The campaign was launched in partnership with certain key media partners, including CTV, Bell Media, and Virgin Radio: see Slides 2 to 8. There were about 52.5 million impressions and 304 media stories shared: see Slide 16.
41. In addition to paid-for advertising, Crayola has actively promoted and continues to actively promote the Crayola Products on a number of social media platforms including Facebook, Instagram, Twitter, Pinterest and YouTube. Attached hereto as **Exhibit “YY”** to my affidavit are Facebook and Instagram posts, from 2015 to 2020 for Crayola Canada.
42. Crayola Canada has posted to its Facebook page at <https://www.facebook.com/crayolacanada/about> since at least as early as February 2015 and currently has more than 3.8 million followers.
43. Crayola Canada has posted to its Instagram Page at https://www.instagram.com/crayola_canada/?hl=en since at least as early as January 2019 and currently has in excess of 13,600 followers.
44. Crayola Canada’s Pinterest Page is available at <https://www.pinterest.com/crayola/> and currently has in excess of 82,000 followers with 4 million monthly views.
45. Crayola Canada’s TikTok Page is available at <https://www.tiktok.com/@crayola?lang=en> and currently has in excess of 62,000 followers and 128,800 likes.
46. The evidence submitted with this affidavit shows that over the past years, and especially between 2014 and 2019, Crayola has regularly and extensively used its the CRAYON SCENT MARK in

Canada. As a result of this extensive use of the CRAYON SCENT MARK by Crayola and various third party articles, comments, and recognition relating to said mark, the CRAYON SCENT MARK has become intrinsically linked with, and is instantly recognizable as, a trademark and strong symbol of Crayola, and this has been the case since well before September 24, 2019 (the filing date of the subject application).

SWORN BEFORE ME in the City of Kansas)
City, Missouri, USA, this 25th day of May 2023)
Candie L. Sisk)
Notary Public, etc.)

Albert P. Mauro, Jr.
ALBERT P. MAURO, JR.

CANDIE L. SISK
Notary Public-Notary Seal
STATE OF MISSOURI
Commissioned for Jackson County
My Commission Expires: June 15, 2023
ID. #15421488