



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADE-MARKS

**Citation: 2014 TMOB 197**  
**Date of Decision: 2014-09-19**

**IN THE MATTER OF AN OPPOSITION  
by Monster, Inc. to application  
No. 1,442,267 for the trade-mark  
MONSTER HIGH in the name of Mattel,  
Inc.**

Introduction

[1] This opposition relates to an application filed on June 19, 2009 by Mattel, Inc. (the Applicant) to register the trade-mark MONSTER HIGH (the Mark) based on proposed use in association with the wares listed in Annex A to this decision (the Wares).

[2] The application was advertised on April 21, 2010 in the *Trade-marks Journal*. Monster Cable Products, Inc., which subsequently changed its name to Monster, Inc. (the Opponent) filed a statement of opposition on September 16, 2010 against this application.

[3] The grounds of opposition raised by the Opponent are based on sections 12(1)(d), 16(3)(a), (b) and (c), and section 2 (distinctiveness) of the *Trade-Marks Act* RSC 1985 c T-13 (the Act). The specific grounds of opposition are detailed in Annex B to this decision. The Applicant denied all grounds of opposition in a counter statement filed on January 27, 2011.

[4] The Opponent filed as its evidence the affidavit of Mihala Hutanu while the Applicant filed the affidavit of Marta Tandori Cheng.

[5] Both parties filed a written argument and were represented at the hearing.

[6] The first issue is to determine if the Opponent has met its initial evidential burden with respect to each of the grounds of opposition raised; and if so, then I must assess whether the Applicant has met its legal onus.

[7] For the reasons detailed hereinafter, I conclude that the Opponent did not meet its evidential burden with respect to all the grounds of opposition pleaded except for those based on sections 12(1)(d) and 16(3)(b) of the Act. For the reasons detailed below I conclude that the Applicant has not met its legal onus with respect to those two grounds of opposition in so far as the Applicant's Overlapping wares (as defined below) are concerned.

#### Preliminary Remarks

[8] In coming to my decision I have considered all of the evidence and submissions made by the parties. I will address in details the most relevant issues raised by the parties.

[9] One on them concerns the status of the Opponent's registrations TMA463,392 and TMA655,938 for the trade-mark MONSTER. The Applicant has pointed out that they have been the subject of section 45 proceedings. The Registrar has ordered that they be amended to delete some of the wares. However the Opponent has filed an appeal before the Federal Court and the appeal process in both of these files is still pending. Consequently those registrations as of this date have not been amended. I will therefore consider all of the wares listed under these registrations [see section 45(5) of the Act and *Spirits International BV v Distilleries Melville Limité* 2011 TMOB 186].

#### Legal Onus and Burden of Proof

[10] The legal onus is on the Applicant to show that the application does not contravene the provisions of the Act as alleged in the statement of opposition. This means that if a determinate conclusion cannot be reached in favour of the Applicant once all the evidence is in, then the issue must be decided against the Applicant. However, there is also an evidential burden on the Opponent to prove the facts inherent to its pleadings. The presence of an evidential burden on the Opponent means that in order for a ground of opposition to be considered at all, there must be

sufficient evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition exist [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD); *Joseph E Seagram & Sons Ltd et al v Seagram Real Estate Ltd* (1984), 3 CPR (3d) 325 (TMOB); *Dion Neckwear Ltd v Christian Dior, SA et al* (2002), 20 CPR (4th) 155 (FCA) and *Wrangler Apparel Corp v The Timberland Company* (2005), 41 CPR (4th) 223 (FC)].

### Relevant dates

[11] The relevant date for the analysis of each ground of opposition varies depending on the ground of opposition to be assessed:

- The registrability of the Mark under s. 12(1)(d) of the Act: The date of the Registrar's decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 at 424 (FCA)];
- Entitlement to the registration of the Mark, where the application is based on proposed use: The filing date of the application (June 19, 2009) [see s. 16(3) of the Act];
- Distinctiveness of the Mark: The filing date of the statement of opposition (September 16, 2010) is generally accepted to be the relevant date [see *Andres Wines Ltd and E & J Gallo Winery* (1975), 25 CPR (2d) 126 at 130 (FCA) and *Metro-Goldwyn-Meyer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FCTD)].

### Grounds of Opposition Summarily Dismissed

[12] There are two grounds of opposition based on prior use of the Opponent's trade-marks and/or trade names: entitlement to the registration of the Mark (sections 16(3)(a) and (c) of the Act). The Opponent has not filed any evidence of prior use of any of its trade-marks or trade names identified in its statement of opposition. As such it failed to meet its initial burden with respect to the grounds opposition based on sections 16(3)(a) and (c) of the Act. They are therefore dismissed.

[13] As for the ground of opposition based on lack of distinctiveness of the Mark (section 2 of the Act), the Opponent has an initial burden to prove that any of its marks alleged in its statement of opposition were known in Canada to some extent at the filing date of its statement of

opposition (September 16, 2010) to negate the distinctiveness of the Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 at 58 (FCTD)].

[14] There is no evidence of prior use of any of the Opponent's marks nor is there evidence that any of those marks were sufficiently known in Canada to negate any distinctiveness of the Mark. Consequently the ground of opposition based on the lack of distinctiveness of the Mark is also dismissed.

[15] The only remaining grounds of opposition are those based on sections 12(1)(d) and 16(3)(b) of the Act.

#### Ground of Opposition Based on Section 12(1)(d) of the Act

[16] Ms. Hutanu is a trade-mark agent employed by the Opponent's agent firm. On May 12, 2014 she conducted a search of the Canadian Trade-marks Database to obtain the full particulars of the Opponent's registrations listed in Annex C herein. She filed as exhibit A to her affidavit the extracts corresponding to each of these registrations. I checked the register and they are all extant.

[17] From the list of registrations owned by the Opponent and listed in Annex C, the Opponent has the best chances of success under this ground of opposition with registrations TMA463,392; TMA669,704; TMA666,620 and TMA655,938 all for the trade-mark MONSTER. If it cannot succeed with any of those registrations it would not achieve a better result with its other registrations. As the relevant date under this ground of opposition is the date of my decision, I will consider registrations TMA463,392 and TMA655,938 as they stand now, namely without the modifications in the list of wares as contemplated by the Registrar in its decisions rendered on May 24, 2013 in the context of a section 45 proceeding.

[18] The other registered trade-marks cited by the Opponent under this ground of opposition contain a distinctive design feature and/or additional words that make the degree of resemblance between those marks and the Mark a step more remote. I wish to add that I am well aware that some of these other marks include the words 'monster' and 'high' but there are additional words

and/or design features that make those marks, as a whole, different from the Mark in sound, appearance and the ideas suggested by them.

[19] The test to determine this issue is set out in s. 6(2) of the Act wherein it is stipulated that the use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would likely lead to the inference that the wares associated with those trade-marks are manufactured, sold or leased by the same person, whether or not the wares are of the same general class. The test under section 6(2) of the Act does not concern the confusion of the marks themselves, but confusion of goods or services from one source as being from another source. In making such assessment I must take into consideration all the relevant surrounding circumstances, including those listed in s. 6(5): the inherent distinctiveness of the trade-marks and the extent to which they have become known; the length of time the trade-marks have been in use; the nature of the wares or business; the nature of the trade; and the degree of resemblance between the trade-marks in appearance, or sound or in the ideas suggested by them.

[20] Those criteria are not exhaustive and it is not necessary to give each one of them equal weight [see *Clorox Co. v. Sears Canada Inc.* (1992), 41 C.P.R. (3d) 483 (F.C.T.D.) and *Gainers Inc. v. Marchildon* (1996), 66 C.P.R. (3d) 308 (F.C.T.D.)]. I also refer to the decisions of the Supreme Court of Canada in *Mattel, Inc. supra* and *Veuve Clicquot Ponsardin v. Boutiques Cliquot Ltée et al.* (2006), 49 C.P.R. (4th) 401 where Mr. Justice Binnie commented on the assessment of the criteria enumerated under s. 6(5) of the Act to determine if there is a likelihood of confusion between two trade-marks.

[21] Also, as stated by the Supreme Court of Canada in *Masterpiece Inc v Alavida Lifestyles Inc et al* (2011), 96 CPR (4th) 361 (SCC), in the majority of cases, the degree of resemblance between the marks in issue is the most important factor. The other factors become significant only once the marks are found to be identical or very similar. Consequently I will start my analysis of the relevant criteria by assessing the degree of resemblance between the marks of the parties.

#### *Degree of resemblance*

[22] Mr. Justice Rothstein in *Masterpiece* summarized the test in the following terms:

40. At the outset of this confusion analysis, it is useful to bear in mind the test for confusion under the Trade-marks Act. In *Veuve Clicquot Ponsardin c. Boutiques Cliquot Ltée*, 2006 SCC 23, [2006] 1 S.C.R. 824 (S.C.C.), Binnie J. restated the traditional approach, at para. 20, in the following words:

The test to be applied is a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the [mark] at a time when he or she has no more than an imperfect recollection of the [prior] trade-marks, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks.

Binnie J. referred with approval to the words of Pigeon J. in *Benson & Hedges (Canada) Ltd. v. St. Regis Tobacco Corp.* (1968), [1969] S.C.R. 192 (S.C.C.), at p. 202, to contrast with what is not to be done — a careful examination of competing marks or a side by side comparison.

41. In this case, the question is whether, as a matter of first impression, the "casual consumer somewhat in a hurry" who sees the Alavida trade-mark, when that consumer has no more than an imperfect recollection of any one of the Masterpiece Inc. trade-marks or trade-name, would be likely to be confused; that is, that this consumer would be likely to think that Alavida was the same source of retirement residence services as Masterpiece Inc.

[23] Applying the test as formulated above I conclude that there is some resemblance between the Opponent's trade-mark MONSTER and the Mark. The word 'monster', which is the Opponent's trade-mark is not only the dominant portion of the Mark but also the first portion of the Mark. I will discuss later the argument raised by the Applicant that the word monster is a common element of trade-marks on the register when I will analyze the state of the register evidence.

[24] The Applicant argues that the word 'monster' is understood as having multiple possible meanings, including not only referencing a strange or horrible creature, but also something that is extremely unusual or large. It refers to the *Merriam Webster Online Dictionary*. It adds that in the context of the Mark, the suffix 'high' would, when the Mark is viewed as a whole, not to be understood as a descriptive term, but rather would be interpreted as the colloquial term of 'high school'. In fact in the *Oxford Dictionary of English*, which I consulted, one of the many definitions for the word 'high' is:

'informal, chiefly N. Amer. high school: I go to junior high.'

Consequently one of the many interpretations for the Mark could be 'Monster High School'.

[25] I am not convinced that ‘Monster High School’ would be the immediate first impression of the Mark in the mind of a casual consumer having an imperfect recollection of the Opponent’s MONSTER trade-mark. I believe that such consumer would think that the addition of the word ‘high’ to the Opponent’s trade-mark MONSTER suggests the idea of high quality, high fidelity, and/or high definition MONSTER branded products, when used in association with electric and electronic devices.

[26] This factor favours the Opponent.

*Inherent distinctiveness of the marks and the extent to which they have become known*

[27] The Applicant argues that the Opponent’s trade-marks are weak trade-marks in view of the state of the register evidence that shows an excess of two-hundred trade-mark applications and registrations which coexist in Canada, which includes the Applicant’s own earlier trade-mark registration for the identical trade-mark MONSTER HIGH (TMA820,883).

[28] The Opponent argues that MONSTER is a word from the English language but it has no apparent connection whatsoever with any of the wares covered by the Opponent’s registrations.

[29] I wish to state at the outset the fact that the Applicant obtained a registration for an identical trade-mark is not a valid consideration in the assessment of any of the relevant criteria [see *Produits Menagers Coronet Inc v Coronet-Werke Heinrich Schlerf GmbH* (1986), 10 CPR (3d) 492 (FCTD)].

[30] In *Choice Hotels International Inc v Hotels Confortel Inc* (1996), 67 CPR (3d) 340 (FCTD) Mr. Justice Rouleau made the following observations on the issue of inherent distinctiveness:

21 Now let us examine paragraph 6(5) (a) of the Act, which refers to the inherent distinctiveness of the trade-marks. The Registrar found, in relation to this paragraph, that neither of the disputed trade-marks has a strong inherent distinctiveness. Hughes has articulated the following principle concerning the inherent distinctiveness of a trade-mark, in his treatise on trade-marks:

A strong, inherently distinctive trade mark is one consisting of a striking inventive name or an original design, and as such, will be entitled to a wide scope of protection; on the other hand a trade mark lacking these

qualities is inherently less distinctive and is considered to be a weaker mark; the ambit of protection afforded to a weak mark is much less than for a strong mark, and registration of other marks containing comparatively small differences may be permitted.[FN8]

22 In the case at bar, the Registrar did not err in arriving at such a decision. On the one hand, the COMFORT INN trade-mark is composed of two words that are common in the English language. Its intrinsic originality is therefore minimal. On the other hand, the CONFORTEL trade-mark is of course an invented word, although it is true that the suffix "TEL" is one that is frequently used in the hotel industry and the term *confort* ("comfort") is not in itself original. Accordingly, the trade-mark COMFORT INN should be given less extended protection, since it has little inherent distinctiveness.

[31] Applying these principles to the marks in issue, I conclude that this factor favours neither of the parties. Both marks comprise common English dictionary words. As such, they are not inherently distinctive as would be an inventive or coined word. The state of the register argument will be discussed later. As for the Opponent's argument that the word 'monster' has no apparent connection with any of its wares, it is equally applicable to the Mark when used in association with most of the Wares.

[32] The degree of distinctiveness of a trade-mark may be enhanced through its use or promotion in Canada. This is the second part of the first factor enunciated in section 6(5)(a) of the Act, namely the extent to which a trade-mark has become known in Canada. There is no evidence of use or promotion of the parties' respective trade-marks in Canada.

[33] Consequently the first factor listed under section 6(5) of the Act favours neither party.

*The length of time the trade-marks have been in use*

[34] The Registrar can only assume a *de minimis* use of a trade-mark based on the date of first use mentioned in the certificates of registration [see *Entre Computer Centers, Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)]. Certificates of registration No TMA463,392; TMA655938; TMA669,704; and TMA666,620 make reference to the use of the trade-mark MONSTER at various dates depending on the registration and the wares covered by a specific registration. However it cannot give rise to an inference of significant use. As for the Applicant, there is no evidence of use of the Mark in the file.



[35] As a result, I conclude that this factor favours the Opponent but not significantly.

*Nature of the wares and their channels of trade*

[36] In order to counter the argument raised by the Opponent that there is clearly an overlap in some of the wares, the Applicant argues that registrations TMA463,392 and TMA655,938 have been the subject of section 45 proceedings and the Registrar has ordered that these registrations be amended to delete what could be considered overlapping wares.

[37] As mentioned previously those decisions are presently under appeal. Until a final decision is rendered by the Federal Court I must consider those registrations as they now appear on the register. Therefore I shall proceed with the comparison of the Wares to the wares covered by each of the Opponent's registrations.

[38] The following is a table of the Opponent's most relevant registrations and the wares covered by each one of them:

Trade-mark	Registration No.	Wares/Services
MONSTER	TMA463,392	(1) Electrical signal transmitting cable and wires, and connectors therefor; electrical signal transmitting cables and wires, and connectors for musical instruments; electrical power products for vehicles, namely power distribution blocks, capacitors, fuse blocks, fuse holders, circuit breakers, battery terminals and connectors for battery cables; clothing, namely t-shirts, jackets and pants. (2) Audio signal cable and connectors; video signal cable and connectors; electric cables for audio equipment; speaker wire; musical and voice signal transmitting cable and connectors therefor; computer cables. (3) Newsletters, magazines and newspapers providing entertainment industry and cable industry news.
MONSTER	TMA666,620	Electrical and electromagnetic signal transmitting, amplifying, receiving and converting devices, namely, cables, wires, connectors, and control devices for use with automotive and marine electrical, electronic and computer devices, namely, electrical and electronic signal switches, electrical and electronic signal splitters, electrical and electronic signal multiplexers, electrical and electronic signal wireless remote

		<p>controllers and electrical and electronic signal controllers; loudspeakers, stereo amplifiers; automotive and marine electrical power control components and accessories, namely, power conditioners, power cell re-chargers, power amplifiers, voltage stabilizers, current stabilizers, electrical surge protectors, and circuit breakers; automotive and marine mobile phone equipment and accessories, namely mobile phone cases, batteries for mobile phones, and mobile phone chargers.</p>
MONSTER	TMA655,938	<p>Electric wires, cables, and connectors; all being electrical and for use with audio and video components: amplifiers, CD, tapes, records, video cable, audio cable, speaker cable and connectors, cable, magnetic circuit breakers, power distribution blocks, junction boxes, fuse holders and battery connectors insulators for cables, electrical power products for vehicles, namely, power distribution blocks, capacitors, fuse blocks, fuse holders, circuit breakers, battery terminals, and connectors for battery cables, computers, calculating machines, cashier's machines, electrical signal transmitting cable and connectors therefore, for musical instruments, video game machines for use with televisions; and electronic game accessories, namely, electrical cables, electrical connectors and video game interactive remote control units; electronic games and electronic game accessories, namely, electrical cables, connectors and control devices, electrical signal, musical and voice transmitting cables and connectors therefore; video game machines for use with televisions; electronic game accessories, namely, electrical cables, electrical connectors and video game interactive remote control units, magnetic circuit breakers, power distribution blocks, junction boxes, fuse holders, battery connectors, batteries, powerstrips and boards, power line conditioners, and electrical power extension cords, electrical signal transmitting cables and connectors therefore; parts of and accessories for such goods, electrical distribution or control machines and apparatus; rotary converters; phase modifiers; batteries; electrical and magnetic measuring instruments; electric wires and cables; electrical communication machines and apparatus; applied electronic machines, alkaline batteries, rechargeable batteries, battery rechargers, fuse holders, battery connectors, junction boxes magnetic circuit breakers, electric current distribution boxes, electric current control device, automatic voltage stabilizers, energy conduit, audio and stereo equipment; electrical, audio and video cables; amplifiers, preamplifiers, speakers, equalizers, CD players and tape</p>

		players; power distribution systems; noise reduction components; connectors and electrical signal transmitting and interactive remote control units, computer products, namely, computer game programs; video game cartridges; video game CD-ROMS; video output game . units; computer game CD-ROMS; video game programs; video game programs for use with television sets; and video game machines for use with televisions, satellite disk-to-receiver interconnect; electrical cables, electrical connectors and amplifiers; satellite receiver connection kit comprised of electrical cables and electrical connectors, amplifiers, and satellite finder.
MONSTER	TMA669,704	Bowling balls

[39] The Applicant, in its written argument, grouped the Wares under the following general categories, which I find useful:

- (i) *clothing and eyewear items, and in particular:* eye glass cases; spectacles; sunglasses; eye glass cords; spectacle frames; helmets, namely bicycle helmets; life preservers; contact lens; binoculars; life jackets; swim masks; goggles for sports, namely, ski goggles, swim goggles; eyeglass chain; Bathing suits, bathrobes, beach cover-ups, belts, berets, boots, cardigans, coats, rain coats, gloves, night gowns, hats, head bands, hosiery, jumpers, knee highs, leotards, mittens, neckties, night shirts, overalls, pajamas, panties, pantyhose, sandals, scarves, shirts, slippers, slips, socks, stockings, suspenders, sweaters, tank tops, thermal underwear, tights, turtlenecks, underwear, vests, caps, skorts, earmuffs, swimsuits, swimsuit covers, jackets, sweatshirts, t-shirts, jeans, skirts; costumes and masks; dresses, shorts, t-shirts, blouses, skirts, pants; shoes; underwear; sneakers;
- (ii) *movies, video and arcade games, and electronic apparatus and accessories related thereto, and in particular* DVD's, namely, pre-recorded DVD's featuring movies; video games; audio visual apparatus and instruments, namely, video camera recorder, televisions, DVD player; calculators; cameras; computers; records, namely, phonograph records; compact discs, namely, prerecorded compact discs featuring music; telephones; cellphones; cellphone case; video cameras; video recorders and video tapes; radios; automatic and coin-operated amusement machines, namely, arcade games, free standing electronic arcade, electronic games; computer games software; mp3 players; DVD players; CD players; video tapes, namely pre-recorded video tapes; printers; computer mouse pad; answering machine; screen savers; smart cards; baby monitor; alarm for room; camcorder; camera case; television; CD case; DVD case; CD storage rack; CD

- sleeve; cell phone covers; cellular telephone apparatuses, namely, cellular phone, cellular phone batteries, cell phone covers; laptop carrying case; keyboards; media players; memory cards; microphone; mp4 players; headphones; earphones; headsets, namely headphones;
- (iii) *personal care appliances, magnets and outlet covers*, and in particular decorative magnets, electric outlet covers; electric curling iron; electric rollers; electric flat iron; electric hair crimper; electric hair straightening irons;
- (iv) *craft and stationary items such as photograph albums and boxes, sticker books, and the like*, in particular photograph albums, photograph boxes, paper boxes, drawer liner paper, note cards, agenda books, planners, pencil cases, arts and crafts paint kits, paper party bags, book covers, book ends, bookmarks, address books, loose leaf binders, stationery boxes, paint brushes, calendars, post cards, trading cards, trivia cards, chalk, paper table cloths, composition books, confetti, craft paper, crayons, crepe paper, decals, paper party decorations, desk sets, erasers, series of fiction books, gift cards, gift wrapping paper, markers, paper napkins, note pads, painting sets, paper party hats, pen and pencil holders, pencil sharpeners, decorative pencil top ornaments, pencils, pens, playing cards, posters, books in the field of collectibles, drawing rulers, rubber stamps, stamp pads, stickers, sticker books, folders, lunch bags, paper gift bags, plastic place mats, invitations, journals, talking children's books, temporary tattoos, writing instruments, namely, pens, pencils, markers, crayons, chalk, books of games, paper banners, coasters made of paper, beading kits, beads, memo pads, greeting cards, facial tissues and stickers for fingernails; autograph books, diaries, notebooks, and scrapbooks, coloring books, activity books, magazines; books; computer paper; markers; note books; posters; photographs; adhesives for stationery, namely, glue, tape; bumper stickers; document covers; business cards; bulletin boards; blank checks; address labels; binders; clip boards; dry erase writing boards; envelopes; clay; clip boards; money clips; painting sets; paper clips; paper mats; stencils; plastic bags; paper bags; lunch bags; menus ; comic books; markers; *and*
- (v) *umbrellas and bags and wallets*, and in particular trunks and travelling bags; backpacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; duffle bags; luggage; fanny pack; wallet; beach bags, gym bags, overnight bags, coin purses, handbags, key cases, luggage, suitcases, waist packs, lipstick holders; purses, cosmetic cases sold empty, hat boxes, card holders; pet carriers; leather key chains; carrying case, namely, luggage, suitcases; school book bags; tote bags.

[40] Under section 12(1)(d) ground of opposition I must compare the Wares as described in the application with the wares covered by the Opponent's registrations [see *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 at 10-11 (FCA); *Henkel Kommanditgesellschaft v Super Dragon* (1986), 12 CPR (3d) 110 at 112 (FCA); *Miss Universe Inc v Dale Bohna* (1994), 58 CPR (3d) 381 at 390-392 (FCA)]. However, those statements must be read with a view to determine the probable type of business or trade. Evidence of the parties' actual trades could have been useful in this respect but there is none in the file [see *McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB); and *American Optical Corp v Alcon Pharmaceuticals Ltd* (2000), 5 CPR (4th) 110 (TMOB)].

[41] At the hearing the Applicant tried to distinguish the nature of the parties' trade. The Applicant argued that, from a reading of the list of wares covered by the Opponent's registrations, the latter is in the business of selling cables while the Wares are intended to children. There is no mention in the description of the Wares that they are directed to children. As for the Opponent's wares, they cover, as listed above, more than just cables.

[42] Comparing the Wares to the wares covered by the Opponent's registrations, I find some overlap as appears from this table:

Applicant's Overlapping wares	Opponent's registration	Opponent's Products
Bathing suits, bathrobes, beach cover-ups, cardigans, coats, rain coats, night shirts, overalls, shirts, sweaters, tank tops, tights, turtlenecks, vests, skorts (sic), swimsuits, swimsuit covers, jackets, sweatshirts, t-shirts, jeans, skirts; dresses, shorts, t-shirts, blouses, skirts, pants;	TMA463,392	clothing, namely t-shirts, jackets and pants.

<p>DVD's, namely, pre-recorded DVD's featuring movies; video games; audio visual apparatus and instruments, namely, video camera recorder, televisions, DVD player; computers; records, namely, phonograph records; compact discs, namely, prerecorded compact discs featuring music; video recorders and video tapes; radios; automatic and coin-operated amusement machines, namely, arcade games, free standing electronic arcade, electronic games; computer games software; mp3 players; DVD players; CD players; video tapes, namely pre-recorded video tapes; smart cards; television; laptop carrying case; keyboards; media players; memory cards; microphone; mp4 players; headphones; earphones; headsets, namely headphones</p>	<p>TMA655,938</p>	<p>electronic game accessories, namely, video game interactive remote control units; electronic games; video game machines for use with televisions; electronic game accessories, namely, electrical cables, electrical connectors and video game interactive remote control units; electrical communication machines and apparatus; applied electronic machines; audio and stereo equipment; amplifiers, preamplifiers, speakers, equalizers, CD players and tape players; computer products, namely, computer game programs; video game cartridges; video game CD-ROMS; video output game; computer game CD-ROMS; video game programs; video game programs for use with television sets; and video game machines for use with televisions, satellite disk-to-receiver interconnect.</p>
<p>telephones; cellphones; cellphone case; cellular phone batteries, cell phone covers</p>	<p>TMA666,620</p>	<p>automotive and marine mobile phone equipment and accessories, namely mobile phone cases, batteries for mobile phones, and mobile phone chargers.</p>

[43] I conclude that there is an overlap between the Applicant's Overlapping wares and the Opponent's Products, all defined in the chart above. In the absence of evidence of the parties' respective channels of trade, I can reasonably assume that the Applicant's Overlapping wares and the Opponent's Products could be sold through the same channels of trade [see *Hudson's Bay Co v Boyner Holding Anonim Sirketi* (2010), 82 CPR (4th) 207 (TMOB)].

[44] Consequently this factor also favours the Opponent in so far as the Applicant's Overlapping wares are concerned.

*Other relevant surrounding circumstances*

[45] The weight to be given to each of the factors discussed above may be diminished or strengthened by other relevant factors, namely in this case, the state of the register and the marketplace as well as the existence of a family of trade-marks.

i) Family of MONSTER trade-marks

[46] I can easily dispose of the Opponent's argument of the existence of a family of MONSTER trade-marks. There must be evidence of actual prior use of those trade-marks in order to sustain such argument [see *MacDonald's Corporation v Yogi Yogurt Ltd* (1982), 66 CPR (2d) 101]. In the present case I have no evidence of use of any of the Opponent's registered trade-marks enumerated in its statement of opposition. Therefore the Opponent cannot take advantage of the argument that it owns a family of MONSTER trade-marks.

ii) State of the register evidence

[47] As for the state of the register evidence which was filed by the Applicant, through the affidavit of Tandori Cheng, it is only relevant insofar as one can make inferences from it about the state of the marketplace [see *Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); *Welch Foods Inc v Del Monte Corp* (1992), 44 CPR (3d) 205 (FCTD)]. Inferences about the state of the marketplace can only be drawn from state of the register evidence where a large number of relevant registrations have been located [see *Maximum Nutrition Ltd v Kellogg Salada Canada Inc* (1992), 43 CPR (3d) 349 (FCA)].

[48] In its written submission the Applicant has provided an analysis of the citations included in the Tandori Cheng affidavit [see paragraphs 5.2 (iv) and (vi) of the Applicant's written submission]. Out of the 125 citations found by Ms. Cheng that include the word 'monster' as an element of a registered trade-mark, the Applicant has focused on third party trade-mark registrations coexisting on the register in Canada with similar class 009 goods alone, which include:

apparatus and instruments for conducting, switching, transforming, accumulating, regulating or controlling electricity; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; compact discs, DVDs and other digital recording media; mechanisms for coin-operated apparatus; cash registers, calculating machines, data processing equipment, computers; computer software.

[49] From those 125 citations contained in Ms. Cheng's affidavit, the Applicant has identified 12 citations that it believes most relevant. However I consider only MEGA MONSTERS, MONSTER HUNTER, DRUG MONSTER, KING OF THE MONSTERS and MONSTER FUSION to be relevant. All the others can easily be distinguishable as they contain additional distinctive elements. For example I refer to ESSIE-LAKE ERIE'S FRIENDLY SEA MONSTER, DMQ DRAGON QUEST MONSTERS-Joker & Design, MONSTER TRUCK MADNESS, MONSTERS VS. ALIENS and VIOLATOR MONSTER RIG.

[50] Ms. Chang also listed 80 active pending Canadian trade-mark applications which contain the words 'monster' or 'monsters'. In its written submission the Applicant listed 6 citations which correspond to either applications that have now matured to registration or applications filed on the basis of respective applicants' earlier date of first use of the mark, all covering class 009 wares.

[51] Even if I were to consider all of those 6 citations to be relevant, the total number of relevant citations, namely 11 owned by 9 different entities, is insufficient to draw an inference about the state of the marketplace from the state of the register evidence described above [see *Welch Foods, supra*].

[52] Consequently I do not consider the state of the register evidence to be a relevant additional circumstance in this case.



### *Conclusion*

[53] From the analysis of the relevant criteria I conclude that the Applicant has not discharged its legal onus to prove, on a balance of probabilities, that there is no likelihood of confusion between the Mark and the Opponent's MONSTER trade-marks when used in association with the Applicant's Overlapping wares. Therefore this ground of opposition is maintained in part.

### Ground of opposition based on section 16(3)(b) of the Act

[54] The relevant date for this ground of opposition is the filing date of the application (June 19, 2009) [see section 16(3) of the Act].

[55] The Opponent is relying on its application 1,406,818 for the trade-mark M MONSTER & Design in association with the wares listed in Annex D to this decision and application 1,386,992 for the trade-mark MONSTER in association with cleaning preparations, cloths and cleaning wipes, and canned pressurized gases for dusting and cleaning purposes.

[56] Ms. Cheng filed the particulars of each of these applications. I note that application 1,406,818 matured for registration on December 23, 2010 (TMA785,953), thus after the advertisement date of the present application (April 21, 2010). Therefore the Opponent's aforesaid application was pending at the advertisement date of the present application [see section 16(4) of the Act]. Consequently the Opponent has met its initial burden.

[57] I do not need to do an extensive analysis as I did under the previous ground of opposition. The same criteria are applicable except that they must be assessed at an earlier date (June 19, 2009), which would not have an impact on such analysis, except for the state of the register evidence. No analysis has been provided by the Applicant of the state of the register evidence as of the relevant date under this ground of opposition. In the best case scenario for the Applicant, the relevant citations mentioned under the previous ground of opposition would still be relevant despite the earlier relevant date. I already ruled that the number of those relevant citations was insufficient to consider the state of the register evidence as a relevant factor.

[58] I believe that the Wares are different enough from the wares covered by application 1,386,992 to negate any likelihood of confusion between the trade-mark MONSTER covered by

such application and the Mark. As such that ground of opposition is dismissed in so far as application 1,386,992 is concerned.

[59] As for application 1,406, 818 for the trade-mark M MONSTER & Design as illustrated below:



the dominant element of that trade-mark is the word 'MONSTER'. The design portion is not a dominant feature. There is therefore some resemblance with the Mark. There is an overlap in the parties' respective wares and channels of trade in so far as the following wares, part of the Wares, are concerned:

DVD's, namely, pre-recorded DVD's featuring movies; video games; audio visual apparatus and instruments, namely, video camera recorder, televisions, DVD player; computers; compact discs, namely, pre-recorded compact discs featuring music; telephones; cellphones; cellphone case; video recorders and video tapes; radios; mp3 players; DVD players; CD players; video tapes, namely pre-recorded video tapes; CD case; DVD case; CD storage rack; CD sleeve; cell phone covers; cellular telephone apparatuses, namely, cellular phone, cellular phone batteries, cell phone covers; mp4 players; headphones; earphones; headsets, namely headphones.

[60] I note that all of the above listed wares are included already in the Applicant's Overlapping wares defined under the previous ground of opposition. As such the Opponent even though successful under this ground of opposition, for reasons similar to those outlined under the registrability ground of opposition, is not in a better position as it was under the registrability ground of opposition.

[61] I maintain this ground of opposition in part; only in so far as the wares listed in paragraph 59 above are concerned.

## Disposition

[62] Pursuant to the authority delegated to me under s. 63(3) of the Act, I refuse the application with respect to:

Bathing suits, bathrobes, beach cover-ups, cardigans, coats, rain coats, night shirts, overalls, shirts, sweaters, tank tops, tights, turtlenecks, vests, skorts (sic), swimsuits, swimsuit covers, jackets, sweatshirts, t-shirts, jeans, skirts; dresses, shorts, t-shirts, blouses, skirts, pants; DVD's, namely, pre-recorded DVD's featuring movies; video games; audio visual apparatus and instruments, namely, video camera recorder, televisions, DVD player; computers; records, namely, phonograph records; compact discs, namely, pre-recorded compact discs featuring music telephones; cellphones; cellphone case; video cameras; video recorders and video tapes; radios; automatic and coin-operated amusement machines, namely, arcade games, free standing electronic arcade, electronic games; computer games software; mp3 players; DVD players; CD players; video tapes, namely pre-recorded video tapes; headphones; earphones; smart cards; television; cell phone covers; cellular telephone apparatus, namely cellular phone, cellular phone batteries, cell phone covers; laptop carrying case; keyboards; media players; memory cards; microphone; mp4 players; headset, namely head phones.

and reject the opposition with respect to:

Eye glass cases; spectacles; sunglasses; eye glass cords; spectacle frames; calculators; cameras; helmets, namely bicycle helmet; decorative magnets, electric outlet covers; life preservers; contact lens; binoculars; printers; computer mouse pad; answering machine; screen savers; baby monitor; alarm for room; camcorder; camera case; CD case; DVD case; CD storage rack; CD sleeve; life jacket; measuring tapes; telescope; swim mask; goggles for sports, namely, ski goggles, swim goggles; eyeglass chain; electric curling iron; electric rollers; electric flat iron; electric hair crimper; electric hair straightening irons.

Belts, berets, boots, gloves, night gowns, hats, head bands, hosiery, jumpers, knee highs, leotards, mittens, neckties, pajamas, panties, pantyhose, sandals, scarves, slippers, slippers, socks, stockings, suspenders, thermal underwear, underwear, caps, earmuffs; costumes and masks; shoes; underwear; sneakers.

Photograph albums, photograph boxes, paper boxes, drawer liner paper, note cards, agenda books, planners, pencil cases, arts and crafts paint kits, paper party bags, book covers, book ends, book marks, address books, loose leaf binders, stationery boxes, paint brushes, calendars, post cards, trading cards, trivia cards, chalk, paper table cloths, composition books, confetti, craft paper, crayons, crepe paper, decals, paper party decorations, desk sets, erasers, series of fiction books, gift cards, gift wrapping paper, markers, paper napkins, note pads, painting sets, paper party hats, pen and pencil holders, pencil sharpeners, decorative pencil top ornaments, pencils, pens, playing cards, posters, books in the field of collectibles, drawing rulers, rubber stamps, stamp

pads, stickers, sticker books, folders, lunch bags, paper gift bags, plastic place mats, invitations, journals, talking children's books, temporary tattoos, writing instruments, namely, pens, pencils, markers, crayons, chalk, books of games, paper banners, coasters made of paper, beading kits, beads, memo pads, greeting cards, facial tissues and stickers for fingernails; autograph books, diaries, notebooks, and scrapbooks, coloring books, activity books, magazines; books; computer paper; markers; note books; posters; photographs; adhesives for stationery, namely, glue, tape; bumper stickers; document covers; business cards; bulletin boards; blank checks; address labels; binders; clip boards; dry erase writing boards; envelopes; clay; clip boards; money clips; painting sets; paper clips; paper mats; stencils; plastic bags; paper bags; lunch bags; menus ; comic books; markers.

Trunks and travelling bags; backpacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; duffle bags; luggage; fanny pack; wallet; beach bags, gym bags, overnight bags, coin purses, handbags, key cases, luggage, suitcases, waist packs, lipstick holders; purses, cosmetic cases sold empty, hat boxes, card holders; pet carriers; leather key chains; carrying case, namely, luggage, suitcases; school book bags; tote bags.

pursuant to s. 38(8) of the Act [see *Produits Menagers Coronet Inc v Coronet-Werke Heinrich Schlerf GmbH* (1986), 10 CPR (3d) 492 (FCTD) as authority for a split decision].

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Jean Carrière  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

## Annex A

The wares covered by application 1,442,267 are:

(1) DVD's, namely, pre-recorded DVD's featuring movies; video games; eye glass cases; spectacles; sunglasses; eye glass cords; spectacle frames; audio visual apparatus and instruments, namely, video camera recorder, televisions, DVD player; calculators; cameras; computers; records, namely, phonograph records; compact discs, namely, pre-recorded compact discs featuring music; telephones; cell phones; cell phone case; video cameras; video recorders and video tapes; radios; automatic and coin-operated amusement machines, namely, arcade games, free standing electronic arcade, electronic games; computer games software; mp3 players; DVD players; CD players; helmets, namely bicycle helmet; video tapes, namely pre-recorded video tapes; decorative magnets, electric outlet covers; headphones; ; life preservers; contact lens; binoculars; ear phones; printers; computer mouse pad; answering machine; screen savers; smart cards; baby monitor; alarm for room; camcorder; camera case; television; CD case; DVD case; CD storage rack; CD sleeve; cell phone covers; cellular telephone apparatuses, namely, cellular phone, cellular phone batteries, cell phone covers; laptop carrying case; keyboards; life jacket; media players; measuring tapes; memory cards; microphone; telescope; swim mask; mp4 players; headsets, namely, head phones; goggles for sports, namely, ski goggles, swim goggles; eyeglass chain; electric curling iron; electric rollers; electric flat iron; electric hair crimper; electric hair straightening irons.

(2) Bathing suits, bathrobes, beach cover-ups, belts, berets, boots, cardigans, coats, rain coats, gloves, night gowns, hats, head bands, hosiery, jumpers, knee highs, leotards, mittens, neckties, night shirts, overalls, pajamas, panties, pantyhose, sandals, scarves, shirts, slippers, slips, socks, stockings, suspenders, sweaters, tank tops, thermal underwear, tights, turtlenecks, underwear, vests, caps, skorts (sic), earmuffs, swimsuits, swimsuit covers, jackets, sweatshirts, t-shirts, jeans, skirts; costumes and masks; dresses, shorts, t-shirts, blouses, skirts, pants; shoes; underwear; sneakers.

(3) Photograph albums, photograph boxes, paper boxes, drawer liner paper, note cards, agenda books, planners, pencil cases, arts and crafts paint kits, paper party bags, book covers, book ends, book marks, address books, loose leaf binders, stationery boxes, paint brushes, calendars, post cards, trading cards, trivia cards, chalk, paper table cloths, composition books, confetti, craft paper, crayons, crepe paper, decals, paper party decorations, desk sets, erasers, series of fiction books, gift cards, gift wrapping paper, markers, paper napkins, note pads, painting sets, paper party hats, pen and pencil holders, pencil sharpeners, decorative pencil top ornaments, pencils, pens, playing cards, posters, books in the field of collectibles, drawing rulers, rubber stamps, stamp pads, stickers, sticker books, folders, lunch bags, paper gift bags, plastic place mats, invitations, journals, talking children's books, temporary tattoos, writing instruments, namely, pens, pencils, markers, crayons, chalk, books of games, paper banners, coasters made of paper, beading kits, beads, memo pads, greeting cards, facial tissues and stickers for fingernails; autograph books, diaries, notebooks, and scrapbooks, coloring books, activity books, magazines; books; computer paper; markers; note books; posters; photographs; adhesives for stationery, namely, glue, tape; bumper stickers; document covers; business cards; bulletin boards; blank checks; address labels; binders; clip boards; dry erase writing boards; envelopes; clay; clip

boards; money clips; painting sets; paper clips; paper mats; stencils; plastic bags; paper bags; lunch bags; menus ; comic books; markers.

(4) Trunks and travelling bags; backpacks, purses; umbrellas, parasols and walking sticks; whips, harness and saddlery; duffle bags; luggage; fanny pack; wallet; beach bags, gym bags, overnight bags, coin purses, handbags, key cases, luggage, suitcases, waist packs, lipstick holders; purses, cosmetic cases sold empty, hat boxes, card holders; pet carriers; leather key chains; carrying case, namely, luggage, suitcases; school book bags; tote bags.

(the Wares)


## Annex B

The grounds of opposition now pleaded can be summarized as follow:






1. The Mark is not registrable having regard to section 12(1)(d) of the Act in that it is confusing with the Opponent's registered trade-marks listed in Annex C;
2. The Applicant is not the person entitled to the registration of the Mark pursuant to section 16(3)(a) of the Act in that at all material times the Mark was confusing with each of the trade-marks listed in Annex C that have been previously used or made known in Canada by the Opponent or the Opponent's licensees or predecessors in title, and that the Opponent or the Opponent's predecessor in title has not abandoned;
3. The Applicant is not the person entitled to the registration of the Mark pursuant to section 16(3)(b) of the Act in that at all material times the Mark was and is confusing with the trade-marks M MONSTER Design, application 1,406,818 and MONSTER, application 1,386,992. The aforesaid applications have been previously filed in Canada and they were pending at the date of advertisement of the Applicant's application;
4. The Applicant is not the person entitled to the registration of the Mark pursuant to section 16(3)(c) of the Act in that at all material times the Mark was and is confusing with the trade names MONSTER, MONSTER CABLE and MONSTER CABLE PRODUCTS each of which has, and which collectively have been previously used in Canada by the Opponent, in association with a business involved in the manufacture, distribution, sale, and marketing of communications, electrical and electronic products;
5. Pursuant to section 38(2)(d) of the Act, the Mark is not distinctive having regard to the use in Canada by others of trade-marks and trade-names referred to above.


### Annex C

The Opponent's registered trade-marks are:



Trade-mark	Registration No.	Wares/Services
CAPSULE MONSTER COLISEUM	TMA647,119	Video game software; video game programs; video game CD-ROMs; video game Digital Versatile Disc-ROMs; Computer game programs; Computer game CD-ROMS; Computer game Digital Versatile DiscROMS; Electronic game programs; Downloadable electronic game software; Electronic game CD-ROMS; Electronic game Digital Versatile Disc-Roms; Cartridges and cassettes for use with hand-held video game machine.
MONSTER	TMA463,392	(1) Electrical signal transmitting cable and wires, and connectors therefor; electrical signal transmitting cables and wires, and connectors for musical instruments; electrical power products for vehicles, namely power distribution blocks, capacitors, fuse blocks, fuse holders, circuit breakers, battery terminals and connectors for battery cables; clothing, namely t-shirts, jackets and pants. (2) Audio signal cable and connectors; video signal cable and connectors; electric cables for audio equipment; speaker wire; musical and voice signal transmitting cable and connectors therefor; computer cables. (3) Newsletters, magazines and newspapers providing entertainment industry and cable industry news.
	TMA761,616	Electrical and electronic control devices, namely, electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely, cables, wires, connectors, and control devices for use with electrical, electronic, and computer devices, namely, electrical and electronic signal switches, electrical and electronic signal splitters, electrical and electronic signal multiplexers, electrical and electronic signal wireless remote controllers and electrical and electronic signal controllers; computer components and accessories, namely, computer peripherals, namely, cables, connectors, and



		electrical surge protectors; audio equipment and accessories, namely, power amplifiers, audio signal equalizers; electrical control components and accessories, namely power conditioners, power cell re-chargers, power amplifiers, voltage stabilizers, current stabilizers, powerstrips, electrical surge protectors, circuit chargers and circuit breakers; uninterruptible power supplies.
	TMA752,631	Electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely cables, wires, and connectors for use with electrical, electronic, and computer devices.
	TMA752,633	Electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely cables, wires, and connectors for use with electrical, electronic, and computer devices.
	TMA753,031	Electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely cables, wires, and connectors for use with electrical, electronic, and computer devices.
MONSTER	TMA669,704	Bowling balls.
MONSTER POWER	TMA611,734	Alkaline batteries, rechargeable batteries, battery rechargers, fuse holders, battery connectors, junction boxes, magnetic circuit breakers, current distribution boxes, electric power controllers, automatic voltage stabilizers, voltage and waveform conditioners, surge protectors, powerstrips, electric wires and cables.
	TMA755,564	
	TMA756,893	Electrical and electronic control devices, namely, electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely, cables, wires, connectors, and control devices for use with electrical, electronic, and computer devices, namely, electrical and electronic signal wireless remote controllers and electrical and electronic signal controllers; electrical control components and accessories, namely, power conditioners, power cell re-chargers, power amplifiers, voltage stabilizers,


		current stabilizers, electrical surge protectors, circuit chargers, and circuit breakers.
MONSTER COMPUTER	TMA530,302	Computer cables.
MONSTER CABLE	TMA444,635	(1) Audio signal cable and connectors, video signal cable and connectors, electrical signal transmitting cable and connectors, electrical cables for audio equipment, speaker wire, musical and voice signal transmitting cable and connectors therefor, computer cables. (2) Speaker wire. (3) Musical and voice signal transmitting cable and connectors therefor. (4) Electrical signal transmitting cable and connectors therefor. (5) Computer cables.
MONSTER CABLE	TMA664,281	Electrical and electromagnetic signal transmitting, amplifying, receiving and converting devices, namely, cables, wires, connectors, and control devices for use with automotive and marine electrical, electronic and computer devices, namely, electrical and electronic signal switches, electrical and electronic signal splitters, electrical and electronic signal multiplexers, electrical and electronic signal wireless remote controllers and electrical and electronic signal controllers; loudspeakers, stereo amplifiers; automotive and marine electrical power control components and accessories, namely, power conditioners, power cell re-chargers, power amplifiers, voltage stabilizers, current stabilizers, electrical surge protectors, and circuit breakers; automotive and marine mobile phone equipment and accessories, namely, mobile phone cases, batteries for mobile phones, and mobile phone chargers.
	TMA753,013	Electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely, cables, wires, and connectors for use with electrical, electronic, and computer devices.
MONSTER	TMA666,620	Electrical and electromagnetic signal transmitting, amplifying, receiving and converting devices, namely, cables, wires, connectors, and control devices for use with automotive and marine electrical, electronic and computer devices, namely, electrical and electronic signal switches, electrical and

		<p>electronic signal splitters, electrical and electronic signal multiplexers, electrical and electronic signal wireless remote controllers and electrical and electronic signal controllers; loudspeakers, stereo amplifiers; automotive and marine electrical power control components and accessories, namely, power conditioners, power cell re-chargers, power amplifiers, voltage stabilizers, current stabilizers, electrical surge protectors, and circuit breakers; automotive and marine mobile phone equipment and accessories, namely mobile phone cases, batteries for mobile phones, and mobile phone chargers.</p>
MONSTER	TMA655,938	<p>Electric wires, cables, and connectors; all being electrical and for use with audio and video components: amplifiers, CD, tapes, records, video cable, audio cable, speaker cable and connectors, cable, magnetic circuit breakers, power distribution blocks, junction boxes, fuse holders and battery connectors insulators for cables, electrical power products for vehicles, namely, power distribution blocks, capacitors, fuse blocks, fuse holders, circuit breakers, battery terminals, and connectors for battery cables, computers, calculating machines, cashier's machines, electrical signal transmitting cable and connectors therefore, for musical instruments, video game machines for use with televisions; and electronic game accessories, namely, electrical cables, electrical connectors and video game interactive remote control units; electronic games and electronic game accessories, namely, electrical cables, connectors and control devices, electrical signal, musical and voice transmitting cables and connectors therefore; video game machines for use with televisions; electronic game accessories, namely, electrical cables, electrical connectors and video game interactive remote control units, magnetic circuit breakers, power distribution blocks, junction boxes, fuse holders, battery connectors, batteries, powerstrips and boards, power line conditioners, and electrical power extension cords, electrical signal transmitting cables and connectors therefore; parts of and accessories for such goods, electrical distribution or control machines and apparatus; rotary</p>

		converters; phase modifiers; batteries; electrical and magnetic measuring instruments; electric wires and cables; electrical communication machines and apparatus; applied electronic machines, alkaline batteries, rechargeable batteries, battery rechargers, fuse holders, battery connectors, junction boxes magnetic circuit breakers, electric current distribution boxes, electric current control device, automatic voltage stabilizers, energy conduit, audio and stereo equipment; electrical, audio and video cables; amplifiers, preamplifiers, speakers, equalizers, CD players and tape players; power distribution systems; noise reduction components; connectors and electrical signal transmitting and interactive remote control units, computer products, namely, computer game programs; video game cartridges; video game CD-ROMS; video output game . units; computer game CD-ROMS; video game programs; video game programs for use with television sets; and video game machines for use with televisions, satellite disk-to-receiver interconnect; electrical cables, electrical connectors and amplifiers; satellite receiver connection kit comprised of electrical cables and electrical connectors, amplifiers, and satellite finder.
MONSTER POWER	TMA455,217	Magnetic circuit breakers, power distribution blocks, junction boxes, fuse holders, and battery connectors.
	TMA752,632	Electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely, cables, wires, and connectors for use with electrical, electronic, and computer devices.
	TMA752,632	Electrical and electromagnetic signal transmitting, amplifying, receiving, and converting devices, namely, cables, wires, and connectors for use with electrical, electronic, and computer devices.

## Annex D

List of wares covered by application 1,406, 818 for the trade-mark M MONSTER Design:

	<p>electrical and electromagnetic signal transmitting, amplifying, receiving and converting devices, namely, cables, wires, connectors, and control devices for use with electrical, electronic, and computer devices; loudspeakers; stereo amplifiers; recording media, namely, pre-recorded compact discs and DVDs featuring audio and video recordings featuring music and entertainment; telephone accessories, namely, telephone cables and connectors, telephone headsets, cases for telephones, telephone chargers and voltage surge protectors; mobile phone equipment and accessories, namely, mobile telephone cables, electrical power connectors, mobile telephone chargers, mobile telephone headsets, and cases for mobile telephones; computer components and accessories, namely, computer component cables and connectors; audio equipment and accessories, namely, audio cables and connectors, signal splitters for electrical audio apparatus, speakers, FM radio transmitters, and remote controls for use with audio and video devices and for use with wireless lighting controllers; video equipment and accessories, namely, video cables and connectors, and voltage surge protectors; electronic game equipment and accessories, namely, electronic game cables and connectors; electrical power control components and accessories, namely, power cables, power switches, capacitors, electrical connectors, electric power strips, voltage surge protectors, power amplifiers, circuit chargers, circuit breakers; energy conditioning devices, namely, power line conditioners, voltage conditioners, voltage stabilizers, current stabilizers, and power noise reduction devices for filtering power line noise; power cell rechargers; control protocol software featuring interoperability standards for centralized home control of residential lighting, audio devices and video devices, and computer hardware and electrical controllers, for centralized home control, namely, for controlling residential lighting, audio devices and video devices</p>
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