



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

Citation: 2013 TMOB 162
Date of Decision: 2013-09-27

**IN THE MATTER OF AN OPPOSITION
by San Francisco Baseball Associates L.P.
to application No. 1,212,191 for the trade-
mark GIANT & Design in the name of
Giant Manufacturing Co., Ltd.**

[1] This is a decision accepting in part an opposition under section 38 of the *Trade-marks Act*, RSC 1985, c T-13 by San Francisco Baseball Associates L.P. to an application filed by Giant Manufacturing Co., Ltd. for the registration of the trade-mark GIANT & Design (the Mark), shown below.



I. The Record

I.1 The Application

[2] The application, filed by Giant Manufacturing Co., Ltd. (the Applicant) on April 5, 2004, is based on proposed use of the Mark. The statement of wares, as amended on May 28, 2007, reads:

baby backpacks; tote bags; handbags; leather cases for cellular phone; traveling trunks; backpacks; fanny packs; wallets; umbrellas; haversacks; beach bags; school bags; briefcases; travel bags; knapsacks; camping backpacks; shopping bags; change purses; all purpose athletic bags; parasols; patio umbrellas; beach umbrellas; golf umbrellas; leather holders for business cards; sports wear for bicyclist; socks; gloves;

hats and caps; athletic shoes; shawls; gym suits; snow suits; ski suits; jogging suits; warm-up suits; play suits; pants; belts (clothing); shoes; jackets; coats; vests; hooded coats; polo shirts; T-shirts; jeans; shirts; pants for bicyclist; sport suits; leisure suits; leisure socks; sport socks; leisure pants; working dress; aprons; uniforms; leisure hats; caps for bicyclist; sun visors; topees; sunbonnets; thermal hats; scarves; foulard; neckerchiefs; leisure shoes; shoes for bicyclist; neckties; bow ties; girdles; rain coats; sleeveless cloaks; socks for bicyclist; thermal gloves (the Wares).

I.2 The Statement of Opposition

[3] San Francisco Baseball Associates L.P. (the Opponent) filed a statement of opposition on February 11, 2008 based on each of the grounds set out in section 38(3) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act).

[4] The first two grounds of opposition allege that the application does not conform to the requirements of sections 30(a) and 30(i) of the Act respectively.

[5] The three other grounds of opposition are premised on allegations of confusion between the Mark and the Opponent's registered and common law trade-marks comprising or containing the term GIANTS alleged to have been previously used or made known in Canada in association with identical or closely similar wares and services. I note in passing that the registered trade-marks GIANTS Design (No. TMA441,141), SAN FRANCISCO GIANTS Design (No. TMA337,253), and GIANTS & Design (No. TMA441,157), as detailed in Schedule A to this decision, are specifically alleged in the statement of opposition. However, the Opponent did not specifically identify or detail its "common law GIANTS marks" in the statement of opposition. I will return to this point in the analysis of the relevant grounds of opposition.

I.3 The Evidence

I.3.1 Opponent's Evidence

[6] It consists of the following:

- the affidavit of Ethan G. Orlinsky, Corporate Secretary of Major League Baseball Properties, Inc., with Exhibits "A" to "V"; and
- certificates of authenticity of the Opponent's alleged trade-mark registrations.

[7] I note that the documents appended as exhibits to the Orlinsky affidavit were not certified as prescribed by the *Federal Courts Rules*, SOR/98-106, which are generally followed in opposition proceedings. Although unnotarized exhibits would probably be found inadmissible by the Federal Court, the Registrar does not strictly adhere to the rules of practice of the Federal Court. Further, the Applicant never raised the fact that the exhibits appended to the affidavit had not been certified. Given the circumstances of this case, I will have regard to these exhibits.

I.3.2 Applicant's Evidence

[8] It consists of the following:

- the affidavit of Paul Charles Nash, Retail Development Manager of Giant Bicycle Canada, Inc., with Exhibits "A" to "H";
- the affidavit of Lynda Palmer, trade-mark searcher, with Exhibit "A";
- the affidavit of Janet McKenzie, trade-mark assistant of the Applicant's trade-marks agent, with Exhibits "A" to "J"; and
- certificates of authenticity of five trade-mark registrations owned by the Applicant, as detailed in Schedule "B" to this decision.

I.4 Representations

[9] Only the Applicant filed a written argument; a hearing was not held.

II. Legal Onus and Evidential Burden

[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 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); *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)].

III. Grounds of Opposition Summarily Dismissed

[11] The grounds of opposition raised under sections 30(a) and 30(i) of the Act are summarily dismissed for the reasons that follow.

[12] Firstly, the section 30(a) ground of opposition, which alleges that the application does not contain a statement in ordinary commercial term of the Wares, is dismissed for the Opponent's failure to meet its evidential burden. Besides not making any submissions about this ground of opposition, the Opponent did not file any evidence in support thereto.

[13] Secondly, section 30(i) of the Act requires an applicant to include a statement in the application that the applicant is satisfied that it is entitled to use the trade-mark in Canada. Where an applicant has provided the required statement, the jurisprudence suggests that non-compliance with section 30(i) of the Act can be found only where there are exceptional circumstances that render the applicant's statement untrue, such as evidence of bad faith [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. There is no such evidence here.

IV. Analysis of the Remaining Grounds of Opposition

[14] The issues that arise from the remaining grounds of opposition are:

1. Is the Mark confusing with the Opponent's registered trade-marks?
2. Was the Applicant the person entitled to registration of the Mark at the filing date of the application?
3. Was the Mark distinctive of the Applicant's Wares at the filing date of the statement of opposition?

[15] I will analyse each of these issues in turn.

IV.1 Is the Mark Confusing with the Opponent's Registered Trade-marks?

[16] The material date for considering this issue, which arises from the section 12(1)(d) ground of opposition, is the date of my decision [see *Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd and The Registrar of Trade Marks* (1991), 37 CPR (3d) 413 (FCA)].

[17] Having exercised the Registrar's discretion, I confirm that the Opponent's alleged registration Nos. TMA441,141, TMA337,253 and TMA441,157 are extant under its new name San Francisco Baseball Associates LLC. According to the last footnote to each registration page, the Opponent's change of name from San Francisco Baseball Associates *L.P.* to San Francisco Baseball Associates *LLC* occurred on September 28, 2012 (emphasis added); it was recorded by the Canadian Intellectual Property Office on January 3, 2013. The fact that the Opponent did not seek to amend the record to reflect its new name has no consequence in this proceeding.

[18] Since the Opponent has met its evidential burden, the question becomes whether the Applicant has met its legal onus to show that the Mark is not reasonably likely to cause confusion with any of the Opponent's alleged registered trade-marks.

[19] The test for confusion is one of first impression and imperfect recollection. Section 6(2) of the Act indicates that use of a trade-mark causes confusion with another trade-mark if the use of both trade-marks in the same area would be likely to lead to the inference that the wares or services associated with those trade-marks are manufactured, sold, leased, hired or performed by the same person, whether or not the wares or services are of the same general class.

[20] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: (a) the inherent distinctiveness of the trade-marks and the extent to which they have become known; (b) the length of time each has been in use; (c) the nature of the wares, services or business; (d) the nature of the trade; and (e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. These enumerated factors need not be attributed equal weight. [See *Mattel, Inc v 3894207 Canada Inc* (2006), 49 CPR (4th) 321 (SCC); *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée et al* (2006), 49 CPR (4th) 401

(SCC); and *Masterpiece Inc v Alavida Lifestyles Inc* (2011), 92 CPR (4th) 361 (SCC) for a thorough discussion of the general principles that govern the test for confusion.]

[21] In my opinion, comparing the Mark and the registered trade-marks GIANTS Design (No. TMA441,141) and GIANTS & Design (No. TMA441,157) will effectively decide the section 12(1)(d) ground of opposition. In other words, if confusion is not likely between the Mark and these two registered trade-marks, then it would not be likely between the Mark and the registered trade-mark SAN FRANCISCO GIANTS Design (No. TMA337,253).

[22] In *Masterpiece, supra*, the Supreme Court of Canada discussed the importance of the degree of resemblance between trade-marks in conducting an analysis of the likelihood of confusion. In the reasons for judgment, Mr. Justice Rothstein states at paragraph 49:

[...] the degree of resemblance, although the last factor listed in s. 6(5), is the statutory factor that is often likely to have the greatest effect on the confusion analysis [...] if the marks or names do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion. The other factors become significant only once the marks are found to be identical or very similar... As a result, it has been suggested that a consideration of resemblance is where most confusion analyses should start [...].

[23] Thus, I turn to the assessment of the section 6(5) factors starting with the degree of resemblance between the marks.

The degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them

[24] When considering the degree of resemblance, the law is clear that the trade-marks must be considered in their totality; it is not correct to lay them side by side and compare and observe similarities or differences among the elements or components of the trade-marks.

[25] The Applicant submits that the parties' trade-marks differ "significantly, visually, phonetically and in ideas suggested". Specifically, it contends that the Mark includes a "distinctive and fanciful design of equal size and prominence to the word GIANT", as opposed to the lack of any independent design element in the Opponent's mark GIANTS Design. Moreover, the Applicant alleges that the absence of the letter "s" in the Mark has a significant impact in the ideas suggested

by the marks of the parties. On this note, it argues that the names of sports teams “are typically pluralized” and that the fans would not refer to a team name in the singular, thus no one would associate the Mark with the Opponent.

[26] Since the Applicant’s submissions about the names of sports teams are intended to address Mr. Orlinsky’s opinion on the “immaterial omission of the letter ‘S’” in the Mark, it should be noted that I disregard any opinions that go to the questions of fact and law to be determined by the Registrar in this proceeding. Further, in my view the Applicant’s submissions about the names of sports teams advance an additional surrounding circumstance rather than being germane to the consideration of section 6(5)(e) of the Act. Hence, I will return to these submissions under the additional surrounding circumstances of this case.

[27] There is some merit to the Applicant’s submissions about visual differences between the marks, especially when considering the design elements found in the Mark and the trade-mark GIANTS & Design. However, in my view the visual differences are not as significant as argued by the Applicant. Indeed, when considering the trade-marks as a whole, I find there are similarities in appearance. For one thing, the word element of each trade-mark, written in capital letters in all three cases, is essentially the same. The word “giants” is clearly the essential feature of the mark GIANTS Design. Further, as the word “giants” is superimposed on the baseball design, it is arguably the dominant feature of the mark GIANTS & Design. Likewise, the word “giant” is the dominant feature of the Mark.

[28] The design features of the trade-marks are of no significance when considering their degree of resemblance in sound. As I understand its submissions, the Applicant contends that the trade-marks differ significantly in sound owing to the absence of the “s” in the Mark. I disagree. The phonetic differences between “giant” and “giants” are not so significant.

[29] Turning to the ideas suggested by the marks, I acknowledge that the design element in the trade-mark GIANTS & Design suggests the game of baseball. However, it remains that the trade-marks at issue are all composed of the dictionary word “giant”, which moreover is their only word element.

The inherent distinctiveness of the trade-marks and the extent to which they have become known

[30] The section 6(5)(a) factor involves a combination of inherent and acquired distinctiveness of the parties' trade-marks.

[31] All three marks possess some inherent distinctiveness. The word "giant" or "giants" is neither descriptive nor suggestive of the wares and services of the parties. In its written argument, the Applicant describes the design in the Mark as a "geometric figure illustrating a bird in flight with outstretched wings". As a matter of first impression, I am not convinced that the average consumers would perceive the design as explained. Nonetheless, the design contributes to increasing the inherent distinctiveness of the Mark. The baseball design also contributes to the inherent distinctiveness of the mark GIANTS & Design, except for the wares and services in the field of baseball as the design is clearly descriptive of the sport. Finally, since the arched layout of the word "giants" is intrinsic to the word forming the mark GIANTS Design, it adds very little to its inherent distinctiveness.

[32] The strength of a trade-mark may be increased by means of it becoming known in Canada through promotion or use. Therefore, the evidence should be evaluated to determine the extent to which each mark has become known in Canada. I will do so starting with the Opponent's evidence introduced through the Orlinsky affidavit.

[33] Mr. Orlinsky has held the position of Corporate Secretary of Major League Baseball Properties, Inc. (MLBP) since November 1995. He explains that MLBP is the licensing agent for the Opponent, owner of the San Francisco Giants Major League Baseball professional baseball club (the Club). According to Mr. Orlinsky's statements, the Club was founded in 1883; it is one of the oldest and most established clubs in Major League Baseball (MLB). The Club has been commonly referred to as the "GIANTS" since approximately 1885; it began to display the mark "GIANTS" on its uniforms as early as 1918.

[34] At this point, I note that Mr. Orlinsky introduces the evidence by collective reference to the Opponent's trade-marks consisting in whole or part of the word "giants", including the alleged registered trade-marks. These trade-marks are defined in the Orlinsky affidavit as "the

Club's GIANTS Marks" and illustrated in Exhibit "B" to the affidavit. I reproduce them in Schedule "C" to this decision. I would add that any ambiguities in the evidence resulting from Mr. Orlinsky's collective reference to the Opponent's trade-marks will be resolved against the Opponent [see *Conde Nast Publications Inc v Union des Editions Modernes* (1979), 46 CPR (2d) 183 (FCTD)]. This comment leads me to address the Applicant's submissions regarding an apparent ambiguity in the Orlinsky affidavit.

[35] The Applicant submits that the evidence puts into question the identity of the actual owner of the Opponent's marks or the source of the wares. In particular, the Applicant points to the inconsistent use of the following terms by Mr. Orlinsky when referring to the Opponent's marks: "MLBP's senior trademark rights", "MLBP GIANTS Marks", "the Club's GIANTS Marks", "MLBP-licensed goods bearing the Club's GIANTS Marks" and "goods and services associated with MLBP, the Club and/or their affiliate or related entities". Even though Mr. Orlinsky appears to use these expressions interchangeably in his affidavit when discussing the Opponent's marks, he also clearly identifies MLBP as the licensing agent for the Opponent, owner of the Club which in turns belongs to MLB. While a more complete picture of MLBP's activities would likely have been elicited by cross-examination, the Applicant elected to forgo cross-examination. When the evidence is viewed in its entirety, I am satisfied that MLBP merely acts as the licensing agent for the Opponent. I would add that the ownership, validity and enforceability of the Opponent's alleged registrations are not at issue in this proceeding.

[36] The Orlinsky affidavit discusses the history and the popularity of the Opponent's baseball team, as well as the merchandising business. I note that much of the affidavit pertains to the Club's reputation as a professional baseball team and the overall recognition of MLB.

[37] The evidence shows that the Club's GIANTS Marks in general have acquired significant distinctiveness in association with entertainment services in the nature of baseball games. In this regard, Mr. Orlinsky's testimony may be summarized as follows:

- the Club's GIANTS Marks can be seen on the players' uniforms and the Club's home stadium, during broadcast of the Club's games, in Canada and elsewhere;

- the Club has made 17 World Series championship appearances and won 5 World Series championship titles, many of which have been widely covered by print and online news publications, including those circulated and televised in Canada;
- MLB's official website *www.mlb.com* and the Club's official website *giants.mlb.com* offer live broadcast of the baseball games, information on the clubs, news, audio/visual materials, ticket sales, and interactive games. Upon information and belief, Mr. Orlinsky states that there were over 144 million visits by Canadian Internet users to MLB's official website, including the Club's official website, between 2005 and 2009;
- in addition to the regular MLB seasons, players from the Club participate in the annual All-Star Game exhibition that is broadcast worldwide, including Canada;
- the Club also played an Interleague series of three games against the Toronto Blue Jays, in Toronto, in June 2002; the two clubs met again in 2004 and 2007 as part of the series;
- MLB games are covered extensively by newspapers, radio, television and Internet on a daily and weekly basis during baseball season, in Canada and elsewhere; and
- various US-based publications including *Sports Illustrated*, *USA Today*, *Sports Weekly* and *The New York Times*, and major Canadian print and online publications including *The Toronto Star*, *The National Post*, *The Toronto Sun*, *www.tsn.ca*, *www.canoe.ca* and *www.canada.com* often run articles and stories on the Club.

[38] However, the Opponent's evidence concerning sales of its merchandise, as introduced through the Orlinsky affidavit, does not allow me to assess with any precision the extent to which the registered marks GIANTS Design and GIANTS & Design have become known in Canada in association with the registered wares, especially in view of the wide variety of wares. In this regard, Mr. Orlinsky's testimony in terms of the Club's merchandise may be summarized as follows:

- a family of GIANTS marks, including the Club's GIANTS Marks, has been used to designate a variety of goods and services associated with the Club;

- hundreds of licensees throughout the world have been granted the right to manufacture and sell a wide range of products bearing MLB marks, including the Club's GIANTS Marks;
- more than thirty companies are licensed to sell products bearing MLB marks, including the Club's GIANTS Marks, in Canada; products bearing the Club's GIANTS Marks are offered for sale through numerous Canadian retail stores, and via MLB's and the Club's official websites;
- the Club "exercises requisite quality control in relation to licensed goods bearing or featuring the Club's GIANTS Marks";
- from 1998 to 2003, retail sales of licensed products bearing trade-marks "associated with or promoting" the Club, including those bearing the Club's GIANTS Marks, exceeded US\$145,845,600 worldwide;
- from 1999 to 2009, two of the Canadian licensees' retail sales of "apparel goods bearing or featuring the Club's marks, including the Club's GIANTS Marks," accounted for more than \$950,000; and
- from 2005 to 2009, sales within Canada of "GIANTS Club Merchandise" from MLB's official website exceeded \$77,000.

[39] Mr. Orlinsky files printouts of various items including clothing, headwear, footwear, desk calendar, poster, team banner, button, mug and toys, bearing one of the Club's GIANTS Marks, including GIANTS Design and GIANTS & Design, as Exhibits "C" and "H" to his affidavit.

[40] Except for the items that can be described as "apparel goods" such as clothing, headwear and footwear, I am unable to determine whether Mr. Orlinsky's reference to the sale of "Club Merchandise" in Canada would include any of the wares registered in association with the Opponent's marks GIANTS Design and GIANTS & Design. On this point, the affiant did not breakdown the value of sales by year or by type of wares. The Opponent also did not provide separate figures for each of the Club's GIANTS Marks discussed.

[41] I now turn to the Applicant's evidence introduced through the affidavit of Paul Charles Nash, who has held the position of Retail Development Manager of Giant Bicycle Canada Inc. (Giant Canada) since 2007.

[42] As a preliminary matter, I wish to address an apparent discrepancy in Mr. Nash's affidavit regarding the Applicant's name. Specifically, Mr. Nash indicates that Giant Canada is the Canadian subsidiary of Giant Manufacturing Co., *Inc.* whereas the application for the Mark is in the name of Giant Manufacturing Co., *Ltd.* (emphasis added). Mr. Nash also refers to the rights of Giant Manufacturing Co., *Inc.* into the trade-marks GIANT and GIANT & Design of registration Nos. TMA395,430, TMA657,037, TMA396,031 and TMA394,352, which are collectively defined in his affidavit as the GIANT Marks. That being said, Mr. Nash files printouts of these registrations as Exhibit B to his affidavit; they identify their owner as "Giant Manufacturing Co., *Ltd.*" as do the certificates of authenticity filed by the Applicant as part of its evidence. Accordingly, when the evidence is viewed in its entirety, I am prepared to accept any reference to Giant Manufacturing Co., *Inc.* in the Nash affidavit as a reference to the Applicant.

[43] Mr. Nash describes the Applicant as an important bicycle manufacturer with extensive sales and advertising campaigns, including sponsorships of international and regional sporting events, around the world and in Canada. In this regard, Mr. Nash's testimony may be summarized as follows:

- established in 1972 in Taiwan, the Applicant has grown to become the largest bicycle company in the world, with over 10,000 retail outlets in over fifty countries;
- the Applicant's global sales exceeded 5 million bicycles and US\$820 million in revenues in 2007;
- promotion of the GIANT brand includes sponsorships of world class triathletes, mountain bike racers, as well as cycling teams and individual cyclists at Tour de France;
- Giant Canada is a licensee of the GIANT Marks and is responsible for the marketing and sales of bicycles, bicycle products and accessories in Canada;
- the Applicant "controls the character and quality of the wares and services provided by Giant Canada in association with the GIANT Marks" at all times;
- there are approximately 200-250 authorized dealers of the Applicant's products in Canada; and

- bicycles and bicycle parts bearing one or more GIANT Marks have been sold in Canada since the early 1990s.

[44] Mr. Nash states that the range of products bearing the GIANT Marks have grown to include “cycling apparel, bicycle helmets, bicycle lights, water bottles and cages for water bottles, bicycle repair kits and repair tools, bike racks and baskets, cycling computers, indoor trainers and bike stands, and bike locks”. As Mr. Nash goes on to introduce the evidence by collective reference to these products, my use of the term “bicycle related products” in the following summary of his testimony reflects his collective reference.

- Giant Canada has spent hundreds of thousands of dollars advertising bicycle related products in Canada through print advertising and through sponsorship of cyclists and cycling events;
- in 1998, the Applicant launched a website dedicated to Canadian customers; it features product information, store locators, news about cycling teams and an online store featuring cycling apparel, cycling equipments, as well as bicycle parts, accessories and tools. Number of unique visits to the website is between 405,000 and 724,000 annually for the years 2007 to 2011; and
- the approximate annual sales figures of the bicycle related products bearing one of the GIANT Marks (excluding bicycles) in Canada are between \$570,000 and \$1.2 million from 2006 to 2010.

[45] Mr. Nash files printouts of photos representative of bicycle related products bearing one of the GIANT Marks and representative sampling of invoices dated from 2006 to 2010 between Giant Canada and various authorized dealers in Canada as Exhibits “D” and “E” to his affidavit.

[46] The sample invoices include items described as “short sleeve jersey”, “vest”, “jacket”, “short”, “gear bag”, “t-shirt”, “socks” and “gloves”. However, the Applicant did not provide a breakdown of the sales figures per type of products, nor were there separate figures for each of the GIANT Marks. Further, the representative photos in Exhibit “D” do not show use of the Mark neither in association with any of these wares, nor with any of the Wares; rather they show

use of the Mark with bicycles and accessories such as locks, air pressure gauge, repair kit, and bike stand.

[47] To sum up, I conclude that the Opponent's trade-marks GIANTS Design and GIANTS & Design possess some measure of inherent distinctiveness. They also benefit from acquired distinctiveness, but only to the extent that entertainment services in the nature of baseball games are concerned. Indeed, even though there appears to be some evidence of use of the Club's GIANTS Marks in association with "apparel goods" and "Club Merchandise" in Canada, the evidence, as introduced by the Orlinsky affidavit, does not enable me to determine the extent of use per mark or per type of wares; there are no submissions from the Opponent to convince me otherwise.

[48] As for the Mark, I conclude that it also possesses some measure of inherent distinctiveness. Even though the evidence lends support to finding that the Applicant's GIANT Marks benefit from acquired distinctiveness in association with bicycles and bicycle related products, it remains that the evidence does not establish acquired distinctiveness of the Mark in association with the Wares.

[49] Accordingly, the section 6(5)(a) factor favours the Opponent but only to the extent that the entertainment services in the nature of baseball games are concerned. In other words, the section 6(5)(a) factor is of no significance when considering the Wares and the Opponent's wares.

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

[50] The application for the Mark is based upon proposed use in Canada and there is no evidence that the Mark has been used to date in association with the Wares.

[51] The Opponent's registration Nos. TMA441,141 and TMA441,157 indicate the following:

- declarations of use filed on March 3, 1995 for the registered wares in both cases; and
- use in Canada with the registered services since at least as early as 1958 and December 1982 respectively.

[52] As I previously mentioned, the Opponent provided significant evidence of use of the registered trade-marks GIANTS Design and GIANTS & Design in association with the entertainment services in the nature of baseball games. However, even though there appears to be some evidence of use of the Club's GIANTS Marks in association with "apparel goods" and "Club Merchandise" in Canada, I am unable to determine the extent of use per mark or per type of wares. Further, the mere existence of the registrations for the Opponent's trade-marks GIANTS Design and GIANTS & Design establishes no more than minimal use and cannot give rise to an inference of significant and continuous use of the trade-marks in association with the registered wares [see *Entre Computer Centers, Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)].

[53] Accordingly, while the section 6(5)(b) factor does not favour the Applicant, it also does not favour the Opponent when considering its wares. The section 6(5)(b) factor significantly favours the Opponent only to the extent that the registered services are concerned.

The nature of the wares and services; and the nature of the trade

[54] When considering sections 6(5)(c) and 6(5)(d) of the Act, it is the statement of wares as defined in the application for the Mark and the statement of wares and services in the Opponent's registration Nos. TMA441,141 and TMA441,157 that govern the assessment of the likelihood of confusion under section 12(1)(d) of the Act [see *Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); and *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 19 CPR (3d) 3 (FCA)].

[55] From the outset, I find that there is no similarity between the nature of the Opponent's registered services and the nature of the Wares. The channel of trade of the Opponent's services also differs significantly from that of the Wares. In particular, the Opponent's baseball games take place in stadiums across North America and they are broadcasted online, on radio and television in Canada and elsewhere.

[56] I now turn to the consideration of the nature of the wares associated with the trade-marks and the parties' channels of trade for their respective wares.

[57] The Applicant submits that the parties' respective wares differ. Specifically, it contends that the Opponent has not provided any evidence to indicate that it sells items such as backpacks, bags, parasols, umbrellas and cycling apparel. The Applicant further suggests that while its wares are "true sports apparel", the Opponent's wares are designed for "armchair enthusiasts of a particular [baseball] team". In support, the Applicant cited *Alpha Sportswear Ltd v International News Inc* (2005) 44 CPR (4th) 3725 (TMOB).

[58] As for the channels of trade, the Applicant alleges that the Opponent's wares are sold via stores "specializing in sports memorabilia and team apparel" while its wares are sold via "a network of authorized dealers involved in the cycling industry". The Applicant also submits that the parties' target customers differ: baseball fans as opposed to cyclists and cycling fans.

[59] I acknowledge that some of the wares stated in registration Nos. TMA441,141 and TMA441,157 differ from or do not overlap with the Wares. Also, in terms of sports apparel, I acknowledge that the registrations do not cover cycling apparel such as "sports wear for bicyclist", "pants for bicyclist", "caps for bicyclist", "shoes for bicyclist", and "socks for bicyclist" identified in the application for the Mark. That being said, the statement of wares of each registration covers active wear, rainwear, outerwear, casual clothing, sportswear, headwear, footwear, backpacks and bags, belts and wallets, as does the application for the Mark. Likewise, registration No. TMA441,157 covers umbrellas as does the application for the Mark. Thus, I cannot agree with the Applicant that the parties' respective wares totally differ.

[60] Furthermore, contrary to the Applicant's submissions, the Opponent's wares are not sold strictly in sport memorabilia and team apparel stores. In addition to being sold via MLB's and the Club's official websites, the Opponent's products are sold in retail stores across the country. Indeed, Mr. Orlinsky explains that the Opponent's products are sold in stores such as Sports Expert, Sport Chek, Canadian Tire, Champs, Footlocker, Sears, Wal-Mart and Zellers. As for the Applicant, Mr. Nash explains that in addition to the Applicant's own online store for Canadian customers, the GIANT bicycles, bicycle products and accessories are distributed by Giant Canada to its 200-250 authorized dealers throughout Canada, who in turn sell to the general public through retail and online stores. On this note, based on the names of the customers identified in the invoices attached as Exhibit "E" to the Nash affidavit, I am prepared to accept

that some of the Applicant's authorized dealers appear to sell bicycles and related products exclusively. However, such inference cannot extend to all the customers listed in the invoices provided.

[61] Even if I were to accept that the cycling apparel identified in the application, namely "sports wear for bicyclist", "pants for bicyclist", "caps for bicyclist", "shoes for bicyclist", and "socks for bicyclist", would be sold in specialized cycling stores, the statement of wares includes several wares for which it is reasonable to conclude that they would not be sold in specialized cycling stores. As examples of such wares, I note leather cases for cellular phone, beach bags, school bags, golf umbrellas, snow suits, ski suits, working dress, bow ties. Further, the application for the Mark does not contain restrictions regarding the markets for the distribution of the Wares.

[62] As for the target customers, I disagree with Applicant's artificial division between baseball fans and cycling fans. There is no evidence to suggest that the average consumer of active clothing and accessories cannot be a fan of one or more sport teams and an avid cyclist.

[63] Finally, the facts of the *Alpha Sportswear Ltd.* case can be distinguished from those of the present case. Suffice it to say that in the present case, there is no evidence to suggest that the parties' wares would not be carried in the same stores or purchased by the same consumers. In any event, it is trite law that each case has to be decided based upon its own merit.

[64] To sum up, I conclude that the nature of the Opponent's services and that of the Wares differ significantly. There is however either identity or potential for overlap in terms of some of the registered wares and the Wares. There is also potential for overlap in the channels of trade associated with the marks but only insofar as the Wares and the registered wares are concerned.

[65] Accordingly, when considering the wares at issue, the overall consideration of the sections 6(5)(c) and (d) factors favours the Opponent.

Additional surrounding circumstances

[66] The Applicant's submissions and evidence advance the following additional surrounding circumstances: the names of sport teams; the state of the register and of the marketplace; the absence of actual instances of confusion; and the use of the GIANT Marks.

Names of sports teams

[67] As previously indicated, the Applicant contends that names of sports teams are typically pluralized and that the fans would not refer to a team name in the singular, thus no one would associate the Mark with the Opponent.

[68] It should be noted that the Applicant does not point to any of the affidavits filed as its evidence in support of its contention that "*sport teams* names are typically pluralized" (emphasis added). Nor do I consider that there is any evidence supporting this contention.

[69] Likewise, the Applicant did not file evidence to support its contention that "all of the teams in Major League Baseball have names that are pluralized" with the exception of teams "whose names ending in X cannot be pluralized in such a way as to be grammatically correct". To the extent that the Applicant is seemingly relying on the Orlinsky affidavit as supporting its contention about baseball team names, I would add that the Orlinsky affidavit is insufficient to reach such a conclusion.

State of the register and of the marketplace

[70] The Applicant submits that the state of the register and of the marketplace evidence filed through the Palmer and McKenzie affidavits lends support to a finding of no likelihood of confusion between the trade-marks. More particularly, the Applicant submits that as this evidence shows common adoption and use in Canada of third party trade-marks comprising the word GIANTS, it must be concluded that Canadians are used to distinguishing between marks containing or comprising that word.

[71] State of the register evidence is introduced to show the commonality or distinctiveness of a mark or portion of a mark in relation to the register as a whole. Evidence of the state of the

register is only relevant inasmuch as inferences may be made on it concerning the state of the marketplace [see *Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB)]. Inferences regarding the state of the marketplace based on state of the register evidence can only be drawn when a significant number of pertinent registrations are located [see *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)].

[72] The Palmer affidavit presents the results of searches of the Canadian trade-mark database purporting to show various registrations and applications for trade-marks containing the word GIANTS in association with wares and services similar to those of the Opponent. Among the 15 results located by the affiant, eight are irrelevant to the present proceeding. Specifically, three of the registrations are owned by the Opponent; there are also four registrations and one application that identify wares significantly different from those at issue. The remaining seven registrations are divided among two registered owners; six belong to New York Football Giants, Inc. and one belongs to Vancouver Junior Hockey Limited Partnership. In my view, this is insufficient to make any inferences about the state of the marketplace.

[73] The Applicant submits that the McKenzie affidavit evidences the display of third party GIANTS marks on websites accessible to persons in Canada, and the display of apparel and merchandise bearing third party GIANTS marks in close proximity to those of the Opponent's.

[74] The McKenzie affidavit includes Internet printouts related to the New York Giants football club and the Vancouver Giants hockey club purporting to show the state of the marketplace. More particularly, Ms. McKenzie provides copies of articles on "New York Giants", "History of the New York Giants" and "Vancouver Giants" from Wikipedia, [Exhibits "B" to "D"]. She also provides excerpts from the websites of the New York Giants football club at *www.giants.com* and of the Vancouver Giants hockey club at *www.vancouvergiants.com* [Exhibits "E" and "F"]. Finally, Ms. McKenzie provides printouts from websites featuring images of sports apparel and accessories bearing the names and the logos of the Club and those of the New York Giants football club [Exhibits "G" to "J"].

[75] Printouts from third party websites are generally considered hearsay evidence and cannot be relied upon as evidence of the truth of their contents and so all that I am able to conclude is that the webpages existed at the time that they were accessed by Ms. McKenzie in July of 2011.

Even if I were to disregard the hearsay issues with respect to this evidence, I would still find that it does not show common adoption and use in Canada of third party trade-marks comprising the word GIANTS. Suffice it to say that:

- the articles from Wikipedia merely discuss a professional football team called the New York Giants and a junior ice hockey team called the Vancouver Giants. In other words, they do not show use of a trade-mark in Canada within the meaning of the Act;
- there is no evidence as to the number of Canadians that would have viewed the websites accessed by Ms. McKenzie;
- the display of products bearing the name or logo of the New York Giants football club on websites does not evidence the sales of any products in Canada; and
- none of the printouts of the Vancouver Giants' website contains images of wares featuring the name or the logo of this hockey club, let alone evidence of use of a mark in Canada.

[76] Accordingly, I conclude that the state of the register and of the marketplace evidence is of no assistance to the Applicant's case.

Absence of actual instances of confusion

[77] Mr. Nash attests that he has never encountered a customer who mistakenly believed that there was an association between Giant Bicycles and the San Francisco Giants Baseball club or who believed that the Applicant's GIANT Marks were owned by or associated with the Opponent's baseball club.

[78] An opponent needs not to prove instances of confusion. The burden is on an applicant to demonstrate the absence of likelihood of confusion. Absence of evidence of confusion does not relieve an applicant from its burden of proof. Nevertheless, an adverse inference may be drawn from the lack of evidence of actual confusion where the marks have coexisted for a long period of time [see *Mattel Inc.*, *supra* at page 347].

[79] It is unclear whether any actual instances of confusion would have been brought up to the attention of Mr. Nash. In any event, since the evidence does not permit me to draw a meaningful conclusion as to extent and the period of use of the Opponent's trade-marks GIANTS Design and GIANTS & Design in association with wares, I consider the lack of actual instances of confusion to be of no significance.

Use of the Applicant's GIANT Marks

[80] As per my review of the Nash affidavit, the Applicant has put forward evidence of its established presence as manufacturer of GIANT bicycles and bicycle related products in the world of cycling since at least 2007. Specifically, the Nash affidavit discusses the Applicant's considerable sales revenues and advertising expenditures for the GIANT bicycles and bicycle related products, including ongoing sponsorships of cycling teams and individual cyclists in international and Canadian competitions. The Nash affidavit provides sample ads showing cyclists on GIANT bicycles and photos of the Applicant's fleet of GIANT bicycles set up for demonstrations at sporting events across Canada. It is apparent that some of the ads filed as Exhibits "G" show a cyclist sponsored by the Applicant, especially since GIANT Marks, including the Mark, are displayed on the cyclist clothing. Also, the photos appended as Exhibit "G" show the Mark prominently displayed at cycling events.

[81] In the present case, even though much of the Applicant's evidence of use of the GIANT Marks is in relation to bicycles and bicycle related products, I find it reasonable to conclude to a close relationship between these wares and cycling apparel, in particular "sports wear for bicyclist", "pants for bicyclist", "caps for bicyclist", "shoes for bicyclist", and "socks for bicyclist" included in the application for the Mark. In fact, the Applicant's evidence supports such a finding.

[82] Indeed, in addition to Mr. Nash's statement to the effect that the range of products sold in Canada under the GIANT Marks has grown to include cycling apparel since the early 1990s, the Applicant also provided specimens showing use of one of the GIANT Marks on bicycle gloves and helmets [Exhibit "D"]. It also provided sample invoices for various clothing items [Exhibit "E"].

[83] Accordingly, I am satisfied that the Applicant's reputation with respect to its GIANT bicycles and bicycle related products is an additional circumstance that significantly favours the Applicant with respect to the cycling apparel associated with the Mark.

Conclusion on the likelihood of confusion

[84] In applying the test for confusion, I have considered it as a matter of first impression and imperfect recollection.

[85] Having considered all of the surrounding circumstances of this case, I am not satisfied that the Applicant has discharged its legal onus of establishing that there is no reasonable likelihood of confusion between each of the registered trade-marks GIANTS Design and GIANTS & Design and the Mark in association with the following wares:

baby backpacks; tote bags; handbags; leather cases for cellular phone; traveling trunks; backpacks; fanny packs; wallets; umbrellas; haversacks; beach bags; school bags; briefcases; travel bags; knapsacks; camping backpacks; shopping bags; change purses; all purpose athletic bags; parasols; patio umbrellas; beach umbrellas; golf umbrellas; leather holders for business cards; socks; gloves; hats and caps; athletic shoes; shawls; gym suits; snow suits; ski suits; jogging suits; warm-up suits; play suits; pants; belts (clothing); shoes; jackets; coats; vests; hooded coats; polo shirts; T-shirts; jeans; shirts; sport suits; leisure suits; leisure socks; sport socks; leisure pants; working dress; aprons; uniforms; leisure hats; sun visors; topees; sunbonnets; thermal hats; scarves; foulard; neckerchiefs; leisure shoes; neckties; bow ties; girdles; rain coats; sleeveless cloaks; thermal gloves.

[86] Indeed, the consideration of the sections 6(5)(a) and 6(5)(b) factors does not favour the Opponent when considering the registered wares, nor does it favour the Applicant when considering the Wares. Since I consider that there is no additional surrounding circumstance that advances the Applicant's case for the above-listed wares, I am left with the sections 6(5)(c), 6(5)(d) and 6(5)(e) factors. In my view, the identity or potential for overlap between the nature of the above-listed wares and some of the registered wares, the potential for overlap in the channels of trade and the degree of resemblance between the marks, owing to their common and only word "giant", result in an even balance of probabilities between a finding of confusion and a finding of no confusion. As the onus is on the Applicant to establish on a balance of probabilities

that the Mark is not confusing with the Opponent's registered trade-marks GIANTS Design and GIANTS & Design, I must decide this issue against the Applicant.

[87] However, I find that the Applicant's extensive use and promotion of its GIANT Marks in association with bicycles and bicycle related products shift the balance of probabilities in its favour when considering cycling apparel. Thus, I am satisfied that the Applicant has discharged its legal onus of establishing that there is no reasonable likelihood of confusion between each of the registered trade-marks GIANTS Design and GIANTS & Design and the Mark in association with the following wares:

sports wear for bicyclist; pants for bicyclist; caps for bicyclist; shoes for bicyclist; socks for bicyclist.

[88] In view of the above, I find it is not necessary to consider the likelihood of confusion between the registered trade-mark SAN FRANCISCO GIANTS & Design (TMA337,253) and the Mark for the wares for which the section 12(1)(d) ground of opposition is successful. That being said, as I previously indicated that comparing the Mark with the registered trade-marks GIANTS Design and GIANTS & Design effectively decides the ground of opposition, I conclude that the Applicant has also discharged its legal onus of establishing that there is no reasonable likelihood of confusion between the Mark for the aforementioned cycling apparel and the registered trade-mark SAN FRANCISCO GIANTS & Design.

[89] Accordingly, the section 12(1)(d) ground of opposition is successful in part.

IV.2 Was the Applicant the Person Entitled to Registration of the Mark at the Filing Date of the Application?

[90] This issue arises from the non-entitlement ground of opposition raised under section 16(3)(a) of the Act.

[91] The Opponent has the initial burden of proving that each of the trade-marks alleged in support of the non-entitlement ground of opposition was used or made known in Canada before the filing date of the application, namely April 5, 2004, and had not been abandoned at the date of advertisement of the application, namely April 11, 2007 [see section 16(5) of the Act].

[92] I note that the Applicant did not make any submissions about the sufficiency of the pleading, which references “the Opponent’s GIANTS Trade-marks” that are defined as including the Opponent’s registered trade-marks and “common law GIANTS marks”. By the same token there are no submissions from the Opponent in the present proceeding. In other words, whether or not the Applicant could understand that the pleading encompassed each of the Club GIANTS Marks had not been brought up as an issue in the present proceeding.

[93] In any event, it could be understood that the registered trade-marks referenced in the statement of opposition were alleged in support of the ground of opposition. Further, here also I consider that comparing the Mark with the trade-marks GIANTS Design (No. TMA441,141) and GIANTS & Design (No. TMA441,157) will effectively decide this ground of opposition. Accordingly, I find it is not necessary to assess the sufficiency of the pleading having regard to the Opponent’s evidence [see *Novopharm Ltd v AstraZeneca AB et al* (2002), 21 CPR (4th) 289 (FCA)]. It will be sufficient to consider whether the Opponent has discharged its evidential burden for its trade-marks GIANTS Design and GIANTS & Design.

[94] As per my previous review of the Orlinsky affidavit, I am satisfied that the trade-marks GIANTS Design and GIANTS & Design have been used in Canada in association with entertainment services in the nature of baseball games prior to April 5, 2004 and that they had not been abandoned on April 11, 2007.

[95] However, the evidence does not support concluding that the Opponent has discharged its evidential burden with respect to the trade-marks GIANTS Design and GIANTS & Design in association with wares. In particular, there is no clear evidence of use or promotion of the trade-marks GIANTS Design and GIANTS & Design, in association with any of the wares in the categories of clothing, headwear, footwear, backpacks and bags, parasols and umbrellas, in Canada prior to the relevant date. The sales figures for the period of 2005 – 2009 for items described as “Club Merchandise” are of no assistance to the Opponent as they pertain to sales subsequent to the relevant date. As for the sales figures for “apparel goods”, they cover a period of ten years (1999 – 2009), half of which is subsequent to the relevant date. Without additional breakdown of these revenues, I am unable to determine the extent to which, if any, the trade-marks GIANTS Design and GIANTS & Design have been used in Canada prior to the filing date

of the application in association with a particular type of wares. Further, there is no information on the advertising expenditures associated with the wares over the years.

[96] In fact, in terms of evidence of advertising and promotion of the Club's GIANTS Marks in Canada, much of Mr. Orlinsky's affidavit focuses on the Club's reputation as a professional baseball team, the notoriety of its players, and the popularity of MLB as a professional baseball league. I agree with the Applicant that the display of the marks on the players' uniforms, be it during the broadcast of baseball games or in photos in printed publications, does not amount to evidence of promotion or advertisement of the wares associated with the Opponent's marks in Canada.

[97] Since the Opponent met its evidential burden in association with its services only, the issue becomes whether the Applicant has satisfied its legal onus to show that the Mark, as of April 5, 2004, was not reasonably likely to cause confusion with the Opponent's marks GIANTS Design and GIANTS & Design in association with entertainment services in the nature of baseball games.

[98] When I compare the Mark with the trade-marks GIANTS Design and GIANTS & Design previously used in association with the Opponent's services, I conclude that assessing each of the section 6(5) factors as of April 5, 2004 rather than as of today's date does not significantly impact my previous analysis of the surrounding circumstances of this case under the section 12(1)(d) ground of opposition.

[99] Accordingly, having considered all of the surrounding circumstances of this case, I find that the differences between the nature of the Opponent's services and the nature of the Wares coupled with the differences between the nature of the trade are so significant that they favour the Applicant in the overall assessment of the balance of probabilities as to a likelihood of confusion. Accordingly, I am satisfied that the Applicant has discharged its legal onus of establishing that, as of April 5, 2004, there was no reasonable likelihood of confusion between the Mark and the marks GIANTS Design and GIANTS & Design in association with entertainment services in the nature of baseball games.

[100] In view of the above, I dismiss the non-entitlement ground of opposition.

IV.3 Was the Mark distinctive of the Applicant's Wares at the Filing Date of the Statement of Opposition?

[101] This issue arises from the ground of opposition alleging that the Mark is not distinctive within the meaning of section 2 of the Act in view of the likelihood of confusion with the Opponent's trade-marks.

[102] The material date for considering the distinctiveness of the Mark is the filing date of the statement of opposition, namely February 11, 2008 [see *Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

[103] Once again, regardless of the sufficiency of the pleading, I find that comparing the Mark with the Opponent's marks GIANTS Design (No. TMA441,141) and GIANTS & Design (No. TMA441,157) will effectively decide this ground of opposition.

[104] As per my previous review of the Orlinsky affidavit, I am satisfied that the Opponent has met its evidential burden to show that its two trade-marks, as of February 11, 2008, had a substantial, significant or sufficient reputation in Canada in association with entertainment services in the nature of baseball games so as to negate the distinctiveness of the Mark [see *Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); *Bojangles' International LLC v Bojangles Café Ltd*, 2006 FC 657 (CanLII), (2006), 48 CPR (4th) 427 (FC)].

[105] However, for reasons similar to those expressed under the previous grounds of opposition, I conclude that the Opponent has not discharged its burden to show that these two marks had become sufficiently known in Canada in association with wares, as of February 11, 2008, so as to negate the distinctiveness of the Mark.

[106] Accordingly, the issue becomes whether the Applicant has satisfied its legal onus to show that the Mark, as of February 11, 2008, was not reasonably likely to cause confusion with the Opponent's marks GIANTS Design and GIANTS & Design in association with entertainment services in the nature of baseball games.

[107] I conclude that assessing each of the section 6(5) factors as of February 11, 2008 does not impact my analysis of the surrounding circumstances of this case under the non-entitlement

ground of opposition. Accordingly, I am satisfied that the Applicant has discharged its legal onus of establishing that, as of February 11, 2008, there was no reasonable likelihood of confusion between the Mark and the marks GIANTS Design and GIANTS & Design in association with entertainment services in the nature of baseball games.

[108] In view of the above, I dismiss the non-distinctiveness ground of opposition.

V. Disposition

[109] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application under section 38 of the Act for the following wares:

baby backpacks; tote bags; handbags; leather cases for cellular phone; traveling trunks; backpacks; fanny packs; wallets; umbrellas; haversacks; beach bags; school bags; briefcases; travel bags; knapsacks; camping backpacks; shopping bags; change purses; all purpose athletic bags; parasols; patio umbrellas; beach umbrellas; golf umbrellas; leather holders for business cards; socks; gloves; hats and caps; athletic shoes; shawls; gym suits; snow suits; ski suits; jogging suits; warm-up suits; play suits; pants; belts (clothing); shoes; jackets; coats; vests; hooded coats; polo shirts; T-shirts; jeans; shirts; sport suits; leisure suits; leisure socks; sport socks; leisure pants; working dress; aprons; uniforms; leisure hats; sun visors; topees; sunbonnets; thermal hats; scarves; foulard; neckerchiefs; leisure shoes; neckties; bow ties; girdles; rain coats; sleeveless cloaks; thermal gloves.

[110] However, I reject the opposition under section 38 of the Act for the following wares:

sports wear for bicyclist; pants for bicyclist; caps for bicyclist; shoes for bicyclist; socks for bicyclist.

[see *Produits Menagers Coronet Inc v Coronet-Werke Heinrich Schlerf GmbH* (1986), 10 CPR (3d) 492 (FCTD) as authority for a split decision].

Céline Tremblay
Member
Trade-marks Opposition Board
Canadian Intellectual Property Office

Schedule "A"

1. Trade-mark:



(GIANTS Design)

Registration No.: TMA441,141

Wares: (1) Boys' and mens' tank tops, sweatshirts, shorts and tops, cardigans, jogging suits, undershirts, pyjamas, polo pyjamas, robes, tops and long pant sets, warm up suits, hats, caps, visors, scarves, jackets, parkas, ponchos; rainwear, namely coats, parkas and ponchos; belts suspenders, wallet and belt sets, wallets, belt buckles; baseballs, baseball bats, helmets, caps, mitts, gloves and masks, and baseball uniforms and warm up jackets; ladies' sleepwear, loungewear, namely robes, leisure suits and jogging suits, and short sets; girls' shirts, nightgowns, nightshirts, pyjamas and parkas; infants' pyjamas, shirts, bibs, hooded towel and bib sets; toddlers' jackets; rugs and mats; residential, commercial and automobile floor mats; bath sheets, towels, shower curtains, bath mats, bedspreads, drapes, curtains, blankets, sheets, pillow cases, comforters, quilts, sleeping bags, slumber bags, backpacks, backpack bags, drawstring bags, tote bags, equipment bags; quilted beach mats, bandanas; boys' and girls' sneakers, jogging shoes, rubber boots, canvas footwear, namely running shoes and sneakers; plastic cups, collector boards, cigarette lighters, pens; beverage coolers, plastic drinking tumblers; license plate frames made of metal; glassware, namely drinking glasses, beer steins, coffee mugs and highball glasses, waste baskets, key chains and tags, ashtrays, watches, alarm clocks, wallcoverings, namely wall plaques, mirrors, wallpaper and fabric, mugs, tumblers and stemware, namely plastic drinking glasses and drinking glasses with stems; banks; jewellery, namely pins, tie bars, cuff links, money clips, charms and pendants; puffy vinyl stickers, cardboard play activity card to accept stickers, activity boards, photo trading cards, stamps, decals, stickers, mini booklets, collector boards and albums, display boards related to cards, stickers and the like, storage devices, namely trunks, garbage cans and chests related to cards and booklets; buttons, badges, bumper stickers, posters, satin patches, cloth patches, rub-ons, plastic plaques, paper pennants, big sign posters, paper posters; baseball game using video cassettes; magnets, metal and plastic pins, button-ups, metal and plastic buttons, felt pennants; toy plastic baseballs and bats, foam baseball bats, plastic baseballs, foam baseballs, plastic kick ups, namely pitching devices for batting practice, plastic catcher's masks, plastic baseball gloves, foam baseball gloves; souvenir batting helmets, helmet banks, miniature batting helmets, mini key helmets; candy, chewing gum and confectionery, namely chocolate and candy bars; miniature plastic batting helmets to cap candy/gum, tubular enclosures to hold gum/candy.

Services: (1) Entertainment services in the nature of the performance, presentation and promotion of baseball games rendered live and through the media of radio and television.

2. Trade-mark:



(SAN FRANCISCO GIANTS Design)

Registration No.: TMA337,253

Wares: (1) Boys' and men's tank tops, sweatshirts, hats, caps; helmets; girls' shirts, nightshirts; infants' shirts; jewelry, namely pins; photo trading cards, collector albums; buttons, felt pennants.

Services:

(1) Entertainment services in the nature of the performance, presentation and promotion of baseball games rendered live and through the media of radio and television.

3. Trade-mark:



(GIANTS & Design)

Registration No.: TMA441,557

Wares: (1) Clothing, namely jackets, coats, ponchos, raincoats, pants, overalls, jeans, coveralls, shorts, sweatpants, t-shirts, shirts, tops, jerseys, turtlenecks, pullovers, sweaters, vests, tank tops, sweatshirts, jogging suits, warm-up suits, skirts, short sets, diaper sets, dress and pant sets, pant sets, sweater sets, sunsuits, swimsuits, sleepers, snowsuits, underwear, housecoats, bath robes, bath wraps, undershirts, bibs, pyjamas, nightgowns, nightshirts, boxer shorts, layette sets, socks, hosiery, hats, caps, visors, headbands, wristbands, mitts, gloves, scarves, handkerchiefs, belts, suspenders, ties, buckles; footwear and accessories, namely shoelaces, shoe bags, shoes, boots, slippers, sneakers, running shoes, baby booties, thongs; sporting goods and athletic equipment, namely baseball jerseys, jerseys, baseball pants, sports pants, baseball uniforms, balls, baseballs, ball holders, ball bags, helmets, protective pads, gloves, golf bags, sports bags, equipment bags, golf club head covers, golf tees, golf clubs, batting gloves, masks; games, toys and play things, namely inflatable toys, balls, bats, gloves, helmets sold individually or in sets, card games, video games, computer games, board games, flying disks, figurines, vehicles, playsets, playing cards, windup toys, balloons, audio cassettes, video cassettes, computer disks, puzzles, kites, stuffed animals, plush toys, dolls, beachballs, pinwheels, puppets, rattles, colouring books, activity books, return tops; luggage and luggage accessories, namely bags, duffel bags, backpacks, knapsacks,

suitcases, carrying cases, card holders, wallets, coin purses, money clips, key chains, key rings, key fobs, key cases, key tags, key holders, umbrellas, luggage tags; pet leashes; pet collars, paper products, namely paper plates, paper cups, napkins, placemats, table covers, party hats, bags, wrapping paper, ribbon, party favors; housewares and household accessories, namely mugs, steins, tumblers, glasses, cups, tankards, shot glasses, apothecary jars, pitchers, beverages coolers, cooler bags, mug hangers, candles, plates, bowls, dishes, lunch kits, coasters, handles for coasters, bottle openers, spoons, salt and pepper shakers, vacuum bottles, thermal mugs and steins, water bottles, flasks, air fresheners, wastebaskets, food containers, tins, beverage holders, condiment sets, lunch boxes, chimes, lamps, telephones, nightlights, barbeque grills, shovels, bottles, trays, candlesticks, baby bottles, training cups, ice buckets, door hangers, picture frames, toothbrushes, wallpaper; baby pacifiers; souvenirs and novelties, namely flags, banners, pennants, pom-poms, buttons, windsocks, coins, banks, helmets, alphabet letters, megaphones, party baskets, Christmas tree decorations and ornaments, figurines, zipper pulls, engravings, bats, balls, ball stands, foam hand shaped glove which can be waved; smokers supplies and accessories, namely lighters and ashtrays; eyewear and accessories, namely eyeglasses, sunglasses, eyeglass cases, eyeglass cords, eyeglass holders, eyeglass sportsband, binoculars; radios; stationery and school articles, namely pens, pencils, crayons, markers, coloured pencils, mechanical pencils, highlighters, erasers, rulers, pencil cases, note pads, memo pads, report covers, portfolios, greeting cards, invitations, bookmarks, pencil holders, magnets, stamp pads, paperweights, letter openers, paper clips, postcards, binders, bulletin boards, display boards, tape measures, school bags, tags, desk sets and writing kits comprised of memo pads, pen, pencil and pencil caddy; decals, stickers, stamps, tattoos, bumper stickers, emblems, patches, badges, crests, transfers, baseball cards, trading cards, trivia cards, autographs books, albums, scrapbooks, booklets, programs, magazines, books, folders, book covers, portfolios, date books, calendars, storage devices namely trunks, cans, chests, boxes and albums related to cards and booklets, card holders, signs; time pieces namely watches, clocks, wrist watch/ wallet combinations; thermometers; car mats; bed, bath, kitchen and table linen, namely sheets, pillow cases, pillows, blankets, quilts, comforters, duvets, bedspreads, curtains, bumper pads, sleeping bags and sacks, cushions, shower curtains, towels, tablecloths, placemats, napkins, oven mitts, potholders, aprons, chef hats, carpets, rugs, mats; clothes organizers; furniture namely chairs, tables, stools, rocking chairs, cushions; sunshades; automobile sun screens; jewellery namely costume and precious metal jewellery, charms, medallions, coins, rings, pendants, necklaces, tie tacks, earrings, pins, pin sets; license plate holders; pictures, photographs, prints, posters, wall hangings, plaques, maps; fabric; alimentary products and beverages, namely candy, chocolate, gum, sunflower seeds, peanuts, popcorn, ice cream, ice milk, yogurt.

Services: (1) Entertainment services in the nature of the performance, presentation and promotion of baseball games rendered live and through the media of radio and television.

Schedule "B"

1. Trade-mark:



Registration No.: TMA394,352

Wares: (1) Bicycles and structural parts thereof.

2. Trade-mark: GIANT

Registration No.: TMA395,430

Wares: (1) Bicycles; bicycle parts and components, namely: frames, handlebars, handlebar stems, head sets, derailleurs, gears, saddles, seat posts, seat tubes, pedals, cranks, wheels, tubes, tires, rims, spokes, pumps, forks, carriers, reflectors, mud guards, chains, chainguards, hubs, brakes and levers, toe straps and clips, bells, locks.

3. Trade-mark: GIANT

Registration No.: TMA396,031

Wares: (1) Exercise equipment, namely stationary bicycles, stationary ski machines, treadmills and stair step exercise machines.

4. Trade-mark: G*I*A*N*T*S

Registration No.: TMA441,977

Wares: (1) Computer software and computer software for use in the bicycle industry.

5. Trade-mark:



Registration No. TMA657,037

Wares: (1) Windbreak training machines for use with bicycles; knee guards for athletic use; wrist guards for sports; chest protectors for sports; bicycle handle-bar grip covers; bicycle handle-bar grip strips; balls; bicycle models (toy); toy bicycles; piggy banks; volleyballs; basketballs; badminton shuttlecocks and rackets; tennis balls; soccer balls; golf balls; golf clubs; golf gloves; chess sets; Chinese chess sets; checker sets; encirclement chess sets; poker chips; playing cards; exercise bicycles.

Schedule "C"

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SAN FRANCISCO GIANTS



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