



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

**Citation: 2012 TMOB 89**  
**Date of Decision: 2012-05-02**

**IN THE MATTER OF OPPOSITIONS  
by Stephen Slesinger, Inc. to application  
Nos. 1,312,371, 1,312,975, 1,312,976,  
1,330,168 and 1,333,365 for the trade-  
marks PIGLET, POOH, ROO, WINNIE  
THE POOH and TIGGER in the name of  
Disney Enterprises, Inc.**

Introduction

[1] These opposition proceedings concern trade-marks that comprise the names of certain characters created by the British author A.A. Milne for his children's books that revolve around the character known as WINNIE THE POOH (the Pooh Works). In 1929/30, an American named Stephen Slesinger negotiated with Mr. Milne to acquire certain rights to commercialize these characters in the United States and Canada. Stephen Slesinger, Inc. (the Opponent) was incorporated as the vehicle for the commercialization and on or about 1961, the Opponent entered into an agreement with Walt Disney Productions, the predecessor of Disney Enterprises, Inc. (the Applicant), whereby Walt Disney Productions acquired certain rights in the Pooh Works. Walt Disney Productions proceeded to license trade-marks that are associated with the Pooh Works to third parties and to register some of such marks in its name. The parties' relationship seemed to run smoothly until about 1983 when it was deemed necessary to terminate the previous agreements and create new ones in order to resolve certain disputes. After that, the Applicant or its predecessor continued to license and register marks associated with the Pooh Works. However, in 2008/2009 the Opponent opposed trade-mark applications filed by the

Applicant in Canada in 2006/2007. Meanwhile, in the United States, the Opponent was taking action against the Applicant concerning similar trade-marks and related copyright both in the courts and in the Trademark Office.

[2] Although there are five separate proceedings, one with respect to each of the trade-mark applications identified above, the pleadings, evidence and argument concerning each are very similar. I will address each application in turn, beginning with the opposition to application No. 1,330,168 for the trade-mark WINNIE THE POOH.

### WINNIE THE POOH

[3] The Applicant filed application No. 1,330,168 for the trade-mark WINNIE THE POOH on January 4, 2007 based on proposed use of the mark in association with a variety of wares. The current statement of wares is set out in Schedule A hereto.

[4] Application No. 1,330,168 was advertised for opposition purposes in the *Trade-marks Journal* of November 21, 2007 and on April 21, 2008, the Opponent filed a statement of opposition. The grounds of opposition may be summarized as follows:

1. The application does not conform to the requirements of section 30(a) of the *Trade-marks Act*, RSC 1985, c T-13 (the Act) because the application does not contain a statement in ordinary commercial terms of the specific wares in association with which the mark is proposed to be used.
2. The application does not conform to the requirements of section 30(e) of the Act because “the Applicant, by itself or through a licensee, or by itself and through a licensee, never intended to use the trade-mark in Canada in association with the wares set forth in the application.”
3. The application does not conform to the requirements of section 30(i) of the Act because the Applicant could not have been satisfied that it was entitled to use the mark in Canada in association with the wares described in the application in view of the fact that the mark is owned by the Opponent.

4. The Applicant is not the person entitled to registration of the mark pursuant to section 16(3)(a) of the Act because “at the date of filing of the application, it was confusing with a trade-mark that had been previously used in Canada or made known in Canada by any other person, namely the trade-mark WINNIE THE POOH owned and used by the Opponent in Canada.”
5. The mark is not distinctive because it “does not actually distinguish the wares in association with which it is proposed to be used by the Applicant from the wares of others nor is it adapted so as to distinguish them in view of the fact that the trade-mark is owned by the Opponent.”

[5] The Applicant filed and served a counter statement in which it denied the Opponent’s allegations.

[6] Pursuant to section 41 of the *Trade-marks Regulations*, SOR/96-195 (the Regulations), the Opponent filed an affidavit of its President, Patricia Slesinger.

[7] Pursuant to section 42 of the Regulations, the Applicant filed certified copies of six Canadian trade-mark registrations for WINNIE THE POOH owned by the Applicant plus a certified copy of the file history of one expunged Canadian trade-mark registration for WINNIE-THE-POOH owned by the Opponent.

[8] Pursuant to section 43 of the Regulations, the Opponent filed evidence in reply, namely an affidavit of Carla Edwards, a secretary employed by its trade-mark agents.

[9] No cross-examinations were conducted.

[10] Only the Opponent filed a written argument but both parties participated in an oral hearing.

#### Applicable Material Dates

[11] The material dates with respect to the grounds of opposition are as follows:

- section 30 - the filing date of the application [*Georgia-Pacific Corp v Scott Paper Ltd* (1984), 3 CPR (3d) 469 (TMOB) at 475];
- section 16(3) – the filing date of the application;
- distinctiveness - the date of filing of the opposition [*Metro-Goldwyn-Mayer Inc v Stargate Connections Inc* (2004), 34 CPR (4th) 317 (FC)].

### Onus

[12] The Applicant bears the legal onus of establishing, on a balance of probabilities, that its application complies with the requirements of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist [see *John Labatt Limited v The Molson Companies Limited* (1990), 30 CPR (3d) 293 (FCTD) at 298].

### Summary of the Evidence

#### *The Opponent's Evidence in Chief - Slesinger Affidavit*

[13] Patricia Slesinger has been the Opponent's President since 2008. She is the daughter of Stephen Slesinger, who directed the Opponent from its founding in the 1930s until his passing in 1953, and Mrs. Shirley Ann Slesinger, who was the Opponent's President from 1958 until her passing in 2007.

[14] Ms. Slesinger attests: "From an early age, my mother began teaching me aspects of our business and from approximately 1975 until 2007, I was gradually given increasing responsibilities"; "I have personal knowledge of the facts contained in this my affidavit or I have obtained the facts from the records of [the Opponent]." Ms. Slesinger then proceeds to provide copies of various documents. She does not make any statements concerning either the meaning of these documents or the activities of the Opponent.

[15] To the extent that Ms. Slesinger's exhibits were provided for the purpose of showing the Opponent's rights in the trade-marks associated with the Pooh Works (including WINNIE THE POOH), as well as the rights of the Applicant, they are clearly relevant and so I will briefly

discuss each of them. The following is a general description of each document, accompanied in some instances with further details of their contents and comments thereon, but it should be noted that the parties dispute the legal effect of the documents.

[16] Exhibit A is a copy of a letter dated December 24, 1929 from a B.H. Stern to a Mr. Brown, which refers to an enclosed agreement that Mr. Stern states can be signed by “Milne and Slesinger” when Slesinger is in London.

[17] Exhibit B is a copy of an agreement between A.A. Milne and Stephen Slesinger dated January 6, 1930 (presumably the agreement referred to in the Exhibit A letter), with a side letter from E.H. Shepard. The agreement begins by granting Mr. Slesinger “the sole and exclusive right, licence and privilege to use in any and every manner except as hereafter expressly forbidden in the United States of America, its insular possessions, the Dominion of Canada and Nova Scotia, for and during the respective periods of copyright and any renewal thereof to be had under the Copyright Act or acts of the several countries or territorial divisions, aforesaid, to and in the following works of the Author [Milne], to wit: “WHEN WE WERE VERY YOUNG”, “WINNIE-THE-POOH”, “NOW WE ARE SIX”, and “THE HOUSE AT POOH CORNER”, and of any literary works dealing with the characters contained in those books which may be hereafter written by the Author during the existence of this agreement, the name of the Author, the title of the said works, and the characters therein, the drawings and illustrations in the said several works and the right to have made other and further drawings and illustrations portraying or reflecting actions of the said characters...” The agreement goes on to discuss use “of a fabric, thing or material which is subject to trademark under the Trademark Act of the United States of America”. The agreement provides that Mr. Slesinger shall organize a corporation under the laws of the State of New York which shall have the right to grant licenses for the use of the trademarks. The agreement also discusses royalties to be paid to Mr. Milne. The side agreement provides that one-half of the proceeds received by Mr. Milne will be received by Mr. Shepard.

[18] Exhibit C is a copy of a Canadian trade-mark registration issued to the Opponent on April 8, 1932 for WINNIE-THE-POOH (registration 251/54131).

[19] Exhibit D is a copy of a letter dated April 18, 1930 from Mr. Slesinger to Curtis Brown Ltd. in England concerning puppet shows with the Winnie-the-Pooh characters to be performed in retail stores, with royalties to be paid to Mr. Milne.

[20] Exhibit E is a copy of a letter dated June 20, 1932 from the Opponent to Mr. Milne c/o Curtis Brown Ltd. extending the January 6, 1930 agreement to include “radio reproduction, representation, broadcasting and/or the like”.

[21] Exhibit F is a copy of an agreement dated November 17, 1932 in which the Opponent licenses a third party to use the Winnie-the-Pooh properties in the U.S. and Canada on a board game.

[22] Exhibit G is a copy of an article from *The New Yorker* magazine dated October 26, 1935 concerning the Winnie-the-Pooh Association, Mr. Slesinger and Mr. Milne. While I accept that such an article exists, there is no basis on which to accept this exhibit as evidence as to the truth of its contents, i.e. the information contained in the article is inadmissible hearsay.

[23] Exhibit H is a copy of an agreement dated June 14, 1961 between the Opponent and Walt Disney Productions. The Opponent is referred to as “the seller” and Walt Disney Productions is referred to as “the purchaser”. The agreement states that the seller “assigns, grants, and sets over unto the purchaser” the sole and exclusive right in the U.S. and Canada with respect to various Winnie-the-Pooh works of Mr. Milne, subject to existing licenses and to the payment to the seller of 4% of the gross amounts received by the purchaser as a result of the commercialization of the works. The agreement also provides that the seller “may continue to enter into and to extend license agreements for periods of not more than two years...” In addition, the agreement states, “The seller is familiar with the terms of an agreement about to be entered into between the purchaser and Dorothy Daphne Milne and the Estate of Alan Alexander Milne, deceased. The seller hereby agrees not to assert against the purchaser any right in conflict with such rights as are acquired by the purchaser under said agreement, provided, however, that none of the seller’s rights under its agreement with the purchaser is in any way impaired.”

[24] Exhibit I is a copy of a letter dated June 14, 1961 to the Opponent from Dorothy Daphne Milne and Spencer Curtis-Brown, both of whom signed individually and as executrix/executor

and trustee of the Last Will and Testament of Alan Alexander Milne, deceased. They state that they are familiar with the Opponent's proposed agreement with Walt Disney Productions dated June 14, 1961, that they approve and consent to such agreement, and that the Opponent will not be obliged to pay royalties to the Estate of A.A. Milne on account of rights granted to Walt Disney Productions under that agreement. The writers further state that they will only look to Walt Disney Productions for the payment of royalties for such rights as are granted to Walt Disney Productions under the June 14, 1961 agreement between the Opponent and Walt Disney Productions.

[25] Exhibit J is a copy of an agreement also dated June 14, 1961 between Dorothy Daphne Milne and Spencer Curtis-Brown, collectively the "seller", and Walt Disney Productions, the "purchaser". The seller "assigns, transfers, grants and sets over unto the purchaser" the right to make motion pictures based upon the Pooh Works, the sole and exclusive motion picture rights throughout the world, "the right to apply for and secure, in the name of the purchaser, its assignees, privies and/or licensees, any and all copyrights, trade-mark registrations, patents and similar rights secured by law in the United States and/or foreign countries with respect to the use of the names or titles of said [Pooh Works], or any part thereof, and/or the characters and story thereof". The agreement provides for the purchaser to pay the seller certain lump sum payments plus "a sum of money equivalent to two and one-half percent of the gross amounts actually received by the purchaser" from the commercialization of the work anywhere in the world on "any and all items, things and services"; the purchaser shall render semi-annual statements concerning such payments. Paragraph 22 states that the rights granted to the purchaser with respect to the sole right to publish and sell "children's story books, picture books, paint books, coloring books, comic books, cut-out books, novelty books, game books, puzzle books, magazines, booklets and pamphlets" are "subject to such rights as may have been heretofore acquired by [the Opponent]."

[26] Exhibit K is a copy of an agreement dated April 1, 1983 between the Opponent and Walt Disney Productions, Christopher R. Milne and trustees for the Pooh Properties. The preamble include the following points:

- Stephen Slesinger acquired certain rights from A.A. Milne on January 6, 1930, which he subsequently assigned to the Opponent, and which the Opponent subsequently assigned to Walt Disney Productions by agreement dated June 14, 1961.
- By virtue of an assignment in 1972 the Trustees became the owner of the copyrights and the benefits of the 1930 agreement.
- “[T]he parties have determined to resolve certain disputes which have hereafter existed between them and in so doing have resolved to clarify certain aspects of their contractual arrangements and to settle revised agreements.”
- The parties have agreed to revoke the prior agreements and the Opponent and Walt Disney Productions are desirous of entering into a new agreement, with Walt Disney Productions being willing to simultaneously amend the June 14, 1961 agreement that it has with the Trustees’ predecessors.

[27] In paragraph 5 of the April 1, 1983 agreement, the Opponent warrants that it has been granted the sole and exclusive television and radio rights in the United States and Canada, including various further rights. However, in paragraph 7, the Opponent “assigns, grants, and sets over unto Disney the sole and exclusive right in the United States and Canada” to broadcast motion pictures based on the work by means of television or any process analogous thereto, plus all the other rights that the Opponent has with respect to the work. In exchange, Disney agreed to pay the Opponent certain percentages of the gross amounts received by Disney from exploitation of the work. In paragraph 13, the Opponent acknowledged that it was familiar with the terms of the agreement entered into by Disney with the Trustees dated June 14, 1961 and with the terms of an amendment thereto. The Opponent agreed “not to assert against Disney any right in conflict with such rights as are acquired by Disney” under the agreement with the Trustees. Paragraph 15 states, “[u]pon the expiration or earlier termination of this agreement or the reacquisition of rights under Paragraph 11, the rights granted to Disney under Paragraphs 7 and 8 shall vest in the Trustees and [the Opponent] jointly.” I note that there is no evidence or argument before me that expiration, termination or reacquisition has occurred.



[28] Exhibit L is a copy of a Release dated April 1, 1983 whereby the Opponent, in exchange for consideration, released Walt Disney Productions from any claims that it might have had prior to January 1, 1982.

[29] Exhibit M is a copy of an amendment of some of the payment terms of one of the June 14, 1961 agreements.

[30] Exhibit N is a copy of a Release signed in March 1983 whereby the Trustees, in exchange for consideration, released Walt Disney Productions from any claims that it might have had prior to January 1, 1982.

[31] Exhibit O is a copy of a letter dated April 1, 1983 from the Opponent to Walt Disney Productions confirming some small changes to the April 1, 1983 agreement.

[32] Exhibit P is a copy of a letter dated April 1, 1983 from Walt Disney Productions to the Trustees and the Opponent.

[33] Exhibit Q is a copy of a letter dated February 7, 1983 from Walt Disney Production's counsel to two law firms, one of which Ms. Slesinger refers to as the Opponent's counsel.

[34] Exhibit R is a copy of an expired license agreement between Walt Disney Productions and Sears, Roebuck and Co., dated February 10, 1965, and pages from an expired license agreement between The Walt Disney Company, Inc. and Sears Canada, Inc., dated July 1, 1990. These documents state that Disney has acquired certain rights which empower it to grant rights to the licensees. The license to Sears Canada, Inc. states, "Disney has registered in the Canadian Trade Marks Office certification marks relating to the license being granted to SEARS herein and as described as 'Winnie the Pooh', 'Pooh', 'Winnie L'Ourson', 'Tigger', 'Eeyore' and 'Roo'." Ms. Slesinger has not explained how these documents form part of the Opponent's records but as she has introduced them into evidence I will assume that the Opponent had knowledge of them as part of its business relationship with Walt Disney Productions.

[35] Exhibit S is a sampling of reports from the Opponent to A.A. Milne, which include payments due and payable under the January 6, 1930 agreement, as amended. Ms. Slesinger states that these include payments regarding sales in Canada, but does not refer to any examples

of such. In its written argument, the Opponent states that Exhibit S “includes Canadian sales from Parker Brothers, Sparton of Canada, etc.” While I have located references to Parker Brothers, Sparton of Canada and MCA Canada in the exhibit, it is not clear that such references relate to sales in Canada. Moreover, there is no indication that any trade-mark (let alone the trade-mark at issue here) was associated with whatever sales are referred to in the reports.

[36] I note that some of the documents in Exhibit S, listing money payable to A.A. Milne by the Opponent, bear the title “Royalty Report”.

[37] Exhibit T is a copy of a sampling of pages of what Ms. Slesinger refers to as “royalty statements from Disney to Slesinger, regarding royalties paid to Slesinger by Disney under the 1983 agreement”. Some of the “royalty statements” do contain sections called Canadian Licensing, but it is not clear to me what trade-mark, if any, was associated with each ware that was sold, let alone whether any trade-mark was associated with the ware in a manner that complies with section 4 of the Act. I note that the 1983 agreement includes specific reference to the copyrights in the Pooh Works and it is not clear which of the various rights were the subject of the Canadian licensing that is referred to in the statements.

[38] I note that some of the documents in Exhibit T, listing money payable to the Opponent by the Applicant’s predecessor, bear the title “Statement of Royalty Participation”.

[39] Exhibit U is identified as “a copy of pages from the deposition transcript of Peter F. Nolan taken on October 11, 2006 in *Milne, Coyne and Disney Enterprises, Inc. v. Stephen Slesinger, Inc.*, case no. CV-02-08508 FMC (PLAX) of the United States District Court, Central District of California, and a copy of pages from the deposition transcript of Peter F. Nolan taken on November 17, 1997 in *Stephen Slesinger, Inc. v. The Walt Disney Co.*, case no. BC 022365 of the Superior Court of the State of California, for the County of Los Angeles.” The decision that issued with respect to the District Court action has been provided to me by the Applicant as part of its case law. The nature of the Superior Court action is not clear to me and there is nothing before me that indicates its outcome.

[40] Exhibit V is identified as “a copy of a June 2, 2000 Court Order in the case of *Stephen Slesinger, Inc. v. The Walt Disney Co.*, case no. BC 022365 of the Superior Court of the State of

California, for the County of Los Angeles.” It approved a Referee’s report that denied the Opponent’s discovery request of Disney’s pending negotiations with the Milne Trust.

[41] Exhibit W is identified simply as “a copy of page 1 of an agreement between Disney Enterprises, Inc., Milne, and Coyne, dated November 4, 2002.”

[42] Exhibit X is a copy “of an opinion by the United States Court of Appeal, Ninth Circuit, in the case of *Milne, et al. v. Stephen Slesinger, Inc.* case number 04-57189”, dated 2006. It seems to primarily concern the issue of whether the termination provision of the Sonny Bono Copyright Extension Act (CTEA) applied to the parties’ 1983 agreement. According to the Court of Appeal, “The CTEA’s termination provision does not apply to post-1978 agreements such as the parties’ 1983 agreement, which continues to control the parties’ rights and royalty shares in the Pooh works.”

[43] Exhibit Y is identified as “a copy of a sampling of correspondence during the 1960s through 1980s between Slesinger and Disney.” None of it seems to relate to Canada.

[44] Before proceeding, I must acknowledge that the Applicant has objected to Ms. Slesinger’s evidence on the basis that it is hearsay, commenting that even if she had referred to the exhibits as business records, then at most only the royalty documents are of a nature that might qualify as business records. I agree that the various agreements between the parties are not business records. However, there are a number of reasons for which I consider the majority of the exhibits to be relevant and reliable.

[45] The majority of the documents provided by Ms. Slesinger were between the present parties (or their predecessors), and so they would be within the Applicant’s knowledge. The Applicant has not contested either the reliability or the relevance of the documents provided. The Opponent has pointed out that the Applicant chose to not cross-examine Ms. Slesinger; the Applicant has defended that choice by saying that on cross-examination Ms. Slesinger would likely have merely responded to questions by saying that the documents speak for themselves. I agree that some of the documents do speak for themselves and, to the extent that they are relevant, I have decided to listen to them.

[46] In the event that I am wrong to have considered the documents introduced by Ms. Slesinger, then I note that if I had treated them as inadmissible the outcome of the proceeding would not have differed.

*The Applicant's Evidence*

[47] The Applicant filed certified copies of the following:

1. the file history of the expunged registration No. TMDA54131 for the trade-mark WINNIE-THE-POOH – This reveals that the Opponent registered WINNIE-THE-POOH as of April 8, 1932. By letter dated April 6, 1939, the Opponent's agent informed the Registrar that the Opponent had no further interest in this registration, with the result that the registration was cancelled as of April 6, 1939.
2. registration No. TMA141,319 for the certification mark WINNIE THE POOH for various clothing, toys and games – Walt Disney Productions applied for this registration on February 13, 1965, a declaration of use was filed August 6, 1965 and the registration issued on August 17, 1965. The registration was renewed on August 17, 1995 and the Applicant was its owner when the certified copy issued.
3. registration No. TMA150,743 for the certification mark WINNIE THE POOH for various food items – Walt Disney Productions applied for this registration on May 9, 1966, a declaration of use was filed May 5, 1967 and the registration issued on May 12, 1967. The registration was renewed on May 12, 1997 and the Applicant was its owner when the certified copy issued.
4. registration No. TMA191,331 for the trade-mark WINNIE THE POOH for various household/nursery items – Walt Disney Productions applied for this registration on September 21, 1972 based on use of the mark in Canada since at least as early as April 1, 1971 and the registration issued on May 25, 1973. The registration was renewed on May 25, 2003 and the Applicant was its owner when the certified copy issued.
5. registration No. TMA269,445 for the certification mark WINNIE THE POOH for a wide variety of wares – Walt Disney Productions applied for this registration on March 12, 1980 based on use of the mark in Canada since a variety of dates, the earliest of which was September 1971, and the registration issued on May 28, 1982. The registration was renewed on May 28, 1997 and the Applicant was its owner when the certified copy issued.
6. registration No. TMA489,680 for the trade-mark WINNIE THE POOH for a wide variety of wares – the Applicant applied for this registration on April 29, 1996 based on use of the mark in Canada since a variety of dates, the earliest of which was 1986, and the registration issued on February 11, 1998.

7. registration No. TMA723,709 for the trade-mark WINNIE THE POOH for a variety of wares – the Applicant applied for this registration on August 19, 2002 based on proposed use of the mark in Canada, a declaration of use was filed August 19, 2008 and the registration issued on September 15, 2008.

*The Opponent's Reply Evidence – Affidavit of Carla Edwards*

[48] Carla Edwards is a secretary employed by the law firm that is acting as the Opponent's agent. She simply provides copies of four documents, without identifying how she acquired such documents. She refers to the documents as follows:

Exhibit A: “a copy of Form 10-Q/A (Amendment No. 1) filed by The Walt Disney Company with the United States Securities and Exchange Commission in Washington, D.C. 20549 United States of America for the quarter ended March 31, 2002”

Exhibit B: “a copy of Form 10-Q filed by The Walt Disney Company with the United States Securities and Exchange Commission in Washington, D.C. 20549 United States of America for the quarter ended June 30, 2002”

Exhibit C: “a copy of the cover page and pages 43 and 44 and pages 186 and 187 of the Deposition of Disney Enterprises, Inc. through Edward John Nowak dated Friday, September 8, 2006 filed in the United States District Court, Central District of California in the case of Claire Milne, an individual, by and through Michael Joseph Coyne, her Receiver, and Disney Enterprises, Inc. vs. Stephen Slesinger, Inc vs. Harriet Jessie Minette Hunter”

Exhibit D: “a copy of pages 1 to 5 of the Declaration of Fredrick L. Allen in support of Defendant's response regarding Plaintiff's entitlement to a percentage of advances filed in the Superior Court of the State of California, for the County of Los Angeles, in the matter of Stephen Slesinger, Inc. vs. The Walt Disney Company and DOES [sic] 1 through 100.”

[49] At the oral hearing, the Applicant objected to the Edwards affidavit on three bases: i) it is not proper reply evidence, ii) it is inadmissible hearsay evidence, and iii) it is the type of clearly contentious evidence that should not be introduced by an employee of a party's law firm as per *Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada* (2006), 53 CPR (4th) 286 (FCA), affg (2005), 43 CPR (4th) 21 (FC). The Opponent did not make any submissions in response.

[50] Proper reply evidence responds to issues raised in the other side's evidence. The Opponent has not submitted that there are issues raised by the certified copies filed by the Applicant that support Ms. Edwards' reply evidence and I see none. I am therefore disregarding her evidence on the basis that it is not proper reply evidence. As a result, there is no need for me to rule on the validity of the Applicant's two other objections.

#### Prior Case Law between the Parties

[51] As alluded to earlier, the parties have already contested the ownership of the marks associated with the Pooh Works in the United States. The Applicant has directed my attention to two U.S. decisions between the parties: *Stephen Slesinger, Inc v Disney Enterprises, Inc*, a decision of the United States Trademark Trial and Appeal Board (the TTAB) dated June 8, 2011; and *Clare Milne and Disney Enterprises, Inc v Stephen Slesinger, Inc*, a decision of the United States District Court for the Central District of California dated September 25, 2009, 2009 US Dist LEXIS 94925 (the USDC Decision). Of course, the U.S. decisions are not binding on me and the Applicant's agent indicated that they were being presented for persuasive value only.

[52] The USDC Decision granted the Applicant's motion for summary judgment with respect to a claim by the Opponent that the Applicant was infringing the Applicant's trade-mark rights with respect to the POOH Works. In the USDC decision, the Court stated that it was "satisfied that under the clear terms of the parties' agreements, [the Opponent] transferred all of its rights in the Pooh works to Disney". The TTAB stated that the key issue to be decided by it was identical to the issue underlying the USDC Decision, namely, whether the Opponent had an ownership interest in the Pooh Works. Before the TTAB, the Opponent alleged, *inter alia*, that the Applicant was, when it filed its U.S trade-mark applications, a licensee of the Opponent and that the Opponent is the rightful owner of the mark(s). The TTAB noted that the District Court considered whether the Opponent had any ownership interest in the Pooh Works as a result of the 1983 agreement between the parties. The District Court found that both parties had treated the agreements as constituting a transfer from the Opponent to the Applicant of all of the Opponent's interests in the Pooh characters, entitling the Opponent to royalties for all uses. The TTAB was satisfied that the District Court clearly interpreted the agreements of the parties, examined the nature of the transfer of the rights and, based thereon, determined whether the Opponent assigned

or merely licensed its rights in the Pooh Works to the Applicant. The District Court interpreted the contracts between the parties, including the April 1, 1983 agreement, and found that “the unambiguous nature of the contracts is strongly supported by the conduct of the parties over the nearly 50 years of their relationship. Both parties have treated the agreements as constituting a transfer from [the Opponent] to Disney of all of [the Opponent’s] interests in the Pooh characters, entitling [the Opponent] to royalties for all uses.” The Court concluded that it “was satisfied that under the clear terms of the parties’ agreements, [the Opponent] transferred all of its rights in the Pooh Works to Disney”. As a result, the Opponent’s opposition and cancellation actions before the TTAB were dismissed with prejudice. I also note that the Opponent voluntarily dismissed its appeal of the District Court Order of September 25, 2009.

[53] The Opponent has made no substantive submissions concerning these two U.S. decisions, despite the fact that the District Court and the TTAB interpreted the same key agreements of 1930, 1961 and 1983 that the Opponent is relying on in the present proceeding.

#### Conclusion regarding the Relationship between the Parties

[54] The agreements between the parties are unusual in that they first refer to rights being sold and then refer to royalties being payable for the ongoing use of the sold rights. It is unclear why this approach was taken, but there is clear evidence that the Opponent acknowledged both that it had assigned the rights that it had acquired from A.A. Milne to the Applicant’s predecessor (see page 1 of April 1, 1983 agreement, Exhibit K, Slesinger affidavit) and that the Applicant’s predecessor was entitled to register, and had in fact registered, trade-marks associated with the Pooh Works in its own name (see Exhibits J and R, Slesinger affidavit). This acknowledgement and acquiescence indicate to me that both in 1983 and in 1990 the Opponent accepted that the Applicant’s predecessor owned the trade-mark rights. I am not certain what made the Opponent subsequently change its view on this point, but the evidence does not indicate to me any valid basis for the Opponent to do so. In fact, recent case law between the parties in the U.S. has held in favour of the Applicant on the issue of ownership. Therefore, I accept that the best interpretation of the various agreements between the parties is that, prior to the dates that are material in the present proceeding, the Opponent assigned whatever rights it owned in the Pooh Works, including the trade-marks, to the Applicant’s predecessor in exchange for consideration

that included the payment of “royalties”. In other words, I find that the Opponent does not own the mark that is the subject of this application and did not own it at the time that the application was filed.

#### Section 30(b) Ground of Opposition

[55] The Opponent has not filed any evidence or argument directed to its section 30(b) ground of opposition. Therefore there is no basis to support the Opponent’s allegation that the Applicant’s wares are not in ordinary commercial terms. The ground is therefore dismissed on the basis that the Opponent has not met its initial burden.

#### Section 30(i) Ground of Opposition

[56] Section 30(i) of the Act requires that an applicant declare itself satisfied that it is entitled to use the applied-for mark. Where an applicant has provided the statement required by section 30(i), a section 30(i) ground should only succeed in exceptional cases such as where there is evidence of bad faith on the part of the applicant [*Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. The Opponent has pleaded that the Applicant could not have been satisfied that it was entitled to use the mark in view of the fact that the Opponent owns the mark. However, the Opponent’s evidence does not demonstrate that it owns the mark. In fact, there is case law stating that it does not. In view of my finding that the Opponent does not own the mark, the section 30(i) ground cannot succeed.

#### Section 16(3)(a) Ground of Opposition

[57] Regarding the section 16(3)(a) ground of opposition, the Opponent was obliged to evidence that it had used the mark prior to the filing of the Applicant’s application and had not abandoned its use of the mark at the date of advertisement of the Applicant’s application [section 16(5)]. What constitutes use of a trade-mark is set out in section 4 of the Act. There is no evidence before me showing use of the mark by anyone, let alone by the Opponent. Therefore, the Opponent has not met its initial burden under section 16(3)(a), with the result that such ground is dismissed.



### Distinctiveness Ground of Opposition

[58] The Opponent has pleaded that the mark is not distinctive of the Applicant in view of the fact that the mark is owned by the Opponent. In view of my finding that the mark is not owned by the Opponent, the distinctiveness ground is dismissed on the basis that the Opponent has not met its initial burden.

### Section 30(e) Ground of Opposition

[59] Since the application contains a statement that the applicant by itself and/or through a licensee intends to use the trade-mark in Canada, it formally complies with section 30(e) of the Act. The issue therefore becomes whether or not the Applicant has substantially complied with section 30(e), i.e. is the Applicant's statement that it intended to use the applied for mark true? [See *Home Quarters Warehouse, Inc v Home Depot, USA, Inc* (1997), 76 CPR (3d) 219 (TMOB); *Jacobs Suchard Ltd v Trebor Bassett Ltd* (1996), 69 CPR (3d) 569 (TMOB).]

[60] At the oral hearing, the Opponent compared the statements of wares in the Applicant's existing registrations for WINNIE THE POOH against the wares in application No. 1,330,168, noting where wares overlap. The purpose of the exercise as I understand it was to demonstrate that there are some "proposed use" wares in the present application that were identified in prior registrations as having already been sold in Canada in association with the WINNIE THE POOH mark. For example, "colouring books" are listed both in registration No. TMA141,319 for WINNIE THE POOH based on a declaration of use filed August 6, 1965 and in the present application based on proposed use. Therefore, the Opponent submitted at the oral hearing that the Applicant did not intend to use WINNIE THE POOH for the overlapping wares when it filed the application because, as indicated in the existing registrations, WINNIE THE POOH had already been used as a trade-mark in association with such wares. In addition, the Opponent submitted that an applicant cannot use the same trade-mark in association with the same wares to both indicate defined standards for wares and to distinguish those wares from the wares of others, i.e. as both a certification mark and as an ordinary trade-mark [see *Mister Transmission (International) Ltd v Registrar of Trade Marks* (1978), 42 CPR (2d) 123 (FCTD)].

[61] The Applicant's submission in response was that the issue should be whether the mark was still being used with the registered wares when the present application was filed, the suggestion being that if the earlier use had been abandoned then the proposed use basis was appropriate. The problem with the Applicant's response as I see it is that there is only a light evidential burden on the Opponent with respect to its section 30(e) ground since the facts concerning the Applicant's intentions are better known to the Applicant than to the Opponent [see *Molson Canada v Anheuser-Busch Inc* (2003), 29 CPR (4th) 315 (FCTD) and *Green Spot Co v John M Boese Ltd* (1986), 13 CPR (3d) 206 (TMOB) at 210-211]. The Opponent is entitled to rely upon the Applicant's evidence to meet its light evidential burden and the claims of use set out in the certified copies of the Applicant's existing registrations meet this initial burden. The Applicant therefore must meet the legal burden that lies on it to show that the proposed use claim in the pending application was appropriate because it had abandoned the use referred to in the earlier registrations for the same mark. The Applicant has not filed any evidence to meet this legal burden. Accordingly, based on the line of decisions wherein the Registrar of Trade-marks refused proposed use applications where actual use of the trade-mark was evidenced prior to the filing date [see *Nabisco Brands Ltd v Cuda Consolidated Inc* (1997), 81 CPR (3d) 537 (TMOB) at 540 and *Systèmes de Formation & de Gestion Perform Inc v Scissons*, 2004 CarswellNat 1758 (TMOB)], the section 30(e) ground succeeds with respect to the specific wares that overlap, namely: clocks; jewelry; watches; address books; baby books; books; calendars; children's activity books; colouring books; diaries; greeting cards; photograph albums; postcards; posters; stickers; backpacks; diaper bags; overnight bags; tote bags; umbrellas; figurines; picture frames; toy chests; tumblers; bowls; cookie cutters; cups; dishes; lunch boxes; napkin holders; paper plates; soap dishes; waste baskets; biscuits; breakfast cereal; candies; chocolate; honey (collectively the WINNIE THE POOH Overlapping Wares).

[62] I should add that at the oral hearing the Opponent further submitted that any wares listed in royalty statements that predate the filing of the application should be struck from the application on the basis that the mark was already in use with such wares. However, as noted earlier, the royalty statements are not evidence of use of any marks with any wares, both because they do not list the specific mark allegedly used and because there is no evidence that there was use that satisfies the requirements of section 4 of the Act.

Disposition re Application No. 1,330,168

[63] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse application No. 1,330,168 only with respect to the WINNIE THE POOH Overlapping Wares and I reject the opposition with respect to the remaining wares, pursuant to section 38(8) of the Act.

*Preamble regarding Outstanding Applications*

[64] I will now address each of the remaining four applications. However, before beginning, I wish to clarify that the majority of the evidence, law and analysis set out above with respect to the application for WINNIE THE POOH applies *mutatis mutandis* to the remaining applications. I will indicate below where differences exist among the five applications. I also want to point out that although there may be fluctuations among the files regarding the date that is material for assessing each of the grounds of opposition, in the circumstances of these cases nothing turns on the date at which the issues are determined.

TIGGER

[65] I turn first to application No. 1,333,365 which the Applicant filed on January 31, 2007 for the trade-mark TIGGER based on proposed use of the mark in association with a variety of wares. The current statement of wares is set out in Schedule B hereto.

[66] Application No. 1,333,365 was advertised for opposition purposes in the *Trade-marks Journal* of February 13, 2008. On July 4, 2008, the Opponent filed a statement of opposition and on September 4, 2008, the Opponent filed a revised statement of opposition. The Registrar served the revised statement of opposition on the Applicant on October 16, 2008. The grounds of opposition are identical to those set out above with respect to the application for WINNIE THE POOH, the only exception being that the fourth ground of opposition relies upon TIGGER instead of WINNIE THE POOH, and refers to the Opponent's wares/services, as summarized below:

The Applicant is not the person entitled to registration of the mark pursuant to section 16(3)(a) of the Act because "at the date of filing of the application, it was confusing with a trade-mark that had been previously used in Canada or made known in Canada by any other person, namely the trade-mark TIGGER owned and used by the

Opponent in Canada. The Opponent is the owner and user of the trade-mark TIGGER for use in association with items and things which employ or use or which are taken from or which are based upon any of the characters, material or titles of the books written by Alan Alexander Milne including, for example, the works WINNIE THE POOH and THE HOUSE AT POOH CORNER and the collection of verses written by Alan Alexander Milne and entitled WHEN WE WERE VERY YOUNG and NOW WE ARE SIX, including without limiting the generality of the foregoing, toys, puppets, fabrics, wall paper, other materials, dolls, games, puzzles, novelties, food products, phonograph records, and other reproductions of dramatizations of the aforementioned books and aforementioned works.”

[67] The Applicant filed and served a counter statement in which it denied the Opponent’s allegations.

[68] Pursuant to section 41 of the Regulations, the Opponent filed an affidavit of Patricia Slesinger.

[69] Pursuant to section 42 of the Regulations, the Applicant filed certified copies of the same documents that it filed in support of its application for WINNIE THE POOH, plus certified copies of the following three registrations:

1. registration No. TMA269,185 for the certification mark ROO for stuffed toys, hand puppets and various clothing – Walt Disney Productions applied for this registration on March 12, 1980 based on use of the mark since at least as early as December 1972, and the registration issued on May 21, 1982. The registration was renewed on May 21, 1997 and the Applicant was its owner when the certified copy issued.
2. registration No. TMA162,721 for the certification mark TIGGER for various clothing, toys, games and food items – Walt Disney Productions applied for this registration on June 12, 1968, a declaration of use was filed on April 24, 1969, and the registration issued on May 9, 1969. The registration was renewed on May 9, 1999 and the Applicant was its owner when the certified copy issued.
3. registration No. TMA273,660 for the certification mark TIGGER for hand puppet toys, record players, records, books, tapes and various clothing – Walt Disney Productions applied for this registration on March 12, 1980 based on use of the mark since at least as early as December 1972, and the registration issued on November 12, 1982. The registration was renewed on November 12, 1997 and the Applicant was its owner when the certified copy issued.

[70] Pursuant to section 43 of the Regulations, the Opponent filed an affidavit of Carla Edwards, which for all intents and purposes is the same as that filed with respect to the

application for WINNIE THE POOH, except that it includes one additional exhibit, namely Exhibit “E” which is identified as “a copy of The Walt Disney Royalty Statement for the period of 10/01/1982 through 09/30/2009 to Stephen Slesinger, Inc.”. The inclusion of this exhibit does not change my decision to the effect that the Edwards affidavit is not proper reply evidence.

[71] The Opponent obtained leave pursuant to section 44 of the Regulations to replace the affidavit of Ms. Slesinger filed pursuant to section 41 with an affidavit of Ms. Slesinger that corrected a typographical error that occurred in the originally filed affidavit. The only substantial difference between this affidavit and that filed with respect to the WINNIE THE POOH application is that it includes one additional paragraph at the end, which reads: “TIGGER is one of the characters that appears in the Winnie-the-Pooh works of A.A. Milne. The January 6, 1930 Agreement (Exhibit B), and its amendments, conveyed to Slesinger the sole and exclusive rights to use the names of the characters appearing in all of the Winnie-the-Pooh works and to Trade Mark the same.”

[72] None of the affiants were cross-examined.

[73] Only the Opponent filed a written argument but both parties participated in an oral hearing.

#### Section 30(e) Ground of Opposition

[74] The issue under section 30(e) is the same as that discussed with respect to the WINNIE THE POOH application, namely is the Applicant’s statement that it intended to use the applied for mark true?

[75] At the oral hearing, the Opponent compared the statements of wares in the Applicant’s existing registrations for TIGGER against the wares in application No. 1,333,365, noting where wares overlap. Applying the analysis set out with respect to the WINNIE THE POOH application, I am similarly satisfied here that the certified copies of the registrations filed by the Applicant satisfy the Opponent’s initial burden insofar as the overlapping wares are concerned. Moreover, the Applicant has done nothing to meet its legal burden. Accordingly, based on the line of decisions wherein the Registrar of Trade-marks refused proposed use applications where

actual use of the trade-mark was evidenced prior to the filing date [see *Nabisco Brands Ltd v Cuda Consolidated Inc* (1997), 81 CPR (3d) 537 (TMOB) at 540 and *Systèmes de Formation & de Gestion Perform Inc v Scissons*, 2004 CarswellNat 1758 (TMOB)], the section 30(e) ground succeeds with respect to the specific wares that overlap, namely: books; coloring books; dresses; pants; shirts; shorts; sweat shirts; vests; balloons; beach balls; inflatable toys; jigsaw puzzles; kites; playing cards; plush toys; puppets; squeeze toys; target games; toy banks; biscuits; breakfast cereal; bubble gum; candies; chocolate; honey (collectively the TIGGER Overlapping Wares).

#### Remaining Grounds of Opposition

[76] The remaining grounds of opposition are dismissed for the same reasons that they were dismissed with respect to the WINNIE THE POOH application.

#### Disposition re Application No. 1,333,365

[77] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse application No. 1,333,365 only with respect to the TIGGER Overlapping Wares and I reject the opposition with respect to the remaining wares, pursuant to section 38(8) of the Act.

#### ROO

[78] I turn next to application No. 1,312,976 which the Applicant filed on August 8, 2006 for the trade-mark ROO based on proposed use of the mark in association with a variety of wares and services. The current statement of wares and services is set out in Schedule C hereto.

[79] Application No. 1,312,976 was advertised for opposition purposes in the *Trade-marks Journal* of September 10, 2008 and on October 27, 2008, the Opponent filed a statement of opposition. The grounds of opposition are identical to those pleaded with respect to the application for TIGGER, with two exceptions: i) the grounds refer throughout to the Applicant's services in addition to its wares and ii) in the fourth ground of opposition, the Opponent relies upon its ownership, use and making known of the trade-mark ROO, instead of TIGGER.

[80] The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[81] Pursuant to section 41 of the Regulations, the Opponent filed an affidavit of Patricia Slesinger.

[82] Pursuant to section 42 of the Regulations, the Applicant filed certified copies of the same documents that it filed in support of its application for TIGGER.

[83] Pursuant to section 43 of the Regulations, the Opponent filed an affidavit of Carla Edwards, which for all intents and purposes is the same as that filed with respect to the application for TIGGER.

[84] The Opponent obtained leave pursuant to section 44 of the Regulations to replace the affidavit of Ms. Slesinger filed pursuant to section 41 with an affidavit of Ms. Slesinger that corrected a typographical error that occurred in the originally filed affidavit. The corrected Slesinger affidavit is for all intents and purposes the same as that filed with respect to the application for TIGGER, except that the final paragraph refers to ROO instead of TIGGER.

[85] None of the affiants were cross-examined.

[86] Only the Opponent filed a written argument but both parties participated in an oral hearing.

#### Section 30(e) Ground of Opposition

[87] The issue under section 30(e) is the same as that discussed with respect to the WINNIE THE POOH application, namely is the Applicant's statement that it intended to use the applied for mark true?

[88] At the oral hearing, the Opponent compared the statements of wares in the Applicant's existing registration for ROO against the wares in application No. 1,312,976, noting where wares overlap. Applying the analysis set out with respect to the WINNIE THE POOH application, I am similarly satisfied here that the certified copy of the registration filed by the Applicant satisfies the Opponent's initial burden insofar as the overlapping wares are concerned. Moreover, the

Applicant has done nothing to meet its legal burden. Accordingly, based on the line of decisions wherein the Registrar of Trade-marks refused proposed use applications where actual use of the trade-mark was evidenced prior to the filing date [see *Nabisco Brands Ltd and Systèmes de Formation & de Gestion Perform Inc*], the section 30(e) ground succeeds with respect to the specific wares that overlap, namely: dresses; pants; shirts; shorts; sweaters; sweat shirts; t-shirts; vests; puppets; stuffed toys (collectively the ROO Overlapping Wares).

#### Remaining Grounds of Opposition

[89] The remaining grounds of opposition are dismissed for the same reasons that they were dismissed with respect to the WINNIE THE POOH application.

#### Disposition re Application No. 1,312,976

[90] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse application No. 1,312,976 only with respect to the ROO Overlapping Wares and I reject the opposition with respect to the remaining wares and services, pursuant to section 38(8) of the Act.

#### PIGLET

[91] I turn now to application No. 1,312,371 which the Applicant filed on July 31, 2006 for the trade-mark PIGLET based on proposed use of the mark in association with a variety of wares and services. The current statement of wares and services is set out in Schedule D hereto.

[92] Application No. 1,312,371 was advertised for opposition purposes in the *Trade-marks Journal* of February 6, 2008. On July 4, 2008, the Opponent filed a statement of opposition and on September 4, 2008, the Opponent filed a revised statement of opposition. The Registrar served the revised statement of opposition on the Applicant on October 16, 2008. The grounds of opposition are identical to those pleaded with respect to the application for TIGGER, with two exceptions: i) the grounds refer throughout to the Applicant's services in addition to its wares and ii) in the fourth ground of opposition, the Opponent relies upon its ownership, use and making known of the trade-mark PIGLET, instead of TIGGER.



[93] The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[94] Pursuant to section 41 of the Regulations, the Opponent filed an affidavit of Patricia Slesinger. This Slesinger affidavit is for all intents and purposes the same as that filed pursuant to section 44 of the Regulations with respect to the application for TIGGER, except that the final paragraph refers to PIGLET instead of TIGGER.

[95] Pursuant to section 42 of the Regulations, the Applicant filed certified copies of the same documents that it filed in support of its application for TIGGER.

[96] Pursuant to section 43 of the Regulations, the Opponent filed an affidavit of Carla Edwards, which for all intents and purposes is the same as that filed with respect to the application for TIGGER.

[97] None of the affiants were cross-examined.

[98] Only the Opponent filed a written argument but both parties participated in an oral hearing.

#### Section 30(e) Ground of Opposition

[99] The issue under section 30(e) is the same as that discussed with respect to the WINNIE THE POOH application, namely is the Applicant's statement that it intended to use the applied for mark true? However, in this case there is no existing registration that claims that use of the mark has already commenced in Canada. As a result, the Opponent's only submission is that wares listed in royalty statements that predate the filing of the application should be struck from the application on the basis that the mark was already in use with such wares. However, as noted earlier, the royalty statements are not evidence of use of any marks with any wares, both because they do not list the specific mark allegedly used and because there is no evidence that there was use that satisfies the requirements of section 4 of the Act. Therefore the Opponent has not met its initial burden and the section 30(e) ground is accordingly dismissed.

Remaining Grounds of Opposition

[100] The remaining grounds of opposition are dismissed for the same reasons that they were dismissed with respect to the WINNIE THE POOH application.

Disposition re Application No. 1,312,371

[101] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition to application No. 1,312,371, pursuant to section 38(8) of the Act.

POOH

[102] I turn now to application No. 1,312,975 which the Applicant filed on August 8, 2006 for the trade-mark POOH based on proposed use of the mark in association with a variety of wares. The current statement of wares is set out in Schedule E hereto.

[103] Application No. 1,312,975 was advertised for opposition purposes in the *Trade-marks Journal* of June 3, 2009 and on July 28, 2009, the Opponent filed a statement of opposition. The grounds of opposition are identical to those set out above with respect to the application for WINNIE THE POOH, the only exception being that in the fourth ground of opposition, the Opponent relies upon its prior use and making known of both the trade-marks WINNIE THE POOH and POOH. The Applicant filed and served a counter statement in which it denied the Opponent's allegations.

[104] Pursuant to section 41 of the Regulations, the Opponent filed an affidavit of its attorney, Andrew Skale.

[105] Pursuant to section 42 of the Regulations, the Applicant filed certified copies of the same documents that it filed in support of its application for WINNIE THE POOH.

[106] The Opponent did not file evidence pursuant to section 43 of the Regulations in respect of this application.

[107] No cross-examinations were conducted.

[108] Only the Opponent filed a written argument but both parties participated in an oral hearing.

#### Skale Affidavit

[109] Mr. Skale introduces 20 exhibits. Exhibits A through Y to the Skale affidavit are identical to the exhibits provided by Ms. Slesinger in regard to the application for WINNIE THE POOH, as detailed above. However, Mr. Skale has also provided Exhibits Z, AA, BB, CC and DD, which I will address further below.

[110] It is noted that Exhibits Z through CC correspond to Exhibits A through D of the Edwards affidavit that was filed with respect to the applications for WINNIE THE POOH, TIGGER, ROO and PIGLET (although Skale's Exhibit CC, unlike Edwards' Exhibit D, is heavily redacted). It is further noted that Exhibit DD of the Skale affidavit corresponds to Exhibit E of the Edwards affidavit that was filed with respect to the applications for TIGGER, ROO and PIGLET. Those Edwards affidavits were disregarded on the basis that they were not proper reply evidence. However, as Mr. Skale's evidence was filed under section 41, not 43, of the Regulations, a similar objection cannot apply to his evidence.

[111] The Applicant has however raised other objections regarding Mr. Skale's evidence. The Applicant notes that Mr. Skale says that he has served as counsel for the Opponent since 2006 and that he has "personal knowledge of the facts contained in this my affidavit or I have obtained the facts from the records of [the Opponent]." The Applicant submits that Mr. Skale's evidence is hearsay because he does not have contemporaneous knowledge of the majority of the exhibits, the exhibits are not stated to be business records (and would largely not qualify as such in any event), and it is not clear how Mr. Skale has personal knowledge of the documents. In addition, the Applicant argues that introducing evidence through Mr. Skale is contrary to the *Cross-Canada Auto Body* decision as Mr. Skale's position makes him equivalent to a lawyer on the team representing the Opponent. However, *Cross-Canada Auto Body* was concerned with "opinion evidence on the most crucial issues in the case", which is not the type of evidence that Mr. Skale has introduced. The evidence introduced by him are documents that are, for the most part, between the parties, or their predecessors. In these circumstances, it seems inappropriate to disregard them on the basis of either hearsay or the principles enunciated in *Cross-Canada Auto*

*Body.* As noted by the Opponent, the Applicant did not exercise its right to cross-examine Mr. Skale, nor has the Applicant even suggested that the documents attached to his affidavit are not reliable or relevant. Therefore, for reasons similar to those set out in my discussion of the application for WINNIE THE POOH in regard to the Slesinger affidavit, I will consider the exhibits introduced by Mr. Skale.

[112] In the event that I am wrong to have considered the documents introduced by Mr. Skale, then I note that if I had treated them as inadmissible the outcome of the proceeding would not have differed.

[113] I note that the comments that I made concerning Ms. Slesinger's Exhibits A through Y regarding the WINNIE THE POOH application apply equally to Mr. Skale's corresponding exhibits. The additional exhibits filed by Mr. Skale are discussed below.

[114] Exhibit Z is identified as "Form 10-Q/A (Amendment No. 1) filed by The Walt Disney Company with the United States Securities and Exchange Commission in Washington, D.C. 20549 United States of America for the quarter ended March 31, 2002." The document refers to "a 1983 licensing agreement".

[115] Exhibit AA is identified as "Form 10-Q filed by The Walt Disney Company with the United States Securities and Exchange Commission in Washington, D.C. 20549 United States of America for the quarter ended June 30, 2002." It is similar to Exhibit Z.

[116] The Opponent states that it "has not filed the documents identified as Exhibits 'Z' and 'AA' to the Skale Affidavit to support the subject matter contained in the documentation but, rather, to establish Disney's perception of the relationship between it and the Opponent."

[117] Exhibit BB is identified as "a copy of the cover page and pages 43 and 44 and pages 186 and 187 of the Deposition of Disney Enterprises, Inc. through Edward John Nowak dated Friday, September 8, 2006 filed in the United States District Court, Central District of California in the case of *Milne, et al. v. Stephen Slesinger, Inc.*"

[118] In its written argument, the Opponent, referring to Exhibit BB, states, "The deponent Nowak, as an agent for Disney, states that the April, [sic] 1983 Agreement between Slesinger

and Disney was a Licence Agreement.” However, a review of the answers given by Mr. Nowak on page 44 show that he went on to say that rights were being assigned and/or licensed:

Q. Okay. When you use the term “rights transferred in the agreement,” what rights do you understand those were?

A. Well, in essence, this is a license agreement.

Q. And who is licensing what to whom, as you understand?

A. Well, you are asking me to construe the agreement? In – let me ask that.

MR. PETROCELLI: The document – the agreement speaks for itself. You can answer these questions subject to that objection. The questions are answered by the agreement itself, which is Exhibit 2.

THE WITNESS: Well, certain rights to a collection of properties which we might call the “Winnie the Pooh properties” were being assigned and/or licensed among the trustees of the Pooh Properties Trust, Stephen Slesinger, Inc. and the Disney entity.

[119] Moreover, I note that Exhibit BB is part of a deposition that was taken in the course of the proceeding that culminated in the US District Court finding that the Opponent had transferred its rights, despite the answers given by Mr. Nowak.

[120] Exhibit CC is identified as “a redacted copy of pages 1 to 5 of a non-confidential Declaration of Fredrick L. Allen in support of Defendant’s response regarding Plaintiff’s entitlement to a percentage of advances filed in the Superior Court of the State of California, for the County of Los Angeles, in the matter of *Stephen Slesinger, Inc. vs. The Walt Disney Company*.” I note that the pages are all stamped CONFIDENTIAL.

[121] Exhibit CC relates to the same court action as Exhibit V, namely case No. BC 022365. As noted in the Opponent’s written argument, in Exhibit CC, Mr. Allen, who identifies himself as the Director of Consumer Products Accounting for the Walt Disney Company, refers to the Opponent as a licensor and explains certain practices with respect to Disney’s “license arrangement with [the Opponent]”. Mr. Allen states that his declaration is submitted “in support of Defendant’s Response Regarding Plaintiff’s Entitlement to a Percentage of Advances”. The nature of action BC 022365 is not clear to me and there is nothing before me that indicates its

outcome. While the parties presumably know the context of the redacted pages, neither one has provided that information in these proceedings. Therefore it is difficult to assess the significance of the bits of documents provided.

[122] At the oral hearing, the Applicant made a number of submissions concerning references to licenses made by representatives of the Applicant. It noted that the Opponent did not provide the full context and submitted that it is improper to submit random bits of transcripts. It further submitted that the issue is not what someone said but what the document actually is. In contrast, the Opponent has argued that one must consider the parties' intentions in determining the legal nature of an agreement.

[123] Exhibit DD is identified as "a copy of The Walt Disney Company Royalty Statement summary for the six months ending 09/30/09, with figures from 10/01/82 to date [through 09/30/2009], to Stephen Slesinger, Inc." I do not consider it any more significant than the various royalty documents provided for other time periods. Although the Opponent submits that the use of the word "royalty" indicates that there is a license between the parties, I agree with the Applicant that the use of such word is not decisive of the nature of the parties' relationship. As discussed earlier with respect to the application for WINNIE THE POOH, based on the evidence as a whole it is more reasonable to construe the governing agreement as a transfer of rights in exchange for consideration, rather than as a license.

[124] The additional exhibits provided by Mr. Skale do not cause me to change my conclusion regarding the relationship between the parties, as set out earlier with respect to the application WINNIE THE POOH. In other words, I am satisfied that the Opponent did not own the POOH trade-mark at the dates that are material in this proceeding.

#### Section 30(e) Ground of Opposition

[125] The issue under section 30(e) is the same as that discussed with respect to the WINNIE THE POOH application, namely is the Applicant's statement that it intended to use the applied for mark true? However, in this case there is no existing registration that claims that use of the mark has already commenced in Canada. As a result, the Opponent's only submission is that wares listed in royalty statements that predate the filing of the application should be struck from

the application on the basis that the mark was already in use with such wares. However, as noted earlier, the royalty statements are not evidence of use of any marks with any wares, both because they do not list the specific mark allegedly used and because there is no evidence that there was use that satisfies the requirements of section 4 of the Act. Therefore the Opponent has not met its initial burden and the section 30(e) ground is accordingly dismissed.

#### Remaining Grounds of Opposition

[126] The remaining grounds of opposition are dismissed for the same reasons that they were dismissed with respect to the WINNIE THE POOH application.

#### Disposition re Application No. 1,312,975

[127] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition to application No. 1,312,975, pursuant to section 38(8) of the Act.

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Jill W. Bradbury  
Member  
Trade-marks Opposition Board  
Canadian Intellectual Property Office

## Schedule A

Statement of wares in application No. 1,330,168 for WINNIE THE POOH:

(1) Alarm clocks; belt buckles of precious metal (for clothing); bolo ties with precious metal tips; bracelets; busts of precious metal; candle snuffers of precious metal; candlesticks of precious metal; charms; clocks; earrings; jewelry; jewelry cases of precious metal; jewelry chains; key rings of precious metal; lapel pins; letter openers of precious metal; neck chains; necklaces; necktie fasteners; non-monetary coins; ornamental pins; pendants; rings; slides for bolo ties; stop watches; tie clips; tie fasteners; tie tacks; wall clocks; watch bands; watch cases; watch chains; watch straps; watches; wedding bands; wristwatches; Address books; almanacs; appliqués in the form of decals; appointment books; art prints; arts and craft paint kits; autograph books; baby books; ball point pens; baseball cards; binders; bookends; bookmarks; books; bumper stickers; calendars; cartoon strips; Christmas cards; chalk; children's activity books; coasters made of paper; coin albums; coloring books; color pencils; comic books; comic strips; coupon books; decals; decorative paper centerpieces; diaries; disposable diapers for babies; drawing rulers; envelopes; erasers; felt pens; flash cards; gift cards; gift wrapping paper; globes; greeting cards; guest books; magazines; maps; memo pads; modeling clay; newsletters; newspapers; note paper; notebooks; notebook paper; paintings; paper flags; paper party favors; paper party hats; paper cake decorations; paper party decorations; paper napkins; paper party bags; paperweights; paper gift wrap bows; paper pennants; paper place mats; paper table cloths; pen or pencil holders; pencils; pencil sharpeners; pen and pencil cases and boxes; pens; periodicals; photograph albums; photographs; photo-engravings; pictorial prints; picture books; portraits; postcards; posters; printed awards; printed certificates; printed invitations; printed menus; recipe books; rubber stamps; score cards; stamp albums; staplers; stickers; trading cards; ungraduated rulers; writing paper and writing implements ; All purpose sport bags; athletic bags; baby backpacks; backpacks; beach bags; book bags; calling card cases; change purses; coin purses; diaper bags; duffel bags; fanny packs; gym bags; handbags; knapsacks; key cases; leather key chains; lipstick holders; luggage; luggage tags; overnight bags; purses; satchels; shopping bags; tote bags; umbrellas; waist packs; wallets ; Air mattresses for use when camping; bassinets; beds; benches; bookcases; cabinets; chairs; coat racks; computer keyboard trays; cots; couches; decorative glitter; decorative mobiles; desks; drinking straws; engraved and cut stone plaques; figurines and statuettes made of bone, plaster, plastic, wax, or wood; flagpoles; foot stools; furniture namely, bedroom furniture, computer furniture, dining room furniture, lawn furniture, patio furniture, office furniture and living room furniture; gift package decorations made of plastic; hand fans; hand-held mirrors; jewelry boxes not of metal; key fobs not of metal; love seats; magazine racks; mattresses; mirrors; non-Christmas ornaments made of bone, plaster, plastic, wax or wood; ottomans; party ornaments of plastic; pedestals; picture frames; pillows; plant stands made of wire and metal; decorative wall plaques; plastic flags; plastic name badges; plastic novelty license plates; plastic pennants; plastic cake decorations; sea shells; sleeping bags; tables; toy chests; umbrella stands; venetian blinds; wind chimes; Beverageware namely, decanters, drinking glasses, jugs, pitchers. travel mugs and tumblers; beverage glassware; bird houses; bowls; brooms; cake pans; cake molds; cake servers; candle holders not of precious metal; candle snuffers; canteens; ceramic figurines; coasters not of paper and not being table linen; cookie jars; cookie cutters; cork screws; cups; decorating bags for confectioners; decorative



crystal prisms; decorative glass; decorative plates; dishes; figurines made of china, crystal, earthenware, glass, or porcelain; flower pots; hair brushes; hair combs; heat-insulated vessels; insulating sleeve holders for beverage containers; lunch boxes; mugs; napkin holders; napkin rings not of precious metals; paper cups; paper plates; pie pans; pie servers; plastic cups; plates; soap dishes; tea kettles; tea sets; thermal insulated containers for food or beverage; toothbrushes; trays; trivets; vacuum bottles; waste baskets; Bagels; bases for making milkshakes; biscuits; bread; breakfast cereal; preparations made from cereal; bubble gum; cakes; cake mixes; candies; cake decorations made of candy; ketchup; cereal-based snack bars; chewing gum; chocolate; non-alcoholic chocolate-based beverages; non-alcoholic cocoa-based beverages; cones for ice cream; confectionery; cookies; corn-gelatin desserts; frozen confections; frozen meals consisting primarily of pasta or rice; frozen yogurt; honey; ice cream; ice milk; licorice; marshmallows; mayonnaise; muffins; mustard; noodles; oatmeal; pancakes; pancake mixes; pasta; pastries; pancake syrup; pies; pizza; popcorn; pretzels; puddings; rice; rolls; salad dressings; sauces namely, spaghetti sauce, taco sauce, enchilada sauce and tomato sauce; sherbets; spices; tea; tortillas; waffles.

## Schedule B

Statement of wares in application No. 1,333,365 for TIGGER

(1) Audio cassette recorders; audio cassette players; pre-recorded audio cassettes, audio discs, CD-ROMs, compact discs, DVDs, digital versatile discs, digital video discs and video cassettes featuring music, animation and live action motion pictures, stories and games; audio speakers; binoculars; calculators; camcorders; cameras; CD-ROM drives (as part of the computer); CD-ROM writers (as part of the computer); cellular telephones; cellular telephone accessories, namely, headphones, cell phone battery chargers, cell phone belt clips and holsters, cell phone holders for automobiles, cell phone antennas, cellular telephone cases; face plates for cellular telephones and cell phone car kits; compact disc players; compact disc recorders; computer game programs; computer game cartridges and discs; computers; computer hardware; computer keyboards; computer monitors; computer mouse; computer disc drives; computer software featuring games and learning activities; cordless telephones; decorative magnets; digital cameras; DVD players; DVD recorders; electronic personal organizers; eyeglass cases; eyeglasses; headphones; karaoke machines; microphones; MP3 players; modems (as part of a computer); mouse pads; motion picture films; pagers; personal stereos; personal digital assistants; computers printers; radios; sunglasses; telephones; television sets; video cameras; video cassette recorders; video cassette players; video game cartridges; video game discs; videophones; walkie-talkies; wrist and arm rests for use with computers.

(2) Alarm clocks; belt buckles of precious metal (for clothing); bolo ties with precious metal tips; bracelets; busts of precious metal; candle snuffers of precious metal; candlesticks of precious metal; charms; clocks; earrings; jewelry; jewelry cases of precious metal; jewelry chains; key rings of precious metal; lapel pins; letter openers of precious metal; neck chains; necklaces; necktie fasteners; non-monetary coins; ornamental pins; pendants; rings; slides for bolo ties; stop watches; tie clips; tie fasteners; tie tacks; wall clocks; watch bands; watch cases; watch chains; watch straps; watches; wedding bands; wristwatches.

(3) Address books; almanacs; appliqués in the form of decals; appointment books; art prints; arts and craft paint kits; autograph books; baby books; ball point pens; baseball cards; binders; bookends; bookmarks; books; bumper stickers; calendars; cartoon strips; Christmas cards; chalk; children's activity books; coasters made of paper; coin albums; coloring books; color pencils; comic books; comic strips; coupon books; decals; decorative paper centerpieces; diaries; disposable diapers for babies; drawing rulers; envelopes; erasers; felt pens; flash cards; gift cards; gift wrapping paper; globes; greeting cards; guest books; magazines; maps; memo pads; modeling clay; newsletters; newspapers; note paper; notebooks; notebook paper; paintings; paper flags; paper party favors; paper party hats; paper cake decorations; paper party decorations; paper napkins; paper party bags; paperweights; paper gift wrap bows; paper pennants; paper place mats; paper table cloths; pen or pencil holders; pencils; pencil sharpeners; pen and pencil cases and boxes; pens; periodicals; photograph albums; photographs; photo-engravings; pictorial prints; picture books; portraits; postcards; posters; printed awards; printed certificates; printed invitations; printed menus; recipe books; rubber stamps; score cards; stamp albums; staplers; stickers; trading cards; ungraduated rulers; and writing paper.

(4) All purpose sport bags; athletic bags; baby backpacks; backpacks; beach bags; book bags; calling card cases; change purses; coin purses; diaper bags; duffel bags; fanny packs; gym bags; handbags; knapsacks; key cases; leather key chains; lipstick holders; luggage; luggage tags;

overnight bags; purses; satchels; shopping bags; tote bags; umbrellas; waist packs; wallets.

(5) Air mattresses for use when camping; bassinets; beds; benches; bookcases; cabinets; chairs; coat racks; computer keyboard trays; cots; couches; decorative glitter; decorative mobiles; desks; drinking straws; engraved and cut stone plaques; figurines and statuettes made of bone, plaster, plastic, wax, or wood; flagpoles; foot stools; furniture, namely, bedroom furniture, computer furniture, dining room furniture, lawn furniture, patio furniture, office furniture and living room furniture; gift package decorations made of plastic; hand fans; hand-held mirrors; jewelry boxes not of metal; key fobs not of metal; love seats; magazine racks; mattresses; mirrors; non-Christmas ornaments made of bone, plaster, plastic, wax or wood; ottomans; party ornaments of plastic; pedestals; picture frames; pillows; plant stands made of wire and metal; decorative wall plaques; plastic flags; plastic name badges; plastic novelty license plates; plastic pennants; plastic cake decorations; sea shells; sleeping bags; tables; toy chests; umbrella stands; venetian blinds; wind chimes.

(6) Beverageware; beverage glassware; bird houses; bowls; brooms; cake pans; cake molds; cake servers; candle holders not of precious metal; candle snuffers; canteens; ceramic figurines; coasters not of paper and not being table linen; cookie jars; cookie cutters; cork screws; cups; decorating bags for confectioners; decorative crystal prisms; decorative glass; decorative plates; dishes; figurines made of china; crystal, earthenware, glass, or porcelain; flower pots; hair brushes; hair combs; heat-insulated vessels; insulating sleeve holders for beverage containers; lunch boxes; mugs; napkin holders; napkin rings not of precious metals; paper cups; paper plates; pie pans; pie servers; plastic cups; plates; soap dishes; tea kettles; tea sets; thermal insulated containers for food or beverage; toothbrushes; trays; trivets; vacuum bottles; waste baskets.

(7) Afghans; barbecue mitts; bath linen; bath towels; bed blankets; bed canopies; bed linen; bed sheets; bed skirts; bed spreads; blanket throws; calico; children's blankets; cloth coasters; cloth doilies; cloth flags; cloth pennants; comforters; crib bumpers; curtains; fabric flags; felt pennants; golf towels; hand towels; handkerchiefs; hooded towels; household linen; kitchen towels; oven mitts; pillow cases; pillow covers; pot holders; quilts; receiving blankets; silk blankets; table linen; textile napkins; textile place mats; textile tablecloths; throws; towels; washcloths; woolen blankets.

(8) Athletic shoes; bandanas; baseball caps; beach cover-ups; beachwear; belts; bibs; bikinis; blazers; boots; bow ties; bras; caps; chaps; cloth bibs; coats; dresses; ear muffs; footwear, namely, shoes, athletic shoes, slippers, boots and sandals; gloves; golf shirts; Halloween costumes; hats; head bands; head wear, namely, baseball caps, stocking caps, toque caps, peak caps, soft bucket hats, brimmed hats, golf hats and flop hats; hosiery; infant wear; jackets; jeans; jerseys; kerchiefs; leotards; leg warmers; mittens; neckties; night shirts; night gowns; pajamas; pants; panty hose; polo shirts; ponchos; rainwear; robes; sandals; scarves; shirts; shoes; animal skins; shorts; slacks; slippers; sleepwear; socks; stockings; sweaters; sweat pants; sweat shirts; swimsuits; tank tops; tights; t-shirts; underwear; vests; wrist bands.

(9) Action skill games; action figures and accessories therefore; board games; card games; children's multiple activity toys; badminton sets; balloons; basketballs; bath toys; baseballs; beach balls; bean bags; bean bag dolls; board games; building blocks; bowling balls; bubble making wands and solution sets; chess sets; children's play cosmetics; Christmas stockings; Christmas tree decorations; collectable toy figures; crib mobiles; crib toys; disc toss toys; dolls; doll clothing; doll accessories; doll play sets; electric action toys; equipment sold as a unit for playing card games; fishing tackle; golf balls; golf gloves; golf ball markers; hand held unit for playing electronic games; hockey pucks; inflatable toys; jigsaw puzzles; jump ropes; kites; magic

tricks; marbles; manipulative games; mechanical toys; music box toys; musical toys; parlor games; party favors in the nature of small toys; party games; playing cards; plush toys; puppets; roller skates; rubber balls; skateboards; soccer balls; spinning tops; squeeze toys; stuffed toys; table tennis tables; target games; teddy bears; tennis balls; toy action figures; toy bucket and shovel sets; toy mobiles; toy vehicles; toy scooters; toy cars; toy model kits; toy figures; toy banks; toy trucks; toy watches; wind-up toys; return tops.

(10) Bagels; bases for making milkshakes; biscuits; bread; breakfast cereal; bubble gum; cakes; cake mixes; candies; cake decorations made of candy; ketchup; cereal-based snack bars; chewing gum; chocolate; chocolate-based beverages; cocoa-based beverages; cones for ice cream; cookies; corn-gelatin desserts; frozen confections; frozen meals consisting primarily of pasta or rice; frozen yogurt; honey; ice cream; ice mild; licorice; marshmallows; mayonnaise; muffins; mustard; noodles; oatmeal; pancakes; pancake mixes; pasta; pastries; pancake mixes; pasta; pastries; pancake syrup; pies; pizza; popcorn; pretzels; puddings; rice; rolls; salad dressings; sauces; sherbets; spices; tea; tortillas; waffles.

## Schedule C

Statement of wares and services in application No. 1,312,976 for ROO:

### wares

(1) After-shave lotions; antiperspirants; aromatherapy oils; artificial eyelashes and fingernails; baby oils; baby wipes; bath gels; bath powder; beauty masks; blush; body creams, lotions, and powders; breath freshener; bubble bath; cologne; dentifrices; deodorants for personal use; dusting powder; essential oils for personal use; eye liner; eye shadows; eyebrow pencils; face powder; facial creams; facial lotion; facial masks; facial scrubs; fragrance emitting wicks for room fragrance; fragrances for personal use; hair gel; hair conditioners; hair shampoo; hair mousse; hair creams; hair spray; hand cream; hand lotions; hand soaps; lip balm; lipstick; lipstick holders; lip gloss; liquid soaps; makeup; mascara; mouthwash; nail care preparations; nail glitter; nail hardeners; nail polish; perfume; potpourri; room fragrances; shaving cream; skin soap; talcum powders; toilet water; skin creams; skin moisturizer; sun block; sun screen.

(2) Audio cassette recorders; audio cassette players; pre-recorded audio cassettes, audio discs, CD-ROMs, compact discs, DVDs, digital versatile discs, digital video discs and video cassettes featuring music, animation and live action motion pictures, stories and games; audio speakers; binoculars; calculators; camcorders; cameras; CD-ROM drives (as part of the computer); CD-ROM writers (as part of the computer); cellular telephones; cellular telephone accessories, namely, headphones, cell phone battery chargers, cell phone belt clips and holsters, cell phone holders for automobiles, cell phone antennas, cellular telephone cases; face plates for cellular telephones and cell phone car kits; compact disc players; compact disc recorders; computer game programs; computer game cartridges and discs; computers; computer hardware; computer keyboards; computer monitors; computer mouse; computer disc drives; computer software featuring games and learning activities; cordless telephones; decorative magnets; digital cameras; DVD players; DVD recorders; electronic personal organizers; eyeglass cases; eyeglasses; headphones; karaoke machines; microphones; MP3 players; computer modems; mouse pads; motion picture films; pagers; personal stereos; personal digital assistants; computer printers; radios; sunglasses; telephones; television sets; video cameras; video cassette recorders; video cassette players; video game cartridges; video game discs; videophones; walkie-talkies; wrist and arm rests for use with computers.

(3) Alarm clocks; belt buckles of precious metal (for clothing); bolo ties with precious metal tips; bracelets, namely bangles; busts of precious metal; candle snuffers of precious metal; candlesticks of precious metal; charms; clocks; earrings; jewelry; jewelry cases of precious metal; jewelry chains; key rings of precious metal; lapel pins; letter openers of precious metal; neck chains; necklaces; necktie fasteners; non-monetary coins; ornamental pins; pendants; finger rings; slides for bolo ties; stop watches; tie clips; tie fasteners; tie tacks; wall clocks; watch bands; watch cases; watch chains; watch straps; watches; wedding bands; wristwatches.

(4) Address books; almanacs; appliqués in the form of decals; appointment books; art prints; arts and craft paint kits; autograph books; baby books; ball point pens; baseball cards; binders, namely, loose leaf binders with and without fasteners and ring binders; bookends; bookmarks; books; bumper stickers; calendars; cartoon strips; Christmas cards; chalk; children's activity books; coasters made of paper; coin albums; coloring books; color pencils; comic books; comic

strips; coupon books; decals; decorative paper centerpieces; diaries; disposable diapers for babies; drawing rulers; envelopes; erasers, namely, chalk erasers, erasers for dry erase and marking boards, artist erasers, kneaded erasers, white erasers, eraser pencils, mechanical erasers, electric/battery operated erasers, art gum erasers and gum erasers; felt pens; flash cards; gift cards; gift wrapping paper; globes, namely, terrestrial and celestial globes; greeting cards; guest books; magazines; maps; memo pads; modeling clay; newsletters; newspapers; note paper; notebooks; notebook paper; paintings; paper flags; paper party favors; paper party hats; paper cake decorations; paper party decorations; paper napkins; paper party bags; paperweights; paper gift wrap bows; paper pennants; paper place mats; paper table cloths; pen or pencil holders; pencils; pencil sharpeners; pen and pencil cases and boxes; pens; periodicals; photograph albums; photographs; photo-engravings; pictorial prints; picture books; portraits; postcards; posters; printed awards; printed certificates; printed invitations; printed menus; recipe books; rubber stamps; score cards; stamp albums; office staplers; stickers; trading cards; ungraduated rulers; and writing paper.

(5) All purpose sport bags; athletic bags; baby backpacks; backpacks; beach bags; book bags; calling card cases; change purses; coin purses; diaper bags; duffel bags; fanny packs; gym bags; handbags; knapsacks; key cases; leather key chains; lipstick holders; luggage; luggage tags; overnight bags; purses; satchels; shopping bags; tote bags; umbrellas; waist packs; wallets.

(6) Air mattresses for use when camping; bassinets; beds; bookcases; coat racks; computer keyboard trays; cots; couches; decorative glitter; decorative mobiles; desks; drinking straws; engraved and cut stone plaques; bone figurines and statuettes; plaster figurines and statuettes; plastic figurines and statuettes; wax figurines and statuettes; wood figurines and statuettes; flagpoles; foot stools; furniture, namely, bedroom furniture, computer furniture, dining room furniture, lawn furniture, patio furniture, office furniture, living room furniture, benches, cabinets, chairs, mattresses for beds and mirrors; gift package decorations made of plastic; hand fans; hand-held mirrors; jewelry boxes not of metal; key fobs not of metal; love seats; magazine racks; ornaments, namely bone ornaments, plaster ornaments, plastic ornaments, wax ornaments and wood ornaments; ottomans; party ornaments of plastic; pedestals; picture frames; pillows, namely foam pillows, feather pillows and down pillows; plant stands made of wire and metal; decorative wall plaques; plastic flags; plastic name badges; plastic novelty license plates; plastic pennants; plastic cake decorations; sea shells; sleeping bags; tables, namely, furniture tables and work tables; toy chests; umbrella stands; venetian blinds; wind chimes.

(7) Beverageware; beverage glassware; bird houses; bowls, namely, cereal bowls, fruit bowls, nut bowls, serving bowls, soup bowls, salad bowls, and sugar bowls; brooms, namely, whisk brooms, push brooms, sweeping brooms, and dust brooms; cake pans; cake molds; cake servers; candle holders not of precious metal; candle snuffers; canteens; ceramic figurines; coasters not of paper and not being table linen; cookie jars; cookie cutters; cork screws; cups, namely, coffee cups, egg cups and measuring cups; decorating bags for confectioners; decorative crystal prisms; decorative glass; decorative plates; dishes, namely, casserole dishes and butter dishes; figurines made of china; crystal, earthenware, glass, or porcelain; flower pots; hair brushes; hair combs; insulating sleeve holders for beverage containers; lunch boxes; mugs; napkin holders; napkin rings not of precious metals; paper cups; paper plates; pie pans; pie servers; plastic cups; plates, namely, dinner plates, salad plates, bread plates, serving platters; soap dishes; tea kettles; tea sets; thermal insulated containers for food or beverage; toothbrushes; trays, namely, desk file trays, document file trays, drawing trays, meal trays, letter trays, paint trays, paper trays, pen and pencil trays and serving trays; trivets; vacuum bottles; waste baskets.

(8) Afghans; barbecue mitts; bath linen; bed blankets; bed canopies; bed linen; bed sheets; bed skirts; bed spreads; blanket throws; calico fabrics; children's blankets; cloth coasters; cloth doilies; cloth flags; cloth pennants; comforters; crib bumpers; curtains, namely window curtains, shower curtains and valance curtains; fabric flags; felt pennants; golf towels; hand towels; handkerchiefs; hooded towels; household linen, namely, bath linen, bed linen, kitchen linen and table linen; kitchen towels; oven mitts; pillow cases; pillow covers; pot holders; quilts; receiving blankets; silk blankets; table linen; textile napkins; textile place mats; textile tablecloths; throws; towels, namely, bath towels, beach towels, golf towels, hand towels, hooded towels and kitchen towels; wash cloths; woollen blankets.

(9) Athletic shoes; bandanas; baseball caps; beach cover-ups; beachwear; belts, namely, clothing accessory belts; bibs; bikinis; blazers; boots; bow ties; bras; caps; chaps; cloth bibs; coats; dresses; ear muffs; footwear, namely, shoes, athletic shoes, slippers, boots and sandals; gloves, namely winter gloves, evening gloves, lady's gloves, driving gloves, riding gloves and work gloves; golf shirts; Halloween costumes; hats; head bands; head wear, namely, baseball caps, stocking caps, toque caps, peak caps, soft bucket hats, brimmed hats, golf hats and flop hats; hosiery; infantwear; jackets, namely, leather jackets, motorcycle jackets, wind-resistant jackets, fleece jackets, car coats, hooded jackets, hooded parkas, down-filled coats, ski jackets, winter jackets, warm-up jackets; jeans; jerseys; kerchiefs; leotards; leg warmers; mittens; neckties; night shirts; night gowns; pajamas; pants; panty hose; polo shirts; ponchos; rainwear; robes; sandals; scarves; shirts; shoes; animal skins; shorts; slacks; slippers; sleepwear; socks; stockings; sweaters; sweat pants; sweat shirts; swimsuits; tank tops; tights; t-shirts; underwear; vests; wrist bands.

(10) Action skill games; action figures and accessories therefore; board games; card games; children's multiple activity toys; badminton sets; play balloons; basketballs; bath toys; baseballs; beach balls; bean bags; bean bag dolls; board games; building blocks; bowling balls; bubble making wands and solution sets; chess sets; children's play cosmetics; Christmas stockings; Christmas tree decorations; collectable toy figures; crib mobiles; crib toys; disc toss toys; dolls; doll clothing; doll accessories; doll playsets; electric action toys; equipment sold as a unit for playing card games; fishing tackle; golf balls; golf gloves; golf ball markers; hand held unit for playing electronic games; hockey pucks; inflatable toys; jigsaw puzzles; jump ropes; kites; conjuring apparatus, namely, equipment for performing magic tricks; marbles; manipulative games; mechanical toys; music box toys; musical toys; parlor games; party favors in the nature of small toys; party games; playing cards; plush toys; puppets; return tops; roller skates; rubber balls; skateboards; soccer balls; spinning tops; squeeze toys; stuffed toys; table tennis tables; target games; teddy bears; tennis balls; toy action figures; toy bucket and shovel sets; toy mobiles; toy vehicles; toy scooters; toy cars; toy model hobbycraft kits; toy figures; toy banks; toy trucks; toy watches; wind-up toys.

(11) Cheese; cheese and cracker combinations; cheese spread; candied fruit; chocolate mills; dairy products excluding ice cream, ice milk and frozen yogurt; dips, namely, dairy based dips, snack-food dips and vegetable dips; dried fruits; drinking yogurts; frozen meals consisting primarily of meat, fish, poultry or vegetables; fruit preserves; fruit based snack food; jams; jellies; milk beverages with high milk content; meats; nuts shelled and unshelled, namely, almonds, Brazils, cashews, filberts, macadamias, peanuts, pecans and walnuts; peanut butter; potato chips; potato-based snack foods; powdered milk; raisins; snack mix consisting primarily of processed fruits, processed nuts and/or raisins; soup; soup mixes; yogurt.

(12) Bagels; bases for making milkshakes; biscuits; bread; breakfast cereal; bubble gum; cakes;

cake mixes; candies; cake decorations made of candy; ketchup; cereal-based snack bars; chewing gum; chocolate; chocolate-based beverages; cocoa-based beverages; cones for ice cream; cookies; corn-gelatin desserts; frozen confections; frozen meals consisting primarily of pasta or rice; frozen yogurt; honey; ice cream; ice mild; licorice; marshmallows; mayonnaise; muffins; mustard; noodles; oatmeal; pancakes; pancake mixes; pasta; pastries; pancake mixes; pasta; pastries; pancake syrup; pies; pizza; popcorn; pretzels; puddings; rice; rolls; salad dressings; sauces, namely, spaghetti sauce, taco sauce, enchilada sauce and tomato sauce; sherbets; spices; tea; tortillas; waffles.

(13) Drinking water; energy drinks; flavored waters; fruit juices; non-alcoholic fruit-flavored beverages; juice base concentrates; lemonade; punch; non-alcoholic beverages, namely, carbonated beverages; non-alcoholic beverages containing fruit juices; smoothies; sparkling water; sports drinks; syrups for making soft drinks; table water; vegetable juices.

#### services

(1) Production, presentation, distribution, and rental of motion picture films; production, presentation, distribution, and rental of television and radio programs; production, presentation, distribution, and rental of sound and video recordings; providing information in the field of entertainment, namely, reference material on film, television, stage, musical and radio actors, directors, writers, animators, composers, musicians, executives and craft personnel, programming schedules for television networks, release information on films, background on history, production, and technical processes of film, television, stage, musical and radio entertainment, and entertainment news; production of entertainment shows and interactive programs for distribution via television, cable, satellite, audio and video media, cartridges, laser discs, computer discs and electronic means; production and provision of entertainment news and information via communication and computer networks; amusement park and theme park services; and entertainer services, namely, live and televised appearances by a professional entertainer.



## Schedule D

Statement of wares and services in application No. 1,312,371 for PIGLET:

### wares

(1) After-shave lotions; antiperspirants; aromatherapy oils; artificial eyelashes and fingernails; baby oils; baby wipes; bath gels; bath powder; beauty masks; blush; body creams, lotions, and powders; breath freshener; bubble bath; cologne; cosmetics; dentifrices; deodorants for personal use; dusting powder; essential oils for personal use; eye liner; eye shadows; eyebrow pencils; face powder; facial creams; facial lotion; facial masks; facial scrubs; fragrance emitting wicks for room fragrance; fragrances for personal use; hair gel; hair conditioners; hair shampoo; hair mousse; hair creams; hair spray; hand cream; hand lotions; hand soaps; lip balm; lipstick; lipstick holders; lip gloss; liquid soaps; makeup; mascara; mouthwash; nail care preparations; nail glitter; nail hardeners; nail polish; perfume; potpourri; room fragrances; shaving cream; skin soap; talcum powders; toilet water; skin creams; skin moisturizer; sun block; sun screen.

(2) Audio cassette recorders; audio cassette players; pre-recorded audio cassettes, audio discs, CD-ROMs, compact discs, DVDs, digital versatile discs, digital video discs and video cassettes featuring music, animation and live action motion pictures, stories and games; audio speakers; binoculars; calculators; camcorders; cameras; CD-ROM drives (as part of the computer); CD-ROM writers (as part of the computer); cellular telephones; cellular telephone accessories, namely, headphones, cell phone battery chargers, cell phone belt clips and holsters, cell phone holders for automobiles, cell phone antennas, cellular telephone cases; face plates for cellular telephones and cell phone car kits; compact disc players; compact disc recorders; computer game programs; computer game cartridges and discs; computers; computer hardware; computer keyboards; computer monitors; computer mouse; computer disc drives; computer software featuring games and learning activities; cordless telephones; decorative magnets; digital cameras; DVD players; DVD recorders; electronic personal organizers; eyeglass cases; eyeglasses; headphones; karaoke machines; microphones; MP3 players; modems (as part of a computer); mouse pads; motion picture films; pagers; personal stereos; personal digital assistants; computer printers; radios; sunglasses; telephones; television sets; video cameras; video cassette recorders; video cassette players; video game cartridges; video game discs; video cassettes; videophones; walkie-talkies; wrist and arm rests for use with computers.

(3) Alarm clocks; belt buckles of precious metal (for clothing); bolo ties with precious metal tips; bracelets; busts of precious metal; candle snuffers of precious metal; candlesticks of precious metal; charms; clocks; earrings; jewelry; jewelry cases of precious metal; jewelry chains; key rings of precious metal; lapel pins; letter openers of precious metal; neck chains; necklaces; necktie fasteners; non-monetary coins; ornamental pins; pendants; rings; slides for bolo ties; stop watches; tie clips; tie fasteners; tie tacks; wall clocks; watch bands; watch cases; watch chains; watch straps; watches; wedding bands; wristwatches.

(4) Address books; almanacs; appliqués in the form of decals; appointment books; art prints; arts and craft paint kits; autograph books; baby books; ball point pens; baseball cards; binders; bookends; bookmarks; books; bumper stickers; calendars; cartoon strips; Christmas cards; chalk; children's activity books; coasters made of paper; coin albums; coloring books; color pencils;

comic books; comic strips; coupon books; decals; decorative paper centerpieces; diaries; disposable diapers for babies; drawing rulers; envelopes; erasers; felt pens; flash cards; gift cards; gift wrapping paper; globes; greeting cards; guest books; magazines; maps; memo pads; modeling clay; newsletters; newspapers; note paper; notebooks; notebook paper; paintings; paper flags; paper party favors; paper party hats; paper cake decorations; paper party decorations; paper napkins; paper party bags; paperweights; paper gift wrap bows; paper pennants; paper place mats; paper table cloths; pen or pencil holders; pencils; pencil sharpeners; pen and pencil cases and boxes; pens; periodicals; photograph albums; photographs; photo-engravings; pictorial prints; picture books; portraits; postcards; posters; printed awards; printed certificates; printed invitations; printed menus; recipe books; rubber stamps; score cards; stamp albums; stationery; staplers; stickers; trading cards; ungraduated rulers; and writing paper.

(5) All purpose sport bags; athletic bags; baby backpacks; backpacks; beach bags; book bags; calling card cases; change purses; coin purses; diaper bags; duffel bags; fanny packs; gym bags; handbags; knapsacks; key cases; leather key chains; lipstick holders; luggage; luggage tags; overnight bags; purses; satchels; shopping bags; tote bags; umbrellas; waist packs; wallets.

(6) Air mattresses for use when camping; bassinets; beds; benches; bookcases; cabinets; chairs; coat racks; computer keyboard trays; cots; couches; decorative glitter; decorative mobiles; desks; drinking straws; engraved and cut stone plaques; figurines and statuettes made of bone, plaster, plastic, wax, or wood; flagpoles; foot stools; furniture, namely, bedroom furniture, computer furniture, dining room furniture, lawn furniture, patio furniture, office furniture and living room furniture; gift package decorations made of plastic; hand fans; hand-held mirrors; gift package decorations made of plastic; hand fans; hand-held mirrors; jewelry boxes not of metal; key fobs not of metal; love seats; magazine racks; mattresses; mirrors; non-Christmas ornaments made of bone, plaster, plastic, wax or wood; ottomans; party ornaments of plastic; pedestals; picture frames; pillows; plant stands made of wire and metal; decorative wall plaques; plastic flags; plastic name badges; plastic novelty license plates; plastic pennants; plastic cake decorations; sea shells; sleeping bags; tables; toy chests; umbrella stands; venetian blinds; wind chimes.

(7) Athletic shoes; bandanas; baseball caps; beach cover-ups; beachwear; belts; bibs; bikinis; blazers; boots; bow ties; bras; caps; chaps; cloth bibs; coats; dresses; ear muffs; footwear, namely, shoes, athletic shoes, slippers, boots and sandals; gloves; golf shirts; Halloween costumes; hats; head bands; head wear, namely, baseball caps, stocking caps, toque caps, peak caps, soft bucket hats, brimmed hats, golf hats and flop hats; hosiery; infantwear; jackets; jeans; jerseys; kerchiefs; leotard; leg warmers; mittens; neckties; night shirts; night gowns; pajamas; pants; panty hose; polo shirts; ponchos; rainwear; robes; sandals; scarves; shirts; shoes; animal skins; shorts; slacks; slippers; sleepwear; socks; stockings; sweaters; sweat pants; sweat shirts; swimsuits; tank tops; tights; t-shirts; underwear; vests; wrist bands.

(8) Action skill games; action figures and accessories therefore; board games; card games; children's multiple activity toys; badminton sets; balloons; basketballs; bath toys; baseballs; beach balls; bean bags; bean bag dolls; board games; building blocks; bowling balls; bubble making wands and solution sets; chess sets; children's play cosmetics; Christmas stockings; Christmas tree decorations; collectable toy figures; crib mobiles; crib toys; disc toss toys; dolls; doll clothing; doll accessories; doll playsets; electric action toys; equipment sold as a unit for playing card games; fishing tackle; golf balls; golf gloves; golf ball markers; hand held unit for playing electronic games; hockey pucks; inflatable toys; jigsaw puzzles; jump ropes; kites; magic tricks; marbles; manipulative games; mechanical toys; music box toys; musical toys; parlor games; party favors in the nature of small toys; party games; playing cards; plush toys; puppets;

return tops; roller skates; rubber balls; skateboards; soccer balls; spinning tops; squeeze toys; stuffed toys; table tennis tables; target games; teddy bears; tennis balls; toy action figures; toy bucket and shovel sets; toy mobiles; toy vehicles; toy scooters; toy cars; toy model hobby kits; toy figures; toy banks; toy trucks; toy watches; wind-up toys.

services

(1) Production, presentation, distribution, and rental of motion picture films; production, presentation, distribution, and rental of television and radio programs; production, presentation, distribution, and rental of sound and video recordings; entertainment information; production of entertainment shows and interactive programs for distribution via television, cable, satellite, audio and video media, cartridges, laser discs, computer discs and electronic means; production and provision of entertainment, news, and information via communication and computer networks; amusement park and theme park services; educational and entertainment services rendered in or relating to theme parks; live stage shows;-theater production; and entertainer services, namely, live and televised appearances by a professional entertainer.

## Schedule E

Statement of wares in application No. 1,312,975 for POOH:

- (1) After-shave lotions; antiperspirants; aromatherapy oils; artificial eyelashes and fingernails; baby oils; baby wipes; bath gels; bath powder; beauty masks; blush; body creams, lotions, and powders; breath freshener; bubble bath; cologne; dentifrices; deodorants for personal use; dusting powder; essential oils for personal use; eye liner; eye shadows; eyebrow pencils; face powder; facial creams; facial lotion; facial masks; facial scrubs; fragrance emitting wicks for room fragrance; fragrances for personal use; hair gel; hair conditioners; hair shampoo; hair mousse; hair creams; hair spray; hand cream; hand lotions; hand soaps; lip balm; lipstick; lipstick holders; lip gloss; liquid soaps; makeup; mascara; mouthwash; nail care preparations; nail glitter; nail hardeners; nail polish; perfume; potpourri; room fragrances; shaving cream; skin soap; talcum powders; toilet water; skin creams; skin moisturizer; sun block; sun screen.
- (2) Alarm clocks; belt buckles of precious metal (for clothing); bolo ties with precious metal tips; bracelets, namely, jewellery; busts of precious metal; candle snuffers of precious metal; candlesticks of precious metal; charms; clocks; earrings; jewelry; jewelry cases of precious metal; jewelry chains; key rings of precious metal; lapel pins; letter openers of precious metal; neck chains; necklaces; necktie fasteners; non-monetary coins; ornamental pins; pendants; rings; slides for bolo ties; stop watches; tie clips; tie fasteners; tie tacks; wall clocks; watch bands; watch cases; watch chains; watch straps; watches; wedding bands; wristwatches.
- (3) All purpose sport bags; athletic bags; baby backpacks; backpacks; beach bags; book bags; calling card cases; change purses; coin purses; diaper bags; duffel bags; fanny packs; gym bags; handbags; knapsacks; key cases; leather key chains; lipstick holders; luggage; luggage tags; overnight bags; purses; satchels; shopping bags; tote bags; umbrellas; waist packs; wallets.
- (4) Air mattresses for use when camping; bassinets; beds; benches; bookcases; coat racks; computer keyboard trays; cots; couches; decorative glitter; decorative mobiles; desks; drinking straws; engraved and cut stone plaques; figurines and statuettes made of bone, plaster, plastic, wax, or wood; flagpoles; foot stools; furniture, namely, bedroom furniture, computer furniture, dining room furniture, patio furniture, office furniture, living room furniture, benches, cabinets, chairs, mattresses for beds and mirrors; gift package decorations made of plastic; hand fans; hand-held mirrors; jewelry boxes not of metal; key fobs not of metal; lawn furniture; love seats; magazine racks; ornaments, namely, bone ornaments, plaster ornaments, plastic ornaments, wax ornaments and wood ornaments; ottomans; party ornaments of plastic; pedestals; picture frames; pillows, namely, foam pillows, feather pillows and down pillows; plant stands made of wire and metal; decorative wall plaques; plastic flags; plastic name badges; plastic novelty license plates; plastic pennants; plastic cake decorations; sea shells; sleeping bags; tables, namely, furniture tables and work tables; toy chests; umbrella stands; venetian blinds; wind chimes.
- (5) Beverageware; beverage glassware; bird houses; bowls, namely, cereal bowls, fruit bowls, nut bowls, serving bowls, soup bowls, salad bowls, and sugar bowls; brooms, namely, whisk brooms, push brooms, sweeping brooms, and dust brooms; cake pans; cake molds; cake servers; candle holders not of precious metal; candle snuffers; canteens; ceramic figurines; coasters not of paper and not being table linen; cookie jars; cookie cutters; cork screws; cups, namely, coffee cups, egg cups and measuring cups; decorating bags for confectioners; decorative crystal prisms; decorative glass; decorative plates; dishes, namely, casserole dishes and butter dishes; figurines made of china; crystal, earthenware, glass, or porcelain; flower pots; hair brushes; hair combs;

insulating sleeve holders for beverage containers; lunch boxes; mugs; napkin holders; napkin rings not of precious metals; paper cups; paper plates; pie pans; pie servers; plastic cups; plates, namely, dinner plates, salad plates, bread plates, serving plates; soap dishes; tea kettles; tea sets; thermal insulated containers for food or beverage; toothbrushes; trays, namely, desk file trays, document file trays, drawing trays, meal trays, letter trays, paint trays, paper trays, pen and pencil trays and serving trays; trivets; vacuum bottles; waste baskets.

(6) Afghans; barbecue mitts; bath linen; bath towels; bed blankets; bed canopies; bed sheets; bed skirts; bed spreads; blanket throws; calico; children's blankets; cloth coasters; cloth doilies; cloth flags; cloth pennants; comforters; crib bumpers; curtains; fabric flags; felt pennants; golf towels; hand towels; handkerchiefs; hooded towels; linen, namely, bath linen, bed linen, kitchen linen and table linen; kitchen towels; oven mitts; pillow cases; pillow covers; pot holders; quilts; receiving blankets; silk blankets; table linen; textile napkins; textile place mats; textile tablecloths; throws; towels, namely, bath towels, beach towels, golf towels, hand towels, hooded towels and kitchen towels; washcloths; woollen blankets.

(7) Athletic shoes; bandanas; baseball caps; beach cover-ups; beachwear; belts, namely, clothing accessory belts; bibs; bikinis; blazers; boots; bow ties; bras; caps; chaps; cloth bibs; coats; dresses; ear muffs; gloves, namely, winter gloves, evening gloves, ladies gloves, driving gloves, riding gloves and work gloves; golf shirts; Halloween costumes; hats; head bands; head wear, namely, stocking caps, toques, peak caps, brimmed hats, golf hats and flop hats; hosiery; infantwear; jackets, namely, leather jackets, motorcycle jackets, wind-resistant jackets, fleece jackets, car coats, hooded jackets, hooded parkas, down-filled coats, ski jackets, winter jackets and warm-up jackets; jeans; jerseys; kerchiefs; leotards; leg warmers; mittens; neckties; night shirts; night gowns; pajamas; pants; panty hose; polo shirts; ponchos; rainwear; robes; sandals; scarves; shirts; shoes; skins; shorts; slacks; slippers; sleepwear; socks; stockings; sweaters; sweat pants; sweat shirts; swimsuits; tank tops; tights; t-shirts; underwear; vests; wrist bands.

(8) Action skill games; action figures and accessories therefore; board games; card games; children's multiple activity toys; badminton sets; play balloons; basketballs; bath toys; baseballs; beach balls; bean bags; bean bag dolls; board games; building blocks; bowling balls; bubble making wands and solution sets; chess sets; children's play cosmetics; Christmas stockings; Christmas tree decorations; collectable toy figures; crib mobiles; crib toys; disc toss toys; dolls; doll clothing; doll accessories; doll playsets; electric action toys; equipment sold as a unit for playing card games; fishing tackle; golf balls; golf gloves; golf ball markers; hand held unit for playing electronic games; hockey pucks; inflatable toys; jigsaw puzzles; jump ropes; kites; conjuring apparatus, namely, equipment for performing magic tricks; marbles; manipulative games; mechanical toys; music box toys; musical toys; parlor games; party favors in the nature of small toys; party games; playing cards; plush toys; puppets; roller skates; rubber balls; skateboards; soccer balls; spinning tops; squeeze toys; stuffed toys; table tennis tables; target games; teddy bears; tennis balls; toy action figures; toy bucket and shovel sets; toy mobiles; toy vehicles; toy scooters; toy cars; toy model kits; toy figures; toy banks; toy trucks; toy watches; wind-up toys; return tops.

(9) Cheese; cheese and cracker combinations; cheese spread; candied fruit; chocolate mills; dairy products excluding ice cream, ice milk and frozen yogurt; dips; dried fruits; drinking yogurts; frozen meals consisting primarily of meat, fish, poultry or vegetables; fruit preserves; fruit based snack food; jams; jellies; milk beverages with high milk content; meats; nuts; peanut butter; potato chips; potato-based snack foods; powdered milk; raisins; snack mix consisting primarily of processed fruits, processed nuts and/or raisins; soup; soup mixes; yogurt.

(10) Bagels; bases for making milkshakes; biscuits; bread; breakfast cereal; bubble gum; cakes; cake mixes; candies; cake decorations made of candy; ketchup; cereal-based snack bars; chewing gum; chocolate; non-alcoholic chocolate-based beverages; non-alcoholic cocoa-based beverages; cones for ice cream; cookies; corn-based snack foods; crackers; deli sandwiches; flavored, sweetened gelatine desserts; frozen confections; frozen meals consisting primarily of pasta or rice; frozen yogurt; honey; ice cream; ice milk; licorice; marshmallows; mayonnaise; muffins; mustard; noodles; oatmeal; pancakes; pancake mixes; pasta; pastries; pancake syrup; pies; pizza; popcorn; pretzels; puddings; rice; rolls; salad dressings; sauces, namely, spaghetti sauce, taco sauce, enchilada sauce and tomato sauce; sherbets; spices; tea; tortillas; waffles.

(11) Drinking water; energy drinks; flavored waters; fruit juices; non-alcoholic fruit-flavored beverages; juice base concentrates; lemonade; punch; non-alcoholic beverages, namely, carbonated beverages; non-alcoholic beverages containing fruit juices; smoothies; sparkling water; sports drinks; syrups for making soft drinks; table water; vegetable juices.