



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2021 TMOB 112**

**Date of Decision: 2021-05-31**

**IN THE MATTER OF AN OPPOSITION**

**Monster Energy Company**

**Opponent**

**and**

**Moncler S.P.A., an incorporated  
business forming a joint stock  
company of Italian nationality**

**Applicant**

**1,809,952 for M (& DESIGN)**

**Application**

INTRODUCTION

[1] Monster Energy Company (the Opponent) opposes registration of the trademark M (& DESIGN), shown below (the Mark), which is the subject of application No. 1,809,952 filed by Moncler S.P.A. (the Applicant). For the reasons set out in this decision, I reject the opposition.



[2] The Application was filed on November 17, 2016 on the basis of proposed use in Canada in association with a long list of goods classified under Nice class 30. I am reproducing as Schedule A to my decision, the statement of goods, as revised by the Applicant. The Application also claims a priority filing date of September 9, 2016, based upon the Applicant's corresponding application in Italy.

[3] The Application was advertised in the *Trademarks Journal* of March 14, 2018.

[4] The Opponent filed its statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on May 14, 2018, following which the Applicant filed and served its counter statement denying all of the grounds of opposition.

[5] As the Act was amended on June 17, 2019, all references in this decision are to the Act as amended, with the exception of references to the grounds of opposition which refer to the Act as it read before it was amended (see section 70 of the Act which provides that section 38(2) of the Act as it read prior to June 17, 2019 applies to applications advertised prior to that date).

[6] With respect to the Application, the Opponent alleges that (i) the application does not conform to the requirements of section 30(a) of the Act; (ii) the application does not conform to the requirements of section 30(e) of the Act; (iii) the application does not conform to the requirements of section 30(i) of the Act; (iv) the Mark is not registrable under section 12(1)(d) of the Act; (v) the Applicant is not the person entitled to the registration of the Mark under section 16 of the Act, and (vi) the Mark is not distinctive under section 2 of the Act. The last three grounds of opposition revolve around the likelihood of confusion between the Mark and the Opponent's Marks (collectively, the Opponent's Claw Icon Design Marks), particulars of which are included under Schedule B to this decision.

[7] On January 9, 2020, the Opponent filed a request for leave in conjunction with a revised statement of opposition. The proposed amendments to the statement of opposition were to update the status of six of the Opponent's "M" design applications, which proceeded to registration between September 11, 2018 and December 12, 2019. These trademarks were included in the original statement of opposition under the non-entitlement grounds as applications and had since matured to registration.

[8] The Applicant objected to the request for leave and the proposed amendments to the statement of opposition. In this regard, the Applicant argued that it was of the view that it would not be in the interests of justice to grant leave to amend the statements of opposition because the amendments should have been made earlier and it would be prejudiced since the amendments were not made prior to the close of the evidentiary period. The Applicant took the position that it will suffer prejudice, as the Applicant's strategy in the opposition to date, including what evidence to file and the decision not to cross-examine Mr. Sacks on his affidavit, has been based on the statement of opposition as initially filed. The Applicant also took the position that the amendments are not important because the success of the ground of opposition which is affected by the amendment will turn on the same factors as the grounds of opposition previously alleged since the trademarks in question were already referenced in the original statement of opposition as applications.

[9] In its correspondence to the Registrar dated February 6, 2020, the Opponent referred to a chart with the trademarks (with exception of application No. 1,885,678) subject of the proposed amendment to the statement of opposition and previous associated related leave request filed on January 9, 2020. Included in the chart are all of the registration dates associated with the marks.

[10] In response to the Applicant's objection to the Opponent's leave requests, the Opponent submits that the Applicant would not be prejudiced by the amendments, as the Applicant was aware that at least one of the applications, namely, application No. 1,704,546, had been allowed on July 29, 2016 – well prior to the filing date of the original statements of opposition. The Opponent submits, that the Applicant was therefore alert to the fact that the registration of this mark was imminent, yet the Applicant still chose not to cross examine Mr. Sacks on his affidavit.

Further to this, the Opponent submits that most of the applications which only recently proceeded to registration are simply an updating of applications listed in the original statement of opposition to their registered status that had happened after the original opposition had been filed.

[11] The practice of the Trademarks Opposition Board is to grant leave to amend a statement of opposition where it is satisfied that it is in the interest of justice to do so having regard to all the surrounding circumstances including (i) the stage the opposition proceeding has reached, (ii) whether the request for leave to amend could have been made at an earlier stage, (iii) the importance of the proposed amendment to the opponent and (iv) the extent to which the applicant would be prejudiced if leave was granted: see *Nabisco Brands Ltd, also trading as Christie Brown & Co v Perfection Foods* (1986), 12 CPR (3d) 456 at 458 (FCTD).

[12] While at a late stage of the proceedings, the reasons put forth by the Opponent are clear as to why the Opponent had not made the request for leave to amend the statement of opposition earlier, and the Opponent has done so within a reasonable time period. However, with respect to the importance of the proposed amendment, the updating of the status of six of its “M” design applications relied upon to include the fact of their registration will ultimately not be determinative, as will be apparent in the reasons that follow. Lastly, I agree with the Opponent that the amendment would not cause any prejudice to the Applicant since the original statement of opposition included the applications for these marks, and the Applicant would have been aware that at least one of these applications, namely, No. 1,704,546, had been allowed on July 29, 2016, well prior to the filing date of the statement of opposition. In view of the above, notwithstanding the late stage of the proceeding, and the limited importance of the amendment, I consider it to be in the interests of justice to grant leave to the Opponent to amend its statement of opposition to reflect an accurate status of the Opponent’s marks without splitting the Opponent’s case. Consequently, the statement of opposition as amended, forms part of the record of this proceeding and is reflected in the above summarized statement of opposition.

#### THE RECORD

[13] In support of its opposition, the Opponent filed the affidavit of Rodney Cyril Sacks, sworn September 25, 2018. Mr. Sacks’ affidavit details the Opponent’s use, advertising and

promotion of its relied upon trademarks, the Opponent's Claw Icon Design Marks. Mr. Sacks was not cross-examined on his affidavit.

[14] In support of its application, the Applicant filed the affidavits of Michael Duchesneau and Aleksandar Vukovic, both sworn February 5, 2019. Both of these affiants were cross-examined on their affidavits and the transcripts form part of the record.

[15] Mr. Vukovic's affidavit includes state of the register evidence which will be further discussed below. Mr. Duchesneau's affidavit includes website screenshots and archived website screenshots relating to trademarks which correspond to many of the trademarks identified by Mr. Vukovic in Exhibits A and B to his affidavit.

[16] The Opponent did not file reply evidence.

[17] Both parties filed written representations and attended an oral hearing held jointly with a hearing for an opposition proceeding with respect to another application of the Applicant. A separate decision will be issued for this other proceeding, which pertains to application No. 1,754,749, for the trademark MONCLER & Design.

#### THE PARTIES' RESPECTIVE BURDEN OR ONUS

[18] The Applicant bears the legal onus of establishing, on a balance of probabilities that the application complies with the requirements of the Act. This means that if a determinate conclusion cannot be reached in favour of the Applicant after a consideration of all of the evidence, then the issue must be decided against the Applicant. 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].

#### ANALYSIS

##### **Sections 30(a) and 30(e) Grounds of Opposition**

[19] The Opponent has plead that the Application does not conform to the requirements of section 30(a) of the Act, as the statement of goods in the Application is not set out in ordinary

commercial terms or in sufficient detail to enable the average person or consumer to ascertain the nature of the goods.

[20] The Opponent has further plead that the Application does not conform to the requirements of section 30(e) of the Act as:

- (i) The Applicant has used the Mark in Canada with the goods prior to the applicable filing date; and/or
- (ii) The Applicant had no intention and has not intention to use the Mark in Canada with the goods by itself or through a licensee or by itself and through a licensee.

[21] However, the Opponent did not refer to any evidence nor present any arguments in support of its allegations set forth under these grounds of opposition. Consequently, the sections 30(a) and 30(e) grounds of opposition are rejected for the Opponent's failure to meet its initial evidential burden.

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

[22] The Opponent has plead that the Applications do not conform with the requirements of section 30(i) of the Act as the Applicant could not have been satisfied that it was entitled to use the Mark in Canada in association with the goods as the Mark was and is confusing with the Opponent's Marks that have previously been applied for or used and registered in Canada.

[23] Where an applicant has provided the statement required by section 30(i) of the Act, 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 [see *Sapodilla Co Ltd v Bristol-Myers Co* (1974), 15 CPR (2d) 152 (TMOB) at 155]. In this case, there is no evidence of bad faith or exceptional circumstances. Furthermore, even if the Opponent had shown that the Applicant knew of its trademarks at the deemed filing date of its application, I note that it has been held that mere knowledge of the existence of an opponent's trademark does not in and of itself support an allegation that an applicant could not have been satisfied of its entitlement to use a mark at the time that it filed its application [*Woot, Inc v Woot Restaurants Inc Les Restaurants Woot Inc*, 2012 TMOB 197].

[24] The section 30(i) ground of opposition is therefore rejected for the Opponent's failure to meet its initial evidential burden.

### **Sections 16(3)(a) and (c) Grounds of Opposition**

[25] The Opponent has plead that the Applicant is not the person entitled to the registration of the Mark in association with the goods, as of the applicable date of filing of the Application and at all relevant times thereafter, the Mark was confusing with:

- (i) The Opponent's Marks which had been previously used (and registered) or applied for in Canada; and
- (ii) The Opponent's trade name which had previously been used in Canada.

[26] I will begin with an analysis under the grounds of opposition based on sections 16(3)(a) and 16(3)(c) of the Act. With respect to these grounds, the Opponent has an initial burden of establishing that one or more of its trademarks and/or trade name alleged in support of these grounds of opposition were used or made known prior to the date of filing of the Application (namely, September 9, 2016), and were not abandoned at the date of advertisement of the Application (in this case, March 14, 2018) [section 16(5) of the Act].

[27] As previously indicated, in support of its opposition, as evidence of use, marketing and promotion of the Opponent's Marks and trade name, the Opponent filed the affidavit of Mr. Sacks.

[28] Mr. Sacks is the CEO of Monster Beverage Corporation and its subsidiaries, which include the Opponent, also doing business as Monster Beverage Company.

[29] Mr. Sacks states that the Opponent is in the business of designing, creating, developing, producing, marketing and selling energy drinks, previously also including in its business, other beverages, such as natural sodas, fruit juices, smoothies, lemonades and iced teas.

[30] Mr. Sacks attests that the Opponent is the lawful proprietor and owner at common law of the Claw Icon trademark (see TMA637,677 in Schedule B to this decision), and many other marks containing the Claw Icon (referred to collectively as the Claw Icon Marks). He provides as

Exhibit 1 to his affidavit, a report of all registered and pending Claw Icon Marks held by the Opponent in Canada – the list includes, among others, those marks relied upon under the various grounds of opposition (see Schedule B to this decision).

[31] Mr. Sacks attests that in April 2002, the Opponent launched its MONSTER ENERGY drink in 16oz cans, which were almost double the size of competitive energy drinks at that time, and that in 2003, the Opponent launched its MONSTER energy beverage line in Canada. He further states that worldwide retail sales of the Opponent’s drinks now exceed 3 billion cans per year, with millions sold in Canada corresponding to over US\$787 million in sales since the launch in 2003 to September 2018. In addition, he provides statistics regarding significant product market share both in the United States (for the four week period ending July 28, 2018) and in Canada (for the 52 week period ending July 28, 2018), representing sales wherein “each can of MONSTER energy drink bears at least one of the Claw Icon Marks.”

[32] Mr. Sacks attests that the Opponent’s MONSTER energy drinks (all of which bear one of the Claw Icon Marks) are sold in Canada in over 33,000 total outlets, in the channels of retail stores, gas stations and other outlets such as grocery stores, drug stores, and on-premises. He attaches as Exhibit 2 to his affidavit, pictures taken in December 2016 of MONSTER energy drinks available for sale in Canada. The cans of energy drinks are labelled with what Mr. Sacks has referred to as the Claw Icon design, as well as with the Opponent’s MONSTER ENERGY mark and its various iterations.

[33] Mr. Sacks attests that in Canada and elsewhere outside of the United States, the Opponent allocates the majority of its marketing, advertising and promotional budget on athletic endorsements and sponsoring athletic competitions and other events. He provides as Exhibit 3, photographs which show promotions of the Opponent’s MONSTER energy drinks in Canada and MONSTER sponsored events in Canada. The photographs show posters and other marketing materials which feature the Claw Icon design and MONSTER ENERGY marks as sponsors of various sporting events.

[34] Mr. Sacks explains that the Opponent has widely advertised, marketed and promoted its MONSTER energy drinks bearing the Claw Icon Marks through the sponsorship of athletes and athletic competitions around the world (which includes vast media and Internet coverage), on



apparel and merchandise bearing the Claw Icon Marks distributed in retail outlets, in magazines, on the MONSTER and other Internet websites, through social media such as its Facebook page, in publications, through the sponsorship of music festivals and musicians, and through the distribution of point-of-sale and promotional materials. He attests that for the period of 2011 up to the second quarter of 2018, the Opponent has spent more than US\$208 million in advertising, marketing, and promoting its MONSTER energy drinks in Canada. He attests that almost without exception, the Opponent's advertisements and promotion for its MONSTER energy drinks feature the Claw Icon Marks.

[35] Mr. Sacks explains that in particular, the Opponent's marketing focus includes international events, including but not limited to events which are webcast on the Internet "where our target market of young males spends a great deal of time" (for example, sponsorship of Road Racing World Championship Grand Prix ("MotoGP") events, Supercross events, Formula One World Championship races, Ultimate Fighting Championship events, and music festivals, events, and musicians). He explains that the Opponent's sponsorship of sporting events involves the Claw Icon Marks being prominently displayed at the events on banners, posters, signs, and on clothing and accessories sold at the events, on transport, support and hospitality tractor trailers, on motor homes and promotional vehicles that tour the circuit for various sports. Additionally, Mr. Sacks attests that the Opponent gives out free samples of MONSTER energy drinks and MONSTER-branded merchandise at these events, and has distributed over 3.4 million sample cans of MONSTER energy drinks to Canadian consumers, including over 525,000 sample cans in Canada in 2016.

[36] Mr. Sacks explains that in addition to sponsoring events, the Opponent also sponsors sports teams and professional athletes, where the Claw Icon Marks are prominently featured on the team's or individual athlete's equipment.

[37] Mr. Sacks details similar sponsorship for FIM Motocross World Championships, UFC (since 2015), Professional Bull Riders (since 2012), NASCAR (since 2017), Dakar Rally (between 2011 and 2015, 2017), and individual NASCAR driver Robby Gordon (2007-2010), X Games, the Winter X Games, and the Winter X Games Europe, the MONSTER ENERGY AMA Supercross Series (since 2008, with an event taking place in Canada each year), the

Monster Energy Pipeline Pro (International surfing event in Hawaii, sponsored from 2005 to 2009), the Billabong XXL Awards (International surfing award, sponsored from 2005 to 2012), sponsorship of international athletes wherein coverage of those athletes and events reaches Canada via the internet, television coverage, and magazines featuring these athletes which are distributed in Canada (he provides a list of such athletes which includes some Canadian athletes, as well as well-known athletes such as Tiger Woods, Conor McGregor, and Michael Schumacher). He provides a long list of Monster sponsored Canadian athletes (24) – and states that all of these athletes have the Claw Icon Marks in highly visible locations on their sports equipment when they compete and participate in their respective sports. In addition to sponsorship of International event outside of Canada, the Opponent has sponsored Canadian events including: Monster Energy Motocross Nationals (2007-2011), The Shred Show at the World Ski and Snowboard Festival (2011 to present), North by Northeast festival in Toronto (2011-2013), Canadian Music Week (aka Canadian Music Fest, 2013-2015), Ruckus in the Rockies snowboard competition (2011-2014), Montreal Supermotocross (2010-2012), Center of Gravity beach festival in Kelowna, BC (2012 to present), Grand Prix de Trois-Rivieres (2014 to present).

[38] In support of the aforementioned sponsorship advertising and promotion, Mr. Sacks provides numerous exhibits which include photographs of sponsored events and athletes, as well as Canadian broadcast information/event viewership statistics, printouts of sponsored event homepages and Facebook pages, printouts of sponsored athlete's homepages, articles featuring sponsored athletes, and more (Exhibits 3 through 30). The Opponent's Marks are clearly visible on athlete equipment/attire, on event banners, posters, etc. as per Mr. Sack's description. The events/sponsorships range in date from 2007 (for example, MotoGP sponsorship) through to 2017 (X Games), many with large international audiences (including in Canada), events taking place in Canada (Formula One), as well as sponsored Canadian athletes.

[39] Mr. Sacks attests that in addition to sponsoring professional athletes and teams, the Opponent maintains an amateur sponsorship and athlete development program called The Monster Army. He attests that more than 388,000 amateur athletes from throughout the world in various extreme sports have applied to be accepted as part of The Monster Army through its website at *www.monsterarmy.com*, and that there are currently approximately 19,931 Monster

Army members from Canada. He explains that the Opponent supports members of The Monster Army in many different ways, but often includes assistance with gear (typically wearing Monster branded gear per Exhibit 31), training, and travel. He provides that according to Google Analytics, for the period October 1, 2008 to August 31, 2018, The Monster Army website received approximately 4.2 million unique visitors, wherein approximately 208,000 of these unique visitors were from Canada.

[40] In addition to sporting events, athletes, etc., Mr. Sacks attests that the Opponent's Claw Icon Marks have received tremendous exposure internationally through the sponsorship of musicians and music festivals, including, Wakestock (the world's largest annual wakeboard and musical festival, sponsored from 2008-2014), and Vans Warped Tour (sports/music festival consisting of 50 concerts over the summer in major cities throughout the US and Canada with hundreds of thousands of attendees, official energy drink from 2003-2007, sponsored events 2016-2018).

[41] Further to the above, Mr. Sacks details the Opponent's website and social media presence with respect to marketing and promotion of its Claw Icon Marks. He states that the Opponent's website was launched in 2003 and he attaches pages from the Canadian localized version of the Opponent's MONSTER ENERGY website, and provides statistics regarding visitors to the site including from Canada (1.59 million between September 1, 2010 and August 31, 2018). He attests that Monster engages in 'blast emails' regarding sponsored athletes wherein the Claw Icon Marks are featured. He attests that the exposure of the Claw Icon Marks on social media websites has expanded dramatically, with examples as follows:

- the MONSTER ENERGY Facebook page, with more than 644,000 likes from Canada;
- the MONSTER ENERGY Gaming Facebook page, with more than 27,000 likes from Canada;
- the MONSTER ENERGY Supercross Facebook page;
- the MONSTER ENERGY Music Facebook page – with more than 9,700 likes from Canada;
- the MONSTER Army Facebook page, with more than 9,400 likes from Canada;
- the MONSTER ENERGY Girls Facebook page, with more than 22,700 likes from Canada;
- the MONSTER ENERGY Military Facebook page;

- a MONSTER ENERGY Instagram account, with 4.7 million followers from around the world, including Canada;
- a MONSTER Twitter account with 3.3 million followers worldwide, and a separate Twitter account for Canada that has over 23,000 followers; and
- a YouTube channel, launched on March 22, 2006, having since received more than 347 million views worldwide, including more than 11 million views from Canada.

[42] Mr. Sacks attests that a report published, which analyzed the most popular brands around the world based on Facebook global brand statistics, listed MONSTER ENERGY as the 14<sup>th</sup> most popular brand in the world (2010), and in 2012, CNBC reported that MONSTER ENERGY Facebook page was one of the top 10 most ‘liked’ brands on Facebook worldwide. He provides further similar statistics for other years to 2015, as well as comparisons of these statistics against other well known brands such as Lululemon, Burberry, and Nestle. Mr. Sacks additionally attests that a number of articles have been published in trade publications, as well as in internationally circulated magazines describing and referring to the MONSTER energy drinks and to the success of the Opponent and its products – these include, among others, the Wall Street Journal (2003), Time (July 2003), Business Week Online (June 6, 2005), etc.

[43] Lastly, Mr. Sacks attests that, in addition, the Opponent has used and continues to use, its Claw Icon Marks on clothing since 2002, and has licensed use of the Claw Icon Marks on a host of other products. He clearly states that the Opponent controls the quality of any apparel and merchandise bearing the Claw Icon Marks. He explains that the Opponent’s sponsored athletes and teams wear this apparel, and Monster Army athletes can also order such apparel from the Opponent. He provides examples (photographs) of such apparel and merchandise – which clearly bear the Claw Icon Marks. He attests that the Claw Icon Marks also appear in various popular video games in association with race car driving, skateboarding, etc. and sponsored athletes, and that the Opponent has also partnered with video game publishers to promote the release of new video games (cross promotion wherein Claw Icon Marks were featured), in association with popular video games such as Call of Duty (2009-2013) and video game events such as gaming tournaments and E-sports (2014-2016).

[44] The aforementioned marketing and promotion of the Claw Icon Marks as described above are supported throughout Mr. Sacks affidavit, with attached exhibits which include photographs of events, website printouts, articles, etc.

[45] Having regard to the above, while not every one of the Claw Icon Marks is represented throughout the evidence, I am satisfied that the Opponent has met its initial burden of establishing that at least one or more of the Opponent's Claw Icon Marks and its trade name alleged in support of these grounds of opposition were used prior to the filing date of the application, and were not abandoned at the date of advertisement of the application.

[46] I now have to determine, on a balance of probabilities, if the Mark is likely to cause confusion with one or more of the Opponent's Claw Icon Marks and/or trade name. I will begin with an assessment of the likelihood of confusion between the Mark and the Opponent's trademarks Claw Icon design (TMA637,677) and M Monster Army & design (TMA1,045,761), as I consider these marks represent the best case scenario for the Opponent. If the Opponent is not successful with these marks, it would not achieve a more favourable result with the other marks or its trade name.

#### The test for confusion

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

[48] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those specifically enumerated in section 6(5) of the Act, namely: a) the inherent distinctiveness of the trademarks and the extent to which they have become known; b) the length of time each has been in use; c) the nature of the goods, services or business; d) the nature of the trade; and e) the degree of resemblance between the trade-marks in appearance or sound or in the ideas suggested by them. These criteria are not exhaustive and it is not necessary to give each one of them equal weight [see, in general, *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22; *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23; and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27].

*Section 6(5)(a) – the inherent distinctiveness and the extent to which the marks have become*

*known*

[49] The overall consideration of the section 6(5)(a) factor, involves a combination of inherent and acquired distinctiveness of the parties' marks. Furthermore, the strength of a trademark may be increased by means of it becoming known in Canada through promotion or use.

[50] I note that, in general, trademarks comprised of letters of the alphabet or numbers with little additional distinctive indicia are considered to be inherently weak and are not entitled to a wide ambit of protection [*GSW Ltd v Great West Steel Industries Ltd* (1975), 22 CPR (2d) 154 (FCTD); and *Noxzema Chemical Co of Canada Ltd v Estee Lauder Cosmetics Ltd* (1975), 23 CPR (2d) 214 (TMOB)].

[51] In the present case, with respect to the Opponent's Claw Icon mark, despite being comprised solely of a stylized "M", it has some measure of inherent distinctiveness in that it is a unique letter stylization that resembles a claw mark.

[52] I consider the Applicant's Mark on the other hand, however, to be inherently stronger than the Opponent's Claw Icon mark. In this regard, as stated by the Registrar in *Bayerische Motoren Werke Aktiengesellschaft v MONCLER SPA, an incorporated business forming a joint stock company of Italian nationality*, 2020 TMOB 83, with respect to the "M" design portion of the Mark, "it is nested within a fanciful representation of a cock or chicken, and somewhat represents a part of that animal's body, which contributes to the inherent distinctiveness of the Mark."

[53] With respect to the Opponent's M Monster Army & Design mark, I find that it has similar overall inherent distinctiveness to the Mark, in that it is more than just a fanciful "M" design; it includes a fanciful representation of a predatory bird (perhaps a falcon or phoenix).

[54] As previously indicated however, the strength of a trademark may be increased by means of it becoming known through promotion or use in Canada.

[55] The Applicant's application is based upon proposed use in Canada, and the Applicant has not provided any subsequent evidence of promotion or use of the Mark.

[56] The Opponent, on the other hand, has provided substantial evidence of use of its Claw Icon mark in Canada, in association with energy drinks. In this regard, I note that since the launch of the Opponent's energy drinks in Canada in 2003, there has been substantial sales (\$787 million) of the Opponent's energy drinks bearing the Claw icon mark, sold through more than 33,000 outlets in Canada. The evidence also shows that the Opponent has spent a significant amount on advertising and promoting its products in association with this mark for years (both internationally and in Canada), and the Opponent has sponsored a large number of well known international events and individuals, which in my view, makes it reasonable to infer that such marketing has significantly contributed to the notoriety of these marks, including in Canada.

[57] Consequently, while the inherent distinctiveness factor favours the Applicant relative to the Claw Icon design mark, the Opponent has shown that its Claw Icon design mark has a strong degree of acquired distinctiveness. Conversely, with respect to the Opponent's M Monster Army & design mark, while I find that the inherent distinctiveness of the parties' marks are equally balanced, I am unable to ascertain from Mr. Sacks' affidavit, the degree to which the M Monster Army & design mark would be known and have acquired distinctiveness as of the material date under this ground of opposition.

*Section 6(5)(b) – the length of time in use*

[58] The Applicant has not filed any evidence of use of the Mark, and as noted above, the Opponent has provided substantial evidence of use of its Claw Icon design mark; however, it is unclear from the evidence precisely and to what extent the M Monster Army & design mark has been used as of the material date.

[59] Consequently, I find this factor favours the Opponent with respect to the Claw Icon design mark.

*Sections 6(5)(c) and (d) – the nature of the goods, services and business or trade*

[60] The Opponent's goods include, among other beverages, energy drinks, as well as apparel and accessories and services relating to athletic events and athletes.

[61] The Applicant's application covers a wide range and variety of goods, including various beverage and beverage-related goods grouped under Nice Class 30.

[62] While I do find that there is at least some overlap between some of the parties' goods, I find it is not necessary to undertake a detailed analysis of the Applicant's statement of goods in order to precisely identify which of the applied-for goods overlap, either directly or indirectly, with the Opponent's goods and to what extent their corresponding channels of trade may also overlap, in view of my ultimate conclusion on the likelihood of confusion below.

*Section 6(5)(e) – degree of resemblance in appearance, when sounded, or in idea suggested*

[63] When considering the degree of resemblance between the marks, the law is clear that the marks must be considered in their totalities; it is not the correct approach to lay the trademarks side by side and compare and observe similarities or differences among the elements or components of the marks. The Supreme Court of Canada in *Masterpiece, supra* advised that the preferable approach when comparing marks is to begin by determining whether there is an aspect of the trademark that is particularly striking or unique.

[64] As noted by the Supreme Court in *Masterpiece, supra*, at paragraph 49, "the degree of resemblance, although the last factor listed in [section] 6(5) [of the Act], is the statutory factor that is often likely to have the greatest effect on the confusion analysis [...] if the marks or names do not resemble one another, it is unlikely that even a strong finding on the remaining factors would lead to a likelihood of confusion".

[65] Applying these principles to the present case, I find that the parties' marks bear little to no resemblance.

[66] The Mark is composed of two components namely, the letter "M" embedded together with a fanciful representation of a cock or chicken; both components being equally dominant. The Mark does not have any clear meaning in the context of the applied-for goods.

[67] The Opponent's Claw Icon design mark, on the other hand, is solely comprised of the letter "M" in a stylized lettering resembling claw mark/scratch made by a claw or talon. This is as far as any common relationship to fowl is concerned between the parties' marks. Any idea



suggested in relationship to the Claw Icon design mark however, is more in line with a predatory bird – a mark made by a talon; this is not the idea suggested by the Mark. As with the Mark, the letter “M” does not have any clear meaning in the context of the Opponent’s goods - it is simply the first letter of the Opponent’s trade name or house mark.

[68] With respect to the Opponent’s M Monster Army & design mark, I reach a similar conclusion; that there is little to no resemblance between the parties’ marks. The Opponent’s mark is comprised of well-known English words, which are suggestive in the context of creating a group of consumers/fans as an ‘army’ to promote the Monster brand and activities. Additionally, while the M Monster Army & design mark includes the depiction of a bird, it is significantly different in appearance, being that of a predatory bird such as a falcon or phoenix. The idea suggested behind the bird would appear to be one of aggression and/or fierceness; whereas the rooster design in the Mark has no clear meaning in relation to the associated goods.

[69] With respect to the marks as sounded, while I acknowledge that it may be that there would be no pronunciation of the design element of the Mark, and therefore, that the Mark and the Opponent’s Claw Icon design mark (such design being embedded within the M Monster Army & design mark) would sound the same, the fact remains that Claw Icon design mark is not solely for the letter “M”, but for that letter in a stylized lettering, and that the M Monster Army & design mark includes additional words not found in the Mark. That said, I find that the phonetic similarity that may exist between these particular trademarks of the Opponent and the Mark do not outweigh the significant differences existing between the parties’ marks in terms of appearance and suggested ideas.

[70] Having regard to the aforementioned, I find that this factor significantly favours the Applicant.

*Additional surrounding circumstances – State of the register and marketplace*

[71] State of the register evidence is only relevant insofar as one can make inferences from it about the state of the marketplace, and inferences about the state of the marketplace can only be drawn where large numbers of relevant registrations are located [*Ports International Ltd v Dunlop Ltd* (1992), 41 CPR (3d) 432 (TMOB); and *Welch Foods Inc v Del Monte Corp* (1992),

44 CPR (3d) 205 (FCTD), 36 CPR (3d) 562 (TMOB); and *Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA)].

[72] As previously indicated, with respect to evidence in this regard, the Applicant filed the affidavits of Aleksandar Vukovic and Michael Duchesneau. The Vukovic affidavit includes printouts of particulars of 72 Canadian trademark registrations and applications (Exhibit A), owned by various entities for a variety of goods and services, all of which incorporate an M design in some form. Mr. Vukovic also includes printouts of particulars of 37 registrations and applications (Exhibit B), owned by various entities for a variety of goods and services, all of which include the term “Monster” (with exception of one which includes the term MONTCLAIR), and of 18 registrations and applications (Exhibit C), which are all owned by the Applicant, most of which are in respect of trademarks that include the term “MONCLER” and/or the M and rooster design. Mr. Duchesneau’s affidavit includes website screenshots and archived website screenshots relating to trademarks which correspond to many of the trademarks identified by Mr. Vukovic in Exhibits A and B to his affidavit.

[73] The Opponent submits that the majority of the third party marks identified by Mr. Vukovic are irrelevant, in that they cover different goods or services unrelated to those of the parties, and several of the third party marks are pending marks which are based on proposed use without any evidence of the actual state of the marketplace in Canada. Further to this, the Opponent submits that of the remaining registered marks that do include overlapping goods/services, none feature the jagged M design and/or image of a bird in association with the letter “M”, which are common elements of the parties’ marks. The Opponent further submits that the third party website printouts included in the Duchesneau affidavit are also irrelevant, in that none of the third parties were verified to actually sell any of the goods or provide any of the services in Canada, the majority of which do not provide goods or services related to the Opponent’s goods, and the non-archived website printouts are dated after the material date. Interesting to note however, is that while the Opponent submits that marks related to different goods and services are irrelevant, the Opponent simultaneously argues under sections 6(5)(c) and (d), that its marks are so well known that they are capable of transcending beyond the MONSTER goods.



[74] In any event, as with the analysis under sections 6(5)(c) and (d), I find it is not necessary to undertake a detailed analysis of the state of the register and marketplace evidence, in view of my ultimate conclusion on the likelihood of confusion below.




Conclusion

[75] Having considered all of the surrounding circumstances, I find that the Applicant has met its onus to show, on a balance of probabilities, that the Mark is not likely to cause confusion with any of the Opponent’s Marks or its trade name. I reach this conclusion as I find the section 6(5)(a) (inherent distinctiveness) and 6(5)(e) (differences existing between the parties’ trademarks) factors outweigh any potential for overlap with respect to the parties’ goods and their channels of trade. Accordingly, the sections 16(3)(a) and (c) grounds of opposition are rejected.

**Section 16(3)(b) Ground of Opposition**

[76] With respect to the ground of opposition based on section 16(3)(b) of the Act, the Opponent must establish that one or more of its applications relied upon was filed (or deemed filed in Canada) prior to the deemed filing date of the Application, and was pending at the date of advertisement of the Application [section 16(4) of the Act]. The Opponent has met its burden under this ground, having regard to the following marks of the Opponent (further particulars with respect to goods/services are included under Schedule B to this decision):

<b>Trademark</b>	<b>Registration No. /Application No.</b>	<b>Registration date (Filing date or deemed filing date)</b>
	TMA1,006,499 App. No. 1,704,546	2018-10-11 (2014-11-26)
	TMA814,306 App. No. 1,004,549	2018-09-11 (2016-12-15, with a priority filing date of 2016-08-05)

	TMA1,045,761 App. No. 1,795,155	2019-07-30 (2016-08-10, with a priority filing date of 2016-02-12)
	TMA1,067,467 App. No. 1,794,488	2019-12-30 (2016-08-04, with a priority filing date of 2016-05-20)
	App. No. 1,814,297	Abandoned on 2019-02-19 (2016-12-15, with a priority filing date of 2016-08-05)

[77] I now have to determine, on a balance of probabilities, if the Applicant's Mark is likely to cause confusion with one or more of the Opponent's trademarks above.

[78] However, my findings with respect to the grounds of opposition based on sections 16(3)(a) and (c) are equally applicable, particularly, having regard to sections 6(5)(a)(inherent distinctiveness in regard to the Claw Icon design) and the substantial differences between the parties marks with respect to section 6(5)(e) of the Act, despite some differences in the Opponent's marks above. Thus, I find the Applicant has met its onus to show, on a balance of probabilities, that the Mark is not likely to cause confusion with any of the Opponent's trademarks relied upon under this ground. Accordingly, the section 16(3)(b) ground of opposition is rejected.

**Section 12(1)(d) Ground of Opposition**

[79] The Opponent has plead that the Mark is not registrable in association with goods as the Mark is confusing with the Opponent's registered marks. An opponent's initial onus is met with respect to a section 12(1)(d) ground of opposition if one or more of the registrations relied upon

are in good standing. The Registrar has the discretion to check the register in order to confirm the existence of any registrations relied upon by an opponent [see *Quaker Oats Co of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB)].

[80] I have exercised the Registrar's discretion to confirm that the Opponent's registrations are in good standing as of today's date, which, as previously indicated, is the material date for assessing a section 12(1)(d) ground of opposition [per *Park Avenue Furniture Corp, supra*]. The Opponent has therefore satisfied its evidential burden.

[81] As with the ground of opposition based on section 16(3)(a), I find that the Opponent's strongest cases relate to the Opponent's trademarks Claw Icon design (TMA637,677) and M Monster Army & design (TMA1,045,761). If the Opponent is not successful with these marks, it would not achieve a more favourable result with the other registered marks.

[82] The difference in material date under this ground of opposition does not affect my ultimate conclusion regarding confusion between the parties' marks. As such, my findings under the grounds of opposition based on section 16(3)(a) are equally applicable.

[83] Accordingly, the ground of opposition under section 12(1)(d) is also rejected.

## **Section 2 Ground of Opposition**

[84] The Opponent has plead that the Mark is not distinctive of the associated goods, nor is it adapted to distinguish the Applicant's goods from the goods of others, including the Opponent's goods.

[85] While there is a legal onus on the Applicant to show that the Mark is adapted to distinguish or actually distinguishes its goods from those of others throughout Canada, there is an initial evidential burden on the Opponent to establish the facts relied upon in support of the ground of non-distinctiveness [see *Muffin Houses Incorporated v The Muffin House Bakery Ltd* (1985), 4 CPR (3d) 272 (TMOB)].

[86] In order to meet its initial burden in support of the non-distinctiveness ground of opposition, the Opponent must show that as of May 14, 2018, one or more of the Opponent's

Marks was known to some extent at least and its reputation in Canada was substantial, significant or sufficient [*Motel 6, Inc v No 6 Motel Ltd* (1981), 56 CPR (2d) 44 (FCTD); *Bojangles' International LLC v Bojangles Café Ltd* (2006), 48 CPR (4th) 427 (FC)].

[87] Having regard to the Opponent's evidence of use provided under the Sacks affidavit, I accept that the Opponent has met its burden under this ground of opposition.

[88] However, the difference in material date under this ground of opposition once again does not affect my ultimate conclusion regarding confusion between the parties' marks. As such, my findings under the ground of opposition based on section 16(3)(a) are equally applicable, and I find that the Applicant has thus met its burden to show that the Mark is adapted to distinguish or actually distinguishes its goods from those of others, including the Opponent's goods, throughout Canada.

[89] Accordingly, the ground of opposition based on non-distinctiveness of the Mark is rejected.

#### DISPOSITION

[90] Having regard to the aforementioned, pursuant to the authority delegated to me under section 63(3) of the Act, I reject the opposition pursuant to section 38(12) of the Act.

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Kathryn Barnett  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office



## SCHEDULE A

### **Statement of goods for application No. 1,809,952 – M (& DESIGN)**






(1) Coffee; caffeine-free coffee; espresso; instant coffee; roasted coffee beans; unroasted green coffee; infusions, not medicinal, namely herbal teas; camomile teas; tea; green tea; theine-free tea; tea-based beverages; coffee-based beverages; coffee-based beverages containing milk; prepared coffee-based beverages; cocoa-based beverages; chocolate-based beverages; chocolate-based beverages with milk; prepared cocoa-based beverages; hot chocolate; cocoa; artificial coffee; chocolate; chocolates; pralines; filled chocolates; chocolate candies; chocolate bars; filled chocolate bars; bars of chocolate; eggs of chocolate; chocolate truffles; cocoa spreads; chocolate-coated dried fruits; chocolate-coated nuts; cakes; cookies; petit-beurre biscuits; brioches; doughnuts; brownies; muffins; cheesecakes; marshmallows; pancakes; wafers; ring-shaped cakes; gingerbread; puddings; chocolate mousses; confectionery, namely, dessert mousses, fruit jelly candy; candy; cotton candy; confectionery for decorating Christmas trees, namely peanut, almond, crystal sugar pieces confectionery, candies, bonbons made of sugar; royal jelly for human consumption, not for medical purposes; sugar; honey; candy, namely, caramels, sweetmeats; gummy candies; toffees; confectionery, namely, fondants, sugar-free chewing gum, pastilles, stick liquorice, liquorice; meringues; chewing gum; lolly-pops; sugared almonds; peanut confectionery; almond confectionery; brittles; candy mints; processed cereals, namely breakfast cereals, ready-to-eat cereals; oat flakes; corn flakes; muesli; rusks; cereal bars; flapjacks; muesli bars; candy bars; high-protein cereal bars; cereal-based snack food; rice-based snack food; snack mixes consisting of crackers, pretzels and popped popcorn; pretzels; popcorn; grain-based chips; tortillas; nachos, being tortilla chips; sandwiches; bread rolls; sandwiches, namely, hot dogs, hamburgers; bread; pizzas; focaccia bread; quiches; crackers; pasta; maple syrup; chocolate syrups; topping syrups, namely chocolate syrups, caramel syrups; chocolate toppings; chocolate chips; chocolate-based fillings for cakes and pies; cake frosting; chocolate powder; candy decorations for cakes; treacle; mayonnaise; ketchup sauce; dressings for salad; balsamic vinegar; soya sauce; pasta sauce; pesto sauce; seasonings, namely, peppers, saffron; turmeric; spices, namely, curry, cinnamon, ginger; nutmegs; capers; cooking salt; mustard; vinegar; sauces being condiments, namely Worcestershire sauce, sriracha hot chili sauce, pepper sauce, chili sauce, barbecue sauce; spices.

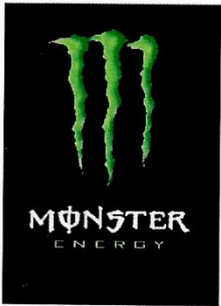




SCHEDULE B




**Particulars of the Opponent's Claw Icon Design Marks**




<b>Trademark</b>	<b>Registration No. / Application No.</b>	<b>Registration Date (Filing Date)</b>	<b>Goods / Services</b>
	<p>TMA811,438 App. No. 1,377,410</p>	<p>2011-11-08 (2007-12-17, with a priority filing date of 2007-06-19)</p>	<p>(1) Nutritional supplements, namely, non-alcoholic beverages, namely, energy drinks, sport drinks, soft drinks, carbonated soft drinks enhanced with vitamins, minerals, nutrients namely taurine, amino acids and/or herbs, namely ginseng and guarana excluding perishable beverage products that contain fruit juice or soy. (2) Non-alcoholic beverages, namely, energy drinks, sport drinks, soft drinks, carbonated soft drinks enhanced with vitamins, minerals, nutrients namely taurine, amino acids and/or herbs, namely ginseng, and guarana excluding perishable beverage products that contain fruit juice or soy.</p>
	<p>TMA637,677 App. No. 1,195,514</p>	<p>2005-04-19 (2003-11-07)</p>	<p>(1) Carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs. (2) Beverages, namely, carbonated soft drinks, fruit juice drinks having a juice content of 50 percent or less by volume that are shelf-stable; carbonated and non-carbonated energy or sports drinks, noncarbonated teas, water, but excluding perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not.</p>













	<p>TMA805,562 App. No. 1,446,780</p>	<p>2011-08-30 (2009-07-31, with a priority filing date of 2009-02-06)</p>	<p>(1) Nutritional supplements, namely nutritional supplements drinks containing vitamins, minerals and proteins. Non-alcoholic beverages, namely energy drinks, soft drinks, sports drinks, fruit drinks, and carbonated drinks, enhanced with vitamins, minerals, nutrients, amino acids and/or herbs.</p>
	<p>TMA982,273 App. No. 1,662,781</p>	<p>2017-10-05 (2014-02-06, with a priority filing date of 2013-08-26)</p>	<p>(1) Lanyards for holding whistles, keys, eyeglasses, sunglasses, mobile telephones, badges, identification cards, event passes, media passes, photographs, recording equipment.</p>
	<p>TMA979,313 App. No. 1,692,983</p>	<p>2017-08-24 (2014-09-09, with a priority filing date of 2014-03-12)</p>	<p><u>Services:</u> (1) Promoting goods and services in the sports, motorsports, electronic sports, and music industries through the distribution of printed, audio and visual promotional materials; promoting sports and music events and competitions for others.</p>
	<p>TMA833,007 App. No. 1,453,690</p>	<p>2012-09-27 (2009-09-30)</p>	<p>(1) Stickers, sticker kits, decals; sports bags, travel bags, school bags, handbags, messenger bags, knapsacks, backpacks; clothing, namely t-shirts, sweat shirts, pants, jackets, shorts; and headgear namely, hats, caps and beanies; protective clothing, namely protective headwear, namely motorcross helmets, motorcycle helmets, snowmobile helmets, all terrain vehicle helmets, sports helmets, bicycling helmets, ski helmets, snowboard helmets.</p>
	<p>TMA831,724 App. No. 1,494,509</p>	<p>2012-09-10 (2010-09-02)</p>	<p>(1) Nutritional supplements namely energy drinks enhanced with vitamins, minerals, nutrients, amino acids and herbs; beverages, namely carbonated soft drinks, carbonated drinks enhanced with vitamins,</p>

			minerals, nutrients, amino acids and herbs, carbonated and non-carbonated energy and sports drinks.
	TMA971,649 App. No. 1,740,113	2017-05-24  (2015-08-03, with a priority filing date of 2015-02-02)	(1) Nutritional supplements in liquid form, namely energy drinks and sports drinks. (2) Non-alcoholic beverages, namely, carbonated soft drinks; carbonated drinks enhanced with vitamins, minerals, nutrients, proteins, amino acids and herbs; carbonated energy drinks and sports drinks.
	TMA932,892 App. No. 1,597,292	2016-03-29  (2012-10-09, with a priority filing date of 2012-10-05)	(1) Silicone wrist bands; silicone bracelets; jewelry, namely, bracelets and wristbands.
	TMA962,031 App. No. 1,662,762	2017-02-06  (2014-02-06, with a priority filing date of 2013-08-26)	(1) Lanyards for holding whistles, keys, eyeglasses, sunglasses, mobile telephones, badges, identification cards, event passes, media passes, photographs, recording equipment.
	TMA917,306 App. No. 1,547,982	2015-10-16  (2011-10-17)	(1) Nutritional supplements in liquid form, namely energy drinks enhanced with vitamins, minerals and proteins. Non-alcoholic beverages, namely energy drinks, energy drinks flavored with tea, energy drinks flavored with juice, sports drinks, and fruit juice drinks having a juice content of 50% or less by volume; all of the foregoing enhanced with vitamins, minerals, nutrients, amino acids and/or herbs.
	TMA833,012 App. No. 1,453,691	2012-09-27  (2009-09-30)	(1) Stickers, sticker kits, decals; sports bags, travel bags, school bags, handbags, messenger bags, knapsacks, backpacks; clothing, namely t-shirts, sweat shirts, pants, jackets, shorts; and headgear namely, hats, caps and beanies; protective clothing,

			<p>namely protective headwear, namely motorcross helmets, motorcycle helmets, snowmobile helmets, all terrain vehicle helmets, sports helmets, bicycling helmets, ski helmets, snowboard helmets.</p> <p>(2) Towels, namely hooded towels for children, face towels made of textile materials, hand towels, bath towels, hooded towels, cotton towels, kitchen towels of textile, golf towels, beach towels, cloth towels, children's towels, microfiber towels, terry towels, waffle towels, tea towels and dish towels for drying.</p>
	TMA1,006,499 App. No. 1,704,546	2018-10-11 (2014-11-26)	(1) Dairy-based beverages; dairy-based energy shakes; energy shakes; coffee energy shakes; chocolate energy shakes. Ready to drink tea and tea based beverages; ready to drink flavored tea, tea based beverages; ready to drink coffee and coffee based beverages; ready to drink flavored coffee and coffee based beverages; ready to drink chocolate-based beverages.
	TMA814,306 App. No. 1,004,549	2018-09-11 (2016-12-15, with a priority filing date of 2016-08-05)	(1) Automotive wheels.
	TMA1,045,761 App. No. 1,795,155	2019-07-30 (2016-08-10, with a priority filing date of 2016-02-12)	<p><u>Goods</u></p> <p>(1) Clothing, namely, tops namely tank tops, hooded tops, sweat tops, knitted tops, woven tops, crop tops, warm-up tops, rugby tops, fleece tops, shirts, t-shirts, hooded shirts, sweat shirts, jackets, and bandanas; headgear, namely, hats and beanies</p>

			<p><u>Services</u></p> <p>(1) Providing a web site featuring information on athletes; organizing and conducting educational programs and activities for athletes, namely providing educational scholarships, educational services in ski, snowboard, mountain bike, surf, BMX, skate, motocross, and wakeboard, providing tutorials and seminars in ski, snowboard, mountain bike, surf, BMX, skate, motocross, and wakeboard, organising and staging of sports competitions in ski, snowboard, mountain bike, surf, BMX, skate, motocross, and wakeboard; athlete development program, namely arranging, sponsoring, conducting and providing space, facilities and personnel in sports events in ski, snowboard, mountain bike, surf, BMX, skate, motocross, and wakeboard competitions.</p>
	<p>TMA1,065,353</p> <p>App. No. 1,883,000</p>	<p>2019-12-05</p> <p>(2018-02-13)</p>	<p>(1) Non-alcoholic beverages, namely, carbonated soft drinks, sports drinks, fruit juice drinks, flavored waters and energy drinks; beer.</p>
	<p>TMA1,061,985</p> <p>App. No. 1,882,992</p>	<p>2019-11-05</p> <p>(2018-02-13)</p>	<p>(1) Non-alcoholic beverages, namely, carbonated soft drinks, sports drinks, fruit juice drinks, flavored waters and energy drinks; beer.</p>
	<p>TMA1,066,163</p> <p>App. No. 1,885,678</p>	<p>2019-12-12</p> <p>(2018-03-01)</p>	<p>(1) Nutritional herbal, vitamin and mineral supplements for general health and well being; nutritional supplements in liquid form namely, energy drinks and sports drinks; nutritional supplements sold as an ingredient in a beverage, namely</p>

			<p>herbal flavourings for making beverages; herbal beverages, namely herbal tea beverages, herbal teas; nutritional beverages, namely protein-enriched sports drinks for boosting energy.</p> <p>(3) Nutritional supplements sold as a component in a beverage, namely herbal flavourings for making beverages.</p> <p>(2) Non-alcoholic beverages, namely, carbonated soft drinks, sports drinks and energy drinks; syrups, concentrates, powders and preparations for making carbonated soft drinks, sports drinks and energy drinks; vitamin-enriched carbonated soft drinks, sports drinks and energy drinks; nutrient-enriched carbonated soft drinks, sports drinks and energy drinks; amino acid-enriched carbonated soft drinks, sports drinks and energy drinks.</p>
	TMA1,072,375 App. No. 1,886,693	2020-02-11  (2018-03-07)	(1) Non-alcoholic beverages, namely, carbonated soft drinks, sports drinks, fruit juice drinks, flavored waters and energy drinks; syrups, concentrates, powders and preparations for making soft drinks, sports drinks, fruit drinks, fruit juices, flavored waters, carbonated drinks and energy drinks; beer.
	TMA1,067,467 App. No. 1,794,488	2019-12-30  (2016-08-04, with a priority filing date of 2016-05-20)	(1) Non-alcoholic beverages, namely, energy drinks, soft drinks, sports drinks, non-alcoholic fruit juice drinks and flavored waters, water enhanced with vitamins, minerals, proteins, and amino acids.
	App. No. 1,814,297	Abandoned on 2019-02-19  (2016-12-15, with a priority filing date of 2016-08-05)	(1) Automotive wheels. (2) Motorcycle parts and accessories.

	App. No. 1,885,692	Abandoned on 2019-11-12 (2018-03-01)	(1) Non-alcoholic beverages, including carbonated drinks and energy drinks; syrups, concentrates, powders and preparations for making beverages, including carbonated drinks and energy drinks; beer.
	App. No. 1,844,995	Abandoned on 2019-10-22 (2017-06-28)	(1) Carbonated soft drinks; syrups and concentrates for making carbonated soft drinks.
	App. No. 1,844,973	Abandoned on 2019-10-22 (2017-06-28)	(1) Carbonated soft drinks; syrups and concentrates for making carbonated soft drinks.
	App. No. 1,844,983	Abandoned on 2019-10-22 (2017-06-28)	(1) Carbonated soft drinks; syrups and concentrates for making carbonated soft drinks.
	App. No. 1,844,991	Abandoned on 2019-10-22 (2017-06-28)	(1) Carbonated soft drinks; syrups and concentrates for making carbonated soft drinks.
	App. No. 1,845,000	Abandoned on 2019-10-22 (2017-06-28)	(1) Carbonated soft drinks; syrups and concentrates for making carbonated soft drinks.
	App. No. 1,886,448	Abandoned on 2019-11-12 (2018-03-06)	(1) Carbonated soft drinks.

**TRADEMARKS OPPOSITION BOARD  
CANADIAN INTELLECTUAL PROPERTY OFFICE  
APPEARANCES AND AGENTS OF RECORD**

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**HEARING DATE** 2020-12-08

**APPEARANCES**

Nathan Fan	For the Opponent
Kwan T. Loh	For the Applicant

**AGENTS OF RECORD**

Marks & Clerk Canada	For the Opponent
Smart & Biggar LLP	For the Applicant