

LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2021 TMOB 113

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

**1,754,749 for MONCLER (&
DESIGN)**

Application

INTRODUCTION

[1] Monster Energy Company (the Opponent) opposes registration of the trademark MONCLER (& DESIGN), shown below (the Mark), which is the subject of application No. 1,754,749 (the Application), filed by Moncler S.P.A. (the Applicant). For the reasons that follow, I reject the opposition.



[2] The Application was filed on November 13, 2015 on the basis of proposed use in Canada in association with a long list of goods, covering among other things, goods classified under Nice classes 20, 30, and 32. 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 June 12, 2015, based upon the Applicant's corresponding application in Italy.

[3] The Application was advertised in the *Trademarks Journal* of December 7, 2016.

[4] The Opponent filed its statement of opposition under section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act) on February 7, 2017, to which the Applicant subsequently 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] In its statement of opposition, 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 MONSTER Marks or the Opponent's Marks), the particulars of which are included under Schedule B to this decision, as well as the Opponent's trade name.

[7] On January 9, 2020, the Opponent filed a request for leave in conjunction with a revised statement of opposition. The proposed amendment to the statement of opposition was to update the status of three of the Opponent's relied upon applications, which proceeded to registration between October 16, 2017 and October 11, 2018. These trademarks (application Nos. 1,704,546, 1,701,677, and 1,699,946) 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 amendment 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 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 25, 2020, the Opponent referred to a chart with additional trademarks as being part of the requested amendments to the statement of opposition and the previous related leave request filed on January 9, 2020. However, only one such listed trademark was included in the revised statement of opposition, namely, registration No. TMA1,006,499 (application No. 1,704,546). As such, the other marks listed in the Opponent's February 25, 2020 correspondence are not subject of the leave request or revised statement of opposition that was filed on January 9, 2020 for the instant file, and will not be considered.

[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. Further to this, the Opponent submits that application No. 1,704,546, one of

the applications which are subject of the amendments, only recently proceeded to registration on October 11, 2018; the other two registrations to be added (TMA983,986 and TMA982,896) 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 Trade Marks 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 three 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 affidavits of Elenita Anastacio, sworn July 20, 2017, and Rodney Cyril Sacks, sworn July 18, 2017. Mr. Sacks was cross-examined on

his affidavit and the transcript forms part of the record. Ms. Anastacio's affidavit simply contains a list of the Opponent's MONSTER Marks relied upon, with printouts of the particulars of those marks from the Canadian Trademarks Database, while Mr. Sacks' affidavit details the Opponent's use, advertising and promotion of the Opponent's MONSTER Marks and trade name.

[14] In support of its Application, the Applicant filed the affidavits of Gay Owens, sworn June 27, 2018, and Michael Duchesneau sworn June 26, 2018, as well as certified copies of registrations Nos. TMA196,003, TMA905,567, TMA857,383, and TMA976,409. Both affiants were cross-examined and the transcripts form part of the record.

[15] Ms. Owens' affidavit essentially includes state of the register evidence which will be further discussed below.

[16] Mr. Duchesneau's affidavit includes website screenshots and archived website screenshots relating to trademarks which correspond to many of the trademarks identified by Ms. Owens in Exhibit A to her affidavit.

[17] The Opponent did not file reply evidence.

[18] 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. 1,809,952, for the trademark M (& Design).

THE PARTIES' RESPECTIVE BURDEN OR ONUS

[19] 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

[20] 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.

[21] 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 Class 30 and 32 goods prior to the applicable filing date; and/or
- (ii) The Applicant had no intention and has no intention to use the Mark in Canada with the Class 30 and 32 goods by itself or through a licensee or by itself and through a licensee.

[22] 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

[23] The Opponent has plead that the Application does 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 Class 30 and 32 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.

[24] 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 trademark 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].

[25] 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

[26] The Opponent has plead that the Applicant is not the person entitled to the registration of the Mark in association with the Class 30 and 32 goods as, 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.

[27] I will begin with an analysis under the grounds of opposition based on sections 16(3)(a) and 16(3)(c) of the Act. The Opponent has an initial burden of establishing that one or more of its trademarks, and its trade name alleged in support of these grounds of opposition was used or made known prior to the date of filing of the application (namely, June 12, 2015), and was not abandoned at the date of advertisement of the application for the Mark (in this case, December 7, 2016) [section 16(5) of the Act].

[28] 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.

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

[30] 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.

[31] Mr. Sacks attests that the Opponent is the lawful proprietor and owner at common law of the Claw Icon, MONSTER trademark (see TMA637,677 in Schedule B to this decision), and many other marks containing MONSTER (referred to collectively as the MONSTER Marks). He provides as Exhibit 1 to his affidavit, a report of all registered and pending MONSTER 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).

[32] 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 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 \$613 million in sales since the launch in 2003 to September 30, 2016. In addition, he provides statistics regarding significant product market share both in the United States (for the four week period ending May 20, 2017) and in Canada (for the 52 week period ending October 29, 2016), representing sales wherein "each can of MONSTER energy drink bears at least one of the MONSTER Marks."

[33] Mr. Sacks states that MONSTER energy drinks sold in Canada are often sold and promoted at events where beer and other alcoholic beverages are sold (such as baseball games, motocross races, and other sporting events, as well as nightclubs, bars and restaurants). In addition, he explains that the Opponent provides its on-premises retailers with a variety of point-of-sale materials specific to bars and restaurants, which include bar mats, tip jars, mini fridges, and bottle openers. He states that in 2006, the Opponent signed its first on-premise distributor agreement, and the MONSTER energy drinks have been continuously sold by on-premise retailers since that date.

[34] Mr. Sacks attests that the Opponent's MONSTER energy drinks 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.

[35] 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.

[36] Mr. Sacks explains that the Opponent has widely advertised, marketed and promoted its MONSTER energy drinks bearing the MONSTER 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 MONSTER 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 and including September 2016, the Opponent has spent more than US\$147 million in advertising, marketing, and promoting its MONSTER energy drinks in Canada.

[37] Mr. Sacks attests 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 MONSTER 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.

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

[39] 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), and individual NASCAR driver Robby Gordon (2007, 2008), 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 (19) – and states that all of these athletes have the MONSTER 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).

[40] 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.

[41] 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 376,000 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 19,952 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 December 31, 2016, The Monster Army website received approximately 3.9 million unique visitors, wherein approximately 192,000 of these unique visitors were from Canada.

[42] In addition to sporting events, athletes, etc., Mr. Sacks attests that the Opponent's MONSTER 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).

[43] Further to the above, Mr. Sacks details the Opponent's website and social media presence with respect to marketing and promotion of its MONSTER 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 (1.3 million between September 1, 2010 and December 31, 2016). He attests that Monster engages in 'blast emails' regarding sponsored athletes wherein the MONSTER Marks are featured. He attests that the Opponent also has:

- a MONSTER ENERGY Facebook page, with more than 650,000 likes from Canada;
- a MONSTER ENERGY Gaming Facebook page, with more than 26,000 likes from Canada;
- a MONSTER ENERGY Supercross Facebook page, with more than 145,000 likes from Canada;
- a MONSTER ENERGY Music Facebook page, with more than 8,600 likes from Canada;
- a MONSTER Army Facebook page, with more than 9,700 likes from Canada;
- a MONSTER ENERGY Girls Facebook page, with more than 22,000 likes from Canada;
- a MONSTER ENERGY Military Facebook page, with more than 1,500 likes from Canada;
- a MONSTER ENERGY Instagram account, with 4.2 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 24,000 followers; and
- a YouTube channel, launched on March 22, 2006, having since received more than 208 million views worldwide, including more than 7.8 million views from Canada.

[44] 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 14th 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 internationally circulated magazines describing and referring to the MONSTER energy drinks and to the success of the Opponent and its products – these include the Wall Street Journal (2003), Time (July 2003), Business Week Online (June 6, 2005), etc., as well as in trade publications.

[45] Lastly, Mr. Sacks attests that, in addition, the Opponent has used and continues to use, its MONSTER Marks on clothing since 2002, and has licensed use of the MONSTER Marks on a host of other products. He clearly states that the Opponent controls the quality of any apparel and

merchandise bearing the MONSTER 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 MONSTER Marks. He attests that the MONSTER 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 MONSTER Marks were featured), in association with popular video games such as Call of Duty (2009-2013) and video game events such as gaming tournaments (2014-2016).

[46] Having regard to the above, I am satisfied that the Opponent has met its initial burden of establishing that one or more of the Opponent's 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.

[47] 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 Marks and/or the Opponent's trade name. I will begin with an assessment of the likelihood of confusion between the Mark and the Opponent's trade-marks MONSTER ENERGY and Claw Icon design, 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

[48] 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.

[49] 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

[50] 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.

[51] In the present case, I agree with the Registrar's conclusion in *Monster Company v Chun Hua Lo*, 2021 TMOB 40, that the Opponent's MONSTER ENERGY mark is not inherently strong, as both components suggest beverages that will give the user a lot of energy [*Hansen Beverage Company v Rainbow SPA*, 2010 TMOB 19 at para 15]. However, with respect to the Opponent's Claw Icon mark, despite being comprised solely of a stylized "M", it has greater 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 marks above. In this regard, the word "MONCLER" is a coined word, and 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] As previously indicated however, the strength of a trademark may be increased by means of it becoming known through promotion or use in Canada.

[54] 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.

[55] The Opponent, on the other hand, has provided substantial evidence of use of its MONSTER ENERGY and Claw Icon marks, 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 (\$613 million) of the Opponent's energy drinks bearing the MONSTER ENERGY and Claw icon marks, 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 these marks 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.

[56] Consequently, while the inherent distinctiveness factor favours the Applicant, the Opponent has shown that its marks have a strong degree of acquired distinctiveness.

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

[57] 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 MONSTER ENERGY and Claw Icon marks. While sales figures for the Opponent's goods associated with these marks have not been broken down specifically by year, I accept that the sales figures attested to, which in the aggregate date back to 2003, include sales of goods bearing these marks.

[58] Consequently, I find this factor favours the Opponent.

Sections 6(5)(c) and (d) - the nature of the services and business or trade

[59] The Opponent's goods include, among other beverages, energy drinks. In addition, the Opponent has expanded into merchandising apparel and accessories.

[60] The Applicant's application covers a wide range and variety of goods, including various beverage and beverage-related goods grouped under Nice Classes 30 and 32.

[61] I note that a portion of the cross examination of Mr. Sacks dealt with questions regarding the Opponent's channels of trade, target consumers, etc. 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

[62] 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.

[63] 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”.

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

[65] The Mark is a composite mark composed of two components namely, the letter “M” embedded together with a fanciful representation of a cock or chicken, and the coined word MONCLER; both components which are fairly equally dominant. The Mark does not have any clear meaning in the context of the applied-for goods.

[66] The Opponent’s Claw Icon 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 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, letter “M” does not have any clear meaning in the context of the Opponent’s goods - it is simply the first letter of the word component of the trademark. Further however, the Mark includes the coined term MONCLER, which additionally significantly differentiates between the parties’ marks visually and phonetically.

[67] With respect to the Opponent’s MONSTER ENERGY 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 I have already concluded suggest beverages that will give the user a lot of energy. The word MONCLER however, is a coined term. Additionally, the difference in pronunciation of the terms MONSTER and MONCLER is apparent. In this regard, I agree with the Applicant that the only similarity is the letter combination “MON-ER”, and the marks are wholly distinguishable due to the differences in sound between “ST” and “CL”.

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

Additional surrounding circumstances – State of the register and marketplace

[69] 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 [see *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)].

[70] As previously indicated, with respect to evidence in this regard, the Applicant filed the affidavits of Gay Owens and Michael Duchesneau. The Owens’ affidavit includes printouts of particulars of 58 Canadian trademark registrations and applications (Exhibit A), 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). Mr. Duchesneau’s affidavit includes website screenshots and archived website screenshots relating to trademarks which correspond to many of the trademarks identified by Ms. Owens in Exhibit A to her affidavit. Ms. Owens also includes printouts of particulars of 29 registrations and applications (Exhibit B), 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.

[71] The Opponent submits that the majority of the third party marks identified by Ms. Owens are irrelevant, in that they cover different goods or services unrelated to those of the parties, the majority of the third party marks do not contain any distinctive or prominent “M” designs, 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. 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 section 6(5)(c) and (d), that its marks are so well known that they are capable of transcending beyond the MONSTER goods.

[72] 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

[73] 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 section 16(3)(a) and (c) grounds of opposition are rejected.

Section 16(3)(b) Ground of Opposition

[74] Now, moving on 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:

Trademark	Registration/Application No.	Registration date (filing date)
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MONSTER ENERGY ULTRA BLACK	TMA983,986 App. No. 1,701,677	2017-10-31 (2014-11-07)
MONSTER ENERGY ULTRA CITRON	TMA982,896 App. No. 1,699,946	2017-10-16 (2014-10-28)
	TMA1,006,499 App. No. 1,704,546	2018-10-11 (2014-11-26)
MONSTER ENERGY ULTRA GREEN	App. No. 1,699,951	Abandoned on 2019-05-22 (2014-10-28)

[75] However, my findings with respect to the grounds of opposition based on sections 16(3)(a) and (c), particularly, having regard to sections 6(5)(a) (inherent distinctiveness) and 6(5)(e) (lack of resemblance between the parties' trademarks) are equally applicable, despite a few differences in some of 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 marks relied upon under this ground. Accordingly, the section 16(3)(b) ground of opposition is rejected.

Section 12(1)(d) Ground of Opposition

[76] The Opponent has plead that the Mark is not registrable in association with the Class 30 and 32 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)].

[77] 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.

[78] 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 MONSTER ENERGY (TMA690,588) and Claw Icon design (TMA637,677). If the Opponent is not successful with these marks, it would not achieve a more favourable result with the other registered marks.

[79] 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.

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

Section 2 Ground of Opposition

[81] The Opponent has plead that the Marks are not distinctive of the Class 30 and 32 goods, nor is it adapted to distinguish the Class 30 and 32 goods from the goods of others, including the Opponent's goods.

[82] 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)].

[83] In order to meet its initial burden in support of the non-distinctiveness ground of opposition, the Opponent must show that as of December 7, 2016, 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)].

[84] 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.

[85] 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 grounds 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.

[86] Accordingly, the ground of opposition under section 2 based on non-distinctiveness of the Mark is rejected.

DISPOSITION

[87] 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.

Kathryn Barnett
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Statement of goods for application No. 1,754,749 – MONCLER (& DESIGN)

12

(1) Baby strollers; foldable baby strollers; covers for baby strollers; baskets for baby strollers; harness for baby strollers; canopies for baby strollers; linings for baby strollers; parasols to be affixed to baby strollers; umbrellas to be affixed to baby strollers; baby carriages; covers for baby carriages; hoods for baby carriages; shields for baby carriages; baskets for baby carriages; harness for baby carriages; pads for baby carriages; shaped covers for baby carriages; baby carriages incorporating carry cots; baby carriages with removable infant carry cot; prams, being baby carriages; covers for prams; safety seats for children for automobiles; safety seats for use in vehicles; car seats for children; child restraints for vehicle seats; child safety harnesses for vehicle seats; car seat bases for children; child booster cushions for vehicle seats; stands for children's car seats; automobile seat cushions; seat covers for vehicles; security harness for vehicle seats; safety belts for vehicle seats; pet safety seats for use in vehicles; bicycles; bicycles for children; tandem bicycles; bicycle saddles; saddlebags adapted for bicycles; bicycle bells; baskets adapted for cycles; luggage carriers for bicycles; bicycle trailers; saddle covers for bicycles or motorcycles; bicycle seat posts; tricycles for children; delivery tricycles; small wagons for transporting children; sports cars; go-carts; steering wheels for vehicles; gliders; golf carts, being vehicles; shopping trolleys, being carts; pushchairs; vehicles, namely, scooters, motorized scooters, non-motorized scooters; motorcycles; paddles for canoes; parachutes; kick sledges; sleeping cars; yachts; fitted dashboard covers for vehicles; upholstery for vehicles; anti-theft alarms for vehicles; panniers adapted for cycles; safety devices for automobiles, namely, air bags; luggage carriers for vehicles; roof rack storage containers for land vehicles; ski carriers for cars; ski carriers for vehicles; bicycle racks for vehicles; luggage racks for attachment to vehicle hoods; luggage racks for attachment to vehicle trunks; drink holders for vehicles; fitted covers for vehicles; spare wheel covers; covers for vehicle steering wheels; shaped vehicle covers.

20

(2) School furniture; furniture, namely, bedroom furniture, lawn furniture, patio furniture, living room furniture, kitchen furniture, dining room furniture, bathroom furniture; furniture of metal, namely metal camping furniture; upholstered furniture, namely sofas, armchairs, chairs; outdoor furniture; garden furniture; inflatable furniture; computer furniture; workstations having multi-use work surfaces for use in a wide variety of fields, namely custom-built computer workstations and custom-built office desks; wardrobes; furniture, namely, closets, index cabinets, showcases, washstands, carts for computers, benches, trolleys, trestles, screens for fireplaces, screens; cupboards; pantries, not of metal; shelves; sideboards; drawers, being furniture parts; chests of drawers; medicine cabinets; tables of metal; dressing tables; tea tables; massage tables; tables; writing desks; desks; nightstands; counters, being tables; ladders of wood or plastics; step stools, not of metal; furniture frames; furniture shelves; furniture partitions of wood; doors for furniture; furniture casters, not of metal; furniture fittings, not of metal; fitted furniture covers of fabric; furniture moldings; edgings of plastic for furniture; fitted furniture covers, not of fabric; plastic drawer lining material; seating furniture, namely sofa; divans, extendible sofas, sofa beds, settees, chaise longues, armchairs, chair beds, footrests, chairs, being seats; seats of metal,

namely, chairs, tables, tall and bar stools; easy chairs; rocking chairs; recliners, being furniture; ergonomic chairs for seated massage; Japanese-style floor seats, namely, zaisu; stools; bathroom stools; chair legs; chair pads; portable back supports for use with chairs; children's furniture; beds; mattresses; futon mattresses; sleeping mats; sleeping bags; sleeping bags for camping; pillows; cushions; stadium cushions; Japanese floor cushions, namely, zabuton; chair cushions; seat cushions; futons, being furniture; bed rails; bed bases; bed fittings, not of metal; storage racks for ski and sports equipment; storage racks for surfboards; baseball and softball bat racks; CD storage racks, being furniture; storage racks for storing works of art; shoe racks; shoe cabinets; keyboards for hanging keys; coat stands; towel stands, being furniture; hat stands; tie racks; book rests, being furniture; umbrella stands; magazine racks; door stops of wood; door stops of plastic; photograph frames made of paper; picture frames made of paper; picture frames; photograph frames; picture frames of precious metal; mirror frames; picture hangers, not of metal; embroidery frames; hand-held mirrors, being toilet mirrors; toilet mirrors; display stands; display cases for merchandise; furniture for displaying goods; display cases; jewellery organizer displays; newspaper display stands; fair stands, being display stands; mannequins; life-size forms of the human body to display clothes; costume display stands; costume stands; coat hangers; covers for clothing, being wardrobe; clothes rods; garment covers, being storage; clothes hooks, not of metal; cradles; infant beds; sleeping mats for use by children; mats for infant playpens; baby bolsters; head support cushions for babies; baby changing tables; wall-mounted diaper, being napkin, changing platforms; baby changing mats; high chairs for babies; booster seats; baby bouncers, being seats; portable baby bath seats for use in bath tubs; infant walkers; playpens for babies; baby gates; furniture, namely, safety gates of metal for babies, children, and pets; furniture, namely, safety gates, not of metal, for babies, children, and pets; crib bumpers; chests for toys; containers, not of metal, for commercial use, namely industrial packaging containers of rubber, of paper, of textile, commercial garbage containers, commercial beverage containers, commercial thermal insulated containers for food and beverages; floating containers, not of metal, namely refrigerated shipping containers; boxes of wood or plastic; caskets; non-metal furniture chests; hampers [baskets], namely laundry hampers, food hampers; non-metal baskets, namely bread baskets, waste paper baskets, sewing baskets, picnic baskets, gift baskets sold empty, flower baskets; packaging containers of plastic; party ornaments of plastic, namely plastic party decorations; holiday ornaments of plastic, other than tree ornaments, namely Christmas ornaments, birthday ornaments; gift package decorations made of plastic sold as a whole and containing Christmas decorations, and party decorations; figures of bone, ivory, plaster, plastic, wax and wood; figurines, being statuettes, of bone and ivory; figurines, being statuettes, of wood, wax, plaster and plastic; decorative window finials; statuettes of resin; desktop statuary made of bone, ivory, plaster, plastic, wax and wood; statues of bone, ivory, plaster, plastic, wax and wood; busts of wood, wax, plaster and plastic; busts of bone and ivory; sculptures of bone, ivory, plaster, plastic, wax and wood; works of art of wood, wax, plaster and plastic, namely statues, statuettes, figurines, sculptures; woven timber blinds, being furniture; slatted indoor blinds; indoor blinds of textile; interior textile window blinds; paper blinds; furniture, namely, indoor window blinds, being shades; blinds of reed, rattan or bamboo, being sudare; curtain hooks; curtain tie-backs; door handles, not of metal; furniture handles, not of metal; drawer pulls of plastics, wood, cork, reed, cane, wicker, horn, ivory, whalebone, shell, amber, mother-of-pearl, meerscham and of substitutes for all these materials, namely resins; door knobs, not of metal; door knockers, not of metal; door fittings, not of metal; bag closures, not of metal; closures for containers, not of metal, nor of plastic; non-metallic

stoppers, namely bottle stoppers, cork and cork imitations stoppers, glass stoppers, rubber stoppers for industrial packaging containers; bottle caps, not of metal; corks for bottles; playhouses for pets; kennels for household pets; dog kennels; pet crates; pet cushions; non-electric ventilating fans for personal use; cabinet work; name badges of plastic; clear plastic holders for badges; display boards; placards of wood or plastics; signboards of wood or plastics; rings, not of metal, for keys; towel dispensers, fixed, not of metal; drawer dividers; pedestals, namely lavatory and sink pedestals; flower-pot pedestals; plant stands; plant hangers, not of metal; brush mountings; non-metal trays, namely paper trays, desk trays, letter trays, serving trays, meal trays, crumb trays, pen trays.

30

(3) Coffee; caffeine-free coffee; espresso; instant coffee; roasted coffee beans; unroasted green coffee; herbal teas, other than for medicinal use; 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; chocolate; chocolate products, namely 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 jellies; candy; cotton candy; confectionery for decorating Christmas trees; sugar; honey; royal jelly; cooking salt; 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, being pastry; candy mints; breakfast cereals; ready-to-eat cereals; cereals, processed; oat flakes; corn flakes; muesli; rusks; cereal bars; flapjacks, being oat bars; muesli bars; candy bars; high-protein cereal bars; cereal-based snack food; rice-based snack food; snack mixes consisting of crackers, pretzels or popped popcorn; pretzels; popcorn; grain-based chips; tortillas; nachos, being tortilla chips; rice; tapioca; sago; flour; sandwiches; bread rolls; sandwiches, namely, hot dogs, hamburgers; bread; pizzas; focaccia bread; quiches; crackers; pasta; pastry; maple syrup; chocolate syrups; topping syrups; chocolate toppings; chocolate chips; chocolate-based fillings for cakes and pies; cake frosting; chocolate powder; candy decorations for cakes; dressings for salad; vinegar; balsamic vinegar; soya sauce; pasta sauce; pesto sauce; seasonings, namely, peppers, saffron; turmeric; spices, namely, curry, cinnamon, ginger; nutmegs; vanilla, being flavouring; capers; mustard sauce; sauces, being condiments, namely, apple sauce, gravy sauce, meat gravies, pizza sauce, spaghetti sauce, cheese sauce, fish sauce, barbecue sauce, chili sauce, ketchup sauce, pepper sauce, pasta sauce, mayonnaise.


32

(4) Table waters; beverages, namely, mineral water; aerated water; still water; flavoured mineral water; energy drinks; isotonic beverages; sports drinks; non-alcoholic beverages, namely cocoa-based beverages, coffee-based beverages, fruit juice beverages, honey-based beverages, milk beverages containing fruits, tea-based beverages, fruit-flavored beverages, chocolate-based beverages, non-dairy soy beverages; carbonated beverages, non-alcoholic; colas, being soft drinks; lemonades; soda water; tonic water; low calorie soft drinks; non-alcoholic beverages flavoured with tea; coffee-flavoured soft drinks; non-alcoholic fruit juice beverages; fruit-based


soft drinks flavoured with tea; fruit-flavoured soft drinks; non-alcoholic beverages containing fruit juices; smoothies; fruit smoothies; vegetable smoothies; fruit nectars, non-alcoholic; fruit juices; aloe vera juices; sherbets, being beverages; aperitifs, non-alcoholic; cocktails, non-alcoholic; beer-based cocktails; beer-based beverages; low-alcohol beer; de-alcoholised beer; non-alcoholic wine; rosolio, being non-alcoholic beverages; syrups for beverages; non-alcoholic fruit extracts; essences for making beverages; preparations for making aerated water; preparations for making mineral water.

SCHEDULE B

Particulars of the Opponent's Marks

<u>Trademark</u>	<u>Registration No. / Application No.</u>	<u>Registration Date (Filing Date)</u>	<u>Goods</u>
	<p>TMA637,677</p> <p>App. No. 1,195,514</p>	<p>2005-04-19</p> <p>(2003-11-07)</p>	<p>(1) Carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs.</p> <p>(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>MONSTER ENERGY</p>	<p>TMA690,588</p> <p>App. No. 1,203,689</p>	<p>2007-06-21</p> <p>(2004-01-20)</p>	<p>(1) Beverages, namely non-alcoholic, non-carbonated fruit juice drinks having a juice content of 50 percent or less by volume that are shelf-stable; carbonated soft drinks; carbonated drinks enhanced with vitamins, minerals, nutrients, amino acids and/or herbs; carbonated and non-carbonated sports drinks; non-carbonated teas; and water; all of the foregoing wares excluding perishable beverages containing fruit juice or soy, whether such products are pasteurized or not.</p>
<p>MONSTER ASSAULT</p>	<p>TMA936,039</p> <p>App. No. 1,628,035</p>	<p>2016-04-26</p> <p>(2013-05-24)</p>	<p>(1) Nutritional supplements in liquid form, namely energy drinks; non-alcoholic beverages, namely carbonated soft drinks; carbonated and noncarbonated soft drinks, energy drinks, sports drinks, and fruit juice drinks, all enhanced with vitamins, minerals, nutrients, amino acids and/or herbs; all the foregoing goods exclude perishable</p>

			beverage products that contain fruit juice or soy, whether such products are pasteurized or not.
MONSTER ENERGY ULTRA BLUE	TMA942,178 App. No. 1,633,340	2016-06-30 (2013-07-02)	(1) Nutritional supplements in liquid form, namely energy drinks; non-alcoholic beverages, namely energy drinks, soft drinks, sports drinks, all enhanced with vitamins, minerals, nutrients, amino acids and/or herbs; all the foregoing goods exclude perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not.
MONSTER ENERGY ULTRA RED	TMA940,751 App. No. 1,631,556	2016-06-13 (2013-06-18)	(1) Nutritional supplements in liquid form, namely energy drinks; non-alcoholic beverages, namely energy drinks, soft drinks, sports drinks, all enhanced with vitamins, minerals, nutrients, amino acids and/or herbs; all the foregoing goods exclude perishable beverage products that contain fruit juice or soy, whether such products are pasteurized or not.
MONSTER ENERGY ULTRA BLACK	TMA983,986 App. No. 1,701,677	2017-10-31 (2014-11-07)	(1) Nutritional supplements in liquid form, namely, nutritional supplement drinks containing vitamins, minerals, proteins, nutrients, amino acids, or herbs; nutritional supplements in liquid form, namely, energy drinks; non-alcoholic beverages, namely energy drinks, energy drinks flavoured with juice, fruit-flavored drinks, soft drinks, sports drinks, and drinks enhanced with vitamins, minerals, nutrients, amino acids or herbs.
MONSTER ENERGY ULTRA CITRON	TMA982,896 App. No. 1,699,946	2017-10-16 (2014-10-28)	(1) Nutritional supplements in liquid form, namely, nutritional supplement drinks containing vitamins, minerals, proteins, nutrients, amino acids, or herbs; nutritional supplements in liquid form, namely, energy drinks. Non-alcoholic beverages,

			namely energy drinks, energy drinks flavoured with juice, fruit-flavored drinks, soft drinks, sports drinks, and drinks enhanced with vitamins, minerals, nutrients, amino acids or herbs.
	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.
MONSTER ENERGY ULTRA GREEN	App. No. 1,699,951	Abandoned on 2019-05-22 (2014-10-28)	(1) Nutritional supplements in liquid form, namely, nutritional supplement drinks containing vitamins, minerals, proteins, nutrients, amino acids, or herbs; nutritional supplements in liquid form, namely, energy drinks. Non-alcoholic beverages, namely energy drinks, energy drinks flavoured with juice, fruit-flavored drinks, soft drinks, sports drinks, and drinks enhanced with vitamins, minerals, nutrients, amino acids or herbs.

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

HEARING DATE 2020-12-08

APPEARANCES

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