

O P I C



C I P O

LE REGISTRAIRE DES MARQUES DE COMMERCE
THE REGISTRAR OF TRADEMARKS

Citation: 2022 TMOB 002

Date of Decision: 2022-01-14

IN THE MATTER OF AN OPPOSITION

Slazengers Limited

Opponent

and

Arctic Cat Inc.

Applicant

1,366,432 for FLYING CAT Design

Application

INTRODUCTION

[1] Slazengers Limited (the Opponent) opposes registration of the trademark FLYING CAT Design (the Mark), which is the subject of application No. 1,366,432 by Arctic Cat Inc. (the Applicant). The Mark is shown below:



[2] As set out in Schedule A below, the Mark is applied for in association with a variety of vehicle-related goods. The Mark is applied for on the basis of use in Canada since at least as early as February 28, 2007 on goods (1), use in Canada since at least as early as February 28, 2006 on goods (2), and use and registration in the United States on goods (3).

[3] The opposition is primarily based on an allegation that the Mark is confusing with the Opponent's Panther design trademarks, previously registered in Canada in association with the same or related goods.

THE RECORD

[4] The application for the Mark was filed on October 4, 2007.

[5] The application was advertised for opposition purposes on September 16, 2015. Numerous amendments to the *Trademarks Act*, RSC 1985, c T-13 (the Act) came into force on June 17, 2019. Pursuant to section 70 of the Act, the grounds of opposition will be assessed based on the Act as it read immediately before June 17, 2019, an exception being that, with respect to confusion, sections 6(2) to (4) of the Act as it currently reads will be applied.

[6] On February 16, 2016, the Opponent opposed the application by filing a statement of opposition under section 38 of the Act. The grounds of opposition are based on non-compliance with section 30 of the Act; non-registrability under section 12(1)(d) of the Act; non-entitlement under section 16 of the Act; and non-distinctiveness under section 2 of the Act.


[7] The Applicant filed a counter statement denying the grounds of opposition.

[8] In support of its opposition, the Opponent submitted certified copies of three Canadian trademark registrations owned by the Opponent. The Applicant did not submit evidence. Neither party submitted written representations. An oral hearing was not held.

[9] Before assessing the grounds of opposition, I will first provide an overview of the Opponent's evidence, the evidential burden on the Opponent, and the legal onus on the Applicant.

OVERVIEW OF THE OPPONENT'S EVIDENCE

[10] The Opponent is the owner of the following three trademark registrations in Canada (collectively, the Opponent's Panther Trademarks):

Registration	Trademark	Goods
TMA544347 PANTHER DEVICE		See Schedule B

TMA773568 SLAZENGER & Black Panther Design		See Schedule C
TMA782635 Black Panther Design		See Schedule D

EVIDENTIAL BURDEN AND LEGAL ONUS

[11] In accordance with the usual rules of evidence, there is an evidential burden on the Opponent to prove the facts inherent in its allegations pleaded in the statement of opposition [*John Labatt Ltd v Molson Companies Ltd*, 1990 CarswellNat 1053 (FCTD)]. The presence of an evidential burden on the Opponent with respect to a particular issue means that in order for the issue to be considered at all, there must be sufficient evidence from which it could reasonably be concluded that the facts alleged to support that issue exist.

[12] For those allegations for which the Opponent has met its evidential burden, the legal onus is on the Applicant to show that the application does not contravene the provisions of the Act as alleged in the statement of opposition. The presence of a legal onus on an applicant means that, if a determinate conclusion cannot be reached once all the evidence has been considered, then the issue must be decided against it.

12(1)(D) GROUND OF OPPOSITION – CONFUSION WITH A REGISTERED TRADEMARK

[13] The Opponent pleads that the Mark is not registrable because it is confusing with the Opponent’s Panther Trademarks.

[14] The material date with respect to confusion with a registered trademark is the date of this decision [*Park Avenue Furniture Corporation v Wickes/Simmons Bedding Ltd*, 37 CPR (3d) 413 (FCA)]. As the Opponent’s Panther Trademarks are extant on the register, the Opponent meets its initial burden with respect to each registration.

[15] Accordingly, the Applicant must establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark and any of the Opponent's Panther Trademarks.

[16] In this case, given the overlap in the nature of the parties' goods as discussed below, I consider it sufficient to consider only the Opponent's latter two registrations, being TMA773568 for SLAZENGER & Black Panther Design and TMA782635 for Black Panther Design. I will begin by focusing on TMA782635 for Black Panther Design.

Test to determine confusion

[17] The test to determine the issue of confusion is set out in section 6(2) of the Act which provides 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 associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods are of the same general class or appear in the same class of the Nice Classification.

[18] The test to be applied is a matter of first impression in the mind of a casual consumer "somewhat in a hurry" who sees the Mark in association with the applied-for goods at a time when they have no more than an imperfect recollection of the Opponent's trademark and does not pause to give the matter any detailed consideration or scrutiny [see *Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[19] In making such an assessment, all the relevant surrounding circumstances must be considered, including those listed in section 6(5) of the Act: the inherent distinctiveness of the trademarks and the extent to which they have become known; the length of time the trademarks have been in use; the nature of the goods, services or business; the nature of the trade; and the degree of resemblance between the trademarks in appearance, or sound or in the ideas suggested by them.

[20] The criteria or factors in section 6(5) of the Act are not exhaustive and different weight will be given to each in a context-specific assessment [*Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22 at para 54]. In *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, the Supreme

Court of Canada stated that section 6(5)(e), the resemblance between the trademarks, will often have the greatest effect on the confusion analysis [at para 49] and that, while the first word in the trademark may be the most important in some cases, the preferable approach is to consider whether there is an aspect of the trademark that is particularly “striking or unique” [at para 66].

[21] Given its importance, I will begin with the degree of resemblance between the parties’ trademarks.

Degree of Resemblance

[22] In this case, I consider there to be a high degree of resemblance between the parties’ trademarks in appearance and in ideas suggested. In this respect, while the “flying cat” constituting the applied-for Mark is arguably more angular, both trademarks feature the profile of a striding black feline. I do not consider the direction in which each feline is facing to significantly diminish this resemblance.

[23] Accordingly, this important factor favours the Opponent.

Inherent Distinctiveness and the Extent Known

[24] Neither party furnished evidence with respect to the use or extent known of their respective trademarks and both trademarks have a similar high degree of inherent distinctiveness with respect to the relevant goods.

[25] Accordingly, I do not consider this factor to significantly favour either party. To the extent the high degree of inherent distinctiveness of each trademark is based on similar designs, as noted above, the degree of resemblance factor strongly favours the Opponent.

Length of Time in Use

[26] While the application for the Mark includes claims of use in Canada dating back to 2006 and 2007 for some of the applied-for goods, there is no evidence of such use. Similarly, there is no evidence of use with respect to the Opponent’s Panther Trademarks.

[27] Accordingly, I do not consider this factor to favour either party.

Nature of the Services or Business / Nature of the Trade

[28] When considering the nature of the goods of the parties in respect of the issue of confusion, it is the statements of goods in the subject application and registration that govern [*Mr Submarine Ltd v Amandista Investments Ltd*, 1987 CarswellNat 749 (FCA); *Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)].

[29] The applied-for goods are all vehicle or vehicle-related goods. I also note that each of the enumerated goods include the following qualifier:

...the aforementioned vehicles, parts and accessories refer to all such vehicles being designed for off-highway use and all such parts being for off-highway vehicles, and excluding typical passenger cars, such as sedans, station wagons, pickup trucks and SUVs.

[30] However, I note the following vehicle-related goods as set out in goods (4) in the Opponent's registration No. TMA782635:

...transporters for use in sporting activities, namely golf carts; golf trolleys; wheeled carriers for golfing use; motorised land vehicles for golf use; tyre inflating machines and apparatus being vehicle accessories; tyre protection chains; air pumps being vehicle accessories; air pumps for bicycles; baskets adapted for cycles; bells for bicycles, cycles; bicycle brakes; chains; frames; handle bars; pumps; tyres; rims; saddles; spokes; stands; carrier tricycles; cranks for cycles; cycle bells; hubs; mudguards; gears for cycles; pedals for cycles; saddle covers for bicycles; wheels for bicycles; ball bearings for automotive use; bicycles and bicycle stands; bicycles; panniers adapted for cycles; motorised surfboards; fittings for bicycles for carrying beverages; luggage carriers and nets for cycles; luggage carriers and nets for vehicles; wheeled luggage carriers; wheels for carrying luggage; luggage carriers for attachment to vehicles; steering wheels; camping trailers; load carrying trailers; tow bars for trailers; couplings for towing trailers; parts and fittings for all the aforesaid goods...

[31] I also note the following vehicle-related goods as set out in goods (2) in the Opponent's registration No. TMA773568 for SLAZENGER & Black Panther Design:

...golf carts; golf trolleys; wheeled carriers for golfing use; motorised land vehicles for golf use; tyre inflating machines and vehicle accessories namely, tyre protection chains, air pumps namely, air pumps for bicycles; baskets adapted for cycles; bells for bicycles, cycles; bicycles; panniers adapted for cycles; motorised surfboards; transporters for use in sporting activities namely, go carts, golf caddies, motorized vehicles namely, go-carts,

bicycle trailers (riyakah), child carrying trailers for use in transporting children while hiking, jogging, walking, skiing, snow shoeing or skating...

[32] While the nature of these vehicle-related goods may differ somewhat from the applied-for goods, as the Opponent has met its initial burden under this ground, the onus is on the Applicant. In the absence of evidence or even representations from the Applicant, at a minimum, I accept that there is potential for overlap in the nature of the parties' goods, businesses, and channels of trade to some extent.

[33] Accordingly, I consider these factors to favour the Opponent.

Conclusion – Confusion with the Opponent's Black Panther Design

[34] As mentioned above, the degree of resemblance between the parties' trademarks is the statutory factor that is often likely to have the greatest effect in deciding the issue of confusion.

[35] Having considered all of the surrounding circumstances, I find that the Applicant has not met its legal burden with respect to the likelihood of confusion between the parties' trademarks. I reach this conclusion due to the high degree of resemblance between the parties' trademarks and the potential overlap in the nature of the parties' goods, businesses and trades.

[36] In view of the foregoing, the section 12(1)(d) ground of opposition based on confusion with the Opponent's registration No. TMA782635 is successful.

Conclusion – Confusion with the Opponent's SLAZENGER & Black Panther Design

[37] I reach the same conclusion with respect to confusion with the Opponent's registration No. TMA773568 for SLAZENGER & Black Panther Design.

[38] In this respect, while the Opponent's trademark includes the additional SLAZENGER word element, there remains a high degree of resemblance between the striking elements of the parties' trademarks, being the striding black feline design.

[39] Having considered all of the surrounding circumstances, I find that the Applicant has not met its legal burden with respect to the likelihood of confusion between the parties' trademarks.

I reach this conclusion due to the high degree of resemblance between the parties' trademarks and the potential overlap in the nature of the parties' goods, businesses and trades.

[40] In view of the foregoing, the ground of opposition based on confusion with the Opponent's registration No. TMA773568 is also successful.

[41] As the Opponent is successful with respect to two of its registrations, I do not consider it necessary to address the remaining registration, TMA544347 for PANTHER DEVICE.

REMAINING GROUNDS OF OPPOSITION

[42] The remaining grounds of opposition as set out in the statement of opposition (based on sections 30(b), 30(d), 30(i), 16(1)(a), 16(1)(b), 16(2)(a), 16(2)(b) and 2 of the Act) required evidence in support of such pleadings for the Opponent to meet its initial evidential burden; such evidence was not submitted in this case.

[43] As the Opponent has not met its initial burden with respect to each of the remaining grounds, all of the grounds based on sections 2, 16 and 30 of the Act are rejected.

DISPOSITION

[44] In view of all of the foregoing, pursuant to section 38(12) of the Act and the authority delegated to me under section 63(3) of the Act, I refuse the application.

Andrew Bene
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

Statement of Goods for Application No. 1,366,432

(1) Power sport vehicles, namely, all-terrain vehicles and snowmobiles; power sport vehicle structural parts, namely, grill, towing hitch, trailers, tires and wheels, bumpers, grab bars, arms, axles, clutch, frame guards, fuel system primarily comprised of fuel lines for vehicles and also containing throttle bodies, fuel injectors, and fuel tanks for land vehicles, sold as a unit, steering bars, tie rods, cardan shafts; ATV body parts, namely, body panels, skid plates, side guards, cab kits primarily consisting of windshields, doors, roof, and rear panels, handguards, fender boxes, power sport vehicle engine, tires, rear independent suspension parts, namely, suspension arms, shocks, and springs, and structural parts therefor, cargo carriers for power sport vehicles, windshields, tool holders and baskets specially adapted for power sport vehicles, automotive cargo racks, auxiliary seat backs; exhaust pipes for land vehicles, air filters for vehicles engines, snow plow blades for vehicles, winches for use with power sport vehicles and land vehicles, winch kits primarily consisting of parts for winches, namely, clutches, brakes, cables, and fairleads; ATV fuel filters; power sport vehicle accessories specially adapted for use with power sport vehicles, namely, automotive cargo rack for holding bags, cargo carriers, namely, cargo basket mounts, vehicle bed wall extenders; side-by-side multi-purpose land vehicles; side-by-side multi-purpose structural land vehicle parts, namely, grill, towing hitch, trailers, tires and wheels, bumpers, grab bars, arms, axles, clutch, frame guards, fuel system primarily comprised of fuel lines for vehicles and also containing throttle bodies, fuel injectors, and fuel tanks for land vehicles, sold as a unit, steering bars, tie rods and shafts, engine, tires, rear independent suspension parts, namely, suspension arms, shocks, and springs, and structural parts therefor, cargo carriers for vehicles, windshields, cargo carriers for vehicles, namely, tool holders and baskets specially adapted for side-by-side land vehicles, automotive cargo racks, auxiliary seat backs; winches for use with side-by-side land vehicles; side-by-side multipurpose land vehicle structural parts and accessories specially adapted for use with side-by-side land vehicles, namely, automotive cargo rack for carrying bags, automotive cargo carriers, namely, cargo basket mounts, bed wall extenders; the aforementioned vehicles, parts and accessories refer to all such vehicles being designed for off-highway use and all such parts being for off-highway vehicles, and excluding typical passenger cars, such as sedans, station wagons, pickup trucks and SUVs

(2) Snowmobiles; snowmobile structural parts, namely, towing hitch, trailers, bumpers, arms, axles, clutch, fuel system primarily comprised of fuel lines for vehicles and also containing throttle bodies, fuel injectors, and fuel tanks for land vehicles, sold as a unit, steering bars, tie rods, and shafts, engine, windshields, tool holders and baskets specially adapted for snowmobiles, automotive cargo racks, snowmobile wheel suspensions, namely, front and rear wheel suspension systems comprised primarily of wheel suspension and structural parts therefor; winches for use with snowmobiles; snowmobile exhaust pipes; snowmobile structural accessories and parts specially adapted for use with snowmobiles, namely, hand guard mounts, tank pads, windscreens, flyscreens, windshields, ski handles, handlebar grips, handlebar covers, ski saddles, belly pans, grip plates, hood covers, skid plates, hood screens, wear strips, skid wheels, recoil handles, snowflaps, windshield-mounted rearview mirrors, hood-mounted rearview mirrors, cargo sleds for transport purposes, cargo sled covers for cargo sleds for transport purpose and snowmobile runner kits primarily consisting of wearbars and also

containing nuts and carbides, automotive cargo racks, gear cradles, utility bars, cargo carriers for vehicles, namely, bucket holders, light bars, wearbars, runners, caddies, jack stands, sled lifts, shop dollies; the aforementioned vehicles, parts and accessories refer to all such vehicles being designed for off-highway use and all such parts being for off-highway vehicles, and excluding typical passenger cars, such as sedans, station wagons, pickup trucks and SUVs

(3) Power sport vehicles, namely, all-terrain vehicles and snowmobiles; power sport vehicle structural parts, namely, grill, towing hitch, trailers, tires and wheels, bumpers, grab bars, arms, axles, clutch, frame guards, fuel system primarily comprised of fuel lines for vehicles and also containing throttle bodies, fuel injectors, and fuel tanks for land vehicles, sold as a unit, steering bars, tie rods, cardan shafts; ATV body parts, namely, body panels, skid plates, side guards, cab kits primarily consisting of windshields, doors, roof, and rear panels, handguards, fender boxes, power sport vehicle engine, tires, rear independent suspension parts, namely, suspension arms, shocks, and springs, and structural parts therefor, cargo carriers for power sport vehicles, windshields, tool holders and baskets specially adapted for power sport vehicles, automotive cargo racks, auxiliary seat backs; exhaust pipes for land vehicles, air filters for vehicles engines, snow plow blades for vehicles, winches for use with power sport vehicles and land vehicles, winch kits primarily consisting of parts for winches, namely, clutches, brakes, cables, and fairleads; ATV fuel filters; power sport vehicle accessories specially adapted for use with power sport vehicles, namely, automotive cargo rack for holding bags, cargo carriers, namely, cargo basket mounts, vehicle bed wall extenders; side-by-side multi-purpose land vehicles; side-by-side multi-purpose structural land vehicle parts, namely, grill, towing hitch, trailers, tires and wheels, bumpers, grab bars, arms, axles, clutch, frame guards, fuel system primarily comprised of fuel lines for vehicles and also containing throttle bodies, fuel injectors, and fuel tanks for land vehicles, sold as a unit, steering bars, tie rods and shafts, engine, tires, rear independent suspension parts, namely, suspension arms, shocks, and springs, and structural parts therefor, cargo carriers for vehicles, windshields, cargo carriers for vehicles, namely, tool holders and baskets specially adapted for side-by-side land vehicles, automotive cargo racks, auxiliary seat backs; winches for use with side-by-side land vehicles; side-by-side multipurpose land vehicle structural parts and accessories specially adapted for use with side-by-side land vehicles, namely, automotive cargo rack for carrying bags, automotive cargo carriers, namely, cargo basket mounts, bed wall extenders; the aforementioned vehicles, parts and accessories refer to all such vehicles being designed for off-highway use and all such parts being for off-highway vehicles, and excluding typical passenger cars, such as sedans, station wagons, pickup trucks and SUVs; snowmobiles; snowmobile structural parts, namely, towing hitch, trailers, bumpers, arms, axles, clutch, fuel system primarily comprised of fuel lines for vehicles and also containing throttle bodies, fuel injectors, and fuel tanks for land vehicles, sold as a unit, steering bars, tie rods, and shafts, engine, windshields, tool holders and baskets specially adapted for snowmobiles, automotive cargo racks, snowmobile wheel suspensions, namely, front and rear wheel suspension systems comprised primarily of wheel suspension and structural parts therefor; winches for use with snowmobiles; snowmobile exhaust pipes; snowmobile structural accessories and parts specially adapted for use with snowmobiles, namely, hand guard mounts, tank pads, windscreens, flyscreens, windshields, ski handles, handlebar grips, handlebar covers, ski saddles, belly pans, grip plates, hood covers, skid plates, hood screens, wear strips, skid wheels, recoil handles, snowflaps, windshield-mounted rearview mirrors, hood-mounted rearview mirrors, cargo sleds for transport purposes, cargo sled covers for cargo sleds for transport purpose and snowmobile runner kits primarily consisting of wearbars and also

containing nuts and carbides, automotive cargo racks, gear cradles, utility bars, cargo carriers for vehicles, namely, bucket holders, light bars, wearbars, runners, caddies, jack stands, sled lifts, shop dollies; the aforementioned vehicles, parts and accessories refer to all such vehicles being designed for off-highway use and all such parts being for off-highway vehicles, and excluding typical passenger cars, such as sedans, station wagons, pickup trucks and SUVs.

Claims

Used in CANADA since at least as early as February 28, 2007 on goods (1)

Used in CANADA since at least as early as February 28, 2006 on goods (2)

Priority Filing Date: October 03, 2007, Country or Office: UNITED STATES OF AMERICA, Application No. 77/295,648 in association with the same kind of goods (3)

Used in UNITED STATES OF AMERICA on goods (3)

Registered in or for UNITED STATES OF AMERICA on June 10, 2014, under No. 4,545,557 on goods (3)

Schedule B

Statement of Goods for TMA544347 (PANTHER DEVICE)

(1) Cricket bat mallets; abdominal protectors (boxes), jockstraps and box briefs; sports protective wear, namely, shin guards, chest protectors, protective glasses, shoulder pads, elbow pads, protective cups, helmets and protective head gear for cricket and hockey; sunglasses and spectacles, frames and straps; optical spectacles, frames and straps; optical lenses; wrist watches, alarm clocks, table clocks, electric time keepers, electronic time keepers, car clocks, dials, chronometers and stop watches; scorebooks (cricket), pens; adhesive tape for use on cricket bats; travel bags and holdalls; golf seat stick umbrellas; umbrellas; souvenir cricket bats and field hockey sticks; keyrings; towels; ladies' and girls' sportswear, namely sports skirts, tops, sweaters, pullovers, cardigans, shirts, jackets, dresses, shorts, hats, caps, visors for tennis and golf, gloves, socks, sweatbands, sports shoes, sweatshirts, tracksuits, and jogging suits; mens' and boys' sportswear, namely sports tops, sweaters, pullovers, shirts, cardigans, jackets, shorts, trousers, sweatshirts, hats, caps, visors for tennis and golf, gloves, socks, sweatbands, sports shoes, tracksuits and jogging suits; tennis and golf balls; tennis, racquetball, badminton and squash rackets; tennis, squash, golf and badminton head covers; tennis, badminton and squash strings; field hockey sticks, golf clubs, golf bags and bags adapted for carrying sporting articles, golf carts and golf gloves; table tennis bats, table tennis balls, field hockey balls, field hockey and soccer shin guards; shuttlecocks; cricket bats, cricket balls, cricket stumps, cricket bails, cricket bags, cricket pads, cricket batting gloves, wicketkeeping gloves and glove liners, cricket bat and golf club grips, cricket bat grip applicators.

Claims

Declaration of Use filed April 06, 2001

Schedule C

Statement of Goods for TMA773568 (SLAZENGER & Black Panther Design)

(1) Racket sports hardware and accessories (tennis, squash and badminton) namely, tennis balls, squash balls and shuttlecocks; cricket equipment, namely, bats, balls, pads, gloves, stumps, helmets, bags; clothing namely, shirts, t-shirts, blouses, pants, shorts, skirts, dresses, jackets, vests, coats, pyjamas, underwear; field hockey equipment, namely, sticks, pads, gloves, helmets, bags; golf balls.

(2) Non-medicated toilet preparations for the cleansing of the skin, body, hands and feet namely, soaps, shower and bath gel; cosmetics namely, foundation make-up, powder, blush, rouge, lipstick, lip liner, eye shadow, eye liner, mascara; essential oils for personal use; hair care preparations, shampoo; aftershave, perfume, eau de cologne and toilet water; preparations for the cleansing of the skin, body, hands and feet; deodorants and anti perspirants for use on the person; talcum powder; dentifrices; first aid kits; cold creams for the treatment of sporting injuries; vitamin, mineral and protein preparations and substances, namely, capsules, lozenges and powders; non-alcoholic vitamin drinks; power bars, meal replacement bars and powders and energy drinks; sunglasses, spectacles; spectacle frames, lenses, chains, and cords; golf carts; golf trolleys; wheeled carriers for golfing use; motorised land vehicles for golf use; tyre inflating machines and vehicle accessories namely, tyre protection chains, air pumps namely, air pumps for bicycles; baskets adapted for cycles; bells for bicycles, cycles; bicycles; panniers adapted for cycles; motorised surfboards; transporters for use in sporting activities namely, go carts, golf caddies, motorized vehicles namely, go-carts, bicycle trailers (riyakah), child carrying trailers for use in transporting children while hiking, jogging, walking, skiing, snow shoeing or skating, precious metals and their alloys and goods in precious metals or coated therewith namely, bracelets of precious metal, busts of precious metal, commemorative statuary cups made of precious metal, fancy keyrings of precious metals, key chains of precious metal, key holders of precious metals, key rings of precious metal, ornaments of precious metal, precious metal trophies, precious metal trophy columns, jewellery; horological and chronometric instruments namely, clocks, watches, sport watches; medals, badges of precious metals; cuff links, tie clips and pins; parts and fittings for all the aforesaid goods; writing paper, cardboard boxes; printed matter namely, books and magazines in the fields of sport, health and fitness; photographs; stationery and office requisites namely, writing instruments, namely, felt writing pens, pens, fountain pens, pencils, mechanical pencils, markers, crayons, highlighters, periodicals, magazines, postcards, posters, stickers, graphic reproductions; instructional and teaching materials (other than apparatus) namely, manuals; playing cards; leather and imitations of leather and goods made of these materials namely, skins and hides, luggage, cases, trunks, travelling bags, travelling cases, carry-all luggage, overnight luggage, bags for travel accessories, shoe bags for travel and garment bags; briefcases, document cases and portfolios; school bags and school satchels; umbrellas, parasols and walking sticks; bags namely, holdalls and rucksacks; sports bags; wallets, key cases, purses and pouches; golf umbrellas; golf umbrella seats; parts and fittings for the aforesaid goods; textiles and textile goods namely, bed and table linen; towels, flannels and face towels; clothing namely, coats, sports clothing, jackets, anoraks, pullovers, trousers, shirts, t-shirts, cagoules, smock and salopettes, gloves, socks, underwear and gaiters; footwear namely, sports shoes, trainers, boots, walking boots, football boots, shoes, cycling shoes; headgear namely, hats, caps, visors, bandannas, toques, balaclavas; parts and

fittings for all the aforesaid goods; preparations for use as dietetic additives for consumption by sports persons; mineral and aerated waters and other non-alcoholic drinks, namely, preparations for making fruit drinks, energy drinks, guarana drinks, isotonic drinks, non-carbonated soft drinks, sports drinks; preparations in the form of powder for making into drinks; spring water (beverages), other than for medical purposes.

Claims

Used in CANADA since at least as early as 1978 on goods (1)

Used in UNITED KINGDOM on goods (2)

Registered in or for UNITED KINGDOM on November 24, 2006, under No. 2.403.283 on goods (2)

Schedule D

Statement of Goods for TMA782635 (Black Panther Design)

(1) Racket sports hardware and accessories (tennis, squash and badminton) namely tennis balls, squash balls and shuttlecocks; cricket equipment, namely, bats, balls, pads, gloves, stumps, helmets, bags, clothing, namely shirts, t-shirts, blouses, pants, shorts, skirts, dresses, jackets, vests, coats, pyjamas, underwear; field hockey equipment, namely, sticks, pads, gloves, helmets, bags; golf balls.

(2) Non-medicated toilet preparations, namely soaps, shower and bath gel; cosmetics, namely foundation makeup, powder, blush, rouge, lipstick, lip liner, eye shadow, eye liner, mascara; essential oils for personal use; hair care preparations, shampoo; aftershave, perfume, eau de cologne and toilet water; preparations for the cleansing of the skin, body, hands and feet; deodorants and anti perspirants for use on the person; talcum powder; dentifrices; apparatus for cooking namely gas and electric cookers, barbecues, stoves, parts and fittings for all the aforesaid goods.

(3) Telecommunication installations, apparatus and instruments, namely telephone networks; telephone apparatus, namely telephones, mobile telephones, cordless telephones; telephone answering apparatus and instruments, namely telephone answering machines and voice mail; paging apparatus, namely pagers; apparatus for recording, transmission or reproduction of sound or images, photographic apparatus and instruments namely cameras, camera film, video cameras, camera lenses, camcorders, television apparatus and instruments, namely televisions, televisions for receiving satellite broadcasting; satellites and decoders, television aerials; antennas; transformers; surge protectors; video apparatus and instruments, namely video recording machines; video disc players; combined televisions and VCR; remote control apparatus, namely remote controls for televisions, audio, video and stereo equipment; audio apparatus and audio systems; namely tuners, automatic playback machines, radio receivers, radio cassettes, CD radio cassettes, CD players, personal CD players, tape recorders, tape players, cassette decks, turntables, record players, graphic equalizers, headphones, speakers, loud speakers, earphone speakers, speaker cables, amplifiers; portable audio apparatus and instruments namely optical disc players/recorders and pre-recorded discs therefor, MP3 players, radios, clock radios; karaoke machines, juke boxes; computers, lap-top and notebook computers, game computers, namely keyboards, mice, mouse pads; apparatus for use with computers, namely printers; computer terminals; visual display units; computer hardware; computer software in the field of sport, health and fitness; computer programs in the field of sport health and fitness; disc drives; CD Roms, namely blank CD Roms, CD Roms in the field of sport, health and fitness; computer games; tapes, discs and floppy discs, all recorded with computer programs in the field of sport, health and fitness; video games; discs and tapes all for video games; games adapted for use with television receivers; audio and video tapes and discs, all in pre-recorded form, in the field of sport, health and fitness; blank tapes for recording audio and video; compact discs; sound recordings; phonograph records, cassettes and discs; blank tapes for tape recorders; digital audio tapes; head cleaning tapes; electronic games; cabinets and stands all adapted for audio, video and television apparatus and instruments; electrical apparatus and instruments, all for office use namely word processors, photocopiers, facsimile processing machines; calculating machines, namely calculators and adding machines; office machines namely scales; clocks and timers;

controllers and keypads all for heating, ventilation, air conditioning, lighting and security; containers for microscope slides; magnets; encoded cards and magnetic encoders for use with security access systems; holograms; magnifying glasses; pedometers; periscopes; batteries, battery chargers, battery boxes; plugs; electric irons; electrolysis apparatus for personal use; electric hair curling apparatus; hair waving apparatus; hair styling apparatus namely electric steam curling sets; electrically heated haircurlers; binoculars; eyewear, namely spectacles, sunglasses, sports goggles, swimming goggles; frames and lenses for spectacles and sunglasses; cases for spectacles and sunglasses; chains and cords for spectacles and sunglasses; protective clothing and accessories, namely knee pads, shields and protectors; elbow pads, shields and protectors; helmets; protective helmets; sports helmets and visors; protective glasses, sunglasses and goggles; protective clothing, headgear and footwear for use in sport; face shields; abdominal guards; mouth protectors (gum shields); life belts, jackets and buoys; floats for bathing and swimming; clothing for protection against accidents, radiation and fire; divers' apparatus, namely ear plugs; filters for respiratory masks; parts, fittings and components for all the aforesaid goods; horological and chromatic instruments, namely clocks and watches, sports watches; watch straps; mugs; tankards; trophies, belt buckles, all being of precious metal or coated therewith; jewellery and imitation jewellery; time keeping instruments, namely alarm clocks; ashtrays of precious metal; badges of precious metal; boxes; boxes of precious metal; boxes of precious metal for needles; bracelets; medals, badges of precious metals; candle rings of precious metal; candlesticks of precious metal; cases for clock and watch-making; cases for watches; chains of precious metal; clock cases; clock hands; coffee pots non electric, household containers, household containers all of precious metal, namely storage containers; household utensils of precious metal, namely tongs; imitation gold; jewel cases of precious metal; key rings; kitchen containers of precious metal namely food storage containers; kitchen utensils of precious metal, namely spoons, forks and knives; rings being jewellery; saucers of precious metal; cufflinks, tie clips, tie pins; watch bands; wrist watches; ornaments of precious metals, namely figurines; trinkets, namely decorative boxes; parts, fittings and components for all the aforesaid goods; printed matter, namely books; graphic reproductions, namely pictures, posters, prints, printed cards, postcards, photographs; writing implements, namely ball pens, felt pens; nib pens, mechanical pencils; stationery namely greeting cards; glues; binders, binder materials, namely sleeves; albums, toilet tissues, toilet paper, rolls of paper, all for use in the kitchen; serviettes, towels and wipes; napkins and table cloths; placemats; paper tableware, address books, binder note books, clear books, loose leaf books, note books, spiral note books, stock books, word note books, book ends, paint brushes, calendars, diaries, photograph holders, instructional and teaching materials (other than apparatus) namely manuals; sign pens, pen stands, pencil stands, photo stands; stickers; tapes; periodicals, magazines, newspapers; transfers and decalcomanias, pen trays, pencil trays, manuals, wrappers; towels of paper; table liners of paper, face towels of paper; hygienic paper, handkerchiefs, writing paper; catalogues, brochures and leaflets; coasters; wrapping and packing materials; typewriting apparatus and instruments, namely typewriters; cheque book holders; parts, fittings and components for all the aforesaid goods; leather and imitations of leather and goods made of these materials, namely skins and hides; luggage, cases, trunks, traveling bags, travelling cases, carry-on luggage, overnight luggage, bags for travel accessories, shoe bags for travel and garment bags; briefcases, document cases and portfolios; school bags and school satchels; bags, holdalls, haversacks, backpacks, rucksacks, knapsacks, handbags, shoulder bags, clutch bags, tote bags, sports bags, athletic bags, beach bags, shopping bags, cycle bags, pannier bags, record bags, belt bags, toilet bags; hip pouches; belts; wallets,

purses, pouches and key cases; baby and child carriers; camping bags; frames for handbags, umbrellas or parasols; fastenings and straps of leather; key fobs made of leather incorporating key rings; card holders; umbrellas, golf umbrellas, golf umbrella seats, parasols, canes and walking sticks; whips, harnesses and saddlery; parts and fittings for the aforesaid goods; textile articles, textiles, namely textile wall hangings; linen and upholstery fabrics; bed linen, bed covers, bed clothes, bed spreads, quilt covers, duvet covers, sheets, pillow cases, pillow covers, quilts, duvets, eiderdowns, sleeping bags, rugs; bath linen, towels, flannels, face towels, shower curtains; table linen, table covers, table clothes, table mats, table napkins, napkins, coasters; kitchen towels, tea towels; curtains, curtain tie backs, textile curtain pelmets, blinds; cushion covers, furniture coverings; handkerchiefs; upholstery fabrics; parts, fittings and components for all the aforesaid goods; clothing; sportswear, namely coats; sports clothing; jackets, anoraks, pullovers, trousers, shirts, T-shirts, cagoules, smock and salopettes; gloves, socks, underwear and gaiters; footwear, namely sports shoes, trainers, boots, walking boots, football boots, shoes, cycling shoes; headgear, namely hats, caps, visors, bandanas, toques, balaclavas; waterproof and weatherproof clothing; thermal clothing; lightweight clothing namely jackets, coats, vests, pants, shirts; parts and fittings for all the aforesaid goods; sporting articles for use in boxing, gymnastics, indoor and field athletics, and for use in playing the games of badminton, squash, grass and ice hockey, football, lacrosse, fives, table tennis, netball, bowls, lawn tennis, cricket, croquet, clock golf, quoits, discs and putting golf and water polo balls; sporting articles for use in boxing, namely gloves, helmets, pads, punching bags; sporting articles for use in gymnastics, namely bands, rings, ropes, bars, hurdles; sporting articles for use in indoor and field athletics, namely javelins, hurdles, discus, hammers all for use in sport, sporting articles for use in playing the games of badminton, squash and table tennis, namely racquets, presses, strings, balls, shuttlecocks, paddles and nets, sporting articles for use in playing the games of grass and ice hockey, namely pucks, sticks, boots, skates, pads, shinguards; sporting articles for use in playing the games of football and lacross, namely pins, balls, sticks, nets, goal posts; toys, games, playthings, namely soft toys, action figures, boardgames, puzzles, balloons; novelties, souvenirs, namely pennants, flags, figurines; Christmas decorations; sports bags; electronic games; computer games; decorations for Christmas trees; miniature figurines, artificial Christmas trees and Christmas tree stands; kaleidoscopes; parts, fittings and components for all the aforesaid goods.

(4) Kits containing medical preparations, namely filled first aid boxes and medical kits; cold creams for the treatment of sporting injuries; naturopathic and homeopathic preparations and substances; antiseptic preparations; analgesics; vitamin, mineral and protein preparations and substances, namely capsules, lozenges and powders, power bars, meal replacement bars and powders for energy drinks; mineral drinks; waters (beverages) for medical purposes; vitamin drinks; drinks predominantly of minerals or vitamins; bandages and dressings; disinfectants for hygiene purposes; transporters for use in sporting activities, namely golf carts; golf trolleys; wheeled carriers for golfing use; motorised land vehicles for golf use; tyre inflating machines and apparatus being vehicle accessories; tyre protection chains; air pumps being vehicle accessories; air pumps for bicycles; baskets adapted for cycles; bells for bicycles, cycles; bicycle brakes; chains; frames; handle bars; pumps; tyres; rims; saddles; spokes; stands; carrier tricycles; cranks for cycles; cycle bells; hubs; mudguards; gears for cycles; pedals for cycles; saddle covers for bicycles; wheels for bicycles; ball bearings for automotive use; bicycles and bicycle stands; bicycles; panniers adapted for cycles; motorised surfboards; fittings for bicycles for carrying beverages; luggage carriers and nets for cycles; luggage carriers and nets for vehicles; wheeled

luggage carriers; wheels for carrying luggage; luggage carriers for attachment to vehicles; steering wheels; camping trailers; load carrying trailers; tow bars for trailers; couplings for towing trailers; parts and fittings for all the aforesaid goods; popcorn; husked oats; oat flakes; oat based food, namely cereals, breads and bars; muesli; cereal preparations, namely corn flakes, corn flour; corn meal, maize flakes, maize flour, maize meal, flour milling products, namely stones; gluten for food, potato flour for food; soya flour; biscuits; malt biscuits; petit-beurre biscuits; cookies; edible decorations for cakes; cakes; tarts; petit fours; macaroons; bread, leaven ginger bread, bread rolls, buns, pastry, pastries, waffles, pancakes, pizzas, pastilles; chocolate; chocolate based beverages, chocolate beverages with milk, cocoa, cocoa based beverages, coffee beverages with milk, coffee flavourings, confectionery, namely fondants, confectionery for decorating Christmas trees, almond confectionery, peanut confectionery; sugar confectionery, stick liquorice, liquorice, lozenges, candy caramels, candy for food, maltose, gum sweets, pralines, peppermint sweets; sugar, natural sweeteners, spices, allspice, curry, ginger, cinnamon, cloves, seasonings, condiments, salt, cooking salt, celery salt, salt for preserving foodstuffs, pepper, seasoning peppers, mustard, aniseed, saffron, vanilla substitute, vanillin, almond paste, essences for foodstuffs, namely flavoured vanilla and nut flavoured extracts; starch for food, ice cream, edible ices, ice sherbets, ice sorbets, ice for refreshment, natural or artificial ice, glucose for food, golden syrup, honey, sago, semolina, tapioca for food, turmeric for food, preparations for stiffening whipped cream, yeast, pies, meat pies, pate, farinaceous foods, farinaceous foods pastes, groats for human food, puddings, sandwiches, sauces, namely ketchup, non-medicinal infusions, namely herbal teas; vinegar, beer vinegar, salad dressings, mayonnaise; non-medicated additives for beverages, namely artificial flavourings and sweeteners; aerated beverages with a coffee, cocoa or chocolate base; beverages containing soya; beverages made from cereals; flavourings (other than essential oils) for beverages; protein, fruit and milk based powder for making non-alcoholic beverages; whiteners (non-dairy) for beverages; tea beverages; instant powder for making flavoured non-alcoholic drinks; corn starch derivatives in powder form for making into non-alcoholic drinks; preparations for use as dietetic additives for consumption by sports persons, namely proteins and electrolytes; soft drinks; beers; mineral and aerated waters; non-alcoholic drinks; fruit based drinks; fruit drinks, namely non-alcoholic fruit based drinks and fruit juices; syrups and other preparations, namely powders for making non-alcoholic beverages; shandy, de-alcoholised drinks, non-alcoholic beers and wines; syrups for beverages; sorbets (beverages); non-alcoholic fruit extracts; powders for effervescing non-alcoholic beverages; preparations in the form of powder for making into non-alcoholic drinks; spring water (beverages), other than for medical purposes; seltzers (beverages).

Claims

Used in CANADA since at least as early as 1978 on goods (1)

Used in UNITED KINGDOM on goods (2), (3), (4)

Registered in or for UNITED KINGDOM on April 15, 2005, under No. 2375461 on goods (3)

Registered in or for UNITED KINGDOM on August 12, 2005, under No. 2380107 on goods (4)

Registered in or for UNITED KINGDOM on March 31, 2006, under No. 2403281 on goods (2)

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

HEARING DATE: No hearing held

AGENTS OF RECORD

Bereskin & Parr LLP/S.E.N.C.R.L., s.r.l.

For the Opponent

Marie Capewell

For the Applicant