



LE REGISTRAIRE DES MARQUES DE COMMERCE  
THE REGISTRAR OF TRADEMARKS

**Citation: 2022 TMOB 188**

**Date of Decision: 2022-09-27**

**IN THE MATTER OF AN OPPOSITION**

**EnTechneVision Inc.**

**Opponent**

**and**

**Disney Enterprises, Inc.**

**Applicant**

**1,574,925 for THE JUNGLE BOOK**

**Application**

INTRODUCTION

[1] Disney Enterprises, Inc. (the Applicant) has filed application No. 1,574,925 (the Application) to register the trademark THE JUNGLE BOOK (the Mark). The filing date of the Application is April 25, 2012.

[2] The Application is in association with the goods and services set out in Schedule A to this decision, and is based on proposed use of the Mark in Canada as well as use and registration of the Mark in the European Union.

[3] The Application was advertised for opposition purposes in the *Trademarks Journal* on March 27, 2019. On August 21, 2019, EnTechneVision Inc. (the Opponent) filed a statement of opposition against the Application pursuant to section 38 of the *Trademarks Act*, RSC 1985, c T-13 (the Act). I note that the Act was amended on June 17, 2019, and pursuant to section 70 of the

Act, the grounds of opposition in this proceeding will be assessed based on the Act as it read prior to June 17, 2019.

[4] The Opponent raises grounds of opposition based on registrability under section 12(1)(d), entitlement under section 16(3)(a), distinctiveness under section 2, and non-compliance with sections 30(d) and (e) of the Act. For the grounds of opposition that are based on an alleged likelihood of confusion, the Opponent relies on its registered trademark JUNGLE BOOK (TMA807,353).

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

[6] The Opponent's evidence is comprised solely of a certified copy of its registration No. TMA807,353. The Opponent's registration covers the services set out in Schedule B to this decision. The Applicant did not file any evidence.

[7] Only the Applicant filed written representations and no hearing was held.

[8] For the reasons that follow, the Application is refused in part.

#### ONUS

[9] The legal onus is on the Applicant to show that the Application complies with the provisions of the Act. However, there is an initial evidential burden on the Opponent to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once this initial burden is met, the Applicant must satisfy the Registrar, on a balance of probabilities, that the grounds of opposition pleaded should not prevent the registration of the Mark [*John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD) at 298; *Dion Neckwear Ltd v Christian Dior, SA* (2002), 20 CPR (4th) 155 (FCA)].

## GROUND OF OPPOSITION SUMMARILY REJECTED

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

[10] The Opponent pleads that the Application does not comply with section 30(d) of the Act because the Applicant had not used the Mark in the European Union as of the Application filing date. The Opponent pleads that the Application does not comply with section 30(e) of the Act because, while the Application is based in part on proposed use of the Mark in Canada, the Opponent alleges that the Mark was used by the Applicant in Canada prior to the filing date.

[11] There is no evidence of record speaking to the sections 30(d) and (e) grounds of opposition. Accordingly, the Opponent has not met its initial evidential burden and these grounds of opposition are rejected.

### **Section 16(3)(a) and Section 2 Grounds of Opposition**

[12] For its grounds of opposition under sections 16(3)(a) and 2, the Opponent relies on alleged prior use of its trademark JUNGLE BOOK which is the subject of registration No. TMA807,353. However, the Opponent did not file any evidence of use of its trademark. Consequently, there is no evidence on which it can rely for the purposes of its sections 16(3)(a) and section 2 grounds of opposition. While the Opponent filed a certified copy of its registration, a certified copy alone only permits the Registrar to assume, at most, *de minimis* use of an opponent's trademark [see *Entre Computer Centers Inc v Global Upholstery Co* (1991), 40 CPR (3d) 427 (TMOB)] and is not sufficient to meet an opponent's evidential burden for a section 16(3)(a) or section 2 ground of opposition [see *1772887 Ontario Ltd v Bell Canada*, 2012 TMOB 41 at paras 36-38 and 44-45].

[13] Therefore, the section 16(3)(a) and section 2 grounds of opposition are rejected.

### SECTION 12(1)(D) GROUND OF OPPOSITION

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

[15] The Opponent pleads that the Mark is not registrable because it is confusing with the Opponent's registered trademark JUNGLE BOOK. I have exercised my discretion to check the Register and confirm that registration No. TMA807,353 remains extant [see *Quaker Oats Co Ltd of Canada v Menu Foods Ltd* (1986), 11 CPR (3d) 410 (TMOB) (*Quaker Oats*)]. The Opponent has therefore met its initial evidential burden with respect to this ground of opposition, and the Applicant bears the legal burden of demonstrating on a balance of probabilities that there is no likelihood of confusion between the Mark and the Opponent's registered trademark.

[16] I note that the Opponent's registration was the subject of a proceeding under section 45 of the Act (initiated by the same firm that represents the Applicant in this proceeding) which resulted in a decision of the Registrar to amend the statement of goods and services in the Opponent's registration to those services set out in Schedule B to this decision [see *Andrews Robichaud v Entechnevision Inc*, 2017 TMOB 110, 150 CPR (4th) 448].

#### Test for confusion

[17] The test for 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 likely lead to the inference that the goods and services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods and services are of the same general class or appear in the same class of the Nice Classification. In making such an assessment, I must take into consideration all the relevant surrounding circumstances, including those listed in section 6(5) of the Act: (a) the inherent distinctiveness of the trademarks and the extent to which they have become known; (b) the length of time the trademarks have 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 trademarks in appearance, or sound or in the ideas suggested by them.

[18] These criteria are not exhaustive and different weight will be given to each one in a context specific assessment [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23, 49 CPR (4th) 401; *Mattel, Inc v 3894207 Canada Inc*, 2006 SCC 22, [2006] 1 SCR 772 at para 54]. I also refer to *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27, 92 CPR (4th) 361 at

para 49, where the Supreme Court of Canada states that section 6(5)(e), the resemblance between the marks, will often have the greatest effect on the confusion analysis.

[19] The test for confusion is assessed as a matter of first impression in the mind of a casual consumer somewhat in a hurry who sees the applicant's mark, at a time when they have no more than an imperfect recollection of the opponent's trademark, and do not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot, supra*, at para 20].

*Degree of resemblance*

[20] The parties' trademarks are identical but for the article "THE" in the Applicant's Mark. The degree of resemblance factor obviously favours the Opponent.

*Inherent distinctiveness of the trademarks and the extent to which they have become known*

[21] This factor involves a consideration of both the inherent and acquired distinctiveness of the parties' respective trademarks.

[22] I consider the Opponent's trademark JUNGLE BOOK to have at least some inherent distinctiveness, though it is on the low end of the spectrum of inherent distinctiveness because it is suggestive of the Opponent's services having a "jungle" theme. I similarly consider the Applicant's Mark to have at least some inherent distinctiveness.

[23] Neither party filed any evidence to suggest that their trademarks are known at all.

[24] Given that the trademarks are essentially identical and neither party filed evidence that their trademark has become known in Canada, in this case, I consider this factor to be effectively neutral and to favour neither party.

*Length of time the trademarks have been in use*

[25] Neither party filed any evidence in this proceeding of use of their trademarks. I do not consider the certified copy of the registration filed by the Opponent to speak in any meaningful

way to the duration of use of its trademark [see *1772887 Ontario Ltd v Bell Canada*, 2012 TMOB 41 at para 22]. Therefore, this factor does not significantly favour either party.

*Nature of the goods, services or business; and the nature of the trade*

[26] Given that the parties' trademarks are essentially identical, and given that neither party filed any evidence of use of, or reputation in, the trademarks, the confusion analysis in this case turns primarily on nature of the parties' goods, services and likely channels of trade.

[27] When considering the nature of the goods and services, it is the statement of goods and services in the parties' application and registration that govern the analysis [*Miss Universe Inc v Bohna* (1994), 58 CPR (3d) 381 (FCA)]. Those statements must be read with a view to determining the probable type of business or trade intended by the parties rather than all possible trades that might be encompassed by the wording. In this regard, evidence of the actual trades of the parties can be useful, particularly where there is an ambiguity as to the goods or services covered in the application or registration at issue [*McDonald's Corp v Coffee Hut Stores Ltd* (1996), 68 CPR (3d) 168 (FCA); *Procter & Gamble Inc v Hunter Packaging Ltd* (1999), 2 CPR (4th) 266 (TMOB)]. However, I note that in the present case I have no evidence from either party, and no submissions from the Opponent regarding the nature of any alleged overlap between the parties' goods, services or channels of trade.

[28] The list of services in the Opponent's registration is set out in Schedule B to this decision, and since it is relatively brief it is reproduced again for reference, below:

(1) Entertainment services, namely, providing entertainment in the field of interactive games by means of a global computer network; providing a website featuring games, stories, and educational materials and interactive educational activities for the primary and secondary levels. (2) Computer services namely providing a web site on global computer network whereon users can play interactive games; providing access to on-line interactive computer game programs in the field of action and adventures.

[29] While I have no evidence or submissions from the Opponent regarding the nature of its services or channels of trade, it appears from the above descriptions that the Opponent's services focus on the provision of computer-based games and educational materials for the primary and secondary levels accessible via computer.

[30] The list of goods and services in the Application is extensive. In my view, it is apparent that the vast majority of goods and services in the Application do not overlap with, or otherwise relate to, the services in the Opponent's registration. By way of example, the Application includes numerous personal care goods such as "After-shave lotions; antiperspirants", stationery items such as "Address books", and food and beverage products including "Cheese" and "Bagels", none of which are related to the services in the Opponent's registration. For such items, the section 6(5)(c) and (d) factors favour the Applicant.

[31] However, there are a limited number of goods in the Application which, in my view, appear to be sufficiently close in nature or related to the services in the Opponent's registration, such that the section 6(5)(c) and (d) factors favour the Opponent. These goods are as follows: "Action skill games", "manipulative games, namely, action target games, arcade games" and "target games". In particular, these descriptions appear to be broad enough to encompass games which are provided via computer, similar to those identified in the Opponent's registration. In the absence of evidence from either party to the contrary, the description of these goods in the Application suggests a potential for overlap with the services in the Opponent's registration.

*Surrounding circumstance – findings during examination*

[32] At paragraphs 42 to 47 of its written submissions, the Applicant argues that the fact that the Application was examined and approved for advertisement supports the Applicant's position that there is no likelihood of confusion. For example, at paragraph 42, the Applicant submits that "the Registrar has already inherently agreed with this assessment when they approved the subject application for advertisement after conducting its own search of the trademarks register." Further, at paragraph 44, the Applicant submits that "While the Registrar is not inherently bound by the decision to approve an application for registration, it is submitted that it would be an unjust and prejudicial precedent for the Registrar to reverse a determination made in Examination, when the Opponent [h]as provided the Registrar no evidence or arguments to justify a reconsideration of the Registrar's previous decision."

[33] As acknowledged by the Applicant, the Registrar in an opposition proceeding is not bound by the earlier decision to approve an application for advertisement. As discussed above, once an opponent meets its initial evidential burden in an opposition proceeding, the legal burden

then lies on the applicant to convince the Registrar on a balance of probabilities that the trademark is registrable. In this respect, it is possible for an opponent to succeed in an opposition proceeding under section 12(1)(d) by relying solely on its registration without additional evidence [for example, see *Quaker Oats, supra*; see also *GlaxoSmithKline Inc v Scar Heal, Inc*, 2014 TMOB 45]; an outcome that would be impossible if the Registrar in an opposition proceeding was bound by the prior decision to approve the application for advertisement.

[34] In view of the above, I do not consider the approval of the Application for advertisement to be a surrounding circumstance which assists the Applicant in this case.

#### Conclusion regarding the Section 12(1)(d) ground

[35] Having considered all of the surrounding circumstances, the Applicant has not satisfied its legal burden to show that there is no likelihood of confusion between the parties' trademarks in respect of the goods "Action skill games", "manipulative games, namely, action target games, arcade games" and "target games". In my view, taking all of the relevant factors into account, these goods are too closely related to the services in the Opponent's registration no. TMA807,353.

[36] However, the Applicant has satisfied its legal burden to show that there is no reasonable likelihood of confusion between the parties' trademarks for the remaining goods and services in the Application. In particular, I am satisfied that the remaining goods and services are sufficiently different from the services in the Opponent's registration such that confusion is unlikely.

[37] Consequently, the section 12(1)(d) ground of opposition succeeds in respect of the goods "Action skill games", "manipulative games, namely, action target games, arcade games" and "target games" but fails in respect of the remainder of the goods and services.

#### DISPOSITION

[38] In view of the above, pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the Application with respect to the goods "Action skill games", "manipulative games, namely, action target games, arcade games" and "target games", and I reject the



opposition with respect to the remainder of the goods and services pursuant to section 38(12) of the Act.

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Timothy Stevenson  
Member  
Trademarks Opposition Board  
Canadian Intellectual Property Office

## SCHEDULE A

### **Application No. 1,574,925 (THE JUNGLE BOOK)**

#### **Goods:**

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

(2) Audio discs, audio recordings, audio and video recordings, musical recordings and video recordings in the form of pre-recorded compact discs, CD-ROMs, DVDs, digital versatile discs, digital video discs, optical discs and magneto-optical discs all featuring music, motion picture films, and television shows; audio speakers; binoculars; calculators; camcorders; cameras; CD-ROM drives as part of the computer; CD-ROM writers as part of the computer; cellular telephones; cellular telephone accessories, namely, headphones, head sets, adapters and batteries for cellular telephones; cellular telephone cases; computer chips containing musical recordings; face plates for cellular telephones; compact disc players; compact disc recorders; computers; computer hardware; computer keyboards; computer monitors; computer mouse; computer disc drives; cordless telephones; decorative magnets; digital cameras; DVD players; DVD recorders; optical and magneto-optical disc players and recorders for audio, video and computer data; electrical and optical cables; electronic personal organizers; eyeglass cases; eyeglasses; graduated rulers for office and stationery; headphones; karaoke machines; microphones; MP3 players; modems as part of a computer; mouse pads; pagers; personal stereos; personal digital assistants; computer printers; radios; sunglasses; telephones; television sets; video cameras; video cassette recorders; video cassette players; video cassettes videophones; walkie-talkies; wrist and arm rests for use with computers.

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

(4) Address books; almanacs; appointment books; art prints; paints for arts and crafts; autograph books; baby books; ball point pens; baseball cards; stationery binders; bookends; bookmarks; books; bumper stickers; calendars; cartoon strips; crayons; Christmas cards; chalk; chalk boards; children's activity books; coasters made of paper; coin albums; coloring books; coloring pages; color pencils; comic books; comic strips; coupon books; decals; decorative paper centerpieces; diaries; disposable diapers for babies; drawing rulers; dry erase writing boards; envelopes; rubber erasers; felt pens; flash cards; gift cards; gift wrapping paper; globes; greeting cards; guest

books; magazines; maps; felt tip markers; memo pads; modeling clay; newsletters; newspapers; note paper; notebooks; notebook paper; paintings; paper flags; paper party favors; paper party hats; paper cake decorations; paper party decorations; paper napkins; paper party bags; paperweights; paper gift wrap bows; paper pennants; paper place mats; paper table cloths; plastic table linens; plastic party bags; pen and pencil holders; pencils; pencil sharpeners; pen and pencil cases and boxes; pens; periodicals; photograph albums; photographs; pictorial prints; picture books; plastic materials for packaging, namely, plastic bags; portraits; postcards; posters; printed awards; printed certificates; printed invitations; printed menus; recipe books; rubber document stamps; sandwich bags; score cards; stamp albums; writing stationery; staplers; stickers; trading cards; ungraduated rulers; writing paper; writing implements

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

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

(7) Barbecue mitts; beverage glassware; bird houses; bowls; brooms; cake pans; cake molds; cake servers; candle holders not of precious metal; candle snuffers; canteens; ceramic figurines; drink coasters not of paper and not being table linen; collapsible boxes for of cardboard and plastic household use; cookie jars; cookie cutters; cork screws; cups; curtain rods; decorating bags for confectioners; decorative crystal prisms; decorative glass; decorative plates; dishes; figurines made of china, crystal, earthenware, glass, and porcelain; flower pots; hair brushes; hair combs; heat-insulated containers for food and beverages; insulating sleeve holders for beverage containers; lunch boxes; mugs; napkin holders; napkin rings not of precious metals; oven mitts; paper cups; paper plates; pie pans; pie servers; plastic cups; plastic water bottles; plates; soap dishes; tea kettles; tea sets; thermal insulated containers for food and beverage; toothbrushes; trays, namely, ice cube molds, meal trays, letter trays, paint trays, paper trays, pen and pencil trays and serving trays; trivets; vacuum bottles; waste baskets

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

(9) Bandanas; beach cover-ups; beachwear; belts; bibs; bikinis; blazers; bow ties; bras; chaps;

cloth bibs; coats; dresses; ear muffs; footwear, namely, shoes, athletic shoes, slippers, boots and sandals; gloves; golf shirts; Halloween costumes; head bands; head wear, namely, baseball caps, caps with visors, stocking caps, toques, peak caps, hats, soft bucket hats, brimmed hats, golf hats and flop hats; hosiery; infantwear; jackets; jeans; jerseys; kerchiefs; leotards; leg warmers; mittens; neckties; night shirts; night gowns; overalls; pajamas; pants; panty hose; polo shirts; ponchos; rainwear; robes; scarves; shirts; skirts; shorts; slacks; sleepwear; socks; stockings; sweaters; sweat pants; sweat shirts; swimsuits; tank tops; tights; t-shirts; underwear; vests; wrist bands

(10) Action skill games; action figures and accessories therefor; board games; card games; children's multiple activity toys; badminton sets; balloons; baseball bats; basketballs; bath toys; baseballs; beach balls; bean bags; bean bag dolls; building blocks; bowling balls; bubble making wands and solution sets; catcher's mitts; chess sets; children's play cosmetics; Christmas stockings; Christmas tree decorations; collectable toy figures; crib mobiles; crib toys; disc toss toys; dolls; doll clothing; doll accessories; doll playsets; electric action toys; fishing tackle, namely, fishing hooks, fishing knives, fishing lines, fishing lures, fishing reels and fishing rods; ; golf balls; golf gloves; golf ball markers; hockey pucks; inflatable toys; jigsaw puzzles; jump ropes; kites; kits for learning magic tricks; marbles; manipulative games, namely, action target games, arcade games; mechanical toys; music box toys; musical toys; parlor games; party favors in the nature of small toys; party games; playing cards; plush toys; punching balls; puppets; roller skates; rubber balls; skateboards; snowboards; snow globes; soccer balls; spinning tops; squeeze toys; stuffed toys; table tennis tables; target games; teddy bears; tennis balls; toy action figures; toy bucket and shovel sets; toy mobiles; toy vehicles; toy scooters; toy cars; toy model kits; toy figures; toy banks; toy trucks; toy watches; water squirting toys; wind-up toys; return tops

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

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

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

**Services:**

(1) Production, presentation, distribution, and rental of motion picture films; production, presentation, distribution, and rental of television and radio programs; production, presentation, distribution, and rental of sound and video recordings, namely, comedic, dramatic and musical performances; production of entertainment shows, entertainment information shows, and interactive programs, namely, movies, television shows, and music for distribution via television, cable, satellite, audio and video media, cartridges, laser discs, computer discs and electronic means, namely, digital audio and video files; production and provision of comedic, dramatic, interactive and musical entertainment, news, and information regarding the Applicant's wares and services via communication and computer networks, namely, the internet; amusement park and theme park services, namely, operation of an amusement park; entertainment in the form of live stage shows, namely, comedic, dramatic and musical performances; presentation of live performances, namely, comedic, dramatic and musical performances; theater productions; entertainer services, namely, live appearances by a professional comedic, dramatic and musical entertainers

SCHEDULE B

**Opponent's registration No. TMA807,353 (JUNGLE BOOK)**

- (1) Entertainment services, namely, providing entertainment in the field of interactive games by means of a global computer network; providing a website featuring games, stories, and educational materials and interactive educational activities for the primary and secondary levels.
- (2) Computer services namely providing a web site on global computer network whereon users can play interactive games; providing access to on-line interactive computer game programs in the field of action and adventures.

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

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**HEARING DATE** No Hearing Held

**AGENTS OF RECORD**

Ridout & Maybee LLP

For the Opponent

Andrews Robichaud

For the Applicant