



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2023 TMOB 087

Date of Decision: 2023-05-29

IN THE MATTER OF AN OPPOSITION

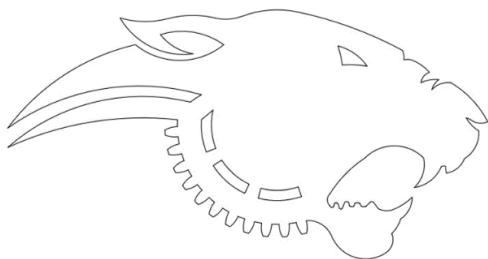
Opponent: Jaguar Land Rover Limited

Applicant: Mécanique de performance Panthera Motorsports Inc.

Application: 1,870,658 for PANTHERA Logo

OVERVIEW

[1] Jaguar Land Rover Limited (the Opponent) opposes registration of the trademark PANTHERA Logo (the Mark), which is the subject of application No. 1,870,658 (the Application), standing in the name Mécanique de performance Panthera Motorsports Inc. (the Applicant). The Mark is reproduced below:



[2] The Application, as revised by the Applicant on May 28, 2021, with leave of the Registrar granted on June 2, 2021, relies on the dual bases of use of the Mark in Canada in association with the below goods (1), (3), (4) and (5) since at least as early as the below claimed dates of first use, and proposed use with the below goods (2) and (6) (collectively, the Goods):

(1) Motorcycle and off-road all terrain motor vehicle engines parts and fittings thereof, excluding sport utility vehicle, light truck and automobile engines and parts and fittings thereof.

(2) Protective face-shields for protective motorcycle and off-road all terrain motor vehicle helmets, motorcycle and off-road all terrain motor vehicle protective equipment, namely, helmets, protective supports for shoulders and elbows, excluding protective face-shields for protective helmets and protective equipment for sport utility vehicles, light trucks and automobiles.

(3) Motorcycle and off-road all terrain motor vehicle engines; engines for land vehicles, excluding sport utility vehicle, light truck and automobile engines and parts and fittings thereof; Motorcycles; off-road all terrain motor vehicles, excluding sport utility vehicles, light trucks and automobiles.

(4) Stickers.

(5) Casual clothing, baseball caps.

(6) Sports clothing, motorcycle clothing, namely, pants, shirts, sweatshirts, jackets, vests, chaps, gloves and riding boots.

Used in Canada since at least as early as December 2015 with goods (1), (3) and (4).

Used in Canada since at least as early as December 2016 with goods (5).

[3] The main issue in this proceeding is whether there is a likelihood of confusion between the Mark and one or more of the Opponent's design marks reproduced below, and other design marks referred to by the Opponent as the LEAPER Device and JAGUAR & LEAPER Device trademarks (collectively, the LEAPER Marks) and the GROWLER trademarks (the GROWLER Marks), the full particular of which are set out in Schedule A attached hereto to my decision (collectively, the Opponent's Trademarks):



[4] For the reasons that follow, the opposition succeeds.

THE RECORD

[5] The Application was filed on November 30, 2017 and advertised for opposition purposes in the *Trademarks Journal* on March 27, 2019.

[6] On November 27, 2019, the Opponent filed a statement of opposition under 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.

[7] The grounds of opposition raised by the Opponent are based on non-registrability of the Mark under section 12(1)(d) of the Act; non-entitlement of the Applicant under sections 16(1)(a), 16(1)(b), 16(3)(a), and 16(3)(b) of the Act; non-distinctiveness of the Mark under section 2 of the Act; and non-compliance of the Application with sections 30(a), 30(b), 30(e), and 30(i) of the Act. In this regard, I note that the Opponent did not amend its statement of opposition following the revised Application filed by the Applicant, in which the numbering of the Goods was changed. As such, the statement of opposition does not reflect the Goods and their category numbers as they stand in the revised Application. For the purpose of this decision, all references to the Goods and their category numbers will be consistent with the revised Application, notwithstanding the Opponent's reference to the Application's initial list of goods.

[8] On April 2, 2020, the Applicant filed and served a counter statement denying the grounds of opposition.

[9] In support of its opposition, the Opponent filed the affidavits of Gianfranco G. Mitrione, Corporate Counsel for Jaguar Land Rover North America, LLC, an affiliated company of the Opponent, sworn on October 22, 2020 (the Mitrione Affidavit) and Mary P. Noonan, a trademark searcher employed by the Opponent's agents, sworn on August 26, 2020 (the Noonan Affidavit). The Mitrione Affidavit speaks to the issue of use and promotion of the Opponent's Trademarks, while the Noonan Affidavit provides the particulars of the Opponent's Trademarks obtained from the Canadian Intellectual Property Office (CIPO) Trademarks Database.

[10] In support of its Application, the Applicant filed the affidavits of Sébastien Montplaisir, President of the Applicant, sworn on April 26, 2021 (the Montplaisir Affidavit) and Charlène Luc, a paralegal at the firm Canyon IP Inc., sworn on April 23, 2021 (the Luc Affidavit). The Montplaisir Affidavit speaks to the issue of use and promotion of the Mark, while the Luc Affidavit purports to introduce state of the register evidence from CIPO Trademarks Database in respect of design mark applications and registrations related to the Vienna Classification of "Tigers and other large felines" and whose goods are in the Nice Class 12 covering "Vehicles".

[11] None of the parties' affiants were cross-examined on their affidavits.

[12] Only the Applicant submitted written representations. Both parties attended an oral hearing.

EVIDENTIAL BURDEN AND LEGAL ONUS

[13] The Opponent has the initial evidential burden to adduce sufficient admissible evidence from which it could reasonably be concluded that the facts alleged to support each ground of opposition exist. Once that burden is met, the Applicant bears the legal onus of establishing, on a balance of probabilities, that the particular grounds of opposition should not prevent the registration of the Mark [*John Labatt Ltd v Molson Companies Ltd* (1990), 1990 CanLII 11059 (FC), 30 CPR (3d) 293 (FCTD); *Dion Neckwear Ltd v Christian Dior, SA et al*, 2002 FCA 29, 20 CPR (4th) 155].

ANALYSIS

Grounds of opposition summarily rejected: Non-compliance of the Application with section 30 of the Act

Section 30(a) ground – Goods not specified in ordinary commercial terms

[14] The Opponent has pleaded that the Application does not contain a statement in ordinary commercial terms of the specific goods in association with which the Mark is proposed to be used. The Opponent has merely repeated the wording of the Act and has not elaborated further. Even if I were to consider this ground sufficiently pleaded, it would be rejected for the Opponent's failure to meet its evidential burden in respect thereof as none of the Opponent's evidence is directed towards this ground, nor did the Opponent make any concrete argument with respect to this ground.

Section 30(b) ground – No use of the Mark by the Applicant

[15] The Opponent has pleaded that the Applicant did not use the Mark in association with some or all of the goods (1), (3), (4) and (5) as of the claimed dates of first use set out in the Application. There is no concrete argument or evidence of record to support this allegation or put into issue the Applicant's claimed dates of first use. Accordingly, the ground of opposition based on section 30(b) of the Act is also rejected.

Section 30(e) ground – No proposed use of the Mark by the Applicant

[16] The Opponent has pleaded that the Applicant incorrectly made the statement that the Applicant intended to use the Mark as of the Application filing date in respect of some or all of the goods (2) and (6) when in fact the Mark was already in use. Again, there is no concrete argument or evidence of record to support this allegation. Accordingly, the ground of opposition based on section 30(e) of the Act is also rejected.

Section 30(i) ground – The Applicant was aware of the Opponent's Trademarks

[17] The Opponent has pleaded that the Applicant was or should have been aware of each of the Opponent's Trademarks that were filed and/or used earlier than any date of first use of or Application for the Mark by the Applicant, and with which the Mark is confusing.

[18] Section 30(i) of the Act merely requires that an applicant include a statement in its application that it is satisfied that it is entitled to use the trademark in Canada. Where this statement has been provided, a section 30(i) ground should only succeed in exceptional cases, such as where there is evidence of bad faith on the part of the applicant [*Sapodilla Co Ltd v Bristol Myers Co* (1974), 15 CPR (2d) 152 (TMOB)]. 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 its mark [*Woot, Inc v WootRestaurants Inc*, 2012 TMOB 197]. As there is no evidence of bad faith or exceptional circumstances in the present case, this ground of opposition is also rejected.

Section 12(1)(d) Ground – Non-registrability of the Mark

[19] The Opponent has pleaded that the Mark is not registrable because it is confusing with each and all of the registered trademarks comprising the Opponent's Trademarks. I have exercised the Registrar's discretion to confirm whether each of the Opponent's pleaded registrations is in good standing as of today's date, which is the material date for assessing a section 12(1)(d) ground of opposition [*Park Avenue Furniture Corp v Wickers/Simmons Bedding Ltd* (1991), 37 CPR (3d) 413 (FCA)].

[20] As the Opponent has met its evidential burden, the Applicant must therefore establish, on a balance of probabilities, that there is not a reasonable likelihood of confusion between the Mark and any one of the Opponent's pleaded registrations.

[21] In this regard, I stress that the Opponent's pleaded registrations must be reviewed individually and not collectively as a "family of marks" for the purpose of assessing the likelihood of confusion with the Mark. As discussed below, however, evidence of a family of marks is a relevant surrounding circumstance in each case. That said, and unless indicated otherwise, I will focus my analysis on the Opponent's trademark JAGUAR DESIGN of registration Nos. TMA368,410 and TMA347,855 (the Jaguar Design Mark).

The test for confusion

[22] 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 he or she has no more than an imperfect recollection of the opponent's trademark, and does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the marks [*Veuve Clicquot Ponsardin v Boutiques Cliquot Ltée*, 2006 SCC 23 at para 20].

[23] Thus, section 6(2) of the Act does not concern the confusion of the trademarks themselves, but of the goods or services from one source as being from another. In the present case, the question is essentially whether a consumer, with an imperfect recollection of either one of the Opponent's pleaded registrations, who sees the Applicant's Goods in association with the Mark, would think that they are sold or otherwise emanate from or are licensed, approved or sponsored by the Opponent.

[24] In applying the test for confusion, the Registrar must have regard to all the surrounding circumstances, including those listed at 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 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. This list is not exhaustive; all relevant factors are to be considered, and are not necessarily attributed equal weight [see *Mattel, Inc v 3894207 Canada Inc* 2006 SCC 22; *Veuve Clicquot, supra*; and *Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 for a thorough discussion of the general principals that governs the test for confusion].

The inherent distinctiveness of the trademarks and the extent to which they have become known

[25] Both parties' trademarks are inherently distinctive since neither describes any aspect of the parties' goods or services.

[26] The degree of distinctiveness of a trademark may be increased by means of it becoming known through promotion or use.

[27] This brings me to review the parties' evidence on this point.

The Opponent's evidence

The Mitrione Affidavit

[28] The Mitrione Affidavit comprises 42 pages with 25 accompanying exhibits, and covers the history of the Opponent's business throughout the years, including the use of the Opponent's "well-known" business brand JAGUAR and the Opponent's Trademarks. I summarize below only those portions of the Mitrione Affidavit that I consider to be the most pertinent regarding the extent of use and promotion of the Jaguar Design Mark. In this regard, I note that Mr. Mitrione often refers to the LEAPER Marks collectively, and I will do the same in my review of his affidavit.

[29] Mr. Mitrione states that the Opponent is a "globally renowned manufacturer of luxury sedans, sports cars, and sport utility vehicles" and has over 2,700 retailers around the world, including 41 in Canada [para 16; and Exhibit B]. He states that the Opponent's vehicles are "prestigious, highly valued, and known for their quality and design throughout their history" [para 20], thus leading the Opponent to win many awards over the years in relation to its JAGUAR vehicles [paras 32 and 33; and Exhibit H].

[30] Mr. Mitrione states that in addition to being primarily a vehicle manufacturer, the Opponent also provides vehicle parts, maintenance and repair services, accessories, and financial services in the form of vehicle financing, as well as a wide range of non-automotive services and JAGUAR merchandise (such as: clothing and clothing accessories, including polos, jackets, and caps; key rings and key fobs; luggage, including carry-on bags, suit carriers, and briefcases; fragrance; sunglasses; watches; mugs; wallets; notebooks; phone cases; and gifts ranging from cufflinks to letter openers and bottle stoppers to business card cases) [paras 48, 78, and 79; and Exhibits X and Y].

[31] Mr. Mitrione provides worldwide annual revenues of the Opponent from 2012 to 2019 and states that between 2005 and 2019, at least 20, 700 vehicles were sold in Canada, featuring the LEAPER Marks [para 47].

[32] Mr. Mitrione states that the LEAPER Marks have been used extensively by the Opponent's business for nearly 80 years and have come to be recognized by the public as being closely associated with the Opponent and the JAGUAR brand. More particularly, he attests that the LEAPER Marks are featured on many elements of the Opponent's vehicles, including on the rear, steering wheel, on-board multimedia system, and vehicles headrest, and have been used in association with vehicle parts, manufacturing and repair of vehicles and related goods and services, including the above-described JAGUAR merchandise [paras 5, 9, 24 to 31, 76 to 81; and Exhibits E, F, U, X, and Y], as per some of the examples reproduced below:



LEAPER Device featured prominently on the back of JAGUAR vehicles





Prominent use of LEAPER Device on signage outside authorized retailer Coventry North Jaguar, located at 123 Auto Park Circle, Woodbridge, Ontario, Canada



[33] Mr. Mitrione states that the Opponent has consistently recognized the importance of maintaining and increasing the visibility and value of the LEAPER Marks and has invested in advertising across all types of media [para 49]. In Canada, advertising investment from 2012 through 2017 is in excess of \$37,000,000. This advertising includes magazines, newspapers, television, and sponsorships [para 50]. The Opponent’s promotion of its trademarks also includes the Opponent’s internet presence [paras 63 to 67; and Exhibits U and V], social media [para 70]; brochures and guides [paras 71 to 73], participation in Auto Shows around the world including in Canada [paras 61 and 62], and a “long and distinguished connection” with many international motor races, such as the world famous Le Mans 24-hour race, the Monte Carlo Rally and the World Sportscar Championship, the FIA Formula 1 World Championship, and

the FIA Formula E Championships [paras 21 and 52 and 53; and Exhibits L, M, N, O and P]. Mr. Mitrione asserts that the Opponent's participation in Formula 1 has exposed large numbers of consumers to the LEAPER Marks over many years, as per the example reproduced below:



Jaguar Racing Formula 1 vehicle with striking JAGUAR & LEAPER mark on the profile of the air intake.

[34] Mr. Mitrione states that the LEAPER Marks have also had considerable and high-profile exposure to the general public, through numerous television programs/series and films that feature a JAGUAR vehicle, which were broadcast at an international level, including in Canada [paras 35 to 38; and Exhibit I] and brand ambassadors and famous people throughout the world, including for example, Canadian tennis champion Milos Raonic [paras 39 to 44; and Exhibits J and K].

The Applicant's Evidence

The Montplaisir Affidavit

[35] As a preliminary remark, I note that in his affidavit, Mr. Montplaisir often uses the pronoun "I" ["je" in French] when describing the use and promotion made in respect of the Mark. Given Mr. Montplaisir's position and role in the Applicant's business since its inception, I am prepared to accept that it was meant to refer to the Applicant, as opposed to Mr. Montplaisir personally. I summarize below only those portions of the Montplaisir Affidavit that I consider to be the most pertinent regarding the extent of use and promotion of the Mark.

[36] Mr. Montplaisir states that the Applicant is specialized in the design and sale of high-performance engines, parts and electric starters suitable for off-road recreational

vehicles such as dirt bikes, racing cars karting, motocross sidecars, snow bikes, off-road four-wheelers and off-road three-wheelers [para 5; and Exhibits SM-1 and SM-5].

[37] With respect to use of the Mark, Mr. Montplaisir states that it was used in association with “motorcycle and motor vehicle engines parts and fittings, motorcycle and motor vehicle engines; engines for land vehicles; motorcycles; all-terrain vehicles, stickers” since as early as December 2015, and with “casual clothing, baseball caps” since as early as December 2016 [para 7].

[38] Mr. Montplaisir states that the Mark appears on all the goods sold, their packaging, on the invoices, on the Applicant’s social media accounts, and directly on motorcycles used during races when they are equipped with one of the Applicant’s engines [para 8 and; and Exhibit SM-4], as per some of the examples reproduced below:



[39] Mr. Montplaisir states that the Applicant’s Goods can be purchased online or through third-party retailers [paras 9 and 10; and Exhibits SM-5 and SM-6].

[40] Mr. Montplaisir states that the Applicant or a representative of it participated at different local events in the province of Quebec to promote the Mark, all related to racing [paras 11, 12, and 18; and Exhibits SM-7 and SM-13]. The Applicant has also concluded a few promotional/representation contracts with third parties for the promotion of the Applicant’s products via their social media accounts [paras 14 to 17; and Exhibits SM-9 to SM-12].

Conclusion on the first factor

[41] As per my review above of the Mitrione Affidavit, the Opponent's evidence shows extensive use and promotion of the LEAPER Marks in Canada in association mainly with the Opponent's JAGUAR automobiles, with important sales and advertising figures dating back to 2005 and 2012, respectively. Given that Mr. Mitrione asserts that every vehicle sold in Canada depicted at least one of the LEAPER Marks, and that throughout the voluminous evidence filed by the Opponent, the Jaguar Design Mark is indeed featured in most of the exhibited materials, I find reasonable to conclude that the Jaguar Design Mark, if not all of the LEAPER Marks, have become well known in Canada in association mainly with the Opponent's automobiles. Besides, I note that the Applicant itself does not seem to contest the prominence of the LEAPER Marks in the luxury car industry.

[42] Turning to the Applicant, the Applicant has asserted use of the Mark in Canada since 2015 and provided evidence that it promoted the Mark since at least 2018 mainly in local racing events in the province of Quebec. However, in the absence of any sales or advertising figures, the extent of the Applicant's sales and the penetration of the Applicant's advertising efforts remain very much unclear. Therefore, at most, I consider that the extent to which the Mark has become known is very limited and appears to be restricted to people in the racing industry in the province of Quebec.

[43] To sum up, this factor unequivocally favours the Opponent.

The length of time the trademarks have been in use

[44] As noted by the Federal Court of Appeal, "[a] mark that has been in use a long time, versus one newly arrived on the scene, is presumed to have made a certain impression which must be given some weight" [*United Artists Pictures Inc v Pink Panther Beauty Corp*, [1998] 3 FC 534].

[45] Having regard to my review above of the Mitrione and Montplaisir Affidavits, this factor also favours the Opponent.

The nature of the goods, services or business; and the nature of the trade

[46] When considering the nature of the goods, services or business and the nature of the trade, I must compare the Applicant's statement of goods with the statement of goods and services in the registration(s) relied upon by the Opponent [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr Submarine Ltd v Amandista Investments Ltd*, 1987 CanLII 8953, 19 CPR (3d) 3 (FCA)].

[47] The Jaguar Design Mark's registrations cover "Automobiles and parts and fittings therefor" and "Automobile maintenance and repair services" (TMA368,410) and "Spectacles, sunglasses, spectacle frames and parts of these goods; spectacles casings" (TMA347,855). I note that the other relied-upon trademark registrations pleaded by the Opponent also cover vehicle parts, maintenance and repair services, accessories, and financial services in the form of vehicle financing, as well as a wide range of non-automotive services and merchandise. I will return to this point later when considering the additional surrounding circumstance concerning the Opponent's JAGUAR family of trademarks.

[48] The Applicant submits that there are important differences in the nature of the parties' goods and trades and the establishments through which the goods are sold, given that the targeted consumers are different and the Opponent's goods are mostly luxury cars, while the Goods are essentially motorcycles and all terrain vehicles' parts and accessories. In this regard, the Applicant stresses that the Application was amended to expressly restrict the Goods, by excluding sport utility vehicles, light trucks and automobiles. The Applicant further submits that it is impossible for the parties' goods to be sold side by side. With respect, I do not find the Applicant's submissions persuasive.

[49] First, it is not necessary that the parties operate in the same general field or industry or that their respective goods and services be of the same type or quality or be sold side by side for there to be a likelihood of confusion. As stated in section 6(2) of the

Act, confusion may occur “whether or not the goods or services are of the same general class.”

[50] Second, notwithstanding the exclusion added to the statement of Goods, I find there is a certain overlap between the Applicant’s Goods (1) and (3) and the Opponent’s automobiles and parts and fittings therefor in that they all consist of land vehicles and their parts. Likewise, I find there is a remote overlap between the Opponent’s automobiles and parts and fittings therefor and the Goods (2) as these goods of the Applicant relate (or are complementary) to land vehicles. With respect to the Goods (4), (5) and (6), I note that they essentially consist of merchandising items, which are ancillary to the Applicant’s primary Goods (3). As such, I find that there is a remote overlap between these goods and the Opponent’s derivative products covered by registration No. TMA347,855. I will return to this point when considering the Opponent’s JAGUAR family of trademarks.

[51] Third, despite the exclusion contained in the Application with respect to some of the Goods, it is possible the parties’ respective goods could travel through similar channels of trade. As reminded by the Supreme Court in *Masterpiece, supra*, at paragraphs 53 to 59, one must not lose sight of the full scope of the rights conferred by the trademark registration sought by the Applicant. The focus must be on the terms set out in the Application for the Mark and on what “the registration would authorize the [Applicant] to do, not what the [Applicant] happens to be doing at the moment.” While actual use is not irrelevant, “it should not be considered to the exclusion of potential uses within the registration.”

[52] In this regard, and as stressed by the Opponent at the hearing, the Applicant’s Goods could potentially be sold to the same consumers and through similar channels of trade. Indeed, nothing prevents the Applicant from targeting the vehicle luxury market in the future. What is more, nothing prevents the Applicant from assisting or participating in the same or similar international motor racing events as the Opponent’s. As a matter of fact, Exhibit SM-14 attached to the Montplaisir Affidavit, which the affiant describes as a presentation of the Applicant’s business activities and trades that was remitted to

investors expressly states that the Applicant's vision is to [TRANSLATION]: "Push boundaries. Become a world-class motorsport engine manufacturer" [*Repousser les limites. Devenir un motoriste de classe mondiale spécialisé dans le sport motorisé*].

[53] To sum up, I find that the differences between the parties' goods and channels of trade are not as pronounced as the Applicant contends.

The degree of resemblance between the trademarks in appearance or sound or in the ideas suggested by them

[54] The degree of resemblance is often the most significant factor in the confusion analysis. When considering this factor, it is preferable to first consider whether there is an aspect of the trademark that is "particularly striking or unique" [*Masterpiece, supra*, at para 64].

[55] Moreover, as previously mentioned, it is well established in the jurisprudence that likelihood of confusion is a matter of first impression and imperfect recollection. In this regard, "[w]hile the marks must be assessed in their entirety (and not dissected for minute examination), it is still possible to focus on particular features of the mark that may have a determinative influence on the public's perception of it" [*Pink Panther Beauty Corp v United Artists Corp* (1998), 80 CPR (3d) 247 (FCA), at para 34].

[56] Given that the jaguar design element comprising the Jaguar Design Mark and each of the LEAPER Marks is virtually the same, the submissions regarding the degree of resemblance made by both parties (discussed below) apply to all the LEAPER Marks, not only the Jaguar Design Mark.

[57] The Opponent submits that the feline design comprising the LEAPER Marks and the Mark share multiple elements, such as the focused eyes, the similar mouth roaring, the side profile, the tightly hold back ears, the neck of the animal characterized by a pointed trailing end, and the overall attitude of the feline. In this regard, the Opponent stresses that it is not possible to determine the very precise type of feline depicted in the Mark, e.g. whether it is a panther or a jaguar, adding that it is not possible in fact to distinguish a panther from a black jaguar. Moreover, the Opponent submits that the

“gear” element comprising the Mark is only a “tweak” of the design and should not be considered a dominant feature of the Mark.

[58] Conversely, the Applicant submits that its design mark is very different from each of the Opponent’s LEAPER Marks. It submits that diverse elements of its design mark distinguish it from the Opponent’s LEAPER Marks. More particularly, the Applicant describes the feline in the LEAPER Marks as sleek, elongated and slim, while the feline in the Mark has a more rounded face, a gear instead of the neck, and more details in the muzzle and mane. In this regard, the Applicant submits that the type of feline depicted in the Mark is not necessarily a jaguar and that the gear element is a dominant feature of the Mark. With respect, I do not find the Applicant’s submissions persuasive.

[59] In my view, the Applicant’s approach fails to consider the Mark in its entirety, as a matter of first impression. Indeed, I find the Applicant dissects the parties’ marks into their component parts and analyzes their detailed points of dissimilarity. Rather, I agree with the Opponent that the overall impression of the Mark is the same as that of each of the Opponent’s LEAPER Marks given that the felines display the same attitude and that their heads share the same general appearance. As such, I agree with the Opponent that the gear element is not a dominant element of the Mark and does little to distinguish it significantly from the Opponent’s LEAPER Marks.

[60] For the sake of clarity, I shall add in this regard that although the word element JAGUAR comprising each of the JAGUAR & LEAPER Device trademarks is equally dominant with the jaguar design element featured therein, this does not change the overall similarities existing between each of the JAGUAR & LEAPER Device trademarks and the Mark because, as rightly pointed by the Opponent, it is not possible to determine the very precise type of feline depicted in the Mark, e.g. whether it is a panther or a jaguar. That said, and as alluded to by the Opponent at the hearing, this analysis could perhaps have been different had the Mark included the word element PANTHERA.

[61] To sum up, I find that there is a fair degree of resemblance between the Mark and each of the Opponent’s LEAPER Marks.

Additional surrounding circumstances

State of the register

[62] State of the register evidence is only relevant insofar as one can make inferences from it about the state of the marketplace [*Ports International Ltd v Dunlop Ltd*, 1992 CarswellNat 1431 (TMOB); and *Welch Foods Inc v Del Monte Corp*, 1992 CarswellNat 178 (FCTD)]. Inferences regarding the state of the marketplace may be drawn from such evidence only if a large number of relevant trademarks are located [*Kellogg Salada Canada Inc v Maximum Nutrition Ltd* (1992), 43 CPR (3d) 349 (FCA); *McDowell v Laverana GmbH & Co KG*, 2017 FC 327 at paras 41 to 46]. Relevant trademarks include those that (i) are registered or are allowed and based on use; (ii) are for similar goods and services as the marks at issue, and (iii) include the component at issue in a material way [*Sobeys West Inc v Schwan's IP, LLC*, 2015 TMOB 197 at para 38].

[63] The Applicant relies on the evidence from the Luc Affidavit. Attached as Exhibit CL-1 to the Luc Affidavit is the result of a search on CIPO's Trademarks Database, which references a list of 123 trademarks obtained using the search criteria mentioned above at paragraph 10 of my decision. Notably, this exhibit does not provide any information with respect to the owners of the trademark registrations or applications listed therein, nor the very precise goods and/or services covered by these registrations or applications.

[64] At the hearing, both parties referred to that list and indicated, in broad terms, which of these 123 trademarks could potentially be relevant to the present case. The Opponent submitted that out of that list, at most three registrations could be relevant, while the Applicant suggested that 12 registrations were relevant.

[65] Ultimately, I agree with the Opponent that the Luc Affidavit is of no assistance to the Applicant in the present case. First, despite the parties' submissions made at the hearing, I consider the state of the register evidence, as submitted in the Luc Affidavit, to be incomplete because of the lack of information noted above. In this regard, I shall add that it is not for the Registrar to supplement deficiencies in the evidence as

submitted or affirm the accuracy of the registrations and applications listed in the search results as of the material date to assess the present ground of opposition. Second, even if I were to accept that the existence of these three or 12 registrations amount to a surrounding circumstance in the Applicant's favour, I am not prepared to give it significant weight because of the relatively low number of relevant registrations found and the absence of evidence of common use in the marketplace of any of these third-party trademarks.

Family of marks

[66] There can be no presumption of the existence of a family of trademarks in opposition proceedings. A party seeking to establish a family of marks must establish that it is using more than one or two trademarks within the alleged family [see *Techniquip Ltd v Canadian Olympic Assn* (1998), CanLII 7573 (FC); and *Now Communications Inc v CHUM Ltd* (2003), 32 CPR (4th) 168 (TMOB)].

[67] In the present case, although the evidence furnished does not necessarily establish use the LEAPER Device trademarks, the JAGUAR & LEAPER Device trademarks and the GROWLER Marks (discussed below) in association with each and every one of the respective registered goods and services pleaded in the statement of opposition, I am satisfied that the Opponent has demonstrated use and promotion of the three categories of trademarks described in Schedule A, i.e. first the LEAPER Device trademarks, second the JAGUAR & LEAPER Device trademarks and third the GROWLER Marks (or acceptable variations thereof [per *Registrar of Trade Marks v Compagnie Internationale pour l'informatique CII Honeywell Bull*, 4 CPR (3d) 523 (FCA); and *Nightingale Interloc v Prodesign* (1984), 2 CPR (3d) 535 (TMOB)]) in Canada in association with at least, the Opponent's JAGUAR automobiles, as well as a range of merchandise such as clothing, luggage, hats, glasses, and the like, thus making it a family of trademarks. At the hearing, the Opponent has submitted that the Opponent's Trademarks are, in fact, not only associated with the many different products and services of the Opponent, but also with a lifestyle, as demonstrated by the various exhibits regarding the famous people and events associated in different ways with the Opponent's JAGUAR automobiles.

[68] While the Mitrione Affidavit puts emphasis on the LEAPER Marks, the affiant does also refer to the Opponent's long history of use of the GROWLER Marks in Canada and around the world in association with the Opponent's vehicles, vehicle parts, manufacturing and repair of vehicles, and related goods and services.

[69] More particularly, the Mitrione Affidavit does at least demonstrate that, as for the LEAPER Device trademarks and the JAGUAR & LEAPER Device trademarks, the GROWLER Marks are featured on the vehicles (mainly on the front grille) and on JAGUAR merchandise, such as clothing, luggage, keyring, caps, travel flask, power charger, passport holders, wallets, charging cable, scale models, kid toy cars, and travel mug [Exhibits D, F, K, Q, R, T, U, W, and Y], as per some of the examples reproduced below:



GROWLER KEYRING
Keyring with Growler logo and
debossed Jaguar wordmark.
RED / SOJAKR274RDA
BLACK / SOJAKR274BKA
\$40.00



[70] Mr. Mitrione explains that the JAGUAR merchandise is available through the Opponent's authorized retailers in Canada, and may also be purchased through the

Opponent's website for Canada located at <https://www.jaguar.ca/en/branded-goods/index.html> [para 79]. Mr. Mitirione further provides the worldwide sales figures for merchandise sold through retailers and websites, which amounted to over £2,000,000 (CAD \$3,489,356) each year in 2015, 2016, and 2017 [para 80]. Although no breakdown for Canada is provided, I find reasonable to infer, based on a fair reading of the Mitirione Affidavit as a whole, that at least some of the merchandise depicted in the Exhibit Y Lifestyle Collection brochure were sold in Canada.

[71] To sum up, I am prepared to conclude that the Opponent has evidenced the use of a feline branding as depicted in its family of LEAPER Device trademarks, JAGUAR & LEAPER Device trademarks and GROWLER Marks in association with, at least, not only the Opponent's JAGUAR vehicles, but also with a range of derivative products in Canada.

[72] Thus, I consider this to be a relevant surrounding circumstance that favours the Opponent.

No instances of confusion

[73] Both in its written representations and at the hearing, the Applicant has submitted that no instances of confusion have occurred.

[74] An adverse inference concerning the likelihood of confusion may be drawn when evidence of concurrent use of the parties' trademarks is extensive and no evidence of confusion has been given by an opponent [*Christian Dior SA v Dion Neckwear Ltd*, 2002 FCA 29 (CanLII), 2002, 20 CPR (4th) 155 at para 19]. In view of the imprecisions noted above in my review of the Montplaisir Affidavit, I am not convinced that there is evidence of extensive concurrent use in this case insofar as the Applicant's Goods are concerned. Accordingly, I am not prepared to accord significant weight to this surrounding circumstance.

Examiner's failure to cite the Opponent's Trademarks

[75] In its written representations, the Applicant submits that the fact that the Examiner did not cite any of the Opponent's Trademarks against the Application for the

Mark supports a finding of no likelihood of confusion. This argument is of no assistance to the Applicant's case. Suffice it to say that a decision by the examination section is not binding on this Board and does not have precedential value for this Board if only because both the onus and evidence before an Examiner differs from that before the Board [see *Thomas J Lipton Inc v Boyd Coffee Co* (1991), 40 CPR (3d) 272 (TMOB) at 277 and *Procter & Gamble Inc v Morlee Corp* (1993), 48 CPR (3d) 377 (TMOB) at 386].

Conclusion on the likelihood of confusion

[76] Considering the degree of resemblance between the Mark and the Jaguar Design Mark, the extent of use and length of time, the Jaguar Design Mark has been in use, the fact that the parties' goods and channels of trade are potentially overlapping, and the fact that the Opponent has established the use of a family of trademarks featuring a feline design as depicted in the LEAPER Device trademarks, the JAGUAR & LEAPER Device trademarks and the GROWLER Marks in association with, at least, not only the Opponent's JAGUAR vehicles, but also with a range of derivative products in Canada, the Applicant has failed to demonstrate, on a balance of probabilities, that an average consumer seeing the Mark in association with the Goods would not, as a matter of first impression and imperfect recollection, infer that the Goods are sold or otherwise emanate from or are licensed, approved or sponsored by the Opponent. Indeed, I am not satisfied that the Applicant has sufficiently distinguished its Mark from the Opponent's established Jaguar Design Mark. Had the Mark included the word PANTHERA, I might have reached a different conclusion.

[77] Accordingly, the section 12(1)(d) ground of opposition is successful.

[78] As the Opponent has succeeded with its Jaguar Design Mark, it is unnecessary to consider the remaining trademark registrations pleaded under this ground.

Remaining grounds of opposition

[79] As the opposition has already succeeded under the section 12(1)(d) ground of opposition, I do not consider it necessary to decide the remaining grounds of opposition.

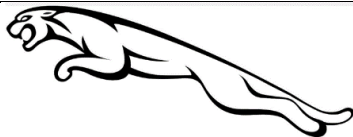
DISPOSITION



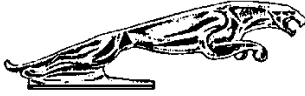
[80] Pursuant to the authority delegated to me under section 63(3) of the Act, I reject the Application pursuant to section 38(12) of the Act.



Annie Robitaille
Member
Trademarks Opposition Board
Canadian Intellectual Property Office



SCHEDULE A


Particulars of the Opponent's Trademarks (registrations and pending applications) as pleaded in the statement of opposition




The LEAPER Device Trademarks		
Trademark	Application Number / Filing Date	Registration Number / Registration Date
 JAGUAR DESIGN	1,865,498 (October 31, 2017) (I note that this application matured to registration under No. TMA1,063,959 on November 22, 2019, i.e. after the filing of the statement of opposition. However, the statement of opposition was not amended so as to also plead that registration)	
<p>Services (Nice class & Statement)</p> <p>39(1) Leasing, rental and chauffeur-driven car hire services for motor vehicles, storage facilities for motor vehicles, and parts and fittings; arranging and providing holidays, safaris, travel and off-road driving excursions; tour operating services; arranging transportation of vehicles, drivers and passengers; travel agency, tourist agency, and travel information and advice services; booking of seats and issuing of tickets for travel; seat, berth and ticket reservation services; escorting of travellers, namely, providing guided tours of safaris, off-road excursions, sightseeing, tour guide and excursion services, and conducting guided tours of motor vehicle facilities and driving courses; vehicle-driving services, namely, providing customized driving directions, arrangement of driving expeditions, arrangement of driving experience days and driving holidays, arrangement of off-road adventure expeditions, arrangement of multi-day driving expeditions; conducting sightseeing travel tours by automobiles; coordinating travel arrangements for individuals and for groups; providing a website featuring information on travel; travel clubs; organisation of excursions; organizing, arranging and conducting motor vehicle riding excursions and tours for entertainment and recreational purposes</p> <p>41(2) Vehicle driving and off-road driving instruction and tuition; providing educational courses in four-wheel and racing driving techniques, land motor vehicle mechanics, map-reading, driving safety, and environmental responsibility; driving academy services; club services, namely, automotive club services; training, educational and entertainment services, namely, participation in sports car races, power boat sports events, motor vehicle riding events, all relating to motor vehicles; arranging competitions and tournaments relating to driving and car racing; providing a web site featuring on-line courses of instruction in driving high performance automobiles; conducting guided tours of motor vehicle facilities and driving courses; organizing, arranging and conducting motor vehicle riding events for entertainment and recreational purposes; entertainment services, namely, participation in sports car races; entertainment services, namely, performing and competing in motor sports events; providing various facilities for an array of automotive sporting events, competitions and awards programmes</p>		


 JAGUAR DESIGN	608,783	TMA368,410 (May 4, 1990)
Goods (1) Automobiles and parts and fittings therefor. Services (1) Automobile maintenance and repair services.		
 JAGUAR DESIGN	523,274	TMA347,855 (November 10, 1988)
Goods (1) Spectacles, sunglasses, spectacle frames and parts of these goods; spectacle casings.		
 JAGUAR DESIGN	304,868	TMA156,265 (April 5, 1968)
Goods (1) Motor land vehicles.		

The JAGUAR & LEAPER Device Trademarks		
 JAGUAR JAGUAR & DESIGN	771,556	TMA465,114 (October 25, 1996)
Services (1) Credit card services; cheque account services; credit services, provision of finance for credit sales; hire purchase financing; lease purchase financing; corporate financing.		
 JAGUAR JAGUAR & DESIGN	643,399	TMA471,186 (February 18, 1997)
Goods (1) Men's toiletries and fragrances, namely, eau de toilette, after shave lotion, soap, deodorant stick and deodorant spray, shower gel, hair shampoo, foaming shave gel, after shave moisturizing balm.		

 <p>JAGUAR & DESIGN</p>	<p>581,257</p>	<p>TMA378,643 (January 25, 1991)</p>
<p>Goods (1) Cleaning and polishing preparations for motor land vehicles; hand tools; jewellery, other than watches, and parts of and fittings for such jewellery; books, periodicals, magazines and newspapers; printed publications relating to automotive subjects namely spare parts lists and maintenance manuals; playing cards; driving licence cases, wallet cases, business card holders, belts, credit card holders, key cases, address books, note books, passport holders, beauty cases, document cases, pocket wallets, parasols, umbrellas; tennis rackets, badminton rackets, squash rackets, golf balls, golf tees; ashtrays.</p>		
 <p>JAGUAR & LEAPER DESIGN</p>	<p>1,928,375 (November 1, 2018)</p> <p>(I note that this application matured to registration under No. TMA1,063,972 on November 22, 2019, i.e. after the filing of the statement of opposition. However, the statement of opposition was not amended so as to also plead that registration)</p>	
<p>Services (Nice class & Statement) 36(1) Insurance services, financial services, namely commercial and consumer lending services, bill payment, financing of motor vehicle leases, and processing of financial lending applications, real estate services, namely financing loans for car dealerships, arranging leases and rental agreements for real estate, financial services pertaining to vehicle purchase and lease, financial services pertaining to vehicle rental through a vehicle subscription service, vehicle insurance services, vehicle insurance services provided to members of a vehicle rental subscription, vehicle insurance claims services, warranty services namely, underwriting warranty programs in the field of automobiles and insurance brokerage warranty services by providing extended warranties on automobiles, guarantee services, namely providing financial guarantees, hire-purchase and lease-purchase services, namely, hire-purchase and lease-purchase financing and car subscription services, credit card services, pre-paid charge card services, debit card services, financial sponsorship of cultural and entertainment events, financial sponsorship, sponsorship schemes, namely financial sponsorship of educational, humanitarian and conservation programs, financial sponsorship of sports events, financial sponsorship of engineering awards, financial sponsorship of television programmes, films, radio programmes, online multimedia entertainment, namely video game tournaments and esports, financial sponsorship of charity services, financial sponsorship of community projects, charity fundraising services, grant distribution, namely providing grants to youth sports organizations, education organizations, humanitarian organizations, environmental conservation organizations, project related investment, namely providing capital investment services and financing to emerging and start-up companies, and providing information, consultancy and advice relating to all the aforesaid services.</p>		

	<p>1,860,992 (October 4, 2017)</p> <p>(I note that this application matured to registration under No. TMA1,063,974 on November 22, 2019, i.e. after the filing of the statement of opposition. However, the statement of opposition was not amended so as to also plead that registration)</p>	
<p>Goods (Nice class & Statement)</p> <p>12(1) Vehicles, namely, automobiles, trucks, vans, sport utility vehicles, all-terrain vehicles, apparatus for locomotion by land, air and/or water, namely, boats, airplanes, driverless motor vehicles, namely driverless cars, autonomous motor vehicles, namely autonomous cars, racing cars, trucks, reconditioned classic vehicles, namely reconditioned classic automobiles, trucks, vans, sport utility vehicles, all-terrain vehicles, vehicles sold in kit form, namely, automotive body kits comprising external structural parts of automobiles, commercial vehicles, namely, vans and trucks, electric vehicles, namely, electric cars, hybrid vehicles, namely, hybrid cars, military vehicles, namely, armoured cars, tanks, vehicles for use by emergency services, search and rescue services, namely, fire trucks, fire engines, police vehicles, cars and ambulances, powertrains for land vehicles, engines for land vehicles, motors for land vehicles, engines for motorcycles, motors for motorcycles, engines for bicycles, motors for bicycles, engines for racing cars, trailers, arm rests for vehicle seats, luggage bags specially adapted for fitting in the boot of vehicles, car interior organizer bags, nets and trays specially adapted for fitting in vehicles, head-rests for vehicle seats, steering wheels, voice activated steering wheel device comprising voice command and recognition software that allows users to control features of their vehicle, namely, locking and unlocking vehicle doors, starting and turning off the vehicle, and directing the vehicles, joysticks for steering vehicles, airbags, vehicle head rest covers, wing mirror protective and vanity covers, car seat covers, covers for vehicle steering wheels, fitted covers for vehicles, shaped or fitted mats and floor coverings for motor vehicles, wheels for vehicles, alloy wheels, wheel trims, wheel rims, spare wheels, hub caps for wheels, hub centre caps, wheel covers, wheel sprockets, tyres, automobile tyres, bicycle tyres, inner tubes for tyres, spoilers for vehicles, covers for vehicles, namely vehicle covers, seats for vehicles, safety seats for vehicles, safety belts for vehicles, safety harnesses for vehicles, safety directional signals [audible] for vehicles, anti-theft, security and safety devices and equipment for vehicles, namely, anti-theft devices for motor cars and airbags for vehicles; radiator grilles for vehicles, trim panels for vehicle bodies, doors for vehicles, vehicle windows, vehicle windshields, window glass for vehicle windows, windshields, roof windows for vehicles, skylight windows for vehicles, vehicle bumpers, vehicle centre consoles sold as parts of vehicles and which incorporate electronic interfaces, disposable paper protectors for vehicle carpets and seats, disposable protectors for steering wheels and road wheels, all made of polythene or of plastic film or sheet materials, bicycles, tricycles, and parts and fittings for bicycles, self-balancing electric scooters, hover boards, scooters, quadricycles, motorised unicycles, go-karts, strollers and prams, and their parts and accessories, baby, infant and child seats for vehicles, sun blinds, roof racks, luggage carriers and nets, cycle carriers, sail board carriers, ski carriers, and snow chains, all for vehicles, drones, unmanned aerial vehicles, personal air vehicles, namely, personal aircraft, hoverboard, go-karts, hovercraft, underwater vehicles, namely, underwater remotely operated vehicles for transport, jet vehicles for water sports, remote control vehicles,</p>		

not being toys, namely remote control automobiles, trucks, vans, sport utility vehicles, all-terrain vehicles.		
	885,096	TMA573,782 (January 16, 2003)
<p>Goods</p> <p>(1) Bathing caps, bathing suits, swim trunks, bathing trunks, beach coverups, ski bibs, ski boots, ski jackets, ski gloves, ski pants, ski suits, jackets, golf shirts, gym shorts, head bands, jogging suits, polo shirts, sweat shirts, sweat pants, sweat suits, golf shoes, golf trousers, golf gloves, t-shirts, tennis wear, track suits, hats, horse riding attire.</p>		
	865,773	TMA510,395 (April 6, 1999)
<p>Goods</p> <p>(1) Watches; clocks; jewellery; parts of and fittings for all the aforesaid goods.</p> <p>(2) Smokers' articles of precious and semi-precious metals, namely, cigarette cases, ashtrays and cigarette lighters; parts of and fittings for all the aforesaid goods.</p>		
	864,293	TMA514,668 (August 17, 1999)
<p>Goods</p> <p>(1) Books; periodicals; magazines and newspapers; printed publications relating to automotive subjects, namely spare parts lists, maintenance manuals and driver instruction manuals; writing paper; pens; pencils; desk ornaments; and playing cards.</p>		

The GROWLER Marks		
 <p>GROWLER DEVICE</p>	<p>1,934,293 (December 5, 2018)</p> <p>(I note that this application matured to registration under No. TMA1,169,336 on March 6, 2023, i.e. after the filing of the statement of opposition. However, the statement of opposition was not amended so as to also plead that registration)</p>	

Goods (Nice class & Statement)

(9)(1) Computer hardware; on-board computers for vehicles; computers for autonomous-driving; on board electronic systems for providing driving and parking assistance; on board electronic systems for automatic braking; on board electronic systems to assisting in maintaining or changing lanes when driving; cruise control systems for vehicles; vehicle speed control apparatus; computer software; interactive multimedia software; automotive computer software and hardware; computer software for use in relation to vehicles; telemetry devices for motor vehicle and engine applications; electric control panels; electric control apparatus, instruments and displays; sensors; integrated electronic safety systems for vehicles; safety and driving assistant systems; lasers for use in relation to vehicles; LIDAR apparatus for vehicles; radar apparatus for vehicles; cameras for vehicles; onboard cameras; action cameras; parking sensors and rear-view cameras for vehicles; automotive measuring instruments; electronic apparatus for collecting measurements and receiving data; computer software, mobile applications and wireless transmission and receiving equipment for use in connection with autonomous and hands-free driving, automobile safety features and warning or alarm functions, accident prevention and traffic alerts; driving control unit for vehicles; driver assistance systems for motor vehicles; charging stations for charging electric vehicles; apparatus and cables for use in charging electric vehicles; batteries for vehicles; electric accumulators, voltage regulators, aerials, electric batteries and mountings; antitheft warning devices; alarm sensors; gauges; instrument panels and clusters; odometers; speedometers; tachometers; temperature sensors; voltmeters; ammeters; testing apparatus; proximity meters; electric circuit breakers; commutators; electric condensers; electric connections; electric cables; electric fuses; electric fuse boxes; electric control apparatus and instruments for motor vehicles and engines; electrical sensors; fire extinguishing apparatus; gauges; lenses for lamps; printed electrical circuits; electric relays; electric switches; electric wiring harnesses; testing apparatus; Apparatus for recording, transmission or reproduction of sound and images; remote controls for motors; remote control apparatus for starting vehicles; emergency warning lights; emergency notification system; computer interface apparatus forming an integral part of a vehicle; display panels for vehicles; electronic driver display systems for vehicles; audio, audiovisual or telecommunications equipment; Radio apparatus; in-car audiovisual entertainment systems; sound reproducing equipment; televisions; radios; CD players; loud speakers; headphones; Personal Digital Assistants; tablet computers; multimedia devices; MP3 or MP4 apparatus and equipment; mobile hard drives; Universal Serial Bus drives; cases and holders for mobile phones, smartphones, computers, personal digital assistants, laptops, notebook computers; chargers for mobile phones, smartphones, laptop and tablet computers; telephones; mobile telephones; mobile phone and tablet computer headsets and accessories; straps for telephone handsets; screensavers for phones and tablets; car telephone installations; recording media; highway emergency warning equipment; thermometers; compasses; calculators; electronic instructional and teaching apparatus and instruments; electrical and scientific apparatus for use in the repair and servicing of vehicles; magnets; tape measures; eyewear, glasses, sunglasses, driving glasses, skiing goggles; cases for eyeglasses, sunglasses or skiing goggles; drivers helmets; racing driver protective clothing; apparatus, gloves and clothing, all for use in protection against accident or injury; safety lights for wear on the body; global positioning system (GPS); navigational systems, comprising electronic transmitters, receivers, circuitry, microprocessors, cellular telephone and computer software all for use in navigation and all integrated into a motor vehicle; downloadable electronic maps; wireless transmission and receiving equipment; interactive multimedia software; electric connections; wireless controllers to remotely monitor and control the function and status of other electrical, electronic, signalling systems and mechanical devices for use in connection with vehicles and engines for vehicles; communications apparatus to transmit and receive communications via vehicles; Computer


hardware and software for tracking driver behaviour; sensors, computers and wireless transceivers to provide connectivity within the vehicle, between vehicles, with cell phones, and with data centers; computer hardware and software apparatus to provide tactile, audible and visual interfaces to interact with occupants of the vehicle; Wireless transmission and receiving equipment for use in connection with remote computers for use in automobiles for tracking, monitoring and diagnosing maintenance for vehicles and for providing information to drivers; Computer application software for use by drivers and passengers of vehicles for accessing, viewing, and interacting with and downloading information and entertainment content; Downloadable software and on-board computer software that provides users with remote and in-vehicle access to motor vehicle functions and functions relating to driver safety, convenience, communication, entertainment, and navigation; diagnostic apparatus consisting of sensors for use in testing vehicle function and in diagnosing vehicle electrical and mechanical problems; software and software applications to allow users to track and locate stolen vehicles, charge electronics, and store and synchronize collected personalized user and vehicle information; electronic interface modules for wired and wireless interface of mobile phones and electronic media players with an automotive electrical system; computer systems for automated vehicle control; downloadable mobile applications; downloadable electronic publications; electronic publications; electronic periodic publications; application software for use in or in relation to vehicles; computer games, computer games software; Databases, data sets, data files and software relating to 3D printing; Databases, data sets, data files and software relating to design and manufacture of vehicles and parts and accessories therefor; Databases, data sets, data files and software relating to design and manufacture of replica or model vehicles and parts and accessories therefor; computer aided design (CAD) software and data files; downloadable image files; electronic databases containing image files; Databases, data sets, data files and software relating to car sharing schemes; Databases, data sets, data files and software relating to vehicle driver behaviour; Simulators for simulating the operation of land vehicles; virtual models of vehicles or vehicle interiors; Virtual reality software and hardware; augmented reality software and hardware; parts and fittings for any of the aforesaid goods

(12)(2) Vehicles; motor vehicles; apparatus for locomotion by land, air and/or water; motor land vehicles; land vehicles; off-road vehicles; ATVs; driverless motor vehicles; autonomous motor vehicles; racing cars; reconditioned classic vehicles; vehicles sold in kit form; commercial vehicles; electric vehicles; hybrid vehicles; military vehicles; vehicles for use by emergency services, search and rescue services; powertrains for land vehicles; engines for land vehicles; motors for land vehicles; engines for motorcycles; motors for motorcycles; engines for bicycles; motors for bicycles; engines for racing cars; trailers; arm rests for vehicle seats; luggage bags specially adapted for fitting in the boot of vehicles; car interior organizer bags, nets and trays specially adapted for fitting in vehicles; shaped or fitted mats and floor coverings for vehicles; head-rests for vehicle seats; vehicle head rest covers; wing mirror protective and vanity covers; car seat covers; covers for vehicle steering wheels; fitted covers for vehicles; wheels for vehicles; alloy wheels; wheel trims; wheel rims; spare wheels; hub caps for wheels; hub centre caps; wheel covers; wheel sprockets; spoilers for vehicles; covers for vehicles; seats for vehicles; safety seats for vehicles; safety belts for vehicles; safety harnesses for vehicles; safety signals [audible] for vehicles; airbags for passengers; anti-theft, security and safety devices and equipment for vehicles; radiator grilles for vehicles; trim panels for vehicle bodies; doors for vehicles; vehicle windows; vehicle windshields; window glass for vehicle windows and windshields; roof windows for vehicles; skylight windows for vehicles; vehicle bumpers; steering wheels for vehicles vehicle centre consoles sold as parts of vehicles and which incorporate electronic interfaces; bicycles; tricycles; parts, fittings and accessories for bicycles; hover boards; scooters; quadricycles; motorised unicycles; go-karts; strollers and prams, and their parts and accessories; baby, infant and

child seats for vehicles; sun blinds, roof racks, luggage carriers and nets, cycle carriers, sail board earners, ski carriers, and snow chains, all for vehicles; drones; unmanned aerial vehicles; personal air vehicles; hovercraft; underwater vehicles; jet vehicles for water sports; remote control vehicles, not toys; parts and fittings for all of the aforesaid goods


Services (Nice class & Statement)

(37)(1) Maintenance, repair, servicing, reconditioning, restoration, inspection, care, cleaning, painting and polishing of motor land vehicles, drones, unmanned aerial vehicles, civil engineering construction machines, automotive manufacturing machinery, agricultural machines, internal combustion engines or of parts and fittings for all these goods; applying external finishes or coatings to vehicles; diagnostic or Inspection services, all for motor cars or for parts and fittings therefor, or for internal combustion engines; Assembly of accessories for vehicles (installation services); Vehicle breakdown assistance [repair]; Providing emergency roadside assistance service; Tuning of engines and motor vehicles; Providing maintenance and vehicle repair assistance and information to drivers regarding their vehicles; maintenance, upgrading and diagnostic repair services for in-car electronics systems or in-car entertainment systems; Charging station services for electric vehicles; vehicle battery charging; Automobile customization services; automotive upgrade services; information, consultancy and advice relating to any of the aforesaid services and for the supply of parts for motor land vehicles

 <p>JAGUAR & DESIGN</p>	<p>304,867</p>	<p>TMA156,352 (April 11, 1968)</p>
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Goods

(1) Motor land vehicles and parts thereof, namely, steering wheels, hub caps and radiator grille badges, and accessories therefor, namely, license holders.

 <p>JAGUAR HEAD DESIGN</p>	<p>596,959</p>	<p>TMA353,037 (March 10, 1989)</p>
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Goods

(1) Automobiles and parts and fittings therefor.

Appearances and Agents of Record

HEARING DATE: 2023-01-23

APPEARANCES

For the Opponent: Kevin Sartorio

For the Applicant: Philippe Brouillette

AGENTS OF RECORD

For the Opponent: Gowling WLG (Canada) LLP

For the Applicant: Brouillette Legal Inc.