



Canadian Intellectual Property Office

THE REGISTRAR OF TRADEMARKS

Citation: 2025 TMOB 41

Date of Decision: 2025-03-03

IN THE MATTER OF AN OPPOSITION

Opponent: Sesame Workshop

Applicant: Advanced New Technologies Co., Ltd.

Application: 1659742 for SESAME

OVERVIEW

[1] Advanced New Technologies Co., Ltd. (the Applicant) seeks to register the trademark SESAME (the Mark), for use in association with over 350 goods and services, listed in Schedule A to this decision (the Goods and Services).

[2] Sesame Workshop (the Opponent) opposes the registration of the Mark. The Opponent produces the children's television show SESAME STREET, and owns a range of trademarks incorporating the word SESAME (the Opponent's SESAME Marks, listed in the statement of opposition) that it uses in association with its television show and other related goods and services. The Opponent alleges that the Mark is confusing with the Opponent's SESAME Marks. The Opponent also raises a variety of other grounds of opposition.

[3] For the following reasons, the application is refused in respect of the Overlapping Goods and Services, defined at paragraph [43] herein. However, the opposition is rejected in respect of the remaining Good and Services, listed in Schedule B to this decision.

THE PROCEEDING

[4] The application was filed on January 15, 2014, and was advertised for opposition purposes on January 24, 2018. Since the application was advertised prior to June 17, 2019, the date on which numerous amendments to the *Trademarks Act*, RSC 1985, c T-13 (the Act) came into force, the Opponent's grounds of opposition will be assessed based on the Act as it read immediately prior to this date (subject to some exceptions; see section 70 of the Act). Thus, references to sections of the Act in this decision will refer to the Act as it read immediately prior to this date, unless otherwise indicated.

[5] The Applicant claims entitlement to register the Mark on the basis of proposed use in Canada, pursuant to section 16(3) of the Act, and claims a priority filing date of January 14, 2014 pursuant to section 34(1) of the Act. The Applicant had also claimed entitlement to registration on the basis of use and registration in Hong Kong, pursuant to section 16(2) of the Act, but this claim was removed on July 28, 2022.

[6] The Opponent filed a statement of opposition pursuant to section 38 of the Act on March 25, 2019. In support of the opposition, the Opponent submitted the affidavit of John Gallacher, sworn on November 30, 2020 (the Gallacher Affidavit). Mr. Gallacher was cross-examined on his affidavit, and the transcript of this cross-examination was filed on May 20, 2021.

[7] In support of the application, the Applicant submitted the affidavits of Leiming Chen (the Chen Affidavit), Joanne Berent (the Berent Affidavit) and

Mary Noonan (the Noonan Affidavit), all sworn on July 18, 2022. None of these affiants were cross-examined on their affidavits.

[8] The Opponent then filed the affidavit of Emma Fillman, sworn October 3, 2023 (the Fillman Affidavit), in reply to the Applicant's evidence. The Applicant did not cross-examine Ms. Fillman, but did object to her affidavit for several reasons, which will be further discussed below.

[9] Both parties submitted written representations and were heard at an oral hearing.

THE EVIDENCE

The Gallacher Affidavit

[10] Mr. Gallacher is the Senior Counsel of the Opponent [para 1]. He states that the Opponent is the non-profit educational organization behind the children's television show SESAME STREET [para 2].

[11] Mr. Gallacher provides the particulars of the Opponent's Canadian registrations for the Opponent's SESAME Marks, including registration numbers and the goods and services in connection with which each trademark is registered [para 3]. He also provides some details of the Opponent's television show and related entertainment services, including the average number of viewers per show for the years 2013 to 2020 [para 4], the number of Canadians viewers and views of content from the Opponent's YouTube channel [para 7], and Canadian locations at which live performances and "Meet and Greet" events were held in 2019 and 2020 [paras 10-11].

[12] Mr. Gallacher states that the Opponent also licenses its SESAME Marks to third party manufacturers, who provide a wide variety of goods such as electronic learning aids, health and wellness products such as vitamins and

bandages, clothing and footwear, home accessories such as clock and posters, and children's toys (the Opponent's Licensed Products).

Mr. Gallacher provides the total annual sales revenue earned from Canadian sales of such products [paras 12-14]. However, Mr. Gallacher does not provide any description or examples of which SESAME Marks are associated with which Licensed Products, or how the trademarks are associated. Mr. Gallacher also does not state whether the Opponent controls the character or quality of the Licensed Products pursuant to the Opponent's agreements with its third party manufacturers.

[13] Mr. Gallacher also provides some details of the Opponent's marketing and promotional activities, such as various websites operated by the Opponent [para 16], social media accounts operated by the Opponent on platforms such as Facebook, Instagram, and Twitter [para 15], and a special event held by the Opponent for its 50th anniversary [para 18].

[14] Mr. Gallacher provides the total gross revenue from all of the Opponent's Canadian business activities, including videos, music, books, and other products, for the years 2014 to 2019 [para 17].

The Chen Affidavit

[15] Mr. Chen is a director of the Applicant [para 1]. He describes the Applicant as a subsidiary of Ant Group Co. Ltd., ("Ant Group"), a group of companies that is a world leader in the technology and financial services industries [paras 5, 6]. Ant Group traces its roots to Alipay, a service that facilitates payments between online buyers and sellers [para 7].

[16] Mr. Chen states that Ant Group offers a number of products, platforms and services, one of which is Zhima Credit, also known as Sesame Credit ("Zhima" is the transliteration of the Mandarin characters that mean "Sesame" in English) [paras 11, 12 and 19]. Mr. Chen describes Zhima

Credit as a private and independent credit assessment service designed to assess a user's willingness and ability to fulfill a commercial contract [para 12]. Mr. Chen states that Ant Group is and has been licensed by the Applicant and its predecessor to use the Mark, and has had direct or indirect control over the character and quality of any goods or services provided by Ant Group in association with the Mark [paras 15-16].

[17] Mr. Chen describes the Zhima Credit service that has been offered in China in association with the trademark ZHIMA, which the Ant Group uses interchangeably with the trademark SESAME [paras 18-20], and describes how that service may be expanded in the future [paras 21-22]. As for Canada, Mr. Chen states that since 2018, Chinese nationals who use Zhima Credit have had the option of submitting an English language report as part of a Canadian visitor visa application, in order to prove financial standing [para 23 and Exhibits 5-6]. Mr. Chen also states that Ant Group is in the process of expanding the goods and services that it offers in association with the Mark, both in Canada and worldwide [para 24].

The Berent Affidavit

[18] Ms. Berent is a reference librarian employed by the Applicant's trademark agents [para 1]. Her affidavit attaches copies of three dictionary definitions of the word "sesame" that she was asked to obtain [para 3, and Exhibits A-C].

The Noonan Affidavit

[19] Ms. Noonan is a trademark searcher employed by the Applicant's trademark agents [para 1]. Her affidavit attaches the results of a search of the Canadian Trademarks Register for "all active allowed trademark applications, advertised trademark applications, and trademark registrations

consisting of or containing the element “SESAME” ... excluding any marks owned by [the Opponent] or [the Applicant]” [para 3, and Exhibit A].

The Fillman Affidavit

[20] Ms. Fillman is an articling student with the Opponent’s trademark agents [para 1]. She was asked to identify articles on the Internet that mention the Applicant and/or the Applicant’s prior name “Alibaba”, and the word “SESAME”. Her affidavit attaches copies of articles she located on September 18 and 19, 2023 [para 3, and Exhibits A-U].

GROUND OF OPPOSITION

[21] The Opponent raises the following grounds of opposition:

- the Mark is not registrable because it is confusing with the Opponent’s SESAME Marks (the Registrability Ground);
- the Applicant is not the person entitled to register the Mark because, as of the filing date of the application, the Mark was confusing with the Opponent’s SESAME Marks (the Entitlement Ground);
- the Mark is not distinctive because it does not distinguish and is not adapted to distinguish the Goods and Services from the goods and services of others, in particular the Opponent’s goods and services (the Distinctiveness Ground);
- the application does not comply with the requirements of section 30(d) of the Act because, as of the application filing date, the Mark was not in use in Hong Kong as claimed in the application (the Section 30(d) Ground);
- the application does not comply with the requirements of section 30(e) of the Act because, as of the application filing date, the Applicant had no *bona fide* intention of using the Mark in Canada in

association with all of the listed goods and services (the Section 30(e) Ground); and

- the application does not comply with the requirements of section 30(i) of the Act because, as of the application filing date, the Applicant could not have been satisfied that it was entitled to use the Mark in Canada (the Section 30(i) Ground).

[22] For each ground of opposition, there is an initial evidential burden on the Opponent to adduce evidence from which it could reasonably be concluded that the facts alleged to support that ground of opposition are true. If this initial burden is met, then the Applicant bears the legal onus of satisfying the Registrar that, on a balance of probabilities, the ground of opposition should not prevent registration of the Mark [see *John Labatt Ltd v Molson Companies Ltd* (1990), 30 CPR (3d) 293 (FCTD)].

ADMISSIBILITY OF THE OPPONENT'S REPLY EVIDENCE

[23] On October 23, 2023, the Applicant objected to the Fillman Affidavit on the basis that it contains improper evidence in reply. The Applicant maintained its objection in its written representations and at the hearing. It argues that the Fillman Affidavit does not respond to new or unanticipated issues raised in the Opponent's evidence, but rather consists of the sort of basic evidence on the issue of the Applicant's intention to use that an Opponent would have been expected to put forward in chief [Applicant's written representations, para 49]. The Applicant also notes that the Opponent uses the Fillman Affidavit to challenge the credibility of statements made at paragraph 24 of the Chen Affidavit, which should have been done through cross-examination [para 57].

[24] In response, the Opponent argues that the Fillman Affidavit was filed in reply to statements in paragraph 24 of the Chen Affidavit. The Opponent asserts that these statements are vague claims of use of the Mark in

association with many of the Goods and Services, and an intention to use the Mark with the remaining Goods and Services [Opponent's written representations, para 8]. The Opponent argues that these claims were surprising because, after more than a decade has passed since the application was filed, the Applicant has only vaguely implied that it has used and intends to use the Mark in association with all of the Goods and Services [para 9]. The Opponent states that the Fillman Affidavit was filed to show that the only use of the Mark as of the date of the Fillman Affidavit was in association with a social credit scoring system [para 9].

[25] I am in substantial agreement with the Applicant's submissions. Proper reply evidence is that which responds directly to points raised in an applicant's evidence that are unanticipated; it is not meant to correct or complete an opponent's earlier evidence, and does not entitle a party to split its case [see *Halford v Seed Hawk Inc*, 2003 FCT 141 (*Halford*)]. In my view, the statements in paragraph 24 of the Chen Affidavit cannot be fairly characterized as unanticipated or surprising. In particular, the absence of detailed evidence of use or intent to use should not have been surprising to the Opponent, because the Opponent's evidence in chief does not contain anything that calls into question the Applicant's intention to use the Mark. It is therefore to be expected that the Applicant would not submit evidence to respond to the unsupported allegation of no intention to use the Mark. As well, if the Fillmore Affidavit, which purports to cast doubt on the Applicant's intention to use the Mark, were accepted in reply, the Opponent will have effectively split its case in respect of the Applicant's intention to use.

[26] Furthermore, as the Applicant correctly notes, evidence that is simply a rebuttal of an applicant's evidence, and which could have been led in chief, is not to be admitted [*Halford* at para 15]. The Opponent argues that the Fillman Affidavit is intended to rebut Mr. Chen's assertions regarding the

Applicant's use and intent to use the Mark, but since the Applicant's intention to use was relevant to the opposition from the outset, and since 19 of the 21 articles included in the Fillman Affidavit pre-date the Opponent's evidence-in-chief, the bulk of the Fillman Affidavit could and should have been led in chief.

[27] For all of the foregoing reasons, I find that the Fillman Affidavit does not constitute proper reply evidence. The affidavit will not be given any weight in this decision.

REASONS FOR DECISION

The Registrability Ground

[28] In respect of this ground, the Opponent pleads that the Mark is not registrable pursuant to section 12(1)(d) of the Act, because it is confusing with the Opponent's SESAME Marks. The material date for this ground of opposition is the date of this decision [*Simmons Ltd v A to Z Comfort Beddings Ltd* (1991), 37 CPR (3d) 413 (FCA)].

[29] As of the date of this decision, the Opponent's registration for the trademark 123 SESAME STREET ART STARTS & Design (TMA686512) is expunged from the registry. However, all of the other Opponent's SESAME Marks are in good standing. Accordingly, the Applicant bears the onus of demonstrating that the Mark is not confusing with any of the remaining Opponent's SESAME Marks.

[30] My analysis will focus on confusion with the Opponent's registered trademarks SESAME (TMA229,800) and SESAME STREET (TMA718,122), the particulars of which are included in Schedule C to this decision. In my view, these registrations represent the Opponent's strongest case. If the Mark is not confusing with either of these registered trademarks, it will not be confusing with any of the other Opponent's SESAME Marks.

The Test for Confusion

[31] A trademark causes confusion with another trademark if the use of both in the same area would be likely to lead to the inference that the goods or services associated with the trademarks are manufactured, sold, leased, hired or performed (as the case may be) by the same person [section 6(2) of the Act]. The issue is to be considered as a matter of first impression in the mind of a casual consumer somewhat in a hurry, who sees the applied-for trademark at a time when they have no more than an imperfect recollection of an opponent's trademark. This casual, hurried consumer does not pause to give the matter any detailed consideration or scrutiny, nor to examine closely the similarities and differences between the trademarks [*Veuve Clicquot Ponsardin v Boutiques Clicquot Ltée*, 2006 SCC 23 at para 20 (*Veuve Clicquot*)].

[32] Applying the test for confusion is an exercise in finding facts and drawing inferences [*Masterpiece Inc v Alavida Lifestyles Inc*, 2011 SCC 27 at para 102 (*Masterpiece*)]. All surrounding circumstances of the case must be considered, including those listed at section 6(5) of the Act, namely:

- the inherent distinctiveness of the trademarks and the extent to which they have become known;
- the length of time the trademarks have been in use;
- the nature of the goods, services or business;
- the nature of the trade; and
- the degree of resemblance between the trademarks, including in appearance or sound or in the ideas suggested by them.

Inherent Distinctiveness

[33] Trademarks are inherently distinctive when nothing about them refers the consumer to a multitude of sources. While both the Mark and the

Opponent's trademarks SESAME and SESAME STREET consist of ordinary English words or phrases that could refer to many things, the ordinary English meanings of the words and phrases have no apparent connection with any of the goods or services at issue. Accordingly, all of these trademarks possess a fair amount of inherent distinctiveness, and this factor does not substantially favour either party.

Extent Known and Length of Use

[34] The Opponent argues that both of these factors favour its position because the Opponent's SESAME Marks have been used extensively in Canada and around the world for over 50 years [Opponent's written representations, para 33]. The Applicant appears to accept that over 50 seasons of the Opponent's SESAME STREET television show have aired in Canada, but argues that there is no evidence of which of the Opponent's SESAME Marks were used in association with any of the Licensed Products, or the manner in which those trademarks were associated with the Licensed Products, if at all [Applicant's written representations, para 131]. Further, the Applicant argues that there is no evidence showing any use of the Opponent's trademarks SESAME, SESAME BEGINNING Design, RUE SESAME, or SESAME PARK [para 134]. At the hearing, the Applicant argued that I should not allow 50 years of use of the trademark SESAME STREET in association with television and live performances to "bleed in", in respect of other goods and services, or other trademarks.

[35] The evidence establishes that the Opponent's SESAME STREET television show has been broadcast in Canada for over 50 seasons. From June 2013 to June 2020, the Opponent's SESAME STREET show has had average viewers per show ranging from 8,300 to over 20,000 [Gallacher Affidavit, para 4]. As well, over 227,000 Canadians have watched the Opponent's content on YouTube for a total of over 22 million hours

[Gallacher Affidavit, para 7], and in at least 2019 and the first quarter of 2020, the Opponent put on live SESAME STREET performances in numerous towns and cities across Canada [Gallacher Affidavit, paras 10 and 11]. This evidence establishes that the Opponent's trademark SESAME STREET has been used in association with television programs for children for over 50 years, and in association with live performances for children since at least 2019. For both these services, I accept that the trademark SESAME STREET has become known in Canada to a fairly large extent.

[36] On the other hand, the evidence does not establish that the Opponent's trademark SESAME has been used or become known in Canada, to any extent. Aside from the particulars of the SESAME registration, there is no specific reference to the trademark SESAME anywhere in Mr. Gallacher's affidavit. Furthermore, Mr. Gallacher refers to the Opponent's television show and live performances as SESAME STREET throughout his affidavit. Adding the word "Street" to the word "Sesame" results in a loss of identity and recognition of the trademark SESAME alone, due primarily to the substantially different ideas suggested by the trademarks (discussed more below). Therefore, I find that use of the trademark SESAME STREET does not constitute use of the trademark SESAME *per se* [see *Canada (Registrar of Trade Marks) v Cie internationale pour l'informatique CII Honeywell Bull SA* (1985), 4 CPR (3d) 523 (FCA)].

[37] The evidence also does not establish that the trademarks SESAME or SESAME STREET have been used or made known by the Opponent in connection with the Licensed Products in Canada, to any appreciable extent. While Mr. Gallacher provides the revenue earned through sales of the Licensed Products in Canada from the years 2014 to 2019, his evidence leaves no way to determine how much of those sales were attributable to products bearing the trademarks SESAME or SESAME STREET in particular,

or how such trademarks were even associated with such products.

Furthermore, in the absence of any evidence that the Opponent controls the character or quality of the Licensed Products via its license agreements, any use of the Opponent's SESAME Marks by licensees does not inure to the Opponent's benefit pursuant to section 50 of the Act.

[38] In view of all the foregoing, the length of use and the extent which the trademarks have become known favor the Opponent in respect of television programs and live performances for children, offered in connection with the trademark SESAME STREET. These factors do not favour either party in respect of any other goods or services, or the trademark SESAME.

Nature of the Goods and Services, and Nature of the Trade

[39] In its written representations, the Opponent asserts that the Goods and Services overlap significantly with those listed in the Opponent's trademark registrations, and that these factors strongly favour the Opponent [paras 35 and 36]. The Applicant, on the other hand, asserts that the vast majority of the Goods and Services are "extremely different" from those of the Opponent, and that even if there is some superficial overlap "on paper", the nature of the parties' goods and services, target customers, and channels of trade are significantly different [para 164].

[40] At the hearing, both parties allowed for the possibility that at least some of the Goods and Services may overlap with those of the Opponent, favouring a finding of confusion, while others may be unrelated, favouring a finding of no confusion. The Opponent provided a numbered list of all the Goods and Services, and identified numerous items that, in the Opponent's view, overlapped or were closely related to goods or services listed in the Opponent's trademark registrations. The Applicant submitted that, while the starting point is the description of Goods and Services as stated in the application, I may look to the evidence to assist me in taking a common

sense approach to what is the reasonable, likely scope of the good or service in question, and whether it overlaps with the Opponent's goods or services. The Applicant's position, as I understand it, is that the Applicant's business in the field of technology and finance is entirely distinct from the Opponent's business in children's entertainment, which suggests that a reasonable interpretation of the Goods and Services would not overlap with the Opponent's goods or services in the vast majority of cases.

[41] When considering the goods, services, and trades of the parties, it is the statements of goods and services in the parties' respective trademark applications and registrations that govern [*Henkel Kommanditgesellschaft auf Aktien v Super Dragon Import Export Inc* (1986), 12 CPR (3d) 110 (FCA); *Mr Submarine Ltd v Amandista Investments Ltd* (1987), 1987 CanLII 8953, 19 CPR (3d) 3 (FCA)]. That being said, the statements of goods and services must be read with a view to determining the probable type of business or trade intended, rather than all possible trades that might be encompassed by the wording. In this regard, evidence of the parties' actual use of their respective trademarks is relevant [see *McDonald's Corp v Coffee Hut Stores Ltd* (1996), 1996 CanLII 3963, 68 CPR (3d) 168 (FCA)].

[42] Having reviewed the Goods and Services, and in particular those identified by the Opponent at the oral hearing, in view of the principles set out above, I find the vast majority of the Goods and Services to be, on their face, entirely unrelated or only minimally related to the goods and services listed in the Opponent's registrations. By way of example, no reasonable interpretation of the "actuarial services" included in the application could have any connection with the Opponent's television shows, live performances, the Licensed Products, or any other goods or services stated in the Opponent's registrations. As another example, the retail services included in the application, and identified by the Opponent, are not

meaningfully similar to the Opponent's goods and services simply because they refer to the sale of items that may be included in the Licensed Products. Furthermore, in the absence of evidence to the contrary, such unrelated goods and services may be presumed to travel in unrelated channels of trade. Accordingly, these factors strongly favour the Applicant in respect of the vast majority of the Goods and Services.

[43] However, I reach a different conclusion in respect of the following Goods and Services (the Overlapping Goods and Services):

- compact discs featuring music;
- digital music downloadable from the Internet;
- downloadable ... motion pictures, movies and music for computers, handheld computers and mobile phones;
- production of television and radio advertisements for others;
- telecommunications services, namely, ... streaming of video, voice and audio recordings featuring music, motion pictures, animated movies, television shows, cartoons, musical videos, music concerts, musical shows, ... via the Internet to computer users from websites;
- entertainment in the form of ... dance performance ...;
- arranging, organizing, hosting and conducting musical concerts;
- providing information in the field of entertainment, namely, television shows, movies, musical concerts and videos, theatre productions ... ;
- providing digital recorded music not downloadable from the Internet;
- providing digital music not downloadable from MP3 (Moving Picture Experts Group-1 audio layer 3) Internet web sites;
- licensing of sound recordings; and

- live performances by musical band.

[44] On their face, each of the Overlapping Goods and Services directly overlaps with, or is closely related to, one or more of the following:

- “disc and sound records” listed in the Opponent’s registration for the trademark SESAME;
- “radio and television broadcasting namely educational and entertainment programming” listed in the Opponent’s registration for the trademark SESAME;
- “education services, namely, the production of radio and television programs, videos, motion pictures, sound recording and live shows for children” listed in the Opponent’s registration for the trademark SESAME STREET;
- “providing educational material and entertainment of general interest to children, parents and families via the Internet” listed in the Opponent’s registration for the trademark SESAME STREET; or
- “live theatrical performances directed to children, parents and families” listed in the Opponent’s registration for the trademark SESAME STREET.

[45] In the absence of limitations as to the specific nature of the content referred to in the Overlapping Goods and Services, such content and the Overlapping Goods and Services themselves could relate directly to the field of children’s education or entertainment. And while the evidence shows that the Applicant’s current use of the Mark is not in this field, there is no evidence of the intended or actual nature of the Overlapping Goods and Services. The Applicant’s evidence is therefore not of assistance in determining whether the Overlapping Goods and Services are distinct from those of the Opponent. Accordingly, the nature of the parties’ goods and

services, and the nature of their trades, favours the Opponent in respect of the Overlapping Goods and Services.

Degree of Resemblance

[46] Since the Mark is identical to the Opponent's trademark SESAME, this factor strongly favors the Opponent in respect of that trademark.

[47] As for the trademark SESAME STREET, the Mark bears a fair degree of resemblance to this trademark in both appearance and sound, since both trademarks contain the fairly striking, unique word "sesame". However, the trademarks are dissimilar in terms of the ideas they suggest. While the Mark suggests the idea of a sesame seed, on account of the ordinary English meaning of this word, the trademark SESAME STREET suggests the idea of a location in a town or city named "Sesame Street". I therefore find that the degree of resemblance favors the Opponent only somewhat in respect of the trademark SESAME STREET.

Conclusion regarding confusion

[48] Having considered all of the surrounding circumstances of this case, I am satisfied that the likelihood of confusion between the parties' trademarks is at least somewhat less than even in respect of the large majority of the Goods and Services. Most of the Goods and Services are entirely dissimilar to those of the Opponent, such that consumers are highly unlikely to infer that such disparate goods and services emanate from the same source, despite the degree of similarity between the trademarks, and the extent to which the Opponent's trademark SESAME STREET may be known.

[49] I reach a different conclusion in respect of the Overlapping Goods and Services. In my view, the likelihood of confusion between the Mark and each of the Opponent's trademarks SESAME and SESAME STREET is at least even in respect of these services. In the case of the trademark SESAME, the Mark

is identical to this trademark, and the nature of the goods, services and trade all favour the Opponent. In the case of the trademark SESAME STREET, while the degree of resemblance with the Mark is reduced, the trademark SESAME STREET has been used in Canada for a very long period of time, and has become known to Canadian consumers to a fairly large extent, which mitigates the decreased degree of similarity.

[50] Since the Applicant has not shown that the likelihood of confusion is less than even in respect of the Overlapping Goods and Services, the Registrability Ground succeeds in this respect. The Registrability Ground is rejected in respect of the remaining Goods and Services.

The Entitlement and Distinctiveness Grounds

[51] In respect of the Entitlement Ground, the Opponent pleads that the Applicant is not the person entitled to register the Mark pursuant to section 16(3) of the Act since, as of the filing date of the application, the Mark was confusing with the Opponent's SESAME Marks, which had been used and made known in Canada by the Opponent and its predecessor in title, Children's Television Workshop, since at least as early as 1974, and which had not been abandoned as of the advertisement date of the application [statement of opposition, para 6]. The material date for this ground is the filing date of the Application.

[52] In respect of the Distinctiveness Ground, the Opponent pleads that the Mark is not distinctive, in that it does not actually distinguish the Goods and Services from the goods and services of others, and in particular, the Opponent's goods and services, nor is it adapted to do so [statement of opposition, para 7]. The material date for this ground of opposition is the date on which the opposition proceeding was commenced [*Metro Goldwyn Mayer Inc v Stargate Connections Inc*, 2004 FC 1185].

[53] In its written representations, the Opponent states that both of these grounds turn on whether there is a likelihood of confusion between the Mark and the Opponent's SESAME Marks [Opponent's written representations, para 28]. For this reason, it is not necessary for me to determine whether the Opponent has met its initial evidential burden in respect of these grounds. In respect of the Overlapping Goods and Services, the Registrability Ground has succeeded, and it is unnecessary to consider additional grounds of opposition. In respect of the remaining Goods and Services, I find that the Mark is not confusing with any of the Opponent's SESAME Marks, for substantially the same reasons stated in respect of the Registrability Ground. The differences in the evidence as of the material dates for these grounds do not substantially effect the confusion analysis. Accordingly, if the Opponent has met its initial burden in respect of these grounds, the grounds are nonetheless rejected in respect of the remaining Goods and Services.

The Section 30(d) Ground

[54] In respect of this ground, the Opponent pleads that the application does not comply with section 30(d) of the Act, because the Mark was not in use in Hong Kong, China, in association with all of the Goods and Services, when the application was filed.

[55] Section 30(d) of the Act, as it read before the 2019 amendments, is as follows (emphasis added):

30 An applicant for the registration of a trade-mark shall file with the Registrar an application containing ...

(d) in the case of a trade-mark that is the subject in or for another country of the Union of a registration or an application for registration by the applicant or the applicant's named predecessor in title on which the applicant bases the applicant's right to registration, particulars of the application or registration and, if the trade-mark has neither been used in Canada nor made known in Canada, the name of a

country in which the trade-mark has been used by the applicant or the applicant's named predecessor in title, if any, in association with each of the general classes of goods or services described in the application ...

[56] By way of background, applications filed prior to the 2019 amendments to the Act were required to identify the basis or bases on which an applicant was entitled to registration of a trademark. Trademark applicants could claim entitlement to registration based on prior use of the trademark in Canada pursuant to section 16(1) of the Act, proposed use of the trademark in Canada pursuant to section 16(3) of the Act, and/or registration abroad and use pursuant to section 16(2) of the Act.

[57] The present application as filed was based on proposed use pursuant to section 16(3) of the Act, and registration and use in Hong Kong, China pursuant to section 16(2) of the Act. Since the application was based in part on section 16(2) of the Act, the Applicant was required to provide the information stated in section 30(d) of the Act, including the name of a country in which the Applicant had used the Mark in association with the Goods and Services. Implicitly, the statement provided by the Applicant must have been true as of the filing date of the application.

[58] Upon filing, the application contained the information required by section 30(d) of the Act, including the name of a country in which the Applicant had used the Mark (i.e., Hong Kong). On July 28, 2022, the application was amended to remove the section 16(2) basis for registration, and the information relating thereto. Since that date, the Applicant claims entitlement to registration based only on proposed use in Canada, pursuant to section 16(3) of the Act.

[59] Nonetheless, the Opponent continues to assert the Section 30(d) Ground. The Opponent notes that the application as advertised included the false statement of use in Hong Kong, China, and that this statement was

only removed three years after the advertisement of the application, and eight years after the application filing date. The Opponent argued at the hearing that the Applicant should not be permitted to amend the application at such a late stage to delete a categorically false statement, since third parties will have relied on the statement. The Opponent urged me to set a precedent wherein applicants will be held to any false claims of use in their applications, even after the basis for entitlement that necessitated the statement, and the statement itself, is removed.

[60] I have reservations about the Opponent's position, which would result in the refusal of the application as a result of a statement that is no longer needed, and has been removed. The alleged harm that this would prevent, namely, third parties relying on the statement before it was removed, is speculative in this case, and inapplicable in general, since the Act has been amended such that statements of use are no longer required in any application. Nonetheless, even if the Opponent's arguments were accepted, the end result would only be to defeat the section 16(2) basis for registration. The application may still proceed (and does proceed) on the section 16(3) basis for registration [*Reitmans (Canada) Ltd v Thymes Ltd*, 2011 TMOB 100 at para 37]. It is therefore unnecessary for me to rule on the Section 30(d) Ground, and I decline to do so.

The Section 30(e) Ground

[61] In respect of this ground, the Opponent pleads that the application does not comply with the requirements of section 30(e) of the Act, since the Applicant did not have a *bona fide* intention to use the Mark in Canada in association with all of the Goods and Services when the application was filed [statement of opposition, para 2]. The material date for this ground of opposition is the filing date of the application which is deemed to be January 14, 2014.

[62] The Opponent relies on the Fillman Affidavit as discharging its initial evidential burden in respect of this ground [Opponent's written submissions, para 20]. However, as stated above, the Fillman Affidavit is improper reply, and will not be afforded any weight.

[63] The Opponent also relies on the Chen Affidavit as discharging its initial evidential burden. The Opponent argues that the Chen Affidavit is "clearly inconsistent with, and casts doubt on, the Applicant's purported intention to use the Mark in association with the long list of goods and services identified in the application" [Opponent's written representations, para 20]. In the Opponent's submission, "it would have been a rather simple matter to clearly state the Applicant's intention ..." to use the Mark in association with all of the Goods and Services, but "... the evidence is conspicuously vague in relation to the Applicant's intention to use the Mark in Canada in association with even a small fraction of ..." the Goods and Services [para 20]. In particular, the Opponent points to the following statements in paragraph 24 of the Chen Affidavit, which the Opponent characterizes as "extremely broad":

As detailed above, Ant Group currently offers **a host of financial and credit related services** that assist and allow individuals and merchants to make sales and purchases ... of many of the [Goods and Services]. In addition, Ant Group is a **rapidly expanding, multifaceted, global business that is in the process of growing and expanding both its global footprint and the goods and services that it offers in association with its trademarks in Canada and worldwide. This expansion and intended use of the [Mark] with the [Goods and Services] in Canada** will be powered, in part, by the Applicant's association with Ant Group's businesses ... (emphasis in the Opponent's written representations, para 21).

[64] At the hearing, the Opponent asserted that these alleged inconsistencies alone were sufficient to discharge the Opponent's initial burden.

[65] While the Opponent correctly notes that its initial burden in respect of this ground is light, it is also not non-existent. There must be *some* evidence to support a conclusion that the Applicant did not intend to use the Mark in association with all of the Goods and Services. When relying on an applicant's own evidence to meet this burden, that evidence must be *clearly* inconsistent with an applicant's intention to use [*Corporativo De Marcas GJB, SA DE CV v Bacardi & Company Ltd*, 2014 FC 323 at para 33].

[66] Put simply, there is nothing in the Chen Affidavit that is inconsistent with the Applicant's declared intention to use the Mark, in association with all of the Goods and Services. Indeed, paragraph 24 of the Chen Affidavit states that the Applicant is expanding its goods and services offered in Canada, and explicitly references the Applicant's "intended use of the [Mark] with the [Goods and Services] in Canada". Contrary to the Opponent's submission, this statement is clearly *consistent* with an intention to use on the part of the Applicant. Furthermore, even if Mr. Chen had not clearly stated the Applicant's intention to use the Mark in association with all of the Goods and Services, such silence cannot constitute clearly inconsistent evidence with which the Opponent could meet its initial burden.

[67] While the sheer length and scope of the Goods and Services may cause some to wonder whether the Applicant truly intended to use the Mark in association with all of them, this alone is not sufficient to discharge the Opponent's initial evidential burden. Some evidence must be relied upon, and if that evidence is the Applicant's, then it must be clearly inconsistent with an intention to use the Mark. The Chen Affidavit, which states that the Applicant *does* intend to use the Mark in Canada in association with the Goods and Services, falls far short of the mark. Accordingly, the Opponent's initial burden has not been met, and the Section 30(e) Ground is rejected.

The Section 30(i) Ground

[68] In respect of this ground, the Opponent asserts that the application does not comply with the requirements of section 30(i) of the Act, since the Applicant could not have been satisfied that it was entitled to use the Mark in Canada, as of the filing date of the Application [statement of opposition, para 4]. In this regard, the Opponent pleads that the Applicant must have known of the Opponent's SESAME Marks when it filed the application, and that use of the Mark would be likely to cause confusion with, and depreciate the value of goodwill owing to the Opponent's SESAME Marks, contrary to sections 20 and 22 of the Act [para 4].

[69] The Opponent made no submissions in respect of this ground, either in writing or at the hearing. The Applicant argued at the hearing that, in the absence of any evidence that the Applicant knew of the Opponent's SESAME Marks, or was attempting to trade on the Opponent's reputation and goodwill by applying to use the Mark, the Opponent has not met its initial evidential burden in respect of this ground. In the absence of submissions to the contrary, and in view of the fact that I find the Mark not to be confusing in respect of the vast majority of the Goods and Services, I agree with the Applicant. As the Opponent has not met its initial evidential burden, the Section 30(i) Ground is rejected.

DISPOSITION

[70] Pursuant to the authority delegated to me under section 63(3) of the Act, I refuse the application with respect to the Overlapping Goods and Services, and I reject the opposition with respect to the remainder of the Goods and Services, all pursuant to section 38(12) of the Act. Thus, the application will proceed to registration with the statement of goods and services provided in Schedule B to this decision.

Jaimie Bordman
Member
Trademarks Opposition Board
Canadian Intellectual Property Office

SCHEDULE A

The Goods and Services of the application

- 9 (1) Scientific, photographic, cinematographic, signalling and laboratory apparatus and instruments, namely, microscopes, pipettes, flasks, test tubes, electric generators, cameras, photographic lenses, camera filters, photometers, slide plates, slide projectors, telescopes, eyeglasses and sunglasses, magnifying glasses, video viewers namely, video monitors and video tape players, lamps, namely, electric lamps, floor lamps, desk lamps, fluorescent lamps, table lamps, head lamps, medical lamps, flash lamps for photography, television screens, picture enlarger projectors, video tape recorders, electrical loadmeters, radar speed indicator signs, fuel level gauges, temperature indicators, side lights and reversing lights for vehicles, direction indicators for vehicles, headlights; apparatus for recording, transmission and reproduction of sound and images, namely, computers, computer screens, computer keyboards, computer printers, telephones, telecopiers, televisions; magnetic data carriers, namely, blank magnetic tape; mechanisms for coin-operated vending machines; cash registers, calculators, electronic data processing equipment namely, computers and printers for use with computers; computer programs for use in electronic commerce for processing electronic payments to and from others and authenticating the identity of payer; software for processing electronic bill payments and credit and debit card payments; authentication software for verification in relation to on-line payment and transfer of funds; on-line electronic publications namely, books, magazines, newsletters, journals, directories, catalogues and information pamphlets downloadable from the Internet; on-line electronic publications, namely, books, magazines, newsletters, journals, directories, catalogues and information pamphlets downloadable from a computer network; on-line electronic publications, namely, books, magazines, newsletters, journals, directories, catalogues and information pamphlets downloadable from a computer database; Downloadable computer software for accessing, viewing, and controlling remote computers and computer networks; downloadable electronic publications in the nature of newspaper and magazine articles, essays and academic papers, and instructional books, charts, diagrams and videos in the fields of telecommunications, namely, satellite, wireless computer networks, telephone communications, cable network and cellular network routing, the Internet, computer training, business management, sales, and marketing; notebook computers; laptop computers; portable computers; handheld computers; personal digital assistants; personal media players, namely, portable and handheld audio and video players being MP3 players, MP4 players, portable CD players and portable DVD players, mobile telephones; smart phones; digital cameras; computer workstations, comprised of compute desk and furniture, computer, monitor and printer; computer servers, network servers; computer and

computer hardware for telecommunications networking, namely, computer network adaptors, switches, routers and hubs; wireless and wired modems and communication cards and devices, namely, long distance calling cards; cell phone, telephones; laptop computer holders, computer bags; fire extinguisher; computer hardware; computer firmware for controlling large overhead variable message signs on highways, computer firmware for maintaining data integrity, namely, assuring accuracy and stability of data information, computer firmware for programming and for remote monitoring of function of hardware and network of computers; E-commerce computer software to allow users to perform electronic payment transactions via a global computer network; compact discs featuring music; digital music downloadable from the Internet; telecommunications apparatus, namely, network telephone, electronic facsimile machines, handheld computers, and mobile phones; mouse mats; mobile phone handsets; mobile phone accessories, namely, cases, holders, handsfree headsets and chargers; downloadable games, pictures, photographs, motion pictures, movies and music for computers, handheld computers and mobile phones; alarm systems, namely, security alarm systems, fire alarm systems; security cameras; mobile radio and television broadcasting units, namely, receptors, antennas, radios and television sets; television broadcasting equipment, namely, transmitters, amplifiers, television cameras and monitors, camcorders, video camera recorders and video teleprompters; cameras; video cameras; headphones; ear pieces, namely, earbuds, earsets and earphones; stereo and computer speakers; Global Positioning System (GPS) apparatus and equipment, namely, computer software, transmitters, receivers and hand held units, for automotive, aviation and marine uses and vehicle tracking; computer, electronic games and video games; liquid crystal displays for telecommunications and electronic equipment namely, computer monitors, laptop computers, tablet computers, televisions, mobile phones, digital cameras; television set top box; remote controls, namely, remote controls for televisions, remote controls for home audio sets, remote controls for video players; spectacles and sunglasses; signboards; encoded credit, debit, cash and identification cards and magnetic credit, debit, cash and identification cards; automatic teller machines, cash dispensing machines for making change and for exchange of coins to cash; instructional and teaching material, namely, educational software featuring electronic commerce and online trading;

- 16 (2) Newspapers; magazines; periodicals; journals; paper, namely, bond paper, printer paper, note paper, note book paper, craft paper, newsprint paper, cardboard; printed matter, namely, books, newspapers and magazines; bookbinding material, namely, cardboard, paper, leather and glue; photographs; stationery, namely, rulers, pens, pencils, erasers, highlighters, paper pads, paper clips, staplers and staples, scissors; artists' materials, namely, artist's paints, paint sets, colouring pencils, art canvases, art canvas boards, art paper, artist easels and paint brushes; typewriters; instructional and teaching material, namely, books, manuals,

and chalk, chalkboards, flip charts, felt markers; plastic materials for packaging, namely, plastic boxes, plastic bubble packs, plastic film for palletizing goods, plastic fastening ties, plastic packing for shipping containers, plastic pellets for packing; printers' type; printing blocks; books, pamphlets, posters, business cards, gift cards, membership cards, announcement cards, greeting cards, invitation cards, note cards, circulars, catalogues, calendars, price tags, price labels; carry bags of paper, cardboard and plastic; printed telephone, facsimile, electronic mail and web site directories; cards in the form of debit cards, credit cards, charge cards and telephone cards other than encoded and magnetic cards; marketing and promotional materials, namely, brochures, flyers, coupons, pamphlets, banners; computer user manuals; packaging materials, namely, cardboard boxes, paper wrapping, ribbons for wrapping; tissues, namely, facial tissue, toilet tissue, tissue paper; handkerchiefs made of paper; toy models and figurines made of paper; paper party bags

- 35 (1) Advertising, namely, direct mail advertising of wares and services of others, electronic billboard advertising of the wares and services of others, dissemination of advertising materials for others, updating of advertising materials for others; business management; business administration; office functions namely, bookkeeping services, supplying of office requisites, namely, envelopes, pens, erasers, notebooks, writing pads, adhesive tapes, calculators, packaging materials and folders, photocopy services; operation of consumer loyalty programs; advertising services provided via the Internet, namely, promoting the goods of others by providing information regarding discounts and special offers for the goods of others; production of television and radio advertisements for others; accountancy; auctioneering; arranging and conducting consumer trade shows and fairs in the field of household products, household appliances, consumer electronics, fitness products, health and beauty products, clothing, footwear, watches, fashion and jewelry, toys, books and automobiles; conducting public opinion polls; data processing; provision of business information of goods and services of others via local and global computer networks; advertising agency services; advertising services provided for others, namely, rental of advertising space on a web site a global computer network, advertising via the Internet for others, database management; compilation of information into computer databases; business consulting services, namely, business administration consulting services, business consulting in the field of electronic commerce relating to retail store and wholesale store service online trading in which seller posts products to be auctioned and bidding is done via the Internet and business acquisitions and mergers, business consulting in the field of business networking, business efficiency services, business management consulting services; business consulting services in the field of web based events, namely, teleconferencing, videoconferencing and meetings, computer training programs, and business management seminars; business consulting services in the field

of online collaboration and collaboration services that allow users to access jointly-shared documents, data information, task lists, and participate in discussion forums and collaboration software; business consulting services in the fields of sales and marketing; project management consulting services relating to development, set up, staging, production, recording, monitoring and follow-up for web based events, conferences, training programs, learning programs, and seminars; market research; business consultancy services, namely, locating and providing information and referrals for goods and services of others; business consultancy services, namely, providing a web site on a global computer network by which third parties can buy and sell goods and services; providing computerized online ordering services featuring clothing, footwear, cosmetics, body care products, home entertainment electronics, computer hardware, computer software, toys and sporting goods; advertising of goods and services of others via local and global computer networks; international import and export agency services providing and rental of advertising space on the Internet; online trading services namely, electronic auctioneering and providing online appraisal and valuation relating thereto, online retail services of consumer products, namely, on-line sales of clothing, cosmetics, home entertainment electronics, housewares, computers, laptops, scanners and printers, small electric kitchen appliances, lingerie, photographic equipment, sporting goods and toys providing a directory of third party web sites for the purchase of consumer goods and services, business consultancy services in the field of operating a website featuring an electronic marketplace for the buyers and sellers of goods and services; advertising of vacant residential and commercial property for sale and rental for others; compilation of advertisements for the sale of goods and services of others for use as web pages on the Internet; computer data processing; auctioneering provided on the Internet; personnel management; presentation of goods, namely, clothing, cosmetics, home entertainment electronics, house wares, computer wares and kitchen wares, lingerie, photographic equipment, sporting goods and toys on website for retail purposes; the bringing together, for the benefit of others, of a variety of goods for sale at book stores, clothing stores, computer equipment stores, department stores, furniture stores, jewellery shops, toy stores and sporting goods store, enabling customers to conveniently view and purchase those goods from a general merchandise Internet web site and in a wholesale outlet; the bringing together, for the benefit of others, of a variety of goods for sale at book stores, clothing stores, computer equipment stores, department stores, furniture stores, jewellery shops, toy stores and sporting goods stores, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order and online; the bringing together, for the benefit of others, of a variety of goods for sale at book stores, clothing stores, computer equipment stores, department stores, furniture stores, jewellery shops, toy stores and sporting goods stores, enabling customers to conveniently view and purchase those goods from

retail outlets; retail and wholesale of telephones, mobile phone handsets, mobile phone accessories, electronic and telecommunications goods, namely, home entertainment electronics, computers, laptops, printers, computer hardware and computer software, batteries, battery chargers, apparatus and instruments for recording, receiving, transmitting and reproducing data, information, pictures, images and sound, namely, audio recording units, music recording units, telephone recording units, cameras, video cameras, web cameras, microphones, precious metals, jewellery, precious stones, printed matter, namely, books, magazines and newspapers, stationery and magnetic and non-magnetically encoded cards, furniture, picture frames, household and kitchen utensils, glassware, porcelain and earthenware, textiles, clothing, footwear, headgear, laces and embroidery, buttons, ribbons, pins and needles, artificial flowers, carpets, rugs, games and electronic toys, chemicals used in industry, science, photography and agriculture, paints, varnishes and lacquers, personal hygiene products, soaps, perfumery, cosmetics, hair and body lotions, essential oils, cleaning and bleaching preparations, lubricants, fuels, candles, pharmaceutical, veterinary and sanitary preparations, ironmongery and small items of metal hardware; machines, namely, office machines, agricultural machines, chemical processing machines, construction machines, metalworking machines, vending machines, automatic teller machines, electronic facsimile machines, video game machines, and machine tools, namely, metalworking tools, gardening tools, hand-operated tools, hand held cutting tools, tools, cutlery, razors and hand tools, computers, calculators, spectacles and sun glasses, surgical instruments, medical instruments for general examination and cutting tissue, apparatus for lighting, namely, lamps, chandeliers, heating, namely, electric heaters, steam generating, cooking, namely, stoves, ovens, toaster ovens, rice cookers, slow cookers, refrigerating, namely, refrigerators, electric coolers, drying, namely, clothes dryers, ventilating, namely, ventilation fans, water supply and sanitary purposes, namely, garbage containers, toilets, motor vehicles, firearms, fireworks, silverware, horological and chronometric instruments, musical instruments, magazine, cards, paper and cardboard products, picture, typewriters, packaging materials, rubber and plastics for manufacture use, packing and insulating materials, leather and imitations of leather and goods made from these materials, namely, handbags, purses, wallets, leather holders, bags, luggage, umbrellas, mirrors, ropes, string, nets, tents, yarns and threads for textile use, coat hangers, place mats, dressmaker's articles, bed and table covers, playthings, namely, toys, and sporting articles, floral products, namely, artificial and dried flowers, tobacco, smokers' articles and matches; department store retailing services; secretarial services; provision of business statistical information, namely, marketing survey services; organisation of exhibitions for commercial and advertising purposes, namely, organizing exhibits where third parties sell and advertise their goods and services in the field of household products, household appliances, consumer electronics, fitness products, health and beauty

products, clothing, footwear, watches, fashion and jewelry, toys, books and automobiles; business assistance services namely, compilation of customer mailing lists; business investigation; business administration services for the processing of sales made on the Internet; personnel placement; import-export clearance agencies, import-export agency services; arranging for subscriptions for newspapers; document reproduction; transcribing and stenography services; rental of office equipment; customer relationship management; business management services in the field of electronic commerce; business management consulting and administration services in the field of sponsorship programmes; accounting services; charitable services, namely organizing and conducting volunteer programmes and service projects for the benefit of the community

- 36 (2) Insurance; financial affairs, namely, financial analysis, financial analysis consultation services, financial appraisals, investment of funds for others, financial investment counselling, investment management, financial planning services; monetary affairs, namely, foreign currency exchange services; real estate affairs, namely, real estate brokerage services, real property management services; financial transactions clearing house services via a global computer network; online financial services, namely, debt settlement and providing electronic processing of credit card transactions and electronic funds transfer via a global computer network; credit card services, processing and transmission of bills and payments thereof, and providing insurance for financial transactions for purchases; electronic funds transfer services; transmission of funds by electronic means for others; electronic bill payments for others via the Internet; financial services in the nature of billing and payment processing services; renting and leasing of real estate; real estate appraisal; real estate valuation, real estate financing, real estate investment; real estate brokerage services; real estate agency services; housing services for seniors and students; actuarial services; real estate management and consultancy services; rent collection; rental of offices; rental of apartments and flats; provision of financial information via the Internet; safety deposit box services; issuing of travellers' cheques and letters of credit; providing advice on capital investments; financial evaluation relating to insurance, and real estate; financial asset management services; securities brokerage services; stock exchange quotation services; stocks and bonds brokerage, financial analysis; debit card services, charge card services and cheque verification services; savings account and financial investment brokerage services; financial clearinghouse services; credit verification of individuals and companies via global computer information network; credit risk management consulting services; electronic purchase payment and electronic bill payment services; financial accounts management services; issuance of stored value cards, charge cards and debit cards; telephone credit cards services; information services relating to finance and insurance, provided online from a computer database and the Internet;

agency for collection of gas and electricity fees; antique appraisal; art appraisal; jewelry appraisal; used car appraisal; providing business information in the field of taxes; charitable fund raising; collection and organization of donations for charitable purposes; rental of paper money and coin counting and processing machines; rental of cash dispensers and automated-teller machines; online bill and fee payment services; rental and leasing of safes

- 38 (3) Telecommunications services, namely, providing data transmission services via radio, telephone lines and the Internet for the computers of others via satellite, wireless telephone lines, cable network and wide area network and streaming of video, voice and audio recordings featuring music, motion pictures, animated movies, television shows, cartoons, musical videos, music concerts, musical shows, news and sports events via the Internet to computer users from websites; providing web-based multimedia teleconferencing, videoconferencing, and online meeting services that allow simultaneous and asynchronous viewing, sharing, editing, and discussion of documents, text data, and images by participants via a web browser; providing customers with online access to online reports regarding the performance, effectiveness, and status of web-based software applications, teleconferences, videoconferences and meetings; operation of a website providing users with secure remote access to private computer networks; operating a website to allow users to collaborate with others by allowing users to access applications, platforms, jointly-shared documents, data, task lists, and discussion forums; Providing an online database of information in the field of Internet broadcasting complaint submission procedures and platforms; facsimile transmission; electronic mail slices through wired and wireless access paging services, wireless digital messaging services; paging services; rental of modems; transmission and delivery of electronic mail messages, still picture and moving picture information, namely, characters, messages, music and images, telegrams, information and text by telephone, teleprinter, cable, computer and satellite means; video conferencing services; operation of electronic bulletin board on a website that enables users to perform a real-time interactive talk between a computer terminal and an electronic bulletin board containing still picture and moving picture information and voice information such as characters for social networking purposes on topics of general interest; providing electronic bulletin boards and message boards for transmission of messages for social networking purposes on topics of general interest; providing online chat rooms for registered users for transmission of messages concerning collegiate life, classified, virtual community and social networking; video-on-demand transmission services; news agency services; providing access to computer database facilitating electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet on the global computer network for searching and retrieving information, data, web sites and resources available on

computer networks; operation of a website providing user access to a computer database containing electronic publications, bulletin boards, database and information in the field of electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet accessible via computer; operation of chat rooms for social networking purposes on topics of general interest, namely, chat room services; multiple user access to global computer information networks for the transfer and dissemination of information in the field of electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet; providing access to a website on a global computer network by which third parties buy and sell goods and services, place and fulfill orders and conduct business transactions, providing access to an interactive website on a global computer network for third parties to post information, respond to requests and place and fulfill orders for products, services and business opportunities; web video conferencing services; electronic communication services for establishing operation of virtual chatrooms via text messaging; providing electronic bulletin boards for the posting and transmission of messages among and between computer users concerning products, services and business leads and opportunities for social and business networking purposes; providing an online interactive bulletin board for posting, promoting for others, sale and resale of items via a global computer network; providing electronic mail and electronic mail forwarding services, providing computer access and leasing access time to online interactive bulletin boards and databases in the field of electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet; providing access to a web site on a global computer network by which third parties can offer goods and services, place and fulfill orders and conduct business transactions; providing access to electronic calendar, address book and electronic notebook, via local and global computer networks; providing facilities for video and telephone conferencing; operating a website providing computer links to third party web sites to facilitate online purchase transactions of goods and services

- 39 (4) Transport, namely, transportation services of passenger and consumer goods by rail, air, truck and ship; packaging of articles for transportation and warehouse storage of such articles for transport; travel booking services; electronic data storage for archiving business, corporate and personal records and documents; transportation information, namely, providing a website in the area of travel; ship brokerage; Reservation and booking of seats for travel and reservation of hotel rooms for travelers; courier services; transport services, namely, logistic management relating to transport of goods by truck, rail and air; car rental services; car parking lot services; yacht and boat chartering services; travel agency services; travel reservation and travel information

services; travel arrangement and travel information services provided on-line from a computer database and the Internet; provision of information in the field of travel and tourism through the Internet; merchandise packaging for others; providing road and traffic information, chauffeur services; loading and unloading of cargo; freight brokerage; brokerage services for rental, leasing, selling, purchasing of ships and boats; chartering of ships and boats; salvage and refloating of ships and boats; boat and ship mooring facility services; rental of warehouses; rental and leasing of wheelchairs; management of parking lots; rental and leasing of airplanes; rental and leasing of storage containers; rental and leasing of bicycles; rental and leasing of cars; rental and leasing of ships and boats; rental and leasing of non-motorized vehicles, namely, bicycles, tricycles, skates, skateboards, push scooters; rental and leasing of mechanical parking meters; rental and leasing of transportation pallets; rental and leasing of packaging and wrapping machines; rental and leasing of refrigerator; collection of domestic waste and trash; collection of industrial waste and trash; import-export clearance agencies, namely, custom clearance

- 41 (5) Education services, namely, providing seminars and conferences in the field of business management and e-commerce relating to retail store and wholesale store services; providing of training in the field of business management and e-commerce relating to retail store and wholesale store services; entertainment in the form of air shows, dance performance and circus performance; booking seats for shows and sports events; administration of cultural and educational exchange programs; providing information in the field of sporting and cultural events; publication of texts, namely, articles and academic papers, books and journals; publication of diagrams, namely, charts and graphs, and photographs; publication of newspapers, magazines and periodicals; education, training and instruction services, namely, online courses and webinars, in the fields of operation of telecommunications equipment, namely, satellite, wireless computer network, telephone, cable network, cellular network, operation of computers, operation of computer programs, web site design, electronic-commerce, namely, conducting electronic business transaction relating to retail store and wholesale store services via the Internet, business management and advertising; educational services, namely, development of courses and examinations to provide qualifications in the field of computer programming; electronic games provided by means of the Internet; provision of information in the field of yoga, golf events, fun fair, social dance, sports, community social and cultural events; providing on-line electronic publications not downloadable namely, publishing of an electronic newsletter; arranging, organizing, hosting and conducting singing competitions; arranging, organizing, hosting and conducting musical concerts; arranging, organizing, hosting and conducting game shows and quests, namely role playing games; entertainment ticket agency services; providing information in the field of entertainment, namely, television shows,

movies, musical concerts and videos, theatre productions and comedy shows and in the field of education, namely, online courses and webinars in relation to business management, electronic commerce relating to retail store and wholesale store services, information security, computer data security and intellectual property, provided online from a computer database and the Internet; providing digital recorded music not downloadable from the Internet; providing digital music not downloadable from MP3 (Moving Picture Experts Group-1 audio layer 3) Internet web sites; entertainment and education services relating to planning, production and distribution of sound recordings, photographic images, digital music, movies, live and recorded audio sound recordings, and video recordings for broadcasting on the Internet, digital wireless and wired television receiver boxes; licensing of sound recordings; production of documentary and news programmes for broadcasting on the Internet; news reporters' services; information in the field of sports and community cultural festival events, current news events and breaking news provided by satellite television transmission and the Internet; providing a web site featuring on-line computer games; provision of recreation club, sports arena facilities and gymnasium facilities; live performances by musical band; operation of discotheque, entertainment in the form of fashion shows and night club services; arranging, conducting and provision of conferences, conventions, congresses, seminars and training workshops in the fields of finance, real estate, electronic commerce relating to retail store and wholesale store services, online trading services in which seller posts products to be auctioned and bidding is done via the Internet, computer hardware and software, and telecommunications, namely, satellite, wireless computer networks, telephone communications, cable network and cellular network; art exhibition and gallery services; art gallery services, namely, fine arts leasing; training services in the field of occupation health and safety, and environmental conservation; provision of cigar classes, wine tasting classes; instructional services in the field of operation of audiovisual equipment, which is used for the production of broadcasting radio and television programs; providing audio and visual recording studios; providing sports facilities, namely, basketball courts, tennis courts, swimming pools, gymnastic rooms; providing theatre facilities for movies, shows, plays, and music; providing classroom facilities for educational training; theatrical booking agencies; rental and leasing of motion pictures, cine-films; rental and leasing of musical instruments; rental and leasing of television programmes; rental and leasing of television sets; lending libraries; archive library services; film subtitling services; sign language interpretation services; rental of entertainment software, namely, video games; operation of a website providing video games, computer games, still images and streaming of audio sound recordings; providing online computer games and contests; rental of pre-recorded video tapes; rental and leasing of video game machines; lending of arcade game equipment; lending of pictures; photography;

translation; language interpretation; educational and training programs in the field of risk management; news reporting; lottery services

- 42 (6) Design and development of computer hardware and software; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) services providing software in the fields of web-based conferencing, audio conferencing, electronic wireless digital messaging services, document collaboration, video conferencing, and voice and call processing; providing online non-downloadable software for facilitating the interoperability of multiple software applications in the field of electronic commerce relating to retail store and wholesale store services; technical support services in the form of troubleshooting of computer hardware and software problems provided online, by email and by telephone; providing assistance in the field of computer hardware and computer software provided to Internet users by means of a support hotline; computer services, namely, creating indexes of information, sites and resources on computer network in the field of e-commerce relating to retail store and wholesale store services; providing Internet search engines; design of computers, notebook computers, laptop computers, portable computers and handheld computers; design of personal digital assistants and personal media players, namely, portable and handheld audio and video players; design of mobile telephones and smart phones; design of digital cameras; computer programming; computer integration services; computer systems analysis services; computer programming in relation to the defence against virus; design, maintenance and updating of computer system software; computer software design; computer hardware system design; computer software system design; design and development of webpages; hosting webpages for others; hosting computer application software for searching and retrieving information from databases and computer networks in the field of e-commerce businesses relating to retail store and wholesale store services; providing technical information in the field of computer software, computer technology and programming at the specific request of end-users by means of telephone and global computer network; computer services, namely, customized searching of computer databases and websites; computer programming, coding and decoding; conversion of physical data and documents into electronic media format; architectural design services; interior designs of buildings, offices and apartments; provision of computer security risk management programs; computer security information and testing services; quality certification services, namely, quality certification in the field of computer and data security; consultancy in the field of computer data security; authentication services namely, quality certification in the field of computer and data security; consultancy services in the field of security for telecommunications, namely, computers and computer networks; authentication services for computer security; on-line authentication of electronic signatures

- 45 (7) Personal and social services rendered by others to meet the needs of individuals, namely, general cleaning, laundry, meal preparation, home and house repairs, chauffeur services, babysitting, home sitting, social and personal networking and introduction services; providing information in field of social work services; dating services; legal services; domain name registration services; security guard services; bodyguard services; rental of clothing; alarm response and verification services through electric central stations for intruders, burglar and fire protection systems; intruder and burglar alarms monitoring services, fire and flood alarm monitoring services; housekeeping and maid services; licensing use of digital data, namely, still pictures, motion pictures, audio recordings and documents containing text; creation, compilation and maintenance of a register of domain names in the field of e-commerce; baggage inspection for security purposes; personal background investigation services; funeral home and funeral arrangement services

SCHEDULE B

Goods and services for which the opposition is rejected

- 9 (1) Scientific, photographic, cinematographic, signalling and laboratory apparatus and instruments, namely, microscopes, pipettes, flasks, test tubes, electric generators, cameras, photographic lenses, camera filters, photometers, slide plates, slide projectors, telescopes, eyeglasses and sunglasses, magnifying glasses, video viewers namely, video monitors and video tape players, lamps, namely, electric lamps, floor lamps, desk lamps, fluorescent lamps, table lamps, head lamps, medical lamps, flash lamps for photography, television screens, picture enlarger projectors, video tape recorders, electrical loadmeters, radar speed indicator signs, fuel level gauges, temperature indicators, side lights and reversing lights for vehicles, direction indicators for vehicles, headlights; apparatus for recording, transmission and reproduction of sound and images, namely, computers, computer screens, computer keyboards, computer printers, telephones, telecopiers, televisions; magnetic data carriers, namely, blank magnetic tape; mechanisms for coin-operated vending machines; cash registers, calculators, electronic data processing equipment namely, computers and printers for use with computers; computer programs for use in electronic commerce for processing electronic payments to and from others and authenticating the identity of payer; software for processing electronic bill payments and credit and debit card payments; authentication software for verification in relation to on-line payment and transfer of funds; on-line electronic publications namely, books, magazines, newsletters, journals, directories, catalogues and information pamphlets downloadable from the Internet; on-line electronic publications, namely, books, magazines, newsletters, journals, directories, catalogues and information pamphlets downloadable from a computer network; on-line electronic publications, namely, books, magazines, newsletters, journals, directories, catalogues and information pamphlets downloadable from a computer database; Downloadable computer software for accessing, viewing, and controlling remote computers and computer networks; downloadable electronic publications in the nature of newspaper and magazine articles, essays and academic papers, and instructional books, charts, diagrams and videos in the fields of telecommunications, namely, satellite, wireless computer networks, telephone communications, cable network and cellular network routing, the Internet, computer training, business management, sales, and marketing; notebook computers; laptop computers; portable computers; handheld computers; personal digital assistants; personal media players, namely, portable and handheld audio and video players being MP3 players, MP4 players, portable CD players and portable DVD players, mobile telephones; smart phones; digital cameras; computer workstations, comprised of compute desk and furniture, computer, monitor and printer; computer servers, network servers; computer and computer hardware for telecommunications networking, namely,

computer network adaptors, switches, routers and hubs; wireless and wired modems and communication cards and devices, namely, long distance calling cards; cell phone, telephones; laptop computer holders, computer bags; fire extinguisher; computer hardware; computer firmware for controlling large overhead variable message signs on highways, computer firmware for maintaining data integrity, namely, assuring accuracy and stability of data information, computer firmware for programming and for remote monitoring of function of hardware and network of computers; E-commerce computer software to allow users to perform electronic payment transactions via a global computer network; telecommunications apparatus, namely, network telephone, electronic facsimile machines, handheld computers, and mobile phones; mouse mats; mobile phone handsets; mobile phone accessories, namely, cases, holders, handsfree headsets and chargers; downloadable games, pictures, photographs, for computers, handheld computers and mobile phones; alarm systems, namely, security alarm systems, fire alarm systems; security cameras; mobile radio and television broadcasting units, namely, receptors, antennas, radios and television sets; television broadcasting equipment, namely, transmitters, amplifiers, television cameras and monitors, camcorders, video camera recorders and video teleprompters; cameras; video cameras; headphones; ear pieces, namely, earbuds, earsets and earphones; stereo and computer speakers; Global Positioning System (GPS) apparatus and equipment, namely, computer software, transmitters, receivers and hand held units, for automotive, aviation and marine uses and vehicle tracking; computer, electronic games and video games; liquid crystal displays for telecommunications and electronic equipment namely, computer monitors, laptop computers, tablet computers, televisions, mobile phones, digital cameras; television set top box; remote controls, namely, remote controls for televisions, remote controls for home audio sets, remote controls for video players; spectacles and sunglasses; signboards; encoded credit, debit, cash and identification cards and magnetic credit, debit, cash and identification cards; automatic teller machines, cash dispensing machines for making change and for exchange of coins to cash; instructional and teaching material, namely, educational software featuring electronic commerce and online trading;

- 16 (2) Newspapers; magazines; periodicals; journals; paper, namely, bond paper, printer paper, note paper, note book paper, craft paper, newsprint paper, cardboard; printed matter, namely, books, newspapers and magazines; bookbinding material, namely, cardboard, paper, leather and glue; photographs; stationery, namely, rulers, pens, pencils, erasers, highlighters, paper pads, paper clips, staplers and staples, scissors; artists' materials, namely, artist's paints, paint sets, colouring pencils, art canvases, art canvas boards, art paper, artist easels and paint brushes; typewriters; instructional and teaching material, namely, books, manuals, and chalk, chalkboards, flip charts, felt markers; plastic materials for packaging, namely, plastic boxes, plastic bubble packs, plastic film for

palletizing goods, plastic fastening ties, plastic packing for shipping containers, plastic pellets for packing; printers' type; printing blocks; books, pamphlets, posters, business cards, gift cards, membership cards, announcement cards, greeting cards, invitation cards, note cards, circulars, catalogues, calendars, price tags, price labels; carry bags of paper, cardboard and plastic; printed telephone, facsimile, electronic mail and web site directories; cards in the form of debit cards, credit cards, charge cards and telephone cards other than encoded and magnetic cards; marketing and promotional materials, namely, brochures, flyers, coupons, pamphlets, banners; computer user manuals; packaging materials, namely, cardboard boxes, paper wrapping, ribbons for wrapping; tissues, namely, facial tissue, toilet tissue, tissue paper; handkerchiefs made of paper; toy models and figurines made of paper; paper party bags

- 35 (1) Advertising, namely, direct mail advertising of wares and services of others, electronic billboard advertising of the wares and services of others, dissemination of advertising materials for others, updating of advertising materials for others; business management; business administration; office functions namely, bookkeeping services, supplying of office requisites, namely, envelopes, pens, erasers, notebooks, writing pads, adhesive tapes, calculators, packaging materials and folders, photocopy services; operation of consumer loyalty programs; advertising services provided via the Internet, namely, promoting the goods of others by providing information regarding discounts and special offers for the goods of others; accountancy; auctioneering; arranging and conducting consumer trade shows and fairs in the field of household products, household appliances, consumer electronics, fitness products, health and beauty products, clothing, footwear, watches, fashion and jewelry, toys, books and automobiles; conducting public opinion polls; data processing; provision of business information of goods and services of others via local and global computer networks; advertising agency services; advertising services provided for others, namely, rental of advertising space on a web site a global computer network, advertising via the Internet for others, database management; compilation of information into computer databases; business consulting services, namely, business administration consulting services, business consulting in the field of electronic commerce relating to retail store and wholesale store service online trading in which seller posts products to be auctioned and bidding is done via the Internet and business acquisitions and mergers, business consulting in the field of business networking, business efficiency services, business management consulting services; business consulting services in the field of web based events, namely, teleconferencing, videoconferencing and meetings, computer training programs, and business management seminars; business consulting services in the field of online collaboration and collaboration services that allow users to access jointly-shared documents, data information, task lists, and participate in discussion forums and collaboration software;

business consulting services in the fields of sales and marketing; project management consulting services relating to development, set up, staging, production, recording, monitoring and follow-up for web based events, conferences, training programs, learning programs, and seminars; market research; business consultancy services, namely, locating and providing information and referrals for goods and services of others; business consultancy services, namely, providing a web site on a global computer network by which third parties can buy and sell goods and services; providing computerized online ordering services featuring clothing, footwear, cosmetics, body care products, home entertainment electronics, computer hardware, computer software, toys and sporting goods; advertising of goods and services of others via local and global computer networks; international import and export agency services providing and rental of advertising space on the Internet; online trading services namely, electronic auctioneering and providing online appraisal and valuation relating thereto, online retail services of consumer products, namely, on-line sales of clothing, cosmetics, home entertainment electronics, housewares, computers, laptops, scanners and printers, small electric kitchen appliances, lingerie, photographic equipment, sporting goods and toys providing a directory of third party web sites for the purchase of consumer goods and services, business consultancy services in the field of operating a website featuring an electronic marketplace for the buyers and sellers of goods and services; advertising of vacant residential and commercial property for sale and rental for others; compilation of advertisements for the sale of goods and services of others for use as web pages on the Internet; computer data processing; auctioneering provided on the Internet; personnel management; presentation of goods, namely, clothing, cosmetics, home entertainment electronics, house wares, computer wares and kitchen wares, lingerie, photographic equipment, sporting goods and toys on website for retail purposes; the bringing together, for the benefit of others, of a variety of goods for sale at book stores, clothing stores, computer equipment stores, department stores, furniture stores, jewellery shops, toy stores and sporting goods store, enabling customers to conveniently view and purchase those goods from a general merchandise Internet web site and in a wholesale outlet; the bringing together, for the benefit of others, of a variety of goods for sale at book stores, clothing stores, computer equipment stores, department stores, furniture stores, jewellery shops, toy stores and sporting goods stores, enabling customers to conveniently view and purchase those goods from a general merchandise catalogue by mail order and online; the bringing together, for the benefit of others, of a variety of goods for sale at book stores, clothing stores, computer equipment stores, department stores, furniture stores, jewellery shops, toy stores and sporting goods stores, enabling customers to conveniently view and purchase those goods from retail outlets; retail and wholesale of telephones, mobile phone handsets, mobile phone accessories, electronic and telecommunications goods, namely, home entertainment electronics, computers, laptops, printers,

computer hardware and computer software, batteries, battery chargers, apparatus and instruments for recording, receiving, transmitting and reproducing data, information, pictures, images and sound, namely, audio recording units, music recording units, telephone recording units, cameras, video cameras, web cameras, microphones, precious metals, jewellery, precious stones, printed matter, namely, books, magazines and newspapers, stationery and magnetic and non-magnetically encoded cards, furniture, picture frames, household and kitchen utensils, glassware, porcelain and earthenware, textiles, clothing, footwear, headgear, laces and embroidery, buttons, ribbons, pins and needles, artificial flowers, carpets, rugs, games and electronic toys, chemicals used in industry, science, photography and agriculture, paints, varnishes and lacquers, personal hygiene products, soaps, perfumery, cosmetics, hair and body lotions, essential oils, cleaning and bleaching preparations, lubricants, fuels, candles, pharmaceutical, veterinary and sanitary preparations, ironmongery and small items of metal hardware; machines, namely, office machines, agricultural machines, chemical processing machines, construction machines, metalworking machines, vending machines, automatic teller machines, electronic facsimile machines, video game machines, and machine tools, namely, metalworking tools, gardening tools, hand-operated tools, hand held cutting tools, tools, cutlery, razors and hand tools, computers, calculators, spectacles and sun glasses, surgical instruments, medical instruments for general examination and cutting tissue, apparatus for lighting, namely, lamps, chandeliers, heating, namely, electric heaters, steam generating, cooking, namely, stoves, ovens, toaster ovens, rice cookers, slow cookers, refrigerating, namely, refrigerators, electric coolers, drying, namely, clothes dryers, ventilating, namely, ventilation fans, water supply and sanitary purposes, namely, garbage containers, toilets, motor vehicles, firearms, fireworks, silverware, horological and chronometric instruments, musical instruments, magazine, cards, paper and cardboard products, picture, typewriters, packaging materials, rubber and plastics for manufacture use, packing and insulating materials, leather and imitations of leather and goods made from these materials, namely, handbags, purses, wallets, leather holders, bags, luggage, umbrellas, mirrors, ropes, string, nets, tents, yarns and threads for textile use, coat hangers, place mats, dressmaker's articles, bed and table covers, playthings, namely, toys, and sporting articles, floral products, namely, artificial and dried flowers, tobacco, smokers' articles and matches; department store retailing services; secretarial services; provision of business statistical information, namely, marketing survey services; organisation of exhibitions for commercial and advertising purposes, namely, organizing exhibits where third parties sell and advertise their goods and services in the field of household products, household appliances, consumer electronics, fitness products, health and beauty products, clothing, footwear, watches, fashion and jewelry, toys, books and automobiles; business assistance services namely, compilation of customer mailing lists; business investigation; business administration

services for the processing of sales made on the Internet; personnel placement; import-export clearance agencies, import-export agency services; arranging for subscriptions for newspapers; document reproduction; transcribing and stenography services; rental of office equipment; customer relationship management; business management services in the field of electronic commerce; business management consulting and administration services in the field of sponsorship programmes; accounting services; charitable services, namely organizing and conducting volunteer programmes and service projects for the benefit of the community

- 36 (2) Insurance; financial affairs, namely, financial analysis, financial analysis consultation services, financial appraisals, investment of funds for others, financial investment counselling, investment management, financial planning services; monetary affairs, namely, foreign currency exchange services; real estate affairs, namely, real estate brokerage services, real property management services; financial transactions clearing house services via a global computer network; online financial services, namely, debt settlement and providing electronic processing of credit card transactions and electronic funds transfer via a global computer network; credit card services, processing and transmission of bills and payments thereof, and providing insurance for financial transactions for purchases; electronic funds transfer services; transmission of funds by electronic means for others; electronic bill payments for others via the Internet; financial services in the nature of billing and payment processing services; renting and leasing of real estate; real estate appraisal; real estate valuation, real estate financing, real estate investment; real estate brokerage services; real estate agency services; housing services for seniors and students; actuarial services; real estate management and consultancy services; rent collection; rental of offices; rental of apartments and flats; provision of financial information via the Internet; safety deposit box services; issuing of travellers' cheques and letters of credit; providing advice on capital investments; financial evaluation relating to insurance, and real estate; financial asset management services; securities brokerage services; stock exchange quotation services; stocks and bonds brokerage, financial analysis; debit card services, charge card services and cheque verification services; savings account and financial investment brokerage services; financial clearinghouse services; credit verification of individuals and companies via global computer information network; credit risk management consulting services; electronic purchase payment and electronic bill payment services; financial accounts management services; issuance of stored value cards, charge cards and debit cards; telephone credit cards services; information services relating to finance and insurance, provided online from a computer database and the Internet; agency for collection of gas and electricity fees; antique appraisal; art appraisal; jewelry appraisal; used car appraisal; providing business information in the field of taxes; charitable fund raising; collection and

organization of donations for charitable purposes; rental of paper money and coin counting and processing machines; rental of cash dispensers and automated-teller machines; online bill and fee payment services; rental and leasing of safes

- 38 (3) Telecommunications services, namely, providing data transmission services via radio, telephone lines and the Internet for the computers of others via satellite, wireless telephone lines, cable network and wide area network and streaming of video, voice and audio recordings featuring news and sports events via the Internet to computer users from websites; providing web-based multimedia teleconferencing, videoconferencing, and online meeting services that allow simultaneous and asynchronous viewing, sharing, editing, and discussion of documents, text data, and images by participants via a web browser; providing customers with online access to online reports regarding the performance, effectiveness, and status of web-based software applications, teleconferences, videoconferences and meetings; operation of a website providing users with secure remote access to private computer networks; operating a website to allow users to collaborate with others by allowing users to access applications, platforms, jointly-shared documents, data, task lists, and discussion forums; Providing an online database of information in the field of Internet broadcasting complaint submission procedures and platforms; facsimile transmission; electronic mail slices through wired and wireless access paging services, wireless digital messaging services; paging services; rental of modems; transmission and delivery of electronic mail messages, still picture and moving picture information, namely, characters, messages, music and images, telegrams, information and text by telephone, teleprinter, cable, computer and satellite means; video conferencing services; operation of electronic bulletin board on a website that enables users to perform a real-time interactive talk between a computer terminal and an electronic bulletin board containing still picture and moving picture information and voice information such as characters for social networking purposes on topics of general interest; providing electronic bulletin boards and message boards for transmission of messages for social networking purposes on topics of general interest; providing online chat rooms for registered users for transmission of messages concerning collegiate life, classified, virtual community and social networking; video-on-demand transmission services; news agency services; providing access to computer database facilitating electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet on the global computer network for searching and retrieving information, data, web sites and resources available on computer networks; operation of a website providing user access to a computer database containing electronic publications, bulletin boards, database and information in the field of electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned

and bidding is done via the Internet accessible via computer; operation of chat rooms for social networking purposes on topics of general interest, namely, chat room services; multiple user access to global computer information networks for the transfer and dissemination of information in the field of electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet; providing access to a website on a global computer network by which third parties buy and sell goods and services, place and fulfill orders and conduct business transactions, providing access to an interactive website on a global computer network for third parties to post information, respond to requests and place and fulfill orders for products, services and business opportunities; web video conferencing services; electronic communication services for establishing operation of virtual chatrooms via text messaging; providing electronic bulletin boards for the posting and transmission of messages among and between computer users concerning products, services and business leads and opportunities for social and business networking purposes; providing an online interactive bulletin board for posting, promoting for others, sale and resale of items via a global computer network; providing electronic mail and electronic mail forwarding services, providing computer access and leasing access time to online interactive bulletin boards and databases in the field of electronic commerce relating to retail store and wholesale store services and online trading in which seller posts products to be auctioned and bidding is done via the Internet; providing access to a web site on a global computer network by which third parties can offer goods and services, place and fulfill orders and conduct business transactions; providing access to electronic calendar, address book and electronic notebook, via local and global computer networks; providing facilities for video and telephone conferencing; operating a website providing computer links to third party web sites to facilitate online purchase transactions of goods and services

- 39 (4) Transport, namely, transportation services of passenger and consumer goods by rail, air, truck and ship; packaging of articles for transportation and warehouse storage of such articles for transport; travel booking services; electronic data storage for archiving business, corporate and personal records and documents; transportation information, namely, providing a website in the area of travel; ship brokerage; Reservation and booking of seats for travel and reservation of hotel rooms for travelers; courier services; transport services, namely, logistic management relating to transport of goods by truck, rail and air; car rental services; car parking lot services; yacht and boat chartering services; travel agency services; travel reservation and travel information services; travel arrangement and travel information services provided on-line from a computer database and the Internet; provision of information in the field of travel and tourism through the Internet; merchandise packaging for others; providing road and traffic information, chauffeur

services; loading and unloading of cargo; freight brokerage; brokerage services for rental, leasing, selling, purchasing of ships and boats; chartering of ships and boats; salvage and refloating of ships and boats; boat and ship mooring facility services; rental of warehouses; rental and leasing of wheelchairs; management of parking lots; rental and leasing of airplanes; rental and leasing of storage containers; rental and leasing of bicycles; rental and leasing of cars; rental and leasing of ships and boats; rental and leasing of non-motorized vehicles, namely, bicycles, tricycles, skates, skateboards, push scooters; rental and leasing of mechanical parking meters; rental and leasing of transportation pallets; rental and leasing of packaging and wrapping machines; rental and leasing of refrigerator; collection of domestic waste and trash; collection of industrial waste and trash; import-export clearance agencies, namely, custom clearance

- 41 (5) Education services, namely, providing seminars and conferences in the field of business management and e-commerce relating to retail store and wholesale store services; providing of training in the field of business management and e-commerce relating to retail store and wholesale store services; entertainment in the form of air shows, and circus performance; booking seats for shows and sports events; administration of cultural and educational exchange programs; providing information in the field of sporting and cultural events; publication of texts, namely, articles and academic papers, books and journals; publication of diagrams, namely, charts and graphs, and photographs; publication of newspapers, magazines and periodicals; education, training and instruction services, namely, online courses and webinars, in the fields of operation of telecommunications equipment, namely, satellite, wireless computer network, telephone, cable network, cellular network, operation of computers, operation of computer programs, web site design, electronic-commerce, namely, conducting electronic business transaction relating to retail store and wholesale store services via the Internet, business management and advertising; educational services, namely, development of courses and examinations to provide qualifications in the field of computer programming; electronic games provided by means of the Internet; provision of information in the field of yoga, golf events, fun fair, social dance, sports, community social and cultural events; providing on-line electronic publications not downloadable namely, publishing of an electronic newsletter; arranging, organizing, hosting and conducting singing competitions; arranging, organizing, hosting and conducting game shows and quests, namely role playing games; entertainment ticket agency services; providing information in the field of entertainment, namely, comedy shows and in the field of education, namely, online courses and webinars in relation to business management, electronic commerce relating to retail store and wholesale store services, information security, computer data security and intellectual property, provided online from a computer database and the Internet; entertainment and education services relating to planning,

production and distribution of sound recordings, photographic images, digital music, movies, live and recorded audio sound recordings, and video recordings for broadcasting on the Internet, digital wireless and wired television receiver boxes; production of documentary and news programmes for broadcasting on the Internet; news reporters' services; information in the field of sports and community cultural festival events, current news events and breaking news provided by satellite television transmission and the Internet; providing a web site featuring on-line computer games; provision of recreation club, sports arena facilities and gymnasium facilities; operation of discotheque, entertainment in the form of fashion shows and night club services; arranging, conducting and provision of conferences, conventions, congresses, seminars and training workshops in the fields of finance, real estate, electronic commerce relating to retail store and wholesale store services, online trading services in which seller posts products to be auctioned and bidding is done via the Internet, computer hardware and software, and telecommunications, namely, satellite, wireless computer networks, telephone communications, cable network and cellular network; art exhibition and gallery services; art gallery services, namely, fine arts leasing; training services in the field of occupation health and safety, and environmental conservation; provision of cigar classes, wine tasting classes; instructional services in the field of operation of audiovisual equipment, which is used for the production of broadcasting radio and television programs; providing audio and visual recording studios; providing sports facilities, namely, basketball courts, tennis courts, swimming pools, gymnastic rooms; providing theatre facilities for movies, shows, plays, and music; providing classroom facilities for educational training; theatrical booking agencies; rental and leasing of motion pictures, cine-films; rental and leasing of musical instruments; rental and leasing of television programmes; rental and leasing of television sets; lending libraries; archive library services; film subtitling services; sign language interpretation services; rental of entertainment software, namely, video games; operation of a website providing video games, computer games, still images and streaming of audio sound recordings; providing online computer games and contests; rental of pre-recorded video tapes; rental and leasing of video game machines; lending of arcade game equipment; lending of pictures; photography; translation; language interpretation; educational and training programs in the field of risk management; news reporting; lottery services

- 42 (6) Design and development of computer hardware and, software; application service provider (ASP) services, namely, hosting computer software applications of others; application service provider (ASP) services providing software in the fields of web-based conferencing, audio conferencing, electronic wireless digital messaging services, document collaboration, video conferencing, and voice and call processing; providing online non-downloadable software for facilitating the interoperability of multiple software applications in the field of electronic

commerce relating to retail store and wholesale store services; technical support services in the form of troubleshooting of computer hardware and software problems provided online, by email and by telephone; providing assistance the field of computer hardware and computer software provided to Internet users by means of a support hotline; computer services, namely, creating indexes of information, sites and resources on computer network in the field of e-commerce relating to retail store and wholesale store services; providing Internet search engines; design of computers, notebook computers, laptop computers, portable computers and handheld computers; design of personal digital assistants and personal media players, namely, portable and handheld audio and video players; design of mobile telephones and smart phones; design of digital cameras; computer programming; computer integration services; computer systems analysis services; computer programming in relation to the defence against virus; design, maintenance and updating of computer system software; computer software design; computer hardware system design; computer software system design; design and development of webpages; hosting webpages for others; hosting computer application software for searching and retrieving information from databases and computer networks in the field of e-commerce businesses relating to retail store and wholesale store services; providing technical information in the field of computer software, computer technology and programming at the specific request of end-users by means of telephone and global computer network; computer services, namely, customized searching of computer databases and websites; computer programming, coding and decoding; conversion of physical data and documents into electronic media format; architectural design services; interior designs of buildings, offices and apartments; provision of computer security risk management programs; computer security information and testing services; quality certification services, namely, quality certification in the field of computer and data security; consultancy in the field of computer data security; authentication services namely, quality certification in the field of computer and data security; consultancy services in the field of security for telecommunications, namely, computers and computer networks; authentication services for computer security; on-line authentication of electronic signatures

- 45 (7) Personal and social services rendered by others to meet the needs of individuals, namely, general cleaning, laundry, meal preparation, home and house repairs, chauffeur services, babysitting, home sitting, social and personal networking and introduction services; providing information in field of social work services; dating services; legal services; domain name registration services; security guard services; bodyguard services; rental of clothing; alarm response and verification services through electric central stations for intruders, burglar and fire protection systems; intruder and burglar alarms monitoring services, fire and flood alarm monitoring services; housekeeping and maid services; licensing use of digital data, namely, still pictures, motion pictures, audio recordings and

documents containing text; creation, compilation and maintenance of a register of domain names in the field of e-commerce; baggage inspection for security purposes; personal background investigation services; funeral home and funeral arrangement services

SCHEDULE C***The Opponent's trademarks SESAME and SESAME STREET***

Trademark	Registration No.	Goods and Services
SESAME	TMA229800	9 (1) Disc and sound records. 41 (1) Radio and television broadcasting namely educational and entertainment programming.
SESAME STREET	TMA718122	5 (1) Disposable diapers. 9 (2) Pre-recorded musical sound recordings, sound recordings, audio recordings, audio cassettes, audio discs, compact discs, audio digital discs, audio digital tapes, musical video recordings, video recordings, video discs, DVDs, CD-ROMs, and computer software, all featuring animation, educational themes and entertainment directed to children; video recordings of television programs featuring animation, educational themes and entertainment directed to children; computer game programs, cartridges, cassettes, discs, and software; CD cases, calculators; computers for children, compact disc players, radios incorporating clocks, audiotape, cassette recorders, musical recorders, tape recorders, videocassette recorders, videotape recorders, video recorders, CD recorders, VCR players/recorders and DVD players/recorders; walkie-talkies, baby monitors, bicycle helmets, life jackets, kneeling pads, cameras, computer peripheral mouse pads; eyeglasses and sunglasses;

		<p>cases for children's eyeglasses, swim goggles; telephones and telephone faceplates; decorative refrigerator magnets; story books, children's books, children's activity books, coloring books and comic books.</p> <p>14 (3) Key chains, key rings, key holders, key fobs; non-metal key chains, non-metal key rings.</p> <p>16 (4) Printed materials, namely, magazines and newsletters; story books, children's books, children's activity books, coloring books, sticker books, comic books, comic strips published periodically; address books, personal organizers, autograph books, baby books, birthday books, diaries; paper book covers, bookends, bookmarks, paperweights, desk pads, photo albums, photographs; calendars; writing paper, writing tablets, note cards, notebooks, ring binders, spiral notepads, folders and file folders of paper and plastic, file boxes, portfolios, postcards, flash cards; pens, pen ink cartridges, pencils, colored pencils, pen stands, pencil cases, pencil sharpeners, pencil caps, envelopes, erasers, ring binder dividers, rubber stamps, drawing rulers, stamp pads, glue for arts and crafts, staplers, adhesive tape for stationery purposes, tape dispensers; chalk, chalkboards, slate boards for writing, construction paper, felt tip markers, highlighting markers, modeling clay, drawing paper, drawing pads, drawing sets, arts and crafts paint kits, printing sets consisting of decorative stamps and paper, stationery notes with adhesive</p>
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		<p>on one side for attachment to surfaces, paper door knob hangers, self adhesive decorative seals, vinyl non-sticker decals, vinyl coated memo board; crepe paper, gift tags, paper cake decorations, paper centerpieces, paper doilies, paper bags, paper gift bags, paper identification tags, paper lunch bags, leaf bags, paper napkins, paper party decorations, paper party hats, paper party invitations, paper place mats, paper tablecloths, shelf paper, table centerpieces made of paper, paper flags; facial tissue, toilet paper; craft kits for making clay pottery, craft kits for making hand-painted translucent window decorations, craft sets for decorating picture frames, craft kits for making sand art, craft kits for making and designing greeting cards consisting of glitter and glue; hobby kits, namely paper craft sets for use in making paper sculptures.</p> <p>18 (5) Purses, drawstring bags, pouches, brief cases, back packs, knapsacks, luggage, traveling bags, tote bags, carry-alls, duffel bags, gym bags, sports bags, school bags, book bags, day bags, plastic bottle bags, beach bags; key cases; parasols.</p> <p>20 (6) Picture frames; small figurines of plastic; air mattresses for recreational use, room mirrors, handheld mirrors, baby bath chairs, baby gates, sofa, storage boxes, curtain rods.</p> <p>21 (7) Dinnerware and beverage ware of paper, plastic, ceramic, glass or earthenware, namely dishes,</p>
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		<p>platters, plates, bowls, saucers, egg cups, drinking glasses; serving pitchers; cooking pots, infant cups, water bottles sold empty; water bottles with straws attached, beverage glassware with permanently attached pewter emblems; insulated and non-insulated lunch boxes, insulated and non-insulated lunch pails, insulated beverage containers, insulated bottles, foam drink holders; waste baskets; cookie cutters, cookie jars; canisters, napkin holders, napkin rings, both of non-precious metal; bottle openers; bed and snack trays, serving trays; statuettes and figurines of china, crystal, earthenware, glass, porcelain, and terra cotta; nonmetal savings banks; sun catchers; baby bath tubs, towel bars, towel holder, tissue box covers, soap dishes, potties for children, toothbrushes, shaving brushes, hair brushes, hair combs; bath sponges.</p> <p>21 (8) Drinking straws, picnic boxes, picnic baskets, food boxes.</p> <p>25 (9) Clothing, namely shirts, t-shirts, tank tops, pants, vests, overalls, jackets, socks, leggings, snowsuits, sleepwear, loungewear, jumpers, coats, dresses, skirts, underwear, sweaters, swim wear, shorts, clothing ties, clothing mufflers, berets, earmuffs, hats, workout clothes, namely gym shorts, gym suits.</p> <p>28 (10) Toys, games and playthings, namely, doll clothing and costumes, doll accessories, paper dolls, return tops, craft kits for children for making and decorating fingernails and toenails, craft kits for decorating hair,</p>
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		<p>craft kits for making candy, craft kits for making soap, craft kits for making perfume, craft kits for making crystals, craft kits for molding chocolate, craft sets and play kits consisting of play cosmetics, craft kits for making beads and toy jewelry, craft kits for making decorative objects with magnets, action skill games, board games, card games, manipulative games, interactive toys, hand held units for playing electronic games, electronic learning toys, toy computers, toy film cartridges and viewers, bath toys, beach toys, toy shovels, toy rakes, toy scoops, toy buckets, toy water guns, toy water wheels, pull toys, ride-on toys, toy vehicles, toy scooters, toy boats, toy cars, toy trains, tricycles, toy furniture, toy tables, toy chairs, toy clocks, toy telephones; toy musical instruments; toy tote bags, toy day bags, toy beach bags, other toy bags; toy purses, hand puppets, finger puppets, bean bags, bean bag plush toys, bean bag dolls, ice skates, roller skates, sports balls, beach balls, playground balls, toy foam balls, flying discs, jump ropes, kites, wind up toys, toy banks, toy building structures, toy action figures and accessories therefore, cases for play accessories, toy environments for use with action figures, play sets for action figures, role-playing game sets, masquerade games, inflatable swim floats for recreational use, inflatable swimming pools, playground sand boxes, snow sleds for recreational use, snow boards; hobby kits, namely paper craft sets for use in making playing cards.</p>
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		<p>30 (11) Cookies, cookie mix, candy, cakes, cupcakes, muffins, cake decorations made of candy, chewing gum, bubble gum, cotton candy, frozen confections, frozen yogurt, ice cream, fruit jellies, marshmallows, popcorn, pretzels, crackers, chocolate and bread; breakfast cereal, other processed grains; tea, iced tea, tea with fruit flavoring.</p> <p>32 (12) Fruit juice, soft drinks.</p> <p>41 (1) Education services, namely, the production of radio and television programs, videos, motion pictures, sound recordings and live shows for children; provision of entertainment services, all relating to radio and television programs, videos, motion pictures, sound recordings and live shows for children; providing educational material and entertainment of general interest to children, parents and families via the Internet; live theatrical performances directed to children, parents and families; amusement parks.</p>
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Appearances and Agents of Record

HEARING DATE: 2024-11-27

APPEARANCES

For the Opponent: Jennifer McKay

For the Applicant: Kevin Sartorio

AGENTS OF RECORD

For the Opponent: Dentons Canada LLP

For the Applicant: Gowling WLG (Canada) LLP