



TTAB

Attorney Docket No. 049336

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Igor Lognikov
Serial No.: 78/612,360
Filed: April 19, 2005
Mark: **TEMPLATEMONSTER**
Class: 35 & 42

Attorney: Gene V.J. Maciol
Law Office: 103

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

To the Commissioner of Trademarks:

Transmitted herewith for filing in the above-identified application are the following documents:

- [X] OPPOSER'S MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION AND STANDING, AND FOR FAILURE TO STATE A CLAIM;
- [X] OPPOSER'S MOTION FOR LEAVE TO AMEND PLEADINGS;
- [X] AMENDED NOTICE OF OPPOSITION; and,
- [X] RETURN POSTCARD.

Mark: TEMPLATEMONSTER
Applicant: Igor Lognikov

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned at (202) 661-7650.

Respectfully submitted,

By: Brian J. Winterfeldt
Brian J. Winterfeldt
Tricia M. Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W., Suite 1000 South
Washington, DC 20005-3807
Tel: (202) 661-7650
Fax: (202) 626-9065
email: winterfeldtb@ballardspahr.com

Date: November 6, 2006

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MonsterCommerce, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No. 91173189
)	
Igor Logniko)	
)	
Applicant.)	
)	

**OPPOSER’S MEMORANDUM IN OPPOSITION TO APPLICANT’S MOTION TO
DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION
AND STANDING, AND FOR FAILURE TO STATE A CLAIM**

Before the Board is the motion of Applicant, Igor Lognikov (“Applicant”), to dismiss the opposition by MonsterCommerce, LLC (“Opposer” or “MonsterCommerce”) for lack of subject matter jurisdiction and standing, and for failure to state a claim. Because the applicable rules and evidence of record, including those on which Applicant relies, support a finding by the Board of non-prejudicial misidentification of the Opposer and privity between the party filing the extension of time to oppose (“EOT”) and the owner of U.S. Registration No. 2,947,268, Applicant’s motion should be denied.

In conjunction herewith and pursuant to Fed. R. Civ. P. 15(a) and 37 C.F.R. §2.107(a), Opposer makes a motion for leave to amend the pleadings to correct the misidentification of the Opposer and demonstrate that the filer of the EOT and the owner of the U.S. Registration No. 2,947,268 are in privity, as defined by Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) §206.03.

FACTUAL BACKGROUND

1. On April 19, 2005, Applicant filed a use-based application that was assigned Application Serial No. 78/612,360 by the U.S. Patent & Trademark Office (“PTO”). This Application was published for opposition in the *Official Gazette* on May 30, 2006 and Network Solutions (“Network Solutions”) filed an extension of time due on June 16, 2006. The PTO was granted the extension of time on the same day.
2. On September 27, 2006, MonsterCommerce, LLC (“MonsterCommerce”), owner of U.S. Reg. No. 2,947,268 and a wholly owned subsidiary of Network Solutions, timely filed the subject Notice of Opposition with the Trademark Trial and Appeal Board (“TTAB”).
3. Applicant, on October 17, 2006, filed a Motion to Dismiss contending that the Board does not have subject matter jurisdiction and Opposer failed to state a claim upon which relief can be granted; Opposer herein submits this Memorandum in Opposition to the motion and Motion for Leave to Amend the Pleading pursuant to Fed. R. Civ. P. 15(a).

ARGUMENT

A. THE BOARD HAS SUBJECT MATTER JURISDICTION BECAUSE THE OPPOSITION WAS FILED BY A PARTY IN PRIVITY WITH THE PARTY THAT TIMELY FILED THE REQUEST FOR THE EXTENSION OF TIME TO OPPOSE

Applicant argues that the TTAB lacks subject matter jurisdiction and that dismissal is appropriate under Rule 12(b)(6) where “the plaintiff can prove no set of facts in support of the claims in the complaint.” In evaluating a motion to dismiss, the Court must take as true all well-pleaded facts and draw all reasonable inferences favorable to the complainant. *See Papasan v. Allain*, 478 U.S. 265, 283 (1986); *Correa-Martinez v. Arrillaga-Belendez*, 903 F.2d 49, 52 (1st Cir. 1990). Rule 12(b)(6) therefore affords the plaintiff a highly deferential reading of the

complaint and a court may dismiss a complaint for failure to state a claim only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001).

The Trademark Act provides that anyone that may be “damaged by the registration of a mark upon the principal register,” may file an opposition or an extension of time to file such opposition setting forth the grounds upon which the opposition is maintained within thirty days after the publication of the mark in the *Official Gazette*. 15 U.S.C. § 1063(a). An extension of time to oppose inures only to the benefit of the party to which it was granted and those in privity with that party. Thus, an opposition filed in a different name will be accepted if it was filed by a person in privity with the person who filed the extension request. TBMP § 206.01.

Privity includes a relationship of “related companies’ within the meaning of Sections 5 and 45 of the Act, 15 U.S.C. §§ 1055 and 1127.” TBMP §206.02. “The term “***related company***” means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used.” 15 U.S.C. § 1127. (Emphasis in original). Courts have also long since recognized the parent company/subsidiary relationship as a related company relationship that would give rise to a finding of privity. *See, F. Jacobson & Sons, Inc. v. Excelled Sheepskin & Leather Coat Co.*, 140 U.S.P.Q. 281, 282 (Comm’r 1963) (parent company is a related company such that its filing of the extension of time to oppose was found to have been “regularly filed” under Rule 2.105).

This case is the perfect example of parties in privity such that the filing of the extension of time to oppose by Network Solutions on June 16, 2006 was proper. Network Solutions acquired MonsterCommerce, LLC in December 2005 and as the parent corporation owns

MonsterCommerce's assets in its entirety. See, **Exhibit A**, Network Solutions' declaration attesting to the acquisition of MonsterCommerce, LLC. MonsterCommerce is therefore a wholly owned subsidiary of Network Solutions such that Network Solutions exercises control over the nature and quality of the services offered in connection with the MONSTERCOMMERCE mark in U.S. Registration No. 2,947,268 and is in privity with MonsterCommerce as defined by Section 206.03 of the TBMP. In sum, as the parent company of the Registrant, Network Solutions is a party that believes that it would be damaged by registration of Application Serial No. 78/612,360. Thus, the extension of time to oppose filed by Network Solutions on June 16, 2006 was appropriate as it is in privity with Monstercommerce, LLC, the owner of the Registration upon which this Opposition is based.

While Opposer concedes that the pleading omitted the declaration to support the parent company/subsidiary relationship between the parties, no additional burden or injury resulted from the omission as the pleading clearly identified MonsterCommerce as a subsidiary of Network Solutions. See, **Exhibit B**, Notice of Opposition, ¶1. Notwithstanding this full disclosure, the relationship between the parties is a matter of public record and was easily discoverable as is demonstrated by Applicant's submission of some of the very evidence with its October 17, 2006 Motion to Dismiss that Opposer now uses to support the attached amended pleading.

B. THE REGISTRATION CERTIFICATE WAS MISTAKENLY ISSUED TO A NON-EXISTENT ENTITY THUS OPPOSER HAS STANDING TO FILE THE OPPOSITION

Applicant also argues that MonsterCommerce lacks standing because it did not have ownership rights in the subject mark at the time of the filing of the Opposition. Applicant asserts that because the Registration issued in the name of MonsterCommerce, Inc., rather than

MonsterCommerce, LLC, Opposer is not the owner of the cited Registration. Applicant's argument is fallacious. "A request for a further extension, or an opposition, filed in a different name will not be rejected on that ground if it is shown to the satisfaction of the TTAB that the party in whose name the extension was requested was misidentified through mistake." TBMP § 206.03. As defined by Rule 2.102(b), a misidentification includes a mistake in the form of the potential Opposer's name or its entity type. *See* 37 C.F.R. § 2.102(b), Cass Logistics Inc. v. McKesson Corp., 27 U.S.P.Q.2d 1075 (TTAB 1993).

Similarly, "a party may establish its standing to oppose or to petition to cancel by showing that it has a real interest in the case, that is, a personal interest beyond that of the general public." Harjo v. Pro Football, Inc., 30 U.S.P.Q.2d 1828, 1832; *see also* Int'l Order of Job's Daughters v. Lindeburg & Co., 727 F.2d 1087, 1092, 220 U.S.P.Q. 1017, 1020 (Fed. Cir. 1984) (stating that the Lanham Act merely requires pleading a "real interest" in the proceeding). Thus, misidentification of the owner of the Registration would not obviate the existence of MonsterCommerce's real interest in this matter.

Nonetheless, the remedy for misidentification is a relatively straightforward and simple one. The appropriate action to correct a misidentification is to amend the pleading within 20 days after service of the original pleading or by written consent of the adverse party. Alternatively, if the pleading was not amended within the first 20 days, the party may amend its pleading by written consent or by leave of the TTAB and such leave should be freely given where justice so require. *See* Fed. R. Civ. P. 15(a). "In view thereof, the TTAB liberally grants leave to amend pleadings at any stage of a proceeding when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party or parties." TBMP § 507.02. In accordance with Rule 2.107, Opposer submits herewith an

amended pleading and respectfully requests that the TTAB consider the amended pleading in the light most favorable to the Opposer.

Again, the evidence as submitted by Applicant establishes that the registration of the subject mark in the name of MonsterCommerce, Inc. rather than MonsterCommerce, LLC was the result of a clerical error. The PTO appropriately required MonsterCommerce to *merely* submit a declaration verifying that the owner of the mark was the limited liability company rather than a non-existent corporation. The California Secretary of State database also supports the sole existence of MonsterCommerce as a limited liability company. See, **Exhibit C**, Declaration attesting to the clerical error and a copy of the California Secretary of State web pages showing that there is no incorporated body under the name MonsterCommerce.

MonsterCommerce, which filed the Opposition against the Applicant's mark on the grounds of likelihood of confusion, based on its ownership of the subject Registration, fulfills the standing requirement by alleging that it is the owner of said Registration and demonstrating to the PTO that the Registration mistakenly issued in the name of a non-existent entity. Hence, MonsterCommerce has demonstrated a real interest in the matter. 3 J. Thomas McCarthy, Trademarks and Unfair Competition at § 20:11 (4th ed. 2002).

Applicant's Exhibits clearly demonstrate that since as early as October 27, 2005, Opposer notified the PTO of this clerical error and complied with the PTO requirement to verify the error. Nonetheless, instead of making inquiry of Opposer to determine whether Opposer's declaration had indeed been received and/or accepted by the PTO, Applicant instead filed the herein self-styled Motion to Dismiss. Applicant's Motion to Dismiss is therefore a transparent attempt to delay filing an Answer in this action and is legally and factually baseless as evidenced by its own Exhibits and by Opposer's disclosure of the subsidiary relationship in the original pleading.

CONCLUSION

For all the foregoing reasons and in consideration of the submitted Motion for Leave to Amend the Pleadings and accompanying amended pleadings, MonsterCommerce respectfully requests that the TTAB deny Applicant's Motion to Dismiss and grant the Motion for Leave to Amend the Pleadings.

Respectfully submitted,

MONSTERCOMMERCE, LLC

By: Brian J. Winterfeldt

Brian J. Winterfeldt
Tricia McDermott Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

(202) 661-7650 Telephone
(202) 626-9065 Fax

Attorneys for MONSTERCOMMERCE, LLC

Dated: November 6, 2006

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MONSTERCOMMERCE, LLC

Opposer,

v.

IGOR LOGNIKOV

Applicant.

Opposition No. 91173189

Commissioner for Trademarks
Box: TTAB
P. O. Box 1451
Alexandria, VA 22313-1451

DECLARATION

The undersigned, Bobby N. Turnage, Jr., Senior Vice President and General Counsel of Network Solutions, LLC, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, declares that he is properly authorized to execute this declaration on behalf of the Opposer. The undersigned further declares that Network Solutions, LLC acquired MonsterCommerce, LLC on January 4, 2005, and that Network Solutions, LLC owns and controls the assets of MonsterCommerce, LLC.

Date: November 6, 2006

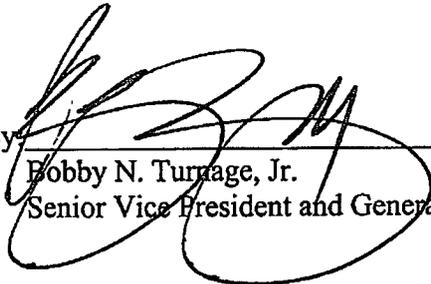
By 
Bobby N. Turnage, Jr.
Senior Vice President and General Counsel

EXHIBIT B

TTAB



Attorney Docket No. 049336

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Applicant: Logniko, Igor
Serial No.: 78/612,360
Filed: April 19, 2005
Mark: **TEMPLATEMONSTER**
Classes: 35 and 42

Attorney: Jean V.J. Maciol
Law Office: 103

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, Virginia 22313-1451

To the Commissioner of Trademarks:

Transmitted herewith for filing in the above-identified application are the following documents:

- NOTICE OF OPPOSITION;
- CHECK IN THE AMOUNT OF \$600; and,
- RETURN POSTCARD.

A check in the amount of \$600 is enclosed to cover any required fees. In the event any variance exists between the amount enclosed and the U.S. Patent and Trademark Office charges, please charge or credit the difference to our Deposit Account 02-0755, Reference No. 049336. A duplicate copy of this transmittal letter is attached.



09-27-2006

U.S. Patent & TMO/TM Mail Rpt Dt. #72

Mark: TEMPLATEMONSTER
Applicant: Logniko, Igor

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned at (202) 661-7650.

Respectfully submitted,

By: Brian J. Winterfeldt
Brian J. Winterfeldt
Tricia M. Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W., Suite 1000 South
Washington, DC 20005-3807
Tel: (202) 661-7650
Fax: (202) 626-9065
email: winterfeldtb@ballardspahr.com

Date: September 27, 2006

Pursuant to 15 U.S.C. §§ 1052, 1063, and 1125 of the Lanham Act and 37 C.F.R. §§ 2.101 and 2.104, and predicated upon the following grounds, Opposer alleges as follows:

1. Opposer, MonsterCommerce, LLC, is a limited liability company duly organized and existing under the laws of California, having its principal place of business at One BronzePoint, Belleville, Illinois 62226.

2. Opposer is the owner of the MONSTERCOMMERCE mark, the subject of a federal registration, Registration No. 2,947,268 for:

Computer services, namely, providing on-line non-downloadable software that enables users to sell their products or services on-line, namely, software facilitating the practicing of e-commerce services and e-commerce shopping portal services, in International Class 42.

A copy of the registration is attached as Exhibit A.

Opposer is also the owner of a family of MONSTER marks, including MONSTERLOCAL (U.S. Application Serial No. 76/658,138), MONSTER MARKETPLACE, MONSTER, MONSTER WEB PROMOTION, MONSTER WEB DESIGN, MONSTER DOMAIN REGISTRATION, MONSTERSMALLBUSINESS, MONSTER SELLERS, the MONSTER logo, and the MONSTER EYE logo (the "MONSTER Family of Marks").

3. Opposer offers, *inter alia*, a broad range of online services, including providing use of e-commerce storefront software and systems, website design, promotion and hosting, merchant accounts, and domain name registration services.

Its on-line services include, but are not limited to, providing on-line shopping cart software which is used for the purpose of designing, hosting, implementing, and maintaining websites and specifically providing built-in and customizable website

templates and graphics, website optimization tools and plug-ins, web-based administration for on-line stores, email accounts, credit card processing, an order management system, and technical support services.

The Opposer, having been established in 1998, is a single-source e-commerce provider offering e-business clients the components needed to sell successfully online: e-commerce store building tools, design services, merchant accounts, and web site promotion services. The Opposer, therefore, is one of the leading providers of storefront and e-commerce solutions for on-line businesses.

4. Opposer is the owner of a federal registration for the MONSTERCOMMERCE mark and began promoting its services under the MONSTER Family of Marks as early as October 2001. Therefore, Opposer's first use of the MONSTER Family of Marks pre-dates Applicant's first use of the TEMPLATEMONSTER Mark, inasmuch as Applicant asserts dates of first use of April 15, 2002.

5. Since its initial adoption and use of the MONSTER Family of Marks, Opposer has made a substantial investment in advertising and marketing its services under the mark. Opposer has extensively used, advertised, promoted and offered for sale Opposer's services under the MONSTER Family of Marks through various channels of trade and commerce. As a result of Opposer's extensive use and promotion of the MONSTER Family of Marks and the extensive sales of services under the MONSTER Family of Marks, the Opposer has established valuable good will in the marks.

6. On information and belief, on April 19, 2005, Applicant filed Application Serial No. 78/612,360 for the mark TEMPLATEMONSTER pursuant to Lanham Act Section 1(a) for the following services:

Online retail services featuring downloadable software for website development comprising pre-formatted modifiable templates., in International Class 35.

Website development services, namely, providing website design services for others., in International Class 42.

The application was published for opposition in the *Official Gazette* on May 30, 2006.

7. Applicant's mark so closely resembles the MONSTER Family of Marks that Applicant's mark, when used in connection with the services set forth in Applicant's application, it is likely to cause confusion, or to cause mistake, or to deceive purchasers and potential purchasers of Applicant's services into erroneously believing that there is some relationship between Opposer and Applicant, or that Opposer has authorized, sponsored or licensed Applicant's use of the mark TEMPLATEMONSTER, in violation of 15 U.S.C. § 1052(d).

8. Applicant's mark, when used in association with the services identified in Applicant's application, is likely to cause dilution of Opposer's MONSTER Family of Marks in violation of 15 U.S.C. § 1125(c).

9. Registration of Applicant's mark will damage Opposer, as such registration will give color of exclusive statutory rights to the mark TEMPLATEMONSTER to Applicant in derogation and violation of the prior and superior rights of Opposer.

WHEREFORE, Opposer, MonsterCommerce, LLC, believes that it will be damaged by registration of U.S. Application Serial No. 78/612,360, and therefore

respectfully requests that the Trademark Trial and Appeals Board sustain this opposition and refuse registration of Applicant's mark.

All correspondence should be addressed to Brian J. Winterfeldt, Esq., c/o Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW, Suite 1000, Washington, DC 20005.

Respectfully submitted,

MONSTERCOMMERCE, LLC

By: Brian J. Winterfeldt
Brian J. Winterfeldt
Tricia McDermott Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

(202) 661-7650 Telephone
(202) 626-9065 Fax

Attorneys for MONSTERCOMMERCE, LLC

Dated: September 27, 2006

Enclosures:

- Notice of Opposition (original)
- EXHIBIT A: U.S. Service Mark Registration No. 2,947,268 for MONSTERCOMMERCE
- Check in the amount of \$600.00 for the filing fee
- Authorization To Charge or Credit Deposit Account (original and one copy)
- Return receipt postcard

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
UNITED STATES DEPARTMENT OF COMMERCE**

Registrant: MonsterCommerce, LLC
Mark: MONSTERCOMMERCE
Reg. No.: 2,947,268
Registered: May 10, 2005

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REVOCATION AND POWER OF ATTORNEY

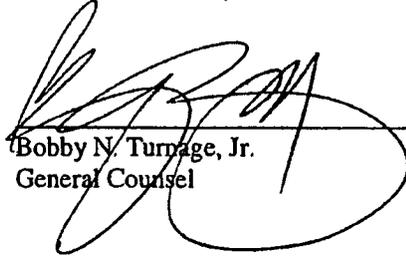
MonsterCommerce, LLC appoints Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, N.W., Suite 1000 South, Washington, DC 20005 as its domestic representative upon whom all documents can be served involving matters and proceedings related to the mark identified above.

Applicant hereby appoints as its attorneys: Brian J. Winterfeldt, Deepika R. Allana, Benita P. Collier, Stacey J. Johnson, Tricia M. Thompkins and all other attorneys with the firm of Ballard Spahr Andrews & Ingersoll, LLP, as principal attorneys to prosecute these applications, to transact all business in the U.S. Patent and Trademark Office connected therewith and to receive the Registration Certificates if one should issue. Please direct all communication to:

Brian J. Winterfeldt, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W.
Suite 1000 South
Washington, DC 20005-3807
Telephone: (202) 661-2200
Facsimile: (202) 661-2299
Email: winterfeldtb@ballardspahr.com

Applicant hereby revokes any and all previous Powers of Attorney filed in relation to this registration.

MonsterCommerce, LLC



A handwritten signature in black ink, appearing to read 'Bobby N. Turnage, Jr.', is written over a horizontal line. The signature is stylized and somewhat cursive.

Bobby N. Turnage, Jr.
General Counsel

Date: October 5, 2006

EXHIBIT C

FILE COPY

Attorney Docket No.: 049337

Applicant: Network Solutions, LLC

Reg. No.: 2,947,268

Reg. Date: May 10, 2005

Mark: MONSTERCOMMERCE

Documents Filed:

1. Transmittal Letter;
2. Response;
3. Exhibit A - Substitute Affidavit in Support of Ownership of Registration;
4. Exhibit B - Revocation and Power of Attorney;
5. Return postcard.

Sender's Initials: BJW/ARW

Date: October 12, 2006

PLEASE DATE STAMP & RETURN

Attorney Docket No.: 049337

Applicant: Network Solutions, LLC

Reg. No.: 2,947,268

Reg. Date: May 10, 2005

Mark: MONSTERCOMMERCE

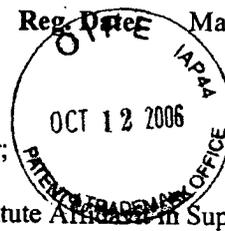
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Sender's Initials: BJW/ARW

Date: October 12, 2006

PLEASE DATE STAMP & RETURN



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
UNITED STATES DEPARTMENT OF COMMERCE

Applicant: Network Solutions, LLC
Mark: **MONSTERCOMMERCE**
Reg. No.: 2,947,268
Reg. Date: May 10, 2005

POST REGISTRATION

Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

To the Commissioner of Trademarks:

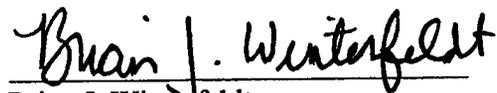
Transmitted herewith for filing in the present application are the following documents:

- Response;
- Substitute Affidavit in Support of Ownership of Registration (Exhibit A);
- Revocation and Power of Attorney (Exhibit B); and
- Return Postcard.

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned at (202) 661-7650.

Respectfully submitted,

By:



Brian J. Winterfeldt
Tricia M. Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W., Suite 1000 South
Washington, DC 20005-3807
Tel: (202) 661-7650
Fax: (202) 626-9065

Date: October 12, 2006

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Registration of :
MonsterCommerce, LLC : POST REGISTRATION
Registration No.: 2,947,268 : Trademark Specialist:
Registration Date: May 10, 2005 : Valerie Stevens
Mark: **MONSTERCOMMERCE** :

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

RESPONSE

Dear Madam:

This is submitted in response to the Post Registration Office Action dated May 11, 2006.

DECLARATION

The Trademark Specialist has rejected the Section 7(h) Request for Correction submitted on October 27, 2005 because an Affidavit under 37 C.F.R. §2.20 verifying the contents was not submitted. Applicant submits herewith as Exhibit A, the required Substitute Affidavit in Support of Ownership of Registration.

**REVOCATION AND POWER OF ATTORNEY WITH APPOINTMENT OF
DOMESTIC REPRESENTATIVE**

Please note that a Revocation and Power of Attorney is also being filed today in connection with this registration, a copy of which is attached as Exhibit B.

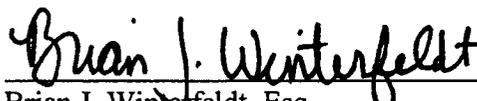
CONCLUSION

The Registrant, MonsterCommerce, LLC, respectfully requests the amendment of the registration and notification to that effect be provided at the Trademark Office's earliest convenience. If further action of the part of the Registrant is required, the Trademark Specialist is invited to contact the undersigned.

Respectfully Submitted,

Date: October 12, 2006

By:



Brian J. Winterfeldt, Esq.
Tricia M. Thompkins, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W.
Suite 1000 South
Washington, DC 20005-3807
Telephone: 202.661.2200
Facsimile: 202.661.2299

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Registration of

MonsterCommerce, LLC

Reg. No.: 2,947,268

BOX POST REGISTRATION

Reg. Date: May 10, 2005

Mark: MONSTERCOMMERCE

**SUBSTITUTE AFFIDAVIT IN SUPPORT OF
OWNERSHIP OF REGISTRATION**

Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

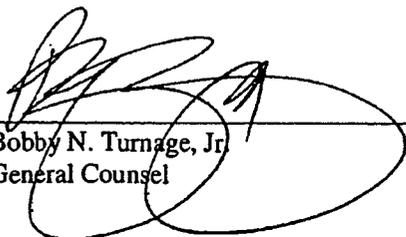
To The Commissioner of Trademarks:

I, the undersigned, declare that the application as filed on August 29, 2002, and subsequently the registration as issued on May 10, 2005, which indicates the Applicant/Registrant as MonsterCommerce, Inc., a corporation of California is incorrect. The application and subsequent registration should indicate that the Applicant/Registrant is MonsterCommerce, LLC, a limited liability company of California.

MonsterCommerce, LLC
Reg. No. 2,974,268

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that all statements made of her own knowledge are true all statements made on information and belief are believed to be true.

MonsterCommerce, LLC



Bobby N. Turnage, Jr.
General Counsel

Date: October 5, 2006

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
UNITED STATES DEPARTMENT OF COMMERCE**

Registrant: MonsterCommerce, LLC
Mark: MONSTERCOMMERCE
Reg. No.: 2,947,268
Registered: May 10, 2005

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REVOCATION AND POWER OF ATTORNEY

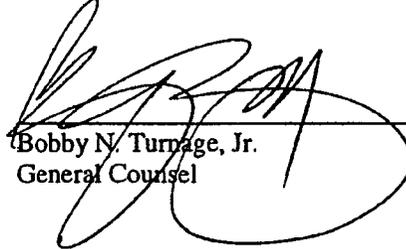
MonsterCommerce, LLC appoints Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, N.W., Suite 1000 South, Washington, DC 20005 as its domestic representative upon whom all documents can be served involving matters and proceedings related to the mark identified above.

Applicant hereby appoints as its attorneys: Brian J. Winterfeldt, Deepika R. Allana, Benita P. Collier, Stacey J. Johnson, Tricia M. Thompkins and all other attorneys with the firm of Ballard Spahr Andrews & Ingersoll, LLP, as principal attorneys to prosecute these applications, to transact all business in the U.S. Patent and Trademark Office connected therewith and to receive the Registration Certificates if one should issue. Please direct all communication to:

Brian J. Winterfeldt, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W.
Suite 1000 South
Washington, DC 20005-3807
Telephone: (202) 661-2200
Facsimile: (202) 661-2299
Email: winterfeldtb@ballardspahr.com

Applicant hereby revokes any and all previous Powers of Attorney filed in relation to this registration.

MonsterCommerce, LLC



A handwritten signature in black ink, appearing to read 'Bobby N. Turnage, Jr.', is written over a horizontal line. The signature is stylized and somewhat illegible.

Bobby N. Turnage, Jr.
General Counsel

Date: October 5, 2006

California Business Portal

Secretary of State **BRUCE McPHERSON**

SECRETARY OF STATE

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Limited Partnership / Limited Liability Company **LP/LLC**

The information displayed here is current as of "Oct 20, 2006" and is updated weekly. This is not a complete or certified record of the Limited Partnership or Limited Liability Company.

If you are unable to locate a record, you may request a more extensive search by ordering a status report. Fees and instructions for ordering a status report are included in the **Business Entities Records Order Form**. Certificates and/or certified copies can be requested using the order form.

Results of search for " **monstercommerce** "

Click on the name of the Limited Partnership or Limited Liability Company for additional information.

LP/LLC Number	Date Filed	Status	LP/LLC Name	Agent for Service of Process
200030510084	10/27/2000	active	MONSTERCOMMERCE, LLC	SIROUS DERAKHSH

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Corporations

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For information about certification of corporate records or for additional corporate information, please refer to **Corporate Records**. If you are unable to locate a record, you may request a more extensive search by ordering a status report. Fees and instructions for ordering a status report are included on the **Business Entities Records Order Form**. Certificates and/or certified copies can also be requested using the order form.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MonsterCommerce, LLC)	
)	
Opposer,)	
)	
v.)	Opposition No. 91173189
)	
Igor Logniko)	
)	
Applicant.)	
)	

OPPOSER’S MOTION FOR LEAVE TO AMEND PLEADINGS

Opposer, MonsterCommerce, LLC (“Opposer”), by and through its undersigned counsel and pursuant to Fed. R. Civ. P. 15 and 37 C.F.R. § 2.107, respectfully seeks leave of the Trademark Trial and Appeal Board (“TTAB”) to file an amended Notice of Opposition.

Fed. R. Civ. P. 15 states that a motion for leave to amend a complaint, “shall be freely given when justice so requires.” It is well-settled law that leave to amend the complaint is rarely denied and may be denied only where there is a demonstrable showing of prejudice to an opposing party. In fact, it may be an abuse of discretion for the court to deny leave to amend absent a demonstrable showing of prejudice. Forman v. Davis, 371 U.S.178, 83 S.Ct.227, 9 L.Ed. 2d 222 (1962); Jackson v. Bank of Hawaii, 902 F 2d 1385 (9th Cir. 1990); Harkless v. Sweeny Independent School District, 544 F 2d 1353 (5th Cir.1977) cert. Denied 434 U.S. 966; United Steelworkers of America v. Mesker Bros. Industries, Inc., 457F2d 91 (8th Cir. 1971).

Further, a number of federal courts have held that the court should not even consider the legal sufficiency of the substance of the proposed amendment in granting leave to file the amended complaint.

The facts in this matter demonstrate that the proposed amendment is offered in good faith and for good reasons, that it is the first motion made by the Opposer to amend the Notice of Opposition and that it is offered to clarify the relationship between Network Solutions, LLC ("Network Solutions"), the party that timely filed the Extension of Time to Oppose ("EOT") and the Opposer; both matters raised by Applicant's Motion to Dismiss and in the interests of justice.

As demonstrated in the Opposer's Memorandum in Opposition to Applicant's Motion to Dismiss, Opposer is in privity with Network Solutions because of its parent company/subsidiary relationship. Likewise, Opposer has shown that it has standing to oppose the Applicant's mark based on its ownership of the cited Registration, which was not apparent on its face because of a clerical mistake regarding the identification of the Registrant. The mistake has since been satisfied with the PTO as the singular requirement, a declaration attesting to the error, was submitted to the PTO on October 12, 2006. In sum, the purpose of Opposer's Amendment is to clarify the record by demonstrating its privity with Network Solutions.

In this case, justice requires that the TTAB grant leave to amend the Notice of Opposition. Clearly, Applicant may not now assert that its rights have been prejudiced; no answer as been filed by Applicant and no discovery has been initiated. Moreover, the evidence Applicant uses in its Motion to Dismiss is the same evidence that proves privity between Opposer and Network Solutions and clarifies the clerical mistake regarding the Registration.

Conclusion

For the reasons set forth above, Opposer respectfully request that leave to file the Amended Notice of Opposition, submitted herewith pursuant to 37 C.F.R. § 2.107 , be granted.

Respectfully submitted,

MONSTERCOMMERCE, LLC

By: Brian J. Winterfeldt
Brian J. Winterfeldt
Tricia McDermott Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

(202) 661-7650 Telephone

(202) 626-9065 Fax

Attorneys for MONSTERCOMMERCE, LLC

Dated: November 6, 2006

CERTIFICATE OF SERVICE

I, Brian J. Winterfeldt, hereby certify that on today's date, I caused a copy of the foregoing Opposer's Memorandum in Opposition to Applicant's Motion to Dismiss, Motion for Leave to Amend the Pleadings and Amended Pleadings to be served by facsimile transmission to **(954) 252-9192** with a copy transmitted thereafter by certified mail, on counsel set forth below:

Richard S. Ross, Esq.
4801 South University Drive
Suite 237
Ft. Lauderdale, Florida 33328
Telephone: (954) 252-9110
Fax: (954) 252-9192

Dated: November 6, 2006



Brian J. Winterfeldt

Pursuant to 15 U.S.C. §§ 1052, 1063, and 1125 of the Lanham Act and 37 C.F.R. §§ 2.101 and 2.104, and predicated upon the following grounds, Opposer alleges as follows:

1. Opposer, MonsterCommerce, LLC, is a limited liability company duly organized and existing under the laws of California, having its principal place of business at One BronzePoint, Belleville, Illinois 62226.

2. Opposer is the owner of the MONSTERCOMMERCE mark, the subject of a federal registration, Registration No. 2,947,268 for:

Computer services, namely, providing on-line non-downloadable software that enables users to sell their products or services on-line, namely, software facilitating the practicing of e-commerce services and e-commerce shopping portal services, in International Class 42.

A copy of the registration is attached as **Exhibit A**.¹

Opposer is also the owner of a family of MONSTER marks, including MONSTERLOCAL (U.S. Application Serial No. 76/658,138), MONSTER MARKETPLACE, MONSTER, MONSTER WEB PROMOTION, MONSTER WEB DESIGN, MONSTER DOMAIN REGISTRATION, MONSTERSMALLBUSINESS, MONSTER SELLERS, the MONSTER logo, and the MONSTER EYE logo (the "MONSTER Family of Marks").

3. As a wholly owned subsidiary, Opposer is in privity Network Solutions, LLC, which timely filed the extension of time to oppose ("EOT") the registration of the subject application. *See*, Declaration of Bobby N. Turnage, Jr., Senior Vice President and General Counsel of Network Solutions, LLC, attached as **Exhibit B**.

¹ Note that the registration certificate mistakenly issued in the name of a non-existent entity, MonsterCommerce, Inc. A copy of the declaration attesting to the misidentification as defined by Rule 2.102(b) is also attached to **Exhibit A**.

4. Opposer offers, *inter alia*, a broad range of online services, including providing use of e-commerce storefront software and systems, website design, promotion and hosting, merchant accounts, and domain name registration services.

Its on-line services include, but are not limited to, providing on-line shopping cart software which is used for the purpose of designing, hosting, implementing, and maintaining websites and specifically providing built-in and customizable website templates and graphics, website optimization tools and plug-ins, web-based administration for on-line stores, email accounts, credit card processing, an order management system, and technical support services.

The Opposer, having been established in 1998, is a single-source e-commerce provider offering e-business clients the components needed to sell successfully online: e-commerce store building tools, design services, merchant accounts, and web site promotion services. The Opposer, therefore, is one of the leading providers of storefront and e-commerce solutions for on-line businesses.

4. Opposer is the owner of a federal registration for the MONSTERCOMMERCE mark and began promoting its services under the MONSTER Family of Marks as early as October 2001. Therefore, Opposer's first use of the MONSTER Family of Marks pre-dates Applicant's first use of the TEMPLATEMONSTER Mark, inasmuch as Applicant asserts dates of first use of April 15, 2002.

5. Since its initial adoption and use of the MONSTER Family of Marks, Opposer has made a substantial investment in advertising and marketing its services under the mark. Opposer has extensively used, advertised, promoted and offered for sale

Opposer's services under the MONSTER Family of Marks through various channels of trade and commerce. As a result of Opposer's extensive use and promotion of the MONSTER Family of Marks and the extensive sales of services under the MONSTER Family of Marks, the Opposer has established valuable good will in the marks.

6. On information and belief, on April 19, 2005, Applicant filed Application Serial No. 78/612,360 for the mark TEMPLATEMONSTER pursuant to Lanham Act Section 1(a) for the following services:

Online retail services featuring downloadable software for website development comprising pre-formatted modifiable templates., in International Class 35.

Website development services, namely, providing website design services for others., in International Class 42.

The application was published for opposition in the *Official Gazette* on May 30, 2006.

7. Applicant's mark so closely resembles the MONSTER Family of Marks that Applicant's mark, when used in connection with the services set forth in Applicant's application, it is likely to cause confusion, or to cause mistake, or to deceive purchasers and potential purchasers of Applicant's services into erroneously believing that there is some relationship between Opposer and Applicant, or that Opposer has authorized, sponsored or licensed Applicant's use of the mark TEMPLATEMONSTER, in violation of 15 U.S.C. § 1052(d).

8. Applicant's mark, when used in association with the services identified in Applicant's application, is likely to cause dilution of Opposer's MONSTER Family of Marks in violation of 15 U.S.C. § 1125(c).

9. Registration of Applicant's mark will damage Opposer, as such registration will give color of exclusive statutory rights to the mark

TEMPLATEMONSTER to Applicant in derogation and violation of the prior and superior rights of Opposer.

WHEREFORE, Opposer, MonsterCommerce, LLC, believes that it will be damaged by registration of U.S. Application Serial No. 78/612,360, and therefore respectfully requests that the Trademark Trial and Appeals Board sustain this opposition and refuse registration of Applicant's mark.

All correspondence should be addressed to Brian J. Winterfeldt, Esq., c/o Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW, Suite 1000, Washington, DC 20005.

Respectfully submitted,

MONSTERCOMMERCE, LLC

By: Brian J. Winterfeldt
Brian J. Winterfeldt
Tricia McDermott Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, NW,
Suite 1000 South
Washington, DC 20005

(202) 661-7650 Telephone
(202) 626-9065 Fax

Attorneys for MONSTERCOMMERCE, LLC

Dated: November 6, 2006

EXHIBIT A



United States Patent and Trademark Office

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(Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark MONSTERCOMMERCE

Goods and Services IC 042. US 100 101. G & S: computer services, namely, providing on-line non-downloadable software that enables users to sell their products or services on-line, namely, software facilitating the practicing of e-commerce services and e-commerce shopping portal services. FIRST USE: 20011005. FIRST USE IN COMMERCE: 20011005

Mark Drawing Code (1) TYPED DRAWING

Design Search Code

Serial Number 76445524

Filing Date August 29, 2002

Current Filing Basis 1A

Original Filing Basis 1A

Published for Opposition March 25, 2003

Registration Number 2947268

Registration Date May 10, 2005

Owner (REGISTRANT) MONSTERCOMMERCE, INC. CORPORATION CALIFORNIA 10715 Norton Lane Sparta ILLINOIS 62286

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record H. JAY SPIEGEL

Type of Mark Register SERVICE MARK PRINCIPAL

**Live/Dead
Indicator** LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSER DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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FILE COPY

Attorney Docket No.: 049337

Applicant: Network Solutions, LLC

Reg. No.: 2,947,268

Reg. Date: May 10, 2005

Mark: MONSTERCOMMERCE

Documents Filed:

1. Transmittal Letter;
2. Response;
3. Exhibit A - Substitute Affidavit in Support of Ownership of Registration;
4. Exhibit B - Revocation and Power of Attorney;
5. Return postcard.

Sender's Initials: BJW/ARW

Date: October 12, 2006

PLEASE DATE STAMP & RETURN

Attorney Docket No.: 049337

Applicant: Network Solutions, LLC

Reg. No.: 2,947,268

Reg. Date: May 10, 2005

Mark: MONSTERCOMMERCE

Documents Filed:

1. Transmittal Letter;
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Date: October 12, 2006

PLEASE DATE STAMP & RETURN



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
UNITED STATES DEPARTMENT OF COMMERCE

Applicant: Network Solutions, LLC
Mark: **MONSTERCOMMERCE**
Reg. No.: 2,947,268
Reg. Date: May 10, 2005

POST REGISTRATION

Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

To the Commissioner of Trademarks:

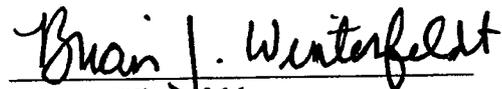
Transmitted herewith for filing in the present application are the following documents:

- Response;
- Substitute Affidavit in Support of Ownership of Registration (Exhibit A);
- Revocation and Power of Attorney (Exhibit B); and
- Return Postcard.

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned at (202) 661-7650.

Respectfully submitted,

By:



Brian J. Winterfeldt
Tricia M. Thompkins
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W., Suite 1000 South
Washington, DC 20005-3807
Tel: (202) 661-7650
Fax: (202) 626-9065

Date: October 12, 2006

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re Registration of :
MonsterCommerce, LLC : POST REGISTRATION
Registration No.: 2,947,268 : Trademark Specialist:
Registration Date: May 10, 2005 : Valerie Stevens
Mark: **MONSTERCOMMERCE** :

Commissioner for Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

RESPONSE

Dear Madam:

This is submitted in response to the Post Registration Office Action dated May 11, 2006.

DECLARATION

The Trademark Specialist has rejected the Section 7(h) Request for Correction submitted on October 27, 2005 because an Affidavit under 37 C.F.R. §2.20 verifying the contents was not submitted. Applicant submits herewith as Exhibit A, the required Substitute Affidavit in Support of Ownership of Registration.

**REVOCATION AND POWER OF ATTORNEY WITH APPOINTMENT OF
DOMESTIC REPRESENTATIVE**

Please note that a Revocation and Power of Attorney is also being filed today in connection with this registration, a copy of which is attached as Exhibit B.

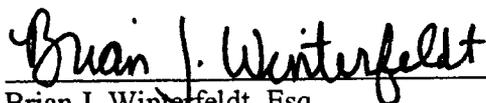
CONCLUSION

The Registrant, MonsterCommerce, LLC, respectfully requests the amendment of the registration and notification to that effect be provided at the Trademark Office's earliest convenience. If further action of the part of the Registrant is required, the Trademark Specialist is invited to contact the undersigned.

Respectfully Submitted,

Date: October 12, 2006

By:



Brian J. Winterfeldt, Esq.
Tricia M. Thompkins, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
601 13th Street, N.W.
Suite 1000 South
Washington, DC 20005-3807
Telephone: 202.661.2200
Facsimile: 202.661.2299

EXHIBIT A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Registration of

MonsterCommerce, LLC

Reg. No.: 2,947,268

BOX POST REGISTRATION

Reg. Date: May 10, 2005

Mark: **MONSTERCOMMERCE**

**SUBSTITUTE AFFIDAVIT IN SUPPORT OF
OWNERSHIP OF REGISTRATION**

Commissioner of Trademarks
P.O. Box 1451
Alexandria, Virginia 22313-1451

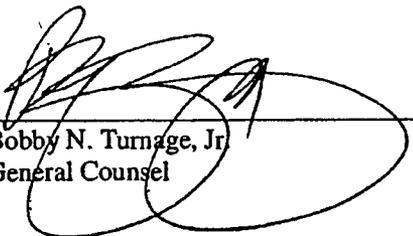
To The Commissioner of Trademarks:

I, the undersigned, declare that the application as filed on August 29, 2002, and subsequently the registration as issued on May 10, 2005, which indicates the Applicant/Registrant as MonsterCommerce, Inc., a corporation of California is incorrect. The application and subsequent registration should indicate that the Applicant/Registrant is MonsterCommerce, LLC, a limited liability company of California.

MonsterCommerce, LLC
Reg. No. 2,974,268

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that all statements made of her own knowledge are true all statements made on information and belief are believed to be true.

MonsterCommerce, LLC



Bobby N. Turnage, Jr.
General Counsel

Date: October 5, 2006

EXHIBIT B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
UNITED STATES DEPARTMENT OF COMMERCE**

Registrant: MonsterCommerce, LLC
Mark: MONSTERCOMMERCE
Reg. No.: 2,947,268
Registered: May 10, 2005

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

REVOCATION AND POWER OF ATTORNEY

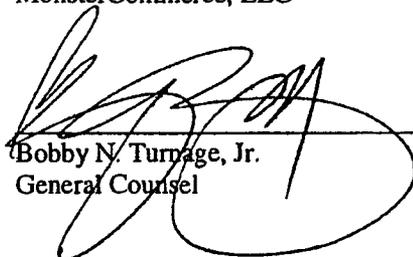
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Applicant hereby appoints as its attorneys: **Brian J. Winterfeldt**, Deepika R. Allana, Benita P. Collier, Stacey J. Johnson, Tricia M. Thompkins and all other attorneys with the firm of Ballard Spahr Andrews & Ingersoll, LLP, as principal attorneys to prosecute these applications, to transact all business in the U.S. Patent and Trademark Office connected therewith and to receive the Registration Certificates if one should issue. Please direct all communication to:

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Telephone: (202) 661-2200
Facsimile: (202) 661-2299
Email: winterfeldtb@ballardspahr.com

Applicant hereby revokes any and all previous Powers of Attorney filed in relation to this registration.

MonsterCommerce, LLC



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Bobby N. Turnage, Jr.
General Counsel

Date: October 5, 2006

EXHIBIT B

