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

Proceeding	91228458
Party	Plaintiff Monster Energy Company
Correspondence Address	DIANE M REED KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN ST, 14TH FLOOR IRVINE, CA 92614 UNITED STATES efiling@knobbe.com, francie.leonguerrero@knobbe.com, doreen.buluran@knobbe.com
Submission	Motion to Consolidate
Filer's Name	Matthew S. Bellinger
Filer's e-mail	efiling@knobbe.com, francie.leonguerrero@knobbe.com, doreen.buluran@knobbe.com
Signature	/Matthew S. Bellinger/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

MONSTER ENERGY COMPANY,

Opposer and Counterclaim Defendant,

v.

MAPLE LEAF SPORTS & ENTERTAINMENT  
LTD. and NBA PROPERTIES, INC.,

Applicants and Counterclaim Plaintiffs.

)  
) Opposition Nos.: 91222422 (Parent)  
) 91222445  
) 91226092

) Serial Nos.: 86480573, 86480603,  
) 86480655, 86480693, 86480716,  
) 86480739, 86480248, 86480297,  
) 86480313, 86480332, 86480362,  
) 86480532, 86480507, 86480488,  
) 86480463, 86480434, 86480405,  
) 86480388, 86641420, 86641438

) Marks:



) Opposition No.: 91228458

) Serial No.: 86/641,393

) Mark:



**OPPOSER MONSTER ENERGY COMPANY'S CONSENTED MOTION TO  
CONSOLIDATE OPPOSITION PROCEEDINGS**

## I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 42(a) and T.B.M.P. § 511, Monster Energy Company (“Opposer”) hereby moves to consolidate previously consolidated Opposition Nos. 91222422, 91222445, and 91226092, with Opposition No. 91228458 (collectively, the “Oppositions”). Opposer further requests that the schedule of Opposition No. 91228458 govern the consolidated proceedings. The Oppositions involve common questions of law and fact, and common parties or parties that share a common interest. Thus, consolidation is appropriate. Applicants, Maple Leaf Sports & Entertainment Ltd. (“MLSE”) and NBA Properties, Inc. (“NBA Properties”) (collectively, “Applicants”), have stated that they consent to consolidation and this Motion.

## II. FACTUAL BACKGROUND

MEC is engaged in the business of selling, licensing, and marketing energy drinks and other products and accessories bearing Opposer’s ® mark and related marks. Applicant MLSE owns and operates the National Basketball Association’s Toronto Raptors Basketball team. Applicant NBA Properties oversees the marketing and merchandising of the NBA and NBA member teams.

On June 17, 2015, Opposer filed Opposition No. 91222422 alleging that it would be damaged by registration of MLSE’s  mark. On June 18, 2015, Opposer filed Opposition No. 91222445 alleging that it would be damaged by registration of MLSE’s



mark. MEC alleged in both oppositions that confusion was likely between MLSE’s

marks and Opposer's marks, including Opposer's  ® mark, and also alleged that

registration of MLSE's marks would dilute the distinctive qualities of Opposer's  ® mark.

On October 1, 2015, the Board *sua sponte* issued an order consolidating the two oppositions. *See* Docket No. 7 in Opposition No. 91222422.

On January 29, 2016, Opposer filed Opposition No. 91226092 alleging that it would be

damaged by registration of NBA Properties'  mark. MEC alleged that confusion

was likely between the  mark and Opposer's marks, including Opposer's  ®

mark, and also alleged that registration of the  mark would dilute the distinctive

qualities of Opposer's  ® mark.

On April 13, 2016, Opposer, with the consent of Applicants, moved to consolidate the three oppositions identified above (Opposition Nos. 91222422, 91222445, and 91226092). *See* Docket No. 6 in Opposition No. 91226092. On June 29, 2016, the Board *sua sponte* consolidated the three oppositions (collectively, the "Previously Consolidated Oppositions"). *See* Docket No. 14 in Opposition No. 91222422.

On June 15, 2016, Opposer filed Opposition No. 91228458 alleging that it would be

damaged by registration of NBA Properties'  mark. MEC alleged that

confusion was likely between the  mark and Opposer's marks, including

Opposer's  ® mark, and also alleged that registration of the  mark

would dilute the distinctive qualities of Opposer's  ® mark.

On July 12, 2016, Opposer filed a consented motion to suspend proceedings in the Previously Consolidated Oppositions pending settlement negotiations, which the Board granted. *See* Docket Nos. 15-16 in Opposition No. 91222422. Thus, those proceedings remain suspended through September 10, 2016.<sup>1</sup>

### **III. ARGUMENT**

The current Oppositions involve common questions of law and fact. For example, Opposer asserts nearly identical common law rights and registrations in the Oppositions. In addition, the Applicants' marks opposed in the Oppositions involve a similar claw design element, as shown below.

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<sup>1</sup> In view of the ongoing settlement discussions, the parties will be filing a request to further suspend the pending oppositions.



Applicants also asserted a prior registration defense in the Oppositions. Moreover, the goods and services identified in the opposed applications also overlap. For example, the Oppositions all involve goods or services in at least Class 41.<sup>2</sup> Accordingly, consolidation is appropriate. *See, e.g., Ritchie v. Simpson*, 41 U.S.P.Q.2d 1859, 1860 (T.T.A.B. 1996) (cases consolidated despite variations in marks and goods), *rev'd on other grounds*, 170 F.3d 1092, 50 U.S.P.Q.2d 1023 (Fed. Cir. 1999); *Black & Decker Corp. v. Emerson Elec. Co.*, 84 U.S.P.Q.2d 1482 (T.T.A.B. 2007) (consolidated oppositions against separate applications for DIRT HAWG and WATER HAWG).

Further, Applicants, MLSE and NBA Properties, share a common interest. MLSE is the parent company of the Toronto Raptors, a basketball team that plays in the NBA. NBA Properties oversees the marketing and merchandising of the NBA and NBA member teams, including the Toronto Raptors. Further, NBA Properties stated in its Answer filed in Opposition Nos. 91226092 and 91228458 that it is the exclusive licensee of various trademarks owned by MLSE and that NBA Properties, in coordination with MLSE, created the opposed mark at issue in those oppositions. *See* Docket No. 5 in Opp. No. 91226092 at ¶¶ 35-36; Docket No. 4 in Opp. No. 91228458 at ¶¶ 34-35; *see also* T.B.M.P. § 511 (“Although identity of the parties is another factor considered by the Board in determining whether consolidation should be ordered, it is not always necessary.”) (internal citations omitted); *New Orleans Louisiana Saints LLC & NFL*

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<sup>2</sup> The applications in Opposition Nos. 91222422 and 91222445 involve goods or services in Classes 9, 14, 16, 18, 20, 21, 24, 25, 28, 35, 38, and 41. The applications in Opposition No. 91226092 involve goods in Class 25 and Class 41. The application in the Opposition No. 91228458 involves services in Class 41.

*Props. LLC v. Who Dat?, Inc.*, 99 U.S.P.Q.2d 1550 (T.T.A.B. 2011) (stating that the Board may consolidate multiple oppositions brought by different opposers if the oppositions plead the same claims for consistency and economy). Further, the Previously Consolidated Opposition includes both Applicants.

Consolidation will save the Board and the parties the time, effort, and expense that would be required in maintaining the Oppositions on separate schedules. For example, the parties anticipate that there will be substantial overlap in the discovery required for the Oppositions. The Oppositions will also present similar issues to be decided by the Board.

This motion is sought for purposes of judicial economy and not for reasons of delay. To avoid duplicative litigation and promote judicial economy, while preserving the interest of the parties in the Oppositions, the above Oppositions should be consolidated into one proceeding.

Opposer further requests that the schedule of the most recently filed Opposition No. 91228458 govern the consolidated proceedings. In addition, if the proceedings are still suspended at the time the Board reviews this motion to consolidate, Opposer requests that the Board resume the proceedings for the limited purpose of ruling on the instant motion.<sup>3</sup>

#### **IV. CONCLUSION**

For the reasons set forth above, Opposer requests consolidation of the Previously Consolidated Oppositions (Opposition Nos. 91222422, 91222445, and 91226092) with Opposition No. 91228458, and that the schedule of Opposition No. 91228458 be adopted for the consolidated proceeding. Opposer further requests that each proceeding retain its separate character and require entry of a separate judgment pursuant to Fed. R. Civ. P. 42(a) and T.B.M.P. § 511.

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<sup>3</sup> Per the Board's order dated July 12, 2016, the Previously Consolidated Oppositions are suspended through September 10, 2016. See Docket No. 16 in Opp. No. 91222422.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 8, 2016

By: /Matthew S. Bellinger/

Steven J. Nataupsky  
Matthew S. Bellinger  
Jason A. Champion  
Nicole R. Townes  
Jonathan A. Menkes  
Julianna M. Simon  
2040 Main Street, Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404  
efiling@knobbe.com  
Attorneys for Opposer,  
MONSTER ENERGY COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER MONSTER ENERGY COMPANY'S CONSENTED MOTION TO CONSOLIDATE OPPOSITION PROCEEDINGS** has been served on Applicant's counsel by mailing said copy on September 8, 2016, via First Class Mail to:

Anil V. George  
NBA PROPERTIES, INC.  
Olympic Tower 645 Fifth Ave  
New York, New York 10022

Signature: 

Name: Doreen P. Buluran

Date: September 8, 2016

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