

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

In the Matter of Application Serial No. 78/046,283
Trademark: MONSTERMARK

MONSTER CABLE PRODUCTS, INC.)
AND MONSTER CABLE)
INTERNATIONAL, LTD.,)
)
Opposer,)
)
v.)
)
EMARKMONITOR, INC.,)
)
Applicant.)
_____)

Opposition No. 91154268

02-19-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #

BOX TTAB, NO FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202

ANSWER

Applicant eMarkMonitor, Inc. (herein "Applicant"), by and through its counsel, answers the Notice of Opposition ("Opposition") of Monster Cable Products Inc. and Monster Cable International, Ltd. ("Opposer") as follows:

1. Answering the preliminary paragraph of the Opposition, Applicant denies that Opposer will be damaged in any way by the registration of the trademark MONSTERMARK. Applicant denies that EASYTRIM LIMITED has filed the application to register MONSTERMARK, Serial Number 78/046,283.

2. Answering paragraph 1 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

3. Answering paragraph 2 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

4. Answering paragraph 3 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

5. Answering paragraph 4 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

6. Answering paragraph 5 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

7. Answering paragraph 6 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

8. Answering paragraph 7 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

9. Answering paragraph 8 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

10. Answering paragraph 9 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

11. Answering paragraph 10 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

12. Answering paragraph 11 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

13. Answering paragraph 12 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

14. Answering paragraph 13 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

15. Answering paragraph 14 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

16. Answering paragraph 15 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

17. Answering paragraph 16 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

18. Answering paragraph 17 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

19. Answering paragraph 18 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

20. Answering paragraph 19 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

21. Answering paragraph 20 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

22. Answering paragraph 21 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

23. Answering paragraph 22 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

24. Answering paragraph 23 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

25. Answering paragraph 24 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

26. Answering paragraph 25 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

27. Answering paragraph 26 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

28. Answering paragraph 27 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

29. Answering paragraph 28 of the Opposition, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same.

30. Answering paragraph 29 of the Opposition, to the extent Opposer has plead conclusions of law rather than facts, no response is required. To the extent that any response is

required, Applicant lacks sufficient knowledge or information to form a belief as to the truth of the allegations therein, and on such basis denies the same. Applicant denies that Opposer will be damaged in any way by the registration sought by the Applicant.

AFFIRMATIVE DEFENSES

31. As a separate and affirmative defense, Applicant alleges that Opposer failed to state facts sufficient to oppose the registration sought by Applicant.

32. As a further separate and affirmative defense, Applicant alleges that there is no confusion or likelihood of confusion either as to source, sponsorship or affiliation between Opposer's products or services that bear Opposer's alleged trademarks and the Applicant's MONSTERMARK goods and services.

33. As a further separate and affirmative defense, Applicant alleges that Opposer's purported claims are barred by the privilege of fair competition.

34. As a further separate and affirmative defense, Applicant alleges that Opposer's purported claims are barred by the doctrine of waiver.

35. As a further separate and affirmative defense, Applicant alleges that Opposer's purported claims are barred by the doctrine of estoppel.

36. As a further separate and affirmative defense, Applicant alleges that Opposer's purported claims are barred by the doctrine of laches.

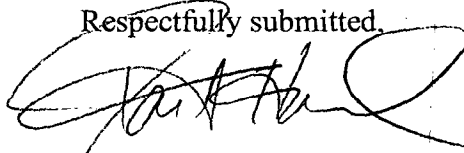
37. As a further separate and affirmative defense, Applicant alleges that Opposer's purported claims are barred by the doctrine of acquiescence.

38. As a further separate and affirmative defense, Applicant alleges that Opposer's purported claims are barred by the applicable statute of limitations.

WHEREAS, Applicant prays that the Opposition be denied and that the application for registration of MONTSTERMARK be granted.

DATED this 14th day of February, 2003.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. Haenel", written over a horizontal line.

David J. Haenel, Esq.
eMarkMonitor, Inc.
12438 W. Bridger St., Suite 100
Boise, Idaho 83713
(208) 389-5740

CERTIFICATE OF SERVICE

I HEREBY CERTIFY That on the 17th day of February, 2003, I mailed a true and correct copy of the foregoing ANSWER to Robert W. Payne, LARIVIERE, GRUBMAN & PAYNE, LLP, P.O. Box 3140, Monterey, CA 93942 via the U.S. mail, first class, postage prepaid.

By: 

David J. Haenel, Esq.

Certificate of Mailing

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as First Class mail in an envelope addressed to **Box TTAB NO FEE**, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, on:

Date of Mailing Document: 2/14/03

Name of applicant, attorney, or representative certifying mailing: David J. Haene

Signature: 

Date of Signing: 2/14/03

03 FEB 26 AM 9:30

February, 14, 2002

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2900 Crystal Drive
Arlington, VA 22202-3513

02-19-2003

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RE: Opposition No. 91154268
Ser. No. 78/046,283
Monster Cable Products, Inc. v. eMarkMonitor, Inc.

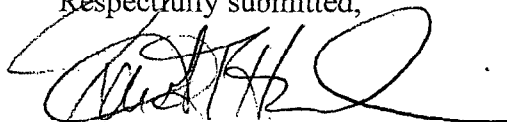
Dear Sir or Madam:

I am the attorney for the Applicant, eMarkMonitor, Inc. On behalf of eMarkMonitor, Inc., I have enclosed the following documents regarding the above-referenced matter:

1. Answer to the Notice of Opposition (original and two copies), and
2. Certificate of Mailing

Please let me know if you have any questions. Thank you for your assistance in this matter.

Respectfully submitted,



David J. Haenel

encl.