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

Proceeding	91244205
Party	Defendant Monster Energy Company
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Submission	Answer
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Signature	/Paul A. Stewart/
Date	11/26/2018
Attachments	2018-11-28 ANSWER TO NOTICE OF OPPOSITION - HAN-BEV.6369M.pdf(177279 bytes)

4. Applicant admits that Application Serial No. 85/902,238 registered on May 3, 2016 as U.S. Registration No. 4,951,671. Applicant denies the remaining allegations of Paragraph 4 of the Notice.

5. Applicant admits that ISN has used the MONSTER MOBILE (plus design) mark in U.S. Commerce on at least some of the services recited in the '671 Registration. Applicant denies the remaining allegations of Paragraph 5 of the Notice.

6. Applicant admits that Exhibit A to the Notice appears to be a copy of the '671 Registration and the status pages from the TSDR System for the '671 Registration. Applicant denies any remaining allegations of Paragraph 6 of the Notice.

7. Applicant denies the allegations of Paragraph 7 of the Notice.

8. Applicant admits that ISN sells or has sold tools under the MONSTER MOBILE trademark and under a stylized MONSTER mark in U.S. commerce. Applicant denies all remaining allegations of Paragraph 8 of the Notice.

9. Applicant admits the allegations of Paragraph 9 of the Notice.

10. Applicant admits that it sells beverages, and that it sells energy drinks under the MONSTER ENERGY[®] mark. Applicant denies any remaining allegations of Paragraph 10 of the Notice.

11. Applicant admits that it has been selling energy drinks in U.S. commerce under the MONSTER ENERGY[®] trademark since 2002. Applicant also admits that it sometimes uses the logo depicted in Paragraph 11 of the Notice. Applicant denies any remaining allegations of Paragraph 11 of the Notice.

12. Applicant admits that it has filed and obtained U.S. trademark registrations for its MONSTER ENERGY® trademark and its M MONSTER ENERGY logo for goods that encompass energy drinks. Applicant denies any remaining allegations of Paragraph 12 of the Notice.

13. Applicant admits that third party companies have used trademarks that include the term “monster.” Applicant denies any remaining allegations of Paragraph 13 of the Notice.

14. Applicant admits that third party companies have used trademarks that include the term “monster.” Applicant denies any remaining allegations of Paragraph 14 of the Notice.

15. Applicant admits that third party companies have used trademarks that include the term “monster.” Applicant denies any remaining allegations of Paragraph 15 of the Notice.

16. Applicant admits that third party companies have used trademarks that include the term “monster.” Applicant denies any remaining allegations of Paragraph 16 of the Notice.

17. Applicant admits the allegations of Paragraph 17 of the Notice.

18. Applicant admits that it has entered into a coexistence agreement with Odwalla, Inc., and that, at the time of the agreement, Odwalla had been using the marks C MONSTER and B MONSTER in commerce in the United States in conjunction with certain beverages. Applicant denies the remaining allegations of Paragraph 18 of the Notice.

19. Applicant admits the allegations of Paragraph 19 of the Notice.

20. Applicant denies the allegations of Paragraph 20 of the Notice.

21. Applicant denies the allegations of Paragraph 21 of the Notice.

22. Applicant denies the allegations of Paragraph 22 of the Notice.

23. Applicant denies the allegations of Paragraph 23 of the Notice.

24. Applicant denies the allegations of Paragraph 24 of the Notice.

25. Applicant denies the allegations of Paragraph 25 of the Notice.
26. Applicant admits the allegations of Paragraph 26 of the Notice.
27. Applicant admits that it has filed a complaint against ISN in the United States District Court for the Central District of California (Case No. 5:17-cv-00548-CBM-RAO), alleging trademark and trade dress infringement by ISN. Applicant denies any remaining allegations of Paragraph 27 of the Notice.
28. Applicant admits the allegations of Paragraph 28 of the Notice.
29. Applicant admits that, in the California Civil Suit, Applicant alleges that ISN's MONSTER MOBILE trademark, as used in commerce, with green and black trade dress, is sufficiently similar to Applicant's MONSTER ENERGY trademark to cause consumer confusion, in light of all other relevant factors. Applicant denies any remaining allegations of Paragraph 29 of the Notice.
30. Applicant admits that, in the California Civil Suit, Applicant has asserted common law rights in the term MONSTER alone. Applicant denies all remaining allegations of Paragraph 30 of the Notice.
31. Applicant admits that the California Civil Suit remained pending at the time the Notice of Opposition was filed.
32. Applicant admits the allegations of Paragraph 32 of the Notice.
33. Applicant admits the allegations of Paragraph 33 of the Notice.
34. Applicant admits the allegations of Paragraph 34 of the Notice.
35. Applicant admits the allegations of Paragraph 35 of the Notice.
36. Applicant admits the allegations of Paragraph 36 of the Notice.

37. Paragraph 37 of the Notice constitutes an admission by ISN as to its beliefs. No response by Applicant as to ISN's statement of its beliefs is necessary or appropriate.

38. Paragraph 38 of the Notice constitutes an admission by ISN as to its beliefs. No response by Applicant as to ISN's statement of its beliefs is necessary or appropriate.

39. Applicant denies the allegations of Paragraph 39 of the Notice, especially in light of the fact that the jury in the California Civil Suit returned a verdict finding that Opposer has infringed at least some of Applicant's federal trademark registrations that include the word "Monster" and also infringed Applicant's trade dress.

40. Applicant admits the allegations of Paragraph 40 of the Notice.

41. Applicant admits the allegations of Paragraph 41 of the Notice.

42. Applicant admits the allegations of Paragraph 42 of the Notice.

43. Applicant admits the allegations of Paragraph 43 of the Notice.

44. Applicant admits the allegations of Paragraph 44 of the Notice.

45. Applicant denies the allegations of Paragraph 45 of the Notice.

46. Applicant denies the allegations of Paragraph 46 of the Notice.

47. Applicant denies the allegations of Paragraph 47 of the Notice.

48. Applicant denies the allegations of Paragraph 48 of the Notice.

49. Applicant denies the allegations of Paragraph 49 of the Notice.

50. Applicant denies the allegations of Paragraph 50 of the Notice.

51. Applicant denies the allegations of Paragraph 51 of the Notice.

52. Applicant denies the allegations of Paragraph 52 of the Notice, especially in light of the fact that the jury in the California Civil Suit returned a verdict finding that Opposer has

infringed at least some of Applicant's federal trademark registrations that include the word "Monster" and also infringed Applicant's trade dress.

53. Applicant admits the allegations of Paragraph 53 of the Notice.

54. Applicant admits the allegations of Paragraph 54 of the Notice.

55. Applicant denies the allegations of Paragraph 55 of the Notice.

56. Applicant admits that, among other things, it has alleged that there is a likelihood of confusion between the MONSTER ENERGY® trademark and ISN's MONSTER MOBILE trademark and stylized MONSTER mark on various goods sold in commerce. Applicant admits that one or more of these allegations have been made in the California Civil Suit, the Suspended Oppositions, and the Cancellation Action. Applicant denies any remaining allegations of Paragraph 56 of the Notice.

57. Paragraph 57 of the Notice constitutes an admission by ISN as to its beliefs. No response by Applicant as to ISN's statement of its beliefs is necessary or appropriate.

58. Applicant lacks sufficient information to determine the truth or falsity of ISN's assertion as to its own alleged subjective belief and, on that basis, denies the allegations of Paragraph 58 of the Notice.

59. Applicant admits that, as of the date of filing of the Notice of Opposition, there had been no final decision on the merits as to Applicant's allegations of a likelihood of confusion in the California Civil Suit, the Suspended Oppositions, or the Cancellation Action. Applicant denies any remaining allegations of Paragraph 59 of the Notice.

60. Applicant denies that ISN will be injured if the '840 Application is permitted to register and denies any remaining allegations of Paragraph 60 of the Notice.

61. Applicant denies the allegations of Paragraph 61 of the Notice.

AFFIRMATIVE DEFENSES

1. The Notice fails to state a claim upon which relief can be granted.
2. ISN lacks standing to bring the present Opposition Proceeding.

WHEREFORE, Applicant prays that this Opposition be denied in its entirety, for lack of standing and on the merits, and that the '840 Application be permitted to register.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 26, 2018

By: /Paul A. Stewart/

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S ANSWER TO NOTICE OF OPPOSITION has been served on the Opposer's counsel of record on November 26, 2018 via electronic mail to:

Jeffrey S. Standley
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Signature: Tamara L. Wright

Name: Tamara L. Wright

Date: November 26, 2018

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