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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Monster Cable Products, Inc.

Serial No. 75899157

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Monster Cable Products, Inc.

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Before Walters, Grendel, and Drost, Administrative
Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On January 18, 2000, Monster Cable Products, Inc.
(applicant) applied to register the mark MONSTERS LIVE
FOREVER in standard character form on the Principal
Register for services ultimately identified as
"Distributorship services featuring replacement products
for power conditioning devices and electrical and
electromagnetic cables and connectors" in Class 35. The
application (Serial No. 75899157) alleges a date of first
use and a date of first use in commerce of April 1998.

The examining attorney refused registration on the ground that "applicant's specimens do not demonstrate use of the mark in connection with the identified service" under Sections 1, 3, and 45 of the Trademark Act. 15 U.S.C. §§ 1051, 1053, and 1127. Brief at 2 and 5. The examining attorney argues (brief at 4) that "[w]hile MONSTERS LIVE FOREVER is shown on the submitted specimens, there is nothing on the specimens to indicate that the applicant is providing distributorship services." Applicant maintains (brief at 3) that since "the specimen shows the mark 'MONSTERS LIVE FOREVER' used to introduce the service by which replacement products for power conditioning devices and electrical cables is provided, the mark is clearly used in connection with the identified service."

"The question whether the subject matter of an application for registration functions as a mark is determined by examining the specimens along with any other relevant material submitted by applicant during prosecution of the application." In re The Signal Companies, Inc., 228 USPQ 956, 957 (TTAB 1986).

An important function of specimens in a trademark application is, manifestly, to enable the PTO to verify the statements made in the application regarding trademark use. In this regard, the manner in which an applicant has employed the asserted mark,

as evidenced by the specimens of record, must be carefully considered in determining whether the asserted mark has been used as a *trademark* with respect to the goods named in the application.

In re Bose Corp., 546 F.2d 893, 192 USPQ 213, 216
(CCPA 1976) (footnote omitted).

"The Trademark Act is not an act to register mere words, but rather to register trademarks. Before there can be registration, there must be a trademark, and unless words have been so used they cannot qualify." Bose Corp., 192 USPQ at 215.

Applicant has submitted several specimens (shown below) in an attempt to demonstrate that it is using the mark on the identified services.

Specimen 1

Specimen 2

Monster Lifetime Product and Connected Equipment Warranty
(Valid in the United States and Canada)



Installing your Monster PowerCenter™ is easy.

Proper connection ensures the best performance.



Note to CITY Installer
This reminder is provided to call the CITY system installer's attention to Article 900-49 of the NEC that provides specific guidelines for proper grounding and in particular, specifies that the cable ground shall be connected to the point of entry as practical.

Step 2:
Make sure the power is switched off on the Monster Power product and on the equipment you want to protect.

Turn off the power switch on the Monster Power unit. If you see the red portion of the switch, your protective is on. Please switch it off.

Note: The Monster Power product and the connected equipment must be indoors and in the same building.

Step 3:
Installing the Monster Power product

Plug your Monster Power product directly into a properly grounded 3-wire AC outlet. Refer to the section of these instructions "Warning—Grounding and Polarization" if your outlet doesn't accept the Monster Power 3-wire grounded plug. Turn the switch on to test the unit.

Important Note—Proper Power and Protection
To completely follow these power and protect your equipment against electrical surges, energy spikes, current leaks, or AC power cuts in your system, your AC power cables in your system must be connected to an appropriate Monster PowerCenter.

Important Note—Proper Protection and the Limited Connected Equipment Warranty
The Limited Connected Equipment Warranty becomes invalid if any fire (plasma, surge, or AC), or audio or video interference leading into the equipment comes from a component that is not properly protected by the Monster PowerCenter.



Specimen 3

994 MONSTER CABLE™

Monster PowerCenter™ Lifetime Product Warranty and Connected Equipment Warranty



Monster Standard Computer PowerCenters

Product Warranty

Monster Cable Products, Inc. warrants that this product shall be free of defects in materials and workmanship under normal use for its lifetime. The warranty extends only to the original purchaser and is non-transferable. During the warranty period, Monster Cable Products, Inc. will, at no additional charge, repair or replace defective parts or at the option of Monster Cable Products, Inc. replace the entire unit.

This warranty does not extend to any Monster Cable Products, Inc. product that has been damaged or rendered defective (a) as a result of accident, misuse or abuse (b) by the use of parts not manufactured or sold by Monster Cable Products, Inc. or (c) by modification of product.

Do not plug any home theater audio or video equipment into this unit, as it will void the warranty.

1. Member will review the claim and make a determination following receipt of all requested information.

2. If the claim is found to fall within Monster guidelines, Member, at its discretion, will direct you to:

- A. Authorize repairs (except for damaged equipment)
- B. Reimburse you for the market value of the damaged connected equipment (see Limited Connected Equipment Warranty for details)
- C. Reimburse replacement of damaged equipment

3. If a repair estimate is received, or stated in Article 75 above, this will be indicated on the form to properly submit to Member for review. Member reserves the right to evaluate such claim and reserves the right to offer repair or replacement of damaged equipment.

Member reserves right to evaluate each claim and reserves right to offer repair or replacement of damaged equipment.

Note: Compensation or reimbursement of this fee is not covered.

If you have any questions regarding this claim procedure, call Member Customer Service at (877)800-8000.

While the wording in the specimens is not always clear, the logo on the specimens reads "MONSTERS LIVE FOREVER 100% REPLACEMENT WARRANTY."

We start by noting that applicant is seeking to register its mark MONSTERS LIVE FOREVER for distributorship services featuring replacement parts for power conditioning devices and electrical and electromagnetic cables and connectors. Thus, applicant's services are not simple warranty services.¹ Furthermore, distributorship services are normally distinct from retail services. See, e.g., In re Eddie Z's Blinds and Drapery Inc., 74 USPQ2d 1037, 1040 (TTAB 2005) (Retail store services and wholesale distributorship services "include retailers of the goods which applicant distributes, as well as ultimate customers"); TMEP § 1402.11(a) (4th ed. April 2005) ("Retail (and distributorship) services are classified in Class 35 no matter how the services are conducted"). Therefore,

¹ Regarding warranty services, the CCPA has held that "Orion merely guarantees or warrants the performance of its own goods, rather than provides a service contemplated by the Lanham Act (Act). Such guarantee or warranty may serve as an inducement in the sale of Orion's goods, but does not constitute a service separate therefrom." In re Orion Research Inc. (Orion I), 523 F.2d 1398, 187 USPQ 485, 486 (CCPA 1975). See also In re Orion Research Inc. (Orion II), 669 F.2d 689, 205 USPQ 688, 690 (CCPA 1980) ("The present repair/replacement activity remains merely an inducement to the sale of Orion's own goods. It is irrelevant whether the activity is self-imposed or compelled by a sales contract or statute").

applicant's services are more than simple warranty and replacement services because applicant is seeking registration for distributorship services featuring replacement products.

We now look at the specimens of record to see if they show use of the mark in association with these services. The first two specimens are not acceptable. Specimen 1, which is representative of several similar examples, is simply the mark used on packages for the goods and there is no indication of any distributorship services. Specimen 2 provides installation instructions. While it does contain the notation "Monster Lifetime Product and Connected Equipment Warranty," it primarily involves "Installing your Monster Power Center.™" Again, it does not refer to distributorship services. Neither of these specimens demonstrates use of applicant's service mark on distributorship services featuring replacement products.

The third specimen, which appears to be a continuation of specimen 2, does refer to the warranty in detail.

How to Make a Claim

In the event damage has occurred to equipment which is properly connected to a Monster Power product as a result of an abnormally high voltage spike, please follow these instructions.

- 1** Call Monster Customer Service at (877)800-8989
- 2** Give a detailed explanation of how the damage occurred
- 3** Obtain a Return Authorization number for the Monster Power product.
- 4** A "Connected Equipment Claim Form" will be sent to you. This claim form must be filled out entirely and sent back with the Monster Power product.

How to Make a Claim Continued..

- 5** Return the Monster Power product, shipping prepaid, to Monster for verification of claim. Make sure the Monster return authorization number is printed on the outside of the package. Please include the following:
 - A. Copy of your sales receipt
 - B. Completed Connected Equipment Claim form that you obtained from Monster customer service
 - C. Repair estimate from a service center authorized by the manufacturer of the connected equipment

MONSTER CABLE

**Monster PowerCenter
Lifetime Product Warranty and
Connected Equipment Warranty**



**Monster Standard
Computer PowerCenters**

6 Monster will review the claim and make a determination following receipt of all requested information.

7 If the claim is found to fall within warranty guidelines, Monster, at its discretion, will direct you to:

- A. Authorize repairs needed for damaged equipment.
- B. Reimburse you for fair market value of the damaged connected equipment.

Product Warranty

Monster Cable Products, Inc. warrants that this product shall be free of defects in materials and workmanship under normal use for its lifetime.

This warranty extends only to the original purchaser and is nontransferable. During the warranty period, Monster Cable Products, Inc. will at no additional charge, repair or replace defective parts or at the option of Monster Cable Products, Inc. replace entire unit.

This warranty does not extend to any Monster Cable Products, Inc. product that has been damaged or rendered defective (a) as a result of accident, misuse or abuse; (b) by the use of parts not manufactured or sold by Monster Cable Products, Inc.; or (c) by modification of product.

Do not plug any home theatre audio or video equipment into this unit, as it will void the warranty.

8 If a repair estimate is required, as stated in section 7A above, you will be instructed on how to properly submit to Monster for payment. Monster reserves the right to evaluate each claim, and reserves the right to offer repair or replacement of damaged equipment.

Monster reserves right to evaluate each claim and reserves right to offer repair or replacement of damaged equipment.

In this specimen, applicant's services appear to be similar to the warranty services of the applicant in the Orion I and II cases. There is no reference to distributorship services. Customers are told to call "Monster Customer Service" (Step 1). Then, Steps 2 and 3 advise customers to provide a detailed explanation and to get a "return authorization." Steps 4 and 5 indicate that a form will be sent to the customer and the customer is instructed how to return the product. Steps 6-8 explain

that applicant will review the claim and it explains how applicant will deal with warranty service. While the specimen does discuss warranty services, there is an absence of any indication that these services are "distributorship services."

It is important that the specimens support use of the mark in association with the goods or services for which applicant is seeking registration. In re Compagnie Nationale Air France, 265 F.2d 938, 121 USPQ 460, 461 (CCPA 1959) ("Nothing in the advertisement pertaining to the 'SKY-ROOM' identifies the air transportation service of appellant and there is no other evidence which reveals that the public considers 'SKY-ROOM' as an identifying mark of this airline"); In re Johnson Controls Inc., 33 USPQ2d 1318, 1320 (TTAB 1994) ("[T]he labels submitted as specimens with this application do not show use of the mark sought to be registered as a service mark for the custom manufacture of valves. If the application sought registration as a trademark for these fluid control products, these specimens would clearly be satisfactory, but that is not the issue here"); Peopleware Systems, Inc. v. Peopleware, Inc., 226 USPQ 320, 323 (TTAB 1985) ("No direct association is demonstrated by the insignificant use of 'Peopleware' in the sentence at the bottom of the card.

Exactly what is intended by the term in that sentence is unclear, but in any case its use in the sense of an adjective modifying 'emphasis' does not, in our opinion, associate it with the services Haelsig advertised in a manner which approaches the level of service mark use"). See also In re Adair, 45 USPQ2d 1211 (TTAB 1997) (Mark TREE ARTS CO. and design may function as a mark for goods but specimen did not show the term used as a mark for the service of designing permanently decorated Christmas trees).

Applicant argues that as "the replacement service is provided by Monster Cable, potential consumers would readily identify Applicant as the source of the services under the service name 'MONSTERS LIVE FOREVER.'" Brief at 2. However, that is not the question. The question is whether the mark MONSTERS LIVE FOREVER identifies applicant's distributorship services featuring replacement parts. The specimens do not show that there are any such services; therefore, the mark, as used on the specimens, does not identify these services.

The CCPA has noted that:

The requirement that a mark must be "used in the sale or advertising of services" to be registered as a service mark is clear and specific. We think it is not met by evidence which only shows use of the mark as the name of a process and that the company is in

the business of rendering services generally, even though the advertising of the services appears in the same brochure in which the name of the process is used. The minimum requirement is some direct association between the offer of services and the mark sought to be registered therefor.

In re Universal Oil Products Co., 476 F.2d 653, 177 USPQ 456, 457 (CCPA 1973) (emphasis omitted).

Applicant also relies on In re Metriplex, Inc., 23 USPQ2d 1315 (TTAB 1992) for the proposition that "the types of specimens which may be submitted as evidence of use are varied." Brief at 4. In that case, the mark was displayed "on a computer terminal in the course of rendering of the service. There is no question that purchasers and users of the service would recognize GLOBAL GATEWAY ... as a mark identifying the data transmission services which are accessed via the computer terminal." Metriplex, 23 USPQ2d at 1316. The same situation is not present in applicant's case. Viewing the specimens, prospective purchasers would not have any clue that applicant's warranty is actually a distributorship service featuring replacement products.

Therefore, we conclude that none of applicant's specimens demonstrates that applicant is using the mark MONSTERS LIVE FOREVER as a service mark for its distributorship services.

Decision: The refusal to register is affirmed.