

O-155-08

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION No 2379526
BY KATIE REYNOLDS TO REGISTER THE TRADE MARK THE
POWDERPUFF GIRLS (SERIES OF TWO) IN CLASS 44**

**AND IN THE MATTER OF OPPOSITION
THERE TO UNDER NO 93421
BY THE CARTOON NETWORK INC**

TRADE MARKS ACT 1994

IN THE MATTER OF Application No. 2379526

by Katie Reynolds to register the Trade Mark THE POWDERPUFF GIRLS (series of two) in Class 44

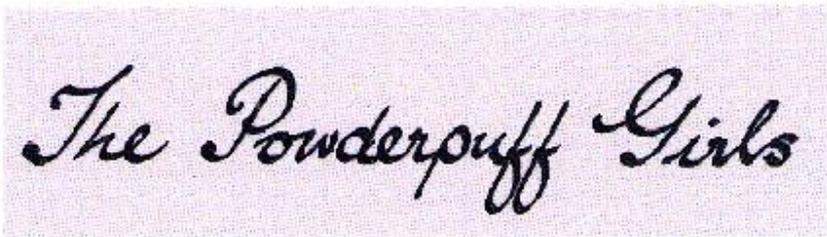
and

IN THE MATTER OF Opposition thereto under No. 93421

by The Cartoon Network Inc

BACKGROUND

1) On 3 December 2004, Katie Reynolds of Studio 7, The Chandlery, 40 Gowers Walk, London, E1 8BH applied under the Trade Marks Act 1994 (“the Act”) for registration of the following series of two trade marks:



The Powderpuff Girls

2) The application was in respect of the following Class 44 services:

Hairdressing services, make-up services, beauty treatment, beauty consultancy and advisory services; manicuring services.

3) On 11 May 2005, The Cartoon Network Inc, of One CNN Center, Atlanta, Georgia, USA filed notices of opposition to the application. It bases its opposition on Sections 5(2) (b) and 5(3) of the Act and is in respect of three earlier trade marks all including the words THE POWERPUFF GIRLS. Full details of these can be found in the annex to this decision. It claims a reputation in its UK registration 2195180 in relation to the Section

5(3) grounds and also that this reputation is relevant to the likelihood of confusion in relation to the grounds under Section 5(2) (b). For the purposes of the Section 5(2) (b) ground, the opponent relies only on the list of Class 3 goods. Regarding the grounds under Section 5(3) the opponent additionally relies upon Community trade marks 852780 and 4145884 claiming use of the applicant's trade mark would, without due cause, take unfair advantage of or be detrimental to the distinctive character or the repute of the opponent's earlier trade marks.

4) The applicant subsequently filed a counterstatement denying that its trade marks offend Sections 5(2) (b) and 5(3) of the Act. It denies that the opponent's trade marks are sufficiently similar to the applicant's trade mark for there to be confusion under Section 5(2)(b) of the Act. The applicant also cites the differences between the respective trade marks when denying the claim based upon Section 5(3) of the Act.

5) Both sides filed evidence and this is summarised below. Both sides seek an award of costs. The matter came to be heard on 7 March 2008 when the opponent was represented by Mr Simon Malynicz of Counsel instructed by Messrs Wildbore & Gibbons. The applicant was represented by Mr Tim Ludbrook of Counsel instructed by Messrs Page White & Farrer.

Opponent's Evidence

6) This takes the form of a witness statement and a statutory declaration both with accompanying exhibits. The relevant points from both these documents are recorded below.

7) The witness statement is by Camilla Frances Sexton, registered trade mark attorney with Wildbore & Gibbons and the opponent's representative in these proceedings and dated 10 November 2006. Ms Sexton declares that the evidence presented is from publicly accessible information. In response to the applicant's claim in its counterstatement that no similar goods and services are involved, Ms Sexton refers to a selection of Internet printouts at Exhibit CFS1 illustrating that it is common in the UK marketplace for providers of hair and beauty services to also provide hair and beauty products under the same trade mark. This exhibit includes a number of pages from the websites of hair and beauty treatment providers illustrating own-branded cosmetics and hair products.

8) The Statutory Declaration is by Nanette Richards and is also dated 10 November 2006. Ms Richards is a director of Turner Entertainment Networks International Limited, a wholly owned subsidiary of the opponent's parent company and, through contractual arrangements, has control over the exploitation rights in "The Powerpuff Girls" brand in the UK and Europe. The Statutory Declaration is accompanied by numerous exhibits.

9) Ms Richards describes the Powerpuff Girls as cartoon characters of three five year old girls each of whom possesses superpowers. They are the subject of an animated television programme, a movie and associated merchandising. The cartoon was first broadcast in

the UK on a television channel called Cartoon Network in 1999. At this time it was broadcast four times a day, seven days a week. Since 2006, it has been broadcast six days a week on another television channel called Cartoon Network Too during afternoon prime time, whilst continuing to be broadcast on Cartoon Network on Saturdays and Sundays. I note that all the broadcasts on Cartoon Network Too occur after the application date of 11 December 2004 (“the relevant date”). Exhibits are presented to demonstrate the scale of exposure of the cartoon on television with Exhibit NR2 being a list of 116 episodes of The Powerpuff Girls and also including transmission schedules illustrating in the region of four hundred transmissions between 1999 and the relevant date.

10) Exhibit NR3 presents results of Ms Richard’s company’s own research into the awareness of the Powerpuff Girls brand amongst girls of various ages and their parents. The report concluded that awareness had “virtually reached saturation across all of the female audiences” and, by way of illustration, in 2004 99% of parents of girls aged 7 – 9 had a “prompted awareness” of the brand. Ms Richards refers to merchandising activities linked to THE POWERPUFF GIRLS brand. Exhibit NR4 provides examples of such merchandising and includes a photograph of branded hair accessories and a nail kit provided as a free gift with THE POWERPUFF GIRLS comic magazine.

11) Further merchandising examples are provided at Exhibit NR6 including a computer game for a “GameCube console” and a line of women’s fashion clothing. A list of retail sources in the UK is provided. Ms Richards also discloses the following UK revenues for all merchandise products:

2001: £3,657,636
2002: £2,650,968
2003: £2,112,942
2004: £1,619,704
2005: £2,381,190

Revenues relating to merchandising products categorised by Ms Richards as “personal care and health care” were:

2001: £75,661
2002: £17,956
2003: £100,014
2004: £23,542
2005: £110,649

The term “personal care and health care” can cover a wide range of products and it is unclear what proportion, if any, of these revenues relate to the Class 3 products relied upon for the Section 5(2) (b) grounds.

12) Ms Richards also notifies of the intention for her company to expand the toiletry/cosmetics side of the merchandising business. Exhibit NR4 includes packaging

templates for lip gloss, body shimmer and brush, body shimmer and puff, bath and shower gel, candles, a tin purse and a gift set including shampoo, but I note these are all dated after the relevant date. THE POWERPUFF GIRLS brand has sponsored events in the field of skateboarding and snowboarding and Exhibit NR5 provides press cuttings referring to such sponsorship. Exhibit NR6 provides further press clipping where THE POWERPUFF GIRLS merchandise is featured. I shall not list the merchandise illustrated, but I will refer to the relevant products later, as required. I do note however that this exhibit provides no evidence of merchandising in the form of hair and beauty products.

13) Ms Richards refers to various promotional campaigns and illustrations of these are provided in Exhibit NR8. This exhibit includes, what appears to be, a copy of a company presentation on the subject of a campaign in 2001 run in conjunction with Persil washing powder where THE POWERPUFF GIRLS characters appeared on the Persil packaging and stickers were given away free inside the packets. It also contains details of the launch of THE POWERPUFF GIRLS range of adult women's clothing and accessories at Topshop retail outlets in May 2003.

Applicant's Evidence

14) This consists of nine witness statements. I shall examine the first two of these in detail and, as there are close similarities between the remaining seven, I will summarise them together.

15) The first is by Ruth Ellen Rowlands dated 14 March 2007. Ms Rowlands is a trade mark agent with Page White & Farrer. She is authorised by Katie Reynolds to make the witness statement and does so from her own knowledge. Ms Rowlands statement mainly consists of an account of her visit to a number of retail outlets in the Oxford Street area of London on 28 February 2007. Ms Rowlands records that she failed to find any outlet selling THE POWERPUFF GIRL products and that shop staff she asked were not aware that their respective shops had ever stocked these products.

16) A further search of the websites of various retail outlets also conducted on 28 February 2008 revealed THE POWERPUFF GIRLS products being sold on only one website where Woolworths was advertising for sale two DVDs and two computer games bearing the THE POWERPUFF GIRLS brand.

17) The second witness statement is by the applicant, Katie Reynolds and is dated 14 May 2007. Ms Reynolds is a professional make-up artist and her statement is based upon the records and account books of her business or they are from publicly accessible information. She explains the origins of the brand THE POWDERPUFF GIRLS developed from her original name for the business, Powderpuff. The "girls" employed by the business became known as "the Powderpuff Girls" and hence the business name evolved to adopt this name. The applicant's principal customers are guests at events and bookings generally come from events agencies or entertainment companies.

18) Ms Reynolds identifies the word “powderpuff” as being “a noun used to refer to a soft spherical object made from fluffy fibres for applying powder to the skin” and informs that all the Powderpuff Girls have powderpuffs in their work kits. Evidence in the form of Internet extracts is provided at Exhibit KR1 illustrating that powderpuffs are objects commonly associated with and well known in the context of make-up services. Further, Ms Reynolds identifies particular connotations and meaning in relation to the services at issue such as face powder and powdering one’s nose. Dictionary references are provided at Exhibit KR2 to support this. Ms Reynolds contrasts this meaning with that for the word “power” which is defined “as being in control or authority over others, dominance, command, influence or ascendancy, strength, vigour etc.”

19) At Exhibit KR7, extracts show use of THE POWDERPUFF GIRLS brand at an event called the RSVP Show in Olympia in March 2006 but I note this is after the relevant date. There are also various printed articles from the UK and Europe demonstrating extensive use of the brand, but only the extract from the Sunday Times Style magazine was dated before the relevant date. Further information is provided at Exhibit KR8 that assists in identifying the applicant’s business plan and target customer. The distinction between the respective target audiences is highlighted with the opponent’s target audience being four to eleven year old girls (as revealed in Exhibit NR1 accompanying its evidence-in-chief) and the target audience of the applicant which is identified in its business plan as being aged thirty plus.

20) Ms Reynolds cites various aspects of the opponent’s evidence as illustrations of the different natures of the respective core goods and services. She refers to “the fighting imagery of the opponent’s brand” and contrasts this with the “peaceful and refined imagery” of the applicant’s own services. She points out that cartoon programmes are very different to beauty care services and that the opponent’s cartoons are broadcast on a children’s channel with its accompanying audience of children.

21) Ms Reynolds refers to Exhibit NR2 of the opponent’s evidence-in-chief and draws attention to the fact that THE POWERPUFF GIRLS cartoon is only ranked 18th in the network’s own listings. I observe that this ranking relates to the second quarter of 2006, a year after the relevant date. She builds upon her observation by providing evidence at Exhibit KR11 that Cartoon Network enjoyed only 0.4% of viewing figures in December 2004 according to information published by the Broadcasters Audience Research Board. Ms Reynolds also raises issues concerning the relevance and reliability of the opponent’s own research into awareness of the THE POWERPUFF GIRLS brand because no information is provided regarding the circumstances in which the surveys were carried out, some of the questions are misleading and because children are not necessarily reliable respondents. In a further effort to discredit the surveys referred to in the opponent’s evidence, Exhibit KR13 presents a number of Internet extracts discussing the reasons and likelihood of persons falsely claiming knowledge of something and Ms Reynolds concludes that it is common for people to claim knowledge of something that they in practice do not have.

22) At Exhibit KR15, Ms Reynolds presents the UK Patent Office cross-search list demonstrating that Class 44 services are not cross-searched with Class 3 goods to illustrate that the respective goods and services are not similar.

23) Of the remaining seven witness statements, six are from customers of Ms Reynolds and the seventh is from Mr Nathan Collins whose business designed the applicant's brand identity. All these witness statements follow a similar format. They highlight the differences between the relevant consumers, the areas of business and the concepts of the trade marks themselves.

Opponent's Evidence in reply

24) This is a further witness statement by Ms Sexton and is dated 16 November 2007. In response to a comment made by Ms Reynolds' in her witness statement that no-one has shown any confusion or association between the respective trade marks, a number of examples of THE POWERPUFF GIRLS brand being referred to as THE POWDERPUFF GIRLS are provided. Internet extracts illustrating this are at Exhibit CF32 and includes extracts from the BBC and the Independent newspaper.

25) Similarly, in response to an assertion by Ms Reynolds' that the services of make-up artists are provided to mature women, Exhibit CFS3 provides Internet extracts illustrating make-up service providers offering services to children and teenagers such as teenage make-up parties.

DECISION

Section 5(2)(b)

26) Section 5(2)(b) reads:

“(2) A trade mark shall not be registered if because –

(a) ...

(b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark.”

27) In my consideration of a likelihood of confusion, I take into account the guidance from the settled case law provided by the ECJ in *Sabel BV v Puma AG* [1998] RPC 199, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc* [1999] RPC 117, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* [2000] 45 F.S.R. 77, *Marca Mode CV v Adidas AG & Adidas Benelux BV* [2000] E.T.M.R. 723, *Medion AG v. Thomson*

Multimedia Sales Germany & Austria GmbH C-120/04 and *Shaker di L. Laudato & C. Sas v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) C-334/05 P (LIMONCELLO). It is clear from these cases that:

(a) the likelihood of confusion must be appreciated globally, taking account of all relevant factors; *Sabel BV v Puma AG*,

(b) the matter must be judged through the eyes of the average consumer of the goods/services in question; *Sabel BV v Puma AG*, who is deemed to be reasonably well informed and reasonably circumspect and observant - but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind; *Lloyd Schuhfabrik Meyer & Co. GmbH v Klijsen Handel B.V.*,

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details; *Sabel BV v Puma AG*,

(d) the visual, aural and conceptual similarities of the marks must therefore be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components; *Sabel BV v Puma AG*,

(e) a lesser degree of similarity between the marks may be offset by a greater degree of similarity between the goods, and vice versa; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(f) there is a greater likelihood of confusion where the earlier trade mark has a highly distinctive character, either per se or because of the use that has been made of it; *Sabel BV v Puma AG*,

(g) in determining whether similarity between the goods or services covered by two trade marks is sufficient to give rise to the likelihood of confusion, the distinctive character and reputation of the earlier mark must be taken into account; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*,

(h) mere association, in the sense that the later mark brings the earlier mark to mind, is not sufficient for the purposes of Section 5(2); *Sabel BV v Puma AG*,

(i) further, the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense; *Marca Mode CV v Adidas AG and Adidas Benelux BV*,

(j) but if the association between the marks causes the public to wrongly believe that the respective goods come from the same or economically linked undertakings, there is a likelihood of confusion within the meaning of the section; *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc*.

k) assessment of the similarity between two marks means more than taking just one component of a composite trade mark and comparing it with another mark; the comparison must be made by examining each of the marks in question as a whole, which does not mean that the overall impression conveyed to the relevant public by a composite trade mark may not, in certain circumstances, be dominated by one or more of its components; *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH*

l) it is only when all other components of a complex mark are negligible that it is permissible to make the comparison on the basis of the dominant element; *Shaker di L. Laudato & C. Sas v OHIM*

The average consumer

28) As matters must be judged through the eyes of the average consumer (*Sabel BV v. Puma AG*, paragraph 23) it is important that I assess who the average consumer is for the goods and services at issue. The opponent relies upon the list of Class 3 goods that includes *lotions, skin, facial and body creams, lotions, oils; make-up, make-up powder, makeup bases, makeup removers; nail polish and varnish; nail polish remover; nail care preparations, shampoo, hair lotions and hair rinses*. The application is in respect of *hairdressing services, make-up services, beauty treatment, beauty consultancy and advisory services and manicuring services*. The applicant's submissions highlight that its services are marketed to an adult and predominantly female consumer whereas the opponent's products are marketed to pre-teenage girls. This may be so, but I am mindful of the comments of Richard Arnold QC in *Oska's Ltd's trade mark* [2005] RPC 20:

“56. The applicant argued before the hearing officer that (i) there had been no confusion in practice between its goods and those of the opponent and (ii) confusion was unlikely since its goods were aimed at a different market. As to (i) ... as the hearing officer rightly held, whether there is a likelihood of confusion must be assessed on the basis of normal and fair use of the mark in relation to the goods specified in the application, which is not limited in any particular types of clothing nor to any particular market. As to (ii), even if it is assumed that the target market of the applicant's goods would not be confused, that does not negate the existence of a likelihood of confusion if the applicant's mark were to be used in other ways falling within the scope of normal and fair use...”

29) I must therefore consider normal and fair use. Marketing strategies can be temporary and a proprietor who adopts a particular strategy at one point in time has the freedom to choose another strategy at a different point. I am re-enforced in this view by the judgment in *Devinlec Développement Innovation Leclerc SA v Office for Harmonization in the Internal Market (Trade Marks and Designs)* (OHIM) Case T- 147/03 where it was stated:

“104 Consideration of the objective circumstances in which the goods covered by the marks are marketed is fully justified. The examination of the likelihood of confusion which the OHIM authorities are called on to carry out is a prospective examination. Since the particular circumstances in which the goods covered by

the marks are marketed may vary in time and depending on the wishes of the proprietors of the trade marks, the prospective analysis of the likelihood of confusion between two marks, which pursues an aim in the general interest, that is, the aim that the relevant public may not be exposed to the risk of being misled as to the commercial origin of the goods in question, cannot be dependent on the commercial intentions, whether carried out or not, and naturally subjective, of the trade mark proprietors.

.....

107 It follows that by taking into consideration in the assessment of the likelihood of confusion between the marks the particular circumstances in which the goods covered by the earlier mark are marketed, the temporal effect of which is bound to be limited and necessarily dependent solely on the business strategy of the proprietor of the mark, the Board of Appeal erred in law.”

30) In summary, the different marketing methods and different target consumers of the two parties have no bearing on the degree of similarity between the respective goods and services. I must assess the matter from the inherent properties of the descriptions. Ms Reynolds, in her witness statement, makes much of these different target markets but I do not intend to comment further on this line of argument.

31) The applicant also argues more generally that beauty services attract a mature consumer and that this puts distance between the relevant consumers. This may be the case in respect to the marketing strategy of the applicant but, as the opponent has drawn my attention to (Exhibit CFS3 of Ms Sexton’s witness statement of 16 November 2007), such services can and are provided to younger customers also. Further, the average consumer of the applicant’s Class 3 goods could be of any age. As such, I consider the average consumer for these respective goods and services to be the same. In respect of the applicant’s “hairdressing services”, this is an everyday service required by all ages of consumer and once again, I consider these consumers to be the same as those of the applicant’s Class 3 goods.

Comparison of goods and services

32) In assessing the similarity of goods, it is necessary to apply the approach advocated by case law and all relevant factors relating to the respective goods and services should be taken into account in determining this issue. In *Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer* the ECJ stated at paragraph 23:

‘In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, *inter alia*, their nature, their end users and their method of use and whether they are in competition with each other or are complementary.’

33) Other factors may also be taken into account such as, for example, the distribution channels of the goods concerned (see, for example, paragraph 53 of the judgment of the Court of First Instance (CFI) in Case T-164/03 *Ampafrance v OHIM – Johnson & Johnson (monBeBé)*).

34) At the hearing, Mr Malynicz conceded that the nature of goods and services are different but contended that overall there is similarity between the opponent's Class 3 goods and those services of interest to the applicant. Whilst recognising their non-binding nature, he referred me to OHIM guidelines (http://oami.europa.eu/en/mark/marque/pdf/similarity_of_goods&services-EN.pdf) on the point as being illustrative of his contention. These guidelines conclude that in certain circumstances similarity between goods and services can be found and also states:

“5.2 ...

A trade custom may be established according to which the same undertakings usually provide services to customers independent of whether or not they have purchased the corresponding goods (or vice versa). That means that the services are not merely ancillary to the goods, such as the repair or maintenance of a machine by the manufacturer of that machine. Such a trade custom strongly weighs in favour of similarity.

Examples:

- *Hygienic and beauty care v cosmetics*”

35) The opponent has supported this view by providing evidence of hairdressers also trading in “own branded” Class 3 goods (Exhibit CFS1 of Ms Sexton's witness statement of 10 November 2006). Mr Malynicz concludes that the opponent's Class 3 goods are complementary to the applicant's services. Mr Ludbrook, on the other hand, disputes that the distribution channels overlap. To support his contention, Mr Ludbrook referred to the Registry decision in *INJOY* [O/096/05] where the Hearing Officer found that goods and services similar to those at issue here were not similar to each other. However, I note that the Hearing Officer in that case was not presented with any evidence to the contrary and as such it is of little persuasive value. Finally, Mr Ludbrook concluded that if there is a complementarity at all between the respective goods and services, it is at a very low level.

36) According to the case-law of the CFI in relation to the analogous provision of the Community Trade Mark Regulation 40/94, goods are complementary if there is a close connection between them, in the sense that one is indispensable or important for the use of the other in such a way that customers may think that the responsibility for the production of those goods lies with the same undertaking: Case T-169/03 *Sergio Rossi v OHIM – Sissi Rossi*. On this basis the CFI has held that wine and wine glasses are not complementary, but that there is a slight similarity between some types of bags in Class 18 and shoes and clothing in Class 25: *El Corte Ingles S.A. v OHIM*, Case T-443/05.

37) In this case, the question of whether the goods and services are complementary is linked to the question of whether, and to what extent, the respective goods and services have the same purpose. It is obvious that:

shampoo, hair lotions, hair rinses

- in the specification of the earlier mark, are goods connected with :

hairdressing services

- in the specification of the application. Similarly, it is also obvious that:

cosmetics, skin lotions, skin, facial and body creams, lotions, oils; make-up, make-up powder, make-up bases, make-up removers; nail polish and varnish; nail polish remover; nail care preparations, tissues impregnated with cosmetic lotion

- in the specification of the earlier mark, are goods connected with:

make-up services, beauty treatment, beauty consultancy and advisory services; manicuring services

- in the specification of the application.

38) The opponent's goods are obvious and important tools when delivering the applicant's services and it seems clear on the evidence that consumers of hair dressing and beauty services are exposed to the brands of the products used in the provision of those services. I therefore find that these goods and services share the same or similar general purpose (improving the appearance of the user), and to some extent are complementary.

39) I do not think that any of the respective goods and services are in competition with one another.

40) The opponent has presented evidence (Exhibit CFS1 of Ms Sexton's witness statement of 10 November 2006) that the trade channels can be the same in that both the services and goods can be provided by hairdressers and providers of beauty therapy services. Mr Ludbrook contended that this only illustrates that the trade channels could overlap in the sense that it may also be possible to illustrate that a garage could sell lingerie, but this would fall short of establishing that the respective distribution channels overlap. To an extent, I agree with Mr Ludbrook. Clearly, *shampoos* for example can and are sold by hairdressers but the main outlet for such goods is supermarkets, chemists and other similar shops. I therefore find that beauty and hairdressing services are one of a number of channels through which the applicant's goods reach the consumer.

41) I conclude that, on balance, there is a degree of similarity between the respective goods and services, but that this similarity is on the low side.

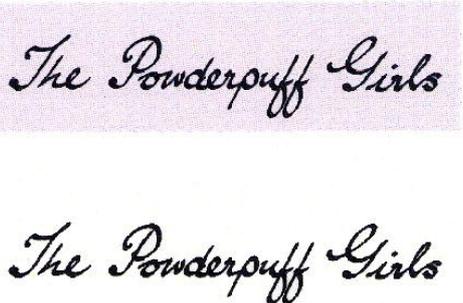
Use and distinctive character of the earlier trade marks

42) The opponent’s trade mark consists of the stylised words THE POWERPUFF GIRLS together with the device of the three cartoon characters that make up this fictional group. Neither the words or the device have any significance in relation to Class 3 goods other than maybe to suggest products targeted at girls or women. As such, the opponent’s trade mark enjoys a high level of distinctive character in relation to the relevant goods.

43) At the hearing, Mr Malynicz conceded that the opponent no longer claimed that THE POWERPUFF GIRLS enjoyed any reputation as a trade mark in respect to Class 3 goods. It follows that the opponent’s trade mark does not enjoy any enhanced distinctive character in respect of these goods.

Comparison of marks

44) For ease of reference, the respective trade marks are:

Opponent’s trade mark	Applicant’s trade mark
	

45) When assessing the extent of similarity between the respective trade marks, I must do so with reference to their visual, aural and conceptual similarities bearing in mind their distinctive and dominant components (*Sabel BV v. Puma AG*, para 23).

46) From the visual perspective, Mr Malynicz contends that the distinctive and dominant part of the opponent’s trade mark is the words “THE POWERPUFF GIRLS” and that there is a visual similarity between this element of the earlier trade mark and the applicant’s trade mark. He referred me to *Criminal Clothing Ltd v Aytan’s Manufacturing (UK) Ltd* [2005] EWHC 1303 (unreported, Christopher Floyd QC) to support his contention that the words “THE POWERPUFF GIRLS” can be found to be the dominant components of the earlier trade mark. He contended that such a finding should focus the analysis of visual similarity on the word elements of the respective trade marks. Mr

Ludbrook contended that trade marks are often perceived visually and that the device element dominates the opponent's trade mark.

47) Whilst I note Mr Malynicz invitation to find the word element of the earlier trade mark to be the dominant component, I cannot ignore the significance of the device element which consists of a cartoon representation of three young girls flying out through a circular opening. This is obviously intended to signify that they have superpowers. This device is significant visually for a number of reasons. Firstly, it is such as to have a visual impact in its own right, being the largest part of the trade mark and arguably the visual focus with the word element appearing above and slightly to the left of the device. Secondly, the subject of the device element emphasises that the word element is THE POWERPUFF GIRLS. Thirdly, the device enjoys a high level of inherent distinctive character for Class 3 goods. The applicant's trade mark consists of the words THE POWDERPUFF GIRLS in a flowing hand written-type script, with the first trade mark in the series of two having a lilac coloured background. Taking all these factors into account, I find that comparing the marks as wholes, there is a low level of visual similarity.

48) Aurally, the respective trade marks share the same first and third words and the second word differs only in the pronunciation of the second syllable. This small difference in pronunciation is not sufficient to put any great distance between the trade marks. I therefore conclude that, from an aural perspective, the respective trade marks are very similar.

49) Consistent with the opponent's position that its cartoon show was well known amongst children and their parents at the relevant date, Mr Malynicz contended that conceptually the words THE POWERPUFF GIRLS immediately conjures up the "three little characters" and that the words themselves are therefore the dominant element. I agree with Mr Malynicz that conceptually the opponent's trade mark conjures up the three cartoon characters, but I view the device element showing the little "superheroes" as being of at least equal importance as the words in creating this strong conceptual identity.

50) Mr Ludbrook made the point that reference to well known cartoon characters can actually deepen the conceptual dissimilarities between the respective trade marks. There is support for this contention with the CFI commenting as follows in *Les Editions Albert Rene v OHIM* T-336/03:

"79 Third, as regards the conceptual comparison....This specific representation of a popular character makes it extremely unlikely that there could be any confusion in the public mind between words which are more or less similar....

80 Such conceptual differences can in certain circumstances counteract the visual and aural similarities between the signs concerned. For there to be such a counteraction, at least one of the signs at issue must have, from the point of view

of the relevant public, a clear specific meaning so that the public is capable of grasping it immediately...”

51) The opponent’s trade mark has just such “a clear, specific meaning” namely that of three young girl characters with superpowers. This is in contrast to the conceptual impression created by the applicant’s trade mark which brings to mind young women using powderpuffs. I therefore find that the respective trade marks are conceptually dissimilar.

52) In conclusion, there is a close aural similarity between the respective trade marks, there is some visual similarity resulting from the similarity in the respective word elements but there is conceptual dissimilarity. On balance, these factors combine to result in a relatively low but not negligible level of similarity between the respective trade marks.

Likelihood of confusion

53) Mr Malynicz referred me to *Obarhauser v OHIM – Petit Liberto (FIFTIES)* T-104/01 to demonstrate that even if the respective trade marks are visually dissimilar, likelihood of confusion can still be found if aural and conceptual similarity exist. However, as I have already found above, there is conceptual dissimilarity and it is from this position that I go on to consider the likelihood of confusion.

54) The ECJ has provided some guidance on the weight to be given to conceptual differences where, in *Claude Ruiz-Picasso et al v OHIM (PICASSO)* C-361/04 P, it commented:

“20. ...where the meaning of at least one of the two signs at issue is clear and specific so that it can be grasped immediately by the relevant public, the conceptual differences observed between those signs may counteract the visual and phonetic similarities between them...”

21. ...such a finding is, in this case, entirely part of the process designed to ascertain the overall impression given by those signs and to make a global assessment of the likelihood of confusion between them”

55) The opponent provides evidence (Exhibit CFS2 of Ms Sexton’s witness statement of 16 November 2007) that purports to demonstrate confusion between the respective trade marks. This consists of instances where the opponent’s trade mark is referred to as “the powderpuff girls” in respect to its cartoon television programme and movie and on one occasion, in respect to the launch of a range of clothing. The word ‘Powerpuff’ in the opponent’s mark may be, in part, a play on the dictionary word ‘Powderpuff’. It is not therefore surprising that the words ‘Powerpuff Girls’ will occasionally be mistaken for the known words they resemble despite the conceptual differences. In my view, the evidence shows no more than that such occasional mistakes have occurred. In assessing their impact I must, of course, also take account of the degree of similarity between the respective goods and services.

56) I must therefore adopt the global approach advocated by case law and take into account that marks are rarely recalled perfectly with the consumer relying instead on the imperfect picture of them he has in kept in his mind (*Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel B.V* paragraph 27). In doing so, I find that the impact of the visual and conceptual differences between the respective trade marks, together with my finding that the similarity of the respective goods and services is on the low side, to be such that there is no likelihood of confusion. The aural similarities shared between the applicant's mark and the word element of the opponent's mark may result in one trade mark bringing the other to mind, but the relevant public would not be led into believing that the respective goods and services originate from the same or economically linked undertaking. I therefore find there is no likelihood of confusion and the opposition under Section 5(2) (b) fails.

Section 5(3)

57) I turn to consider the ground for opposition under Section 5(3) of the Act which reads as follows:

5.-(3) A trade mark which –

(a) is identical with or similar to an earlier trade mark, and shall not be registered if, or to the extent that, the earlier trade mark has a reputation in the United Kingdom (or, in the case of a Community trade mark, in the European Community) and the use of the later mark without due cause would take unfair advantage of, or be detrimental to, the distinctive character or the repute of the earlier trade mark.

58) The scope of Section 5(3) has been considered in a number of cases notably *General Motors Corp v Yplon SA* (CHEVY) [1999] ETMR 122 and [2000] RPC 572, *Adidas Salomon v Fitnessworld* [2004] ETMR 10, *Premier Brands UK Limited v Typhoon Europe Limited* (TYPHOON) [2000] RPC 767, *Daimler Chrysler v Alavi* (MERC) [2001] RPC 42, *C.A. Sheimer (M) Sdn Bhd's TM Application* (VISA) [2000] RPC 484, *Valucci Designs Ltd v IPC Magazines* (LOADED) O/455/00, *Mastercard International Inc and Hitachi Credit (UK) Plc* [2004] EWHC 1623 (Ch), *Electrocoin Automatics Limited and Coinworld Limited and others* [2005] FSR 7 and *Davidoff & Cie SA v Gofkid Ltd* (DAVIDOFF) [2003] ETMR 42.

59) The applicable legal principles arising from these cases are as follows.

a) 'Reputation' for the purposes of Section 5(3) means that the earlier trade mark is known by a significant part of the public concerned with the products or services covered by that trade mark (paragraph 26 of the ECJ's judgment in *General Motors Corp. v Yplon SA* (CHEVY) [1999] ETMR 122).

b) Under this provision the similarity between the marks does not have to be such as to give rise to a likelihood of confusion between them; the provision may be

invoked where there is sufficient similarity to cause the relevant public to establish a link between the earlier mark and the later mark or sign, *Adidas Salomon v Fitnessworld*, paragraph 29.

c) The existence of the link must be appreciated globally, taking into account all factors relevant to the circumstances of the case, *Adidas Salomon v Fitnessworld*, paragraph 30

d) The link must be such that it would cause real as opposed to theoretical effects: *Intel v Sihra* and *Intel Corporation Inc v CPM United Kingdom Ltd* [2006] EWHC 1878 (Ch).

e) The provision is not aimed at every sign whose use may stimulate the relevant public to recall a trade mark which enjoys a reputation with them (per Neuberger J. in *Premier Brands UK Limited v Typhoon Europe Limited* [2000] FSR 767).

f) The stronger the earlier mark's distinctive character and reputation the easier it will be to accept that detriment has been caused to it (per Neuberger J. in *Premier Brands*, and the ECJ in *CHEVY*, paragraph 30).

g) There is detriment to the distinctive character of the earlier mark where it is no longer capable of arousing immediate association with the goods or services for which it is registered. There is detriment to the repute of the earlier mark where the goods or services for which the later mark is used appeal to the public's senses in such a way that the earlier mark's power of attraction is diminished: *Spa Monopole v OHIM* [2005] ETMR 109 (CFI). These concepts have also been described as blurring or tarnishing the earlier mark (paragraph 88 of Pumfrey J.'s judgment in *Daimler Chrysler v Alavi* (MERC) [2001] RPC 813).

h) Unfair advantage is taken of the distinctive character or the repute of the earlier mark where there is clear exploitation and free-riding on the coat-tails of a famous mark or an attempt to trade upon its reputation: *Spa Monopole v OHIM*.

60) In its grounds for opposition, the opponent claimed use of the applicant's trade mark would take unfair advantage of or be detrimental to the distinctive character or the repute of the opponent's earlier trade marks. At the hearing, Mr Malynicz confined this claim to detriment to the distinctive character. In addition, the opponent's reliance upon the UK registration was also abandoned.

61) Firstly, it is necessary for the opponent to establish that the earlier trade marks enjoyed a reputation at the relevant date. Ms Richards, in her Statutory Declaration provides information of 116 episodes shown on the Cartoon Network television channel since 1999, being broadcast four times a day, seven days a week and remained an integral part of the broadcast schedule of the channel until 2006. Most, if not all of these episodes are included on numerous occasions in the transmission schedules provided in Exhibit

NR2 disclosing transmission details of THE POWERPUFF GIRLS from the year 1999 up to the relevant date and beyond.

62) Mr Ludbrook took me to Exhibit NR1 of Ms Richard's Statutory Declaration and in particular, the page entitled "The Powerpuff Girls Consumer Products Brand Positioning". He contends that such evidence demonstrates that the opponent's target market is primarily 4 to 11 year old girls and on a secondary level 13 to 21 year old girls. I note this, but also that the parents of such young girls will also be involved in the purchasing process and therefore will also be touched by any reputation. To a certain extent, this is borne out by the marketing surveys presented in the opponent's evidence (at Exhibit NR3 of Ms Richard's Statutory Declaration). These surveys were not commissioned for these proceedings and Mr Malynicz accepted that, as a result, they may have limitations but he contends they form part of a picture that shows THE POWERPUFF GIRLS to be well known. One of these surveys found that 99% of parents of 7 – 9 year old girls had a "prompted awareness" of the brand in 2004. Whilst acknowledging the potential limitations of this evidence, I accept that these surveys do have some value in assisting to illustrate the scope of the opponent's reputation when considered with all the other evidence put forward on this issue.

63) In her Statutory Declaration, Ms Reynolds refers to Exhibit KR11 and the Cartoon Network television channel enjoying 0.4% of viewing figures in December 2004 and being a television channel limited to broadcasting cartoons for young children. She draws unfavourable comparisons with BBC1 and BBC2 that enjoyed 26% of the total viewing in the same month. I note this, but I also note that 0.4% of viewing figures is in the typical range for many of the satellite/cable television channels listed in the same exhibit. The Cartoon Network's viewing figures are not dissimilar than those for other children's channels such as Boomerang (0.7%), CBBC (0.5%), CBEEBIES (1.4%), Discovery Kids (0.1%), Disney Channel (0.5%) and Nickelodeon (0.3%). Whilst THE POWERPUFF GIRLS programme clearly does not enjoy the level of exposure as programmes broadcast on the flagship BBC channels, at the relevant time it was receiving what appears to be typical exposure for children-orientated channels.

64) Taking all of the above into account, I am content that the television exposure from 1999 up to the relevant date is sufficient to develop a reputation amongst a substantial proportion of young girls and their parents in respect of cartoon television programmes.

65) Does this reputation extend beyond such programmes? In her Statutory Declaration, Ms Richard's refers to merchandising activities and products. The following list of products are common to both Ms Richards' Statutory Declaration and to the list of goods for CTM 4145884 (the earlier registration relied upon by the opponent that covers goods): Women's clothing, book ends, DVDs, skateboards, stickers and video games. In addition, Ms Richards discloses that the opponent won a number of awards for its merchandising activities in the year 2000, that THE POWERPUFF GIRLS magazine was launched in June 2002 and had a circulation of 20,000. In October 2004, this magazine was re-branded as Hey Girl before being discontinued in January 2005.

66) It is not clear what proportion of revenues for merchandising products disclosed in Ms Richards' Statutory Declaration relate to the limited list of goods in the previous paragraph. Exhibit NR6 provides an illustration of the following:

- Online and printed national magazine articles from January to July 2003 describing women's clothing bearing likenesses of one or more of the three Powerpuff Girls characters available from the Selfridges and Topshop retail stores.
- An extract from the Blue Peter magazine of November 2002 which carries an illustration of home-made book ends in the likeness of the three Powerpuff Girls.
- A number of extracts from local newspapers promote the DVD of THE POWERPUFF GIRLS movie in April 2003, but no other information is available as to the extent of sales of this.
- A limited edition "Powerpuff Girls skateboard" available exclusively from a retail outlet called Sweaty Betty was mentioned in an article in the Metro newspaper dated 7 July 2003.
- A number of extracts illustrate THE POWERPUFF GIRLS branded stickers being given away free with a magazine called "Mizz" in September 2003.
- Two references, one in "Mizz" magazine in October 2003 and the other in the Blackpool Gazette in February 2004, relating to a THE POWERPUFF GIRLS branded computer video game. Again, no further information is provided.

67) At the hearing, Mr Malynicz commented that this "merchandising is ancillary, and even the film is ancillary, to the heart of the business which is THE POWERPUFF GIRLS cartoon...". I also note Ms Richards comments in her Statutory Declaration that the opponent has an intention to expand its range of toiletry/cosmetic merchandising, but this is of no relevance in establishing the scope of reputation at the relevant date. Similarly, Ms Rowland's visit to Oxford Street on behalf of the applicant in February 2007 adds nothing to the debate regarding the scope of the opponent's reputation as this only serves to provide a snapshot two years after the relevant date.

68) Some guidance on identifying if a reputation exists is provided by the ECJ in *General Motors Corp. v Yplon SA*:

“24. The public amongst which the earlier trade mark must have acquired a reputation is that concerned by that trade mark, that is to say, depending on the product or service marketed, either the public at large or a more specialised public, for example traders in a specific sector.

25. It cannot be inferred from either the letter or the spirit of Article 5(2) of the Directive that the trade mark must be known by a given percentage of the public so defined.

26. The degree of knowledge required must be considered to be reached when the earlier mark is known by a significant part of the public concerned by the products or services covered by that trade mark.

27. In examining whether this condition is fulfilled, the national court must take into consideration all the relevant facts of the case, in particular the market share held by the trade mark, the intensity, geographical extent and duration of its use, and the size of the investment made by the undertaking in promoting it.”

69) Taking account of all the relevant facts, the evidence confirms the ancillary nature of the merchandising products and that these products are in the form of “spin-offs” that promote the television cartoon programme itself. The evidence falls short of demonstrating that the merchandising products are known by a significant part of their relevant market, or that these products enjoy a significant market share. As such, I find that the reputation of THE POWERPUFF GIRLS brand does not extend beyond the television cartoon and the evidence does not support the contention that the opponent has a reputation in relation to these products.

70) Having established the existence and scope of a reputation, I go on to consider if a link is created between the respective trade marks. The ECJ in *Adidas Salomon v Fitnessworld* commented that the existence of the link must be appreciated globally. In considering whether the reputation is sufficient to lead the relevant consumer, upon seeing the applicant’s trade mark, to make a link between the earlier trade marks and those of the applicant, I am mindful that this link must be real and not theoretical in its effect (*Intel v. Sihra* and *Intel Corporation Inc v. CPM United Kingdom Ltd*). I am also mindful that the provision is not aimed at every sign whose use may stimulate the relevant public to recall a trade mark which enjoys a reputation with them (*Premier Brands UK Limited v. Typhoon Europe Limited*).

71) As I noted earlier, the opponent’s reliance upon the UK registration was abandoned at the hearing leaving CTMs 4145884 and 852780, the latter being for the text only THE POWERPUFF GIRLS and in relation to “...production and distribution of television...programs...”. This presents the opponent’s best case as the trade mark is both visually and aurally very similar to the applicant’s trade mark. Conceptually they are dissimilar, but unlike the other two of the opponent’s trade marks, there is no device element to reinforce this dissimilarity. There is a high degree of similarity between the marks. Further, it is only this earlier trade mark that covers the services for which I have identified that a reputation exists. I will therefore limit my analysis of the existence of the necessary link to this one earlier trade mark.

72) The applicant’s trade mark THE POWDERPUFF GIRLS is a sign that brings to mind powderpuffs being used by girls or women and, as such, it has an allusive quality in relation to beauty and similar services. Despite the aural and visual similarities shared by the respective trade marks, the conceptual dissimilarity and this allusive characteristic serve to put some distance between the respective trade marks.

73) The services of the opponent’s earlier trade mark are very different. There is an animated cartoon on the one hand and beauty services and the like on the other. The respective markets may have some overlap in that the parents of young girls and, to a lesser extent, women generally may be exposed to both brands, but the core respective

consumers are different, namely young girls on the one hand and adult women on the other.

74) Having a global appreciation as advocated by the case law and taking account the distance between the respective services, the different core consumers, the conceptual differences between the respective trade marks and the allusive characteristic of the applicant's trade mark in respect to its services, I find that if a link exists, it does so only in that it may result in the earlier trade mark being brought to mind. I have some doubts as to whether such a "bringing to mind" is sufficient to establish the necessary link, but for the sake of completeness I will go on to consider the issue of detriment to distinctive character as if this "bringing to mind" is sufficient.

75) At the hearing, Mr Malynicz referred to *Mastercard International Inc and Hitachi Credit (UK) Plc* to support his contention that the opponent does not need to show actual detriment. Nevertheless, detriment must be more than hypothetical and I turn to the CFI for guidance on this issue and in particular its comments in *Spa Monopole v OHIM*:

“40 The Court notes, as a preliminary point, that the purpose of Article 8(5) of Regulation No 40/94 is not to prevent registration of any mark which is identical with a mark with a reputation or similar to it. The objective of that provision is, notably, to enable the proprietor of an earlier national mark with a reputation to oppose the registration of marks which are likely either to be detrimental to the repute or the distinctive character of the earlier mark, or to take unfair advantage of that repute or distinctive character. In that connection, it should be made clear that the proprietor of the earlier mark is not required to demonstrate actual and present harm to his mark. He must however adduce prima facie evidence of a future risk, which is not hypothetical, of unfair advantage or detriment.

.....

– Detriment to the distinctive character of the earlier mark

43 There is detriment where the earlier mark is no longer capable of arousing immediate association with the goods for which it is registered and used (see to that effect the Opinion of Advocate General Jacobs in *Adidas*, ECR I-12540, point 37).

44 In the present case, the Court finds that the applicant does not put forward any evidence to support the conclusion that there is a risk of detriment to the distinctive character of the mark SPA by the use of the mark SPA-FINDERS. The applicant stresses the alleged immediate link which the public will establish between SPA and SPA-FINDERS. It infers from that link that there is detriment to the distinctive character. As the applicant acknowledged at the hearing, the existence of such a link is not sufficient to demonstrate the risk of detriment to the distinctive character.”

76) Thus the mere existence of a link is not sufficient to conclude that there is detriment to distinctive character. It must be likely that detriment exists. In the current case, the later trade mark may bring to mind the earlier trade mark, but taking account of the distance between the respective services, the difference in the conceptual identities of the respective trade marks and the allusive quality of the applicant's trade mark, this bringing to mind would be no more than in an abstract way. As such, I do not believe that the existence of the later trade mark makes the earlier trade mark any less distinctive than before. The opponent has not put forward any evidence to demonstrate that detriment is anything more than hypothetical and I therefore find that the opposition under Section 5(3) fails.

Costs

77) The opposition having failed, the applicant is entitled to a contribution towards its costs. At the hearing, Mr Ludbrook cites the opponent's abandonment at the hearing of the claim to a reputation with respect to Class 3 goods under the Section 5(2) grounds and also abandonment of reliance upon UK registration 2195180 with respect to the Section 5(3) grounds. The reason given by Mr Malynicz is that these claims added nothing to its case. The opponent also abandoned the Section 5(3) grounds based on the heads of damage other than detriment to distinctive character. These three points were all pleaded in the grounds for opposition. These were all presented as reasons for the applicant incurring additional cost and Mr Ludbrook invited me to consider this in my finding.

78) I note Ms Richards comment in paragraph 16 of her Statutory Declaration that:

“It is my belief that as a result of the extensive marketing, advertising and merchandising of The Power Puff Girls products, the brand has achieved a significant reputation...”

Regarding the Class 3 issues, the opponent's evidence was manifestly devoid of support for these and failed to demonstrate any reputation in this area of trade. The applicant's evidence dealt with the issue of scope of reputation on a general level and did not make a distinction between reputation for the purposes of the Section 5(2) grounds and for the Section 5(3) grounds. As Mr Malynicz made clear, Ms Richard's comment above still applied to goods, other than those proper to Class 3, and were still relevant to the claim under Section 5(3). There is some inconsistency between Mr Malynicz's comment and the scope of the Section 5(3) grounds. The abandonment of the UK registration 2195180 also removed Classes 14, 18, 21 and 24 from the debate and therefore removed the various jewellery items, bags, duvet covers, key rings and watches from the list of merchandising goods at paragraph 7 of Ms Rowland's Statutory Declaration that her above comments, in part, relate to. However, it does not appear that the abandonment of this point or this inconsistency has resulted in the applicant undertaking unnecessary work. All of the applicant's evidence in response to the claim to a reputation addressed merchandising as a single issue and did not put forward any evidence that related solely to goods covered by the abandoned claim. Further, none of the applicant's evidence was directed at the specific heads of damages claimed by the opponent and later abandoned.

79) In these circumstances, I reject the notion that the applicant incurred additional costs relating to the abandoned claims and I decline to adjust the award of costs accordingly.

80) Taking account of the above issues, I conclude that it is appropriate to award costs according to the Trade Mark Registry's published scale and on the following basis:

Consideration of TM7	£200
Statement of case in reply	£300
Preparing and filing evidence	£500
Considering evidence	£400
Preparation for and attendance at hearing	£500
TOTAL	£1900

81) I order The Cartoon Network Inc to pay Katie Reynolds the sum of £1900. This sum is to be paid within seven days of the expiry of the appeal period or within seven days of the final determination of this case if any appeal against this decision is unsuccessful.

Dated this 4th day of June 2008

**Mark Bryant
For the Registrar,
the Comptroller-General**

ANNEX

List of opponent's earlier marks

Trade Mark	List of Goods and Services
<p data-bbox="231 465 343 499">2195180</p> 	<p data-bbox="783 465 1129 499">List of Goods and Services</p> <p data-bbox="783 465 1370 1003"><i>Class 03: Washing and cleaning preparations, stain removers, bleaching preparations, waxes and polishes, fabric softener, soaps, bath oils, bubble bath; cosmetics, sunscreen, suntan lotions, skin lotions, skin, facial and body creams, lotions, oils; make-up, make-up powder, makeup bases, makeup removers; nail polish and varnish; nail polish remover; nail care preparations, shampoo, hair lotions, hair rinses; body powder, foot powder, non-medicated talcum powder; tooth paste, tooth powder, tooth gel, mouthwash; petroleum jelly, lip moisturizer and lip balm; tissues impregnated with cosmetic lotion.</i></p> <p data-bbox="783 1037 1370 1854"><i>Class 09: Video and audio tapes, cassettes, discs and records, apparatus for recording, producing and projecting sound and visual images, motion pictures, photographic slides, eyeglasses, sunglasses, anti-glare glasses, protective and safety glasses and lenses, frames and cases therefor, radios, televisions, transceivers, telephones, thermometers, compasses, rulers, measuring tapes, telescopes, microscopes, periscopes, binoculars, magnifying glasses, calculators, computers, computer software and computer peripheral apparatus, alarms, signalling bells, signal and warning lights and devices, reflecting discs and strips for wear, warning triangle and other vehicle breakdown signs, life jackets, protective helmets and clothing, water diving apparatus, snorkel tubes, swim masks, swim goggles, cameras, film, slide projectors, batteries, flashlights and lanterns, flash lighting apparatus for cameras, electronic games; magnets; eyeglass cases.</i></p> <p data-bbox="783 1888 1370 1921"><i>Class 14: Jewellery, precious stones, clocks,</i></p>

	<p><i>watches, stopwatches, timers; key rings, boxes of precious metal.</i></p> <p><i>Class 16: Stationery, boxed and individual sheets, memo boards, bulletin boards, folders, files, packaging materials, namely containers, boxes, bags, advertising materials and adhesives, letters, numerals, signs and figures, printed periodicals, photographs, posters, transfers (decalcomanias), printed matter, printed reproductions, namely lithograph prints, pictures, paintings, painting canvas, books, annuals, catalogues, calendars, display albums, diaries, bookbinding materials, artists's materials, namely crayons, paint brushes, materials for modelling or moulding, writing and drawing instruments, namely pens, pencils, markers, erasers, rulers, compasses, printing blocks, printers' type and cliches, stencils, instructional and teaching materials, namely books, pamphlets, brochures, slides; ordinary playing cards, gift tags, invitations; wastepaper baskets, giftwrap, ribbons, bows, labels and stickers, clipboards, memo or note pads, greeting cards, envelopes, seals and correcting fluids, books to colour and sew, paint sets, colouring books, colouring postcards, displays and/or paperboard for use in retailing and sale promotion, paper napkins, paper tablecloths, paper baking cups; bookmarks; pencil boxes; pen cases; paper cake decorations; bumper stickers; magnetic boards; paper banners.</i></p> <p><i>Class 18: Trunks, suitcases and travelling bags; goods made from leather and imitations of leather including pocketbooks, handbags, shoulder bags, cosmetic bags, attache cases, brief cases, portfolios, wallets, billfolds, key cases, coin cases, pouches, purses, cardcases, passport cases, tool bags, tote bags, duffel bags, sport bags; umbrellas, sun umbrellas, parasols, small leather goods, vanity cases; laundry bags, storage bags;</i></p>
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	<p>walking sticks; beach bags, diaper bags, book bags, fanny packs, animal carriers, knap sacks; bags made of plastic.</p> <p>Class 21: Household or kitchen utensils and containers; combs, hair brushes, sponges, tooth brushes, articles for cleaning purposes, brooms, dust pans, dust cloths, cleaning cloths, portable baby baths, wash basins, cages for household pets; litter boxes and litter trays for pets, vases; watering cans; flower pots; shoe horns; bottle openers; bowls, cups, mugs, covered bowls, glasses, tumblers; salt and pepper shakers, jars, spoon rests, trivets, coasters, trays, napkin holders, serving spoons, beverage coolers, water and beverage containers, buckets, ice buckets, ice trays, insulated containers and bottles, paper and plastic cups, plates, bowls, cookie jars, pots, drinking cups for infants, piggy banks not of metal; decorative articles and works of art made of glass, porcelain or earthenware, porcelain knobs, handles, draw pulls and hooks; gloves for household purposes; clothes brushes and shoe brushes; oven mitts; signboards made of glass or porcelain; carriers for animals.</p> <p>Class 24: Textiles and textile goods; tablecloths, cloth for embroidery, hand towels, bath towels, dish towels, washcloths, toilet seat covers, dusters, cloth coasters, textile napkins, place mats; linens, namely sheets, pillow cases, mattress covers, blanket covers, comforters, blankets; cloth pennants.</p> <p>Class 25: Clothing; suits, hosiery, socks, stockings, articles of underclothing, shorts, shirts, blouses, tops, slacks, trousers, skirts, dresses, jackets, coats, raincoats, capes, overalls, waistcoats, pantyhose, knitted articles of clothing, scarves, mufflers, caps, hats, sun visors, dressing gowns, bathrobes, children's and infants' clothing, bibs; formal wear, articles of sports clothing; activewear; leisurewear; sleeping garments; sweaters,</p>
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	<p><i>cardigans, vests, belts, aprons, tights, jeans, ties, swimwear, wristbands, footwear, sandals, boots, sneakers, shoes, handkerchiefs, gloves, neckwear, headwear, hairnets; wristbands, headbands, panties; slickers.</i></p> <p><i>Class 28: Toys, dolls, plush toys, games, balloons, spinning tops, jigsaw puzzles; toy masks, card games (none being ordinary playing cards), board games, electronic games; toy building blocks; ornaments and decorations (other than candles or lamps), all for Christmas trees; doll's houses; toy motor vehicles, ride-on vehicles for children, pedal powered and battery powered vehicles for children; sporting articles (other than clothing), roller skates, ice skates, surfboards (not motorized), swimming flippers; horseshoes; swings; strings and nets for sporting goods, games and rackets; rackets for playing tennis, squash, paddleball; archery equipment; track and field equipment; balls, gloves, pads, bats, sticks, clubs, markers and tees used for games of sport; masks and body guards and equipment for every kind of play; horseriding, mountain climbing, archery, fencing, gymnastic, boxing equipment, weights, bars and mechanically operated exercise equipment; fishing rods, lines, hooks, baits, lures, floats, sinkers and reels; skis, ski boots, ski poles; jump ropes; puppets, sandbox toys, swings; tossing disc toys.</i></p> <p><i>Class 30: Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; yeast, salt, sauces (except salad dressings); spices; ice, candy; gum, bubble gum, pretzels, snack foods, candy decorations for cakes, breakfast cereal.</i></p> <p><i>Class 32: Mineral and aerated waters, and other non-alcoholic drinks; fruit drinks and</i></p>
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	<p><i>fruit juices; syrups and other preparations for making beverages; non-alcoholic punch.</i></p> <p><i>Class 38: Communication services; cable and television broadcasting services; electronic bulletin boards provided by means of a global computer network.</i></p> <p><i>Class 41: Education and entertainment services by or relating to television, motion pictures, cable transmission and radio; television and cable production services, motion picture productions, stage productions; publication of books; staging athletic events and live shows; amusement park and theme park services; electronic publication of books and magazines relating to entertainment, education and news; on-line chat room facilities for real time interaction with other computer users regarding topics of general interest.</i></p> <p><i>Class 42: Computer services provided on-line; provision of information by means of a global computer information network; restaurant services; catering services relating to the provision of food and drink.</i></p>
<p>CTM 4145884</p> 	<p><i>Class 09: Audio and video analogue and digital recordings on tape, disks, records, DVD's, CD's, cassettes, or other recording media; motion picture films; motion picture films prepared for broadcast on television, cable television, digital television or satellite television or for theatrical viewing; apparatus for recording, producing, editing, reproducing and transmitting sound, video, data and images; audio cassettes; CD players and DVD players and recorders; radios, televisions; computers, notebook computers, electronic scanners; computer memory cards and drives; computer software; cameras; camera film; telephones and pagers; personal digital assistants</i></p>

	<p><i>(PDA's); electronic diaries; electronic books; computer and video game programs, apparatus and software; computer game equipment containing memory devices, namely discs, sold as a unit for playing a parlour-type computer game; calculators; mouse pads; optical instruments, including binoculars, telescopes, periscopes, microscopes, magnifying lenses and glasses, prisms, sunglasses and eyeglasses; apparatus for measuring, signalling, monitoring, analysing and recording light, sound, length, height, speed, fluid flow, temperature, humidity, pressure, weight, volume, depth, magnetism, electricity, surface characteristics, data and images; rulers, compasses, scales, decorative magnets, magnets, batteries; encoded cards; handheld karaoke players; pre-recorded motion picture film cassettes to be used with handheld viewers or projectors; pre-recorded audio tapes and booklets sold together as a unit; computer programs, namely software linking digitised video and audio media to a global computer information network; encoded magnetic cards, including key cards, phone cards, credit cards, debit cards, cash cards, identification and security cards; electronic apparatus and instruments; and parts and accessories of these goods.</i></p> <p><i>Class 16: Paper and paper articles; cardboard and cardboard articles; printed publications including books, magazines, newsletters; cartoons and cartoon posters, photographs, maps, almanacs, calendars, stationery, letter and envelope sets; postcards, gift cards, place cards, greeting cards, announcement cards; notepads, notebooks, rulers, albums, address books, book and paper binders, autograph books, comic books, memo pads, colouring books, activity books, sketcher books, sticker albums, artists' materials, including canvas, drawing pads, paints, brushes; modelling</i></p>
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	<p><i>clay; staplers, erasers, pencil sharpeners, pens, pencils, markers, crayons, highlighters, chalk; pencil cases; paperweights; office supplies; school supplies; educational and instructional materials; stickers, decals, appliqués, bumper stickers; paper banners, trading cards; paper hats, paper napkins; party bags, gift wrap, paper gift wrap bows, paper cake decorations, paper table cloths, paper table decorations, paper table mats; bookends.</i></p> <p><i>Class 25: Clothing for men, women and children, including shirts, t-shirts, sweatshirts, jogging suits, trousers, pants, shorts, tank tops, rainwear, cloth baby bibs, skirts, blouses, dresses, suspenders, sweaters, jackets, coats, raincoats, snow suits, ties, robes, hats, caps, sun visors, belts, scarves, sleepwear, pyjamas, lingerie, underwear, boots, shoes, sneakers, sandals, booties, slipper socks, swimwear; masquerade and Halloween costumes and masks.</i></p> <p><i>Class 28: Toys and sporting goods, including games and playthings; action figures and accessories therefor, plush toys, balloons, bathtub toys, ride-on toys, equipment sold as a unit for playing card games; playing cards and card games; toy vehicles, dolls, flying disks, electronic handheld game units, game equipment sold as a unit for playing a board game, a manipulative game, or a parlour game, target games, stand alone video output game machines, jigsaw and manipulative puzzles, skateboards, ice skates; water squirting toys; balls, including playground balls, soccer balls, footballs, baseballs, basket balls, baseball gloves, swimming floats for recreational use, kick board flotation devices for recreational use, surfboards, swim boards for recreational use, swim fins; toy bakeware and toy cookware, toy banks, doll houses, doll furniture, doll clothing; Christmas tree</i></p>
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	<i>ornaments; action rubber balls; action figures; bean bag dolls; toy blocks; toy model walkie-talkies; skateboards; yo-yos; toy buckets and shovels; crib and toy mobiles, baby and child multiple action toys.</i>
CTM 852780 The Powerpuff Girls	<i>Class 41: Education and entertainment services, namely the production and distribution of television and cable television programs for entertainment purposes.</i>