



MADRID PROTOCOL

Total Provisional Refusal of Protection

(Rule 17(1) of the Regulations under the Protocol)

I. Name of the Office:

Canadian Intellectual Property Office

II. International registration number:

1639595

III. Name of the holder:

The Upper Deck Company

IV. Information concerning the type of provisional refusal:

Total provisional refusal based on an ex officio examination.

V. Information concerning the scope of the provisional refusal:

The provisional refusal affects all the goods and services.

VI. Grounds for refusal (where applicable, see item VII):

This examiner's report concerns the above identified Protocol application. To avoid abandonment proceedings, a proper response must be received by this office by November 2, 2023. All correspondence respecting this Protocol application must indicate the file number.

This Protocol application has been examined under the provisions of the Trademarks Act and Trademarks Regulations.

In view of paragraph 12(1)(d) of the Trademarks Act the trademark does not appear to be registrable since it is considered confusing with registered trademark no. TMA1,093,806, particulars of which are attached.

In assessing whether there is a reasonable likelihood of confusion between the trademark and the cited trademarks, the Registrar must have regard to the provisions of subsection 6(2) of the Trademarks Act, which provides that:

The use of a trademark causes confusion with another trademark if the use of both trademarks in the same area would be likely to lead to the inference that the goods or services associated with those trademarks are manufactured, sold, leased, hired or performed by the same person, whether or not the goods or services are of the same general class.

The Registrar must consider all the surrounding circumstances including those stated in subsection 6(5) of the Act:

- (a) the inherent distinctiveness of the trademarks or tradenames and the extent to which they have become known;
- (b) the length of time the trademarks or tradenames have been in use;
- (c) the nature of the goods, services or business;
- (d) the nature of the trade;
- (e) the degree of resemblance between the trademarks or tradenames in appearance or sound or in the ideas suggested by them.

Confusion is tested in terms of the average consumer's first impression of the one trademark and imperfect recollection of the other trademark(s), and not by a side-by-side scrutiny. The "average consumer" is a likely buyer of the associated goods or services who has an average education in English and/or French.

The applicant's written comments with respect to this matter are invited.

The applicant is invited to file a response using the e-service on the CIPO website at www.cipo.ic.gc.ca, by fax at 819-953-2476 or by mail at the following address:

Registrar of Trademarks
Place du Portage I
50 Victoria Street, room C-114
Gatineau, QC K1A 0C9

If the applicant has any specific questions in respect of this Office action, please contact the assigned examiner. Please note that for general inquiries, including assistance with filing of the revised Protocol application, queries about the status of an application or receipt of correspondence, you may contact our Client Service Centre toll free at 1-866-997-1936.

Yours truly,

Angela Felker
Examination Section
873-355-9184
fax: 819-953-2476

VII. Information relating to an earlier mark:

1877858 TMA1,093,806

(i) Filing date and number, and, if any, priority date:

2018-01-16, **1877858**

(ii) Registration date and number (if available):

2021-02-16, TMA1,093,806

(iii) Name and address of the owner:

HUMAN VISION PRODUCTIONS INC.
2170 Pierre-Dupuy Av. Suite 404
Montreal
CANADA

(iv) Reproduction of the mark:

THE TURNING POINT

(v) List of the relevant goods and services (this list may be in the language of the earlier application or registration):

(Class 9) Video and interactive computer games.

(Class 14) Clocks, watches, key chains and jewelry; cufflinks; leather key chains; Pins, namely, lapel pins, ornamental hat pins, tie pins.

(Class 16) Books and magazines, banners of paper, calendars, paper flags, pencils, pens, erasers, note books, note pads, pencil cases, pencil boxes, posters, rulers, stickers.

(Class 18) All purpose sport bags, athletic bags, baby backpacks, backpacks, beach bags, book bags, calling card cases, change purses, coin purses, diaper bags, duffel bags, fanny packs, gym bags, handbags, knapsacks, key cases, luggage, luggage tags, overnight bags, purses, satchels, shopping bags, tote bags, umbrellas, waist packs, wallets, tote bags, school bags.

(Class 20) Picture frames, pillows, decorative wall plaques.

(Class 21) Bowls, drinking cups, nonmetal decorative boxes, decorative plates, lunch boxes.

(Class 24) Plastic flags, plastic name badges, plastic novelty license plates, plastic pennants, banners of textile, banners of plastic, textile flags.

(Class 25) Clothing, namely, athletic shoes, bandanas, baseball caps, beach cover-ups, beachwear, belts, bikinis, blazers, boots, caps, chaps, cloth bibs for babies, coats, dresses, ear muffs, gloves, golf shirts, Halloween costumes, hats, head bands, hosiery, infantwear, jackets; jeans, kerchiefs, leotards, leg warmers, mittens, neckties, night shirts, night gowns, overalls, pajamas, pants, panty hoses, polo shirts, ponchos, rainwear, bath robes, beach robes, sandals, scarves, shirts, skirts, shorts, slacks, slippers, sleepwear, socks, stockings, sweaters, sweat pants, sweat shirts, swimsuits, tank tops, tights, t-shirts, underwear, vests and wrist bands; Footwear namely baseball shoes, basketball shoes, boxing shoes, curling shoes, fencing shoes, tennis shoes and shoes.

(Class 26) Pins, namely, hair pins, hat pins for securing hats; Buttons namely novelty buttons, lapel buttons, shirt buttons.

(Class 28) Action figures and accessories; Toys namely multiple activity toys, bath toys, bowling pins, construction toys, crib toys, educational toys, mechanical toys, musical toys, pet toys, pull toys, plush toys, ride-on toys, squeezable squeaking toys, toy blocks, toy chests, toy model vehicles and related accessories, toy pistols, toy robots, toy snow globes, toy spinners, toy swords, toy vehicles.

(Class 35) Providing home and online shopping services and retail store sale of the following wares: Books and magazines, Clothing, namely, athletic shoes, bandanas, baseball caps, beach cover-ups, beachwear, belts, bikinis, blazers, boots, caps, chaps, cloth bibs for babies, coats, dresses, ear muffs, gloves, golf shirts, Halloween costumes, hats, head bands, hosiery, infantwear, jackets; jeans, kerchiefs, leotards, leg warmers, mittens, neckties, night shirts, night gowns, overalls, pajamas, pants, panty hoses, polo shirts, ponchos, rainwear, bath robes, beach robes, sandals, scarves, shirts, skirts, shorts, slacks, slippers, sleepwear, socks,

stockings, sweaters, sweat pants, sweat shirts, swimsuits, tank tops, tights, t-shirts, underwear, vests and wrist bands, Footwear namely baseball shoes, basketball shoes, boxing shoes, curling shoes, fencing shoes, tennis shoes and shoes, Bowls, drinking cups, nonmetal decorative boxes, decorative plates, stickers, posters, pins namely lapel pins, bowling pins, hair pins, hat pins for the purposes of securing hats, ornamental hat pins, tie pins, buttons namely novelty buttons, lapel buttons, shirt buttons and cufflinks, pens, banners, flags, All purpose sport bags, athletic bags, baby backpacks, backpacks, beach bags, book bags, calling card cases, change purses, coin purses, diaper bags, duffel bags, fanny packs, gym bags, handbags, knapsacks, key cases, leather key chains, luggage, luggage tags, overnight bags, purses, satchels, shopping bags, tote bags, umbrellas, waist packs, wallets, tote bags, lunch boxes, Action figures and accessories, toys namely multiple activity toys, bath toys, construction toys, crib toys, educational toys, mechanical toys, musical toys, pet toys, pull toys, plush toys, ride-on toys, squeezable squeaking toys, toy blocks, toy chests, toy model vehicles and related accessories, toy pistols, toy robots, toy snow globes, toy spinners, toy swords, toy vehicles, calendars, school supplies namely pencils, pens, erasers, note books, note pads, pencil cases, pencil boxes, rulers, school bags, Clocks, watches, key chains and jewelry, Picture frames, pillows, decorative wall plaques, plastic flags, plastic name badges, plastic novelty license plates, plastic pennants, Video and interactive computer games.

(Class 41) Production, presentation, distribution, and rental of motion picture films; Production, presentation, distribution, and rental of television and radio programs; Production, presentation, distribution, and rental of music, movie, television programs, and radio programs recordings; Production of entertainment shows and interactive programs in the forms of air shows, circus performances, comedy shows, dance performances, fashion shows, fireworks displays, laser shows, live musical concerts, orchestra performances, personal appearances by a sports celebrity or movie star, television shows, theater productions for distribution via television, cable, satellite, cartridges, laser discs, computer discs and on the Internet; Production and provision of entertainment, news, and information in the forms of air shows, circus performances, comedy shows, dance performances, fashion shows, fireworks displays, laser shows, live musical concerts, orchestra performances, personal appearances by a sports celebrity or movie star, television shows, theater productions via communication and computer networks; Theater productions.

VIII. Provisions of the applicable law:

Paragraph 12(1)(d) of the *Trademarks Act*

IX. Information relating to the possibility to request a review or file an appeal or otherwise respond to the opposition:

- (i) Time limit to request a review or file an appeal or otherwise respond to the opposition:
2023-11-02
- (ii) Calculation of time limit (the time limit runs from):
2023-05-02
- (iii) Authority to which such request for review, appeal or response should be made:
Registrar of Trademarks

(iv) Whether the request for review, appeal or response has to be filed in a specific language or through a local representative:

Correspondence must be in French or English

(v) Other requirements, if any:

Not applicable

X. Date and signature of the Office:

Registrar of Trademarks

2023-05-02



2 mai/May 2023
Votre référence Your File

Notre référence Our File
2161209
Numéro EI IR Number
1639595

NELLIGAN O'BRIEN PAYNE LLP
300-50 O'CONNOR STREET
OTTAWA
ONTARIO K1P 6L2
Attention: Wing T. Yan (39213-208 to -226)

RE: Trademark: TURNING POINTS
Applicant: The Upper Deck Company

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