

July 17, 2017

**Via Email and U.S. Mail**

Morris E. Turek  
YourTrademarkAttorney.com  
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Chesterfield, MO 63017  
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Re: Trademark Matter – Beastup LLC / Monster Energy Company  
Our Reference: HANBEV.6127TIS; Your Reference: W102 005MI

Dear Mr. Turek:

This responds to your July 12, 2017 letter. As a threshold matter, your proposal to allow your client to continue using the BEASTUP mark for energy drinks is unacceptable. As explained in my previous letter dated June 26, 2017, Monster has strong registered and common law rights in its BEAST Marks, which have been displayed on billions of Monster's energy drinks and used in Monster's point of sale and advertising materials nationwide since 2002. Your client's use of the BEASTUP mark, even without the claw marks, in connection with energy drinks infringes Monster's valuable trademark rights because of the likelihood of association with Monster's energy drinks.

Contrary to your assertion, the location of Monster's BEAST Marks on the "back" of the cans, per your characterization, does not alter the source identifying function of the trademarks. Moreover, the cans are often displayed in various orientations when sold. In addition, Monster's BEAST Marks have also been displayed on point of sale and marketing materials placed on millions of coolers and store windows and displays, including, for example, as shown below.



Monster's BEAST Marks are also displayed in connection with Monster's beverage products on Monster's website and social media sites. The evidence shows overwhelmingly that Monster's BEAST Marks are valuable trademarks that have acquired tremendous goodwill. Your assertions to the contrary are entirely baseless.

Moreover, your client's prominent use of the BEASTUP mark on the front of its cans exacerbates the likelihood of association with Monster's BEAST marks used on its energy drinks. Your suggestion that it somehow alleviates confusion simply defies common sense.

Also, contrary to your suggestion, your client's BEASTUP mark as used on energy drinks is confusingly similar to Monster's BEAST Marks. The most dominant and distinctive feature of the BEASTUP mark is "BEAST," which is a common element with all of Monster's BEAST Marks. The appendage of the word "UP" to the end of the mark does not serve to differentiate the BEASTUP mark from any of Monster's BEAST Marks, which also include words other than the term BEAST.

In addition, your reference to the THUNDER BEAST registration is irrelevant. As you have acknowledged, Monster is currently engaged in a cancellation proceeding against the THUNDER BEAST mark on likelihood of confusion grounds. Further, your client is using the BEASTUP mark in connection with energy drinks, the identical goods in connection with which Monster uses its BEAST Marks. The other three registrations identified in your letter (U.S. Reg. No. 3,719,344 for BEAST, U.S. Reg. No. 4,814,809 for SAVAGE BEAST, and U.S. Reg. No. 4,548,300 for BODY BEAST) are all for clothing and not beverages.

Furthermore, contrary to your assertion, Beastup's claw marks are nearly identical to Monster's Claw Icon as shown, for example, below.



The orientation of your client's claw marks also does not avoid a likelihood of confusion. Indeed, Monster often uses its Claw Icon in a slanted orientation. Contrary to your assertion that Beastup's claw marks are merely background design elements, your client is using the claw marks as a prominent design feature of its cans. In addition, as shown below, Beastup also uses the infringing claw marks as source identifiers on point of sale materials and car wraps.



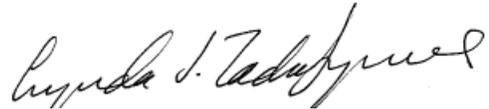
Your client's use of the infringing claw design on its energy drink cans and point of sale materials, including in association with a BEAST mark, is a blatant attempt to associate its

products with Monster and its products. We have no doubt that a court and jury would agree with this conclusion.

While Monster appreciates your client's willingness to discontinue use of the infringing claw marks in connection with clothing and energy drinks, this is insufficient to resolve the dispute. Your client must also: (1) discontinue all use of the BEASTUP mark in connection with energy drinks and agree not to use or seek to register any other BEAST-inclusive marks in connection with energy drinks or beverages, (2) abandon its U.S. Trademark Registration No. 4,584,629 for the BEASTUP mark, and (3) agree not to use any trade dress likely to cause confusion with the MONSTER Trade Dress. Please respond by no later than **July 21, 2017** and state whether your client will agree to these terms.

Nothing in this letter should be deemed a waiver of any of Monster's rights, claims, or remedies, all of which are expressly reserved.

Sincerely,



Lynda J. Zadra-Symes

cc: Monster Energy Company

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