

July 12, 2017

Via Email (Lynda.ZadraSymes@knobbe.com)

Lynda Zadra-Symes
Knobbe Martens
2040 Main St., 14th Fl.
Irvine, CA 92614

Re: Trademark Matter – Beastup LLC / Monster Energy Company
Our File No.: W102 005MI
Your Reference No.: HANBEV.6127TIS

Dear Ms. Zadra-Symes,

I represent Beastup LLC (“Beastup”) in its intellectual property matters. I am writing in response to your letter dated June 26, in which you demand that my client take certain actions regarding its use and registration of the BEASTUP mark (Reg. Nos. 3,838,489 and 4,584,629), as well as its use of a claw design and product packaging “including displays in bright colors, such as green and red, on a black background.” I have had the opportunity to fully investigate this matter and am writing in the hope of promptly and amicably resolving all issues raised in your correspondence.

First, you assert that my client’s BEASTUP mark infringes upon Monster’s various marks incorporating the word “beast,” which include UNLEASH THE BEAST!, UNLEASH THE ULTRA BEAST!, REHAB THE BEAST!, and PUMP UP THE BEAST! (collectively referred to as the “Beast Marks”). I disagree with the notion that my client’s BEASTUP mark is likely to cause confusion with the Beast Marks and that it is prohibited from using any mark containing the word “beast” in connection with energy drinks and clothing. As your photographic examples of the Beast Marks clearly illustrate, Monster has adopted the Beast Marks as taglines located on the back of its cans in relatively small lettering. On the other hand, Beastup uses its BEASTUP mark as the name of its product lines in large lettering on the front of its cans and on its clothing items. Aside from the clear differences in appearance, sound, and commercial impression between the marks themselves, consumers are not likely to be confused because my client’s BEASTUP mark and Monster’s Beast Marks are used in considerably different ways.

Furthermore, a cursory search of the Trademark Office’s records reveals an existing trademark registration for THUNDER BEAST for “non-alcoholic beverages, namely, carbonated beverages” (Reg. No. 4,772,758), which you are no doubt familiar with as Monster’s attorney in the pending cancellation proceeding associated with that registration. There are also at least

twenty existing registrations for marks that (1) incorporate the term “beast,” (2) are registered for clothing and related products, (3) are not owned by Monster, and (4) coexist with Monster’s Beast Marks. Some of these registrations include:

BEAST (Reg. No. 3,719,344) for “clothing, namely, shirts, tank tops, tee shirts, underclothes, boxer shorts, jockey shorts, underpants, underwear”

SAVAGE BEAST (Reg. No. 4,814,809) for “clothing, namely, bodybuilding, fitness and gym clothing, namely, t-shirts, vests, tank tops, hooded jackets, hooded sweatshirts and hooded jumpers, jumpers; bodybuilding and weightlifting clothing straps, namely, sweatbands, footwear and headwear, shorts, trousers, tracksuits, tracksuit bottoms, jogging suit bottoms, hats”

BODY BEAST (Reg. No. 4,548,300) for “clothing, namely, shirts, t-shirts, sweat shirts, all of the foregoing excluding footwear”

Monster also claims that its Claw Icon is infringed by Beastup’s use of claw marks as a design element on its products. I disagree that Beastup’s claw marks are “nearly identical” to Monster’s Claw Icon. Whereas the Monster Claw Icon functions as a trademark (and indeed is registered as such with the Trademark Office), Beastup’s claw marks do not function as a trademark and are merely background design elements placed on the can. Moreover, Monster’s Claw Icon consists of three vertical claw marks front and center on its cans, typically in a bright color set on a black background that makes them “pop.” In contrast, Beastup’s claw marks are silver on a white background and run diagonally from the top-right to bottom-left. They appear at the top and bottom of the can and do not have the same level of symmetry that you can clearly see in Monster’s Claw Icon.

Finally, you claim infringement of Monster’s trade dress, which you define as “a dark background and a bright contrasting accent color, including bright green and red.” Certainly, Monster would agree that the use of bright colors in connection with energy drinks is not only common, but arguably functional in that such colors are associated with high-energy. In fact, in the Facebook photo included on page 9 of your letter, I can clearly see yellow and orange cases of Rockstar energy drinks in very close proximity to similar orange and yellow cans and cases of Monster energy drinks. Contrary to your assertion, Beastup’s energy drink cans do not feature bright green at all, much less bright green on a dark background. Rather, Beastup’s cans are primarily white. While its product packaging does include a small black background against which the BEASTUP mark is printed, the mark is presented in a white/silver lettering above the white-colored words “Alert & Focused Energy.” The color red appears only as an outline behind these words and is in no way similar to Monster’s use of black and red. Without question, Monster’s claim to the exclusive right to use bright colors on a dark background is a broad overstatement of any rights it may have acquired in its trade dress.

Although Beastup is willing to defend its right to use BEASTUP and its current product packaging with the claw marks, it is not interested in expensive, time-consuming, and uncertain litigation if this matter can be resolved with the interests of both parties in mind. To that end, Beastup is willing to agree to cease use of the claw marks in connection with its clothing and energy drinks. In return, Monster would (1) agree not to interfere with or challenge Beastup’s

use and registration of BEASTUP, and (2) agree not to interfere with or challenge other aspects of Beastup's product packaging once the claw marks are removed.

Please let me know if your client is willing to resolve this matter on the terms outlined above. Of course, should you wish to discuss this matter further, please do not hesitate to contact me. I may be reached direct at (314) 749-4059 and morris@yourtrademarkattorney.com.

Sincerely,

A handwritten signature in cursive script that reads "Morris E. Turek".

Morris E. Turek

cc: Robert Wealty, Beastup, LLC