

The Cable Guy -- David Tognotti, general counsel at Monster Cable Products, has made it his mission to amp up the sound equipment maker. When not working out insurance for the company's fleet of cars, he's filing suits to protect the Monster.

By Tina Spee

It's high noon, and general counsel David Tognotti is almost late for a deposition with motorcycle bad boy Jesse James, a witness in his company's trademark-infringement lawsuit against the Discovery Channel.

But for now, the rarely ruffled 34-year-old attorney takes a moment to completely ignore a corned beef sandwich at a Russian deli in Century City in favor of fervently pitching the goods at Monster Cable Products Inc.

"The guiding force behind our company is passion," says Tognotti, leaning over a barely touched bowl of matzo ball soup, brown eyes glinting like those of an audiophile discovering "the sweet spot" of a home stereo system's perfectly placed loudspeakers.

Two years ago, Tognotti became the first general counsel to the Brisbane-based maker of speakers, subwoofers, audio amplifiers, batteries, voltage stabilizers and "every kind of cable imaginable."

Clearly, the company's obsession with improving the sound of stereo systems through the production of high performance speaker cable has rubbed off on the third-generation Italian American and Bay Area native.

Compared to mainstream corporate America, the culture at Monster Cable Products is offbeat. Some of the company's 755 employees, for instance, are referred to as "monsters." Head monster and Chief Executive Officer Noel Lee runs the show with the help of his son, little monster and Vice President Kevin Lee.

When the company hired Tognotti, its executives told him they couldn't call him their general counsel. He needed a monster name. Monster Cable Products' first chief legal monster was born.

After the deposition, the chief legal monster will fly back to his lair in Brisbane to put the finishing touches on a proposal to assign a monster title to

yet another Bay Area inhabitant. In June, the company entered the race for naming rights to San Francisco's 3Com Park.

Colleague Peter Radsliff remembers how Tognotti, now a "budding audiophile," immersed himself quickly into the quirky culture at Monster Cable Products through a combination of keen business sense, personality and legal expertise.

"Dave drank the Kool-Aid from Day One," says Radsliff, the company's product development and marketing monster.

"We easily could have gotten a stuffed shirt in here for corporate counsel who wanted to stay within the little confines of reviewing contracts," Radsliff adds. "I would say Dave is a monster through and through."

Founded in 1979 by Noel Lee, a laser-fusion design engineer and professional drummer, Monster Cable Products has grown from producing high-fidelity audio cable to boasting everything from a home theater furniture line to a music label with artists like Shana Morrison, the daughter of blues master Van Morrison.

Insiders credit Noel Lee with revolutionizing the audio accessory industry through a combination of creative marketing and superior products.

Lee says Tognotti fits well with the company culture.

"All lawyers are slime, and Dave's the slimiest of them all," Lee jokes.

"A lot of attorneys, they interpret the law too literally. They're like accountants. They're afraid to step outside the box and give you a different kind of opinion," Lee says. "[Tognotti's] not like that. He's really good at figuring out what the law says and then what can and can't be really accomplished. And, also, he's got a good sales mind and a marketing mind, so he knows the impact on the company."

According to Tognotti, Monster Cable Products' line of microphone and musical instrument cables is the stuff of legend among recording engineers, producers and musicians.

The company, which is private, has revenues of \$300 million, according to electronics magazine Connected. Tognotti won't disclose Monster's revenue but says it is more than \$300 million and less than \$1 billion.

Artists like retro rocker Lenny Kravitz have thanked the company or Lee in the liner notes of their albums. The brochure for Prince's Minneapolis-based recording Mecca, Paisley Park Studios, describes state-of-the-art equipment wired with Monster Cable products.

Rock 'n' roll behemoths like Aerosmith and the Red Hot Chili Peppers have lent their names to the company, allowing it to list them as "famous monsters" who rely on its products to "help them seize the Holy Grail of tone."

Tognotti's job comes with celebrity-style perks, like getting to whiz around town for the day in one of Monster Cable Products' \$5.5 million worth of exotic company cars. Housed in the "Monster Stable," the collection includes the 580-horsepower Lamborghini Murcielago and the rare Porsche Carrera GT.

And of course, the machines are decked out with sound systems ranging in price from \$10,000 to \$30,000, including equipment from the Monster Car Audio line. Tognotti says annual negotiations with Monster Cable Products' insurance carrier over buying coverage for company employees and customers who drive the cars get a little unnerving.

"We have some of the coolest company cars in the world," Tognotti says, describing the Murcielago as the most exciting car to drive.

But Tognotti says the attention he gets when he comes out of a building and finds a gawking crowd standing around his parked Ferrari 360 Spider makes him uncomfortable.

"It's just not my style to be flashy," Tognotti says.

As the company's top legal officer, Tognotti has access to perks in addition to the company's breathtaking car collection.

But he says that handling corporate affairs keeps him too active for hobnobbing with the company's celebrity fans and other opportunities, like back-stage Rolling Stones passes.

"I'm too busy with day-to-day business," he says. "My job is to do what I can do to bring my skills to the table to make the company a better company."

"That's really what drives me. That's what excites me."

Tognotti oversees contracts governing Monster Cable Products' co-branding agreements with electronic heavyweights like Apple Computer Inc. and THX. He

manages the trademark and patent prosecution for Monster Cable Products' 300 new commodities a year, and he works to protect its international portfolio of 200 patents and 350 trademarks. He directs distribution deals with 14,000 retail stores in 80 countries, including Minneapolis' Best Buy Co. Inc. and Target Corp. And he handles everything from corporate governance and tax issues to environmental compliance at Monster Cable Products' international offices and factories, including locations in Ireland, the United Kingdom, France, Germany, Netherlands, Canada, Taiwan and China.

He also oversees the company's litigation. Monster has seven pending lawsuits, including a contract-termination dispute brought against the company by a Paris distributor and a willful patent infringement claim that Monster Cable Products made against Irvine's Quest Group. A large part of what Tognotti does also involves policing the "monster mark" by filing trademark-infringement lawsuits against high-profile defendants like the Discovery Channel.

In the case against the Discovery Channel which brought Tognotti to Los Angeles for a deposition, the company claims that the Discovery Channel's "Monster Garage" television series, in which rebel mechanics soup up ordinary cars, infringes on his company's "famous Monster mark" and dilutes its brand name.

The R-rated Web site of the television show's co-creator, motorcycle guru James, features scantily clad women in provocative poses. Tognotti says people could find offensive the Web site's display of a cross similar to the symbol used by the Nazis.

Monster Cable Products likes to keep its image clean, and the chance that consumers might confuse its brand name with "Monster Garage" pushed the company to file suit, Tognotti says.

Arent Fox partner Anthony Lupo, who is serving as lead outside counsel for the Discovery Channel in the lawsuit, could not comment on the lawsuit, citing client confidentiality.

The lawsuit echoes other trademark-infringement claims that the consumer electronics maker has made against household names over their use of the term Monster.

It sued the Walt Disney Co., for instance, after it made the

animated hit "Monsters Inc." for trademark infringement and dilution.

The lead outside counsel for Disney in the lawsuit, Quinn Emanuel Urquhart Oliver & Hedges partners Albert Bedecarro and Charles Verhoeven of San Francisco, also could not be reached for comment.

The companies agreed to a confidential settlement, after which they joined together in marketing promotions. For a year, a billboard in New York's Times Square jointly advertised Monster Cable products and the release of the movie's DVD. Copies of the DVD have been displayed alongside Monster Cable products in stores throughout the country.

"We have a great relationship with Disney right now," Tognotti says. "It didn't result from the lawsuit."

Instead, the company's promotional collaboration began when an executive from Disney's Buena Vista Home Entertainment Inc. contacted the company and suggested they join forces, Radscliff says.

The company filed a similar suit against the Monster job board.

According to Tognotti, around the time the job board agreed to a confidential settlement with Monster Cable Products over similar trademark-infringement claims, a link appeared at the bottom of the job site's home page directing Web users to the audio accessory maker's Web site.

Andrew Baum, the managing partner of New York's Darby & Darby, who served as lead counsel to the job board in the lawsuit, declines to comment on the timing of the link's appearance.

But Baum says his client's use of the "monster" name wasn't trademark infringement.

"Nothing prohibits me from saying that I think that Monster Cable has an exaggerated idea of the scope of its rights," Baum says.

"I think they have a well-known mark in the audio equipment area, and they

certainly make good products," Baum adds. **"But they appear to believe that they have a universal monopoly on the word 'monster' in any context with respect to any products, and that's just not what the law gives them, in my opinion."**

Monster, Tognotti counters, is not trying to be a bully.

"We're not known as being litigious, but we're not going to back down from anyone," he says.

Tognotti says that only a few Monster trademarks predate his company's claim to the name, including the Muppet's Cookie Monster, Gumbo Monster Mudder tires, Disposable Waste Systems Inc.'s Muffin Monster, which grinds sewage system blockages into tiny particles, and General Mills Inc.'s Monster Cereals, including Count Chocula and Frankenberry breakfast cereal brands.

Since Monster Cable Products filed for its trademark in 1978, there have been 1,600 monster-related trademark attempts, according to Tognotti.

He admits that the movie "Monsters Inc." had nothing to do with Monster Cable. Monsters, Tognotti says, could be identified with anything from revolting people to big furry creatures.

But suing companies like Disney over use of the monster label preserves the value of his company's brand, Tognotti says.

"We feel monster has a secondary meaning. Monster is us. Monster is who we are," Tognotti says. "If you allow other monsters to exist out there, it muddies the water."

"When I have to hire trademark attorneys for \$400 to \$500 an hour, that doesn't bring any joy to me, but it's an essential part of the business," he says.

Baum, a trademark litigator, says he receives calls from lawyers across the country complaining that their client has become the victim of a Monster Cable Products' trademark-infringement claim.

"What I tell them is, 'It's not your lucky day,'" Baum says.

"It seems that Noel Lee is the only business owner in the country who doesn't seem to mind paying lawyers," Baum adds. "They're very tenacious, and they don't go away. And I think a lot of people settle with them just because it's not worth it."

The company also has been on the receiving end of lawsuits. In January 2003, Energizer Holdings Inc. filed a complaint against Monster Cable Products, contending that the company made false advertising claims on its Monster PowerCells alkaline batteries.

Testing results proved, Energizer said, that claims on the battery packaging such as "last longer than standard alkalines" and "25% more power than standard alkalines" were false.

As part of a consent order, Monster Cable Products agreed to remove claims of superior performance from its packaging. But Tognotti says his company's own scientific tests supported the assertions it made.

"We settled before we ever got into the merits in the case, but if we had to, we felt we could have defended it," Tognotti says. "We believe the claims we made were accurate and not misleading."

For its lawsuit against Disney, Monster Cable Products hired Robert W. Payne of Monterey's LaRiviere, Grubman & Payne. His partner, F. David LaRiviere, serves as outside intellectual property prosecution counsel for the company.

LaRiviere describes Monster Cable Products as a fun client to work for. He received an invitation this winter to a concert the company hosts at the international Consumer Electronics Show, which bills itself as the world's largest annual trade show for consumer technology.

The rockfest is coupled with another annual concert the company holds at the Custom Electronic Design and Installation Association's yearly meeting.

At the Monster Cable Products' concert at January's Consumer Electronics Show, LaRiviere joined 4,000 people in the ballroom at the Paris Las Vegas hotel for a performance by Grammy award-winning musician Carlos Santana.

"It was a wonderful experience," says LaRiviere, describing Santana's show as a "wailing" jam session that will never be duplicated.

To secure private performances by artists like Santana for the company's

annual concerts, Tognotti negotiates contracts with organizations like Beverly Hills talent agency Creative Artists Agency Inc. and New York's Universal/Motown Records Group.

Recently, he hammered out an agreement with Aerosmith guitarist Joe Perry to feature photographs of the musician in in-store advertising displays for the Monster Power line of amplifiers and voltage stabilizers.

But working on Monster Cable Products' recent proposal for the name rights to San Francisco's 3Com Park has given Tognotti the opportunity to negotiate with a different crowd: the 49ers.

Named 3Com Park after its latest sponsor, networking hardware and software seller 3Com Corp., the stadium is better known as Candlestick Park.

In July, San Francisco's Board of Supervisors agreed to allow the city to sell the landmark's moniker again, and Monster Cable Products jumped at the chance to slap its logo on the stadium.

Competing with corporate giants like airline Virgin USA and financial service provider Wells Fargo for the naming rights, the company sees hanging its shingle at 3Com Park as more than just a fantastic marketing tool.

"Obviously, it's an opportunity for Monster Cable to cement its relationship with the community," Tognotti says.

He adds that the company, founded by a San Francisco native, can't wait to give back to the community it's lived in for a quarter of a century.

Though the 49ers have been charged with negotiating the deal, half of the winning bid will go to balancing the city's Recreation and Park Department budget. Under the terms of the arrangement, the park department must receive at least \$3 million.

Naming rights to other stadiums in the state have million-dollar price tags. Pet supplies retailer Petco agreed to pay \$2.7 million a year for the naming rights to Petco Park in San Diego.

On Aug. 20, Monster Cable Products submitted its final proposal to the team. In addition to selling the company as a well-established firm with a loyal following and a wealth of respect within its industry, the proposal laid out practical terms of the deal, such as how much signage the company will be allowed in the stadium if it wins. The team is expected to narrow its selection to two bidders before the final decision.

If the team doesn't choose a name soon, Board of Supervisors President

Matt Gonzalez could win his fight to put a measure on this fall's ballot asking San Francisco residents to decide whether the naming rights deal should proceed.

Supervisor Chris Daly, who voted with Gonzalez against the potential deal, told the San Francisco Chronicle that he doesn't think public buildings and resources should just be sold to the highest bidder.

Even if Monster Cable Products' financial offering, which Tognotti declines to discuss, pales in comparison to bids by larger companies like Wells Fargo, Tognotti hopes the cool-factor of the company's name wins out with the football team.

"What would be more intimidating to an opposing team than to come in and play the 49ers at Monster Park?" Tognotti asks.

When Radsliff, Monster Cable Products' marketing director, started putting the company's proposal together for the 49ers, he says, he needed a partner with deal-making skills and selling potential.

Tognotti, with his businessman savvy and flourish for marketing, fit the bill.

"He's not afraid to get his hands dirty, and he's willing to chip in and help, no matter what," Radsliff says.

Tognotti is always accessible to any staff member on a wide variety of projects, according to Radsliff.

Likewise, when the company needed someone to represent it in a major sales trip to Asia to meet with local distributors and dealers, Tognotti took the job.

"We tapped Dave because he presents himself well," Radsliff says. "Dave, in his heart, is kind of introverted. The company asks him to be an extrovert all the time, and he steps up to the plate and does it.

"And it may be uncomfortable for him, but it doesn't show."

Before the company had a general counsel, Radsliff says, the legal work of protecting Monster Cable Products' intellectual property portfolio fell to him, with the help of outside counsel.

"In addition to all my other duties, it was a nightmare," Radsliff says. "He ended up creating incredible alliances and partnerships with different executives

in the company and just became an immediately indispensable asset that we can't believe we didn't have before."

LaRiviere, who has processed trademarks and patents for Monster Cable Products since before Tognotti arrived on the scene, says the company's hiring of a general counsel has made a "whale of a difference."

"Before he came along, the client was uncertain about how to instruct outside counsel, and Dave is extremely good at that," LaRiviere says.

He praised the way Tognotti is able to communicate with the company's management and translate that into clear instructions for his firm.

In addition to Tognotti, Monster Cable Products now has one other in-house attorney, Joanna Ma.

According to Tognotti, the company's other outside counsel include tax attorney David Colker of Gray Cary Ware & Freidenrich in East Palo Alto; international lawyers John McKenzie and Lothar Determann at Baker & McKenzie in San Francisco; and intellectual property litigator Ian Feinberg of Mayer, Brown, Rowe & Maw in San Francisco.

The company also uses intellectual property litigator Marcy Bergman of San Francisco's Cooper, White & Cooper, who is serving as lead counsel for Monster Cable Products in its lawsuit against the Discovery Channel.

Before joining Monster Cable Products, Tognotti spent three years as second in command at the legal department of San Jose-based wireless company Metrocom.

While at that company, Tognotti handled trademark and patent prosecution, as well as related litigation, for products related to Metrocom's nationwide wireless network.

The company's former general counsel, Dale Marquart, is a consultant with Integrity Interactive in San Francisco. Marquart says he hired Tognotti in part because he loved the fellow University of San Francisco graduate's curiosity about the company and its products.

"He spent a great deal of time trying to understand what a particular business unit's goals were," Marquart says. "And then he would incorporate that knowledge in with his legal knowledge to come up with the best possible solution for the situation."

Before serving at Metrocom, Tognotti spent two years with Rohlf & Waslaf, a San Jose litigation boutique.

Tognotti says he always pictured himself going in-house, but he thought getting some hands-on experience with litigation at a private law firm would prove beneficial in the long run.

"One of my goals was I wanted to get experience doing a lot of different things," Tognotti says.

When Tognotti began working at Monster Cable Products, his home audio system consisted of a Sony bookshelf stereo he used throughout his days at University of San Francisco School of Law a decade ago.

Now, he estimates his home system has a retail value of \$15,000, including his "display," the fancy equivalent of a television screen.

Tognotti says he can walk into people's homes now and identify great sound systems.

"I came here, and I learned how to listen to music and how to set up an audiophile-grade system," Tognotti says. "It's hard not to get caught up."

As for his professional future, Tognotti says he thinks he'll more likely end up in an executive position at a corporation than at a law firm.

"I think I'm probably more interested in the aspects of running a business and building a well-run company than I am practicing law," Tognotti says. "At the end of the day, that's what I do."