

EXHIBITS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

GENESCO BRANDS INC., AS)
SUCCESSOR OF GENESCO INC.,)
)
Opposer,)
)
v.)
)
GREGORY MARTZ,)
)
Applicant.)

Serial No. 75/707,767
Opposition No. 121,296

OPPOSER'S TRIAL BRIEF

TRADEMARK TRIAL AND APPEAL BOARD
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DESCRIPTION OF THE RECORD

The evidence of record filed on behalf of Opposer, Genesco Inc. and Genesco Brands Inc. (hereinafter collectively "Genesco")² consists of Opposer's Notice of Reliance, which includes (1) the testimony deposition of Jason Dasal and the exhibits thereto; (2) status and title copies of U.S. Registrations for the trademarks J&M No. 1,721, 290; J&M and Oval Design No. 1,734,916; J&M and Oval Design No. 1,294,579; J&M (stylized) No. 124,004; J&M PRESIDENT'S COLLECTION (stylized) No. 1,189,395; JOHNSTON & MURPHY J&M (stylized) No. 604,265; and UNMISTAKABLY J&M No. 1,245,893 (hereinafter, collectively referred to as the "J&M Marks"); and copies of documents produced by Applicant in response to Opposer's discovery requests consisting of examples of Applicant's advertising showing use of the mark GM with thumbprint design numbered by Applicant as pages 0015, 0018, 0025, and 0068. Genesco timely filed its Notice of Reliance with the Board on November 2, 2001, and the Testimony Deposition Transcript of Jason Dasal and accompanying exhibits (hereinafter "Dasal Test.") with the Board on December 7, 2001.

Applicant Gregory Martz ("Martz") filed Applicant's Notice of Reliance on January 3, 2002, which consists of the following: (1) status and title copy of U.S. Registration No. 2,379,130 for the trademark GM CUSTOM FIBERGLASSING WATERPROOF and Design ("the GM Mark"); (2) transcript of testimony deposition of Gregory Martz and accompanying exhibits; (3) a copy of Applicant's First Set of Interrogatories (sic) to Opposer; and (4) a copy of Opposer's Responses to Applicant's First Set of Interrogatories to

² Genesco Brands Inc. is a wholly owned subsidiary of Genesco Inc., and the owner by assignment recorded with the U.S. Patent and Trademark Office on September 4, 2001 at reel 2365/frame 0925 of all of the trademarks formerly owned by Genesco Inc. All of the J&M Marks on which this opposition is based are exclusively licensed to Genesco Inc.

Opposer. Martz also filed Applicant's Supplemental Notice of Reliance on January 4, 2002, which consists of one additional status and title copy of U.S. Registration No. 2,379,130 for the GM Mark. Martz filed the Testimony Deposition of Gregory Martz and accompanying exhibits on January 23, 2002 (hereinafter "Martz Test.").

LEGAL ISSUE PRESENTED

Whether there is a likelihood of confusion between Martz's proposed GM mark for "T-shirts, surftrunks, sweatshirts, sweatpants, shirts, tank tops, jackets, shorts, socks and pants" in International Class 25, and the J&M Marks, which are used and federally registered in connection with a wide variety of goods and services, including (among others) footwear; apparel (including hosiery); retail store services; retail and mail order services in the field of men's and women's footwear, fashion accessories; shoe care products and other goods, and whether the opposed mark would dilute the distinctiveness of the famous J&M Marks.

SUMMARY OF ARGUMENT

Since at least as early as April 21, 1892, Genesco (through its Johnston & Murphy division) has continuously and extensively used the mark J&M in both word mark and stylized script form. Genesco owns incontestable federal registration no. 124,004 for the J&M mark in script letters for “boots and shoes made of materials comprising leather, canvas, rubber, sole compositions and combinations of the same.” That stylized mark is shown below:



(hereinafter “the J&M Script Logo”). Dasal Test. p. 11. Subsequently, Genesco has obtained and currently owns at least six other incontestable U.S. federal trademark registrations incorporating the formative J&M for a wide variety of goods and services in addition to footwear. After using the J&M mark extensively in connection with footwear, apparel and retail stores and other goods and services for at least the past one hundred and ten years, Genesco has built up a high degree of fame and good will in this mark, which has become one of the best known and most prestigious footwear, apparel and retail brands in America. On May 17, 1999, one hundred and seven years after Genesco first began using its J&M Script Logo mark, Martz filed a federal registration application for the GM Mark for clothing items, including “T-shirts, surftrunks, sweatshirts, sweatpants, shirts, tank tops,

jackets, shorts, socks and pants” in International Class 25, claiming a first use date of June 1983.

Martz’s GM Mark is closely similar to Genesco’s J&M Marks, and particularly the JM Script Logo as shown below:



The dominant element of Martz’s mark is the script lettering which is indistinguishable from “JM.” The Martz mark also covers identical and closely related goods that would be sold through the same trade channels to the same customers. Accordingly, pursuant to Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), and for the reasons set forth more fully below, the Board should sustain this Opposition and refuse registration of Martz’s U.S. Application Serial No. 75/707,767.

FACTS

I. THE J&M MARK HAS A LONG HISTORY AND IS EXTREMELY WELL KNOWN.

Genesco was founded in 1925 and is one of the leading makers and retailers of footwear and apparel in the United States. One of Genesco’s best known brands is JOHNSTON & MURPHY®. The Johnston & Murphy Company which is a division of Genesco, was founded in 1850 and since its inception has manufactured high quality American-made men’s shoes. Johnston & Murphy became one of the most prestigious

brands in America early in its history and the Company has made shoes for every U. S. President since Millard Fillmore. Dasal Test. p. 8.

For the past 110 years (since at least as early as April 21, 1892), the J&M Script Logo has served as a symbol of the JOHNSTON & MURPHY brand. Dasal Test. pp. 10-11. U.S. Registration No. 124,004 for the J&M mark was first registered in stylized script form on December 13, 1918 (Opposer's Notice of Reliance; Dasal Test. p. 11.), and the J&M Script Logo continues to be used today. Dasal Test at 12-14 and Exhibits 3-7. The J&M mark is used interchangeably with the JOHNSTON & MURPHY mark to identify the products and services of Johnston & Murphy. Dasal Test. p. 10 and Exhibits 1,3, 7-10, 15, 17, 19, 20-23.

In addition to Johnston & Murphy's continuous and extensive use of the J&M Script Logo for the past one hundred and ten years, Genesco also uses and owns incontestable federal registrations for at least six other marks that include the formative J&M for a wide variety of goods and services (hereinafter, collectively with the J&M Script Logo, referred to as the "J&M Marks").³ See Opposer's Notice of Reliance.

The J&M Marks are used in both Roman letters and in the stylized script logo in connection with a wide variety of products and services. Dasal Test. Dep. at 11-14 and Exhibits 1, 3-7, 8-10, 15, 17, 19-23. The J&M mark in stylized Roman and in plain type lettering is also used extensively in connection with footwear, apparel and retail stores. Dasal Test pp. 14-17 and Exhibits 1, 8, 10, 20, 21, 23.

³ Genesco's incontestable federal registrations for the J&M Marks include the following: (1) registration no. 1,721,290 for the J&M mark in block letter form; (2) registration no. 1,734,916 for the J&M and oval design mark; (3) registration no. 1,294,579 for the J&M and oval design mark; (4) registration no. 1,189,395 for the J&M PRESIDENT'S COLLECTION mark and design; (5) registration no. 604,265 for the JOHNSTON & MURPHY J&M (stylized) mark; and (6) registration no. 1,245,893 for the UNMISTAKABLY J& M mark. See Opposer's Notice of Reliance.

The J&M Mark is also used on hang tags and other point of purchase materials in the over 100 Johnston & Murphy retail stores and in the shoe departments of wholesale accounts (such as a “brass logo” that would be displayed by a wholesale account like Dillard’s or Macy’s department stores); and appears as a design element on the walls of retail stores. Dasal Test. p. 27 and Exhibits 20, 21. The J&M mark is also used extensively on the company’s website, and it is used interchangeably with JOHNSTON & MURPHY to refer to the company and its products. Dasal Test. p. 29 and Exhibit 23.

A. The J&M Marks are Used In Connection with a Wide Variety of Products and Services.

Johnston & Murphy uses the J&M Marks in connection with a wide range of shoes, apparel and other products and services. As illustrated by the samples of Johnston & Murphy direct mail catalogs referred to in the testimony of Jason Dasal, the Director of Retail Marketing for Johnston & Murphy, the J&M marks are imprinted on belts and shoes and are used to identify events such as the J&M celebration of its “150 years of style,” stores (the J&M “flagship” store in New York); footwear collections (the “J&M golf collection”); and shoe care products and throughout the catalogs to identify the brand. Dasal Test pp. 6-17 and Exhibits 3, 8, 9, 10, 11, 15, 20. The Johnston & Murphy product line sold under the J&M marks includes all types of shoes including casual shoes, dress shoes, sandals, golf shoes, waterproof boots, and outdoor shoes; clothing items including belts, gloves, scarves, socks, shirts, sweaters, pants, and jackets; leather accessories including portfolios, card cases and briefcases as well as travel accessories and shoe care products. Dasal Test. p. 20.

The direct order retail catalogs feature a wide variety of clothing items including socks, Hawaiian shirts, shorts, bathing suits, camp shirts, safari jackets, silk and linen casual

shirts, belts, and golf shirts, as well as shoe care products and accessories such as shoe trees, tie racks, shoe racks, and shoe polish in addition to shoes. Dasal Test. p. 17 and Exhibit 10.

The clothing items sold under the J&M marks vary by season. Dasal Test. p. 17. For example, as Jason Dasal testified the Spring I 2000 Johnston & Murphy catalog is intended to convey a message to consumers that the clothing offered in that catalog relates to the type of casual lifestyle played out on the beach and waterfront. Dasal Test. p. 18 and Exhibit 10. Various types of shorts, Hawaiian print shirts, and bathing suits, are shown in beach and waterfront settings. The garments offered include items such as “super cargo shorts” described as comfortable for beach and biking, and “club fun swim shorts” described as “just what you want for sunbathing, beachcombing or volleyball in the sand.” Dasal Test. p. 18 and Exhibit 10. Another Spring 2000 direct mail catalog, Johnston & Murphy offers “Big-city-to-beach sandals.” Dasal Test. p. 19 and Exhibit 11. Mr. Dasal explained, “at J&M we’re selling more than just shoes and clothes. We’re selling a lifestyle that appeals to our target customer. This lifestyle includes both life in the city and leisure activities like spending time at the beach.” Dasal Test. p. 19. The same catalog offers Italian linen trousers and silk shirts to appeal to fashion conscious consumers interested in casual wear. Dasal Test. p. 19-20 and Exhibit 11.

In addition to using the J&M Marks for products and retail stores, Johnston & Murphy educates customers through its catalog and website that the J&M Marks symbolize the brand. Dasal Test. p. 28 and Exhibits 4, 5, 10, 11, 15, and 23. Numerous media use the J&M Marks interchangeably with JOHNSTON & MURPHY® and demonstrate the public recognition of the J&M Marks as symbols of the brand. Dasal Test. p. 28 and Exhibits 19, 22.

B. J&M Products are Sold Extensively Through Multiple Trade Channels.

The J&M Mark are used in relation to shoes made by Genesco as well as shoes, apparel, leather goods, shoe care products and accessories sourced from other manufacturers. Those products are sold through over 100 JOHNSTON & MURPHY® retail stores located in major shopping malls throughout the United States, over 30 factory outlet stores, and through over 3000 other retail accounts including chains of better department stores; specialty stores and golf pro shops. They are also sold through retail and wholesale catalogs, and through the <www.johnston&murphy.com> website. Dasal Test. p. 9. Johnston & Murphy direct mail catalogs are mailed to 700,000 to 800,000 retail consumers generally eight times each year, and also are distributed to consumers in the retail stores. Dasal Test. p. 15. Genesco also distributes approximately 7500 wholesale catalogs at least twice a year at the beginning of each season to promote products under the J&M Marks. Dasal Test. p. 21 and Exhibits 4, 5.

C. Johnston & Murphy Advertises and Promotes the J&M Marks Extensively.

In addition to catalog advertising and website advertising, Genesco advertises products under the J&M Marks in national consumer magazines and publications, and local newspapers. In total, Johnston & Murphy spends approximately \$11 million annually in advertising, which includes national advertising, co-op advertising with wholesale accounts, retail store advertising, and catalogs. Dasal Test. pp. 22-23. For example, during only the Spring of 2001, Genesco spent approximately \$251,000.00 on print advertising in newspapers and national magazines for the brand. Id. In the year 1999, Johnston & Murphy spent \$2.6 million in print advertising (in national newspapers and national magazines) and

in the year 2000, Johnston & Murphy spent approximately \$2.7 million in print advertising (primarily in national newspapers and magazines). Dasal Test. pp. 22-23.

Genesco also promotes the J&M brand through sponsorship and promotions such as its sponsorship of the Lincoln Center jazz orchestra featuring Wynton Marsalis. Dasal Test. pp. 22-23 and Exhibit 15. This sponsorship featured store banners of Wynton Marsalis wearing JOHNSTON & MURPHY shoes as well as shopping bags and promotion in catalogs and at consumer and trade events. Johnston & Murphy similarly sponsored the restoration of the Mount Rushmore Presidential Trail. Dasal Test. p. 24 and Exhibit 16.

D. The J&M Marks Have Been Extensively Recognized in the Media.

Products sold under the J&M Marks have been featured in numerous articles in the trade press and general media. For example in May 1999, Footwear News, the leading trade publication of the footwear industry, featured an article entitled “100 Years of Footwear,” which referred repeatedly to the J&M Marks and illustrated the J&M Script Logo. Dasal Test. p. 25. The article also included a Johnston & Murphy advertisement from the 1920s and an illustration of a Johnston & Murphy factory circa the year 1900. Dasal Test. pp. 25-26 and Exhibit 17. Both the August 28, 2000 edition of Footwear News and a January 19, 2001 article in the Atlanta Journal Constitution are representative examples of publicity regarding the fact that Johnston & Murphy has made shoes for every U.S. President since Millard Fillmore. Dasal Test. pp. 8, 26 and Exhibits 18, 19. Mr. Dasal also testified that Johnston & Murphy shoes also have been supplied to the fictional White House portrayed on the popular NBC television series “The West Wing.” Dasal Test. pp. 26-27 and Exhibit 23.

II. MARTZ'S GM MARK IS CLOSELY SIMILAR TO GENESCO'S J&M MARK

On May 17, 1999, nearly one hundred and seven years after Genesco first used its J&M mark, Martz filed Application Serial No. 75/707,767 for the GM Mark for "t-shirts, surftrunks, sweatshirts, sweatpants, shirts, tank tops, jackets, shorts, socks, and pants" which was published for opposition on June 13, 2000. Martz testified that the GM Mark consists of his thumbprint and initials. Martz test. pp. 6-7. However, because the letter "G" consists of two open loops, it could as easily be read as "J" by potential purchasers of applicant's apparel. Additionally the "G" or "J" is linked to the "M" so that the overall effect closely resembles the J&M Script Logo. The descriptive wording "custom fiberglass waterproofing, appears only in very small type and is largely obscured by the fingerprint background. Consequently Martz's mark is closely similar in appearance, sound and meaning to Genesco's marks as shown below:



Sound/Meaning "J&M"



"JM"

The goods sold under Genesco's J&M mark and those covered by Martz's application are essentially identical and could be sold through the same retail outlets. Genesco's J&M Marks are registered for apparel including men's and women's footwear and apparel, neckties, belts, hosiery, and suspenders. The clothing covered by Martz's application are

closely related, including shirts, pants, jackets and socks. Genesco's J&M Marks are used for all of those goods and other clothing covered by Martz's application including surftrunks and t-shirts. Dasal Test. pp. 18-20, 31 and Exhibits 10, 23.

There is no restriction as to distribution channels in Martz's application and the goods would be potentially sold in all retail channels through which such goods are normally distributed. Mr. Martz acknowledged that such products could be sold, for example, in department stores (Martz Test. p. 25-26) where Genesco's products under the J&M marks are also sold. Dasal Test. p. 9. Genesco also uses the J&M Marks in connection with waterproof footwear and apparel Dasal Test. pp. 30-31, Exhibit 10. Consequently, to the extent the small print reference to "custom fiberglass waterproofing" is perceptible at all, it could only compound the confusion between Martz's apparel products and those sold under the J&M Marks.

ARGUMENT

I. GENESCO HAS PRIORITY OF USE

A. There is No Dispute that Genesco Began Using the J&M Marks Long Prior to Martz's First Use of the GM Mark.

Priority of use is not an issue in this matter. Genesco first used the J&M mark one hundred and ten years ago on April 21, 1892, and Genesco owns incontestable federal registration no. 124,004 for J&M Script Logo mark (which registered on December 31, 1918) as well as at least six other incontestable federal registrations for the J&M Marks. Dasal Test. p. 11; Opposer's Notice of Reliance. Martz first used the GM Mark on June 1, 1983, ninety one years after Genesco's first use of the J&M Mark in script logo. Martz's

Application File. In fact, with one exception,⁴ Genesco's first use dates listed in the incontestable federal registrations for all of the J&M Marks in all international classes precede Martz's claimed first use date of the GM Mark. As shown in Opposer's Notice of Reliance, Genesco has submitted status and title copies for all of the J&M Marks as part of the record in this matter. Therefore, Genesco's priority has been established and is not an issue in this case. See Gillette Canada Inc. v. Ranir Corp., 23 U.S.P.Q.2d 1768, 1771 (T.T.A.B. 1992)("priority of use is not in issue since opposer has made of record copies of the registrations upon which it relies and has established that the registrations are in force and are owned by opposer") citing King Candy Co. v. Eunice King's Kitchen, Inc., 496 F.2d 1400, 182 U.S.P.Q. 108, 109 (C.C.P.A. 1974).

II. APPLICABLE LEGAL STANDARDS

In an opposition proceeding the Board must determine whether a likelihood of confusion exists between the marks at issue pursuant to Section 2 of the Lanham Act. 15 U.S.C. § 1052 (1994 Supp. V). In testing for likelihood of confusion, the Board should consider evidence relating to the thirteen factors articulated in In re E. I. Du Pont de Nemours & Co., 476 F.2d 1357, 177 U.S.P.Q. 563 (C.C.P.A. 1973), to the extent those factors are relevant based on the evidence presented.

"The fundamental inquiry mandated by [section] 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks." Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 1103, 192 U.S.P.Q. 24, 29 (C.C.P.A. 1976); see also Block Drug Co. v. Molnlycke AB, 41 U.S.P.Q.2d 1141, 1142

⁴ The first use date for the J&M mark in block letter form (Reg. No. 1,721,290) in International Class 18 is August 18, 1989. The first use date for the J&M mark in all other international classes is prior to June 1, 1983.

(T.T.A.B. 1996); accord Fisons Ltd. v. UAD Labs., Inc., 219 U.S.P.Q. 661, 661 (T.T.A.B. 1983) (“[t]he issue of likelihood of confusion must be resolved by comparing the sound, appearance and meaning of the marks, as well as the goods which the marks identify”).

Based on a comparison of the marks and the goods Martz’s GM Mark so resembles Genesco’s J&M Marks that consumers are likely to be mistaken or confused that the clothing items sold under Martz’s GM Mark emanate from the same source or are otherwise sponsored by or affiliated with Genesco’s J&M Marks.

III. MARTZ'S GM MARK IS CONFUSINGLY SIMILAR TO GENESCO'S J&M MARKS.

In an analysis to determine whether a likelihood of confusion exists, “[t]he first factor to be considered is the similarity or dissimilarity of the marks in their entirety as to appearance, sound, connotation, and commercial impression.” In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 1566, 223 U.S.P.Q 1289, 1290 (Fed. Cir. 1984)(likelihood of confusion between the mark MARTIN'S for “wheat bran and honey bread” and mark MARTIN'S for “cheese”). Id.

A. The Appearance of Martz’s GM Mark is Confusingly Similar to the Appearance of Genesco’s J&M Mark.

Though marks should be considered in their entirety, both the Federal Circuit and the Board have recognized that “one feature of a mark may be more significant than other features, and that it is proper to give greater force and effect to that dominant feature.” Giant Food, Inc. v. Nation's Foodservice, Inc., 710 F.2d 1566, 1570, 218 U.S.P.Q. 392, 395 (Fed. Cir. 1983)(“the mark GIANT HAMBURGERS and Design . . . for ‘hamburger and hot dog sandwiches, milk shakes for consumption on or off premises’ and restaurant services” found confusingly similar to the marks “GIANT FOOD, SUPER GIANT, GIANT FOOD and

Design, GIANT and Design for, inter alia, retail grocery and supermarket services and private label food products”). Id. See also In re National Data Corp., 753 F.2d 1056, 1057, 224 U.S.P.Q. 749 (Fed. Cir. 1985)(affirms refusal to register the mark THE CASH MANAGEMENT EXCHANGE for “computerized cash management services” based on prior registration of CASH MANAGEMENT ACCOUNT for “financial services involving the use of plastic credit cards by the card holders for loans to card holders from their brokerage equity account”)(“there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on consideration of the marks in their entirety.”); Uncle Ben’s Inc. v. Stubenberg Int’l Inc., 47 U.S.P.Q.2d 1310, 1312 (T.T.A.B. 1998); In re Gordon Daly, Ser. No. 75/351,296, 1996 TTAB LEXIS 9 *1, *4 (T.T.A.B. April 23, 1996); Kabushiki Kaisha Hattori Tokeiten v. Scuotto, 228 U.S.P.Q. 461 (T.T.A.B. 1985); Burger Chef Sys., Inc. v. Sandwich Chef, Inc., 608 F.2d 875, 203 U.S.P.Q. 733 (C.C.P.A. 1979).

The most prominent and significant feature in Martz’s GM Mark is the script “GM” portion of this mark. In fact, in some of his advertising, Martz only features the GM Mark and thumbprint design without the additional language included in his federal registration application (i.e., the terms “custom fibreglassing waterproof”). See Opposer’s Notice of Reliance (documents produced by Applicant marked 0015, 0018, 0025, 0068). The “GM” in Martz’s mark could be easily read as JM and is closely similar in overall appearance to the J&M Script Logo. See Opposer’s Notice of Reliance. Both marks are comprised of two letters; the second of which is the identical letter “M.” The letter “G” in Martz’s mark, does not distinguish it effectively from J&M because the letter “G” in script form in Martz’s mark looks like the letter “J” in script form. Thus, there is a likelihood that consumers would view

Martz's "G" as a "J" and erroneously believe that Martz's mark is "JM" instead of "GM." Accordingly, the appearance of Martz's GM Mark is confusingly similar to the appearance, sound, and meaning of the J&M Marks.

B. The Commercial Impression of Martz's Mark is Confusingly Similar with that of Genesco's J&M Marks.

Because the dominant portions of the parties' respective marks are nearly identical and confusingly similar, consumers are left with a similar commercial impression of the parties' marks. Also, Genesco owns federal trademark registrations for the J&M mark in block letter form, which entitles Genesco to use its J&M mark in any lettering form. The thumbprint component of Martz's GM mark appears to be only a background design, which is insufficient to distinguish the marks. CBS, Inc. v. Morrow, 708 F.2d 1579, 1580, 218 U.S.P.Q. 198, 200 (Fed. Cir. 1983) ("[m]inor design features do not necessarily obviate likelihood of confusion arising from consideration of the marks in their entireties.")

Thus, "in giving greater force and effect to the dominant portion of the marks," see Giant Food, 710 F.2d at 1571, 218 U.S.P.Q. at 395, citing Burger Chef 608 F.2d at 878, it is apparent that the appearance and commercial impression of Martz's GM mark are confusingly similar to Genesco's J&M Marks. If Martz's mark registers on the Principal Register, consumer confusion will likely result. Finally, "if there is any doubt as to the likelihood of confusion, that doubt must be resolved against the newcomer." Giant Food, 710 F.2d at 1571, 218 U.S.P.Q. 390, 395 citing Bulova Watch Co. v. Waltham Watch Co., 408 F.2d 1062, 161 U.S.P.Q. 286 (C.C.P.A. 1969).

IV. THE GOODS ARE ESSENTIALLY IDENTICAL AND SOLD THROUGH SIMILAR TRADE CHANNELS.

A. The Board Will Compare the Goods in Genesco's Cited Registrations To Martz's Application.

The Board should compare the goods listed in Martz's federal registration application for the GM Mark to the goods and services listed in Genesco's incontestable federal registrations for the J&M Marks:

Where likelihood of confusion is asserted by an opposer with respect to a trademark for which an application for registration has been filed, the issue must be resolved on the basis of not only a comparison of the involved marks, but also on consideration of the goods named in the application and in opposer's registration and, in the absence of specific limitations in the application and in opposer's registration, on consideration of the normal and usual channels of trade and methods of distribution.

Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat.'l Assoc., 811 F.2d 1490, 1492, 1 U.S.P.Q.2d 1813, 1815 (Fed. Cir. 1987) citing CBS, 708 F.2d at 1581, 218 U.S.P.Q. at 199. Upon comparing the parties' respective goods listed in Martz's federal registration application for the GM Mark to the goods and services listed in Genesco's incontestable federal registrations for the J&M Marks, the likelihood of confusion between these marks becomes evident.

B. The Goods Included in Martz's Federal Registration Application for the GM Mark are Closely Related and Confusingly Similar to the Goods Covered by the Federal Registrations for Genesco's J&M Marks.

Genesco owns incontestable federal registration no. 1,721,290 for the J&M mark in block letter form for a variety of goods and services spanning five international classes, including "men's and women's footwear and apparel; namely, dress and casual shoes, sandals, boots, golf shoes, athletic shoes, leisure shoes, slippers, hosiery, insoles, neckties, belts, and suspenders" in International Class 25. See Opposer's Notice of Reliance. Because

the term “apparel” is synonymous with “clothing,” which is included in Martz’s description of goods in his federal registration application, the parties’ respective goods are closely and sufficiently related to support a finding of likelihood of confusion.⁵

Nevertheless, the Board has held that “when ‘the marks [of the parties] are the same or almost so, it is only necessary that there be a viable relationship between the goods or services in order to support a holding of likelihood of confusion.” Block Drug, 41 U.S.P.Q.2d at 1144, (emphasis added) quoting In re Concordia Int’l Forwarding Corp., 222 U.S.P.Q. 355, 356 (T.T.A.B. 1983). To support a finding of likelihood of confusion, the “goods need not be identical or even competitive in nature (nor need they necessarily be sold through the same trade channels), in order to support a likelihood of confusion” but must be related in some manner. Helene Curtis Industries, Inc. v. Suave Shoe Corp., 13 U.S.P.Q.2d 1618, 1625 (T.T.A.B. 1989) (SUAVE mark for shoes found to be confusingly similar to SUAVE for hairdressing, hair spray, crème rinse, and dandruff control shampoo). See also Scarves by Vera, Inc. v. Todo Imports Ltd. (Inc.), 544 F.2d 1167, 1174-75, 192 U.S.P.Q. 289 (2d Cir. 1976)(cosmetics, toiletries, and fragrances closely related to women’s scarves, apparel, and linen to support finding of likelihood of confusion); The Corp. of Lloyd’s v. Louis D’Or of France, Inc., 202 U.S.P.Q. 313, 316 (T.T.A.B. 1979)(cologne and perfume related to insurance services); In re Arthur Holland, Inc., 192 U.S.P.Q. 494, 495 (T.T.A.B. 1976)(cologne closely related to jeans and other clothing items to support finding of likelihood of confusion).

⁵ In THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th Edition), the first definition for “apparel” is “clothing, especially outer garments; attire.”

In this instance, the goods covered by Martz's federal registration application for the GM Mark are sufficiently related to cause a likelihood of confusion with the J&M Marks covered by Genesco's incontestable federal registrations nos. 124,004; 604,265; 1,734,916; 1,245,893; 1,294,579; and 1,189,395. Both Martz's application and Genesco's registrations cover hosiery (listed as "socks" in Martz's federal registration application and "hosiery" in Genesco's federal registration nos. 1,721,290 and 1,734,916).

Additionally, the Board has held repeatedly that shoes and footwear are closely related to clothing to support a likelihood of confusion. Clothing and shoes are "[c]losely related goods which could be purchased in the same retail outlets by the same classes of purchasers and often during the same shopping excursion to complete an ensemble." B. Rich's Sons, Inc. v. Freida Originals, Inc., 176 U.S.P.Q. 284-85 (T.T.A.B. 1972)(application for FREIDA'S CHEVY CHASE ORIGINALS for various clothing items likely to be confused with prior registration for RICH'S CHEVY CHASERS for shoes). See also General Shoe Corp. v. Hollywood-Maxwell Co., 277 F.2d 169, 170-71 125 U.S.P.Q. 443 (C.C.P.A. 1960)(women's shoes related to brassieres); In re Melville Corp., 18 U.S.P.Q.2d 1386, 1387 (T.T.A.B. 1991)(women's shoes related to women's pants, blouses, shorts and jackets); In re Pix of America Inc., 225 U.S.P.Q. 691, 692 (T.T.A.B. 1985)(women's shoes related to outer shirts); In re Kangaroos U.S.A., 223 U.S.P.Q. 1025, 1026 (T.T.A.B. 1984)(athletic shoes related to men's shirts).

Genesco also owns federal registration no. 1,721,290 for the J&M mark in block letter form for "retail and mail order services in the field of men's and women's footwear, apparel, and fashion accessories," in International Class 42, claiming a first use date of November 20, 1971. See Opposer's Notice of Reliance. Genesco's sale of clothing and apparel in the retail

store services and through mail order catalogs covered by this incontestable federal registration further supports a finding that the goods are confusingly similar. In re Adriana, Sanchez Marriquez, 2001 WL 332657 *1, *4 (T.T.A.B. April 5, 2001)(unpub. op.)(CONCORD for athletic shoes and sneakers confusingly similar to CONCORD JEAN STORES for retail clothing services because applicant's goods are "encompassed within the products registrant's store sells").

C. The Clothing Goods Covered in Martz's Federal Registration Application are Identical to Clothing Sold by Genesco Under the J&M Marks.

In addition to the goods covered by its incontestable federal registrations for the J&M Marks (such as hosiery), Genesco has extensively used the J&M Marks in connection with a wide variety of other apparel items, including identical items to those covered by Martz's federal registration application. Martz's application covers "T-shirts, surftrunks, sweatpants, shirts, tank tops, jackets, shorts, socks, and pants." Genesco uses the J&M Marks in connection with identical clothing items, such as T-shirts, shirts, shorts, jackets and pants. Dasal Test. p. 17 – 20 and Exhibits 10, 11, 15, 23. Additionally, Genesco uses the J&M Marks in connection with "bathing suits" and "beach clothing," which are essentially identical to the "surftrunks" covered in Martz's federal registration application. Dasal Test. p. 17 and Exhibits 10, 15. Genesco also uses the J&M Marks in connection with other types of clothing items such as belts and caps. Dasal Test. pp. 16, 17 and Exhibits 7, 20. For example, Mr. Dasal testified with regard to Exhibit 10:

Q. Do the direct catalogs such as this sell any products other than shoes?

A. Yes. This particular catalog has socks, Hawaiian shirts, shorts, bathing suits, camp shirts, safari jackets, silk and linen casual shirts, belts, golf shirts ...

Dasal Test. p. 17 and Exhibit 10. As noted above, the J&M retail consumer catalogs alone reach 700,000 to 800,000 retail customers, eight times a year in addition to retail promotion and sale of J&M products. Dasal Test p. 15. Accordingly, all of Applicants goods are identical or closely related to those for which Genesco's J&M marks have been extensively used and promoted.

D. Martz's Goods and Genesco's Goods are Sold Through the Same Trade Channels To Consumers.

Because both Martz's application and Genesco's incontestable federal registrations for the J&M Marks do not contain any limitations or restrictions regarding trade channels, the Board must assume that the goods will travel through "'the normal and usual channels of trade and methods of distribution' to all the normal and usual purchasers of the goods." Block Drug, 41 U.S.P.Q. at 1144 (the mark PROMISE for "perineal wash cream and conditioner" and "disposable pre-moistened washcloths" found to be confusingly similar to the mark PROMISE for "desensitizing toothpaste"), quoting CBS, 708 F.2d at 1579 see also In re White Swan, Ltd., 8 U.S.P.Q.2d 1534, 1535 (T.T.A.B. 1988)(the mark SHAKE SCATTER & GROW for "flower seeds" found to be confusingly similar to the mark SHAKE-N-GROW for "grass seed").

Through its Johnston & Murphy division, Genesco sells its products under the J&M Marks through almost every possible trade channel, including Johnston & Murphy retail stores, factory outlet stores, department stores, specialty stores, retail and wholesale catalogs, and on its website. Dasal Test. p. 9. Because of the widespread distribution of a variety of goods and services under the J&M Marks sold through numerous trade channels, it is reasonable to believe that consumers would be confused upon discovering clothing sold

under Martz's GM Mark. Moreover, Martz testified that "the idea" he had "in mind" when he adopted and began using the GM Mark was for his clothing items to become popular with "mainstream consumers" similar to other surfing brands such as Stussy, Ocean Pacific, and Gordon & Smith. Martz Test. Dep. at 25. Further, Martz admitted during his testimony that such brands are sold in department stores, one of Genesco's major trade channels. *Id.* at 25-26. Dasal Test. p. 9. Thus, there is a likelihood that consumers would encounter items sold under Genesco's J&M Marks and Martz's GM Mark in the same trade channels.

Additionally, courts and the Board have found confusion to be likely based on the circumstances surrounding the marketing of both parties' products even where the goods and trade channels differ:

It is a well settled principle of trademark law that it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade to support a holding of likelihood of confusion. It is sufficient for purposes herein that the respective goods of the parties are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could because of the similarity of the marks used therewith, give rise to the mistaken belief that they originate from or are in some way associated with the same producer.

In re International Telephone & Telegraph Corp., 197 U.S.P.Q 910 (T.T.A.B. 1978)(citations omitted). In the present case, the marketing conditions surrounding Genesco's J&M Marks and Martz's GM Mark would be identical, therefore, increasing the likelihood of confusion.

V. GENESCO'S J&M MARKS ARE EXTREMELY STRONG AND FAMOUS AND CONSEQUENTLY ENTITLED TO BROAD PROTECTION.

Pursuant to the to DuPont analysis, the Board must evaluate "the fame of the prior mark (sales) as advertising, length of use." In re E.I. DuPont de Nemours & Co., 476 F.2d 1357, 1361, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973).

It is undeniable that the J&M Marks are famous and entitled to a broad scope of protection. The J&M Script Logo mark was first used one hundred and ten years ago on April 21, 1892. Dasal Test. p. 11; Opposer's Notice of Reliance. Since this first use date, Genesco and its predecessors have widely extended use of J&M Marks and built up their fame through advertising, sales, and use, and through federal registration of multiple marks incorporating the formative J&M, in connection with a wide variety of goods and services. Specifically, Genesco owns incontestable federal registration no. 1,721,290 for the J&M mark in block letter form for goods and services in International Classes 3, 18, 21, 25, and 42; incontestable federal registration no. 1,734,916 for the J&M mark and an oval design for goods and services in International Classes 25 and 42; incontestable federal registration no. 1,294,579 for the J&M and oval design mark for goods in International Class 25; incontestable federal registration no. 1,189,395 for the J&M President's Collection and design mark for goods in International Class 25; incontestable federal registration no. 604,265 for the JOHNSTON & MURPHY J&M mark (stylized) for goods in International Class 25; and incontestable federal registration no. 1,245,893 for UNMISTAKABLY J&M in block letter form. These extensions of the J&M mark have assisted in building this mark's fame. See Gillette Canada Inc. v. Ranir Corp., 23 U.S.P.Q.2d 1768, 1771 (T.T.A.B. 1992) (ORAL-B mark for toothbrushes held to be famous because its owner had extended it to a variety of related products).

Moreover, the fact that Genesco uses and has federally registered its J&M Marks in connection with a variety of goods and services in addition to footwear means that consumers are more likely to believe that Genesco has sponsored or is affiliated with Martz's clothing items. See Uncle Ben's, 47 U.S.P.Q.2d at 1313 ("With respect to the goods, the fact

that opposer applies its mark to a variety of productsis significant...this makes it more likely that purchasers, aware of opposer's use of UNCLE BEN'S on a variety of food products, when seeing applicant's mark used in connection with a bread mix, are likely to believe that this product is also being produced or sponsored by opposer.”). For example, Genesco's federal registration no. 1,721,290 for the J&M mark in block letter form not only may be used in any lettering form but this federal registration covers a broad range of goods and services such as men's and women's apparel; retail and mail order services in the field of men's and women's footwear, apparel, and fashion accessories; shoe horns; coasters of leathers; cedar shoe trees and protective bags for shoes; leather care and shoe products; closet accessories; leather accessories such as wallets; and travel bags and briefcases. See Opposer's Notice of Reliance. Genesco's retail stores and catalogs sell virtually all of the same goods covered by Martz's application.

The J&M Marks are so well-known and highly regarded that Johnston & Murphy has supplied every U.S. President since Millard Fillmore with a pair of shoes, including Abraham Lincoln whose J&M shoes are included in a J&M traveling exhibition. Dasal Test. P. 8 and Exhibit 18. Genesco also supplies shoes to the characters of the fictional White House shown on the television series “the West Wing.” Dasal Test. pp. 8-9, 26-27 and Exhibit 23.

Additionally, Genesco has advertised and promoted its J&M Marks extensively. Genesco spends approximately \$11 million annually in total advertising. Dasal Test. p. 23. This substantial investment and extensive advertising supports a finding that the J&M Marks are well-known and strong. See eg. Scarves by Vera, Inc. v. Todo Imports Ltd. (Inc.), 544 F.2d 1167, 1170, 192 U.S.P.Q. 289 (2d Cir. 1976)(\$3 million spent in advertising and promoting mark); Kenner Parker Toys Inc. v. Rose Art Indust., Inc., 963 F.2d 350, 22

U.S.P.Q.2d 1453 (Fed. Cir. 1992)(\$2 million spent in advertising); Specialty Brands, Inc. v. Coffee Bean Distrib., Inc., 748 F.2d 669, 674, 223 U.S.P.Q. 1281 (Fed. Cir. 1984)(Opposer spent “several millions of dollars” in advertising over the years); Uncle Ben’s, 47 U.S.P.Q.2d at 1311 (T.T.A.B. 1998)(Opposer spent \$5 million in advertising).

Genesco further promotes and reinforces the fame of the J&M Marks through sponsorships such as the Lincoln Center jazz orchestra featuring Wynton Marsalis, and support for completion of the restoration of the Mount Rushmore Presidential Trail. Dasal Test. pp. 23-24 and Exhibits 15, 16.

Finally, numerous media references to the J&M Marks demonstrate the effectiveness of many years of use, advertising and promotion of the J&M Marks by Genesco and its predecessors. Dasal Test, pp. 24-27 and Exhibits 16-19. Genesco’s exclusive use and registration of the J&M Marks for a wide variety of goods and services, significant investment in advertising and promotion of various events, further demonstrate that Genesco’s J&M Marks are famous and entitled to broad protection.

Famous and well known marks are entitled to broader protection against encroachment by second comers. Kenner Parker Toys, 22 U.S.P.Q. 2d 1457 (“[a] strong mark, on the other hand, casts a long shadow which competitors must avoid.”). See also Money Station, Inc. v. Cash Station, Inc., 38 U.S.P.Q.2d 1150 (Fed. Cir. 1995)(“[o]pposer’s marks have acquired considerable fame, which weighs in its favor in determining likelihood of confusion.”); Century 21 Real Estate Corp. v. Century Life of Am., 970 F.2d 874, 877, 23 U.S.P.Q.2d 1698 (Fed. Cir. 1992)(“the Lanham Act’s tolerance for similarity between competing marks varies inversely with the fame of the prior mark”); Specialty Brands, 748 F.2d 669, 675 (“when an opposer’s trademark is a strong, famous mark, it can never be of

'little consequence.' The fame of a trademark may affect the likelihood purchasers will be confused inasmuch as less care may be taken in purchasing product under a famous name."'). Therefore, because the J&M Marks are strong and famous, they are entitled to a broad scope of trademark protection, which weighs heavily in favor of finding a likelihood of confusion between the J&M Marks and Martz's GM Mark.

VI. THE J&M MARKS WERE FAMOUS LONG PRIOR TO THE FILING DATE OF MARTZ'S FEDERAL REGISTRATION APPLICATION FOR THE GM MARK AND ARE LIKELY TO BE DILUTED BY MARTZ'S MARK.

Genesco has demonstrated a likelihood of confusion between Genesco's J&M Marks and Martz's GM Mark. Accordingly, the Board should sustain this opposition and refuse registration of Martz's GM Mark on that basis alone. Nevertheless, the evidence submitted in this matter (as set forth in the testimony deposition of Jason Dasal and accompanying exhibits) establishes Genesco's entitlement to prevail on its dilution claim as well.

Pursuant to the Trademark Amendments Act of 1999, oppositions may be based on the Federal Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c)(1). In order to prevail on the dilution claim, Genesco must show that the J&M Marks are famous, and Martz began using the GM Mark after the J&M Marks achieved fame. The statute sets forth the following non-exclusive list of factors for courts (and the Board) to consider to determine whether a mark meets the fame requirement of the Act:

- (A) the degree of inherent or acquired distinctiveness of the mark;
- (B) the duration and extent of use of the mark in connection with the goods and services with which the mark is used;
- (C) the duration and extent of advertising and publicity of the mark;
- (D) the geographical extent of the trading area in which the mark is used;
- (E) the channels of trade for the goods or services with which the mark is used;
- (F) the degree of recognition of the mark in the trading areas and channels of trade of the mark's owners and the person against whom the injunction is sought;

- (G) the nature and extent of the use of the same or similar marks by third parties; and
- (H) the existence of a registration under the Act of March 3, 1881, or the Act of February 20, 1905, or on the principal register.

15 U.S.C. § 1125(c)(1)(A-H). As set forth above, these factors favor a finding that the J&M Marks are entitled to protection against dilution as well as confusion.

The first “fame” factor weighs in Genesco’s favor. The J&M Marks have achieved a high degree of acquired distinctiveness. In determining acquired distinctiveness, the Board must consider factors such as length and extent of use and advertising of the mark. Genesco has used the J&M Marks over at least the past one hundred and ten years and heavily advertises and promotes the J&M Marks (\$11 million spent annually on advertising) through nearly every medium available. The J&M Marks have acquired widespread recognition through use in virtually all trade channels including over 100 retail stores in major malls, over 3000 wholesale accounts (including major department stores with multiple stores) and distribution of consumer catalogs annually.

The second fame factor, duration and extent of use of the J&M Marks in connection with Genesco’s products, clearly favors a finding that the J&M Marks are famous.

The third fame factor, duration and extent of advertising and promotion of the J&M Marks is also apparent. Indeed Genesco’s testimony demonstrated that every U.S. President since the mark was introduced has J&M shoes and advertising for the brand dating back to the 1920’s was reproduced in Footwear News. Dasal Test. pp. 8, 25 and Exhibit 17.

Regarding the fourth fame factor, geographical extent of use, the evidence showed use of the J&M Marks in connection with its retail outlet stores and major department stores

throughout the U.S. Additionally, the J&M Marks are promoted through millions of catalogs distributed throughout the U.S.

Similarly, the fifth fame factor, channels of trade, also weighs in Genesco's favor because Genesco sells products and offers its retail services under the J&M Marks through virtually every trade channel available. Dasal Test. p. 9.

The fame of the J&M Marks is clear under the sixth fame factor, degree of recognition in the trading area and channels of trade of Genesco and Martz, as well. The J&M Marks are among the best known footwear, apparel, and retail marks in America as a result of over a century of use, advertising, promotion and sale of such goods under the marks.

With respect to the seventh fame factor, nature and use of the same or similar marks by third parties, Genesco believes the J&M Marks are unique. Although the component elements consist of ordinary letters and symbols, the composite marks creates a distinctive commercial impression associated only with Johnson & Murphy. Dasal Test. pp. 10-12.

Finally, with regard to the eighth factor, ownership of federal registration on the principal register, Genesco is the owner of at least seven federal trademark registrations for the J&M Marks for a wide variety of goods and services. These include the marks J&M No. 1,721, 290; J&M and Oval Design No. 1,734,916; J&M and Oval Design No. 1,294,579; J&M (stylized) No. 124,004; J&M PRESIDENT'S COLLECTION (stylized) No. 1,189,395; JOHNSTON & MURPHY J&M (stylized) No. 604,265; and UNMISTAKABLY J&M No. 1,245,893. See Opposer's Notice of Reliance.

Thus, all of the fame factors set forth in the federal dilution statute demonstrate the fame and distinctiveness of the J&M Marks.

The Board's recent decision in The Toro Co. v. Torohead, Inc., 2001 WL 1744114 *1 (T.T.A.B. 2001) clarifies the issues to be decided in an opposition based on dilution. The Board in that case adopted "likelihood of dilution" rather than "actual dilution" as the basis for a claim. Id. Also, the Toro decision, while holding that distinctiveness is a key factor, recognizes the statutory wording of the Federal Dilution Act makes clear that a dilution claim may be based on either inherent or acquired distinctiveness. 15 U.S.C. § 1125(c)(1)(a). The House Judiciary report on the Federal Dilution Act explained that "a mark may be 'famous' even if not inherently distinctive." H.R. Rep. 104-374, at 7 (1995), reprinted in 1996 U.S.C.C.A.N. 1029, 1034. See also Times Mirror Magazines, Inc. v. Las Vegas Sports News, L.L.C., 212 F.3d 157, 54 U.S.P.Q. 2d 1577 (3d Cir. 2000); Gazette Newspaper, Inc. v. New Paper, Inc., 934 F. Supp. 688, 40 U.S.P.Q.2d 1900 (D. Md. 1996); 4 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION §24:91 (a mark may be distinctive "either inherently or through acquisition of secondary meaning"). Thus, having established that the J&M Marks are famous and distinctive under the federal dilution statute, Genesco should also prevail on the dilution claims.

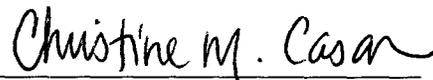
CONCLUSION

Any "[d]oubt is resolved against the newcomer, for the newcomer has the opportunity of avoiding confusion, and is charged with the obligation to do so" In re Shell Oil, 992 F.2d 1209, 26 U.S.P.Q.2d 1687, 1691 (Fed. Cir. 1993), citing In re Hyper Shoppes (Ohio), Inc., 837 F.2d 463, 464-65, 6 U.S.P.Q.2d 1025, 1026 (Fed. Cir. 1988). See also In re Apparel, Inc., 366 F.2d 1022, 1023, 151 U.S.P.Q. 353, 354 (C.C.P.A. 1966)("The earlier user and earlier registrant would be entitled to the benefit of any doubt..."). Martz filed his federal registration application for the GM Mark long after Genesco had been using and federally

registered the J&M Marks. If Martz's mark registers on the Principal Register, confusion is likely based on Genesco's prior use and incontestable federal registrations of the J&M Marks.

For these reasons, the Board should sustain this Opposition and refuse registration of Applicant's GM CUSTOM FIBERGLASSING WATERPROOF and Design mark, U.S. Application Ser. No. 75/707,767 for "T-shirts, surftrunks, sweatshirts, sweatpants, shirts, tank tops, jackets, shorts, socks, and pants" in International Class 25.

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Genesco Brands Inc., as successor of
Genesco Inc.

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner of Patents and Trademarks, TTAB NO FEE 2900 Crystal Drive, Arlington, Virginia 22202 on April 18, 2002.


Christine M. Cason
Date: April 18, 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

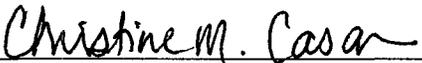
GENESCO BRANDS INC., AS)
SUCCESSOR TO GENESCO INC.,)
)
Opposer,) Serial No. 75/707,767
) Opposition No. 121,296
v.)
)
GREGORY MARTZ,)
)
Applicant.)

CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the foregoing
OPPOSER'S TRIAL BRIEF on counsel for Applicant by depositing a copy thereof by first
class mail, postage prepaid, and addressed as follows:

Douglas M. Vickery, Esq.
Emerald Plaza
402 West Broadway
Suite 1550
San Diego, California 92101

This 18th day of April, 2002.


Christine M. Cason