ESTTA Tracking number: **ESTTA680470**
Filing date: **06/26/2015**

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

Proceeding	91213413
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Attachments	FINAL Mappin & Webb Main ACR Brief - Public_Redacted.pdf(583025 bytes)

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

MAPPIN & WEBB, LIMITED, Opposer v. M WEBB, LLC Applicant.	Opposition No. 91213413 Mark: M WEBB Serial No.: 85460569

OPPOSER'S MAIN ACR BRIEF

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I. INTRODUCTION

Opposer Mappin & Webb Limited ("Mappin & Webb") began as a silversmith company in England. Over the last century and a half, it has expanded its offerings from jewelry to leather goods, giftware, and other products under marks comprised of or containing MAPPIN & WEBB (the "MAPPIN & WEBB Marks")—all the while enjoying tremendous commercial success and acclaim. Countless Americans have been exposed to the MAPPIN & WEBB brand at the Mappin & Webb stores in the United Kingdom, including in high-traffic tourist areas in London and at the international terminals at the Heathrow airport (operating numerous flights to the U.S.) and through MAPPIN & WEBB jewelry worn by celebrities and prominent members of the British royal family, including the Duchess of Cambridge Kate Middleton. Further, vintage MAPPIN & WEBB-branded leather goods, including purses and handbags, are sold in the U.S. via third-party e-tailers and are sought-after collectors' items.

Recently, Mappin & Webb decided to expand its geographic reach into the U.S. and to make its brand a more affordable and contemporary "lifestyle" brand. As part of this effort, on June 20, 2011, Mappin & Webb filed two intent-to-use applications for the marks MAPPIN & WEBB and MAPPIN & WEBB LONDON, covering various leather articles, including wallets and purses, jewelry, watches, giftware, and related items.

Four months later, on October 31, 2011, Applicant M Webb, LLC ("Applicant") filed an intent-to-use application for the M WEBB mark for handbags, purses, wallets, tote bags, and women's apparel and accessories. Applicant has not used its M WEBB mark and has never advertised under the M WEBB mark in the U.S.

Applicant stipulated that Mappin & Webb has standing and priority. Thus, the only issue to be decided is likelihood of confusion. And confusion is likely here because the parties' marks, goods/services, consumers, and trade channels are either the same or similar.

First, like the MAPPIN & WEBB Marks, Applicant's M WEBB mark starts with "M" and ends with "WEBB." And given consumers' and the fashion industry's propensity to abbreviate/shorten trademarks (which has been repeatedly recognized by the Board), people will likely believe that Applicant's M WEBB mark is an abbreviation of the MAPPIN & WEBB Marks.

Second, some of Applicant's goods are identical to certain of Mappin & Webb's goods (i.e., purses and wallets) and others (i.e., handbags, tote bags, and women's apparel and accessories) are closely-related and/or complementary to Mappin & Webb's travelling bags, other leather goods, jewelry, and retail-store services featuring these products.

Third, because there are no limitations in the parties' applications, their customers and trade channels are presumed to be the same.

Finally, the fact that Applicant's designer may be named "Marissa Webb" neither excuses nor diminishes the likely confusion between the MAPPIN & WEBB and M WEBB marks. As the Board and the Federal Circuit recognized, the interest of an individual in using her name as a mark (not to mention an abbreviation of the name) must give way to a more compelling interest involved in avoiding a likelihood of confusion.

II. STATEMENT OF ISSUES

Whether there is likelihood of confusion between Mappin & Webb's MAPPIN & WEBB Marks and Applicant's M WEBB mark where:

(a) Applicant stipulated that Mappin & Webb has standing and priority;

(b) Some of Applicant's goods are identical to Mappin & Webb's goods (i.e., both parties' applications cover wallets and purses) and Applicant's other goods (i.e., handbags, tote bags, and women's apparel and accessories) are closely-related to Mappin & Webb's travelling bags, other leather goods, and jewelry;

(c) Like the MAPPIN & WEBB Marks, Applicant's M WEBB mark starts with the letter "M" and ends with "WEBB"; and given consumers' propensity to shorten trademarks (which has been repeatedly recognized by the Board), consumers will likely perceive M WEBB as an abbreviation of the MAPPIN & WEBB Marks; and

(d) Neither party's applications contain any restrictions as to the channels of trade and/or classes of purchasers.

III. PROCEDURAL HISTORY

On November 11, 2013, Mappin & Webb filed a notice of opposition against Applicant's application for the M WEBB mark (Application Serial No. 85460569). On November 25, 2013, Applicant filed its answer. Following the close of discovery, the parties agreed to proceed using ACR pursuant to the Stipulation for Accelerated Case Resolution (Dkt. # 16) ("ACR Stipulation"), which the Board approved on June 4, 2015 (Dkt. # 18). Under the ACR Stipulation, the parties' briefs and accompanying declarations with exhibits are deemed the final record on which the Board may render its decision.

In connection with the ACR proceeding, the parties also entered into a Stipulation of Facts for Accelerated Case Resolution (Dkt. # 17) ("Factual Stipulation"). In the Factual Stipulation, Applicant stipulated, among other things, that Mappin & Webb has standing to bring this opposition proceeding and has priority. (*Id*. at ¶¶ 1 and 4.)

IV. DESCRIPTION OF THE RECORD

Mappin & Webb offers the following Declarations in support of its Main ACR Brief:

1. Declaration of Elizabeth Galton, Creative Director of Aurum Group Limited (which owns Mappin & Webb), with Exhibits 1-32, discussing, among other things, the history, acclaimed heritage, and commercial success of the MAPPIN & WEBB brand; Mappin & Webb's plans for expansion into the United States; the MAPPIN & WEBB Marks; and Mappin & Webb's sales, advertising, and promotion of its products.

2. Declaration of Brian Duffy, Chief Executive Officer of Aurum, discussing, among other things, Mappin & Webb's plans for expansion into the United States.

3. Declaration of Morgan Smith, counsel for Mappin & Webb, with Exhibits 1-120 offering into evidence materials admissible under notice of reliance under TBMP § 704 and the ACR Stipulation.

Additionally, the file history of Applicant's M WEBB application is automatically of record. 37 CFR § 2.122 (b).

V. STATEMENT OF FACTS

A. Mappin & Webb, Its Prestigious Heritage, and Commercial Success Over the Years

Mappin & Webb's roots trace back to 1775, when the Mappin Brothers opened a silver workshop in Sheffield, England. A century and several generations later, the union of Jonathan Newton Mappin and George Webb brought about the MAPPIN & WEBB name and mark, which has continuously been used in the United Kingdom since 1860. (Decl. of Elizabeth Galton ¶ 6, June 25, 2015 ("Galton Decl.").) In the century and a half that followed, Mappin & Webb has served five British sovereigns over a continuous period since Her Majesty Queen Victoria granted Mappin & Webb a Royal Warrant as silversmiths in 1897. (*Id.* at ¶ 7, 8.)

Among its various accomplishments, Mappin & Webb also designed the *Ryder Cup* trophy (a prestigious biennial men's golf competition between teams from Europe and the United States), and has designed and produced the *Royal Ascot* trophies and cups (one of the world's most acclaimed race competitions attracting many of the world's finest racehorses, including from the U.S.) for the last 75 years. (*Id.* at ¶ 9.)

MAPPIN & WEBB-branded products have been spotted on prominent members of the British royal family, including Princess Diana and the Duchess of Cambridge (Kate Middleton), and on the Princess of Monaco Grace Kelly—who are well-known in the U.S. and throughout the world. (*Id.* at ¶ 10.)

Mappin & Webb has enjoyed tremendous commercial success over the years. In the last 4 years alone, global gross sales of Mappin & Webb's products totaled around

Redacted

(*Id.* at ¶ 12.)

B. Mappin & Webb's Historical, Current, and Planned Product Offerings

For well over a century, Mappin & Webb has offered a wide selection of jewelry, precious stones, watches, silverware, cutlery, glassware, barware, and other gift items. (*Id.* at ¶ 13.) Moreover, until around 1980, Mappin & Webb also offered a variety of leather goods, including handbags and purses, travelling bags, wallets, cigar cases, jewelry cases, spectacle cases, other small leather goods, etc.:

Redacted

(*Id.* at ¶ 14.)

Vintage MAPPIN & WEBB-branded handbags are available for purchase in the U.S. from third-party resellers, e.g., eBay, and are sought-after collectors' items. (*Id.* at ¶ 15.)

In recent years, Mappin & Webb has sought to expand its geographic scope (including into the United States) and to make its brand a more affordable and contemporary "lifestyle" brand. (*Id.* at ¶ 11.) As part of its efforts, Mappin & Webb has been working on revitalizing its leather goods collection under the MAPPIN & WEBB Marks, with a planned launch of small leather goods this year. (*Id.* at ¶ 16.) Mappin & Webb also plans to launch a collection of

handbags, luggage, travelling bags, leather watchwinders, watch rolls, cufflink boxes, jewelry boxes and rolls, and other leather goods:

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(*Id.* at ¶¶ 16-18.)

C. The MAPPIN & WEBB Marks

The MAPPIN & WEBB Marks have prominently and consistently appeared on products, at all of Mappin & Webb U.K. stores (discussed below), and on packaging (including bags and watch and jewelry boxes):

(*Id.* at ¶ 19.)

Further, for over a century, Mappin & Webb has also abbreviated the MAPPIN & WEBB Marks as "MW" and placed the "MW" monogram on some of its products, including leather goods:

(*Id.* at ¶ 21.)

Mappin & Webb has displayed an updated version of the "MW" abbreviation on all of its products since at least as early as 2012 **Redacted**

Redacted

(*Id.* at ¶ 23.)

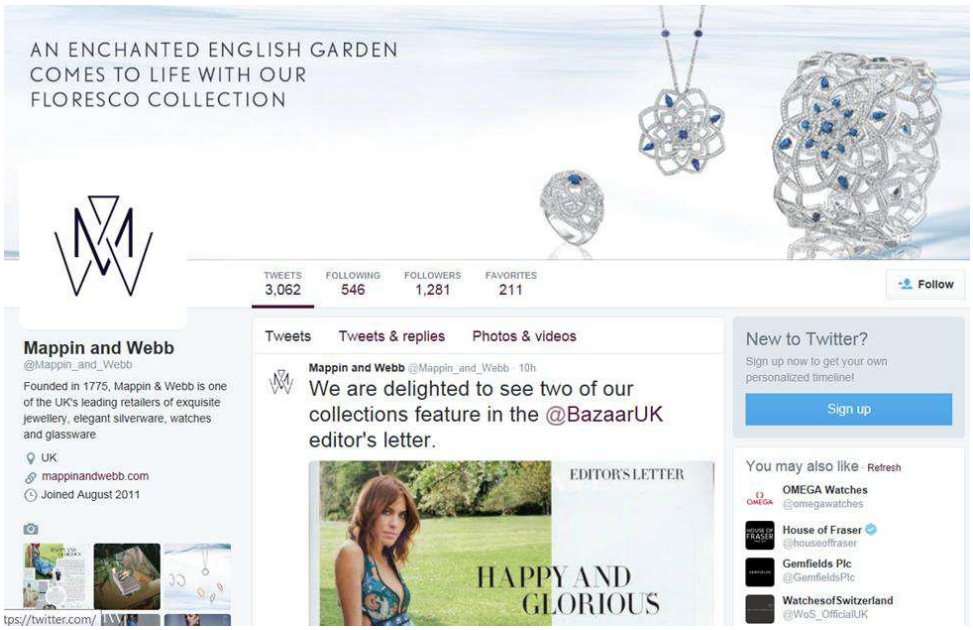
D. Mappin & Webb Has Extensively and Continuously Advertised and Promoted Its MAPPIN & WEBB Marks for Well Over a Century

For over a century, Mappin & Webb has extensively advertised and promoted its MAPPIN & WEBB Marks in the United Kingdom and other countries. Mappin & Webb promotes the MAPPIN & WEBB Marks on signage at all of its brick-and-mortar store locations; on its website, located at www.mappinandwebb.com; and on product packaging, including bags, wrapping, and watch and jewelry boxes. (*Id.* at ¶ 24.)

Regarding print publications, Mappin & Webb advertises the MAPPIN & WEBB Marks in prominent magazines in the United Kingdom, including *Vogue*, *Harper's Bazaar*, *Tatler*, and *Vanity Fair* (also circulated in the U.S.), in addition to national and regional newspapers in the United Kingdom. (*Id.* at ¶ 25.) Mappin & Webb has also been featured in unsolicited editorials in *Forbes* and various U.S. fashion/jewelry blogs, including *Jewelry News Network* and *What Kate Wore*. (*Id.*)

Moreover, Mappin & Webb extensively promotes the MAPPIN & WEBB Marks via social media, including Facebook (*see* https://www.facebook.com/mappinandwebb) and Twitter

(https://www.twitter.com/Mappin_and_Webb)—all accessible to consumers around the world, including in the U.S. In addition to the MAPPIN & WEBB Marks, these social media webpages prominently display the "MW" abbreviation logo:



(*Id.* at ¶ 26.)

Further, Mappin & Webb regularly hosts, sponsors, and participates in widely-publicized events, promoting its MAPPIN & WEBB Marks and products. In 2013-2014 alone, Mappin & Webb participated in a number of prominent promotional events that have attracted U.S. attendees, including the *Ryder Cup* prestigious golf tournament between the U.S. and European players and the world-famous *Royal Ascot* horse-racing event. (*Id.* at ¶ 27.) Mappin & Webb has also been promoted at other prominent events, including *Vogue's Fashion Night Out* in Manchester, the *Buckingham Palace Coronation Festival*, the *Annual Household Division Dinner*; and the *Royal Warrant Holders Annual Dinner*. (*Id.* at ¶ 28.)

E. Mappin & Webb's Stores, Including in Locations Frequented by Americans

For over a century, Mappin & Webb has had store locations throughout the United Kingdom, including (at various times) multiple stores in London and in the cities of Guilford,

Cambridge, Chester, Manchester, Glasgow, St. Andrews, Gleneagles, Bluewater/Kent, and Guernsey (a Channel Island and major tourist destination). (*Id.* at ¶ 30.) In London, Mappin & Webb has three store locations in high-traffic tourist (including U.S. tourist) areas: Regent Street, Bond Street, and Fenchurch Street. (*Id*. at ¶ 31.)

Moreover, for over twenty years, millions of Americans have been exposed to the MAPPIN & WEBB brand and stores at the Heathrow International Airport, one of the busiest airports in the world. Specifically, for over twenty years, Mappin & Webb has had stores at the Heathrow terminals that operate countless flights to the U.S. (*Id.* at ¶¶ 32-37.)[1]

[1] Specifically, from August 1991 until March 2010, Mappin & Webb had a store in Heathrow Terminal 3, which at the time operated mostly international flights, including many to the U.S. via such airlines as the American Airlines. (Galton Decl. ¶ 32.) From June 1998 until August 2008, Mappin & Webb operated a store in Heathrow Terminal 4. (*Id*. at ¶ 33.) From 2008 until June 19, 2015, Mappin & Webb has continuously operated a store location in Heathrow Terminal 5 (shown above), which operates numerous international flights into the U.S., including with such airlines as Delta Airlines, Virgin Atlantic, US Airways, United Airlines, and American Airlines. (*Id.* at ¶ 34.)

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Mappin & Webb's Heathrow stores have prominently displayed the MAPPIN & WEBB Marks on the products, store signage, point-of-sale materials, airport guides, and promotional/advertising materials, etc. (*Id.* at ¶ 35.)[2]

F. Mappin & Webb's Website and Purchase Inquiries from U.S. Consumers

U.S. consumers can view and browse Mappin & Webb's product selection on Mappin & Webb's website, www.mappinandwebb.com. Consumers can purchase products and have the products shipped to them directly from the www.mappinandwebb.com website, but it currently processes transactions only for consumers located outside the U.S. As part of its planned expansion, however,

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(*Id.* at ¶ 38.)

U.S. consumers can (and do) contact the Mappin & Webb showroom in the United Kingdom via email or through the Customer Service number posted on Mappin & Webb's website, where a representative will help a U.S. customer complete the purchase of an item seen on the Mappin & Webb website. (*Id.* at ¶ 39.)[3]

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[2] Countless U.S. travellers encounter Mappin & Webb stores and MAPPIN & WEBB Marks while travelling through Heathrow. For example, in 2007-2008, U.S. travellers ranked second (outnumbered by travellers from the United Kingdom only) on the list of "Top 7 Countries" by nationality travelling through Heathrow, including Terminals 3 and 4 (where Mappin & Webb stores were located at the time). (Galton Decl. ¶ 36.) Notably, New York JFK airport is ranked No. 1 on the list of most popular destinations for the Heathrow airport. And in 2014 alone, 73.4 million passengers travelled through the Heathrow airport, including 31.6 million passengers on 207,859 flights through Heathrow Terminal 5 (where the Mappin & Webb store was located until recently.) (*Id.* at ¶ 37.)

[3] Indeed, Mappin & Webb has shipped products under the MAPPIN & WEBB Marks to customers located in the U.S. following such customer inquiries. (*Id.* at ¶ 40.)

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(*Id.*)

G. Mappin & Webb's Planned Expansion into the U.S.

The U.S. is a market of primary importance for Mappin & Webb. Mappin & Webb seeks to establish MAPPIN & WEBB as a "lifestyle" brand for all types of consumers in the U.S. (*Id.* at ¶ 41.)

Consistent with this strategy, over the past several years, Mappin & Webb has been continuously and diligently working on the planned expansion into the U.S. market, including **Redacted**, filing trademark applications in the U.S., and **Redacted** (Declaration of Brian Duffy, ¶ 3, June 25, 2015 ("Duffy Decl."); Galton Decl. ¶¶ 42-48.)

Among its many products, Mappin & Webb plans to offer in the U.S. a variety of leather articles, including wallets, credit card holders and calling card holders, luggage tags, phone cases, iPad and other tablet cases, jewelry boxes, purses, handbags, trunks, travelling bags, watch winders, cufflink boxes, photograph frames, and jewelry rolls. (Galton Decl. ¶ 43.) Moreover, Mappin & Webb plans to sell in the U.S. a wide variety of jewelry products, precious stones, watches, cutlery, and giftware. (*Id*. at ¶ 44.)

Mappin & Webb currently does not have any brick-and-mortar stores in the U.S., **Redacted**

(Duffy Decl. ¶¶ 3, 8; Galton Decl. ¶¶ 47, 48, 51-53.)

Redacted

(Galton Decl. ¶ 49.)

H. Mappin & Webb's Applications for the MAPPIN & WEBB Marks

In furtherance of its plans to enter the U.S. market, on June 20, 2011, Mappin & Webb filed two intent-to-use applications: Serial No. 85350960 for the mark MAPPIN & WEBB and Serial No. 85350965 for the mark MAPPIN & WEBB LONDON. The applications cover various leather articles, including wallets, credit card holders and calling card holders, luggage tags, purses, trunks and travelling bags in Class 18; jewelry, watches, giftware, and related items in Class 14; and a variety of other products and retail services in Classes 8, 9, 16, 20-21, and 35. As detailed above, Mappin & Webb has a bona fide intent to use the MAPPIN & WEBB Marks in the U.S. on the goods and services covered by the applications **Redacted**

(*Id.* at ¶ 54.)

I. Applicant's Intent-to-Use Application for the M WEBB Mark for Purses, Wallets, Handbags, Tote Bags, and Women's Apparel and Accessories

On October 31, 2011 (over four months after Mappin & Webb's filing date), Applicant filed an intent-to-use Application Serial No. 85460569 for the M WEBB mark for "handbags, purses, wallets, tote bags" in Class 18 and "women's apparel and accessories, namely, shirts,

t-shirts, pants, dresses, skirts, shorts, jackets, coats, sweaters, lingerie, pajamas, robes, socks, hosiery, scarves, gloves, hats, belts and footwear" in Class 25.

Applicant does not and has never used the mark M WEBB on any goods. (Factual Stipulation ¶ 8.) Moreover, Applicant has never advertised under the M WEBB mark. (Exs. 3-4 to Smith Decl., Applicant's Resp. to Interrog. 12, Resp. to Request Nos. 9, 13, 22, and 23.)

VI. ARGUMENT

A. Mappin & Webb Has Standing

Under Section 13(a) of the Lanham Act, "any person who believes that he would be damaged by the registration of a mark upon the principal register . . . may, upon payment of the prescribed fee, file an opposition in the Patent and Trademark Office, stating the grounds therefor." 15 U.S.C. § 1063(a). An opposer may establish standing to bring an opposition on likelihood-of-confusion grounds by showing that it has a real commercial interest in its own mark and a reasonable basis for its belief that it would be damaged by the registration of the applicant's mark. *Ritchie v. Simpson*, 50 USPQ2d 1023, 1025-26 (Fed. Cir. 1999). Here, Applicant stipulated that Mappin & Webb has standing to bring this opposition proceeding. (Factual Stipulation ¶ 1.) Moreover, Applicant seeks to register the mark M WEBB for handbags, purses, wallets, tote bags, and women's apparel and accessories. Mappin & Webb's ownership of the prior-filed applications for the MAPPIN & WEBB Marks for identical, closely-related, and/or complementary goods and services establishes the required commercial interest. As shown below, Mappin & Webb has presented evidence sufficient to prevail on its likelihood-of-confusion claim. Mappin & Webb has thus proven a real commercial interest in the outcome of this proceeding and a reasonable basis for its belief that it will be damaged by the registration of Applicant's M WEBB mark.

B. Mappin & Webb Has Priority

Applicant stipulated that Mappin & Webb has priority. (Factual Stipulation ¶ 4) ("Opposer has priority because Opposer's Filing Date precedes Applicant's Filing Date.") Indeed, Mappin & Webb's pleaded intent-to-use applications for the MAPPIN & WEBB Marks have priority because their June 20, 2011 filing date predates the October 31, 2011 filing date of Applicant's intent-to-use application for the M WEBB mark. (*See* Smith Decl. Exs. 1-2 for Mappin & Webb's pleaded applications.) *See Zirco Corp. v. Am. Tel. & Tel. Co.*, 21 USPQ2d 1542, 1554 (TTAB 1991) ("an intent-to-use applicant [has] a superior right over anyone adopting a mark after applicant's filing date"); *Kraft Group LLC v. Harpole*, 90 USPQ2d 1837, 1841 (TTAB 2009) (a party, the filing date of whose intent-to-use application predates the filing date of opponent's intent-to-use application, "clearly has priority").

C. MAPPIN & WEBB Marks Are Inherently Distinctive and Thus Strong

The MAPPIN & WEBB Marks are arbitrary as applied to Mappin & Webb's goods (including wallets, purses, other leather goods, jewelry, and giftware). TMEP § 1209.01(a) ("Arbitrary marks comprise words that are in common linguistic use but, when used to identify particular goods or services, do not suggest or describe a significant ingredient, quality, or characteristic of the goods or services.").[4] Because the MAPPIN & WEBB Marks are arbitrary, they are inherently distinctive and strong. *Palm Bay Imports Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 73 USPQ2d 1689, 1692 (Fed. Cir. 2005) ("VEUVE is an arbitrary term as applied to champagne and sparkling wine, and thus conceptually strong as a trademark").

[4] Although derived from the last names of the brand's founders, when considered in their entirety, the MAPPIN & WEBB Marks are not primarily merely a surname. *In re Standard Elektrik Lorenz A.G.*, 371 F.2d 870, 873, 152 USPQ 563, 566 (CCPA 1967) (holding that a "mark must be considered in its entirety" and that SCHAUB-LORENZ, a combination of two surnames, is not primarily merely a surname); TMEP § 1211.01(b)(i).

D. Confusion Is Likely Between the MAPPIN & WEBB and the M WEBB Marks

To determine likelihood of confusion, the Board should consider evidence relating to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 177 USPQ 563, 567 (CCPA 1973). The Board is required to consider only those factors that are most relevant to this case. *Han Beauty, Inc. v. Alberto-Culver Co.*, 57 USPQ2d 1557, 1559 (Fed. Cir. 2001). "In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services." *In re Risemart, Inc.*, 104 USPQ2d 1931, 1934 (TTAB 2012) (citing *Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 USPQ 24, 28-29 (CCPA 1976)). Here, Applicant's M WEBB and MAPPIN & WEBB marks are similar, and Applicant intends to use its mark on goods, some of which are identical to and others are closely-related and/or complementary to Mappin & Webb's goods and services. Moreover, the parties' applications contain no restrictions as to the channels of trade and/or classes of purchasers and thus are identical.

1. The MAPPIN & WEBB and M WEBB Marks Are Similar

When considering similarity of the marks, side-by-side comparison is improper; instead the "focus is on the recollection of the average consumer, who retains a general rather than specific impression of the marks." *In re SL & E Trading Stable Inc.*, 88 USPQ2d 1216, 1219 (TTAB 2008) (citing *Winnebago Indus., Inc. v. Oliver & Winston, Inc.*, 207 USPQ 335, 344 (TTAB 1980)). Similarity in overall commercial impression is alone sufficient to support a finding of likelihood of confusion between marks, even if the marks exhibit aural or visual dissimilarity but convey the same general idea or stimulate the same metal reaction. *See United Rum Merchs. Ltd. v. Fregal, Inc.*, 216 USPQ 217, 219 (TTAB 1982). Moreover, where, as here, "marks appear on or in connection with virtually identical or closely related goods, the degree of

similarity of the marks necessary to support a conclusion of likely confusion is not as great as when the goods are different." *In re Microsoft Corp.*, 68 USPQ2d 1195, 1198 (TTAB 2003). *See also*, *Century 21 Real Estate Corp. v. Century Life of Am.*, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Here, the MAPPIN & WEBB and M WEBB marks both begin with the letter "M," followed by the identical element "WEBB." They are thus similar in sight, sound, meaning, and overall commercial impression. Moreover, given the propensity of consumers to shorten and/or abbreviate trademarks (which, as detailed below, the Board has repeatedly recognized), the first letter "M" in Applicant's M WEBB mark will likely be perceived by consumers as an abbreviation of "MAPPIN" in the MAPPIN & WEBB Marks.

The *SL & E Trading* decision is instructive. There, the Board found that the applicant's SAM EDELMAN mark for luggage, handbags, purses, wallets, tote bags, and backpacks was confusingly similar to the mark EDELMAN for various leather goods. 88 USPQ2d 1216. The Board found that there were "strong similarities between the marks in terms of appearance, sound, meaning and commercial impression" because "the marks share[d] the surname 'EDELMAN.'" *Id*. at 1219. "Moreover, consumers or members of the trade viewing the registrant's mark EDELMAN may see it as an abbreviation form of applicant's mark SAM EDELMAN.'" *Id*. The Board recognized the propensity of fashion brands/designers to being "referred to by their surnames alone" and to using shortened/abbreviated company names. *Id*.

Similarly, in *Fiserv, Inc. v. Elec. Transaction Syst. Corp.*, 113 USPQ2d 1913, 1913-14, the Board found likelihood of confusion between the marks POPMONEY and PMONEY. The Board held that, "with overlapping services, consumers will perceive PMONEY as an abbreviation of POPMONEY." *Id*. at 1919. The Board explained that as "our case law further

indicates, [c]ompanies are frequently called by shortened names, such as Penney's for J.C. Penney's, Sears for Sears and Roebuck (even before it officially changed its name to Sears alone), Ward's for Montgomery Ward's, and Bloomies for Bloomingdales." *Id*. (citing *Marshall Field & Co. v. Mrs. Fields Cookies*, 25 USPQ2d 1321, 1333 (TTAB 1992)).

In *Big M. Inc. v. U.S. Shoe Corp.*, 228 USPQ 614, 616 (TTAB 1985), the Board found that the marks T.H. MANDY (for retail store services featuring women's sportswear) and MANDEE (for women's apparel, handbags, tote bags, and wallets) "were strikingly similar." The Board concluded that "the inclusion of the initials 'T.H.'" was insufficient to avoid confusion. *Id*. The Board held that it "cannot ignore the propensity of consumers to often shorten trademarks and, in the present case, this would be accomplished by dropping 'T.H.' in referring to registrant's stores." *Id*. *See also In re Restoration Hardware, Inc.*, Serial No. 85885460, 2015 WL 1227732, at *5 (TTAB Feb. 23, 2015) (non-precedential) (finding RH and R.H. VINTAGE marks confusingly similar and recognizing that "[c]ompanies are frequently called by shortened names"; "[C]onsumers may shorten R.H. VINTAGE to RH. In the alternative, consumers may mistakenly believe that R.H. VINTAGE products are the vintage line of RH products because of the similarity of the marks and the identity of the products on which the marks are used.").

Like in *SL & E Trading*, *Big M*, and *Restoration Hardware*, given the propensity of consumers to shorten trademarks, consumers will likely perceive M WEBB as an abbreviation of MAPPIN & WEBB. This is especially so because, as explained *SL & E Trading*, fashion companies/designers are often called by shortened names. 88 USPQ2d at 1219. Further, a finding of similarity between the marks is even more warranted here than in *SL & E Trading*, *Big M*, and *Fiserv*. First, in *SL & E Trading*, applicant's mark incorporated only the "EDELMAN"

element from the registrant's mark. Applicant's M WEBB mark does more; in addition to incorporating the entirety of the "WEBB" element in the MAPPIN & WEBB Marks, it also begins with the letter "M" (which will likely be perceived by consumers as an abbreviation of "MAPPIN," consistent with the way Mappin & Webb sometimes abbreviates its marks). Second, in *Big M*, the shared elements "MANDEE" and "MANDY" differed in spelling. Here, the "WEBB" elements in the parties' marks are identical. Third, in *Fiserv*, the Board found that POPMONEY and PMONEY were confusingly similar even though the opposer's POPMONEY mark was "conceptually weak on the distinctiveness spectrum" for money transfers (it was comprised of the term "money" and "POP," which, as evidence suggested, meant "point-of-purchase"). 113 USPQ2d at 1919. Here the MAPPIN & WEBB Marks are arbitrary and thus conceptually strong.

The Board's acknowledgement of consumers' propensity to shorten/abbreviate trademarks reflects marketplace realities. Among many examples are: A&Fitch (Abercrombie & Fitch), AmEx (American Express), KFC (Kentucky Fried Chicken), FedEx (Federal Express), BofA (Bank of America), Dolce & Gabanna (D&G), LV (Louis Vuitton), Bud (Budweiser), Chevy (Chevrolet), Hewlett-Packard (HP), Mac (MacIntosh), etc. (Smith Decl. ¶ 9, listing these and other examples.) Further, consumers often shorten the first word in a two-word mark to just the first letter, e.g., Starbucks is often referred to as "Sbucks" (or "Sbux"), Facebook as "fbook," and Abercrombie & Fitch as "A&Fitch." (Smith Decl. Exs. 69-71.) Here too, consumers will likely perceive the M WEBB mark as an abbreviation/shortened version of the MAPPIN & WEBB Marks.

2. The Parties Goods Are Identical, Closely-Related, and/or Complementary

a. The Legal Standard for the Relatedness of Goods

"[I]t is not necessary that the goods . . . overlap to be found to be related in such a way that confusion is likely." *Research in Motion Ltd. v. Defining Presence Mktg. Group*, 102 USPQ2d 1187, 1194 (TTAB 2012). It is sufficient only that the goods be related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they could be encountered by the same persons under circumstances that could give rise to the mistaken belief that they originated from the same source. *In re Melville Corp.*, 18 USPQ2d 1386, 1388 (TTAB 1991). *See also Recot, Inc. v. M.C. Becton*, 54 USPQ2d 1894, 1898 (Fed. Cir. 2000) ("Even if the goods in question are different from, and thus not related to, one another in kind, the same goods can be related in the mind of the consuming public as to the origin of the goods. It is this sense of relatedness that matters in the likelihood of confusion analysis.").

Moreover, "[i]t is well settled that the issue of likelihood of confusion . . . must be determined on the basis of the goods as they are identified in the involved application and/[or] registration." *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981). "[W]here the goods in a [] registration are broadly described and there are no limitations in the identification of goods as to their nature, type, channels of trade or classes of purchasers, it is presumed that the scope of the registration encompasses *all goods of the nature and type described*." *Id*. (emphasis added).

b. The Parties' Goods Are Identical, Closely-Related and/or Complementary

Applicant's goods are identical in part to Mappin & Webb's goods, i.e., both parties intend to offer purses and wallets. This alone is sufficient for a finding that the parties' goods are related. *Tuxedo Monopoly, Inc. v. General Mills Fun Group, Inc.*, 648 F.2d 1335, 1336 (CCPA 1981) (it is sufficient that confusion be found as to "any item that comes within the

description of goods set forth by [applicant] in its application"); *Apple Computer v. TVnet.net, Inc.*, 90 USPQ2d 1393, 1397 (TTAB 2007) ("in the context of likelihood of confusion, it is sufficient if likelihood of confusion is found with respect to use of the mark on any item that comes within the description of goods in the application"); *In re Da Vinci, S.A.*, Serial No. 77651154, 2012 WL 1881483, at *2 (TTAB Apr. 30, 2012) (non-precedential) ("Applicant's shorts, shirts, hats, coats, caps, socks, pants, are identical to the shirts, pants, shorts, hats and socks, in Reg. No. 3660937 and the shirts, pants, shorts, caps and coats in Reg. No. 3551284. It is sufficient for a finding of likelihood of confusion if the relatedness is established for any item encompassed by the identification of goods within a particular class in the application."); *In re New York Football Giants, Inc.*, Serial No. 85599795, 2014 WL 3427342, at *4 (TTAB July 3, 2014) (non-precedential) ("Because both the application and the cited registration include T-shirts and applicant's tops may encompass tank tops, the goods are in part identical. Under this *du Pont* factor, the Trademark Examining Attorney need not prove, and we need not find, similarity as to each and every product listed in the Class 25 description of goods. It is sufficient for a refusal based on likelihood of confusion that relatedness is established for any item encompassed by the identification of goods in the application.").

Further, Applicant's women's apparel and accessories (shirts, t-shirts, pants, dresses, skirts, shorts, jackets, coats, sweaters, lingerie, pajamas, robes, socks, hosiery, scarves, gloves, hats, belts and footwear) and Mappin & Webb's jewelry, purses, small leather goods, and travelling bags are closely related and/or complementary. These fashion products are often purchased together and worn in combination. For example, handbags (and similar leather goods) and jewelry are often chosen to complement clothing or complete a desired "look." (Galton Decl. ¶ 59; Smith Decl. Exs. 10, 19, 111-120.)

Notably, Applicant's own application for the M WEBB mark covers both handbags, wallets, purses, and tote bags, on the one hand, and women's apparel, on the other hand, showing that these products are related and often emanate from the same source. Indeed, numerous Board decision have found handbags, purses, and other leather goods, on the one hand, and women's apparel, on the other hand, complementary and thus related for purposes of likelihood of confusion. *See, e.g., Justin Indus., Inc. v. D.B. Rosenblatt, Inc.*, 213 USPQ 968, 976 (TTAB 1981) (the Board held that handbags, boots, and belts were closely related and complementary to apparel items such as blazers and suits because "they are sold through the same types of retail outlets . . . they comprise items of wearing apparel that have been and would be advertised and promoted in the same consumer and trade journals; and they might be bought on the same shopping trip to fashion a complete ensemble"); *Nike Inc. v. WNBA Enters., LLC*, 85 USPQ2d 1187, 1195 (TTAB 2007) ("[w]earing apparel is complementary in nature to accessories for clothing such as purses and tote bags, and items which are used to transport clothing or carry personal articles, such as backpacks, duffel bags, and garment bags"); and *In re MTTM Worldwide, LLC*, Serial No. 77603454, 2010 WL 1920474, at *3 (TTAB Apr. 26, 2010) (non-precedential) (refusing registration because "[w]omen's handbags and purses may be chosen to complement clothing; such items may be bought during the same shopping trip to 'fashion a complete ensemble'") (citing *Justin Indus., Inc.* 213 USPQ at 976).

The Board has similarly held that jewelry and apparel are closely related and/or complementary and thus similar for likelihood-of-confusion purposes. In *David Crystal, Inc. v. Dawson*, the Board affirmed a refusal to register CRYSTYLE for jewelry based on a likelihood of confusion with DAVID CRYSTAL and CRYSTAL for women's wearing apparel, noting that "jewelry and women's wearing apparel are sold and promoted through the same channels of

trade to the same classes of purchasers, they are displayed and worn together, [and] they may be purchased at the same time for coordinated wardrobes." 156 USPQ 573, 574 (TTAB 1967). *See also In re Disney Enters.*, Serial No. 77235868, 2009 WL 4085598, at *3 (TTAB Aug. 12, 2009) (non-precedential) (refusing registration because women's shirts, dresses, shirts, skirts, and sweaters are related to jewelry and "jewelry such as necklaces and earrings are complementary to, and would be purchased and worn together with, women's dresses and sweaters"); *In Re Aktieselskabet Af 21.november 2001*, Serial No. 76556260, 2008 WL 1741882, at *5 (TTAB Mar. 31, 2008) (non-precedential) (refusing registration because of the "significant relationship" between shirts, dresses, trousers, t-shirts, blouses, tops, pants, shorts, skirts, warm-up suits, and jackets, on the one hand, and jewelry items, bags, and luggage, on the other hand).

Numerous prominent third-party fashion brands, including KATE SPADE, J. CREW, RALPH LAUREN, TORY BURCH, LILLY PULITZER, BANANA REPUBLIC, CALVIN KLEIN, and others offer women's apparel, purse/handbags, and jewelry. (Galton Decl. ¶ 60; Smith Decl. Exs. 6-19 (attaching printouts from 14 websites of third-party fashion brands)). Often, fashion brands and fashion publications feature jewelry and handbags/purses alongside clothing to advertise complete "looks" or fashion ensembles. (Smith Decl. Exs. 10, 19, 111-120.) The relatedness of the parties' products here is further supported by around 45 representative examples of third-party *use-based* registrations covering jewelry, small leather goods, purses, handbags, and apparel items. *In re Kysela Pere et Fils, Ltd.*, 98 USPQ2d 1261, 1264, 1266 (TTAB 2011) ("third-party registrations … which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source," about twenty third-party registrations covering both wine and beer "demonstrate the relatedness of 'wine' and 'beer'"; moreover, "website evidence lends further support to [the

Board's] conclusion that the goods are related because the websites show that consumers have been exposed to the concept that wineries also make and sell beer.").

Similarly, Mappin & Webb's applied-for retail store services in the field of jewelry, bags, and other leather goods are related to Applicant's handbags, purses, wallets, tote bags, and women's apparel and accessories. *In re Peebles, Inc.*, 23 USPQ2d 1795, 1796 (TTAB 1992) ("As we have said before there is no question that store services and the goods which may be sold in that store are related goods and services"); 4 J. THOMAS MCCARTHY, MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 24:25 (4th ed. 2014) ("Where the services consist of retail sales services, likelihood of confusion is found when another mark is used on goods which are commonly sold through such a retail outlet.").

3. The Parties' Channels of Trade and Purchasers Are Identical

Neither Mappin & Webb's nor Applicant's applications contain any restrictions as to classes of purchasers and/or channels of trade. As such, the Board presumes that the identifications encompass all goods of the type described, that they move in all channels of trade normal for these goods, and that they are available to all classes of purchasers of the identified goods. *See Octocom Sys., Inc. v. Houston Computer Servs., Inc.*, 918 F.2d 937, 942-43 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed."; "[A]n application with an identification of goods having no restriction on trade channels obviously is not narrowed by testimony that the applicant's use is, in fact, restricted to a particular class of purchasers."); *Hewlett-Packard Co. v. Packard Press Inc.*, 281 F.3d 1261, 1268 (Fed. Cir. 2002)

("[A]bsent restrictions in the application and registration, goods and services are presumed to travel in the same channels of trade to the same class of purchasers.")

Moreover, the evidence shows that Applicant's apparel products (currently marketed under the mark MARISSA WEBB) have been featured in the same fashion and lifestyle magazines as Mappin & Webb's products, including *Marie Claire* and *Harper's Bazaar*. (Galton Decl. ¶ 58.) And MAPPIN & WEBB-branded jewelry products are often featured alongside clothing, purses, and accessories in these fashion magazines to advertise a complete "look" or fashion ensemble. (Galton Decl. ¶ 59.)

4. That Applicant's Designer Is Named "Marissa Webb" Does Not Change the Conclusion That Confusion Is Likely

To the extent Applicant argues that it should be allowed to register the M WEBB mark because the name of its designer is "Marissa Webb," the Board rejected this argument in *SL & E Trading* and held that "the fact that [the applied-for] mark is an individual's name does not give applicant an unfettered right to use the name if it conflicts with" a senior trademark. 88 USPQ2d at 1217. Relying on established Federal Circuit precedent, the Board explained that "the interest in allowing an entrepreneur to use his own surname as a trademark on his goods must give way to the more compelling public and private interests involved in avoiding a likelihood of confusion or mistake as to source where use of the surname leads to such confusion or mistake":

> Applicant argues that there is no likelihood of confusion because there is a "strong public policy to allow individuals to use their names." Moreover, applicant asserts that this public policy is especially applicable in this case where applicant has built a reputation in the relevant industry. Contrary to applicant's argument, however, neither our reviewing court, the Court of Appeals for the Federal Circuit, nor its predecessor, the Court of Customs and Patent Appeals, have adopted such a "strong public policy." *See Nina Ricci S.A.R.L. V.E.T.F. Enterprises Inc.*, 889 F.2d 1070, 12 USPQ2d 1901 (Fed. Cir. 1989) (VITTORIO RICCI for handbags, clothing and retail store services in the field of clothing is likely to cause confusion with NINA RICCI for clothing and accessories even though Vittorio Ricci was the name of defendant's principal); *Ford Motor Co. v. Ford*, 462 F.2d 1405, 174 USPQ 456, 458

> (CCPA 1972) ("the interest in allowing an entrepreneur to use his own surname as a trademark on his goods must give way to the more compelling public and private interests involved in avoiding a likelihood of confusion or mistake as to source where use of the surname leads to such confusion or mistake"). *See also Justin Industries, Inc. v. D.B. Rosenblatt, Inc.*, 213 USPQ 968, 976 (TTAB 1981) ("the right to use one's name in his business may be circumscribed if it conflicts with a mark previously used by another and is likely to cause confusion as to the origin of the business or of the goods sold thereunder"); *Jack Winter Inc. v. Lancer of California, Inc.*, 183 USPQ 445, 446 (TTAB 1974) (DAVID WINTER for clothing is likely to cause confusion with JACK WINTER for clothing); *Girard-Perregaux & Cie, S.A. v. Perregaux*, 122 USPQ 95, 96 (Comm'r. Pats. 1959) ("Paul Perregaux" is likely to be confused with "Girard Perregaux" and "Perregaux"). Thus, the fact that SAM EDELMAN is an individual's name does not give applicant an unfettered right to use that name if it conflicts with a previously registered mark.

Id. at 1217.

Here too, that Applicant's designer may be named "Marissa Webb" and purportedly "built a reputation in the relevant industry" neither excuses nor diminishes the likely confusion between the MAPPIN & WEBB and M WEBB marks for the parties' in-part identical, closely-related, and/or complementary goods/services.

VII. CONCLUSION

For the above reasons and authorities, Mappin & Webb respectfully requests that the Board sustain its opposition and refuse registration of Applicant's M WEBB mark on the ground of likelihood of confusion.

Dated: June 26, 2015

By: /Douglas A. Rettew/

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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing OPPOSER'S MAIN ACR BRIEF was served by first class mail, postage prepaid, on this 26th day of June 2015, upon counsel for Applicant at the following address of record:

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