

ESTTA Tracking number: **ESTTA340097**

Filing date: **03/31/2010**

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

Proceeding	92046820
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Date	03/31/2010
Attachments	SWAT Motion for Summary Judgment Declaration.pdf (30 pages)(1079913 bytes)

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

SWATCH AG, (SWATCH S.A.),
(SWATCH LTD.),

Petitioner,

v.

MOTTI M. SLODOWITZ,

Respondent.

Mark: S.W.A.T.

Cancellation No.: 92046820

Registration No.: 3,172,010

**PETITIONER'S MOTION AND INCORPORATED MEMORANDUM OF LAW
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

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**PETITIONER'S MOTION AND INCORPORATED MEMORANDUM OF LAW IN
SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Petitioner, Swatch AG (Swatch S.A.) (Swatch Ltd.) ("Petitioner" or "Swatch"), by and through its attorneys, hereby moves for summary judgment pursuant to TBMP § 528 and Fed. R. Civ. P. 56 on the grounds that Respondent's mark is confusingly similar to Swatch's SWATCH mark. Incorporated herein by reference is the declaration of Jenny T. Slocum, and all accompanying exhibits.

I. INTRODUCTION

The circumstances and issues presented by this Cancellation are ideal for resolution by summary judgment. There are only a few material facts which require consideration by the Trademark Trial and Appeal Board. These facts, which are not in dispute, provide the basis for judgment as a matter of law. Accordingly, the Board should consider these undisputed facts, and find that summary judgment is appropriate.

II. BACKGROUND

Swatch owns numerous U.S. Trademark Registrations for the mark SWATCH in International Class 14, for watches, watch parts and a variety of other goods. See Ex. 4, Ex. 5, Ex. 8 and Ex. 49. The SWATCH mark has been in continuous use in U.S. commerce since at least 1981. See Ex. 4, Ex. 5, Ex. 8 and Ex. 49.

On November 14, 2006, Respondent obtained U.S. Trademark Registration No. 3,172,010 for the mark S.W.A.T. for “watches, wrist and clip style” in International Class 14. See Ex. 3. Swatch promptly filed a Petition to Cancel Respondent’s U.S. Trademark Registration No. 3,172,010. See Ex. 1. Swatch seeks cancellation on the basis of a likelihood of confusion between the SWATCH and S.W.A.T. marks, for identical goods and dilution of the SWATCH mark. See Ex. 1.

III. STATEMENT OF UNDISPUTED FACTS

Among other things, Swatch served a First Set of Requests for Admissions (hereinafter, the “discovery requests”). Ex. 10-13. Respondent failed to respond to the First Set of Requests for Admissions. Pursuant to Fed. R. Civ. P. 36(a) and TBMP § 407.03(a), the unanswered Requests for Admissions are deemed admitted and conclusively established. *Jet Enters. Pvt Ltd. v. Jet Airways, Inc.*, 2008 TTAB LEXIS 677, at *4 (TTAB 2008). In consideration of the foregoing and other evidence on the record, the following facts are undisputed:

1. Petitioner owns the SWATCH trademark, and U.S. Registration Nos. 1,356,512; 1,671,076; 2,050,210; 2,752,980, among others. See Ex. 4, Ex. 6, Ex. 8 and Ex. 49.
2. Respondent’s Trademark Registration No. 3,172,010 is for the mark S.W.A.T. See Ex. 3.

3. Both parties' trademark registrations recite identical time-keeping goods such as watches. See Ex. 3 - 5, and Ex. 8.

4. Petitioner's first use of the SWATCH mark is November 12, 1981. See Ex. 4.

5. Respondent's first use of its mark is February 2004. See Ex. 3.

6. Petitioner uses the SWATCH mark on watches. See Ex. 4, 5 and 8; Ex. 43 and 44; Ex. 13, No. 15.

7. Respondent admits that it uses its mark on identical goods, namely, watches. See Ex. 13, No. 14; Respondent's Answer to Petition to Cancel, ¶ 5, D.E. #4.

8. Respondent was aware of Petitioner's SWATCH family of marks prior to adoption and use of the S.W.A.T. trademark. See Ex. 13, No. 8.

9. Respondent was aware of Petitioner's SWATCH marks prior to seeking registration of the S.W.A.T. mark. See Ex. 13, No. 11 and No. 16.

10. Respondent admits that he was aware of one or more of Petitioner's SWATCH marks prior to selecting his mark. See Ex. 13, No. 12.

11. Respondent's goods listed in Trademark Registration No. 3,172,010 are in the same International Class as goods listed in Petitioner's trademark registrations for the SWATCH mark. See Ex. 13, No. 13.

12. Applicant has not limited its Registration to specific trade channels. See Ex. 3.

13. Both Petitioner and Respondent sell watches. See Ex. 13, No. 22.

14. Respondent admits that Petitioner's SWATCH marks are well-known in the United States. See Ex. 13, No. 6.

15. Respondent admits that Petitioner's SWATCH marks are famous marks. See Ex. 13, No. 7.

16. Respondent admits that Petitioner's SWATCH marks have acquired distinctiveness. See Ex. 13, No. 18.

17. Respondent admits that his mark only differs from the SWATCH mark by two letters. See Ex. 13, No. 20.

18. Respondent admits that his mark is confusingly similar to Petitioner's SWATCH mark. See Ex. 13, No. 21.

IV. DISCUSSION

A. STANDARD OF REVIEW FOR RULE 56(C) MOTION FOR SUMMARY JUDGMENT

Summary judgment, pursuant to Federal Rule of Civil Procedure 56(c), is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Pure Imagination, Inc. v. Pure Imagination Studios, Inc.*, 2004 WL 2222269, at *2 (N.D.Ill. 2004)(citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). The party moving for summary judgment bears the burden of proving that there are no genuine issues of material fact. *Old Grantian Co. v. William Grant & Sons Ltd.*, 53 C.C.P.A. 1257, 1260, 361 F.2d 1018, 1021 (1966).

B. OPPOSER HAS ESTABLISHED PRIOR USE OF THE SWATCH MARK

In order to succeed in this cancellation proceeding, Petitioner must establish priority rights in its trademark. See, *Herbko Intern., Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 1162 (Fed. Cir. 2002). These rights may arise from a prior registration, prior trademark or service mark use, prior use as a trade name, prior use analogous to trademark or service mark use, or any other use sufficient to establish proprietary rights. *Id.*

It is undisputed that Petitioner has prior rights. Petitioner owns several trademark registrations for SWATCH that predate Respondent's Registration No. 3,172,010. Petitioner duly disclosed its date of first use in its U.S. Trademark Registration Nos. 1,356,512; 1,671,076; 2,050,210; 2,752,980. See Ex. 4, Ex. 6, Ex. 8 and Ex. 49. Additionally, Respondent's first use in commerce of the S.W.A.T. mark comes over 22 years after the first use of the SWATCH mark. See Ex. 4, Ex. 5, and Ex. 8.

Respondent has not contested this date of first use. Petitioner has therefore established that its rights in the SWATCH trademark precede Respondent's use of the S.W.A.T. mark. Having established prior rights, all doubt must be resolved against the second comer, as "[o]ne who adopts a mark similar to another already established in the marketplace does so at his peril." *Sally Beauty Co. v. Beautyco., Inc.*, 304 F.3d 964, 973 (10th Cir. 2002) (quoting *Beer Nuts, Inc. v. Clover Club Foods, Co.*, 711 F.2d 934, 941 (10th Cir. 1983)(citations and quotation omitted). Based on the analysis below, Respondent's adoption of the S.W.A.T. mark creates a likelihood of confusion with Petitioner's SWATCH marks.

C. LIKELIHOOD OF CONFUSION

Having established prior rights, the inquiry turns towards a likelihood of confusion analysis. In determining likelihood of confusion, the Trademark Trial and Appeal Board focuses on whether consumers would mistakenly assume that the Respondent's goods emanate from the same source as, or are associated with Petitioner's goods. This determination is made on a case-specific basis, by analyzing all of the probative facts in evidence that are relevant to the factors set forth in *In re E.I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See *In re Miriam Jacob and Norma Sawdy*, 2004 WL 3060185, at *3 (TTAB Dec. 17, 2004). These factors include: (1) the similarity or dissimilarity of the marks in their entireties as to

appearance, sound, connotation, and commercial impression; (2) the similarity or dissimilarity and nature of the goods; (3) the similarity or dissimilarity of established, likely-to-continue trade channels; (4) the conditions under which and buyers to whom sales are made, i.e. “impulse” v. careful, sophisticated purchasing; (5) the fame of the prior mark; (6) the number and nature of similar marks in use on similar goods; (7) The nature and extent of any actual confusion; (8) the length of time during and the conditions under which there has been concurrent use without evidence of actual confusion; (9) the variety of goods on which a mark is or is not used; (10) the market interface between the applicant and the owner of a prior mark; (11) the extent to which applicant has a right to exclude others from use of its mark on its goods; (12) the extent of potential confusion; and (13) any other established fact probative of the effect of use. See *In re E. I. DuPont de Nemours & Co.*, 476 F.2d at 1361.

No single factor of a likelihood of confusion test is dispositive and a varying range of significance may be attributed to each of the factors depending on the facts presented. See *CAE, Inc. v. Clean Air Eng'g, Inc.*, 267 F.3d 660, 678 (7th Cir. 2001). Furthermore, the TTAB is not required to analyze each of the thirteen *DuPont* factors in every case. *In re Dixie Restaurants*, 105 F.3d 1405, 1406-1407 (Fed. Cir. 1997). Rather, it need only consider a factor when there is evidence of record on the issue and any one factor may control a particular case. *Id.* at 1406, 1407.

1. The Most Important DuPont Factors: Similarity of the Marks and Similarity of the Goods Favor Opposer

In the context of the likelihood of confusion analysis, the two central considerations are the similarities between the marks and the similarities between the goods. *In Re Miriam Jacob and Norma Sawdy*, 2004 WL 3060185, at *3.

A. The S.W.A.T. Mark is Substantially Similar to the SWATCH marks.

Respondent's S.W.A.T. mark is substantially similar in appearance and sound to Swatch's SWATCH mark as the marks have the same prominent beginnings term ("SWAT") and are often followed by the term "watches," such as S.W.A.T. watch or SWATCH watch. See Ex. 41 and 44.

In determining similarity of marks, for the purpose of an infringement analysis, three axioms apply: "(1) marks should be considered in their entirety and as they appear in marketplace; (2) similarity is best adjudged by appearance, sound, and meaning; and (3) similarities weigh more heavily than differences." *Edge Wireless, LLC v. U.S. Cellular Corp.*, 312 F.Supp.2d 1325, 1330 (D. Or. 2003). Courts have noted explicitly the importance of the sound of a protected mark, or of the dominant terms in a trademark. *Forum Corp. of North America v. Forum, Ltd.*, 903 F.2d 434, 440 (7th Cir. 1990). The overall impression that the marks create, as well as any memorable feature of a mark, should be considered in analyzing likelihood of confusion. *Corbitt Mfg. Co. v. GSO Am., Inc.*, 197 F. Supp. 2d 1368, 1375 (S. D. Ga. 2002); see *Henri's Food Prods, Co. v. Kraft, Inc.*, 717 F.2d 352, 356 (7th Cir. 1983); *Blumenfeld Dev. Corp. v. Carnival Cruise Lines, Inc.*, 669 F. Supp. 1297, 1320 (E. D. Pa. 1987). Applying the foregoing criteria, it is evident that the Respondent's S.W.A.T. mark is very similar to Petitioner's SWATCH mark.

First, the SWATCH and S.W.A.T. marks are strikingly similar in appearance. SWAT- is the dominant feature of both marks as the beginning of both Petitioner's SWATCH mark and Respondent's S.W.A.T. mark. *Cf. Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee en 1772*, 396 F.3d 1369, 1372, 73 U.S.P.Q.2d 1689 (Fed. Cir. 2005). As the predominant element of both marks, the SWAT- portion is most likely to be impressed upon the

mind of the consumer and remembered. *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, 1897 (TTAB 1988)(discussing the similarity of KIDWIPES to KID STUFF and noting that “it is often the first part of a mark which is most likely to be impressed upon the mind of a purchaser and remembered”). The common letters S, W, A, and T are found in the same position and in the same order in both marks.

Because SWAT- is the dominant feature of the SWATCH and S.W.A.T. marks, the marks are nearly identical to the listener. This aural similarity exists despite the punctuation in Respondent’s mark. It is well settled that there is no correct pronunciation of a trademark. *See In re Belgrade Shoe Co.*, 411 F.2d 1352, 1353 162 USPQ 227 (CCPA 1969); *Interlego AG v. Abrams/Gentile Entertainment Inc.*, 63 USPQ2d 1862 (TTAB 2002). *see also In re Microsoft Corp.*, 68 USPQ2d 1195, 1199 (TTAB 2003)(finding that it is not possible to control how consumers will vocalize marks).

The Board has noted that consumers have a propensity to use shorthand forms of words, as well as to pronounce acronyms as words rather than as individual letters. *In re ABBTECH Staffing Services, Inc.*, 2006 TTAB LEXIS 267, at *13 (TTAB 2006). As acronyms are often pronounced and read in the same manner as a spoken word, the presence of dots or periods between the letters of the word S.W.A.T. in Respondent’s mark can not be construed to find that the mark will not be pronounced as a single word. In fact, the likelihood is to the contrary. *See Black Entertainment Television, Inc. v. Nancy Delany*, 2000 TTAB LEXIS 302, 11-12 (TTAB 2000)(“An acronym is pronounced and read in the same manner as a spoken work, e.g. as ‘radar,’ or in [the case of ‘B.E.T.] as ‘bet’”); *The B.V.D. Licensing Corp. v. Body Action Design Inc.*, 846 F.2d 727, 730, 6 USPQ2d 1719. (Fed. Cir. 1988) (purchasers will react to B.A.D as the word “bad”), *In re Minn. Heart Clinic, P.A.*, 2009 TTAB LEXIS 44, 13-14 (TTAB

2009)(finding that C.O.R.E. is likely to be spoken as “core” by consumers), *In re Zinky Elecs.*, 2006 TTAB LEXIS 858 (TTAB 2006) (holding that consumers are likely to pronounce “S.U.P.R.O.” as “supro”). The acronym S.W.A.T. is a clearly identifiable, pronounceable word which lends itself to the pronunciation “SWAT.”

Given the pronunciation of Respondent’s mark, the sound of the parties’ marks is nearly identical. It is evident that the Respondent’s mark is similar to Petitioner’s mark in appearance and sound. See *Weiss Assocs, Inc. v. HRL Assocs, Inc.*, 902 F.2d 1546, 1549, 14 U.S.P.Q.2d 1840 (Fed. Cir. 1990) (holding that applicant’s trademark “TMM” for computer software was similar in sound and appearance to opposer’s “TMS” registered mark also used for software); *Safeworks, LLC v. Spydercrane.com, LLC*, 2009 U.S. Dist. LEXIS 114440, *18-*19 (W.D. Wash. Dec. 7, 2009) (finding similarity of the look and sound of the marks SPIDER and SPYDERCRANE supported likelihood of confusion).

The likelihood of confusion is heightened by the fact that Petitioner and Respondent have the right to use their respective marks, in block form regardless of the design. See Ex. 4 and Ex. 3. The simple comparison of the SWATCH and SWAT marks also weighs heavily in favor of the Petitioner.

The similarity of the marks is further compounded when considering how the marks are used in commerce. Both marks are often followed by the word “watch.” See Ex. 44 and Ex. 41. Additionally, Respondent’s goods are often labeled as SWAT watches on Internet websites, rather than S.W.A.T. watches. See Ex. 41 and 42.

The placement of the marks on the goods is very similar and can confuse consumers. On Respondent's products, his mark is used on the face of the watch. *See* Ex. 41. Similarly, the SWATCH mark is used on the face of the watch. *See* Ex. 43 and Ex. 44.

The similarity of the visual and oral presentation of marks S.W.A.T. and SWATCH, as well as actual use in connection with other words or phrases, favors the Petitioner and a finding of likelihood of confusion.

B. The similarity or dissimilarity and nature of the goods

In this instance, the goods are identical. The Respondent's mark is registered in connection with class 14 goods, namely watches. *See* Ex. 3. Petitioner owns the SWATCH trademark in connection with watches in class 14, among others. *See* Ex. 4 through Ex. 9 and Ex. 49. *See In re Gen. Motors Corp.*, 2008 TTAB LEXIS 328, *16-17 (TTAB Feb. 8, 2008)(finding "watches" and "watches; watch bands, watch parts; watch straps, watch chains; electric clocks and watches; wristwatches" identical for the purposes of the *DuPont* factors).

There are no restrictions in channels of trade or the nature of the goods. For purposes of this cancellation action, the goods must be found to be identical. In the case of identical goods, the degree of similarity of the marks required to show confusion is lessened. *See also Century 21 Real Estate Corp. v. Century Life of Am.*, 970 F.2d 874, 877, 23 USPQ2d 1698 (Fed. Cir. 1992)("When marks would appear on virtually identical goods or services, the degree of similarity necessary to support a conclusion of likely confusion decline"); *Exxon Corp. v. Texas Motor Exch. of Houston, Inc.*, 628 F2d 500, 505 (5th Cir. 1980)("The greater the similarity between the products and services, the greater the likelihood of confusion.").

Use on identical goods, combined with the high degree of similarity of the marks, is sufficient to cause consumer to attribute both products to a single source. *CAE, Inc., v. Clean Air Engineering, Inc.*, 267 F.3d 660, 679 (7th Cir. 2001). In light of the foregoing, confusion as to source is virtually inevitable. Having established that the marks are similar, and the goods are identical, the Board may find a likelihood of confusion as a matter of law. *See In Re Miriam Jacob and Norma Sawdy*, 2004 WL 3060185, at *3 (TTAB 2004).

2. The Remaining Factors Also Favor Petitioner

A. The Parties Share the Same Trade Channels

Where the descriptions of goods in trademark applications are not limited to specific channels of trade or classes of customers, there is a presumption that the parties share the same trade channels. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 1101 (CCPA 1976); *see also In re Smith & Mehaffey*, 31 U.S.P.Q.2d 1531, 1532 (1994). This is precisely the situation here. Petitioner is entitled to the presumption that the trade channels overlap.

The evidence also demonstrates that the trade channels overlap. Petitioner sells its SWATCH branded watches over the Internet, at the domain www.stores.swatch.com among other places. *See* Ex. 44 Registrant also sells its watches over the Internet, including such sites as www.amazon.com. *See* Ex. 41. Additionally, Respondent has admitted that its S.W.A.T. watches are offered through similar channels of trade as Petitioner's goods and services. *See* Ex. 13, Petitioner's First Set of Requests for Admissions, deemed admitted, No. 5. This factor also favors Petitioner.

B. The Degree of Care Likely to be Exercised by Consumers

The price point for certain SWATCH branded watches and Respondent's S.W.A.T. branded watches are around approximately \$60.00. See Ex. 41 and Ex. 44. This is not a high price in the watch industry. Due to the relatively low price of the goods, it is not a careful and sophisticated purchaser. The degree of care likely to be exercised by consumers is properly assessed by considering both parties' potential consumers. *CAE, Inc.*, 267 F.3d at 682. Customer sophistication does not equate to trademark sophistication. *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 717 (3d Cir. 2004); *Fuji Photo Film Co. v. Shinohara Shoji Kabushiki Kaisha*, 754 F.2d 591, 595-96 (5th Cir. 1985). Where the goods are general consumer items, consumers are presumed not to be sophisticated. *In re Gebhard*, 2009 TTAB LEXIS 155, at *7 (TTAB Mar. 26, 2009)(where applicant's goods included watches). Sophistication of the consumer is also not a factor where the identification of goods includes goods that may be inexpensive. *See id.*

The almost identical nature of the marks and the identical nature of the products to which the parties attach these marks make it highly likely that even an informed and sophisticated consumer would mistakenly attribute the parties' products to a common source. *See CAE, Inc.*, 267 F.3d at 683. See also *In re Smith and Mehaffey*, 31 U.S.P.Q.2d at 1532. Lower price indicates consumers exercise less care. *See Recot, Inc. v. Becton*, 214 F.3d 1322, 1329, 54 U.S.P.Q.2d 1894 (Fed. Cir. 2000)(citing *Kimberly-Clark Corp. v. H. Douglas Enter., Ltd.*, 774 F.2d 1144, 1146, 227 U.S.P.Q. 541, 542 (Fed. Cir. 1985) and *Hunt Food & Industries, Inc. v. Gerson Stewart Corp.*, 367 F.2d 431, 434, 151 U.S.P.Q. 350, 350(CCPA 1966). Accordingly, this factor also favors Petitioner.

C. Petitioner's Marks are Famous for Timekeeping Devices

Petitioner is well known in the consumer goods market as the manufacturer and purveyor of innovative and fashionable, high quality timepieces. See <http://www.swatch.com/>.

Petitioner's marketing of its SWATCH branded timepieces includes celebrity and athlete endorsements. See Ex. 39, Ex. 40, Ex. 45 and Ex. 46. Many celebrities, including model Heidi Klum, actress Mischa Barton, and reality-television star Kelly Osbourne, have been seen wearing Swatch watches or attending Swatch-sponsored events, including Swatch's reopening of its Times Square flagship store in November 2009. See Ex. 39, Ex. 40, Ex. 45 and Ex. 46.

Petitioner has been an official timekeeper and official sponsor of the Olympic Games. See Ex. 48. For over 25 years, the SWATCH brand has been extensively advertised and featured in numerous publications. A representative sampling includes such publications as:

- *American Photographer* Ex. 17
- *The Wall Street Journal* Ex. 18 and Ex. 27
- *ADWEEK* Ex. 19
- *The New York Times Magazine* Ex. 20 and Ex. 47
- *Marketing and Media Decisions* Ex. 21
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- *Details* Ex. 36 and Ex. 38
- *Page Six Magazine* Ex. 37
- *The San Francisco Examiner* Ex. 15

Moreover, Respondent has admitted that Petitioner's SWATCH marks are well-known and famous, and that it was aware of the existence of Petitioner and its family of SWATCH marks prior to the adoption and use of the S.W.A.T. mark. *See* Ex. 13, Petitioner's Request for Admissions, Nos. ¶6, 7, 8, and 10. Accordingly, this factor also favors Petitioner.

D. The Number and Nature of Similar Marks in Use on Similar Goods:

Petitioner expends significant resources in protecting its famous and incontestable SWATCH trademarks. Petitioner has instituted numerous legal proceedings to protect the fame and goodwill associated with its mark. As such, Petitioner is the owner of the only active U.S. trademark registrations for the mark SWATCH in any class. *See* U.S. Patent and Trademark Office records. This factor also favors Petitioner.

E. The Variety of Goods on Which a Mark is or is Not Used:

Swatch owns numerous registrations for its SWATCH mark, in connection with several classes of goods. Since 1984, when the first SWATCH trademark was applied for, the mark has expanded with further registrations. There is a wide variety of goods for which Swatch owns a trademark registration for, including, but not limited to, the following:

SWATCH—Registration No. 1356512 for:
Watches and parts thereof in class 014.

SWATCH—Registration No. 1671076 for:
Watches, clocks and parts thereof in class 014.

SWATCH—Registration No. 2050210 for:
Books and periodicals, namely a series of books illustrating collectible articles;
magazines for watch collectors in class 016.

See Ex. 4, Ex. 6 and Ex. 8.

In addition to these goods, Swatch also sells jewelry, including necklaces, earrings and bracelets bearing the SWATCH mark, and has a number of retail stores that sell goods bearing the SWATCH mark. See www.swatch.com. This wide range of goods shows the success, popularity and famousness of the SWATCH mark. This factor also favors Petitioner.

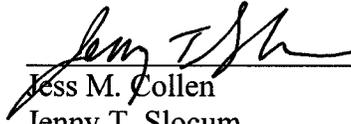
F. The Extent of Potential Confusion

The potential for confusion is great in light of the similarity between the parties' marks and products. Both parties' marks are for identical goods, sold under almost identical marks. See Ex. 41, Ex. 43 and Ex. 44. In addition to the presumption arising from the parties' identical recitation of goods, Respondent has admitted that its products are sold through similar channels of trade to those of Petitioner, and that the S.W.A.T. mark is confusingly similar to Petitioner's SWATCH mark. Clearly, this factor favors Petitioner. See Ex. 13, Requests No. 5 and 21.

3. The Sum of the Likelihood of Confusion Factors Indisputably Favor Petitioner

The above analysis of the relevant factors supports Petitioner's contention that no genuine issue of material fact exists. Taking into consideration the undisputed facts, a likelihood of confusion most certainly exists. As Petitioner is the senior user of the SWATCH trademarks, Respondent's trademark registration should be cancelled. Accordingly, Petitioner respectfully requests that its motion for Summary Judgment be granted, and that Reg. No. 3,172,010 be cancelled.

Respectfully submitted,



Jess M. Collen
Jenny T. Slocum
Oren Gelber
Collen *IP*
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Attorneys for Petitioner

Dated: March 31, 2010

SHOULD ANY OTHER FEE BE REQUIRED, THE PATENT AND TRADEMARK OFFICE IS HEREBY REQUESTED TO CHARGE SUCH FEE TO OUR DEPOSIT ACCOUNT 03-2465.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING FILED ELECTRONICALLY WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE.

Date: March 31, 2010



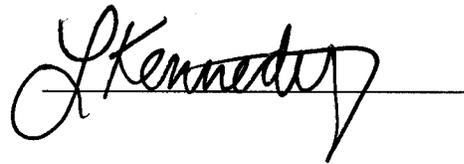
CERTIFICATE OF SERVICE

I, Lauren Kennedy hereby certify that I caused true and correct copy of the following:
Petitioner's Motion for Summary Judgment to be served upon:

Dax Alvarez
Blakely Sokoloff Taylor & Zafman
12400 Wilshire Boulevard, Seventh Floor
Los Angeles, CA 90025
UNITED STATES

Via first-class mail, postage pre-paid.

Said service having taken place this 31st Day of March, 2010

A handwritten signature in black ink, appearing to read "L. Kennedy", is written over a horizontal line.

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

SWATCH AG, (SWATCH S.A.),
(SWATCH LTD.),

Petitioner,

v.

MOTTI M. SLODOWITZ,

Respondent.

Mark: S.W.A.T.

Cancellation No.: 92046820

Registration No.: 3,172,010

**DECLARATION OF JENNY T. SLOCUM IN SUPPORT OF
PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

I, Jenny T. Slocum, declare as follows:

1. I am an attorney employed at Collen IP, attorneys for the Petitioner. I submit this declaration in support of Petitioner's Motion for Summary Judgment. The facts set forth in this Declaration are personally known to me and I have first hand knowledge thereof. If called as a witness, I could and would competently testify to all facts within my personal knowledge, except where stated upon information and belief.
2. Petitioner filed a Petition Cancel with the Trademark Trial and Appeal Board on December 27, 2006. A true and correct copy of the filing is attached as Exhibit 1.
3. Respondent served its Answer to Petitioner's Petition to Cancel on January 24, 2007. A true and correct copy is attached hereto as Exhibit 2.

4. Upon information and belief, Respondent is the owner of U.S. Trademark Registration No. 3,172,010 for S.W.A.T. for Watches, wrist and clip style. Attached hereto is a true and correct copy of the registration for U.S. Trademark Registration No. 3,172,010 as Exhibit 3.
5. Petitioner is the owner of U.S. Trademark Registration No. 1,671,076 for SWATCH for watches, clocks and parts thereof. Attached hereto is a true and correct copy of the registration for U. S. Trademark Registration No. 1,671,076 as Exhibit 4.
6. Petitioner is the owner of U.S. Trademark Registration No. 1,252,863 for SWATCH QUARTZ for watches incorporated with a quartz and parts thereof. Attached hereto is a true and correct copy of the registration for U.S. Trademark Registration No. 1,252,863 as Exhibit 5.
7. Petitioner is the owner of U.S. Trademark Registration No. 2,050,210 for SWATCH for books and periodicals, namely a series of books illustrating collectable articles, magazines for watch collectors. Attached hereto is a true and correct copy of the registration for U.S. Trademark Registration No. 2,050,210 as Exhibit 6.
8. Petitioner is the owner of U.S. Trademark Registration No. 2,100,605 for goods in Class 6, 9, 16, 18, 20, and 28 as depicted in the attached true and correct copy of the registration for U.S. Trademark Registration No. 2,100,605 as Exhibit 7.
9. Petitioner is the owner of U.S. Registration No. 1,356,512 for watches and parts thereof. Attached hereto is a true and correct copy of the registration for U.S. Trademark Registration No. 1,356,512 attached hereto as Exhibit 8.
10. Petitioner is the owner of U.S. Registration No. 1,799,862 for goods in Class 42 as depicted in the attached true and correct copy of the registration for U.S. Trademark Registration No. 1,799,862 attached hereto as Exhibit 9.

11. Petitioner is the owner of U.S. Trademark Application Serial No. 78/194,325 for goods in Class 3, 8, 9, 11, 14, 15, 16, 18, 20, 21, 22, 24, 25, 28, 29, 32, 34, 35, 38, and 41 as depicted in the attached true and correct copy of the Trademark Electronic Search System attached hereto as Exhibit 10.

12. On March 5, 2007, Petitioner served Petitioner's First Set of Interrogatories upon Respondent. Attached hereto is a true and correct copy of Petitioner's First Set of Interrogatories as Exhibit 11.

13. On March 5, 2007, Petitioner served Petitioner's First Set of Requests for Documents and Things upon Respondent. A true and correct copy of Petitioner's First Set of Requests for Documents and Things is attached hereto as Exhibit 12.

14. On March 5, 2007, Petitioner served Petitioner's First Set of Requests for Admission upon Respondent. A true and correct copy of Petitioner's First Set of Requests for Admission is attached hereto as Exhibit 13.

15. Respondent's Discovery Responses were due on April 23, 2007. On May 8, 2007, Petitioner agreed to a 30 day extension of time for Respondent to file discovery responses, until June 7, 2007. Respondent did not serve any discovery responses.

16. On June 18, 2007, Jess M. Collen, attorney for Petitioner, sent a letter to Dax Alvarez, counsel for Respondent, informing Respondent that Respondent never served any discovery responses. A true and correct copy is attached hereto as Exhibit 14.

17. *The San Francisco Examiner* Sunday Magazine Section, Image, published an article, "Time is Money" on March 22, 1992. A true and correct copy is attached hereto as Exhibit 15.

18. *The New York Times* published an article, "Downtime; The Well-Dressed Wrist: Pager, Phone, Joystick...Watch" on June 18, 1998. A true and correct copy is attached hereto as Exhibit 16.
19. *American Photographer* published an article, "'Sophisticated fun' is the new Swatch word" in January, 1986. A true and correct copy is attached hereto as Exhibit 17.
20. *The Wall Street Journal* published an article, "Santa Suits UP: Red Coat (Check), Shades (heck), Swatch Watches..." on December 24, 1985. A true and correct copy is attached hereto as Exhibit 18.
21. *ADWEEK* published an article, "'Life's a Beach' for Swatch" on March 10, 1986. A true and correct copy is attached hereto as Exhibit 19.
22. *The New York Times Magazine*, published an article, "Men's Fashions of the Times" on September 8, 1985. A true and correct copy is attached hereto as Exhibit 20.
23. *Marketing & Media Decisions*, Spring 1985 Special Issue, published an article, "The watch to wear when you're wearing more than one." A true and correct copy is attached hereto as Exhibit 21.
24. *Smithsonian*, published an article, "On land, at sea and in the air, those polymer invaders are here" in the November 1985 issue. A true and correct copy is attached hereto as Exhibit 22.
25. *Advertising Age* published an article, "Swatch cuts wide swath" on August 26, 1985. A true and correct copy is attached hereto as Exhibit 23.
26. *New York Times* published an article, "Swatch's Total Look Campaign" in July 1985. A true and correct copy is attached hereto as Exhibit 24.
27. *Popular Science* published an article, "Swiss ingenuity creates a throwaway quartz Swatch" in the March 1984 issue. A true and correct copy is attached hereto as Exhibit 25.

28. *American Jewelry Manufacturer* published an article, "WATCH IT! HERE COMES SWATCH" in April 1984. A true and correct copy is attached hereto as Exhibit 26.
29. *The Wall Street Journal* published an article, "Many Retailers Post Small Gains In Holiday Sales" on December 27, 1985. A true and correct copy is attached hereto as Exhibit 27.
30. *Ms.* published an article, "The Swatch Phone" in April 1988. A true and correct copy is attached hereto as Exhibit 28.
31. *Gary, IN Post-Tribune* published an article, "Swatches inspired by about everything" in 1991. A true and correct copy is attached hereto as Exhibit 29.
32. *Observer, (New York)* published an article, "Swatch Frenzy in N.Y. as Auction Prices Climb" on August 19, 1991. A true and correct copy is attached hereto as Exhibit 30.
33. *The New York Times, All About Watches*, published an article, "Fighting the Recession By Spotting Some Fads And Inventing Others" on November 17, 1991. A true and correct copy is attached hereto as Exhibit 31.
34. *Los Angeles Times* published an article, "All Wound Up" on September 6, 1991. A true and correct copy is attached hereto as Exhibit 32.
35. *Cambridge Tab*, published an article, "Swatch has great timing" in July, 1993. A true and correct copy is attached hereto as Exhibit 33.
36. *Women's Wear Daily*, published an article, "Time After Time" on August 20, 1991. A true and correct copy is attached hereto as Exhibit 34.
37. *Metro New York* featured various SWATCH advertisements on January 26, 2007. A true and correct copy of the relevant pages are attached hereto as Exhibit 35.
38. The magazine *Details* dated April 2008 included SWATCH advertisements. A true and correct copy of the relevant pages are attached hereto as Exhibit 36.

39. *Page Six Magazine* depicts SWATCH advertisements dated May 23, 2008. A true and correct copy of the relevant page is attached hereto as Exhibit 37.

40. SWATCH advertisements have appeared in the magazine *Details* dated September 2008. A true and correct copy of the relevant pages is attached hereto as Exhibit 38.

41. On March 30, 2010, I visited the website of Haute Living, located at <http://www.hauteliving.com/blog/swatch%E2%80%99s-celeb-studded-makeover/>, containing an article "Swatch's Celeb-Studded Makeover." A true and correct copy of the relevant pages is attached hereto as Exhibit 39.

42. On March 30, 2010, I visited the website of Microsoft News Center, located at <http://www.microsoft.com/presspass/press/2004/oct04/10-20MSNDSwatchPR.msp>, which included the news press release "Swatch Announces New Swatch Smart Watch That Delivers Exclusive Entertainment Information and More Via Microsoft's MSN Direct Service." A true and correct copy of the relevant pages is attached hereto as Exhibit 40.

43. On March 30, 2010, I visited the website, www.amazon.com, which offers for sale the SWAT WATCH W BACK LIGHT. A true and correct copy of the relevant pages is attached hereto as Exhibit 41.

44. On March 30, 2010, I visited Google Product Search, located at www.google.com/products, which displays links to websites offering for sale SWAT watches. A true and correct copy of the relevant pages is attached hereto as Exhibit 42.

45. On March 30, 2010, I visited the official website of Swatch, located at www.swatch.com, which displays the Chrono Automatic watch and the purchase page for Chrono Automatic on the Swatch e-store, located at <http://store.swatch.com/s3/chrono+automatic>. A true and correct copy of the relevant pages is attached hereto as Exhibit 43.

46. On March 30, 2010, I visited the Official Swatch e-store, located at <http://store.swatch.com/>, which displays the Colour Codes Collection. A true and correct copy of the relevant pages is attached hereto as Exhibit 44.

47. On March 30, 2010, I visited the website for People Magazine, located at www.people.com/people/article0,,20320167,00.html, containing an article showing celebrity Kelly Osbourne at Swatch's 26th charity anniversary party in Times Square. A true and correct copy of the relevant pages is attached hereto as Exhibit 45.

48. On March 30, 2010, I visited the website for Page Six Magazine, located at www.nypost.com/pagesixmag/issues/20090910, containing an interview with model Heidi Klum. A true and correct copy of the relevant pages is attached hereto as Exhibit 46.

49. *The New York Times Magazine*, Men's Fashion Spring 2010, published an article "Good Timing." A true and correct copy is attached hereto as Exhibit 47.

50. On March 30, 2010, I visited the website for Swatch Group, located at www.swatchgroup.com, containing an October 31, 2002 Press Release from the United States Olympic Committee announcing Swatch Group as an Official Sponsor of the 2004, 2006, and 2008 U.S. Olympic Teams. A true and correct copy of the press release is attached hereto as Exhibit 48.

51. Petitioner is the owner of U.S. Registration No. 2,752,980 for goods in Class 14 as depicted in the attached true and correct copy of the registration for U.S. Trademark Registration No. 2,752,980 attached hereto as Exhibit 49.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed March 31, 2010 at Ossining, New York.