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

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

CARTIER INTERNATIONAL A.G.,

Opposer,

v.

LANCE COACHMAN,

Applicant.

Opposition No. 91/209815

**OPPOSER CARTIER INTERNATIONAL A.G.'S TRIAL BRIEF**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....3

PRELIMINARY STATEMENT .....7

FACTUAL RECORD.....8

A. Stipulation of the Parties.....8

B. Cartier’s Evidence.....8

C. Applicant’s Evidence.....9

EVIDENTIARY OBJECTIONS TO APPLICANT’S EVIDENCE.....9

STATEMENT OF FACTS .....10

A. Cartier and the TRINITY Brand.....10

    1. Business of Cartier .....10

    2. History of the TRINITY Brand and TRINITY Products.....11

    3. Sales of TRINITY Products.....12

    4. Marketing and Advertising of TRINITY Products.....13

    5. Unsolicited Press Coverage of TRINITY Products .....14

    6. Cartier’s TRINITY Trademark Registrations and Application .....15

    7. Cartier’s Enforcement Efforts.....16

B. Applicant and His TRINITY Mark.....18

    1. Business and Products of Applicant .....18

    2. Marketing and Sales of Applicant’s TRINITY Handbag .....19

    3. Applicant’s Application to Register TRINITY Mark.....20

C. Marketplace Use of Marks in Connection with Both Jewelry and Handbags .....20

ARGUMENT .....20

A. Cartier Has Established Standing.....20

B. Cartier Has Established Priority.....21

C. Applicant’s Mark is Likely to Cause Confusion With Cartier’s TRINITY Mark .....22

    1. The Parties’ Marks are Identical .....24

2.	Applicant’s Goods are Identical or Closely Related to Cartier’s Goods .....	25
a.	The Parties’ Goods are Related.....	26
b.	The Parties’ Goods are Related Under the Natural Expansion Doctrine...	28
3.	The TRINITY Mark is Strong and is Entitled to a Broad Scope of Protection .....	29
a.	The TRINITY Mark is Inherently Strong.....	29
b.	The TRINITY Mark has Marketplace Strength.....	31
4.	The Parties’ Trade Channels and Customers Overlap .....	32
5.	Cartier’s Variety of Goods Contributes to a Likelihood of Confusion.....	34
6.	There is No Evidence of Third-Party Use That Weakens the TRINITY Mark .....	34
	CONCLUSION.....	36
	APPENDIX A	

## TABLE OF AUTHORITIES

### CASES

<i>Allagash Brewing Co. v. Pelletier</i> , Opp. No. 91214028, 2015 WL 6121774 (T.T.A.B. Sept. 22, 2015) .....	26
<i>Barbara’s Bakery, Inc. v. Landesman</i> , 82 U.S.P.Q.2d 1283 (T.T.A.B. 2007) .....	23
<i>Black &amp; Decker Corp. v. Emerson Electric Co.</i> , 84 U.S.P.Q.2d 1482 (T.T.A.B. 2007) .....	34, 35
<i>Bose Corp. v. QSC Audio Products, Inc.</i> , 63 U.S.P.Q.2d 1303 (Fed. Cir. 2002).....	31, 32
<i>CBS Inc. v. Morrow</i> , 218 U.S.P.Q. 198 (Fed. Cir. 1983).....	33
<i>Canadian Imperial Bank of Commerce v. Wells Fargo Bank, National Association</i> , 1 U.S.P.Q.2d 1813 (Fed. Cir. 1987).....	33
<i>Compuclean Marketing &amp; Design v. Berkshire Products Inc.</i> , 1 U.S.P.Q.2d 1323 (T.T.A.B. 1986) .....	20-21
<i>Cuban Cigar Brands, N.V. v. Inter America Cigar Co.</i> , Opp. No. 91169391, 2008 WL 2271547 (T.T.A.B. May 21, 2008).....	31
<i>Cunningham v. Laser Golf Corp.</i> , 55 U.S.P.Q.2d 1842 (Fed. Cir. 2000).....	20, 33
<i>Eveready Battery Co. v. Green Planet, Inc.</i> , 91 U.S.P.Q.2d 1511 (T.T.A.B. 2009) .....	23
<i>Federated Foods, Inc. v. Fort Howard Paper Co.</i> , 192 U.S.P.Q. 24 (C.C.P.A. 1976) .....	24
<i>Fiat Group Automobiles S.p.A. v. ISM Inc.</i> , 94 U.S.P.Q.2d 1111 (T.T.A.B. 2010) .....	21
<i>GTFM, Inc. v. Seems</i> , Opp. No. 91179611, 2009 WL 4086584 (T.T.A.B. Sept. 11, 2009) .....	32
<i>Genesco Inc. v. Martz</i> , 66 U.S.P.Q.2d 1260 (T.T.A.B. 2003) .....	33
<i>Gillette Canada Inc. v. Ranir Corp.</i> , 23 U.S.P.Q.2d 1768 (T.T.A.B. 1992) .....	23
<i>Hasbro, Inc. v. Pinkett</i> , Opp. No. 91123661, 2004 WL 1427395 (T.T.A.B. June 18, 2004).....	28
<i>Herbko International, Inc. v. Kappa Books, Inc.</i> , 64 U.S.P.Q.2d 1375 (Fed. Cir. 2002).....	<i>passim</i>

<i>Hewlett-Packard Co. v. Packard Press, Inc.</i> , 62 U.S.P.Q.2d 1001 (Fed. Cir. 2002).....	25, 27
<i>In re A.C.E. International Co.</i> , App. Ser. No. 76120896, 2003 WL 22174266 (T.T.A.B. Sept. 16, 2003).....	30
<i>In re E. I. du Pont de Nemours &amp; Co.</i> , 177 U.S.P.Q. 563 (C.C.P.A. 1973).....	<i>passim</i>
<i>In re Iolo Technologies, LLC</i> , 95 U.S.P.Q. 2d 1498 (T.T.A.B. 2010).....	24
<i>In re Kelly-Moore Paint Co.</i> , App. Ser. No. 78667467, 2008 WL 902863 (T.T.A.B. Mar. 3, 2008).....	23
<i>In re MBNA America Bank, N.A.</i> , 67 U.S.P.Q.2d 1778 (Fed. Cir. 2003).....	29
<i>In re Majestic Distilling Co.</i> , 65 U.S.P.Q.2d 1201 (Fed. Cir. 2003).....	24
<i>In re Martin’s Famous Pastry Shoppe, Inc.</i> , 223 U.S.P.Q. 1289 (Fed. Cir. 1984).....	25
<i>In re Opus One, Inc.</i> , 60 U.S.P.Q.2d 1812 (T.T.A.B. 2001).....	26
<i>In re Shell Oil Co.</i> , 26 U.S.P.Q.2d 1687 (Fed. Cir. 1993).....	25, 26
<i>In re Sociedad Cooperativa Limitada De Comercializacion</i> , App. Ser. No. 85365179, 2013 WL 5467021 (T.T.A.B. Sept. 9, 2013).....	27
<i>In re TBAC Investment Trust</i> , App. Ser. No. 74209526, 1999 WL 612950 (T.T.A.B. Aug. 11, 1999).....	26
<i>In re Thor Tech, Inc.</i> , 90 U.S.P.Q.2d 1634 (T.T.A.B. 2009).....	33
<i>In re Wilson</i> , 57 U.S.P.Q.2d 1863 (T.T.A.B. 2001).....	30
<i>Kenner Parker Toys, Inc. v. Rose Art Industries, Inc.</i> , 22 U.S.P.Q.2d 1453 (Fed. Cir. 1992).....	23, 29
<i>Kohler Co. v. Baldwin Hardware Corp.</i> , 82 U.S.P.Q.2d 1100 (T.T.A.B. 2007).....	24, 35
<i>L’Oreal S.A. v. Marcon</i> , 102 U.S.P.Q.2d 1434 (T.T.A.B. 2012).....	21
<i>Life Zone Inc. v. Middleman Group, Inc.</i> , 87 U.S.P.Q.2d 1953 (T.T.A.B. 2008).....	21

<i>Mason Engineering &amp; Design Corp. v. Mateson Chemical Corp.</i> , 225 U.S.P.Q. 956 (T.T.A.B. 1985) .....	28
<i>Nautilus Group, Inc. v. ICON Health &amp; Fitness, Inc.</i> , 71 U.S.P.Q.2d 1173 (Fed. Cir. 2004).....	30
<i>Nina Ricci, S.A.R.L. v. E.T.F. Enterprises, Inc.</i> , 12 U.S.P.Q.2d 1901 (Fed. Cir. 1989).....	23
<i>Octocom Systems, Inc. v. Houston Computer Services, Inc.</i> , 16 U.S.P.Q.2d 1783 (Fed. Cir. 1990).....	25
<i>Opryland USA Inc. v. Great American Music Show, Inc.</i> , 23 U.S.P.Q.2d 1471 (Fed. Cir. 1992).....	22
<i>Otto International, Inc. v Otto Studio, LLC</i> , Opp. No. 91175103, 2009 WL 1741895 (T.T.A.B. June 1, 2009) .....	31
<i>Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772</i> , 73 U.S.P.Q.2d 1689 (Fed. Cir. 2005).....	34, 35
<i>Park 'N Fly, Inc. v. Dollar Park &amp; Fly, Inc.</i> , 469 U.S. 189, 224 U.S.P.Q.2d 327 (1985) .....	30
<i>Quiksilver, Inc. v. Tiffany &amp; Broadway, Inc.</i> , Opp. No. 91107511, 2000 WL 1125573 (T.T.A.B. July 26, 2000).....	31, 32
<i>Recot, Inc. v. Becton</i> , 54 U.S.P.Q.2d 1894 (Fed. Cir. 2000).....	29
<i>Rocket Trademarks Pty Ltd. v. Phard S.p.A.</i> , 98 U.S.P.Q.2d 1066 (T.T.A.B. 2011) .....	22
<i>Spin Concepts, Inc. v. Fosco, Inc.</i> , Opp. No. 91202544, 2014 WL 295253 (T.T.A.B. Jan. 15, 2014) .....	36
<i>Stone Lion Capital Partners, LP v. Lion Capital LLP</i> , 110 U.S.P.Q.2d 1157 (Fed. Cir. 2014).....	35
<i>Team Air Express, Inc. v. Alliance Shippers, Inc.</i> , Canc. No. 92043162, 2007 WL 4438620 (T.T.A.B. Dec. 11, 2007).....	36
<i>Time Warner Entertainment Co. v. Jones</i> , 65 U.S.P.Q.2d 1650 (T.T.A.B. 2002) .....	26
<i>Two Pesos, Inc. v. Taco Cabana, Inc.</i> , 505 U.S. 763, 23 U.S.P.Q.2d 1081 (1992) .....	29
<i>Venture Out Properties L.L.C. v. Wynn Resorts Holdings, L.L.C.</i> , 81 U.S.P.Q.2d 1887 (T.T.A.B. 2007) .....	20
<i>Wolverine Outdoors, Inc. v. Marker Volkl (Int'l) GmbH</i> , Consol. Opp. No. 91161363, 2013 WL 5655832 (T.T.A.B. Sept. 30, 2013).....	27, 28

**STATUTES**

15 U.S.C. § 1052.....20, 24, 36  
15 U.S.C. § 1063.....20

**TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE**

TBMP § 309.03.....21

**TREATISE**

J. Thomas McCarthy,  
*McCarthy on Trademarks & Unfair Competition* (4th ed. 2016).....23, 29, 30



## PRELIMINARY STATEMENT

Opposer Cartier International A.G. and its related entities (together, “Cartier”) are suppliers of some of the world’s most well-known luxury goods. In connection with the sale of such goods, Cartier’s long-standing practice has been to promote and offer its goods as part of collections. One of the most iconic of Cartier’s collections is TRINITY, a mark that Cartier has used continuously in the United States since at least as early as 1983.

Over the last three decades, Cartier’s TRINITY collection has included a wide variety of goods, including jewelry, handbags, leather belts, cufflinks, key rings, diaries, organizers, travel clocks, pens, and eyewear. Cartier has registered the TRINITY mark with the United States Patent and Trademark Office for use in connection with many of these goods, namely jewelry, watches, clocks, diaries, and writing instruments. Cartier has expended substantial resources to promote and advertise TRINITY products in national publications and in digital media. As a result, [REDACTED]

[REDACTED] Through Cartier’s decades of use and substantial investment in its TRINITY mark, consumers have come to know and recognize the TRINITY mark and to expect it to be applied by Cartier to a variety of goods.

Decades after Cartier established the TRINITY mark as the signifier of an iconic luxury goods collection, Applicant Lance Coachman (“Applicant”) applied to register and began to use the mark TRINITY in connection with leather handbags. Applicant’s mark is identical to Cartier’s strong and well-known TRINITY mark. Moreover, Applicant’s goods are related to the goods identified in the U.S. trademark registrations that Cartier already owns for TRINITY and are identical to the goods on which Cartier uses the TRINITY mark. Under these circumstances, Applicant’s proposed registration and use of the TRINITY mark in connection with leather

handbags is likely to cause confusion, mistake, or deception in the marketplace. On this basis, Applicant's application to register the TRINITY mark should be denied under Section 2(d) of the Lanham Act.

## **FACTUAL RECORD**

### **A. Stipulation of the Parties**

The parties stipulated to the submission of trial testimony in the form of sworn affidavits or declarations under penalty of perjury, subject to the opposing party's right to take cross-examination through written questions. (Dkt. No. 22).

### **B. Cartier's Evidence**

Cartier submitted testimony and exhibits through the following witnesses:

(i) Alison Cohen, Assistant Vice President, Merchandising and Jewelry Workshop at Cartier, a division of Richemont North America, Inc., the U.S. affiliate of Opposer Cartier International A.G., by Trial Declaration dated October 30, 2015 ("Cohen Decl.") (Dkt. no. 24), Supplemental Trial Declaration dated November 30, 2015 ("Supp. Cohen Decl.") (Dkt. no. 34), and Rebuttal Trial Declaration dated February 12, 2016 ("Rebuttal Cohen Decl.") (Dkt. no. 44). Applicant cross-examined Ms. Cohen by written questions with respect to her first Trial Declaration, which Ms. Cohen responded to in a Cross-Examination Response Declaration dated November 30, 2015 ("Cross-Examination Cohen Decl.") (Dkt. no. 33).

(ii) Stacey Hallerman, Vice President—Chief Legal Counsel of Richemont North America, Inc., the U.S. affiliate of Opposer Cartier International A.G., by Trial Declaration dated October 30, 2015 ("Hallerman Decl.") (Dkt. no. 26).

A description of each exhibit made of record by the foregoing witnesses as part of their declarations is included in Appendix A hereto.

Cartier also submitted during its testimony period the following Notices of Reliance: (i) Notice of Reliance on Printed Publications (Dkt. no. 28); (ii) Notice of Reliance on Deposition Testimony (Dkt. no. 29); (iii) Notice of Reliance on Discovery Responses (Dkt. no. 31); (iv) Second Notice of Reliance on Printed Publications (Dkt. no. 45); (v) Second Notice of Reliance on Deposition Testimony (Dkt. no. 46); (vi) Second Notice of Reliance on Discovery Responses (Dkt. no. 47); and (vii) Notice of Reliance on Additional Portions of Deposition Testimony of Opposer's Witness (Dkt. no. 48).

A description of each exhibit made of record through Cartier's Notices of Reliance is included in Appendix A hereto.

### **C. Applicant's Evidence**

Applicant submitted testimony and exhibits through the following witness: Applicant Lance Coachman, by Trial Declaration dated December 30, 2015 ("Coachman Decl.") (Dkt. no. 35) and Supplemental Trial Declaration dated January 29, 2016 ("Supp. Coachman Decl.") (Dkt. no. 43). Cartier cross-examined Applicant by written questions with respect to his first Trial Declaration, which Applicant responded to in a Cross-Examination Response Declaration ("Cross-Examination Coachman Decl.") (Dkt. no. 42).

Applicant also submitted the following Notices of Reliance: (i) Notice of Reliance on Discovery Responses (Dkt. no. 37); (ii) Notice of Reliance on Deposition Testimony (Dkt. no. 38); and (iii) Notice of Reliance on Printed Publications (Dkt. nos. 40, 41).

### **EVIDENTIARY OBJECTIONS TO APPLICANT'S EVIDENCE**

Cartier's objections to the admissibility of evidence proffered by Applicant are set forth in Cartier's Statement of Objections to Applicant's Proffered Evidence, dated April 13, 2016. Because the Board has not yet had an opportunity to rule on Cartier's evidentiary objections, for

purposes of this brief, Cartier has assumed that all of Applicant’s evidence is part of the record. By treating Applicant’s evidence as properly made of record for purposes of this brief, Cartier does not waive any of its evidentiary objections.

## STATEMENT OF FACTS

### A. Cartier and the TRINITY Brand

#### 1. *Business of Cartier*

Cartier, founded in 1847, is a world-famous supplier of high-quality, well-crafted luxury goods, including fine jewelry, watches, handbags, belts, eyewear, and other accessories. (Cohen Decl. ¶¶ 5, 8). Cartier’s commitment to innovation in design and function, as well as its use of only the finest materials in constructing its products, has made it one of the world’s leading makers of luxury products. (*Id.* ¶ 5). Cartier’s reputation for producing high-quality luxury goods has been widely recognized. (*Id.* ¶ 6). Cartier has received the Royal Warrant from the Royal Court of England – which certifies that its goods are supplied to the royal court– and equivalent recognition from the heads of Spain, Portugal, Russia, Siam, Greece, Serbia, Belgium, Romania, Egypt, Albania, and the Principality of Monaco. (*Id.*). In addition, the Prince of Wales once hailed Cartier as “*Joaillier des Rois, Roi des Joailliers*” (“Jeweler to Kings, King of Jewelers”). (*Id.*).

Cartier’s longstanding practice has been to offer a wide variety of products under each of its “collection” names. (*Id.* ¶ 7). Such “collections” include, among others, TRINITY, LOVE, JUSTE UN CLOU, PANTHÈRE DE CARTIER, SANTOS DE CARTIER, JEANNE TOUSSAINT, and MARCELLO DE CARTIER. (*Id.*). Generally, each collection includes jewelry, but also perfume, leather goods, watches, eyewear, and a plethora of other products. (*Id.*).

The specific products that are offered within each collection vary from season to season and year to year, depending on market conditions and trends. (Cross-Examination Cohen Decl., response no. 4). For example, Cartier’s LOVE collection has included, from time to time, both jewelry products and leather wallets, and the SANTOS DE CARTIER collection has included both watches and leather wallets. (Cohen Decl. ¶ 7; Exs. CT 1, CT 2). Thus, consumers have become accustomed to Cartier collections that include varied and alternating products. (Cohen Decl. ¶ 30; Cross-Examination Cohen Decl., response no. 4).

## 2. *History of the TRINITY Brand and TRINITY Products*

One of Cartier’s “pillar” collections is TRINITY. [REDACTED]

[REDACTED]

(Cohen Decl. ¶ 11; Ex. TW 17 (Cohen Disc. Dep.) at 13:13-15). The products sold under the TRINITY mark date back to 1924, when Louis-François Cartier created a ring for the French poet and novelist Jean Cocteau. (Cohen Decl. ¶ 9). The ring was comprised of three intertwined bands, with each band in a different metal. (*Id.*). Jean Cocteau wore the ring for the rest of his life, thus earning the ring an iconic status. (*Id.*).

Since 1983, Cartier has continuously used the trademark TRINITY in the United States. (*Id.* ¶ 10). The term TRINITY was derived from the design of the famous Jean Cocteau ring with the three intertwined bands. (*Id.*). While the first products sold under the TRINITY mark were jewelry, over the last several decades Cartier has offered an extremely wide range of TRINITY brand products. (*Id.* ¶¶ 10, 12). The TRINITY jewelry product offerings have included rings, bracelets, necklaces, earrings, pendants, and chains. (*Id.* ¶ 13; Ex. CT 4). The TRINITY products other than jewelry have included handbags, leather belts, cufflinks, key rings, diaries, organizers, travel clocks, pens, and eyewear. (Cohen Decl. ¶¶ 14-15; Exs. CT 5-CT 11).

As for TRINITY brand handbags, Cartier offered them for sale in the United States from 2004 to 2008. (Cohen Decl. ¶ 14; Exs. CT 5, CT 16). Consistent with its philosophy of rotating the product offerings under its collection names, Cartier did not offer TRINITY brand handbags every year. In 2012, Cartier decided to re-introduce TRINITY handbags after they had been left out of the TRINITY collection for a few years. (Hallerman Decl. ¶ 8). In November 2015, this plan came to fruition and Cartier began to offer for sale a TRINITY leather pouch in the United States. (Cohen Decl. ¶ 14; Ex. CT 6). Cartier currently sells this TRINITY leather pouch in its Cartier boutiques, and is considering a wider retail distribution network. (Cross-Examination Cohen Decl., response no. 6).

### **3. Sales of TRINITY Products**

Sales of TRINITY products are stellar. (Cohen Decl. ¶¶ 20-21). Cartier's total sales of TRINITY jewelry products from FY 2007 to January 2015 were over [REDACTED], with more than [REDACTED] units sold during that time period. (Ex. CT 15). Moreover, annual sales for TRINITY brand jewelry exceeded [REDACTED] in each year from FY 2011 to FY 2014. (*Id.*).

As for TRINITY brand products other than jewelry, namely eyewear, handbags, leather belts, cufflinks, key rings, diaries, organizers, travel clocks, and pens, sales also have been significant. Between FY 2007 and FY 2014, Cartier's total sales were [REDACTED] for TRINITY leather goods such as handbags, belts, and organizers, [REDACTED] for TRINITY pens, and [REDACTED] for TRINITY cufflinks, key rings, and travel clocks. (Ex. CT 16). Cartier's total sales for TRINITY eyewear for FY 2013 (when TRINITY eyewear was first introduced) and FY 2014 were over [REDACTED]. (*Id.*).

#### 4. *Marketing and Advertising of TRINITY Products*

Cartier markets and advertises TRINITY products extensively in both print and digital media. (Cohen Decl. ¶¶ 16-19). Examples of Cartier's print and digital advertisements from FY 2007 to FY 2014 for TRINITY jewelry and eyewear are shown in Trial Exhibit CT 12 to the Cohen Trial Declaration.<sup>1</sup>

Cartier has advertised its TRINITY products in numerous high-circulation national publications, including the *New York Times*, *Wall St Journal*, *Los Angeles Times*, *Washington Post*, *San Francisco Chronicle*, *Chicago Tribune*, *Boston Globe*, *Newsday*, *In Style*, *Vogue*, *WWD*, *Marie Claire*, *New York Magazine*, *Elle*, *W Magazine*, *Harper's Bazaar*, *Vanity Fair*, and many others. (Ex. CT 13 (showing print publications in which TRINITY advertisements were placed from FY 2002 to FY 2013 and the dates on which such advertisements were published)).

Cartier has spent the following amounts for print advertising since 2005: ██████████ in FY 2005; ██████████ in FY 2006; ██████████ in FY 2007; ██████████ in FY 2009; ██████████ in FY 2010; ██████████ in FY 2011; ██████████ in FY 2012; and ██████████ in FY 2013. (Ex. CT 14 at CART 1032).

Cartier started its digital advertising program in 2008. (Cohen Decl. ¶ 18). Since 2008, Cartier has placed paid search advertising for TRINITY brand products on Google, Bing, and Yahoo search engines. (*Id.*). In addition, Cartier has placed advertisements for TRINITY brand products on several popular websites. (*Id.*). In 2012, Cartier ran digital advertisements for TRINITY brand products on The Zoe Report's website and *W Magazine's* website. (*Id.*; Ex. CT 12 at CART 764-65, 768). In 2013, Cartier ran digital advertisements for TRINITY brand

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<sup>1</sup> Although Cartier ran print advertisements for other TRINITY products, including leather goods and pens, the visuals for those advertisements are not available. (Cohen Decl. ¶ 16 n.1).

products on *Elle*'s website and the Refinery29 website. (Cohen Decl. ¶ 18; Ex. CT 12 at CART773-75). In 2014, Cartier ran digital advertisements for TRINITY brand products on the Refinery29 website and on Style.com. (Cohen Decl. ¶ 18; Ex. CT 12 at CART777-80). Cartier has spent an increasingly large amount on its digital advertising as the importance of digital marketing has grown. Cartier spent the following amounts for digital advertising since 2008: █████ in 2008; █████ in 2009; █████ in 2010; █████ in 2011; █████ in 2012; █████ in 2013; and █████ in 2014. (Ex. CT 14 at CART1033).

In sum, Cartier engages in a robust advertising program for its TRINITY brand products in both print and digital media, with combined annual advertising expenditures of over █████ █████ in nearly every year since 2010. (Ex. CT 14). As a result, the TRINITY mark and the products sold thereunder have been prominently featured in many of the nation's leading publications and online destinations, exposing millions of consumers to Cartier's TRINITY brand.

##### **5. *Unsolicited Press Coverage of TRINITY Products***

Due to the iconic status of Cartier's TRINITY brand, TRINITY brand products receive significant unsolicited media coverage. (Cohen Decl. ¶ 22). TRINITY products are consistently featured in editorial spreads highlighting luxury or fashion consumer products. (*See* Ex. CT 17 (representative samples of unsolicited press coverage of TRINITY products)). For example, *Harper's Bazaar*, in an editorial commemorating Cartier's 100th anniversary, called the TRINITY collection "iconic." (*Id.* at CART 906). The *Robb Report* referred to the TRINITY design as possessing a "cultish cultural chic." (*Id.* at CART 911). *Marie Claire* likewise noted the "cult status" of the original TRINITY ring, and that notable people to wear the collection through the years have included Halle Barry, Madonna, Eva Mendes, Sienna Miller, Kristen



Scott Thomas, Anna Hathaway, Cameron Diaz, and Brooke Shields. (*Id.* at CART 914). An article in *Interview* magazine recalled how David Bowie never took off his “iconic” TRINITY ring. (*Id.* at CART 915). And *WWD* called the TRINITY design the “best-known of Cartier’s iconic designs.” (*Id.* at CART 918).

In addition, many celebrities wear TRINITY brand jewelry products to awards shows, movie premieres, film festivals, and other events where they are photographed. (Cohen Decl. ¶ 23). As such, high-circulation publications routinely feature photographs of celebrities wearing TRINITY brand jewelry products. (*Id.*). Celebrities who have been photographed wearing TRINITY products include Reese Witherspoon, Demi Moore, Naomi Watts, Amy Adams, Kate Winslet, and Kate Middleton. (Ex. CT 18).

#### **6. *Cartier’s TRINITY Trademark Registrations and Application***

In connection with Cartier’s efforts to protect the TRINITY brand and name, Cartier has obtained several trademark registrations for its TRINITY mark in the United States, including U.S. Registration No. 1,927,987 for use in connection with “jewelry made of precious metal or coated therewith” in International Class 14; U.S. Registration No. 2,243,233 for use in connection with “watches” in International Class 14; U.S. Registration No. 3,864,480 for use in connection with “watches, clocks” in International Class 14; and U.S. Registration No. 4,263,072 for use in connection with “diaries, writing instruments” in International Class 16. (Hallerman Decl. ¶ 7; Ex. CT 19).

Cartier also has sought protection for its TRINITY mark in connection with handbags and other leather goods. As stated above, Cartier added handbags and other leather goods to its TRINITY collection in 2004. (Cohen Decl. ¶ 14; Exs. CT 5, CT 16). Thus, on January 9, 2004, Cartier filed Application Serial No. 79/001,402 to register the TRINITY mark for use in

connection with “goods made of leather or imitation leather, namely, document cases, credit cards cases, business card cases, wallets, handbags, rucksacks, traveling bags, valises, trunks, suitcases, luggage, briefcases; saddlery” in International Class 18. (Hallerman Decl. ¶ 7; Ex. CT 20). This application matured to U.S. Registration No. 2,944,103 on April 26, 2005. It remained valid, subsisting, and in full effect until it lapsed on December 9, 2011. (*Id.*).

On July 10, 2012, after Cartier decided to reintroduce TRINITY handbags and other leather goods, Cartier filed Application Serial No. 79/116,170 to re-register the TRINITY mark specifically in connection with “goods made of leather or imitation leather, in particular, document holders, wallets, handbags, rucksacks, travelling bags, valises, trunks and suitcases” in International Class 18. (Hallerman Decl. ¶ 8; Ex. CT 21). This application remains pending as Applicant’s application to register TRINITY has been cited as a bar to registration. (Hallerman Decl. ¶ 8).

#### **7. *Cartier’s Enforcement Efforts***

Cartier actively enforces its exclusive rights in the TRINITY mark in a number of ways. First, Cartier actively monitors the trademark registry for applications for marks that are confusingly similar to its TRINITY mark, and takes necessary measures to prevent the registration of such confusingly similar marks, including by opposing the marks before the Board. (*Id.* ¶ 10). Based on its rights in its TRINITY mark, Cartier successfully opposed the applications to register the marks 1 IN 3 TRINITY (Opp. No. 91174557) and TRINITY TO THE POWER OF ME (Opp. No. 91176351). (*Id.*; Ex. CT 22). Cartier also opposed the application to register the mark TRINITY FELLOWSHIP (Opp. No. 91162873), and, as a result, the owner of the application agreed to narrow the identification of goods. (*Id.*).

Second, Cartier sends cease-and-desist letters to parties who are either using a mark that is confusingly similar to Cartier's TRINITY mark or who are improperly using Cartier's TRINITY mark. (Hallerman Decl. ¶ 11). For example, Cartier sent a cease-and-desist letter to the owners of Application Serial No. 85/698,475, who had applied to register the mark TRINITY BANDZZ. (*Id.*; Ex. CT 23). After receipt of Cartier's cease-and-desist letter, the owners expressly abandoned their application. (*Id.*). Cartier also sent a cease-and-desist letter to Eve's Addiction, a jewelry retailer that was improperly using the TRINITY mark in connection with the sale of jewelry products. (Hallerman Decl. ¶ 11; Ex. CT 24). After receiving Cartier's letter, Eve's Addiction confirmed that it had ceased all improper use of the TRINITY mark. (*Id.*).

Third, Cartier takes action against those who distribute and sell counterfeit TRINITY jewelry. (Hallerman Decl. ¶ 12). For example, Cartier, along with several other brands, brought a lawsuit against the operators of a website that facilitated the sale of counterfeit versions of Cartier's products, including TRINITY products. (*Id.*; Ex. CT 25). Cartier prevailed in the lawsuit and obtained a permanent injunction that enjoined the defendants from, *inter alia*, permitting, allowing, or facilitating any customers or users to post or display listings to sell products bearing the TRINITY mark. (*Id.*).

Finally, Cartier enforces its rights in its TRINITY mark by monitoring use of the TRINITY mark on the Internet, and requesting that website owners take down references to the TRINITY mark when their use is likely to cause confusion with Cartier or Cartier's TRINITY products. (Hallerman Decl. ¶ 13; Ex. CT 26). Cartier has secured nearly 2,500 takedowns since the inception of this particular enforcement program. (*Id.*).

**B. Applicant and His TRINITY Mark**

**1. Business and Products of Applicant**

Applicant is the founder and owner of the company TrinityWerks, Inc., which is in the business of developing and distributing women's handbags and other leather goods. (Coachman Decl. ¶¶ 1-3; Ex. CT 38 (Coachman Disc. Dep.) at 10:23-11:3, 12:7-9). Applicant offers his products under the mark TRINITY, which he has been using since March 2012. (Coachman Decl. ¶¶ 4-5; Ex. CT 41 (Applicant's Interrogatory Responses) amended response no. 4). Applicant's TRINITY products consist of one style of handbag in three colors. (Coachman Decl. ¶ 4; Ex. CT 38 (Coachman Disc. Dep.) at 14:24-15:17; Ex. CT 40 (Applicant's Interrogatory Responses) response no. 1). These handbags can be seen in Applicant's Trial Exhibit TW 1.

At some point in the future, Applicant intends to offer for sale two other types of handbags under the TRINITY mark. (Coachman Decl. ¶ 10; Ex. CT 38 (Coachman Disc. Dep.) at 17:25-18:19, 20:6-22). Applicant has made prototypes of both bags, but has not offered them for sale to consumers yet. (*Id.*).

In the past, Applicant has considered ways to expand his TRINITY line. Applicant considered expanding his use of TRINITY to include jewelry items, specifically necklaces. (Ex. CT 38 (Coachman Disc. Dep.) at 36:20-37:3, 37:8-12, 42:20-43:14, 46:14-48:5, Cartier Ex. 7). He also purchased several items from the manufacturer of his TRINITY handbags, including belts, to see if any of those products would generate "buzz" in the United States such that he would add them to his line. (*Id.* at 52:24-53:3, 54:17-21, 55:3-15, Cartier Ex. 11). Applicant viewed these items as "logical possible extensions" of his TRINITY brand, but decided not to offer them for sale "at this time." (*Id.* at 55:9-15).

**2. Marketing and Sales of Applicant's TRINITY Handbag**

Applicant has engaged in very limited marketing for his TRINITY bags, spending no more than [REDACTED] total on promotional activities. (Coachman Decl. ¶ 11). His marketing efforts to date have been limited to the following: giving away minimal quantities of the TRINITY handbag; promoting the TRINITY handbag to a local entrepreneurial group in Union City, Georgia; arranging for one of the stars of Real Housewives of Atlanta to hold the TRINITY handbag in photographs, which Applicant featured on his Twitter account; and sending nine emails to potential distributors and other contacts. (*Id.* ¶¶ 11-14). Applicant also maintains a Twitter account and a website. The Twitter account has no followers, and the website has no content. (*Id.*; Exs. TW 11-TW 12; Ex. CT 38 (Coachman Disc. Dep.) at 86:15-87:7, Cartier Ex. 13).

Applicant made his first sale of a TRINITY handbag in May 2012 (Ex. CT 41 (Applicant's Interrogatory Responses) amended response no. 4), and since then he has sold approximately [REDACTED] handbags for a total revenue of [REDACTED]. (Coachman Decl. ¶ 15). All of Applicant's sales have been directly to consumers, who, for the most part, are friends or acquaintances of Applicant. (*Id.*; Ex. CT 38 (Coachman Disc. Dep.) at 71:19-71:2, 73:3-11, 73:15-19, 74:11-75:20). Applicant has tried to interest national retailers in his TRINITY handbags, including Saks Fifth Avenue, Neiman Marcus, and Macy's, but to date none have shown any interest. (Ex. CT 38 (Coachman Disc. Dep.) at 80:19-81:5, 83:25-84:5; Ex. CT 47 (Coachman Disc. Dep.) at 110:25-112:20). Nonetheless, Applicant still intends to have his TRINITY handbags sold at upscale boutiques and department stores. (Coachman Decl. ¶ 17; Cross-Examination Coachman Decl., response no. 8; Ex. CT 38 (Coachman Disc. Dep.) at 83:15-24).

**3. Applicant's Application to Register TRINITY Mark**

On April 20, 2012, Applicant filed Application Serial No. 85/604,000 to register the mark TRINITY for "leather handbags" in International Class 18. (Coachman Decl. ¶ 18; Ex. TW 13). Cartier timely opposed Applicant's application on March 18, 2013. (Dkt. no. 1).

**C. Marketplace Use of Marks in Connection with Both Jewelry and Handbags**

Many brands, as Cartier does and as Applicant himself considered doing, offer both jewelry and handbags under the same brand name. (Cohen Decl. ¶ 27). Indeed, this practice is commonplace. (*Id.*) Such brands include Chanel, Chloe, Tiffany, Coach, Gucci, Guess?, Kenneth Cole, Michael Kors, Prada, Saint Laurent, and Tory Burch. (Exs. CT27-CT 37). As such, consumers have come to expect that bags and jewelry offered under the same mark originate from the same company. (Cohen Decl. ¶¶ 27, 29; Cross-Examination Cohen Decl., response nos. 1-3).

**ARGUMENT**

Cartier has asserted a likelihood of confusion under Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), as the basis for its opposition to registration of Applicant's TRINITY mark. To succeed on its likelihood of confusion claim, Cartier must establish its standing and then prove both priority and likelihood of confusion. *See Cunningham v. Laser Golf Corp.*, 55 U.S.P.Q.2d 1842, 1844 (Fed. Cir. 2000); *Venture Out Props. LLC v. Wynn Resorts Holdings, LLC*, 81 U.S.P.Q.2d 1887, 1891 (T.T.A.B. 2007).

**A. Cartier Has Established Standing**

Cartier has standing to bring this proceeding. Under the Lanham Act, "[a]ny person who believes he would be damaged by the registration of a mark" may file an opposition. 15 U.S.C. § 1063(a); *see also Compuclean Mktg. & Design v. Berkshire Prods. Inc.*, 1 U.S.P.Q.2d 1323,

1324 (T.T.A.B. 1986) (“It is an essential element of proof in any opposition or cancellation proceeding that the opposer or petitioner possess a ‘real interest’ in the proceeding.”).

Here, Cartier has a real interest in this proceeding. On July 10, 2012, Cartier filed Application Serial No. 79/116,170 to re-register its TRINITY mark for use in connection with various leather goods in International Class 18. (Hallerman Decl. ¶ 8). The application was provisionally refused because Applicant’s application to register TRINITY was cited as a potential bar to registration. (*Id.*). Cartier’s application has been suspended pending the final disposition of Applicant’s TRINITY application. (Ex. CT 21 at CART 580). These facts demonstrate that Cartier would be damaged by registration of Applicant’s TRINITY mark, and thus standing is established. *See Fiat Grp. Autos. S.p.A. v. ISM Inc.*, 94 U.S.P.Q.2d 1111, 1112 (T.T.A.B. 2010) (finding standing where the opposed application was cited as a potential bar to the opposer’s application); *Life Zone Inc. v. Middleman Grp., Inc.*, 87 U.S.P.Q.2d 1953, 1959 (T.T.A.B. 2008) (same); Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 309.03(b) (providing that standing is established if “[p]laintiff . . . has been advised that it will be refused registration when defendant’s application matures into a registration”).

#### **B. Cartier Has Established Priority**

There also is no issue concerning priority. To establish priority, Cartier must show proprietary rights in the TRINITY mark arising 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.” *Herbko Int’l, Inc. v. Kappa Books, Inc.*, 64 U.S.P.Q.2d 1375, 1378 (Fed. Cir. 2002); TBMP § 309.03(c)(A). Where the opposer proves that it owns a registration for its pleaded mark, priority is not an issue. *See L’Oreal S.A. v. Marcon*, 102 U.S.P.Q.2d 1434, 1436 n.7 (T.T.A.B. 2012) (“[T]here can be no

priority dispute when an opposer properly introduces its registrations into the record, and the applicant fails to file a counterclaim to cancel them.”); *Rocket Trademarks Pty Ltd. v. Phard S.p.A.*, 98 U.S.P.Q.2d 1066, 1072 (T.T.A.B. 2011) (stating that priority not at issue as to the marks and goods covered by the pleaded registrations that were of record). Here, Cartier has proved that it owns its pleaded registration for the TRINITY mark (Hallerman Decl. ¶ 6; Ex. CT 19), and thus priority is established.

Moreover, Cartier registered and used its TRINITY mark long before any priority date upon which Applicant can rely. Cartier’s oldest TRINITY registration issued on October 17, 1995, and Cartier has continuously used its TRINITY mark in the United States since 1983. (*Id.*; Cohen Decl. ¶ 10). Both of these dates precede March 2012, the date of first use claimed in Applicant’s application. (Coachman Decl. ¶ 18; Ex. TW 13 at Applicant 39). This is more than sufficient to show Cartier’s priority. *See Herbko*, 64 U.S.P.Q.2d at 1378.

**C. Applicant’s Mark is Likely to Cause Confusion With Cartier’s TRINITY Mark**

In determining likelihood of confusion, the Board weighs the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 177 U.S.P.Q. 563, 567 (C.C.P.A. 1973), to the extent those factors are relevant to the case at hand. *See Opryland USA Inc. v. Great Am. Music Show, Inc.*, 23 U.S.P.Q.2d 1471, 1473 (Fed. Cir. 1992) (explaining that “[n]ot all of the *du Pont* factors are relevant or of similar weight in every case”). Here the relevant *du Pont* factors are: (i) the close similarity of the parties’ marks; (ii) the identity and/or relatedness of the parties’ goods; (iii) the strength of the TRINITY mark; (iv) the overlap of the parties’ trade channels and consumers;



(v) the variety of goods on which the TRINITY mark is used; and (vi) the lack of third-party use of similar marks.<sup>2</sup>

The Board's analysis of the *du Pont* factors must be guided by two broad principles. First, all doubts about whether confusion is likely must be resolved in favor of the prior user. See *Nina Ricci, S.A.R.L. v. E.T.F. Enters., Inc.*, 12 U.S.P.Q.2d 1901, 1904 (Fed. Cir. 1989); *Gillette Can. Inc. v. Ranir Corp.*, 23 U.S.P.Q.2d 1768, 1774 (T.T.A.B. 1992). Second, Applicant, as the newcomer, is obligated to avoid selecting a mark close to the established TRINITY mark in order to protect consumers from confusion and to protect Cartier's goodwill and investment in its mark. See *Kenner Parker Toys, Inc. v. Rose Art Indus., Inc.*, 22 U.S.P.Q.2d 1453, 1456 (Fed. Cir. 1992); *Nina Ricci*, 12 U.S.P.Q.2d at 1904.

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<sup>2</sup> The remaining *du Pont* factors are not relevant to this proceeding. The factor concerning the extent to which Applicant has a right to exclude others based on ownership of a valid registration for its mark is irrelevant since Applicant does not own any existing registration for the TRINITY mark, and use alone is irrelevant to this factor. See *In re Kelly-Moore Paint Co.*, App. Ser. No. 78667467, 2008 WL 902863, at \*7 (T.T.A.B. Mar. 3, 2008). The factors concerning the nature and extent of any actual confusion and the length of time during which there has been concurrent use are of little significance given the limited nature of Applicant's actual use of the TRINITY mark thus far – only about [REDACTED] TRINITY handbags sold since May 2012 mostly to friends and acquaintances. (Coachman Decl. ¶ 15; Ex. CT 38 (Coachman Disc. Dep.) at 71:19-71:2, 73:3-11, 73:15-19, 74:11-75:20). See *Eveready Battery Co. v. Green Planet, Inc.*, 91 U.S.P.Q.2d 1511, 1516 (T.T.A.B. 2009) (holding that no weight given to lack of actual confusion where evidence showed that applicant had sold only 15,000 items under its applied-for mark); *Barbara's Bakery, Inc. v. Landesman*, 82 U.S.P.Q.2d 1283, 1287 (T.T.A.B. 2007) (noting that “absence of [actual confusion] evidence is clearly due to the minimal scope of applicant's actual use of her mark in the marketplace” and thus finding “absence of actual confusion is of little probative value in this case”). Further, it is well established that “[t]he test of infringement is the *likelihood* of confusion, not the proof of *actual* confusion,” and thus an opposer is “not required to prove any instances of actual confusion.” 4 J. Thomas McCarthy, *McCarthy on Trademarks & Unfair Competition* (hereinafter, “*McCarthy*”) § 23:12 (4th ed. 2016) (emphasis in original). Finally, the factor concerning the market interface between the applicant and owner of a prior mark is also not relevant since there is no evidence of a consent or other agreement allowing Applicant to register his mark.

With the above principles in mind, the below analysis of the relevant *du Pont* factors leads to the inevitable conclusion that Applicant's TRINITY mark, when used on or in connection with the applied-for goods, is likely to cause confusion, to cause mistake, or to deceive. Therefore, Applicant's application to register TRINITY here opposed should be denied based on Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

**1. The Parties' Marks are Identical**

The two key factors in a likelihood of confusion analysis are the similarities of the marks and the similarities of the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 192 U.S.P.Q. 24, 29 (C.C.P.A. 1976) ("The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks."); *In re Iolo Techs., LLC*, 95 U.S.P.Q.2d 1498, 1499 (T.T.A.B. 2010) ("In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services."). As for the similarity of the marks factor, it examines the similarity of the marks in their entireties as to appearance, sound, connotation, and commercial impression. *du Pont*, 177 U.S.P.Q. at 567.

Here, the parties' marks are identical in every respect—both consist of the term TRINITY in standard character format, and thus are identical in appearance, sound, connotation, and commercial impression. *See Kohler Co. v. Baldwin Hardware Corp.*, 82 U.S.P.Q.2d 1100, 1109 (T.T.A.B. 2007) ("The marks in this proceeding are identical in sound, appearance, meaning and commercial impression, both marks being DEVONSHIRE in standard character form."). That the marks are identical weighs heavily against Applicant in the overall likelihood of confusion analysis. *See In re Majestic Distilling Co.*, 65 U.S.P.Q.2d 1201, 1204 (Fed. Cir. 2003) ("We have previously held that, when word marks are identical but neither suggestive nor

descriptive of the goods associated with them, the first *DuPont* factor weighs heavily against the applicant, . . . and even when goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source.” (citations and internal quotation marks omitted)); *In re Shell Oil Co.*, 26 U.S.P.Q.2d 1687, 1688 (Fed. Cir. 1993) (“The identity of words, connotation, and commercial impression weighs heavily against the applicant.”); *In re Martin’s Famous Pastry Shoppe, Inc.*, 223 U.S.P.Q. 1289, 1290 (Fed. Cir. 1984) (“This factor weighs heavily against applicant, as the two word marks are identical: MARTIN’S.”). As such, this factor decidedly favors Cartier.

## **2. Applicant’s Goods are Identical or Closely Related to Cartier’s Goods**

The other *du Pont* factor critical to the likelihood of confusion analysis is the similarity of the parties’ goods offered under their respective marks. *See du Pont*, 177 U.S.P.Q. at 567. The inquiry under this factor is whether the party’s goods and services are sufficiently related such that consumers are likely to believe that they come from the same source. *See Hewlett-Packard Co. v. Packard Press, Inc.*, 62 U.S.P.Q.2d 1001, 1004 (Fed. Cir. 2002) (“Even if the goods and services in question are not identical, the consuming public may perceive them as related enough to cause confusion about the source or origin of the goods and services”); *Herbko Int’l*, 64 U.S.P.Q.2d at 1381 (same). When analyzing the relatedness of the goods, the Board must look at the goods as they are identified in the respective registrations and applications of the parties. *See Octocom Sys., Inc. v. Hous. Computer Servs., Inc.*, 16 U.S.P.Q.2d 1783, 1787 (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 . . .”).

Given that the marks here at issue are identical, the degree of similarity between the parties' goods that is required to support a finding of likelihood of confusion lessens. *See Shell Oil*, 26 U.S.P.Q.2d at 1689; *Time Warner Entm't Co. v. Jones*, 65 U.S.P.Q.2d 1650, 1661 (T.T.A.B. 2002). That is, "[w]here the applicant's mark is identical to the registrant's mark, as it is in this case, there need be only a viable relationship between the respective goods or services in order to find that a likelihood of confusion exists." *In re Opus One, Inc.*, 60 U.S.P.Q.2d 1812, 1815 (T.T.A.B. 2001).

*a. The Parties' Goods are Related*

Cartier owns registrations for TRINITY for use in connection with jewelry, watches, clocks, diaries, and writing instruments. (Hallerman Decl. ¶ 6; CT 19). These goods are undoubtedly related to leather handbags, the goods for which Applicant has applied to register his TRINITY mark. To start, the Board previously has held that goods of this type are related. *See In re TBAC Inv. Trust*, App. Ser. No. 74209526, 1999 WL 612950, at \*2 (T.T.A.B. Aug. 11, 1999) (concluding that luggage and small leather goods were related to, *inter alia*, watches).

Moreover, the evidence of record conclusively establishes that the goods are related. Cartier has shown that numerous companies offer jewelry, one of the core products offered under Cartier's TRINITY mark, and handbags under the same marks. (Cohen Decl. ¶ 27; Exs. CT 27-CT 37). As such, consumers have come to expect that bags and jewelry offered under the same mark originate from the same company, and that brands that offer jewelry will also offer a handbag line under the same name. (Cohen Decl. ¶¶ 27, 29; Cross-Examination Cohen Decl., response nos. 1-3). These facts support a finding that the parties' goods are related. *See Allagash Brewing Co. v. Pelletier*, Opp. No. 91214028, 2015 WL 6121774, at \*7 (T.T.A.B. Sept. 22, 2015) (finding beer and cheese related based on testimony by the opposer's president that it

was common practice for brewing companies to make and sell food products, and thus consumers would expect that the applicant's jams and jellies emanated from the same source as opposer's beer); *Wolverine Outdoors, Inc. v. Marker Volkl (Int'l) GmbH*, Consol. Opp. No. 91161363, 2013 WL 5655832, at \*19 (T.T.A.B. Sept. 30, 2013) (finding footwear and apparel related based in part on testimony from the opposer's marketing manager that it is typical for a footwear company to expand into apparel); *In re Sociedad Cooperativa Limitada De Comercializacion*, App. Ser. No. 85365179, 2013 WL 5467021, at \*3-4 (T.T.A.B. Sept. 9, 2013) (finding persuasive Examining Attorney's argument that applicant's olive oil, honey, and paprika powder were related to registrant's nut butters and Marcona almond butter products based on evidence showing that companies offer olive oil and/or honey under the same marks as nut butters).

That leather handbags are related to Cartier's TRINITY brand products is further confirmed by Cartier's own sale of leather handbags under the TRINITY mark. Cartier offered TRINITY handbags for sale in the United States from 2004 to 2008, and again began to offer them for sale in November 2015. (Cohen Decl. ¶ 14; Hallerman Decl. ¶¶ 7-9; Ex. CT 16 (showing sales of TRINITY handbags in the United States from 2004 to 2008)). Because Cartier itself has offered leather handbags under the TRINITY mark, and is currently doing so again, consumers are likely to believe that Applicant's leather handbags are part of Cartier's TRINITY collection. (Cohen Decl. ¶ 28). This is a textbook showing of relatedness. *See Hewlett-Packard*, 62 U.S.P.Q.2d at 1004; *Herbko Int'l*, 64 U.S.P.Q.2d at 1381.

Finally, Applicant's own market research establishes that Cartier's TRINITY products are related to Applicant's TRINITY handbags. Applicant considered adding necklaces and leather belts to his line of TRINITY products (Ex. CT 38 (Coachman Disc. Dep.) at 36:20-37:3,

37:8-12, 42:20-43:14, 46:14-48:5, 52:24-53:3, 54:17-21, 55:3-15, Cartier Exs. 7, 11), the same products that Cartier has long offered under its TRINITY mark and that, in the case of jewelry, is covered by Cartier's federal registrations for the TRINITY mark. Indeed, Applicant called leather belts a "logical possible extension" of his TRINITY brand. (*Id.* at 55:9-15). This is further evidence that leather handbags tend to be offered under the same mark as the products covered by Cartier's trademark registrations, and therefore consumers would view Applicant's TRINITY leather handbags as emanating from the same source as Cartier's TRINITY products.

*b. The Parties' Goods are Related Under the Natural Expansion Doctrine*

The Board also can find the parties' goods related under the doctrine of natural expansion. As the Board has previously explained:

Under the doctrine of natural expansion, the first user of a mark in connection with particular goods or services possesses superior rights in the mark not only as against subsequent users of the same or similar mark for the same or similar goods or services, but also as against subsequent users of the same or similar mark for any goods or services which purchasers might reasonably expect to emanate from it in the normal expansion of its business under the mark.

*Mason Eng'g & Design Corp. v. Mateson Chem. Corp.*, 225 U.S.P.Q. 956, 962 (T.T.A.B. 1985).

Here, leather handbags, the goods for which Applicant has applied to register his TRINITY mark, are well within Cartier's zone of natural expansion. This is established by the many companies that offer both handbags and jewelry under the same brands and that Cartier has and is currently selling handbags under the TRINITY mark. *See Wolverine Outdoors*, 2013 WL 5655832, at \*16-18 (holding that bags were within opposer's zone of natural expansion of footwear based on opposer's own entry into the bag market and evidence that several companies offer both bags and footwear under the same marks); *Hasbro, Inc. v. Pinkett*, Opp. No. 91123661, 2004 WL 1427395, at \*7 (T.T.A.B. June 18, 2004) (holding that certain goods were

within opposer’s natural zone of expansion where opposer had previously offered such goods for sale).

\* \* \*

In sum, the degree of relatedness necessary to support a finding of likelihood of confusion is rather low in light of the parties’ identical marks. Nonetheless, the evidence of record conclusively establishes that consumers are likely to view the parties’ goods as emanating from the same source.

**3. The TRINITY Mark is Strong and is Entitled to a Broad Scope of Protection**

Another important *du Pont* factor is the strength of the senior mark. *See Recot, Inc. v. Becton*, 54 U.S.P.Q.2d 1894, 1897 (Fed. Cir. 2000) (explaining that this factor “plays a ‘dominant role’” in the likelihood of confusion analysis). The stronger the mark, the greater the legal protection to which it is entitled. *See Kenner Parker Toys*, 22 U.S.P.Q.2d at 1456 (“[T]he Lanham Act’s tolerance for similarity between competing marks varies inversely with the fame of the prior mark.”). As the Board has explained, “[a] strong mark . . . casts a long shadow which competitors must avoid.” *Id.* A mark’s strength is determined first by examining its inherent distinctiveness and, second, by determining its marketplace recognition. *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768, 23 U.S.P.Q.2d 1081, 1086 (1992); 2 *McCarthy* § 11:83. The undisputed record, as explained below, establishes the strength of the TRINITY mark and its entitlement to a broad scope of protection.

a. *The TRINITY Mark is Inherently Strong*

The inherent strength of a mark is determined according to where the mark falls along the spectrum of generic, descriptive, suggestive, and arbitrary/fanciful marks. *See In re MBNA Am. Bank, N.A.*, 67 U.S.P.Q.2d 1778, 1780 (Fed. Cir. 2003). The TRINITY mark is the subject of

four trademark registrations, two of which are incontestable (Hallerman Decl. ¶ 6; Ex. CT 19) and therefore not subject to challenge as merely descriptive. *Park 'N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189, 196, 224 U.S.P.Q.2d 327, 330 (1985) (“The language of the Lanham Act . . . refutes any conclusion that an incontestable mark may be challenged as merely descriptive.”). As such, the TRINITY mark is inherently distinctive as a matter of law.

The TRINITY mark also is inherently distinctive as a matter of fact. The TRINITY mark does not describe or suggest any characteristics or qualities of the recited goods in Cartier’s TRINITY registrations,<sup>3</sup> and thus it is an arbitrary mark. See *Nautilus Grp., Inc. v. ICON Health & Fitness, Inc.*, 71 U.S.P.Q.2d 1173, 1180 (Fed. Cir. 2004) (“[A]n arbitrary mark is a known word used in an unexpected or uncommon way.”); 2 *McCarthy* § 11:11 (“Arbitrary marks comprise those words . . . that are in common linguistic use but which, when used with the goods or services in issue, neither suggest nor describe any ingredient, quality or characteristic of those goods or services.”). As an arbitrary mark, TRINITY is entitled to a broad scope of protection. See *In re A.C.E. Int’l Co.*, App. Ser. No. 76120896, 2003 WL 22174266, at \*4 (T.T.A.B. Sept. 16, 2003) (“Based on the record before us, COBRA is an arbitrary mark for the registrant’s protective gloves, and the registration is therefore entitled to a broad scope of protection, protection which certainly extends to prevent the registration of applicant’s virtually identical mark COBRA for protective helmets for welding.”); *In re Wilson*, 57 U.S.P.Q.2d 1863, 1865 (T.T.A.B. 2001) (“PINE CONE is an arbitrary and strong mark entitled to a broad scope of protection.”).

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<sup>3</sup> Although Cartier uses the TRINITY mark in connection with jewelry that is sometimes composed of three rings, its federal registration for TRINITY in Class 14 is not so limited (Ex. CT 19 (Cartier’s trademark registrations), nor is its use. (Ex. CT 6; Rebuttal Cohen Decl. ¶ 3). In fact, many of Cartier’s TRINITY products do not have the three-ring design element. (Ex. TW 17 (Cohen Disc. Dep.) at 13:16-18).



b. *The TRINITY Mark has Marketplace Strength*

The marketplace strength of a mark is determined by examining various factors including the extent of sales and advertising, length of use, and the degree of public recognition and renown. *See Bose Corp. v. QSC Audio Prods., Inc.*, 63 U.S.P.Q.2d 1303, 1306 (Fed. Cir. 2002). Here, the evidence shows that Cartier's TRINITY mark has enjoyed strong sales success, has been advertised extensively, and has been the subject of much unsolicited press.

TRINITY is one of [REDACTED], with U.S. sales of TRINITY products generating approximately [REDACTED] between FY 2007 and FY 2014. (Cohen Decl. ¶¶ 11, 20-21; Exs. CT 15, CT 16). Moreover, annual sales for TRINITY products exceeded [REDACTED] in each year from FY 2011 to FY 2014. (Exs. CT 15, CT 16). This evidence demonstrates that TRINITY is a strong mark. *See Otto Int'l, Inc. v Otto Studio, LLC*, Opp. No. 91175103, 2009 WL 1741895, at \*3 (T.T.A.B. June 1, 2009) (finding mark strong based on annual sales in the tens of millions and total sales over a decade in the hundreds of millions); *Cuban Cigar Brands, N.V. v. Inter Am. Cigar Co.*, Opp. No. 91169391, 2008 WL 2271547, at \*5 (T.T.A.B. May 21, 2008) (finding mark strong based on annual revenues in the tens of millions); *Quiksilver, Inc. v. Tiffany & Broadway, Inc.*, Opp. No. 91107511, 2000 WL 1125573, at \*2, 6 (T.T.A.B. July 26, 2000) (finding mark strong based in part on increasing annual sales, with recent annual sales of \$12-13 million, \$21-23 million, and \$25 million).

The strength of Cartier's TRINITY mark is also shown through Cartier's length of use, Cartier's advertising and promotion of the mark, and the high level of unsolicited press mentions that the brand regularly garners. *See Bose*, 63 U.S.P.Q.2d at 1305-06. The TRINITY mark has been in use in the United States for over thirty years, during which time Cartier has engaged in extensive advertising of the TRINITY brand. (Cohen Decl. ¶¶ 10, 16-19). Cartier advertises its

TRINITY products both in national print publications and on well-known websites. (*Id.* ¶¶ 17-18; Exs. CT 12, CT 13). Cartier’s annual advertising expenditures have been over ██████ in most years since 2010. (Ex. CT 14). This evidence further establishes the strength of the TRINITY mark. *See GTFM, Inc. v. Seems*, Opp. No. 91179611, 2009 WL 4086584, at \*3-4 (T.T.A.B. Sept. 11, 2009) (finding promotional expenditures of \$1.6 million over recent two years to be sufficient for finding mark strong); *Quiksilver*, 2000 WL 1125573, at \*3, 6 (finding mark strong based in part on average annual advertising expenditures of \$1 million).

Finally, the TRINITY mark receives significant unsolicited press. (Cohen Decl. ¶ 22). For example, TRINITY products are consistently featured in editorial spreads in high-circulation national publications, such as *Harper’s Bazaar*, *Marie Claire*, and *WWD*. (*See* Ex. CT 17 (representative samples of unsolicited press coverage of TRINITY products)). In addition, many celebrities wear TRINITY jewelry products to events where they are photographed, and such photographs appear in various widely-read publications. (Cohen Decl. ¶ 23; Ex. CT 18).

In short, the evidence conclusively establishes that the TRINITY mark has been used and advertised extensively and broadly and has achieved impressive sales success, key considerations in assessing the renown of a mark. *See Bose*, 63 U.S.P.Q.2d at 1308-09. Given its broad commercial impact, the TRINITY mark has a great degree of strength and deserves a wide scope of protection.

#### **4. The Parties’ Trade Channels and Customers Overlap**

Two other relevant *du Pont* factors that clearly weigh in Cartier’s favor are the overlap of the parties’ trade channels and consumers. *See du Pont*, 177 U.S.P.Q. at 567. In considering channels of trade and purchasers to determine likelihood of confusion, the Board must look to

the applications and registrations on the record before it. *See CBS Inc. v. Morrow*, 218 U.S.P.Q. 198, 199 (Fed. Cir. 1983).

Applicant's TRINITY application for leather handbags contains no limitations as to trade channels or purchasers. Therefore, the Board must presume that Applicant's handbags will flow through all normal channels of trade and be sold to all normal consumers for such goods. *See Canadian Imperial Bank of Commerce v. Wells Fargo Bank, Nat'l Ass'n*, 1 U.S.P.Q.2d 1813, 1814 (Fed. Cir. 1987) (affirming Board's determination of likelihood of confusion based on the scope of the goods and services covered by the contested mark); *In re Thor Tech, Inc.*, 90 U.S.P.Q.2d 1634, 1639 (T.T.A.B. 2009) (stating that where "there are no limitations as to channels of trade or classes of purchasers," it is presumed that the goods "move in all channels of trade normal for those products, and that they are available to all classes of purchasers for the listed goods"). Cartier's registrations for jewelry, watches, clocks, diaries, and writing instruments and its application for leather goods likewise are not limited to any particular trade channels or customers.

Given that neither party has limited its trade channels or purchasers, and given that the parties' goods are related, the parties' respective trade channels and customers are presumed to overlap. *See Genesco Inc. v. Martz*, 66 U.S.P.Q.2d 1260, 1268 (T.T.A.B. 2003) ("Given the in-part identical and in-part related nature of the parties' goods, and the lack of any restrictions in the identifications thereof as to the trade channels and purchasers, [the parties' goods] could be offered and sold to the same classes of purchasers through the same channels of trade."); *see also Cunningham*, 55 U.S.P.Q.2d at 1846. As such, the similarity of the trade channels and the similarity of the consumers factors favor Cartier.

**5. Cartier’s Variety of Goods Contributes to a Likelihood of Confusion**

Another *du Pont* factor relevant to the inquiry here considers “[t]he variety of goods on which a mark is or is not used.” *du Pont*, 177 U.S.P.Q. at 567. Where the senior mark is used with a number of goods, consumers are more likely to think, upon encountering the junior mark, that the senior user has expanded its product line. *See Black & Decker Corp. v. Emerson Electric Co.*, 84 U.S.P.Q.2d 1482, 1492-93 (T.T.A.B. 2007).

Cartier has used its TRINITY mark in connection with a wide variety of goods, including jewelry, handbags, leather belts, cufflinks, key rings, diaries, organizers, travel clocks, pens, and eyewear. (Cohen Decl. at ¶¶ 12-15). Based on the variety of goods and services offered under the TRINITY mark, and the common fashion industry practice to offer both jewelry and handbags under the same brand, consumers are likely to think that Applicant’s TRINITY handbags are an expansion of or related to the TRINITY product line. Thus, the variety of goods factor favors Cartier.

**6. There is No Evidence of Third-Party Use That Weakens the TRINITY Mark**

Because “[e]vidence of third-party use of similar marks on similar goods is relevant to show that a mark is relatively weak and entitled to only a narrow scope of protection,” *Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 U.S.P.Q.2d 1689, 1693 (Fed. Cir. 2005) (citations omitted), another *du Pont* factor assesses “[t]he number and nature of similar marks in use on similar goods.” *du Pont*, 177 U.S.P.Q. at 567.

Here, Cartier vigorously protects its valuable TRINITY mark, including by preventing the registration of TRINITY-inclusive marks by third parties. (Hallerman Decl. ¶ 10; Ex. CT 22). Applicant has made of record three third parties’ purported use of TRINITY or TRINITY-

inclusive marks in connection with bags<sup>4</sup> (Exs. TW 38-TW 40), but this evidence does not suffice to tip this factor in Applicant's favor. First, the evidence consists of printouts from the e-commerce website *Amazon.com* (*id.*), but Applicant does not provide any information on the extent to which the goods have been sold or marketed. *See Black & Decker*, 84 U.S.P.Q.2d at 1495 (discounting webpages as evidence of third-party use because it could not be determined "to what extent the goods have been sold"); *Kohler*, 82 U.S.P.Q.2d at 1112 (giving little weight to evidence showing third-party goods available for sale on Internet because there were "no specifics regarding the sales or promotional efforts surrounding the third-party marks"). Thus, this evidence is of limited probative value. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 110 U.S.P.Q.2d 1157, 1160 (Fed. Cir. 2014) (approving Board's view that "little importance" should be given to "internet printouts referencing third-party investment groups with 'LION' in their name" on the ground that such evidence "generally has minimal probative value where, as here, it is not accompanied by any evidence of consumer awareness" (citation and internal quotation marks omitted)).

Second, Applicant has not made of record enough third-party evidence to tip this factor in his favor. The purpose of "introducing third-party uses is to show that customers have become so conditioned by a plethora of such similar marks" that they will not assume that all goods and services offered under such marks emanate from a common source. *Palm Bay Imps.*, 73 U.S.P.Q.2d at 1694. Applicant's three examples of third-party use of TRINITY are insufficient to demonstrate that consumers have become so conditioned to TRINITY or TRINITY-inclusive

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<sup>4</sup> Cartier notes that Applicant stated in his interrogatory responses that he was "not aware of any third parties using a name or mark that contains TRINITY in the U.S. in connection with any goods within International Class 18." (Ex. CT 48 (Applicant's Responses to Interrogatories) at response no. 19). It is unclear when Applicant discovered this purported third-party use.

marks in connection with handbags. *See Spin Concepts, Inc. v. Fosco, Inc.*, Opp. No. 91202544, 2014 WL 295253, at \*8 (T.T.A.B. Jan. 15, 2014) (concluding that usage of term by four third parties was not sufficient to show that consumers could distinguish the parties' marks); *Team Air Express, Inc. v. Alliance Shippers, Inc.*, Canc. No. 92043162, 2007 WL 4438620, at \*11 (T.T.A.B. Dec. 11, 2007) (finding that Internet printouts showing five third-party uses provided "nothing more than a *de minimis* showing . . . under the sixth *du Pont* factor"). Given that Applicant had every incentive to come forward with all third-party uses that he could find, the fact that there are only three examples is telling.

For these reasons, this factor does not favor Applicant.

\* \* \*

Every single factor relevant to this proceeding either favors Cartier or is neutral. *None* favor Applicant. Under these circumstances, Applicant's application to register the TRINITY mark in connection with leather handbags is likely to cause confusion, mistake and deception with respect to Cartier's prior used and registered TRINITY mark in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d).

### **CONCLUSION**

For the foregoing reasons and based on the evidence properly of record in this proceeding, Cartier respectfully requests that the registration of the mark shown in Application Serial No. 85/604,000 be denied and that final judgment for Cartier be entered in this proceeding.

Dated: New York, New York  
April 13, 2016

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By:  \_\_\_\_\_

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## APPENDIX A

Opposer Cartier International A.G. is relying on the following evidence in support of its position in this proceeding as set forth in its Trial Brief:

1. The testimony of Alison Cohen, as presented in her October 30, 2015 Trial Declaration, November 30, 2015 Cross-Examination Response Declaration, November 30, 2015 Supplemental Trial Declaration, and February 12, 2016 Rebuttal Trial Declaration, and Cartier's Exhibits CT 1-CT 18 and CT 42 referenced therein:

- Cartier's Exhibit CT 1: Representative samples of Cartier's jewelry products and leather wallets offered under the LOVE mark;
- Cartier's Exhibit CT 2: Representative samples of Cartier's watches and leather wallets offered under the SANTOS DE CARTIER mark;
- Cartier's Exhibit CT 3: Representative samples of Cartier's bag offerings;
- Cartier's Exhibit CT 4: Representative samples of Cartier's TRINITY jewelry products;
- Cartier's Exhibit CT 5: Cartier's 2004 and 2005 press books;
- Cartier's Exhibit CT 6: Cartier's TRINITY handbag offered for sale in the United States since November 2015;
- Cartier's Exhibit CT 7: Representative sample of Cartier's TRINITY leather belts;
- Cartier's Exhibit CT 8: Representative sample of Cartier's TRINITY cufflinks;
- Cartier's Exhibit CT 9: Representative sample of Cartier's TRINITY key rings;
- Cartier's Exhibit CT 10: Representative samples of Cartier's TRINITY eyewear;
- Cartier's Exhibit CT 11: Cartier "book showing Cartier's 2014 eyewear collection;



- Cartier’s Exhibit CT 12: Representative samples of Cartier’s print and digital advertisements from FY 2007 to FY 2014 for TRINITY jewelry and eyewear;
- Cartier’s Exhibit CT 13: Summary of print publications in which TRINITY advertisements were placed from FY 2002 to FY 2013;
- Cartier’s Exhibit CT 14: Summary of Cartier’s marketing and advertising expenditures for TRINITY products from FY 2002 to FY 2013;
- Cartier’s Exhibit CT 15: Summary of Cartier’s U.S. sales of TRINITY jewelry products from FY 2007 to January 2015;
- Cartier’s Exhibit CT 16: Summary of Cartier’s U.S. sales of TRINITY eyewear, handbags, leather belts, cufflinks, key rings, diaries, organizers, travel clocks, and pens from FY 2007 to FY 2014, and summary of Cartier’s U.S. sales of TRINITY handbags, in units, from FY 2005 to FY 2008;
- Cartier’s Exhibit CT 17: Representative sample of unsolicited press for TRINITY products;
- Cartier’s Exhibit CT 18: Photographs of celebrities wearing TRINITY jewelry products to events; and
- Cartier’s Exhibit CT 42: Advertisements for TRINITY products showing use of the TRINITY mark standing alone.

2. The testimony of Stacey Hallerman, as presented in her October 30, 2015 Trial Declaration, and Cartier’s Exhibits CT 19-CT 26 referenced therein:

- Cartier’s Exhibit CT 19: Copies of records from the United States Patent and Trademark Office (“USPTO”) with respect to Cartier’s registrations for the TRINITY mark;

- Cartier's Exhibit CT 20: Copies of records from the USPTO with respect to Cartier's lapsed U.S. Registration No. 2,944,103 for the TRINITY mark;
- Cartier's Exhibit CT 21: Copies of records from the USPTO with respect to Cartier's Application Serial No. 79/116,170 for the TRINITY mark;
- Cartier's Exhibit CT 22: Records from the Trademark Trial and Appeal Board with respect to oppositions initiated by Cartier against applications to register TRINITY-inclusive marks;
- Cartier's Exhibit CT 23: Correspondence between Cartier and the owners of Application Serial No. 85/698,475 for the TRINITY BANDZZ mark;
- Cartier's Exhibit CT 24: Correspondence between Cartier and Eve's Addiction concerning improper use of the TRINITY mark;
- Cartier's Exhibit CT 25: Court records from lawsuit initiated by Cartier against operators of a website that facilitated the sale of counterfeit versions of Cartier's TRINITY products; and
- Cartier's Exhibit CT 26: Summary of online takedowns that Cartier has initiated based on its rights in the TRINITY mark.

3. Cartier's October 30, 2015 Notice of Reliance on Printed Publications and Cartier's Exhibits CT 27-CT 37 referenced therein:

- Cartier's Exhibit CT 27: Printouts from the website [www.chanel.com](http://www.chanel.com) showing bags and jewelry offered under the CHANEL mark;
- Cartier's Exhibit CT 28: Printouts from the website [www.net-a-porter.com](http://www.net-a-porter.com) showing bags and jewelry offered under the CHLOE mark;

- Cartier's Exhibit CT 29: Printouts from the website [www.coach.com](http://www.coach.com) showing bags and jewelry offered under the COACH mark;
- Cartier's Exhibit CT 30: Printouts from the website [www.gucci.com](http://www.gucci.com) showing bags and jewelry offered under the GUCCI mark;
- Cartier's Exhibit CT 31: Printouts from the website [www.shop.guess.com](http://www.shop.guess.com) showing bags and jewelry offered under the GUESS mark;
- Cartier's Exhibit CT 32: Printouts from the website [www.juicycouture.com](http://www.juicycouture.com) showing bags and jewelry offered under the JUICY COUTURE mark;
- Cartier's Exhibit CT 33: Printouts from the website [www.kennethcole.com](http://www.kennethcole.com) showing bags and jewelry offered under the KENNETH COLE mark;
- Cartier's Exhibit CT 34: Printouts from the website [www.michaelkors.com](http://www.michaelkors.com) showing bags and jewelry offered under the MICHAEL MICHAEL KORS mark;
- Cartier's Exhibit CT 35: Printouts from the website [www.prada.com](http://www.prada.com) showing bags and jewelry offered under the PRADA mark;
- Cartier's Exhibit CT 36: Printouts from the website [www.ysl.com](http://www.ysl.com) showing bags and jewelry offered under the SAINT LAURENT mark; and
- Cartier's Exhibit CT 37: Printouts from the website [www.toryburch.com](http://www.toryburch.com) showing bags and jewelry offered under the TORY BURCH mark.

4. Cartier's October 30, 2015 Notice of Reliance on Deposition Testimony and Cartier's Exhibit CT 38 referenced therein:

- Cartier's Exhibit CT 38: Excerpts from the discovery deposition of Applicant Lance Coachman, taken September 16, 2014.

5. Cartier's October 30, 2015 Notice of Reliance on Discovery Responses and Cartier's Exhibits CT 39-CT 41 referenced therein:

- Cartier's Exhibit CT 39: "Definitions and Instructions" section of Cartier's First Set of Interrogatories, dated January 10, 2014;
- Cartier's Exhibit CT 40: Applicant's responses to Cartier's Interrogatory Nos. 1, 5, 6, 7, 8, 9, 10, and 11, dated March 27, 2014; and
- Cartier's Exhibit CT 41: Applicant's amended responses to Cartier's Interrogatory Nos. 4 and 12, dated February 5, 2015.

6. Cartier's February 12, 2016 Second Notice of Reliance on Printed Publications and Cartier's Exhibits CT 43-CT 46 referenced therein:

- Cartier's Exhibit CT 43: Printout from the website [www.dkny.com](http://www.dkny.com) showing jewelry offered under the DKNY mark;
- Cartier's Exhibit CT 44: Printouts from the website [www.stevemadden.com](http://www.stevemadden.com) showing jewelry offered under the STEVE MADDEN mark;
- Cartier's Exhibit CT 45: Printout from the website [www.1stdibs.com](http://www.1stdibs.com) showing bags offered under the VAN CLEEF & ARPELS mark; and
- Cartier's Exhibit CT 46: Printouts from the website [www.cartier.us](http://www.cartier.us) showing use of the TRINITY mark standing alone.

7. Cartier's February 12, 2016 Second Notice of Reliance on Deposition Testimony and Cartier's Exhibit CT 47 referenced therein:

- Cartier's Exhibit CT 47: Excerpts from the discovery deposition of Applicant Lance Coachman, taken September 16, 2014.

8. Cartier's February 12, 2016 Second Notice of Reliance on Discovery Responses and Cartier's Exhibit CT 48 referenced therein:

- Cartier's Exhibit CT 48: Applicant's responses to Cartier's Interrogatory Nos. 18 and 19, dated March 27, 2014.


9. Cartier's February 12, 2016 Notice of Reliance on Additional Portions of Deposition Testimony of Opposer's Witnesses and Cartier's Exhibit CT 49 referenced therein:

- Cartier's Exhibit CT 49: Excerpts from the discovery deposition of Alison Cohen, taken January 8, 2015.

**CERTIFICATE OF SERVICE**

I hereby certify that I caused, on this 13th day of April 2016, a copy of the foregoing **OPPOSER CARTIER INTERNATIONAL A.G.'S TRIAL BRIEF** to be sent by First Class Mail, postage prepaid, in an envelope addressed to counsel for Lance Coachman:

Reginald J. Hill, Esq.  
D. Matthew Feldhaus, Esq.  
Jenner & Block LLP  
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Emily Weiss