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

Proceeding	91209815
Party	Plaintiff Cartier International A.G.
Correspondence Address	JOHN P MARGIOTTA FROSS ZELNICK LEHRMAN & ZISSU PC 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES jmargiotta@fzlz.com, eweiss@fzlz.com, ykarzoan@fzlz.com
Submission	Other Motions/Papers
Filer's Name	Emily Weiss
Filer's e-mail	jmargiotta@fzlz.com, eweiss@fzlz.com, mortiz@fzlz.com
Signature	/Emily Weiss/
Date	04/13/2016
Attachments	F1923515.PDF(107816 bytes )

**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 STATEMENT OF  
OBJECTIONS TO APPLICANT LANCE COACHMAN'S EVIDENCE**

Opposer Cartier International A.G. (“Cartier”) herein states its objections to certain evidence sought to be introduced in this proceeding by Applicant Lance Coachman (“Applicant”). During his testimony period, Applicant submitted a Trial Declaration, dated December 30, 2015 (Dkt. no. 35). As discussed below, Cartier objects to certain testimony in Applicant’s Trial Declaration.

**A. Applicant’s Testimony in Paragraph 20 Concerning Consumers’ Perceptions**

Cartier seeks to exclude the following portion of Paragraph 20 of Applicant’s Trial Declaration: “I believe that consumers generally do not think of [the brands cited in Paragraph 20] as selling jewelry. Instead, consumers understand COACH and GUCCI, as well as CHANEL, as well-known for handbags and fragrances, respectively.” Pursuant to Paragraph 6 of the parties’ Stipulation Regarding Introduction of Party Direct Testimony at Trial, dated August 24, 2015 (Dkt. no. 22), Cartier’s objections to this testimony were initially stated in Opposer’s Objections to Applicant’s Trial Declaration, served on Applicant on January 14, 2016

and attached hereto as Exhibit A.

This testimony should be excluded because it lacks foundation and constitutes impermissible opinion testimony. *See* Fed. R. Evid. 603, 701. Lay witnesses can provide opinion testimony only if it is based on “first-hand knowledge or observation.” *See* Fed. R. Evid. 701 advisory committee’s notes. For this reason, the Board has permitted a lay witness to testify on consumers’ expectations or perceptions only if the lay witness has first-hand knowledge of the industry in question through his or her position. *See, e.g., Allagash Brewing Co. v. Pelletier*, Opp. No. 91214028, 2015 WL 6121774, at \*7 n.44 (T.T.A.B. Sept. 22, 2015) (admitting testimony from president of opposer, a brewing company, on consumers’ perceptions of beer products because president had gained knowledge of the craft brewing industry through his position); *see also* Fed. R. Evid. 701 advisory committee’s notes (explaining that opinion testimony from a lay witness is admitted where the witness has “particularized knowledge . . . by virtue of his or her position in the business”).

This is not such a case. Applicant is president of an executive search firm, which, by his own admission, does not require him to be familiar with the fashion industry or consumers for handbags and other accessories. (Coachman Decl. ¶ 1; Cross-Examination Coachman Decl., response no. 1). Applicant’s business of selling bags is a side project that he started to fund his daughter’s college education. (Coachman Decl. ¶ 2). While Applicant claims that he researched the leather handbag market in connection with his sale of a small number of handbags to friends and acquaintances (Cross-Examination Coachman Decl., response no. 2), such research is not only incredibly limited, but it does not provide Applicant with first-hand knowledge of the subject matter of the testimony at issue. That is, Applicant does not testify that he conducted any research on the brands referenced in his testimony or on the jewelry market, nor does he testify

that he has any experience in either area. As such, Applicant's testimony is not based on first-hand knowledge or observation and should be excluded.

**B. Applicant's Testimony Concerning Third-Party Brands in Paragraph 20**

Cartier also seeks to exclude the following portion of Paragraph 20 of Applicant's Trial Declaration: "[B]ased on my understanding of the handbag market and research that my attorneys have performed of high-end jewelry brands, I understand that there are brands that sell either high-end jewelry or high-end handbags, but not both." Pursuant to Paragraph 6 of the parties' Stipulation Regarding Introduction of Party Direct Testimony at Trial, dated August 24, 2015 (Dkt. no. 22), Cartier's objections to this testimony were initially stated in Opposer's Objections to Applicant's Trial Declaration. *See* Ex. A.

This testimony should be excluded because it lacks foundation. *See* Fed. R. Evid. 603. Applicant claims that this testimony is based on his understanding of the handbag market and research performed by his attorneys, but neither provides a basis for Applicant's testimony. As for his understanding of the marketplace, Applicant has not testified that he researched brands that sell high-end jewelry. As for research conducted by his attorneys, to the extent Applicant is referring to Exhibits TW 20-36 submitted with his Notice of Reliance on Printed Publications (Dkt. no. 40), they do not provide a foundation for his testimony. Those exhibits, which consist of Internet printouts, only show that some brands, as of the date the screenshots were taken, were not selling both handbags and jewelry on their websites; they do not show that those brands, or any other brands, have not sold both handbags and jewelry.<sup>1</sup> As such, Applicant's testimony

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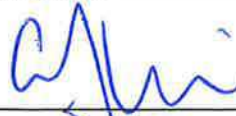
<sup>1</sup> In fact, some of the brands shown in Exhibits TW 20-36, which Applicant claims sell only handbags or only jewelry, sell both products, as shown by Cartier's research. (*See* Exhibits CT 43-46). Moreover, Applicant's research does not show that these brands have never offered both handbags and jewelry, nor did the research confirm that these products were not offered through their stores.

should be excluded for lack of foundation.

Dated: New York, New York  
April 13, 2016

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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



John P. Margiotta  
Emily Weiss

866 United Nations Plaza  
New York, New York 10017

Tel: (212) 813-5900

Email: [jmargiotta@fzlz.com](mailto:jmargiotta@fzlz.com)  
[eweiss@fzlz.com](mailto:eweiss@fzlz.com)

*Attorneys for Opposer Cartier International A.G.*

# **Exhibit A**

**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’S OBJECTIONS TO APPLICANT’S TRIAL DECLARATION**

Pursuant to 37 C.F.R. § 2.123 and paragraph 6 of the Stipulation Regarding Introduction of Party Direct Testimony at Trial, dated August 24, 2015 (dkt. no. 22), Opposer Cartier International A.G. (“Opposer”) makes the following objections to the Trial Declaration of Applicant Lance Coachman (“Applicant”).

**A. Paragraph 19 of Applicant’s Trial Declaration**

- Opposer objects to Applicant’s testimony that he believes that “Cartier has never used a stand-alone TRINITY mark to sell handbags” and that “Cartier has only ever used a TRINITY DE CARTIER mark for leather handbags and Cartier’s other products.” This testimony lacks foundation as Applicant has not testified that he is aware of each use of the TRINITY mark by Cartier in connection with handbags and other products. *See Fed. R. Evid. 603.*
- Opposer objects to Applicant’s testimony that the 2004 Cartier press book was in French. This testimony is untrue as there is English text in the press book, which Applicant himself attaches to this Trial Declaration.

**B. Paragraph 20 of Applicant’s Trial Declaration**

- Opposer objects to Applicant’s testimony that “consumers generally do not think of [the brands cited in Paragraph 20] as selling jewelry.” This testimony lacks foundation as Applicant has provided no basis for his knowledge of how consumers think of the cited brands. *See Fed. R. Evid. 603.* Moreover, it constitutes impermissible opinion testimony. *See Fed. R. Evid. 701.*
- Opposer objects to Applicant’s testimony that “consumers understand COACH and GUCCI, as well as CHANEL, as well-known for handbags and fragrances, respectively.” This testimony lacks foundation as Applicant has provided no basis for his knowledge of how consumers understand the cited brands. *See Fed. R. Evid. 603.* Moreover, it constitutes impermissible opinion testimony. *See Fed. R. Evid. 701.*
- Opposer objects to Applicant’s testimony that “there are brands that sell either high-end jewelry or high-end handbags, but not both.” This testimony lacks foundation as Applicant has provided no basis for his testimony that there are no brands that sell both high-end jewelry and high-end handbags. *See Fed. R. Evid. 603.*

**C. Paragraph 21 of Applicant’s Trial Declaration**

- Opposer objects to Applicant’s testimony that “[consumers] are capable of telling the difference between my TRINITY handbags and products sold by Cartier.” This testimony lacks foundation as Applicant has provided no basis for his testimony that consumers can tell the difference between the parties’ products. *See Fed. R. Evid. 603.* Moreover, it constitutes impermissible opinion testimony. *See Fed. R. Evid. 701.*



**D. Paragraph 22 of Applicant's Trial Declaration**

- Opposer objects to Applicant's testimony that "the TRINITY DE CARTIER products contain the specific design elements of three rings as shown in Exhibit TW 15." This testimony lacks foundation as Applicant has provided no basis for his knowledge of the designs of Cartier's TRINITY products. *See Fed. R. Evid. 603.*
- Opposer objects to Applicant's testimony that "the TRINITY DE CARTIER handbags will be sold at Cartier boutique stores, or grouped with other Cartier products when sold in department stores." This testimony lacks foundation as Applicant has provided no basis for his knowledge of where Cartier's TRINITY handbags will be sold. *See Fed. R. Evid. 603.*

Dated: New York, New York  
January 14, 2016

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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

  
John Margiotta  
Emily Weiss

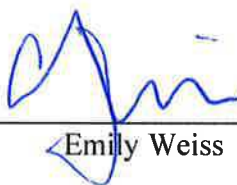
866 United Nations Plaza  
New York, New York 10017  
Tel: (212) 813-5900  
Email: [jmargiotta@fzlz.com](mailto:jmargiotta@fzlz.com)  
[eweiss@fzlz.com](mailto:eweiss@fzlz.com)

*Attorneys for Opposer Cartier International A.G.*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused, on this 14th day of January 2016, a copy of the foregoing **OPPOSER'S OBJECTIONS TO APPLICANT'S TRIAL DECLARATION** to be sent by email and by first class mail, postage prepaid, to counsel for Lance Coachman:

Reginald J. Hill, Esq.  
D. Matthew Feldhaus, Esq.  
Jenner & Block LLP  
353 N. Clark Street  
Chicago, IL 60654-3456  
Email: rhill@jenner.com  
dfeldhaus@jenner.com



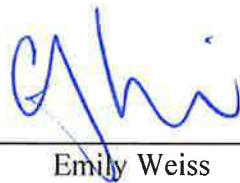
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Emily Weiss

**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 STATEMENT OF OBJECTIONS TO APPLICANT LANCE COACHMAN'S EVIDENCE** 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  
353 N. Clark Street  
Chicago, IL 60654-3456



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Emily Weiss