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

Proceeding	91209815
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

_____)	
CARTIER INTERNATIONAL A.G.,)	
)	
Opposer,)	
)	Opposition No. 91/209815
v.)	
)	App. Serial No. 85/6040000
LANCE COACHMAN,)	
)	
Applicant.)	Mark: TRINITY
_____)	

APPLICANT LANCE COACHMAN’S TRIAL BRIEF

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PRELIMINARY STATEMENT

Applicant Lance Coachman (“Coachman”) has applied for federal registration of his “TRINITY” mark in Class 18 for leather handbags. Opposer Cartier International A.G. (“Cartier”) alleges that it has priority to the TRINITY mark, and that Coachman’s registration should be refused due to likelihood of confusion with Cartier’s TRINITY mark for jewelry and other products. Cartier has failed to establish its assertions.

Cartier cannot establish that it has priority to the TRINITY mark for leather goods. Cartier once had a registration to the TRINITY mark for leather goods, but Cartier abandoned that registration, allowing the Trademark Office to cancel that registration in 2011 due to non-use. Cartier claims that it sold leather handbags in the U.S. in connection with the TRINITY mark from 2004 to 2008, but admits it sold only [REDACTED] bags in 2008 and none thereafter. Moreover, the flawed evidence Cartier submits shows a TRINITY DE CARTIER mark rather than a TRINITY mark in connection with its handbags. Cartier also points to a purported TRINITY leather belt, but Cartier’s evidence shows that it is selling leather belts in connection with a “3-RINGS BUCKLE BELT” mark rather than a TRINITY mark. Finally, Cartier implies that its registration and use of the TRINITY mark for jewelry provides it with priority to leather handbags, but Cartier fails to show that consumers would expect both goods to originate from the same source. Coachman began to use and sought registration of the TRINITY mark for leather handbags over three years after Cartier ceased using it and, therefore, established priority to the TRINITY mark for leather handbags.

Cartier also cannot establish likelihood of confusion. Although Cartier claims to use the TRINITY mark on a wide variety of goods, its evidence shows the mark used only in connection with jewelry, and even then, the TRINITY DE CARTIER and CARTIER marks are dominant.

Moreover, the defining characteristic of Cartier’s jewelry and other products are that they generally consist of or include a design of three rings (or sometimes other items), each typically with three different metals, colors, or finishes, making its use of TRINITY and TRINITY DE CARTIER descriptive with respect to the term “trinity”—a group of three closely related person or things. Given the weakness of Cartier’s mark in relation to handbags, Coachman’s and Cartier’s sophisticated consumers are able to tell the difference between Coachman’s handbags and Cartier’s jewelry and other products based on the unrelatedness of the products and highly separate trade channels. Finally, as would be expected, there is no evidence of actual confusion despite Coachman having sold his TRINITY handbags for over four years.

Due to Cartier’s failure to establish priority or likelihood of confusion, the Board should dismiss this opposition.

FACTUAL RECORD

A. Stipulation of the Parties

Coachman agrees with Cartier’s statement of the stipulation of the parties.

B. Cartier’s Evidence

Coachman agrees with Cartier’s recitation of the evidence that was submitted: 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); and (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).

Cartier also submitted 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).

C. Applicant’s Evidence

Coachman submitted his own testimony and exhibits 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 Coachman by written questions with respect to his first Trial Declaration, and Coachman responded in a Cross-Examination Response Declaration (“Cross-Examination Coachman Decl.”) (Dkt. no. 42).

Coachman 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). A description of each exhibit made of record through Coachman’s witness testimony and Notices of Reliance is attached as Appendix A hereto.

EVIDENTIARY OBJECTIONS TO CARTIER'S EVIDENCE

Coachman separately objects to the admissibility of certain evidence offered by Cartier in Coachman's Statement of Objections to Cartier's Proffered Evidence, dated May 13, 2016. For purposes of this brief and until the Board has had an opportunity to rule on Coachman's evidentiary objections, Coachman assumes that all of Cartier's evidence is part of the record. By treating Cartier's evidence as properly made of record for purposes of this brief, however, Coachman does not waive any of his evidentiary objections.

STATEMENT OF FACTS

I. Coachman's TRINITY Leather Handbags

A. The Significance of the TRINITY Mark to Coachman

Coachman is the founder and owner of TrinityWerks, Inc. ("TrinityWerks"), which is in the business of developing and distributing ladies' leather handbags. (Coachman Decl. ¶¶ 1-3.) Coachman is also the President of EXI, Inc., an executive search firm that he co-founded prior to founding TrinityWerks. (*Id.* ¶ 1.) Coachman earned his Bachelor of Science in Business Administration in 1985. (*Id.*)

When Coachman's daughter, Trinity, was born in 2010, he was already fifty-seven years old. (*Id.* ¶ 2.) He decided to found TrinityWerks as a legacy project to fund her college education. (*Id.* ¶ 2.) He named his company TrinityWerks because it combines her name with the German word for work. (*Id.* ¶ 5.) He also named the leather handbags that he developed after her, and because the word "Trinity" is significant to his Christian religious faith, as it refers to the Father, Son, and Holy Ghost. (*Id.* ¶ 5.) While the term "Trinity" has personal significance to Coachman as a religious term and the name of his daughter, it has no significance to the characteristics, use, and marketing of the TRINITY leather handbags. (*Id.* ¶ 5.)

B. Development of the TRINITY Leather Handbags

While traveling in South America several years ago, Coachman was inspired by a unique product design that he saw. (*Id.* ¶ 3.) There, the native women use a handbag made out of mule skin that is designed to be carried at the shoulder. (*Id.* ¶ 3.) The weight of carrying the handbag is distributed to the shoulders and not the arms to make carrying a heavy burden effortless. (*Id.* ¶ 3.) Coachman decided to develop a leather handbag incorporating that same technique. (*Id.*)

In 2011, Coachman launched into developing and researching the TRINITY handbags. (Coachman Decl. ¶ 6.) He studied the quality and craftsmanship of comparable handbags in department stores and high-end boutiques. (*Id.* ¶ 6.) He analyzed the leather handbag market to gauge the uniqueness of his product and its potential price. (*Id.*; Cross-Examination Coachman Decl., resp. no. 2-3.) As part of that research, Coachman personally had conversations with many manufacturers and sellers of leather handbags. (Cross-Examination Coachman Decl., resp. no. 2-3.) Those conversations provided an education in the market, consumers, products, and brands for high-end leather handbags. (*Id.*)

Coachman made two trips in 2011 to the countries of Uruguay, Brazil, and Argentina to research leather manufacturers for his handbags. (Coachman Decl. ¶ 7.) On those trips, he bought example leather handbags and a couple of leather belts. (Ex. CT 38, Coachman Dep. at 52:24-55:15; Ex. TW 4.) He also saw a necklace on a leather band inspired by the native people, and was given a price for it by a manufacturer in addition to the pricing for his handbags. (*Id.* at 46:14-48:5.) However, he decided to focus solely on leather handbags and has no intention to produce and sell leather belts or leather necklaces. (*Id.* at 46:14-48:5, 52:25- 55:15.) Coachman ultimately selected Los Robles of Buenos Aires, Argentina to manufacture the TRINITY handbags. (Coachman Decl. ¶ 8.) He paid approximately [REDACTED] for an initial order of [REDACTED]

handbags, which he received in the United States in late 2011. (*Id.*; Ex. TW 5 (final payment of [REDACTED].)

The TRINITY handbags are shown at Exhibit TW 1 and below, and have been produced in the colors of black, tan, and white. (Coachman Decl. ¶ 1; Ex. TW 1.) In addition to the TRINITY handbags shown in Exhibit TW 1, Coachman also has prototypes for two other TRINITY handbags he intends to produce in the future: The TRINITY G evening bag at Exhibit TW 7, and an overnight bag at Exhibit TW 8. (Coachman Decl. ¶ 10; Exs. TW 7-8.)



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C. Application of the TRINITY Mark to the Handbags

Prior to finalizing the handbags, Coachman researched the availability of the TRINITY mark by searching the USPTO database, but he found no results for TRINITY in leather goods. (Coachman Decl. ¶ 5.) He also searched for TRINITY WEAR and TRINITY1 and found no results. (*Id.*; Ex. TW 2.)

Thus, Coachman had Los Robles place the TRINITY mark on the front portion of the body of the handbags, as well as on the leather tag that is attached. (Coachman Decl. ¶ 4; *see* Ex. TW 1.) In addition to the TRINITY mark, the handbags also display a symbol consisting of a cross within a circle above the TRINITY mark on the handbags, and on the opposite side from the TRINITY mark on the leather tag. (Coachman Decl. ¶ 9; Ex. TW 1.) Coachman included the cross-symbol to represent the “T” in TRINITY, and because of its significance to Coachman as a Christian religious symbol. (Coachman Decl. ¶ 9.) The cross symbol was designed by a graphic designer in Buenos Aires that Coachman hired. (*Id.*; Ex. TW 6 (final payment to graphic designer).) When Coachman produces the TRINITY evening and overnight bags, the TRINITY mark and cross symbol will also appear on the body and leather tags of those. (Coachman Decl. ¶ 10.)

D. Sales of TRINITY Handbags

Coachman focused his initial efforts to promote and sell his TRINITY handbags on his church, Resurrection House for All Nations in Union City, Georgia (“Resurrection House”), which has approximately 1,500 members. (*Id.* ¶¶ 11-12.) In March 2012, Coachman gave a TRINITY handbag to [REDACTED] at Resurrection House. (*Id.* ¶ 11.) He followed that up by promoting the TRINITY handbags to Glory Works, a ministry at Resurrection House for entrepreneurs, in or around April 2012. (*Id.* ¶ 12.) As a result of promoting the TRINITY

handbags to Glory Works members and the public use of the handbag by his [REDACTED] Coachman sold a TRINITY handbag in Atlanta, Georgia in or around May 2012. (*Id.*)

Since then, Coachman has sold approximately [REDACTED] TRINITY handbags for a total revenue of approximately [REDACTED]. (*Id.* ¶ 15.) Many of the sales have taken place in Atlanta, but he has also sold TRINITY handbags to individuals in Milwaukee, Chicago, Washington D.C., and Miami. (*Id.*) Coachman makes most of the sales himself, through conversations with potential buyers. (Cross-Examination Coachman Decl., resp. nos. 2-7; Coachman Supp. Decl. ¶¶ 5-7.) In a couple instances, friends and acquaintances of Coachman have hosted TRINITY handbag parties for him to sell the handbags to their own friends, acquaintances, and co-workers. (*Id.*; Ex. CT 38, Coachman Dep., 71:19-72:22.) Not all of the sales have been to Coachman's own friends and acquaintances, however, but also to friends-of-friends and acquaintances-of-acquaintances as word-of-mouth has spread and more people have seen others carrying his TRINITY handbags. (Coachman Decl. ¶ 15.) Coachman has typically sold the TRINITY handbags for [REDACTED] to members of his church and for [REDACTED] to others. (*Id.* ¶ 17.)

As Coachman has been the primary salesman for his TRINITY handbags, he has personally had conversations with most of the buyers of his handbags, as well as many more consumers in which the conversation did not result in a sale. (Cross-Examination Coachman Decl., resp. nos. 1-7; Coachman Supp. Decl. ¶¶ 5-7.) Those conversations have given him the opportunity to personally observe that the typical buyers of his TRINITY handbags are college-educated and wealthy women with the disposable income to afford the price of a high-quality leather handbag. (*Id.*; Coachman Decl. ¶¶ 16-17; Cross-Examination Coachman Decl., resp. no. 7; Coachman Supp. Decl. ¶ 7.) The conversations have also given him the opportunity to make

observations on the market, consumers, and brands for leather handbags, in general. (Cross-Examination Coachman Decl., resp. nos. 1-7; Coachman Supp. Decl. ¶¶ 5-8.)

E. Promotion and Distribution of TRINITY Handbags

Since March 2012, Coachman has spent approximately [REDACTED] advertising and promoting the TRINITY handbags. (*Id.* ¶ 11.) Coachman registered the trinitywerks.com domain name in July 2011, but he is waiting until this opposition is resolved to further develop the website. (Coachman Decl. ¶¶ 5, 14; Ex. TW 3.) In April 2012, Cynthia Bailey, a fashion model and star of the Real Housewives of Atlanta endorsed the TRINITY handbags via photos and Twitter in exchange for a TRINITY handbag. (*Id.* ¶ 13.) The photos and screenshots of tweets from April through May 2012 of Ms. Bailey holding the TRINITY handbag are shown at Exhibit TW 9. (*Id.*; Ex. TW 9.) Coachman promoted the TRINITY handbags via Twitter again in February 2014. (Coachman Decl. ¶ 14; Ex. TW 11.) Coachman also promoted the TRINITY handbags by giving one as a prize at a golf event in Atlanta. (Coachman Decl. ¶ 13.)

In 2013, Coachman began to seek distribution and retail agreements for the TRINITY handbags. (*Id.* ¶ 14; Ex. TW 10.) He sent out emails to contacts, (Ex. TW 10), and also had discussions with representatives of Macy's, Neiman Marcus, and Saks 5th Avenue in Atlanta. (Cross-Examination Coachman Decl., no. 8.) Those conversations have not yet resulted in a distribution agreement, but the TRINITY handbags were offered for sale at Lalo Fine Italian Handbags in Atlanta in 2013 for \$499. (*Id.*; Coachman Decl. ¶¶ 14, 17.) If Coachman obtains a distribution agreement, he intends to sell the TRINITY handbags at upscale boutiques and department stores at a price of approximately [REDACTED] to [REDACTED]. (Coachman Decl. ¶ 17.)

F. Opposition and Personal Observations of Coachman

Coachman filed U.S. Application Serial No. 85/604,000 for the TRINITY mark in Class 18 for leather handbags on April 20, 2012. (Coachman Decl. ¶ 18; Ex. TW 13.) The Trademark

Examiner, after a search of the USPTO database, found no reason to refuse the application for likelihood of confusion. (Ex. TW 13.) Coachman first became aware of Cartier's claim to the TRINITY mark when he received the Notice of Opposition. (Coachman Decl. ¶ 19.)

Coachman is aware of no actual confusion between his TRINITY handbags and Cartier's products. (*Id.* ¶ 21.) Moreover, based on his personal observations of the purchasers of his products, he believes they are capable of telling the difference between his TRINITY handbags and the products sold by Cartier, and that no confusion will result. (*Id.* ¶¶ 21, 23; Coachman Supp. Decl. ¶ 7; Cross-Examination Coachman Decl., resp. nos. 2, 7.) In his conversations with consumers and sellers of handbags, he has become aware that GUCCI and COACH are well-known for selling leather handbags, but, prior to this opposition, he never heard of either referred to as a brand for jewelry. (Coachman Decl. ¶ 20; Cross-Examination Coachman Decl., resp. nos. 2, 4-5; Coachman Supp. Decl. ¶ 5.) Likewise, he is aware of CHANEL for selling fragrances, but he has never heard someone refer to it as a brand for leather handbags or jewelry. (Cross-Examination Coachman Decl., resp. nos. 2, 4-5; Coachman Supp. Decl. ¶ 5.)

From reviewing the documents put before him by Cartier during his deposition, Coachman observed that Cartier used the TRINITY DE CARTIER mark for Cartier's handbags rather than a TRINITY mark. (Coachman Decl. ¶ 19; Coachman Supp. Decl. ¶ 3.) From reviewing examples of Cartier's products submitted by Cartier in his opposition, Coachman has also personally observed that Cartier's TRINITY and TRINITY DE CARTIER products typically contain the specific design elements of three rings. (Coachman Decl. ¶ 22; Coachman Supp. Decl. ¶ 8.)

II. Cartier and its TRINITY Mark

A. Cartier's Trademark Registrations

The valid registrations that Cartier made of record are limited to “jewelry made of precious metal or coated therewith,” “watches,” and “clocks” in Class 14, and “diaries, writing instruments” in Class 16. (Hallerman Decl. ¶ 6; Ex. CT 19 (U.S. Reg. No. 1,927,987; No. 2,243,233; No. 3,864,480; and No. 4,263,072).)

Cartier filed an application for the TRINITY mark in Class 18 on January 9, 2004 for “goods made of leather or imitation leather, namely, document cases, credit card cases, business card cases, wallets, handbags, rucksacks, traveling bags, valises, trunks, suitcases, luggage, briefcases, saddlery.” (Hallerman Decl. ¶ 7; Ex. CT 20 (U.S. Reg. No. 2,944,103).) However, Cartier admits that it allowed the Trademark Office to cancel that registration on December 9, 2011, (Hallerman Decl. ¶ 7; Ex. CT 20 at CART000472), because it was no longer using the TRINITY mark for leather goods, (*see* Ex. TW 18, Hallerman Dep. 8:10-19, 10:23-11:14.)

Cartier currently has no valid registration to the TRINITY mark in Class 18 for handbags or other leather goods. (*See* Hallerman Decl. ¶ 7; Ex. CT 20 at CART000472.) On July 10, 2012, after Coachman filed his application to register TRINITY for leather handbags, Cartier filed an application to register the TRINITY mark in Class 18 for “goods made of leather or imitation leather, in particular, document holders, wallets, handbags, rucksacks, travelling bags, valises, trunks and suitcases. (Hallerman Decl. ¶ 8; Ex. CT 21.)

Cartier's second application was rejected by the Trademark Examiner due to likelihood of confusion with two different applications:

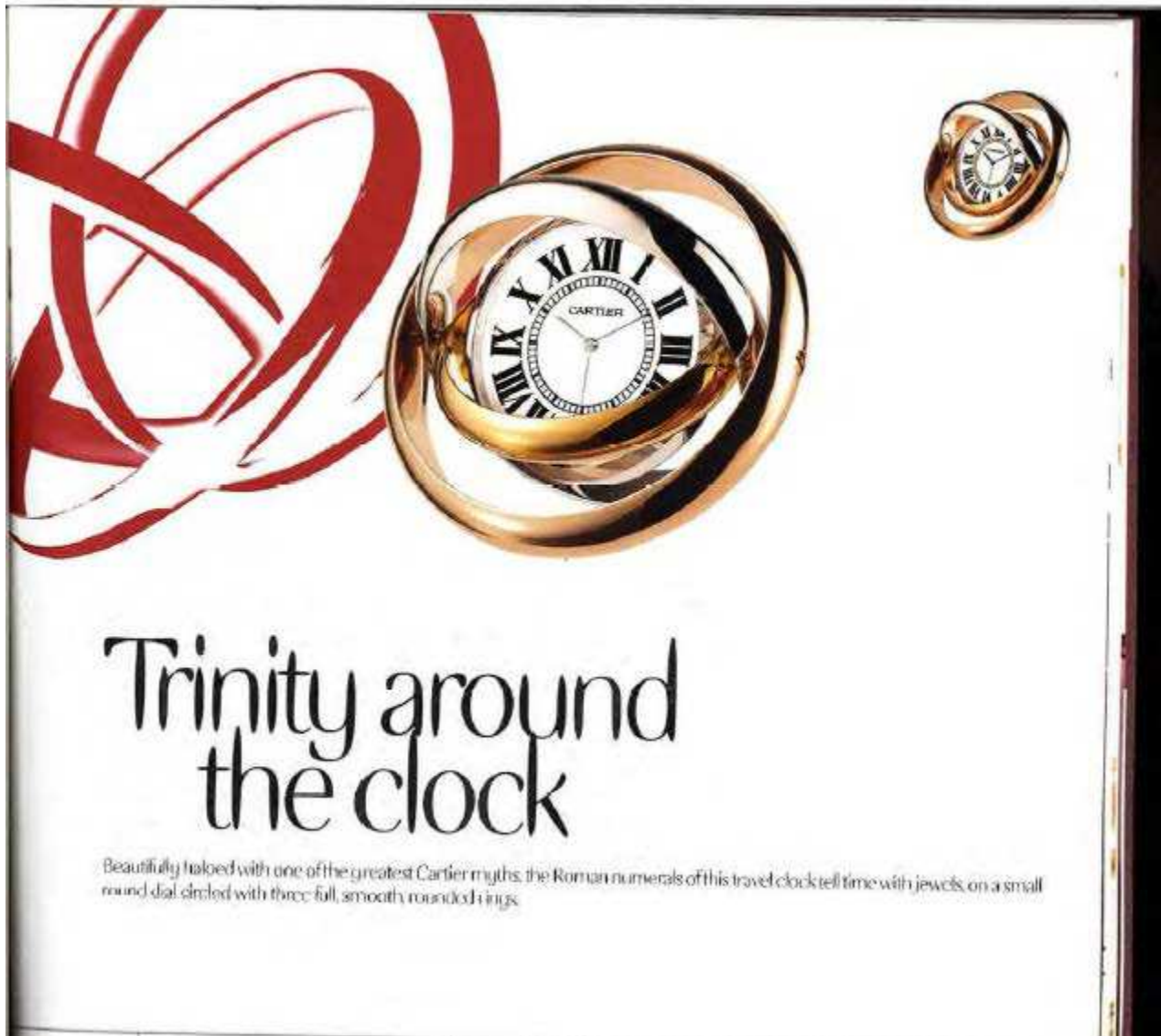
- i) Application Serial No. 85/604,000, Coachman's application for the TRINITY mark for leather handbags in Class 18, and

- ii) Application Serial No. 85/540,737, now Registration No. 4,688,159, for TRINITY RANCH in Class 18 for “handbags, purses, and wallets.”

(Ex. CT 21 at CART 000612-619; Ex. TW 37.) To overcome the TRINITY RANCH mark, Cartier informed the Trademark Examiner that it intended to try and negotiate a coexistence agreement. (*Id.* at CART 000590-593.)

B. Cartier’s Advertising and Sales of Leather Goods



Cartier offers two press books from 2004 and 2005 as evidence that it sold leather handbags in connection with the TRINITY brand from 2004 to 2008. (Cohen Decl. ¶ 14; Ex. CT 5.) Cartier admits the press books were not used to offer handbags for sale to consumers, and Cartier does not know and has provided no evidence that the press books resulted in any actual press coverage in the United States. (Cohen Supp. Decl. ¶ 3; Ex. TW 17, Cohen Dep., 59:9-60:4.) In addition, the first 32 out of the 37 pages of the first press book are in French. (*See* Coachman Supp. Decl. ¶ 4.) The two press books show use of DIABOLO DE CARTIER, SANTOS DE CARTIER, and TRINITY DE CARTIER marks in connection with the goods in the press books, but not a TRINITY mark. (*See* Ex. CT 5.) In a single instance in which “Trinity” is used in the press book without “de Cartier,” it is used to describe the three-ring design associated with Cartier’s TRINITY DE CARTIER mark, namely, three rings of metal around a clock:

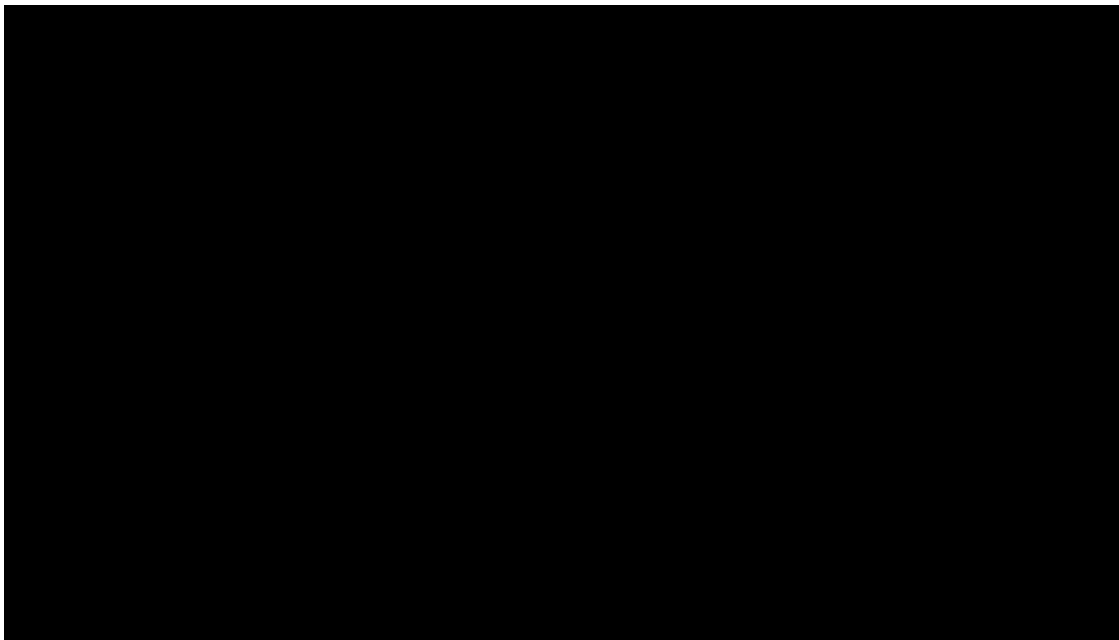


(Ex. CT 5 at CART 000722.)

Cartier offers internal documents as evidence of its sales, advertisements, and advertisements expenditures of leather goods, including handbags, in connection with the TRINITY mark. (Cohen Decl. ¶¶ 19-21.) Cartier does not have the visuals for the actual advertisements of TRINITY leather goods, however. (Cohen Decl. ¶ 16.) Instead, Cartier presents spreadsheets noting [REDACTED] newspaper advertisements in calendar year 2004 and [REDACTED] newspaper advertisements in calendar year 2005, purportedly for TRINITY leather goods. (*Id.* ¶

17; Ex. CT 13 at CART 001062.) Cartier admits that it does not know what specific leather goods products were displayed in those advertisements. (Ex. TW 17, Cohen Dep., 34:3-16.) Cartier also admits that it made the strategic decision to stop its advertising for TRINITY leather goods in 2005, and to spend the money on other collections. (Ex. TW 17, Cohen Dep. 28:9-29:23; Ex. CT 13 at CART 0001062.)

Cartier provided a spreadsheet showing sharply decreasing sales of “TRINITY Bags and Luggage” from calendar year 2004 to 2008:  . (See Ex. CT 16.)



Cartier also presented evidence from its website of a representative sample of Cartier’s “TRINITY leather belts.” (CT Br. Appendix-1; Cohen Decl. ¶ 15; Ex. CT 7.) TRINITY appears nowhere on the sample, however, and instead it is called a “3 RINGS BUCKLE BELT” with “3 rings, 3 finishes.” (Ex. CT 7.) In Cartier’s evidence of sales, the purported TRINITY leather belt likewise appears to be referred to as “Belt 3 Rings.” (See Ex. CT 16 at CART 0001570-72.)

Cartier states that it would begin to offer a TRINITY leather pouch for sale in the United States in November 2015 exclusively in its Cartier boutique stores and on its website. (Cohen

Decl. ¶ 14; Cohen Cross-Examination Decl., resp. no. 6; Cohen Supp. Decl. ¶ 4.) However, Cartier has presented no images of the leather pouch displaying the TRINITY mark or in connection with the TRINITY mark. (*See* Ex. CT 6.) Cartier has also not provided the advertisements or projected sales for the TRINITY leather pouch, despite cross-examination questions requesting them. (Cohen Cross-Examination Decl., resp. nos. 6, 8.) Cartier’s other leather goods products have been sold exclusively in CARTIER branded boutique stores for over five years. (Ex. TW 17, Cohen Dep. 11:20-12:3, 16:2-19:7, 42:23-43:2.)

C. Cartier’s Advertising and Sales of Jewelry and other Products

As with the leather goods above, the jewelry, watches, clocks, diaries, and writing instruments in Cartier’s 2004 and 2005 press books are overwhelmingly connected with Cartier’s DIABOLO DE CARTIER, SANTOS DE CARTIER, and TRINITY DE CARTIER marks and not with its TRINITY mark. (*See* Ex. CT 5.) Likewise, the web-pages that Cartier submits show that its key rings and eyewear are sold in connection with a TRINITY DE CARTIER mark rather than a TRINITY mark. (*See* CT Exs. 9-10.) Only the web-pages of its jewelry and cufflinks, which are a form of jewelry in Class 14, show use of a TRINITY mark, albeit secondary to the CARTIER or TRINITY DE CARTIER marks. (*See* Ex. CT 4, 8.) Likewise, Cartier’s advertisements for jewelry that show a stand-alone TRINITY mark place the TRINITY mark in small font near a CARTIER mark in a much larger font. (*See* Exs. CT 12, 46.)

With the exception of some key chains it sells, Cartier’s products are considered “high-end.” (Ex. TW 17, Cohen Dep. 10:2-17.) Cartier’s witness, Alison Cohen stated that the common characteristic of Cartier’s TRINITY jewelry is that each one contains three intertwined bands in different metals. (Cohen Decl. ¶ 13.) If not three intertwined bands of different metals, then the pieces incorporate three rings, colors, tones, or finishes. (*See* CT Ex. 4, 7-10.)

For example, Cartier sells a “KEY RING WITH TRINITY DE CARTIER DÉCOR” which is a key ring with “steel, pink and yellow gold finish.”

↑ Back

KEY RINGS


KEY RING WITH TRINITY DE CARTIER DECOR

Stainless steel, pink and yellow golden finish

REF: T1220454

Cartier has designed a small accessories collection that stands to its tradition of excellence and unique flair for fine objects. These delicately crafted pieces act as precious adornments, offering an ever-present touch of elegance.

Key ring with Trinity de Cartier decor, stainless steel, pink- and yellow-gold finish.
Dimensions: length 80 mm x width 34 mm.



(Ex. CT 9.)

- “TRINITY RING” is “Three Bands. Three types of gold.”

↑ Back

TRINITY DE CARTIER


TRINITY RING

3-gold, diamonds

REF: N4192600

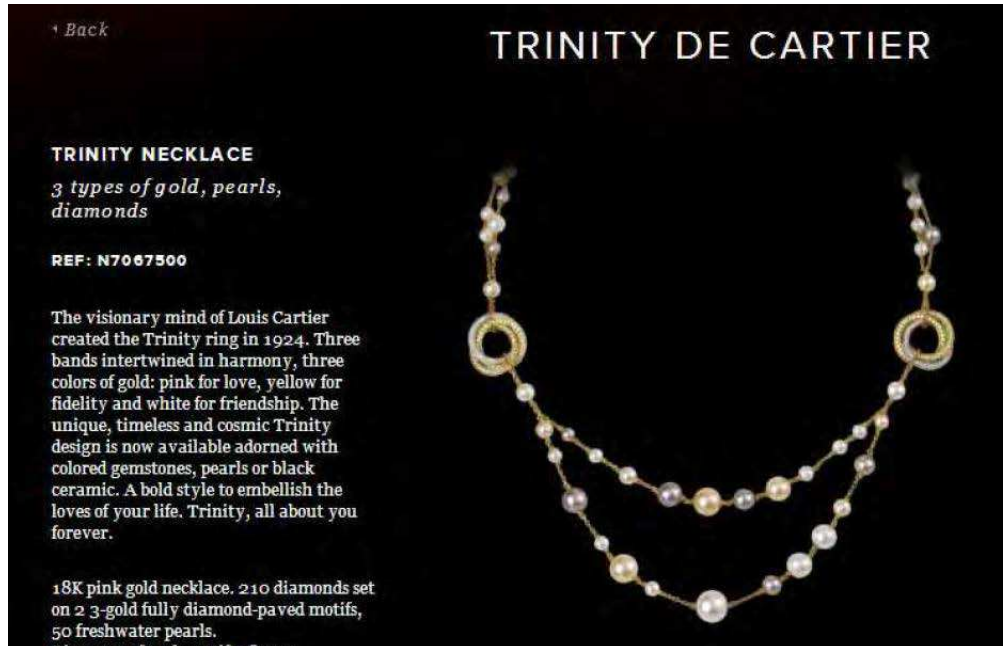
Three bands. Three types of gold. Intertwined in harmony. The visionary mind of Louis Cartier created the Trinity ring in 1924. The unique, timeless and cosmic Trinity design, depicted in three colors of gold (pink for love, yellow for fidelity and white for friendship), now available in a collection devoted to the loves of your life. Trinity, all about you forever.

18K 3-gold ring with paved white, pink and yellow diamonds.



(Ex. CT 4
at CART
001202.)

- “TRINITY NECKLACE” is “3 types of gold, pearls, diamonds.”



(Id. at
CART
001883.)

- “TRINITY EARRINGS” are “3 types of gold, pearls, diamonds.”



(Id. at
CART
001180.)

- “TRINITY CLASSIC GOLD CUFFLINKS” are “Yellow, pink and white gold.”



(Ex. CT 8.)

- “TRINITY DE CARTIER COLLECTION” eyewear “draw inspiration from the three interlocked rings of Cartier Trinity” and have a “3-tone finish.”



(Ex. CT 10 at
CART
001073.)

Cartier’s submits evidence of “unsolicited” press coverage, (Ct. Br., p. 14; Cohen Decl. ¶ 22), but every one of Cartier’s examples of press coverage is limited to jewelry and describes

that jewelry as incorporating three rings, metals, and/or colors. (*See* Dkt. 32, Ex. CT 17.) The examples include:

- “Trinity collection, named for the intertwined bands made of white gold (for friendship), pink gold (for love) and yellow gold (for fidelity).” (*Id.* at CART 000928.)
- “The iconic Trinity (familiarily known as the Rolling) Ring is composed of three interlocking bands of white, yellow and red gold.” (*Id.* at CART 000921.)
- “Trinity, Cartier’s signature trio interlocking bands.” (*Id.* at CART 000907.)
- “Cartier’s new bracelet, the Trinity, is made from white gold, yellow gold, and diamonds.” (*Id.* at CART 000909.)
- “[C]alled Trinity 100, it will feature rings, bracelets, earrings in the three colors of 18-karat gold.” (*Id.* at CART 000914.)
- “The Trinity is created in a combination of yellow, rose, and white gold in interlocking rings that make for a unique design. This season, try Cartier’s newest classic cuff links (\$18,700), which include a mixture of pink, yellow, and white gold in an intertwining knot.” (*Id.* at CART 000939.)

Cartier’s jewelry products are sold exclusively in CARTIER branded boutique stores and on its web-site. (Ex. CT 49, Cohen Dep. 17:22-18:3; Ex. CT 4.) Cartier’s writing instruments are also sold in Cartier-branded boutiques or in pen specialty stores. (*See* Ex. CT 48, Cohen Dep. 47:23-48:18.) Cartier eyewear is sold through authorized dealers and may be on the same shelf as the products of other companies. (Ex. CT 48, Cohen Dep. 17:10-12.)

D. Cartier's Enforcement Actions

Cartier cites oppositions, cease-and-desist letters, and enforcement actions as examples of its enforcement activities. (*See* CT Br. p. 16-17; Hallerman Decl. ¶¶ 10-13.) For two of the three oppositions that Cartier cites, the application concerned jewelry and the Applicant did not file an answer.¹ (Ex. CT 22 at CART 001261-67 (Opposition No. 91174557), CART 001269-73 (Opposition No. 91176351).

Both of the cease-and-desist letters that Cartier cites also concerned jewelry. (Hallerman Decl. ¶ 11, Exs. CT 23-24.) Cartier's evidence of enforcement actions are against those that distribute and sell counterfeit jewelry. (Hallerman Decl. ¶ 12.) Cartier's witness admitted that she did not know if Cartier's evidence of internet takedowns concerned products other than jewelry. (Ex. TW 18, Hallerman Dep. 18:1-19:23; Ex. CT 26.) Notably, that evidence concerns takedowns worldwide and is not limited to the United States. (*Id.* at 19:8-10.)

III. Marketplace Use

Cartier offers print-outs of its web-pages showing that it sells jewelry, watches, and handbags under its CARTIER brand or a combination of its CARTIER brand and one of its collection brands, such as LOVE (jewelry and wallets), SANTOS DE CARTIER (watches and wallets), JEANNE TOUSSAINT (handbags), MARCELLO DE CARTIER (handbags), and LOUIS CARTIER (handbags). (*See* Exs. CT 1-3.) Cartier has also submitted web-pages showing that several large house brands such as CHANEL, CHLOE, COACH, DKNY, GUCCI, GUESS, JUICY COUTURE, KENNETH COLE, MICHAEL KORS, PRADA, SAINT LAURENT, TONEY BURCH, STEVE MADDEN, and VAN CLEEF & ARPELS offer both jewelry and handbags. (*See* Dkt. 28, ¶ 1; Exs. CT 27-37; Dkt. 45, ¶ 1; Exs. CT 43-45.)

¹ The third concerned Cartier's registration for diaries and writing instruments in Class 16. (Ex. CT 22 at CART 001274-80.)

Regarding those examples, Cartier’s witness, Alison Cohen, observes that consumers have come to expect that bags and jewelry offered under the same mark originate from the same company. (Cohen Decl. ¶¶ 26-29; Cohen Cross-Examination Decl., no. 1-4.) Cohen’s experience in Merchandising has focused on stock and inventory, and she admitted that she is not responsible for marketing strategy or research studies. (Ex. TW 17, Cohen Dep., 7:7-8, 8:1-22, 14:19-15:7.)

Coachman submitted a Notice of Reliance during his responsive period with evidence showing designer brands such as DAVID YURMAN, GARRARD, GELIN ABACI, HARRY WINSTON, IPPOLITA, JIMMY CHOO, JOHN HARDY, KIPLING, LACOSTE, LOUBOUTIN, PAUL MORELLI, PIAGET, ROBERTO COIN, and TACORI offering either jewelry or handbags, but not necessarily both. (See Ex. TW 20, 22, 23-33, 35.)

During Coachman’s response period, counsel for Coachman also found and made of record by Notice of Reliance three separate uses of TRINITY marks specific to handbags that were found through searches of Amazon.com, (Dkts. 40, ¶ 3, Exs. TW 37-40.):

- A few different TRINITY handbags from the designer Anne Klein are available for sale on Amazon.com. (Ex. TW 39.)
- TRINITY carry-on bags from the TUMI brand are also sold on Amazon.com. (Ex. TW 40.)
- Several TRINITY RANCH handbags from Montana West are available for sale on the Amazon.com website. (Ex. TW 38.) The Registration Certificate for TRINITY RANCH for “handbags, purses, and wallets” in Class 18 was also submitted. (Ex. TW 37.)

ARGUMENT

I. Cartier Has Not Established Priority To The TRINITY Mark For Leather Goods

In an opposition founded on Section 2(d), the opposer must establish its own prior proprietary rights in an unabandoned mark to defeat the application. *TAB Systems v. Pactel Teletrac*, 37 U.S.P.Q.2d 1879, 1881 (Fed. Cir. 1996). Although priority is not at issue with

respect to a mark and goods set forth in a valid registration that is made of record, *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 U.S.P.Q. 108, 110 (CCPA 1974), an opposer without a valid registration must show, by a preponderance of evidence, that it established common law rights in the mark prior to the applicant's priority date. *Chrysler LLC v. Anthony S. Pimpo*, No. 91171962, 2008 WL 3333841, at *3 (T.T.A.B. July 30, 2008) (opposer that allowed registration to expire was required to prove common law rights).

Cartier has no valid registration to the TRINITY mark in Class 18 for handbags or other leather goods. (See Hallerman Decl. ¶ 7; Ex. CT 20 at CART 000472.) Cartier admits that it allowed its registration to the TRINITY mark in Class 18 to be canceled in December 2011 because it was no longer using the TRINITY mark for leather goods. (Hallerman Decl. ¶ 7; Ex. CT 20 at CART 000472; Ex. TW 18, Hallerman Dep. 8:10-19, 10:23-11:14.) Therefore, Cartier must show, by a preponderance of evidence, that it has common law rights in the TRINITY mark for handbags prior to Coachman's priority date. See *Chrysler LLC*, 2008 WL 3333841, at *3. However, Cartier cannot show that it has priority to the TRINITY mark for handbags because:

- i) Cartier has presented no evidence of trademark or analogous use of the TRINITY mark for handbags or leather goods;
- ii) By its own admissions, Cartier abandoned the TRINITY mark for handbags;
- iii) Cartier cannot establish that handbags and jewelry are naturally related; and
- iv) Coachman has priority to the TRINITY mark for handbags.

A. Cartier Has Presented No Evidence of Trademark or Analogous Use of the TRINITY Mark For Handbags or Leather Goods.

To demonstrate that it has common law rights, an opposer must show that it made bona fide use of the mark in the ordinary course of trade prior to the applicant. *King Candy Co.*, 182 U.S.P.Q. at 110; *Chrysler LLC*, 2008 WL 3333841, at *3. If it cannot show use in the ordinary

course of trade, an opposer may rely on analogous use, but that analogous use must be reasonably expected to have had a substantial impact on the purchasing public to create an association in their minds between the mark and the opposer's goods. *Herbko Int'l Inc. v. Kappa Books Inc.*, 64 U.S.P.Q.2d 1375, 1378 (Fed. Cir. 2002).

Despite purportedly offering evidence of handbags and leather belts sold in connection with the TRINITY mark, Cartier has not demonstrated trademark or analogous use for the TRINITY mark. First, Cartier offers press books from 2004 and 2005 as evidence that it sold TRINITY brand handbags from 2004 to 2008, (CT Br. p. 12; Cohen Decl. ¶ 14; Ex. CT 5); however, the press books were neither used to offer handbags for sale to consumers nor does Cartier know if they resulted in any actual press coverage in the United States. (Dkt. 34, Cohen Supp. Decl. ¶ 3; Ex. TW 17, Cohen Dep., 59:9-60:4.) Therefore, these press books were neither used in the ordinary course of trade nor could they be reasonably expected to have had a substantial impact on the purchasing public. *See T.A.B. Sys.*, 37 U.S.P.Q.2d at 1882 (“Although the record indicates that some of PacTel’s press kits were distributed to potential customers, no evidence was presented enabling one to infer that a substantial share of the consuming public had been reached.”) Moreover, the press books show use of the DIABOLO DE CARTIER, SANTOS DE CARTIER, and TRINITY DE CARTIER marks but not the TRINITY mark. (*See* Ex. CT 5.)

Second, Cartier presents a screenshot from its website of one of Cartier’s “TRINITY leather belts,” (CT Br. Appendix-1; Cohen Decl. ¶ 15), but the leather belt is, in fact, a “3 RINGS BUCKLE BELT” with “3 rings, 3 finishes,” (*see* Ex. CT 7.) TRINITY appears nowhere on the page, (*see* Ex. CT 7), and Cartier presents no other images of its TRINITY leather goods

products. In Cartier's evidence of sales, the purported TRINITY leather belt likewise appears to be referred to as "Belt 3 Rings." (See Ex. CT 16 at CART 0001570-72.)

Third, Cartier offers a spreadsheet that notes that Cartier placed [REDACTED] newspaper advertisements in calendar year 2004 and [REDACTED] newspaper advertisements in calendar year 2005, purportedly for Cartier's TRINITY leather goods. (See Cohen Decl. ¶ 17; Ex. CT 13 at CART 001062.) However, Cartier does not have the visuals for the actual advertisements of Cartier's TRINITY leather goods, (Cohen Dec'l, ¶ 16), and Cartier admits that it does not know what specific leather goods products were displayed in those advertisements. (Ex. TW 17, Cohen Dep., 34:3-16.) Like the spreadsheet merely identifying the existence of advertisements, Cartier also offers a spreadsheet that purports to show sales of Cartier's TRINITY leather handbags. (See Cohen Decl. 21; Ex. CT 16.) Given the first two points above, however, it is also unknown whether those leather handbags displayed a TRINITY mark, a TRINITY DE CARTIER mark, a 3 RINGS BUCKLE BELT mark, or some other mark.

Fourth, Cartier asserted that it would begin to offer a TRINITY leather pouch for sale in the United States in November 2015 in its Cartier boutique stores and on its website, (Cohen Decl. ¶ 14; Cohen Cross-Examination Decl., resp. no. 6; Cohen Supp. Decl. ¶ 4), but the image Cartier provides of the pouch does not display a TRINITY mark on the pouch or in connection with it, (see Ex. CT 6.) Cartier has not confirmed or corroborated any actual sales of the pouch.

B. Cartier Abandoned the TRINITY Mark for Leather Handbags.

Nonuse of a mark for three consecutive years is prima facie evidence of abandonment. 15 U.S.C. § 1127. "Use" of a mark means the bona fide use of such mark made in the ordinary course of trade, and not merely made to reserve a right in the mark. *Id.* A party is not allowed to "warehouse" a mark without making actual use of it. *E.g., Yamaha Corp. of Am. v. Wrightwood Enters., Inc.*, No. 108,787, 2002 WL 31651943, at *9-10 (T.T.A.B. Nov. 22, 2002); *Drowning*

Pool LLC v. Drowning Pool, No. 91154398, 2007 WL 2070917, at *7-8 (T.T.A.B. July 11, 2007); *Exxon Corp. v. Humble Exploration Co., Inc.*, 217 U.S.P.Q. 1200, 1204-5 (5th Cir. 1983).

Cartier's last advertisements for leather goods purportedly in connection with the TRINITY mark were over ten years ago, in calendar years 2004 and 2005. (Ex. CT 13 at CART1062; Ex. TW 17, Cohen Dep. 28:9-29:23.) Cartier then made the strategic decision to focus on its other collections and stop advertising leather goods in connection with TRINITY. (Ex. TW 17, Cohen Dep. 28:9-29:23) It likewise allowed its sales of TRINITY handbags to sputter from █████ in 2005, to █████ in 2006, to █████ in 2007, to all of █████ sales by March 2008 and no sales thereafter. (Cohen Decl. ¶ 21; Ex. CT 16.) Notably, Cartier claims that Coachman has sold only a small number of his TRINITY leather handbags, (CT Br. p. 23, n. 2; Dkt. 51, p. 2), yet, at █████ TRINITY leather handbags, Coachman has sold more handbags than Cartier did the last three years, 2006 to 2008, that it was producing and selling handbags, (*Compare* Ex. CT 16 to Coachman Decl. ¶ 15.)

Given the facts, Coachman could have readily sought cancellation of Cartier's registration for TRINITY to leather goods. Instead, that was unnecessary since Cartier allowed the Trademark Office to cancel its registration in December 2011 because Cartier had stopped using the TRINITY mark for those products at least since 2008. (Hallerman Decl. ¶ 7; Ex. CT 19 at CART 000472; Ex. TW 18, Hallerman Dep. 8:10-19, 10:23-11:14.) Seven years after its last sale and nearly four years after its registration was canceled, Cartier now purports to offer leather handbags in connection with a TRINITY mark. (*See* Ex. CT 16; Cohen Decl. ¶ 14; Cross-Examination Cohen Decl., response no. 6-8; Cohen Supp. Decl. ¶ 4.) However, this recent and spurious activity with respect to the TRINITY mark cannot overcome the fact that Cartier abandoned its mark. *See Exxon Corp.*, 217 U.S.P.Q. at 1204-5.

C. Cartier Cannot Establish Priority Through Its Zone of Expansion Theory.

Cartier does not address the zone of expansion doctrine within its priority analysis – its sole argument is that it has priority due to its pleaded registrations for jewelry, diaries, and writing instruments – but then, within the similarity or dissimilarity of the goods likelihood of confusion factor, Cartier glosses over the rigorous analysis required by the zone of expansion doctrine to implicitly argue that it has priority to leather handbags because its jewelry is related to Coachman’s TRINITY leather handbags under the zone of expansion doctrine. (See CT Br. 21-22, 28-29.) This Board has consistently stated that “[i]n general, in an *inter partes* situation, the doctrine of natural expansion is used in connection with priority.” *E.g., Orange Bank, Inc. v. Ole Mexican Foods, Inc.*, 116 U.S.P.Q.2d 1102, 1119 (T.T.A.B. 2015); *Vanity Fair, Inc. v. Ilyil Ent., LLC*, No. 91201657, 2014 WL 2531208, at *5, n.11 (T.T.A.B. May 12, 2014) (“[T]he expansion of trade doctrine usually is considered in the context of priority.”). In addition, this Board has stated that it “should not apply the complexities of the ‘natural expansion’ doctrine as an end-around this critical [similarity or dissimilarity of the goods] *du Pont* factor.” *Emminence, LLC v. Lisa Kelly*, No. 91205286, 2014 WL 5361386, at *5 (T.T.A.B. Oct. 8, 2014). When the complexities of the natural expansion doctrine’s factors are actually applied, it is obvious that Cartier cannot establish priority, much less likelihood of confusion, through its zone of expansion theory.

“The application of the doctrine is strictly limited to those cases where the expansion, whether actual or potential, is ‘natural,’” where the goods are of such nature that purchasers would generally expect them to emanate from the same source. *Mason Eng’g & Design Corp. v. Mateson Chem. Corp.*, 225 U.S.P.Q. 956, 962 (T.T.A.B. 1985). The factors to consider in determining whether an expansion is natural are:

(1) whether the subsequent user's area of business is a distinct departure from the prior user's area of business, thereby requiring a new technology or know-how, or whether it is merely an extension of the technology involved in the first area of business; (2) the nature and purpose of the goods or services in each area; (3) whether the channels of trade and classes of customers for the two areas of business are the same, so that the goodwill established by the prior user in its first area of business would carry over into the second area; and (4) whether other companies have expanded from one area to the other.

Id.

On the first factor, Cartier presented no evidence that the technological know-how to craft TRINITY jewelry is similar to the technological know-how to craft leather handbags. Logically, it would appear to be a distinct departure. For the second factor, Cartier likewise presented no evidence that the nature and purpose of jewelry is the same as for handbags – and handbags clearly serve a utilitarian purpose of carrying items that jewelry does not.

For the third factor, Cartier conclusively states that because neither party has limited its trade channels or purchasers, and because the goods are related (which Cartier has not proven), the respective trade channels and customers are presumed to overlap. (CT Br. p. 33.) Cartier is attempting to prove the goods are related and cannot circularly argue that the goods are related, so the trade channels and consumers must be related, so the zone of expansion applies and the goods are related. Moreover, there is substantial authority that the presence of goods in the same store does not mean they are necessarily related. *See e.g., Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 198 U.S.P.Q. 151, 152 (CCPA 1978); *7-Eleven Inc. v. HEB Grocery Co.*, 83 U.S.P.Q.2d 1257, 1263-4 (T.T.A.B. 2007) (finding that frozen food entrees sold near drinking

water would not be perceived as within the same zone of expansion); *Vanity Fair, Inc.*, 2014 WL 2531208, at *5, n.11 (finding that evidence that the same stores that carry applicant's t-shirts also carry opposer's undergarments does not mean that the goods are related or even sold within the same departments of those stores).

The fourth factor, regarding whether other companies have expanded from one area to another, is the only one for which Cartier presents evidence, (*see* CT Br. 28; Cohen Decl. ¶ 27; Exs. CT 27-37), but the evidence is suited to whether the CARTIER house mark was in contention rather than its TRINITY collection mark. The Board's statements in *Zanella Ltd. v. Saroyan Lumber Co.* are instructive in evaluating Cartier's evidence. The Board stated that:

The fact that famous fashion designers have lent their famous names to a wide range of products does not mean that all of the products they sell are related. Opposer has not met its burden of showing that a lesser known designer in a more limited clothing field, primarily known for men's trousers, would normally expand its less than famous name brand to wooden flooring, or that purchasers would generally expect such goods to emanate from the same source. Although famous designer names in the clothing field are frequently used on collateral items, the record fails to disclose a similar practice relative to lesser-known marks.

Zanella Ltd. v. Saroyan Lumber Co., No. 91153249, 2005 WL 1787248, at *8 (T.T.A.B. June 23, 2005).

Likewise, the fact that house brands such as CARTIER, CHANEL, COACH, GUCCI, PRADA, MICHAEL KORS, DKNY, STEVE MADDEN, etc. offer a range of products does not mean that all of the products they sell are related. (*See* Exs. CT 1-3, 27-37.) Nor does it mean

that a “collection” brand, such as Cartier’s TRINITY, primarily known for incorporating three rings, metals, or colors, (*see infra* II.B; Dkt. 32, Ex. CT 17), would expand its collection brand to handbags. Although large house brands are used on collateral items, there is evidence showing that other designer brands such as DAVID YURMAN, TACORI, ROBERTO COIN, LOUBOUTIN, PAUL MORELLIE, LACOSTE, JIMMY CHOO, etc. offer either jewelry or handbags, but not necessarily both. (*See* Ex. TW 20, 22, 23-33, 35; Coachman Decl. ¶ 20.)

Moreover, Cartier’s evidence that it and the other house brands offer both handbags and jewelry consist of internet web-pages that Cartier submitted. On this very factor, the Board has previously stated that internet web-pages reflecting an opposer’s own use of its mark in connection with a variety of goods is not sufficient to make a *prima facie* case in the opposer’s favor. *Emminence*, 2014 WL 5361386, at *5. Likewise, the fact that Cartier and other house brands may sell their jewelry and handbags within their own boutique stores, or even a department store, does not mean they are necessarily related. *See, e.g., Zanella Ltd.*, 2005 WL 1787248, at *7-9; *Interstate Brands Corp.*, 198 U.S.P.Q. at 152; ; *7-Eleven Inc.*, 83 U.S.P.Q.2d at 1263-4.

Cartier’s jewelry products are sold exclusively in CARTIER branded boutique stores and on its website. (Ex. CT 49, Cohen Dep. 17:22-18:3.) Cartier’s leather goods products have been sold exclusively in CARTIER branded boutique stores for over five years. (Ex. TW 17, Cohen Dep. 11:20-12:3, 16:2-19:7, 42:23-43:2.) The fact that jewelry and handbags are sold by Cartier on its virtual web-page stores and in its own Cartier boutique stores does not prove those goods are related. *See e.g., Eminence*, 2014 WL 5361386, at *5 (finding that opposer’s sale of a variety of goods on opposer’s own website did not prove the goods were necessarily related); *Interstate Brands Corp.*, 198 U.S.P.Q. at 152 (finding that goods sold within the same store are

not necessarily related); *Vanity Fair, Inc.*, 2014 WL 2531208, at *9 (T.T.A.B. 2014) (finding that not all goods sold in a retail store are sold in the same department or necessarily related).

Finally, the Board has failed to find a natural expansion of goods in situations that appeared on their face to be more related than jewelry and handbags. *See e.g., Eminence*, 2014 WL 5361386, at *5 (finding that oils for hair conditioning would not be perceived by consumers of hair extensions as falling within the natural zone of expansion of a manufacturer for wigs and hair pieces); *Mfrs. Technical Inst., Inc. v. Pinnacle Coll., LLC*, No. 91195896, 2013 WL 5402083, at *12 (T.T.A.B. Sept. 4, 2013) (finding that courses in audio recording and design are not within the natural zone of expansion of courses for careers in electronics, computer programming, medical assisting, and massage therapy); *Oyj v. DAscoli*, No. 91160397, 2008 WL 4354180, at *10-11 (T.T.A.B. Sept. 19, 2008) (finding that duffle bags, beach bags, backpacks, and diving bags were not within the natural zone of expansion for the maker of ski poles and ski pole bags).

D. Coachman Has Priority To the TRINITY Mark for Handbags.

Once a person abandons a mark, others are free to claim future possession and property rights therein. 3 J. Thomas McCarthy, *McCarthy on Trademarks and Unfair Competition*, §§17:1 and 17:2 (4th ed. 2000).

The filing date of Coachman's application for the TRINITY mark for leather handbags in Class 18 is April 20, 2012. (Coachman Decl. ¶ 18; Ex. TW 13.) Coachman's first use in commerce of the TRINITY mark for handbags was in March and April 2012, as he promoted and attempted to sell his TRINITY handbags. (*Id.* ¶¶ 11-12.) He then made his first sale in May 2012. (*Id.*) That period, from March 2008 to May 2012, is more than seven years after Cartier stopped advertising leather goods under the Trinity mark and more than three years after Cartier's last sale of a handbag in connection with the TRINITY mark in March 2008, and over

three years before Cartier asserts that it would begin to offer a TRINITY leather pouch for sale in connection with the TRINITY mark in November 2015. (*See* Ex. CT 16; Cohen Decl. ¶ 14; Cross-Examination Cohen Decl., response no. 6-8; Cohen Supp. Decl. ¶ 4.) Thus, Coachman has priority to the TRINITY mark for leather handbags.

Therefore, Cartier has failed to provide sufficient evidence to meet its burden of proving priority to the TRINITY mark for handbags, and the Board should dismiss this opposition.

II. Coachman’s Mark is Not Likely to Cause Confusion With Cartier’s TRINITY Mark or TRINITY DE CARTIER Mark.

The Board determines likelihood of confusion by analyzing the probative facts in evidence relevant to the *du Pont* factors. *See In re E. I. du Pont de Nemours & Co.*, 177 U.S.P.Q. 563, 567 (CCPA 1973); “Not all of the *du Pont* factors may be relevant or of equal weight in a given case,” and “any one of the factors may control a particular case.” *In re Majestic Distilling Co., Inc.*, 65 U.S.P.Q.2d 1201, 1204-5 (Fed. Cir. 2003).

The factors most relevant to this opposition include: the limited use of Cartier’s TRINITY mark in conjunction with jewelry and not a wide variety of other goods; the descriptive nature of Cartier’s TRINITY and TRINITY DE CARTIER marks; the use of other TRINITY marks for handbags by third parties; the dissimilarity of the marks as used by Cartier; the unrelatedness of jewelry and handbags; the unrelatedness of Cartier’s and Coachman’s actual channels of trade; the care that purchasers take in purchasing the relevant goods; and the lack of actual confusion. *See In re E. I. du Pont de Nemours & Co.*, 177 U.S.P.Q. at 567. Cartier has not presented sufficient evidence to meet its burden of proving likelihood of confusion.

A. Cartier’s TRINITY Mark Is Not Used For a Wide Variety of Goods.

Cartier argues that it 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. (CT Br., 34; Cohen Decl. 12-15.) This Board has “emphasize[d], however, that this *du Pont* factor addresses the plaintiff’s actual use of its mark, not merely its registration.” *Societe Nationale Des Chemins De Fer Francais v. Hoffman*, No. 91095769, 2009 WL 625383, at *10 (T.T.A.B. Feb. 9, 2009). By the evidence Cartier has actually presented, its assertion is false.

As explained above, Cartier provided no evidence of trademark or analogous use of a TRINITY mark for its unregistered handbags, leather belts, or other leather goods. (*See supra* I.A.) As with its handbags, the evidence that Cartier provides demonstrates that its key rings, diaries, organizers, watches, clocks, pens, and unregistered eyewear are sold in connection with a TRINITY DE CARTIER mark rather than a TRINITY mark. (*See* CT Exs. 4-5, 9-10.) In addition, the press books are flawed evidence because they were neither sent to consumers nor necessarily resulted in any press. *See T.A.B. Sys.*, 77 F.3d at 1375. Moreover, the age of the press books alone is disqualifying to show that Cartier’s TRINITY mark is currently associated with a broad range of goods. *See Societe Nationale Des Chemins De Fer Francais*, 2009 WL 625383, at *11 (finding that decades old catalogues were insufficient to establish that the public equated opposer’s brand with a wide range of goods).

That leaves just jewelry and cufflinks, which as a form of jewelry are also in Class 14, for which Cartier presents evidence of use associated with TRINITY. (*See* CT Exs. 4, 8.) Even when TRINITY is used, however, it is secondary to CARTIER or TRINITY DE CARTIER, in much smaller type, and/or descriptive for Cartier’s goods. (*See e.g.*, Ex. CT 4, 12, 18, 46; Dkt. 32, Ex. CT 17.) When this issue was raised by Coachman during his testimony period, Cartier

responded with rebuttal evidence that purports to show “that Cartier uses the TRINITY mark standing along on its web-site,” but, in fact, shows use of the TRINITY DE CARTIER mark to identify and sell the jewelry. (See Dkt. 45, Opposer’s Second Notice of Reliance on Printed Publications, ¶ 2, Ex. CT 46.)

Cartier’s evidence of use of the TRINITY mark for jewelry only favors Coachman because it shows how limited the TRINITY mark actually is and because jewelry is not the goods that are at issue in the opposition. Moreover, the TRINITY DE CARTIER mark that Cartier actually uses for its unregistered leather goods and eyewear, as well as most of its registered jewelry and other goods, is distinguishable to consumers from Coachman’s TRINITY mark.

B. Cartier’s TRINITY and TRINITY DE CARTIER Marks Are Descriptive of Cartier’s Goods.

The strength or weakness of the mark can be the most important factor. *See, e.g., Kellogg Co. v. Pack-Em Enters. Inc.*, 21 USPQ2d 1142, 1145 (Fed. Cir. 1991) (“We know of no reason why, in a particular case, a single *duPont* factor may not be dispositive.”) A term is descriptive if it “immediately conveys . . . knowledge of the ingredients, qualities, or characteristics of the goods with which it is used.” *In re Gyulay*, 3 U.S.P.Q.2d 1009, 1009 (Fed. Cir. 1987) (quoting *In re Qwik-Print Copy Shops, Inc.*, 205 U.S.P.Q. 505, 507 (CCPA 1980).) “[I]f a mark requires imagination, thought, and perception to arrive at the qualities or characteristics of the goods, then the mark is suggestive.” *In re Nett Designs Inc.*, 236 F.3d 1339, 1341, 57 U.S.P.Q.2d 1564, 1566 (Fed. Cir. 2002). “[T]he question is whether someone who knows what the goods or services are will understand the mark to convey information about them.” *In re Tower Tech, Inc.*, 64 U.S.P.Q.2d 1314, 1316 (T.T.A.B. 2002). As used by Cartier,

TRINITY and TRINITY DE CARTIER are descriptive of Cartier's products, which are commonly composed of, or include three rings, three metals, three colors, and/or three finishes.

The word "trinity" is defined as "a group of three closely related persons or things." *See e.g., "Trinity,"* Merriam-Webster (2015). Cartier admits that the common characteristic of its jewelry is that each one contains three intertwined bands in different metals. (Cohen Decl. ¶ 13.) Therefore, Cartier can rely on the understanding of its TRINITY jewelry to sell a "KEY RING WITH TRINITY DE CARTIER DÉCOR" which is a key ring with "steel, pink and yellow gold finish." (Ex. CT 9.) Among the many examples of its descriptive use of TRINITY are:

- "TRINITY RING" is "Three Bands. Three types of gold." (Ex. CT 4 at CART 001202.)
- "TRINITY NECKLACE" is "3 types of gold, pearls, diamonds." (*Id.* at CART 001183.)
- "TRINITY EARRINGS" are "3 types of gold, pearls, diamonds." (*Id.* at CART 001180.)
- "TRINITY CLASSIC GOLD CUFFLINKS" are "Yellow, pink and white gold." (Ex. CT 8.)
- "TRINITY DE CARTIER COLLECTION" eyewear "draw inspiration from the three interlocked rings of Cartier Trinity" and have a "3-tone finish." (Ex. CT 10.)
- "Trinity around the clock" for a clock with three rings around it. (Ex. CT 5 at CART 000722.)

Likewise, the "unsolicited" press coverage that Cartier relies on solely concerns jewelry and overwhelmingly includes descriptions of three rings, metals, colors, or finishes. (See Dkt. 32, Ex. CT 17.) Among the many examples are:

- "Trinity collection, named for the intertwined bands made of white gold (for friendship), pink gold (for love) and yellow gold (for fidelity)." (*Id.* at CART 000928.)
- "The iconic Trinity (famously known as the Rolling) Ring is composed of three interlocking bands of white, yellow and red gold." (*Id.* at CART 000921.)

- “Trinity, Cartier’s signature trio interlocking bands.” (*Id.* at CART 000907.)
- “Cartier’s new bracelet, the Trinity, is made from white gold, yellow gold, and diamonds.” (*Id.* at CART 000909.)
- “[C]alled Trinity 100, it will feature rings, bracelets, earrings in the three colors of 18-karat gold.” (*Id.* at CART 000914.)

Given the above, even if not descriptive, the TRINITY and TRINITY DE CARTIER marks are at least highly suggestive of the associated products. Highly suggestive marks are weak and strongly support the lack of likelihood of confusion. *Knight Textile Corp. v. Jones Inv. Co.*, 75 U.S.P.Q.2d 1313, 1316 (T.T.A.B. 2005).

Moreover, Cartier does not argue that its TRINITY mark is famous, but it does present raw statistics of sales and advertising expenditures to argue that its TRINITY mark has marketplace strength. (*See* CT Br. p. 31-32.) Cartier’s evidence of marketplace strength, however, lacks context and is not probative. The Board has previously instructed that raw statistics of sales and advertising expenditures must be placed in the proper context of comparable products. *Citigroup Inc. v. Capital City Bank Group, Inc.*, 94 U.S.P.Q.2d 1645, 1657 (T.T.A.B. 2010); *Alpharma Inc. v. Advanced Animal Nutrition, Inc.*, No. 91164763, 2009 WL 273252 at *3 (T.T.A.B. Jan. 27, 2009) (“[W]e are unable to draw any conclusions as to the strength of the mark from this testimony because opposer failed to provide any context in which to place these figures (e.g., the sales or advertising figures for comparable types of products).”). Cartier has likewise failed to provide that context by comparing its sales and expenditures to the jewelry products of other companies. Moreover, its evidence shows no advertising expenditures for leather goods for over ten years and no sales of handbags for over eight. (*See* Ex. CT 13 at

CART1062; Ex. CT 16.) Following its recent precedent, the Board should be unable to draw any conclusions about the strength of the TRINITY mark from the raw statistics.

Therefore, the descriptive or highly suggestive nature of Cartier's TRINITY mark strongly favors Coachman and a finding of no likelihood of confusion.

C. Third Party Uses and Registration Further Demonstrate the Weakness of the TRINITY Mark For Handbags.

Third party uses and registration of TRINITY marks for handbags are sufficient to show that consumers are capable of distinguishing between small differences in the marks or goods. *General Mills Inc. v. Health Valley Foods*, 24 U.S.P.Q.2d 1270, 1277 (T.T.A.B. 1992). In addition to the many registrations of marks containing TRINITY in the USPTO database, three separate uses of TRINITY marks specific to bags were found during Coachman's response through searches of Amazon.com. (Dkts. 40, ¶ 3, Exs. TW 37-40.) First, a few different TRINITY handbags from the designer Anne Klein are available for sale on Amazon.com. (Ex. TW 39.) Second, TRINITY carry-on bags from the TUMI brand are also sold on Amazon.com. (Ex. TW 40.) Third, several TRINITY RANCH handbags from Montana West are available for sale on the Amazon.com website. (Ex. TW 38.)

Cartier argues that the evidence from Amazon.com should be discounted because it consists of internet printouts with no information on the extent to which the goods have been sold or marketed. (*See* CT Br. 35.) However, Cartier's own evidence of the use of its marks on goods, as well as the sale of both jewelry and handbags by other large house brands consists of internet printouts. (*See, e.g.*, Exs. CT 1-4, 10, 27-37.) To the extent those web-pages are probative that some large house brands offer both jewelry and handbags, the Amazon.com web-pages are probative that at least three other companies sell bags using a TRINITY mark.

The TRINITY RANCH mark in particular undermines Cartier’s argument for likelihood of confusion because Cartier has demonstrated a willingness to consent to third party uses of TRINITY for handbags. See *Mushroom Makers, Inc. v. R.G. Barry Corp.*, 196 U.S.P.Q. 471, 481 (S.D.N.Y. 1977) (senior user’s consent to third party use on identical goods “undermined” claims of likelihood of confusion). Montana West also owns Registration No. 4,688,159 for TRINITY RANCH in Class 18 for “handbags, purses, and wallets,” (Ex. TW 37,) and the TRINITY RANCH mark also blocked Cartier’s registration of TRINITY for leather goods, (Ex. CT 22 at CART 000612-617.) For the TRINITY RANCH mark, however, Cartier intended to pursue a coexistence agreement rather than an opposition. (*Id.* at CART 000590-593.)

This factor strongly favors Coachman and a finding of no likelihood of confusion.

D. Cartier’s Enforcement Evidence Concerns Jewelry and Does Not Strengthen Its TRINITY or TRINITY DE CARTIER Marks.

Cartier also argues that it has successfully enforced its rights through oppositions, cease and desist letters, and enforcement actions. (CT Br. p. 16-17.) Yet, in two of the three oppositions Cartier cites, the application concerned jewelry and the Applicant did not file an answer.² (Ex. CT 22 at CART 001261-67 (Opposition No. 91174557), CART 001269-73 (Opposition No. 91176351). Likewise, both of the cease and desist letters that Cartier refers to also concerned jewelry. (Hallerman Decl. ¶ 11, Exs. CT 23-24.) Similarly, Cartier admits that its enforcement actions are against those that distribute and sell counterfeit jewelry. (Hallerman Decl. ¶ 12.) So too, Cartier’s witness admitted that she did not know if Cartier’s evidence of internet takedowns concerned products other than jewelry. (Ex. TW 18, Hallerman Dep. 18:1-19:23; Ex. CT 26.) Moreover, the reports concerned takedowns worldwide and are not limited to the United States. (*Id.* at 19:8-10.) It is not surprising that Cartier would protect the TRINITY

² The third concerned Cartier’s registration for diaries and writing instruments in Class 16. (Ex. CT 22 at CART 001274-80.)

brand for jewelry, nor that other users would back away from using it for jewelry. This opposition concerns handbags, however. This factor favors Coachman and a finding of no likelihood of confusion.

E. The Descriptive Nature of Cartier’s TRINITY and TRINITY DE CARTIER Marks Makes The Marks Dissimilar.

To determine whether two marks are confusingly similar, one must consider the appearance, sound, meaning and commercial impression of the marks. *Palm Bay Imports, Inc. v. Veuve Clicquot Ponsardin Maison Fondée En 1772*, 73 U.S.P.Q.2d 1689, 1692 (Fed. Cir. 2005). The use of a house mark creates a substantially different commercial impression that can distinguish a descriptive or highly suggestive mark, even when used for identical goods. *See, e.g., Rocket Trademarks Pty Ltd. v Phard S.p.A.*, 98 U.S.P.Q.2d 1066, 1075-6 (TTAB 2011) (finding ZU ELEMENTS and ELEMENTS for identical clothing goods not confusingly similar due to suggestive use of “element,” and addition of house mark); *Knight Textile Corp.*, 75 USPQ at 1315-16 (finding ESSENTIALS and NORTON MCNAUGHTON ESSENTIALS for clothing not confusingly similar due to suggestive use of “essentials,” and addition of house mark).

As explained above Cartier’s TRINITY and TRINITY DE CARTIER marks are descriptive or highly suggestive of Cartier’s products due to imparting the meaning that the goods consist of three metals, colors, finishes, etc. In comparison, Coachman’s TRINITY mark for handbags is arbitrary and does not have a descriptive or highly suggestive meaning. Therefore, the marks are distinguishable by meaning, if not by sound and sight. That is sufficient to find them dissimilar and no likelihood of confusion. *See Alpharma Inc.*, 2009 WL 273252, at *3-4 (finding that NITRO in opposer’s mark for chemical product had a different meaning and commercial impression than applicant’s use of NITRO for pet food).

In addition, the inclusion of the CARTIER house mark in the TRINITY DE CARTIER mark, as well as the use of CARTIER and TRINITY DE CARTIER marks in conjunction with TRINITY, are sufficient to distinguish Cartier's TRINITY and TRINITY DE CARTIER marks from Coachman's. The Board's decision in *Knight Textile Corp. v. Jones Investment Co.* is instructive here. 75 U.S.P.Q.2d at 1315-16. In that opposition, the Board found the term ESSENTIALS to be highly suggestive for clothing. *Id.* Further, the Board found that the marks were not similar in sound, appearance or connotation due to the presence of the NORTON MCNAUGHTON house mark. *Id.* Therefore, although both marks were used for clothing, the Board found that when viewed in their entireties, confusion was not likely to occur. This factor favors Coachman and a finding of no likelihood of confusion.

F. Coachman's Leather Handbags are not Closely Related to Cartier's Jewelry.

Cartier cites *Octocom Systems, Inc. v. Houston Computer Services, Inc.*, for the proposition 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." (CT Br. p. 25, *citing* 16 U.S.P.Q.2d 1783, 1787 (Fed. Cir. 1990).) Applying that rule, the comparison for this factor is of Coachman's application in Class 18 for leather handbags to Cartier's registrations in Classes 14 and 16 for jewelry, watches, clocks, diaries, and writing instruments.³ (*Compare* Ex. TW 13 *with* Ex. CT 19.)

Cartier also cites *In re TBAC Inv. Trust* for the proposition that luggage and watches are apparently *per se* related, but that non-precedential opinion is inapposite for four reasons. (CT

³ To the extent that Cartier's new application in Class 18 for leather goods is relevant to this factor, the question of priority to TRINITY for leather goods is antecedent to whether the goods are identical. Cartier's prior registration to leather goods was canceled, and is, thus, proof of nothing. *See Societe Nationale des Chemins*, 2009 WL 625383, at *10.

Br. p. 26 (*citing* No. 74/209,526, 1999 WL 612950, at *2 (TTAB Aug. 11, 1999).) First, analogously, the Federal Circuit has previously addressed “a trend for apparel and cosmetic and toiletry products to be sold or sponsored by the same entities (e.g., CALVIN KLEIN, CHRISTIAN DIOR, CHANEL),” and held that there is no *per se* rule of likelihood of confusion when the same or similar mark is applied to clothing and to toiletry or cosmetic products – “each case must be resolved on its own facts.” *Fruit of the Loom Inc. v. Fruit of the Earth, Inc.*, No. 87-1621, 1988 WL 26058, at *1 (Fed. Cir. Mar. 30, 1988). Second, there was no argument that the cited marks in *In re TBAC* were descriptive or highly suggestive, unlike with Cartier’s TRINITY mark. *See* 1999 WL 612950 at *2-3. Third, the Examining Attorney refused registration due to likelihood of confusion, and was likely accorded deference, *id.* at *1, whereas the Examining Attorney for Coachman’s TRINITY mark found no reason to refuse registration due to likelihood of confusion. (Ex. TW 13.)

Fourth, the Board in *In re TBAC* found that because the same mark was registered for both watches and leather goods, the goods must be related. 1999 WL 612950 at *2. That logic is similar to Cartier’s argument that because it and other companies sell both leather goods and jewelry under their house brands that the goods must be related under the natural expansion doctrine. (*See* CT Br., p. 27-28.) Cartier’s expansion argument is addressed under priority, above, (*see supra* I.C), but the argument that two goods are *per se* related if there are third-party uses or registrations of both has been repeatedly rejected in the similarity of goods context. *See e.g., Fruit of the Loom Inc.*, 1988 WL 26058, at *1 (finding clothing and cosmetics/toiletries unrelated despite both being sold by CALVIN KLEIN, CHRISTIAN DIOR, CHANEL); *7-Eleven Inc.*, 83 U.S.P.Q.2d at 1263-4 (finding that drinking water and frozen food entrees are not related despite “many examples of third-party use and third-party registrations of [both] under

the same mark.”); *Zanella Ltd.*, 2005 WL 1787248, at *4-5 (finding that despite famous fashion designers selling both apparel and flooring and other home furnishings, the goods are not naturally related).

Moreover, many of Cartier’s examples of web-pages of house brands that sell both jewelry and handbags have, like Cartier, branded stores in their own right. (See Exs. CT 27-37.) The fact that goods of different types may be sold in the same stores does not mean that they are related. *Interstate Brands Corp.*, 198 U.S.P.Q. at 152. Likewise, the fact that the two goods appear on a company’s website has little probative value. *Emminence*, 2014 WL 5361386, at *5. Nonetheless, Cartier’s witness Alison Cohen uses the example of web-pages from Cartier, Chanel, Coach, Tiffany, and Michael Kors and her experience to observe that consumers have come to expect that bags and jewelry offered under the same mark originate from the same company. (Cohen Decl. ¶¶ 26-29; Cohen Cross-Examination Decl., no. 1-4.) Cohen’s observations are entitled to little, if any weight, given that her experience in merchandising has focused on forecasting and managing inventory, and she admitted that she is not responsible for marketing strategy or research studies. (Ex. TW 17, Cohen Dep., 7:7-8, 8:1-22, 14:19-15:7.) In comparison, Coachman has had many direct interactions with consumers in the course of selling his handbags, and his personal observations are that they are capable of telling the difference between his TRINITY handbags and products sold by Cartier, and that no confusion will result. (*Id.* ¶¶ 21, 23.) In his conversations with consumers and sellers of handbags, he has become aware that GUCCI and COACH are well-known for selling leather handbags, but he observes that he has never heard of either referred to as a brand for jewelry. (Coachman Cross-Examination Decl., nos. 3-5.) Likewise, he is aware of CHANEL for selling fragrances, but he

has never observed someone in his conversations refer to it as a brand for leather handbags or jewelry. (*Id.*)

Finally, Cartier's additional arguments do not establish relatedness. Cartier argues that because it once sold handbags in connection with a TRINITY mark from 2004 to 2008, and it is currently doing so again, as of November 2015, that "is a textbook showing of relatedness." (CT Br. 27.) Barring the fact that Cartier has not alleged to have yet had even a nominal number of sales of its TRINITY handbag, if a company can cease offering, promoting, or advertising a good for over seven years and still plausibly claim consumer association, then why set *prima facie* evidence of non-use at less than half that amount of time?

Cartier also contends that because Coachman considered producing leather belts and a necklace with a leather band, that those goods are related to leather handbags. (*See* CT Br., p. 28.) Both products were presented to Coachman while he was researching leather manufacturers in South America, and in both instances, he decided not to expand beyond leather handbags. (*Id.* at 46:14-48:5, 52:25- 55:15.) It is interesting that Cartier would raise the leather belts, however, considering that Cartier neither uses the TRINITY mark in connection with leather belts nor has a registration for it. Even a strong and arbitrary mark does not entitle the owner to a "monopoly" on its use "for all goods and services." *Hormel Foods Corp. v. Spam Arrest, LLC*, No. 92042134, 2007 WL 4287254, at *12 (T.T.A.B. Feb. 23, 2007) (owner of famous SPAM mark not entitled to a monopoly of use).

This factor strongly favors Coachman and a finding of no likelihood of confusion.

G. The Purchasers of Cartier's and Coachman's Products Are Sophisticated And Able To Distinguish Between The Marks and Goods.

The conditions under which the relevant goods are purchased and the degree of care that purchasers take in making their decision must be considered when evaluating likelihood of

confusion. *Mfrs. Technical. Inst., Inc.*, 2013 WL 5402083, at *15; *Stouffer Corp. v. Health Valley Natural Foods Inc.*, 1 U.S.P.Q.2d 1900, 1902 (T.T.A.B. 1986); *In re Software Design, Inc.*, 220 U.S.P.Q. 662, 63 (T.T.A.B. 1983). Purchaser sophistication tends to minimize likelihood of confusion. *Palm Bay Imps.*, 73 U.S.P.Q.2d at 1695. Source confusion is less likely when services are relatively high-priced, as consumers are more likely to research the source of such services. *See Elec. Design & Sales, Inc. v. Elec. Data Sys. Corp.*, 21 USPQ2d 1388, 1392-3 (Fed. Cir. 1992) ; *Astra Pharm. Prods., Inc. v. Beckman Instruments, Inc.*, 220 U.S.P.Q. 786, 790-1 (1st Cir. 1983) (“There is always less likelihood of confusion where goods are expensive and purchased after careful consideration.”); *In re Martin's Famous Pastry Shoppe, Inc.*, 223 USPQ 1289, 1290 (Fed. Cir. 1984) (holding purchasers of relatively inexpensive products “have long been held to a lesser standard of purchasing care” than buyers of expensive items).

In this case, the purchasers of Cartier’s jewelry products may spend as much as \$18,700 for TRINITY cuff links. (Ex. CT 17 at CART 000939.) With the exception of some key chains it sells, its products are considered “high-end.” (Ex. TW 17, Cohen Dep. 10:2-17.) Given the expensive nature of the Cartier products, consumers are unlikely to make that purchase indiscriminately without understanding the source. While less expensive, Coachman’s TRINITY handbags are sold for [REDACTED] to [REDACTED] to college-educated and wealthy women with the disposable income to afford the price of a high-quality leather handbag. (*Id.*; Coachman Decl. ¶¶ 16-17.)

Due to the relative high price and high-end nature of the jewelry and handbags at issue, consumers are likely to be able to tell the difference between Cartier jewelry and Coachman’s TRINITY handbags. This factor favors Coachman.

H. The Parties' Trade Channels Do Not Overlap

The similarity of trade channels is a less important factor where the goods in question are sold in different departments. *Interstate Brands Corp.*, 198 USPQ 151, 153 (CCPA 1978); *Outback Steakhouse of Fla., Inc. v. Waterworldwide Pty Ltd.*, No. 91161384, 2009 WL 129559, at *6 (T.T.A.B. Jan. 7, 2009) (finding that “little can be concluded merely from the fact” that both beer and bottled water are sold in grocery stores to the general public). The fact that Coachman’s TRINITY handbags and Cartier’s TRINITY and TRINITY DE CARTIER jewelry may one day be sold in the same department stores has little probative value when they would be sold in different departments. As it is, it is highly unlikely that Coachman’s TRINITY handbags would be sold where Cartier’s jewelry and handbags currently are – in Cartier-branded boutique stores. Nor is it likely that Coachman’s TRINITY handbags would be sold in the pen specialty stores or authorized eyewear retailers of Cartier’s other TRINITY products.

This factor is neutral or favors Coachman.

I. There is No Evidence of Actual Confusion

The lack of actual confusion between Coachman’s TRINITY handbags and Cartier’s TRINITY jewelry for nearly four years supports that there is no confusion between them. *See Brookfield Commc’ns Inc. v. West Coast Enter. Corp.*, 50 U.S.P.Q.2d 1545, 1555-6 (9th Cir. 1999) (“We cannot think of more persuasive evidence that there is no likelihood of confusion between these two marks than the fact that they have been simultaneously used for five years without causing any consumers to be confused as to who makes what.”)

This factor strongly favors Coachman because neither Cartier nor Coachman are aware of any instances of actual confusion between Cartier’s TRINITY mark and Coachman’s TRINITY mark. (Dkt. 37, Cartier Resp. to Interrog 8; Coachman Decl. ¶ 21.)

J. The Balancing of the Factors

As Cartier's TRINITY mark is descriptive or highly suggestive of its products, consumers will be able to distinguish between the two marks and their goods based on small differences. *See In Re Hartz Hotel Servs. Inc.*, 102 U.S.P.Q.2d 1150, 1152 (T.T.A.B. Mar. 19, 2012) (finding that GRAND HOTELS NYC for hotel services is not likely to cause confusion with GRAND HOTEL for hotel services). In this instance: the co-branding of Cartier's TRINITY products with its CARTIER and TRINITY DE CARTIER marks; the unrelatedness of Cartier's jewelry and Coachman's leather handbags; the sale of Cartier's jewelry and handbags in Cartier branded boutiques; and the sophistication of Cartier's and Coachman's purchasers makes it highly unlikely that they will be confused by Coachman's use of the TRINITY mark for handbags. That should be apparent given the lack of actual confusion in over four years of concurrent use for both handbags and jewelry.

CONCLUSION

Therefore, it is clear that Cartier is neither able to establish priority for the TRINITY mark for handbags nor likelihood of confusion with Coachman's TRINITY mark for leather handbags. Rather than allow Cartier to warehouse a mark for more than seven years without use, the Board should dismiss this Opposition.

Date: May 13, 2016

Respectfully submitted,

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APPENDIX A

Applicant Lance Coachman (Coachman) 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 Mr. Lance Coachman, as presented in his December 30, 2015 Trial Declaration, January 29, 2016 Cross-Examination Response Declaration, January 29, 2016 Supplemental Trial Declaration, and Coachman's Exhibits TW 1-TW 15 referenced therein:

- Coachman's Exhibit TW 1: Coachman's TRINITY leather handbag sold in the United States since 2012;
- Coachman's Exhibit TW 2: Copy of notes from U.S.P.T.O. Trademark database searches for the TRINITY, TRINITY WEAR, and TRINITY1 marks;
- Coachman's Exhibit TW 3: Printout from the www.Whois.com web-site with registration information for the trinitywerks.com domain name;
- Coachman's Exhibit TW 4: Copies of receipts for leather handbags and other leather goods Coachman purchased from manufacturers in Argentina while developing and researching his TRINITY leather handbag;
- Coachman's Exhibit TW 5: Copy of a money order for [REDACTED] sent as final payment to Coachman's leather handbag manufacturer in Argentina for the first shipment of his TRINITY leather handbags;
- Coachman's Exhibit TW 6: Copy of a money order for [REDACTED] sent as final payment to Coachman's graphic designer in Argentina for completion of the work on the TRINITY logo;
- Coachman's Exhibit TW 7: Image of the TRINITY G evening handbag that Coachman intends to sell in the future;

- Coachman’s Exhibit TW 8: Image of a TRINITY overnight bag that Coachman intends to sell in the future;
- Coachman’s Exhibit TW 9: Copies of screenshots and photos of Ms. Cynthia Bailey, a fashion model and star of Real Housewives of Atlanta, promoting Coachman’s TRINITY handbag via Twitter;
- Coachman’s Exhibit TW 10: Copies of nine emails that Coachman sent to potential distributors and other contacts in his effort to obtain distribution and retail agreements for his TRINITY leather handbag;
- Coachman’s Exhibit TW 11: Copies of screenshots of Coachman promoting his TRINITY leather handbag via Twitter to Arsenio Hall’s “Kick Ass Starter” program;
- Coachman’s Exhibit TW 12: Print from the www.trinitywerks.com web-site showing Coachman’s TrinityWerks web-site;
- Coachman’s Exhibit TW 13: Copies of records from the U.S. Patent and Trademark Office (“USPTO”) with respect to Coachman’s Application Serial No. 85/604,000 for the TRINITY mark for leather handbags;
- Coachman’s Exhibit TW 14: Copies of pages from Cartier’s 2004 press book in Exhibit CT 5, showing that most pages of the press book are in French; and
- Coachman’s Exhibit TW 15: Copies of internet printouts from Cartier’s Exhibit CT 4, showing that Cartier’s TRINITY jewelry products contain the design element of three rings.

2. Coachman’s December 30, 2015 Notice of Reliance on Discovery Responses and Exhibits TW 16-17:

- Coachman's Exhibit TW 16: Opposer's responses to Applicant's Interrogatory Nos. 1-2, 5, and 8-9, dated April 9, 2014.

3. Coachman's December 30, 2015 Notice of Reliance on Deposition Testimony and Exhibits TW 17-19:

- Coachman's Exhibit TW 17: Excerpts from the discovery deposition of Alison Cohen, taken January 8, 2015;
- Coachman's Exhibit TW 18: Excerpts from the discovery deposition of Stacey Hallerman, taken January 8, 2015; and
- Coachman's Exhibit TW 19: Excerpt from the discovery deposition of Lance Coachman, taken September 16, 2014.

4. Coachman's December 30, 2015 Notice of Reliance on Printed Publications and Exhibits TW 20-40:

- Coachman's Exhibit TW 20: December 30, 2015 printouts from the website www.davidyurman.com showing jewelry but not handbags offered under the DAVID YURMAN mark;
- Coachman's Exhibit TW 21: December 30, 2015 printouts from the website www.dkny.com showing that handbags but not jewelry offered under the DKNY mark;
- Coachman's Exhibit TW 22: December 30, 2015 printouts from the website www.garrard.com showing jewelry but not handbags offered under the GARRARD mark;

- Coachman's Exhibit TW 23: December 30, 2015 printouts from the website www.gelinabaci.com showing jewelry but not handbags offered under the GELIN ABACI mark;
- Coachman's Exhibit TW 24: December 28, 2015 printouts from the website www.harrywinston.com showing jewelry but not handbags offered under the HARRY WINSTON mark;
- Coachman's Exhibit TW 25: December 30, 2015 printouts from the website www.ippolita.com showing jewelry but not handbags offered under the IPPOLITA mark;
- Coachman's Exhibit TW 26: December 30, 2015 printouts from the website us.jimmychoo.com showing handbags but not jewelry offered under the JIMMY CHOO mark;
- Coachman's Exhibit TW 27: December 30, 2015 printouts from the website www.johnhardy.com showing jewelry but not handbags offered under the JOHN HARDY mark;
- Coachman's Exhibit TW 28: December 30, 2015 printouts from the website www.kipling-usa.com showing handbags but not jewelry offered under the KIPLING mark;
- Coachman's Exhibit TW 29: December 30, 2015 printouts from the website www.lacoste.com showing handbags but not jewelry offered under the LACOSTE mark;

- Coachman's Exhibit TW 30: December 30, 2015 printouts from the website us.christianlouboutin.com showing handbags but not jewelry offered under the LOUBOUTIN mark;
- Coachman's Exhibit TW 31: December 29, 2015 printouts from the website www.paulmorelli.com showing jewelry but not handbags offered under the PAUL MORELLI mark;
- Coachman's Exhibit TW 32: December 28, 2015 and December 29, 2015 printouts from the website www.piaget.com showing jewelry but not handbags offered under the PIAGET mark;
- Coachman's Exhibit TW 33: December 30, 2015 printouts from the website us.robertocoin.com showing jewelry but not handbags offered under the ROBERTO COIN mark;
- Coachman's Exhibit TW 34: December 30, 2015 printouts from the website www.stevemadden.com showing handbags but not jewelry offered under the STEVE MADDEN mark;
- Coachman's Exhibit TW 35: December 29, 2015 printouts from the website www.tacori.com showing jewelry but not handbags offered under the TACORI mark;
- Coachman's Exhibit TW 36: December 28, 2015 printouts from the website www.vancleefarpels.com showing jewelry but not handbags offered under the VAN CLEEF & ARPELS mark;

- Coachman's Exhibit TW 37: Copy of the registration certificate from the USPTO electronic database for TRINITY RANCH in Class 18 for “handbags, purses, and wallets,”
- Coachman's Exhibit TW 38: December 30, 2015 printouts from the website www.amazon.com showing use of the TRINITY RANCH mark by Montana West to sell handbags;
- Coachman's Exhibit TW 39: December 30, 2015 printouts from the website www.amazon.com showing the use of the TRINITY mark by Anne Klein to sell handbags; and
- Coachman's Exhibit TW 40: December 30, 2015 printouts from the website www.amazon.com showing use of the TRINITY mark by Tumi Astor to sell carry-on bags.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT LANCE COACHMAN'S TRIAL BRIEF** has been served upon counsel for Opposer **CARTIER INTERNATIONAL A.G.** on May 13, 2016, via Overnight Courier and email to:

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