

ESTTA Tracking number: **ESTTA749310**

Filing date: **05/31/2016**

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

Proceeding	91209815
Party	Plaintiff Cartier International A.G.
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Attachments	F1963055.PDF(62963 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 RESPONSE
TO APPLICANT LANCE COACHMAN’S STATEMENT OF
OBJECTIONS TO OPPOSER CARTIER INTERNATIONAL A.G.’S EVIDENCE**

Opposer Cartier International A.G. (“Cartier”) herein responds to Applicant Lance Coachman’s Statement of Objections to Opposer Cartier International A.G.’s Evidence. The objections of Applicant Lance Coachman (“Applicant”) are without basis and should be overruled.

A. Certain Statements in Paragraphs 27, 29, and 30 of the Cohen Declaration

Applicant seeks to exclude certain statements from Paragraphs 27, 29, and 30 of the Trial Declaration of Alison Cohen on the ground that they constitute impermissible and unreliable opinion testimony under Rules 701 and 702 of the Federal Rules of Evidence. Rule 702 concerns testimony by an expert witness, and, as Cartier has conveyed to Applicant, Cartier is not offering Ms. Cohen as an expert witness under Rule 702. (*See* Cross-Examination Cohen Decl., response nos. 1-4). Rather, Ms. Cohen is a lay witness testifying on matters that are rationally based on her perception under Rule 701.

Applicant argues that Ms. Cohen's testimony is not admissible under Rule 701 because, despite working in the fashion industry for eighteen years and at Cartier for eight years, Ms. Cohen is not knowledgeable about the market for jewelry and accessories or about consumers' expectations about Cartier products. In support of his argument, Applicant points to Ms. Cohen's testimony at her discovery deposition in which she described her current job responsibilities, but such testimony does not establish that Ms. Cohen does not have knowledge about the topics testified to in Paragraphs 27, 29, and 30. Moreover, other testimony, which Applicant ignores, establishes that Ms. Cohen is in fact competent to testify on those topics.

As stated above, Ms. Cohen has worked in the fashion industry for over eighteen years. (Cohen Decl. ¶ 26). Prior to working at Cartier, she was a Merchandiser for DKNY and a Brand Manager for Liz Claiborne. (*See* Cross-Examination Cohen Decl., response nos. 1, 3). She joined Cartier in 2008 and since then she has held various merchandising positions. (Cohen Decl. ¶ 2). Ms. Cohen testified that her prior positions at DKNY and Liz Claiborne and her positions at Cartier have required that she be familiar with the jewelry and accessories market, including matters relating to sales, advertising, the consumers that tend to purchase jewelry and handbags, and the products that other brands within the industry offer. (*See* Cross-Examination Cohen Decl., response nos. 1, 3).

Moreover, Applicant misconstrues Ms. Cohen's current job responsibilities. She is involved with all of Cartier's strategic planning, which includes developing a three-year plan for all Cartier products, including jewelry, watches, accessories, leather goods, eyewear, fragrances, scarves, and belts. (Ex. TW 17 (Cohen Disc. Dep.) at 9:7-22). Applicant claims that such experience is not sufficient because Ms. Cohen is not directly involved with Cartier's marketing efforts. Applicant's argument suffers from several defects. First, Applicant just assumes that

marketing experience makes one more knowledgeable about consumers' expectations, but he has no basis for that assertion. Indeed, strategic planning requires more familiarity with consumers' expectations because it involves creating a three-year plan for the entire company. But even if marketing experience were necessary, Ms. Cohen testified that strategic planning includes overseeing marketing budgets and determining which products to advertise in certain years. (*Id.* at 25:23-26:18, 27:12-28:5, 28:19-29:6). Thus, she is in fact involved with Cartier's marketing strategy.

This type of experience is sufficient for Ms. Cohen's testimony to be admissible. *See 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).¹ As such, Applicant's objection is without merit.

B. Cartier's Exhibit CT 5

Applicant's objection to Exhibit CT 5 goes to the weight of the exhibit, not its admissibility. In any event, Applicant's issues with the exhibit are not well-founded, particularly because he fails to comprehend the purpose of the press books shown in Exhibit CT 5. Cartier has never claimed that the press books were sent to consumers. Moreover, whether any press resulted from them is irrelevant. Rather, the press books are being offered to show representative samples of the TRINITY products that were offered in the years the press books were published. Ms. Cohen's testimony provides adequate foundation for this. She testified at

¹ Applicant argues that this case is distinguishable because the witness was the opposer's president and Ms. Cohen is not Cartier's president. (App. Obj. at 3). But, as Applicant acknowledges, the decision to let him testify was based on his knowledge, not his title. Here, Cartier has established that Ms. Cohen is knowledgeable about the jewelry and accessories industry.

her discovery deposition that the books were sent to press contacts in the United States to show press what Cartier was offering that year and to try to obtain press coverage on such products. (Ex. TW 17 (Cohen Disc. Dep.) at 58:12-23, 59:7-14). She confirmed this is in her Supplemental Trial Declaration. (Supp. Cohen Decl. ¶ 3). It naturally follows that if the books were sent to press contacts to promote Cartier's products, something that Applicant does not dispute, then these products were in fact offered in those years.

Finally, the statements from Cartier's Trial Brief that Applicant seeks to exclude are not dependent on the press books. Cartier cites other evidence in support of its assertions, including Ms. Cohen's trial testimony that TRINITY handbags were offered for sale in the United States from 2004 to 2008 and the sales figures for the TRINITY handbags.

For these reasons, Applicant's objections to Exhibit CT 5 and the statements in Ms. Cohen's Trial Declaration and Cartier's Trial Brief should be overruled.

C. Cartier's Exhibit CT 6

Again, Applicant's objection to Exhibit CT 6 goes to the weight of the exhibit, not its admissibility. Applicant's sole objection is that there is not more evidence supporting Ms. Cohen's assertion that the TRINITY handbag is being offered for sale in the United States, but Ms. Cohen's testimony is sufficient by itself. Ms. Cohen testified as to what she knows, including that the bag shown in Exhibit CT 6 is the new TRINITY handbag that was offered for sale in the United States starting in November 2015. She further testified that she did not have additional information concerning sales and advertising because the TRINITY handbag was a worldwide roll-out directed from Europe. (*See* Cross-Examination Cohen Decl., response nos. 8). To the extent Applicant is accusing Ms. Cohen of not being truthful, there is no basis for that accusation. Her trial testimony is entirely consistent with her testimony at her discovery

deposition in January 2015. At that deposition she testified that Cartier's plan was to introduce a TRINITY handbag during the 2015 holiday season, and that the handbag would most likely be a clutch. (Ex. TW 17 (Cohen Disc. Dep.) at 40:3-9, 42:11-14).

Thus, it is not true that "Cartier has presented no evidence that the TRINITY leather pouch is actually being sold or advertised in the United States." The evidence it has introduced is testimony from Ms. Cohen, and there is no reason to doubt that testimony or require more supporting documentation.

Dated: New York, New York
May 31, 2016

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: 

John P. Margiotta
Emily Weiss

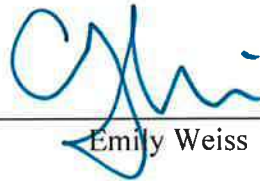
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CERTIFICATE OF SERVICE

I hereby certify that I caused, on this 31st day of May 2016, a copy of the foregoing **OPPOSER CARTIER INTERNATIONAL A.G.'S RESPONSE TO APPLICANT LANCE COACHMAN'S STATEMENT OF OBJECTIONS TO OPPOSER CARTIER INTERNATIONAL A.G.'S EVIDENCE** to be sent by First Class Mail, postage prepaid, in an envelope addressed to counsel for Lance Coachman:

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Emily Weiss