

This Opinion is not a
Precedent of the TTAB

Mailed: October 5, 2016

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board
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Cartier International A.G.

v.

Lance Coachman

—
Opposition No. 91209815
—

John P. Margiotta of Fross Zelnick Lehrman & Zissu, P.C.
for Cartier International A.G.

Reginald J. Hill of Jenner & Block LLP
for Lance Coachman.

—
Before Quinn, Bergsman and Richie,
Administrative Trademark Judges.

Opinion by Bergsman, Administrative Trademark Judge:

Lance Coachman (“Applicant”) seeks registration on the Principal Register of the mark TRINITY (in standard characters) for “leather handbags,” in Class 18.¹

Cartier International A.G. (“Opposer”) has opposed the registration of Applicant’s mark on the ground that Applicant’s mark TRINITY for “leather handbags” so

¹ Application Serial No. 85604000 was filed on April 20, 2012, based upon Applicant’s claim of first use anywhere and use in commerce since at least as early as March 2012.

resembles Opposer's registered mark TRINITY, in typed drawing form, for "jewelry made of precious metal or coated therewith," in Class 18, as to be likely to cause confusion.² Opposer attached to the Notice of Opposition a copy of its pleaded registration printed from the USPTO electronic database showing the current status of and title to the registration.

Applicant, in his Answer, denied the salient allegations in the Notice of Opposition.

I. The Record

The parties stipulated that direct testimony could be offered into evidence by means of a sworn affidavit or declaration and cross-examination could be conducted through oral examination or upon written questions.³

The record includes the pleadings and, by operation of Trademark Rule 2.122(b), 37 C.F.R. § 2.122(b), Applicant's application file.

A. Opposer's testimony and evidence.

1. Testimony declaration with attached exhibits of Alison Cohen, Assistant Vice President of Merchandising and Jewelry Workshop at Cartier, a division of Richemont North America, Inc., Opposer's U.S. affiliate and

² Registration No. 1927987, registered October 17, 1995; second renewal. Prior to November 2, 2003, "standard character" drawings were known as "typed" drawings. A typed mark is the legal equivalent of a standard character mark. TMEP § 807.03(i) (April 2016).

³ 22 TTABVUE.

- exclusive distributor and licensee of CARTIER branded products in the United States;⁴
- a. Alison Cohen cross-examination declaration;⁵
 - b. Alison Cohen supplemental declaration;⁶
 - c. Alison Cohen rebuttal declaration with attached exhibits;⁷
2. Testimony declaration with attached exhibits of Stacey Hallerman, Vice President – Chief Legal Counsel of Richemont North America, Inc.;⁸
 3. Notice of reliance on Internet printouts purporting “to show the existence of third parties who offer both jewelry and bags under the same mark”;⁹
 4. Notice of reliance on excerpts from Applicant’s discovery deposition with attached exhibits;¹⁰
 - a. Rebuttal notice of reliance on excerpts from Applicant’s discovery deposition with attached exhibits;¹¹
 5. Notice of reliance on Applicant’s responses to Opposer’s written discovery;¹²

⁴ 25 TTABVUE. The confidential version of the Cohen declaration was filed at 24 TTABVUE.

⁵ 33 TTABVUE.

⁶ 34 TTABVUE.

⁷ 44 TTABVUE.

⁸ 27 TTABVUE. The confidential version of the Hallerman declaration was filed at 26 TTABVUE.

⁹ 28 TTABVUE.

¹⁰ 30 TTABVUE. The confidential version of Applicant’s discovery deposition was filed at 29 TTABVUE.

¹¹ 46 TTABVUE.

¹² 31 TTABVUE.

- a. Rebuttal notice of reliance on Applicant's responses to Opposer's interrogatory Nos. 18 and 19;¹³
6. Rebuttal notice of reliance on third-party websites purporting to show that "certain of the third parties that Applicant claims sell only handbags or only jewelry in fact have sold or sell both handbags and jewelry";¹⁴ and
7. Notice of reliance on excerpts from Alison Cohen's discovery deposition which Opposer contends "should in fairness be considered so as not to make misleading Applicant's designated deposition excerpts."¹⁵

B. Applicant's testimony and evidence.

1. Applicant's testimony declaration with attached exhibits;¹⁶
 - a. Lance Coachman cross-examination declaration;¹⁷
 - b. Lance Coachman supplemental declaration;¹⁸
2. Notice of reliance on Opposer's responses to Applicant's interrogatories;¹⁹
3. Notice of reliance on excerpts from the Alison Cohen's discovery deposition with attached exhibits;²⁰ and

¹³ 47 TTABVUE.

¹⁴ 45 TTABVUE.

¹⁵ 48 TTABVUE.

¹⁶ 36 TTABVUE. The confidential version of Applicant's declaration was filed at 35 TTABVUE.

¹⁷ 42 TTABVUE.

¹⁸ 43 TTABVUE.

¹⁹ 37 TTABVUE. The confidential responses to Applicant's interrogatories were filed at 38 TTABVUE.

²⁰ 39 TTABVUE.

4. Notice of reliance on Internet printouts purporting “to show the existence of third parties that offer jewelry but not handbags under the same mark, or vice versa, that offer handbags but not jewelry under the same mark, and thus tend to show that jewelry and handbags are distinct, unrelated products.”²¹

II. Standing and Priority

Because Opposer’s pleaded registration is of record, valid and subsisting, Opposer’s standing to oppose registration of Applicant’s mark is established and its priority is not in issue as to the goods listed in the registration (*i.e.*, jewelry). *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000); *Lipton Indus., Inc. v. Ralston Purina Co.*, 670 F.2d 1024, 213 USPQ 185 (CCPA 1982); *King Candy Co., Inc. v. Eunice King’s Kitchen, Inc.*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974).

Opposer also has shown that the mark in Applicant’s application involved herein has been cited as a potential bar to the registration of Opposer’s mark TRINITY for use in connection with various leather goods.²² This demonstrates that Opposer would be damaged by the registration of Applicant’s mark. *See Empressa Cubana Del Tabaco v. Gen. Cigar Co.*, 753 F.3d 1270, 111 USPQ2d 1058, 1062 (Fed. Cir. 2014); *Lipton Indus., Inc. v. Ralston Purina Co.*, 213 USPQ at 189.

²¹ 40 and 41 TTABVUE.

²² Hallerman Decl. ¶8 and Exhibit CT21 (27 TTABVUE 4-5 and 134-190), referring to Application Serial No. 79116170.

Applicant argues that Opposer has failed to show that it has priority for the mark TRINITY for leather goods.²³ However, Opposer is not relying on its use of the TRINITY mark for leather goods; rather, Opposer is relying on its registration for the mark TRINITY for jewelry. *See* Opposer’s Reply Brief wherein Opposer explained that “[t]he question to be answered in this proceeding is whether Applicant’s application to register its [sic] TRINITY mark in connection with handbags should be rejected based on a likelihood of confusion with [Opposer’s] federally-registered TRINITY mark. ... To be clear, [Opposer] has not brought this proceeding alleging priority in handbags *per se*.”²⁴ Thus, the issue before us is whether Applicant’s mark TRINITY for handbags so resembles Opposer’s previously registered mark TRINITY for jewelry as to be likely to cause confusion.

III. Likelihood of Confusion

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the issue of likelihood of confusion. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563, 567 (CCPA 1973) (“*DuPont*”) (cited in *B&B Hardware, Inc. v. Hargis Ind., Inc.*, 575 U.S. ___, 135 S.Ct.1293, 113 USPQ2d 2045, 2049 (2015)). *See also In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201, 1203 (Fed. Cir. 2003). We have considered each *DuPont* factor that is relevant and for which there is evidence of record. *See M2 Software, Inc. v. M2 Communications, Inc.*, 450 F.3d 1378,

²³ Applicant’s Brief, pp. 21-31 (53 TTABVUE 29-39).

²⁴ Opposer’s Reply Brief, p. 4 (55 TTABVUE 6).

78 USPQ2d 1944, 1947 (Fed. Cir. 2006); *ProMark Brands Inc. and H.J. Heinz Company v. GFA Brands, Inc.*, 114 USPQ2d 1232, 1242 (TTAB 2015) (“While we have considered each factor for which we have evidence, we focus our analysis on those factors we find to be relevant.”). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods. *See Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) (“The fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods and differences in the marks.”). *See also In re i.am.symbolic, LLC*, 116 USPQ2d 1406, 1409 (TTAB 2015).

A. The similarity or dissimilarity of the marks.

The marks are identical. There is no reason to believe that the commercial impression would be any different for the goods of Applicant than for those of Opposer. *Cf. Coach Services Inc. v. Triumph Learning LLC.*, 668 F.3d 1356, 101 USPQ2d 1713, 1721-1722 (Fed. Cir. 2012).

B. The strength of Opposer’s TRINITY mark.

Applicant argues that Opposer’s mark is descriptive of jewelry “which are commonly composed of, or includes three rings, three metals, three colors and/or three finishes.”²⁵ Applicant may not attack the validity of Opposer’s pleaded registration without having pleaded a counterclaim to cancel that registration. *See* Trademark Rule 2.106(b)(2)(i), 37 C.F.R. §2.106(b)(2)(i) which provides that “[a] defense

²⁵ Applicant’s Brief, pp. 33-36 (53 TTABVUE 41-44).

attacking the validity of any one or more of the registrations pleaded in the opposition shall be a compulsory counterclaim if grounds for such counterclaim exist at the time when the answer is filed” and Trademark Rule 2.106(b)(2)(ii), 37 C.F.R. §2.106(b)(2)(ii) which provides that “[a]n attack on the validity of a registration pleaded by an opposer will not be heard unless a counterclaim or separate petition is filed to seek the cancellation of such registration.”

We construe Applicant’s contention that TRINITY is descriptive of jewelry to mean that TRINITY is an inherently weak mark entitled to only a narrow scope of protection or exclusivity of use. In this regard, the word “Trinity” is defined, in relevant part, as “a group of three; triad” or “the state of being threefold or triple.”²⁶ Opposer adopted TRINITY as its mark for jewelry based on its principal’s creation of a ring featuring three gold bands with three different types of gold.

9. The products sold under the TRINITY mark date back to 1924, when Louis-Francois Cartier created a ring for the French poet and novelist Jean Cocteau. The ring was comprised of three intertwined bands, with each band in a different metal. Mr. Cocteau wore the ring for the rest of his life, ...

10. ... The term TRINITY was derived from the design of the famous Jean Cocteau ring featuring three intertwined bands. The three bands most often appear in pink gold,

²⁶ Dictionary.com Unabridged based on the *Random House Dictionary* (2016). The Board may take judicial notice of dictionary definitions, *Univ. of Notre Dame du Lac v. J.C. Gourmet Food Imp. Co.*, 213 USPQ 594 (TTAB 1982), *aff’d*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983), including online dictionaries that exist in printed format or have regular fixed editions. *In re Cordua Rests. LP*, 110 USPQ2d 1227, 1229 n.4 (TTAB 2014), *aff’d* 823 F.3d 594, 118 USPQ2d 1632 (Fed. Cir. 2016); *Threshold.TV Inc. v. Metronome Enters. Inc.*, 96 USPQ2d 1031, 1038 n.14 (TTAB 2010); *In re Red Bull GmbH*, 78 USPQ2d 1375, 1378 (TTAB 2006).

Also, “Trinity” is defined as “the union of three persons (Father, Son, and Holy Ghost) in one Godhead, or the threefold personality of one Divine Being.” *Id.* See also Applicant’s Testimony Decl. ¶9 (36 TTABVUE 4).

yellow gold, and white gold, with the colors representing different aspects of a relationship –pink of love, yellow for fidelity, and white for friendship.

* * *

13. ... the designs of the jewelry pieces within the TRINITY collection are varied, but the common feature is that each one contains three intertwined bands in different metals.²⁷

Opposer emphasizes the composition of the jewelry in its advertising. For example,

TRINITY DE CARTIER

Three bands. Three colors. Pink gold, yellow gold and white gold, intertwined in a display of mystery and harmony. ... Three types of gold. Three symbolic colors: pink for love, yellow for fidelity and white for friendship. Trinity, a timeless design now available in a collection to life's memorable loves. Trinity, all about you forever.²⁸

Despite Opposer's advertising emphasizing three bands of three different golds, on the spectrum of distinctiveness, Opposer's TRINITY mark is at worst suggestive. Thus, the TRINITY mark is inherently distinctive and immediately signals a brand or a product source.

With respect to market strength, based on evidence discussed below, we find that Opposer's TRINITY mark is a strong mark. From 2002 through 2013, Opposer advertised its TRINITY jewelry in publications such as *The New York Times*, *Wall Street Journal*, *Los Angeles Times*, *Washington Post*, *San Francisco Chronicle*, *Chicago Tribune*, *Boston Globe*, *Newsday*, *In Style*, *Vogue*, *WWD*, *Marie Claire*, *New*

²⁷ Cohen Testimony Decl. ¶¶9, 10 and 13 (25 TTABVUE 4-5).

²⁸ Cohen Testimony Decl., Exhibit CT4 (25 TTABVUE 88).

York Magazine, Elle, W Magazine, Harper's Bazaar, Vanity Fair, and others.²⁹ Opposer's print and digital advertising expenditures are not insubstantial.³⁰ Likewise, sales of Opposer's TRINITY branded products are not insubstantial.³¹

The market strength of Opposer's TRINITY jewelry line is best illustrated through the unsolicited media notices it has received. For example, the articles set forth below make note of the "iconic" or famous TRINITY design, and they are representative of the unsolicited media that Opposer has made of record.

1. *WWD* (undated)

TRINITY

Probably the best-known of Cartier's iconic designs, the Trinity first appeared in 1924 when the French jeweler designed an interlocking three-banded ring consisting of platinum (a symbol of friendship), rose gold (for love) and yellow gold (for fidelity). While the ring became popular soon after it hit the sales floor, it was the three-banded Trinity bracelet, created that same year and purchased first by celebrated American interior decorator Elsie de Wolfe, that really turned heads. Since then, the ring has seen a variety of influential wearers over the years, including Yves Saint Laurent, Jean Cocteau (who famously

²⁹ Cohen Testimony Decl. ¶17 (25 TTABVUE 6-7) and Exhibit CT13 (24 TTABVUE 430-459) (Confidential).

³⁰ Cohen Testimony Decl. ¶19 (24 TTABVUE 7-8) and Exhibit CT14 (24 TTABVUE 461) (Confidential). Because Opposer designated its advertising expenditures as confidential, we may only refer to them in general terms. Inasmuch as the advertising expenditures are not overwhelming and have not been placed in context with the expenditures of competitors, we cannot render a finding as to whether the expenditures support finding that the TRINITY mark is famous or even well-known.

³¹ Cohen Testimony Decl. ¶20 (24 TTABVUE 8) and Exhibits CT15 and 16 (24 TTABVUE 465-475) (Confidential). Because Opposer designated its sales revenues confidential, we may only refer to them in general terms. As with the advertising expenditures, Opposer's sales revenues are not overwhelming and they have not been placed in context so our ability to place them on a scale of market strength is limited.

wore two Trinity rings on one finger), David Bowie and Madonna.³²

2. Papercity (June 1, 2012)

Trinity of Pearls

Cartier introduced its famed Trinity ring in 1924 and ever since, the trio of white-, yellow- and rose-gold intertwined bands (symbolizing respectively friendship, fidelity and love) has inspired myriad designs through the decades within this storied French house.³³

3. *Harper's Bazaar* (November 2011)

Editors' Picks: The Best Gifts for Women

* * *

Kristina O'Neill, Executive Editor

What I'm wishing for ...

"The Cartier Trinity ring is iconic, and in white gold, palladium and ceramic it's even more exquisite."³⁴

Applicant asserts that "[t]hird-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."³⁵ To support his argument, Applicant introduced a copy of Registration No. 4688159 for the mark TRINITY RANCH for "handbags, purses and wallets; luggage"³⁶ and an excerpt from the

³² Cohen Decl. Exhibit CT17 (25 TTABVUE 372). Because the gist of the article is Cartier designs for the American Centennial, we surmise that the article was published sometime in 1976 prior to July 4.

³³ Cohen Decl. Exhibit CT17 (25 TTABVUE 387).

³⁴ Cohen Decl. Exhibit CT17 (25 TTABVUE 384).

³⁵ Applicant's Brief, p. 36 (53 TTABVUE 44).

³⁶ 41 TTABVUE 356.

AMAZON.com website advertising the sale of TRINITY RANCH handbags, purses, and wallets.³⁷ Applicant also introduced excerpts from the AMAZON.com website advertising the sale of ANNE KLEIN TRINITY handbags³⁸ and TUMI ASTOR, TRINITY carry-on bags.³⁹

Evidence of extensive registration and use of a term by others can be “powerful” evidence of weakness. *See Jack Wolfskin Ausrüstung Fur Draussen GmbH & Co. KGAA v. New Millennium Sports, S.L.U.*, 797 F.3d 1363, 116 USPQ2d 1129, 1136 (Fed. Cir. 2015); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 115 USPQ2d 1671, 1674 (Fed. Cir. 2015). But Applicant offers excerpts from three third-party users and one registration owned by one of the third parties. Thus, there is evidence of only three other users of the term “Trinity.” By comparison, in *Juice Generation*, there were at least twenty-six relevant third party uses or registrations of record, *see* 115 USPQ2d at 1672 n. 1, and in *Jack Wolfskin*, there were at least fourteen, 116 USPQ2d at 1136 n. 2.

Moreover, Applicant proffered no evidence regarding the extent of such third-party use. In this case, the evidence does not rise to the level of demonstrating that the third-party use was so widespread as to “condition” the consuming public.

We find that Opposer’s TRINITY mark is a strong mark for jewelry.

³⁷ 41 TTABVUE 359-362.

³⁸ 41 TTABVUE 364-368.

³⁹ 41 TTABVUE 370.

C. The similarity or dissimilarity and nature of the goods.

Opposer's jewelry and Applicant's leather handbags are different products. However, in determining whether the goods at issue are related, it is not necessary that the goods of the parties be similar or competitive in character to support a holding of likelihood of confusion; it is sufficient for such purposes that a party claiming damage establish that the goods are related in some manner and/or that conditions and activities surrounding marketing of these goods are such that they would or could be encountered by same persons under circumstances that could, because of similarities of marks used with them, give rise to the mistaken belief that they originate from or are in some way associated with the same producer. *Coach Servs., Inc. v. Triumph Learning LLC*, 101 USPQ2d at 1722; *Edwards Lifesciences Corp. v. VigiLanz Corp.*, 94 USPQ2d 1399, 1410 (TTAB 2010); *Schering Corporation v. Alza Corporation*, 207 USPQ 504, 507 (TTAB 1980); *Oxford Pendaflex Corporation v. Anixter Bros. Inc.*, 201 USPQ 851, 854 (TTAB 1978).

Where identical marks are involved, as is the case here, the degree of similarity between the parties' goods that is required to support a finding of likelihood of confusion declines. *In re Shell Oil Co.*, 992 F.2d 1204, 26 USPQ2d 1687, 1688-1689 (Fed. Cir. 1993) ("even when the goods or services are not competitive or intrinsically related, the use of identical marks can lead to the assumption that there is a common source"); *Time Warner Entertainment Co. v. Jones*, 65 USPQ2d 1650 (TTAB 2002); *In re Opus One Inc.*, 60 USPQ2d 1812 (TTAB 2001). It is only necessary that there be a viable relationship between the two to support a finding of likelihood of confusion. *In*

re Concordia International Forwarding Corp., 222 USPQ 355, 356 (TTAB 1983). The issue here, of course, is not whether purchasers would confuse the parties' goods, but rather whether there is a likelihood of confusion as to the source of these goods. *In re Cook Medical Technologies LLC*, 105 USPQ2d 1377, 1380 (TTAB 2012); *Helene Curtis Indus. Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618, 1624 (TTAB 1989); *In re Rexel Inc.*, 223 USPQ 830 (TTAB 1984).

Finally, we must consider the goods as they are described in the application and registration. *Octocom Systems, Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) ("The authority is legion that the question of registrability of an applicant's mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant's goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed"). *See also Paula Payne Products v. Johnson Publishing Co.*, 473 F.2d 901, 177 USPQ 76, 77 (CCPA 1973) ("Trademark cases involving the issue of likelihood of confusion must be decided on the basis of the respective descriptions of goods"). We do not read limitations into the identification of goods. *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983) ("There is no specific limitation and nothing in the inherent nature of Squirtco's mark or goods that restricts the usage of SQUIRT for balloons to promotion of soft drinks. The Board, thus, improperly read limitations into the registration"). Therefore, we must presume that Opposer's "jewelry made of precious

metal or coated therewith” includes all types of jewelry and that Applicant’s “leather handbags” include all types of leather handbags.

Alison Cohen, Assistant Vice President of Merchandising and Jewelry Workshop at Cartier, a division of Richemont North America, Inc., Opposer’s U.S. affiliate and exclusive distributor and licensee of CARTIER branded products in the United States, testified that Opposer markets its products as part of a collection of products.⁴⁰

7. ... Generally these collections encompass a broad spectrum of product offerings, not only jewelry, but also perfume, leather goods, eyewear, and a plethora of other products as well. ... The products offered under these brands change from year to year, and even season to season, depending on market conditions.⁴¹

* * *

12. Because of the nature of [Opposer’s] rotating product offerings, and because TRINITY is one of Opposer’s oldest and most established brands, through the years, [Opposer] has offered an extremely wide range of products under the TRINITY mark.⁴²

* * *

15. [Opposer] has offered other accessories under the TRINITY mark, including leather belts, cufflinks, key rings, diaries, organizers, travel clocks, and pens.⁴³

⁴⁰ Cohen Testimony Decl. ¶7 (25 TTABVUE 4).

⁴¹ Cohen Testimony Decl. ¶7 (25 TTABVUE 4). Ms. Cohen’s testimony that Opposer offers a wide selection of products under the CARTIER house mark is not relevant in this case because the CARTIER mark or variation thereof is not at issue.

⁴² Cohen Testimony Decl. ¶12 (25 TTABVUE 5).

⁴³ Cohen Testimony Decl. ¶15 (25 TTABVUE 6).

In fact, in 2004 and 2005, Opposer advertised the sale of TRINITY handbags in the United States.⁴⁴ However, sales of TRINITY handbags were *de minimis*.⁴⁵

To show that there is a viable relationship between jewelry and leather handbags, Opposer introduced excerpts from 14 websites where third parties advertise the sale of both jewelry and handbags under the same mark. Opposer introduced excerpts from the websites listed below:⁴⁶

1. Chanel.com using the CHANEL mark to advertise the sale of both products;⁴⁷
2. Net-a-porter.com using the CHLOÉ mark to advertise the sale of both products;⁴⁸
3. Coach.com using the COACH mark to advertise the sale of both products;⁴⁹
4. Gucci.com using the GUCCI mark to advertise the sale of both products;⁵⁰

⁴⁴ Cohen Testimony Decl. ¶14 (25 TTABVUE 6).

⁴⁵ Cohen Testimony Decl. Exhibit CT16 (24 TTABVUE 467-475) (Confidential).

⁴⁶ Because all of the third-party uses are for house or designer marks used to identify a broad range of products, their probative value is not as great as product marks used to identify both jewelry and handbags. *See In re Donnay International, S.A.*, 31 USPQ2d 1953, 1954 n.3 (TTAB 1994); *In re Xerox Corp.*, 194 USPQ 449, 450 (TTAB 1977) (“the Examiner's reliance on the registrations of the third parties is not well-founded nor controlling herein if for no other reason than that the marks covered by the registrations are house marks or primary marks which are customarily used to cover all of the different and diverse products and activities undertaken by corporations of the type identified in the registrations whereas here the marks appear to be product marks of limited identification functions.”).

⁴⁷ 28 TTABVUE 7-85.

⁴⁸ 28 TTABVUE 87-92.

⁴⁹ 28 TTABVUE 94-123.

⁵⁰ 28 TTABVUE 125-170.

5. Shop.Guess.com using the GUESS mark to advertise the sale of both products;⁵¹
6. JuicyCouture.com using the JUICY COUTURE mark to advertise the sale of both products;⁵²
7. KennethCole.com using the KENNETH COLE mark to advertise the sale of both products;⁵³
8. MichaelKors.com using the MICHAEL KORS mark to advertise the sale of both products;⁵⁴
9. Prada.com using the PRADA mark to advertise the sale of both products;⁵⁵
10. YSL.com using the SAINT LAURENT mark to advertise the sale of both products;⁵⁶
11. ToryBurch.com using the TORY BURCH to advertise the sale of both products;⁵⁷
12. DKNY.com using the DKNY mark to advertise the sale of both products;⁵⁸

⁵¹ 28 TTABVUE 127-195.

⁵² 28 TTABVUE 197-326.

⁵³ 28 TTABVUE 328-347.

⁵⁴ 28 TTABVUE 349-401.

⁵⁵ 28 TTABVUE 403-410.

⁵⁶ 28 TTABVUE 412-422.

⁵⁷ 28 TTABVUE 424-456.

⁵⁸ 40 TTABVUE 79-98 and 45 TTABVUE 5-8.

13. SteveMadden.com using the STEVE MADDEN mark to advertise the sale of both products;⁵⁹ and

14. Vancleefarpels.com using the VAN CLEEF & ARPELS to advertise the sale of jewelry and fragrances and 1stdibs.com using the VAN CLEEF & ARPELS mark to advertise the sale of handbags.⁶⁰

To show that jewelry and leather handbags are not related products Applicant introduced excerpts from 14 websites purportedly showing “the existence of third parties that offer jewelry but not handbags under the same mark or, vice versa, that offer handbags but not jewelry under the same mark, and thus tend to show that jewelry and handbags are distinct, unrelated products.”⁶¹ Applicant’s evidence of third-party use has less weight than Opposer’s evidence of third-party use because there is no requirement that for goods to be related that all or even a majority of the sources of one product must also be sources of the other products. Therefore, evidence showing only that the source of one product may not be the source of products does not aid Applicant in his attempt to rebut Opposer’s evidence. *See In re G.B.I. Tile and Stone Inc.*, 92 USPQ2d 1366, 1370 (TTAB 2009). *See also In re Kysela Pere et Fils Ltd.*, 98 USPQ2d 1261, 1265 (TTAB 2011).

⁵⁹ 41 TTABVUE 281-285 and 45 TTABVUE 10-16.

⁶⁰ 41 TTABVUE 320-354 and 45 TTABVUE 18.

⁶¹ 40 TTABVUE 2. Applicant introduced excerpts from 17 third party websites but, in rebuttal, Opposer introduced excerpts from the three of the third parties showing that those third parties sold both jewelry and handbags. The third parties are DNKY.com, SteveMadden.com and VanCleefArpels.com noted above.

Applicant also contends that Opposer’s “enforcement actions are against those that distribute and sell counterfeit jewelry.”⁶² Applicant further contends that there is no evidence or testimony regarding any enforcement actions against the third-party users of TRINITY for handbags discussed *supra* (*i.e.*, TRINITY RANCH, ANNE KLEIN TRINITY and TUMI ASTOR, TRINITY) from which Applicant would have us infer that even Opposer does not believe that handbags and jewelry are related products. However, we decline to draw that inference because the reason Opposer has not objected to those marks is that TRINITY RANCH, ANNE KLEIN TRINITY and TUMI ASTOR, TRINITY are different than TRINITY as a stand-alone mark.⁶³ Also, the sales of the products identified by those marks may be so small as not to merit an objection.⁶⁴

We find that the goods are related.

D. Established, likely-to-continue channels of trade.

“Opposer offers its TRINITY products for sale in Opposer’s freestanding boutiques, Opposer’s boutiques located within department stores, and through authorized retailers of [Opposer’s] goods.”⁶⁵

⁶² Applicant’s Brief, p. 20 (53 TTABVUE 28).

⁶³ Opposer’s Reply Brief, p. 20 (55 TTABVUE 22).

⁶⁴ *Id.*

⁶⁵ Opposer’s response to Applicant’s Interrogatory No. 9 (37 TTABVUE 11). *See also* Cohen Discovery Dep., pp. 11-12 and 18 (39 TTABVUE 14-15 and 21) (Opposer’s products are sold in Opposer’s retail boutiques and through authorized dealers, including jewelry stores and department stores such as Neiman Marcus and Saks Fifth Avenue).

Applicant has marketed his leather handbags to the congregation at the Resurrection House for All Nations in Union City, Georgia as well as to Glory Works, a ministry for entrepreneurs sponsored by Resurrection House for All Nations.⁶⁶ He has also sold his leather handbags at Lalo Fine Italian Handbags in Atlanta, Georgia.⁶⁷ He intends to sell the TRINITY leather handbags at upscale boutiques and department stores, such as Macy's, Saks Fifth Avenue and Neiman Marcus.⁶⁸

Q. So in terms of specific retail channels, where do you intend to offer your bag?

A. Upper middle boutiques, primarily, not so much chain. My target market is upper scale, upper middle scale boutiques is really my target market in upper Manhattan, Georgetown, Miami Beach, L.A. Rodeo Drive area, Buckhead, people who have discretionary income and also have a little bit forward-thinking fashion, because a lot of people follow trends. But I want boutiques that set trends.⁶⁹

Applicant's target market "are women between the ages of 25-40, with disposable income, predominantly aimed at corporate or wealthy women."⁷⁰

Because there are no limitations as to channels of trade or classes of purchasers in Opposer's and Applicant's descriptions of goods, it is presumed that Opposer's

⁶⁶ Applicant's Testimony Decl. ¶¶11-12 (36 TTABVUE 5).

⁶⁷ Dep., pp. 74-75 (30 TTABVUE 46-47). See also Applicant's testimony Decl. ¶14 (36 TTABVUE 6).

⁶⁸ Applicant's Discovery Dep., pp. 80-81 (30 TTABVUE 51-52); Applicant's cross-examination response to Question No. 8; Applicant's response to Interrogatory No. 5 (31 TTABVUE 17) and Interrogatory No. 18 (47 TTABVUE 6).

⁶⁹ Applicant's Discovery Dep., p. 83 (30 TTABVUE 54).

⁷⁰ Applicant's response to Interrogatory No. 5 (31 TTABVUE 17); Applicant's Testimony Decl. ¶16 (36 TTABVUE 6).

jewelry and Applicant's leather handbags move in all channels of trade normal for those goods, and that they are available to all classes of purchasers for those goods. *See Paula Payne Products Co. v. Johnson Publishing Co.*, 177 USPQ at 77; *Kalart Co. v. Camera-Mart, Inc.*, 258 F.2d 956, 119 USPQ 139, 140 (CCPA 1958); *In re Linkvest S.A.*, 24 USPQ2d 1716, 1716 (TTAB 1992). Accordingly, Opposer's target market also includes "women between the ages of 25-40, with disposable income, predominantly aimed at corporate or wealthy women."

Because both parties sell or intend to sell their products in upscale boutiques, department stores such as Saks Fifth Avenue and Neiman Marcus, and both parties target the same consumers, and since neither has any limitations in their respective identifications, we find that the goods move in the same channels of trade.

E. "The conditions under which and buyers to whom sales are made, i.e. 'impulse' vs. careful, sophisticated purchasing."

Applicant contends that the relevant consumers of Opposer's jewelry and Applicant's leather handbags exercise a high degree of purchaser care, thus, minimizing the likelihood of confusion.⁷¹

In this case, the purchasers of [Opposer's] jewelry products may spend as much as \$18,700 for TRINITY cufflinks. With the exception of some key chains it sells, its products are considered "high-end." Given the expensive nature of the [Opposer's] products, consumers are unlikely to make that purchase indiscriminately without understanding the source. While less expensive, [Applicant's] TRINITY handbags are sold for XXX to XXX to college-educated and wealthy women with the disposable income to afford the

⁷¹ Applicant's Brief, pp. 42-43 (53 TTABVue 50-51).

price of a high-quality leather handbag.⁷² (Internal citations omitted).

As noted previously, the Board may not read limitations into the descriptions of goods. *Squirtco v. Tomy Corp.*, 216 USPQ at 940. Because the respective descriptions of goods include “jewelry” and “leather handbags” without any limit regarding a particular price point, we must treat the goods as including inexpensive as well as more costly jewelry and leather handbags, and therefore presume that purchasers for the products include ordinary consumers who may buy inexpensive jewelry and leather handbags. *See Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1163-64 (Fed. Cir. 2014) (recognizing Board precedent requiring consideration of the “least sophisticated consumer in the class”). *See also In re Sailerbrau Franz Sailer*, 23 USPQ2d 1719, 1720 (TTAB 1992) (finding that all purchasers of wine may not be discriminating because while some may have preferred brands, “there are just as likely to be purchasers who delight in trying new taste treats.”); *In re Bercut-Vandervoort & Co.*, 229 USPQ 763, 764 (TTAB 1986) (evidence that relevant goods are expensive wines sold to discriminating purchasers must be disregarded given the absence of any such restrictions in the application or registration).

Accordingly, we find that this *du Pont* likelihood of confusion factor is neutral.

⁷² Applicant’s Brief, p. 43 (53 TTABVUE 51). Applicant has designated the price of his leather handbags confidential.

F. The nature and extent of any confusion and the length of time during and conditions under which there has been concurrent use without any evidence of confusion.

Applicant asserts that “[t]he lack of actual confusion between [Applicant’s] TRINITY handbags and [Opposer’s] TRINITY jewelry for nearly four years supports that there is no confusion between them.”⁷³

The absence of any reported instances of confusion is meaningful only if the record indicates appreciable and continuous use by the parties of their marks for a significant period of time in the same markets. *Citigroup Inc. v. Capital City Bank Group, Inc.*, 94 USPQ2d 1645, 1660 (TTAB 2010), *aff’d*, 637 F.3d 1344, 98 USPQ2d 1253 (Fed. Cir. 2011); *Gillette Canada Inc. v. Ranir Corp.*, 23 USPQ2d 1768, 1774 (TTAB 1992). In other words, for the absence of actual confusion to be probative, there must have been a reasonable opportunity for confusion to have occurred. *Barbara’s Bakery Inc. v. Landesman*, 82 USPQ2d 1283, 1287 (TTAB 2007) (the probative value of the absence of actual confusion depends upon there being a significant opportunity for actual confusion to have occurred); *Red Carpet Corp. v. Johnstown American Enterprises Inc.*, 7 USPQ2d 1404, 1406-1407 (TTAB 1988); *Central Soya Co., Inc. v. North American Plant Breeders*, 212 USPQ 37, 48 (TTAB 1981) (“the absence of actual confusion over a reasonable period of time might well suggest that the likelihood of confusion is only a remote possibility with little probability of occurring”).

For the following reasons, we find that there has not been a reasonable opportunity for confusion to have occurred:

⁷³ Applicant’s Brief, p. 44 (53 TTABVUE 52).

1. Applicant's has spent \$6,000 on advertising and promoting his TRINITY handbags through samples, giveaways, and entertainment;⁷⁴
2. "The majority of [Applicant's] advertising and promotional expenses have taken the form of giveaways."⁷⁵
3. "Applicant has not utilized nor promoted the TRINITY leather handbags at any events nor trade shows and does not currently have plans to promote the handbags at any events or trade shows."⁷⁶
4. The only "media" advertising that Applicant has done is giving a TRINITY leather handbag to Cynthia Bailey, one of the Housewives of Atlanta, who posted photographs of herself and the TRINITY leather handbag on her twitter page;⁷⁷
5. Although Applicant has sold TRINITY leather handbags in Chicago, D.C., Miami and Atlanta,⁷⁸ all of his sales have been to individuals.⁷⁹ Applicant has not sold to any retailers;⁸⁰ and
6. Applicant's sales have been *de minimis*.⁸¹

⁷⁴ Applicant's Discovery Dep., p. 113 (30 TTABVUE 59); Applicant's Response to Opposer's Interrogatory No. 11 (31 TTABVUE 19).

⁷⁵ Applicant's Testimony Decl. ¶11 (36 TTABVUE 5).

⁷⁶ Applicant's response to Opposer's Interrogatory No. 9 (31 TTABVUE 19).

⁷⁷ Applicant's Discovery Dep., p. 85 (30 TTABVUE 56); Applicant's response to Opposer's Interrogatory No. 8 (31 TTABVUE 18); Applicant's Testimony Decl. ¶13 (36 TTABVUE 5).

⁷⁸ Applicant's response to Opposer's Interrogatory No. 6 (31 TTABVUE 17).

⁷⁹ Applicant's Discovery Dep., p. 45 (30 TTABVUE 45).

⁸⁰ Applicant's Discovery Dep., p. 72 (30 TTABVUE 44).

⁸¹ Applicant's Discovery Dep., pp. 63 and 67-68 (30 TTABVUE 35 and 39-40); Applicant's Response to Interrogatory No. 12 (31 TTABVUE 26-27).

In view of the foregoing, we find that Applicant's TRINITY handbags have made little impact in the market and that, therefore, there has not been a reasonable opportunity for actual confusion to have occurred. This *du Pont* likelihood of confusion factor is neutral.

G. Balancing the factors.

Because the marks are identical, the goods are related and the goods move in the same channels of trade to some of the same general consumers, we find that Applicant's mark TRINITY for "leather handbags" is likely to cause confusion with Opposer's registered mark TRINITY for "jewelry made of precious metal or coated therewith."

Decision: The opposition is sustained and registration to Applicant is refused.