

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Baxley

Mailed: July 12, 2013

Cancellation No. 92053554

Cabot Company Limited d/b/a  
Cabot Watch Company

v.

Combat Watch Company, LLC

Before Holtzman, Wellington, and Kuczma,  
Administrative Trademark Judges.

By the Board:

Combat Watch Company, LLC ("respondent") registered the mark CWC in standard character form for "[c]locks and watches; [w]atch straps; [w]atches and clocks" in International Class 14.<sup>1</sup>

Cabot Watch Company (a d/b/a for Cabot Company Limited and hereinafter "petitioner") filed a petition to cancel respondent's registration on the ground of likelihood of confusion with its mark CWC for watch straps, watch cases, and watch covers; watches, which it claims to have used in commerce since at least as early as 1997. Petitioner alleges that, on November 8, 2010, it filed application

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<sup>1</sup> Registration No. 3814227, issued July 6, 2010, and alleging January 19, 2008 as the date of first use anywhere and date of first use in commerce.

**Cancellation No. 92053554**

Serial No. 85193341, for the mark CWC for watch straps, watch cases, and watch covers; watches, based on such use; that, on November 19, 2009, respondent, filed application Serial No. 77876646, which matured into the involved registration; that, because respondent made no use of the involved CWC mark prior to the alleged date of first use set forth in the registration therefor, petitioner has priority; and that the marks are identical and are used on the same goods.

Respondent, by its answer, is deemed to have admitted that petitioner has priority of use and that petitioner filed the application identified in the petition.<sup>2</sup> The remaining salient allegations have been denied.

On March 23, 2012, petitioner filed a motion for leave to file an amended petition to cancel wherein it corrects its identification to "Cabot Company Limited," explaining that Cabot Watch Company is a name under which it does

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<sup>2</sup> See Board order dated July 20, 2011. Respondent did not request reconsideration of that order and did not seek to amend its answer. Under the law of the case doctrine, we do not revisit our conclusion. See *Threshold.TV Inc. v. Metronome Enterprises Inc.*, 96 USPQ2d 1031 (TTAB 2010). Such doctrine holds that the Board generally does not reopen issues decided in earlier stages of the same litigation. *Agostini v. Felton*, 521 U.S. 203, 236 (1997). The doctrine does not apply unless the Board is "convinced that [its prior decision] is clearly erroneous and would work a manifest injustice." *Arizona v. California*, 460 U.S. 605, 618, n. 8 (1983). Respondent has not persuaded us that there is an error in our prior decision.

business. In an April 12, 2012 order, the Board determined that "petitioner ha[d] not shown to the Board's satisfaction that it is not seeking to amend the petition to cancel to name a different existing legal entity as petitioner"<sup>3</sup> and therefore denied that motion without prejudice, but allowed petitioner time in which to file a renewed motion.

On May 11, 2012, petitioner filed a renewed motion for leave to file an amended petition to cancel in which it corrected petitioner's name, which the Board granted in a September 18, 2012 order.<sup>4</sup> Because the amended petition to

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<sup>3</sup> The Board noted that the WHOIS search result that respondent submitted in opposition to the such motion indicates that Cabot Watch Company Ltd., a UK limited company, rather than Cabot Company Limited, registered the domain names [www.cabotwatchcompany.com](http://www.cabotwatchcompany.com) and [www.cabotwatchcompany.co.uk](http://www.cabotwatchcompany.co.uk) on August 23, 2010, prior to the filing of the petition to cancel.

<sup>4</sup> On September 21 and 24, 2012, respondent filed petitions to disqualify petitioner's attorneys, based on petitioner's apparent willingness to spend more to prosecute this case than it would cost to settle this case by purchasing the involved registration in accordance with respondent's most recent settlement offer. In an October 4, 2012 order, the Board declined to consider the petitions to disqualify.

In a December 5, 2012 order, the Board denied respondent's motion to compel in view of respondent's failure to serve initial disclosures and stated that "respondent's responses to the discovery requests that petitioner served on September 19, 2011 are long past due." The Board further stated that, in view of respondent's repeated improper filings, "unless respondent first obtains leave of the Board to file a motion in a telephone conference between the Board attorney assigned to this case, respondent's principal, and petitioner's attorney, the Board, in exercising its inherent authority to manage cases on its docket, will not consider any further unconsented motions from respondent other than motions to extend."

cancel was otherwise identical to the original amended petition to cancel, the Board stated in that order that it would treat the answer to the original petition to cancel as being responsive to the amended petition to cancel.

This case now comes up for consideration of: (1) petitioner's motion (filed April 26, 2013) for summary judgment on its pleaded Section 2(d) claim;<sup>5</sup> and (2) respondent's cross-motion (filed May 9, 2013) to dismiss under the Board's inherent authority based on petitioner's repeated references to itself and its sole owner/parent company Silverman's Limited ("Silverman's") collectively as "petitioner" throughout its brief in support of the motion for summary judgment, which was incorporated into its brief in response to the motion for summary judgment.<sup>6</sup>

In support of its motion for summary judgment, petitioner contends that entry of summary judgment is warranted because it has standing based on its ownership of the CWC mark and because the marks, goods, trade channels, and target consumers are all identical; that there has been "actual confusion and evident bad faith;" and that

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<sup>5</sup> In such motion, petitioner asked that the motion be decided on an expedited basis.

<sup>6</sup> On April 30, 2013, respondent filed a "request for directions," which it withdrew in its May 9, 2013 submission.

petitioner has prior rights in the involved mark that respondent effectively conceded in its answer.

Petitioner's evidence in support of its motion includes a declaration of petitioner's attorney, Michael Chiapetta, which introduces: (a) copies of respondent's responses to petitioner's discovery requests; and (b) an excerpt from Z.M. Wesolowski, A Concise Guide to Military Timepieces 1880-1990 (1996), which refers to petitioner's CWC watches. Petitioner also submitted a declaration of petitioner's director and company secretary, Richard Bliss. Evidence introduced through Mr. Bliss' declaration includes: (a) documents which show the transfer of "all shares" of petitioner to Silverman's; (b) excerpts from petitioner's website which feature CWC watches; (c) petitioner's business records showing sales of CWC watches in the United States from 1997 through 2012; (d) sample invoices of sales to United States customers; (e) advertisements for CWC watches which appeared in Soldier of Fortune magazine; (f) excerpts from Silverman's catalogs from 1998 through 2005 which show CWC watches offered for sale; (g) petitioner's November 24, 2010 cease and desist letter to respondent; (h) respondent's December 9, 2012 cease and desist letter to petitioner; and (i) respondent's March 18, 2013 letter to petitioner stating that respondent

has recorded its involved registration with United States Customs.

In response to the summary judgment motion and in support of its motion to dismiss, respondent contends that the motion for summary judgment is not properly before the Board because petitioner served "materially defective" initial disclosures in which petitioner refers to itself as both "[p]etitioner" and "[r]egistrant;" that petitioner, in the brief in support of the motion for summary judgment refers to itself and its distributor/owner Silverman's as "petitioner" and, in doing so, improperly redefines itself "as a consortium of two separate legal entities;" that petitioner's responses to interrogatories are "misleading and untrue" because petitioner is relying upon sales by Silverman's without expressly saying so in those responses; that Silverman's, and not petitioner, sells petitioner's pleaded CWC watches; that respondent "refutes all claims and concedes nothing to date as it has been purposely misled and deceived by" petitioner; that petitioner concedes that it is a British company with no United States presence; that petitioner only sells watches to Silverman's, which has no overseas presence and/or agents; that petitioner concedes that it has no direct trading relationship with customers or retailers in the United

States; that petitioner cannot successfully petition to cancel respondent's involved registration without joinder of Silverman's; that the Bliss declaration, upon which petitioner relies in support of its motion, is actually petitioner's expert disclosure, which petitioner failed to serve in a timely manner; that, although petitioner claims that the ovular design in its mark is inconsequential to the commercial impression of its pleaded mark, respondent understands that petitioner asserted trademark rights in that design in a dispute concerning Military Watch Company over the MWC mark with ovular design; and that a third party, Richemont International S.A., opposed registration of petitioner's mark in the European Trademark Office. Accordingly, respondent asks that the Board deny the motion for summary judgment and grant its motion to dismiss under the Board's inherent authority.

Respondent's evidence submitted with its brief includes: (a) excerpts of communications between the parties regarding petitioner's initial disclosures; (b) copies of petitioner's initial disclosures; (c) excerpts from various Silverman's websites; and (d) copies of petitioner's responses to respondent's discovery requests.

In reply, petitioner contends that respondent has raised a series of baseless procedural arguments, has

failed to address petitioner's proof of ownership of prior rights in the CWC mark, and has only minimally addressed the likelihood of confusion factors in its brief. In particular, petitioner asserts that it served its initial disclosures twice and that any reference to itself as both "[r]egistrant" and "[p]etitioner" is an innocuous drafting error; that Silverman's, as petitioner's sole owner, parent company, and exclusive distributor, is not, and need not be, a party to this case; that petitioner can rely upon Silverman's use of the mark as a related company; and that Mr. Bliss is a fact witness and not an expert witness.

As an initial matter, the record herein indicates that petitioner served its initial disclosures twice, on September 11, 2011, prior to amending the caption of this proceeding, and again on December 21, 2012, after so amending.<sup>7</sup> Although petitioner incorrectly refers to itself

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<sup>7</sup> Under Fed. R. Civ. P. 26(a)(1)(A)(i) and (ii) and Trademark Rule 2.120(a)(3), each party must provide as initial disclosures to its adversary prior to serving discovery requests or filing a motion for summary judgment (except on limited bases not at issue herein),

(i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment; [and]

(ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to

as "[r]egistrant" in both sets of initial disclosures,<sup>8</sup> those initial disclosures leave no doubt that, as used in those initial disclosures, petitioner refers only to itself.<sup>9</sup> Accordingly, the motion for summary judgment was properly filed.

We turn next to respondent's motion to dismiss based on the Board's "inherent authority." In particular, respondent contends that petitioner is improperly attempting to join Silverman's as a party to this proceeding and that this warrants dismissal of the petition to cancel under the Board's inherent authority.

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support its claims or defenses, unless the use would be solely for impeachment.

In petitioner's original and amended initial disclosures, petitioner identifies as individuals believed to have discoverable information to support its claims: "Cabot Watch Company ... and any officers, employees and/or agents of [petitioner, and] ... Richard Bliss, Director." Petitioner's identification of itself and "any officers, employees and/or agents thereof" is insufficient because it does not identify any individuals by name and instead appears merely to account for any possible deposition of petitioner under Fed. R. Civ. P. 30(b)(6). However, petitioner's identification of Mr. Bliss, the sole employee of petitioner upon which petitioner relies in support of its motion for summary judgment is sufficient.

<sup>8</sup> The better practice would have been to serve corrected initial disclosures upon being made aware of the misidentification of petitioner as "[r]egistrant."

<sup>9</sup> If respondent believed that, because petitioner referred to itself in those initial disclosures as "registrant," those initial disclosures were inadequate, its remedy was to file a motion to compel initial disclosures prior to the close of the discovery period. See Trademark Rule 2.120(e)(1). However, because the discovery period in this case has closed, respondent's time in which to file such a motion has lapsed.

Respondent points to the following statement in petitioner's brief: "(Given the collaborative effort of [p]etitioner, owner of the CWC brand, and Silverman's, [p]etitioner's exclusive distributor of CWC watches to consumers and retailers, for ease of reference, [p]etitioner and Silverman's hereinafter shall be referred to collectively as '[p]etitioner.')" Brief in support of motion for summary judgment at 8.

Respondent's motion will be treated as one to dismiss under the Board's inherent authority to sanctions. The Board may dismiss proceedings under its inherent authority to sanction "where the conduct in question does not fall within the reach of other sanctioning provisions of" the Trademark Rules of Practice and the Federal Rules of Civil Procedure. TBMP Section 527.03.

We reject respondent's assertions that petitioner is somehow seeking to join Silverman's as a party plaintiff herein, and that petitioner cannot prevail in this case because Silverman's is a necessary party to this proceeding. The record herein indicates that use of the CWC mark by Silverman's, as parent company/sole owner of petitioner and exclusive distributor of petitioner's CWC watches, was with the express consent and authorization of

petitioner. See Bliss declaration at paragraphs 3 and 5.<sup>10</sup> Petitioner is merely seeking to rely upon use by Silverman's as a related company under Trademark Act Section 5, 15 U.S.C. § 1055. See TMEP Section 1201.03(c) (April 2013) ("Related-company use includes situations where a wholly owned related company of the applicant uses the mark, or where the applicant is wholly owned by a related company that uses the mark.").

Based on the foregoing, we find that petitioner's reference to itself and Silverman's collectively as "petitioner" does not warrant dismissal of the petition to cancel under the Board's inherent authority to sanction or any applicable rule regarding entry of sanctions. Respondent's motion to dismiss based on the Board's inherent authority is therefore denied.

We now turn to the motion for summary judgment. Such a motion is an appropriate method of disposing of cases in which there are no genuine disputes as to any material facts, thus leaving the case to be resolved as a matter of law. See Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of demonstrating that there is no genuine issue of material fact remaining

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<sup>10</sup> Respondent's assertion that Mr. Bliss is an undisclosed expert witness is not well-taken. Mr. Bliss is a fact witness, who was named in petitioner's initial disclosures.

for trial and that it is entitled to judgment as a matter of law. See *Celotex Corp. v. Catrett*, 477 U.S. 317 (1987); *Sweats Fashions Inc. v. Pannill Knitting Co. Inc.*, 833 F.2d 1560, 4 USPQ2d 1793 (Fed. Cir. 1987). The nonmoving party must be given the benefit of all reasonable doubt as to whether genuine issues of material fact exist, and the evidentiary record on summary judgment, and all inferences to be drawn from the undisputed facts, must be viewed in the light most favorable to the nonmoving party. See *Opryland USA, Inc. v. Great American Music Show, Inc.*, 970 F. 2d 847, 23 USPQ2d 1471 (Fed. Cir. 1992).

When the moving party's motion is supported by evidence sufficient to indicate that there is no genuine issue of material fact, and that the moving party is entitled to judgment, the burden shifts to the nonmoving party to demonstrate the existence of specific genuinely-disputed facts that must be resolved at trial. The nonmoving party may not rest on the mere allegations of its pleadings and assertions of counsel, but must designate specific portions of the record or produce additional evidence showing the existence of a genuine issue of material fact for trial. In general, to establish the existence of disputed facts requiring trial, the nonmoving party "must point to an evidentiary conflict created on the

record at least by a counterstatement of facts set forth in detail in an affidavit by a knowledgeable affiant."

*Octocom Systems Inc. v. Houston Computers Services Inc.*, 918 F.2d 937, 941, 16 USPQ2d 1783, 1786 (Fed. Cir. 1990).

As a party moving for summary judgment in its favor on its Section 2(d) claim, petitioner must establish that there is no genuine dispute that (1) it has standing to maintain this proceeding; (2) that it is the prior user of its pleaded mark; and (3) that contemporaneous use of the parties' respective marks on their respective goods would be likely to cause confusion, mistake or to deceive consumers. See *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc.*, 60 USPQ2d 1733, 1735 (TTAB 2001). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it would have the burden of proof at trial, judgment as a matter of law may be entered in favor of the moving party. See Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. at 322-23.

With regard to whether petitioner has standing to maintain this proceeding, we find that petitioner has established its standing in this case based on: (1) respondent's deemed admission that petitioner, on December 8, 2010, filed pleaded application Serial No. 85193141 for

the same mark for some of the same goods; (2) statements in the Bliss declaration regarding petitioner's manufacture and supplying of CWC watches commencing in 1972; (3) evidence of use of the CWC mark on watches sold in the United States through its owner/exclusive distributor Silverman's between 1997 and 2012, prior to any date upon which respondent can rely in support of the use of the mark in its involved registration; (4) the December 9, 2012 cease and desist letter from respondent to petitioner; and (5) the March 18, 2013 letter from respondent to petitioner in which respondent threatened to seek seizure of any imports of petitioner's CWC watches into the United States.<sup>11</sup> No genuine dispute as to any material fact exists on this issue.

We turn next to the issue of whether there is a genuine issue of material fact regarding petitioner's asserted priority of use. To establish priority on a likelihood of confusion ground brought under Trademark Act Section 2(d), a party must prove that, vis-a-vis the other party, it owns "a mark or trade name previously used in the

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<sup>11</sup> Although petitioner alleges in its brief that it has standing based on the refusal of its pleaded application under Trademark Act Section 2(d) based on respondent's involved registration, petitioner did not file a copy of the Office Action in which its pleaded application was so refused. Therefore, the refusal of registration of the pleaded application does not provide a basis for standing in connection with this motion.

United States ... and not abandoned...." Trademark Act Section 2, 15 U.S.C. Section 1052. A plaintiff may establish its own prior proprietary rights in a mark through actual use or through use analogous to trademark use, such as use in advertising brochures, trade publications, catalogues, newspaper advertisements and Internet websites which creates a public awareness of the designation as a trademark identifying the party as a source. See Trademark Act Sections 2(d) and 45, 15 U.S.C. Section 1052(d) and 1127; *T.A.B. Systems v. PacTel Teletrac*, 77 F.3d 1372, 37 USPQ2d 1879 (Fed. Cir. 1996), vacating *PacTel Teletrac v. T.A.B. Systems*, 32 USPQ2d 1668 (TTAB 1994).

As noted *supra*, respondent was deemed to have admitted petitioner's prior use of the CWC mark on some of the same types of goods in its answer. Even without such admission, petitioner has established that there is no genuine dispute that it is the prior user of the CWC and ovular design mark in the following stylized form, , on watches in the United States and that, through its owner/distributor Silverman's, whose use inures to petitioner's benefit, it has established use of its pleaded CWC mark prior to any date upon which respondent can rely for use of that mark. With regard to the parties' respective uses of their marks,

petitioner has established, through the declaration of Mr. Bliss, that, it has manufactured watches under the CWC mark since 1972; that Silverman's has been its exclusive distributor since the late 1980's; that, through Silverman's, it made its first use of the CWC mark on watches in the United States in 1997; and that Silverman's continuously sold watches under the CWC mark through December 2012. Mr. Bliss's declaration is internally consistent and not characterized by uncertainty. See *Hornblower & Weeks, Inc. v. Hornblower & Weeks, Inc., supra* at 1736. Further, the summary of sales under the CWC mark that petitioner submitted with the Bliss declaration in support of its motion for summary judgment indicates that Silverman's made regular, continuous sales of petitioner's watches under the CWC mark since 1997, prior to any date upon which respondent relies in support of its involved registration.

Even if we assume that petitioner has no United States offices and only sells watches in the United States indirectly through Silverman's, these business conditions do not create a genuine dispute as to whether petitioner has prior use of the CWC mark in commerce on watches. Trademark Act Section 45, 15 U.S.C. § 1127, states in relevant part, as follows:

'use in commerce' means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. ... [A] mark shall be deemed to be in use in commerce. ... on goods when ... it is placed in any manner on the goods or their containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and ... the goods are sold or transported in commerce.

Trademark Act Section 5, 15 U.S.C. Section 1055, states as follows:

Where a registered mark or a mark sought to be registered is or may be used legitimately by related companies, such use shall inure to the benefit of the registrant or applicant for registration, and such use shall not affect the validity of such mark or of its registration, provided such mark is not used in such manner as to deceive the public. If first use of a mark by a person is controlled by the registrant or applicant for registration of the mark with respect to the nature and quality of the goods or services, such first use shall inure to the benefit of the registrant or applicant, as the case may be.

The term "related company" means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used. "The essence of 'related company' is the control of the nature and quality of the goods and this is the basis for allowing [a party] to claim ownership of a mark based on the use by a related company." *In re Pharmacia Inc.*, 2 USPQ2d 1883, 1884 (TTAB

1987). "[Y]ears of precedent make it very clear that proper use of a mark by a trademark owner's ... related company constitutes 'use' of that mark attributable to the trademark owner." *Quality Candy Shoppes/Buddy Squirrel of Wisconsin Inc. v. Grande Foods*, 90 USPQ2d 1389, 1392 (TTAB 2007). Cf. TMEP Section 1201.03(c) ("Related-company use includes situations where a wholly owned related company of the applicant uses the mark, or where the applicant is wholly owned by a related company that uses the mark.").

Petitioner has manufactured watches sold under the CWC mark since 1972 in "compli[ance] with established British Ministry of Defence watch standards," long prior to the commencement of its relationship with Silverman's, with "any and all goodwill will that developed as a result of Silverman's use of the CWC trademark [on watches] inur[ing] to the benefit of petitioner." Bliss declaration, paragraphs 2 and 5. Thus, petitioner controls the nature and quality of such watches, and is therefore the owner of the mark. See Trademark Act Section 5; see also, TMEP Section 1201.03(c). Accordingly, petitioner may rely upon sales of CWC watches by petitioner's owner and exclusive distributor, Silverman's, to establish priority herein.<sup>12</sup>

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<sup>12</sup> Although it may have been preferable for Silverman's to be a co-petitioner, it is not necessary that Silverman's be a party

Turning to the likelihood of confusion issue, two key factors are the degree of similarity of the parties' marks and the degree of similarity of their respective goods. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976). As to the letter marks at issue, the parties' CWC marks are extremely similar. Although petitioner uses an ovular design around the letters CWC on its watches, that design element in the mark is insufficient to create a genuine issue of material fact as to the similarities of the marks. See *Herbko International, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156, 64 USPQ2d 1375 (Fed. Cir. 2002) (words are dominant portion of mark); *Ceccato v. Manifatura Lane Gaetano Marzetto & Figli S.p.A.*, 32 USPQ2d 1192 (TTAB 1994) (literal portion of mark makes greater and long lasting impression). The fact that respondent's mark is presented in standard character form does not avoid likelihood of confusion with petitioner's CWC and design mark because respondent's mark could be presented in the same manner of display. See *In re Mighty Tea Leaf*, 601 F.3d 1342, 94 USPQ2d 1257, 1260 (Fed. Cir. 2010); *Squirtco v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 939 (Fed. Cir. 1983) (the argument concerning a difference

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plaintiff to this proceeding for petitioner to prevail in this case.

in type style is not viable where one party asserts rights in no particular display).

With regard to the similarity of the goods at issue, it is well settled that the question of likelihood of confusion must be determined based on an analysis of the goods recited in respondent's registration vis-à-vis the goods shown to be in use by petitioner, rather than what respondent's goods are asserted or shown to actually be. See, e.g., *Octocom Systems*, 16 USPQ2d at 1787; *Canadian Imperial Bank of Commerce, N.A. v. Wells Fargo Bank*, 811 F.2d 1490, 1 USPQ2d 1813 (Fed. Cir. 1987). The goods identified in respondent's involved registration, i.e., "[c]locks and watches; [w]atch straps; [w]atches and clocks," overlap with petitioner's goods which, as shown by the evidence, are "watches."<sup>13</sup> As such, respondent's goods are presumed to travel in all the normal channels of trade for goods of these types, including eBay and Amazon.com, and would be purchased by the same class of customers. See *id.*

Based on the foregoing, we find that petitioner has met its burden by supporting its motion with the Bliss

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<sup>13</sup> Even if we assume that petitioner does not use the pleaded CWC mark on clocks, likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods in the application. See *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981).

**Cancellation No. 92053554**

declaration and other evidence which establishes its right to judgment. Accordingly, the burden shifts to respondent to proffer countering evidence which establishes that there is a genuine factual dispute for trial. However, the evidence that respondent submitted in support of its cross-motion and in response to petitioner's motion is insufficient to show that there is a genuine issue of material fact for trial. In summary, considering the extremely similar marks and the overlapping nature of the goods, trade channels and purchasers, we find that there is no genuine dispute that confusion is likely to result.

In view thereof, petitioner's motion for summary judgment is granted. The petition to cancel is granted, and Registration No. 3814227 will be cancelled in due course.