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## Owner of PHILLIP GAVRIEL for jewellery fails to prove priority over, and likelihood of confusion with, MANSUR GAVRIEL for handbags

United States of America - [Wolf, Greenfield & Sacks, PC](#)

- Owner of PHILLIP GAVRIEL for jewellery opposed registration of MANSUR GAVRIEL for handbags and wallets
- TTAB found that opposer failed to prove use of its mark prior to applicant's constructive use date
- TTAB found marks to be more dissimilar than similar in appearance, sound, connotation and commercial impression

In [Royal Chain Inc v Mansur Gavriel LLC](#) (Opposition No 91214740 (17 September 2018) [not precedential] (opinion by Judge Marc A Bergsman), the Trademark Trial and Appeal Board (TTAB) dismissed a Section 2(d) opposition to the registration of the mark MANSUR GAVRIEL, in standard character form, for handbags, wallets and the like, first finding that the opposer had failed to prove priority, and then concluding, for the sake of completeness, that the applicant's mark was not confusingly similar to the opposer's mark PHILLIP GAVRIEL for jewellery. The TTAB gave weight to the lack of actual confusion and to the applicant's evidence of third-party use and registration of marks using common surnames, for clothing and accessories (eg, ANNE KLEIN and CALVIN KLEIN).

### Failure to prove priority

As part of its direct testimony, the opposer relied on a registration for the mark PHILLIP GAVRIEL in standard character form to prove priority. However, it failed to timely renew the registration, and the registration expired after the opposer's testimony period. Therefore, the opposer could no longer rely on the presumptions stemming from the registration, and it had to base its claim of priority on common law rights. Unfortunately, the opposer's evidence failed to prove use of the mark prior to the applicant's constructive use date, and so the TTAB dismissed the opposition on that ground.

### Likelihood of confusion

For purposes of completeness, the TTAB went on to consider the likelihood of confusion issue. The evidence established that "jewellery and handbags are accessories to a woman's fashion ensemble and, as

such, they are complementary products". Moreover, the presumed trade channels for the applicant's handbags overlap with those for the opposer's jewellery. Likewise, the applicant's handbags presumably include products sold at all price ranges, including the price ranges for the opposer's jewellery.

The opposer claimed that a number of trade show attendees and buyers had inquired as to any affiliation or relationship between MANSUR GAVRIEL and PHILLIP GAVRIEL. The TTAB noted, however, that "[t]his sort of ambiguous inquiry is not probative of actual confusion" (see, eg, *Marshall Field & Co v Mrs Fields Cookies* (25 USPQ2d 1321, 1334 (TTAB 1992)) (inquiries as to corporate affiliations is not evidence of confusion because, without more, they "indicate that these persons were aware that [the companies at issue] were two different entities"); *Elec Water Conditioners Inc v Turbomag Corp* (223 USPQ 162, 164 (TTAB 1994)) ("That questions have been raised as to the relationship between firms is not evidence of actual confusion of their trademarks.")).

Instead, the TTAB found that the opposer's mark PHILLIP GAVRIEL has garnered significant unsolicited media attention. The involved marks have been in concurrent use since 2013. The TTAB found that "there has been a reasonable opportunity for confusion to have occurred", and therefore that the lack of actual confusion weighed in the applicant's favour.

As for the marks, each comprises a given name and a surname. The TTAB has found, when identical goods are involved, that marks sharing a common surname but different given names were similar. Here, however, the applicant introduced copies of third-party registrations and internet evidence to show the co-existence of companies using common surnames for clothing and accessories (eg, ANNE COLE and KENNETH COLE; ANDREW WANG and VERA WANG).

The TTAB drew the following inferences from this evidence:

- There is no *per se* rule that marks consisting of identical surnames and different given names are similar and likely to cause confusion;
- The USPTO has registered marks with identical surnames and different given names in the field of clothing and clothing accessories; and
- A number of different trademark owners have accepted, over a long period of time, that various marks with identical surnames and different common names can be used and registered side-by-side without causing confusion provided that there are differences between the marks and goods in the field of clothing and clothing accessories.

The TTAB found the marks to be more dissimilar than similar in appearance, sound, connotation and commercial impression, and it concluded that the applied-for mark MANSUR GAVRIEL is not likely to cause confusion with the opposer's mark PHILIP GAVRIEL.

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