This Opinion is Not a Precedent of the TTAB

Oral Hearing: April 30, 2014 Mailed: September 30, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re LAMB-GRS, LLC

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Serial No. 77756492

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Jill M. Pietrini and Ryan S. Hilbert of Sheppard Mullin Richter & Hampton LLP, for LAMB-GRS, LLC.

Cheryl Clayton,[1] Trademark Examining Attorney, Law Office 102, Mitchell Front, Managing Attorney.

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Before Kuhlke, Taylor and Greenbaum, Administrative Trademark Judges.

Opinion by Taylor, Administrative Trademark Judge:

LAMB-GRS, LLC ("Applicant") seeks registration on the Principal Register of the mark L.A.M.B. (in standard characters) for

> [c]lothing, namely, jackets, blazers, dresses, skirts, sweaters, jeans, scarves, tops, cardigans, camisoles, shorts, and bustiers; footwear; and headwear in International Class 25.[2]

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[1] Prior to briefing, Mary E. Crawford was the examining attorney responsible for the application.

[2] Application Serial No. 77756492 was filed on June 10, 2009, based upon Applicant's claim of first use anywhere and in commerce since at least as early as February 15, 2004.

At the request of the Examining Attorney, Applicant claimed ownership of U.S. Registration Nos. 3174447, 3665468, 3673511 and others, more fully set forth, *infra*.

The Trademark Examining Attorney has finally refused registration of Applicant's mark under Section 2(a) of the Trademark Act, 15 U.S.C. § 1052(a), on the grounds that Applicant's mark is deceptive for the identified goods not made of lamb, and that "Applicant has failed to show non-deceptive consumer perception of the applied-for mark."[3]

Applicant appealed and twice requested reconsideration. After the Examining Attorney denied the requests for reconsideration, the appeal was resumed. Both Applicant and the Examining Attorney filed briefs and an oral hearing was held. We reverse the refusal to register.

I. Applicable Law

In accordance with Section 2(a) of the Trademark Act, registration must be refused if a mark is deceptive of a feature or an ingredient of the identified goods. The Office has the initial burden of putting forth a prima facie case that a trademark falls within the prohibition of Section 2(a). *In re AOP LLC*, 107 USPQ2d 1644 (TTAB 2013) *citing In re Budge*, 857 F.2d 773, 8 USPQ2d 1259, 1260 (Fed. Cir.

[3] The Examining Attorney's refusal apparently based on Applicant's failure to show non-deceptive consumer perception is superfluous. Such evidence is considered as rebuttal evidence to the prima facie case and is accordingly subsumed in a finding of deceptiveness under Section 2(a). *See* Trademark Manual of Examining Procedure ("TMEP") §1203.02(f)(ii) (2014).

We note, too, that the Examining Attorney had also refused registration on the grounds that the applied-for mark is descriptive or, alternatively, deceptively misdescriptive of the identified goods under Section 2(e)(1) of the Act, but those refusals were withdrawn during prosecution of the application.

1988), aff'g 8 USPQ2d 1790 (TTAB 1987). The test for determining whether a mark is deceptive under Section 2(a) has been articulated in *Budge* as:

> (1) Is the term misdescriptive of the character, quality, function, composition or use of the goods?
>
> (2) If so, are prospective purchasers likely to believe that the misdescription actually describes the goods?
>
> (3) If so, is the misdescription likely to affect a significant portion of the relevant consumers' decision to purchase the goods?

In re Budge, 8 USPQ2d at 1260 (LOVEE LAMB held deceptive for seat covers not made of lambskin). Because Section 2(a) is an absolute bar to the registration of deceptive matter on either the Principal Register or the Supplemental Register, a claim that a mark has acquired distinctiveness cannot obviate a Section 2(a) deceptiveness refusal. *See In re Charles S. Loeb Pipes, Inc.*, 190 USPQ 238, 241 (TTAB 1975); TMEP § 1203.02. Stated another way, a refusal under Trademark Act Section 2(a) cannot be overcome merely because the mark has enjoyed long and/or extensive use. However, evidence of use and of recognition by consumers and the trade can be considered in analyzing the first and second prongs of the *Budge* test; that is, such evidence may be considered in determining whether the mark misdescribes the goods and whether prospective purchasers are likely to believe that the misdescription actually describes the goods. *In re Woolrich Woolen Mills Inc.*, 13 USPQ2d 1235 (1989) (WOOLRICH for clothing not made of wool found *not* to be deceptive under §2(a), due to consumer and trade recognition of WOOLRICH as a trademark as a result of applicant's long and extensive use).

II. The facts of this case

The record, primarily by way of the declarations with accompanying exhibits of Lisa Jacobson, Applicant's "authorized signatory," show that Applicant's principal, Gwen Stefani, is a well-known singer and fashion designer.[4] Ms. Stefani is the lead singer of the rock band No Doubt, which has released numerous albums in over two decades of performing together. No Doubt has won multiple industry awards including, among others, Grammy Awards in 2003 and 2004. In 2004, Ms. Stefani commenced a solo career with the release of her album "LOVE ANGEL MUSIC BABY," which sold more than seven million copies worldwide. Also in 2004, Ms. Stefani launched a clothing and accessory line under the "brand name" L.A.M.B., an acronym of Ms. Stefani's debut solo album.[5] According to Ms. Jacobson, Applicant has used the L.A.M.B. mark since February 15, 2005, and the mark has been in substantially exclusive and continuous use in interstate commerce for Applicant's clothing, headwear, and footwear, including the goods listed in the application, for more than seven years.[6] Since its launch in 2004, L.A.M.B. apparel and footwear has been sold at various times at many major retailers in the United States,

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[4] Ms. Jacobson captioned her declarations as ones regarding "Acquired Distinctiveness" of LOVE ANGEL.MUSIC.BABY and L.A.M.B., respectively. As stated, a claim of acquired distinctiveness does not overcome a deceptiveness refusal. Accordingly, we have considered Ms. Jacobson's declarations to the extent that they evidence consumer perception of Applicant's mark.

Ms. Jacobson additionally is identified in Applicant's brief as the Manager of Applicant's principal, Gwen Stefani.

[5] Applicant's May 11, 2011 Request to Suspend and Remand, Exh. 1 – Jacobson declaration ¶¶ 3, 7 and 15. Ms. Jacobson additionally indicated that Applicant also uses the trademark LOVE ANGEL MUSIC BABY on or in connection with its clothing and accessory line.

[6] *Id* at ¶ 3.

including Barneys New York, Bergdorf Goodman, Saks Fifth Avenue, Nordstrom, Bloomingdales, Macy's, Fred Segal/Ron Herman, Intermix, Shopbob and CuspClothing, and by May 2011 had generated at least $175 million in gross retail sales, $135 million of which was generated after March, 2009.[7] The L.A.M.B. trademark is displayed on labels affixed to the goods, and has been displayed prominently on banners at Applicant's fashion shows.[8] The mark has also been promoted in magazines and at tradeshows, including Fashion Week in New York – a major fashion event which over 1,000 people attend in the main tent, and millions view online. The mark also is promoted on Applicant's websites at <www.l-a-m-b.com> and <www.gwenstefani.com>, with both sites receiving high traffic; in 2009 alone the website www.gwenstefani.com received about 400,000 visits.[9] Applicant has expended more than $3 million to advertise and promote its L.A.M.B. mark and Ms. Stefani has received widespread unsolicited publicity for clothing bearing the L.A.M.B. mark.[10]

Applicant has obtained four registrations for the L.A.M.B. mark which are for clothing items that are similar to those identified in the present application or are items that may be made from lambskin.[11] Registration details follow:[12]

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[7] *Id*. at ¶ 7 and 18.

[8] Id. at ¶ 10.

[9] *Id*. at ¶¶ 9-12, Exhs. B - E.

[10] *Id*. at ¶¶ 16 and 17, Exh. F.

[11] Applicant owns three additional L.A.M.B registrations for various goods, i.e., Registration No. 3418778 for "personal fragrances," Registration No. 3596455 for "body lotion, shower gel, and personal fragrances" and Registration No. 3174448 for "charms " and Registration No. 3691211 for the mark LOVE ANGEL MUSIC BABY for "Clothing,

Registration No.	Goods/Services
3174447	T-shirts, pants, sweatpants, blouses, tank tops, vests and shirts
3673511	Buttons for clothing
3820049	Watches and watch bands
3268695	Handbags

III. Analysis

To begin our analysis, we note that for a term to misdescribe goods, it must be merely descriptive of a significant aspect of the goods which the goods could plausibly possess but in fact do not. *In re Phillips-Van Heusen Corp.*, 63 USPQ2d 1047, 1051 (TTAB 2002). There is no question that Applicant's identified clothing items are not made of lambskin or other products derived from lamb. Indeed, Applicant affirmatively stated during prosecution that its identified clothing items "mostly were made of cotton and similar materials."[13] The issue, therefore, is whether "L.A.M.B." is misdescriptive of a characteristic or feature of Applicant's goods. It is the Examining Attorney's position that the applied-for mark consists of the term "lamb" presented as an acronym, and that the term "lamb" in Applicant's mark, used with clothing, indicates to a consumer that the goods are made from

namely, shirts, tank tops, pants, shorts, and hooded sweatshirts; headwear, namely, visors, baseball caps, and hats; footwear."

[11] Applicant's May 7, 2013 Response.

[12] Applicant's December 21, 2010 and December 27, 2011 Requests for recon., Exhs. E and F, and Exh. A, respectively; and Applicant's May 4, 2010 Response, Exh. A.
Applicant also owns U.S. Registration No. 3691211 for the mark LOVE ANGEL MUSIC BABY for "Clothing, namely, shirts, tank tops, pants, shorts, and hooded sweatshirts; headwear, namely, visors, baseball caps, and hats; footwear.

[13] Applicant's May 7, 2013 Response.

lamb and/or lamb products, such as lamb's wool, lambskin and lamb leather. According to the Examining Attorney, because Applicant indicated that its products are made of cotton or similar material, use of the term "lamb" in Applicant's mark "deceptively misdescribes" the composition of Applicant's goods. The Examining Attorney contends that the use of periods alone is insufficient to overcome the deceptiveness refusal and explicitly argues that:

> Consumers would view and pronounce applicant's mark L.A.M.B. as "lamb." The applicant has not submitted any evidence that a consumer would pronounce the mark as an acronym, "L-period-A-period-M-period-B-period." … That the mark is presented as an acronym with periods between the letters does not alter the pronunciation of the mark as "lamb." The use of periods alone is insufficient to overcome the deceptiveness. If periods alone were sufficient, any deceptive mark could attain trademark significance simply through the insertion of periods. Therefore, the first impression of the mark and pronunciation of the mark "lamb" must control.

Brief unnumbered pp. 5-6. During prosecution, the Examining Attorney also relied on *Tanner's Council of America, Inc. v. Samsonite Corporation*, 204 USPQ 150 (TTAB 1979) in which the Board discussed cases which found that uses of the term "hide," or its phonetic equivalent "hyde," as part of marks used in connection with material that has the appearance of, but is not, leather fall within the proscription of Section 2(a), to support her position that the phonetic equivalent of a deceptive term is also deceptive.

The Examining Attorney has made of record several dictionary definitions, most of which define "lamb" as follows:

> 3. DRESS
> *Same as* lambskin[14]

> definition 1: a young sheep, esp. one not weaned, or its meat, hide, or fleece.[15]

Applicant, for its part, maintains that the applied-for mark L.A.M.B. is not deceptive of the clothing, footwear and headwear sold thereunder because "consumers will and do perceive Applicant's L.A.M.B. mark – with periods or "dots" between the letters – as an acronym with the letters "L", "A", "M", and "B" representing "LOVE", "ANGEL", "MUSIC" and "BABY," respectively." Applicant contends that it has submitted substantial evidence that consumers are used to seeing and consider Applicant's L.A.M.B. mark as an acronym and as a brand, and not as the actual word "lamb."

Applicant's evidence includes the following:

1. The declarations of Lisa Jacobson, Applicant's manager, attesting to, as more fully set forth, *supra*., the genesis of the L.A.M.B. clothing line, sales and advertising figures as well as Applicant's promotional activities and unsolicited media attention regarding the L.A.M.B. mark.

2. An excerpt from *Wikipedia* for the word L.A.M.B.

> L.A.M.B. is a fashion line by American singer Gwen Stefani, the vocalist of the rock band No Doubt and a solo artist. The line manufactures apparel and fashion accessories. The line was founded in 2003 but made its runway debut the following year in 2004. The fashion line manufactures accessories like shoes, watches, bags

[14] Encarta World English Dictionary (www.encarta.msn.com), attachment to December 22, 2009 Office Action.

[15] Wordsmyth Educational Dictionary – Thesaurus (www.wordsmyth.net?en1=lamb), attachment to May 16, 2012 Final Office Action.
We note that Applicant submitted alternate definitions of "lamb" that did not include references to clothing.

> and a fragrance called "L" as well. The name is an acronym of her debut solo album *Love.Angel.Music.Baby*. (http://en.wikipedia.org/wiki/L.A.M.B.)[16]

3. An excerpt from the home page of Applicant's website (www.l-a-m-b.com), which prominently states at the top: [17]

> **L.A.M.B. THE BRAND**
>
> Widely recognized for her trend setting personal style and natural elegance, Gwen Stefani created L.A.M.B., an acronym for Love Angel Music Baby, out of her love of design and fashion. L.A.M.B. is a luxurious collection of clothing, handbags, shoes and fragrance, based on Stefani's personal style and aesthetic. "L.A.M.B. represents all things that I love. It's very much about my style and how I put things together. L.A.M.B. is a line that I want to wear every day," explains Gwen.

4. Excerpts from unsolicited media sources recognizing Applicant's mark, L.A.M.B., as an acronym for LOVE ANGEL MUSIC BABY:

i. An article from the *Atlanta Business Chronicle*, Headline: "Stefani to design sexy frock for bars at W Hotels in Buckhead, Midtown"
Byline: J. Scott Trubey dated October 15, 2008

> Stefani's L.A.M.B. clothing label has been commissioned by nightlife gurus The Gerber Group to design sexy new uniforms for female servers ….
>
> L.A.M.B., an acronym for Love Angel Music Baby, the title of one of Stefani's albums, has produced multiple outfits for the 15 Gerber Group Living Room lounges.

ii. An excerpt from the *Cosmetics International Cosmetic Products Report* (May 1, 2008), Headline: "Rock star Stefani dolls up perfume offering"; World

> Last July, Coty launched the first [sic] Gwen Stefani's first scent under her LOVE Angel Music Baby (L.A.M.B.) fashion label.

[16] Applicant's December 27, 2010 Request for Recon. Exh. 1.

[17] Applicant's January 3, 2012 Request for recon. Exh. A.

iii. An article from the *Atlanta Journal-Constitution* entitled "Style: All tuned up for the stitch; Music and Fashion are inextricably intertwined. Who hasn't attempted to channel the style of a favorite musician at some point?"
Byline: Nedra Rhone dated February 10, 2008

> Stefani is one musician who has embraced the role of designer. … Since 2003 she has been creative director of L.A.M.B. (Love Angel Music Baby)….

iv. An article from *Business and Industry*, Headline: ON THE L.A.M.B. SINGER-DESIGNER GWEN STEFANI IS STEPPING DEEPER INTO THE SHOE SCENE WITH THE LAUNCH OF WOMEN'S HEELS
Byline: Clair Windsor dated November 26, 2007

> In fact, it is Stefani's tireless dedication and detail-minded involvement in her business – not to mention her strong sense of personal style – that has made L.A.M.B. (short for "Love. Angel. Music. Baby.") the huge success it is ….

v. An article from *The Dallas Morning News*, Headline: SPRING SHOPPING Up-and-coming designers, pretty collections. Our guide to what's in store this season at SIix [sic] of your (and our) favorite shops
Byline: Jackie Bolin dated March 25, 2007

> Gwen Stefani is more than the hottest voice on the radio – she also heads up one of the cooler contemporary labels out there. Yes, we're talking about her L.A.M.B. (Love Angel Music Baby) line, and it's new this spring to Tootsies.

vi. An article from The Tribune Co., Headline: "Wishing on a Star"
Byline: Cloe Cabrera, *The Tampa Tribune*, dated June 18, 2007

> Is it for you? Sure, if you want to dress hip, young and sexy. These pieces are ultra trendy and may not be around for more than a season or two, so work it while you can.
>
> > Who: Gwen Stefani, pop star: L.A.M.B. (Love, Angel, Music, Baby) and Harajuku Lovers
> >
> > Where to buy: Nordstrom; l-a-m-b.com.

5. Articles from various media sources, such as, *Style.com*, *The Huffington Post*, *stylelist Fashion*, *WWD.com* [Women's Wear Daily], *New York Fashion*, *The Wall Street Journal*, *People* and *USA Today*, among others, discussing the L.A.M.B. Fall 2011 [Fashion Week] Show Coverage, sometimes noting the fabrication of the collection. Sample articles follow:[18]

YAHOO! NEWS

News.Yahoo.com

February 19th, 2011

UMV: 17,200,000

http://news.yahoo.com/s/fwd/20110219/en_fashion_fwd/gwenstefanisnotsolittlelamb

Gwen Stefani's Not So Little L.A.M.B.

FWD

Share 19 retweet 3 Email Print



Fashion Wire Daily – Feb 2011 Model [illegible] preview L.A.M.B. [illegible] during Fall 2011 Mercedes-Benz Fashion Week in [illegible]



Fashion Video: Measuring up to Paris's luxury fitted footwear AFP



Fashion Video: Fashion Week struts its stuff in Buenos Aires AFP



Fashion Video: Stefani shows rocker-chic LAMB collection AP

New York – Reggae and Harajuku influences menswear inspired looks and lots of prints are what we've come to expect over the years from Gwen Stefani's L A M B line but this season she showed her versatility as a fashion designer at one of the last shows for fall 2011 at Lincoln Center on Thursday Feb 17 in New York

We got more than expected in the staged line-up divided in six sections which opened to a projected helicopter landing as "Soldier Girls" donning diaphanous camouflage tops and bottoms boiled wool trench coats and aviator jackets and shades made their way down Second scene's Rasta "Ragga Muffin Girls" were anything but as cleaned up reggae-colored getups in Navajo tribal print maxi dresses stood alongside intellectual-inspired preppy ties and sweaters

Although not a complete cohesively timelined show each group had its own retro style scheme like "London Girls " 70s school-girl-meets-menswear plaids and "Buffalo Girls" clean tailored and streamlined looks topped off with 60s "Clockwork Orange" inspired headwear

Stefani's usual androgynous looks were present but her over-the-top feminine ensembles as seen in the last two sets "Mod Girls" and her Gwen look-alike "Glamour Girls " were sexy and sophisticated Even taking cues from the haute couture fashion house with Chanel inspired houndstooth it's easy to see that Stefani has taken her fashion line up a notch By toning down the previously overdone red yellow and green motif as well as the Asian-inspired schoolgirl outfits she took her fans through adolescence leaving them with a mature and classy wardrobe

For the first time Stefani's L A M B line wasn't just the visual expression of her girlish music but rather an ostensibly talented conglomeration of easily wearable looks for nearly any stylish woman

[18] Applicant's May 11, 2011 Request to Suspend and Remand, Exh. E.

examiner.com National
the insider source for local

Examiner.com

February 18th, 2011

UMV: 14,400,000

http://www.examiner.com/celebrity-mom-in-national/gwen-stefani-rocks-her-fall-l-a-m-b-line

Gwen Stefani rocks her fall L.A.M.B line

Video: Gwen Stefani rocks her fall L.A.M.B line



Gwen gets a surprise from her son Kingston

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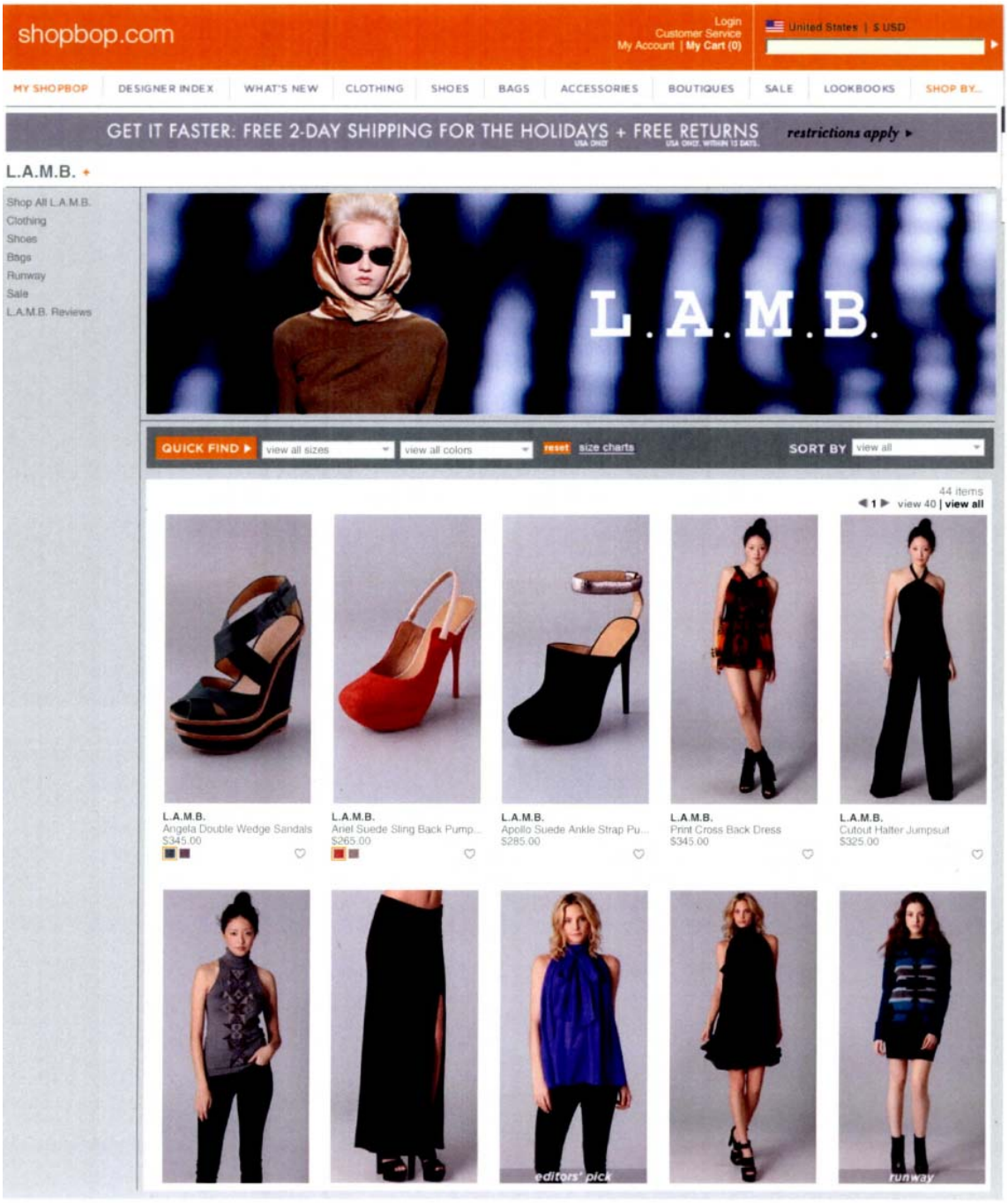
One of the most fashionable celebrity moms if not thee most fashion celeb out there is hands down Gwen Stefani. Her new Fall 2011 L.A.M.B collection was featured in this weeks Mercedes-Benz Fashion Week in New York City. Her collection was one of the last clothing lines to be presented during the week, and it definitely was a case of the best finishing last.

As reported by Billboard.com: Stefani's fashion line consisted of wool bustiers, tailored suits, plaid capes, silk dresses and in true Gwen rock style, it also featured leather items. The models were separated by ethnicity, clothing styles and hair-dos, as they rocked the runway to some very Gwen-esque styled power beats.

The highlight of the show came at the end as the glowing Gwen made her appearance and took to the catwalk. With a long, flowing, black and white gown, and her own music playing in the background, the rocker made it halfway down the runway when her oldest son Kingston jumped onto the stage and called for his 'mommy.' Happiness was evident on her face as she took his hand and continued on with him at her side, proving that even with all her fame and notoriety, that her most important title will always be 'mommy.'

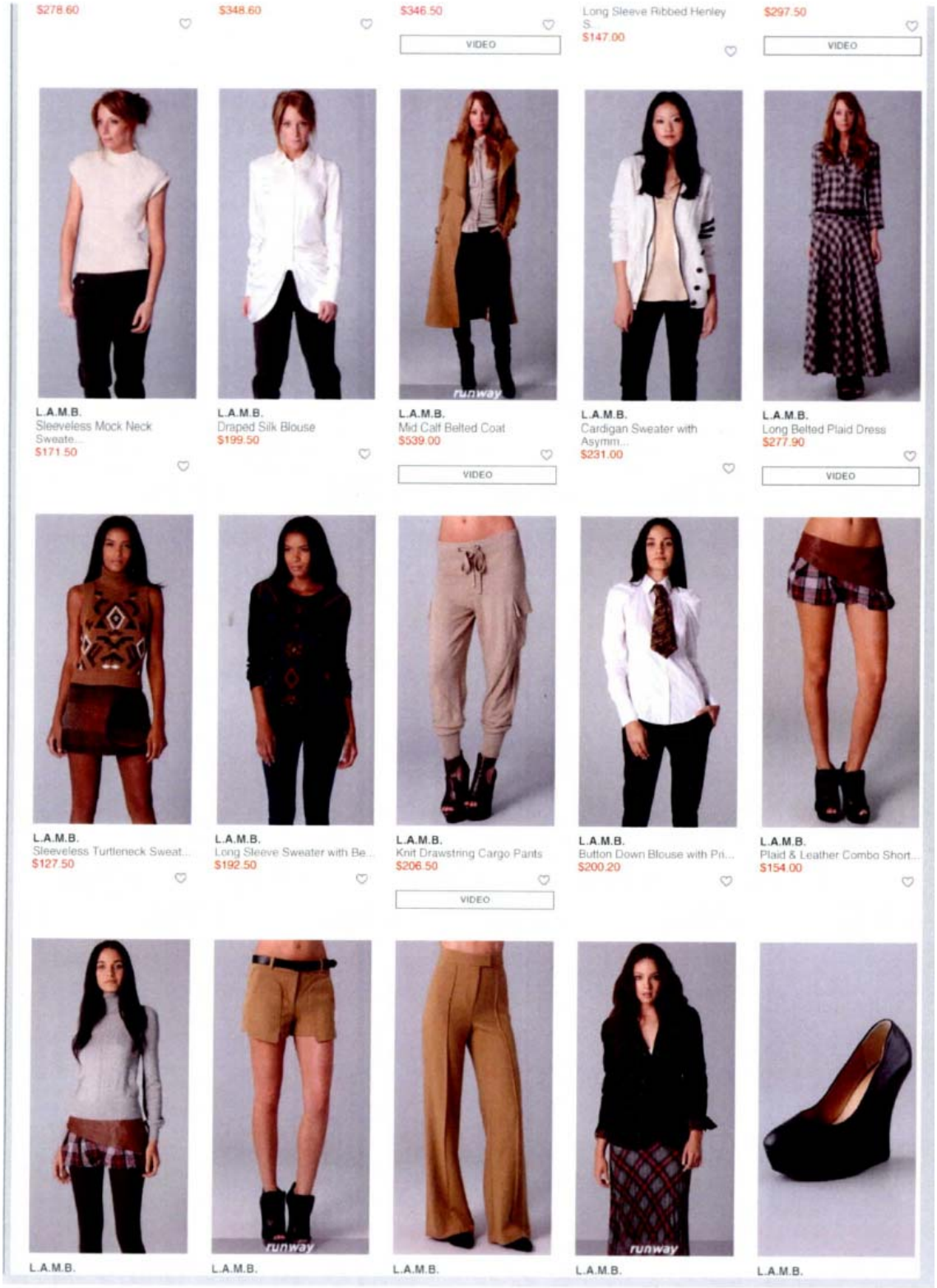
6. Web pages from the websites of various retailers, including shopbop.com, couturezappos.com, Neiman Marcus, DrJays.com, Nordstrom, Sax Fifth Avenue, Bloomingdale's and Macy's, as well as from Applicant's website, showing clothing

and footwear items of the type covered by the L.A.M.B. mark.[19]



ttp://www.shopbop.com/lamb/br/v=1/2534374302023804.htm?all 12/27/2011

[19] Applicant's January 3, 2012 Request for recon. Exh. A



http://www.shopbop.com/lamb/br/v=1/2534374302023804.htm?all

4. Copies of third-party registrations for marks that include the names of various animals whose skins have been known to be used in connection with clothing or other products. The registrations include, by way of example: Registration No. 3924903 for the mark BLACK LAMB for various clothing items and footwear; Registration No. 3867540 for the mark LITTLE LAMB for various clothing items; Registration No. 2065912 for the mark SHEEP for various clothing items and footwear; and Registration No. 2255638 for the mark WILD PIGS for various clothing items and footwear.

While both Examining Attorneys involved in this proceeding focused their arguments on the pronunciation of L.A.M.B., it is evident that they also are of the view that the periods after each letter in Applicant's L.A.M.B. mark are insufficient to change the essential and generally understood meaning of the word "lamb." Indeed, the periods effectively have been ignored in the Examining Attorneys' analysis. However, even though the periods may not be pronounced when calling for the mark, Applicant's goods are clothing, footwear and headwear items that are of a type that is generally inspected prior to purchase. As such, this is a situation where Applicant's mark will be viewed by prospective purchasers shopping either in brick and mortar stores or online and the periods are clearly a notable part of the L.A.M.B. mark.

While we acknowledge that the commercial impression of a mark is usually not altered by the presence, or absence, of punctuation marks, *Cf.*, *In re Vanilla Gorilla L.P.*, 80 USPQ2d 1637, 1639-1640 (TTAB 2006) ("the addition of punctuation marks

to a descriptive term would not ordinarily change the term into a non-descriptive one"); *In re White Swan Ltd.*, 8 USPQ2d 1534, 1535 (TTAB 1988) (when the same words are used in marks, the presence or absence of hyphens or other punctuation marks generally will be of little significance), the record in this case shows that Applicant's L.A.M.B. mark is perceived by relevant consumers and the trade as an acronym that is synonymous with the words "LOVE ANGEL MUSIC BABY."[20] Of particular note, Applicant's much visited website immediately informs a visitor that Applicant's L.A.M.B. mark is derived from the words LOVE ANGEL MUSIC BABY and the renown of the L.A.M.B. mark, as reflected in the promotional activities, sales figures and unsolicited media coverage, reiterates that understanding. We also point out that the fabrics used in connection with Applicant's obviously L.A.M.B. "branded" clothing items are discernable when viewing the items in a retail store setting or online. We thus find that the consumer perception of the acronym L.A.M.B. is as a trademark and that the words it represents, LOVE ANGEL MUSIC BABY, are arbitrary with respect to Applicant's identified clothing, headwear and footwear. *See Woolrich*, 13 USPQ2d 1235. Indeed, although we appreciate that the Board must decide each case on its facts and record, it is telling that the trademark significance of Applicant's L.A.M.B. acronym previously has been recognized by the USPTO on four separate occasions through the registration

[20] Indeed an entry of which we have taken judicial notice from the online Acronym Finder (www.acronym.finder.com/LAMB.html) states that the acronym L.A.M.B. stands for "Love, Angel, Music, Baby (fashion line)," and corroborates our finding.

of four other L.A.M.B marks, all for clothing and other items that could be made from lamb or lambskin.

We are not persuaded by the Examining Attorney's argument that "given that it is common to find shoes and handbags made from lambskin, consumers who are unfamiliar with 'LOVE ANGEL MUSIC BABY' or Gwen Stefani will not made a connection with the album title or performer upon encountering the mark L.A.M.B." Br. unnumbered p. 4. Due to the presence of the periods after each letter in the mark, "L.A.M.B." will be recognized as an acronym, even if its precise meaning is unknown by some.[21]

We feel compelled to address one additional argument made by the Examining Attorney. By the statement in her brief that "applicant has failed to submit any actual consumer evidence to support its contention that the applied for mark will be perceived as an acronym" she appears to suggest that survey evidence is required to establish consumer perception of a mark. She cites to, and we are aware of, no authority that supports that position.

Although we have found that Applicant's L.A.M.B. mark does not misdescribe the identified goods, under the *Woolrich* analysis we address the second prong of the *Budge* test for deceptiveness: are prospective purchasers likely to believe that the misdescription actually describes the goods? The Examining Attorney has made of

[21] The Examining Attorney also claims that the "evidence submitted by the applicant also shows that it is the applicant's practice to use L.A.M.B. with an image of a lamb" and that this usage emphasizes or suggests to a consumer the false connection between L.A.M.B. as an acronym and "lamb" as the material from which clothing is made. Applicant, on the other hand, disputes this claim and contends that the overwhelming evidence submitted by it indicates the exact opposite. Because of the conflicting positions and evidence, we find no persuasive value in the Examining Attorney's claim.

record numerous examples of clothing items such as those included in the identification of goods as being made of lamb, lambskin or lamb leather. Ordinarily, if "L.A.M.B." had been found to misdescribe clothing, footwear and headwear items not made of lamb (or as lamb is defined, lambskin), this evidence would be sufficient to show that consumers are likely to believe that clothing such as jackets, blazers, dresses, skirts, sweaters, jeans, scarves, tops, cardigans, camisoles, shorts, and bustiers, footwear and headwear were made of lamb. However, the situation in this case differs because, as just explained, Applicant's evidence of consumer perception demonstrates that Applicant's L.A.M.B. mark is a widely recognized acronym with an arbitrary meaning in relation to the identified goods. Applicant affirmatively states that its clothing is made of cotton and like materials and media reports during fashion week as well as the online catalog pages demonstrate this fact. Further, applicant uses the L.A.M.B. mark to identify all of its clothing, footwear and headwear items, no matter the fabrication. Under these circumstances, the perception of prospective purchasers is that L.A.M.B. is a source identifier for all of Applicant's clothing, footwear and headwear items and they will not believe that L.A.M.B. identifies only clothing items that are made of lamb.[22]

Having found that "L.A.M.B" does not misdescribe the identified goods and that prospective purchasers are not likely to believe any misdescription with respect to

[22] In reaching our conclusion on this prong of the *Budge* test, we have not relied upon Applicant's argument that the word "lamb," standing alone, is not commonly used to describe a type of clothing given our findings with regard to the L.A.M.B. mark.

"L.A.M.B." in relation to the goods, we need not reach the third prong of the *Budge* test.

For the reasons discussed, the Examining Attorney has failed to meet her burden as to the first and second prongs of the *Budge* test and, accordingly, has failed to demonstrate that Applicant's mark is deceptive when used in connection with the identified goods.

Decision: The refusal to register Applicant's mark L.A.M.B. under Trademark Act Section 2(a) is reversed.