



EXHIBITS

Proceeding/Serial No: 91170112

Filed: 11-20-08

**Title: Opposers answer to applicants first set of
interrogatories**

**Document contains 2 hardcover books, and a
movie <vcr>**



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

COACH SERVICES, INC.,

Opposer,

v.

TRIUMPH LEARNING LLC,

Applicant.

Opposition No. 91170112

78/535,042

**OPPOSER'S ANSWERS TO APPLICANT'S
FIRST SET OF INTERROGATORIES**

Opposer Coach Services, Inc. ("Opposer") hereby responds to the First Set of Interrogatories by Applicant Triumph Learning LLC ("Applicant") pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, as follows:

Interrogatory No. 1:

Please identify the person signing the responses to these interrogatories and each and every person consulted in the preparation of your responses to these interrogatories.

Answer to Interrogatory No. 1:

Norman H. Zivin, Attorney for Opposer.

Carole P. Sadler, Senior Vice President and General Counsel of Opposer.

Interrogatory No. 2:

Please identify each of the documents you used to prepare your responses to these interrogatories.

Answer to Interrogatory No. 2:



11-20-2008



U.S. Patent and Trademark Office's Trademark Electronic Search System (TESS) records for Registration Nos. 2939127, 2534429, 2446607, 2045676, 2088706, and 1309779; and Application Serial Nos. 78/535,642, 78/536,065, and 78/536,143.

Interrogatory No. 3:

Please identify each of the specific products in Class 9 on which you claim to use any mark featuring the word COACH.

Answer to Interrogatory No. 3:

At least cameras, camera cases, eyeglasses, eyeglass frames, eyeglass cases, sunglasses, cellular phone cases, computer cases, and computer accessory cases.

Interrogatory No. 4:

For each of the products identified in your response to interrogatory No. 3, please identify the date of the first use of the COACH mark on the product, identify the exact mark(s) used thereon, and describe the nature of the use, the geographical extent of the use, and the duration of the use, and identify the individual with primary responsibility for and knowledge of such use.

Answer to Interrogatory No. 4:

For all products listed below, the nature of use is brand identification on products and packaging, geographical extent of use is throughout the United States, and an individual with knowledge of such use is Carole P. Sadler, Senior Vice President and General Counsel of Opposer.

<u>Product</u>	<u>Date of first use</u>	<u>Mark</u>	<u>Duration of use</u>
Cameras	2002	COACH	Continuous since 2002
Camera cases	2002	COACH	Continuous since 2002

<u>Product</u>	<u>Date of first use</u>	<u>Mark</u>	<u>Duration of use</u>
Eyeglasses	11/18/1999	COACH	Continuous since 11/18/1999
Eyeglass frames	11/18/1999	COACH	Continuous since 11/18/1999
Eyeglass cases	5/1963	COACH	Continuous since 5/1963
Sunglasses	11/18/1999	COACH	Continuous since 11/18/1999
Cellular phone cases	4/30/1995	COACH	Continuous since 4/30/1995
Computer cases	4/30/1995	COACH	Continuous since 4/30/1995
Computer accessory cases	4/30/1995	COACH	Continuous since 4/30/1995

Interrogatory No. 5:

Please identify each of the specific products in Class 16 on which you claim to use any mark featuring the word COACH.

Answer to Interrogatory No. 5:

At least desk pads, desk file trays, memo boxes, pencil cups, business card holders, paperweights, planning diaries, daily business planners, agendas, pens, pencils, checkbook covers, passport covers, checkbook cases, and pocket secretaries.

Interrogatory No. 6:

For each of the products identified in your response to interrogatory No. 5, please identify the date of the first use of the mark COACH on the product, identify the exact mark(s) used thereon, and describe the nature of the use, the geographical extent of the use, and the duration of the use, and identify the individual with primary responsibility for and knowledge of such use.

Answer to Interrogatory No. 6:

For all products listed below, the nature of use is brand identification on products and packaging, geographical extent of use is throughout the United States, and an individual with knowledge of such use is Carole P. Sadler, Senior Vice President and General Counsel of Opposer.

<u>Product</u>	<u>Date of first use</u>	<u>Mark</u>	<u>Duration of use</u>
Desk pads	5/31/1990	COACH	Continuous since 5/31/1990
Desk file trays	5/31/1990	COACH	Continuous since 5/31/1990
Memo boxes	5/31/1990	COACH	Continuous since 5/31/1990
Pencil cups	5/31/1990	COACH	Continuous since 5/31/1990
Business card holders	5/31/1990	COACH	Continuous since 5/31/1990
Paperweights	5/31/1990	COACH	Continuous since 5/31/1990
Planning diaries	5/31/1990	COACH	Continuous since 5/31/1990
Daily business planners	5/31/1990	COACH	Continuous since 5/31/1990
Checkbook covers	5/31/1990	COACH	Continuous since 5/31/1990
Passport covers	5/31/1990	COACH	Continuous since 5/31/1990
Checkbook cases	5/1963	COACH	Continuous since 5/1963

<u>Product</u>	<u>Date of first use</u>	<u>Mark</u>	<u>Duration of use</u>
Pens/pencils	10/1999	COACH	Continuous since 10/1999
Pocket secretaries	5/1963	COACH	Continuous since 5/1963

Interrogatory No. 7:

Please identify and describe any and all circumstances of actual confusion between your use of any mark featuring the word COACH and Applicant's use of any mark featuring the word COACH, at any time. For each such circumstance, identify all communications and documents relating to such circumstance, and identify each individual with particular knowledge of such circumstance.

Answer to Interrogatory No. 7:

Opposer is not aware of any such instances of actual confusion at this time.

Interrogatory No. 8:

Please identify all advertisements placed by Opposer for each product in Class 9 identified in your response to interrogatory No. 3 which were distributed, aired or otherwise disseminated showing or referring to any COACH mark from inception to present, specifying where each advertisement was placed and when it was used.

Answer to Interrogatory No. 8:

Opposer objects to the extent this interrogatory is overly broad and unduly burdensome in seeking information over a more than 40 year time frame. Opposer further objects to the extent the requested information is in the public domain and equally accessible to Applicant. Subject to and without waiving the foregoing objections, representative advertisements for each product in Class 9 identified in response to Interrogatory No. 3 will be produced. The advertisements produced will indicate the placement and date.

Interrogatory No. 9:

Please identify all advertisements placed by Opposer for each product in Class 16 identified in your response to interrogatory No. 5 which were distributed, aired or otherwise disseminated showing or referring to the any COACH mark from inception to present, specifying where each advertisement was placed and when it was used.

Answer to Interrogatory No. 9:

Opposer objects to the extent this interrogatory is overly broad and unduly burdensome in seeking information over a more than 40 year time frame. Opposer further objects to the extent the requested information is in the public domain and equally accessible to Applicant. Subject to and without waiving the foregoing objections, representative advertisements for each product in Class 16 identified in response to Interrogatory No. 5 will be produced. The advertisements produced will indicate the placement and date.

Interrogatory No. 10:

With particularity, state the factual basis for the allegations set forth in Paragraph 12 of the Notice of Opposition, namely the assertion that "Applicant's use of the mark COACH in association with its goods is likely to cause confusion, or to cause mistake or to deceive, in view of Opposer's long prior use of the arbitrary and distinctive mark COACH in association with the sale, distribution and advertising of its goods", including all facts upon which Opposer intends to rely in asserting and/or proving such assertion in this opposition proceeding.

Answer to Interrogatory No. 10:

Opposer and its predecessors have used the mark COACH since as early as 1957 to identify various goods sold and distributed by Opposer, such that the mark COACH immediately signifies the origin or source of the goods as Opposer in the minds of consumers throughout the

United States. Thus, use of the identical mark by Applicant for goods in the same class is likely to cause confusion, mistake, and deception.

Interrogatory No. 11:

With particularity, state the factual basis for the allegations set forth in Paragraph 13 of the Notice of Opposition, namely the assertion that "Applicant's use of the mark COACH in association with its goods is likely to cause and has caused dilution of the distinctive quality of Opposer's famous mark COACH, by tarnishment and blurring, in view of Opposer's long prior use of the arbitrary and distinctive mark COACH in association with the sale, distribution and advertising of its goods", including all facts upon which Opposer intends to rely in asserting and/or proving such assertion in this opposition proceeding.

Answer to Interrogatory No. 11:

Opposer and its predecessors have used the mark COACH since as early as 1957 to identify various goods sold and distributed by Opposer, and such use has built nationwide recognition for Opposer and its brand of high-quality goods. Applicant's use of the identical mark for goods that might be perceived as emanating from Opposer will dilute the distinctive quality of Opposer's mark and tarnish and blur the image generated by the mark.

Interrogatory No. 12:

With particularity, state the factual basis for the allegations set forth in Paragraph 14 of the Notice of Opposition, namely the assertion that "by reason of Opposer's use of the mark COACH from long prior to Applicant's filing of its application to register the identical mark COACH for use in association with related goods, Opposer has rights superior to any rights of Applicant", including all facts upon which Opposer intends to rely in asserting and/or proving such assertion in this opposition proceeding.

Answer to Interrogatory No. 12:

Opposer and its predecessors have used the mark COACH since as early as 1957 to identify various goods sold and distributed throughout the United States, including computer cases, computer accessory cases, planning diaries, and daily business planners. Accordingly, Opposer is the prior user as between the parties and owns the mark.

Interrogatory No. 13:

With particularity, state the factual basis for the allegations set forth in Paragraph 15 of the Notice of Opposition, namely the assertion that “the registration to Applicant of the mark COACH on the Principal Register will interfere with Opposer’s enjoyment of its rights in its mark COACH, to Opposer’s substantial detriment”, including all facts upon which Opposer intends to rely in asserting and/or proving such assertion in this opposition proceeding.

Answer to Interrogatory No. 13:

Opposer and its predecessors have used the mark COACH continuously since as early as 1957 to identify various goods and amassed nationwide recognition as the source of goods of high quality. If Applicant obtains a federal registration for the identical mark, Opposer’s rights in the mark will be damaged.

Interrogatory No. 14:

With particularity, state the factual basis for any other claim of harm, injury, and/or damage that Opposer alleges or believes it would incur from Applicant’s registration and/or use of the marks at issue in this proceeding.

Answer to Interrogatory No. 14:

Opposer and its predecessors have spent substantial sums in advertising and promoting its goods to be associated with and identified by the mark COACH. Thus, Applicant's use of the identical mark capitalizes on Opposer's goodwill and reputation.

Interrogatory No. 15:

Identify, with particularity, each investigation, search and/or survey conducted or commissioned by Opposer or on its behalf relating specifically to the issues of likelihood of confusion, actual confusion, and/or dilution between Opposer's use of the mark COACH and any other COACH marks.

Answer to Interrogatory No. 15:

Opposer objects to the extent this interrogatory seeks information within the scope of the attorney-client privilege, the work-product doctrine, or any other applicable privilege. Opposer further objects to the extent this interrogatory seeks Opposer's confidential and proprietary information. Subject to and without waiving the foregoing objections, Opposer is not aware of any such investigation, search, or survey at this time.

Interrogatory No. 16:

Identify all documents upon which Opposer intends to rely to prove priority of use in Class 9.

Answer to Interrogatory No. 16:

U.S. Trademark Registration Nos. 2939127, 2534429, 2045676, 2088706, and 1309779; advertisements and catalogs to be produced.

Interrogatory No. 17:

Identify all documents upon which Opposer intends to rely to prove priority of use in Class 16.

Answer to Interrogatory No. 17:

U.S. Trademark Registration Nos. 2446607, 2045676, 2088706, and 1309779; advertisements and catalogs to be produced.

Interrogatory No. 18:

Identify, by name and title, separately the person or persons most knowledgeable regarding the following subject areas relating to goods and/or services of Opposer in Classes 9 and 16 that are sold, advertised and/or intended to be sold under the mark COACH:

- a. sales;
- b. marketing and/or promotion;
- c. revenues;
- d. the consumers and/or users of Opposer's goods (intended and/or actual);
- e. distribution;
- f. advertising;
- g. naming and/or designation of products and/or services; and
- h. trademark and/or service mark matters.

Answer to Interrogatory No. 18:

Carole P. Sadler, Senior Vice President and General Counsel of Opposer; Jodi Kuss, Senior Vice President of Opposer.

Interrogatory No. 19:

Identify all previous litigation, including all *inter partes* proceedings in the U.S. Trademark Office, and all claims by third parties, involving Opposer's rights in any COACH mark.

Answer to Interrogatory No. 19:

At least the following listed proceedings:

<u>Proceeding No.</u>	<u>Parties</u>	<u>Venue</u>
91155880	Coach Services, Inc. v. Leonard	TTAB
91156215	Coach Services, Inc. v. Apte, Inc.	TTAB
91158179	Coach Services, Inc. v. Predisys Oy	TTAB
91158495	Coach Services, Inc. v. Gilbert	TTAB
91161354	Coach Services, Inc. v. Target Brands, Inc.	TTAB
91166473	Coach Services, Inc. v. Banc Enterprises Corp.	TTAB
91167771	Coach Services, Inc. v. The Positive Coaching Alliance	TTAB
91167844	Coach Services, Inc. v. My ePHIT.com, LLC	TTAB
91118412	Coach, Inc. v. The Mark David Corp.	TTAB
91152981	Coach, Inc. v. Kim	TTAB
91089151	Coach Leatherware, Inc. v. Christensen Communications Corp.	TTAB
91098861	Sara Lee Corp. v. Park Industries, Inc.	TTAB
92023637	Sara Lee Corp. v. Converse, Inc.	TTAB
1:04CV02926	Coach Services, Inc. v. Khabbaz	S.D.N.Y.
2:04CV01091	Coach Services, Inc. v. Summer Rio, Inc.	C.D. Cal.
1:00CV00596	Coach, Inc. v. Galloway	D.Md.
1:99CV04583	Coach, Inc. v. Abbott	N.D.Ill.
1:99CV00028	Coach, Inc. v. Benjamin	E.D.Va.
1:99CV03345	Coach, Inc. v. Dye	N.D.Ill.
1:98CV08245	Coach, Inc. v. Gilyard	N.D.Ill.

<u>Proceeding No.</u>	<u>Parties</u>	<u>Venue</u>
1:99CV04047	Coach, Inc. v. Wolfe	N.D.Ill.
1:00CV00834	Coach, Inc. v. Yates	S.D.N.Y.
2:99CV04481	Coach, Inc. v. Mayo	C.D.Cal.
1:01CV06077	Coach, Inc. v. Clifton	S.D.N.Y.
1:00CV09458	Coach, Inc. v. Moon	S.D.N.Y.
1:99CV11672	Coach, Inc. v. We Care Trading Co.	S.D.N.Y.
1:99CV03344	Coach, Inc. v. We Care Trading Co.	N.D.Ill.
01-7968	Coach, Inc. v. We Care Trading Co.	2nd Cir.
01-9162	Coach, Inc. v. We Care Trading Co.	2nd Cir.
2:92CV01948	Coach Leatherware Co. v. Kihm	D.N.J.
1:94CV08236	Coach Leatherware Co. v. Laura Leather Goods	S.D.N.Y.
1:95CV10443	Coach Leatherware Co. v. Various John Does	S.D.N.Y.
1:94CV06061	Laura Leather Goods v. Coach Leatherware Co.	S.D.N.Y.
1:97CV00085	Sara Lee Corp. v. Bags of New York	S.D.N.Y.

Respectfully submitted,

COOPER & DUNHAM LLP

Dated: July 10, 2006

By: 

Norman H. Zivin
 1185 Avenue of the Americas
 New York, New York 10036
 (212) 278-0400
 Attorneys for Opposer
 COACH SERVICES, INC.

VERIFICATION

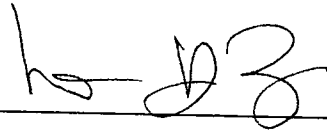
CAROLE P. SADLER hereby declares that she is Senior Vice President and General Counsel of Opposer Coach Services, Inc. and she is authorized to sign the foregoing responses on behalf of Opposer; that she has read the foregoing responses and subscribes the same on behalf of the Opposer; that said responses were prepared with the assistance of other representatives of the Opposer; that said responses, subject to inadvertent or undiscovered errors, are based upon, and therefore, limited by the records and information still in existence, presently recollected and thus far discovered in the course of the preparation of said responses; Opposer reserves the right to make changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available; that subject to the limitations set forth herein, the said responses are true to the best of her knowledge, information and belief; and that the foregoing statements are true under the penalties for perjury.



CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Opposer's Answers to Applicant's First Set of Interrogatories was sent on July 10, 2006 by first class mail, postage prepaid, addressed to the attorneys for Applicant as follows:

R. David Hosp
Robert M. O'Connell, Jr.
Goodwin Procter LLP
Exchange Place
Boston, MA 02109



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

_____)	
COACH SERVICES, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91170112
)	
TRIUMPH LEARNING LLC,)	
)	
Applicant.)	
_____)	

OPPOSER'S NOTICE OF FILING TESTIMONY

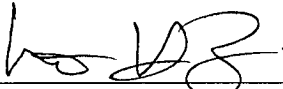
PLEASE TAKE NOTICE that pursuant to Trademark Rule 2.125, Opposer COACH SERVICES, INC. hereby files the Testimony of Carole P. Sadler, taken October 27, 2008, together with Exhibits 450-459 attached thereto.

PLEASE ALSO TAKE NOTICE that Exhibits 456 and 458 are "confidential financial" under the terms of a stipulated confidentiality agreement in the matter, dated October 18, 2006, and are being separately filed under seal.

Opposer has served a copy of the Transcript and Exhibits on the attorneys for Applicant.

Respectfully submitted,

COOPER & DUNHAM LLP

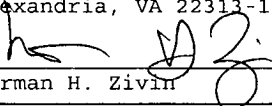
Dated: November 18, 2008 By: 

Norman H. Zivin
1185 Avenue of the Americas
New York, New York 10036
(212) 278-0400

Attorneys for Opposer
COACH SERVICES, INC.

I hereby certify that this paper is being deposited this date with the U.S. Postal Service as first class mail addressed to:

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451


Norman H. Zivin

11/18/08
Date

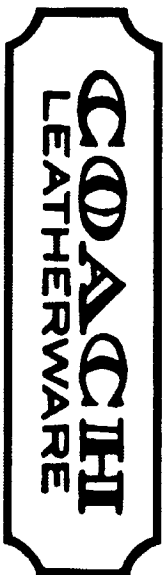
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing
OPPOSER'S NOTICE OF FILING TESTIMONY was sent on November 18,
2008 by first class mail, postage prepaid, addressed to the
attorneys for Applicant as follows:

R. David Hosp
Goodwin Procter LLP
Exchange Place
Boston, MA 02109



Norman H. Zivin



EST. 1941

U.S. Young Customer Update

Strategy & Consumer Insights
March 2008



Overview

- Our annual Brand Tracking survey conducted in June 2007, our most robust sample of consumers, indicated some distinct characteristics of young customers aged 18-24 relative to 25-64 yr olds
- In December 2007, we were given the opportunity to further explore these insights and to test internal hypotheses through a survey to the *Teen Vogue* "It Girl Panel"
- The "It Girl Panel" enabled us to speak with a younger population of young adults (age 13-24) and a more fashion engaged population than we reach with Brand Tracking

Brand Tracking Methodology

OBJECTIVES

METHODOLOGY

- Update the market size estimate for the U.S. handbag and accessory market
 - Timing
 - Executed in June and July 2007 for a total of 27 days
 - Going forward on an annual schedule (June)
 - 17 minute online questionnaire
 - Target group
 - Women, 18-64 years old
 - Age, income and geography census representative
- Improve our understanding of current Coach customers and examine changes over last 12 months
 - Sample size
 - 10,110 qualifying purchasers with 8,218 purchasing in the addressable market* (purchased a bag or accessory** in the last 12 months)
 - 2,601 Coach purchasers (purchased a Coach bag or accessory* in the last 12 months)
 - Structure
 - Demographics - age, zip code, employment status, income, race
 - Awareness – unaided, aided
 - Purchase behavior - brands, units, spend, type, purpose, source, occasion, key decision factors, purchase cycle
 - Handbag profile - quantity, usage, category interest
 - Fashion interest - handbag/accessory interest, fashionability
 - Brand comparison - imagery, relationship with brand, purchase intent
- Track category behavior for handbags & accessories and compare against Coach customer behavior
- Compare Coach's perceptions and performance against key competitors

*All purchases excluding those made in mass merchandiser and secondary channels (e.g., Wal-Mart and eBay)

**Defined as wallets, coin purses, pouches (e.g., make-up cases), card cases (e.g., for business cards, transit passes) and iPod cases

Teen Vogue Methodology

OBJECTIVES

- Better understand the attitudes and behavior of the young consumer aged 13-24 (current survey methods focus on 18-64 year olds)
- Test specific hypothesis about young adults
- Understand preferences for handbags among young adults

METHODOLOGY

- Timing
 - Launched November 21, 2007 and live for 21 days until December 11, 2007
- Methodology
 - "It Girls" opt into the panel and gain access to password protected It Girl site of TeenVogue.com
 - Survey link was posted on Teen Vogue's dedicated "It Girl" Panel site
- Sample Size
 - Expected response of approximately 2,000 "It Girls"
 - 70% of respondents were aged 13-17 and 30% were 18-24
- Structure
 - Demographics - age, zip code, employment status
 - Brand awareness and ownership
 - Category engagement – bags purchased in last 12 months, future purchase intent
 - Role of parents in their handbag purchases
 - Attitudes to Coach and select competitive brands – brand attributes, future purchase intent
 - Characterizing Coach through celebrity association
 - Selection of favorite Coach bag

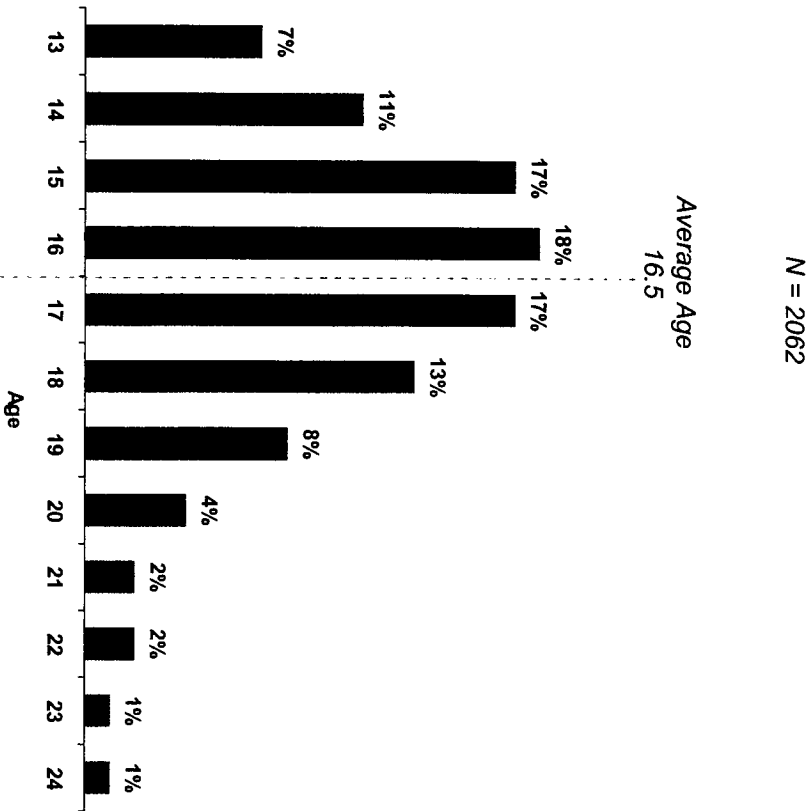
Demographics

The survey to Teen Vogue's "It Girl Panel" successfully reached the younger girls missing from brand tracking, who are more likely to be full time students

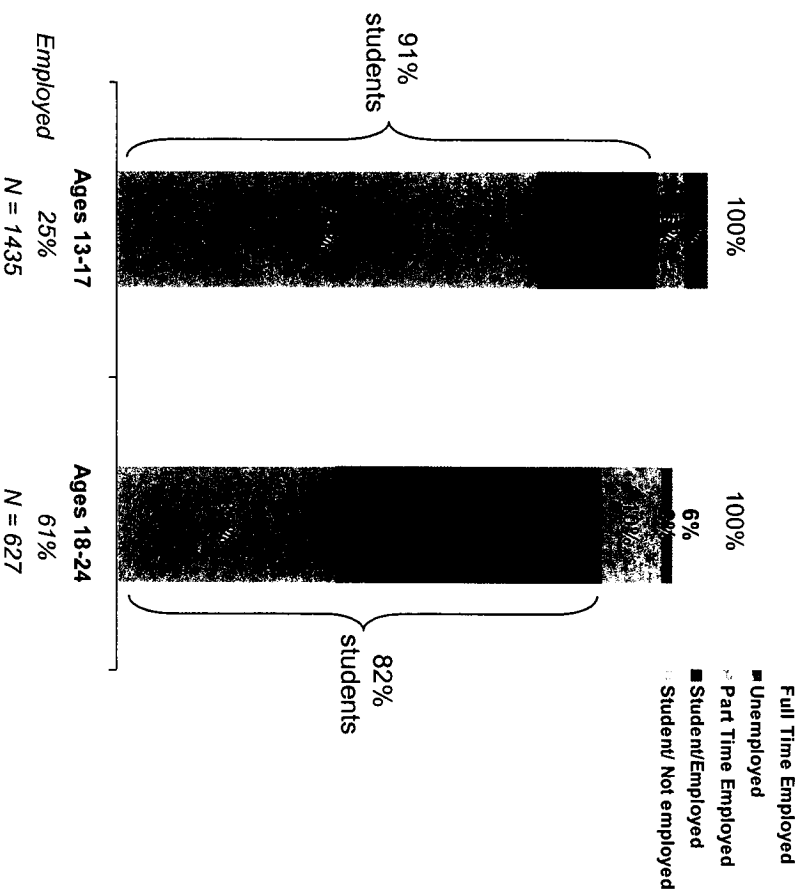
CONFIDENTIAL - FINANCIAL

CSI 11457

AGE DISTRIBUTION



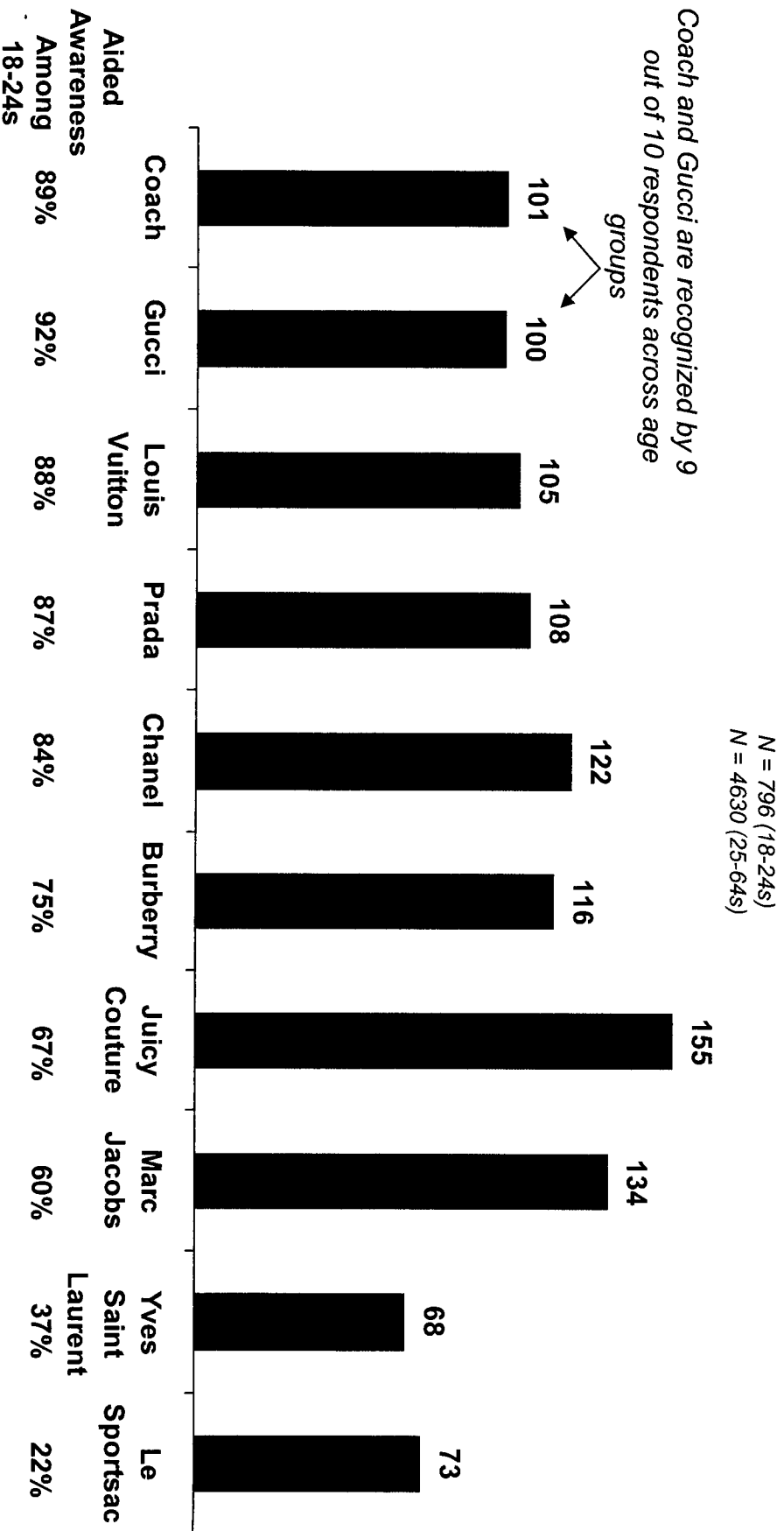
STUDENT / EMPLOYMENT STATUS



Brand Awareness

Younger customers are generally more brand aware of premium brands* than older women participating in the handbag and women's accessories category

TARGET MARKET AIDED AWARENESS: 18 - 24s INDEXED TO 25 - 64s



*Premium refers to Accessible Luxury or Luxury brands
Source: US Brand Tracking July 2007

Teen Vogue Brand Awareness

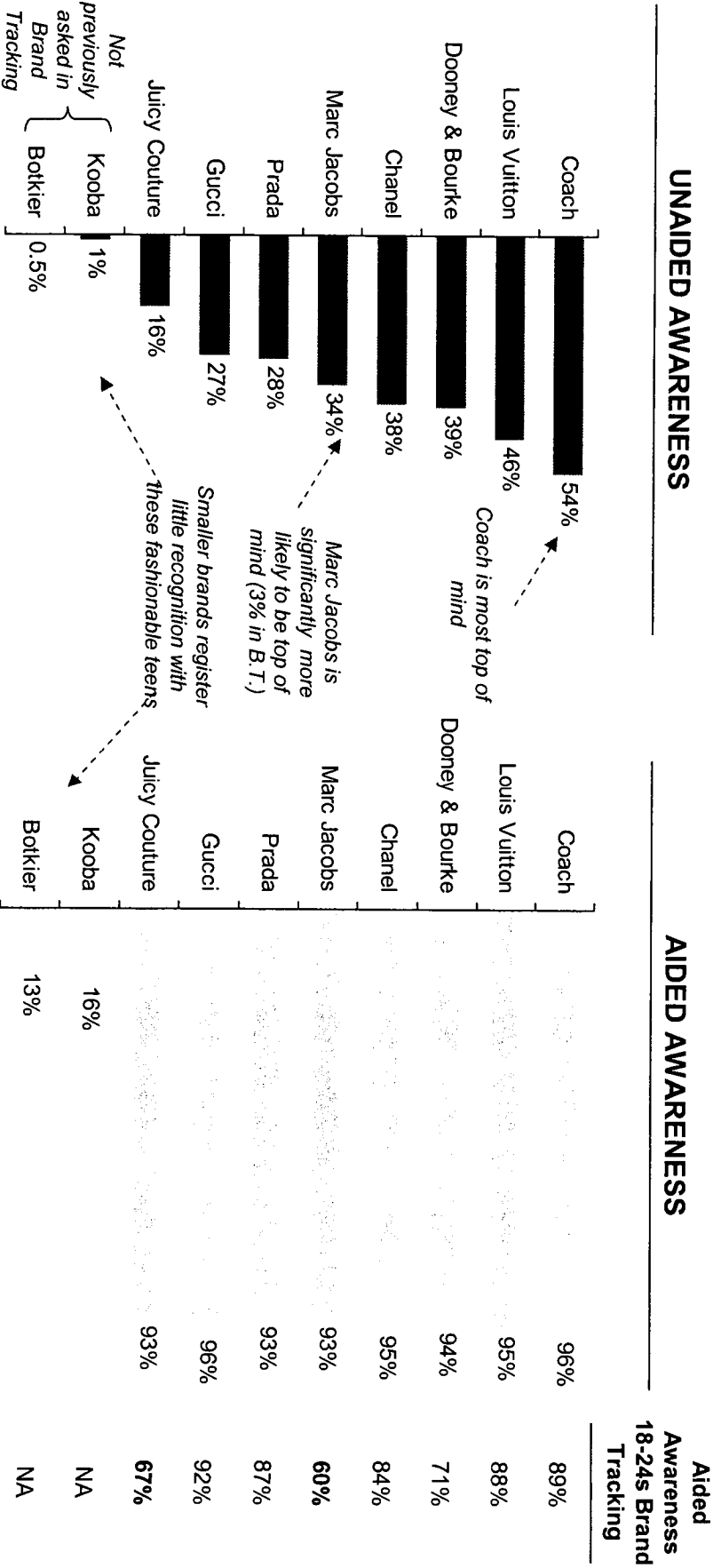
Teen Vogue respondents are even more aware of premium brands than 18-24s in our Target, but they are still unaware of emerging fashion brands like Kooba and Botkier

CONFIDENTIAL - FINANCIAL

CSI 11459

BRAND AWARENESS: AIDED AND UNAIDED

N = 2062



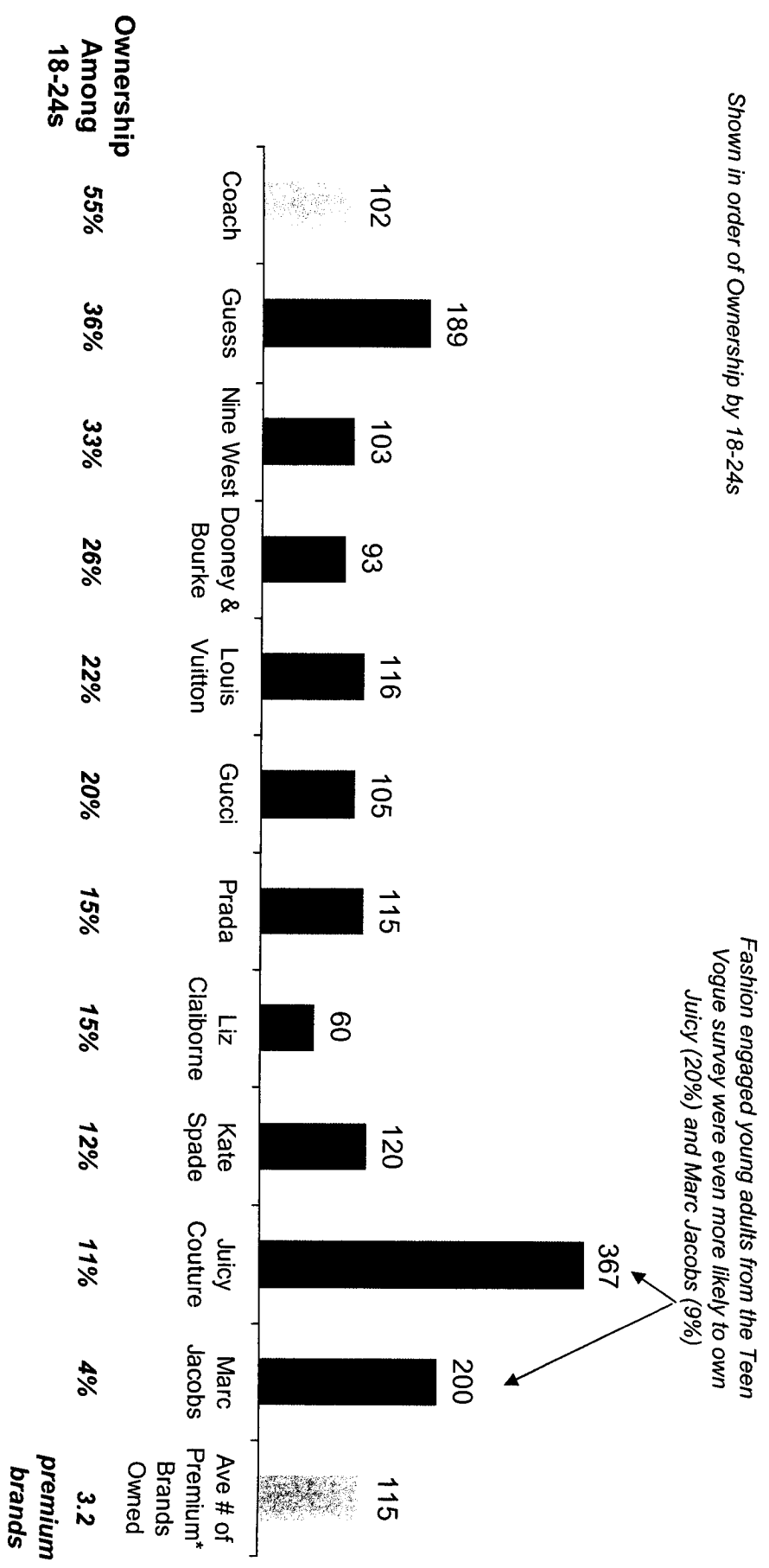
* Brand Awareness higher than Brand Tracking 18-24s
 Source: Teen Vogue IT Girl Panel survey, November/December 2007

Brand Ownership

Surprisingly, young consumers own Coach and luxury brands at similar levels to older women but they are also far more likely to own Marc Jacobs and Juicy Couture

BRAND OWNERSHIP: 18-24s INDEXED TO 25-64s

Shown in order of Ownership by 18-24s



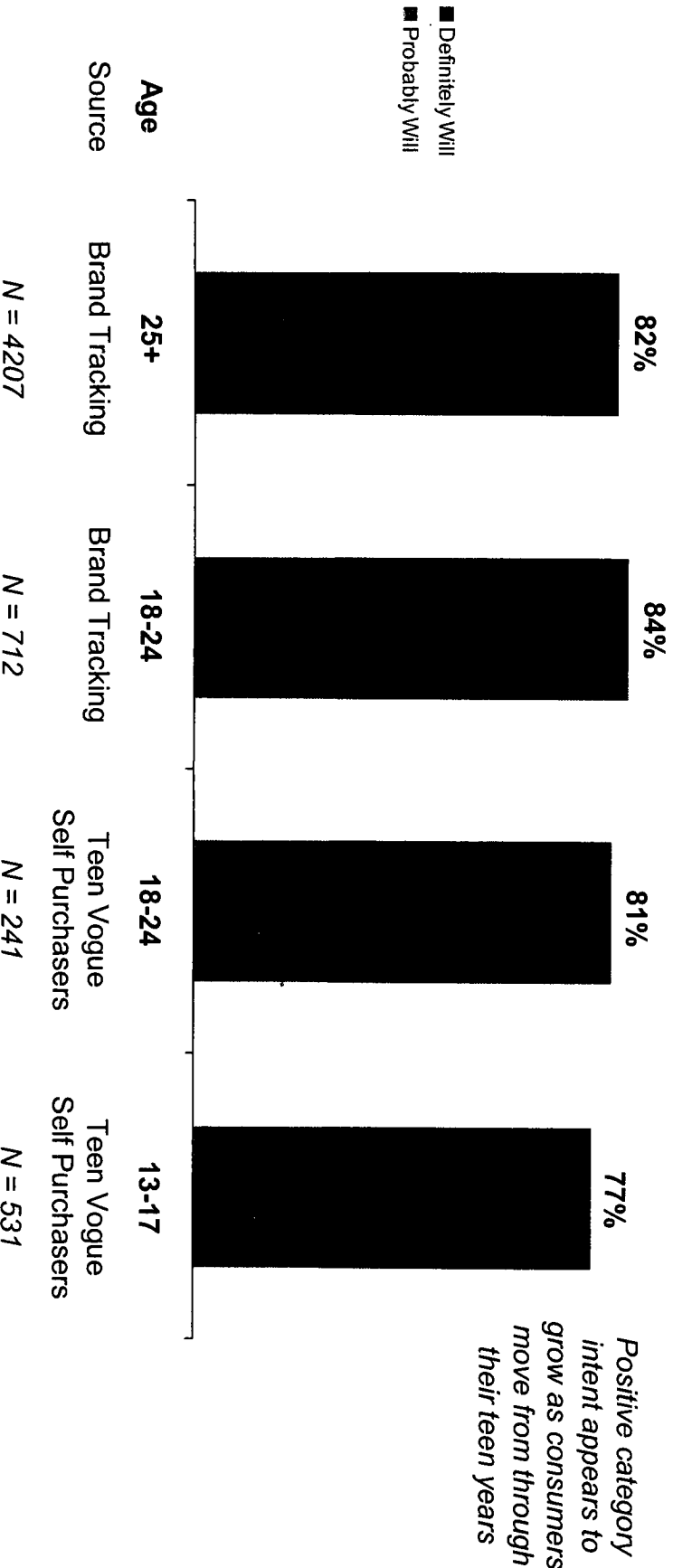
* Premium brands refer to all Accessible Luxury and Luxury brands

Source: US Brand Tracking July 2007

Category Purchase Intent

Young adults already have a high level of engagement in the handbag category with consistently high levels of purchase intent after their early teen years

HANDBAG CATEGORY 12 MONTH PURCHASE INTENT



Role of Parents

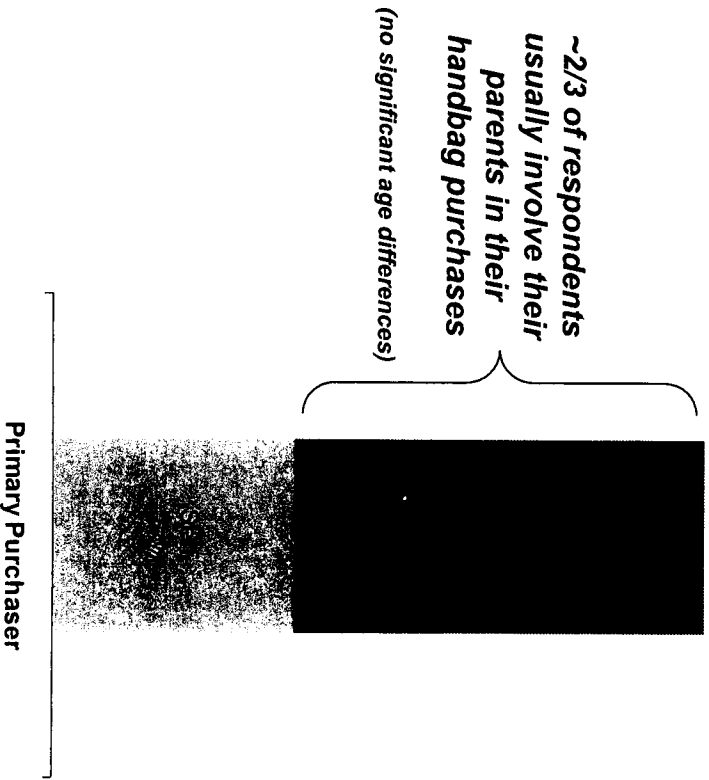
Parents play a significant role in handbag purchases for young adults and their involvement increases the average amount young consumers usually spend on a handbag

CONFIDENTIAL - FINANCIAL

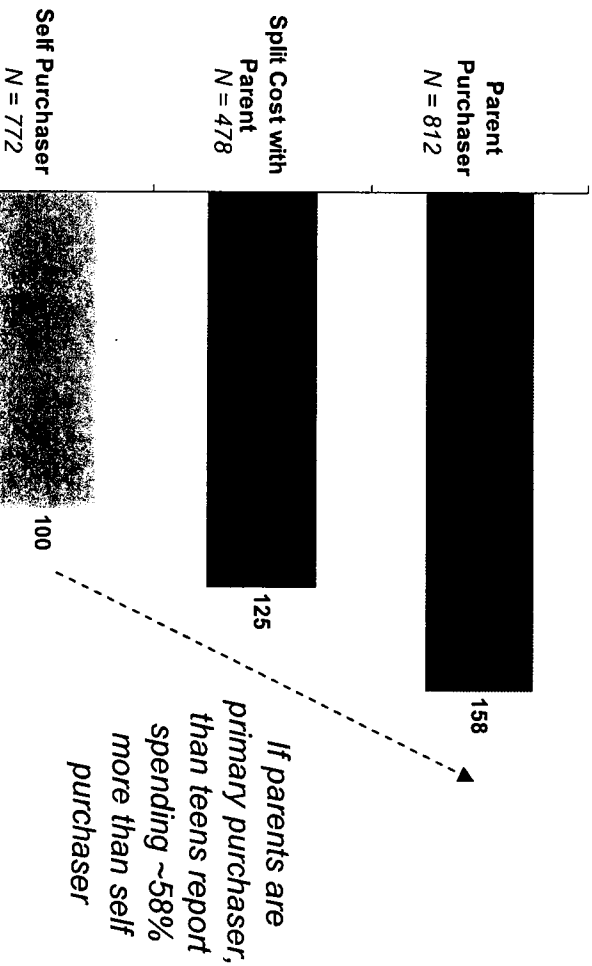
CSI 11462

PRIMARY HANDBAG PURCHASER

N = 2062



SPEND INDEXED TO SELF PURCHASER'S SPEND



Coach Owners and Non-Owners

Coach owners are more engaged in the handbag category than owners of other premium brands and more likely to have their handbags purchased at least in part by their parents

BEHAVIORAL CHARACTERISTICS COACH OWNERS VS PREMIUM* NON-COACH OWNERS

	Teen Vogue Coach Owners (N = 1152)	Teen Vogue Premium* Non-Coach Owners** (N = 515)
Average Age	16.5	16.5
Average number of premium handbag brands owned	4.7	2.2
% Luxury Owners	59%	51%
% Accessible Luxury Owners***	41%	49%
Primary HB Purchaser		
> Parent	38%	37%
> Split	33%	23%
> Self	29%	40%

Brands Owned:
Dooney & Bourke (29%)
Louis Vuitton (24%)
Juicy Couture (17%)
DKNY (15%)

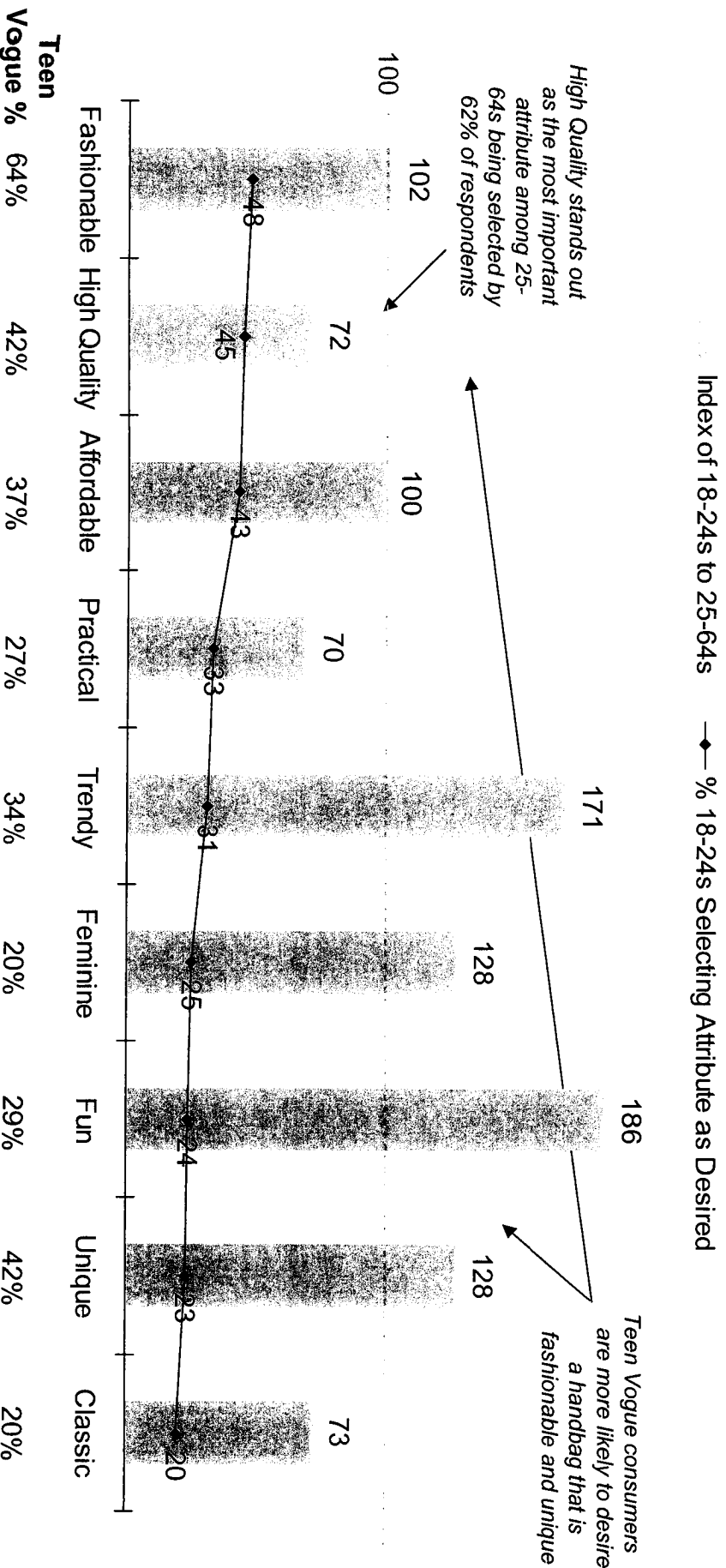
*Premium refers to Accessible Luxury or Luxury brands
**49% of Non-Coach Owners do not own any premium brands
***Accessible Luxury defined by highest level of premium brand owned
Source: Teen Vogue IT Girl Panel survey, November/December 2007

Desired Attributes

Although quality is still important to young consumers, they are more focused on trendiness, femininity and fun than older women

MOST DESIRED ATTRIBUTES IN A HANDBAG OR HANDBAG BRAND

Ranked in order of most desirable handbag attributes to 18-24 Yr Olds



Perceptions of Coach

Coach appears to fit the Teen Vogue consumer's desire for a fashionable handbag, but is not delivering as well on uniqueness and affordability

COACH ATTRIBUTES

Ranking of attribute importance

BRAND TRACKING, TARGET 18-24

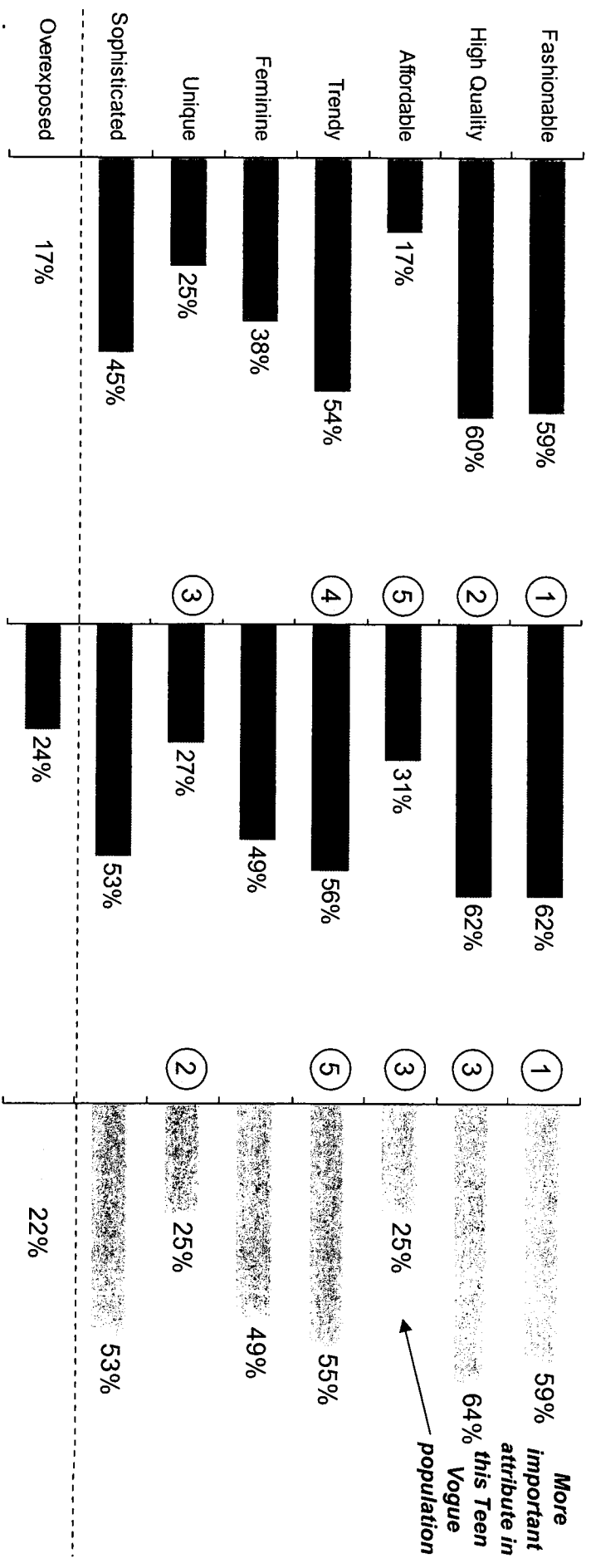
N = 386

TEEN VOGUE, COACH OWNERS

N = 1095

TEEN VOGUE, PREMIUM NON-COACH OWNERS

N = 504



More important attribute in this Teen Vogue population

* Coach attributes were consistent across age groups
Source: Teen Vogue IT Girl Panel survey, November/December 2007, US Brand Tracking July 2007

Change in Equities

Coach continues to gain favor with the fashionable Teen Vogue panelists, but Marc Jacobs appears to be gaining stronger momentum

ATTRIBUTE CHANGE: NET "BECOMING MORE" – "BECOMING LESS"

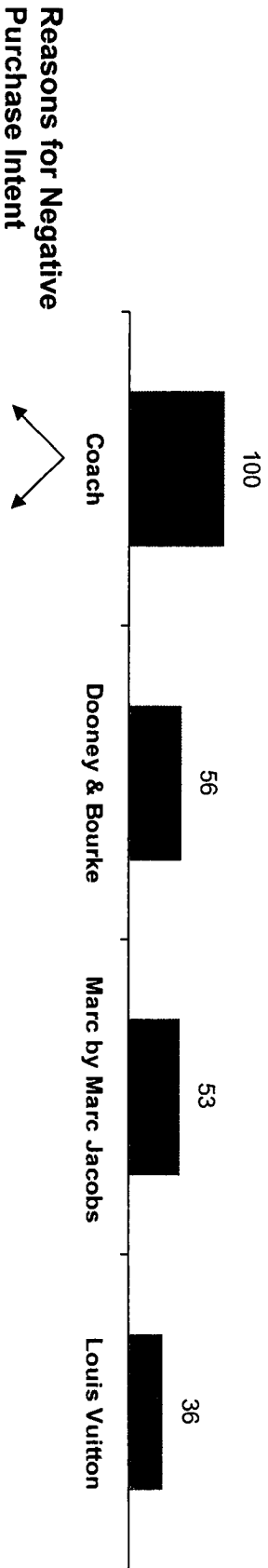
	Coach	Dooney & Bourke	Louis Vuitton	Gucci	Marc by Marc Jacobs
Fashionable	38%	34%	37%	44%	60%
High Quality	24%	19%	26%	35%	40%
For Me	18%	8%	8%	12%	41%
Affordable	-1%	-2%	-27%	-24%	-14%
Overexposed	21%	11%	23%	3%	5%

Q: Thinking of the [BRAND] brand over the last 12 months, please indicate how your opinion has changed with regard to each of the attributes. [Answer options: "Has become more", "Has become less", "Has not changed"]
Source: Teen Vogue IT Girl Panel survey, November/December 2007

Drivers of Purchase Intent

Coach has the highest positive purchase intent of brands surveyed – cost is the primary driver for negative purchase intent across brands

PURCHASE INTENT – ALL BRANDS INDEXED TO COACH



Reasons for Negative Purchase Intent	Coach (13-17)	Coach (18-24)	Dooney & Bourke	Marc by Marc Jacobs	Louis Vuitton
Too expensive	76%	60%	55%	79%	79%
Don't like their designs (incl. color, shape, size)	27%	41%	50%	13%	28%
Not functional for my needs/I don't need it	29%	35%	39%	24%	33%
Too trendy	15%	16%	17%	1%	10%
Not trendy enough	8%	11%	6%	1%	4%
N =	504	225	345	175	222

Design becomes a bigger focus among young adults

25% indicated they did not have access to Marc Jacobs

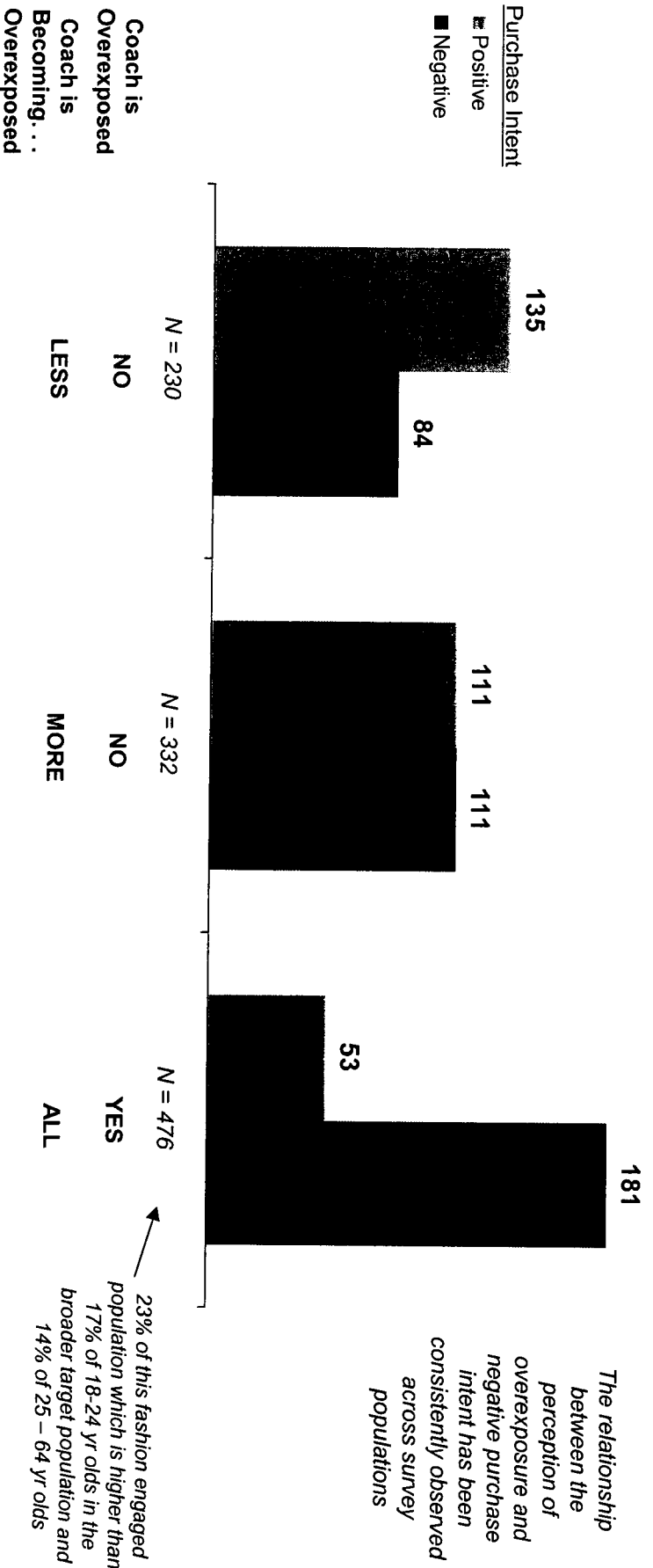
* Top 5 Reasons

Purchase intent asked on a 5 point scale
Source: Teen Vogue IT Girl Panel survey, November/December 2007

Overexposure and Purchase Intent

Teen Vogue respondents are more likely than their peers to perceive Coach as overexposed, which significantly reduces their future purchase intent

OVEREXPOSURE AND FUTURE COACH PURCHASE INTENT (VALUES INDEXED TO "NOT OVEREXPOSED AND NO CHANGE")

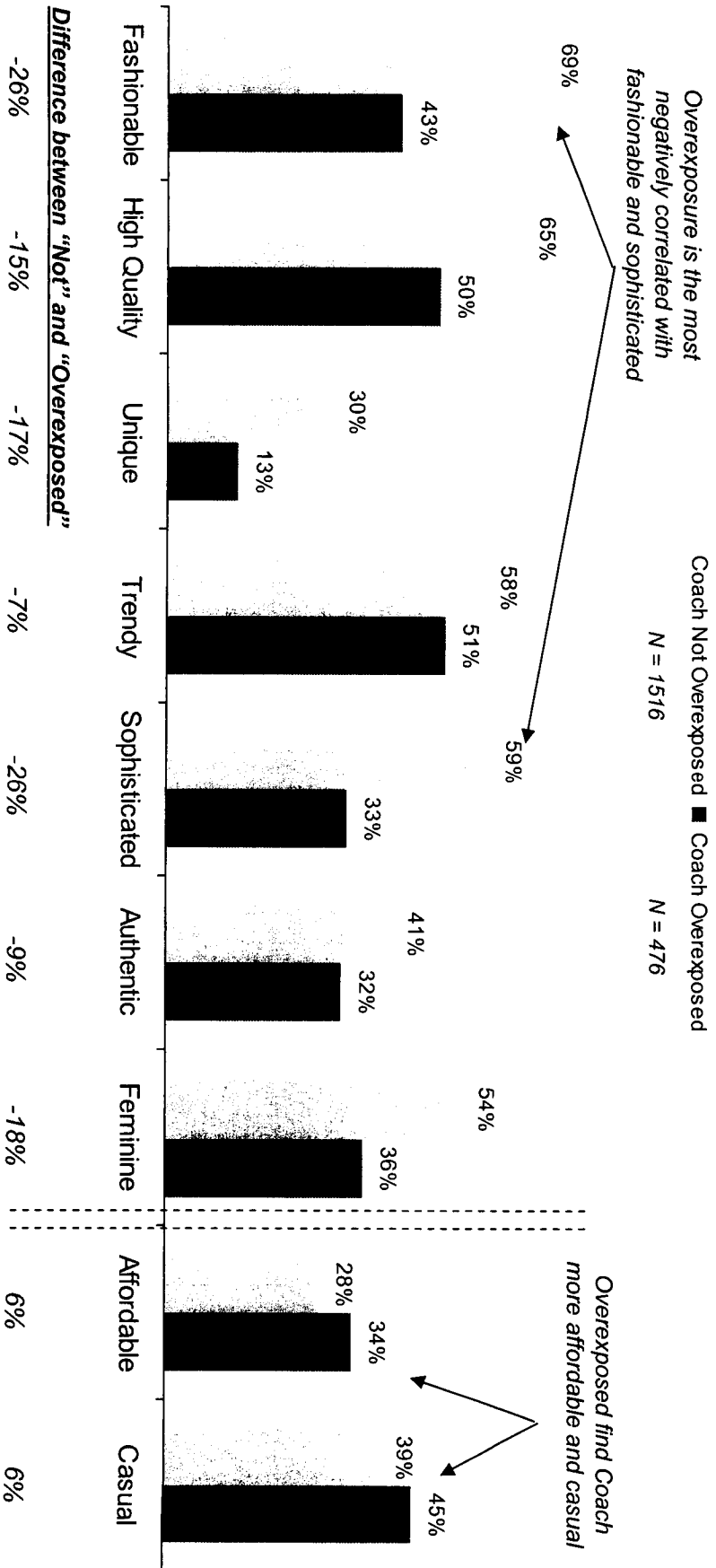


Purchase Intent indexed to current state group where Coach is not overexposed and has not changed
 Source: Teen Vogue IT Girl Panel survey, November/December 2007

Perceptions of Coach by Overexposed

Respondents who perceive Coach as "overexposed" also have lower perceptions of Coach on attributes like high quality and fashionable

ATTRIBUTIONS OF COACH



* Coach attributes were consistent across owners vs. premium non-Coach owner groups, and age groups

Source: Teen Vogue IT Girl Panel survey, November/December 2007

Characterizing Brands

Young consumers associated Coach with celebrities that could be characterized as "the girl next door", while Marc Jacobs may be more the aspirational "IN" crowd

CONFIDENTIAL - FINANCIAL

CSI 11470

BRAND AS CELEBRITY

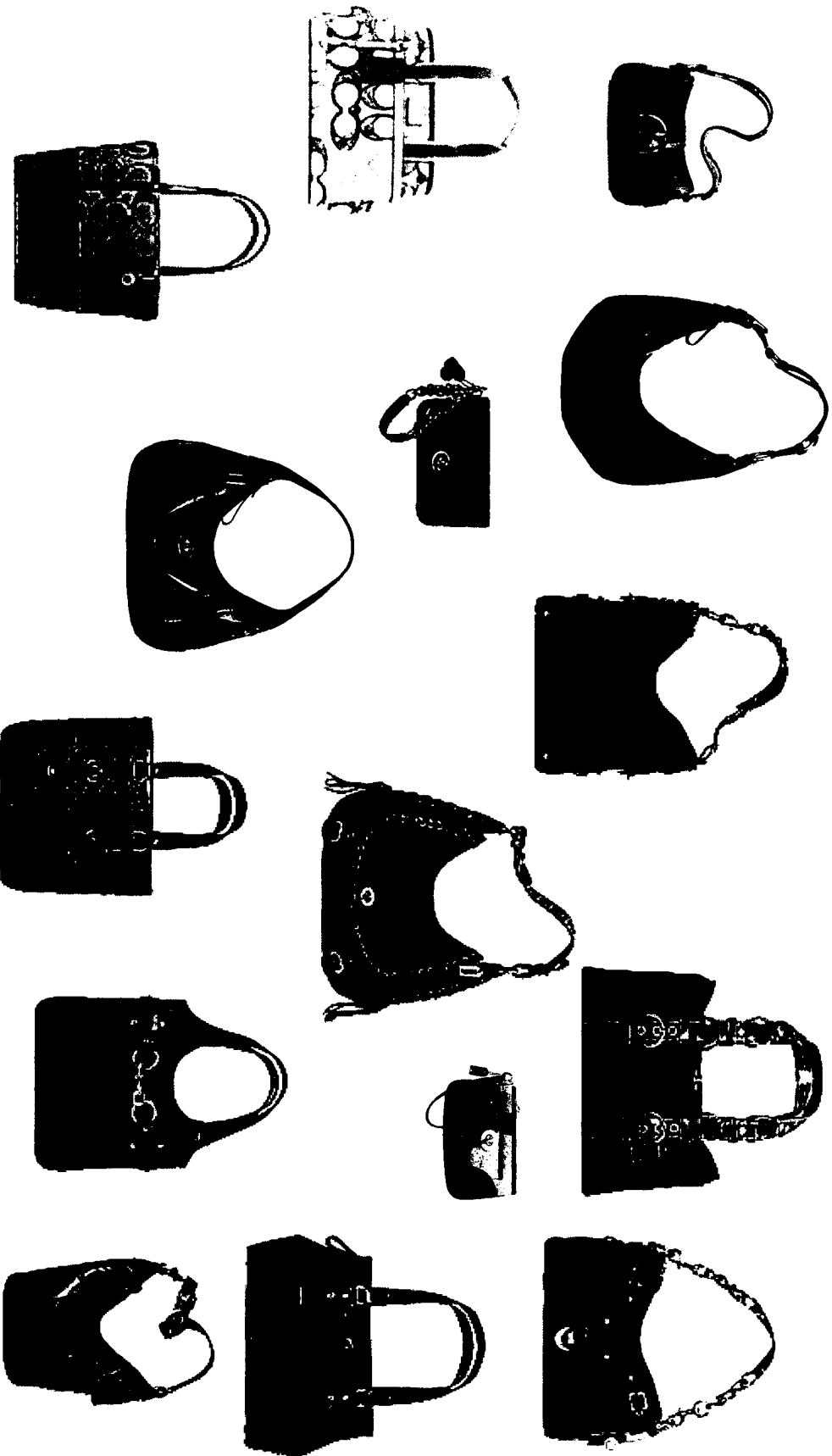
N = 2062

	Coach	Louis Vuitton	Gucci	Dooney & Bourke	Marc by Marc Jacobs	Frequently Mentioned Examples
High School	11%	3%	3%	48%	8%	Miley Cyrus, Emma Roberts, Hayden Panettiere
The "In" Crowd	28%	33%	22%	23%	47%	Lauren Conrad, Olsen twins, Paris Hilton
Older Girl Next Door	39%	34%	47%	19%	30%	Jennifer Garner, Katharine Heigl, Kate Hudson
Glamorous/ Sexy Aunt	3%	9%	11%	3%	5%	Jennifer Lopez, Kate Walsh, Catherine Zeta Jones
Mother	15%	15%	15%	5%	5%	Katie Couric, Diane Sawyer, Jamie Lee Curtis
Other	4%	7%	2%	1%	5%	Male celebrities, "classic" actresses (e.g. Audrey Hepburn)

Q: If [BRAND] were a celebrity, who would she be, and why?
Source: Teen Vogue IT Girl Panel survey, November/December 2007

Coach Bag Selection

Consumers were presented with 15 different Coach bags and asked to select their favorite



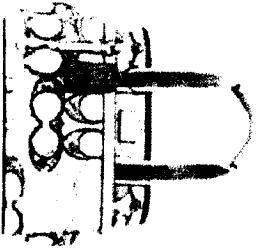
Question: Please select your favorite bag
Source: Teen Vogue IT Girl Panel survey, November/December 2007

CONFIDENTIAL -
FINANCIAL

CSI 11471

Favorite Handbags

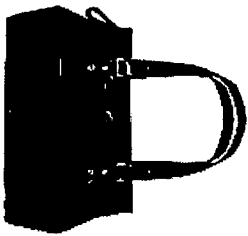
Among Teen Vogue respondents, younger teens were drawn to colors while older girls were looking for something unique



FAVORITE OF:

- 13 – 15 yr olds
- All levels of Coach purchase intent
- Typical reason:

"Love it because it's fun, colorful, and meant for people who are young and fun like me"



FAVORITE OF:

- 16 yrs old and up
- Positive Coach purchase intent
- Typical reason:

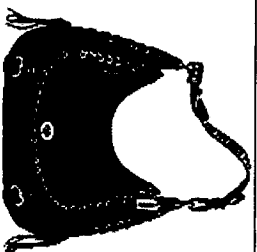
"It said Coach enough but not so much that it took away from the design"



FAVORITE OF:

- 16 yrs old and up
- Neutral Coach purchase intent
- Typical reason:

"It is unique, just like me, yet still casual"



FAVORITE OF:

- 16 yrs old and up
- View Coach as overexposed
- Typical reason:

"I love large bags that have unique details"

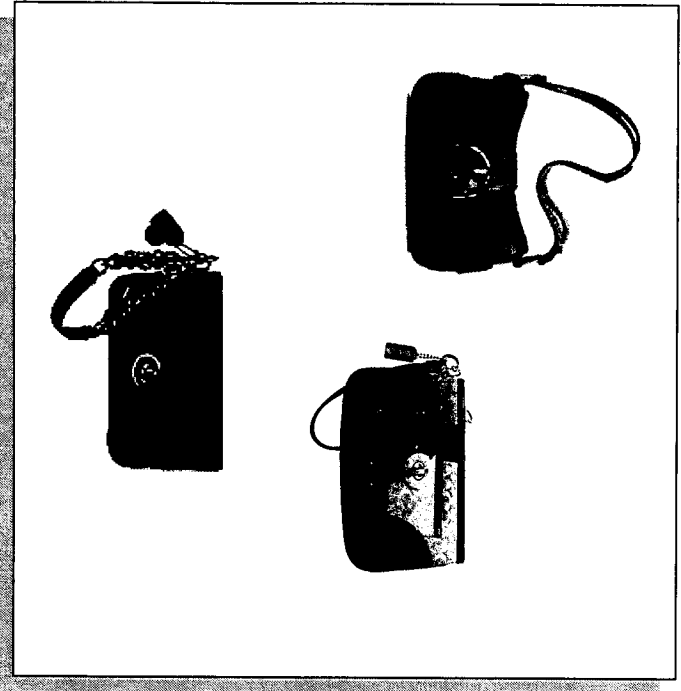
Respondents with positive Coach purchase intent were more likely to select a signature bag as their favorite, while those girls with lower Coach purchase intent gravitated to non-signature bags

Bag Selection

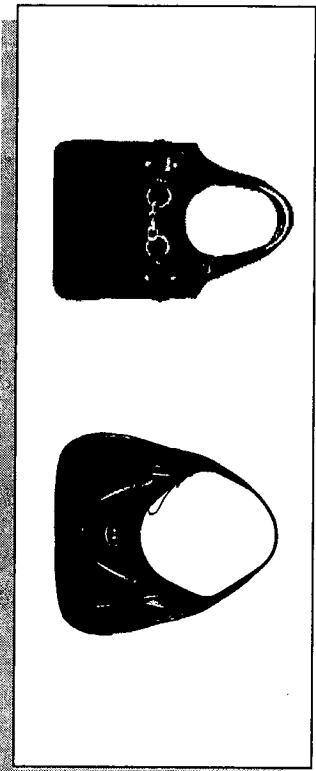
Smaller and plainer bags were among the Teen Vogue respondents least favorites

LEAST SELECTED HANDBAGS

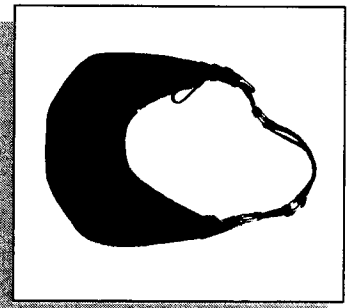
Small Bags



Ergo Bags



Plain Bags



*Question: Please select your favorite bag
Source: Teen Vogue IT Girl Panel survey, November/December 2007*

CONFIDENTIAL -
FINANCIAL

CSI 11473

Key Takeaways

- Younger women appear more engaged in the category – they demonstrate similar behavior and have higher awareness of fashion brands especially Marc Jacobs and Juicy Couture
- Parents play a significant role in purchasing handbags for young adults, and when they are involved the average price of handbag purchases increased by 25-50%
- Pricing is a primary concern of young adults - the primary driver of negative purchase intent across premium brands was that they couldn't afford it not that they didn't want it
- When asked what is important in a handbag or handbag brand, young adults are more likely to value fashion, uniqueness, trendiness, and fun
 - Young adults showed a preference for larger, unstructured silhouettes and bags they described as unique
 - Small bags and simpler silhouette are less appealing to this population
 - Marc Jacobs has strong brand to the fashion engaged young adult population
- Young adults are more likely to perceive Coach as “overexposed” than older women and this perception increases in the fashion engaged population – young adults who describe Coach as “overexposed” view Coach as “casual and affordable” and have lower future purchase intent

Agendas/Datebooks, Checkbooks, Passports

Domestic Channels

POS SALES \$ and Qty

Act 2004-Act 2006

Total Domestic Channels	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$1,674,347	\$1,608,917	\$1,591,568	130,339	129,699	129,899
Total Planners and Portfolios	\$4,137,392	\$5,084,809	\$5,123,104	\$25,724	\$37,837	\$39,627
Total Business Card Holders	\$5,870,955	\$5,765,874	\$7,499,402	107,628	110,569	136,703
Total Checkbooks	\$25,650,940	\$20,518,206	\$19,037,114	136,804	118,819	111,431
Total Passports	\$373,454	\$409,621	\$332,058	5,790	6,838	5,405

Domestic Full Price	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$994,567	\$949,313	\$957,446	78,632	78,698	79,310
Total Planners and Portfolios	\$3,146,688	\$3,146,688	\$3,146,688	17,973	25,580	23,756
Total Business Card Holders	\$4,692,021	\$4,517,558	\$5,749,158	79,140	77,179	90,024
Total Checkbooks	\$12,262,160	\$10,055,862	\$9,251,308	60,950	54,921	47,198
Total Passports	\$334,362	\$304,715	\$252,484	5,174	4,624	3,780

US Wholesale	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$0	\$0	\$53	0	0	4
Total Planners and Portfolios	\$803	\$1,796	\$13,096	16	32	127
Total Business Card Holders	\$8,771	\$129,901	\$575,995	154	2,588	10,709
Total Checkbooks	\$9,308,875	\$7,584,954	\$6,751,129	47,035	43,395	38,752
Total Passports	\$414	\$276	\$10,764	3	2	96

Coach Factory	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$170,059	\$172,615	\$185,074	14,410	13,689	15,373
Total Planners and Portfolios	\$443	\$4,628	\$9,068	4	35	95
Total Business Card Holders	\$373	\$2,463	\$6,132	8	37	91
Total Checkbooks	\$4,883	\$6,372	\$45,811	33	43	449
Total Passports	\$476	\$1,282	\$272	7	21	4

Coach Special Programs	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$1,024	\$1,151	\$809	156	168	130
Total Planners and Portfolios	\$37,298	\$292,575	\$289,757	679	6,372	7,901
Total Business Card Holders	\$28,252	\$160,082	\$187,094	1,597	7,327	12,706
Total Checkbooks	\$130,193	\$144,876	\$366,537	2,246	2,155	8,327
Total Passports	\$598	\$7,672	\$27,441	18	404	910

Coach Special Markets	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$349	\$1,813	\$345	38	211	52
Total Planners and Portfolios	\$420,724	\$352,251	\$509,515	4,399	3,470	5,222
Total Business Card Holders	\$684,150	\$489,335	\$507,488	18,803	15,391	15,031
Total Checkbooks	\$2,626,732	\$1,407,286	\$1,299,025	19,984	11,455	10,068
Total Passports	\$2,883	\$43,846	\$623	71	1,018	16

Direct	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$225,335	\$243,787	\$275,515	16,879	18,768	21,490
Total Planners and Portfolios	\$15,456	\$25,878	\$31,376	103	191	230
Total Business Card Holders	\$12,158	\$21,304	\$28,305	316	437	532
Total Checkbooks	\$44,749	\$45,507	\$49,956	500	794	581
Total Passports	\$449	\$1,782	\$2,462	13	33	40

Catalog	Net POS Sales \$			Net POS Sales Qty		
	Act 2006	Act 2005	Act 2004	Act 2006	Act 2005	Act 2004
Total Paper and Accessories	\$283,013	\$240,238	\$172,326	20,224	18,165	13,540
Total Planners and Portfolios	\$515,980	\$386,976	\$399,138	2,550	2,157	2,296
Total Business Card Holders	\$445,230	\$445,230	\$445,230	7,610	7,610	7,610
Total Checkbooks	\$1,273,348	\$1,273,348	\$1,273,348	6,056	6,056	6,056
Total Passports	\$0	\$0	\$0	504	736	559

From: Audrey Bello

Sent: Wednesday, June 28, 2006 6:04 PM

To: Kira Doughan

Cc: Rana Kashani; Andrea Ratimorszky

Subject: RE: Coach eyeglasses

Hi Kira,

Here is the information that you requested for Domestic eyewear shipments and Ad spend:

	Shipments	Ad Spend
FY04 (Contract began October 2003)	\$ 8.7MM	\$432 K
FY05	\$19.6MM	\$755 K
FY06 (through 5/31, w/ June estimated)	\$30.9MM	\$891 K

Shipments is the number on which Marchon pays royalty to Coach. I am out tomorrow and Friday, if you have any further questions on this, Andrea Ratimorszky or Rana Kashani can help you.

Thanks,

Audrey

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

COACH SERVICES, INC.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Opposition No.
	:	91170112
TRIUMPH LEARNING LLC,	:	
	:	
Defendant.	:	
	:	

TRANSCRIPT of the testimony of CAROLE P. SADLER as taken by and before BETH J. SPINNER, a Certified Shorthand Reporter and Notary Public of the State of New York at the law offices of COOPER & DUNHAM, 1185 Avenue of the Americas, New York, New York on Monday, October 27, 2008, commencing at 10:00 a.m.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A P P E A R A N C E S

COOPER & DUNHAM
BY: NORMAN H. ZIVIN, ESQ.,
Attorneys for the Plaintiff

GOODWIN PROCTER, LLP
BY: R. DAVID HOSP, ESQ.,
Attorney for the Defendant.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
CAROLE SADLER				
By Mr. Zivin	5			
By Mr. Hosp			34	

E X H I B I T S

<u>IDENT.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
450	Opposer's Answers to Applicant's First Set of Interrogatories	8
451	Book	15
452	Book entitled "Fighter"	16
453	Collection of advertising	23
454	Coach Leatherwear versus Ann Taylor case	25
455	Coach versus We Care Trading Case	26
456	Market study	27
457	Document entitled "Coach 60 Years of American Style"	29
458	Sales data	30
459	Videotape entitled "Coach Counterfeit Identification Training"	31

1 IT IS HEREBY STIPULATED, by and between the
2 attorneys for the respective parties hereto, that:

3 All rights, including that right to object to
4 any question, except as to form, or to move to
5 strike any testimony at this examination is
6 reserved; and in addition, the failure to object to
7 any question or to move to strike any testimony at
8 this examination shall not be a bar or waiver to
9 make such motion at, and is reserved to, the trial
10 of this action.

11 This deposition may be sworn to by the
12 witness being examined before a notary public,
13 other than the notary public before whom this
14 examination was begun. But the failure to do so or
15 to return the original of the deposition to
16 counsel, shall not be deemed a waiver of rights.

17 The filing of the original of this deposition
18 is waived.

19
20
21
22
23
24
25

Sadler - direct

1 C A R O L E S A D L E R, having a temporary
2 residence at 17 Warren Street, Number 3, New
3 York, New York, having been duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION BY MR. ZIVIN:

6 Q. Miss Sadler, are you currently
7 employed?

8 A. Currently I am consulting for Coach. I
9 "retired" officially in June of this year after
10 eleven years.

11 Q. When did you start with Coach?

12 A. In March of 1997.

13 Q. And now you are consulting with Coach?

14 A. Correct.

15 Q. During the period that you were with
16 Coach, could you tell us your various job titles
17 and responsibilities?

18 A. When I was hired in March of 1997 I was the
19 vice-president and general counsel for Coach, Inc.,
20 a subsidiary of Sara Lee Corporation.

21 In 2000 when Coach went public, I was
22 promoted to senior vice-president, general counsel,
23 and secretary of Coach, Inc., standalone public
24 company. That is the position I held until I
25 retired in June of this year.

B. SPINNER ASSOCIATES

Sadler - direct

1 Q. Did you ever hold a title of corporate
2 secretary?

3 A. Yes.

4 Q. When did you have that title?

5 A. I believe I testified that when Coach went
6 public I was made the general counsel and secretary
7 of the company.

8 Q. Were you ever part of the management
9 committee at Coach?

10 A. Since the inception of my employment in 1997
11 I have always been a member of the executive
12 committee.

13 Q. And did you, during your tenure with
14 Coach, have access to the books and records of the
15 company?

16 A. Yes.

17 Q. Prior to your tenure with Coach did
18 you have any experience with consumer products or
19 retailing?

20 A. Yes.

21 Q. What was that?

22 A. Prior to Coach I was the assistant general
23 counsel at Saks Fifth Avenue where my
24 responsibilities included, among other things,
25 legal issues relating to trademark, copyright,

B. SPINNER ASSOCIATES

Sadler - direct

1 advertising, consumer issues, and the like.

2 Prior to Saks I was litigation
3 associate at White & Case. Before that a couple of
4 other firms where I was a litigator but my area of
5 general specialty was trademark and copyright.

6 Q. During what period of time were you
7 with Saks Fifth Avenue?

8 A. 1991 through 1997.

9 Q. You said you were a general counsel.
10 Of what states are you admitted to the bar?

11 A. New York State.

12 Q. When you started with Coach in 1997
13 what types of products did Coach sell?

14 A. Coach sold accessories, handbags, small
15 leather goods, office accessories, travel
16 accessories, luggage, mens and womans, for most of
17 the categories I just named.

18 And I believe that covers it.

19 Q. At the time you retired in 2008, what
20 types of products did Coach sell?

21 A. All of those I named, plus eye wear,
22 fragrance and cosmetics, furniture, watches and
23 time pieces. From time to time we, during the
24 period I was at Coach we sold interiors to cars,
25 cameras, iPod covers. There were a lot of

B. SPINNER ASSOCIATES

Sadler - direct

1 evolutions of the product to meet the different
2 consumer products that became popular during the
3 time I was at Coach.

4 We even did publish a few books.

5 Q. Are you generally familiar with the
6 trademark system of classification used by the U.S.
7 Patent & Trademark Office?

8 A. Generally, yes.

9 Q. Has Coach sold any goods which are
10 classified in Class 9?

11 A. Yes.

12 Q. What goods do you recall?

13 A. That would be the eye wear primarily.

14 And I believe there is a list that I
15 provided in my interrogatory answers, that would
16 help me.

17 MR. ZIVIN: We are going to start with
18 450. I'll ask the reporter to mark as 450,
19 Opposer's Answers to Applicant's First Set of
20 Interrogatories.

21 (Opposer's Answers to Applicant's
22 First Set of Interrogatories received and marked
23 Exhibit 450 for Identification.)

24 Q. You referred to providing a list in
25 response to interrogatory answers, is that correct?

B. SPINNER ASSOCIATES

Sadler - direct

1 A. Yes.

2 Q. Now Exhibit 450 has a verification,
3 page 13.

4 A. Yes.

5 Q. Did you verify these answers?

6 A. Yes, I did.

7 Q. So let's look at interrogatory number
8 three.

9 A. Yes.

10 Q. Can you tell us what, if this is the
11 answer to which you referred?

12 A. Yes, it was. It includes eye classes, as I
13 stated earlier, and then cameras, camera cases, eye
14 glass frames, eye glass cases, sunglasses, cellular
15 phone cases, computer cases, computer accessory
16 cases.

17 Q. Has Coach sold any goods which are
18 classified by the Patent and Trademark Office in
19 Class 16?

20 A. Yes, it has.

21 Q. Can you tell us from memory what goods
22 you are talking about?

23 A. This would be the, what I sort of call the
24 office accessories category, diaries, diary covers,
25 desk sets, then things like passport covers,

B. SPINNER ASSOCIATES

Sadler - direct

1 checkbook covers, computer cases.

2 Beyond that I would need to refresh my
3 memory.

4 Q. How would you refresh your memory?

5 A. I believe I answered an interrogatory on that
6 class as well.

7 Q. Referring to 450, interrogatory number
8 five?

9 A. Yes.

10 Q. Is that the answer to which you had
11 referenced?

12 A. Yes.

13 Q. Would you tell us if that refreshes
14 your recollection as to which Class 16 goods Coach
15 sold?

16 A. Yes, it pretty much states what I testified
17 to already, but just for sake of inclusiveness, it
18 specifies desk pads, desk file trays, memo boxes,
19 pencil cups, business card holders, paper weights,
20 planning diaries, daily business planners, agendas,
21 pens, pencil, checkbook covers, passport covers,
22 checkbook cases and pocket secretaries.

23 Q. A little while ago you referred to
24 Coach publishing some books.

25 A. Yes.

B. SPINNER ASSOCIATES

Sadler - direct

1 Q. What books has Coach published?

2 A. From time to time Coach has published books
3 either about its history, such as a title called,
4 "Portrait of a Leather Goods Factory" or it has
5 held the copyright in and/or published books on
6 subjects that are not directly related to our
7 business but which were authored and photographed
8 by our executive creative director, such as the
9 most recent book called "Fighter," which is
10 available on Amazon.com, and is seen by the company
11 as appropriate extension because it relates to
12 marketing and cache of the brand and the name that
13 our creative director be involved in projects that
14 are not exactly specifically related to the
15 products that we sell.

16 MR. HOSP: I am just going to put on
17 the record an objection. We will be objecting to
18 the extent the testimony differs from the testimony
19 given at the 30(b)6 deposition and to the extent
20 the documents have not been produced with respect
21 to these.

22 Q. You referred to a book called
23 "Portrait of a Leather Goods Factory," is that
24 correct?

25 A. Yes.

B. SPINNER ASSOCIATES

Sadler - direct

1 Q. I direct your attention to, it is
2 attached to the notice of reliance, 213.

3 MR. HOSP: May I have a copy of that?

4 MR. ZIVIN: I am going to give you one
5 right now.

6 MR. HOSP: Thank you.

7 BY MR. ZIVIN:

8 Q. I am not going to mark the original
9 since we only have one of them. But I will show
10 you the original, if you wish to identify that one.

11 A. This is the book I was referring to,
12 "Portrait of a Leather Goods Factory."

13 Q. You can show it to counsel so he can
14 see it.

15 Was that book published by Coach?

16 A. Yes.

17 Q. And is it still available today?

18 A. Yes.

19 Q. Is the book advertised or distributed
20 through any means today?

21 A. I know it is available on Amazon.com.

22 Q. When did you check that?

23 A. Today.

24 MR. HOSP: I'll just lodge the same
25 objection. We will be cross examining, reserving

Sadler - direct
1 the rights to object.

2 BY MR. ZIVIN:

3 Q. Let me show you another book which has
4 been marked as Exhibit 215. Let me show you the
5 original, we won't mark the original. Is that a
6 book that was published by Coach?

7 A. It was actually published by Assouline,
8 A-S-S-O-U-L-I-N-E.

9 Q. Do you recall when this book was
10 published?

11 A. 2002.

12 Q. Is this book distributed today?

13 A. Yes.

14 Q. How do you know it is distributed
15 today?

16 A. Again, I checked today to see if this book is
17 available and it is on the internet for sale.

18 Q. Let me show you another book that's
19 been attached to the notice of reliance as Exhibit
20 214. Are you familiar with Exhibit 214?

21 A. Yes.

22 Q. We'll have the original here, we can
23 show it to counsel as well.

24 MR. HOSP: If I can see the original
25 of the other one as well.

B. SPINNER ASSOCIATES

Sadler - direct

1 BY MR. ZIVIN:

2 Q. When was this book published?

3 A. This was published in 2006 on the occasion of
4 the company's 65th anniversary and it was published
5 by Coach.

6 Q. Is this book currently distributed?

7 A. Yes.

8 Q. How do you know that?

9 A. Again, I checked on the internet today and
10 this book is available for sale.

11 Q. Let me show you another book which we
12 will have the reporter mark as Exhibit 451.

13 MR. HOSP: Do we not have an entire
14 copy of this?

15 MR. ZIVIN: No we don't.

16 MR. HOSP: I am going to object to it
17 then.

18 MR. ZIVIN: Here is the original, you
19 can inspect it.

20 MR. HOSP: Has this document been
21 produced?

22 MR. ZIVIN: No.

23 MR. HOSP: Since it is not bates
24 labeled.

25 MR. ZIVIN: No it has not been

B. SPINNER ASSOCIATES

Sadler - direct

1 produced.

2 MR. HOSP: Have all of the others been
3 produced?

4 MR. ZIVIN: We believe they have.

5 MR. HOSP: They were produced prior to
6 the notice of reliance?

7 MR. ZIVIN: Yes, they were produced.
8 But there are two books that are more recent than
9 that so they were not previously produced.

10 (Book received and marked Exhibit 451
11 for Identification.)

12 BY MR. ZIVIN:

13 Q. I show you Exhibit 451.

14 MR. HOSP: You are just marking the
15 excerpt?

16 MR. ZIVIN: No I am going to mark the
17 book but I do not have a copy at this point.

18 BY MR. ZIVIN:

19 Q. Have you seen that book before?

20 A. Yes.

21 Q. And was this book published by Coach?

22 A. This book was published by Reed Krakoff,
23 among others, K-R-A-K-O-F-F in commemoration, in
24 2007, sorry, let me just see the copyright, 2006, I
25 am sorry, on the occasion of an exhibit that is

B. SPINNER ASSOCIATES

Sadler - direct

1 referenced here as co-sponsored by Coach, Inc.

2 Q. Is that book publicly distributed
3 today?

4 A. Yes.

5 Q. How do you know that?

6 A. I checked on the internet today and it is
7 currently available for sale.

8 Q. I am going to ask the reporter to mark
9 as Exhibit 452, another book entitled "Fighter."

10 (Book entitled "Fighter" received and
11 marked Exhibit 452 for Identification.)

12 MR. ZIVIN: Again, I do not have a
13 full copy of 452, so I am just giving you some
14 pages. We'll provide a copy in due course.

15 MR. HOSP: And again, just for the
16 record, I object.

17 BY MR. ZIVIN:

18 Q. Are you familiar with this book?

19 A. Yes, I am.

20 Q. Was this book published by Coach?

21 A. The book is published by the Penguin Group, a
22 Division of Viking Studio, 2008. It just came out.
23 The copyright is held in Coach's name.

24 Q. Who is the author of this book?

25 A. Reed Krakoff.

B. SPINNER ASSOCIATES

Sadler - direct

1 Q. What is his position?

2 A. He is the executive creative director of
3 Coach, Inc.

4 Q. Has Coach ever been mentioned in any
5 books published by others?

6 A. Yes.

7 Q. Has Coach been the subject of any
8 textbooks for the educational industry?

9 A. Yes.

10 Q. I am going to show you a document
11 which has been marked as Exhibit 216 in the notice
12 of reliance.

13 MR. HOSP: Do you have a copy of that,
14 Norm?

15 MR. ZIVIN: Hold on one second. I
16 should have. Yes, I do.

17 MR. HOSP: Thank you. Is this the
18 entire book?

19 MR. ZIVIN: No it is the chapter of
20 the book.

21 MR. HOSP: We are going to object to
22 the introduction of this. Do you have a copy of
23 the entire book?

24 MR. ZIVIN: No, we do not.

25 MR. HOSP: Has a copy of the entire

B. SPINNER ASSOCIATES

Sadler - direct

1 book been produced?

2 MR. ZIVIN: No.

3 I am sure you can buy one from the
4 publisher if you wish.

5 BY MR. ZIVIN:

6 Q. Exhibit 216, can you tell us what that
7 is?

8 A. It is a chapter in a marketing textbook where
9 Coach is included as a case study.

10 Q. Did Coach contribute to the
11 information that is shown in 216?

12 A. It provided factual information to the
13 textbook writers and authorized their inclusion of
14 the company as a marketing study.

15 Q. Has Coach published any catalogues?

16 A. Yes.

17 Q. For how long has Coach published
18 catalogues?

19 A. Decades.

20 Q. Are those catalogues distributed to
21 the public?

22 A. Yes, they are.

23 Q. About how often does Coach publish a
24 catalogue?

25 A. At least quarterly.

B. SPINNER ASSOCIATES

Sadler - direct

1 Q. And to what types of persons does
2 Coach distribute its catalogues?

3 A. Coach, like other consumer companies,
4 maintains a data base of people who have been
5 previous customers or who have provided their
6 mailing information to the company or whom the
7 company believes are potential customers and may
8 mail catalogues to those individuals.

9 The company also includes copies of
10 the catalogue in, along with the purchase of a
11 product in one of the stores as an insert in the
12 shopping bag.

13 Q. Does Coach make any effort to exclude
14 educators and teachers from its customer base?

15 A. No, not at all.

16 Q. What generally are the demographics of
17 the Coach customer base?

18 A. Coach customer base is female. I believe,
19 although this is not my expertise, I have seen many
20 marketing studies done that it is -- she is
21 generally between 25 and 65 and she spans from
22 middle income to lower middle income and then there
23 are also what we would consider to be higher end
24 consumers as well, within that age demographic.

25 Q. Does Coach exclude teachers and

B. SPINNER ASSOCIATES

Sadler - direct
educators from its customers?

A. Not at all. In fact that bracket, whether public or private school teachers is in some of the studies I have seen, the exact demographic of the consumer that we target.

MR. HOSP: I am going to object to the extent those specific studies have not been produced.

BY MR. ZIVIN:

Q. You mentioned stores. Does Coach have stores?

A. Yes.

Q. About how many stores does Coach have?

A. Between full price stores and factory stores in the United States?

Q. Yes.

A. About 400.

Q. Are Coach products distributed through stores other than Coach stores?

A. Yes.

Q. What types of stores?

A. Department stores.

Q. About how many department stores are Coach products sold in the United States?

A. The door number, I don't know exactly, but I

B. SPINNER ASSOCIATES

Sadler - direct

1 think it is close to a thousand doors.

2 Q. Does Coach have any distribution over
3 the internet?

4 A. Yes, we have a web site, Coach.com.

5 Q. Is that an interactive web site?

6 A. Yes.

7 Q. So the products are sold through the
8 web site?

9 A. Correct.

10 Q. Does Coach ever prepare any audio or
11 videotapes?

12 A. Yes.

13 Q. What kind of audio tapes or videotapes
14 do you prepare?

15 A. Mostly, and not only tapes, I mean also DVD
16 or CDs now, but for training, internal training
17 purposes, at functions such as the store managers
18 annual conferences, there are videos done. Also
19 for marketing and advertising purposes there are
20 videos that may be projected in the stores. There
21 are product tools that are also created that may
22 help with training and development of our
23 associates.

24 Q. Does Coach prepare any materials for
25 use by government agencies?

B. SPINNER ASSOCIATES

Sadler - direct

1 A. Can you clarify the question?

2 Q. Does Coach prepare any materials for
3 use by, for example, U.S. Customs?

4 A. Oh absolutely. We do training written
5 materials as well as courses and including visual
6 aids such as anti-counterfeiting tapes or DVDs,
7 whatever the medium is, to assist U.S. Customs in
8 identification of Coach counterfeits and Coach
9 authentic product.

10 Q. Is that for an educational purpose?

11 A. It is for training and education so that the
12 customs officers are alert to the issue of Coach
13 counterfeits and are armed with the information
14 they need to police the borders.

15 Q. Does Coach engage in advertising?

16 A. Yes.

17 Q. What kind of advertising does Coach
18 engage in?

19 A. Newspaper, magazine, billboard, bus kiosk.

20 Q. How long has that been going on?

21 A. As long as I have been at the company and
22 decades before. In fact our founder, Miles Kahn,
23 kept a catalogue, if you will, or a binder of ads
24 that Coach used from the beginning of time, really,
25 when he was with the company and it has been

B. SPINNER ASSOCIATES

Sadler - direct

1 produced in this matter, I believe. That would
2 show the earliest years of Coach advertising.

3 Q. Let's mark as 453, a collection of
4 advertising.

5 (Collection of advertising received
6 and marked Exhibit 453 for Identification.)

7 Q. Are you familiar with 453?

8 A. Yes.

9 Q. You referred to a collection kept by
10 Miles Kahn?

11 A. Yes.

12 Q. Is that this document which has been
13 marked 453?

14 A. Yes.

15 Q. Did he produce this copy to you?

16 A. Yes. It shows ads going back as early as
17 1977.

18 Q. About how much does Coach spend on
19 advertising every year?

20 A. Currently we spend about 30 to \$60 million a
21 year. If you include design and promotional
22 expenditures with the advertising, it is closer to
23 125 million.

24 Q. Annually?

25 A. Annually, yes.

B. SPINNER ASSOCIATES

Sadler - direct

1 Q. And is that information available
2 publicly?

3 A. Yes, it is in our annual report.

4 Q. What are Coach's sales approximately
5 today?

6 A. About three-and-a-half billion dollars.

7 Q. Is that information available
8 publicly?

9 A. Yes.

10 Q. Is Coach a public company?

11 A. Yes.

12 Q. So it reports that information
13 publicly?

14 A. Yes.

15 Q. We spoke a few moments ago regarding
16 anti-counterfeiting and customs. Does Coach take
17 any steps to enforce its trademark rights?

18 A. Yes.

19 Q. Such as what steps?

20 A. Coach polices the marketplace both
21 domestically and internationally for either
22 counterfeits or trademark infringements of our
23 famous mark Coach. We have programs with local
24 police departments, such as the NYPD and U.S.
25 Customs, as I spoke about already. We have also

B. SPINNER ASSOCIATES

Sadler - direct

1 employed private investigators in various, the
2 various states of the country as well as overseas
3 to police the marketplaces, such as flea markets
4 and leads we might get on infringing activities.

5 We send cease and desist letters. We
6 follow up with lawsuits. We do civil seizures, and
7 criminal seizures in conjunction with U.S. Customs
8 or local law enforcement.

9 It is a subject area we take very
10 seriously and employ our resources as best we can
11 to police against abuses of our intellectual
12 property.

13 Q. Have there been any reported decisions
14 in which courts have commented upon Coach's
15 trademark rights?

16 A. Yes.

17 Q. Let me mark as 454 a copy of a case,
18 Coach Leatherwear versus Ann Taylor.

19 (Coach Leatherwear versus Ann Taylor
20 received and marked Exhibit 454 for
21 Identification.)

22 Q. Were you involved in that case, Miss
23 Sadler?

24 A. No, it is prior to my time at Coach. But I
25 am familiar with it.

B. SPINNER ASSOCIATES

Sadler - direct

1 Q. What is your familiarity with it?

2 A. I read it before I joined Coach and I
3 certainly read it after I joined Coach.

4 Q. Were there aspects of the case that
5 were ongoing at the time you joined the company?

6 A. There were aspects of the case involving
7 Laura Leather Goods that survived after the Ann
8 Taylor piece was decided. So we did have an
9 ongoing matter with Laura Leather Goods, who were
10 the manufacturers of the product that Ann Taylor
11 was selling.

12 Q. They're named as one of the defendants
13 in this decision?

14 A. Correct.

15 (Coach versus We Care Trading received
16 and marked Exhibit 455 for Identification.)

17 Q. Let me show you a copy of another
18 decision which I will mark as 455, Coach versus We
19 Care Trading.

20 MR. HOSP: For the record, we are
21 obviously going to object to the introduction of
22 cases but you can continue.

23 BY MR. ZIVIN:

24 Q. Are you familiar with this decision,
25 Miss Sadler?

B. SPINNER ASSOCIATES

Sadler - direct

1 A. Yes.

2 Q. Were you involved in the case of Coach
3 versus We Care Trading?

4 A. Yes.

5 Q. Did you testify at the trial of that
6 case?

7 A. Yes.

8 Q. I asked you a little while ago about
9 stores. You mentioned the Coach stores and the
10 department stores. In what states are those stores
11 located?

12 A. I believe every state in the United States.

13 Q. Has Coach received any publicity or
14 editorial comment on its products that it does not
15 pay for?

16 A. Yes, all the time, in the Fashion Press Coach
17 is often featured in editorials which is not paid
18 for.

19 Q. Has Coach conducted any market
20 surveys?

21 A. Yes.

22 MR. ZIVIN: Let me have the reporter
23 mark as Exhibit 456, a market study, just be marked
24 confidential.

25 (Market study received and marked

B. SPINNER ASSOCIATES

Sadler - direct

1 Exhibit 456 for Identification.)

2 BY MR. ZIVIN:

3 Q. Does Coach have any employees who are
4 assigned to conduct market studies?

5 A. Yes.

6 Q. Do they conduct few or many market
7 studies?

8 A. I don't know how many market studies they
9 conduct but that is their position in charge of
10 consumer insight and their job is to study the
11 market both domestically and internationally for
12 opportunities for Coach and for better
13 understanding of the consumer.

14 Q. And are these studies conducted for
15 litigation purposes or for business purposes?

16 A. For business purposes.

17 MR. HOSP: I am going to object to the
18 introduction of this on foundation.

19 BY MR. ZIVIN:

20 Q. Now Exhibit 456 was produced in this
21 particular case. Is that a study that was
22 conducted by Coach?

23 A. Yes.

24 Q. Was this study conducted for business
25 purposes or for litigation purposes or for some

B. SPINNER ASSOCIATES

Sadler - direct

1 other purpose?

2 A. Business purposes.

3 Q. I direct your attention to page six of
4 the study, which is entitled "Teen Vogue Brand
5 Awareness."

6 A. Yes.

7 Q. What was the aided awareness of Coach
8 in this study?

9 A. 96 percent.

10 Q. When was this study conducted?

11 A. In 2008, I believe. December 2007, I am
12 sorry. No, I correct myself again, it says the
13 timing of the study was executed in June and July
14 of 2007. So it was reported on in December.

15 MR. ZIVIN: I am going to mark as
16 Exhibit 457 a document entitled "Coach 60 Years of
17 American Style."

18 (Document entitled "Coach 60 Years of
19 American Style" received and marked Exhibit 457 for
20 Identification.)

21 Q. Have you seen Exhibit 457 before?

22 A. Yes.

23 Q. Would you describe it for us please?

24 A. On the occasion of our 60th anniversary is
25 just a tool that was created to show the evolution

B. SPINNER ASSOCIATES

Sadler - direct

1 of Coach and it is reminding me of two categories I
2 left out when I talked about products, outer wear
3 and footwear. But it goes up through 2001, I
4 believe.

5 Q. And were you with the company at the
6 time that this document was prepared?

7 A. Yes. In fact I am in the picture on the
8 second page with Coach becoming a public company.
9 Second from the left.

10 Q. Does this time line of 457 accurately
11 reflect the history of the company to the best of
12 your knowledge and information?

13 A. Yes, in a very high level way. It shows key
14 milestones of the company's evolution and
15 development.

16 Q. I am going to mark as 458 confidential
17 sales information.

18 (Sales data received and marked
19 Exhibit 458 for Identification.)

20 Q. Can you tell us what is in 458 please?

21 A. It is sales data for the years 2004 through
22 2006 of goods in Classes 9 and 16 sales and there
23 is advertising for the Class 9 goods as well.

24 Q. Let's mark as Exhibit 459 a videotape
25 entitled "Coach Counterfeit Identification Training

B. SPINNER ASSOCIATES

Sadler - direct

1 Video. Document has a production number on it so I
2 think we produced it earlier. I don't have another
3 copy today.

4 MR. HOSP: I don't recall.

5 MR. ZIVIN: If you don't have it,
6 we'll provide another copy.

7 (Videotape entitled "Coach Counterfeit
8 Identification Training" received and marked
9 Exhibit 459 for Identification.)

10 BY MR. ZIVIN:

11 Q. Can you tell us what Exhibit 459 is
12 please?

13 A. It is an anti-counterfeiting training tape.

14 Q. When was that prepared?

15 A. In November of 2001.

16 Q. At that time were you in charge of
17 anti-counterfeiting efforts for the company?

18 A. Yes, it was created with my assistance and at
19 my request.

20 Q. What was the purpose of this training
21 videotape?

22 A. To assist our sales associates and other
23 employees in identifying counterfeit Coach
24 products.

25 Q. Does Coach own any trademark

B. SPINNER ASSOCIATES

Sadler - direct

1 registrations for the Coach name in the United
2 States?

3 A. Yes, many.

4 Q. Who is the owner of those
5 registrations?

6 A. Coach Services, Inc.

7 (Whereupon there was an off the record
8 discussion.)

9 (Record resumed.)

10 BY MR. ZIVIN:

11 Q. You told us before what the sales are
12 of the company, Coach?

13 A. Yes.

14 Q. What percentage of the sales of the
15 company are goods which bear the Coach name?

16 A. 100 percent.

17 Q. Has Coach ever involved itself in any
18 joint marketing efforts with other companies?

19 A. Yes.

20 Q. What types of joint marketing efforts?

21 A. I have mentioned car interiors with Lexus and
22 cameras with Cannon is two examples.

23 Q. Is Coach a famous mark?

24 A. Yes.

25 Q. Miss Sadler, this case involves a

B. SPINNER ASSOCIATES

Sadler - direct

1 company that is seeking to register a mark "Coach"
2 for audio and videotapes and software for
3 educational purposes and printed materials for
4 educational purposes. Do you believe there is any
5 likelihood of confusion with your company's use of
6 Coach?

7 A. Yes.

8 Q. Why?

9 A. The party seeking registration is seeking
10 registration of exactly the same mark as ours for
11 exactly the same classes of goods that we sell.
12 Marketing to, from what I understand, is exactly
13 the same consumer and consumer demographic. And
14 Coach has been used by my company for 67 years. It
15 is a famous mark. It has a huge level of
16 recognition by the consumer and therefore I think
17 it is like, the registrants use is likely to cause
18 confusion.

19 Q. When you say the registrant, what do
20 you mean?

21 A. Triumph.

22 Q. That is not actually a registrant.

23 A. I am sorry, what is the right word?

24 Q. Applicant.

25 A. Applicant, sorry.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. Miss Sadler, do you believe there is
2 any dilution of your company's rights in the mark
3 Coach?

4 A. Yes.

5 Q. Why is that?

6 A. Because, as I said, the classes of goods are
7 the same. But even if the products are not
8 identical in all respects, I think that the
9 applicants' use would potentially tarnish or dilute
10 the value of the Coach name. As I said, it has
11 been used consistently by my company for over 60
12 years. And in a pristine and highly policed and
13 maintained manner. I think any other party's use
14 of the name potentially dilutes the value to the
15 company.

16 MR. ZIVIN: I don't have any further
17 questions.

18

19 CROSS EXAMINATION BY MR. HOSP:

20 Q. We might as well start and see how far
21 we can get. If we need to take a lunch break, then
22 we'll take a lunch break.

23 Miss Sadler, you mentioned that you
24 believed that Triumph's use of the "Coach" mark is
25 likely to cause confusion with your company's use

B. SPINNER ASSOCIATES

Sadler - cross

1 of the mark, is that right?

2 A. Yes.

3 Q. And presumably you believe that that
4 would cause your company harm, correct?

5 A. Yes.

6 Q. And you believe that Triumph's use of
7 the "Coach" mark would potentially dilute your
8 company's mark, is that right?

9 A. Yes.

10 Q. That would cause your company harm as
11 well?

12 A. Yes.

13 Q. Are there any other ways in which
14 Triumph's use of the "Coach" mark would cause your
15 company harm?

16 A. Well, I think that Triumph's use of the mark
17 is also, Triumph's use of the mark "Coach" is also
18 a descriptive use of the term, the word "Coach."
19 And in that way I think it is dilutive and frankly
20 I don't think it is a valid trademark usage by
21 Triumph.

22 Q. So you say that that is dilutive, so
23 that a descriptive use dilutes your company's mark?

24 A. Yes, it also does not even qualify as a
25 trademark in my view.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. But I am just, leaving aside whether,
2 I am focusing on whether or not in what ways your
3 company is going to be harmed by this.

4 You believe that a descriptive use of
5 the word "Coach" by someone is going to cause your
6 company harm?

7 A. No.

8 Q. So it is dilution and likelihood of
9 confusion that would cause your company harm,
10 correct?

11 A. Correct.

12 MR. ZIVIN: Objection.
13 Mischaracterization.

14 BY MR. HOSP:

15 Q. Is there any other way in which your
16 company is going to be harmed?

17 A. No, not that I can think of right now.

18 Q. You indicated that you retired in June
19 but you are consulting --

20 A. Correct.

21 Q. -- for Coach.

22 Can you describe the nature of that
23 consulting arrangement?

24 A. I was the chief legal officer for the company
25 for eleven years and as such there are matters that

B. SPINNER ASSOCIATES

Sadler - cross

1 are continuing and ongoing since my departure, such
2 as this one, for example, and I have agreed for
3 over a period of time to aid in the transition to
4 my successor to be available to help the company
5 with whatever it needs me to do.

6 Q. On what basis are you paid?

7 A. Annually.

8 Q. So are you paid by the hour?

9 A. No.

10 Q. So --

11 A. I am paid whether or not I do anything for
12 the company. I am paid to be available for them.

13 Q. But you are no longer an employee?

14 A. I think I am an employee.

15 Q. Do you get benefits?

16 A. Yes.

17 Q. Health benefits?

18 A. Yes, yes.

19 Q. Medical, dental?

20 A. Yes.

21 Q. And you are on a salaried basis, you
22 are not on an hourly basis?

23 A. Correct.

24 Q. Do you work sort of every day of every
25 week or just sort of sporadically?

B. SPINNER ASSOCIATES

Sadler - cross

1 A. Sporadically.

2 Q. You said you retired in June?

3 A. Yes.

4 Q. So it has only been five or six
5 months?

6 A. Yes.

7 Q. So far how often would you say you
8 worked, two days a week, three days a week?

9 A. I can't quantify it. Sometimes less than
10 that.

11 Q. Prior to your retiring or switching
12 into this new consulting/employer relationship, you
13 said that you were a member of the executive
14 committee?

15 A. Correct.

16 Q. How many people are on the executive
17 committee?

18 A. I believe it is about 12 people.

19 Q. Is it fair to say these are sort of
20 the top people of the company?

21 A. Yes.

22 Q. Would it include the president of the
23 company?

24 A. There are many presidents in my company but
25 the chairman and the vice-chairman and the

B. SPINNER ASSOCIATES

Sadler - cross

1 executive vice-presidents, the senior
2 vice-presidents, heads of the divisions, CFO, head
3 of human resources.

4 Q. And would this also include the head
5 of marketing, for example?

6 A. Yes.

7 Q. Head of sales?

8 A. We don't have that position.

9 Q. Okay.

10 Would the executive committee discuss
11 strategic initiatives and new products and things
12 along those lines?

13 A. Sometimes.

14 Q. I am going to ask you to take a look
15 at, I am not sure what this was marked as --

16 MR. ZIVIN: 213.

17 BY MR. HOSP:

18 Q. 213, "Portrait of a Leather Goods
19 Factory." You testified this was published by
20 Coach?

21 A. Yes.

22 Q. And what were the sales of this --
23 this was published in 1991, correct?

24 A. Yes.

25 Q. What were the total sales of this

B. SPINNER ASSOCIATES

Sadler - cross

1 book?

2 A. I don't know.

3 Q. Do you know whether or not it was in
4 fact sold by Coach?

5 A. No, I do not know.

6 Q. So in fact this isn't a product that
7 Coach sells, correct?

8 A. I don't know is what I said.

9 Q. You recall being deposed as a 30(b)(6)
10 witness, correct?

11 A. Yes.

12 Q. You understood that in that role you
13 had responsibility for testifying on behalf of the
14 company regarding the matters laid out in a
15 deposition notice, correct?

16 A. Yes.

17 Q. You had, as you testified earlier, all
18 of the, access to all of the company records,
19 correct?

20 A. Yes.

21 Q. Looking at this book, this isn't a
22 book that has anything to do with teaching lessons
23 about standardized testing, does it?

24 A. Do you want me to answer that question or is
25 that a facetious question?

Sadler - cross

1 Q. No, I'd like you to answer it.

2 A. No, it has nothing to do with standardized
3 testing.

4 Q. It doesn't have anything to do with
5 teaching scholastic or educational issues at all,
6 correct?

7 A. It actually explains how to do leather work,
8 so I don't know if that would be considered a
9 scholastic endeavor.

10 Q. Can you point me to the part of this
11 that teaches you how to do leather work?

12 A. Yes. Pages -- they are not numbered pages.

13 Q. You can use the bates numbers at the
14 bottom.

15 MR. ZIVIN: They are not on the
16 original.

17 A. 8339 describes leather arriving at the
18 factory and how it is processed.

19 Q. But looking at that page, it doesn't
20 actually teach you how to use the leather, it
21 doesn't teach you how to make goods with leather,
22 does it?

23 A. It describes the process, that is what this
24 book does, and I think it does teach something.
25 You asked me if it had a scholastic purpose, I

Sadler - cross

1 think it does teach something.

2 Q. It is your view that the purpose of
3 this book was as an educational instrument about
4 the workings of leather goods?

5 A. I did not say that. But I do think upon
6 looking at the text and the photographs that it
7 does have a fact based instructive purpose or
8 object.

9 Q. How many classrooms is this used in?

10 A. I have no idea.

11 Q. Has this ever been used in a
12 classroom?

13 A. I do not know.

14 Q. Is this used in any sort of an
15 educational setting to teach people how to make
16 leather goods?

17 A. I do not know.

18 Q. Do you know of any case in which that
19 is the case?

20 A. No.

21 Q. What was the first printing of this
22 book?

23 A. 1991.

24 Q. I am sorry, when I say first printing,
25 how many copies were printed?

B. SPINNER ASSOCIATES

Sadler - cross

1 A. I do not know.

2 Q. So it could have been ten?

3 A. I don't know.

4 Q. So yes it could have been ten?

5 A. I don't know.

6 Q. What sort of marketing was done to
7 promote this book?

8 A. I don't know.

9 Q. So it is possible no marketing was
10 done to promote this book, correct?

11 A. I don't know.

12 Q. The question is, is it possible that
13 no marketing was done to promote this book?

14 A. I don't know.

15 Q. You don't know if that is possible?

16 A. I don't know if it is possible.

17 Q. Is it impossible? It seems to me to
18 be either possible or impossible?

19 MR. ZIVIN: Objection.

20 A. It seems to me to be highly unlikely.

21 Q. But it is possible?

22 A. It is possible.

23 Q. You don't know how this was promoted
24 at all?

25 A. I don't know.

Sadler - cross

1 Q. You don't know whether a single copy
2 of this was sold by Coach?

3 A. No, I don't know.

4 Q. You testified that this is still
5 available for sale, correct?

6 A. Yes.

7 Q. But for sale by Coach?

8 A. No.

9 Q. So Coach does not currently sell this
10 book?

11 A. No.

12 MR. HOSP: I am looking for the
13 exhibit number for the Coach book that was
14 published by Assouline.

15 MR. ZIVIN: I think it is 215.

16 BY MR. HOSP:

17 Q. Taking a look at this, this is Exhibit
18 215, this was published by Assouline Publishing,
19 correct?

20 A. Yes.

21 Q. Does Coach own the trademark in this
22 -- pardon me, the copyright in this?

23 A. No.

24 Q. Did Coach ever sell this?

25 A. Not that I am aware of.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. This was done in 2002, is that
2 correct?

3 A. Yes.

4 Q. So you were at the company and general
5 counsel at that time, is that right?

6 A. Yes.

7 Q. So this isn't a Coach product, is that
8 fair to say?

9 A. No.

10 Q. No, it is not fair to say; or no, it
11 is not a Coach product?

12 A. No, it is not fair to say.

13 Q. When you say that that is not fair to
14 say, in what sense is that not fair to say?

15 A. The entire book is about Coach. So it is not
16 owned by Coach.

17 Q. Does Coach sell it?

18 A. I think I already answered that question.

19 Q. Does Coach market this?

20 A. Not to my knowledge.

21 Q. To your knowledge was any marketing
22 done for this book ever done by Coach?

23 A. Yes.

24 Q. What marketing was done?

25 A. It was used in the stores. The book was used

B. SPINNER ASSOCIATES

Sadler - cross
1 in the stores.

2 Q. When you say used in the stores, in
3 what way was it used in the stores?

4 A. It was used as a marketing tool in the
5 stores.

6 Q. Was it sold?

7 A. I don't recall actually. It might have been
8 available for sale.

9 Q. But you can't testify that this was
10 ever sold by Coach?

11 A. I am not positive that it was. But I do
12 remember it being available in the stores.

13 Q. How much money was spent marketing
14 this book by Coach?

15 A. It would have been part of marketing of the
16 Hamptons Collection. So I don't know the answer to
17 that question.

18 Q. And did Coach generate any revenues
19 from this book?

20 A. Well, if you look at it as part of the
21 Hamptons Collection, there were a lot of revenues
22 generated.

23 Q. Pardon me, from the actual sale of
24 this book, did Coach generate any revenues?

25 A. I don't know.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. To your knowledge did they generate
2 any sales?

3 A. I don't know, to my knowledge. I don't know.

4 MR. ZIVIN: I think that is Exhibit
5 214.

6 BY MR. HOSP:

7 Q. Just going back to 215 for a moment,
8 you indicated that you checked to see whether or
9 not this was still available for sale and you said
10 it was for sale on the internet?

11 A. Yes.

12 Q. Who was selling it on the internet?

13 A. I don't remember. You can check.

14 Q. But it wasn't Coach selling it on the
15 internet?

16 A. No.

17 Q. Was it a used copy being sold on the
18 internet?

19 A. I don't know if it was previously owned or a
20 previously owned copy.

21 Q. Looking at Exhibit 214, which, just to
22 be clear, we believe is the exhibit number for the
23 document that begins with CSI 11082. You testified
24 that this was published in 2006, is that right?

25 A. Yes.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. This was for Coach's 65th anniversary?

2 A. Yes.

3 Q. Did Coach sell this book?

4 A. Yes.

5 Q. How many copies of this book were
6 sold?

7 A. I don't know.

8 Q. Where was it sold?

9 A. In Coach stores.

10 Q. How many copies of this book were
11 printed?

12 A. I don't know.

13 Q. What were the sales revenue from the
14 sales of this book?

15 A. I don't know.

16 Q. Looking at this book, it is a book
17 about Coach, correct, it is primarily pictures, is
18 that fair to say?

19 A. The subject is the legacy -- is legacy. Like
20 I said, it is our 65th anniversary and the launch
21 at the same time of a Legacy line of products. The
22 theme is the creation of a legacy. I think it is,
23 as you say, mostly photographs, but then it has
24 got, you know, words peppered throughout, such as
25 "American," "authentic," or words that are supposed

Sadler - cross

1 to -- "modern" that describes a legacy.

2 Q. All right. Looking at this, I see
3 there is a forward that talks about creating a
4 legacy, and other than that, I guess I don't see
5 any other pages that actually have any words.

6 A. Okay, well I'll show you. Here. "Modern."

7 Q. Okay.

8 A. "American."

9 Q. Okay.

10 A. "Timeless."

11 Q. Okay.

12 A. "Iconic."

13 Q. Okay.

14 A. "Legacy." "New York." "Authentic." That's
15 it.

16 Q. Okay. So, essentially, other than the
17 forward and eight or nine words, this is just
18 pictures of Coach products, correct?

19 A. Pictures that include Coach products, yes.

20 Q. So you wouldn't describe this as an
21 educational book, would you?

22 A. It is not a textbook.

23 Q. Okay.

24 Is the purpose of this educational?

25 A. You know, I have a broader view of that. If

B. SPINNER ASSOCIATES

Sadler - cross

1 you would like to be more specific with me about
2 what you mean by educational, then I can answer
3 your question. But I think that there is something
4 educational about this book.

5 Q. Do you think Triumph's products will
6 be confused with this book?

7 A. I haven't -- yes.

8 Q. You think people will pick this up --
9 never mind.

10 A. I think people could look at Triumph's
11 products and think that they are somehow related,
12 whether authorized, endorsed by, or permitted by
13 Coach, Inc. That is what I think.

14 Q. Okay.

15 A. I don't know whether someone would pick this
16 up and think of Triumph. I think it would go the
17 other way.

18 Q. But again this is a product you have
19 no idea what the sales of this book were, how many
20 were printed?

21 A. Correct.

22 Q. Do you know what book this chapter is
23 from?

24 A. I don't recall.

25 Q. Do you know when this was published?

B. SPINNER ASSOCIATES

Sadler - cross

1 A. This is the most current edition.

2 Q. Most current edition of what?

3 A. Of this textbook. It has been in for a few
4 years. You know how textbooks come out every year?
5 So it has been included for at least a few years,
6 the case study.

7 Q. Okay.

8 A. But this one is the most current edition
9 which I don't know the date of.

10 Q. Do you know who publishes it?

11 A. No.

12 Q. Do you know who the authors are?

13 A. No.

14 Q. Do you know how many copies have been
15 printed?

16 A. No.

17 Q. This book was never sold by Coach, is
18 that right?

19 A. Yes.

20 Q. So Coach hasn't received any revenue
21 from this book?

22 A. Correct. But Coach did authorize and permit
23 the inclusion of the company as a case study in the
24 textbook. They didn't just do a case study without
25 asking our permission.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. Yes, but you can do, you can do a case
2 study on Coach as long as the information is
3 correct; that would be a fair use, correct?

4 A. That is not what this is about. The point is
5 that in this case, whether or not they needed to,
6 they did come and get our permission to include
7 Coach as a part of the study.

8 Q. But it is not your testimony that they
9 necessarily needed to do that if the information
10 was correct?

11 A. That is not what I said. I didn't say they
12 needed to.

13 Q. Was there a license that was signed?

14 A. There was a permission that was signed.

15 Q. But you would agree if people use the
16 word Coach referring to your company accurately
17 that that is not a trademark infringement, correct?

18 MR. ZIVIN: Objection.

19 BY MR. HOSP:

20 Q. You testified that your specialty is
21 trademark.

22 A. Yes, I know. That is not what this is about
23 to see whether or not I know. I will agree with
24 you that there such a thing as a fair use. What
25 that is, you know, depends on the fact of the

B. SPINNER ASSOCIATES

Sadler - cross

1 situation.

2 My only purpose here was to say that
3 this was not produced by Coach, but it was
4 authorized by Coach. Whether or not this publisher
5 and author needed to get that permission is not
6 what I am talking about.

7 Q. Okay. But Coach doesn't sell this,
8 Coach doesn't any revenue from this?

9 A. No. Good will.

10 Which I think is a very important
11 factor in a trademark's worth and value.

12 Q. Let me take a quick look at that
13 because I don't have a copy and I have never seen
14 it before today.

15 Looking at what is marked at Coach 451
16 which we object to as never being produced, as were
17 a couple of the other ones, but we are preserving
18 this objection, this is a book that wasn't
19 published by Coach, right, it was published by Reed
20 Krakoff?

21 A. Among others, yes.

22 Q. Did Coach sell this book?

23 A. No.

24 Q. So Coach never made any revenue from
25 this?

B. SPINNER ASSOCIATES

Sadler - cross

1 A. Well, not directly as a result of the sale of
2 the book. This was in conjunction with an exhibit
3 that was co-sponsored with Coach, our name is on
4 the book. Reed is the executive creative director
5 of Coach and all of this goes to a broader
6 marketing establishment of the Coach brand,
7 creation of cache, publish awareness.

8 Q. So it is marketing?

9 A. Correct.

10 Q. It is not a product that you sell?

11 A. It drives the products that we sell.

12 Q. Right.

13 How many copies of this were printed?

14 A. I don't know.

15 Q. This isn't an educational textbook, is
16 it?

17 A. It is not a textbook.

18 Q. You wouldn't use this to prepare
19 students for standardized testing, would you?

20 A. No. I wouldn't. But I am not a test
21 preparer. I don't know if somebody would.

22 Q. You think they would?

23 A. It is not what they used when I was prepared
24 for standardized tests.

25 Q. Looking at Exhibit 452, which I think

B. SPINNER ASSOCIATES

Sadler - cross

1 was just produced to us today so all I have is an
2 excerpt. Do you have the actual book? Here it is.

3 This book entitled "Fighter" wasn't
4 published by Coach, was it?

5 A. No.

6 Q. And --

7 A. Coach owns the copyright.

8 Q. Does Coach sell this?

9 A. I don't know.

10 Q. So you can't testify today that Coach
11 sells this?

12 A. It is available on Amazon.com. I am not sure
13 if it is also being sold in the stores. I don't
14 know. This just came out and so it may be part of
15 an initiative in the stores, I don't know.

16 Q. But you can't testify today that it is
17 sold in the stores, correct?

18 A. No, I can't.

19 Q. You can't testify that it is sold by
20 Coach at all, correct?

21 A. Correct.

22 Q. And you can't testify that Coach gets
23 any revenue from this book, correct?

24 A. Correct.

25 Q. This is a book that is primarily

Sadler - cross

1 pictures of, I assume, bookers and fighters,
2 ultimate -- looks like there is at least one
3 ultimate fighter in here?

4 A. I think that is what the book is about,
5 fighters of the UFC, Ultimate Fighters Club.

6 Q. So you wouldn't regard this as an
7 educational textbook, would you?

8 A. It is not a textbook. It is an education to
9 me because I never heard of ultimate fighters
10 before Reed was working on this project.

11 Q. You wouldn't envision this being used
12 to prepare students for standardized testing, would
13 you?

14 A. No.

15 Q. I am looking at the picture on 114, I
16 hope that is not going to be used for the students.

17 So as far as you are aware, are these
18 the only books that Coach has had any involvement
19 in?

20 A. Yes.

21 Q. You can't testify that Coach has
22 actually -- whether or not Coach has made any
23 revenue from sales of these books?

24 A. Correct.

25 Q. And you can't testify as to whether or

Sadler - cross

1 not Coach has marketed these books at all, Coach
2 marketing the books, as opposed to the publisher
3 marketing the books?

4 A. Well, we are the publisher sometimes and I
5 know for sure that some of the books have been
6 available in our stores. I don't know when.

7 Q. Which one do you know was available in
8 the stores again?

9 A. The Legacy book. This Legacy book which is,
10 I don't know what number, oh here --

11 MR. ZIVIN: This one you are pointing
12 to?

13 THE WITNESS: Yes.

14 MR. ZIVIN: 214.

15 A. And this Assouline book.

16 MR. ZIVIN: That is 215.

17 BY MR. HOSP:

18 Q. But you can't testify as to how many
19 of these books were actually sold?

20 A. Correct.

21 Q. Coach does not use its mark, its Coach
22 mark on any textbook or school books that it sells,
23 is that right?

24 A. Yes.

25 Q. And Coach does not use its Coach mark

B. SPINNER ASSOCIATES

Sadler - cross

1 on any video or audio tapes that it sells, is that
2 correct?

3 A. Yes.

4 Q. I believe you testified earlier with
5 respect to internal training, audio, videotapes and
6 compact discs, is that right?

7 A. Yes.

8 Q. But, again, those aren't products that
9 are sold to the public, correct?

10 A. Yes.

11 Q. And with respect to the U.S. Customs
12 material, you said that there was written material,
13 visual aids, anti-counterfeiting materials to
14 assist U.S. Customs, correct?

15 A. Yes.

16 Q. You characterized that as having an
17 educational purpose?

18 A. Yes.

19 Q. But those aren't products that are
20 sold to the public, correct?

21 A. Correct.

22 Q. Coach doesn't sell any products that
23 compete with Triumph's products, do they?

24 MR. ZIVIN: Objection.

25 A. I think there are some products that compete.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. Which products compete?

2 A. Our books.

3 Q. Which books?

4 A. Any or all of them.

5 Q. These books that you have testified
6 that you can't testify whether or not any revenue
7 has been made from them?

8 A. Correct.

9 Q. And you think that these books compete
10 with Triumph Learnings preparatory books?

11 A. They are the same kinds of products.

12 Q. Same kinds of products. So you think
13 that somebody going out to find a book about the
14 history of Coach is likely to instead see
15 preparatory material for, say for example, MCATs
16 and decides that is the book they want to get
17 instead?

18 MR. ZIVIN: Objection, hypothetical.

19 A. I have no idea. I have no idea.

20 Q. Do you think somebody going out to
21 find materials to help teach students to take
22 standardized testing are likely too instead decide
23 to get these books?

24 MR. ZIVIN: Objection.

25 A. Unlikely.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. So they don't really compete?

2 A. I can't answer that question.

3 Q. Does Coach keep track of who its
4 competitors are?

5 A. Yes.

6 Q. Have you ever seen Triumph Learning
7 listed as a competitor of Coach?

8 A. No.

9 Q. You have seen, you have had access to
10 all of the company records, correct?

11 A. Yes.

12 Q. And have you ever in the eleven years
13 that you were at Coach, come across a situation
14 where Triumph Learning was viewed as a competitor
15 to Coach?

16 A. No.

17 Q. So you wouldn't say that Coach -- that
18 Triumph is a competitor of Coach, is that fair?

19 MR. ZIVIN: Objection.

20 A. It is fair.

21 Q. When Coach does market research it
22 characterizes itself as selling luxury goods, is
23 that fair?

24 A. No.

25 Q. So is Coach not a luxury brand?

B. SPINNER ASSOCIATES

Sadler - cross

1 A. I think the word we use is accessible luxury.

2 Q. And looking at the exhibit that's been
3 marked as 456, can you show me where accessible
4 luxury is used?

5 A. I don't know if it is used in here. You want
6 me to see whether it is used in this study, because
7 I can look and see whether it is used.

8 Q. Okay. Sure.

9 MR. ZIVIN: It speaks for itself,
10 whether it says it or it doesn't.

11 A. One use of it is on page five in the footnote
12 it says premium refers to accessible luxury or
13 luxury brands.

14 Do I have to keep looking, see if it
15 is used again?

16 Q. No, that is fine.

17 So it is a premium brand?

18 MR. ZIVIN: Objection.

19 A. It is a premium brand.

20 Q. You indicated that the primary target
21 markets I think you said was middle income and
22 lower middle income and the market includes higher
23 end customers as well, is that what you testified
24 before?

25 A. Something like that. Very inarticulate. I

B. SPINNER ASSOCIATES

Sadler - cross

1 am trying to explain the demographic of our
2 consumer is in that middle band which this study
3 explains better, this 456 exhibit. 25 to 65 I
4 think but here it says 25 to 64. So I was close.
5 And this is looking at extending the market, what
6 opportunity we have in the 18 to 24s, which would
7 be the younger band. Then in the 25 to 64s, I was
8 thinking of that middle to the older side, not very
9 artfully said.

10 Then the income level is, there are
11 core Coach consumers who, I don't know what the
12 average annual income is, you know, of our core
13 consumer but I know it reaches both to aspirational
14 consumers who it is a stretch for them to buy a
15 Coach product, all the way to luxury consumers who
16 would buy more on the higher end of our product
17 offering. So, as I was saying, it is a very broad
18 band.

19 Q. It is fair to say though that
20 demographically Coach's consumer base skews toward
21 the more wealthy than other products, is that fair?

22 MR. ZIVIN: Objection.

23 A. No. We have factory outlet stores.

24 Q. But you don't know specifically what
25 the demographics are in terms of income and wealth

B. SPINNER ASSOCIATES

Sadler - cross

1 with respect to the core Coach purchasers?

2 A. I can't recall.

3 Q. So it could be significantly higher
4 than the average income?

5 A. It could be.

6 Q. You testified about Coach's
7 catalogues. Coach don't sell its catalogues, does
8 it?

9 A. No.

10 Q. A catalogue is not a Coach product?

11 A. It is produced by Coach. But it is a sales
12 tool as opposed to an object that is sold.

13 Q. It is marketing.

14 A. Right.

15 Q. So it is not a product?

16 A. Correct.

17 Q. And other than people purchasing from
18 the catalogue, Coach doesn't make any money off
19 sales of its catalogues, correct?

20 A. Correct.

21 Q. You testified earlier that you believe
22 that there is a likelihood of confusion between
23 Coach's use of Coach and Triumph's use of coach
24 because they are selling to exactly the same
25 consumer demographics, is that right?

B. SPINNER ASSOCIATES

Sadler - cross

1 A. Yes, that was one of reasons, yes.

2 Q. But you don't know specifically what
3 Coach's demographics are, correct?

4 A. I just told you the majority is this 25 to 64
5 year olds.

6 Q. But in terms of, for example,
7 education, income, profession, you don't know what
8 the demographics are for Coach products, do you,
9 specifically?

10 A. I don't know the professional demographic but
11 I know the age demographic.

12 Q. So when you say they are selling to
13 the exact same consumer demographics, what you are
14 saying is they are both selling to people between
15 the ages of 25 to 64?

16 A. Yes.

17 Many of whom are teachers, I know,
18 anecdotally.

19 Q. Coach doesn't market specifically to
20 teachers, does it?

21 A. No, but there are many schools that have had
22 Coach, you know, drives or interest in Coach
23 products. I personally know teachers who are Coach
24 consumers, so I know that our products appeal to
25 teachers.

B. SPINNER ASSOCIATES

Sadler - cross

1 Q. You testified that you were involved
2 in Coach's enforcement for its trademark over the
3 years?

4 A. Yes.

5 Q. Is trademark enforcement something
6 that Coach takes relatively seriously?

7 A. Yes.

8 Q. Would you say it takes it very
9 seriously?

10 A. Yes.

11 Q. Has it filed suits in the past?

12 A. Yes.

13 Q. We have got examples of two cases that
14 have been introduced over objection here. Have
15 there been other lawsuits that have been filed?

16 A. Yes.

17 Q. You testified that Coach has
18 relationships with police in order to enforce its
19 trademark?

20 A. Yes.

21 Q. It has relationships with U.S.
22 Customs?

23 A. Yes.

24 Q. And it sometimes hires private
25 investigators to enforce its trademarks?

B. SPINNER ASSOCIATES

Sadler - cross

1 A. Yes.

2 Q. That is both in the United States and
3 overseas, correct?

4 A. Correct.

5 Q. And it engages in civil seizures for
6 infringing products, correct?

7 A. Yes.

8 Q. And it engages in criminal seizures
9 for infringing products, correct?

10 A. Yes.

11 Q. Does it police for dilution as well?

12 A. I think that is part of trademark
13 infringement.

14 Q. And you have been aware for at least
15 four or five years of the manner in which Triumph
16 uses the word "coach" in connection with its
17 products, correct?

18 A. Yes.

19 Q. And has the company ever filed a
20 lawsuit in this case?

21 A. No.

22 Q. Has it contacted the police?

23 A. No.

24 Q. Has it contacted U.S. Customs?

25 A. First of all, I just want to be clear, that

B. SPINNER ASSOCIATES

Sadler - cross

1 those, using the police and U.S. Customs is for
2 counterfeit merchandise. To my knowledge Triumph
3 is not marketing its tools as Coach handbags. So
4 we would not have a counterfeit situation on our
5 hands.

6 Q. So you haven't contacted the police?

7 A. There is no such thing as police for
8 trademark infringement. There is counterfeit.
9 Counterfeiting is a crime and trademark
10 infringement is not. So this is a civil matter
11 and, no, we have not contacted the police or U.S.
12 Customs about it. We are using the U.S. Patent and
13 Trademark Office, which is also an arm of the
14 government, but it is not the police arm of the
15 government.

16 Q. You haven't filed a lawsuit, correct?

17 A. No. I mean correct.

18 Q. And that is in spite of the fact that
19 you claim that there is a likelihood of confusion?

20 A. Yes.

21 Q. And that this is going to cause damage
22 to your company?

23 A. Yes.

24 Q. Why haven't you filed a lawsuit?

25 MR. ZIVIN: Objection. That is

B. SPINNER ASSOCIATES

Sadler - cross
1 privileged.

2 MR. HOSP: Actually she testified a
3 fair amount about what it is that we -- what it is
4 that the motivations are.

5 MR. ZIVIN: Now you are asking her
6 why, which is really a subject of work product and
7 attorney/client communications. You asked her
8 facts, she can answer facts. Now you are asking
9 her why she has done certain legal things. I think
10 you are invoking the privilege area.

11 BY MR. HOSP:

12 Q. Has the company ever discussed filing
13 a lawsuit?

14 MR. ZIVIN: You can answer that yes or
15 no.

16 A. Yes.

17 Q. And no lawsuit was filed, correct?

18 A. Not yet, no.

19 Q. Not yet. Does the company intend to
20 file a lawsuit?

21 MR. ZIVIN: Objection, same reason.
22 It is privileged. She's not going to answer.

23 BY MR. HOSP:

24 Q. So you are not ruling out the
25 possibility of filing a lawsuit?

B. SPINNER ASSOCIATES

Sadler - cross

1 MR. ZIVIN: Objection. Same grounds.

2 A. I am really hopeful that the U.S. Trademark
3 Office will be able to resolve this matter for us.

4 Q. You understand that even if the
5 registration is rejected, that doesn't prevent
6 Triumph from using the mark, correct?

7 A. I understand that. So I think that we will
8 see what happens.

9 Q. Okay. So it is possible that you may
10 file a lawsuit?

11 MR. ZIVIN: Well, objection. Same
12 objection.

13 A. It is possible.

14 Q. You testified that the company does
15 market surveys, correct?

16 A. Yes.

17 Q. And in those market surveys you often
18 test against competitors, correct?

19 A. I didn't testify to that. If you are asking
20 me, what does test against competitor mean?

21 Q. To --

22 A. Compare us to competitors?

23 Q. Yes, to do market research in
24 comparison with your competitors.

25 A. Yes. I just didn't understand what you were

B. SPINNER ASSOCIATES

Sadler - cross

1 saying.

2 Q. And have you ever been aware of
3 Triumph being tested in connection with one of
4 those surveys?

5 A. No.

6 (Whereupon there was an off the record
7 discussion.)

8 (Record resumed.)

9 MR. HOSP: Back on the record.

10 BY MR. HOSP:

11 Q. Have you done any surveys, has the
12 company done any surveys to determine whether or
13 not there is a likelihood of confusion between
14 Coach's use of the mark "Coach" and Triumph's use
15 of the mark "Coach?"

16 A. Not that I am aware of.

17 Q. And Coach does not use its Coach mark
18 on any computer software applications that it
19 sells, is that right?

20 A. Correct.

21 Q. In fact Coach doesn't sell any
22 computer applications, is that right?

23 A. Correct.

24 MR. HOSP: I think we are done.

25 MR. ZIVIN: For the record, I am never

B. SPINNER ASSOCIATES

Sadler - cross

1 sure whether this is required any more or not but I
2 offer into the evidence the exhibits marked here
3 today and those that were attached to our notices
4 of reliance.

5 MR. HOSP: I think it is not
6 necessary, but that is fine and we reserve all
7 objections that are non-procedural in nature.

8 MR. ZIVIN: Sure.

9 (Whereupon the deposition concluded at
10 12:34 p.m.)

Sadler - cross

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

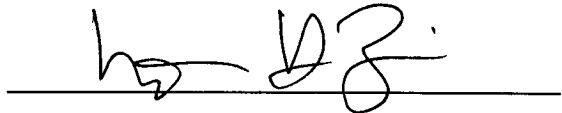
On November 5, 2008, the foregoing deposition was submitted to Carole Sadler, the witness in the aforesaid deposition, taken on October 27, 2008 for her examination;

At which time the deposition was read by her and any changes desired were subsequently entered upon a separate sheet of paper, given to the reporter and attached to the transcript.

Thereafter, the deposition was witnessed and signed by:



Carole Sadler



Notary Public in and for the
County of *Westchester*
State of *New York*

My Commission Expires

NORMAN H. ZIVIN
Notary Public, State of New York
No. 60-9869430
Qualified in Westchester County
Commission Expires March 30, 2010

Sadler - cross

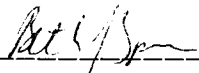
C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, BETH J. SPINNER, a Certified Shorthand Reporter, No. XI01057, and Notary Public of the State of New York do hereby certify that prior to the commencement of the examination the witness and/or witnesses were sworn to testify the truth, the whole truth, and nothing but the truth.

I do further certify that the foregoing is a true and accurate computer-aided transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I do further certify that I am neither of counsel nor attorney for any party in this action and that I am not interested in the event nor outcome of this litigation.



Notary Public of the State of New York
My commission expires October 28, 2009

Dated: November 5, 2008

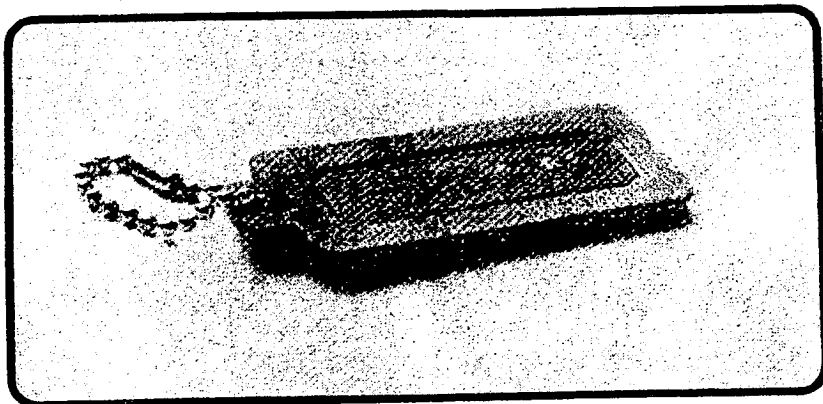
B. SPINNER ASSOCIATES



**PLAINTIFF'S
EXHIBIT**
_____12_____

CSI 00099

We make
Coach® Bags and Belts
in 734
shapes, sizes, and colors,



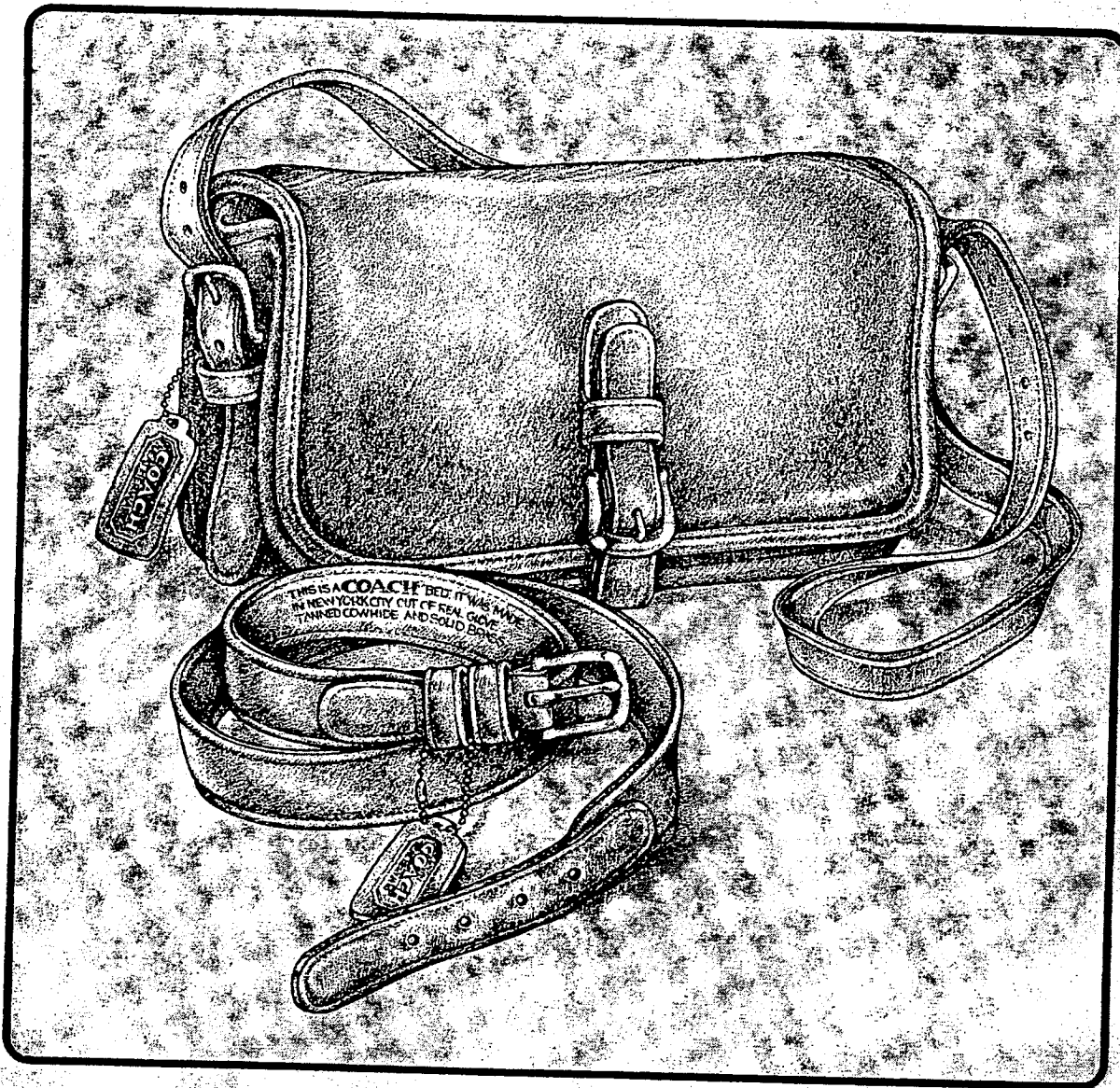
and we hang this
little leather Coach® tag
on every one of them.

If you cannot find the one you want in a store near you, you can order it directly from the Coach Factory in New York.
For Catalogue, Store List and Prices, write Coach Leatherware, 516 West 34th St., N.Y. 10001

JUNE 1980

JUNE 1980

CSI 00100



This is a Coach® Bag with a Coach® Belt.

Coach® Bags and Belts are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can order it directly from the Factory. For catalogue and store list, write: Coach Leatherware, 516 W. 34th St., New York 10001.

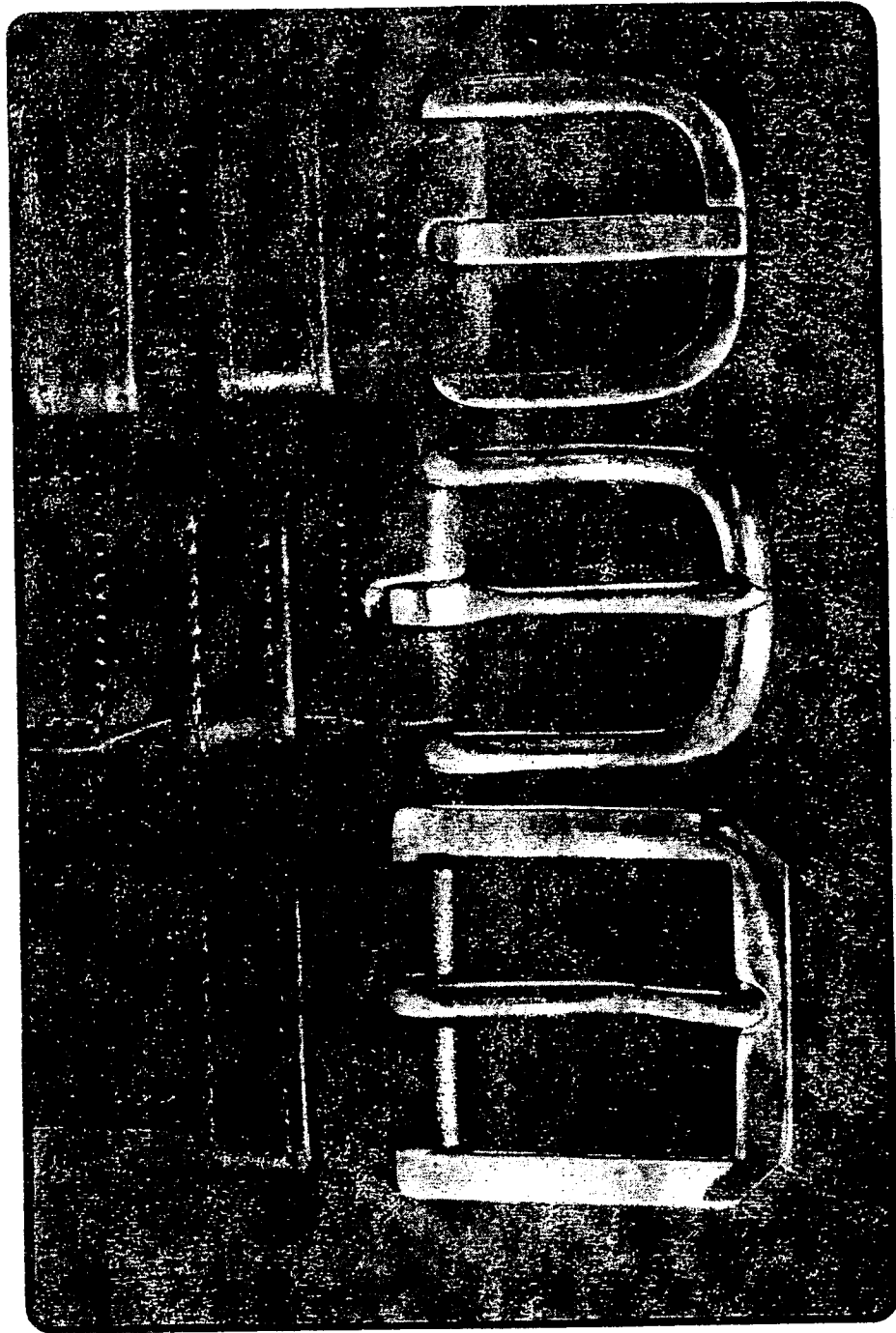
CSI 00101



It's not a Coach[™] bag without the Coach tag.

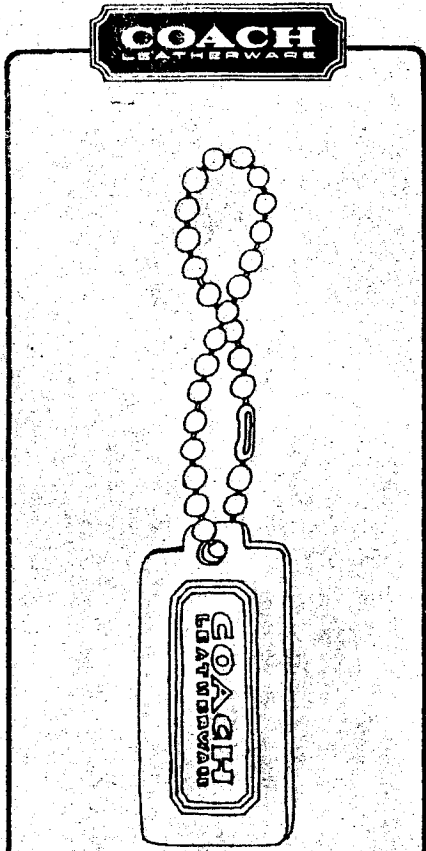
CSI 00102

Coach[™] Bags and Belts are made in New York City and sold in fine stores throughout the country. For cat.



Coach® Belts are made with solid brass buckles.

CSI 00103



This is a Coach® Tag.

We use this little leather tag to identify our bags and belts and to help you distinguish them from their many imitations.

We make the original Coach® Bags and Belts in lots of different shapes and sizes and stock most of them in ten colors.

You will find some of our products in selected stores throughout the country, but the Coach® Store is the only store where you will find them all.

Would you like us to send you our catalogue?

The Coach® Store

754 Madison Avenue—just off 65th St.
New York City 10021
Tel: 212-594-1581

was old Pindy, who had helped build the house in 1826. His age was estimated to be a hundred and ten. Pindy lived ten miles away and came once a week for his medicine. Getting off his wagon, he would walk his old horse up the final rise to the house. He seemed to have forgotten that serfdom had been over for thirty years. "And how much did they pay for you?" he would ask, slapping the behind of a pretty girl in the kitchen. Nika photographed him sitting on a stone wall, with his white beard, and his perfect bowl of white hair, coming down almost to his eyebrows, and with his gnarled hands folded humbly in his lap. Like most of Alexandra Nicolaevna's patients, Pindy thought that if he drank off the whole bottle of medicine at once he would feel better faster, and he had to be persuaded to take it in daily doses.

When the peasants felt really sick, they went to old Karakutsa, who looked after the sheep, and who was said to be able to stop bleeding with whispered incantations. Karakutsa's remedies, which relied heavily on the local flora and fauna, had been in use since the days when Perun was god of the steppe, and the fact that Karakutsa himself had lived to such an old age—he, too, was said to be a centenarian—was a good advertisement for them. Reviling modern medicine, he would seize the arm of his patient, feel his pulse, and then locate precisely between the wrist and elbow a second, fainter throbbing, which he called the brain pulse. The brain pulse, he said, was an infallible index of the condition of the body. "Your brain pulse is dead," he would tell his patient. Holding the arm tightly and swaying back and forth with his eyes closed, he would murmur his incantation so quickly—three times in one breath—that the patient couldn't make out the words. For payment, he accepted hens, shoes, vodka—whatever he was offered.

There were three thousand dessiatines of prodigiously fertile land on the Shideyevo estate: (a dessiatine is 2.7 acres), of which two thousand were cultivated. Sometimes the crops ripened so quickly that dessiatines of rye and oats, and even of wheat, were left to rot because nobody had time to get them in. The wheat harvest of 1906 was exceptional. The Avinoffs invited forty people to help them celebrate their good fortune. Tassels of wheat

around the house. After a sumptuous banquet, everyone toasted "His Excellency the Harvest" in champagne and danced until dawn. With some of the profits from the harvest, Alexandra Nicolaevna had a set of jewelry made up by Fabergé. The necklace, bracelets, rings, earrings, and brooch were made of golden spikes of wheat, with tiny diamonds as kernels. Mopsy wore the jewels when she was presented at court the following year.

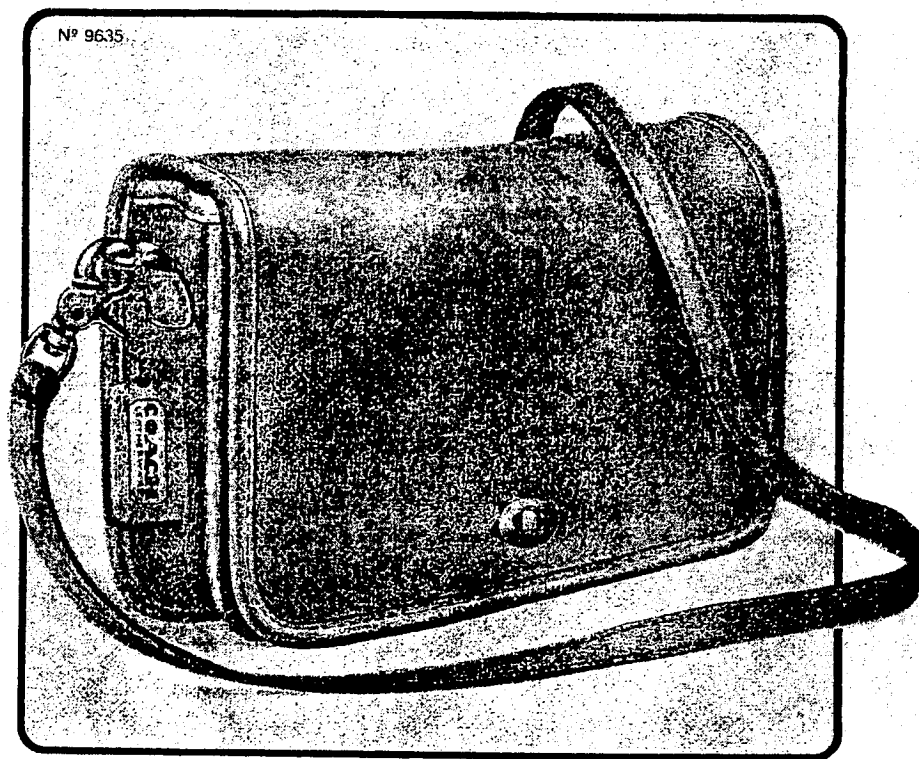
At the emancipation, in 1861, each serf had received a small allotment of land. But the peasants still needed cash, and the only way to get it was to work for the Avinoffs. They got three meals and wages—about fifty cents a day. In summer, the muzhiks worked six days a week. In the winter, there was little to do, and they stayed home and made articles—wooden snow shovels, twig brooms, felt boots, unglazed milk pots, crafts of carved wood and bark and of silver—to sell in the nearby markets of Poltava and Yekaterinoslav. (Poltava, the provincial capital, was thirty-five miles away; Yekaterinoslav, the present Dnepropetrovsk, was about fifty miles away.) The busiest month was August. With every horse, wagon, and driver in use, it was a bad time to travel. Everyone, even mothers with newborn babies at their breasts, took to the fields, and flashing sickles, accompanied by thrilling songs, hacked down the wheat and corn. The work began at dawn and ended after dark. Sometimes the muzhiks would make a

bonfire on the open steppe, and while one told stories the rest would sit and finally fall asleep in its glow.

There were two villages below the house—Novoselovka and Homohivka, joined by a road and separated by the lower garden. Their combined population was about three hundred, and

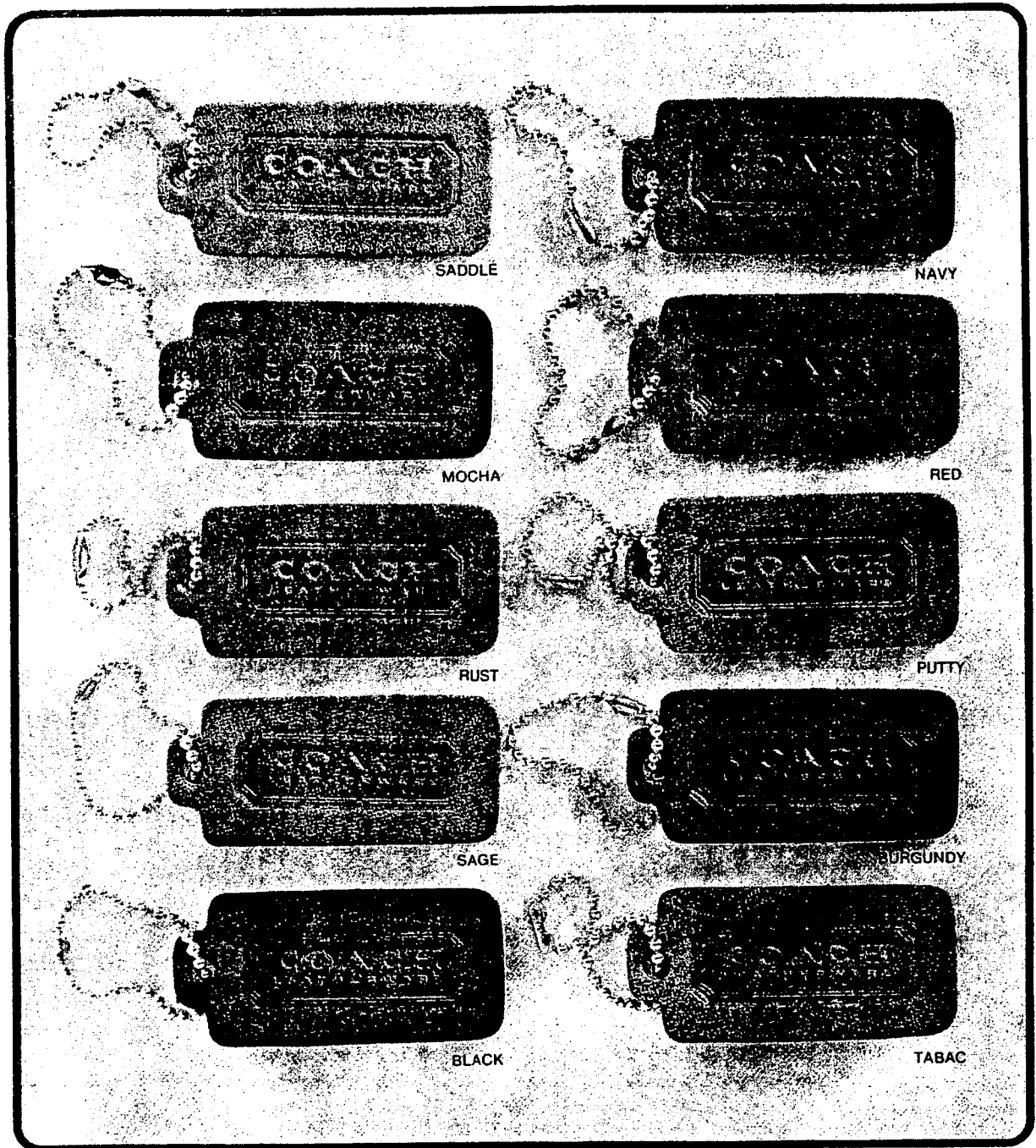
there were several large peasant families—the Moshuras, the Kolnechenkos, the Oleshkos. The cottages, nestled together in the shade of willows and poplars, had bright-white sides, and the roofs were thatched with tall reeds from the marsh. The walls were made of clay plastered on a willow frame. Inside was a stove built up in tiers called *lezhankas*, on which members of the family slept. Strings of shrivelled mushrooms and bundles of dried herbs hung from the ceiling. The *krasny ugol*, or "beautiful corner" where ic





This is a Coach® Bag

It is one of twenty-six small, medium, and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Glove Tanned Cowhide. Coach® Bags are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can order it directly from The Coach® Store in New York City. For Catalogue, write or call: The Coach® Store, 754 Madison Ave., New York City 10021. Tel: (212) 594-1581.

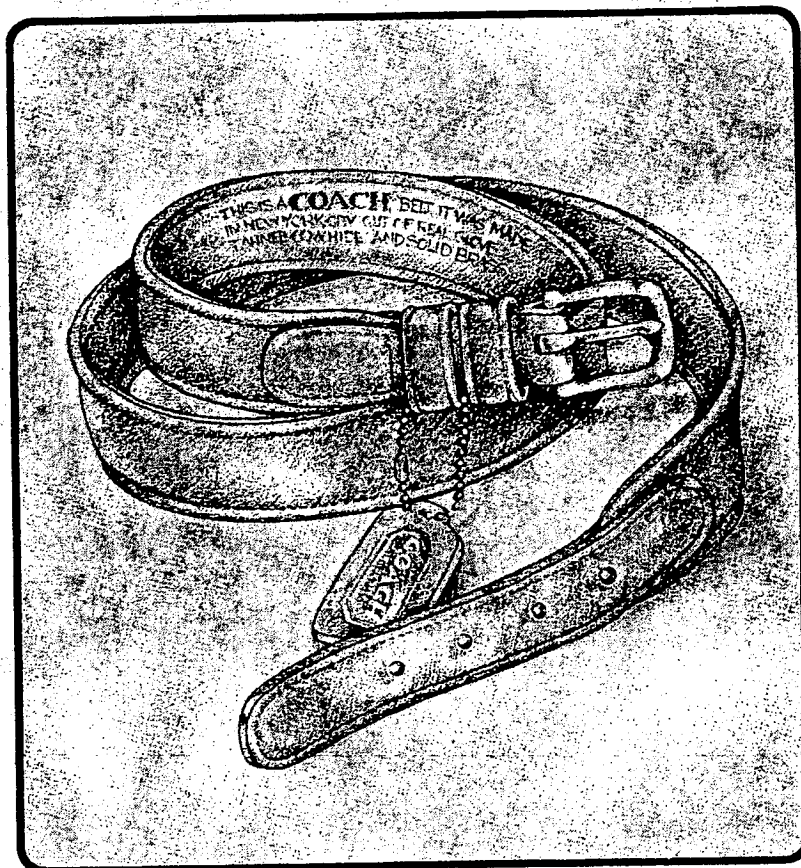


Coach® Bags and Coach® Belts
are now made in ten Coach® colors.

If you cannot find the one you want in a store near you, you can order it directly from the Coach Factory in New York.
For Catalogue, Store List and Prices, write Coach Leatherware, 516 West 34th St., N.Y. 10001

CSI 00106

May 5



This is a Coach® Belt.

If you cannot find this belt in a store near you, you can order it directly from the Coach Factory.
For Catalogue and Store List write: Coach Leatherware, 516 West 34th St., N.Y. 10001

COACH
LEATHERWARE



This is the Original Coach® Bag

We have been making this same classic shoulder bag for almost twenty years and it has never gone out of style. It is one of over a dozen small, medium and large classic Coach® Bags that we make in ten colors of real Glove Tanned Cowhide. Coach® Bags are sold in our own stores and in selected stores throughout the country. You can also order them by mail and we will ship your order directly from the Factory at no extra cost. For Catalogue write: Consumer Service, Coach Leatherware, 516-Y West 34th St., New York City 10001. Tel: (212) 594-3914.

New York City • Paris • Washington, D.C. • Boston • San Francisco • Seattle

— September 17, 1984 —

CSI 00108



This is a Coach® Bag.

April 2, 1984

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country. For Catalogue and Store List write or call: The Coach® Store, 754-Y Madison Ave., New York City 10021. (212) 594-1581.

CSI 00109



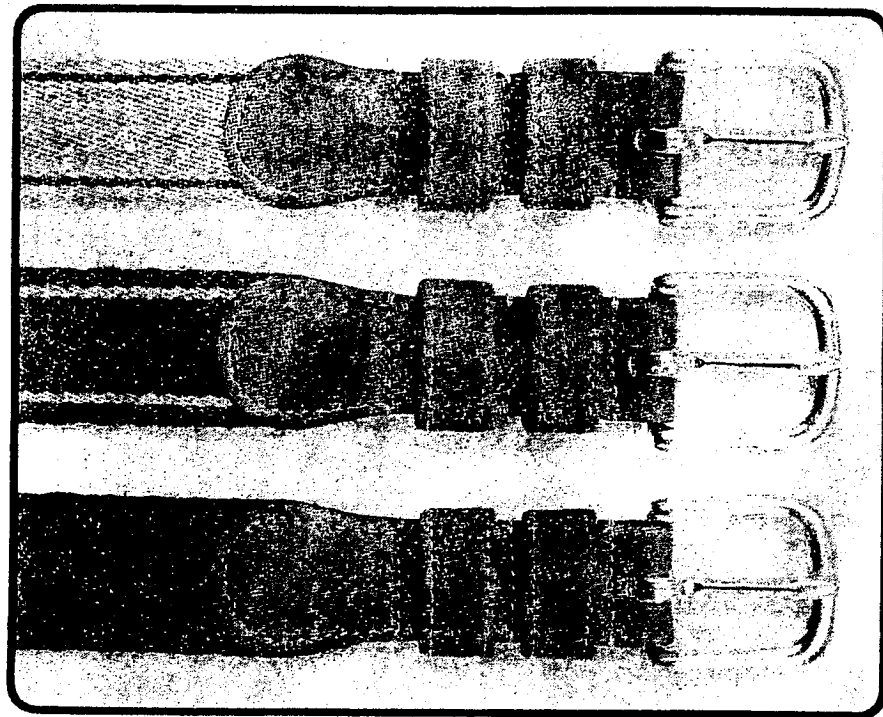
This is the Original Coach® Belt

We have been making this same belt for almost twenty years and it has never gone out of style. It is one of eight classic belts we make in ten colors and ten lengths for men and women from size 26-44. Coach® Bags and Belts are sold in our own stores and in selected stores throughout the country. You can also order them by mail and we will ship your order directly from the Factory at no extra cost. For Catalogue write: Consumer Service, Coach Leatherware, 516-Y West 34th St., New York City 10001. Tel: (212) 594-3914.

New York City • Paris • Washington, D.C. • Boston • San Francisco • Seattle

October 8, 1984

CSI 00110



These are Coach® Belts

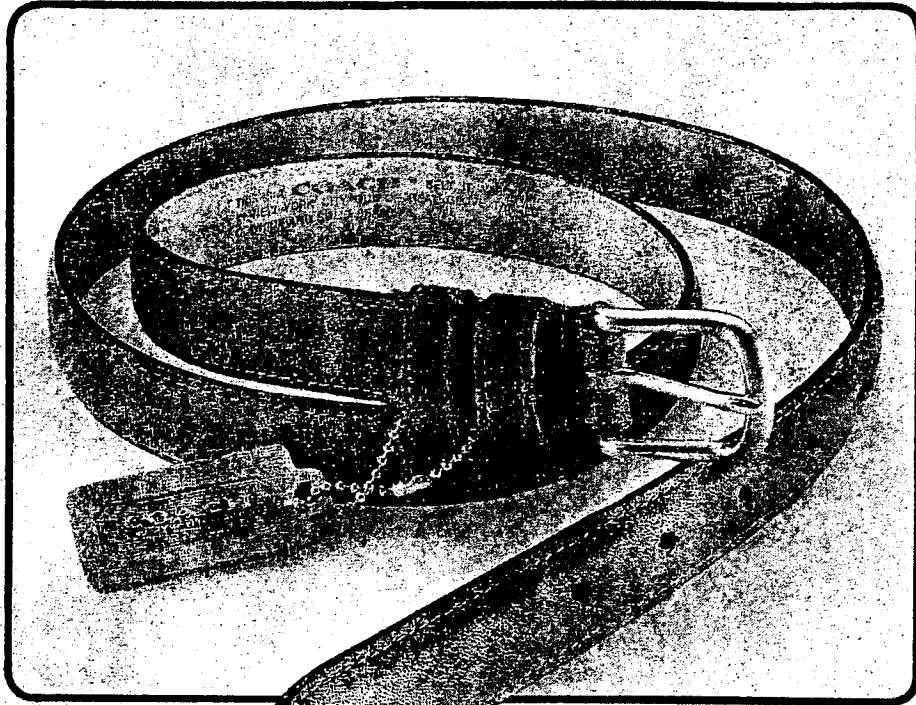
They are made in men's and women's sizes in a wide range of colorful wool surcingles, trimmed with glove leather tabs and fitted with authentic, solid brass harness buckles. Coach® Belts are sold in our own stores and in selected stores throughout the country. If you cannot find the one you want in a store near you, you can order it directly from the Coach® Store in New York. For Catalogue and Store List write: The Coach® Store, 754 Madison Ave., New York City 10021 or call (212) 594-1581.

July 4, 1983

We now have Coach® Stores in Paris, New York, Washington, D.C., Seattle and San Francisco—and will soon open another in Boston.

CSI 00111

This is a Coach® Belt

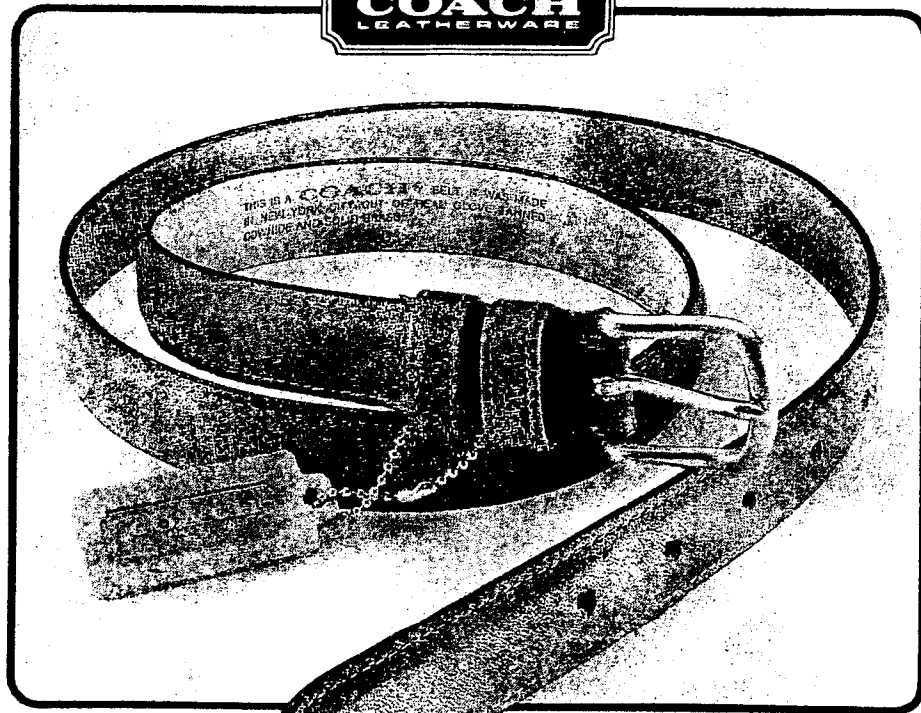


It is one of ten
Glove Tanned
eight lengths
Coach® Belts are sold in selected stores throughout the country.
If you cannot find the one you want in a store near you,
you can also order it directly from the Coach Factory in New
York. For Catalogue and Store List write: Consumer Service,
Coach Leatherware, 516 West 34th Street, New York City 10001.

models we make out of real
Cowhide in ten colors and
for men and women from size 26 to 40.

- July 5, 1982 -

- December 6, 1982 -



This is a Coach®
make out of real
colors and nine
26 to 42. Coach® Belts are sold in our own stores and in selected stores throughout the country. If you cannot find the one you want in a store near you, you can order it directly from the Coach® Store in New York. For Catalogue and Store List write: The Coach® Store, 754 Madison Ave., New York City 10021 or call (212) 594-1581.

Belt. It is one of ten models we
Glove Tanned Cowhide in ten
lengths for men and women from size

New York City • Paris • Washington, D.C. • Boston • San Francisco • Seattle

October 3, 1983

CSI 00113

COACH
LEATHERWARE



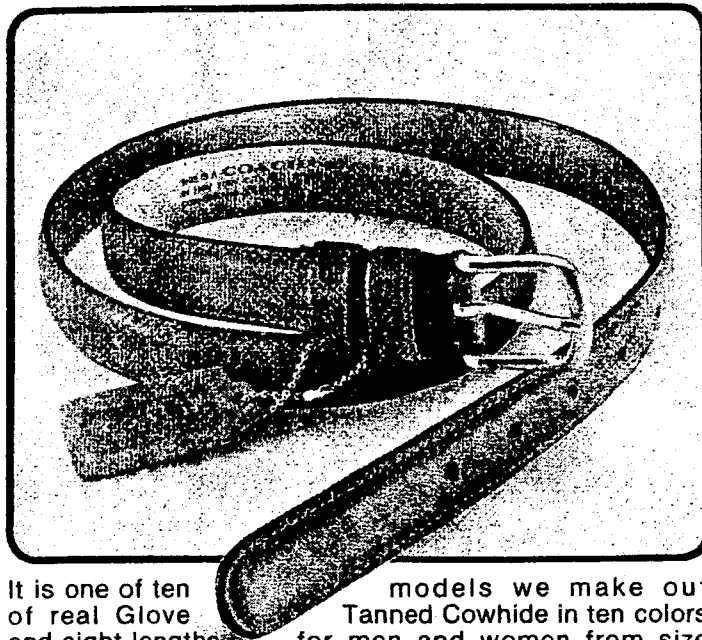
An American in Paris.

Coach® Bags and Belts are made in New York City and shipped by air to the Coach® Store on rue Jacob. Here in the U.S.A. they are sold in our own stores and in selected stores throughout the country.

— December 26, 1983 —

CSI 00114

This is a Coach® Belt

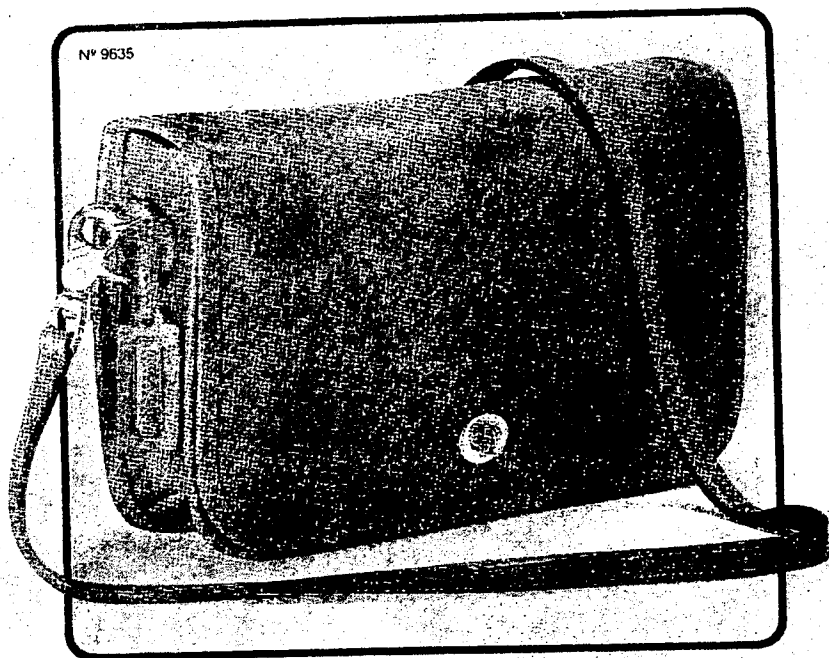


It is one of ten models we make out of real Glove Tanned Cowhide in ten colors and eight lengths for men and women from size 26 to 40. Coach® Belts are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Coach Factory in New York. For Catalogue and Store List write: Consumer Service, Coach Leatherware, 516 West 34th Street, New York City 10001.

— June 1982 —

CSI 00115

A few
of the
things
you
should know
about
Coach® Bags



Coach® Bags are basic, unlined leather bags that are very well made out of very good leather. They never go out of style, and, under normal conditions, can be worn and enjoyed for many years.

Coach® Bags are made by a small, privately held company that has been making leather bags, belts and billfolds since 1941. It is a family-owned business deeply committed to the excellence of its products and the quality of its service.

Coach® Bags are made in a wide range of classic, instantly recognizable models. Many of them were first introduced almost fifteen years ago and are still in production today. There are small, medium and large sizes, and most of them are available in ten colors.

Coach® Bags are made out of a completely natural, uncorrected, full grain leather that has been cured in a special formulation of tanning extracts to render it soft and supple to the touch. Great care is taken not to cover over the natural markings of this leather with paints, sealers, or artificial finishes, and to use only clear aniline colors that

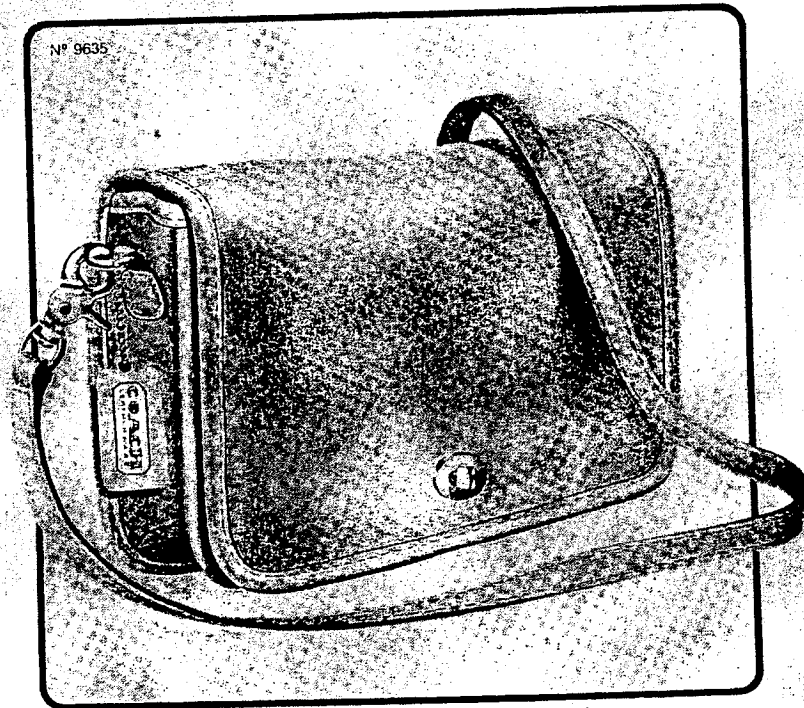
enhance rather than conceal these beautiful markings.

Coach® Bags are virtually indestructible. There are no synthetic lining materials to tear, pull out or come apart. The buckles are cast in solid brass. The seams are sewn with 3-ply high tenacity nylon—double stitched where necessary—and can withstand over 100 lbs. of stress.

Coach® Bags are "one-of-a-kind" bags, each one identified at the factory with its own registration number stamped right into the leather. Because it is made out of a completely "naked" leather, each Coach® Bag will develop its own distinctive patina, changing gradually in appearance and growing darker in coloration as it is worn.

Coach® Bags are soft, supple, unconstructed bags designed to be worn casually and often—at work and at play. True American Classics, they look good with everything and can be worn and enjoyed any time, anywhere. Like a favorite pair of blue jeans, they seem to improve with wear, taking on additional character as they are broken in.

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country. For Catalogue and store list write or call: Coach Leatherware, 516 West 34th Street, New York 10001. Tel: (212) 594-3914



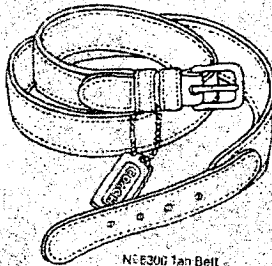
This is a Coach[®] Bag

It is one of twenty-six small, medium and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Glove Tanned Cowhide. Coach[®] Bags are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Factory. For Catalogue and Store List write or call: Consumer Service, Coach Leatherware, 516 West 34th St., New York City 10001. Tel: (212) 594-3914.

May 1982

CSI 00117

COACH



NCE306 Tan Belt

This is a Coach® Belt.

We make it in men's and women's sizes and stock it in ten colors of real Glove Tanned Cowhide.

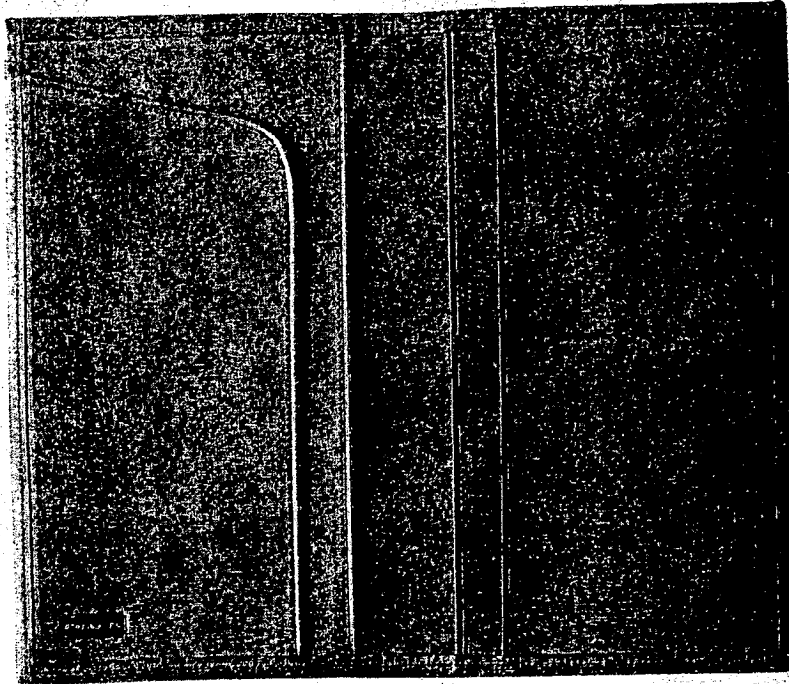
You can pick out a few at the store or send for our catalogue and order them by mail.

The Coach® Store

754 Madison Avenue—just off 65th St.

New York City 10021

Tel: 212-594-1581



This is a Coach® Pocket Secretary

It is one of a small collection of classic wallets and pocket pieces we make out of real Water Buffalo Hide—a remarkable leather with a distinctive “squeak,” especially tanned to retain its beautiful natural markings. Coach® Pocket Pieces are sold in our own stores and in selected stores throughout the country. If you cannot find the one you want in a store near you, you can order it by mail or telephone and we will ship it to you from our Factory at no extra cost. The Coach® Store, 754-Y Madison Avenue, New York City 10021. Telephone (212) 594-1581.

New York City • Paris • Washington, D.C. • Boston • San Francisco • Seattle

August 13, 1984

CSI 00119



A few of the things you should know about Coach® Belts

Coach® Belts are classic Glove Leather belts that are well constructed and beautifully detailed.

Coach® Belts are made by the same people who make Coach® Bags – produced in the same factory, made out of the same leather and stitched by the same sewing machine operators.

Coach® Belts are made in a range of men's and women's widths and sizes. There are ten colors of Glove Tanned Cowhide to choose from as well as an assortment of leather-trimmed wools and linens in colorful racing stripes and solids.

Coach® Belts – whether they are made entirely of leather or in combination with natural fibers – all have the same crisp, traditional saddlery look that is unmistakably "Coach."

Coach® Belts are distinguished by their authentic solid brass hardware, each buckle individually cast in sand.

Coach® Belts have been made in the same basic models with the same classic harness buckles for over ten years. Many fads and trends have come and gone in that time, but these belts have never gone out of style.

If you cannot find the Coach® Belt you want in a store near you, you can order it directly from The Coach® Store in New York. For Catalogue, write or call: The Coach® Store, 754 Madison Avenue, New York City 10021. Telephone: (212) 594-1581.

panics with Hispanics. "I couldn't go over there and he couldn't come over here."

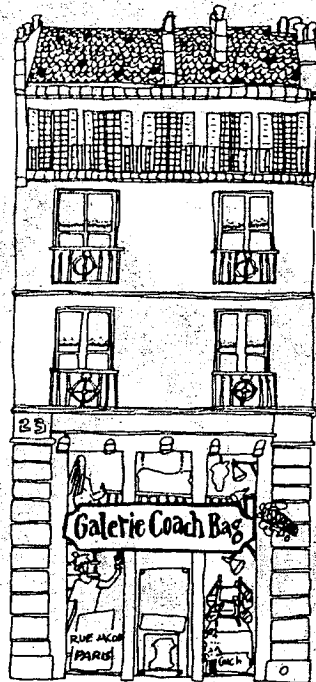
"You can only be so tight with a white boy," Painter says, explaining that if he took me to a playground in Harlem "they wouldn't hurt you," because "you was with me." He continues, "But they'd tell me and you to get out of here. They can know somebody white and like him. But as a whole they say, 'I hate white people.'"

"John, it took me a long time not to resent Jews—I learned they got it up here," says John Barnes, pointing to his head. "What we got to learn is that when a brother gets up a business on a Hundred and Twenty-fifth Street we got to look out for him."

The conversation stretches on, with opinions, resentments, random experiences, and stereotypes exchanged in a good-natured way. A white person who did not know these people might feel threatened, but their resentments and bigotries seem impersonal. (The black poet Amiri Baraka recently said, "Even as I spouted ideas that could be called anti-Semitic, I did not think I hated specific Jews.") These jumbled feelings are perhaps best expressed by Willy Joe, who says, "Most black people don't like whites 'cause of past experience with slavery. We still have slavery in Pittsburgh, I heard. They have auctions for slaves. I heard this from a girl. I don't have no prejudice against no race. Whatever problems I have with somebody, I don't generalize. If I have a fight with a Chinese person, I'm just mad at that person."

THOSE who successfully complete the ten-week BT-27 course will receive a certificate and go on to a twenty-week course called advanced office practices. During the two weeks before the ten-week cutoff, a number of changes take place in BT-27. Mohammed announces that he will be married. The class is invited to the ceremony, at a Bronx church. (Only William Mason attended the wedding, which was scheduled to begin at 4 P.M. but did not get under way until 8 P.M.) For the first time, Hope Parker volunteers to read something in the life-skills class. William Mason's brother, who has been robbed and stabbed, is taken off the critical list. His nineteen-year-old sister is arrested for fighting with a cop. Because of poor attendance and drinking problems, John Hicks and William Penn are dismissed from the training school.

COACH
LEATHERWARE



There
are now
two
Coach® Stores,
one
of them
in Paris,
the other
in New York.

Tucked away on a Left Bank side street, the Coach® Store in Paris is doing a brisk business selling American bags and belts to French men and women.

These bags and belts are all made by us in the Coach® Factory in downtown New York City.

Now we have opened another Coach® Store. This one is on Madison Avenue just off the corner of 65th Street.

The Coach® Store on Madison Avenue is the only store in town where you will find everything we make in every color and size we make it in.

You will also find an exceptionally competent staff, all of whom have previously worked at the Coach® Factory and are familiar with our products and our services.

Telephone and mail orders are picked up at the Store as often as twice a day and shipped out directly from the Factory. There is no extra charge for delivery.

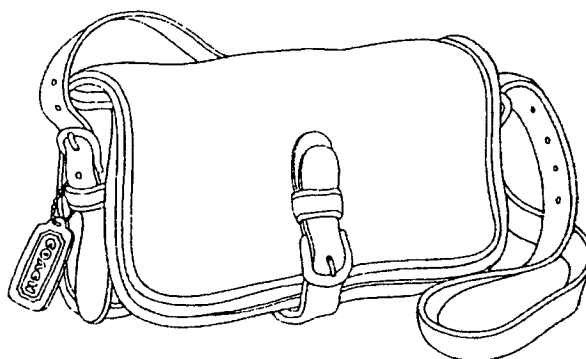
If you will give us a call or drop us a line, we will be happy to send you our catalogue. Or, better still, stop in and pick one up at the store.

The Coach® Store

754 Madison Avenue—just off 65th Street
New York City 10021
Tel: 212-594-1581

the underclass, who are given special assistance—individual counselling, special training, support from their peers, and slow, graduated exposure to stress at work. The experiment was conceived by two Ford Foundation officials—Mitchell Sviridoff and William Grinker. Convinced that few federal training or job programs touched the hardest to reach, Sviridoff, then a vice-president of the foundation, and Grinker, then one of its program officers, studied the efforts of the Vera Institute. They met with representatives of five federal agencies and presented a draft plan for joint financing of a supported-work experiment. The federal officials, naturally, inundated them with questions. Who would run the program? Who would recruit the students? Who would be eligible? The government preferred that the effort be coordinated by a non-profit corporation outside government; it was no coincidence that Sviridoff and Grinker had already drawn up incorporation papers for such an organization. In November of 1974, Grinker left the Ford Foundation to become president of the new Manpower Demonstration Research Corporation. The M.D.R.C. selected the combination of urban and rural sites, financed the community-based organizations like Wildcat which operated them, supervised their management, set goals, audited their performance, and treated each site as a research laboratory for one of the most extensive social experiments ever launched in America. In 1979, with a staff of a hundred people spread over two floors of a Park Avenue skyscraper, and an annual budget of forty million dollars, the M.D.R.C. supervised supported work and several other innovative experiments designed to test various ways to reach the underclass.

Through December of 1980, eighteen thousand people had been enrolled in supported work. Unlike most organizations that run social programs, the M.D.R.C. tries to measure the long-term benefits of its experiments; in 1980 alone, the corporation apportioned three and a half million dollars for research. And, unlike most training programs, supported-work programs seek to recruit the hardest to reach. Among the four groups eligible to participate, for instance, M.D.R.C. surveys have turned up these statistics: the average mother on welfare has been on public assistance more than eight and a half years; ex-offenders have been arrested an aver



There is now a Coach® Store on Madison Avenue just off 65th Street.

It is a small store, but it is very well stocked with Coach® Bags, Coach® Belts and Coach® Leather Accessories—all made by us in our own Factory in downtown New York City.

The Coach® Store is the only store in town where you will find everything we make in every color and size we make it in.

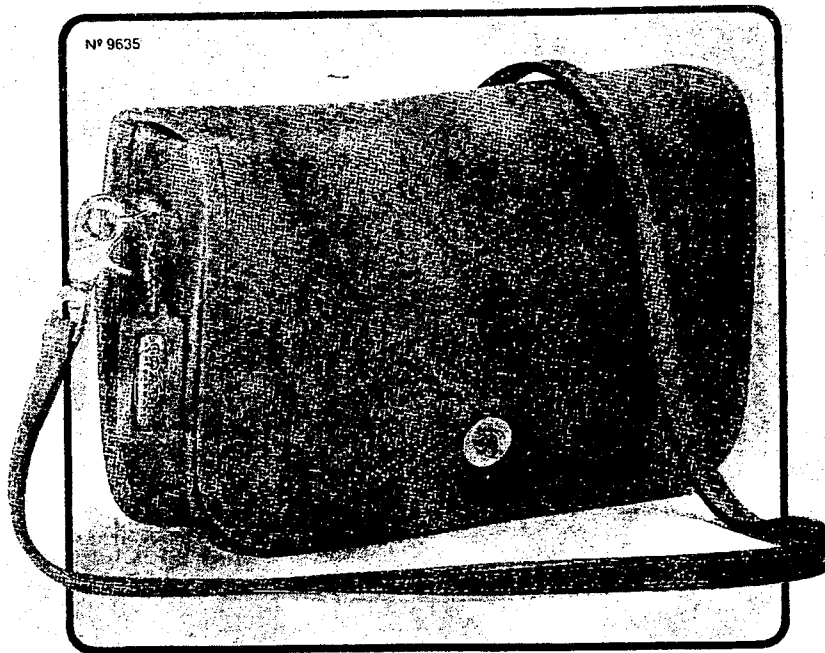
You will also find an exceptionally competent staff, all of whom have previously worked in the Coach® Factory and are familiar with our products and our services.

Telephone and mail orders are picked up at the Store as often as twice a day and shipped out directly from the Factory. There is no extra charge for delivery.

If you will give us a call or drop us a line, we will be happy to send you our catalogue. Or, better still, stop in and pick one up at the store.

The Coach® Store

754 Madison Avenue—just off 65th Street
New York City 10021
Tel: 212-594-1581



A special message for those of you
who may be having difficulty finding
Coach® products in the stores:

Because they are made in small, carefully supervised batches, Coach® Bags and Belts do not readily lend themselves to mass production.

This is why they always seem to be in short supply.

As a matter of fact, it has for some time now been impossible for us to produce enough bags and belts to sell to all the stores that would like to carry them, and even the stores we do sell to are often out of stock.

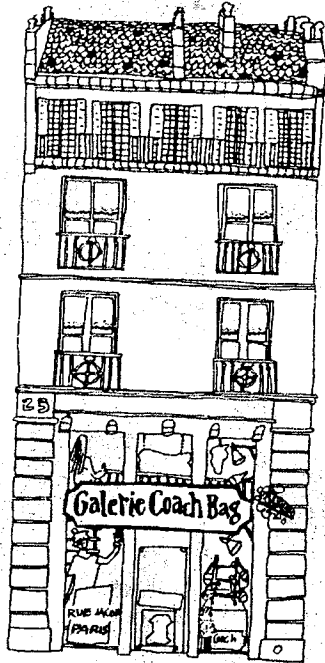
In the event, therefore, that you cannot find the exact Coach® Bag you want in the color you prefer, or if your favorite shop does not have a Coach® Belt in the size you require, by all means let us know about it.

We try to keep a small reserve inventory of all our models at the Factory for this very purpose, and we will be happy to accommodate you directly if we can.

An illustrated Coach Catalogue complete with colors, sizes, and current prices is yours for the asking.

Whether you make your purchase from one of our selected distributors, or whether you order it directly from the Factory, do not hesitate to write or call our Consumer Service Department if you have any questions regarding our products or our service.

Coach Leatherware, 516 West 34th St., N.Y.C. 10001 Tel: (212) 594-3914



The
Coach® Store
in Paris
is a
long way
from the
Coach®
Factory
in
New York

Tucked away on a Left Bank side street, the Coach® Store in Paris is doing a brisk business selling American bags and belts to French men and women.

These bags and belts are all made by us in the Coach® Factory in downtown New York City.

Now we have opened another Coach® Store. This one is on Madison Avenue just off the corner of 65th Street.

The Coach® Store on Madison Avenue is the only store in town where you will find everything we make in every color and size we make it in.

You will also find an exceptionally competent staff, all of whom have previously worked at the Coach® Factory and are familiar with our products and our services.

Telephone and mail orders are picked up at the Store as often as twice a day and shipped out directly from the Factory. There is no extra charge for delivery.

If you will give us a call or drop us a line, we will be happy to send you our catalogue. Or, better still, stop in and pick one up at the store.

The Coach® Store

754 Madison Avenue—just off 65th Street
New York City 10021
Tel: 212-594-1581

GOINGS ON ABOUT TOWN

Pierre; and "Hiroshima, Mon Amour" (1959; Alain Resnais; in French), with Emmanuèle Riva and Eiji Okada.
Nov. 1-3: "Andy Warhol's Bad" (1977); and "Heat" (1972; Paul Morrissey), with Sylvia Miles and Joe Dellesandro.
Nov. 4-7: "The Europeans" (†) and "The God-Between." (†)

OLYMPIA QUAD 1, B'way at 107th. (865-8128)
Through Oct. 29: "Crime and Punishment" (1970; Lev Kulijanov; in Russian), with Georgi Taratorkin.
Oct. 30-31: "Notorious" (1946, Alfred Hitchcock), with Cary Grant, Ingrid Bergman, Claude Rains, and Louis Calhern; and "The Man Who Knew Too Much" (1935; Alfred Hitchcock), with Leslie Banks, Edna Best, Pierre Fresnay, and Peter Lorre.
Nov. 1-3: "Melvin and Howard" (†) and "Resurrection." (†)
Nov. 4-5: "Network" (†) and "The Hospital." (†)
Nov. 6-7: "Harold and Maude" (†); and "Play It Again, Sam" (1972; Herbert Ross), with Woody Allen.

REGENCY, B'way at 67th. (724-3700)
Oct. 28: "Captains of the Clouds" (1942; Michael Curtiz), with James Cagney, Brenda Marshall, and Dennis Morgan; and "Ceiling Zero" (1935; Howard Hawks), with James Cagney, Pat O'Brien, June Travis, and Stuart Erwin.
Oct. 29-31: "Strawberry Blonde" (1941; Raoul Walsh), with Olivia de Havilland, James Cagney, and Rita Hayworth; and "San Francisco" (1936; W. S. Van Dyke), with Clark Gable, Jeanette MacDonald, and Spencer Tracy.
Nov. 1-2: "Run Silent, Run Deep" (1958; Robert Wise), with Clark Gable, Burt Lancaster, and Jack Warden; and "Mister Roberts." (†)
Nov. 3-4: "Comrade X" (1940; King Vidor), with Clark Gable and Hedy Lamarr; and "Honky Tonk." (†)
Nov. 5-7: "Footlight Parade" (†); and "Dancing Lady" (1933; Robert Z. Leonard), with Fred Astaire, Joan Crawford, Franchot Tone, and Clark Gable.

THALIA, B'way at 95th. (222-3370)
Oct. 28: "The Wild Party" (1975; James Ivory), with Raquel Welch, James Coco, David Dukes, and Perry King; and "Shakespeare Wallah." (†)
Oct. 29: "The Blue Angel" (1929; Josef von Sternberg; in German), with Marlene Dietrich, Emil Jannings, and Hans Albers; and "Knight Without Armour" (1937; Jacques Feyder), with Marlene Dietrich and Robert Donat.

Oct. 30-31: "Night of the Living Dead" (1968; George A. Romero), with Duane Jones; and "The Brood" (1979; David Cronenberg; a Canadian film), with Oliver Reed and Samantha Eggar.

Nov. 1: "Things to Come" (†); and "Zardoz" (1974; John Boorman), with Sean Connery and Charlotte Rampling.

Nov. 2: "The Incredible Shrinking Woman" (†); and "The Incredible Shrinking Man" (1957; Jack Arnold), with Grant Williams.

Nov. 3: "Soldier of Orange." (†)
Nov. 4: "Two-Lane Blacktop" (†); and "Born to Kill" ("The Cockfighter"; 1975; Monte Hellman), with Warren Oates, Richard B. Shull, and Harry Dean Stanton.

Nov. 5: "The Boys in the Band" (†) and "Something for Everyone." (†)

Nov. 6-7: "My Brilliant Career" (1980; Gillian Armstrong; an Australian film), with Judy Davis and Sam Neill; and "Picnic at Hanging Rock." (†)

THEATRE 80 ST. MARKS, 80 St. Marks Pl. (254-7400)

Oct. 28: "The Sun Also Rises" (1957; Henry King), Tyrone Power, Ava Gardner, Errol Flynn, Mel Ferrer, and Eddie Albert; and "The Snows of Kilimanjaro" (1952; Henry King), with Gregory Peck, Susan Hayward, and Ava Gardner.

Oct. 29: "Evergreen" (1935; Victor Saville), with Jessie Matthews and Sonnie Hale; and "Second Chorus" (1940; H. C. Potter), with Fred Astaire, Paulette Goddard, and Burgess Mer

10-31:

CSI 00124

and 29, Saturdays, Oct. 24 and 31, and Tuesday, Oct. 27, at 8.)

GOLDOVSKY OPERA THEATRE—Boris Goldovsky directing a performance of Mozart's "Don Giovanni" (in English). (Lehman College Concert Hall, the Bronx. 960-8833. Friday, Oct. 30, at 8.)

ORCHESTRAS AND CHORUSES

NEW YORK PHILHARMONIC—At Avery Fisher Hall. Rafael Kubelik conducting—Thursday, Oct. 22, at 8; Friday, Oct. 23, at 2; Saturday, Oct. 24, at 8; and Tuesday, Oct. 27, at 7:30: A Haydn-Stravinsky-Mendelssohn program, with Kyung-Wha Chung, violin. . . . Thursday, Oct. 29, at 8; Friday, Oct. 30, at 2; Saturday, Oct. 31, at 8; and Tuesday, Nov. 3, at 7:30: A Mozart-Bruckner program, with Murray Perahia, piano.

POLISH CHAMBER ORCHESTRA—Jerzy Maksymiuk conducting a program of music by Handel, Bach, Rossini, and Schoenberg, with Miriam Fried, violin. (Carnegie Hall, Saturday, Oct. 24, at 8.)

PHILADELPHIA ORCHESTRA—Riccardo Muti conducting a Franck-Dvořák program, with Isaac Stern, violin. (Carnegie Hall, Tuesday, Oct. 27, at 8.)

BROOKLYN PHILHARMONIA—Lukas Foss conducting—A varied program, with Donald Gramm, bass-baritone. (Brooklyn Academy of Music, 30 Lafayette Ave. 636-4100. Friday and Saturday, Oct. 23-24, at 8, and Sunday, Oct. 25, at 3. . . . The first in a "Meet the Moderns" series of four programs, this one devoted to music involving computers and laser and electronic innovations. (Brooklyn Academy of Music, Thursday, Oct. 29, at 8. . . . Great Hall, Cooper Union, Third Ave. at 7th St. Friday, Oct. 30, at 8. For information about tickets, call 636-4120.)

MANHATTAN PHILHARMONIA—Walter Engel conducting a Beethoven-Mahler program. (Borden Auditorium, Manhattan School of Music, 120 Claremont Ave., at 122nd St. Friday, Oct. 23, at 8. No tickets necessary.)

Y CHAMBER SYMPHONY—Gerard Schwarz conducting a Handel-Bach program, with Lionel Party, harpsichord, and Thomas Nyfenger, flute. (Kaufmann Concert Hall, 92nd Street Y, Saturday, Oct. 24, at 8.)

MUSICA AETERNA ORCHESTRA—Frederic Waldman conducting a Beethoven-Janáček-Rossini program, with Rudolf Firkusny, piano. (Grace Rainey Rogers Auditorium, Metropolitan Museum, Saturday, Oct. 24, at 8.)

BLOOMINGDALE CHAMBER ORCHESTRA—George Mariner Maul conducting a Fauré-Beethoven-Haydn program, with Michael May, harpsichord. (Symphony Space, Broadway at 95th St. Sunday, Oct. 25, at 3. For information about tickets, call 663-6021.)

CLARION CONCERTS ORCHESTRA—Newell Jenkins conducting a program entitled "The Amadeus Rivalry," with Kenneth Cooper, piano. (Alice Tully Hall, Wednesday, Oct. 28, at 8.)

NEW YORK PRO ARTE CHAMBER ORCHESTRA—Raffael Adler conducting, with Paula Robison, flute. (Merkin Concert Hall, Abraham Goodman House, Saturday, Oct. 31, at 8.)

POMERIUM MUSIQUES—Alexander Blachly directing a program called "English Music from the Hundred Years' War, 1337-1453." (Merkin Concert Hall, Abraham Goodman House, Wednesday, Oct. 28, at 8.)

NEW YORK CHORAL SOCIETY—Robert DeCormier directing a performance of Dvořák's Requiem, with Eleanor Bergquist, soprano; Hilda Harris, mezzo-soprano; Gene Tucker, tenor; and David Eivitts, bass-baritone. (Carnegie Hall, Saturday, Oct. 31, at 8.)

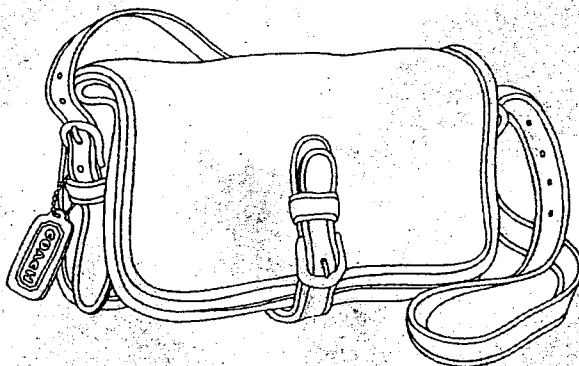
RECITALS

JOSEPH PORRELLO—Tenor, with assisting artists, presenting the premiere of a song cycle by Gian Carlo Menotti, and other works. (Merkin Concert Hall, Abraham Goodman House, Wednesday, Oct. 27, at 8.)

TARACK CHAMBER ENSEMBLE—A chamber group that performs without a conductor. (Carnegie Recital Hall, Wednesday, Oct. 27, at 8.)

MARK WESTCOTT—Piano. (Kaufmann Concert Hall, 92nd Street Y, Thursday, Oct. 22, at 8.)

ALL-BACH PROGRAM—With Ronald Roseman, oboe; Edward Brewer, harpsichord; Timothy Eddy, cello; Syoko Akiyama, violin; and Lucy Shelton, soprano. (Grac



We are pleased to announce
the opening of
The Coach® Store
on Madison Avenue
just off 65th Street.

It is not a big store, but it is very well stocked with Coach® Bags, Coach® Belts and Coach® Leather Accessories—all made by us in our own Factory in downtown New York City.

The Coach® Store is the only store in town where you will find everything we make in every color and size we make it in.

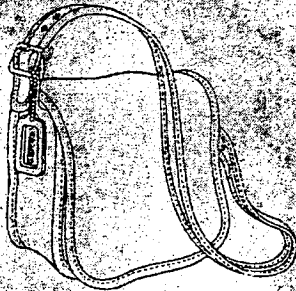
You will also find an exceptionally competent staff, all of whom have previously worked at the Coach® Factory and are familiar with our products and our services.

Telephone and mail orders are picked up at the Store as often as twice a day and shipped out directly from the Factory. There is no extra charge for delivery.

If you will give us a call or drop us a line, we will be happy to send you our catalogue. Or, better still, stop in and pick one up at the store.

The Coach® Store
754 Madison Avenue—just off 65th Street
New York City 10021
Tel: 212-594-1581

COACH
LEATHERWARE



No 9170—Coach Classic Bag

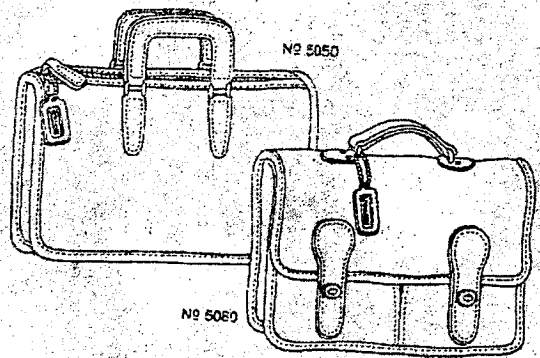
Souples et décontractés, les sacs "Coach bag" sont taillés dans un remarquable cuir américain — c'est un cuir "plein fleur" qui, à l'usage, se patine et vieillit en beauté.

Ce sont les sacs les plus connus depuis dix ans aux U.S.A. et déjà reconnus aujourd'hui à Paris.

Galerie Coach Bag

23 Rue Jacob, Paris 6^e

326.29.17

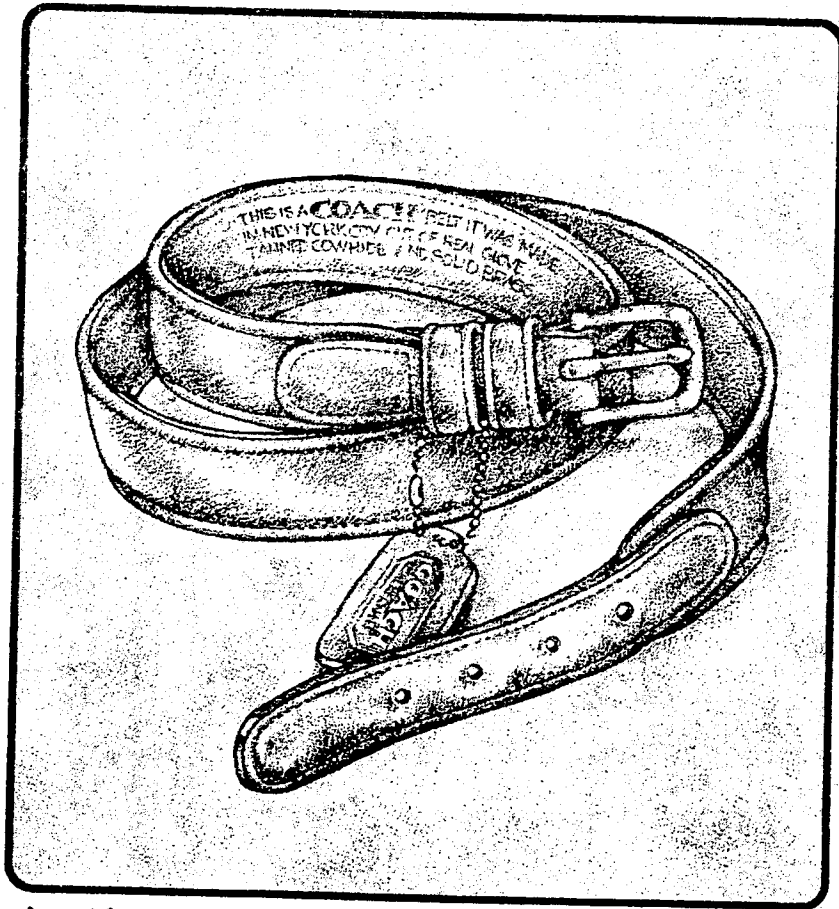


We make soft, legal size Portfolios
and Briefcases out of real Glove
Tanned Cowhide.

You can pick one out at the store
or send for our catalogue and order
it by mail.

The Coach® Store

754 Madison Avenue—just off 65th Street
New York City 10021
Tel: 212-594-1581

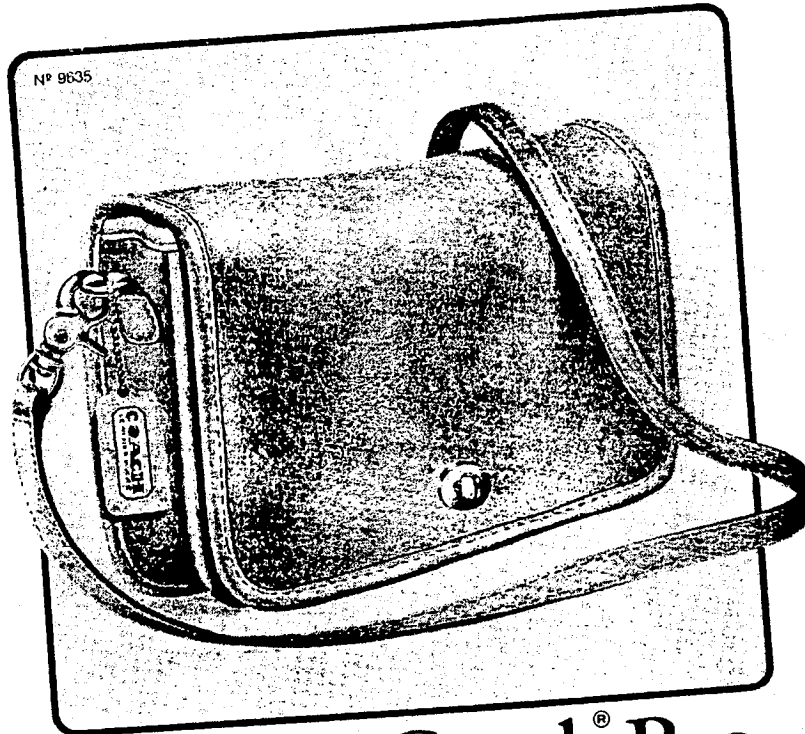


This is a Coach® Belt

It is one of eleven models we make out of real Glove Tanned Cowhide in ten colors and eight lengths for men and women from size 26 to 40. Coach® Belts are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can order it directly from The Coach® Store in New York. For Catalogue, write or call: The Coach® Store, 754 Madison Avenue, New York City 10021. Telephone: (212) 594-1581.

November 1981

CSI 00128



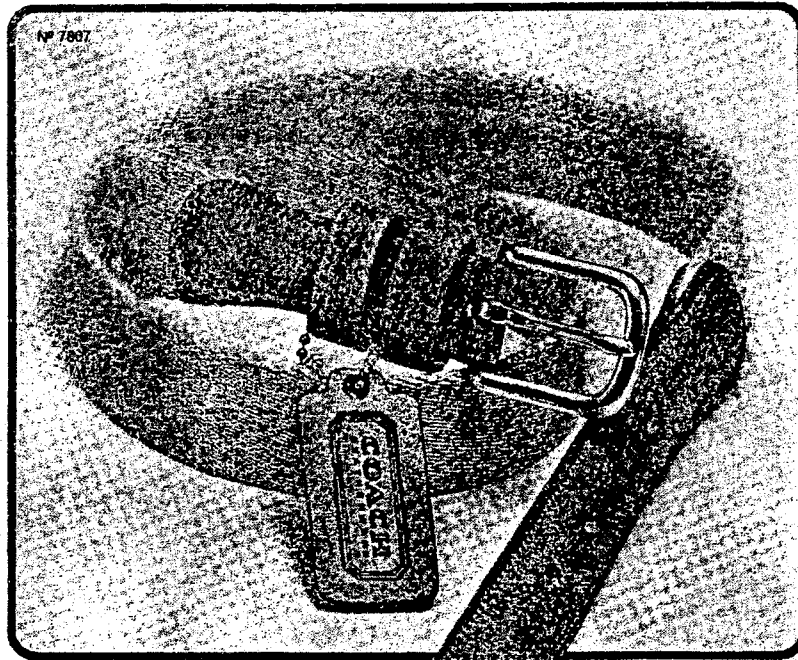
This is a Coach[®] Bag

It is one of twenty-six small, medium and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Glove Tanned Cowhide. Coach[®] Bags are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Factory. For Catalogue and Store List write or call: Consumer Service, Coach Leatherware, 516 West 34th St., New York City 10001. Tel: (212) 594-3914.

October 1981

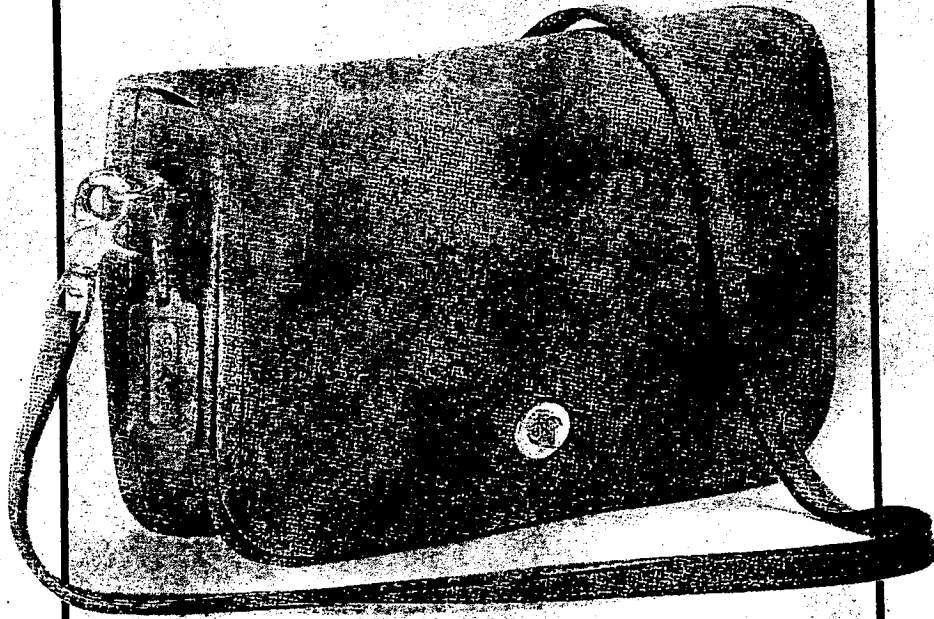
CSI 00129

This is a Coach® Belt



It is one of twenty belts we make out of leather-trimmed wools and linens in a wide range of colorful stripes and solids in both men's and women's sizes. These belts, as well as our Glove Leather belts, are sold in selected stores throughout the country. If you cannot find the Coach® Belt you want in a store near you, you can also order it directly from the Coach Factory in New York. For Catalogue and Store List write or call: Consumer Service, Coach Leatherware, 516 West 34th Street, New York City 10001. Tel: (212) 594-3914.

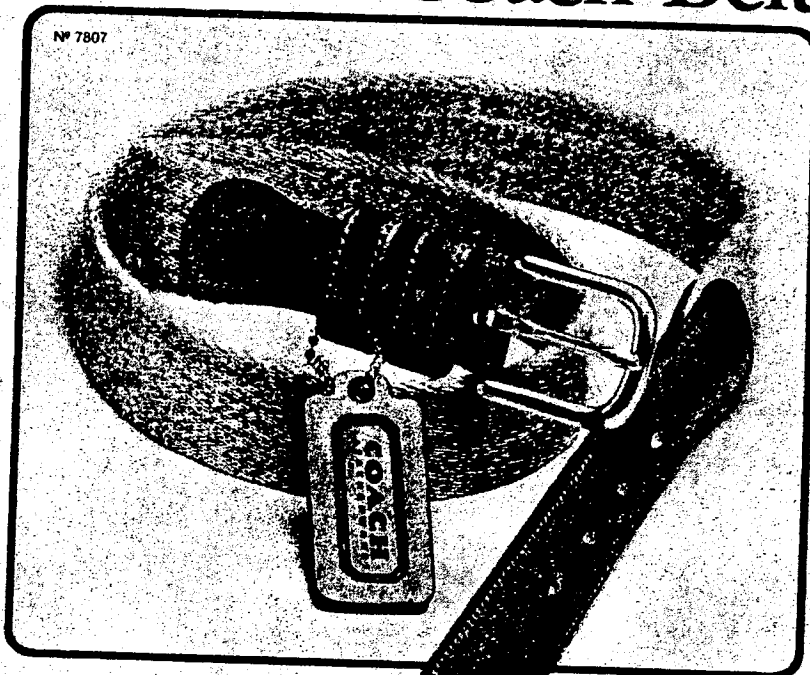
N° 9635



This is a Coach® Bag

It is one of twenty-six small, medium and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Glove Tanned Cowhide. Coach® Bags are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Factory. For Catalogue and Store List write or call: Consumer Service, Coach Leatherware, 516 West 34th St., New York City 10001. Tel: (212) 594-3914.

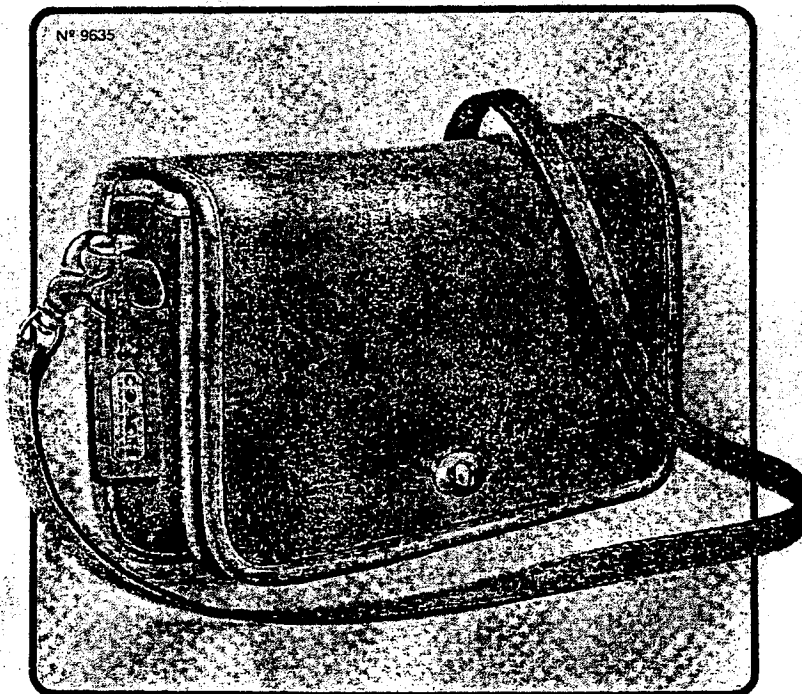
This is a Coach® Belt



It is one of twenty belts we make out of leather-trimmed wools and linens in a wide range of colorful stripes and solids in both men's and women's sizes. These belts, as well as our Glove Leather belts, are sold in selected stores throughout the country. If you cannot find the Coach® Belt you want in a store near you, you can also order it directly from the Coach Factory in New York. For Catalogue and Store List write or call: Consumer Service, Coach Leatherware, 516 West 34th Street, New York City 10001. Tel: (212) 594-3914.

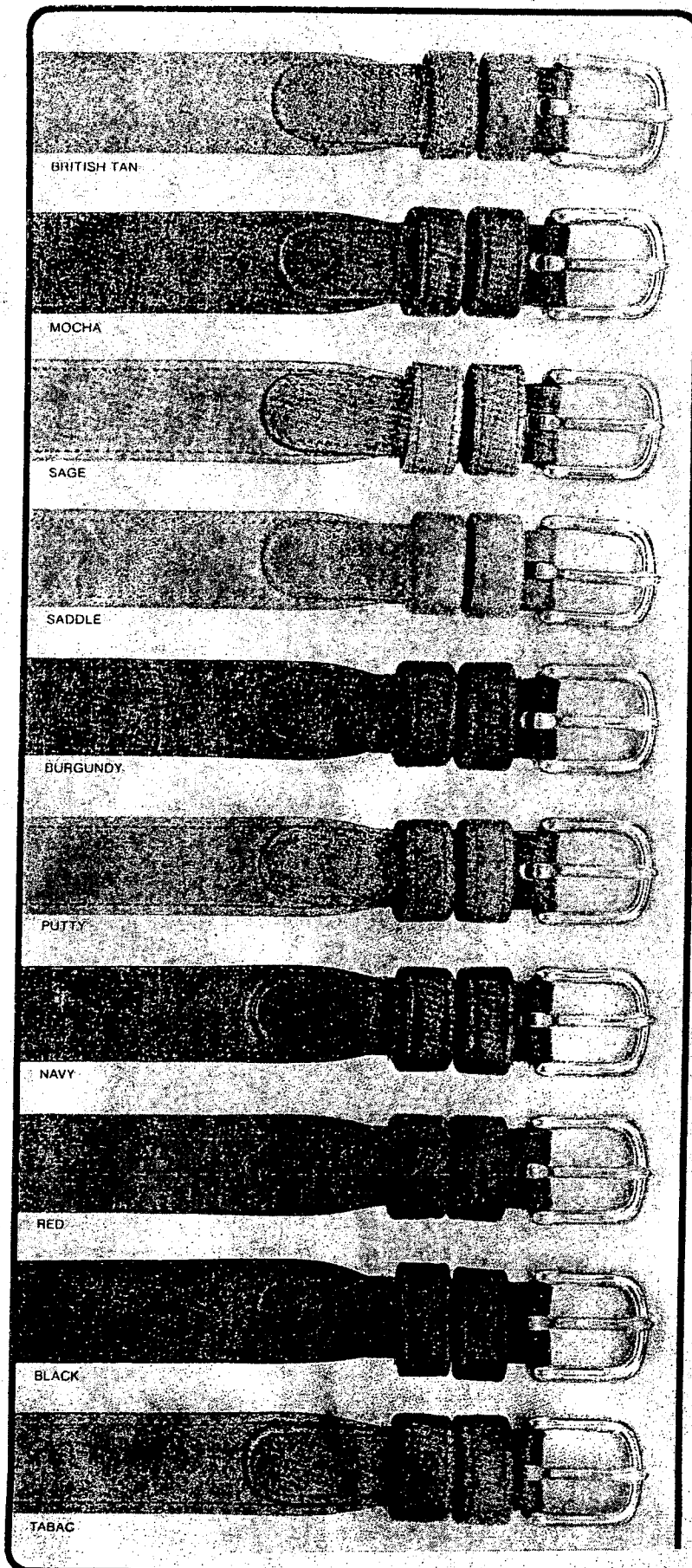
— May 1981 —

CSI 00132



This is a Coach® Bag

It is one of twenty-six small, medium and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Glove Tanned Cowhide. Coach® Bags are sold in selected stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Factory. For Catalogue and Store List write or call: Consumer Service, Coach Leatherware, 516 West 34th St., New York City 10001. Tel: (212) 594-3914.



This
is
a
Coach® Belt
made
out of
full-grain
Coach® Leather
in
ten colors
and
eight lengths
for men
and women
from
size 26
to 40.

If you cannot find the one you want in a store near you, you can order it directly from the Factory. For Catalogue and Store List, write or call: Coach Leatherware, 516 W. 34th St., N.Y.C. 10001. (212) 594-3914.

May 4, 1981

CSI 00134

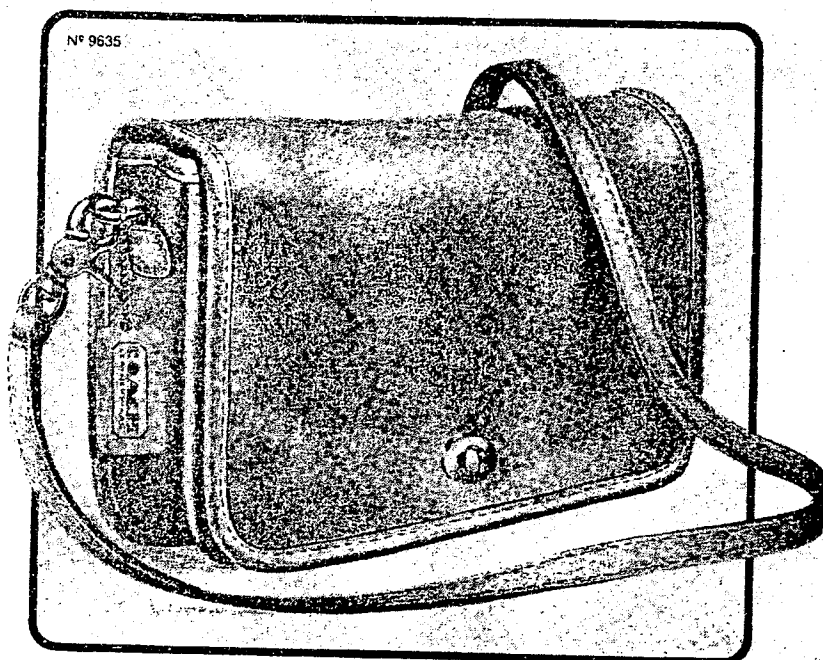
COACH® Bags and Belts are made in New York City and sold in selected stores throughout the country. For catalogue, write: Coach Leatherware, 516 West 34th Street, N.Y.C. 10001.



This
Coach® Belt
is made
of
wool
surcingle,
bridle
leather
and
brass
and comes
in
men's
and women's
sizes.

CSI 00135

A few
of the
things
you
should know
about
Coach® Bags



Coach® Bags are basic, unlined leather bags that are very well made out of very good leather. They never go out of style, and, under normal conditions, can be worn and enjoyed for many years.

Coach® Bags are made by a small, privately held company that has been making leather bags, belts and billfolds since 1941. It is a family-owned business deeply committed to the excellence of its products and the quality of its service.

Coach® Bags are made in a wide range of classic, instantly recognizable models. Many of them were first introduced almost fifteen years ago and are still in production today. There are small, medium and large sizes, and most of them are available in ten colors.

Coach® Bags are made out of a completely natural, uncorrected, full grain leather that has been cured in a special formulation of tanning extracts to render it soft and supple to the touch. Great care is taken not to cover over the natural markings of this leather with paints, sealers, or artificial finishes, and to use only clear aniline colors that

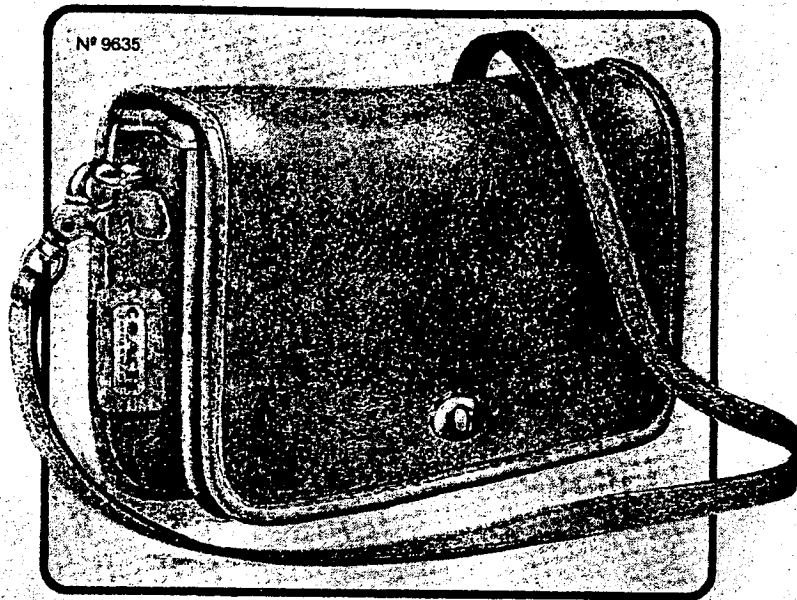
enhance rather than conceal these beautiful markings.

Coach® Bags are virtually indestructible. There are no synthetic lining materials to tear, pull out or come apart. The buckles are cast in solid brass. The seams are sewn with 3-ply high tenacity nylon—double stitched where necessary—and can withstand over 100 lbs. of stress.

Coach® Bags are "one-of-a-kind" bags, each one identified at the factory with its own registration number stamped right into the leather. Because it is made out of a completely "naked" leather, each Coach® Bag will develop its own distinctive patina, changing gradually in appearance and growing darker in coloration as it is worn.

Coach® Bags are soft, supple, unconstructed bags designed to be worn casually and often—at work and at play. True American Classics, they look well with everything and can be worn and enjoyed any time, anywhere. Like a favorite pair of blue jeans, they seem to improve with wear, taking on additional character as they are broken in.

If you cannot find the Coach® Bag you want in a store near you, you can order it directly from the Coach Factory in New York. For Catalogue and Store List, write or call: Coach Leatherware, 516 W. 34th St., N.Y.C. 10001. Tel: (212) 594-3914.



**A special message for those of you
who may be having difficulty finding
Coach® products in the stores:**

Because they are made in small, carefully supervised batches, Coach® Bags and Belts do not readily lend themselves to mass production.

This is why they always seem to be in short supply.

As a matter of fact, it has for some time now been impossible for us to produce enough bags and belts to sell to all the stores that would like to carry them, and even the stores we do sell to are often out of stock.

In the event, therefore, that you cannot find the exact Coach® Bag you want in the color you prefer, or if your favorite shop does not have a Coach® Belt in the size you require, by all means let us know about it.

We try to keep a small reserve inventory of all our models at the Factory for this very purpose, and we will be happy to accommodate you directly if we can.

An illustrated Coach Catalogue complete with colors, sizes, and current prices is yours for the asking.

Whether you make your purchase from one of our selected distributors, or whether you order it directly from the Factory, do not hesitate to write or call our Consumer Service Department if you have any questions regarding our products or our service.

Coach Leatherware, 516 West 34th St., N.Y.C. 10001 Tel: (212) 594-3914

KENMAR-KARNELL STATIONERY & PRINTING
79 WEST 23 STREET NEW YORK 10. N. Y.

KENMAR-KARNELL STATIONERY & PRINTING CO., INC.
79 WEST 23 STREET, NEW YORK 10. N. Y.

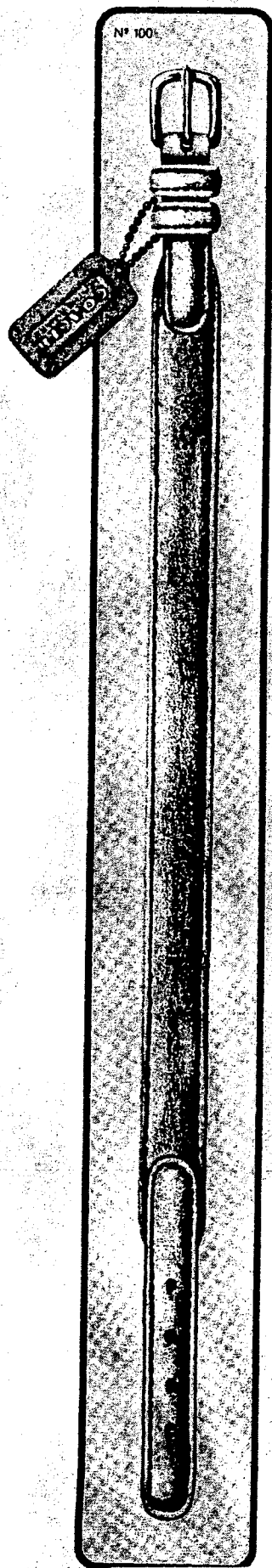


This is a Coach® Bag in burgundy.
We also make it in black, mocha, navy, red,
putty, tabac, british tan, saddle, and sage.

If you cannot find the Coach® Bag you want in a store near you, you can order it directly from the Coach Factory in New York.
For Catalogue and Store List, write or call: Coach Leatherware, 516 W. 34th St., N.Y.C. 10001. Tel: (212) 594-3914.

December 22, 1980

CSI 00138



A few of the things you should know about Coach® Belts

Coach® Belts are classic Glove Leather belts that are well constructed and beautifully detailed.

Coach® Belts are made by the same people who make Coach® Bags - produced in the same factory, made out of the same leather and stitched by the same sewing machine operators.

Coach® Belts are made in a range of men's and women's widths and sizes. There are ten colors of Glove Tanned Cowhide to choose from as well as an assortment of leather-trimmed wools and linens in colorful racing stripes and solids.

Coach® Belts - whether they are made entirely of leather or in combination with natural fibers - all have the same crisp, traditional saddlery look that is unmistakably "Coach."

Coach® Belts are distinguished by their authentic solid brass hardware, each buckle individually cast in sand.

Coach® Belts have been made in the same basic models with the same classic harness buckles for over ten years. Many fads and trends have come and gone in that time, but these belts have never gone out of style.

If you cannot find the Coach® Belt you want in a store near you, you can order it directly from the Coach Factory in New York. For Catalogue, Store List and Prices, write or call Coach Leatherware, 516 West 34th St., N.Y.C. 10001. Tel: (212) 594-3914.



This is a Coach[®] Bag

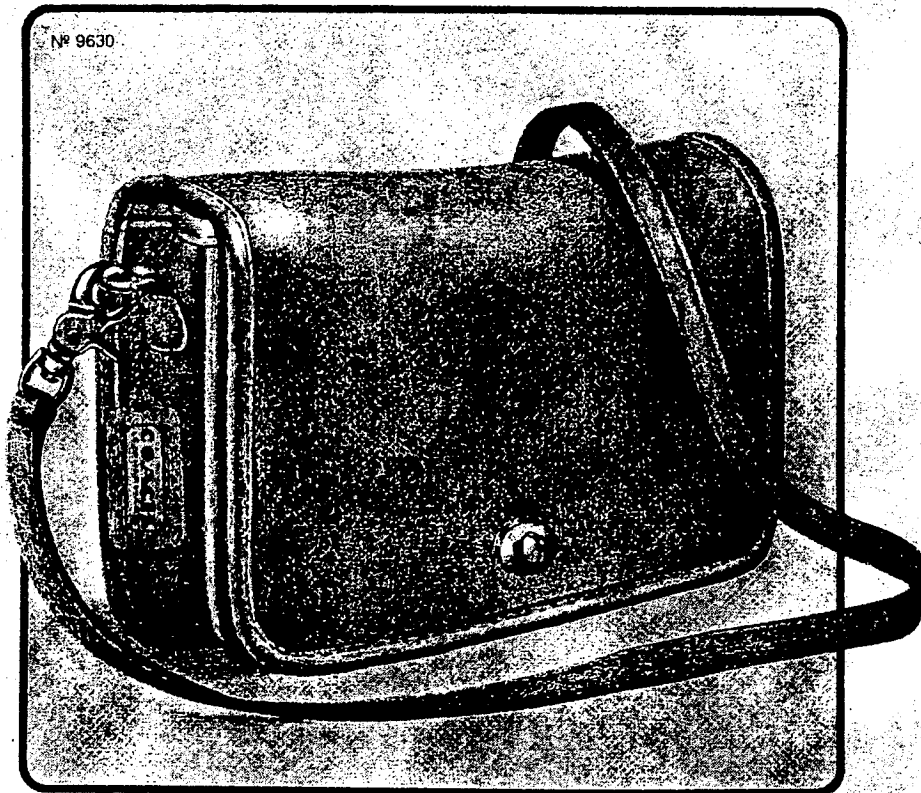
It is one of twenty-six small, medium and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Glove Tanned Cowhide. Coach[®] Bags are sold in many nice stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Coach Factory in New York. For Catalogue and Store List write: Consumer Service, Coach Leatherware, 516 West 34th Street, New York City 10001.

— NOVEMBER 1980 —

93

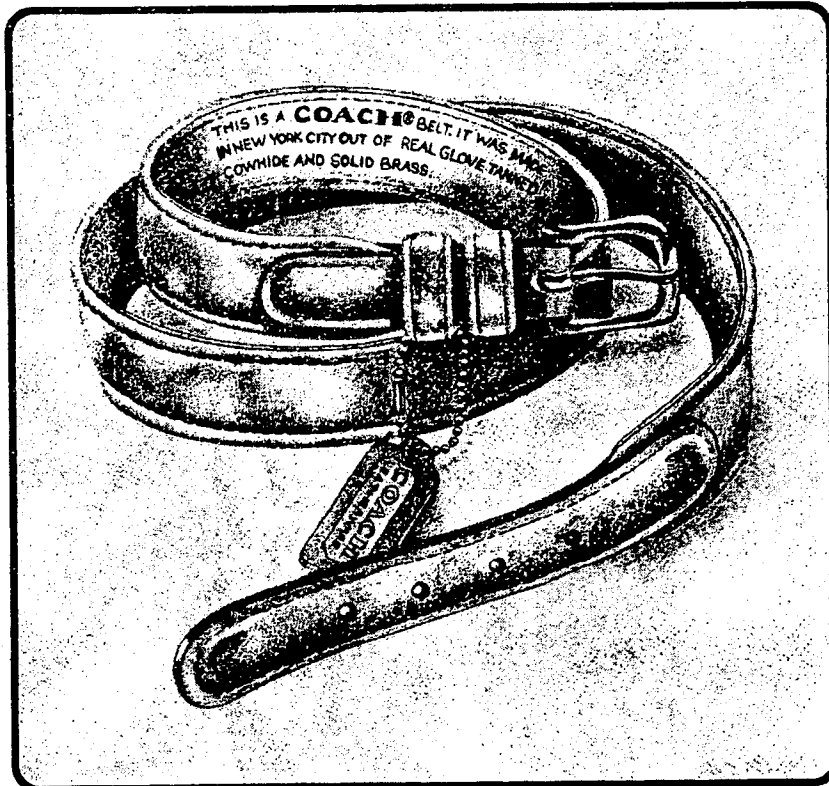
— OCTOBER 22, 1980 —

CSI 00140



This is a Coach[®] Bag

It is one of twenty-six small, medium and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Glove Tanned Cowhide. Coach[®] Bags are sold in many nice stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Coach Factory in New York. For Catalogue and Store List write: Consumer Service, Coach Leatherware, 516 West 34th Street, New York City 10001.



This is a Coach[®] Belt

It is one of eleven models we make out of real Glove Tanned Cowhide in ten colors and eight lengths for men and women from size 26 to 40. Coach[®] Belts are sold in many nice stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Coach Factory in New York. For Catalogue and Store List write: Consumer Service, Coach Leatherware, 516 West 34th Street, New York City 10001.

THE REAL REASON

MRS. J. B. L.
OF ORANGE, CA
AND
MRS. D. A. McN.
OF HYATTSVILLE, MD
COME
TO BUY THEIR CLOTHES
IN SAINT PAUL
IS
BECAUSE

frank murphy

IS A VERY
SPECIAL STORE

SAINT PETER AT FIFTH
AND HIGHLAND VILLAGE

CLOTHES FOR
TOWN AND COUNTRY

MCS
minnetonka
choral society

presents

Vesperae solennes de confessore

by

Wolfgang Amadeus Mozart

Mass in D Minor

(Lord Nelson Mass)

by

Franz Josef Haydn

Elizabeth Woolner—Soprano

Janis Hardy—Mezzo-Soprano

Clifton Ware—Tenor

LeRoy Lehr—Baritone

Chorus & Orchestra

James N. Dau, Conductor

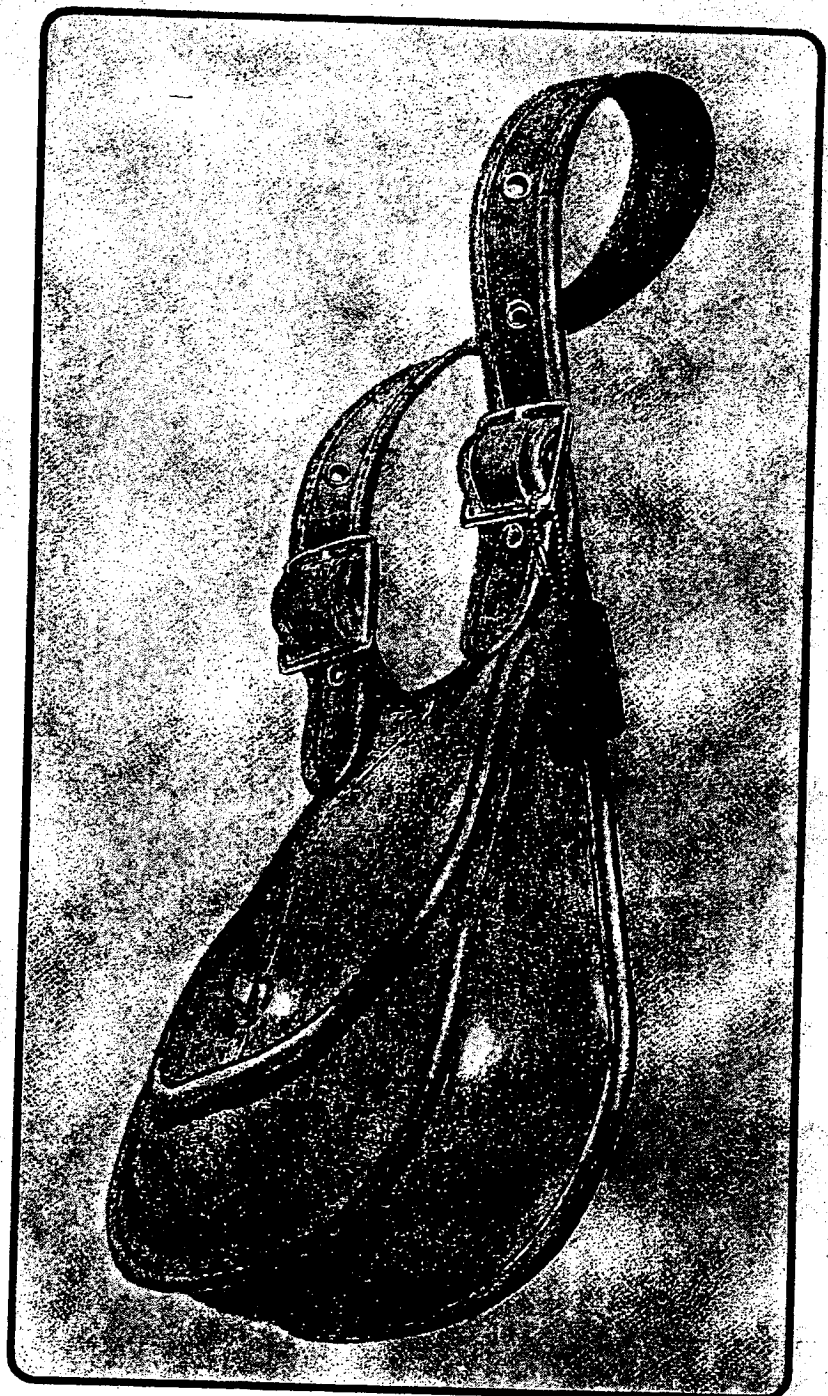
Monday, December 8, 1980

8:00 P.M.

Wayzata Senior High School

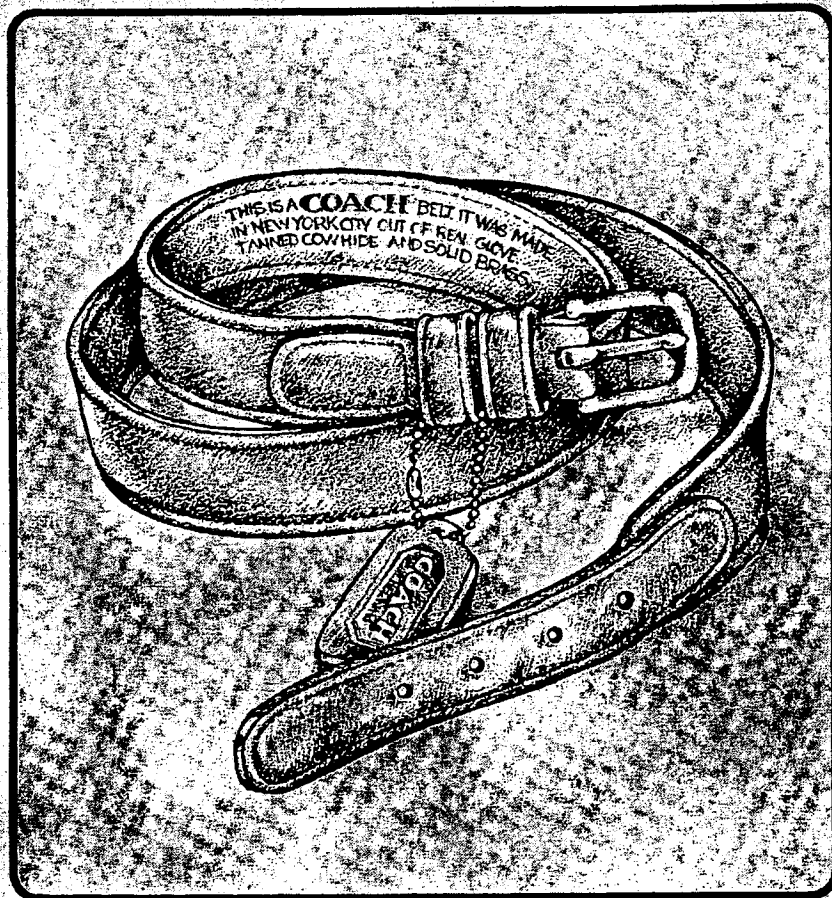
305 Vicksburg Lane, Wayzata

No Admission Charge.



This is a Coach® Bag

It is one of twenty-six small, medium and large Shoulder Bags, Pouches, Clutches, Totes, Satchels and Portfolios that we make in ten colors of real Tanned Cowhide. Coach® Bags are sold in many nice stores throughout the country. If you cannot find the one you want in a store near you, you can also order it directly from the Coach Factory in New York. For Catalogue and Store List write: Consumer Service, Coach Leatherware, 516 West 34th Street, New York City 10001.



This is a Coach[®] Belt.

It is one of eleven models we make out of real Glove Tanned Cowhide in ten colors and eight lengths for men and women from size 26 to 40. Coach[®] Belts are sold in nice stores throughout the country, but if you cannot find the one you want in a store near you, you can order it directly from the Coach Factory in New York. For Catalogue and Store List write: Coach Leatherware, 516 West 34th Street, New York City 10001.

nothing inside
but full-grain leather

scratches are not
covered over with paint-
interesting

nice detailing-
even the pocket
is bound in leather

small even stitches-
an expert did that

Coach brand
stamped into leather

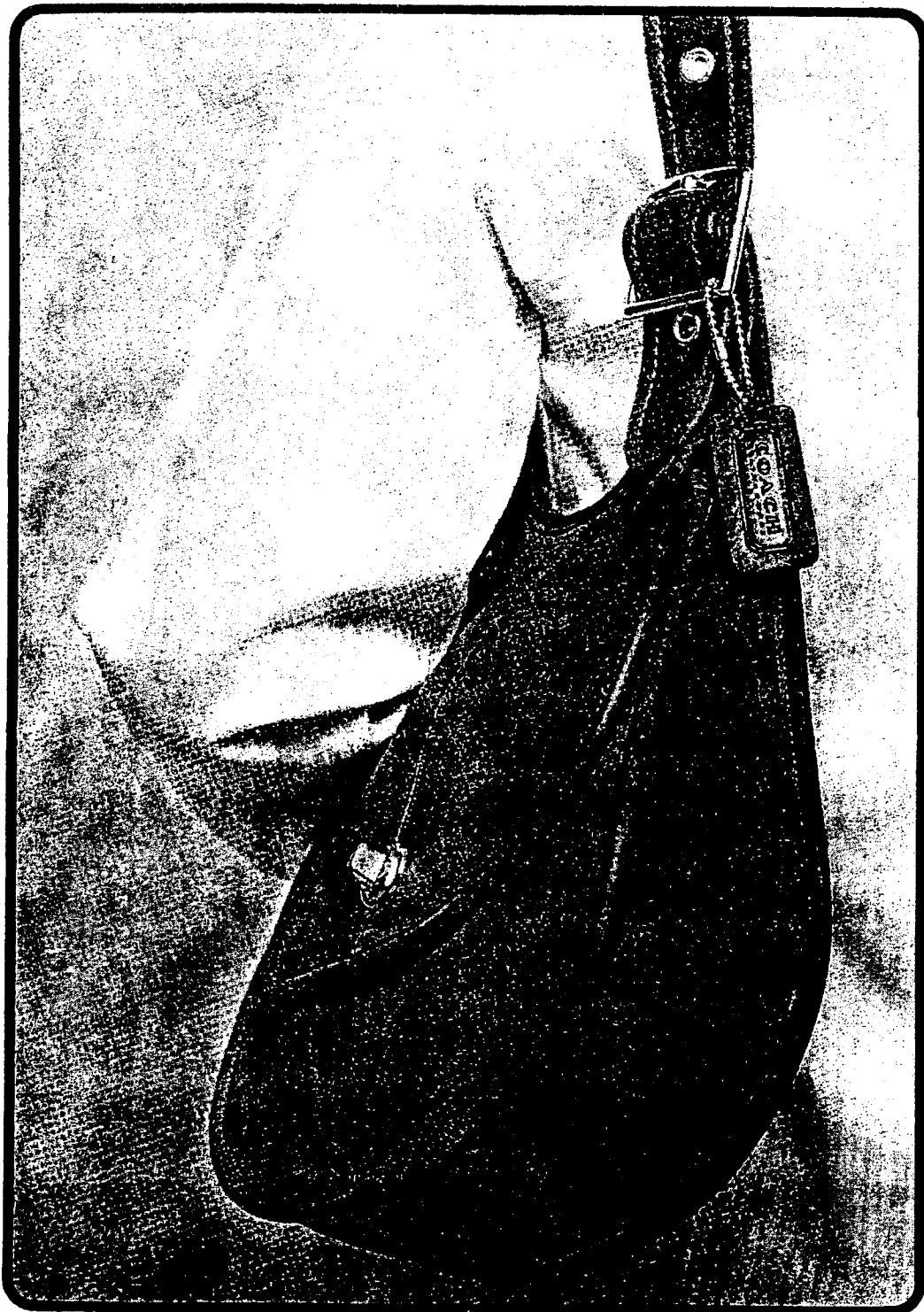
this scar
healed nicely



stretch marks
and fat wrinkles

skilled workers
come to this
great city from
all over the world

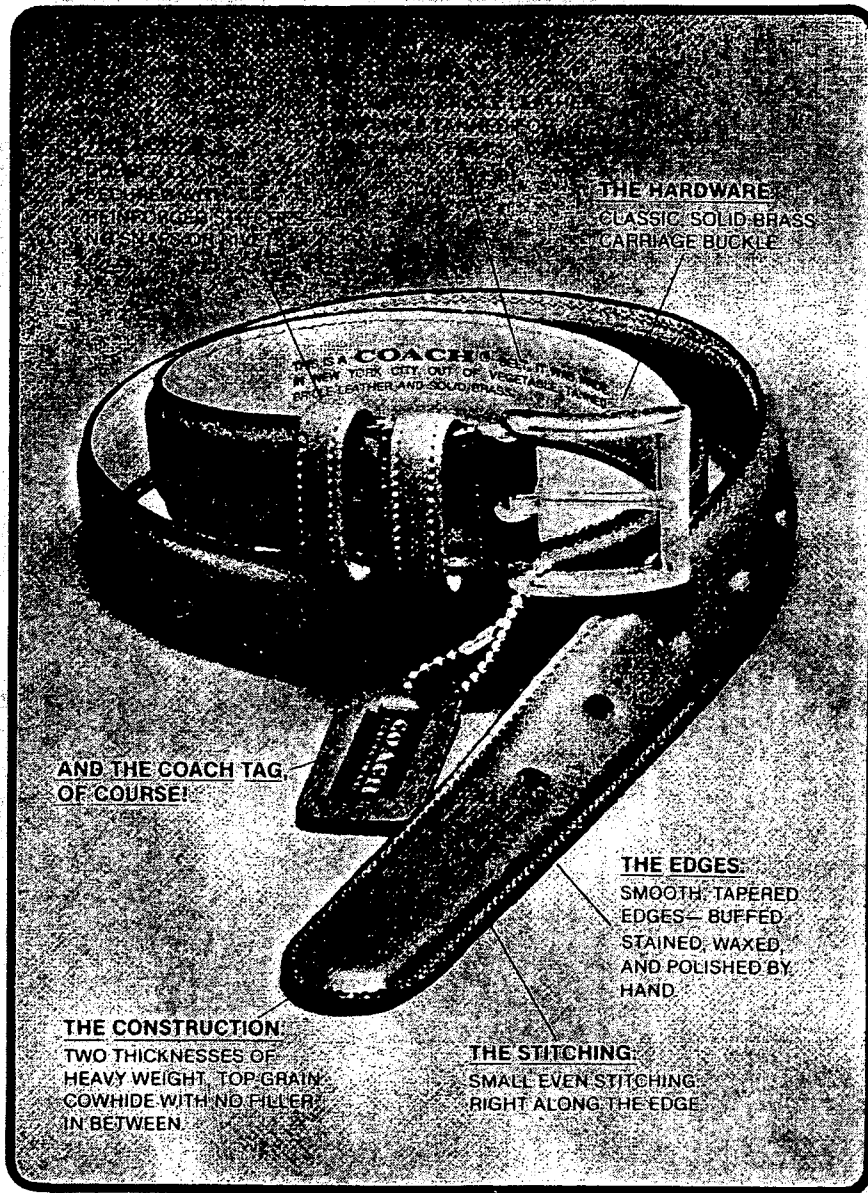
The inside story of a Coach™ bag



Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00146

November 20, 1979



This is a Coach® Belt,
and these are some of the things
that make it special.

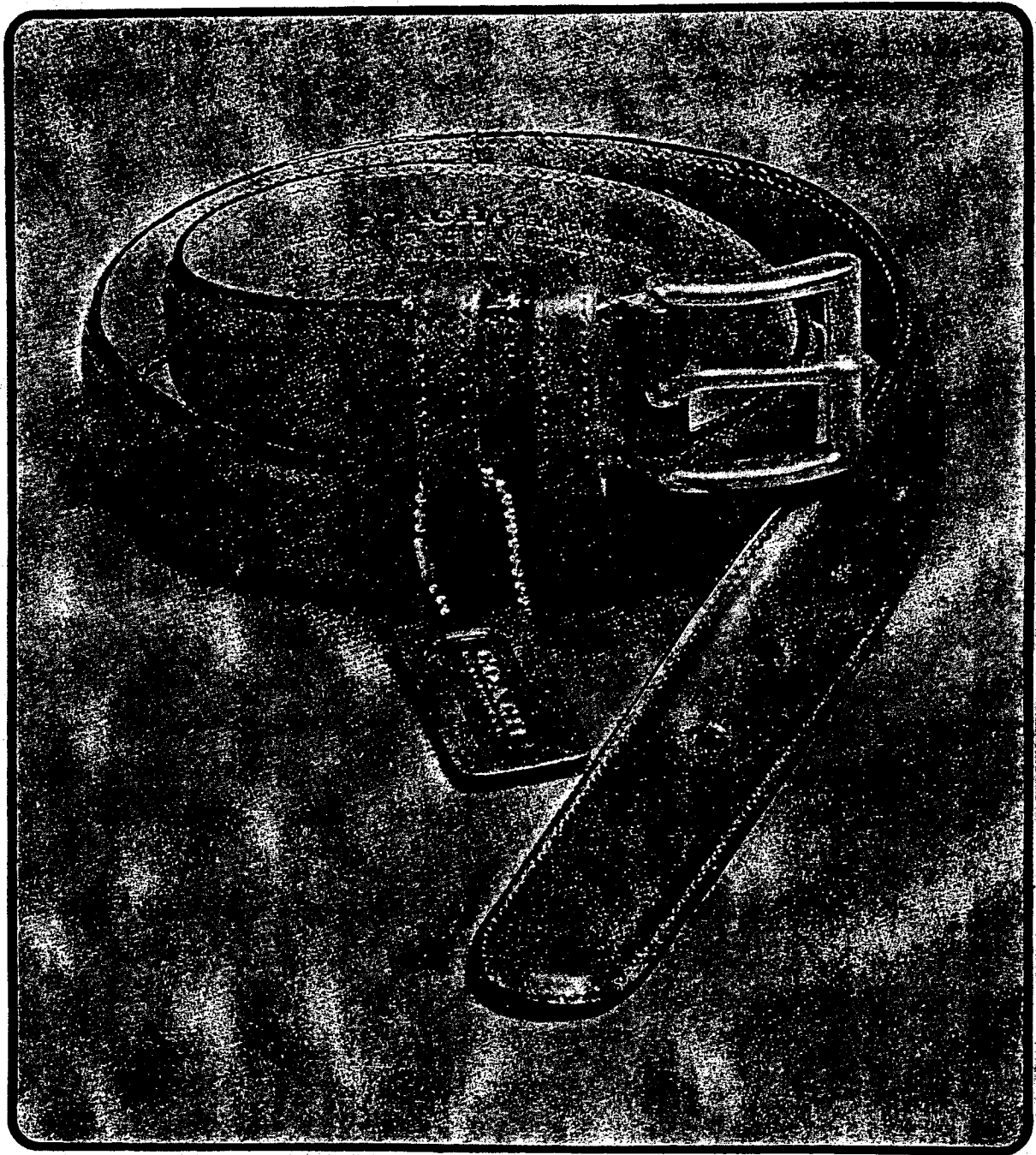
COACH® Belts are made in men's and women's sizes.
For catalogue and store list, write: Coach Leatherware, 516 West 34th Street, New York 10001.

November 1979

CSI 00147



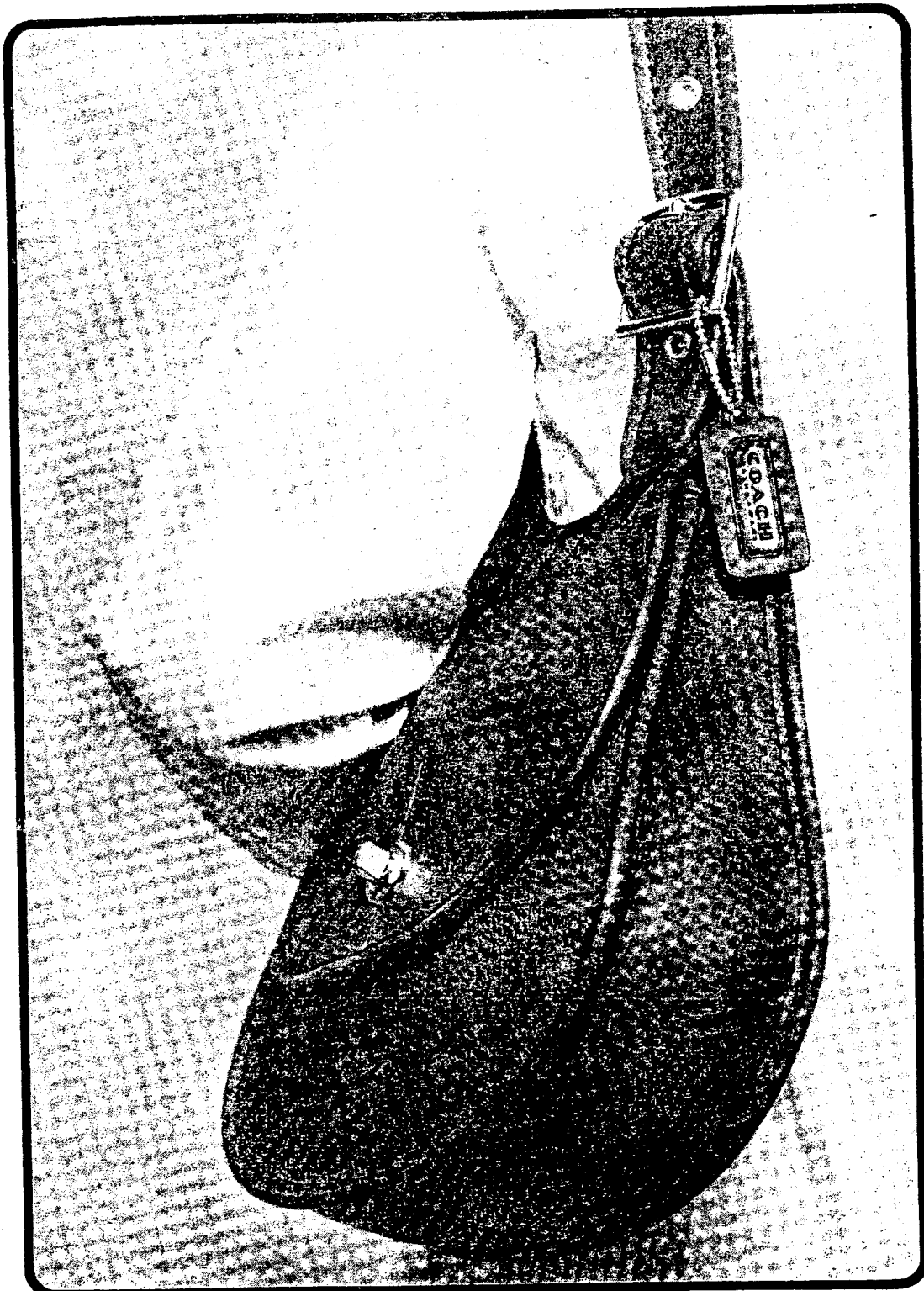
Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.



Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

November

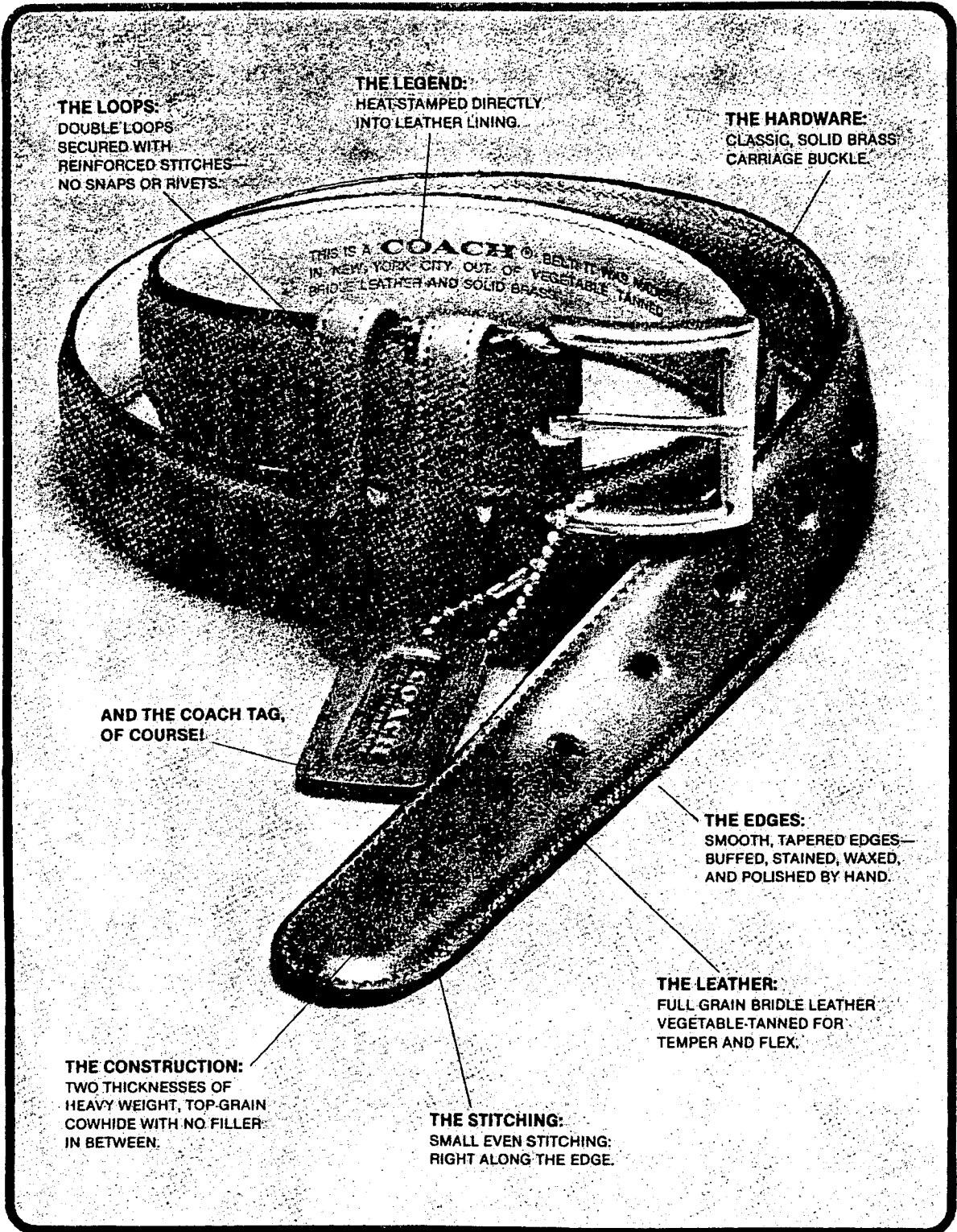
CSI 00149



Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

October 1 ,

CSI 00150



THE LOOPS:
DOUBLE LOOPS
SECURED WITH
REINFORCED STITCHES—
NO SNAPS OR RIVETS.

THE LEGEND:
HEAT-STAMPED DIRECTLY
INTO LEATHER LINING.

THE HARDWARE:
CLASSIC, SOLID BRASS
CARRIAGE BUCKLE.

THIS IS A **COACH**® BELT MADE
IN NEW YORK CITY OUT OF VEGETABLE-TANNED
BRIDLE LEATHER AND SOLID BRASS.

AND THE COACH TAG,
OF COURSE!

THE EDGES:
SMOOTH, TAPERED EDGES—
BUFFED, STAINED, WAXED,
AND POLISHED BY HAND.

THE LEATHER:
FULL GRAIN BRIDLE LEATHER
VEGETABLE-TANNED FOR
TEMPER AND FLEX.

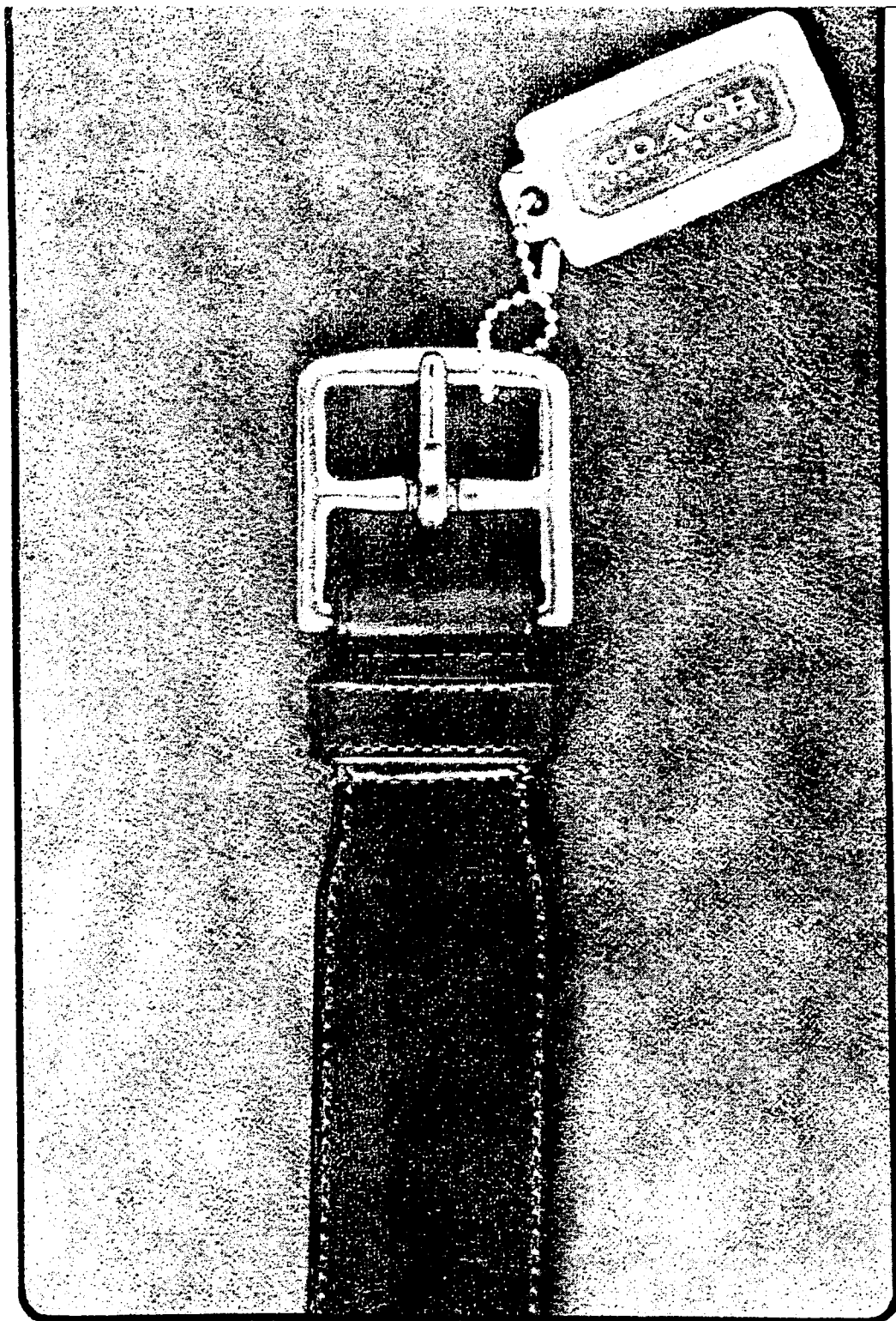
THE CONSTRUCTION:
TWO THICKNESSES OF
HEAVY WEIGHT, TOP-GRAIN
COWHIDE WITH NO FILLER
IN BETWEEN.

THE STITCHING:
SMALL EVEN STITCHING:
RIGHT ALONG THE EDGE.

**This is a Coach® Belt,
and these are some of the things
that make it special.**

June 4, 1970

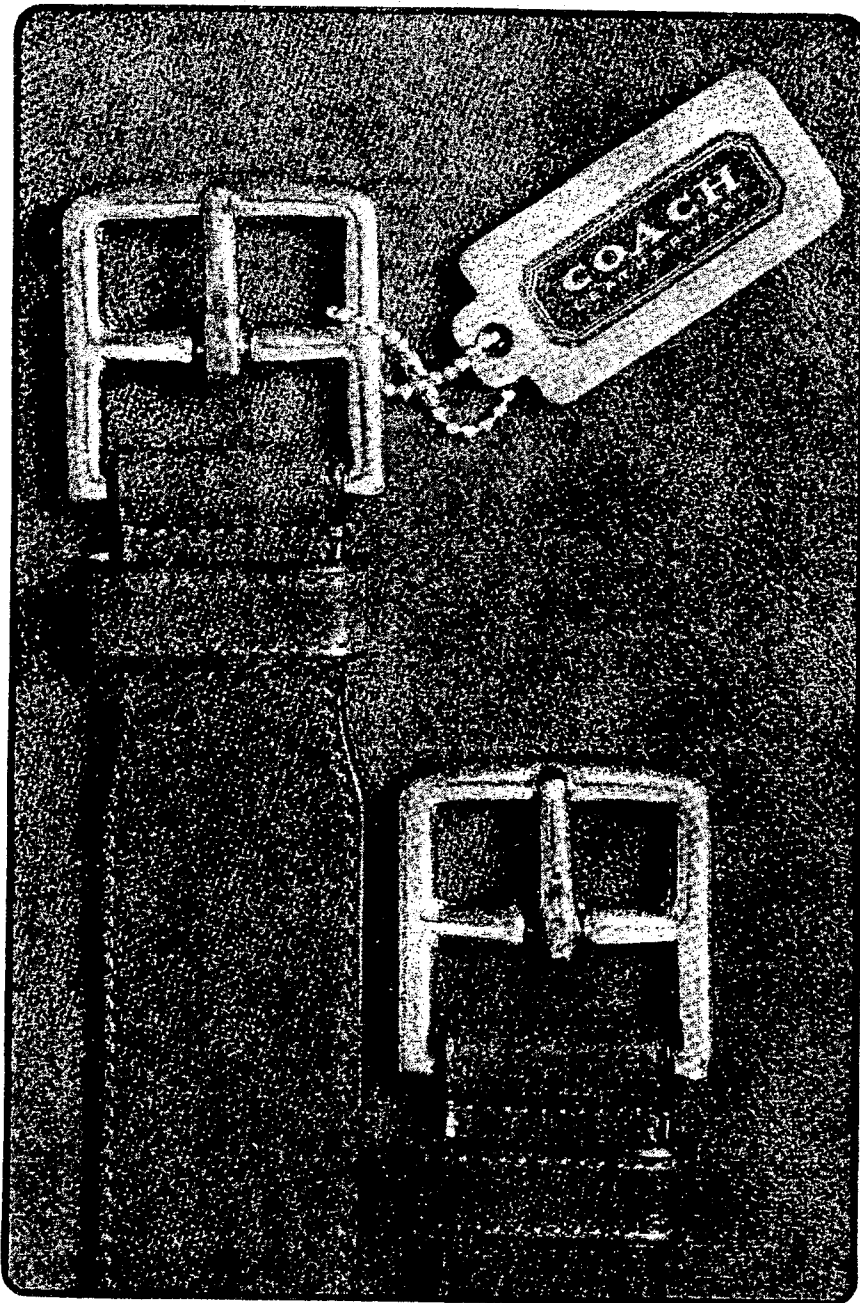
CSI 00151



This is a Coach[®] Belt. It costs about \$12.
And comes with a great looking solid brass stirrup buckle.

Coach[®] Belts are made in men's and women's sizes and are sold in fine stores throughout the world. For c
Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00152



**Coach[®] Belts come in different sizes.
His. Hers.**

Coach[®] Belts are made in men's and women's sizes and are sold in fine stores throughout the world. For catalogue
Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00153



An American in Paris

Made in New York City, and shipped by air to the Coach Shop on rue Jacob, COACH® Bags are among the most sought-after bags in all of Paris. French shopping bag (complete with leather COACH® tag) is yours for the asking. Coach Leatherware, 516 W. 34th St., New York 10001.

May 1st

CSI 00154

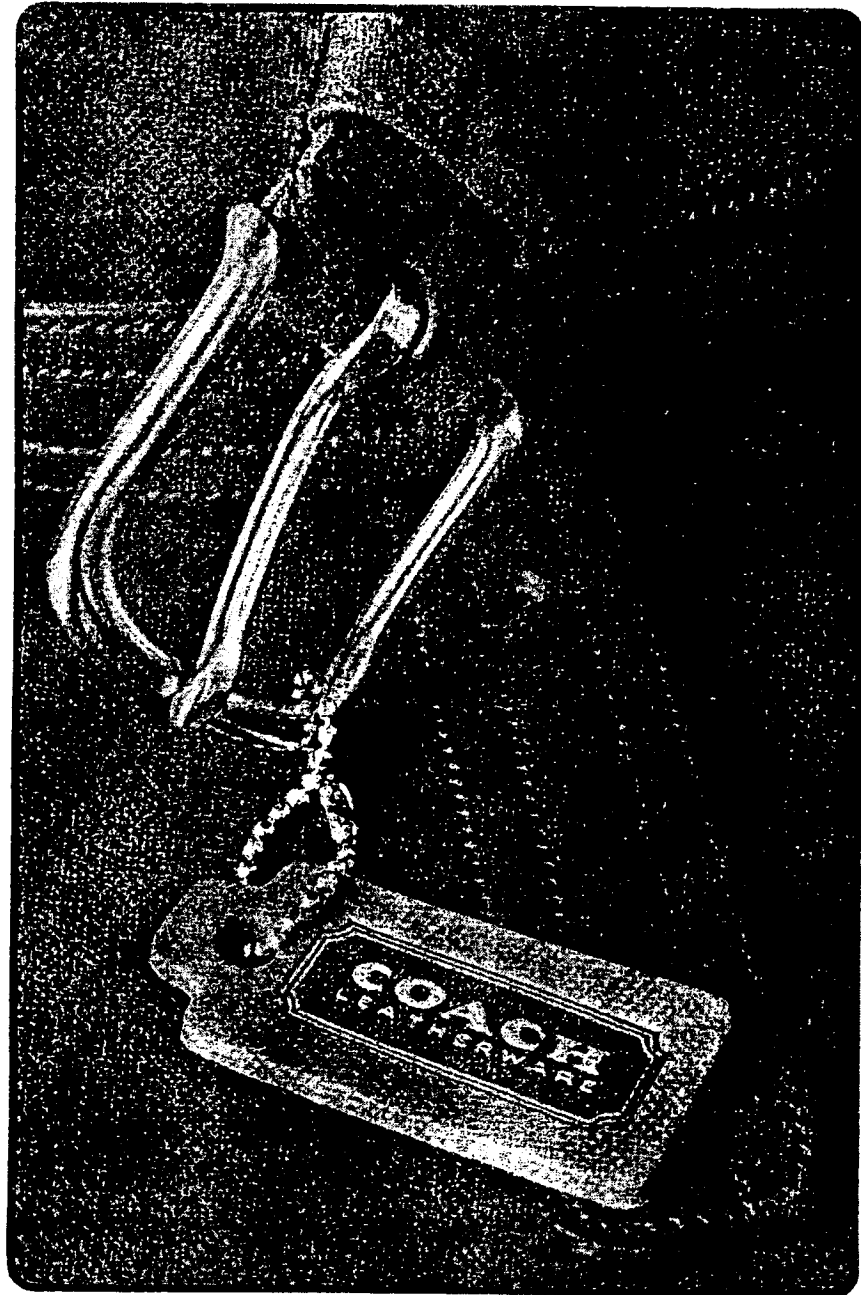
Coach: Bags and Belts are made in New York City and sold in selected stores throughout the country. For catalogues write: Coach Leatherware, 316 West 34th Street, New York 10001.



This
Coach® Belt
is made
of
real
glove
tanned
cowhide
and comes
in
men's
and women's
sizes.

March 1979

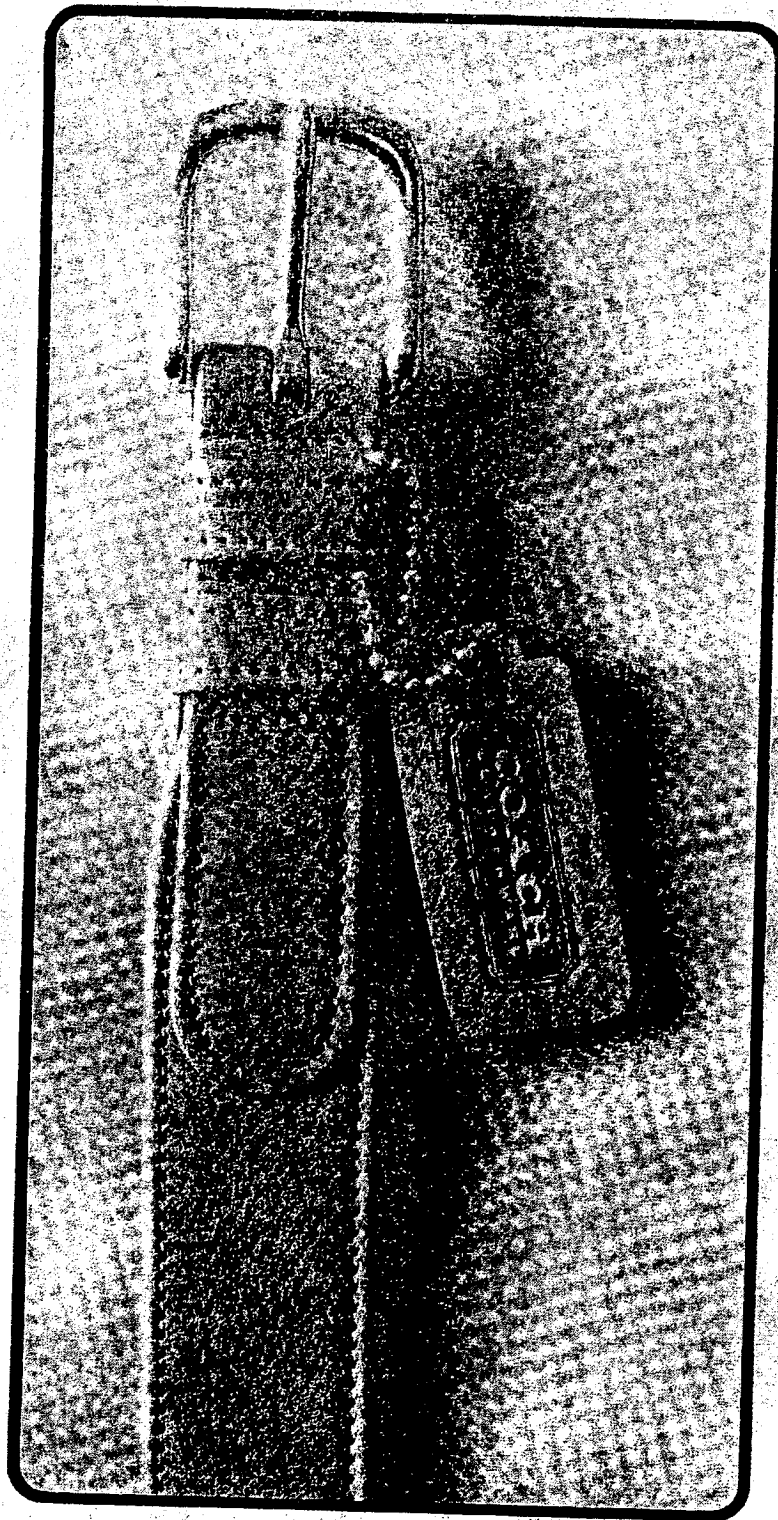
CSI 00155



The Coach® Bag people also make belts.

Coach® Belts are made in men's and women's sizes and are sold in fine stores throughout the country.
Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00156



This is a Coach® Belt.

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country. For catalogue writer,
Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00157

February 19, 1979

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country. For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.



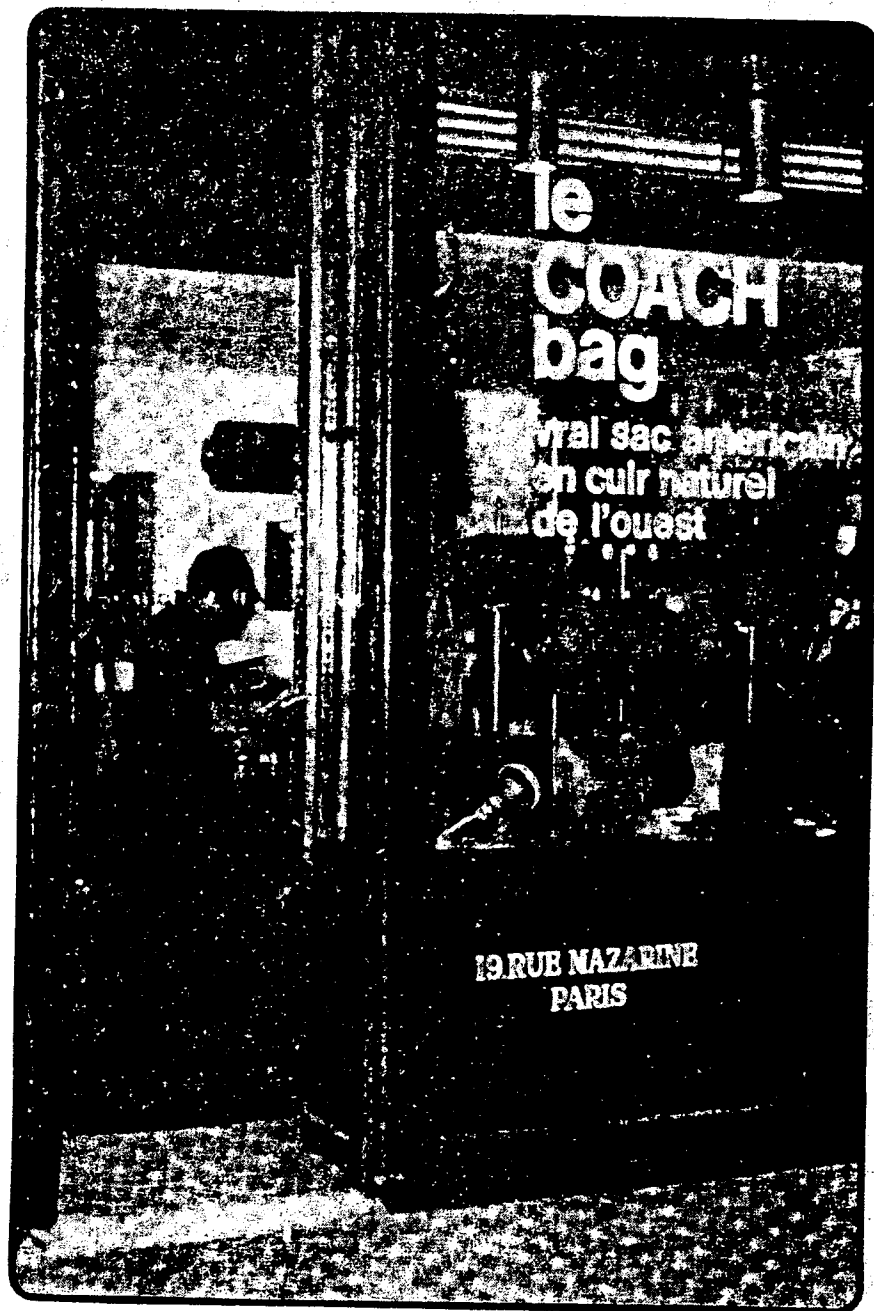


This is
a Coach Belt

It is made
out of
very supple
leather
in lots of
colors and sizes
for men
and women

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the world.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00159



Le Coach® Bag est arrivé à Paris.

Coach® Bags and Belts are made in New York City and sold in fine stores throughout the world. For catalogue
Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00160



This is a Coach® Bag.

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

Oct c

CSI 00161

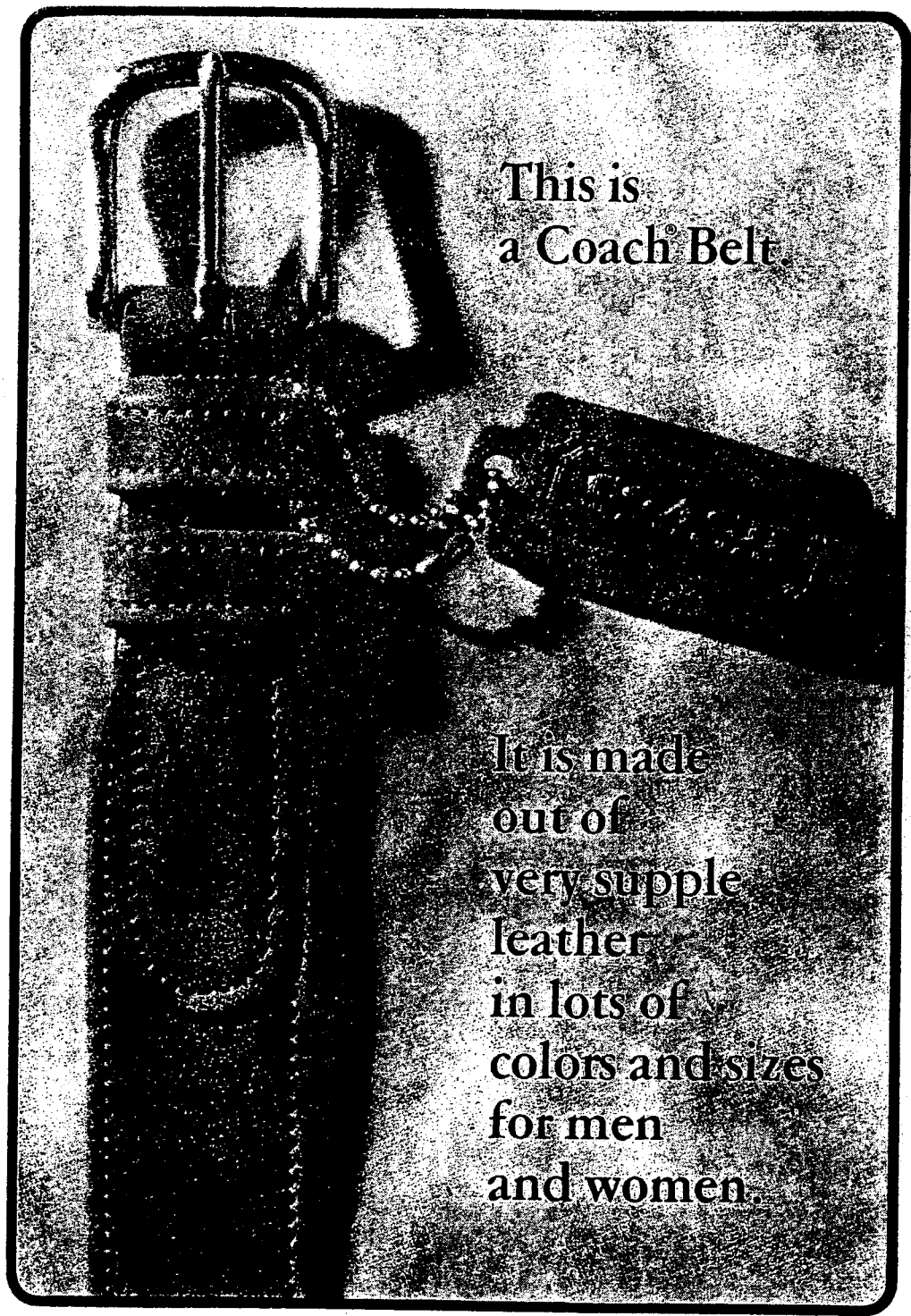


This is a Coach® Bag.

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the country.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

— October 1978

CSI 00162



This is
a Coach® Belt.

It is made
out of
very supple
leather
in lots of
colors and sizes
for men
and women.

Coach® Bags and Belts are made in New York City and sold in selected stores throughout the world.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

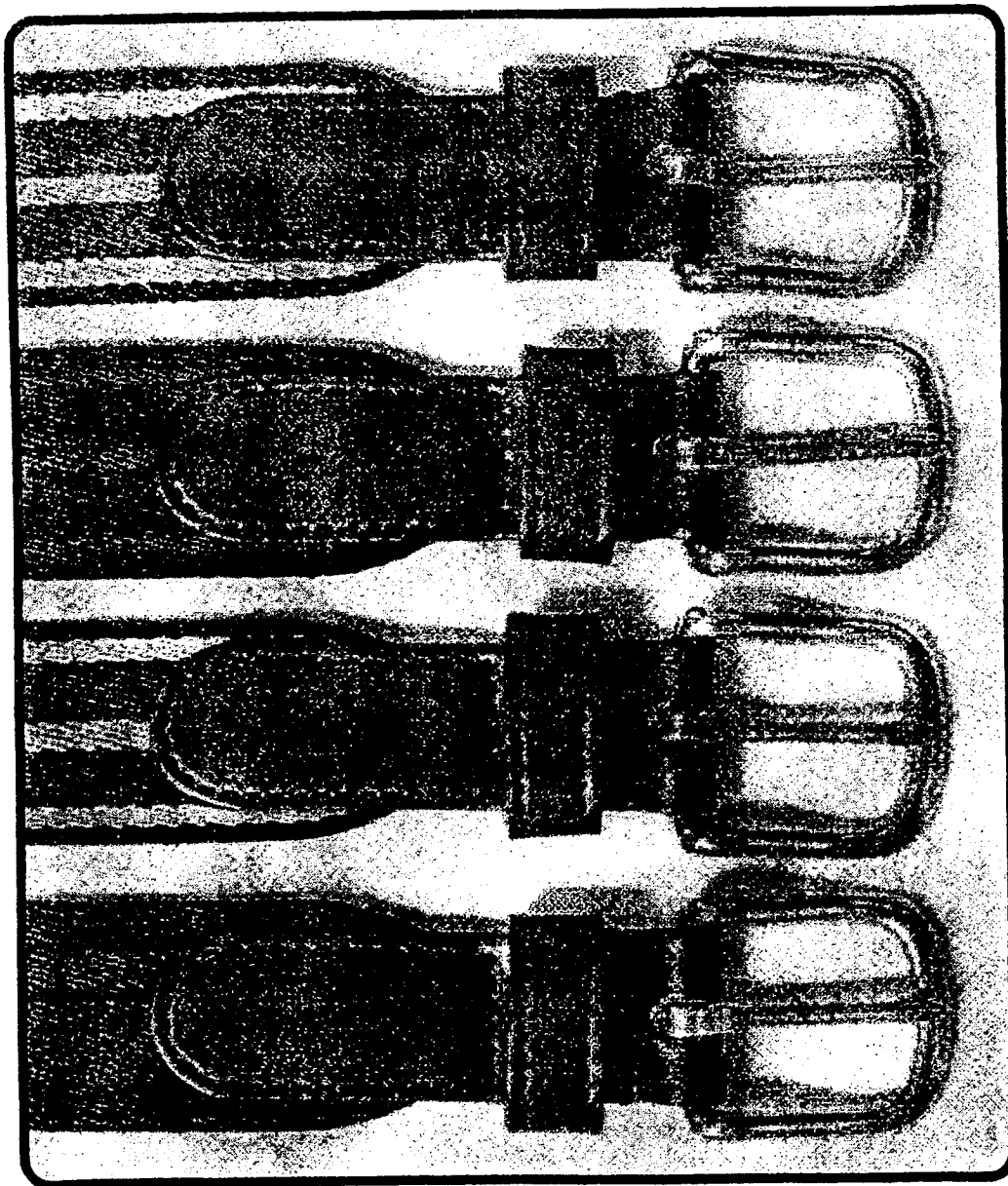


**This is a Coach® Bag.
It is very well made of very good leather
and will never go out of style.**

— April 17, 1978 —

Coach® Bags and Belts are made in New York City and are sold in fine stores throughout the world. For catalogue write:
Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00164



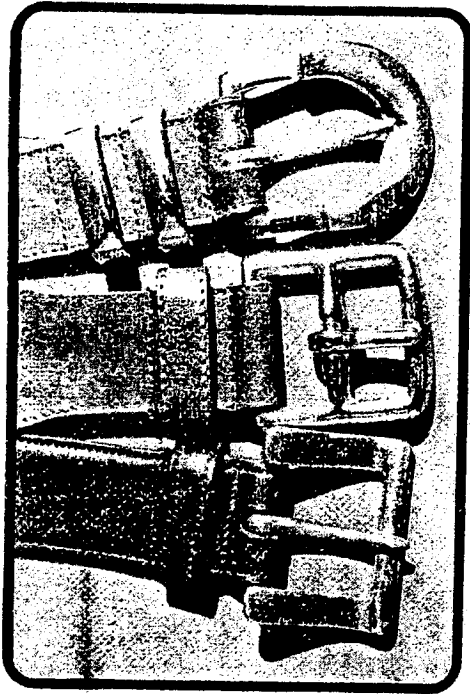
**These Coach® Belts are made of
wool surcingle, bridle leather and brass.
They come in men's and women's sizes.**

— November 21, 1977 —

Coach® Bags and Belts are made in New York City and are sold in fine stores throughout the world. For catalogue write:
Coach Leatherware, 516 West 34th Street, New York 10001.

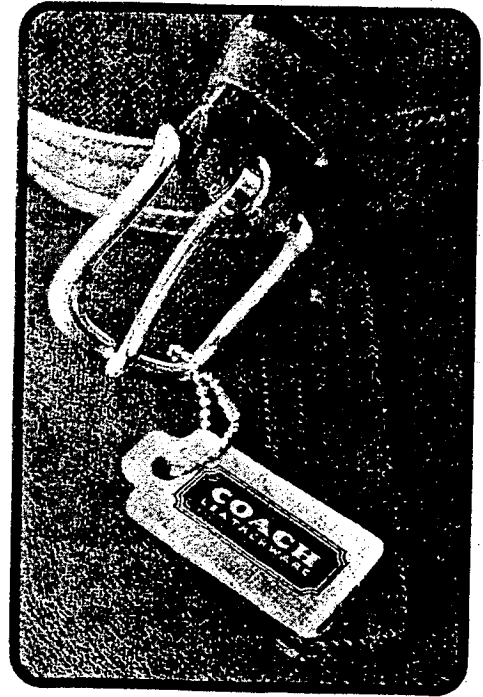
CSI 00165

October 30, 1977



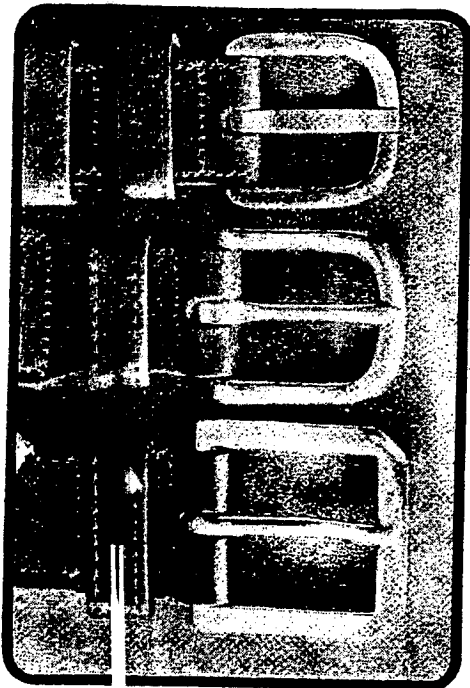
These are Coach® Belts.
They are made of bridle leather and brass
and come in men's and women's sizes.

Coach® Bags and Belts are made in New York City and are sold in fine stores throughout the world.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.



Coach® Belts are very well made
out of very good leather
and come in men's and women's sizes.

Coach® Bags and Belts are made in New York City and are sold in fine stores throughout the world.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.



Coach Belts are made with solid brass buckles.

Coach® Bags and Belts are made in New York City and are sold in fine stores throughout the world.
For catalogue write: Coach Leatherware, 516 West 34th Street, New York 10001.

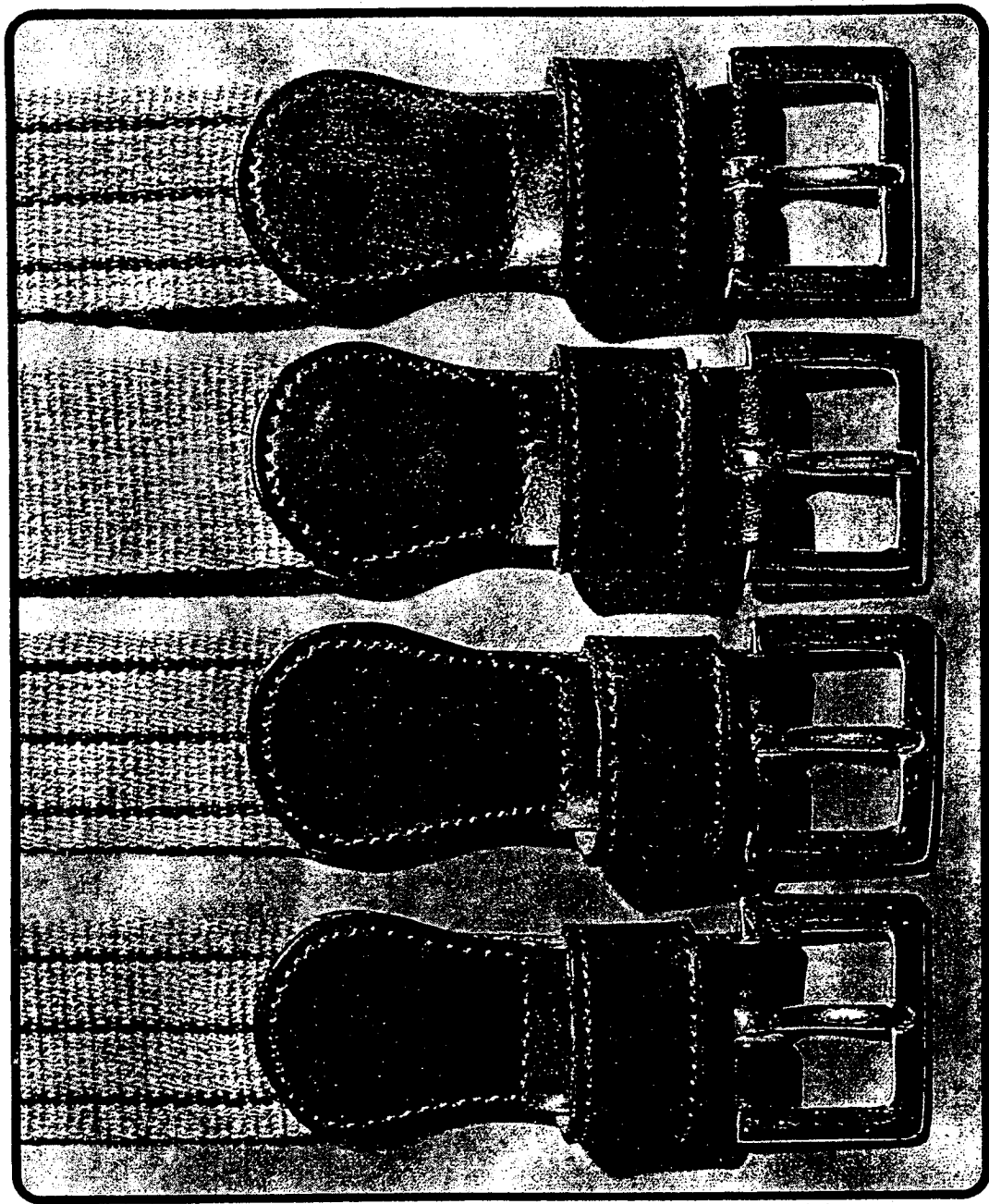
As advertised in:

Harper's Bazaar
The New York Times Magazine
The New Yorker
L'Officiel
Vogue

and the performing arts programs in:

Atlanta
Boston
Chicago
Cleveland
Dallas
Detroit
Los Angeles
Milwaukee
Minneapolis
New York
Philadelphia
San Francisco
Washington, D.C.

CSI 00166



**These Coach® Belts are made of
natural linen, bridle leather and brass.
They come in men's and women's sizes.**

— June 13, 1977 —

Coach® Bags and Belts are made in New York City and are sold in line stores throughout the world. For catalogue write:
Coach Leatherware, 516 West 34th Street, New York 10001.

CSI 00167

Westlaw

933 F.2d 162
933 F.2d 162, 18 U.S.P.Q.2d 1907

Page 1

▷

United States Court of Appeals, Second Circuit.
COACH LEATHERWARE COMPANY, INC.,
Plaintiff-Appellee,

v.

ANNTAYLOR, INC.; Laura Leather Goods, Ltd.;
A & R Handbag, Inc. and Ron's Elegance Center,
Inc., Defendants,
AnnTaylor, Inc.; Laura Leather Goods, Ltd.; and A
& R Handbag, Inc., Defendants-Appellants.
Nos. 1275, 1276, Dockets 90-9082, 90-9124.

Argued April 5, 1991.
Decided May 15, 1991.

Retailer of womens' designer handbags brought action against competitors for trademark infringement and for unfair competition under New York state common law. On plaintiff's motion for preliminary injunction, and defendant's cross-motion for summary judgment, the United States District Court for the Southern District of New York, Kevin T. Duffy, J., 751 F.Supp. 1104, granted, sua sponte, summary judgment in favor of plaintiff, permanently enjoining defendants from manufacturing and selling handbags which emulate those produced by plaintiff, and defendants appealed. The Court of Appeals, Irving R. Kaufman, Circuit Judge, held that: (1) defendants were not provided with adequate opportunity to defend against grant of summary judgment prohibiting replication of plaintiff's handbag designs, and (2) defendants' replication of registered hang tag that plaintiff attached to its handbags violated plaintiff's trademark under the Lanham Act.

Affirmed in part, reversed in part and remanded.

Winter, Circuit Judge, concurred in part and dissented in part with opinion.

West Headnotes

[1] **Federal Civil Procedure 170A** ⚡2470

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)1 In General
170Ak2465 Matters Affecting Right to
Judgment
170Ak2470 k. Absence of Genuine
Issue of Fact in General. Most Cited Cases

Federal Civil Procedure 170A ⚡2543

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)3 Proceedings
170Ak2542 Evidence
170Ak2543 k. Presumptions. Most
Cited Cases
In ruling on motion for summary judgment, court's responsibility is to assess whether there are any material factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against moving party. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

[2] **Federal Civil Procedure 170A** ⚡2546

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment
170AXVII(C)3 Proceedings
170Ak2542 Evidence
170Ak2546 k. Weight and Sufficiency. Most Cited Cases
Judge's inquiry on motion for summary judgment asks whether reasonable jurors could find by preponderance of evidence that plaintiff is entitled to verdict. Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

[3] **Federal Civil Procedure 170A** ⚡2466

170A Federal Civil Procedure
170AXVII Judgment
170AXVII(C) Summary Judgment

170AXVII(C)1 In General
170Ak2465 Matters Affecting Right to
Judgment

170Ak2466 k. Lack of Cause of
Action or Defense. Most Cited Cases
Entry of summary judgment indicates that no reason-
able jury could return verdict for losing party.
Fed.Rules Civ.Proc.Rule 56(c), 28 U.S.C.A.

[4] Federal Courts 170B ↪914

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent

170BVIII(K)6 Harmless Error

170Bk914 k. Judgment and Relief;
Summary Judgment. Most Cited Cases

To determine whether grant of summary judgment
to nonmoving party was affected by absence of
cross motion, appellate court must ascertain wheth-
er facts before district court were fully developed
so that moving party suffered no procedural preju-
dice. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

[5] Federal Courts 170B ↪914

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent

170BVIII(K)6 Harmless Error

170Bk914 k. Judgment and Relief;
Summary Judgment. Most Cited Cases

Threat of procedural prejudice from sua sponte
grant of summary judgment for nonmoving party is
greatly diminished if court's determination is based
on issues identical to those raised by moving party;
absent some indication that moving party might
otherwise bring forward evidence that would affect
court's determination, failure to provide opportunity
to respond is not reversible error. Fed.Rules
Civ.Proc.Rule 56, 28 U.S.C.A.

[6] Federal Courts 170B ↪914

170B Federal Courts

170BVIII Courts of Appeals

170BVIII(K) Scope, Standards, and Extent

170BVIII(K)6 Harmless Error

170Bk914 k. Judgment and Relief;
Summary Judgment. Most Cited Cases

Sua sponte grant of summary judgment on Lanham
Act claim regarding copying of registered tag on
handbags resulted in no prejudice to moving
parties, but moving parties were not provided with
adequate opportunity to defend against grant of
summary judgment prohibiting replication of hand-
bag designs as to which nonmoving party failed to
establish as matter of law that moving parties in-
fringed upon its "trade dress." 18 U.S.C.A. §
636(b)(1)(B); Lanham Trade-Mark Act, §§ 32,
43(a), 15 U.S.C.A. §§ 1114, 1125(a); Fed.Rules
Civ.Proc.Rules 56, 56(c), 28 U.S.C.A.

[7] Trademarks 382T ↪1436

382T Trademarks

382TVIII Violations of Rights

382TVIII(A) In General

382Tk1436 k. Trade Dress. Most Cited
Cases

(Formerly 382k596, 382k587)

To prevail on trade dress claim, plaintiff must
demonstrate that product's appearance has acquired
"secondary meaning" and that purchasers are likely
to confuse imitating goods with the originals. Lan-
ham Trade-Mark Act, § 43(a), 15 U.S.C.A. §
1125(a).

[8] Trademarks 382T ↪1064

382T Trademarks

382TII Marks Protected

382Tk1061 Form, Features, or Design of
Product as Marks; Trade Dress

382Tk1064 k. Functionality. Most Cited
Cases

(Formerly 382k525)

Even if plaintiff establishes that its product has ac-
quired "secondary meaning" for purpose of trade
dress claim, defendant may still avoid liability by
demonstrating that imitated features are
"functional." Lanham Trade-Mark Act, § 43(a), 15

933 F.2d 162
933 F.2d 162, 18 U.S.P.Q.2d 1907

Page 3

U.S.C.A. § 1125(a).

[9] Trademarks 382T ↪1063

382T Trademarks

382TII Marks Protected

382Tk1061 Form, Features, or Design of Product as Marks; Trade Dress

382Tk1063 k. Distinctiveness; Secondary Meaning. Most Cited Cases

(Formerly 382k11)

Trade dress of product attains secondary meaning when purchasing public associates its design with single producer or source rather than simply with product itself. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

[10] Trademarks 382T ↪1063

382T Trademarks

382TII Marks Protected

382Tk1061 Form, Features, or Design of Product as Marks; Trade Dress

382Tk1063 k. Distinctiveness; Secondary Meaning. Most Cited Cases

(Formerly 382k11)

Plaintiff alleging that trade dress of product has attained secondary meaning is not required to establish that all consumers relate product to its producer; it need only show that substantial segment of relevant consumer group makes this connection. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

[11] Trademarks 382T ↪1631

382T Trademarks

382TIX Actions and Proceedings

382TIX(C) Evidence

382Tk1620 Weight and Sufficiency

382Tk1631 k. Trade Dress. Most Cited

Cases

(Formerly 382k592)

Seller of women's designer handbags failed to establish that consuming public identified seller as sole source of handbag designs at issue for purpose

of trade dress violation claim against defendants; seller failed to establish that reasonable jury must conclude overall design of handbags had acquired secondary meaning. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

[12] Federal Civil Procedure 170A ↪2493

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)2 Particular Cases

170Ak2493 k. Copyright, Trademark, and Unfair Competition Cases. Most Cited Cases

(Formerly 382k722)

The careful weighing of evidence necessary to determine secondary meaning with respect to trade dress claim renders such claim unlikely candidate for summary judgment, especially where opposing party has not been afforded adequate opportunity to seek potentially favorable information. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.; Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

[13] Trademarks 382T ↪1631

382T Trademarks

382TIX Actions and Proceedings

382TIX(C) Evidence

382Tk1620 Weight and Sufficiency

382Tk1631 k. Trade Dress. Most Cited Cases

(Formerly 382k587)

Though intentional copying constitutes persuasive evidence of consumer recognition, conscious replication alone does not establish secondary meaning for purpose of trade dress claim. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

[14] Trademarks 382T ↪1631

382T Trademarks

382TIX Actions and Proceedings

382TIX(C) Evidence

382Tk1620 Weight and Sufficiency

382Tk1631 k. Trade Dress. Most Cited

Cases

(Formerly 382k334.1, 382k334)

Court is reluctant to rely on consumer awareness surveys when considering whether product's unregistered trade dress has been infringed as a matter of law. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a).

[15] Antitrust and Trade Regulation 29T ↪17

29T Antitrust and Trade Regulation

29TII Unfair Competition

29TII(A) In General

29Tk15 Practices Prohibited or Required in General; Elements

29Tk17 k. Confusion or Deception.

Most Cited Cases

(Formerly 382k407 Trade Regulation)

Under New York law, showing of secondary meaning is not necessary to prove unfair competition; it is necessary only to demonstrate likelihood of confusion.

[16] Trademarks 382T ↪1118

382T Trademarks

382TIII Similarity Between Marks; Likelihood of Confusion

382Tk1117 Trade Dress

382Tk1118 k. In General. Most Cited Cases

(Formerly 382k334.1, 382k334)

Similarity in overall appearance of products is not alone sufficient to establish source confusion as matter of law.

[17] Trademarks 382T ↪1631

382T Trademarks

382TIX Actions and Proceedings

382TIX(C) Evidence

382Tk1620 Weight and Sufficiency

382Tk1631 k. Trade Dress. Most Cited

Cases

(Formerly 382k596)

Seller of women's designer purses failed to estab-

lish likelihood of confusion necessary to prove unfair competition under New York state common law.

[18] Trademarks 382T ↪1033

382T Trademarks

382TIII Marks Protected

382Tk1033 k. Levels or Categories of Distinctiveness in General; Strength of Marks in General. Most Cited Cases

(Formerly 382k12.1, 382k12)

Four basic classifications of registered trademark, arranged from least to greatest degree of protection accorded, are generic, descriptive, suggestive, and arbitrary or fanciful.

[19] Trademarks 382T ↪1039

382T Trademarks

382TIII Marks Protected

382Tk1039 k. Arbitrary or Fanciful Terms or Marks. Most Cited Cases

(Formerly 382k24)

Trademarks 382T ↪1057(1)

382T Trademarks

382TIII Marks Protected

382Tk1050 Format or Components of Term or Mark

382Tk1057 Nonliteral Elements

382Tk1057(1) k. In General. Most Cited Cases

(Formerly 382k24)

Inherently distinctive shape and composition of lozenge-shaped leather tags embossed with name "Coach Leatherwear" rendered the tag a fanciful trademark for purpose of infringement claim. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[20] Trademarks 382T ↪1362

382T Trademarks

382TVII Registration

382TVII(C) Effect of Federal Registration

933 F.2d 162
933 F.2d 162, 18 U.S.P.Q.2d 1907

Page 5

382Tk1358 Particular Effects; Rights Acquired

382Tk1362 k. Infringement and Other Violations; Likelihood of Confusion. Most Cited Cases

(Formerly 382k254.1, 382k254)

Registered trademarks, as opposed to unregistered trademarks, are entitled to liberal application of law in determining likelihood of confusion issue. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[21] Federal Civil Procedure 170A ⚡2493

170A Federal Civil Procedure

170AXVII Judgment

170AXVII(C) Summary Judgment

170AXVII(C)2 Particular Cases

170Ak2493 k. Copyright, Trademark, and Unfair Competition Cases. Most Cited Cases

(Formerly 382k722)

Issue of likelihood of confusion with respect to registered trademark may be disposed of by summary judgment. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.; Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[22] Trademarks 382T ⚡1098

382T Trademarks

382TIII Similarity Between Marks; Likelihood of Confusion

382Tk1093 Relationship Between Marks

382Tk1098 k. Appearance, Sound, and Meaning. Most Cited Cases

(Formerly 382k349)

Trademarks 382T ⚡1103

382T Trademarks

382TIII Similarity Between Marks; Likelihood of Confusion

382Tk1100 Relationship Between Goods or Services Underlying Marks

382Tk1103 k. Particular Goods and Services, Relationship Between. Most Cited Cases

(Formerly 382k349)

The similarity in look and feel of tag attached to defendant's handbags to that of plaintiff's registered tag, coupled with fact that tags were affixed to almost identical products marketed toward the same consumer group, established likelihood of confusion under the Lanham Act. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[23] Trademarks 382T ⚡1112

382T Trademarks

382TIII Similarity Between Marks; Likelihood of Confusion

382Tk1112 k. Persons Confused; Circumstances of Sale. Most Cited Cases

(Formerly 382k334.1, 382k334)

The sophistication of customers of retailer of women's designer handbags with distinctive, lozenge-shaped leather tag registered as trademark did not bolster defendants' claim that confusion was unlikely. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[24] Trademarks 382T ⚡1714(2)

382T Trademarks

382TIX Actions and Proceedings

382TIX(F) Injunctions

382Tk1712 Permanent Injunctions

382Tk1714 Grounds and Subjects of Relief

382Tk1714(2) k. Infringement.

Most Cited Cases

(Formerly 382k642.1, 382k642)

Trademarks 382T ⚡1714(3)

382T Trademarks

382TIX Actions and Proceedings

382TIX(F) Injunctions

382Tk1712 Permanent Injunctions

382Tk1714 Grounds and Subjects of Relief

382Tk1714(3) k. Unfair Competition. Most Cited Cases

(Formerly 382k642.1, 382k642)

Failure of retailer of women's designer handbags to document significant evidence of actual confusion with respect to registered hang tags attached to the bags did not preclude injunctive relief; retailer was required only to establish likelihood of confusion; proof of real and precise confusion would be necessary only for recovery of monetary damages. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[25] Trademarks 382T ↪1064

382T Trademarks

382TII Marks Protected

382Tk1061 Form, Features, or Design of Product as Marks; Trade Dress

382Tk1064 k. Functionality. Most Cited Cases

(Formerly 382k43)

Trade dress protection does not extend to product's functionality. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[26] Trademarks 382T ↪1184

382T Trademarks

382TVI Nature, Extent, and Disposition of Rights

382Tk1182 Right to Use in General; Exclusivity

382Tk1184 k. Manner of Use; Misuse. Most Cited Cases

(Formerly 382k92.1, 382k92)

Basic Lanham Act principles dictate that owner may not use trademark to circumscribe flow of useful ideas and designs in marketplace. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

[27] Trademarks 382T ↪1064

382T Trademarks

382TII Marks Protected

382Tk1061 Form, Features, or Design of Product as Marks; Trade Dress

382Tk1064 k. Functionality. Most Cited Cases

(Formerly 382k43)

Lanham Act protection does not extend to configurations of ornamental features that would significantly limit range of competitive designs available. Lanham Trade-Mark Act, §§ 32, 43(a), 15 U.S.C.A. §§ 1114, 1125(a).

***164** Luigi P. De Maio, De Maio & Hughes, New York City, for defendants-appellants Laura Leather Goods, Ltd. and A & R Handbags, Inc.

James A. Beha II, Hertzog, Calamari & Gleason, New York City, for defendant-appellant AnnTaylor, Inc.

Daniel S. Ebenstein, Amster, Rothstein & Ebenstein, New York City (Anthony F. Lo Cicero, Steven M. Levy, Amster, Rothstein & Ebenstein, New York City, of counsel), for plaintiff-appellee Coach Leatherware Co., Inc.

Before KAUFMAN, WINTER and MINER, Circuit Judges.

***165** IRVING R. KAUFMAN, Circuit Judge:

Copying women's designer handbags appears to be a convenient device for those seeking to ride fashion's often unpredictable waves. Abundant support for this observation is provided on Manhattan's Fifth Avenue where within close proximity of the flagship stores of Louis Vuitton, Gucci and Chanel, street vendors peddle imitations of these familiar designs. More confusing, and thus more troublesome, is the sale of copies by respected retailers. At the heart of this case is just such a circumstance—the sale of imitation Coach Leatherware Company, Inc. (“Coach”) handbags by the AnnTaylor, Inc. (“AnnTaylor”) chain of retail stores. At issue is the potential for consumer confusion caused by this situation.

In an effort to maintain its market share and its preferred status among customers, Coach instituted this action against appellants AnnTaylor, Laura Leather Goods, Inc. (“Laura”) and A & R Handbag,

Inc. ("A & R") for trademark infringement pursuant to section 43(a) of the Lanham Act and for unfair competition under New York State common law. Coach alleged that appellants had produced limitations of its distinctive leather handbags in a manner likely to cause confusion in the marketplace. Following Coach's motion for a preliminary injunction and appellants' cross-motion for summary judgment, Judge Duffy, *sua sponte*, granted summary judgment in favor of the nonmoving party, Coach. See *Coach Leatherware Co. v. AnnTaylor, Inc.*, 751 F.Supp. 1104 (S.D.N.Y.1990). In addition, he enjoined appellants from substantially emulating any of Coach's more than fifty handbag designs. We believe, however, the record does not support the grant of summary judgment regarding those unregistered aspects of Coach's products. Accordingly, we affirm in part, reverse in part and remand for further proceedings consistent with our decision.

I. Background

We need discuss only those facts and prior proceedings relevant to the disposition of this appeal. Some contextual detail, however, is unavoidable because of the complex nature of trademark infringement claims.

Coach, a New York corporation, has been engaged in the design, manufacture, marketing, distribution and sale of high quality, leather fashion products for approximately fifty years. Coach products are sold exclusively under its own label and are marketed in about fifty Coach-owned stores, in clearly designated Coach displays situated in expensive department stores and through Coach mail order catalogues.

AnnTaylor, a prominent retailer of quality women's apparel, is a wholly-owned subsidiary of AnnTaylor Holding, Inc., which in turn is owned by Merrill Lynch Co., Inc. AnnTaylor, like Coach, considers its market to consist of the stereotypical successful career women. Presently, the more than

160 AnnTaylor stores are located primarily in upscale malls, exclusive thoroughfares, and specialty retail centers. Laura, and its affiliate, A & R (collectively "Laura"), are also New York corporations engaged in the business of designing, manufacturing and selling handbags.

The instant litigation was initiated after Coach learned that some of its "classic" handbag designs, which have been part of its product line for the past fifteen years, were being copied and sold at AnnTaylor. AnnTaylor and Laura had allegedly replicated for sale three handbag styles made prominent by Coach: the "Dinky Bag"-a small handbag with a narrow profile, a flap that extends to cover the entire face of the bag and a shoulder length strap; the "Duffle Sac"-a large handbag with a circular bottom, tapered sides and a leather strap affixed to its top by solid brass hardware; and the "Convertible Clutch"-a larger version of the Dinky Bag. Though dissimilar in several significant respects, each Coach bag shares several features: all are produced from full-grain cowhide, contain exterior binding at external seams and incorporate brass hardware components. In addition, the inside of each bag contains a Coach registration number and various informational paraphernalia unique to Coach marketing tactics.

*166 Over the years, Coach has attached to all of its handbags distinctive lozenge-shaped leather tags embossed with the name "Coach Leatherware." The tags, suspended from beaded brass chains, have become distinctive and valuable through Coach's promotional efforts and by virtue of its upscale reputation-Coach store managers report that the tags alone are often subject to theft. Though Coach bags are not themselves registered, the Coach tag is registered on the Principal Register of the United States Patent and Trademark Office. Apparently seeking to capitalize on the popularity of the Coach "look", the AnnTaylor handbags, in the Coach style, carry a similar leather tag embossed, however, with AnnTaylor's name and distinctive typeface.

II. Proceedings Below

In May 1990, Coach filed a complaint alleging that Laura and AnnTaylor manufactured and sold handbags which essentially mimic design features made famous by Coach. Subsequently, the parties engaged in extensive discovery: both sides retained experts, took depositions, secured affidavits and exchanged documents. Coach went so far as to conduct a survey to determine whether consumers would confuse the AnnTaylor bags with Coach bags, even when the products were clearly labelled. AnnTaylor, though it has not elicited its own evidence to challenge the survey data, contends it should be given no weight since serious methodological flaws, including result-oriented questions, biased the results.

In August 1990, Coach moved preliminarily to enjoin appellants from replicating the Dinky Bag, the Duffle Sac, and the Convertible Clutch. Coach argued that it was likely to succeed on its trademark infringement and unfair competition claims, and contended that failure to issue an injunction immediately would result in irreparable loss of profits and goodwill.

In response, appellants cross-moved for summary judgment, alleging that Coach had not established a prima facie case of infringement. AnnTaylor averred that its clear labelling of the merchandise, its dissimilar trade name and logo, and its failure to parody Coach's unique product packaging, eliminated any likelihood that customers were confused as to the source of the product.

After searching the record and examining the submissions, Judge Duffy determined appellants' handbags were confusingly similar to those manufactured by Coach. Accordingly, in his November 8, 1990 Memorandum and Order, he denied appellants' summary judgment motion and instead granted summary judgment in favor of Coach, finding AnnTaylor and Laura liable, as a matter of law, for trade dress infringement and common law unfair competition. Coach's motion for a preliminary in-

junction was denied as moot.

The judgment permanently enjoined appellants from replicating any of Coach's approximately fifty handbag styles. Further proceedings concerning possible monetary relief were referred to Magistrate Judge Naomi Buchwald, pursuant to 18 U.S.C. § 636(b)(1)(B).

Because we believe the district court's action prevented AnnTaylor and Laura from raising a genuine issue of material fact, we reverse the summary judgment insofar as it determines appellants' copying of the bags violates section 43(a) of the Lanham Act and the New York common law of unfair competition. We affirm, however, the grant of summary judgment with regard to the copying of the registered Coach tags. We find such replication violates section 32 of the Lanham Act which provides protection for registered marks.

III. Summary Judgment

[1][2][3] Though the principles governing summary judgment are by no means novel, they bear repeating for purposes of this appeal. Rule 56(c) of the Federal Rules of Civil Procedure provides that summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact *167 and that the moving party is entitled to a judgment as a matter of law." In reaching this determination, a court's responsibility is to assess whether there are any material factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against the moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49, 106 S.Ct. 2505, 2510-11, 91 L.Ed.2d 202 (1986); *Knight v. United States Fire Ins. Co.*, 804 F.2d 9, 11-12 (2d Cir.1986), *cert. denied*, 480 U.S. 932, 107 S.Ct. 1570, 94 L.Ed.2d 762 (1987). "The judge's inquiry ... unavoidably asks whether reasonable jurors could find by a preponderance of the evidence that the plaintiff is entitled to a verdict."

Anderson, 477 U.S. at 252, 106 S.Ct. at 2512. Entry of summary judgment indicates that no reasonable jury could return a verdict for the losing party. See Issacharoff and Loewenstein, *Second Thoughts About Summary Judgment*, 100 Yale L.J. 73, 84-89 (1990).

In the instant proceeding, we are presented with the somewhat unusual circumstance where the district court has independently raised and granted a summary judgment motion in favor of the nonmoving party. Though not expressly authorized by Rule 56, this practice has become an accepted method of expediting litigation. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265 (1986); 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2720, pp. 33-35 (1983). Somewhat more nebulous is the issue whether the moving party must be afforded an opportunity to respond to the court's *sua sponte* action.

[4] The prevailing view in this Circuit is that a court need not give notice of its intention to enter summary judgment *against* the moving party. See, e.g., *Abrams v. Occidental Petroleum Corp.*, 450 F.2d 157, 165-66 (2d Cir.1971), *aff'd*, 411 U.S. 582, 93 S.Ct. 1736, 36 L.Ed.2d 503 (1973); *Local 33, Int'l Hod Carriers Bldg. & Common Laborers' Union of Am. v. Mason Tenders Dist. Council of Greater N.Y.*, 291 F.2d 496, 505 (2d Cir.1961). As Judge Harold Medina, a former professor of practice and procedure, stated with his characteristic acumen, "it is most desirable that the court cut through mere outworn procedural niceties and make the same decision as would have been made had defendant made a cross-motion for summary judgment." *Local 33, Int'l Hod*, 291 F.2d at 505. To determine whether the absence of a cross motion affected the result, an appellate court must ascertain whether the facts before the district court were fully developed so that the moving party suffered no procedural prejudice. See 10A Wright, Miller & Kane, *supra*, at 35.

When assessing the potential for prejudice, we are

mindful that appellants' summary judgment motion was directed at proving that Coach, who had the burden of persuasion, could not establish a prima facie Lanham Act violation. See *Celotex*, 477 U.S. at 323-25, 106 S.Ct. at 2552-54. In their papers, AnnTaylor and Laura focused on undermining Coach's proof and did not necessarily include all evidence that might be presented at trial in their defense. Had Coach initially moved for summary judgment, instead of the more limited motion for a preliminary injunction, appellants would have been on notice to incorporate all rebutting evidence available to them.

[5] This concern, however, does not necessarily undermine the propriety of the district court's action. Implicit in our earlier decisions is the recognition that despite varying burdens of production, the threat of procedural prejudice is greatly diminished if the court's *sua sponte* determination is based on issues identical to those raised by the moving party. Absent some indication that the moving party might otherwise bring forward evidence that would affect the court's summary judgment determination, failure to provide an opportunity to respond is not reversible error.

[6] For these reasons, we believe AnnTaylor and Laura were not prejudiced by the grant of summary judgment related to Coach's registered hang tag. Appellants contended no material issues of fact prevented summary judgment in their favor on the Lanham Act claims. Moreover, they had significant incentive to put forward *168 any compelling evidence in support of their summary judgment motion since the law prevented the district court from drawing favorable inferences on their behalf.

Despite this assessment, we are unable to conclude that appellants were provided with an adequate opportunity to defend against the grant of summary judgment prohibiting replication of the Coach handbag designs. Our views on this matter result from the differing evidentiary burdens imposed on those who seek to protect an unregistered, as opposed to a registered, mark. It is extremely difficult

to establish, in a motion for summary judgment, that an unregistered design merits Lanham Act protection. *See, e.g., Stormy Clime Ltd. v. Progroup, Inc.*, 809 F.2d 971, 977-78 (2d Cir.1987). Accordingly, because Coach failed to establish as a matter of law that appellants infringed upon its "trade dress," we reverse the grant of summary judgment pertaining to the unregistered elements of Coach's products.

IV. Unregistered Trademark Infringement

Coach's federal claim is based on section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) (1988), which provides a civil action in favor of those who believe they have been damaged, or are likely to be damaged, by the use of a "false designation of origin" on a good or service. Though enacted as part of the Trademark Act, this provision functions as a federal law of unfair competition for unregistered goods. Section 43(a) extends protection to a product's "trade dress"-the total image of a good as defined by its overall composition and design, including size, shape, color, texture, and graphics. *See Stormy Clime*, 809 F.2d at 974. In this case, the district court fairly determined Coach's "trade dress" resided in the general appearance of the handbags.

[7][8] To prevail on a trade dress claim, the plaintiff must demonstrate that the product's appearance has acquired "secondary meaning"-the consuming public immediately identifies the product with its maker-and that purchasers are likely to confuse the imitating goods with the originals. *See Wallace Int'l Silversmiths, Inc. v. Godinger Silver Art Co.*, 916 F.2d 76 (2d Cir.1990). Even if the plaintiff establishes these elements, the defendant may still avoid liability by demonstrating that the imitated features are "functional"-essential to the basic purpose the article is meant to serve.

A. Secondary Meaning

[9][10] The trade dress of a product attains second-

ary meaning when the purchasing public "associates" its design with a single producer or source rather than simply with the product itself. *See Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 851 n. 11, 102 S.Ct. 2182, 2187 n. 11, 72 L.Ed.2d 606 (1982); *Centaur Communications Ltd. v. A/S/M Communications, Inc.*, 830 F.2d 1217, 1221 (2d Cir.1987). The plaintiff is not required to establish that *all* consumers relate the product to its producer; it need only show that a substantial segment of the relevant consumer group makes this connection. *See Centaur Communications*, 830 F.2d at 1222.

Coach contends that compelling circumstantial and direct evidence confirms that consumers associate the Dinky Bag, the Duffle Sac, and the Convertible Clutch with Coach alone. Appellee claims its product awareness survey establishes customer recognition since a majority of respondents associated the AnnTaylor bags with Coach. It concludes that similarities in the aesthetic configuration of the products indicate purposeful replication and thus secondary meaning.

[11] AnnTaylor and Laura respond that Coach has failed to establish, as a matter of law, that the consuming public identifies Coach as the sole source of the handbag designs at issue. They concede Coach handbags are widely recognized, but assert that the designs have become so commonplace that customers do not reflexively assume Coach produced them. Support for this proposition, appellants contend, can be found in Coach's advertising slogan-"It's Not a Coach Bag Without the Coach Tag"*169-which encourages consumers to distinguish its goods from those of its many imitators. If permitted to conduct additional discovery, they argue that at a minimum they would be able to raise a genuine factual dispute on this issue for trial. We agree.

[12] Our cases make clear that proof of secondary meaning entails vigorous evidentiary requirements. *See Thompson Medical Co. v. Pfizer Inc.*, 753 F.2d 208, 217 (2d Cir.1985). When attempting to resolve this essentially factual determination, we

have assessed advertising expenditures, consumer studies, unsolicited media coverage of the product, sales success, attempts to plagiarize the mark, and length and exclusivity of use. *Id.* The careful weighing of evidence necessary to determining secondary meaning renders it an unlikely candidate for summary judgment. The case against summary judgment is even stronger where the opposing party has not been afforded an adequate opportunity to seek potentially favorable information. See *Scherling Corp. v. Home Ins. Co.*, 712 F.2d 4, 10 (2d Cir.1983).

[13][14] With these principles in mind, we find Coach has failed to establish that a reasonable jury *must* conclude the overall design of its handbags have acquired secondary meaning. Though intentional copying constitutes persuasive evidence of consumer recognition, *20th Century Wear, Inc. v. Sanmark-Stardust Inc.*, 815 F.2d 8, 9-10 (2d Cir.1987), conscious replication alone does not establish secondary meaning. Moreover, production of the Coach consumer awareness survey does not satisfy the requisite evidentiary burden. Though we have found such surveys probative when granting summary judgment for a registered trademark owner, see *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Company*, 799 F.2d 867, 869 & n. 1 (2d Cir.1986), we are especially reluctant to rely upon them when considering whether a product's unregistered trade dress has been infringed as a matter of law.

[15] Though the failure to establish secondary meaning renders resolution of the section 43(a) claim premature, this does not conclude our inquiry. In particular, a showing of secondary meaning is not necessary to prove unfair competition under New York State common law, one of the grounds upon which the district court based its judgment. See *Perfect Fit Indus., Inc. v. Acme Quilting Co.*, 618 F.2d 950 (2d Cir.1980), *cert. denied*, 459 U.S. 832, 103 S.Ct. 73, 74 L.Ed.2d 71 (1982). To prevail on the state law claim, Coach need only demonstrate a likelihood of confusion.

B. Likelihood of Confusion

AnnTaylor maintains that differences in packaging and in the size, shape, logo and name on the hang tag ensure that a consumer looking to purchase a Coach product is unlikely to be confused as to its source. Design variations in the imitation wares, including the spacing of the eyelets and the length of shoulder straps, the thickness in the hasp in the buckle and the overall width of the bags, are said to eliminate the consuming public's doubts as to maker. Appellants argue that the sophisticated consumers likely to purchase Coach products are informed enough to realize that handbags lacking a Coach registration number and the Coach name are not Coach products.

Coach responds that the district court's visual inspection was highly probative and largely conclusive of customer confusion. It argues the virtual identity in overall appearance, combined with other significant evidence, including the inability of Laura's President to distinguish across a conference table the differences between Coach and AnnTaylor submissions, would necessarily lead a rational trier of fact to conclude these products were likely to confuse consumers as to manufacturer.

[16][17] We conclude that Coach has not presented sufficient convincing evidence to prevail on summary judgment. Similarity in overall appearance alone cannot establish source confusion *as a matter of law*. Nor is the addition of the anecdotal evidence and the consumer awareness survey dispositive. After drawing all reasonable inferences in favor of appellants, we are ***170** unable to conclude Coach has established that AnnTaylor and Laura engaged in unfair competition under New York state law.

V. Registered Trademark Infringement

Despite Coach's failure to prove section 43(a) or New York state unfair competition liability on summary judgment, we find it has established infringe-

ment of its registered hang tags. Though Coach has not expressly pleaded a cause of action under section 32 of the Lanham Act, 15 U.S.C. § 1114, it seeks in its complaint a permanent injunction preventing "the use of any ... symbol, representation, description or designation which is likely to create the erroneous impression that defendants' goods emanate from Coach ... or are otherwise authorized by Coach." We read this broad request for relief to include protection of its tags.

[18][19] When assessing the protectable nature of a registered trademark, we first consider its strength. The four basic classifications, arranged from least to greatest degree of protection accorded, are: (1) generic, (2) descriptive, (3) suggestive, and (4) arbitrary or fanciful. See *Abercrombie & Fitch Co. v. Hunting World, Inc.*, 537 F.2d 4, 9 (2d Cir.1976). The inherently distinctive shape and composition of the Coach hang tag leads us to conclude the mark is a fanciful one. This determination, which is supported by registration on the federal Principal Register, eliminates the trademark owner's need to prove secondary meaning. See J. McCarthy, *Trademarks and Unfair Competition*, §§ 7:31, 11:3 (2d ed. 1984). Accordingly, to prevail on its section 32 claim, Coach need only establish a likelihood of confusion as to its registered mark. See *Lois Sportswear*, 799 F.2d at 871.

[20][21] Presumptions of differing weight govern determination of the likelihood of confusion issue with regard to registered trademarks as opposed to unregistered trade dress. When engaging in this inquiry, registered marks are "entitled to a liberal application of the law." *Lois Sportswear*, 799 F.2d at 871. And, unlike unregistered trade dress claims, disposition by summary judgment is often appropriate where the protection of a registered trademark is at issue. See Barton, *Summary Judgments in Trademark Cases*, 75 Trademark Rep. 497, 525 (1985). Therefore, our conclusion that Coach has not proven a likelihood of confusion among the handbags does not pre-determine resolution of the claim regarding its hang tags.

[22] We agree with Judge Duffy that "AnnTaylor's tag, although it contains AnnTaylor's name, is nonetheless confusingly similar to that of Coach's tag in look and feel." *Coach Leatherware*, 751 F.Supp. at 1109. This observation, coupled with the fact that the tags are affixed to almost identical products marketed towards the same consumer group establishes likelihood of confusion under section 32.^{FN1} See *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492, 495 (2d Cir.), cert. denied, 368 U.S. 820, 82 S.Ct. 36, 7 L.Ed.2d 25 (1961).

FN1. These considerations are equally applicable to Laura. Laura affixes to its imitation Coach bags a cardboard tag, as well as a lozenge-shaped leather tag in the Coach style, when selling directly to the public. Moreover, when manufacturing bags for retailers, Laura embosses its leather tags with the retailer's name if the retailer requests it. Accordingly, Laura infringes the Coach trademark when it sells, either directly or indirectly, Coach knockoffs with the embossed, lozenge-shaped leather tags.

[23][24] Recognition of Coach's sophisticated customer base does not necessarily bolster AnnTaylor's claim that confusion is unlikely. When rejecting a similar argument raised by a designer jeans manufacturer who had incorporated a pocket stitching pattern nearly identical to the one made famous by Levi Strauss & Co., we concluded that it is the sophisticated consumer "who is most likely to assume that the presence of appellee's trademark stitching pattern on appellants' jeans indicates some sort of association between the two manufacturers. Presumably it is these sophisticated jeans buyers who pay the most attention to back pocket stitching patterns and their 'meanings.'" *Lois Sportswear*, 799 F.2d at 875. Finally, Coach's failure to *171 document significant evidence of actual confusion does not undermine the propriety of summary judgment. To warrant injunctive relief, plaintiffs were

not required to establish unquestioned confusion but a mere *likelihood* of it; proof of real and precise confusion is necessary only for the recovery of monetary damages. As we have indicated, this determination awaits resolution of the proceedings now pending before Magistrate Judge Buchwald.

VI. The Functionality Defense to Section 43(a)

[25][26] Though we need not consider appellants' affirmative defenses to section 43(a) of the Lanham Act because of our finding that summary judgment on the unfair competition issues is premature, we briefly discuss the doctrine of functionality to provide necessary guidance to the court below on remand. Trade dress protection does not extend to a product's functionality—those characteristics of the product which are essential to its purpose or use. See *Wallace Int'l*, 916 F.2d at 81; *Stormy Clime*, 809 F.2d at 977. Basic Lanham Act principles dictate that an owner may not use a trademark to circumscribe the flow of useful ideas and designs in the marketplace. See Note, *The Problem of Functional Features: Trade Dress Infringement Under Section 43(a) of the Lanham Act*, 82 Colum.L.Rev. 77, 79 (1982).

Judge Duffy, however, held as a matter of law that appellants' functionality defense was meritless, since the three Coach handbags are distinctive in their overall design and composition. He determined that many of the component parts, such as the distinctive lozenge-shaped leather tag, are purely ornamental and serve primarily to signify origin. Moreover, he found it possible to produce acceptable variations of the Coach styles. Based on these conclusions, the court proceeded to issue expansive relief, enjoining appellants from copying any Coach handbag.

[27] Though Judge Duffy is undoubtedly correct that there are several ways to produce the handbag styles at issue without creating so great a likelihood of confusion for consumers, there is more to the functionality defense. Lanham Act protection does

not extend to configurations of ornamental features which would significantly limit the range of competitive designs available. *Wallace Int'l*, 916 F.2d at 81. We are concerned that the grant of such broad relief chills competition excessively.

Coach produces from fifty to sixty different styles of handbags in various shapes and sizes. Though the scope of the injunction may reflect the court's desire to conserve judicial resources and stem relitigation of substantially similar infringement claims, we are skeptical that Coach could produce evidence sufficient to support such sweeping protection for its entire line of handbags. An extensive injunction prohibiting emulation of all types of Coach bags could have the unacceptable effect of removing non-infringing design innovations from the market. Similar concerns are raised by an injunction preventing replication of such elemental features as the size, shape, color and materials of Coach bags.

VII. Conclusion

Regretfully, the body of law relating to the Lanham Act has developed into a tangled morass. See Brown, *Design Protection: An Overview*, 34 U.C.L.A.L.Rev. 1341, 1357 (1987). Courts struggling to move mountains often find they have only affected minuscule changes in trademark jurisprudence and occasionally have created their own likelihood of confusion. Be that as it may, our review of the record leads us to conclude that though Judge Duffy prematurely determined AnnTaylor and Laura have infringed upon Coach's unregistered trade dress in its handbags, permanent injunctive relief was properly extended to the registered Coach tag.

For the reasons we have stated, we affirm in part the grant of summary judgment, finding appellants' replication of the Coach tag violated Coach's trademark under section 32 of the Lanham Act. That part of the judgment finding appellants have infringed on Coach's trade dress under section 43(a) of the Lanham Act and *172 the New York common law

of unfair competition is reversed and remanded for further proceedings consistent with this opinion.

WINTER, Circuit Judge, concurring in part and dissenting in part:

I agree with my colleagues that we must reverse the sweeping relief ordered by the district judge in his *sua sponte* grant of summary judgment for the plaintiff. However, I respectfully dissent from the affirmance on entirely new grounds of a portion of that judgment. My disagreement is based on procedural as well as substantive concerns.

If procedural regularity is to be accorded even minimal observance, an appellate court should be extraordinarily cautious about issuing a *sua sponte* grant of summary judgment against a defendant on a fact-specific claim that the plaintiff did not make in its complaint or on appeal. On the merits, I agree with my colleagues that the overall similarity in appearance of the bags with hang tags does not, as a matter of law, create a likelihood of confusion as to source. Precisely because I agree on the trade dress issue, however, I do not agree that there is an infringement of a registered trademark as a matter of law. Ann Taylor's hang tags are different from Coach's registered tag, and, as Judge Kaufman notes, have a potential for creating confusion as to source only when attached to handbags that are substantially identical in appearance. The bags, however, are not part of the registered mark. Because it is the substantially identical handbags that create the confusion, if any, the issue is one of trade dress rather than trademark infringement-as Coach has insisted throughout.

I

I address the procedural issues first. I agree with my colleagues on the strawman issue of whether a court has power to make *sua sponte* grants of summary judgment. When it appears that the sole issue in a case is a matter of law and the parties have no genuine disagreement on the material facts, a party cannot insist on the formality of a motion before a court acts. Nevertheless, *sua sponte* grants of sum-

mary judgment are rare and should be employed only when a court is absolutely sure that no issue of material fact exists. The need for caution is nowhere better demonstrated than in the actions of the district court in the instant matter. Ignoring the fine but important distinctions between the legal protections offered by design patents, copyrights and trademarks, and ignoring further the lack of any motion for judgment by Coach, the district court in effect gave Coach a monopoly against the world on all its handbag designs, whether or not they were involved in this case.

Regretfully, the majority does not draw from this extraordinary decision an appreciation of the need for caution but rather states the law concerning summary judgment in an erroneous way that encourages other district judges to ignore the Federal Rules of Civil Procedure. The majority thus states that when a party moves for summary judgment, a court may grant summary judgment against the moving party "absent some indication" that the moving party has undisclosed evidence relevant to the issue. This new rule is apparently based on the "significant incentive" a moving party has to put forth all its evidence when making its motion.

I disagree. When a defendant moves for summary judgment, it says only, "Plaintiff has insufficient evidence to make out a prima facie case." See *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). It most assuredly does not say, "If plaintiff does have enough evidence to make out a prima facie case, I have no evidence to rebut it." Moreover, a party moving for summary judgment does not always have an incentive to offer rebuttal evidence. If the plaintiff can make out a prima facie case, the defendant will generally not have such overpowering rebuttal evidence that it will be entitled to judgment as a matter of law and thus will have little incentive to expose its defense to scrutiny that will aid its adversary in preparing for trial.

*173 In the instant matter, the defendants' motion for summary judgment said only, "Coach cannot

make out a prima facie case because it has no evidence of confusion as to source." Coach in effect replied, "To the contrary, we have evidence of confusion, including the overall identity in appearance. There is, therefore, sufficient evidence to allow a trier to find confusion as to source." Based on this exchange, the district court granted a monopoly to Coach on all of its handbag designs whether or not they were involved in this litigation. I would condemn rather than encourage this disregard for procedural regularity.

Moreover, when an appellate court *sua sponte* grants summary judgment for the plaintiff on a claim the plaintiff has never made—especially a fact-specific claim on which the plaintiff bears the burden of proof—it certainly does "cut through ... procedural niceties." Coach's complaint did not allege infringement of a registered trademark or even mention Section 32 of the Lanham Act. Instead, it asserted two claims: (1) copying of nonfunctional design features resulting in a likelihood of confusion as to source in violation of Section 43(a) and (2) common law unfair competition through the copying of distinctive trade dress and palming off. The district court based its grant of summary judgment solely on Section 43(a). On appeal, Coach never mentioned registered trademark infringement or even cited Section 32. Until the instant decision, therefore, this was solely a trade dress case. As my discussion of the merits indicates, I believe that observance of procedural regularity might have prevented an erroneous decision.

II

Turning to the merits, I of course agree with my colleagues that the extraordinarily broad order of the district court is plain error. I also agree that summary judgment was inappropriate on the issues of secondary meaning and likelihood of confusion as to source resulting from similar trade dress. Ann Taylor's bags were on the market for months, but Coach has been unable to offer any substantial evidence of actual confusion as to source. That is to

say, Coach has not shown that consumers who buy Ann Taylor bags believe they are buying bags produced by Coach rather than imitations of Coach bags produced by Ann Taylor. To be sure, the bags are remarkably—and not accidentally—similar in design, and each has a "lozenge" shaped (but different) hang tag. However, even identical appearances are insufficient by themselves to show confusion as to source as a matter of law, the indispensable element of a trademark claim. Unlike a design patent or copyright owner, a trademark claimant does not have an exclusive right to a design; its right is solely in protecting its identity as the source of its product. Ann Taylor thus has every right to copy Coach's bags so long as consumers know they are buying Ann Taylor bags. Whether confusion exists should be resolved at a trial.

My disagreement with the majority on the merits relates to its making and then adopting the claim of registered trademark infringement. It is correct that a failure to show likelihood of confusion under Section 43(a)—a trade dress claim—does not preclude assertion of a registered trademark claim. For example, if the tag used by Ann Taylor were identical to Coach's, including the use of the name "Coach," the fact that it was attached to shoes rather than handbags would not legitimate that use under *Polaroid Corp. v. Polarad Electronics Corp.*, 287 F.2d 492 (2d Cir.), *cert. denied*, 368 U.S. 820, 82 S.Ct. 36, 7 L.Ed.2d 25 (1961). However, Ann Taylor's hang tag is different. Ann Taylor's tag is oval-shaped whereas Coach's tag is rectangular. Their respective sizes are different. Moreover, each has a very different name and logo style embossed on it. I cannot, therefore, agree with my colleagues that the Ann Taylor tag infringes the Coach tag, because no reasonable trier of fact could find infringement if the two tags were hung on handbags with different appearances.

My colleagues seem to agree with this analysis, because they qualify their holding by noting that only when the hang tags are *174 put on identical handbags—which are not part of the registered trademark—

933 F.2d 162
933 F.2d 162, 18 U.S.P.Q.2d 1907

Page 16

does a likelihood of confusion exist. By limiting their holding to circumstances involving items that are not part of the registered mark, however, they abandon the infringement theory only to embrace the very trade dress claim that is held in the immediately preceding section of Judge Kaufman's opinion not to have been established as a matter of law.

By converting a rejected trade dress claim into a registered trademark claim and then granting relief on the registered trademark claim on a trade dress rationale, the majority opinion completely blurs the distinction between these two legal theories. The closest precedent relied upon by the majority is *Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Company*, 799 F.2d 867 (2d Cir.1986). In that case in which a registered trademark claim was made we held that use of a back pocket stitching pattern *that was part of a registered mark and had secondary meaning* violated the Lanham Act where the products—ordinary jeans and designer jeans—were not identical and were sold in overlapping but different markets. The fact that the products were different was regarded as making confusion “*more likely*.” 799 F.2d at 874. The present decision turns *Lois Sportswear* on its head. Secondary meaning has not been established as a matter of law for either the tags or the bags, and it is the identity of the products, which are not part of the registered mark, that supplies the critical element causing the supposed confusion. I believe, therefore, that the present decision will be the source of much future mischief.

C.A.2 (N.Y.),1991.
Coach Leatherware Co., Inc. v. AnnTaylor, Inc.
933 F.2d 162, 18 U.S.P.Q.2d 1907

END OF DOCUMENT