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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

Tapestry, Inc.,
a corporation,
and

Capri Holdings Limited,
a corporation.

Docket No. 9429

COMPLAINT COUNSEL'S PRE-TRIAL BRIEF

Henry Liu
Director

Kyle Mach
Tara Isa Koslov
Laura Alexander
Rahul Rao
Deputy Directors

Peggy Bayer Femenella
Assistant Director

Abby Dennis
Deputy Assistant Director

Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington, DC 20580
T: (202) 326-3570
F: (202) 326-2655
Email: nlindquist@ftc.gov

Dated: September 23, 2024

Nicole Lindquist
Laura Antonini
Brandon Boxbaum
Peter Colwell
Kassandra DiPietro
Sean Hughto
Frances Anne Johnson
Sarah Kerman
Andrew Lowdon
Danielle Quinn
Blake Risenmay
Edmund Saw
Victoria Sims
Timothy Singer

Attorneys

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INTRODUCTION

In the middle of the country, just a short drive from the capital of Iowa, lie the Outlets of Des Moines. There, Michael Kors maintains just one of its nearly 250 nationwide stores, within hundreds of feet of Coach and Kate Spade. The setting is the same in countless other communities across the country, from coast to coast, and in almost every state: at the Gulfport Premium Outlets in Gulfport, Mississippi; at the Macy's in Okemos, Michigan; at the Woodburn Premium Outlets forty minutes south of Portland, Oregon; at the University Mall in Mishawaka, Indiana, where Coach and Michael Kors have flagship stores within steps of each other; and at the famous Macy's in Herald Square in midtown Manhattan. These are three quintessential American fashion brands fiercely competing head-to-head to be purchased and worn by tens of millions of everyday Americans, especially women.

And compete they do—on price, on discounts and promotions, on design, on shopping experiences, on sustainability efforts, and even for retail employees—across a wide variety of products. But where Coach, Michael Kors, and Kate Spade most fiercely compete is in the sale of handbags, an item that is ubiquitous for half the population, who use handbags to carry phones, wallets, and keys, but also personal items like hygiene products and make-up. The numbers tell the story: Coach, Michael Kors, and Kate Spade combined boasted nearly **{ \$3 billion }** in sales of handbags in the United States alone in 2023.¹ And while other brands have come and gone, these three iconic American brands have withstood the test of time, duking it out in places like the Outlets of Des Moines in Altoona, Iowa.

Congress enacted the antitrust laws, including Section 7 of the Clayton Act, to protect this very sort of competition. Complaint Counsel will meet its prima facie burden to show that

¹ PX6002 (Smith (Complaint Counsel) Rep.) ¶ 186, tbl 7.

the proposed acquisition poses a reasonable probability of substantially lessening competition both through a showing of increased market concentration as well as extensive evidence of head-to-head competition that will be eliminated if Respondents' merger proceeds. Respondents are unable to meet their burden to show that entry or repositioning will be timely, likely, and sufficient in its magnitude, character, and scope to deter or counteract the competitive effects of their merger, or provide evidence of cognizable efficiencies. Complaint Counsel respectfully asks this Court to issue a permanent injunction to block this acquisition.

BACKGROUND

On August 10, 2023, Tapestry announced its intention to purchase Capri for \$8.5 billion (the "Proposed Acquisition"),² its third major acquisition in a decade. After purchasing Stuart Weitzman in 2015 and Kate Spade in 2017, Coach renamed itself "Tapestry,"³ and the firm now looks to use the Proposed Acquisition to add three more well-known fashion brands to its stable: Michael Kors, Jimmy Choo, and Versace. Launched in 1981 in New York City, the Michael Kors brand, primarily through its MICHAEL Michael Kors "accessible luxury line"⁴ (hereinafter "Michael Kors"), dominates Capri's portfolio.⁵ It is also a chief rival to Tapestry's Coach and Kate Spade brands.

Wall Street lauded the Proposed Acquisition as creating a dominant firm in the mold of the European fashion conglomerates. CNBC observed that the deal would give rise to an "American fashion giant."⁶ Bloomberg added that the combined firm was "likely to dominate the

² PX7055 (Investor Call, Aug. 10, 2023) at 004.

³ PX7060 at 004; PX7123 at 001.

⁴ PX7098 (Capri 2023 Form 10-K) at 009.

⁵ *E.g.*, PX7098 (Capri 2023 Form 10-K) at 010; PX6002 (Smith (Complaint Counsel) Rep.) ¶ 25.

⁶ PX2197 (Capri) at 008 ("Coach owner Tapestry to acquire Michael Kors, Jimmy Choo parent

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U.S. handbag market,”⁷ and that Coach had “won” the “ongoing battle” against long-time foe Michael Kors.⁸ Wells Fargo gushed: “The addition of Michael Kors cements T[apestry] as the number one player in the accessible luxury handbag market in the U.S. by a wide margin.”⁹ The investment community also heralded the deal because it signaled the end of a “problem-causing competitor” in Michael Kors.¹⁰ As Tapestry’s own investment banker observed following announcement of the Proposed Acquisition: “Investors are looking forward to unnecessary promotional activity, most of it viewed to be between Tapestry and Capri, subsiding. It felt like a ‘race to the bottom’ on price, and investors hope to see a return of more price integrity as a result of the combination.”¹¹ Indeed, an internal Tapestry analysis of the potential deal noted that a merger would give Tapestry the power to raise prices because Michael Kors’ lower prices and higher discount rate as compared to Coach “suggest[] room to increase MK AUR [Average Unit Retail]” and “opportunity to reduce MK discounting.”¹²

But while Wall Street may welcome the elimination of this competition and higher prices, the millions of Americans who purchase Coach, Michael Kors, and Kate Spade will not. These consumers are the beneficiaries of an intense, long-standing rivalry between these three iconic American brands—a fierce head-to-head competition that manifests not just through pricing and

Capri Holdings for \$8.5 billion,” CNBC Aug. 10, 2023).

⁷ PX2197 (Capri) at 007 (“Coach Owner to Buy Michael Kors Parent in \$8.5 Billion Deal,” Bloomberg, Aug. 10, 2023).

⁸ PX7139 at 004 (“Coach Tops Michael Kors In Handbag War – And Must Fix Its Rival,” Bloomberg, Aug. 11, 2023).

⁹ PX1374 (Tapestry) at 001 (Wells Fargo Equity Research, Aug. 10, 2023).

¹⁰ PX1092 (Tapestry) at 104 (Redburn Atlantic report, Sep. 13, 2023).

¹¹ PX1074 (Tapestry) at 006 [REDACTED]

¹² PX1216 (Tapestry) at 001, 017-018.

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discounts, but also innovation, shopping experiences, and labor.¹³ And this competition is monitored at the highest levels of each company. Capri CEO John Idol, who has referred to Coach as Michael Kors’ “key competitor,”¹⁴ frequently instructs his team to copy Coach’s pricing and marketing strategies—even its handbag designs,¹⁵ while Tapestry’s Board of Directors routinely receives reports of Coach and Kate Spade pricing strategies in comparison to Michael Kors.¹⁶

Aside from squelching this head-to-head competition, the Proposed Acquisition will also create—under even a *conservative* analysis—a colossus with over [REDACTED] percent market share for “accessible luxury” handbags in the United States, with the next closest brands, [REDACTED], [REDACTED], respectively.¹⁷ Coined by Coach as part of its initial public offering two decades ago, the term “accessible luxury” denotes a “quality well made product” produced at a lower cost and retailed at a fraction of the price of traditional European luxury.¹⁸ Or, as Coach’s CEO and Brand President put it when explaining to investors how Coach “invented Accessible Luxury”: “It was the idea that you didn’t have to spend an exorbitant amount of money to buy a high quality

¹³ See Section III.

¹⁴ PX2240 (Capri) at 001.

¹⁵ E.g., PX2075 (Capri) at 001; PX2098 (Capri) at 001.

¹⁶ E.g., PX1723 (Tapestry) at 010; PX1387 (Tapestry) at 043; PX1223 (Tapestry) at 007.

¹⁷ PX6002 (Smith (Complaint Counsel) Rep.) ¶ 186, tbl. 7.

¹⁸ E.g., PX1704 (Tapestry) at 001 (“our supply chain innovation over the years effectively created the accessible luxury market – balancing lower cost with quality well made product”); PX1731 (Tapestry) at 048 [REDACTED]; PX5008 (Levine (Tapestry) Dep.) at 233:17-20, 235:14-236:5 (“Coach provides quality goods at an accessible price point. When the term was created, the comparison – so the accessible part was in comparison to what the customer might have seen as traditional European luxury.”).

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bag.”¹⁹ In the years since, Respondents,²⁰ along with other industry participants,²¹ have consistently used “accessible luxury” (along with its equivalents like “accessible” or “affordable luxury”) to describe a particular market segment. That segment stands in contrast to traditional European luxury, which “owns” the \$1000+ space,²² and mass-market products, which “are not at the same level” in terms of quality.²³ Post-acquisition, Tapestry will dominate this space, at levels that easily give rise to a presumption of illegality. But it does not intend on stopping there: [REDACTED],²⁴ Tapestry sees the Proposed Acquisition as “set[ting] the table for [a] string of pearls[,] or smaller deals,”²⁵ in its quest to become a “Global Premium Fashion Powerhouse.”²⁶ Indeed, in a 2017 playbook just following the Kate Spade acquisition, Tapestry made its strategy clear: move “into the role of a Serial Acquirer.”²⁷

ANALYSIS

Clayton Act § 7 prohibits acquisitions the effect of which “may be substantially to lessen

¹⁹ PX1635 (Tapestry) at 006.

²⁰ *E.g.*, PX7105 (Tapestry 2023 Form 10-K) at 015; PX7104 (Tapestry 2022 Form 10-K) at 004, 005, 014, 024, 035, 069; PX7098 (Capri 2023 Form 10-K) at 009; PX7096 (Capri 2022 Form 10-K) at 007; PX1379 (Tapestry) at 049; PX2439 (Capri) at 004.

²¹ *E.g.*, [REDACTED] Dep.) at 36:18-36:25; [REDACTED] at 018; [REDACTED] at 002; [REDACTED] at 12; [REDACTED] Dep.) at 26:25-28:7; [REDACTED] Dep.) at 19:11-20:17; PX7182 (Rebecca Minkoff website) at 001 (an “industry leader in accessible luxury handbags”).

²² PX1431 (Tapestry) at 018.

²³ PX2061 (Capri) at 004; *see also* PX1088 (Tapestry) at 003.

²⁴ PX0010 (Tapestry Second Request Response, Feb. 2, 2024) at 107.

²⁵ PX1152 (Tapestry) at 001.

²⁶ PX1737 (Tapestry) at 004; PX1175 (Tapestry) at 004.

²⁷ PX8110 (Tapestry) at 046.

competition, or to tend to create a monopoly.” *In re Illumina, Inc.*, Docket No. 9401, 2023 WL 2823393, at *18 (F.T.C. Mar. 31, 2023) (quoting 15 U.S.C. § 18). “Section 7 prohibits acquisitions that create a reasonable probability of anticompetitive effects.” *In re Otto Bock HealthCare N. Am., Inc.*, Docket No. 9378, 2019 WL 5957363, at *10 (F.T.C. Nov. 1, 2019) (citing *FTC v. Univ. Health, Inc.*, 938 F.2d 1206, 1218 (11th Cir. 1991); *Lektro-Vend Corp. v. Vendo Co.*, 660 F.2d 255, 274 (7th Cir. 1981)). “Congress indicated that its concern was with ‘probabilities, not certainties,’ and that the government need only show a ‘reasonable likelihood’ of a substantial lessening of competition in the relevant market.” *Illumina, Inc.*, 2023 WL 2823393, at *18 (quoting *Brown Shoe Co. v. United States*, 370 U.S. 294, 323, 362 (1962)). “[T]he statute requires a prediction, and doubts are to be resolved against the transaction.” *Id.* (quoting *FTC v. Elders Grain, Inc.*, 868 F.2d 901, 906 (7th Cir. 1989)).

“Courts and the Commission have traditionally analyzed Section 7 claims under a burden-shifting framework.” *Otto Bock*, 2019 WL 5957363, at *11 (citing *United States v. Anthem, Inc.*, 855 F.3d 345, 349 (D.C. Cir. 2017); *United States v. Baker Hughes, Inc.*, 908 F.2d 981, 982-83 (D.C. Cir. 1990); *In re ProMedica Health Sys., Inc.*, Docket No. 9346, 2012 WL 1155392, at *12 (F.T.C. Mar. 28, 2012)). Under this framework, Complaint Counsel “can establish a presumption of liability by defining a relevant product and geographic market and showing that the transaction will lead to undue concentration in that market.” *Otto Bock*, 2019 WL 5957363, at *11 (citing *United States v. Phila. Nat’l Bank*, 374 U.S. 321, 363 (1963); *Baker Hughes*, 908 F.2d at 982-83). “Qualitative evidence regarding pre-acquisition competition between the merging parties can in some cases be sufficient to create a prima facie case even without quantitative evidence of changes in market concentration.” *In re Polypore Int’l, Inc.*, Docket No. 9237, 2010 WL 9549988, at *9 (F.T.C. Nov. 5, 2010) (citing *In the Matter of*

Chicago Bridge & Iron Co., 138 F.T.C. 1024, 1053 (F.T.C. 2004)); 2023 U.S. Dep’t of Justice and FTC Merger Guidelines (hereinafter, the “Merger Guidelines”) at § 2.2 (“an analysis of the existing competition between the merging firms can demonstrate that a merger threatens competitive harm independent from an analysis of market shares”).²⁸

Once Complaint Counsel has established a *prima facie* case of probable harm, the burden of production shifts to Respondents to “produce evidence showing that the plaintiff’s evidence paints an inaccurate picture of the merger’s likely competitive effects.” *Polypore*, 2010 WL 9549988, at *9. If the Respondents meet their burden, the burden of production shifts back to the plaintiff to produce additional evidence of competitive harm and merges with the ultimate burden of persuasion, which remains with the plaintiff. *Illumina, Inc. v. FTC*, 88 F.4th 1036, 1048 (5th Cir. 2023). The stronger the plaintiff’s *prima facie* case, “the greater Respondent[’s] burden of production on rebuttal.” *In re OSF Healthcare Sys.*, Docket No. 9349, 2012 WL 1561036, at *17 (Apr. 4, 2012); *see also FTC v. H.J. Heinz Co.*, 246 F.3d 708, 725 (D.C. Cir. 2001).

Here, Complaint Counsel meets its *prima facie* burden both by showing that this acquisition eliminates substantial head-to-head competition and by showing an undue increase in concentration in the accessible luxury handbag market in the United States as a result of the transaction. Complaint Counsel will also show that the Proposed Acquisition builds on Tapestry’s decade-long pattern and strategy of serial acquisitions. *See Credit Bureau Reports*,

²⁸ Courts have “recognized that a merger that eliminates head-to-head competition between close competitors can result in a substantial lessening of competition.” *FTC v. Sysco Corp.*, 113 F. Supp. 3d 1, 61 (D.D.C. 2015) (citing *FTC v. H.J. Heinz Co.*, 246 F.3d 708, 717-19 (D.C. Cir. 2001)); *accord FTC v. IQVIA Holdings Inc.*, 23 Civ. 06188 (ER), 2024 WL 81232, at *40 (S.D.N.Y. Jan. 8, 2024) (“It is sufficient to show, as the FTC has, that Defendants vigorously compete head-to-head and that this competition would be eliminated by the proposed transaction.”).

Inc. v. Retail Credit Co., 358 F. Supp. 780, 794 (S.D. Tex. 1971); Merger Guidelines at § 2.8.

Respondents cannot produce evidence to rebut Complaint Counsel's strong showing of harm.

I. The Proposed Acquisition Is Presumptively Unlawful Because It Significantly Increases Market Concentration in the Market for “Accessible Luxury” Handbags in the United States.

Complaint Counsel can meet its prima facie burden by showing that the Proposed Acquisition is presumptively unlawful because it will lead to undue concentration in a relevant market. *Polypore*, 2010 WL 9549988, at *9 (citing *Baker Hughes*, 908 F.2d at 982-83); *see also* Merger Guidelines at § 2.1. Under Supreme Court precedent

a merger which produces a firm controlling an undue percentage share of the relevant market, and results in a significant increase in the concentration of firms in that market, is so inherently likely to lessen competition substantially that it must be enjoined in the absence of evidence clearly showing that the merger is not likely to have such anticompetitive effects.

Phila. Nat'l Bank, 374 U.S. at 363. Here, the Proposed Acquisition easily satisfies the thresholds for a presumption of illegality, leading to a combined market share of well over 50 percent in the sale of “accessible luxury” handbags in the United States.

A. “Accessible Luxury” Handbags in the United States Is a Relevant Market.

The first step in assessing concentration is to define a relevant product and geographic market; specifically, to determine the “line of commerce” and “section of the country” where the relevant competition occurs. 15 U.S.C. § 18; *St. Alphonsus Med. Ctr.-Nampa Inc. v. St. Luke's Health Sys., Ltd.*, 778 F.3d 775, 783-84 (9th Cir. 2015). “Congress prescribed a pragmatic, factual approach” to market definition because “the market, as most concepts in law or economics, cannot be measured by metes and bounds.” *United States v. Anthem, Inc.*, 236 F. Supp. 3d 171, 193 (D.D.C. 2017) (cleaned up), *aff'd* 855 F. 3d 345 (D.C. Cir. 2017). In

particular, the commercial realities reflecting competition between the merging parties can inform market definition. *See FTC v. Staples, Inc.*, 190 F. Supp. 3d 100, 123-24 (D.D.C. 2016); Merger Guidelines at § 4.3 (“Direct evidence of substantial competition between the merging parties can demonstrate that a relevant market exists in which the merger may substantially lessen competition and can be sufficient to identify the line of commerce and section of the country affected by a merger, even if the metes and bounds of the market are only broadly characterized.”). “Ordinary course of business documents reveal the contours of competition from the perspective of the parties, who may be presumed to have accurate perceptions of economic realities.” *Otto Bock*, 2019 WL 5957363, at *13 (internal quotation marks and citations omitted).

“The outer boundaries of a product market are determined by the reasonable interchangeability of use or the cross-elasticity of demand between the product itself and substitutes for it.” *Otto Bock*, 2019 WL 5957363, at *12 (quoting *Brown Shoe Co.*, 370 U.S. at 325). “In evaluating reasonable interchangeability, ‘the mere fact that a firm may be termed a competitor in the overall marketplace does not necessarily require that it be included in the relevant product market for antitrust purposes.’” *IQVIA*, 2024 WL 81232, at *24 (quoting *FTC v. Sysco Corp.*, 113 F. Supp. 3d at 26). Indeed, as the Supreme Court has recognized, within a broader market, “well-defined submarkets may exist which, in themselves, constitute product markets for antitrust purposes.” *Brown Shoe*, 370 U.S. at 325; *see also United States v. Alum. Co. of Am.*, 377 U.S. 271, 275 (1964) (while aluminum and insulated copper conductors could be analyzed as a “single product market” that “does not preclude their division for purposes of [Section 7] into separate submarkets”). “[T]he viability of such additional markets does not render the one identified by the government unusable.” *IQVIA*, 2024 WL 81232, at *24 (quoting

United States v. Bertelsmann SE & Co., 646 F. Supp. 3d 1, 28 (D.D.C. 2022)). The inquiry does not look at all products that are interchangeable for any purpose—only “reasonably interchangeable” products. *See, e.g., FTC v. Swedish Match*, 131 F. Supp. 2d 151, 158-59 (D.D.C. 2000).

Here, a relevant market is “accessible luxury” handbags sold in the United States—although, as explained below, this market is conservative, because, under the hypothetical monopolist test, Coach, Kate Spade, and Michael Kors handbags by themselves would constitute a relevant antitrust market.

1. The *Brown Shoe* Practical Indicia Demonstrate That “Accessible Luxury” Handbags Is a Relevant Product Market.

In assessing relevant product markets, the Supreme Court has identified multiple “practical indicia,” including “industry or public recognition of the [relevant market] as a separate economic entity, the product’s peculiar characteristics and uses, unique production facilities, distinct customers, distinct prices, sensitivity to price changes, and specialized vendors.” *Brown Shoe*, 370 U.S. at 325; *see also Otto Bock*, 2019 WL 5957363, at *13 (citing *Brown Shoe*, 370 U.S. at 325). The *Brown Shoe* indicia are “practical aids,” not “talismanic” criteria “to be rigidly applied.” *Swedish Match*, 131 F. Supp. 2d at 159. “All the factors need not be satisfied for the Court to conclude that the FTC has identified a relevant market.” *IQVIA*, 2024 WL 81232, at *13. Rather, the indicia must be viewed in totality and not in isolation—one factor is not dispositive. *FTC v. Surescripts, LLC*, 665 F. Supp. 3d 14, 43 (D.D.C. 2023); *Beatrice Foods Co. v. FTC*, 540 F.2d 303, 308-09 (7th Cir. 1976) (the existence of only three indicia sufficient). Analysis of the *Brown Shoe* practical indicia shows that “accessible luxury” handbags constitute a relevant product market.

Industry Recognition. Industry participants, including Respondents, recognize “accessible luxury” as a distinct market. Over the last decade, and as recently as last year, Respondents have repeatedly referred to their Coach, Kate Spade, and Michael Kors brands as “accessible luxury” in statements to investors and in SEC filings.²⁹ Their ordinary-course documents are replete with references to “accessible luxury” and strategic analyses of the “accessible luxury” market.³⁰

These analyses are prepared for the highest levels of each company, including their boards of directors, and, in the case of Tapestry, have included market sizing exercises that rely on commercially available data from Circana (formerly known as NPD) and use Circana’s “Bridge” and “Contemporary” categories as a proxy for the “accessible luxury” handbag market.³¹ Tapestry’s own consumer research shows that consumers consider Coach “affordable luxury”³² and “[c]onfirmed [Coach’s] global brand positioning”—that is, “Coach enables people to explore their individual take on ‘Accessible Luxury.’”³³

Capri similarly monitors the “accessible luxury” market, consistently identifying Michael Kors, Coach, and Kate Spade as among the major “accessible luxury” brands.³⁴ Respondents’

²⁹ *E.g.*, PX2435 (Capri) at 005; PX2379 (Capri Earnings Call Q4 2023) at 011, 019; PX7105 (Tapestry 2023 Form 10-K) at 015; PX7104 (Tapestry 2022 Form 10-K) at 004, 005, 014, 024, 035, 069; PX7098 (Capri 2023 Form 10-K) at 009; PX7096 (Capri 2022 Form 10-K) at 007; PX7095 (Capri 2021 Form 10-K) at 007; PX7097 (Capri 2019 Form 10-K) at 006.

³⁰ *E.g.*, PX1387 (Tapestry) at 043; PX2124 (Capri) at 004-005; PX1536 (Tapestry) at 015; PX2394 (Capri) at 001; PX2415 (Capri) at 002, 004-005, 009; PX2436 (Capri) at 012; PX1812 (Tapestry) at 068-72; PX2439 (Capri) at 004.

³¹ *See e.g.*, PX1306 (Tapestry) at 003; PX1503 (Tapestry) at 003.

³² PX1936 (Tapestry) at 027.

³³ PX1937 (Tapestry) at 003.

³⁴ PX2674 (Capri) at 006, 011 (refencing “entry le[[v]el luxury” and “peers”); *see also* PX2436 (Capri) at 012 (using Consumer Edge and Euromonitor data); PX2408 (Capri) at 008; PX2680 (Capri) at 006.

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repeated and consistent references to “accessible luxury” echo those of other “accessible luxury” brands, including [REDACTED],³⁵ as well as suppliers, investors, and industry analysts.³⁶

Distinct Pricing. A relevant market may be determined based on price and quality. *See, e.g., Geneva Pharm. Tech. Corp. v. Barr Lab. Inc.*, 386 F.3d 485, 497 (2d Cir. 2004) (finding that price differentials were “indicative of separate markets”); *Alum. Co. of Am.*, 377 U.S. at 276; *United States v. Gillette Co.*, 828 F. Supp. 78, 83 (D.D.C. 1993); *Bertelsmann*, 646 F. Supp. 3d at 29 (rejecting that existence of a “spectrum of price or value” precluded a relevant market based in part on distinct pricing).

Coach, Kate Spade, Michael Kors and other “accessible luxury” handbag brands generally focus their offerings on an opening price point of \$100 and rarely approach or exceed \$1,000, which Tapestry itself acknowledges as merely the “entry point” for “luxury” handbag brands—or what the Respondents and industry participants also refer to as “traditional European luxury,” “true luxury,” or “European luxury” (hereinafter “true luxury”).³⁷ *See FTC v. Lancaster*

³⁵ *E.g.*, [REDACTED] at 018; [REDACTED] Dep.) at 36:18-36:25; [REDACTED], ¶ 12 ([REDACTED] Dep.) at 26:25-28:7 [REDACTED] Dep.) at 19:11-20:17; [REDACTED] at 002.

³⁶ PX7187 (Simone website) at 001-002; PX1096 (Tapestry) at 001; PX2030 (Capri) at 002; PX2052 (Capri) at 002; PX2158 (Capri) at 004; PX2159 (Capri) at 004; PX1096 (Tapestry) at 001; PX2052 (Capri) at 002; PX2423 (Capri) (Investor Study) at 004.

³⁷ PX1379 (Tapestry) at 056; *see* PX1296 (Tapestry) at 008; PX1431 (Tapestry) at 018 (Coach “product portfolio starts at \$100 as point of entry and does not exceed \$1000 where luxury owns the market”); PX5020 (Lifford (Tapestry) Dep.) at 126:9-126:19 (\$100 is the “entry point for our product for a consumer” and “once you hit a dollar threshold it is driven by a luxury brand. And so it looks as though their records show that that’s a thousand.”).

Colony Corp., 434 F. Supp. 1088, 1093 (S.D.N.Y. 1977) (“Plainly, low or moderately-priced glassware, intended for everyday use, differs from fine glassware, such as lead crystal, sold at higher prices and marketed through different channels.”). A 2022 Tapestry strategic pricing analysis shows that the average manufacturer suggested retail price (“MSRP”) for Coach, Kate Spade, Michael Kors, Marc Jacobs, and Tory Burch ranged from \$288 to \$468, with the average for “accessible luxury” being \$373.³⁸ By contrast, the same analysis showed that “true luxury” handbags are priced much higher—well over \$1,000³⁹—a gap that has only been widening in recent years.⁴⁰

In statements to investors, Respondents have routinely acknowledged and touted this “white space” or “delta” between the price points of “accessible luxury” and “true luxury” handbags to demonstrate that there is room to raise prices without losing customers.⁴¹ *See Geneva Pharm*, 386 F.3d at 496-97; *Reynolds Metals Co. v. FTC*, 309 F.2d 223, 229 (D.C. Cir. 1962) (“Such a difference in price as appears on this record must effectively preclude comparison, and inclusion in the same market, of products as between which the difference exists, at least for purposes of inquiry under Sec. 7 of the Clayton Act.”).

“Accessible luxury” handbags also have distinct pricing in that they are characterized by a high degree of, and frequent, discounting and promotions, particularly around major shopping

³⁸ PX1296 (Tapestry) at 008.

³⁹ PX1296 (Tapestry) at 008.

⁴⁰ PX1723 (Tapestry) at 009; *see also* PX5024 (Roe (Tapestry) Dep.) at 215:17-215:23 [REDACTED]

[REDACTED]; PX5035 (Fraser (Tapestry) Dep.) at 219:16-220:12.

⁴¹ *See, e.g.*, PX7053 (Tapestry Q4 2022 Earnings Call Tr.) at 013-014; PX7045 (Tapestry Q3 2023 Earnings Call Tr.) at 010; PX7054 (Tapestry Q4 2023 Earnings Call Tr.) at 012-013; PX7030 (Tapestry Q1 2024 Earnings Call Tr.) at 011; PX7138 (Capri Q4 2022 Earnings Call Tr.) at 011.

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holidays.⁴² Tapestry's Chief Financial and Operating Officer made clear that [REDACTED]
[REDACTED].⁴³

Peculiar Characteristics. "Accessible luxury" handbags boast high-quality materials (often leather) and elevated craftsmanship and construction. Tapestry has asserted that "high quality standards . . . are an integral part of our brands' identity."⁴⁴ Coach handbags may require more than 100 steps to make, including "up to 90 skilled artisans working together to assemble as many as 200 pieces."⁴⁵ Michael Kors states that its products offer "the highest level of craftsmanship."⁴⁶ Or, as [REDACTED] } put it: accessible luxury "is a term used in the handbag industry to signify handbags that have high craftsmanship and quality and that look and feel expensive, but without a four-figure price tag."⁴⁷

[REDACTED]
[REDACTED].⁴⁸

Notably, department stores group together "accessible luxury" handbag brands on their

⁴² See, e.g., PX1105 (Tapestry) at 003; PX2035 (Capri) at 012; PX5025 (Tao (Tapestry) Dep.) at 235:3-236:17; PX5002 (Crevoiserat (Tapestry) Corp. IH.) at 30:11-20; [REDACTED] Dep.) at 68:21-25; 70:13-70:24; PX7260 (Tory Burch website, July 3, 2024) (offering an additional 25% off sale items for a semiannual sale and 15% off your first order of \$200+); [REDACTED] Dep.) at 98:7-99:2 ([REDACTED]).

⁴³ PX5024 (Roe (Tapestry) Dep.) at 99:6-99:9.

⁴⁴ PX7105 (Tapestry 2023 Form 10-K) at 013.

⁴⁵ PX1262 (Tapestry) at 007; see also PX1085 (Tapestry) at 004 (Coach's craftsmanship involves specialized materials, construction, hardware, and details).

⁴⁶ PX2058 (Capri) at 009, 030; see also PX2271 (Capri) at 008-009 (Michael Kors offers a [REDACTED] collection marked by an "[REDACTED]" or "[REDACTED]"; [REDACTED]).

⁴⁷ [REDACTED], ¶ 12; [REDACTED] at 002 ([REDACTED]).

⁴⁸ [REDACTED] Dep.) at 13:21-15:8.

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store floors based on these peculiar characteristics. For example, [REDACTED]

[REDACTED]

[REDACTED]⁴⁹

[REDACTED]

[REDACTED]

[REDACTED]⁵⁰

Unique Production Facilities. “Accessible luxury” handbags are typically made offshore in Asia by skilled artisans, which enables “accessible luxury” brands to produce quality handbags at lower costs—and thus to retail them at lower prices to consumers. Tapestry’s CEO Joanne Crevoiserat described it best when she told her subordinates in preparation for a Board of Directors meeting: “our supply chain innovation over the years effectively created the accessible luxury market – balancing lower cost with quality well made product.”⁵¹ One key supplier for “accessible luxury” handbags for Coach, Kate Spade, and Michael Kors, as well as [REDACTED] and [REDACTED], is Asia-based Simone.⁵² Simone touts its quality-assurance

⁴⁹ [REDACTED] Dep.) at 19:22-20:22, 33:10-34:20.

⁵⁰ [REDACTED] Dep.) at 20:25-21:6, 21:22-22:24, 24:18-25:2, 25:17-25:22.

⁵¹ PX1704 (Tapestry) at 001; *see also* PX5019 (Crevoiserat (Tapestry) Dep.) at 178:22-180:5; PX1731 (Tapestry) at 048 (“[REDACTED]”); PX5036 (Charles (Tapestry) Dep.) at 104:5-21 (“our core deliverable within supply chain is to create the best value for money we can at the best price we can to our consumers.”).

⁵² *See, e.g.*, PX5024 (Roe (Tapestry) Dep.) at 296:12-297:9, 298:5-299:17; PX2224 (Capri) at 002; PX7187 (Simone website) at 001; [REDACTED] Dep.) at 41:1-42:19 ([REDACTED]

[REDACTED]”); [REDACTED] at 002, 004. [REDACTED] PX5036 (Charles (Tapestry) Dep.) at 220:18-221:20; PX1788 (Tapestry) at 001.

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system and craftsmanship of its artisans, which has enabled it to “grow concurrently with the emergence of accessible luxury in the US market.”⁵³ Industry consultants recognize the distinct nature of the supply chain for “accessible luxury” handbags.⁵⁴

Distinct Customers. Coach and Michael Kors both characterize customers of their brands as “lower income,”⁵⁵ and consumer research conducted by and on behalf of Respondents shows that most of the customers for Coach and Michael Kors are “lower income” with under \$75,000-\$80,000 in annual household income,⁵⁶ [REDACTED] [REDACTED].⁵⁷

Kate Spade’s income demographics are similar,⁵⁸ as are those of the other brands widely recognized as smaller players in the “accessible luxury” space.⁵⁹ Testimony and documents presented to Capri’s Board of Directors demonstrate that “accessible luxury” handbag consumers are attracted to promotions.⁶⁰ [REDACTED] similarly noted that her customers are price

⁵³ PX7187 (Simone website) at 001-002.

⁵⁴ PX1327 (Tapestry) at 004 ([REDACTED] [REDACTED]); PX2254 (Capri) at 006 (Bain).

⁵⁵ *E.g.*, PX2010 (Capri) at 009 (“[REDACTED] [REDACTED]”); PX1078 (Tapestry) at 001 (“[REDACTED]”).

⁵⁶ PX2128 (Capri) at 005-006; PX2257 (Capri) at 017; PX1379 (Tapestry) at 041; PX2674 (Capri) at 011; PX2010 (Capri) at 009 ([REDACTED] [REDACTED]); PX1078 (Tapestry) at 001 (“[T]he majority of our demand at Coach is coming from low-income consumers”).

⁵⁷ PX2753 (Capri) at 043.

⁵⁸ PX1255 (Tapestry) at 048.

⁵⁹ PX2050 (Capri) at 022.

⁶⁰ PX2753 (Capri) at 043, 045; *see also* PX5011 (Kors (Capri) Dep.) at 34:1-14, 143:5-144:2.

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sensitive: [REDACTED]”⁶¹

2. “True Luxury” and Mass Market Handbags Are Not Reasonably Interchangeable with “Accessible Luxury” Handbags.

Other types of handbags do not share the same *Brown Shoe* practical indicia and are not reasonably interchangeable with “accessible luxury” handbags. They are thus not part of the relevant product market. *See Otto Bock*, 2019 WL 5957363, at *13.

“**True Luxury.**” With jaw-dropping prices at multiples of Respondents’ offerings,⁶² “true luxury” handbags are not reasonable substitutes for “accessible luxury” handbags. In the words of Coach’s CEO and Brand President: “Gucci bags at \$2000 is just not our customer in N[orth]A[merica].”⁶³ The CEO and Brand President of Kate Spade put it more bluntly: “Bottom line, saying we’re in the same market with true luxury is a joke. . . . Nobody says ‘should I buy a LV [Louis Vuitton] bag or a Coach bag?’”⁶⁴

Beyond price, other characteristics distinguish “accessible luxury” and “true luxury” handbags. While discounting is common among “accessible luxury” handbags, “true luxury”

⁶¹ [REDACTED] Dep.) at 189:2-14. That customers may own a wide variety of handbags and engage in “cross shopping,” does not negate a finding of distinct customers. *See, e.g., FTC v. Whole Foods Mkt.*, 548 F.3d 1028, 1040-41 (D.C. Cir. 2008) (cross-shopping consistent with a group of core consumers); *IQVIA*, 2024 WL 81232, at *15-17 (“the fact that an agency might shift money around during a campaign does not establish that these alternative channels are substitutes”).

⁶² [REDACTED], ¶ 6 (“[REDACTED]”); [REDACTED] at 002, 010, 011 (“[REDACTED]”); [REDACTED] (“[REDACTED]”); [REDACTED] Dep. at 52:17-53:21 (“[REDACTED]”); [REDACTED]; *see also* PX1536 (Tapestry) at 015; PX1723 (Tapestry) at 009; PX1296 (Tapestry) at 008

⁶³ PX1067 (Tapestry) at 001; PX5006 (Kahn (Tapestry) Dep.) at 118:1:21.

⁶⁴ PX1427 (Tapestry) at 001-002; PX5035 (Fraser (Tapestry) Dep.) at 204:2-7.

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brands typically have an explicit no-discounting policy.⁶⁵ And, unlike “accessible luxury” brands, which offer their products in outlets and a range of department stores, “true luxury” aims for a more exclusive shopping experience with limited sales channels and few, if any, outlet stores.⁶⁶ What’s more, “true luxury” handbags carry the imprimatur of the finest craftsmanship and are usually manufactured in Europe.⁶⁷ For example, [REDACTED]

[REDACTED].⁶⁸ Unlike accessible luxury brands that outsource production to off-source skilled artisans like Simone, true luxury brands like [REDACTED]

[REDACTED].⁶⁹ The “true luxury” consumer also has a higher income than the “accessible luxury” customer.⁷⁰

Mass-market. Mass-market (or fast-fashion) handbags are similarly not reasonably

⁶⁵ *E.g.*, [REDACTED]; PX7062 (Wall Street Journal, *Luxury Stores Are Bursting With Unsold Stuff*, Dec. 8, 2023) at 002; [REDACTED] Dep.) at 59:2-8 [REDACTED]).

⁶⁶ *E.g.*, PX7083 (Louis Vuitton website) at 001 (“Louis Vuitton products are sold exclusively in official Louis Vuitton stores, on the Louis Vuitton official website”); PX7275 (Hermes website) at 001; [REDACTED]).

⁶⁷ PX7093 (Louis Vuitton website) at 001 (Louis Vuitton “exclusively produced in our workshops located in France, Spain, Italy and the United States.”); [REDACTED], ¶ 3; PX7075 at 019 (Dior website) (“Dior’s leather goods collections are made in Europe.”); PX7197 at 001 (Loewe handbags made in Madrid by “master artisans”).

⁶⁸ [REDACTED], ¶ 3.

⁶⁹ [REDACTED] Dep.) at 44:21-45:7. [REDACTED].” *Id.* at 46:22-48:11.

⁷⁰ *E.g.*, PX2040 (Capri) at 008.

interchangeable with “accessible luxury” handbags. Indeed, in filings with China’s antitrust regulatory authority, Respondents admitted that even higher-end mass-market handbags were not substitutes for Respondents’ offerings: “[H]igh-end mass market products also offer good quality and performance and are made with decent materials and manufacturing processes, [but] they are not on the same level as luxury products.”⁷¹ Similarly, Coach’s CEO and Brand President testified, “we don’t think of mass as one of the areas that we compete with for mindshare for the customer.”⁷² And for good reason: Mass-market handbags are composed of inferior materials and retail at \$100 or less.⁷³ For example, for mass-market brand [REDACTED]—whose handbags are priced at \$100 and under—[REDACTED] [REDACTED].⁷⁴ According to [REDACTED], [REDACTED] “handbag is [REDACTED] [REDACTED]” brands like H&M and Zara.⁷⁵

3. The Relevant Geographic Market Is the United States.

“[T]he ‘relevant geographic market’ identifies the geographic area in which the defendants compete in marketing their products or services.” *llumina*, 2023 WL 2823393, at *20 (citing *FTC v. CCC Holdings Inc.*, 605 F. Supp. 2d 26, 37 (D.D.C. 2009)).

⁷¹ PX2061 (Capri) at 004; accord PX1088 (Tapestry) at 003 (“personal luxury goods differ from mass-market goods and constitute a separate relevant product market.”).

⁷² PX5003 (Kahn (Tapestry) Corp. IH) at 100:25-101:8.

⁷³ [REDACTED] Dep.) at 24:22-25:5, 36:20-37:3; [REDACTED] Dep.) 44:25-45:10 (“[REDACTED]”); PX5001 (Idol (Capri) IH) at 163:20-164:17 (fast fashion is distinguished by quality of the materials and effort put into brand identity; “fast fashion” brands like H&M are not “peers” of Michael Kors); PX5006 (Kahn (Tapestry) Dep.) at 184:22-185:5.

⁷⁴ [REDACTED] Dep.) at 31:11-15, 36:20-37:3.

⁷⁵ [REDACTED] Dep.) at 13:21-16:1.

The relevant geographic market here is the United States. Coach, Kate Spade, and Michael Kors set pricing for “accessible luxury” handbags, including MSRP and discounts, by region, based on factors like currency, markup targets, and consumers’ preferences and perceptions of brand value, and have U.S.-specific pricing.⁷⁶ Respondents’ shipping practices, including limitations on U.S.-based customers ordering from non U.S.-facing online stores, also support that the geographic market is the United States.⁷⁷ Moreover, Respondents have U.S.-specific marketing and business strategies for their brands and handbags,⁷⁸ monitor U.S. prices and market shares for handbags,⁷⁹ and study U.S. customers, distinct from other regional customer bases.⁸⁰ Indeed, in the federal court litigation, Respondents have “accept[ed] for purposes of analysis” the United States as the relevant geographic market. *FTC v. Tapestry, Inc. et al.*, 1:24-cv-03109-JLR, Dkt. 159 at 5 n.1 (S.D.N.Y. Aug. 20, 2024).

4. Economic Analysis Confirms “Accessible Luxury” Handbags in the United States Is a Relevant Market.

“The enforcement agencies and many courts employ the ‘hypothetical monopolist test’ to

⁷⁶ E.g., PX0010 (Tapestry Second Request Response, Feb. 2, 2024) at 045-049; PX0006 (Capri Second Request Response, Feb. 2, 2024) at 088-089; PX1431 (Tapestry) at 019; PX1296 (Tapestry) at 014, 026, 028; PX1767 (Tapestry) at 014, 018.

⁷⁷ E.g., PX5009 (Walsh (Capri) Dep.) at 274:21-275:14 ([REDACTED]); PX7284 (Coach website) at 001; PX7168 (Michael Kors website) at 001; PX7109 (Michael Kors EU website) at 002; PX7285 (Coach UK website) at 001; PX5008 (Levine (Tapestry) Dep.) at 187:12-193:17 (the U.S. Coach website can only ship to the United States, including Puerto Rico, Alaska, and Hawaii but not to Canada).

⁷⁸ E.g., PX5044 (Parsons (Capri) Dep.) at 22:24-23:25 (discussing that ad campaigns are localized); PX2014 (Capri) at 001-003; PX7030 (Q1 2024 Tapestry Earnings Call) at 004-005 (discussing different marketing campaigns for the United States and Europe).

⁷⁹ E.g., PX1767 (Tapestry) at 010, 014; PX1224 (Tapestry) at 005, 006, 009; PX2436 (Capri) at 012; PX1783 (Tapestry) at 051; PX5010 (Rocha-Rinere (Tapestry) Dep.) at 168:20-169:4.

⁸⁰ E.g., PX2036 (Capri) at 005; PX1069 (Tapestry) at 004.

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assess whether a candidate set of products constitutes a relevant market.” *Otto Bock*, 2019 WL 5957363, at *13. This test asks whether a hypothetical monopolist of products within a candidate market could profitably impose a small but significant and non-transitory increase in price or other worsening of terms on at least one product in the set. *IQVIA*, 2024 WL 81232, at *25 (citing *FTC v. Peabody Energy Corp.*, 492 F. Supp. 3d 865, 886 (E.D. Mo. 2020)). If the monopolist could do so, “then a relevant product market exists for antitrust purposes.” *IQVIA*, 2024 WL 81232, at *25.

As discussed in the expert report of Dr. Loren K. Smith, the market for “accessible luxury” handbags in the United States satisfies the hypothetical monopolist test. To conduct the HMT, Dr. Smith first identified a candidate market comprised of brands identified as “accessible luxury” [REDACTED]

[REDACTED].⁸¹ Dr. Smith then conducted an aggregate diversion analysis, a common tool in market definition.⁸² *See Sysco*, 113 F. Supp. 3d at 34-35 (describing aggregate diversion analysis). As Dr. Smith explained, “[i]f the aggregate diversion is above a given threshold defined by a hypothetical price increase and the price-cost margins, then the candidate market is determined to be sufficiently broad to constitute a relevant market.”⁸³ Here, Dr. Smith found that estimated aggregate diversion ratios from Coach, Kate Spade, and Michael Kors exceed the threshold aggregate diversion ratio “[REDACTED]

”⁸⁴

In fact, Dr. Smith’s use of the brands identified as “accessible luxury” by Tapestry was

⁸¹ PX6002 (Smith (Complaint Counsel) Rep.) at ¶¶ 50 & § III.B.1.b.

⁸² PX6002 (Smith (Complaint Counsel) Rep.) at § III.E.

⁸³ PX6002 (Smith (Complaint Counsel) Rep.) at ¶ 102.

⁸⁴ PX6002 (Smith (Complaint Counsel) Rep.) at ¶ 105

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conservative for purposes of the HMT.⁸⁵ An alternative HMT analysis conducted by Dr. Smith⁸⁶ shows that a hypothetical monopolist who controlled only Coach, Kate Spade, and Michael Kors brands would find it profitable to increase the price of Michael Kors handbags by [REDACTED].⁸⁷ In other words, the Respondents' accessible luxury handbag brands by themselves satisfy the HMT, demonstrating the existence of a relevant product market that is limited to Coach, Kate Spade, and Michael Kors handbags,⁸⁸ which is consistent with Respondents' ordinary-course documents that show they are closest competitors. *See* Section V.A.

B. The Proposed Acquisition Will Lead to Undue Market Concentration.

Tapestry's Coach and Capri's Michael Kors brand are [REDACTED] in the market for "accessible luxury" handbags in the United States, followed by [REDACTED].⁸⁹ Conservative estimates show that, post-merger, Tapestry and Capri would control [REDACTED],⁹⁰ leading to significant increases in concentration that exceed the 30 percent threshold for presumptive illegality under controlling caselaw. *See Phila. Nat'l Bank* 374 U.S. at 364 ("Without attempting to specify the smallest market share which would still be considered to threaten undue concentration, we are clear that 30% presents that threat.").

In addition to market shares, courts and agencies often employ a statistical measure known as the Herfindahl-Hirschman Index (HHI) to assess market concentration. *See, e.g., Heinz*, 246 F.3d at 716; *see also* Merger Guidelines at § 2.1. "The HHI calculates market power

⁸⁵ PX6002 (Smith (Complaint Counsel) Rep.) at ¶ 101.

⁸⁶ PX6002 (Smith (Complaint Counsel) Rep.) at § V.B.2.b.

⁸⁷ PX6002 (Smith (Complaint Counsel) Rep.) at ¶¶ 256-257.

⁸⁸ PX6002 (Smith (Complaint Counsel) Rep.) at ¶ 256.

⁸⁹ PX6002 (Smith (Complaint Counsel) Rep.) at ¶¶ 186, tbl. 7, 193.

⁹⁰ PX6002 (Smith (Complaint Counsel) Rep.) at ¶ 186, tbl. 7.

by summing the squares of the individual market shares of all the firms in the market.” *Otto Bock*, 2019 WL 595763, at *11. Under the 2023 Merger Guidelines, “Markets with an HHI greater than 1,800 are highly concentrated, and a change of more than 100 points is a significant increase” that satisfies the structural presumption for illegality. Merger Guidelines at § 2.1. Here, the Proposed Acquisition would cause the HHI in the “accessible luxury” handbags market to increase by approximately [REDACTED]⁹¹—far surpassing the HHI thresholds for illegality under the Merger Guidelines and existing caselaw. *See, e.g., Heinz*, 246 F.3d at 716 (HHI delta of 510); *United States v. H&R Block, Inc.*, 833 F. Supp. 2d 36, 72 (D.D.C. 2011) (HHI delta of approximately 400); *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 42-43 (D.D.C. 2017) (HHI delta of more than 1,000 points in 70% of relevant geographic markets).

II. The Acquisition Is Unlawful Regardless of Market Concentration Because It Will Eliminate Substantial Head-To-Head Competition.

Complaint Counsel can also meet its *prima facie* burden by demonstrating that the Proposed Acquisition will eliminate head-to-head competition between close competitors. Independent of any market-concentration analysis, elimination of significant competition between major competitors may by “itself constitute[] a violation of § 1 of the Sherman Act,” and, a fortiori, of the Clayton Act.” *United States v. Mfrs. Hanover Trust Co.*, 240 F. Supp. 867, 950 (1965) (quoting *United States v. First Nat’l Bank & Tr. Co. of Lexington*, 376 U.S. 665, 671–72 (1964)); *Polypore*, 2010 WL 9549988, at *9 (qualitative evidence of premerger competition can indicate a substantial loss of competition in the absence of quantitative evidence); Merger Guidelines § 2.2 (“[M]ergers that eliminate head-to-head competition

⁹¹ PX6003 (Smith (Complaint Counsel) Reply Rep.) at ¶ 11.

between close competitors often result in a lessening of competition.”); *United States v. Anthem, Inc.*, 236 F. Supp. 3d 171, 216 (D.D.C. 2017) (citing *Staples*, 190 F.Supp.3d at 131-33); *United States v. Aetna Inc.*, 240 F. Supp. 3d 1, 43 (D.D.C.2017).

When conducting this analysis, courts regularly consider ordinary course documents. *See, e.g., Aetna*, 240 F. Supp. 3d at 25-26 (“Such documents reflect clearly the scope and intensity of the competition.”). Such contemporaneous, ordinary-course documents are more persuasive than self-serving testimony, which is entitled to little weight. *E.g., IQVIA*, 2024 WL 81232, at *39 (“[T]he Court is more persuaded by the plain import of their contemporaneous statements as reflected in the documentary record than by Defendants’ attempts to diminish the substantial evidence of head-to-head competition.”); *FTC v. Meta Platforms Inc.*, 654 F. Supp. 3d 892, 937 (N.D. Cal. 2023) (“[S]ubjective corporate testimony is generally deemed self-serving and entitled to low weight[.]”).

Coach, Kate Spade, and Michael Kors compete closely, and fiercely, in the sale of handbags in the United States. Tapestry and Capri recognize these brands are close competitors, so much so that Tapestry’s documents show a concern for “██████████” between the Coach, Kate Spade, and Michael Kors brands post-acquisition and ██████████ ██████████. ⁹² For its part, Capri’s documents are laced with analyses comparing Coach and

⁹² PX1715 (Tapestry) at 010; PX1032 (Tapestry, Inc. 4(c)-23, Aug. 31, 2023) at 001 (██████████); PX1216 (Tapestry) at 004 (“Is there opportunity to further differentiate brand perceptions so each brand can occupy a different place within the portfolio/consideration set?”); PX1144 (Tapestry) at 002 (Joanne Crevoiserat notes of meetings with Tapestry Board members regarding Capri deal; “AG: Team should push harder on consumer aspect – COH/MK differentiation”); PX5019 (Crevoiserat (Tapestry) Dep.) at 130:17-131:14 (“AG” is Anne Gates, the Chairwoman of the Tapestry Board of Directors).

Michael Kors, including on pricing and designs,⁹³ as well as consumer demographics.⁹⁴ Capri CEO and Chairman John Idol has referred to Coach as “[o]ur key competitor,”⁹⁵ while the President of Accessories and Footwear for Michael Kors has referred to Tapestry as Michael Kors’ “biggest competitor.”⁹⁶ There is good reason for Respondents to focus on each other: their own consumer research shows that customers view Coach, Kate Spade, and Michael Kors as close substitutes.⁹⁷

These brands compete vigorously on many dimensions, from pricing to design to innovation to marketing to shopping experience to retail labor to sustainability—all of which benefit consumers but will be lost if the Proposed Acquisition proceeds.

Price and Discounts. Examples abound in Respondents’ documents of analyses tracking each other’s prices for “accessible luxury” handbags.⁹⁸ Coach routinely includes Michael Kors in pricing comparisons in its ordinary-course documents.⁹⁹ Mr. Idol himself has instructed his

⁹³ *E.g.*, PX2108 (Capri) at 003-013; PX2068 (Capri) at 002.

⁹⁴ PX2128 (Capri) at 006-007; PX2257 (Capri) at 016-018.

⁹⁵ PX2240 (Capri) at 001.

⁹⁶ PX2043 (Capri) at 002; PX5033 (Newman (Capri) Dep.) at 197:14-198:13.

⁹⁷ *E.g.*, PX1186 (Tapestry) at 015; PX1216 (Tapestry) at 004 (Michael Kors and Coach “are each other’s top competition when consumers are considering other brands for purchase”); PX2117 (Capri) at 019, 23-24, 26-27; PX2214 (Capri) at 022, 027, 029, 033; PX1265 (Tapestry) at 048-049.

⁹⁸ *E.g.*, PX1224 (Tapestry) at 005; PX1250 (Tapestry) at 017; PX2108 (Capri) at 003-012; PX2068 (Capri) at 002; PX2727 (Capri) at 003 (using Coach pricing as benchmark in Michael Kors’ price increase analysis); PX5009 (Walsh (Capri) Dep.) at 236:16-19 ([REDACTED])

⁹⁹ PX1783 (Tapestry) at 051 (2023 Coach pricing comparison); PX1536 (Tapestry) at 015 (same analysis but from 2022); *see also* PX1124 (Tapestry) at 008.

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subordinates to “[REDACTED]”¹⁰⁰ And when a marketing email showed Coach leading “very sharp price points,” Mr. Idol instructed his Michael Kors subordinates: “We need to develop a strategy to compete with this. I don’t love it but we have no choice.”¹⁰¹ Similarly, Kate Spade long-range planning documents submitted to Tapestry’s Board of Directors show that Kate Spade set MSRP targets in relation to Michael Kors.¹⁰²

Price competition between Coach, Kate Spade, and Michael Kors occurs beyond list prices, however, as Respondents closely monitor, and often match, each other’s discounts and promotions, including for Mother’s Day and members of the military.¹⁰³ This monitoring takes many forms, including tracking seasonal promotions; for example, Coach management circulated a Michael Kors Black Friday promotional email with comments like “[REDACTED]” and “[REDACTED]”¹⁰⁴; on a separate occasion, Michael Kors retail employees [REDACTED]

[REDACTED].¹⁰⁵ In fact, Respondents—and Wall Street¹⁰⁶—have complained about the fierce discounting between these three brands, so much so that Michael Kors’ CEO wanted to show

¹⁰⁰ PX2091 (Capri) at 001; *see also* PX5000 (Idol (Capri) Corp. IH) 108:8-12 (“Q. Other than just being curious at their prices, whose prices do you most frequently actually compare Michael Kors handbag prices to? A. I would probably say -- I would probably say Coach.”); PX2047 (Capri) at 001-002.

¹⁰¹ PX2075 (Capri) at 001.

¹⁰² PX1223 (Tapestry) at 007.

¹⁰³ PX2622 (Capri) at 005; PX2101 (Capri) at 001; PX2105 (Capri) at 001; PX1133 (Tapestry) at 002; PX1507 (Tapestry) at 001.

¹⁰⁴ PX1135 (Tapestry) at 001.

¹⁰⁵ PX2063 (Capri) at 001-005 [REDACTED]

¹⁰⁶ PX1074 (Tapestry) at 006 (“[REDACTED]

”).

Capri's Board "examples of coach and kate spade racing to the bottom with such promotions" so it could "see what we are up against."¹⁰⁷

The Proposed Acquisition would eliminate this competition and result in significantly higher prices and lower discounts for consumers. Indeed, when Tapestry evaluated a "short list of targets" in August 2022, one of which was Michael Kors, it found that one benefit of an acquisition of Michael Kors was that it would allow the combined firm to "increase MK AUR" and "reduce MK discounting"—i.e., raise prices and reduce discounting.¹⁰⁸ Other documents show Tapestry plans to reduce wholesale—[REDACTED]¹⁰⁹—to just 15 percent of Michael Kors' revenues, which it acknowledges will affect "an older, more price sensitive department store stopper."¹¹⁰ And an economic analysis conducted by Dr. Smith confirmed that the proposed merger likely will cause higher retail prices for Coach, Kate Spade, and Michael Kors handbags—to the tune of a [REDACTED] in consumer harm annually.¹¹¹

Design. In addition to pricing, Coach, Michael Kors, and Kate Spade also compete head-to-head regarding the designs of their handbags, mimicking features and elements that they observe in each other's handbags. For example, internal Coach and Kate Spade documents show that the brands analyze Michael Kors' handbag silhouettes, materials, and colors.¹¹² For its part, Capri's documents are laced with analyses comparing Coach and Michael Kors designs.¹¹³ For

¹⁰⁷ PX2097 (Capri) at 001.

¹⁰⁸ PX1216 (Tapestry) at 001, 017-018.

¹⁰⁹ [REDACTED] Dep.) at 125:4-125:8 ([REDACTED]).

¹¹⁰ PX1723 (Tapestry) at 072; PX1200 (Tapestry) at 010.

¹¹¹ PX6002 (Smith (Complaint Counsel) Rep.) at ¶ 266.

¹¹² PX1338 (Tapestry) at 015; PX1924 (Tapestry) at 011-013.

¹¹³ *E.g.*, PX2108 (Capri) at 003-018; PX2068 (Capri) at 002.

example, with regard to Michael Kors' tote bag straps, a Michael Kors employee mused that

“ [REDACTED]

[REDACTED]

[REDACTED]”¹¹⁴ And Capri executives and design personnel have accused Coach of replicating Michael Kors' designs.¹¹⁵

Capri CEO John Idol is not as shy about taking inspiration from Coach designs, reviewing Coach e-mail blasts for ideas and advising his team to follow suit; over the course of just a few days in June 2021, he demanded that the Michael Kors team incorporate designs and elements he saw in Coach marketing e-mails.¹¹⁶ Later that same summer, he contacted Michael Kors' President of Accessories and Footwear on a Sunday to discuss a new shape that Coach had introduced in its widely popular “Tabby” handbag line;¹¹⁷ the very next day that executive asked her design team if “we need to evolve our Bradshaw into a larger size?? Like C&ach is doing with their Tabby.”¹¹⁸ Michael Kors later introduced a similar bag as part of its Parker line.¹¹⁹ Mr. Idol has also instructed his subordinates at Michael Kors to purchase Coach handbags to analyze

¹¹⁴ PX2074 (Capri) at 001.

¹¹⁵ PX2310 (Capri) at 003 (new Coach bag was “basically the Parker saddle bag,” a Michael Kors line of handbags); PX5033 (Newman (Capri) Dep.) at 228:25-230:1; PX2308 (Capri) at 003, 008.

¹¹⁶ PX2242 (Capri) at 001 (“The full bag stripe on signature looks nice. We should do something like this for next spring in full line and outlet.”); PX2243 (Capri) at 001 (“Love the hook up of Signature on ready to wear and Accessories. We need more ‘items’ like this.”).

¹¹⁷ PX2419 (Capri) at 001.

¹¹⁸ PX2346 (Capri) at 002.

¹¹⁹ PX5033 (Newman (Capri) Dep.) at 112:3-113:22, 117:24-120:4; *see also* PX2350 (Capri) at 001-002 (“We have heard this feedback as well on Coach Tabby especially the pillow version. We will have a similar Shoulder Bag for Fall 22 season with a new iconic MK hardware name Parker.”).

the hardware that Coach uses.¹²⁰

Marketing. Coach, Kate Spade, and Michael Kors pay close attention to each other's marketing—and no detail is too small. In May 2023, Mr. Idol wrote to his team: “Coach’s creativity on these emails (outlet in particular) is killing us . . . our [Michael Kors] backgrounds look cheap and uninspiring . . . They are just bland product photos with no inspiration. Help!!! Fast!!!”¹²¹ The year before Michael Kors’ Group President of Retail observed that Coach and Kate Spade were “going after market share by increasing frequency of highly promotional emails which is fueling their growth and we see in the data, hurting us.”¹²² Michael Kors’ next step was clear: “[REDACTED].”¹²³ In another instance, Mr. Idol forwarded to his team a Coach marketing e-mail regarding handbag price reductions and stressed the need to “compete” with Coach.¹²⁴

And competition between the parties is particularly fierce in internet search advertising. Both Capri and Tapestry engage in “conquesting” strategies designed to bid on each other’s online search terms so that customers looking for one will also be shown the other’s website in

¹²⁰ PX2294 (Capri) at 001 (“Just spoke to John. I knew we should have bought those Coach bags for the hardware. He wants to see them.”); PX2183 (Capri) at 004-011 (analyses of Coach hardware one month after purchase of Coach handbags in PX2294).

¹²¹ PX2098 (Capri) at 001; *see also* PX5021 (Idol (Capri) Dep.) at 186:17-22; PX2103 (Capri) at 002.

¹²² PX2066 (Capri) at 004.

¹²³ PX2012 (Capri) at 002; *see also* PX5017 (Bozeman (Capri) Dep.) at 90:13-91:5 ([REDACTED]).

¹²⁴ PX2075 (Capri) at 001 (“They [Coach] are leading with very sharp price points which must be driving engagement and conversion. They don’t lead with discount therefore preserving margin. We need to develop a strategy to compete with this. I don’t love it but we have no choice.”).

search results.¹²⁵ Online search competition between the parties became so intense that at one point Michael Kors eschewed a more profitable strategy in favor of continuing to conquest its competitor.¹²⁶

Brick-and-Mortar Stores. Although each rely on digital sales, the parties recognize the value of a strong brick-and-mortar presence.¹²⁷ As such, Coach, Kate Spade, and Michael Kors monitor each other's retail stores,¹²⁸ taking cues from other's store layouts, product display and assortments, and in-store marketing campaigns.¹²⁹ For example, when Michael Kors closed stores, Tapestry's CEO asked: "do we know where MK is closing stores? Feels like an opportunity to grab share if we can adjust marketing and if we have a presence in these areas."¹³⁰

Labor. Both parties have recognized their retail employees as providing a "competitive advantage" in the sale of their "accessible luxury" handbags¹³¹ and thus compete on this basis.

¹²⁵ PX5017 (Bozeman (Capri) Dep.) at 136:6-136:15 ([REDACTED]); PX2100 (Capri) at 001; PX2085 (Capri) at 002; PX1157 (Tapestry) at 001; *see also* PX5010 (Rocha-Rinere (Tapestry) Dep.) at 234:14-17 ([REDACTED]).

¹²⁶ PX2085 (Capri) at 002 ([REDACTED]).

¹²⁷ PX5019 (Crevoiserat (Tapestry) Dep.) at 10:1-8 (The point of an omni-channel experience, which includes brick and mortar, is to increase consumer exposure to the brand); PX5006 (Kahn (Tapestry) Dep.) at 29:15-21 (brick-and-mortar stores are "an important sales vehicle for the Coach brand."); PX2132 (Capri) at 022; PX1129 (Tapestry) at 001; PX1160 (Tapestry) at 078; PX1862 (Tapestry) at 001.

¹²⁸ *E.g.*, PX2092 (Capri) at 001; *see generally* PX1219 (Tapestry) at 003-036 (comparing Coach, Kate Spade, and Michael Kors retail store presence and "overlaps").

¹²⁹ *E.g.*, PX1118 (Tapestry) at 002-007; PX2072 (Capri) at 002-005; PX5034 (Resnick (Tapestry) Dep.) at 78:14-78:25.

¹³⁰ PX1703 (Tapestry) at 002.

¹³¹ PX5019 (Crevoiserat (Tapestry) Dep.) at 26:6-26:7, 35:6-35:12, 37:8-19 ("We have great associates in our stores, I think, the best in the business"); PX1706 (Tapestry) at 009; PX1418

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Most notably, when Tapestry moved to \$15/hour for its retail workers, Capri immediately took note, with Mr. Idol asking for a meeting to “understand the financial impact on taking the US MK store fleet full price and outlet to \$15 per hour,”¹³² and Michael Kors’ VP of Stores lamenting: “

! ”¹³³ Less than two months later, Michael Kors announced plans to raise its minimum wage to \$15 per hour.¹³⁴

Sustainability. Respondents even compete on sustainability efforts: When Coach launched Coach “(Re)Loved,” its handbag recycling program, Michael Kors soon responded with “Pre-Loved” for customers to consign their used handbags.¹³⁵ Tapestry took note of its copycat, with one executive calling Michael Kors “ankle biters” in two separate emails, elaborating in a third that “Kors is coming for Coach Reloved!,” and another employee observing in response “they do know how to, rinse-repeat and repackage to the next level.”¹³⁶

* * *

Complaint Counsel meets its prima facie case by showing that the Proposed Acquisition will squelch this longstanding, fierce head-to-head competition. Its elimination will likely lead to higher prices, fewer discounts and promotions, decreased innovation, and reduced wages.

(Tapestry) at 001; PX1635 (Tapestry) at 003; PX2304 (Capri) at 002.

¹³² PX2113 (Capri) at 001.

¹³³ PX2299 (Capri) at 001.

¹³⁴ PX2119 (Capri) at 001.

¹³⁵ PX2070 (Capri) at 041; PX7234 (WWD, Michael Kors Pre-Loved) at 001.

¹³⁶ PX1278 (Tapestry) at 001; PX1970 (Tapestry) at 001; PX5048 (Colone (Tapestry) Dep.) at 135:9-136:16 (“ankle biters” “mean[s] someone that competes with you” (discussing PX1970)).

III. Tapestry Has Engaged in an Anticompetitive Pattern and Strategy of Multiple Acquisitions in the Same or Related Business Lines.

The Proposed Acquisition also perpetuates Tapestry’s decade-long pattern and strategy of serial acquisitions. As the Merger Guidelines state, “A firm that engages in an anticompetitive pattern or strategy of multiple acquisitions in the same or related business lines may violate Section 7.” Merger Guidelines § 2.8; *accord Credit Bureau Repts.*, 358 F. Supp. at 794 (“While it is true that the most common application of Section 7 is to a merger between two large corporations, the effect of which would with one stroke of the pen, significantly enhance the acquiring corporation’s share of the market, it is clear that Section 7 similarly prohibits a series of acquisitions which would result in the same end”). Tapestry’s pattern and strategy of acquisitions will likely lead to anticompetitive effects in the “accessible luxury” handbag market by entrenching Tapestry as the dominant player and making meaningful entry harder.

The Proposed Acquisition is part of Tapestry’s long-articulated strategy and pattern to become “[REDACTED],”¹³⁷ and Tapestry’s documents indicate it has no plans to stop acquisitions even after this merger, with goals to “[REDACTED]”¹³⁸ and “[REDACTED],”¹³⁹ and to ultimately “own ‘accessible luxury.’”¹⁴⁰ This strategy began over a decade ago, when Coach set its sights on becoming “[REDACTED]”¹⁴¹ To do so, Coach devised “[REDACTED],”

¹³⁷ PX1351 (Tapestry) at 046.

¹³⁸ PX1119 (Tapestry) at 004.

¹³⁹ PX1231 (Tapestry) at 009-010.

¹⁴⁰ PX1379 (Tapestry) at 049.

¹⁴¹ PX1413 (Tapestry) at 003.

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one of which was to “[REDACTED].”¹⁴² Pursuant to that strategy, Coach considered acquiring “accessible luxury” handbag competitors Michael Kors, Kate Spade, [REDACTED], and [REDACTED].¹⁴³

In 2015, Coach successfully took its first steps to become this “[REDACTED]” when it purchased Stuart Weitzman.¹⁴⁴ Just months after this acquisition, Coach again looked at numerous “[REDACTED]” for acquisitions in “[REDACTED]” handbags, including Kate Spade, Ralph Lauren, and Michael Kors.¹⁴⁵

A Kate Spade acquisition finally became a reality for Coach in 2017, when Coach purchased the brand for \$2.4 billion and became Tapestry.¹⁴⁶ In a presentation around this time, Coach said a merger with Kate Spade would allow it to [REDACTED] [REDACTED].¹⁴⁷ Notably, just prior to purchasing Kate Spade, Coach told its board that it wanted to “[REDACTED],”¹⁴⁸ which is to limit promotions and discounts.

The Proposed Acquisition will not mark the end of Tapestry’s strategy to acquire “accessible luxury” handbag brands. Tapestry created documents for its board of directors leading up to the Proposed Acquisition saying it “[REDACTED],”¹⁴⁹ and

¹⁴² PX1413 (Tapestry) at 003.

¹⁴³ PX1413 (Tapestry) at 005; *See also* PX1156 (Tapestry) at 022-023; PX1433 (Tapestry) at 038.

¹⁴⁴ PX1370 (Tapestry) at 005.

¹⁴⁵ PX1367 (Tapestry) at 005.

¹⁴⁶ PX7015 (Investor Call May 8, 2017) at 003; PX7123 (Press Release, *Coach, Inc. to Change Its Name to Tapestry, Inc.*, October 11, 2017) at 001.

¹⁴⁷ PX1308 (Tapestry) at 012.

¹⁴⁸ PX1106 (Tapestry) at 005.

¹⁴⁹ PX1201 (Tapestry) at 004.

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its SVP of Strategy and Consumer Insights observed the Proposed Acquisition would “ [REDACTED] [REDACTED].”¹⁵⁰ Not only would the Proposed Acquisition create a North American “accessible luxury” handbag powerhouse, but Tapestry would be able to leverage its combined size for even more acquisitions. Indeed, using the new balance sheet from the Capri acquisition, Tapestry would have [REDACTED] [REDACTED],” a draft board document claims.¹⁵¹ Additionally, Tapestry would have “ [REDACTED].”¹⁵²

IV. Respondents Cannot Rebut the Complaint Counsel’s *Prima Facie* Case.

Under the Section 7 burden-shifting framework, once Complaint Counsel establishes a *prima facie* case, the burden of producing evidence to rebut this presumption then shifts to the Respondents. *Illumina, Inc.*, 2023 WL 2823393, at *18. The recognized methods of rebutting a *prima facie* case are unavailable here.

A. Entry and Expansion Will Not Be Timely, Likely, or Sufficient.

To meet their burden, Respondents must demonstrate that any entry by new firms, or expansion by existing firms, is “‘timely, likely, and sufficient’ enough to replace lost competition from the merger.” *Illumina*, 2023 WL 2823393, at *58 (quoting *Aetna*, 240 F. Supp. 3d at 52-53; *see also* Merger Guidelines at § 3.2. Put differently, entry or repositioning must be sufficient “to fill the competitive void” that would result from the merger. *H&R Block*, 833 F. Supp. 2d at 73. Respondents cannot meet this burden. That is not surprising, given that Tapestry itself has acknowledged that while technology may have resulted in lower barriers to entry, “ [REDACTED]

¹⁵⁰ PX1152 (Tapestry) at 001.

¹⁵¹ PX1188 (Tapestry) at 033.

¹⁵² PX1144 (Tapestry) at 001.

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[REDACTED].¹⁵³ Indeed, the enormous purchase price here belies any argument that entry and scale is easy—if it were, Tapestry could just create a new brand, or purchase a smaller one at a fraction of the cost.¹⁵⁴

Respondents contend that Coach, Kate Spade, and Michael Kors compete with a host of other “accessible luxury” handbag brands. None of these brands, however, approach the size of Michael Kors—and have the ability to replicate the loss of competition from the Proposed Acquisition. And for good reason: Coach, Kate Spade, and Michael Kors are household names in the United States, scoring as some of the most recognized brands in the fashion industry.¹⁵⁵ These types of brands do not appear overnight, and more importantly, are not easily scaled. *Chicago Bridge & Iron Co. N.V. v. FTC*, 534 F.3d 410, 430 (5th Cir. 2008) (entry has to be “of a sufficient scale to compete on the same playing field as [the merged parties]”).¹⁵⁶ Michael Kors himself testified to the costs and extended timetable that it took for his brand to become what it is today.¹⁵⁷ Even [REDACTED]

[REDACTED].¹⁵⁸ [REDACTED]
[REDACTED]

¹⁵³ PX8167 (Tapestry) at 007 ([REDACTED]).

¹⁵⁴ See [REDACTED], ¶ 8 ([REDACTED]).

¹⁵⁵ PX1265 (Tapestry) at 021; PX2117 (Capri) at 019-020.

¹⁵⁶ In fact, if entry and scale were so easy, it begs the question of why Tapestry is forking over \$8.5 billion to buy Capri—instead of a brand like [REDACTED]. [REDACTED], ¶ 8.

¹⁵⁷ PX5011 (Kors (Capri) Dep.) at 9:17-10:14, 10:20-11:6, 14:5-16, 15:12-16:14, 17:3-5, 17:9-18:19.

¹⁵⁸ See [REDACTED] Dep.) at 78:19-87:16.

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[REDACTED], it closed its brick-and-mortar stores and was sold [REDACTED].¹⁵⁹ And [REDACTED]

[REDACTED].¹⁶¹

Moreover, despite the rise of e-commerce, [REDACTED]

[REDACTED],¹⁶² making it important to have a brick-and-mortar presence.¹⁶³

Tapestry has found that consumers who shop its products in more than one sales channel spend over two times than those who shop in just one.¹⁶⁴ It has also observed that “[REDACTED]

[REDACTED]” and that

[REDACTED].¹⁶⁵ Brick-and-mortar presence,

however, is challenging and costly¹⁶⁶—especially when it comes to maintaining the hundreds of stores that Coach, Kate Spade, and Michael Kors each have throughout the country.¹⁶⁷

Marketing and advertising are also costly, but necessary, to obtain the scale of Coach,

¹⁵⁹ [REDACTED] ¶¶ 5-8.

¹⁶⁰ [REDACTED] Dep.) at 20:25-21:24.

¹⁶¹ [REDACTED] Dep.) at 32:9-15.

¹⁶² PX1160 (Tapestry) at 078.

¹⁶³ PX1121 (Tapestry) at 048; [REDACTED] Dep.) at 27:20-28:12 ([REDACTED]); PX1862 (Tapestry) at 001.

¹⁶⁴ PX7029 (Tapestry Earnings Call Q1 2023) at 003; PX5019 (Crevoiserat (Tapestry) Dep.) at 23:23-24:10, 24:11-27:12.

¹⁶⁵ PX1316 (Tapestry) at 006-007; *see also* PX5027 (Harris (Tapestry) Dep.) at 281:2-13 (“[S]tores are an important touch point to market your brands, for consumers to have an opportunity to interact physically with your product.”).

¹⁶⁶ PX1109 (Tapestry) at 015-016.

¹⁶⁷ PX6002 (Smith (Complaint Counsel) Rep.) ¶¶ 18, 20, 26.

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Kate Spade, and Michael Kors. Respondents invest millions of dollars across numerous promotional channels¹⁶⁸ and have entire departments dedicated to creating promotional advertisements, photoshoots, fashion shows, and marketing campaigns.¹⁶⁹ And this marketing gives Respondents an edge: As Tapestry's Chief Financial and Operating Officer said, "[REDACTED] Coach has estimated it will spend [REDACTED] in fiscal year 2024 for marketing [REDACTED],¹⁷¹ and Kate Spade's estimated marketing spend for fiscal year 2024 [REDACTED].¹⁷² On the whole, Tapestry commits [REDACTED] to marketing.¹⁷³ For its part, Michael Kors' expected spend on marketing in the United States for both fiscal year 2023 and 2024 was over \$130 million.¹⁷⁴ These figures far eclipse those of smaller brands.¹⁷⁵

Respondents' treasure trove of consumer data is also a barrier to entry and scale.

Tapestry's consumer database boasts [REDACTED]

¹⁶⁸ E.g., PX1311 (Tapestry) at Sheet1; PX2725 (Capri) at 002.

¹⁶⁹ PX1310 (Tapestry) at 002; PX2561 (Capri) at 015; PX5011 (Kors (Capri) Dep.) at 24:24-26:17; 86:17-23; PX5022 (Wilmotte (Capri) Dep.) at 25:11-26:20.

¹⁷⁰ PX5024 (Roe (Tapestry) Dep.) at 214:2-214:13.

¹⁷¹ PX1727 (Tapestry) at 094.

¹⁷² PX1727 (Tapestry) at 118.

¹⁷³ PX1485 (Tapestry) at 009; PX5027 (Harris (Tapestry) Dep.) at 152:5-154:3; *see also* PX5035 (Fraser (Tapestry) Dep.) at 174:8-17 ("[REDACTED]").

¹⁷⁴ PX2725 (Capri) at 002-003; PX5044 (Parsons (Capri) Dep.) at 33:4-33:9.

¹⁷⁵ [REDACTED] Dep.) at 136:18-22 ([REDACTED]);

[REDACTED] Dep.) at 96:2-96:4 ([REDACTED]).

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[REDACTED],¹⁷⁶ including what Tapestry’s CEO described as a [REDACTED]

[REDACTED]

[REDACTED].¹⁷⁷ As Ms. Crevoiserat explained during an investor call regarding the Proposed Acquisition, Tapestry’s data platform “positions us to leverage our competitive advantages across a broader portfolio of brands.”¹⁷⁸ Tapestry’s Chief Financial and Operating Officer said [REDACTED]

[REDACTED]

[REDACTED].¹⁷⁹ Capri likewise maintains a database of [REDACTED] in North America.¹⁸⁰

That there are many other competitors in the relevant market does not alter the analysis because these brands lack the ability to scale to replace the loss of competition that would result from the Proposed Acquisition. Indeed, Courts have repeatedly considered and rejected arguments that smaller or more specialized competitors can substitute for larger ones, when those competitors “cannot and do not serve as wide an array of customers” as the merging parties do. *Sysco*, 113 F. Supp. 3d at 29; *see also United States v. Von’s Grocery Co.*, 384 U.S. 270, 272-73 (1966) (thousands of independent grocery stores did not undermine concerns about merger that would create the second largest chain in Los Angeles); *Bertelsmann*, 646 F. Supp. 3d at 39-41

¹⁷⁶ PX1201 (Tapestry) at 012.

¹⁷⁷ PX5002 (Crevoiserat (Tapestry) Corp. IH.) at 63:5-24; PX5035 (Fraser (Tapestry) Dep.) at 149:11-151:5 [REDACTED]

¹⁷⁸ PX7055 (Investor Call, Aug. 10, 2023) at 002, 008.

¹⁷⁹ PX5024 (Roe (Tapestry) Dep.) at 179:7-180:6, 186:9-186:22 (“ [REDACTED] ”).

¹⁸⁰ PX5009 (Walsh (Capri) Dep.) at 49:10-16.

(finding a loss of competition where the merging parties were the only two bidders in either 6 to 7 percent or 12 percent of book transactions).

B. Any Efficiencies Are Not Merger-Specific, Cognizable, or Verifiable.

As an initial matter, courts remain skeptical whether efficiencies are a viable defense. *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 347 (3d Cir. 2016) (“We note at the outset that we have never formally adopted the efficiencies defense. Neither has the Supreme Court.”). As the Commission has stated, “[c]ourts acknowledge that efficiencies are inherently difficult to verify and quantify,” *Illumina*, 2023 WL 2823393, at *59 (citing *H&R Block*, 833 F. Supp. 2d at 89) (quotation marks omitted). “Courts and the Commission must ‘undertake a rigorous analysis of the kinds of efficiencies being urged by the parties in order to ensure that those ‘efficiencies’ represent more than mere speculation and promises about post-merger behavior.’” *Illumina*, 2023 WL 2823393, at *59 (quoting *Heinz*, 246 F.3d at 721); *see also Otto Bock*, 2019 WL 5957363 at *33.

Assuming *arguendo* that an efficiencies defense is available, however, Respondents cannot overcome the need to show “extraordinary efficiencies” offset the Proposed Acquisition’s anticompetitive effects given the high market concentration in this case. *Heinz*, 246 F.3d at 720. Nor will they be able to show that any efficiencies are merger-specific or verifiable, or flow from an increase in competition. *See Merger Guidelines* at § 3.3.

Tapestry claims that the Proposed Acquisition “will result in procompetitive efficiencies” by revitalizing “the declining Michael Kors brand.” Answer and Defenses of Respondent Tapestry, Inc., ¶ 15. This claim is so vague that it cannot possibly be verifiable, it is not merger specific, and it does not flow from an increase in competition. Michael Kors is already in the

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process of an ongoing transformation involving a 100-person team.¹⁸¹ In fact, the first handbags that are part of this revitalization are hitting the market now.¹⁸² Other ongoing elements of the transformation program include retail store redesign,¹⁸³ rebranding the MICHAEL Michael Kors line,¹⁸⁴ expanding clienteling services,¹⁸⁵ and “right-sizing” the brand’s distribution.¹⁸⁶ Nor is increasing sales a cognizable defense. *St. Alphonsus*, 778 F.3d at 792 (Clayton Act does not excuse anticompetitive mergers “simply because the merged entity can improve its operations”). This deal is also not about increasing output—because no one can claim Michael Kors lacks capacity to produce handbags.¹⁸⁷

What’s more, Tapestry executives [REDACTED] [REDACTED].¹⁸⁸ Tapestry has represented publicly and [REDACTED] [REDACTED] that the Proposed Acquisition will yield efficiencies of over \$200 million.¹⁸⁹ Yet Tapestry’s Chief Financial and Operating Officer [REDACTED]

[REDACTED].¹⁹⁰ Similarly, Tapestry’s SVP of Finance testified that the efficiencies calculation was

¹⁸¹ PX5022 (Wilmotte (Capri) Dep.) at 88:16-22, 89:7-90:22; *see, e.g.*, PX2561 (Capri) at 001, 009-011.

¹⁸² PX5022 (Wilmotte (Capri) Dep.) at 161:15-162:25, 170:21-173:7.

¹⁸³ PX5022 (Wilmotte (Capri) Dep.) at 91:19-23.

¹⁸⁴ PX5022 (Wilmotte (Capri) Dep.) at 170:18-171:9.

¹⁸⁵ PX5022 (Wilmotte (Capri) Dep.) at 92:11-93:1.

¹⁸⁶ PX5022 (Wilmotte (Capri) Dep.) at 145:23-146:8.

¹⁸⁷ PX5036 (Charles (Tapestry) Dep.) at 205:23-206:18; PX1354 (Tapestry) at 004.

¹⁸⁸ PX5024 (Roe (Tapestry) Dep.) at 120:13-16; PX5041 (Ryan (Tapestry) Dep.) at 27:19-28:1 ([REDACTED])

¹⁸⁹ PX1765 (Tapestry) at 004; PX5024 (Roe (Tapestry) Dep.) at 113:11-17; PX1726 (Tapestry) at 165; PX5041 (Ryan (Tapestry) Dep.) at 54:7-12.

¹⁹⁰ PX5024 (Roe (Tapestry) Dep.) at 121:4-121:20, 135:4-136:4 ([REDACTED])

[REDACTED]

[REDACTED].¹⁹¹ These estimates cannot satisfy Respondents' burden.

C. Tapestry's Assertion That It Intends to Silo Michael Kors Is Irrelevant—And Contrary to the Law and Economics.

In the federal proceeding, Respondents have argued that market shares are not indicative of antitrust issues because post-merger they do not plan to eliminate competition among Coach, Kate Spade and Michael Kors and because the brands will be run independently. These arguments are contrary to black-letter law. As the Supreme Court has made clear, divisions within one company are viewed as a single actor under the antitrust laws. *Copperweld Corp. v. Indep. Tube Corp.*, 467 U.S. 752, 771-72 (1984); *see also Bertelsmann*, 646 F. Supp. 3d at 49-51 (“[c]ompanies with multiple divisions must be viewed as a single actor, and each division will act to pursue the common interests of the whole corporation.”) (quoting *United States v. AT&T*, 916 F.3d 1029, 1043 (D.C. Cir. 2019)). Respondents' arguments also run contrary to basic principles of economics¹⁹² and the evidence. Indeed, Coach and Kate Spade can and do share competitively sensitive information.¹⁹³ And there is an entire Global Strategy & Consumer

[REDACTED]”)

¹⁹¹ PX5041 (Ryan (Tapestry) Dep.) at 14:1-12, 43:21-44:8, 51:7-23, 64:8-18, 66:4-15.

¹⁹² PX6003 (Smith (Complaint Counsel) Reply Rep.), Section II.F.

¹⁹³ *See, e.g.*, PX8123 (Tapestry) at 001-02 (Kate Spade personnel influencing Coach board document and sharing pricing information); PX8130 (Tapestry) at 001 (competitively sensitive information shared among brands); PX8124 (Tapestry) at 001-19 (same); PX1740 (Tapestry) at 006-07, 039, 061, 145 (long-range planning for each other's brands); PX1497 (Tapestry) at 001, 019-20 (Kate Spade CEO receiving Coach deck discussing pricing strategy). In one incident, the CEO of Kate Spade asked the CEO of Coach to not “recut” a heart-shaped bag because it resembled one offered by Kate Spade, lamenting: “it's not a great situation for us.” PX1271 (Tapestry) at 001; PX5035 (Fraser (Tapestry) Dep.) at 62:23-69:12.

Insights group and “Chief Growth Officer”¹⁹⁴ that work across the Tapestry brands.¹⁹⁵

CONCLUSION

For the reasons stated above, Complaint Counsel respectfully requests that this Court permanently enjoin Tapestry from acquiring Capri.

Dated: September 23, 2024

Respectfully Submitted,

By: s/ Abby L. Dennis

Abby L. Dennis

Federal Trade Commission

600 Pennsylvania Avenue, N.W.

Washington, DC 20580

T: 202-326-2381

E: adennis@ftc.gov

Counsel Supporting the Complaint

¹⁹⁴ PX5053 (Seth (Tapestry) Dep.) at 8:8-8:19, 15:14-16, 23:17-23; *see also* PX1726 (Tapestry) at 024 (memo to Tapestry Board referencing: “Reduce ‘space’ between the Brands”).

¹⁹⁵ PX5027 (Harris (Tapestry) Dep.) at 4:21-5:20.

EXHIBITS CITED TO IN
COMPLAINT COUNSEL'S PRETRIAL BRIEF
All Exhibits Filed and Served via FTP Transfer - Aggregate File Size Over the E-file Limit

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PX0006 - Redacted in Entirety	PX1224	PX1703	PX2063- Redacted in Entirety	PX2271- Redacted in Entirety	PX5002- Redacted in Entirety	PX7029
PX0010- Redacted in Entirety	PX1231- Redacted in Entirety	PX1704	PX2066	PX2294	PX5003- Redacted in Entirety	PX7030
PX1032- Redacted in Entirety	PX1250- Redacted in Entirety	PX1706	PX2068	PX2299- Redacted in Entirety	PX5006- Redacted in Entirety	PX7045
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PX1074- Redacted	PX1265- Redacted in Entirety	PX1726- Redacted in Entirety	PX2074- Redacted in Entirety	PX2310	PX5010- Redacted in Entirety	PX7055
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PX1085- Redacted in Entirety	PX1278	PX1731- Redacted	PX2085- Redacted in Entirety	PX2350	PX5017- Redacted in Entirety	PX7062
PX1088- Redacted	PX1296- Redacted	PX1737- Redacted in Entirety	PX2091- Redacted in Entirety	PX2379- Redacted in Entirety	PX5019- Redacted in Entirety	PX7075
PX1092	PX1306	PX1740- Redacted in Entirety	PX2092- Redacted in Entirety	PX2394	PX5020- Redacted in Entirety	PX7083
PX1096- Redacted in Entirety	PX1308- Redacted in Entirety	PX1765- Redacted in Entirety	PX2097- Redacted in Entirety	PX2408	PX5021- Redacted in Entirety	PX7093
PX1105- Redacted in Entirety	PX1310- Redacted in Entirety	PX1767- Redacted in Entirety	PX2098	PX2415	PX5022- Redacted in Entirety	PX7095
PX1106- Redacted in Entirety	PX1311- Redacted in Entirety	PX1783- Redacted in Entirety	PX2100- Redacted in Entirety	PX2419	PX5024- Redacted in Entirety	PX7096
PX1109- Redacted in Entirety	PX1316- Redacted in Entirety	PX1788- Redacted in Entirety	PX2101	PX2423	PX5025- Redacted in Entirety	PX7097
PX1118	PX1327- Redacted in Entirety	PX1812- Redacted in Entirety	PX2103- Redacted in Entirety	PX2435- Redacted in Entirety	PX5026- Redacted in Entirety	PX7098
PX1119- Redacted in Entirety	PX1338- Redacted in Entirety	PX1862- Redacted in Entirety	PX2105	PX2436	PX5027- Redacted in Entirety	PX7104
PX1121- Redacted in Entirety	PX1351- Redacted in Entirety	PX1924- Redacted	PX2108	PX2439	PX5029- Redacted in Entirety	PX7105
PX1124- Redacted in Entirety	PX1354- Redacted in Entirety	PX1936- Redacted in Entirety	PX2113- Redacted in Entirety	PX2561- Redacted in Entirety	PX5032- Redacted in Entirety	PX7109
PX1129- Redacted in Entirety	PX1367- Redacted in Entirety	PX1937- Redacted	PX2117- Redacted in Entirety	PX2622- Redacted in Entirety	PX5033- Redacted in Entirety	PX7123
PX1133- Redacted	PX1370- Redacted in Entirety	PX1939- Redacted in Entirety	PX2119	PX2674	PX5034- Redacted in Entirety	PX7138
PX1135- Redacted in Entirety	PX1374	PX1970	PX2124- Redacted in Entirety	PX2680	PX5035- Redacted in Entirety	PX7139
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PX1152	PX1387- Redacted	PX2012- Redacted in Entirety	PX2132- Redacted in Entirety	PX2727	PX5037- Redacted in Entirety	PX7182
PX1156- Redacted in Entirety	PX1413- Redacted in Entirety	PX2014- Redacted in Entirety	PX2158- Redacted in Entirety	PX2753- Redacted in Entirety	PX5040- Redacted in Entirety	PX7187
PX1157- Redacted in Entirety	PX1418	PX2030	PX2159	PX3120- Redacted in Entirety	PX5041- Redacted in Entirety	PX7197
PX1160- Redacted in Entirety	PX1427- Redacted	PX2035	PX2183	PX3150- Redacted in Entirety	PX5044- Redacted in Entirety	PX7234
PX1175	PX1431- Redacted	PX2036	PX2197	PX3163- Redacted in Entirety	PX5046- Redacted in Entirety	PX7260
PX1186- Redacted in Entirety	PX1433- Redacted in Entirety	PX2040- Redacted in Entirety	PX2214- Redacted in Entirety	PX3175- Redacted in Entirety	PX5048- Redacted in Entirety	PX7284
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PX1201- Redacted in Entirety	PX1503	PX2050	PX2242	PX4000- Redacted in Entirety	PX6000- Redacted in Entirety	PX8123- Redacted in Entirety
PX1216	PX1507	PX2052	PX2243	PX4002- Redacted in Entirety	PX6002- Redacted in Entirety	PX8124- Redacted in Entirety
PX1219	PX1536- Redacted in Entirety	PX2058- Redacted in Entirety	PX2254	PX5000- Redacted in Entirety	PX6003- Redacted in Entirety	PX8130- Redacted in Entirety
PX1223- Redacted	PX1635	PX2061	PX2257- Redacted in Entirety	PX5001- Redacted in Entirety	PX7015	PX8167- Redacted in Entirety

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April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable Dania L. Ayoubi
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-117
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Al Pfeiffer
Latham & Watkins LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
Tel: (415) 395-8898
Email: al.pfeiffer@lw.com

Jonathan M. Moses
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Tel: (212) 403-1388
Email: JMMoses@wlrk.com

Lawrence E. Buterman
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
Tel: (212) 906-1264
Email: lawrence.buterman@lw.com

Elaine P. Golin
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Tel: (212) 403-1118
Email: EPGolin@wlrk.com

Amanda P. Reeves
Latham & Watkins LLP
555 Eleventh Street NW, Suite 1000
Washington, DC 20004
Tel: (202) 637-2183
Email: amanda.reeves@lw.com

Damian G. Didden
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019
Tel: (212) 403-1113
Email: DGDidden@wlrk.com

Counsel for Tapestry, Inc.

Counsel for Capri Holdings Limited

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By: s/ Abby L. Dennis
Abby L. Dennis

Counsel Supporting the Complaint