

**UNITED STATES OF AMERICA
BEFORE THE 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

PUBLIC RECORD

ANSWER AND DEFENSES OF RESPONDENT TAPESTRY, INC.

Pursuant to Rule 3.12 of the Federal Trade Commission’s (the “FTC” or “Commission”) rules of Practice for Adjudicative Proceedings (the “Rules”), respondent Tapestry, Inc. (“Tapestry”), by and through its undersigned counsel, hereby files the following answer to the Commission’s Administrative Complaint (the “Complaint”) against Capri Holdings Limited (“Capri”) and Tapestry (collectively, “Respondents”). The following answer is submitted without prejudice to Respondents’ motion for a more definite statement filed in the related proceeding in the United States District Court for the Southern District of New York.¹ The basis for that motion is that a “threshold step in any antitrust case is to accurately define the relevant market, *FTC v. Qualcomm Inc.*, 969 F.3d 974, 992 (9th Cir. 2020) and as Respondents explain in their motion for

¹ As described in more detail in Respondents’ Motion for a More Definitive Statement filed in the Southern District of New York, the FTC’s complaint failed to define what constitutes a “handbag.” The FTC’s rules do not permit Respondents to file the same motion here. Accordingly, Tapestry will interpret handbag to mean “women’s and men’s handbags, backpacks, duffel bags, cross-body bags, business bags, and other small bags,” which was the definition used by the FTC during its investigation. Tapestry’s interpretation of this term does not, and is not intended to, constitute an admission that the FTC’s definition is accurate or constitutes an appropriate relevant product market for antitrust purposes.

a more definite statement, the FTC has not done so in its complaints. Because the FTC amended its Rules of Practice to remove the ability of a party in a Part III proceeding to file a motion for more definite statement, Tapestry does not do so in this matter even though the relevant market is impermissibly ambiguous and not properly defined in this Part III proceeding either.

PRELIMINARY STATEMENT

The FTC's attempt to block Tapestry's revitalization of Michael Kors, a once great American fashion brand, makes no sense. It is based on an unrealistic view of the marketplace as consisting only of vulnerable, choice-constrained consumers that care deeply about fashion, but are unwilling to pay for it, and who are highly sensitive to price, but refuse to consider hundreds of bags available at every price point in competition with Respondents. The FTC mistakenly believes there are only three options for a consumer seeking a high-quality handbag in whatever price range the FTC ultimately settles on for its untenable "accessible luxury" handbag market: Tapestry's Coach and Kate Spade, and Capri's Michael Kors. Indeed, the FTC's Complaint incredibly goes so far as to decry that these three brands constitute a "duopoly" in that market. Compl. ¶¶ 2, 65. Even a quick department-store visit, online search, skim of a fashion magazine, scroll on social media, browse of a fashion resale website, stroll through a mall, or scan of restaurant patrons shatters the image of such a narrow and artificial market. *Well over one hundred fifty handbag brands, across prices and bag types, compete in the United States today with Tapestry and Capri.*² New brands and dynamic competitors are leveraging the COVID-accelerated

² This reference to more than one hundred fifty brands is no exaggeration. It is conservative, as there are at least that many brands offering leather handbags on popular department store websites or other websites today and even more offering handbags of other materials. That very conservative list includes at least the following brands, each of which market numerous handbags, in alphabetical order: 3.1 Phillip Lim, A.P.C., Acne Studios, Aerin, Aimee Kestenberg, Akris, Alexander McQueen, Alexander Wang, Alexis Bittar, AllSaints, Altuzarra, Anima Iris, Anine Bing, Anne Klein, Anya Hindmarch, Aqua, ASHYA, ATP Atelier, Aupen, Balenciaga, Balmain, Béis, Bembien, Bendetta Bruzziches, BOSS, Botkier, Bottega Veneta, Brahmin, Brandon

shift to online sales, marketing, and product placement to rapidly build brand value, tap into consumer sentiment, and aggressively win sales. Meanwhile, longstanding brands like Burberry, Cole Haan, Gucci, Longchamp, Louis Vuitton, Marc Jacobs, Ralph Lauren, Tory Burch, Tumi, and others continue to compete aggressively to stay relevant in this evolving industry. Michael Kors' struggles over the last several years demonstrate this challenge: as other brands have entered or stayed fresh and relevant amongst robust competition, its star has fallen. Against this backdrop, Tapestry seeks to acquire Capri so that it can achieve its procompetitive goal of reinvigorating consumer perception of Michael Kors to increase demand, expand sales, and deliver Michael Kors (and Capri's other brands) to more consumers.

The FTC's unintelligible market definition and theory of consumer harm make no sense in this industry. The FTC's worldview cannot explain why consumers spend hundreds or more to buy a frog-shaped crossbody bag, a bright pink puffed satchel, or a top-handle bag that looks like a pizza box (all handbags that Kate Spade offers), let alone why they pay more than \$1,000 for a

Blackwood, BTB Los Angeles, Burberry, By Far, Callista, Calvin Klein, Chloé, Christian Louboutin, Clare V., Cole Haan, Comme des Garçons, Coperni, COS, Cult Gaia, Cuyana, Daana Saakena, Dagne Dover, DeMellier, DIESEL, Dior, DKNY, Dolce & Gabbana, Donna Karan, Dooney & Bourke, Dragon Diffusion, Dries Van Noten, Elleme, Emporio Armani, Everlane, Fendi, Ferragamo, Frame, Frances Valentine, Frankie Shop, Free People, Freja New York, Frye, Gabriela Hearst, Ganni, Gerard Darel, GiGi New York, Givenchy, Golden Goose, Gucci, Guess, Hammitt, Hereu, Hermès, Hobbs London, HOBLO, Isabel Marant, Jacquemus, Jil Sander, JW Anderson, JW Pei, Khaite, Ksubi, Kurt Geiger London, L'alingi, Larroude, Lele Sadoughi, Liselle Kiss, Little Liffner, Loeffler Randall, Longchamp, Louis Vuitton, Luar, Lusso, Madewell, Maison Margiela, Maje, Mango, Mansur Gavriel, Marc Jacobs, Marine Serre, Marni, MCM, Moncler, Montblanc, Moschino, Mulberry, MZ Wallace, NEOUS, Nine West, Off-White, Oroton, Oryany, Parker Clay, Petit Kouraj, Pinko, Polène, Polo Ralph Lauren, Prada, Proenza Schouler, Puppets & Puppets, Rabanne, Rag & Bone, Rebecca Minkoff, Ree Projects, Reformation, Reiss, Roberto Cavalli, ROYCE New York, Sacai, Saint Laurent, Samsonite, Sandro, Savette, SC103, Senreve, Sézane, Shinola, Silver & Riley, Simkhai, Simone Rocha, Sophia Webster, St. Agni, Stand Studio, Staud, Stella McCartney, Steve Madden, Strathberry, Ted Baker, Telfar, Theory, The Kooples, Tom Ford, Tory Burch, TOTEME, Tumi, Ugg, Valentino, Valentino Garavani, Victoria Beckham, Vidakush, Vince, Vince Camuto, Wandler, We-AR4, Weekend Max Mara, Whistles, Yuzefi, Yvonne Koné, Zadig & Voltaire, and Zara.

leather pouch mimicking a household trash bag (offered by what the FTC calls a “true luxury” brand). A handbag purchase is far more emotional, multifaceted, and discretionary than the FTC’s theory can tolerate. For some, handbags are an extension of their self-expression. For others, they are purely functional, holding little or no sentimental value. Some shoppers have twenty handbags and seek out the most on-trend designs each season by obsessively tracking influencers and new styles. Others may use a single black leather tote as a wardrobe staple for years. An individual with a higher income may care little about designer bags or fashion at all, while other consumers might save and ultimately stretch to buy a bag of their dreams to celebrate a personal milestone or as a gift after searching widely. There is no definable captive consumer of fashion handbags who cannot readily switch from brand to brand, across price ranges. The FTC’s worldview comes from its experience litigating business tie-ups involving critical healthcare infrastructure, essential manufacturing inputs, or ubiquitous digital platforms, but those industries are far from this world of fashion.³

A proper investigation into the commercial realities of this industry would have led to the unavoidable conclusion that this transaction cannot harm consumers, or anyone else. Antitrust enforcers in Europe, China, Japan, Korea, and elsewhere reviewed this merger, but did not find cause to stop it. The European Commission, for example, conducted a market investigation of competitors and customers over many months and concluded that the handbag industry is “constantly evolving and characterized by low barriers to entry and frequent entry of new players.”

³ Even in its familiar territory, the FTC has suffered a string of recent losses in merger challenges litigated to completion in federal court. *See, e.g., FTC v. Meta Platforms Inc.*, 654 F. Supp. 3d 892 (N.D. Cal. Feb. 3, 2023) (FTC losing motion for preliminary injunction involving social media network); *FTC v. Thomas Jefferson Univ. Hosp.*, 505 F. Supp. 3d 522 (E.D. Pa. 2020) (FTC losing motion for preliminary injunction involving hospital merger); *FTC v. RAG-Stiftung*, 436 F. Supp. 3d 278 (D.D.C. 2020) (FTC losing motion for preliminary injunction involving chemical used for the manufacturing of semiconductors).

The European Commission also explained that “the relevance of Michael Kors is declining,” that even “relatively small” competitors can constrain prices of larger companies, and that “independent brands and new entrants would be able to compete effectively with the [Respondents] post-merger.” The FTC fails to address the market realities in any detail in its Complaint, and does not appear to have inquired into them through any rigorous investigation. Despite having over seven months to evaluate this transaction, the FTC failed to obtain written or oral testimony from any handbag consumer, manufacturer, or competitor of Tapestry or Capri. It issued some demands for documents to companies, but then did not meaningfully follow-through on its own requests. Some companies produced a few documents each, and the FTC did not bother to pursue more. The scope of its subpoenas hardly evidences any attempt to learn about new entrants.

The FTC’s inadequate investigation has contributed to its unrealistic view of the handbag industry, and caused it to falter at the gating element of its claim—defining the relevant product market. A “proper market definition [] can be determined only after a factual inquiry into the commercial realities faced by consumers,” *United States v. Am. Express Co.*, 838 F.3d 179, 197 (2d Cir. 2016), *aff’d*, *Ohio v. Am. Express Co.*, 585 U.S. 529 (2018) (internal quotations omitted), which the FTC did not meaningfully engage in. Instead of using its investigatory-subpoena power to identify “products that have reasonable interchangeability from the perspective of the relevant consumer with the product sold by the defendant firm,” *In re Am. Express Anti-Steering Rules Antitrust Litig.*, 361 F. Supp. 3d 324, 335 (E.D.N.Y. 2019) (internal quotations omitted), the FTC merely identified one of the many categories of products that Respondents sell, saw some similarities and documents showing that the Respondents unremarkably pay attention to one another (along with dozens of other handbag designers), and stopped looking for reasonable

substitutes. Its effort to capture headlines by claiming that mergers between companies that are “close competitors” are presumptively illegal wrongly tracks the mistake that many plaintiffs make when trying to plead a relevant antitrust market consisting of only the defendant’s brand. That type of market definition is improper because it “fails to include all products reasonably interchangeable by consumers for the same purposes,” which is exactly what the FTC ignores in its pleading. *Skyline Travel, Inc. v. Emirates*, 476 F. App’x 480, 481 (2d Cir. 2012); *In re Am. Express Anti-Steering Rules*, 361 F. Supp. 3d at 343 (“It is an understatement to say that single-brand markets are disfavored.”).

As outlined in the Respondents’ Motion for a More Definite Statement filed in response to the FTC’s motion for a preliminary injunction in federal court,⁴ the FTC compounded its error by failing to articulate how the subjective marketing term “accessible luxury” could possibly describe a “distinct” product market for antitrust purposes. The handbag industry is awash with descriptive verbiage, including “semi luxury,” “trendy luxury,” “contemporary,” “classics,” “lux,” “supreme luxury,” “timeless luxury,” “premium,” “premier,” and many more, but there is no agreement on what any of those categories mean. The FTC vaguely tries to draw lines separating “mass market,” “accessible luxury,” and “true luxury” handbags, but the so-called “distinct” features it identifies for each group transcend all three and provide no insight into what the FTC alleges is in, or out, of the alleged “accessible luxury” handbag market. For example:

- The Complaint contends that accessible luxury handbags have “distinct prices,” but never articulates what those prices are. Compl. ¶ 21. Is a \$90 handbag included? Does a \$1,500

⁴ Respondents moved for a more definite statement in the federal preliminary injunction proceeding, *see FTC v. Tapestry, Inc.*, No. 24-cv-3109 (S.D.N.Y. May 3, 2024), ECF No. 74, but the FTC has amended its rules to preclude Respondents from pursuing the same relief here under the logic (not borne out in this case) that “Commission complaints are typically very detailed.” *See* 16 C.F.R. pts. 3, 4 (Jan. 13, 2009), <https://www.govinfo.gov/content/pkg/FR-2009-01-13/pdf/E9-296.pdf>. Complaint counsel refused to agree to delay Respondents’ time to answer in this proceeding pending the U.S. District Court’s resolution of Respondents’ pending motion.

handbag fit? What about a \$3,000 handbag sold secondhand for \$1,000? What about a \$150 handbag that is 40% off? Is it in the market when it goes on sale? The Complaint is unclear.

- The Complaint suggests that bags made of “manmade materials” are inferior to “accessible luxury” bags, but it overlooks that Chanel, Hermès, Louis Vuitton, Gucci, Fendi, and Valentino (all “true luxury” brands according to the FTC) offer nylon handbags, as do Tapestry and Capri, in addition to bags made of canvas, tweed, straw, denim, and even astroturf. Compl. ¶ 33. Is a Prada faux leather bag in the FTC’s market then? What about vegan leather products at higher price points? Again, the Complaint is unclear.
- The Complaint contends there are “distinct customers” for accessible luxury bags because a certain percentage of buyers fall below a specific income level, even though large percentages of that same income group buy “true luxury” bags as well, as the Complaint concedes. Compl. ¶ 30. Likewise, the Complaint suggests Capri estimated in 2023 that ██████ percent of the consumers of true luxury brands Gucci, Dior, Fendi, and Valentino had household income ██████, Compl. ¶ 31; but then what about those that make less but still choose to buy these more expensive brands? Are they in or out of the FTC’s market? Once again, the Complaint is silent.

As these examples show, the list of features that the FTC contends are “distinct” to accessible luxury products actually transcend handbags of all types, classes, and brands. It is impossible to know from the Complaint’s allegations even whether all of Coach, Kate Spade, and Michael Kors handbags fit into the FTC’s definition of “accessible luxury.” Are materials the determinate or is price? Or is it the location of manufacturing? Perhaps it is all three, but in what measure? Or is it the brand alone that determines what product is in the FTC’s market? Or is this a case of the FTC “knows it when it sees it”? The Complaint is again unclear. “Determination of the relevant market is a necessary predicate to a finding of a violation of the Clayton Act,” *United States v. E.I. du Pont de Nemours & Co.*, 353 U.S. 586, 593 (1957), but the FTC fails to articulate a viable market, and will not be able to cure that failure at an evidentiary hearing or trial.

The FTC’s case fails for the additional independent reason that, in any properly defined market, the combined share of Tapestry’s and Capri’s handbag brands is not large enough to show any likelihood of harm to consumers. Proving “undue concentration” in the relevant market is part of the FTC’s *prima facie* case. See *FTC v. RAG-Stiftung*, 436 F. Supp. 3d 278, 310 (D.D.C. 2020).

But as economic analysis will show at trial, in any properly defined market, Coach, Kate Spade, and Michael Kors would represent less than 30 percent of sales, which does not give rise to any presumption of likely harm in this highly dynamic and differentiated industry. *See United States v. Oracle Corp.*, 331 F. Supp. 2d 1098, 1123 (N.D. Cal. 2004) (“A presumption of anticompetitive effects from a combined share of 35% in a differentiated product market is unwarranted. Indeed, the opposite is likely true.”). The combined trends of declining Michael Kors’ sales and the increasing sales and shares of competing products further demonstrate that the merged entity will not have power to harm consumers. *See United States v. Waste Mgmt., Inc.*, 743 F.2d 976, 983 (2d Cir. 1984) (finding no anticompetitive effect from 48.8% market share where there was “easy” entry “into the relevant product and geographic market by new firms or by existing firms”).⁵

The FTC attempts to bandage the holes in its case by claiming the loss of head-to-head competition is enough of a basis alone to block the Transaction. Not true. There is no legal support for the theory that loss of head-to-head competition, absent an undue concentration in a properly defined market, can violate Section 7 of the Clayton Act. As recently as four years ago, a court found in another FTC merger challenge that there was not “a single case in which a court has enjoined a merger, even at this preliminary stage, where the Government failed to show undue concentration in a relevant market as its prima facie case requires, almost always through an HHI or similar metric.” *RAG-Stiftung*, 436 F. Supp. 3d at 287, 291, 310. The law has not changed,

⁵ The FTC’s allegations about market concentration reveal that it did not have data sufficient to perform reliable share calculations when it filed this lawsuit—another defect of its inadequate investigation. Instead of presenting actual market-share or Herfindahl-Hirschman Index (“HHI”) calculations, the Complaint baldly claims that those calculations (whatever they are) are “considerably more than 30 percent” market share and “above” the HHI levels that the FTC considers problematic. Compl. ¶ 69. The data source and methodology the FTC employed to reach those undisclosed estimates remain murky, but the FTC certainly did not include data from the more than one hundred fifty brands currently selling handbags in competition with Tapestry and Capri in the United States.

since the Supreme Court laid down the requirement that “[d]etermination of the relevant market is a necessary predicate to a finding of a violation of the Clayton Act because the threatened monopoly must be one which will substantially lessen competition within the area of effective competition,” *E.I. du Pont de Nemours*, 353 U.S. at 593, a standard the FTC has acknowledged.⁶

The need for proof of a substantial lessening of competition in a relevant market is necessary to prevent the overreach the FTC engages in here. Respondents produced over four million documents to the FTC showing they face robust competition from other brands, they are losing share to new entrants, “true luxury” brands, and dynamic competitors, and that Michael Kors (in particular) is in decline. From that mountain of materials, the FTC cherry-picks a handful of documents discussing competition between Tapestry and Capri. But the competitive effects of the merger can only be assessed in the context of the broader competition, not in strategic ignorance of it—hence the obligation to plead a relevant market.

The FTC’s tag-along allegations relating to perceived harms to labor are even more fanciful. No trial evidence will support the FTC’s claim that the merger “could have substantial effects on employment wages, benefits, and conditions for people who work for or seek employment from the parties and their brands.” Compl. ¶ 57. The FTC makes no effort to identify a relevant market of laborers that will be adversely affected by the merger, let alone show that Tapestry and Capri combined will have an undue concentration of any such market in the United

⁶ The FTC has previously acknowledged that “[t]he government must show that the merger would produce a ‘firm controlling an undue percentage share of the relevant market, and [would] result[] in a significant increase in the concentration of firms in that market.’” FTC Mem. in Supp., *FTC v. Tronox Ltd.*, No. 18-cv-1622 (D.D.C. Aug. 3, 2018), ECF No. 91 (citation omitted); *see also* FTC Mem. of Points & Authorities, *FTC v. Meta Platforms, Inc.*, No. 22-cv-04325 (N.D. Cal. Oct. 31, 2022), ECF No. 164 (“Determination of the relevant product market and geographic markets is a necessary predicate [to] deciding whether a merger contravenes the Clayton Act.” (citation omitted)).

States—because, it appears, the FTC is not pursuing a separate case about labor markets at all. Instead, the Complaint emphasizes a single instance in 2021, when Tapestry announced an increase of its U.S. minimum wage to \$15 an hour in July 2021, and Michael Kors later increased its minimum wage to \$15 effective in October 2021. Compl. ¶¶ 9, 56. The Complaint omits any reference to the fact that because of the nationwide retail-labor shortages brought about by the pandemic, and to compete with retailers of all product types (and employers in other industries), huge numbers of retailers moved to a \$15 minimum wage in 2020 and 2021.⁷ Retail workers for Tapestry and Capri could easily switch to many or all of those employers and others, which explains why both companies increased their U.S. wages to a \$15 per hour baseline in 2021.

The FTC's Complaint suffers numerous flaws that eviscerate its case. The FTC bears the burden of proof. But the FTC has not articulated a viable product market, cannot show that Respondents would possess undue concentration in any properly defined market, and cannot show the likelihood of anticompetitive harm in connection with the sale of their handbags (however defined) post-transaction. The FTC's theory ignores the commercial realities of the industry and stretches to assert issues where none exist.

RESPONSE TO THE SPECIFIC ALLEGATIONS IN THE COMPLAINT

All allegations not expressly admitted herein are denied. Though included herein for reference, Tapestry does not interpret the headings and subheadings throughout the Complaint as well-pleaded allegations to which any response is required. To the extent a response is required, Tapestry denies all allegations in the headings and subheadings of the Complaint. Use of certain terms or phrases defined in the Complaint is not an acknowledgment or admission of any

⁷ The list of nationwide retailers that bumped up to a \$15 per hour minimum wage between June 2020 and November 2021 includes Target, Best Buy, Wayfair, Starbucks, Signet Jewelers, Chipotle, McDonald's, Under Armour, CVS, Lululemon, Walgreens, Williams-Sonoma, Saks Off Fifth, Macy's, Puma, and many more.

characterization FTC may ascribe to the terms. Unless otherwise defined, capitalized terms shall refer to the capitalized terms defined in the Complaint, but any such use is not an acknowledgment or admission of any characterization FTC may ascribe to the capitalized terms.


Tapestry does not concede the truthfulness of third-party sources quoted or referenced in the Complaint. To the extent a response is required, Tapestry denies all allegations of the third-party sources quoted in or referenced in the Complaint. Unless expressly acknowledged below, Tapestry further does not concede the accuracy or completeness of alleged quotations attributed to or from Tapestry employees or documents, which are provided without the appropriate context or proffered in part to assert truth in a manner that may not be consistent with the declarant's intent. Tapestry reserves the right to amend and/or supplement this Answer at a later stage of the proceedings, particularly if the Commission provides a more definitive statement regarding its alleged relevant market. Each paragraph below corresponds to the same-numbered paragraph in the Complaint.

The preamble to the Complaint characterizes this action. To the extent that a response is deemed necessary, Tapestry admits that FTC purports to bring an action under Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18, 21, and Section 5 of the FTC Act, 15 U.S.C. § 45 to prevent Tapestry from acquiring Capri. Tapestry denies that the FTC has any legitimate claim against Respondents, that the Proposed Transaction violates the Clayton Act or FTC Act, or that the FTC is entitled to any relief. Tapestry further contends that the structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint against Tapestry, having prejudged the merits of the action, violates Tapestry's Fifth Amendment Due Process right to adjudication before a neutral arbiter. Further, among other issues, the Commission's procedures violate Tapestry's right to procedural due process under the Due Process

Clause of the Fifth Amendment. Tapestry denies in all other respects the allegations in the preamble to the complaint.

I. NATURE OF THE CASE

1. Tapestry admits that Tapestry proposes to acquire Capri in a transaction valued at \$8.5 billion. Tapestry further admits that if the Proposed Transaction closes, Coach, Kate Spade, and Michael Kors would be owned by Tapestry. Tapestry further responds that the selective quotation of material in Paragraph 1 is taken out of context and misleading; the full document speaks for itself. The rest of Paragraph 1 contains legal arguments and conclusions to which a response is not required. To the extent a response is required, Tapestry denies that the Proposed Transaction would harm consumers; instead, it will lead to innovation and benefit consumers. Tapestry denies the remaining allegations in Paragraph 1.

2. Paragraph 2 contains legal arguments and conclusions to which a response is not required. To the extent a response is required, Tapestry denies the allegations in Paragraph 2, except admits that it sells products from clothing to eyewear to footwear and competes with numerous sellers of those products. Tapestry denies that “‘accessible luxury’ handbags” constitutes a relevant product market and lacks sufficient information to understand the contours of FTC’s proposed market. Tapestry further denies FTC’s characterization of Tapestry and Capri’s combined market share, that the Proposed Transaction will result in a player that will dwarf all other market players, and that Tapestry and Capri currently operate a “”

3. Tapestry admits that it first used the phrase “accessible luxury” over 20 years ago as part of marketing efforts and has continued to use the phrase, generally in marketing, including as a way to convey that its handbags and other products were high quality, yet approachable. Tapestry denies the phrase “accessible luxury” was intended to define a relevant product market or that it does define one. In fact, Coach has introduced a new marketing phrase, pivoting away

from “accessible luxury” and toward “expressive luxury.” Industry commentators such as *Vogue* and other sellers of handbags have made clear that FTC’s complaint provides “a limited view of a category that has exploded and morphed in recent years” and that the terminology “accessible luxury” is “limiting or not reflective of the reality of the place we hold, which is a unique one.” Madeleine Schulz, *These brands are reinventing accessible luxury. Just don’t call it that*, *Vogue*, May 1, 2024, <https://www.voguebusiness.com/story/fashion/these-brands-are-reinventing-accessible-luxury-just-dont-call-it-that>. Tapestry denies the remaining allegations in Paragraph 3, and further states that the quoted language Paragraph 3 is taken out of context and is misleading, and that the full content of the documents speaks for itself.

4. Tapestry admits that it has used the phrase “accessible luxury” in the context of marketing, but denies that “‘accessible luxury’ handbags” constitutes a product market and lacks sufficient information to understand the contours of FTC’s proposed market. Tapestry admits that it has used the phrase “luxury,” “true luxury,” “high-end luxury” or “European luxury,” but denies that these are a separate product market for antitrust purposes. Tapestry lacks sufficient knowledge to form a belief as to the truth of whether undefined “elite” brands claim affluent, high-wealth consumers. Tapestry further lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 4, and denies those allegations on that basis.

5. Tapestry admits that it engages in consumer research and collects demographic and income information as part of this research. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri document cited in Paragraph 5 or whether it even relates to FTC’s alleged handbag product market or the product market for some other good. Tapestry denies the remaining allegations in Paragraph 5.

6. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri document cited in Paragraph 6. With respect to the quote from the Coach document, Tapestry responds that the selective quotation of material in Paragraph 6 is taken out of context and is misleading, and that the full document speaks for itself. The rest of Paragraph 6 contains legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations. The Proposed Transaction is procompetitive and will benefit American consumers and employees of the Respondents.

7. Paragraph 7 contains legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations. The Proposed Transaction is procompetitive and will benefit American consumers and employees of the Respondents. Tapestry further denies that FTC's 2023 Merger Guidelines have any relevance. They are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw.

8. Tapestry lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 8, and denies the allegations on that basis, except admits that in the U.S., Tapestry competes for employees working in a variety of locations and from a across a range of functions and industries. The first and third sentences of Paragraph 8 assert legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations.

9. Tapestry admits that Tapestry publicly committed to a \$15 per hour minimum wage for U.S. hourly employees on or about July 2021 like many U.S. retailers who also increased their minimum wages to \$15 per hour. For instance, Tapestry is informed and believes that in the U.S., retailers that moved to a \$15 minimum wage between June 2020 and November 2021 includes

Target, Best Buy, Wayfair, Starbucks, Signet Jewelers, Chipotle, McDonald's, Under Armour, CVS, Lululemon, Walgreens, Williams-Sonoma, Saks Off Fifth, Macy's, Puma, and many more. Tapestry also admits that Michael Kors publicly committed to a \$15 per hour minimum wage effective on or about October 3, 2021. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri document cited in Paragraph 9. Tapestry denies the remaining allegations in Paragraph 9, and further states that the quoted language in the first sentence is taken out of context and is misleading, and that the full content of the document speaks for itself.

10. Paragraph 10 asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry admits that it has used the term "Coachenomics," but denies the allegation's characterization of "Coachenomics." "Coachenomics" has been used to describe greater investments in marketing to highlight the attractiveness and value of Coach products for consumers along with strategic cost reductions that do not affect the customer. Tapestry intends to revitalize the Michael Kors brand and invest in other Capri brands, including by supporting them with Tapestry's consumer engagement platform and technology-based data analytics capabilities to help grow consumer connection and brand sales. The Proposed Transaction will increase demand for Capri's products (including handbags), expand output, and ultimately deliver the Capri brands to more consumers. Tapestry denies all other allegations.

11. Tapestry states that the quoted language is taken out of context and is misleading, and that the full content of the document speaks for itself. Paragraph 11 further asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations.

12. Paragraph 12 asserts legal arguments and conclusions to which no response is required. To the extent that a response is deemed necessary, Tapestry denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and lacks sufficient information to understand the contours of FTC’s proposed market. Tapestry further denies the remaining allegations in Paragraph 12.

13. Paragraph 13 asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and lacks sufficient information to understand the contours of FTC’s proposed market. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the documents speaks for itself. Tapestry denies the remaining allegations in Paragraph 13.

14. Paragraph 14 asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and lacks sufficient information to understand the contours of FTC’s proposed market. Tapestry further states that entry and expansion are easy and ongoing, contributing to a dynamic marketplace. Tapestry denies the remaining allegations except that Tapestry lacks sufficient information to form a belief about the purported story of Rebecca Minkoff.

15. Paragraph 15 asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations. Tapestry further states that the Proposed Transaction is complementary, will result in procompetitive efficiencies, and will revitalize the declining Michael Kors brand.

II. JURISDICTION

16. Tapestry admits that Respondents are engaged in activities affecting commerce.

17. Tapestry admits that the Proposed Transaction constitutes a merger subject to Section 7 of the Clayton Act, but denies that the Proposed Transaction violates Section 7 of the Clayton Act.

III. RESPONDENTS AND THE PROPOSED ACQUISITION

18. Tapestry admits that for Fiscal Year 2023 its gross margins are approximately 71% and that Coach constitutes 74.5% of Tapestry's sales and Kate Spade constitutes 21.3%. These numbers change from period to period, and the FTC has not identified a time period with respect to its allegations. The last two sentences contain legal conclusions and arguments to which a reply is not required. To the extent a reply is required, Tapestry denies the legal arguments and conclusions in the last two sentences of Paragraph 18. Tapestry otherwise admits the allegations in this Paragraph other than the last three sentences where Tapestry only admits that Coach and Kate Spade stores are located throughout the United States.

19. Tapestry lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 and denies the allegations on that basis.

20. Tapestry admits the allegations in Paragraph 20.

IV. THE MARKET FOR "ACCESSIBLE LUXURY" HANDBAGS

21. Paragraph 21 asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations, including that that "accessible luxury' handbags" constitutes an antitrust product market and that the Proposed Transaction may substantially lessen competition, or tend to create a monopoly, in this undefined proposed market. However, Tapestry admits that it sells handbags in the United States along with multiple other sellers. Tapestry further contends that it lacks sufficient information to understand the contours of FTC's proposed market.

A. The Parties Compete in a Relevant Market for “Accessible Luxury” Handbags.

22. Tapestry admits that it and Coach have used the phrase “accessible luxury” in the context of marketing and admits that it sells handbags. Tapestry lacks sufficient knowledge to form a belief as to the statements of unidentified persons referenced in Paragraph 22. The rest of Paragraph 22 asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations including that “accessible luxury” constitutes a product market and lacks sufficient information to understand the contours of that proposed market. Tapestry further denies the second sentence in Paragraph 22 because Tapestry competes with numerous competitors for the sale of handbags, regardless of how that market is defined.

23. Tapestry admits that it and Coach have used the phrase “accessible luxury,” “aspirational luxury,” and other terms in the context of marketing and certain internal documents. The rest of Paragraph 23 asserts legal arguments and conclusions that do not warrant a response. To the extent a response is required, Tapestry denies the allegations, including that “‘accessible luxury’ handbags” constitutes an antitrust product market. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the documents speaks for itself.

24. Tapestry admits that it has used the phrase “accessible luxury” in the context of marketing and certain internal documents, but denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and contends that it lacks sufficient information to understand the contours of that proposed market. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the document speaks for itself. Tapestry denies the remaining allegations in Paragraph 24.

25. Tapestry admits that it has used the phrase “accessible luxury” in the context of marketing, but denies that “accessible luxury” constitutes an antitrust product market and contends that it lacks sufficient information to understand the contours of that proposed market. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the document speaks for itself. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in Paragraph 25. Tapestry denies the remaining allegations in Paragraph 25.

26. Tapestry admits that the marketing phrase “accessible luxury” is used from time-to-time by others, but denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and contends that it lacks sufficient information to understand the contours of that proposed market. Tapestry states that the quoted language is taken out of context and is misleading, and that the full content of the document speaks for itself. Tapestry further states that Paragraph 26’s use of the undefined or vague term “other industry participants” renders Paragraph 26’s allegations incapable of further response as written. Tapestry denies the remaining allegations in Paragraph 26.

27. Tapestry admits it has used the phrase “accessible luxury” in the context of marketing and certain internal documents, but denies that “‘accessible luxury’ handbags” constitutes a relevant product market for antitrust purposes and contends that it lacks sufficient information to understand the contours of that proposed market. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the document speaks for itself. Tapestry denies the remaining allegations in Paragraph 27.

28. Tapestry denies the FTC's characterization of Tapestry's document in Paragraph 28, and further states that the excerpt is taken out of context and is misleading, and that the full content of the document speaks for itself.

29. Tapestry denies the allegations in Paragraph 29. Tapestry further states that Paragraph 29's use of quotations from unidentified sources renders Paragraph 29's allegations incapable of further response as written.

30. Tapestry denies that "'accessible luxury' handbags" constitutes an antitrust product market and contends that it lacks sufficient information to understand the contours of FTC's proposed market. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in Paragraph 30. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the documents speaks for itself. Tapestry denies the remaining allegations in Paragraph 30.

31. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents cited in Paragraph 31.

32. Tapestry denies the allegations in Paragraph 32 to the extent they are intended to assert that "'accessible luxury' handbags" constitute a product market. Tapestry lacks sufficient information to understand the contours of that proposed market.

33. The first sentence of this Paragraph contains legal arguments and conclusions to which a response is not required. For the second sentence, Tapestry states that the quoted language is taken out of context and is misleading, and that the full content of the documents speaks for itself. The third sentence and second to last sentence purport to quote language from Capri, and Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents cited. The fifth sentence purports to characterize the contents of regulatory filings, and Tapestry

respectfully refers to those filings for a complete and accurate statement of their contents. The rest of this Paragraph contains legal arguments and conclusions to which a response is not required. To the extent a response is required, Tapestry denies those allegations. Tapestry further denies any allegations not specifically addressed above.

34. Paragraph 34 purports to make generalizations regarding the “discounting and promotions” of undefined or vaguely defined groups of handbags. Accordingly, Tapestry lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 34 as written, and therefore denies them. Tapestry further denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and contends that it lacks sufficient information to understand the contours of that proposed market.

35. Paragraph 35 purports to make generalizations regarding the “omnichannel approach and sales experience” of undefined or vaguely defined groups of handbags. Accordingly, Tapestry lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 35 as written, and therefore denies them, except admits that handbags are sold in multiple channels. Tapestry further denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and contends that it lacks sufficient information to understand the contours of that proposed market.

36. Tapestry lacks sufficient knowledge to form a belief as to the truth of the statement by Simone cited in Paragraph 36. With respect to the last sentence, Tapestry states that the quote is taken out of context and is misleading, and that the full content of the documents speaks for itself. Tapestry denies the remaining allegations in Paragraph 36, and further denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and contends that it lacks sufficient information to understand the contours of that proposed market.

37. The first two sentences of Paragraph 37 assert legal arguments and conclusions to which no response is required. To the extent a response is required, Tapestry denies the allegations contained in the first two sentences of Paragraph 37. The third sentence contains quoted language that is taken out of context and is misleading, and the full content of the documents speaks for itself. The final sentence of Paragraph 37 purports to characterize the contents of regulatory filings, and Tapestry respectfully refers to those filings for a complete and accurate statement of their contents. To the extent the allegations set forth in the final sentence of Paragraph 37 are inconsistent with those filings, Tapestry denies the allegations. Tapestry denies any remaining allegations in Paragraph 37.

38. Paragraph 38 asserts legal conclusions and argument that do not warrant a response.

39. Tapestry denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and lacks sufficient information to understand the contours of that proposed market. Paragraph 39 asserts legal conclusions and argument that do not require a response. To the extent that a response is required, Tapestry denies that FTC’s 2023 Merger Guidelines have any relevance. They are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw. Tapestry denies the remaining allegations in Paragraph 39.

B. The Parties Compete in a Relevant Geographic Market of the United States.

40. The first sentence of Paragraph 40 asserts legal conclusions and argument that do not warrant a response. To the extent that a response is required, Tapestry admits that it sells handbags in the United States. Tapestry further admits that it has U.S.-specific marketing. Tapestry lacks sufficient knowledge to form a belief as to the truth of the marketing practices and business strategies of undefined or vaguely defined other “industry participants.” Tapestry denies the remaining allegations in Paragraph 40.

41. Paragraph 41 asserts legal conclusions and argument that do not warrant a response.

To the extent that a response is required, Tapestry denies the allegations in Paragraph 41.

**V. THE PROPOSED ACQUISITION WILL ELIMINATE
DIRECT HEAD-TO-HEAD COMPETITION**

42. Paragraph 42 asserts legal conclusions and argument that do not warrant a response.

To the extent that a response is required, Tapestry denies that FTC's 2023 Merger Guidelines have any relevance. They are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw. Tapestry denies the remaining allegations in Paragraph 42.

43. Paragraph 43 asserts legal conclusions and argument that do not warrant a response.

To the extent that a response is required, Tapestry denies the allegations in Paragraph 43.

44. Paragraph 44 asserts legal conclusions and argument that do not warrant a response.

To the extent that a response is required, Tapestry denies the allegations in Paragraph 44. The Proposed Transaction will benefit consumers.

A. Coach, Kate Spade, and Michael Kors Are Close Competitors.

45. Tapestry lacks sufficient knowledge to form a belief about a letter from an unidentified Tapestry shareholder and therefore denies the second sentence on that basis. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in the fourth and fifth sentences in Paragraph 45. Tapestry further states that the quoted language is taken out of context and misleading, and that the full content of the documents speaks for themselves. Tapestry denies the remaining allegations in Paragraph 45.

46. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in Paragraph 46. Tapestry denies the remaining allegations in Paragraph 46. Tapestry further states that the quoted language is taken out of context and misleading, and that the full content of the documents speaks for itself.

B. There Is a Reasonable Probability That the Proposed Acquisition Will Eliminate Head-to-Head Competition Between Coach, Kate Spade, and Michael Kors.

47. Paragraph 47 asserts legal conclusions and argument that do not warrant a response.

To the extent that a response is required, Tapestry denies that FTC's 2023 Merger Guidelines have any relevance. They are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw. Tapestry further denies the allegations in Paragraph 47.

48. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in Paragraph 48. Paragraph 48 purports to characterize the contents of various documents, and Tapestry respectfully refers the Court to those documents for a complete and accurate statement of their contents. To the extent the allegations set forth in Paragraph 48 are inconsistent with those documents, Tapestry denies the allegations. Tapestry denies any remaining allegations in Paragraph 48.

49. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in Paragraph 49. The rest of Paragraph 49 contains legal arguments and conclusions to which no response is required. To the extent a response is required, Tapestry denies the remaining allegations in Paragraph 49.

50. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in Paragraph 50. Tapestry denies the remaining allegations in Paragraph 50.

51. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced in Paragraph 51. Tapestry denies any remaining allegations in Paragraph 51.

52. Tapestry admits that digital sales are an important and growing part of its business. Tapestry lacks sufficient knowledge to form a belief as to the truth of Capri's actions characterized in Paragraph 52. With respect to the last sentence of Paragraph 52, Tapestry states that the quoted

language is taken out of context and is misleading, and that the full content of the statement speaks for itself. Tapestry denies the remaining allegations in Paragraph 52.

53. The first two sentences of Paragraph 53 assert legal argument and conclusions to which no response is required. To the extent a response is required, Tapestry denies the allegations contained in the first two sentences of Paragraph 53. The third and fourth sentences of Paragraph 53 purport to reference statements by Capri personnel, and Tapestry lacks sufficient knowledge to form a belief as to the truth of those statements. Tapestry denies any remaining allegations in Paragraph 53.

54. The first sentence contains legal arguments and conclusions to which no response is required. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents and actions characterized in the second sentence of Paragraph 54. The third sentence contains quoted language that is taken out of context and is misleading, and the full content of the documents speaks for itself. Tapestry denies the remaining allegations in Paragraph 54.

55. Paragraph 55 contains legal arguments and conclusions to which no response is required. To the extent a response is required, Tapestry denies the allegations in Paragraph 55.

56. Tapestry lacks sufficient knowledge to form a belief as to the truth of the Capri documents referenced and characterized in Paragraph 56. Tapestry admits that Michael Kors publicly committed to a \$15 per hour minimum wage effective October 3, 2021. To the extent a response is required on any other allegation, Tapestry denies the allegations in Paragraph 56 except as explicitly admitted.

57. Paragraph 57 asserts legal arguments and conclusions that do not require a response. To the extent that a response is required, Tapestry denies those allegations, denies the remaining allegations in Paragraph 57, and further states that with respect to the third sentence, the

quoted language is taken out of context and is misleading, and that the full content of the documents speaks for itself.

C. Tapestry Intends to Raise Michael Kors' Prices Post-Transaction by Reducing Discounts and Pulling Back from Wholesale.

58. Paragraph 58 purports to characterize the contents of deal documents, and Tapestry respectfully refers to those documents for a complete and accurate statement of their contents. To the extent the documents are inconsistent, Tapestry denies the allegations in Paragraph 58.

59. Tapestry admits that it has used the term “Coachenomics,” but denies the allegation’s characterization of “Coachenomics.” “Coachenomics” describes the procompetitive strategy of making greater investments in marketing to increase the attractiveness and the value of Coach products for consumers along with strategic cost reductions that do not affect the customer. Tapestry admits that in 2016 it discussed a plan for North American department store distribution, to enable Tapestry to maintain long-term brand health and minimize confusion across channels. Tapestry further states that numerous factors contribute to Average Unit Retail price at a given point in time. Paragraph 59 also purports to characterize the contents of Tapestry documents, and Tapestry respectfully refers to those documents for a complete and accurate statement of their contents. Tapestry denies the remaining allegations in Paragraph 59.

60. Paragraph 60 contains legal arguments and conclusions to which a response is not required. To the extent a response is required, Tapestry denies the allegations in Paragraph 60. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the document speaks for itself.

61. Tapestry lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence regarding Michael Kors. The rest of the first sentence and the second sentence contain legal arguments and conclusions to which a response is not required.

To the extent a response is required, Tapestry denies the allegations. With respect to the last sentence, Tapestry contends that the quoted language is taken out of context and misleading, and that the full content of the document speaks for itself and does not support the allegations in Paragraph 61.

62. Tapestry admits that it has used the term “Coachenomics,” but denies the allegation’s characterization of “Coachenomics.” “Coachenomics” describes the procompetitive strategy of making greater investments in marketing to increase the attractiveness and the value of Coach products for consumers along with strategic cost reductions that do not affect the customer. Tapestry denies the remaining allegations in Paragraph 62. Tapestry further states that the quoted language is taken out of context and is misleading, and that the full content of the documents speaks for itself.

63. Tapestry admits that it has a brand growth platform and states that numerous factors contribute to pricing, Average Unit Retail, and gross margin at a given point of time, including investments in marketing and product, changing consumer trends and preferences, and competition. Tapestry intends to revitalize the Michael Kors brand and invest in other Capri brands, including by supporting them with Tapestry’s consumer engagement platform and technology-based data analytics capabilities to grow consumer connection and brand sales. The Proposed Transaction will increase demand for Capri’s products, expand output, and ultimately deliver the Capri brands to more consumers. Tapestry denies the remaining allegations in Paragraph 63.

64. Paragraph 64’s use of the undefined or vague terms “enormous” and “superior” renders Paragraph 64’s allegations incapable of further response as written. Tapestry admits that it has made procompetitive investments in data and technological capabilities. Tapestry states that

these investments allow Tapestry to market its brands and products more effectively to help drive value in the eyes of the consumers and to deliver the products that consumers desire more efficiently. Tapestry intends to revitalize the Michael Kors brand and invest in other Capri brands, including by supporting them with Tapestry's consumer engagement platform and technology-based data analytics capabilities to grow consumer connection, improve Capri products and increase brand sales. The Proposed Transaction will increase demand for Capri's products, expand output, and ultimately deliver the Capri brands to more consumers. Tapestry otherwise denies the allegations in Paragraph 64.

**VI. THE PROPOSED ACQUISITION IS PRESUMPTIVELY UNLAWFUL
BECAUSE IT SIGNIFICANTLY INCREASES CONCENTRATION**

65. Paragraph 65 asserts legal arguments and conclusions that do not warrant a response. Additionally, Tapestry lacks sufficient information to assess the “‘accessible luxury’ handbag” market and what the FTC contends is included in that market. To the extent a response is required, Tapestry denies the allegations in Paragraph 65.

66. Paragraph 66 asserts legal arguments and conclusions that do not warrant a response. To the extent that a response is required, Tapestry denies that FTC's 2023 Merger Guidelines have any relevance. They are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw.

67. Paragraph 67 asserts legal arguments and conclusions that do not warrant a response. To the extent that a response is required, Tapestry denies the allegations in Paragraph 67, denies that FTC's 2023 Merger Guidelines have any relevance, and states that they are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw.

68. Tapestry denies the allegations contained in the first sentence of Paragraph 68. The remainder of Paragraph 68 asserts legal arguments and conclusions that do not require a response.

To the extent a response is required, Tapestry denies the remaining allegations in Paragraph 68 including that FTC's 2023 Merger Guidelines have any relevance here. They are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw.

69. Paragraph 69 asserts legal arguments and conclusions that do not require a response. To the extent that a response is required, Tapestry denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and lacks sufficient information to understand the contours of that proposed market. Tapestry further denies the remaining allegations in Paragraph 69.

VII. THE PROPOSED ACQUISITION IS PART OF TAPESTRY'S STRATEGY OF SERIAL ACQUISITIONS

70. Tapestry admits that Tapestry owns Coach, Kate Spade, and Stuart Weitzman. Tapestry admits that Capri owns Michael Kors, Versace, and Jimmy Choo. Tapestry further admits that the Proposed Transaction contemplates Tapestry purchasing Capri. The remaining allegations in Paragraph contain legal arguments and conclusions to which a response is not required. To the extent a response is required, Tapestry denies the remaining allegations in Paragraph 70.

71. Paragraph 71 is an excerpt of the Merger Guidelines, which does not require a response. Tapestry refers to the Merger Guidelines for a complete and accurate statement of their contents. To the extent that a response is required, Tapestry denies that FTC's 2023 Merger Guidelines have any relevance here. They are non-binding statements that identify the enforcement practices of the FTC and depart from modern caselaw.

72. Paragraph 72 asserts legal arguments and conclusions that do not warrant a response. Tapestry further states that the quoted language is taken out of context and misleading,

and the full content of the documents speaks for itself. To the extent that a response is required, Tapestry denies the allegations in Paragraph 72.

73. Tapestry denies the allegations in Paragraph 73. Tapestry further states that the quoted language is taken out of context and is misleading, and the full content of the documents speaks for itself.

74. Tapestry states that the quoted language is taken out of context and misleading, and the full content of the documents speaks for itself. This Paragraph further contains legal arguments and conclusions purportedly based on Tapestry documents to which no response is required. To the extent a response is required, Tapestry denies the allegations in Paragraph 74.

75. Tapestry denies that “‘accessible luxury’ handbags” constitutes an antitrust product market and lacks sufficient information to understand the contours of that proposed market. Tapestry denies the remaining allegations in Paragraph 75. Tapestry further states that the quoted language is taken out of context and misleading, and the full content of the documents speaks for itself.

76. Paragraph 76 asserts legal arguments and conclusions that do not warrant a response. Tapestry further states that the quoted language is taken out of context and misleading, and the full content of the documents speaks for itself. To the extent that a response is required, Tapestry denies the allegations in Paragraph 76.

77. Paragraph 77 contains legal arguments and conclusions that do not warrant a response. Tapestry further states that the quoted language is taken out of context and misleading, and the full content of the documents speaks for itself. To the extent that a response is required, Tapestry denies the allegations in Paragraph 77.

78. Paragraph 78 contains legal arguments and conclusions that do not warrant a response. Tapestry further states that the quoted language is taken out of context and misleading, and the full content of the documents speaks for itself. To the extent that a response is required, Tapestry denies the allegations in Paragraph 78.

**VIII. THERE ARE NO COUNTERVAILING FACTORS TO
JUSTIFY THE PROPOSED ACQUISITION**

79. Tapestry lacks sufficient information to form a belief as to the truth of the allegations contained in the second to last sentence of Paragraph 79 regarding Rebecca Minkoff and denies the allegations on that basis. The rest of Paragraph 79 asserts legal arguments and conclusions that do not warrant a response. To the extent that a response is required, Tapestry denies the allegations, and further states that entry and expansion are easy and ongoing, such that it competes in a dynamic marketplace.

80. The second sentence of Paragraph 80 contains quoted language that is taken out of context, and the full content of the documents speaks for itself. The rest of Paragraph 80 contains legal arguments and conclusions that do not warrant a response. To the extent that a response is required, Tapestry denies the allegations. Tapestry further states that there are numerous ways to sell products including through online channels, which makes consumers highly accessible for new entrants. Additionally, wholesale retailers carry a large variety of brands in both their brick-and-mortar and online stores, allowing brands to expand their exposure and reach an even broader consumer base.

81. Tapestry admits that its brands have marketing departments, and Tapestry invests money in marketing. Tapestry further admits that it participates in fashion events. The rest of Paragraph 81 contains legal arguments and conclusions that do not require a response. To the extent a response is required, Tapestry denies the allegations. Tapestry further states that the

internet enables entrants to easily reach millions of prospective consumers through social media. For example, a celebrity posting a photo with a product or engagement with a popular influencer can both drive demand.

82. Tapestry admits that it maintains consumer data that it utilizes to develop and market its brands and products more effectively to drive value in the eyes of the consumers and to deliver the products that consumers desire more efficiently. The third sentence of Paragraph 82 contains quoted language that is taken out of context, and the full content of the documents speaks for itself. The rest of Paragraph 82 contains legal arguments and conclusions that do not warrant a response. To the extent that a response is required and except as specifically admitted herein, Tapestry denies the allegations.

83. Paragraph 83 contains legal arguments and conclusions that do not warrant a response. To the extent that a response is required, Tapestry denies the allegations. Tapestry further states that there are no significant barriers to procuring manufacturing services. There are many manufacturers of fashion products, and entrants have numerous choices when looking to manufacture their products.

84. Paragraph 84 asserts legal conclusions that do not warrant a response. To the extent that a response is required, Tapestry denies the allegations in Paragraph 84, and further states that the Proposed Transaction is complementary and will result in procompetitive efficiencies and will revitalize the declining Michael Kors brand by providing consumers better products.

IX. VIOLATION

Count I – Illegal Agreement

85. Tapestry incorporates all previous responses as though fully set forth herein.

86. Tapestry denies this allegation.

Count II – Illegal Agreement

87. Tapestry incorporates all previous responses as though fully set forth herein.
88. Tapestry denies the allegations.

AFFIRMATIVE AND OTHER DEFENSES

Tapestry asserts the following defenses with respect to the causes of action alleged in the Complaint, without assuming the burden of proof or persuasion where such burden rests on the FTC. Tapestry has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. Tapestry reserves the right to amend, or seek to amend, its Answer, including its affirmative and other defenses.

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

The alleged market definition fails as a matter of both fact and law.

THIRD DEFENSE

The Complaint fails to allege any plausible harm to competition, consumers, or consumer welfare.

FOURTH DEFENSE

The Complaint fails to allege undue share in any plausibly defined relevant market.

FIFTH DEFENSE

Any alleged harm to competition is not actionable.

SIXTH DEFENSE

The Complaint fails to state a claim because new entrants to the relevant market were (and are) timely, likely, and sufficient to offset any alleged anticompetitive effects of the Proposed Acquisition.

SEVENTH DEFENSE

The Proposed Acquisition is procompetitive, and will result in merger-specific efficiencies, cost synergies, product-quality improvements, and other procompetitive effects that benefit consumers. The benefits outweigh any alleged anticompetitive effects.

EIGHTH DEFENSE

The combination of Respondents' businesses is not likely to substantially lessen competition under the analytical framework set forth in the Clayton Act.

NINTH DEFENSE

Neither the filing of this administrative action nor the contemplated relief is in the public interest, pursuant to 15 U.S.C. § 45.

TENTH DEFENSE

The Commission's claims under Section 5 of the Federal Trade Commission Act are nonactionable to the extent the Commission purports to apply Section 5 beyond the boundaries of the Clayton Act.

ELEVENTH DEFENSE

The Commission fails to allege a time frame for the alleged anticompetitive effects.

TWELFTH DEFENSE

The structure of these administrative proceedings, in which the Commission both initiates and finally adjudicates the Complaint against Tapestry, having prejudged the merits of the action, violates Tapestry's Fifth Amendment Due Process right to adjudication before a neutral arbiter.

THIRTEENTH DEFENSE

The Commission's procedures violate Tapestry's right to procedural due process under the Due Process Clause of the Fifth Amendment.

FOURTEENTH DEFENSE

The Commission's procedures arbitrarily subject Tapestry to administrative proceedings rather than to proceedings before an Article III judge in violation of Tapestry's right to Equal Protection under the Fifth Amendment.

FIFTEENTH DEFENSE

These proceedings are invalid because the structure of the Commission as an independent agency that wields significant executive power and the associated constraints on removal of the Commissioners and the Administrative Law Judge violate Article II of the Constitution and the separation of powers.

SIXTEENTH DEFENSE

These administrative proceedings are invalid because Congress unconstitutionally delegated legislative power to the Commission by failing to provide an intelligible principle by which the Commission would decide between bringing administrative enforcement proceedings and bringing enforcement proceedings in court.

SEVENTEENTH DEFENSE

The adjudication of the Complaint against Tapestry through these administrative proceedings violates Tapestry's Seventh Amendment right to a jury trial.

EIGHTEENTH DEFENSE

Granting the relief sought would constitute a taking of Tapestry's property in violation of the Fifth Amendment to the Constitution.

NOTICE

Respondent states that the Notice of the Complaint is a restatement of the rules of the FTC to which no response is required. To the extent a response is required, Tapestry denies the allegations in the Notice of the Complaint except states that the FTC has provided notice of a hearing date on September 25, 2024.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Tapestry requests that the Commission enter judgment in its favor as follows:

1. That the Complaint be dismissed with prejudice;
2. That none of the requested relief issue to the Commission;
3. That costs incurred in defending this action be awarded to Tapestry; and
4. That the Commission grant Tapestry any and all further relief that is just and proper.

Tapestry states that the Notice of Contemplated Relief is a restatement of the rules of the FTC to which no response is required. To the extent a response is required, Tapestry denies the allegations in the Notice of Contemplated Relief.

Tapestry respectfully requests that the Court: (i) deny the FTC's requested relief; (ii) dismiss the Complaint in its entirety with prejudice; (iii) award to Tapestry its costs of suit, including expert fees and reasonable attorneys' fees, as may be allowed by law; and (iv) award to Tapestry such other and further relief as the Court deems just and appropriate.

Dated: May 6, 2024

Respectfully submitted,

/s/ Amanda P. Reeves

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Counsel for Respondent Tapestry, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2024, I caused the foregoing document to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

The Honorable Dania L. Ayoubi
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
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I also certify that I caused the foregoing document to be served via email to:

Complaint Counsel

U.S. Federal Trade Commission

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