

NON-TRADITIONAL TRADEMARKS

February 8, 2019

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WHAT IS A TRADEMARK?



Word



Symbol



Slogan I'M LOVIN' IT

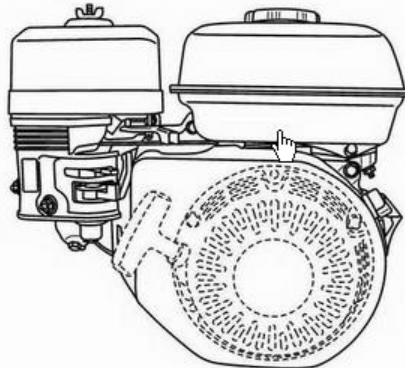
Scent



Color



Product design



That identifies a specific product and distinguishes it from others in the marketplace

WHAT IS TRADE DRESS?



- Products “total image” or “overall appearance”
 - A “symbol” or “device” within the meaning of 15 USC 1052.
 - May include features such as size, shape, color or color combinations, texture, graphics or even certain sales techniques.



STANDARDS FOR OBTAINING TRADE DRESS PROTECTION



- **Distinctiveness**

- Inherently distinctive
- Secondary meaning
 - *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 112 S.Ct. 2753 (1992)

- **Not Functional**

- Feature is functional if it "is essential to the use or purpose of the article or [that] affects the cost or quality of the article."
 - *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844 (1982)

TrafFix Devices, Inc. v. Mktg. Displays, Inc., 532 U.S. 23, 28-29, 58 USPQ2d 1001, 1004-1005 (2001)

TWO PESOS



- Trade dress can be inherently distinctive
 - Secondary meaning need not be shown
 - Taco Cabana was able to describe elements of trade dress with specificity:
 - [A] festive eating atmosphere having interior dining and patio areas decorated with artifacts, bright colors, paintings and murals. The patio includes interior and exterior areas with the interior patio capable of being sealed off from the outside patio by overhead garage doors. The stepped exterior of the building is a festive and vivid color scheme using top border paint and neon stripes. Bright awnings and umbrellas continue the theme.”



■ QUALITEX



- A single color may be protectable as a trademark if the color has acquired secondary meaning
 - A single color cannot be inherently distinctive, but “consumers may come to treat a particular color or its packaging as signifying a brand.”
 - A design is functional if it is essential to the use or purposes of the article or if it affects the cost or quality of the article, that is if exclusive use of the feature would be competitors at a significant on-reputation-related disadvantage.



Qualitex Co. v. Jacobson Products Co., 514 U.S. 159 (1995)

WAL-MART



- A product's design or configuration is never inherently distinctive – showing of secondary meaning necessary
 - If questionable whether trade dress is product-packing or product-design, err on the side of caution and classify as product design.



Samara Brothers



Wal-Mart

Wal-Mart Stores, Inc. v. Samara Bros., 529 U.S. 205 (2000)

PRODUCT PACKAGING



- Appearance of packages, label graphics, fonts, color combinations, textures
- Can be inherently distinctive



PRODUCT DESIGN



- **Shape and Appearance of Product**
 - Box, container or bottle holding product.
 - Coca Cola bottle
 - Combo of blue box and white ribbon
 - **Can never be inherently distinctive**
 - Need to show secondary meaning

Wal-Mart Stores, Inc. v Samara Bros., 529 U.S. 205 1069 (2000)



ESTABLISHING SECONDARY MEANING



- Exclusivity, length manner of use
- Advertising
- Sales
- Unsolicited media attention
- Proof of intentional copying



The mark consists in part of the configuration of the goods consisting of a diamond-shaped dosage tablet, combined with the color blue as applied to the entire surface of the goods. The drawing is lined for the color blue.

■ ASSESSING FUNCTIONALITY



- Does the design or product holds an active or expired utility patent?
- Does the company advertise the advantages of the specific elements of its trade dress?
- Are other design options available?
- Does the design come from cheaper or easier ways to manufacture the item?

- *In re Becton, Dickinson & Co.*, 675 F.3d 1368, 1374-75 (Fed. Cir. 2012)

AESTHETIC FUNCTIONALITY



- Considers whether purely aesthetic features might be considered “functional” because they are pretty and therefore desirable for that reason alone.
 - China not protectable; consumer purchases because beautiful, not because patterns served as source identifiers. *Pagliario v. Wallace China Co.*, 198 F.2d 339 (9th Cir. 1952)
 - Silverware pattern not protectable – Aesthetically functional because other silversmiths had to replicate it to compete. *Wallace International Silversmiths v. Godinger Silver Art*, 916 F.2d 76 (2d Cir. 1990).



AESTHETIC FUNCTIONALITY



- Parties did not dispute that Louboutin invested substantial capital building goodwill in its footwear and that the red sole is closely associated with Louboutin.
- Trial court found that a single color could never serve as a trademark in the fashion industry – color is aesthetically functional in fashion industry
- Reversed: inappropriate to treat fashion industry different from other industries.



Louboutin v. Yves St. Laurent, 696 F. 3d 206 (2d Cir. 2012)

AESTHETIC FUNCTIONALITY



- A mark is aesthetically functional and not entitled to protection if:
 - the design feature is essential to the use or purpose of the article;
 - the design feature affects the cost or quality of the article; and
 - protecting the design feature would significantly undermine a competitors ability to compete
- 2nd Circuit cautioned that “courts must avoid jumping to the conclusion that an aesthetic function is functional merely because it denotes the product’s desirable source.”
- Limits trademark to contrasting uses:
Red Undersole v. Remainder of the Shoe



FABRIC DESIGN



Goods and Services IC 025. US 022 039. G & S: Coats, detachable coat linings, rainwear, ponchos, jackets, gilets, jerseys, jumpers, sweaters, blouses, shirts, polo shirts, t-shirts, singlets, vests, tank tops, waistcoats, suits, dresses, skirts, aprons, trousers, jeans, shorts, ski wear, sports jackets, sports jerseys, sports shirts, sports trousers, sweat pants, sweat shirts, sweat shorts, tracksuits, tennis wear, waterproof clothing, bikinis, sarongs, swimwear, bathrobes, boxer shorts, lingerie, loungewear, nightwear, undergarments, ties, cravats, footwear, shoes, boots, athletic footwear, slippers, ballet slippers, hosiery, socks, leggings, caps, bandanas, hats, head scarves, knitted hats, visors, belts, gloves, mufflers, scarves, shawls, stoles, pashminas, children's and infant's clothing, headwear, footwear, cloth bibs, textile nappies

Mark Drawing Code (2) DESIGN ONLY

Design Search Code 26.17.01 - Bands, straight; Bars, straight; Lines, straight; Straight line(s), band(s) or bar(s)
26.17.04 - Bands, vertical; Bars, vertical; Lines, vertical; Vertical line(s), band(s) or bar(s)
26.17.05 - Bands, horizontal; Bars, horizontal; Horizontal line(s), band(s) or bar(s); Lines, horizontal

Serial Number 77209954

Filing Date June 19, 2007

Current Filing Basis NO FILING BASIS

Original Filing Basis NO FILING BASIS

Owner (APPLICANT) **BURBERRY** LIMITED CORPORATION UNITED KINGDOM 18-22 HAYMARKET LONDON SW1Y 4DQ UNITED KINGDOM

Description of Mark The applicant claims color as a feature of the mark, namely, tan, brown, black, white, red and shades thereof. The mark consists of a repeating plaid pattern.

Type of Mark TRADEMARK. SERVICE MARK

Register PRINCIPAL

Live/Dead Indicator LIVE

TEXTURE



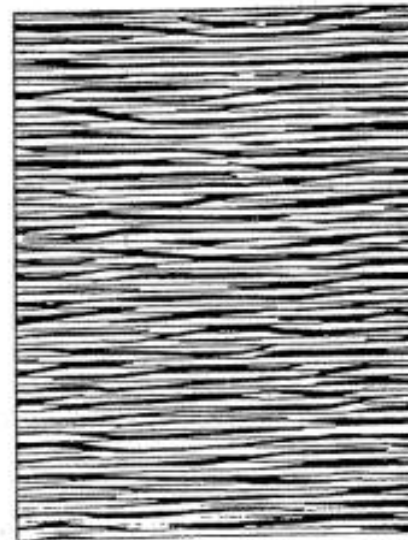
Int. Cl.: 18

Prior U.S. Cl.: 3

Reg. No. 1,931,144

United States Patent and Trademark Office Registered Oct. 31, 1995

TRADEMARK
PRINCIPAL REGISTER



MALLETIER, LOUIS VUITTON (FRANCE CORPORATION)
54, AVENUE MONTAIGNE
75008 PARIS, FRANCE

FOR: TRUNKS FOR TRAVELING, SUIT-CASES, TRAVELING BAGS, HANDBAGS, LUGGAGE, COSMETIC CASES SOLD EMPTY, VANITY CASES SOLD EMPTY, TOILETRY CASES SOLD EMPTY, BACKPACKS, SHOULDER BAGS, TOTE BAGS, LEATHER SHOPPING BAGS, WAIST PACKS, BRIEFCASES, ATTACHE CASES, BRIEFCASE-TYPE PORTFOLIOS, PURSES, CHANGE PURSES, WALLETS.

KEY CASES, DOCUMENT CASES, BUSINESS CARD CASES AND BILLFOLDS, IN CLASS 18 (U.S. CL. 3).

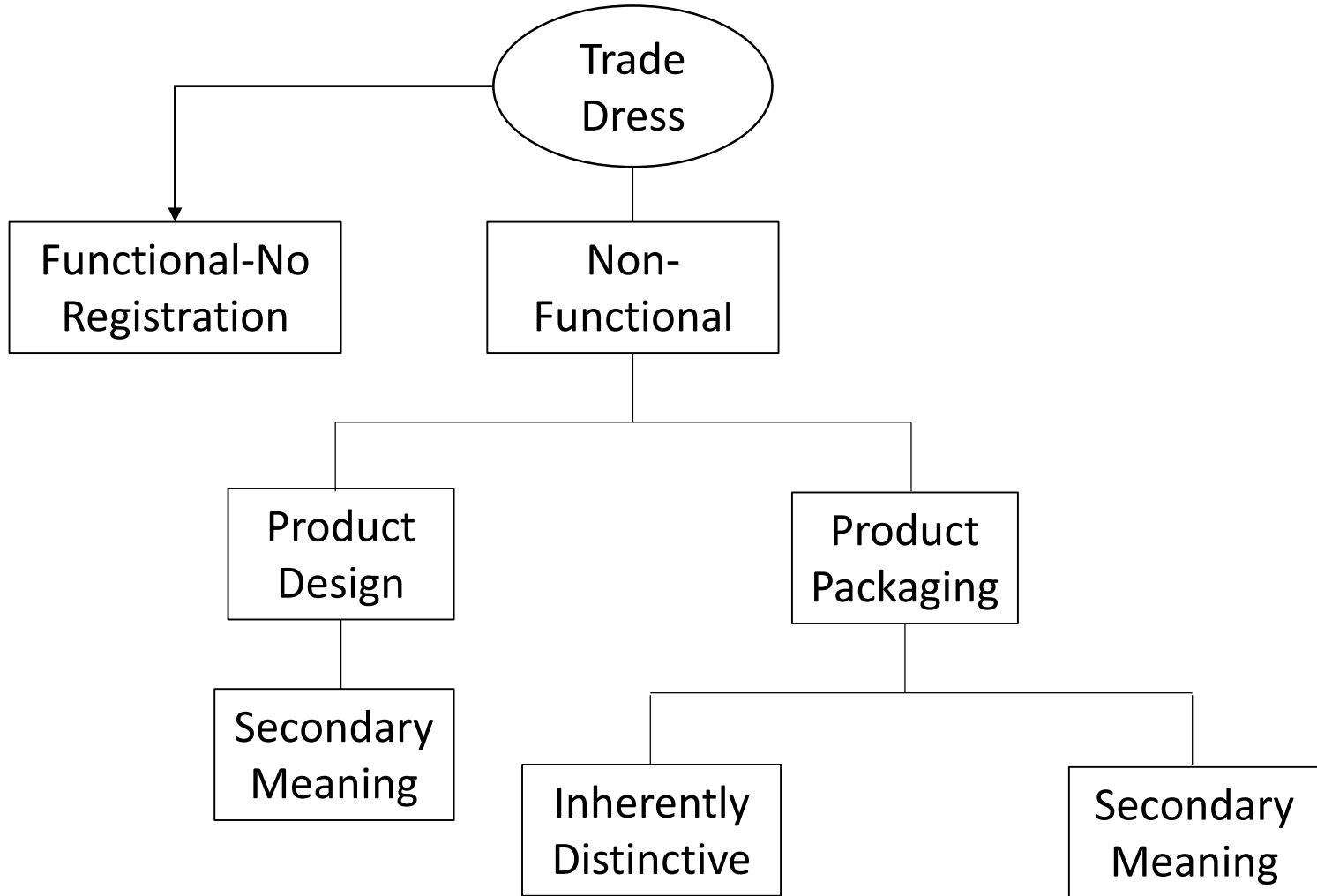
OWNER OF FRANCE REG. NO. 1-399-708, DATED 3-17-1987, EXPIRES 3-17-1997.

THE DRAWING IS LINED FOR THE COLOR LIGHT BLUE. THE SOLID WAVY LINES IN THE DRAWING ARE DARK BLUE. COLOR IS CLAIMED AS A FEATURE OF THE MARK.

SER. NO. 74-562,700, FILED 8-17-1994.

JEFFREY LOOK, EXAMINING ATTORNEY

SUMMARY



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*Intellectual Property and Beyond:
Expansion of Intellectual Property Rights in the
Fashion Industry?*

From French and European perspectives

Laurine JANIN-REYNAUD
Duclos, Thorne, Mollet-Viéville & Associés
Paris - France

Fashion Law Conference, February 8, 2019, New York City



French & EU TRADEMARKS

*A trade mark may consist of any SIGNS, in particular words, including personal names, or designs, letters, numerals, colors, the **shape of goods or of the packaging of goods**, or sounds, provided that such signs are capable of:*

*(a) **distinguishing** the goods or services of one undertaking from those of other undertakings; and*

*(b) **being represented on the register** in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.*

(art.4 of REGULATION (EU) 2017/1001

art.3 of DIRECTIVE (EU) 2015/2436)

3 KEY ISSUES

➤ REPRESENTATION OF THE SIGN

clear, precise, self-contained, easily accessible, intelligible, durable and objective

➤ DISTINCTIVENESS OF THE TRADEMARK

- the trademark can be inherently distinctive
- the trademark can acquire distinctiveness through use (secondary meaning)

➤ SHAPES EXCLUDED FROM TRADEMARK PROTECTION

- shapes resulting from the nature or function of the goods
- shapes giving substantial value to the goods

I. Representation of the sign

- Until recently, a GRAPHICAL representation was required
 - > in practice : quasi exclusion of scents TM or texture TM
- New Regulations have abolished graphical representation as a general requirement
 - > opens registration to less traditional signs (position marks, pattern marks, motion marks, multimedia marks, and hologram marks)
- *CURRENT CRITERIA OF REPRESENTATION*

The sign must be *represented in any appropriate form using generally available technology, and thus not necessarily by graphic means, as long as the representation is **clear, precise, self-contained, easily accessible, intelligible, durable and objective***

Louboutin red sole trademark



French TM of 2000 cancelled

- *the mark at issue cannot be defined by a 2D shape (flat figure), but by an arch, characterizing a 3D shape that only a perspective image is likely to render*

French Supreme Court, May 30, 2012



French TM of 2011 validated

- the representation unambiguously reveals a precisely defined color which covers all of the external sole of the shoe
- the shape is objectively, precisely and clearly identified and is also constant in its localization

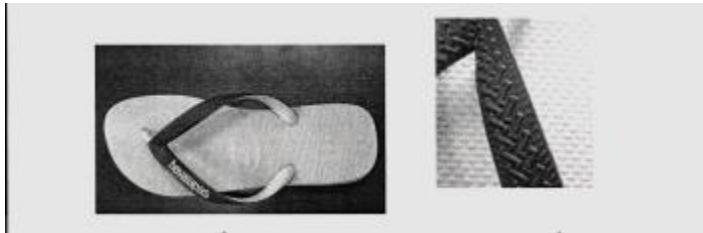
Paris Court of Appeals, May 15, 2018

II. a) Inherent **DISTINCTIVENESS**

Heart of a sign's **ability to function as a badge of origin**

And should therefore not only perform a decorative function

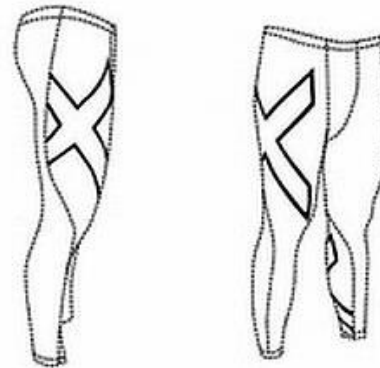
Havaianas EUTM



The pattern appearing on the strap of the flip-flop is sufficiently complex for the consumer to memorize it > **distinctive**

Paris Court of appeals, Dec 12, 2014

EUTM St Andrew's cross



It can be perceived by consumers as an ordinary cross or the letter X. The sign is a commonplace shape

> **not distinctive** EUIPO Sep. 17, 2014

II. a) Inherent DISTINCTIVENESS

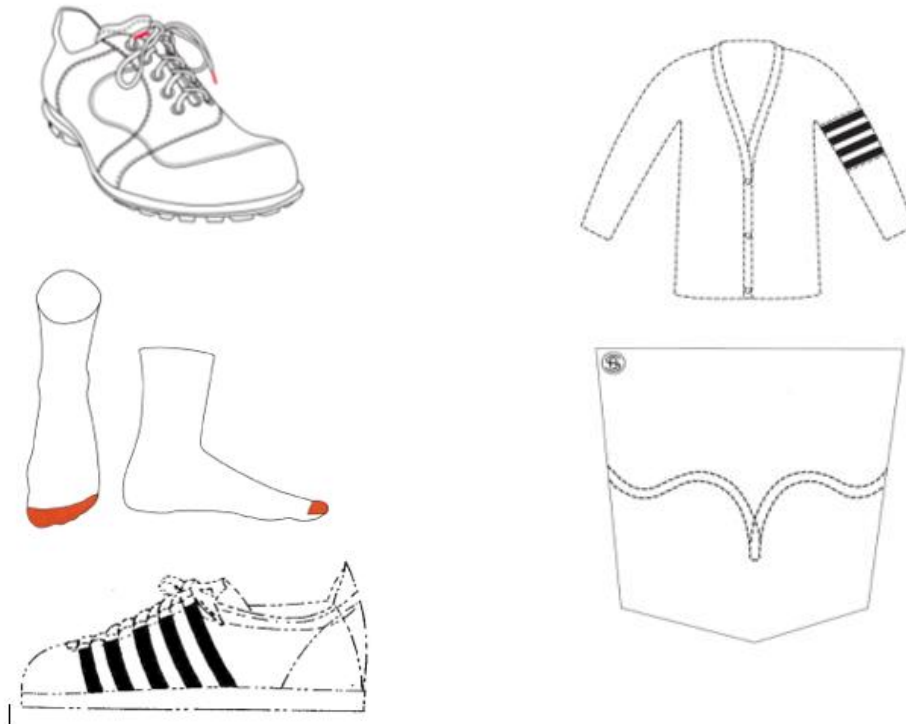
For **trademarks composed of the appearance of the goods:**

Specific case law criteria for assessing the distinctiveness

- Public perception of 3D TMs is relatively low given that 'average consumers are not in the habit of making assumptions about the origin of products on the basis of their shape'
- **Only a mark which departs significantly from the norm or practices of the industry and thereby fulfils its essential function of indicating origin, is not devoid of any distinctive character for the purposes of that provision**
CJEU, Henkel v OHIM, Apr. 29, 2004, C-456/01 and C-457/01

II. a) Inherent **DISTINCTIVENESS**

Examples of EUTMs which did not depart significantly from the norm or practices of the industry and were **refused** registration



II. a) Inherent **DISTINCTIVENESS**

2 handbags of the same company BOTTEGA VENETA



KNOT handbag: *the overall impression departs significantly from the usual shape of handbags*

> EUTM validated by the Paris Court of appeals (Jan 27, 2015)



VENETA handbag: *its shape does not depart significantly from the norm or practices of the industry*

> EUTM lacks distinctiveness

Trib. EU (Mar 22, 2013)

II. b) DISTINCTIVENESS

acquired through use

RELEVANT FACTORS :

- the market share held by the mark with regard to the relevant goods or services
- how intensive, geographically widespread and long-standing the use of the mark has been
- the amount invested by the undertaking in promoting the mark for the relevant goods or services
- the proportion of the relevant public who, because of the mark, identifies the goods or services as originating from a particular undertaking.

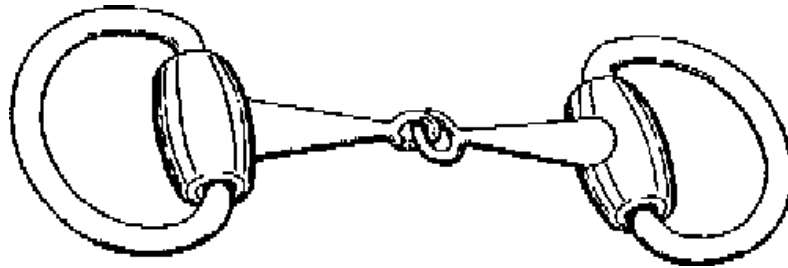
Dior's iconic cane motif



The intensive use of the EUTM since 1961 in connection with a dress, a ready-to-wear line and with other goods such as jewels or bags, allowed it to acquire an « *iconic value identifying the fashion company as a whole on the part of the public* » > [distinctive](#)

Paris Court of Appeals, Nov 12, 2010

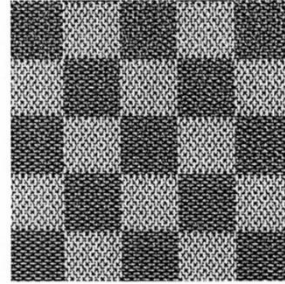
Gucci's traditional horse-bit



- Affixed for many years to the top of its moccasins
 - Very wide and durable use
 - the fact that in 2006 this « *bit grafted on the vamp [...] acclaimed from its launch [...] is reborn in color* »
 - Became an « *iconic image of the GUCCI company* »
- > [distinctive](#) French trademark

Paris Court of Appeals, Nov 25, 2014

Louis Vuitton's Damier pattern



- Unitary character of the EUTM
- necessary to establish the acquisition of distinctiveness through use in **the entire territory** in which the mark did not have distinctiveness **ab initio**
- The distinctiveness had not been acquired through use in at least 4 of the 15 Member States composing the EU at that time
- The EUTM **did not acquire distinctiveness through use** (the trademarks were finally registered after a settlement with withdrawal of the invalidity actions)

Trib. EU, Apr. 21, 2015, T359/12
Same ruling in KIT KAT case
CJEU, Jul. 25, 2018

III. Express Exclusions

The following shall not be registered:

e) signs which consist exclusively of:

- (i) the shape, or another characteristic, which results from the nature of the goods themselves;
- (ii) the shape, or another characteristic, of goods which is necessary to obtain a technical result;
- (iii) the shape, or another characteristic, which gives substantial value to the goods;

(art.7 of REGULATION (EU) 2017/1001

art.4 of DIRECTIVE (EU) 2015/2436)

III. a) Shapes which result from the nature of the goods



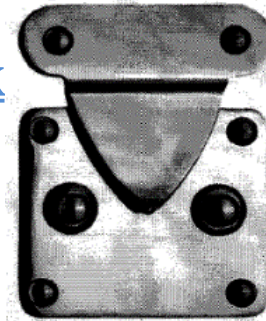
3D French TM [invalidated](#) because formed by a sole whose shape characteristics are essentially imposed by the features dictated by the nature of the product:

- a general shape matching that of the foot,
- sculptures in the form of pins, to avoid sliding,
- a higher relief at the heel,
- a border to ensure the strength of the whole.

Paris First instance Court, Apr. 10, 2015

III. b) Shapes of goods which are necessary to obtain a technical result

Not the case of Louis Vuitton clasp lock



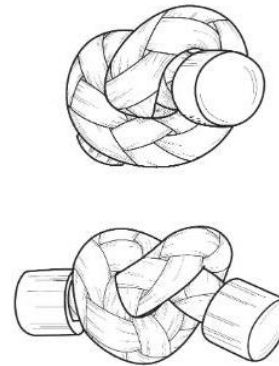
- **FRENCH TM** for bags, jewels and shoes:
the clasp is purely dummy and has no function, it is affixed only as a sign indicating the commercial origin of the product
- > the shape does not exclusively aim at obtaining a technical result
Paris Court of Appeals Jan. 17, 2014
- **EUTM** for bags, belts, shoes, boots, slippers:
 - the fact that a locking device is a '*functional product*' that serves to 'interlock' 2 elements is not in itself a '*technical result*'
 - the appearance of the external parts of such devices gives the designer a considerable margin of freedom & the shape also contains essential arbitrary elements
- > the shape does not exclusively aim at obtaining a technical result

EUIPO Nov. 14, 2018

III. b) Shapes of goods which are necessary to obtain a technical result

Not the case of Bottega Veneta knot clasp:

on the
KNOT bag



The mark does not intend to protect a closing technique:

- the knot merely plays the role of a pusher
- its decorative shape is purely arbitrary (thickness and constricted shape of the knot, presence of end pieces protruding from the body of the knot)

Paris Court of Appeals, Jan. 27, 2015

III. c) Shapes which give substantial value to the goods

ICE WATCH



An EUTM consisting of the shape of a watch along with the word 'ICE' was [cancelled](#) on the grounds that *'the shape of the product is to be regarded as the dominant element of the mark which gives substantial value to the product'* (since promotional campaigns put the stress on the design of the watch)

Paris First Instance Court, Mar. 31, 2016

III. c) Shapes which give substantial value to the goods

Not the case of the EUTM for the **Louboutin Red Sole**

Does the red sole give substantial value to the shoes on the basis that color forms part of the appearance of those shoes and plays an important role in a consumer's decision to purchase them?

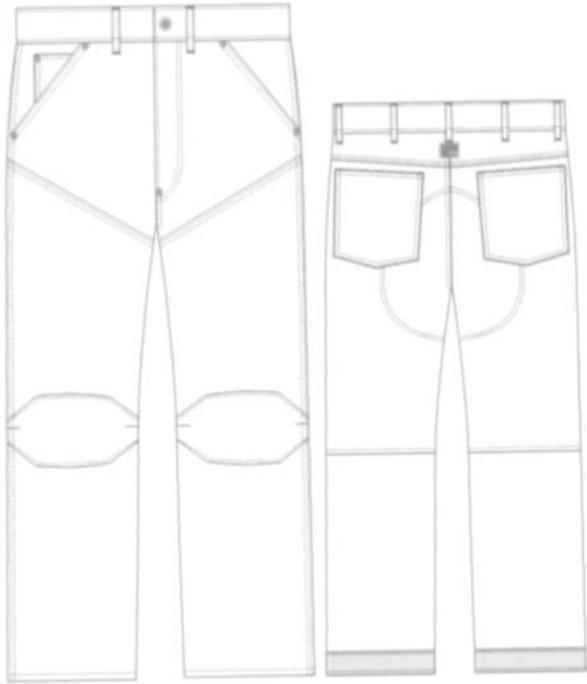


CJEU (June 12, 2018 C-163/16) & Paris Court of A. (May 15, 2018):

- the registration of the mark did not seek to protect that shape but solely sought to protect the application of a color to a specific part of that product.
- this sign cannot be regarded as consisting 'exclusively' of a shape, while the main element is a specific color designated by an internationally recognized identification code.

III. No possible claim of acquired distinctiveness for these trademarks

G-STAR famous jeans



The shape of a product which gives substantial value to that product cannot constitute a trade mark where, prior to the application for registration, it acquired attractiveness as a result of its recognition as a distinctive sign following advertising campaigns presenting the specific characteristics of the product in question.

CJEU C-371/06 Sept. 20, 2007

G-Star v. Benetton

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**THANK YOU FOR
YOUR ATTENTION**

dtmv
&associés

DUNNINGTON
BARTHOLOW & MILLER LLP

Olivera Medenica, *Partner*, **Dunnington Bartholow & Miller LLP**

Rita Odin, *Vice President and Senior Trademark Counsel*, **The Estee Lauder Companies, Inc.**

Panel II:

**Intellectual Property and Beyond:
Expansion of IP Rights
in the Fashion Industry**



FASHION INDUSTRY:
EVOLUTION OF TRADEMARK LAW?

DUNNINGTON
BARTHOLOW & MILLER LLP



Adidas-Salomon v. Target, 228 F. Supp. 2d 1192 (D. Oregon 2002)

Adidas claimed that various features of its sneakers (three stripes on the side of its shoe, “shell toe”, and back heel section) constituted product packaging and therefore did not require a showing of secondary meaning. If product design, however, Adidas further argued that its design was distinctive and served as a source identifier. Target sold similar shoes but with four stripes instead of three.

The court agreed with Target’s argument that Adidas’ design constituted “product design” and therefore required a showing of secondary meaning. The court, however, ultimately sided with Adidas because it found that Adidas had shown secondary meaning.

Adidas-America, Inc. v. Payless ShoeSource, Inc., 2008 WL 4279812 (D. Oregon 2008)

In this case, the court addressed Adidas' "Superstar" trade dress which consists of : 1) three parallel stripes (i.e., the Three—Stripe Mark) on the side of the shoe parallel to equidistant small holes; (2) a rubber 'shell toe'; (3) a particularly flat sole; and (4) a colored portion on the outer back heel that identifies the shoes as Adidas' brand.

Adidas argued that Payless was selling confusingly similar shoes.

Are they similar?

Adidas



Payless



Adidas



Payless



Adidas-America, Inc., Adidas AG and Adidas International Marketing B.V. v. Skechers USA, Inc., 3:15-cv-01741 (D. Oregon/9th Cir.)



image: adidas Stan Smith (left) & Skechers Onix (right)

Skechers Relaxed Fit Cross Court TR



adidas Ultra Boost with the Three-Stripe Mark



Adidas America, Inc. et al v. Athletic Propulsion Labs, LLC,
3:16-cv-00415-HZ (D. Oregon)



Adidas America, Inc. et al v. ECCO USA, Inc. et al,
3:16-cv-00684-SI (D. ORegon)



Adidas v. Marc Jacobs, 3:15-cv-00582 (D. Oregon)

Adidas sued Marc Jacobs for trademark infringement because Marc Jacobs used a four stripe motif running down the arms of some of its designs.

The case settled two months after it was filed.



Adidas (left) and Marc Jacobs (right)

Adidas America, Inc et al v. Juicy Couture, Inc., 3:17-CV-00437 (D. Oregon)



Juicy's striped garments

Adidas v. Forever 21, 3:15-cv-01559-SI (D. Oregon)

Adidas sued Forever 21 claiming the retailer infringed upon Adidas' three stripes trademark. The garments at issue were: sweatshirts bearing Teenage Mutant Ninja Turtles imagery with three stripes extending from the collar down the sleeves. Others feature Looney Tunes characters along with the three-stripe sleeve motif.

The case settled within 3 months of filing.



Forever 21's Teenage Mutant Ninja Turtles and Looney Tunes Sweatshirts

Forever 21 v. Adidas America Inc., 2:17-cv-01752 (C.D. Cal.)

After receiving several C&D letters from Adidas over the 3 stripes, Forever 21 filed a declaratory judgment action against Adidas.



Forever 21 garments that Adidas has threatened to sue over

Forever 21, Inc. v. Gucci America, Inc., et al., 2:17-cv-04706(C.D. Cal.)

After receiving several C&D letters from Gucci over the 3 stripes, Forever 21 filed a trademark cancellation action seeking to cancel Gucci's trademarks. The case settled.



Garments bearing Gucci's striped trademarks


FOREVER 21

SALE STARTING AT \$21
Free shipping on orders over \$50. [SEE DETAILS](#)

FOREVER 21 Women Plus Size Girls Men Beauty [Help](#) [Sign In Your Account](#) [Heart](#) [Cart](#)

[New Arrivals](#) [Ward List](#) [Dresses](#) [Tops](#) [Jackets](#) [Bottoms](#) [Intimates](#) [Activewear](#) [Swim](#) [Accessories](#) [Shoe](#)

Home / Sweaters / Cardigans / Tiger Embroidery Stripe Sweater



Tiger Embroidery Stripe Sweater
\$22.90

Color: Green/navy
Size: [Size Guide](#)
S M L

Qty: 1 [Add To Bag](#)
[Add To Wishlist](#)

Description

Details
A lightweight ribbed knit sweater featuring an embroidered tiger chest logo, a ruffled shoulder, long sleeves with a stripe pattern, striped trim, and a bony a

Content • Care
- 100% acrylic
- Hand wash cold
- Made in China

Size • Fit
- Model is 5'9" and wearing a Small
- Full length: 24.25"
- Chest: 42"
- Sleeve length: 23.25"


One of the allegedly infringing Forever 21 designs

SALE STARTING AT \$21
Free shipping on orders over \$50. [SEE DETAILS](#)

FOREVER 21 Women Plus Size Girls Men Beauty [Help](#) [Sign In Your Account](#) [Heart](#) [Cart](#) [United States](#)

[New Arrivals](#) [Ward List](#) [Dresses](#) [Tops](#) [Jackets](#) [Bottoms](#) [Intimates](#) [Activewear](#) [Swim](#) [Accessories](#) [Shoes](#) [Brands](#)

Home / Jackets / Floral Bomber Jacket



Floral Bomber Jacket
\$68.00

Color: Black
Size: [Size Guide](#)
S M L

Qty: 1 [Add To Bag](#)
[Add To Wishlist](#)

Description

*Available for shipment exclusively within the U.S.

Details
A knit bomber jacket featuring an all-over floral print, striped ribbed trim, a zip front, front zip p and long sleeves. This is an independent brand and not a Forever 21 branded item.

Content • Care
- 95% polyester, 5% spandex
- Hand wash cold
- Made in China

Size • Fit
- Model is 5'9" and wearing a Small
- Full length: 23"
- Chest: 41"
- Waist: 40"
- Sleeve length: 23.25"

One of the allegedly infringing Forever 21 designs

LVL XIII Brands, Inc. v. Louis Vuitton Malletier S.A.,
209 F. Supp.3d 612 (S.D.N.Y. 2016)

Plaintiff LVL XIII (pronounced “Level 13”) sued defendant Louis Vuitton for trademark infringement, claiming that Louis Vuitton had infringed upon Level 13’s trade dress by placing a metal toe plate on its sneakers. Level 13 relied upon a similar argument as Adidas - that its metal toe plate was distinctive product packaging that did not require a showing of secondary meaning. The court disagreed and found that it was instead product design trade dress because “the [claimed mark] serves a primarily aesthetic function: making [the plaintiff’s] sneakers appear more enticing.” LVL XIII was unable to show secondary meaning, and thus its trademark claim was unsuccessful.



LVL XIII sneaker (left) and Louis Vuitton's sneaker (right)

Steven Madden v. Jasmin Larian LLC (SDNY) “Ark Bag”

Counter- Plaintiff (Cult Gaia) sued Steven Madden for trademark infringement. At issue is the Cult Gaia “Ark” bag, a structured handbag made of interlocking rigid strips arranged in a half-moon shape.

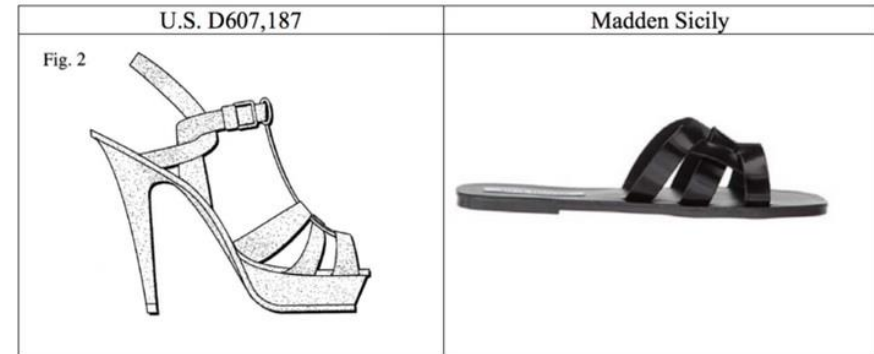


Madden's Shipper bag (left) & Cult Gaia's Ark bag (right)

Steven Madden v. Yves Saint Laurent, 1:18-cv-07592 (SDNY)

Madden filed a declaratory judgment against YSL seeking a declaration that it is not infringing YSL's Tribute shoe.

The case is pending.



YSL's Tribute flat (top) & Madden's Sicily flat (bottom)

Halston Operating Company LLC et al v. Calvin Klein, Inc. et al,
2:18-cv-08893-AB-JPR (C.D. Cal)

Halston alleges that Calvin Klein copied the 30 copyright in a dress, as well as its trade dress. According to Halston “it is apparent that the elements, materials, place, movement centering, composition, colors, arrangement overlay, appearance and structure of the [CK dresses] are substantially and confusingly similar, if not identical” to the original Halston dresses. “



Subject Garment A – BNC161870B



Infringing Garment A – CD8B14NM

The case was voluntarily dismissed.

THANK YOU!

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