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Tiffany and Co. Joins Louboutin in the Fashion Color War

November 3, 2011 by Catlan McCurdy

Another fashion icon has joined the ongoing trademark dispute between Yves Saint Laurent and Louboutin, and despite the fact that many of its goods are very small, the company is actually quite a giant. Tiffany and Company.

Yes, Tiffany. We've all been waiting for the company's two amicus cents to be thrown into the fight. I know I have. Since filing the amicus brief, Tiffany has been called a friend or ally of Louboutin, but I think their so-called "friendship" is secondary to Tiffany's primary concern of protecting its own little blue boxes. If, as it has been predicted, Judge Marrero's ruling in Christian Louboutin SA v. Yves Saint Laurent America Inc. eliminates trademark protection for color marks in fashion, Tiffany is going to have to worry about a lot more than alliances in the industry. What will Tiffany do with all of its free time if it doesn't have to go around suing e-Bay on the daily?

Needless to say, I was pleased to see some strong language in the amicus brief filed by Fross Zelnick Lehrman & Zissu, P.C. Sidenote, Fross Zelnick is the same firm that represented Louboutin before the USPTO in 2008 in securing the registration for the red-sole mark currently at issue. Coincidence? I think not.

The amicus brief stated that District Court's opinion in this case had adopted “a sweeping and unprecedented per se rule against granting trademark protection to any single color that is used on any “fashion item,” even where the color has achieved “secondary meaning” and is associated with a single brand. Amicus curiae respectfully submit that adoption of such a blanket rule was unnecessary to a resolution of the preliminary injunction motion below and should be rejected by this Court.” The brief goes on to state that neither the language of the Lanham Act nor legal precedent to support such a per se rule.

Do I agree with this brief? Absolutely. Color can achieve secondary meaning, even in fashion where color is arguably as important as cut, fabric, and styling. A bright line rule eliminating trademark protection for colors in the fashion industry alone is unnecessary and baseless. Decisions on issues such as the one at hand should be undertaken on a case-by-case basis.