



Client Alert

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Red Letter Case: Second Circuit Upholds Color as a Protectable Mark

Last week, the Second Circuit Court of Appeals confirmed that a single color may serve as a legally protected trademark. In *Christian Louboutin S.A. v. Yves Saint Laurent America Holding, Inc.*, Louboutin asked the court to forbid YSL from marketing a monochrome red shoe, asserting that the shoe infringed Louboutin's trademarked signature red lacquered outsole on a high fashion woman's shoe.

The court held that the red color mark had acquired limited "secondary meaning" as an identifying symbol of Louboutin's brand and was, therefore, entitled to protection. However, the court did limit the trademark protection to uses in which the red outsole contrasts with the color of the remainder of the shoe. As a result, the court said YSL could use a red outsole as part of a monochromatic red shoe.

This case opens the door for further enforcement of color marks in fashion and elsewhere. The decision, along with the recent \$1 billion jury verdict in the *Apple, Inc. v. Samsung Electronics Co. Ltd.* case, reinforce the importance of having a robust product design review process to protect against infringement claims.

Please contact any of the attorneys below if you would like to discuss how this case may affect your business or to discuss ways in which a product design review process can help minimize the risk of infringement claims.

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