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## Argentina: adidas' three-stripes go for more!

Gustavo Giay (Marval O'Farrell & Mairal) · Thursday, April 18th, 2019

On 26 September 2018, Division II of the Federal Court of Appeals of the City of Buenos Aires issued a decision in “*Re adidas AG v. Juan Carlos Chillemi SRL* seeking discontinuance of use and damages” (File No. 5423/2010) confirming the decision of the trial court.

adidas owns trademark registrations for the “three-stripes” design in numerous countries around the world, including Argentina. The three-stripes logo has been a company emblem since 1929, making the company instantly recognizable in the eyes of the consumer.

A well-known local player in the footwear industry started marketing four-stripe designs which closely resembled the iconic adidas logo, simply adding their registered trademark “STONE”.

adidas instituted court proceedings seeking that Chillemi be ordered to: stop using four stripes on its footwear, reimburse adidas for damages, publish the court decision and bear the litigations costs.

Both the trial court and later the Court of Appeals admitted the complaint. In its decision, the Court of Appeals declared that the use of TWO, THREE or FOUR stripes by Chillemi could lead to direct and indirect confusion for consumers. The Court also declared that, in addition to the stripes, Chillemi had almost completely imitated the adidas footwear. It disregarded the inclusion of the “STONE” trademark as a means of differentiating the products.

Regarding damages, the Court of Appeals ruled that Chillemi had to pay damages to adidas amounting to ARS 2 million (approximately USD 50,000), one of the highest awards granted by Argentine courts, and ordered that Chillemi publish the court decision.

The significance of this case lies mainly in the fact that it is the first time that an Argentine Court of Appeals has ruled on confusion between THREE stripes and TWO and FOUR stripes on the merits. Basically, the Court considered that there was *prima facie* evidence that the four-stripe design infringed the three-stripe trademark registration and ordered that Chillemi had to discontinue all four-stripe designs on its products.

This has set an interesting precedent for adidas to seek further limitations on the use of four- and two-stripe designs in sports and casual footwear.

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