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Brazil – Christian Louboutin victory protects red sole as “unregistered” design IP

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Like many companies in the fashion industry, Christian Louboutin did not seek design patent protection for its shoe designs in Brazil. The red sole trademark application was filed in 2009 in Brazil, at a time when position trademarks were not regulated by the Brazilian trademark law. The regulation of the Brazilian PTO on position trademarks only came into effect in October 1st, 2021, and Christian Louboutin’s trademark application is still pending.

The absence of registration of the red sole and designs of Christian Louboutin’s shoes in Brazil created an expectation on the part of local designers that the iconic French designer creations could be misappropriated. One such case where a Brazilian shoe company marketed online red sole shoes inspired by Christian Louboutin’s creations made it to the Appellate Court of Sao Paulo.

Without a trademark or design registration, Christian Louboutin filed a lawsuit based on unfair competition and copyright infringement against the local company, also arguing the notoriety of the red sole. In its defense, the Brazilian company argued that Christian Louboutin had no rights in Brazil and the apposition of its own trademark on the shoes would be enough to avoid any confusion on the part of the consumers.



After a favorable preliminary injunction decision by the Sao Paulo trial court, an interlocutory appeal was filed based on the absence of IP rights covering the red sole shoes.

On March 22, the Appellate Court of Sao Paulo sided with Christian Louboutin taking into consideration two main factors: the notoriety of the red sole and the trade-dress of Christian Louboutin.

Besides the trademark grounds, the Appellate Court decision was strongly grounded on the protection of Christian Louboutin’s uniqueness and trade-dress. The Appellate Court also reinforced that although the main distinctive signs used to identify products and services are the company name and the brand, it is known that their position in the market can also come from an

identity that is intrinsic to the products, composed of graphic-visual elements developed precisely for the purpose of distinguishing them from their competitors.

The judges concluded that in a specialized market such as fashion, there are traits employed by different designers in their works that, over time, become synonymous with the brand itself, such as fabric cuts, uses of styles and, in Christian Louboutin's case, the red soles of the shoes.

Another relevant aspect of the decision for the IP community is that this decision consolidates the case law on the infringement of trade-dress, in particular that there can be a finding of infringement even when not all the elements of the trade dress are used by the infringer.

By confirming the preliminary injunction granted by the trial judge on the grounds above, the Appellate Court of Sao Paulo protects creations in the fashion industry against misappropriation even without a design patent or a trademark registration.

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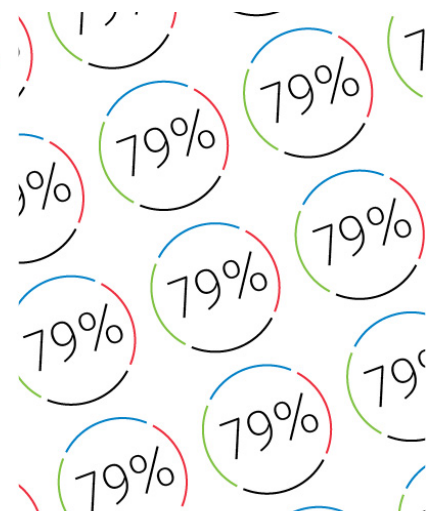
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