

LEGAL/PRIVACY

## Lessons learned from the Louboutin-YSL case

August 15, 2011



By RACHEL LAMB

A preliminary injunction was made last week in the Christian Louboutin-Yves Saint Laurent case claiming that the former did not exclusively own the rights for red shoe-soles. But what does this mean for Louboutin's trademark style?

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**Luxury Daily**

Earlier this year, the high-end footwear manufacturer brought the Italian fashion house to federal court in Manhattan, New York, claiming that Yves Saint Laurent stole Louboutin's trademark by including red soles on the shoes of its latest resort collection. Now that the motion was denied, any brand can make red-soled shoes, which has been the defining detail on a pair of Louboutins for many years.

"Assuming the decision holds, anyone can make red-soled shoes," said Mark Rosenberg, intellectual property attorney at [Sills Cummis & Gross PC](#), New York.

"What this basically means is that no brand can have a trademark on a single color, because it interferes with the functionality of other brands if that one palate is taken out," he said.

Seeing red

The shoes in question were from Yves Saint Laurent's 2011 resort collection. Louboutin

claimed that it was trademark infringement and wanted it barred from sales ([see story](#)).

However, the case that Yves Saint Laurent lawyers presented was that the shoes were made to match other items in the collection as well as evoke Chinese enamel.

The courts argued that no one fashion company can have exclusive rights on one color, because it removes that entire color from the palate for the rest of designers.

“With respect to fashion brands, when it’s just one color it’s very difficult to get a trademark when it relates to fashion,” Mr. Rosenberg said.

Now that red-soled shoes are free for business, any brand – luxury or not – can put this trademark on their designs to try to pass off as the notorious high-end brand.



*YSL's red-soled shoes*

Although affluent consumers will most likely notice the difference between a pair of Louboutins and a pair of shoes from a mid-level retailer, it may be hard to tell the difference between the footwear manufacturer and its high-end competitors such as, say, Yves Saint Laurent.

“In the grand scheme of things, nothing significant is going to happen to Louboutin,” Mr. Rosenberg said.

“Might some of the novelty wear off? Yes, but Louboutin is still going to be associated with very high-end shoes with red-lacquered soles,” he said.

Making a mark

Setting aside the blow to Louboutin’s marketing, this poses a question for all other luxury brands that thought they were safe by getting a color trademark.

However, most brands cannot argue that they have exclusive rights on one color, as it takes that color out of the creative process for other designers.

For instance, Tiffany & Co. has a trademark on a certain shade of robin's egg blue. The brand's pouches, boxes and bags are all decked out in the light blue.

What brands do have, however, is the trademark on a specific pattern or combination of colors.

One example is Burberry's check design.

The British brand has been tied to this pattern as it adorns its ties, scarves, hats and the linings of its famous trench coats, rain boots and other apparel and accessories.



*Burberry's signature checked design*

“No fashion house can just say that they claim plaid as their trademark, because it can't be that vague,” Mr. Rosenberg said. “It has to be a specific kind of plaid in terms of color and design, which is why they can get a trademark on it.

“However, this case [Louboutin and Yves Saint Laurent] brings up a good lesson,” he said. “Luxury brands that believe that they have exclusive rights in a single color need to reconsider that viewpoint strongly.”

Final Take

*Rachel Lamb, associate reporter on Luxury Daily, New York*

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