

## **Adidas claims dominion over the stripe**

*Doreen Carvajal*

Adidas claimed dominion over the stripe Thursday after the European high court rebuffed a bid by top international clothing manufacturers to employ emblems similar to the distinctive three-stripe logo of the German sporting goods maker.

The European Court of Justice dismissed one of the critical arguments made by C&A, H&M and other companies, which have waged a legal battle over the past 10 years in an effort to use two stripes on their own sportswear.

They have argued that the stripe is common enough that no one should own it.

The requirement that patterns should be available to all retailers "cannot constitute a relevant factor" in establishing whether their use of stripes infringes Adidas's trademark, the court said.

The court said it would leave it up to the national courts to determine "whether the average consumer may be mistaken as to the origin of sports and leisure garments featuring stripe motifs in the same places and with the same characteristics as the stripes motif of Adidas."

Adidas, which has vigorously pursued lawsuits against sportswear manufacturers in the United States, Germany, Italy and France over the issue, reveled in the victory.

"We do not seek to prevent the use of decoration but the use of striped markings that confuse consumers, or cause them to make a link with our company and its famous trademark," said Anne Putz, a spokeswoman for Adidas.

At the same time, the court ruling has stirred anxiety in the clothing industry, where national decisions can have a practical impact on clothes manufactured and sold around the world.

"The danger exists that other commonly used motifs will be monopolized by trademark holders," said Daan de Lange, a Dutch lawyer representing Marca Mode, a subsidiary of C&A. Both companies are based in the Netherlands.

De Lange noted that, in practice, such rulings had an impact on the buying patterns of C&A because it selected its inventory for a broad international market.

He noted that manufacturers in many countries outside the Netherlands continued to make clothing with two stripes. For instance, Fred Perry, the British tenniswear maker, has emblazoned its clothing line and corporate Web site with two stripes.

Michael Hart, a lawyer with Baker & McKenzie in Britain who has been advising Fred Perry and other clothing manufacturers, said the ruling ultimately could affect the basic choices of clothing companies.

"The seriousness of this issue is that with a ruling like that there may be companies that put a stripe or two stripes and get a warning letter from Adidas and don't have the resources or will to get involved in a legal battle," Hart said.

The Netherlands has become an outpost for legal battles waged by multinational companies because the nation's judges are considered friendlier to trademark holders than courts in Britain, according to trademark experts.

Long before Adidas established its trademark, the stripe had a long and sometimes inglorious history dating as far back as the 12th century, when stripes were the preserve of hangmen, prostitutes and treacherous knights.

Ursula Hudson, director of the Fashion Business Resource Studio at the London College of Fashion, said that the stripe is a concept that should not be stifled by trademark law.

"Nobody owns stripes," she said. "It's part of the designer tool kit and stripes and sport have been associated since time immemorial."

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