

Pepkor loses appeal case on adidas trademark

The Supreme Court of Appeal has interdicted Pepkor from infringing the well-known adidas three-stripe trademark. In addition, Pepkor was instructed to remove the infringing trademarks from its footwear and, where the infringing marks could not be removed from the footwear, to deliver up the infringing footwear to adidas. The Court also directed that an enquiry be held for purposes of determining the amount of damages suffered because of the infringement.

The evidence showed that the world famous adidas three-stripe trademark was designed and developed by athlete and shoemaker Adi Dassler, for athletes competing at the Olympic Games. Through the years, many prominent athletes have been associated with the adidas trademark, making it highly recognised and extremely popular. Many soccer players most notably wear it during high-profile events such as the FIFA World Cup and European Soccer Championships.

Pepkor chose to offer for sale footwear, which also featured stripes; more particularly four parallel stripes, which bore a striking resemblance to the adidas three-stripe trademark. After a demand by adidas, Pepkor refused to stop selling its sporting footwear bearing the stripes. Adidas had registered its trademark years before and had relied on these registered rights to institute legal proceedings against Pepkor.

"Not intended to be used as a trademark"

Pepkor defended its use of the stripes by explaining that the use of stripes was decorative or for embellishment and not intended to be used as a trademark. It was accepted by the Court that manufacturers of sportswear apply a variety of stripes to their footwear. However, should the usage of stripes be such that members of the public would be deceived and/or confused into believing that there is a link between the product bearing stripes and adidas, same would constitute trademark infringement.

Pepkor also defended its use of the stripes by arguing that the adidas trademark was so famous that there was no likelihood that consumers would be deceived and/or confused to the effect that footwear bearing stripes was associated with or linked to the adidas footwear. The Court did not accept this argument.

Conclusion

The conclusion reached was that a greater reputation in a trademark is likely to result in consumers believing that a competing product bearing a similar trademark comes from the same source. The confusion by members of the public that products bearing a similar mark to a registered trademark are products of the trademark proprietor's need only be fleeting, for there to be trademark infringement.

had been infringed; it also proved that consumers would believe that the Pepkor footwear bearing four stripes was adidas footwear or connected to the brand.

"Adidas' success in protecting its intellectual property is confirmation that these rights are well protected in terms of legislation in South Africa. This is vital for all traders who need assurance that the investment in their trademarks will be protected when these rights are impinged on."

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