

World Trademark Review Daily

Four-striped shoes infringe three-stripe mark despite different trade name
Israel - Gilat, Bareket & Co, Reinhold Cohn Group

Confusion
Passing off

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In *adidas Salomon AG v Ghantos Shoes Company Ltd* (CC (TA) 2326-07, January 18 2011), the Tel Aviv District Court has held that the defendants' four-striped shoes infringed *adidas Salomon AG's* three-stripe mark, and that the word 'Orbit' on the defendants' shoes did not eliminate the risk of confusion, as it could also designate the name of a shoe model by adidas.

adidas brought suit against an importer of four-striped sports shoes bearing the word 'Orbit'. The judgment was handed down in the absence of the defendants, which failed to submit evidence. adidas' witness testified that adidas made use of different names for its various models of shoes, and that the word 'Orbit' may be understood by consumers as one of adidas' models. The witness also stated that the indication inside the defendants' shoes that they were imported from China did not eliminate the risk of confusion, because adidas' shoes are imported by several companies, including authorised factories in China.

The court cited the Supreme Court's ruling in *When the Shoe Fits Ltd v adidas Salomon AG* (LCA 3581/05 [2005]), in which, in a motion for interim relief, the Supreme Court had found that there was *prima facie* confusion between four-striped shoes and adidas' three-stripe mark. The court also cited the Supreme Court's ruling in *Piquanti Food Industries (Israel) Ltd v Osem Food Industries Ltd* (LCA 1400/97 [1997]), in which it was held that, in an infringement action, the manner in which the defendants' mark appears on the goods must be taken into account.

The court held that the defendants, despite using four stripes instead of three, had infringed adidas' three-stripe mark, as the defendants' use of a similar mark on similar products was liable to cause confusion. The overall appearance of the defendants' shoes and mark was also found to constitute passing off.

The court thus issued a permanent injunction, made an order for accounts and, given the defendants' repeated infringement of adidas' rights, awarded statutory damages in the amount of IS100,000. Costs of IS25,000 were also imposed on the defendants.

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