

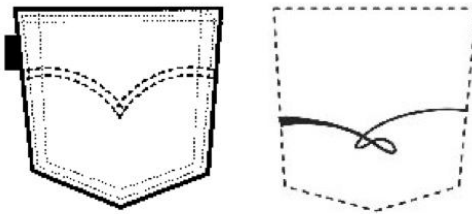
A Winthrop & Weinstine blog dedicated to bridging the gap between legal & marketing types.

[Levi Pockets a Favorable Court of Appeals Decision](#)

Posted on February 9, 2011 by [Susan Perera](#)

Dusting off the archives, you may remember a 2009 [blog post by Tiffany](#) about a trademark infringement lawsuit initiated by Levi Strauss against Abercrombie & Fitch over the back pocket design on the respective parties' jeans.

In that case the jury determined that the pocket designs, shown below, were not confusingly similar; thus, no trademark infringement.



Making news once again, yesterday the 9th Circuit Court of Appeals overturned the lower court's verdict, holding the incorrect standard was applied (the test is not if the designs are identical or near identical, rather the test should have been whether Abercrombie's design blurred the distinctiveness of Levi's design.) So look for a new trial on this matter soon.

Levi is apparently no stranger to the court room, with [sources](#) reporting it has filed over 100 suits since 2001, many over the same back pocket design, against such parties as Espirit, Fossil, Guess, Jordache, Jelessy Jeans, Lucky, Polo, Silver, and Von Dutch. With [some implying](#) that Levi may have an axe to grind with these designer brands that are outcompeting Levi in the market.

So how timely is this story in the current trademark bullying landscape. Is this vigilant trademark enforcement, or trademark bullying? Maybe the line is as easy to blur as Levi's design.

