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[False Start? Riedell v. Adidas](#)

Posted on March 11, 2011 by [Steve Baird](#)



Last month there was [some press](#) about a pair of trademark infringement lawsuits between Adidas (sorry [marketing types](#), I just can't do the lower case letter "a" in "adidas") and Riedell over the number of stripes appearing on their sports footwear products.

You may recall, while we're on the subject of stripes, that I previously have written: "Adidas appears to have gained a one stripe buffer on either side of its powerful three stripe iconic symbol" in [Counting By Numbers, or Stripes? A Likelihood of Confusion Tale](#).

Even more interesting to me than the number of stripes at issue in the current pair of trademark lawsuits between Riedell and Adidas, however, is the all-to-common [fight about where the fight will go forward](#). Yes, this is another edition of [declaratory judgment actions](#).

Here is an interesting timeline worth noting in the Adidas/Riedell trademark dispute:



- On January 25, 2011, Adidas sent a cease and desist letter to Riedell, [here](#), alleging trademark infringement of the 3 stripe design mark, noting: "If we do not receive a satisfactory response within ten (10) days of your receipt of this letter, we will take appropriate action to protect the rights of adidas."
- On February 1, 2011, before the expiration of the 10 day period, Riedell filed a declaratory judgment action in Minnesota federal district court, [here](#), with Exhibits A, B, and C, [here](#), [here](#), and [here](#), asking the Court to declare it has done nothing wrong in selling roller skates having two stripes, as shown above.
- On February 3, Adidas, following-through on its promise to take appropriate action barring a satisfactory response, filed a trademark infringement lawsuit against Riedell, [here](#), in Portland federal district court ("home court" for German-based Adidas in the United States).
- On February 8, 2011, Adidas filed a motion, [here](#), in Minnesota federal district court to dismiss or transfer Riedell's Minnesota lawsuit to federal court in Portland, Oregon.

From court filings, it appears now that all the briefs have been submitted on the issue of whether Riedell's first-filed Minnesota case should be dismissed as "an anticipatory lawsuit" or transferred to and consolidated with Adidas' second-filed Portland case.

A general rule of thumb in these kinds of [turf battles](#) -- where the recipient of a cease and desist letter wants to pick the forum for the fight and beat the trademark owner to the courtroom -- is to wait to bring a declaratory judgment lawsuit until after expiration of the period for response set forth in the demand letter.

Let's just say, when the recipient of a cease and desist letter jumps the gun, as it appears was the case here, it is difficult to overcome the appearance of the anticipatory and improper nature of the first filed action.

My money, were I a betting type, is on the second-filed case going forward in Portland.

What do you think? Where should the fight be fought?

