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Louboutin in Danger of Losing the Red-Soled Trademark

August 25, 2011 by [Catlan McCurdy](#)



In April of this year, shoe designer, Christian Louboutin, turned heads in the fashion and trademark crowds when the brand sued Yves Saint Laurent (YSL) for infringing Louboutin's signature look: red-soled shoes. Duets covered it [here](#). Both interested lawyers and fashion aficionados have been awaiting some form of decision, and our wishes were granted a couple weeks ago when [Judge Victor Marrero denied Louboutin's request for a preliminary injunction](#) that would have prevented YSL from selling the red-soled shoes in its Cruise 2011 collection. Shipgoers everywhere sighed in relief. Judge Marreo not only denied the preliminary injunction, but additionally indicated that Louboutin would be unsuccessful if they continued in their suit against YSL and ordered Louboutin to show why the action should not be converted into a partial summary judgment.

I was surprised at the decision. Louboutin's red-soles seem as iconic as [Tiffany's blue boxes](#) and [the Gucci stripe](#). But after reading the decision, Judge Marreo demonstrates that Louboutin may have shot themselves in their own elegantly-shod foot.



A color can be a trademark if it [acts as symbol that distinguishes a firm's goods and identifies their source, without serving any other significant function](#). Louboutin stated that he chose the color red for the soles of his shoes to create a shoe that would be more “engaging” and “sexy,” because red “attracts men to the women who wear my shoes.” Well, red also attracts the attention of bulls and hummingbirds. And district court judges.

Judge Marreo used Louboutin’s own reasoning for picking the color red as evidence of the color’s functionality when he stated that, “the outsole of a shoe is, almost literally, a pedestrian thing. Yet, coated in a bright and unexpected color, the outsole becomes decorative, an object of beauty. To attract, to reference, to stand out, to blend in, to beautify, to endow with sex appeal – all comprise nontrademark functions of color in fashion....Because in the fashion industry color serves ornamental and aesthetic functions vital to robust competition, the Court finds that Louboutin is unlikely to be able to prove its red outsole brand is entitled to trademark protection, even if it has gained enough public recognition in the market to have acquired secondary meaning.”

This decision has sounded something akin to yelling fire in a movie theater within the fashion industry. [Vogue UK](#) is hypothesizing that other color marks in fashion could be in peril now. Louboutin has promised that they will appeal this decision and the legal team is using the additional time granted by Judge Marreo to seek evidence on how the fashion industry operates, how designers select colors and whether Louboutin’s trademark would be a “hindrance to competition,” as indicated by Judge Marreo in his ruling. YSL has stated that seeking additional evidence is time-consuming and useless, but seeing as how Louboutin’s trademark is in danger of being cancelled, their efforts are completely understandable.

Predictions? Thoughts? Looking forward to seeing red-soled shoes at discount stores soon?

