

ALERT

SUMMARY JUDGMENT DENIED ON CLAIMS OF NONINFRINGEMENT OF CHECKERBOARD PATTERN ON SHOES

California Board Sports v. Vans Inc.

(2007 U.S. Dist. LEXIS 82225, ___ F.Supp.3d ___ (Southern District of California November 6, 2007))



California Board Sports (CBS) and Vans are competitors in the field of casual shoes, accessories and apparel. Vans is the owner of a trademark registration for a slip-on shoe with a black and white checkerboard pattern over the entire front, tongue and heel of the shoe (Vans' "Classic Slip-On"). CBS filed a complaint for declaratory relief arguing that the checkerboard pattern was generic and that its use of the pattern was a fair use. The District Court denied plaintiff's motion for summary judgment, finding that the checkerboard pattern was not generic. Unlike the grape leaves in *Kendall-Jackson Winery v. E&J Gallo*, 150 F.3d 1042, 1047 (9th Cir. 1998) which answered the

question "What are you?" when placed on a bottle containing wine, CBS failed to establish that their checkerboard pattern served the same "What are you?" function in connection with shoes.

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