

Press and Information Division

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Judgment of the Court of Justice in Case C-408/01

Adidas-Salomon AG and Others v Fitnessworld Trading Ltd

**THE PROPRIETOR OF A TRADE MARK WITH A REPUTATION CANNOT
PREVENT THE USE OF A SIMILAR SIGN VIEWED PURELY AS A DECORATIVE
MOTIF**

By contrast, there can be an infringement to the mark with a reputation when the degree of similarity between that mark and the sign has the effect that the public establishes a link between the sign and the mark without necessarily confusing them

Adidas is the proprietor of a trade mark, registered in the Benelux, formed by a motif consisting of three vertical stripes running parallel which appear on sports clothing. Fitnessworld markets certain sports clothing bearing a motif similar to Adidas', but composed of two vertical stripes, not three.

Adidas brought an action against Fitnessworld before the Netherlands courts, claiming a likelihood of confusion between the two motifs on the part of the public. Fitnessworld thus takes advantage of the repute of the Adidas mark and impairs the exclusivity of that mark. Fitnessworld believes that the motif is viewed purely as an embellishment by the relevant section of the public and there cannot, therefore, be an infringement of the mark.

The Hoge Raad der Nederlanden (Supreme Court of the Netherlands), before which the case finally came, referred several questions to the Court of Justice of the European Communities for a preliminary ruling on the interpretation of the Community directive on trade marks.¹

The Court has found that it is **not necessary** for there to exist a **likelihood of confusion** between the sign and the mark with a reputation in order to claim infringement of that mark. **It is sufficient if the relevant section of the public establishes a link** between the sign and the mark

¹ Council Directive 89/104/EEC of 21 December 1988 approximating the laws of the Member States relating to trade marks

even though it does not confuse them.

However, the Court has specified that where, according to a finding of fact by the national court, the relevant section of the public views the sign purely as an embellishment, it does not necessarily establish any link with the mark with a reputation. It follows that the proprietor of the mark with a reputation cannot prevent the use of that embellishment by a third party.

Unofficial document for media use which is not binding on the Court of Justice.

Languages available: DE, EN, FR, NL

*The full text of the judgment can be found on the internet page (www.curia.eu.int)
In principle it can be consulted from midday CET on the day of delivery.*

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