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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

12 June 2018 (*)

(Reference for a preliminary ruling — Trade marks — Absolute grounds for refusal or invalidity — Sign consisting exclusively of the shape of the product — Concept of ‘shape’ — Colour — Position on a part of the product — Directive 2008/95/EC — Article 2 — Article 3(1)(e)(iii))

In Case C-163/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Den Haag (District Court, The Hague, Netherlands), made by decision of 9 March 2016, received at the Court on 21 March 2016, in the proceedings

Christian Louboutin,

Christian Louboutin SAS

v

Van Haren Schoenen BV,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, L. Bay Larsen, T. von Danwitz, J.L. da Cruz Vilaça, C.G. Fernlund and C. Vajda, Presidents of Chambers, E. Juhász (Rapporteur), J.-C. Bonichot, A. Arabadjiev, C. Toader, S. Rodin, F. Biltgen, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: M. Szpunar,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 6 April 2017,

after considering the observations submitted on behalf of:

- Mr Louboutin, by T. van Innis, avocat,
- Christian Louboutin SAS, by J. Hofhuis, advocaat,
- Van Haren Schoenen BV, by W.J.G. Maas, M.R. Rijks, E.T. Bergsma and M. van Gerwen, advocaten,
- the German Government, by T. Henze, M. Hellmann and J. Techert, acting as Agents,
- the French Government, by D. Segoin, acting as Agent,
- the Hungarian Government, by M.Z. Fehér, G. Koós and E.E. Sebestyén, acting as Agents,
- the Portuguese Government, by L. Inez Fernandes, M. Figueiredo and T. Rendas, acting as Agents,
- the Finnish Government, by J. Heliskoski, acting as Agent,
- the United Kingdom Government, by N. Saunders, Z. Lavery and D. Robertson, acting as Agents,
- the European Commission, by J. Samnadda, T. Scharf and F. Wilman, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 June 2017,

having regard to the order of 12 October 2017 reopening the oral part of the procedure and further to the hearing on 14 November 2017,

after hearing the additional Opinion of the Advocate General at the sitting on 6 February 2018,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3(1)(e)(iii) of Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks (OJ 2008 L 299, p. 25).

2 The request has been made in the course of infringement proceedings between, on the one hand, Mr Christian Louboutin and Christian Louboutin SAS (together, ‘Louboutin’) and, on the other, Van Haren Schoenen BV (‘Van Haren’) concerning the sale, by Van Haren, of shoes which allegedly infringe the trade mark owned by Mr Louboutin.

Legal context

EU law

3 Article 2 of Directive 2008/95, entitled ‘Signs of which a trade mark may consist’, provides:

‘A trade mark may consist of any signs capable of being represented graphically, particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging,

provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings.’

4 Article 3 of that directive, entitled ‘Grounds for refusal or invalidity’, provides:

‘1. The following shall not be registered or, if registered, shall be liable to be declared invalid:

...

(e) signs which consist exclusively of:

(i) the shape which results from the nature of the goods themselves;

(ii) the shape of goods which is necessary to obtain a technical result;

(iii) the shape which gives substantial value to the goods;

...’

Benelux Convention on Intellectual Property (Trade Marks and Designs)

5 Article 2.1, entitled ‘Signs that may constitute a Benelux trade mark’, of the Benelux Convention on Intellectual Property (Trade Marks and Designs), signed in The Hague on 25 February 2005 by the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, states:

‘1. The names, drawings, imprints, stamps, letters, numerals, shapes of goods or packaging and all other signs that can be represented graphically and that serve to distinguish the goods or services of an undertaking shall be considered as being individual trade marks.

2. However, signs consisting solely of a shape which results from the nature of the goods, which gives a substantial value to the goods or which is necessary to obtain a technical result, cannot be considered as being trade marks.

...’

The dispute in the main proceedings and the question referred for a preliminary ruling

6 Christian Louboutin designs and produces shoes.

7 On 28 December 2009, Mr Louboutin filed an application for registration of a Benelux trade mark with the Benelux Office for Intellectual Property, leading to the registration, on 6 January 2010, under number 0874489, of a trade mark for goods in Class 25 of the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of 15 June 1957, as revised and amended, and corresponding to the following description: ‘Footwear (other than orthopaedic footwear)’ (‘the mark at issue’).

8 That mark is reproduced below:
