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## **Landmark trademark infringement awarded to Adidas**

By Michael M. Ratoza

On May 5, 2008, after nearly four weeks of trial and two days of deliberation, a Portland jury awarded Adidas America and its parent, Adidas AG, \$305 million in damages in a trademark action against Payless ShoeSource. The verdict is thought by legal pundits to be the largest trademark award in U.S. history, consisting of \$30.6 million in actual damages, \$137 million in disgorged profits and \$137 million in punitive damages.

The trademark dispute involved the Adidas three-stripe logo and the Superstar shoe trade dress (the overall look of an item). Payless contended that it did not violate Adidas trade dress because they manufactured shoes with two and four stripes, rather than Adidas well-known three stripes. Adidas claimed willful intent based on the use by Payless of Adidas shoes as samples with Payless designers, Asian manufacturers and lawyers.

On May 12, 2008, Payless filed motions asking the court to either set aside the verdict and enter judgment in Payless' favor or to order a new trial. In the alternative, Payless asked the court to either vacate or reduce the jury's award substantially, calling it "unsupportable, unwarranted, and excessive as a matter of law and equity." If Payless' motions are not granted, Payless intends to appeal to the United States Court of Appeals, which could delay entry of judgment for several years.

In the meantime, footwear and fashion industry businesses are left to ponder what this all means for them. Despite the fact that the Adidas claims were based solely on its three-stripe trademark and one shoe style's trade dress, one has to wonder if the jury didn't take into consideration the numerous non-patented design features of the Adidas shoes that served as the "inspiration" for Payless shoes. Footwear, textile and clothing companies might want to think twice before producing their next line since, if the product contains parallel stripes, Adidas might just come after them. And Adidas is not the only one - K-SWISS has also sued Payless for infringement of its five stripe mark.

The best way to avoid the sort of verdict rendered against Payless is to hire intellectual property counsel who can provide competent advice based on a full assessment of the most current law available.