

A red-letter day for Christian Louboutin in the Court of Justice

14/06/2018 (EU/Competition)

The Grand Chamber of the Court of Justice gave judgment yesterday in Case C-163/16 Louboutin v Van Haren.

This case followed a very unusual procedure before the Court of Justice – a first hearing was held in April 2017 following which an Advocate General’s opinion was produced. Before giving judgment the court decided to refer the case to the Grand Chamber for a further hearing in November. At that further hearing the French and UK Governments intervened for the first time and made submissions in relation to Advocate General’s opinion. The Advocate General then issued a second opinion in which he maintained his earlier opinion notwithstanding the arguments made at the second hearing.

The background to the case is that the well-known cordwainer Christian Louboutin makes a range of ladies shoes. In 2009 he filed a Benelux trade mark application for the colour red applied to the sole of a high heeled shoe. A few years later shoes with red soles were sold by a competitor Van Haren in its retail outlets in the Netherlands. Louboutin commenced trade mark infringement proceedings before the Dutch courts and in its defence Van Haren argued that the trade mark registration was invalid.

The Dutch court referred a question to the Court of Justice asking whether the exclusions in the trade marks directive relating to shapes were applicable to Louboutin’s trade mark registration for the colour applied to the sole of a shoe.

In its judgment the Grand Chamber followed the submissions of the intervening Member States that the trade mark was for a colour applied to a position on the shoe (the sole) and thus that the shape exclusions in the Directive were inapplicable.

This challenge to Louboutin’s trade mark therefore fails as a matter of law.

The judgment is [here](#).

Nicholas Saunders QC appeared for the United Kingdom instructed by the Cabinet Office.

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