

Louboutin has argued that the sight of a red sole on a high-heeled shoe is instantly associated with the brand.
CREDIT: INNA CHURIKOVA/SHUTTERSTOCK.COM



Louboutin gets green light to protect its red sole

When shoe designer Christian Louboutin grabbed his assistant's red nail polish and used it to add a splash of colour to the sketch of a high-heeled pump he had in front of him, even he could not have predicted that 25 years later his shoes would be a favourite of celebrities, social media 'stars' and even the First Lady of the United States. The instantly recognisable red sole which resulted from this flash of inspiration helped his eponymous brand grow from a single small shop in Paris to a successful global empire, and made Mr Louboutin into a household name.

As is frequently the case when a company hits on a successful idea, regardless of the industry, there has been no shortage of attempts to imitate the Louboutin red sole, not as a homage but in an effort to profit from its reputation. The brand's reaction to such attempts is always forceful and it has brought court cases against a number of rival groups for what it deems to be deliberate infringements of its intellectual

A recent ruling by the European Court of Justice (ECJ) looks set to allow high-end footwear brand Christian Louboutin to continue to protect the distinctive red sole with which it has become synonymous.

property rights. They typically end with a ruling in Louboutin's favour and a rebuke for the offending brand.

End in sight

One of the longest-running disputes Louboutin has been involved in, with Dutch company Van Haren, seems to be close to a conclusion following a ruling by the European Court of

Justice (ECJ). It launched the case against Van Haren in 2012 in order to stop it selling a red-soled shoe, citing the European trademark it registered in 2010 for the colour red, more specifically Pantone 18-1663 TPX or 'Chinese Red', applied to the sole of a shoe. It trademarked the use of this colour specifically on the sole of a high-heeled shoe in 2013.

An initial judgement from a Dutch court in 2013 ruled that Van Haren must stop manufacturing blue and black high-heeled shoes with red soles. The case has since been through a number of appeals and counter-appeals in both national and European courts. The crux of the Dutch brand's defence is that Louboutin's trademark is invalid as European Union law does not allow trademarks that consist solely of "the shape that gives substantial value to the goods". Essentially, this prevents companies from claiming rights to a common shape.

The case eventually reached the ECJ, the supreme court of the European Union. In February 2018, ECJ advocate general Maciej Szpunar delivered his remarks on the case. He said the combination of a colour and a shape could be refused trademark protection, meaning Louboutin's trademark regarding the specific shade of red used on its soles might be invalid.

Mr Szpunar's conclusion was based on his belief that 'shape' does include colour and so the red colour could not be considered apart from the shape of the sole. As mentioned, shapes are not usually eligible for protection under EU trademark law. He also said any decision on the trademark's validity should not take into account the "attractiveness of the goods flowing from the reputation of the mark or its proprietor".


Relief for Louboutin

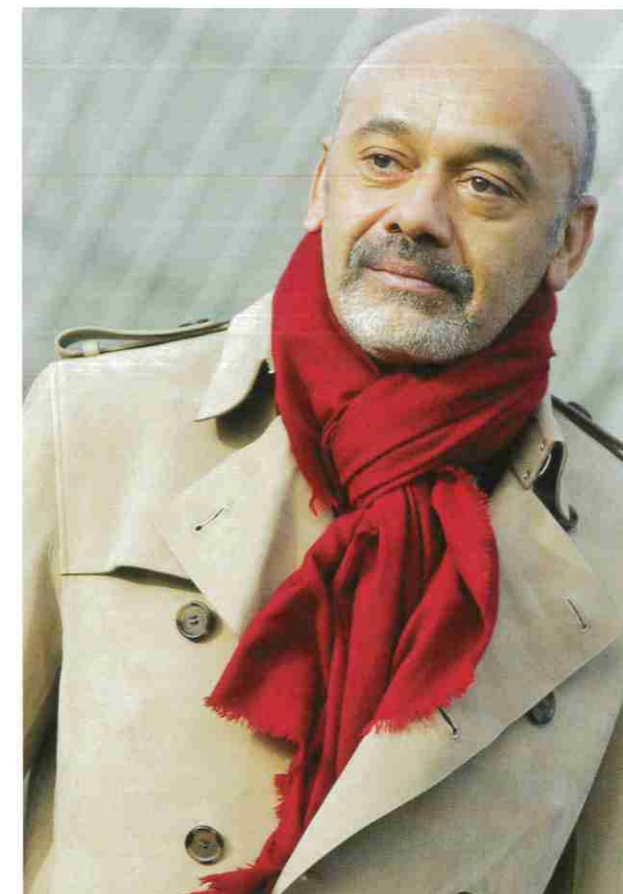
The ECJ advocate general's observations looked like a major setback for Louboutin in its attempts to protect its red sole; ECJ judges usually, though not always, follow such advice. On this occasion they did not, instead ruling that the red colour found on the sole of the brand's shoes is separate from the sole itself and so can be protected under EU trademark rule.

In a statement released on June 12, the ECJ said: "The mark does not relate to a specific shape of sole for high-heeled shoes since the description of that mark explicitly states that the contour of the shoe does not form part of the mark and is intended purely to show the positioning of the red colour covered by the registration."

The judges decided that Louboutin was not trying to trademark the shape of a shoe, rather than application of a specific colour to a specific part of it. As such, the trademark is "not covered by the prohibition of the registration of shapes".

In response to the ruling, the Louboutin brand said: "The protection of Christian Louboutin's red sole trademark is strengthened by the European Court of Justice. The red colour applied on the sole of a woman's high heel shoe is a position mark, as Maison Christian Louboutin has maintained for many years."

The court in the Hague will now deliver a final ruling on the matter and is expected to confirm the validity of Louboutin's red sole trademark. This would pave the way for the brand to protect its distinctive design. This will be a huge relief for the brand; had the ECJ judges followed the advice of advocate general Maciej Szpunar, it would have left Louboutin unable to prevent European competitors from selling shoes with a red sole and so profiting from the work it has put in for over 25 years to build its standing in the fashion industry. 



Christian Louboutin set up his eponymous brand in 1991.
CREDIT: DKSSTYLE/SHUTTERSTOCK.COM

ZERO TOLERANCE TO FAKE PRODUCTS

Louboutin also feels strongly about counterfeiting and dedicates a special section on its website to this subject. In this section, which it calls Stopfake, it says it has adopted a "zero tolerance" policy when it comes to counterfeits and has implemented a "comprehensive programme" to deal with fake products, and with the distribution systems, auction sites and other channels through which they are sold.

The brand urges its customers to only buy products from authorised retailers and warns them that if the price of a pair of 'Louboutin' shoes seems too good to be true, it probably is. A search engine on its site allows customers to check if the website from which they are buying is on the company's blacklist. It links to a database that is updated regularly, but the prevalence of such unauthorised channels, and the frequency with which new ones pop up, means it is not always comprehensive.

The brand also lists the actions it has taken to fight counterfeiting. It includes seizures of fake products by customs authorities and court rulings in its favour. Recent entries on this list include the seizure in May 2018 of 140 pairs of fake Louboutin shoes in Ajman, United Arab Emirates and the seizure in January 2018 of 1,548 "counterfeit goods" by customs officials in France.