

TRADEMARKS & FASHION

THE NORTH AMERICAN PERSPECTIVE

Leslie J. Lott - Lott & Fischer, PL - Coral Gables,
Florida, U.S.A

TRADEMARKS & FASHION

- Protection in the United States:
 - Trademarks
 - Trade Dress
 - Counterfeiting
 - Design Patent

TRADEMARKS



Leslie J. Lott - Lott & Fischer, PL - Coral Gables, Florida, U.S.A

TRADEMARKS



Trade Dress

- Distinctive
- Non-Functional
- Secondary Meaning

Adidas America, Inc. v. Payless Shoesource, Inc.

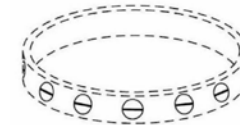
No. 01-1655 (King, J.), (D. Or. 2008)



Cartier "Love Bracelet"



United States of America United States Patent and Trademark Office



Reg. No. 3,776,794

Registered Apr. 20, 2010

Int. Cl.: 14

TRADEMARK

PRINCIPAL REGISTER

CARTIER INTERNATIONAL N.V. (NETHERLAND ANTILLES LIMITED LIABILITY COMPANY)
SCHARLOOEWEG 33
CURACAO, NETHERLAND ANTILLES

FOR: JEWELRY, NAMELY, RINGS, BRACELETS, CHARMS, EARRINGS, MADE OF PRECIOUS METALS, IN CLASS 14 (U.S. CLS. 2, 27, 28 AND 50).

FIRST USE 12-31-1970; IN COMMERCE 12-31-1970.

OWNER OF U.S. REG. NOS. 1,078,675, 1,372,423, AND 3,162,410.

THE MARK CONSISTS OF A JEWELRY ITEM WITH A SERIES OF SIMULATED HEADS OF SCREWS EMBEDDED AROUND THE OUTSIDE PERIMETER. THE MATTER SHOWN BY THE DOTTED LINES IS NOT A PART OF THE MARK AND SERVES ONLY TO SHOW THE POSITION OF THE MARK.

SEC. 2(F).

SER. NO. 77-587,644, FILED 10-7-2008.

SIMON TENG, EXAMINING ATTORNEY



David J. Kyppes

Director of the United States Patent and Trademark Office

Canada Goose v. Sears Canada

CANADA GOOSE KENSINGTON PARKA:



SEARS ALPINTEK COATS:



Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

United States Patent and Trademark Office

Reg. No. 3,361,597

Registered Jan. 1, 2008

**TRADEMARK
PRINCIPAL REGISTER**



CHRISTIAN LOUBOUTIN (FRANCE INDIVIDUAL)
24 RUE VICTOR MASSÉ
PARIS, FRANCE 75009

FOR: WOMEN'S HIGH FASHION DESIGNER
FOOTWEAR, IN CLASS 25 (U.S. CLS. 22 AND 39).

FIRST USE 0-0-1992; IN COMMERCE 0-0-1992.

THE COLOR(S) RED IS/ARE CLAIMED AS A
FEATURE OF THE MARK.

THE MARK CONSISTS OF A LACQUERED RED
SOLE ON FOOTWEAR. THE DOTTED LINES ARE
NOT PART OF THE MARK BUT ARE INTENDED
ONLY TO SHOW PLACEMENT OF THE MARK.

SEC. 2(F).

SER. NO. 77-141,789, FILED 3-27-2007.

NORA BUCHANAN WILL, EXAMINING ATTORNEY

In re Owens-Corning Fiberglas Corp.

774 F.2d 1116, 1123 (Fed. Cir. 1985)

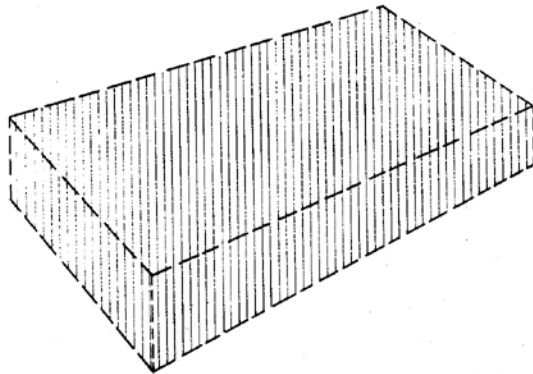
Prior U.S. Cl.: 12

United States Patent and Trademark Office

Reg. No. 1,439,132

Registered May 12, 1987

TRADEMARK PRINCIPAL REGISTER



OWENS-CORNING FIBERGLAS CORPORA-
TION (DELAWARE CORPORATION)
FIBERGLASS TOWER
TOLEDO, OH 43659

FOR: FIBROUS GLASS RESIDENTIAL INSU-
LATION, IN CLASS 17 (U.S. CL. 12).

FIRST USE 0-0-1956; IN COMMERCE
0-0-1956.

THE DRAWING IS LINED TO INDICATE
THE COLOR PINK.

SEC. 2(F).

SER. NO. 247,707, FILED 1-25-1980.

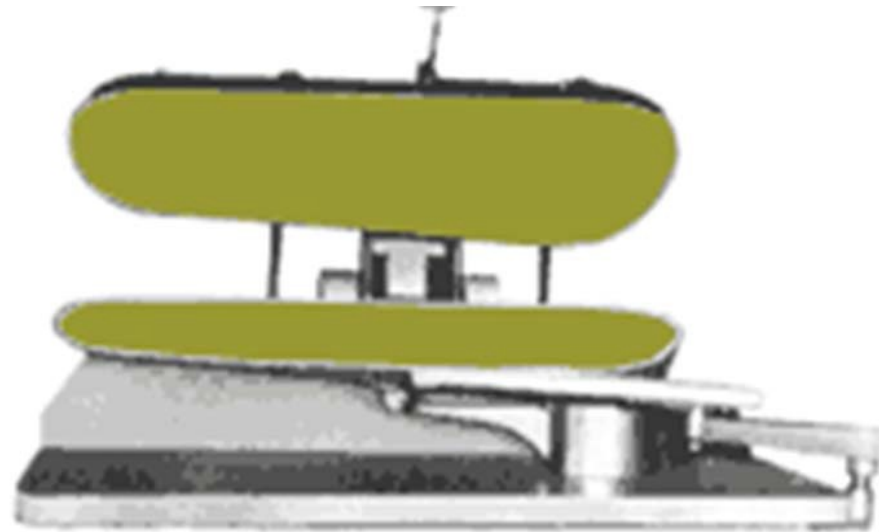
ROBERT PEVERADA, EXAMINING ATTOR-
NEY



Qualitex Co. v. Jacobson Products Co., Inc.

514 U.S. 159, 115 S. Ct 1300, 131 L.Ed 2d 248 (1995)

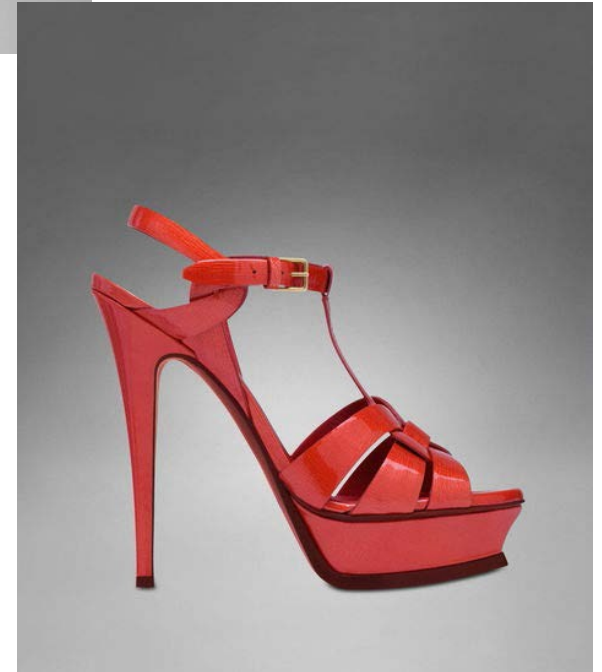
Color can meet the legal requirements for a trademark if it: “act[s] as a symbol that distinguishes a firm’s goods and identifies their source, without serving any other significant function.”



Yves Saint Laurent

Cruise 2011 Collection

- Tribtoo
- Tribute



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Florida, U.S.A

Christian Louboutin S.A. v. Yves Saint Laurent

778 F.Supp. 2d 445; 2011 U.S. Dist. LEXIS 90200 (August 10, 2011)

- Valid distinctive trademark
- No Infringement



Louis Vuitton Malletier v. Dooney & Bourke, Inc.

2006 U.S. App. LEXIS 16774 (2nd Cir. 2006)

- Valid distinctive trademark
- No likelihood of confusion



Parody

JORDACHE



LARDASHE



Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC

507 F.3d 252 (4th Cir. 2007)



Louis Vuitton Malletier S.A. v. Haute Diggity Dog, LLC

507 F.3d 252 (4th Cir. 2007)

- CHEWY VUITON - Affirmed
 - No Infringement
 - No Dilution



Source Perrier S.A. v. Fira-Less Marketing Co.

PIERRE EH!

“Canada’s First Minister Water.”

PLAIN CANADIAN TAP WATER NON SPARKLING
SOMETIMES CARBONATED WITH HOT AIR

“not to be confused with Perrier natural mineral water”

“Serve liberally at party functions remove cap, shrug, pour into kitchen sink and watch your investment go down the drain.”



Tiffany Inc. v. eBay, Inc.

2008 U.S. Dist. LEXIS 53359

(S.D.N.Y. July 14, 2008)

- Online sales of counterfeits
- Contributory infringement?



Tiffany Inc. v. eBay, Inc.

2008 U.S. Dist. LEXIS 53359; (S.D.N.Y. July 14, 2008)

- French Court awards U.S. \$63.2 million against eBay





French Courts:



ROLEX



Tiffany Inc. v. eBay, Inc.

2008 U.S. Dist. LEXIS 53359;

(S.D.N.Y. July 14, 2008)



1. \$20 million annual budget
2. 4,000 “Trust and Safety” employees
3. 200 reps fight trademark infringement
4. 70 employees work with law enforcement
5. \$5 million a year on fraud search engine
6. VeRO program for 10 years
7. “About Me” pages

Louis Vuitton Malletier v. Akanoc Solutions

658 F.3d 936, 100 U.S.P.Q.2d 1124 (9th Cir. 2011)

- Counterfeit products sold on Internet
 - Jury found web host liable for contributory counterfeiting and infringement
 - Awarded \$10,500,000 each against web-host other defendants
- Ninth Circuit affirmed



Design Patent

Below the Waist

Lululemon received three patents for its yoga pants and has sued Calvin Klein saying its pants infringe on the designs.

LULULEMON ASTRO PANT

\$98

CURRENT PRICE

CALVIN KLEIN PANT

\$19.99

Lycra and nylon

MATERIALS

Polyester and spandex

WEBSITE DESCRIPTIONS:

'Four-way stretch and moisture wicking'

'Sport design engineered for performance'

'Streamlined and uber-functional for any yoga practice'

'High tech, quick dry moisture wicking'

**LULULEMON'S
PATENT
DRAWINGS**

**FRONT
VIEW**



**SIDE
VIEW**



**lululemon
athletica**

Calvin Klein

Source: WSJ research
Photos and drawings: the companies

Nike Design Patent



US00D659988S

(12) **United States Design Patent** (10) **Patent No.:** **US D659,988 S**
Kuerbis (45) **Date of Patent:** **May 22, 2012**

(54) **SHOE UPPER**

(75) **Inventor:** **Tate E. Kuerbis**, Portland, OR (US)

(73) **Assignee:** **Nike, Inc.**, Beaverton, OR (US)

(**) **Term:** **14 Years**

(21) **Appl. No.:** **29/414,572**

(22) **Filed:** **Feb. 29, 2012**

(51) **LOC (9) Cl.** **D2-99**

(52) **U.S. Cl.** **D2/972**

(58) **Field of Classification Search** **D2/896;**

D2/902, 906-908, 943, 944, 969, 972-974;

36/45-49, 50.1, 77 M, 77 R, 83, 88, 113,

36/114, 126-131

See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

D248,192 S * 6/1978 Stevenson D2/908

D325,811 S 5/1992 Backus

D339,449 S 9/1993 Hatfield

D347,724 S 6/1994 Teague

D351,721 S 10/1994 Kittle

D354,618 S 1/1995 Kittle

D386,669 S * 11/1997 Tong D2/972

D398,756 S 9/1998 Tong

D402,793 S * 12/1998 Lowrin D2/902

D404,555 S * 1/1999 Gray D2/972

D466,683 S 12/2002 Choi

D467,722 S * 12/2002 Waldeck D2/972

D513,362 S * 1/2006 Kuerbis D2/972

D513,851 S * 1/2006 Holmes D2/972

D514,801 S * 2/2006 Hui D2/972

D593,306 S 6/2009 St-Louis

D601,783 S 10/2009 Pizani

D636,586 S * 4/2011 Williams, Jr. D2/908

D642,779 S 8/2011 Raynse D2/972

D642,780 S 8/2011 Raynse

D643,202 S 8/2011 Jarvis

D643,699 S 8/2011 Raynse

OTHER PUBLICATIONS

Nike Footwear Catalog, 1980 Shoe Show, p. 2, published date unknown, but prior to the filing date of the present application, Nike, Inc., USA.

Nike Footwear Catalog, Footwear: Spring 1991, p. 28, published Jun. 1990, Nike, Inc., USA.

Nike Footwear Catalog, Footwear: Spring 1991, p. 82, published Jun. 1990, Nike, Inc., USA.

Nike Footwear Catalog, Footwear: Spring 1996, p. 34, published Jun. 1995, Nike, Inc., USA.

Nike Footwear Catalog, Footwear: Spring 1998, p. 8, published Jun. 1997, Nike, Inc., USA.

Nike Footwear Catalog, Men's and Women's Footwear (feet): Holiday 2000, p. 6, published Mar. 2000, Nike, Inc., USA.

Nike Footwear Catalog, Footwear: Fall 2007, p. 155, published Nov. 2006, Nike, Inc., USA.

Nike Footwear Catalog, Football: 2011, p. 36, published Aug. 2010, Nike, Inc., USA.

Nike Footwear Catalog, Core Footwear: Spring 2012, p. 33, published May 2011, Nike, Inc., USA.

* cited by examiner

Primary Examiner — Dominic Simone

(74) *Attorney, Agent, or Firm* — Banner & Witcoff, Ltd.

CLAIM

(57) The ornamental design for a shoe upper, as shown and described.

DESCRIPTION

FIG. 1 is a front perspective view of a shoe upper showing my new design;

FIG. 2 is a side view thereof; and,

FIG. 3 is a rear perspective view thereof.

The broken lines immediately adjacent to the shaded area represent unclaimed boundaries of the design. The broken lines showing the remainder of the shoe are for environmental purposes only and form no part of the claimed design.

1 Claim, 3 Drawing Sheets



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THANK YOU

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