

CHRISTIAN LOUBOUTIN CASE: WHETHER SINGLE COLOUR IS SUBJECT TO TRADEMARK PROTECTION IN INDIA?

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Christian Louboutin's stunning red-soled shoes, which are worn by runaways and have been the subject of countless court cases and legal disputes. Why? Christian Louboutin shoes are known for their signature "red sole," which has been the focus of international trademark legislation. The firm wants to use the specific red as its exclusive trademark colour over the entire planet. However, the legal framework governing single-color trademarks is quite complex.

Colour trademarks are considered non-conventional trademarks, therefore registering them presents a number of difficulties in different nations. It is well-established that a colour trademark cannot be distinctive by nature, but that it may become protectable upon showing that it has gained uniqueness or secondary significance.

Before examining whether Christian Louboutin may trademark a particular colour, it is important to clarify if colours can be protected as trademarks.

It is debatable whether a single colour may be trademarked globally. Arguments for and against this include the colour depletion theory and the need to identify the source of a product when a colour assumes a second meaning. "The colour depletion hypothesis is based on the idea that there are only a finite number of colours, and if each one was to be patented separately, it would actually reduce competition."^[1] If we examine the colour depletion theory, we can see that colours can never run out since they are only awarded trademark status if they become so well-known that the product itself can be recognised by its

distinctive colour. Now, it is fairly uncommon for businesses to become so well-known that the colour used on their packaging or in their products stands alone as an identity. Colour by itself lacks the ability to stand out; rather, it is important to consider how buyers would see the colour and the product. A test to establish or refute whether a brand's chosen colour has attained the status is still lacking. Nestle successfully appealed a decision against Cadbury's attempt to trademark the colour purple, which would have prevented other competing businesses from doing the same. Competition may suffer on the one hand, but on the other, businesses may profit from the position of a competitor firm by creating items that are deceptively similar and use the same colour. This creates a conundrum.

“Christian Louboutin S.A. v. Yves Saint Laurent Am. Holding, Inc. - 696 F.3d 206 (2d Cir. 2012) is the most famous case in the history of fashion.”^[2]

In this case, it was clearly decided that Louboutin's red may be trademarked and merits protection. However, it did not include shoes that were all one colour, such as red shoes where the top portion had to be another colour.

The Indian position on whether a single colour should be used alone or in combination is rather ambiguous, especially given that it makes contradictory decisions and goes back and forth on the same issue.

Even more tumultuous was the single-color trademark issue involving the red sole in India. The Delhi High Court handled the issue, and in each of its three decisions, it expressed a distinct viewpoint. In the first order, the court acknowledged the obvious trademark, but in the second, the judge ruled that Louboutin could not be granted such rights since the law governing trademarks in India prohibits the use of a single colour as a trademark. But companies both inside and outside of India have succeeded in registering single colours as trademarks. Single colours are more difficult to trademark because of the basic rule that states that colours are never fundamentally unique.

In the 2018 case of Christian Louboutin v. Abu Baker, it was determined that a single colour is not a mixture of colours and cannot be trademarked as a mark. The Indian court rejected Qualitex's argument as well and declared that it would not base its decision on a foreign judgement but rather exclusively on the 1999 Trademarks Act. “The case even rejected the stance taken in Christian Louboutin Sas vs. Mr. Pawan Kumar & Ors and Deere & Company & Anr. vs. Mr. Malkit Singh & Anr.”^[3]

The Delhi High Court has granted protection to the characteristic blue colour of Parachute oil bottles. Additionally, Victorinox and Telekom have registered their logo colours, and “the Christian Louboutin v. Abu Baker”^[4] ruling even calls into doubt the validity of existing trademarks and colour protections. The legal framework around single-color trademarks is complex. The courts must make sure that the standard of uniqueness is extremely severe when granting non-traditional trademarks, such as single-color trademarks. Another important problem is the functionality concept, which states that a colour mark cannot be functional in relation to a certain good or service. To prevent a single brand from gaining a monopoly and to maintain the necessary protection of intellectual property, the legislature must move to liberalise India's IP law.

The issue of whether specific colours may be trademarked or not, especially in the fashion sector, emerges when Christian Louboutin wins and loses legal battles and trademark rights

in different countries. This is because the importance of colour in the business has not yet been adequately addressed. One of the acceptable criteria that may be used to determine if a business or designer can trademark a colour is the test of secondary meaning. Tiffany blue is another well-known colour in the fashion world that has been protected by trademarks, while the University of Texas holds a trademark on burnt orange. Monopolizing the colour spectrum may also have an impact on artistic expression and creative decisions, which is one of the reasons why trademarks should only be given after careful consideration and in-depth research. Christian Louboutin footwear is often frequently referred to as red soles or simply "red bottoms," and it has even appeared in songs where the colour red is mentioned, demonstrating the clear connection between the product and the shade.

References-

[1] Panwar A and Gehlot A, "Intermediary Liability for Trade Mark Infringement in India: The Louboutin Case" (2020) 15 Journal of Intellectual Property Law & Practice 150

[2] "Louboutin and Christian Louboutin" (2018) 49 IIC - International Review of Intellectual Property and Competition Law 878

[3] "CHRISTIAN LOUBOUTIN CASE" (*Christian Louboutin S.A. v. Yves Saint Laurent America Holding, Inc.*) <<https://h2o.law.harvard.edu/cases/4776>> accessed November 9, 2022

[4] "Louboutin and Christian Louboutin" (2018) 49 IIC - International Review of Intellectual Property and Competition Law 878