

LUXURY FASHION DESIGNER EARNS ITS STRIPES IN TRADEMARK VICTORY AGAINST ADIDAS

Hodgson Russ Intellectual Property Litigation Alert
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The battle over whether a luxury fashion brand's stripe designs infringes adidas' signature "Three Stripe" trademarks ended on January 12. On that day, a jury found that designer Thom Browne, Inc., known for its natty tailoring and designs, was not liable to the activewear giant for trademark infringement.

Allegations of Infringement of the adidas Three Stripes. adidas, notorious for enforcing its trademarks in court, sought millions of dollars in damages and lost profits from Thom Browne, plus an injunction prohibiting the designer from using the three stripe mark and selling infringing apparel. Thom Browne fired back, denying that its apparel infringed adidas' marks, and accused adidas of being an "overzealous enforcer of its actual and perceived rights in its 'Three-Stripe Mark,' particularly against third parties who do not use three stripes."

adidas' lawsuit challenged two of Thom Browne's designs; the "Grosgrain Signature," a five-stripe, white-red-white-blue-white grosgrain ribbon design, and the "Four Bar Signature" design, which features four white parallel stripes.

At trial, adidas argued that Thom Browne's apparel with the Grosgrain and Four Bar designs infringed its trademarks because those designs are likely to confuse consumers, pre-sale or post-sale, into thinking that Thom Browne's apparel is made and sold by, or otherwise affiliated with, adidas.

What the Jury Had to Consider. Judge Jed Rakoff instructed the jurors that to determine whether consumers are likely to confuse Thom Browne's alleged infringing apparel with adidas' apparel (a required element of trademark infringement), they should "draw on [their] own common experience." The jurors were also instructed to weigh several factors including: (1) the degree of similarity between adidas' mark and Thom Browne's use of the Four Bar and/or Grosgrain designs; (2) whether Thom Browne's accused apparel and adidas' products compete for the same consumers; (3) the quality of the Thom Browne apparel relative to adidas' products bearing the Three Stripe mark; and (4) whether adidas showed that Thom Browne used the Four Bar and Grosgrain designs on its apparel intending to confuse consumers and to profit from adidas' reputation.

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Intellectual Property Litigation

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After an eight day trial, the jury ruled in Thom Browne’s favor, finding that it wasn’t liable to adidas for trademark infringement or dilution.

Takeaways. The *adidas v. Thom Browne* verdict offers a rare glimpse at how a jury of peers perceives the contours and boundaries of trademark infringement and dilution – because most matters resolve prior to trial. Companies must be vigilant both in protecting their trademarks and in guarding against allegations of infringement. Hodgson Russ’s intellectual property attorneys help clients looking to enforce their intellectual property rights or defend against claims of intellectual property infringement. For more information, please contact [Sarah Miller](#) or any member of our [Intellectual Property Litigation Practice](#).

