

## European Court of Justice: Louboutin's Trademark for Red Shoe Soles is Valid

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The Court of Justice of the European Union has declared the iconic red sole of Christian Louboutin's shoes to be a trademark. The court considered the trademark's validity and declared that it does not aim to protect the shoe's shape (as the defendant claimed) but rather it sought to protect the application of red on the shoe's sole. Therefore, the court held that the colour red applied to the sole of a shoe can be protected as a positional mark within the European Union.

Christian Louboutin filed a trademark infringement lawsuit against a Dutch company. The company argued that the red sole of a shoe was not capable of trademark protection on the basis that the trademark solely constitutes the product's shape. It claimed that Christian Louboutin's trademark was invalid, relying on Article 3 of Directive 2008/95. This provision states (amongst other things) that marks which consist exclusively of the shape which gives substantial value to the goods will be declared invalid.

A Dutch court referred the question to the Court of Justice, to consider whether the notion of shape includes non-three-dimensional properties of goods, such as their colour.

The Court of Justice took the usual meaning of the word "shape" to be "a set of lines or contours that outline the product concerned". Therefore, it concluded that a colour per se, without an outline, clearly does not constitute a shape.

The Court of Justice stated that even though the trademark noted a shape (an outline of the shoe's sole), this factor is not relevant to the case at hand because:

- The trademark's wording did not seek to protect the shape. Rather, the wording seeks only to protect the application of a colour to a specific part of the product.
- The shape's outline is intended only to show the positioning of the red colour which is covered by the trademark registration.

Please see this [link](#) for the full text of the Court of Justice's decision.

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