

the extent it is deemed to have particular appeal, is available for other shoe makers to use on the main parts of the shoe. There is no competitive need for YSL to use the Red Sole Mark, and its use merely permits YSL to trade upon the reputation and goodwill that Louboutin has built in that mark over two decades.

1. I have worked in the apparel and accessories industry, both in retail and wholesale, for over forty five years during which time I have held a variety of key executive and management positions at companies such as Vice President/Operations for High Tide Swimwear (Women's Swimwear), Partner/Executive Vice President for Prisma Corporation (Sportswear and Dresses), General Manager for Cherry Lane (Junior Sportswear), Executive Vice President, Corporate Operations for LCA Intimates (Intimate Apparel) and Executive Vice President, Corporate Operations for Warnaco-Speedo (Swimwear and Sportswear).

2. Since 1985 I have been a member of the faculty at Fashion Institute of Design and Merchandising (FIDM) where I was elected to that institution's "Hall of Fame" and am a three time recipient of FIDM's "Faculty of the Year" award. As part of the subject matter I teach, I help students understand the process of creating new and original designs, logos and brand identifiers, as well as business issues related to design copyrights, trade dress and trademarks. In addition, I teach classes in fashion marketing and sales, industry practices and other business-related subjects. In these courses, I discuss the benefits of branding as well as the process by which brands promote and market themselves through the use of their marks, which are often referred to as "identifiers" or "signatures".

3. Since 1986, I have also owned and operated my own apparel industry consulting business. In that regard, I provide business management consulting to both failing and growing apparel companies, and advise them on topics such as reorganization, restructuring and/or re-

engineering their business process. As part of my expertise, I specialize in issues of branding, marketing and selling strategies; product development, and inventory management.

3a. I have been recognized as an expert in marketing and fashion in the apparel industry and have been qualified to testify as an expert in numerous court proceeding, including, for example, *Jason Theis v. Abercrombie & Fitch Stores* and *Royal Printex v. Unicolors*.

4. Christian Louboutin S.A., Christian Louboutin, L.L.C., and Christian Louboutin (collectively, “Louboutin”) asked for my assessment of whether YSL’s use of a red outsole on its shoes is based on a competitive need.

5. In my opinion, there is no competitive need from a fashion perspective for YSL to use a red outsole on its shoes. On the other hand, such use of a red outsole permits YSL to trade on the goodwill and reputation developed by Louboutin.

6. The Louboutin trademark or “signature” consists of a lacquered red sole used solely on and with respect to women’s high fashion designer footwear (the Red Sole Mark”). The red color that Louboutin uses for its red outsole is highly distinctive and utilizes a lacquered

red color known as PMS 18-1663TP: .¹

7. The distinct Louboutin red has no utilitarian purpose and does not deprive YSL of any reasonable right or competitive need.

8. To create monochrome shoes YSL has approximately 9,000 PMS colors from which to choose. There is no need for YSL to use the PMS color red used by Louboutin. Simply put, in view of the numerous shades of red available to YSL, Louboutin has no monopoly over the broad spectrum of red colors. There is no reduction of available colors if a particular red is

¹ PMS refers to the Pantone Matching System, a proprietary color system used in a variety of industries, primarily printing, though sometimes in manufacture of colored paint, fabric and plastic.

available to one party and is not available to another, especially, as in this case, when the color is used only on the outsole of a ladies luxury high heeled shoe. Put another way, YSL and any other competitor who wants to produce a rigorously “monochrome” shoe, including the outsole, has thousands of color choices, including many in the red range, or pink or orange. Alternatively, to take advantage of whatever particular appeal the Louboutin lacquer red color has, YSL and any other competitor may use that color for the shoe uppers, straps, buckles, bows, edges, and the like. Only a narrow use on the outsole, unnecessary for fashion considerations or for competitive considerations, is off limits due to Louboutin’s federally registered Red Sole Mark.

9. Louboutin’s red outsole is not essential to the use or purpose of shoes or a shoe outsole. The color red when used on a shoe outsole does not make the sole more absorbent, or more durable or provide the shoe with greater stability, construction or traction or any other functional characteristic. The Louboutin red outsole does not prevent the showing of wear and tear.

10. The Louboutin red outsole does not provide an advantage as to the cost or quality of the shoe. Indeed, I believe that coloring an outsole red increases the shoe’s production cost. Thus, the use by Louboutin of lacquered red color (PMS red No.18-1663TP) for its outsole does not confer any manufacturing cost advantage.

11. The Louboutin red outsole does not improve the performance of the shoes. Thus, the use by Louboutin of PMS red No. 18-1663TP for its outsole does not confer any utilitarian performance enhancement for the sole.

12. The red outsole trademark or “signature” of Louboutin is not functional. Louboutin created the market for red-soled shoes through its substantially exclusive use of a

lacquered red sole since 1992. Over the years, the fashion market caught on to coloring outsoles with bright colors as a fashion tool *precisely* because of the groundbreaking efforts of Louboutin. Given the multiple choices of “red” to chose from, it seems apparent that YSL’s current expanded use of a red sole design (I believe they may have from time to time used an off-color form of red, but only recently issued multiple models of their shoes all at the same time all bearing similar red outsoles) began using a red sole similar to Louboutin’s red sole solely to take unfair advantage of the unique brand equity created by Louboutin in a red sole rather than as a competitive need. If there can be said to be consumer demand for a red soled shoe it is in my view entirely because of what extraordinary popularity Louboutin has achieved over the past two decades.

13. The color red is not needed to designate a material ingredient in a shoe. While red may be compatible with a variety of colors when used for shoe uppers, it also clashes with many colors. Thus, red is not an essential color for shoe outsoles. In fact, I am advised that YSL has sold a number of its models at issue in this lawsuit with black or other colored soles and red uppers, which indicates that even YSL does not find the color red essential for its outsoles.

14. There is a substantial difference between Louboutin and YSL. Louboutin is a design driven company. Mr. Louboutin draws shoes and takes them to his factory to have them made. YSL operates as a marketing driven company. After taking input from a lot of sources, their chief designer develops an apparel collection for a particular season. He selects the colors, materials, *etc.* that he and his team want to use in the collection. *Then*, YSL’s shoe designers begin to work on shoes and accessories that go with the collection, taking the design decisions and especially color decisions based on what is going on in their apparel division. This is standard industry practice in large multi-division and or multi-product companies like YSL.

Louboutin as a single product company is enormously different. The claims of YSL that they somehow need to use the Louboutin red or something close to it are without substance under these circumstances. A red outsole does not alter the perception of a shoe's upper in size, shape or overall appearance. As the need to match other items of dress, red can be needed to match accessories worn by women. However, the red needed to match accessories would appear in the shoe's upper and is not needed on an outsole. Even if you wanted to give such an appearance, all it would take is the coloring of the visible edge of shoe, not the bottom of the shoe. Edge coloring to coordinate a shoe with a collection of apparel is done all the time. Thus, the Louboutin red sole does not interfere with competitive use of red on a shoe's upper or a different red on the sole's edge.

15. One has to keep in mind that we are not here speaking of shoes or a monopoly of the color when applied to shoes. We are speaking *only* of the outsole or bottom of a shoe and a particular shade of red used on the outsole, PMS red No.18-1663TP. Louboutin's Red Sole Mark thus does not inhibit competition even in red shoes, or in any other way, except as the exclusive identifier of the LOUBOUTIN brand, consistent with the rights of a trademark holder.

16. Louboutin's U.S. trademark registration for the red sole mark states that the mark "consists of a lacquered red sole" and the description of goods states "for women's high fashion designer footwear". Thus, Louboutin's mark or "signature" comprises a lacquered red on the outsole of a shoe. To my knowledge, a lacquered red outsole has not been used to any significant degree by others and has almost exclusively been used by Louboutin. In my opinion, YSL's use of a red outsole on its shoes is not based on competitive need or on a pre-existing consumer demand, but rather permits YSL to trade on the goodwill and reputation developed by Louboutin.

17. The Louboutin red sole mark is a source identifier. The red sole is the signature of Louboutin shoes. In view of the plethora of PMS red colors (other than the lacquered red used by Louboutin), combined with the long and exclusive use of the lacquered red sole (PMS 18-1663TP) by Louboutin, the granting of trademark protection to Louboutin for its red sole mark does not deprive competitors of any reasonable right to use the color red on shoes or shoe soles. There simply is no need for a competitor to copy or imitate the Louboutin red sole mark.

18. Louboutin's red sole trademark does not remove the color red from the universe of colors available for use on shoe soles nor does it hinder competition. There are sufficient variants of the color red available, including pink and burgundy, that are close enough to Louboutin's red sole trademark as to give competitors real choices. Indeed, there are approximately 9,000 PMS colors available for shoe soles if one absolutely feels the need to do a colored outsole, including at least 100 colors that are in the family of reds, many of which I would submit are far enough away from the Red Sole Mark to pose no problem to the public in terms of confusion.

19. Although certain colors in the fashion and shoe industry convey "sexiness" I am not aware of any competitive need in the shoe industry for use of the Louboutin specific lacquered red color because other sexy colors, including, for example, various blues and greens as well as pinks, are available for outsoles. Colors in fact can be blended as well to achieve results that are considered "sexy" or "vibrant." New colors arrive all the time. Pantone, for example just announced its "Color of the Year for 2011" as a Pink, PMS 18-2120 taken from the Honeysuckle flower:

PANTONE
18-2120 TCX
Honeysuckle

PANTONE
18-2120 TCX
Honeysuckle

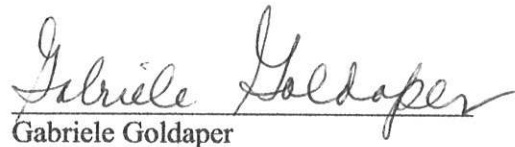


I attach hereto as Exhibit A, a press release from Pantone making the announcement, which I found on the internet today. I note that the color is described as a “reddish pink” which “allures and engages.” Pantone describes the color as “encouraging and uplifting” as a “dynamic reddish pink” which instills “confidence, courage and spirit” and is “a vibrant, energetic hue.” To be sure such verbiage is part of the marketing of the color, but it poses a striking contrast to the unsupported and untenable claim of YSL that somehow use of the Louboutin Red Sole Mark is the only way to make a shoe energetic or sexy or dynamic. Clearly there are countless other choices.

20. Louboutin’s Red Sole Mark symbolizes goodwill in the brand and thus constitutes a trademark. In my opinion the Louboutin Red Sole Mark is instantly identified by women in both the United States and elsewhere as the identifier of the special product from Louboutin.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of July 2011 in Marina del Rey, California.


Gabriele Goldaper