

the value of branding and its role in the intersection with trademark protection.

3. From September 1999 through November 2004, I was the Commissioner for Trademarks at the United States Patent and Trademark Office (USPTO).

4. As Commissioner for Trademarks, I served as the Chief Operating Officer for all aspects of trademark-related operations in the USPTO. My areas of responsibilities included trademark policy formation, trademark examination, trademark office practices, implementation of trademark filing systems and public advisory committee relations. I was responsible for introducing and the early adoption of the trademark electronic filing system. I am currently a member of the USPTO trademark public advisory committee by my appointment from the Secretary of Commerce.

5. In 1999 I served as President of the International Trademark Association (INTA).

6. A copy of my resume is attached hereto as Exhibit A.

7. While employed in the public sector and throughout my career, I advised and consulted with organizations on the establishment and management of trademark licensing programs and creation of marks and brands.

8. Within the last several years, I have provided expert testimony regarding likely confusion in Safe Auto Insurance v. State Automobile Mutual Insurance Company, 2:07-cv-01121-EAS-NMK (S.D. Ohio filed October 26, 2007). The case was settled prior to trial. I also provided an expert report on the history of college trademark licensing in the case of NAU Holdings, LLC and Horny Toad Activewear, Inc v. Dlorah, Inc., 1:08-cv-02743-CMA-BNB (Dist. of Col. filed Dec. 16, 2008).

9. To prepare for the provisions of this Declaration, I have reviewed the Declaration of Jeffrey M. Samuels in Opposition to Plaintiffs' Motion for a Preliminary Injunction - July 12;

Defendants/Counterclaim-Plaintiffs' Memorandum of Law in Opposition to Motion to Dismiss - June 27; Declaration of Kate Schrader in Support of Defendants' Opposition to Plaintiffs' Application for a Preliminary Injunction - July 12; Defendants/Counterclaim-Plaintiffs' Memorandum of Law in Opposition to Motion for Preliminary Injunction - July 12; and Plaintiffs' Amended Memorandum of Law in Support of Application for a Preliminary Injunction - June 20.

10. In addition to my professional experience, I am also interested in fashion and I have been (and am) keenly aware of the Christian Louboutin brand and its iconic lacquered red soles for several years. When I see the distinctive red lacquered sole, I immediately associate it with the Christian Louboutin brand. As a matter of fact, the iconic trademark is featured in my book, "Brand Rewired" (pp 53, 55) as an example of a distinctive color mark, "because it is clearly nonfunctional and a source indicator." (p.55.) In researching the book, my co-author and I crossed-referenced all the trademarks mentioned in the book with the actual US registrations. The Christian Louboutin "Red Sole Mark", U.S. Trademark Registration No. 3,361,597 is listed on page 190.

11. Christian Louboutin S.A.; Christian Louboutin, L.L.C.; and Christian Louboutin (collectively "Louboutin") requested that I opine on the consequences to the "Red Sole Mark", if Louboutin is denied its application for a preliminary injunction.

12. Louboutin's "Red Sole Mark," was approved for registration in 2008 when Louboutin established a secondary meaning for the lacquered red sole. I am aware that YSL made the claim that the "Red Sole Mark" is a weak mark and that it is also functional. In my experience in building a brand and having served as the Commissioner for Trademarks, I know that it takes time to develop non traditional marks into strong trademarks. Based on my

experience and understanding of the USPTO policies, Louboutin proved to the USPTO Examining Attorney that the Red Sole Mark is not functional and met the requirements for registration as a trademark. Just a year prior to the registration, during the 59th Annual Primetime Emmy Awards, Host Ryan Seacrest commented in his opening monologue that Eva Longoria, sitting in the front row, was wearing the shoes with red sole—"Christian Louboutin". This recognition in popular culture demonstrates the wide spread secondary meaning associated and recognized quintessentially as the one and only Christian Louboutin shoe and substantiates the registration of the "Red Sole Mark" in 2008.

13. When I served as the Commissioner of Trademarks, I was aware that color marks were regularly examined and if a mark met the requirements for publication and registration, the color mark was registered. When color marks are registered, they serve as strong trademarks due the rigor of examination and the level of evidence required to secure registration.

14. Once a trademark becomes popular it is often copied by others. There are look-alikes and other representations of the mark to confuse the consumer and to trade on the equity and reputation of the trademark owner. I am aware that YSL has stated that red shoes have been worn for centuries. This may be true, but using the distinctive lacquered red sole as a single source identifier is unique to Christian Louboutin. The color of red (Pantone 18-1663TP) applied to the soles of the shoe is unique to Louboutin and to the best of my knowledge, it is consistently used on all shoes designed by Louboutin, no matter the color of the shoe or the style of the shoe and it is generally recognized as the trademark of Christian Louboutin.

15. I am aware that in YSL/Counterclaim Memorandum of Law, filed on June 27, 2011, YSL argued that if a preliminary injunction was not granted, there will be no irreparable harm to Plaintiff because previous sales of YSL's shoes did not harm the sale of Louboutin's red

soled shoes. Since Louboutin's "Red Sole Mark", is a registered trademark and is the key identifier of source for Plaintiff's brand, I believe that allowing YSL to continue to sell red sole shoes in the marketplace will cause significant harm the Louboutin Red Sole Mark.

16. In making the above statement, I considered that the following would likely occur if the preliminary injunction was not granted:

- a. No less than four models of YSL's shoes, Tribute, Tribtoo, Palais, Woodstock would go back into the marketplace;
- b. Upscale department stores such as Saks, Bergdorf's, Neiman, Barney's and Nordstrom, all of which returned the shoes to YSL when the stores were advised of a trademark infringement action, would begin reselling the shoes;
- c. The national and fashion press would likely publicize the resale of YSL's shoes;
- d. It is logical to assume that other brands would begin to use a red sole shoe to trade on the reputation and success of Louboutin's iconic "Red Sole Mark". Because of the premium pricing, quality and social status attributed to Christian Louboutin shoes, if other companies begin to use the red sole, it will confuse consumers and dilute the value of the brand irreparably; and
- e. Further, the Red Sole Mark is a "hot" fashion statement at this time. If other premium brands are able to trade on the success of Louboutin's special "flair" with the flash of red sole it is likely that other competitors will flood the market and that the Louboutin Red Sole Mark would forever lose its uniqueness, the symbol that distinguishes Louboutin shoes from all others.

17. If a preliminary injunction is not immediately granted to Louboutin and the Court rules in favor of Louboutin at trial after eight to twelve months it is my opinion that the Red Sole

Mark would be irreparably harmed for the reason stated above. Further, it is my opinion that it is almost impossible to put "the genie back in the bottle" if Louboutin is not immediately granted an injunction since the damage will be done and other third party users will flood the marketplace with similar looks and styles and essentially trade on the reputation and trademark rights of Christian Louboutin. .

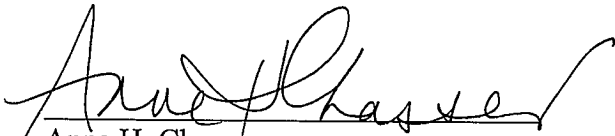
18. It is also my opinion, due to the ever changing fashion industry, that if Louboutin is not granted a preliminary injunction, the court will be sending the message to the fashion industry that trademarks are not valued and respected as source indicators and identifiers of goods and services.

19. Further, in my opinion, there would be great harm done to Louboutin if a preliminary injunction is not granted since Louboutin's brand is built around the iconic, distinctive, Red Sole Mark, and if others are permitted to use similar marks in the form of red soles during the next several months, then Louboutin would lose it's competitive advantage of establishing an iconic distinct brand.

20. For my work on this case, I have been compensated at a rate of \$500.00 per hour. My compensation does not depend on the outcome of this litigation, the opinions I express, or my testimony.

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

Executed this 18th day of July, 2011 in Cincinnati, Ohio.


Anne H. Chasser