The Honorable Ricardo S. Martinez

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ADIDAS AMERICA, INC. and ADIDAS AG,

Plaintiffs,

v.

THE TOPLINE CORPORATION,

Defendant.

THE TOPLINE CORPORATION,

Counterclaimant,

v.

ADIDAS AMERICA, INC. and ADIDAS AG,

Counterdefendants.

Civil Action No. CV09-0646RSM

[PROPOSED] PERMANENT INJUNCTION ON CONSENT AND STIPULATED DISMISSAL

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WHEREAS, Plaintiffs adidas America, Inc. and adidas AG (collectively "adidas") were parties to a civil action captioned *adidas America, Inc. et al. v. Payless ShoeSource, Inc.*, No. CV-01-1655-KI in the United States District Court for the District of Oregon (the "Payless Action"), in which a jury found 267 shoes to infringe or dilute adidas's trademark or trade dress rights. The District Court in the Payless Action entered a November 8, 2008 Order of Permanent Injunction against Payless**.** Various issues concerning the Payless Action are currently on appeal to the Ninth Circuit Court of Appeals;

WHEREAS, Defendant The Topline Corporation ("Topline") served as a buying agent in sourcing certain of the shoes at issue in the Payless Action, photographs of which are attached hereto as **Exhibit A** (the "Topline-Sourced Shoes");

WHEREAS, Topline has denied and continues to deny liability to adidas for the claims asserted in this action; and

WHEREAS, adidas and Topline participated in mediation at which they agreed to settle this action and, *inter alia*, enter into this Permanent Injunction on Consent.

The parties having consented to the permanent injunction set forth below, IT IS HEREBY ORDERED THAT:

1. Defendant The Topline Corporation ("Topline") and its officers, agents, servants, employees, attorneys, and all other persons acting for, with, by, through, or under authority from Topline, or in concert or participation with Topline, are hereby **PERMANENTLY RESTRAINED AND ENJOINED** from manufacturing, distributing, selling, offering for sale, advertising, sourcing, or acting as buying agent for any of the footwear found to infringe or dilute adidas's rights in the Payless Action, including the Topline-Sourced Shoes.

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2. Topline and its officers, agents, servants, employees, attorneys, and all other persons acting for, with, by, through, or under authority from Topline, or in concert or participation with Topline, are further are **PERMANENTLY RESTRAINED AND ENJOINED** from any and all sale, offering for sale, distribution or advertising, acting as buying agent for or other use in the United States of any mark, design, symbol, designation, device or design element on footwear, which includes:

(a) three straight stripes of the same type (irrespective of color), all of which have fifteen degrees or less between any adjacent stripes on a men's size 9 shoe (or of a corresponding degree accounting for the gradation of other sizes), the stripes being formed by contrasting colors, lines of stitching, fabric, perforations, raised or depressed portions, serrated or non-serrated, of substantially equal width (that is, within 20%) and substantially equal and uniform spacing (given that they may angle with respect to each other), extending across the shoe upper, such as the shoe lots depicted in **Exhibit B**;

(b) two straight stripes of the same type (irrespective of color), with fifteen degrees or less between the stripes on a men's size 9 shoe (or of a corresponding degree accounting for the gradation of other sizes), being formed as described in Section 2(a) above, serrated or non-serrated, equal and uniform width, angled forward and extending across the mid-foot portion of the shoe upper toward the sole, and which do not include one or more stripes or other linear marking extending across the two stripes that are more prominent than the two stripes, such as the shoe lots depicted in **Exhibit C**;

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(c) four straight stripes of the same type (irrespective of color), all of which have fifteen degrees or less between any adjacent stripes on a men's size 9 shoe (or of a corresponding degree accounting for the gradation of other sizes), formed as described in Section 2(a) above, serrated or non-serrated, of equal width and substantially equal and uniform spacing (given that they may angle with respect to each other), angled forward, and extending across the mid-foot portion of the shoe upper toward the sole, and which do not include one or more stripes or other linear marking extending across a mid-portion of the four stripes that are more prominent than the four stripes, such as the shoe lots depicted in **Exhibit D**;

(d) two, three or four stripes of the same type (irrespective of color), formed as described in Section 2(a) above, serrated or non-serrated, of equal width and spacing, that are angled forward and extending across the mid-foot portion of the shoe upper toward the sole, which are slightly curved, and which do not include one or more stripes or other linear marking extending across the stripes that are more prominent than the two, three or four stripes, such as the shoe lots depicted in **Exhibit E**; or

(e) two straight stripes of the same type (irrespective of color), formed as described in Section 2(a) above, serrated or non-serrated, having facing edges that are parallel, and which may have opposing edges that are not parallel but angle at less than twenty degrees with respect to the facing edges, with each stripe starting at the sole and being angled forward and extending across the mid-foot portion of the shoe upper, and which do not include one or more stripes or other linear

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marking extending across the stripes that are more prominent than the two stripes, such as the shoe lots depicted in **Exhibit F**.

3. The prohibitions identified in Paragraphs 1 and 2 above shall be automatically modified to the extent that the permanent injunction in the Payless Action is reversed or modified on appeal or by settlement between adidas and Payless.

4. The Court shall have continuing jurisdiction to enforce the provisions of the Permanent Injunction entered herein.

5. The Parties' Claims and Counter-Claims are hereby dismissed with prejudice, with each party bearing its own costs, including attorneys' fees, and without any admission of liability by either party.

IT IS SO ORDERED.

DATED: _____ 2009.

_____
The Honorable Ricardo S. Martinez
United States District Court Judge

Stipulated and Consented to By:

adidas America, Inc. and adidas AG

By: _____
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The Topline Corporation

By: _____ 11-10-09
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EXHIBIT A

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Topline-Sourced Shoes

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PAR – 29510(B)	

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EXHIBIT B

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EXHIBIT C

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EXHIBIT D

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EXHIBIT E

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EXHIBIT F

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served through the Court's CM/ECF system on counsel for Topline as follows:

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This the 13th day of November, 2009.

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