

The Honorable Ricardo S. Martinez

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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.)

Civil Action No. CV09-0646RSM

**[PROPOSED] PERMANENT
INJUNCTION ON CONSENT AND
STIPULATED DISMISSAL**

THE TOPLINE CORPORATION,)

Counterclaimant,)

v.)

ADIDAS AMERICA, INC. and ADIDAS AG,)

Counterdefendants.)

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

8
9 WHEREAS, Defendant The Topline Corporation (“Topline”) served as a buying agent in
10 sourcing certain of the shoes at issue in the Payless Action, photographs of which are attached
11 hereto as **Exhibit A** (the “Topline-Sourced Shoes”);

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

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

16
17 The parties having consented to the permanent injunction set forth below, IT IS
18 HEREBY ORDERED THAT:

19 1. Defendant The Topline Corporation (“Topline”) and its officers, agents, servants,
20 employees, attorneys, and all other persons acting for, with, by, through, or under authority from
21 Topline, or in concert or participation with Topline, are hereby **PERMANENTLY**
22 **RESTRAINED AND ENJOINED** from manufacturing, distributing, selling, offering for sale,
23 advertising, sourcing, or acting as buying agent for any of the footwear found to infringe or
24 dilute adidas’s rights in the Payless Action, including the Topline-Sourced Shoes.
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1 2. Topline and its officers, agents, servants, employees, attorneys, and all other
2 persons acting for, with, by, through, or under authority from Topline, or in concert or
3 participation with Topline, are further are **PERMANENTLY RESTRAINED AND**
4 **ENJOINED** from any and all sale, offering for sale, distribution or advertising, acting as buying
5 agent for or other use in the United States of any mark, design, symbol, designation, device or
6 design element on footwear, which includes:

7
8 (a) three straight stripes of the same type (irrespective of color), all of which have
9 fifteen degrees or less between any adjacent stripes on a men's size 9 shoe (or of
10 a corresponding degree accounting for the gradation of other sizes), the stripes
11 being formed by contrasting colors, lines of stitching, fabric, perforations, raised
12 or depressed portions, serrated or non-serrated, of substantially equal width (that
13 is, within 20%) and substantially equal and uniform spacing (given that they may
14 angle with respect to each other), extending across the shoe upper, such as the
15 shoe lots depicted in **Exhibit B**;

16
17 (b) two straight stripes of the same type (irrespective of color), with fifteen degrees
18 or less between the stripes on a men's size 9 shoe (or of a corresponding degree
19 accounting for the gradation of other sizes), being formed as described in Section
20 2(a) above, serrated or non-serrated, equal and uniform width, angled forward
21 and extending across the mid-foot portion of the shoe upper toward the sole, and
22 which do not include one or more stripes or other linear marking extending
23 across the two stripes that are more prominent than the two stripes, such as the
24 shoe lots depicted in **Exhibit C**;

- 1 (c) four straight stripes of the same type (irrespective of color), all of which have
2 fifteen degrees or less between any adjacent stripes on a men's size 9 shoe (or of
3 a corresponding degree accounting for the gradation of other sizes), formed as
4 described in Section 2(a) above, serrated or non-serrated, of equal width and
5 substantially equal and uniform spacing (given that they may angle with respect
6 to each other), angled forward, and extending across the mid-foot portion of the
7 shoe upper toward the sole, and which do not include one or more stripes or other
8 linear marking extending across a mid-portion of the four stripes that are more
9 prominent than the four stripes, such as the shoe lots depicted in **Exhibit D**;
10
11 (d) two, three or four stripes of the same type (irrespective of color), formed as
12 described in Section 2(a) above, serrated or non-serrated, of equal width and
13 spacing, that are angled forward and extending across the mid-foot portion of the
14 shoe upper toward the sole, which are slightly curved, and which do not include
15 one or more stripes or other linear marking extending across the stripes that are
16 more prominent than the two, three or four stripes, such as the shoe lots depicted
17 in **Exhibit E**; or
18
19 (e) two straight stripes of the same type (irrespective of color), formed as described
20 in Section 2(a) above, serrated or non-serrated, having facing edges that are
21 parallel, and which may have opposing edges that are not parallel but angle at
22 less than twenty degrees with respect to the facing edges, with each stripe starting
23 at the sole and being angled forward and extending across the mid-foot portion of
24 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.

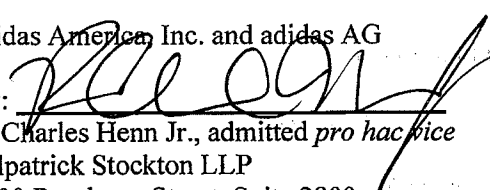
IT IS SO ORDERED.

DATED: _____ 2009.

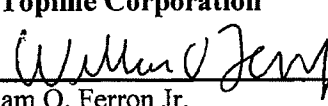
The Honorable Ricardo S. Martinez
United States District Court Judge

Stipulated and Consented to By:

adidas America, Inc. and adidas AG

By: 
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The Topline Corporation

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[Proposed] Permanent Injunction on Consent and Stipulated Dismissal (No. CV09-0646RSM) – 5

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EXHIBIT A

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Topline-Sourced Shoes

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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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