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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIADORA S.p.A. and DIADORA
AMERICA, INC.,

Plaintiffs,

v.

PAYLESS SHOESOURCE, INC.,

Defendant.

No. **C07-1171** JEC

COMPLAINT FOR TRADEMARK
INFRINGEMENT, TRADEMARK
DILUTION AND UNFAIR
COMPETITION

JURY TRIAL DEMANDED

Plaintiffs Diadora S.p.A. and Diadora America, Inc. (collectively "Diadora"),
by way of Complaint against Defendant Payless ShoeSource, Inc. ("Payless"),
allege as follows:

STATEMENT OF THE CASE

1. This is an action for trademark infringement, trademark dilution, and
federal and state unfair competition arising from Payless' use of Diadora's
registered trademarks. Diadora's claims arise under the trademark laws of the
United States, including the Lanham Act, 35 U.S.C. §§ 1051-1141n; state
statutory unfair competition law, RCW 19.86.010-19.86.920; and common law.

ORIGINAL

1 Diadora seeks injunctive relief and damages, including statutory and trebled
2 damages. Diadora also seeks its attorneys' fees and costs.

3 **THE PARTIES**

4 2. Plaintiff Diadora S.p.A. is an Italian corporation whose principal
5 place of business is located at Via Mazzini TV 20, 31031 Caerano Di San Marco
6 (TV), Italy.

7 3. Plaintiff Diadora America, Inc. is a Washington corporation whose
8 principal place of business is 6102 South 226th Street, Kent, WA 98032-1874.

9 4. On information and belief defendant Payless is a Missouri
10 corporation, having its principal place of business at 3231 SE 6th Street, Topeka,
11 KS 66607-2207.

12 **JURISDICTION AND VENUE**

13 5. This Court has federal question jurisdiction under 15 U.S.C. § 1121,
14 28 U.S.C. § 1331, and 28 U.S.C. § 1338(a) in that this case arises under the
15 Trademark Act of 1946, 15 U.S.C. §§ 1051-1141n, and the substantial and related
16 unfair competition law claims under 28 U.S.C. § 1338(b), and supplemental
17 jurisdiction of any remaining claims, under 28 U.S.C. § 1367.

18 6. This Court has personal jurisdiction over Payless by virtue of
19 Payless having caused or otherwise participated in acts complained of herein that
20 are directed to and occurring in the state of Washington, including transacting,
21 doing, and soliciting business in this district. Various Payless products are
22 available for purchase in this district.

23 7. Venue is proper in this judicial district pursuant to 28 U.S.C.
24 § 1391(b) and (c).

1 **DIADORA'S LOGO AND PRODUCTS**

2 8. Diadora is a leading company that designs and markets high-
3 performance athletic shoes and apparel, as well as casual footwear.

4 9. In Italy in 1948, at the time Diadora was founded, Diadora began
5 manufacturing work boots and mountaineering shoes. Diadora developed a line
6 of soccer shoes in the 1970s, and after extensive marketing and promotion
7 Diadora has now evolved into one of the leading manufacturers of soccer, tennis,
8 running, cycling, and casual footwear in the world. Like its competitors Nike and
9 Reebok, Diadora shoes are recognizable by the distinctive design featured on the
10 side of every Diadora shoe. A representation of the Diadora logo on footwear
11 appears below:



17 10. As a result of their superior quality and performance, Diadora's
18 soccer shoes have been adopted as the footwear of choice by many of the world's
19 leading professional and amateur soccer players. Italian superstars Christian
20 Vieri, Valerio Bertotto, Giacomo Cipriani, Giannichedda, and Antonio Cassano, as
21 well as international icons Andres Guly, Marek Jankulovski, Walter Samuel, Alvaro
22 Recoba, Martinez Guigou, Ferdinand Les, Roy Keane, Gary Neville, Phillip
23 Neville, Phillips Kevin, Tamudo Raul, Laurel Mayer, Martin Jorgensen, Luzhny
24 Oleg, Abdelilah Saber, Roberto Baggio, and Francesco Totti are among the
25 players who wear and promote Diadora's shoes. Moreover, Diadora is or has

1 been the official sponsor of several professional soccer teams whose gear
2 features the Diadora logo, including AIA FIGC, Aston Villa, Aarau, Udinese,
3 Napoli, Club Africain, Zeljeznicar, SFC Opava, Videoton, Levski Sofia, Zenith,
4 NOC Ukraine, Hapoel Haifa, AS Roma, Scottish National Team, Preston North
5 End, Malta National Team, and Georgia National Team.

6 11. Diadora later expanded its product lines to include specialty athletic
7 footwear and apparel for the sports of track and field, tennis, running, bicycling,
8 and Formula One Racing. Like its soccer shoes, Diadora's expanded lines of
9 footwear and apparel feature the distinctive Diadora logo. Diadora's track and
10 field, tennis, running, and cycling equipment is popular among professional and
11 amateur athletes alike. In the 1980s, Diadora sponsored track and field star and
12 Olympian, Edwin Moses. Gustavo Kuerten, the 2001 winner of the French Open,
13 has been a celebrity endorser for Diadora's tennis shoes. Diadora sponsors, or
14 has sponsored, tennis professionals Elena Likhoteva, Bjorn Borg, Boris Becker,
15 Jennifer Capriati and Juan Balcells. Additionally, Diadora sponsors the Cantina
16 Tollo professional bicycling team and both Andrei Tchmil and Danilo Di Luca wear
17 Diadora cycling shoes. Vincenzo Modica promotes Diadora's running shoes.
18 Diadora also sponsors the Benetton Rugby Treviso rugby team. Formula One
19 Racing sponsorships included Ayrton Senna.

20 12. Diadora introduced its line of athletic footwear with its logo to the
21 United States market in 1978. Since 1994, Diadora's total revenue for the U.S.
22 market for Diadora shoes and apparel has been over \$250 million. Since 1997,
23 Diadora has sold more than 3 million pairs of shoes in the U.S.

24 13. In 1998, recognizing the demand for retro-looking athletic shoes and
25 for athletic-looking shoes for casual, day-to-day wear, Diadora developed a line of
26 footwear tailored for the broader marketplace. These lines were introduced to the

1 U.S. market in 1999. Like its traditional athletic footwear, each of Diadora's
2 casual shoe models prominently feature the well-known Diadora logo. This
3 footwear has been worn by many celebrities such as Nelly, Young Buck, Chingy,
4 and Murphy Lee in advertisements and at appearances.

5 14. As a result of its extensive marketing and promotional efforts around
6 the world, Diadora's products and the Diadora Logo are now famous in many
7 parts of the globe, including the United States, and are offered for sale in more
8 than 80 countries through distributors and licensees.

9 DIADORA'S MARKS

10 15. Diadora has been using the Diadora logo trademark on goods
11 continuously since the 1970s, with considerable commercial success.

12 16. Diadora owns United States Trademark Registration Number
13 3,063,249, a design mark in International Classes 18, 25 and 28 for, among other
14 items, shoes, footwear, and various clothing items. An exemplar of the mark is
15 shown below:



21 Diadora uses and promotes this mark in commerce in connection with various
22 products, including shoes, footwear, and clothing items. Diadora enjoys
23 substantial goodwill in its mark owing to its lengthy and exclusive use of the mark.

24 17. Diadora owns United States Trademark Registration Number
25 1,324,537, a design mark in International Classes 18, 25 and 28 for, among other
26

1 items, shoes, footwear, and various clothing items. An exemplar of the mark is
2 shown below:



8 Diadora uses and promotes this mark in commerce in connection with various
9 products, including shoes, footwear, and clothing items. Diadora enjoys
10 substantial goodwill in its mark owing to its lengthy and exclusive use of the mark.

11 18. Diadora owns United States Trademark Registration Number
12 1,313,513, a design mark in *International Classes 18, 25 and 28* for, among other
13 items, shoes, footwear, and various clothing items. An exemplar of the mark is
14 shown below:



20 Diadora uses and promotes this mark in commerce in connection with various
21 products, including shoes, footwear, and clothing items. Diadora enjoys
22 substantial goodwill in its mark owing to its lengthy and exclusive use of the mark.

23 19. Diadora's logo that is the subject of United States Trademark
24 Registration Numbers 3,063,249, 1,324,537 and 1,313,513 is hereinafter referred
25 to as the "Diadora Logo." Copies of printouts from the United States Patent and
26

1 Trademark Office website of the U.S. trademark registrations for the Diadora Logo
2 are attached as Exhibits 1 (Reg. No. 3,063,249), 2 (Reg. No. 1,324,537), and 3
3 (Reg. No. 1,313,513).

4 20. Diadora's Trademark Registration Numbers 1,324,537 and
5 1,313,513 have been in effect over 21 years and are now incontestable under 15
6 U.S.C. § 1065. Accordingly, the validity of the Diadora Logo, the registration of
7 the Diadora Logo, registrant's ownership of the Diadora Logo, and Diadora's
8 exclusive right to use the Diadora Logo in commerce are incontestable under 15
9 U.S.C. § 1115(b).

10 21. Well before the acts of Payless complained of herein, and by virtue
11 of Diadora's prominent display of the Diadora Logo on goods, their containers,
12 and displays, and Diadora's extensive marketing and sales of the Diadora Logo,
13 the Diadora Logo had become extremely well known, acquired additional
14 distinctiveness and had come to represent extremely valuable goodwill owned by
15 Diadora.

16 PAYLESS' WRONGFUL ACTS

17 22. On information and belief, some time during the last sixty days,
18 Payless began manufacturing, promoting, offering for sale, and selling in this
19 District and throughout the United States a new line of shoe called the
20 CHAMPION® Idol Athletic ("Idol Athletic"). The Idol Athletic bear a design mark
21 (the "Infringing Logo") that is substantially identical to the Diadora Logo. Payless
22 is using the Infringing Logo without Diadora's permission. A true and accurate
23 copy of the Payless website advertising such product is attached hereto as
24 Exhibit 4.

1 23. Using the Infringing Logo, Payless offers for sale and sells goods,
2 such as athletic shoes, identical to those Diadora offers for sale and sells under
3 the Diadora Logo.

4 24. On information and belief, Payless is substantially advertising,
5 promoting, offering for sale, and selling the Idol Athletic shoe bearing the
6 Infringing Logo. The Idol Athletic shoe is sold in hundreds of stores across the
7 United States, including Payless stores in this district, and on the Internet.

8 25. Diadora has not consented to Payless' use of the Infringing Logo,
9 nor has Diadora sponsored, endorsed or approved the goods or services offered
10 or promoted by Payless.

11 26. Diadora's unauthorized use of the Infringing Logo is likely to cause
12 confusion, cause mistake, and deceive an appreciable number of reasonably
13 prudent customers and prospective customers into falsely believing that Payless'
14 goods are provided, sponsored, or approved by Diadora and/or Diadora and
15 Payless are connected or affiliated.

16 27. On or about July 16, 2007, shortly after discovering Payless' use of
17 the Infringing Logo, Diadora sent a letter to Payless demanding that it cease using
18 the Infringing Logo. A copy of that letter is attached hereto as Exhibit 5.

19 28. Upon information and belief, Payless deliberately employs a mark
20 substantially identical to the Diadora Logo, with knowledge of Diadora's long prior
21 use, to mislead and confuse consumers into believing that Payless' goods are
22 provided, sponsored, or approved by Diadora and to intentionally profit from
23 Diadora's goodwill in the Diadora Logo.

24 29. As a direct and proximate result of Payless' conduct set forth above,
25 Diadora has been irreparably injured, including, but not limited to, harm to the
26

1 reputation and goodwill that Diadora has built up in its business and the loss of
2 sales and profits that Diadora would have made but for Payless' actions.

3 30. Payless' conduct is continuing and will continue, constituting an
4 ongoing infringement of Diadora's Logo and an ongoing threat to the public. This
5 continuing conduct will cause Diadora irreparable harm unless the Court restrains
6 and enjoins Payless from engaging in the wrongful conduct described herein. It
7 would be difficult to determine the amount of compensation that could afford
8 Diadora adequate relief for the acts of Payless, present and threatened, and a
9 multiplicity of judicial proceedings may be required. Diadora's remedy at law is not
10 adequate in and of itself to compensate it for this harm.

11 **FIRST CLAIM FOR RELIEF:**
12 **FEDERAL TRADEMARK INFRINGEMENT**
13 **15 U.S.C. §1114**

14 31. Plaintiff incorporates all prior allegations as if set forth fully herein.

15 32. This is a claim for infringement of the federally registered Diadora
16 Logo arising under Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1).

17 33. For at least 30 years prior to the acts of Payless complained of
18 herein, Diadora has continually sold and advertised products which bear the
19 Diadora Logo.

20 34. Diadora's advertising and promotional activities involving its products
21 bearing the Diadora Logo have been continuous and have been for the purpose of
22 acquainting the public with the excellent quality of Diadora's products so that
23 consumers may, with knowledge and confidence, purchase and use products
24 bearing the Diadora Logo. As a result, Diadora products bearing the Diadora
25 Logo are well known, and the Diadora Logo has come to be and are recognized
26 by the public as indicating that the products bearing the Diadora Logo originate
with Diadora.

1 35. Payless' use of the Infringing Logo, a mark substantially identical
2 and therefore confusingly similar to the Diadora Logo, in a similar manner in
3 connection with identical and highly related goods, constitutes trademark
4 infringement in violation of 15 U.S.C. § 1114(1). Payless' acts constitute
5 infringement of Diadora's U.S. Trademark Registration Nos. 3,063,249, 1,324,537
6 and 1,313,513.

7 36. Payless' use of the Infringing Logo is continuing. Without injunctive
8 relief, Diadora has no adequate remedy at law by which to control the continuing
9 injury to its business, reputation, and goodwill. Diadora has been and will
10 continue to be irreparably harmed. No amount of money damages can
11 adequately compensate Diadora if it loses the ability to control the use of its mark,
12 reputation, and goodwill through the false and unauthorized use of its trademark.
13 Diadora is entitled to monetary damages and injunctive relief prohibiting Payless
14 from using the Infringing Logo or any other logotype, trademark, or designation
15 which is likely to be confused with the Diadora Logo.

16 37. Payless' use of the Infringing Logo in violation of Diadora's rights
17 has been knowing, willful, deliberate, and with intent to profit from Diadora's
18 goodwill in the Diadora Logo, making this an exceptional case. Accordingly,
19 Diadora is entitled to recover Payless' profits together with Diadora's damages,
20 trebled, costs of the action, and reasonable attorneys' fees pursuant to 15 U.S.C.
21 § 1117.

22 **SECOND CLAIM FOR RELIEF:**
23 **UNFAIR COMPETITION UNDER FEDERAL LAW**
 15 U.S.C. § 1125(a)

24 38. Plaintiff incorporates all prior allegations as if set forth fully herein.

25 39. Payless' use of the Infringing Logo, a mark identical and thus
26 confusingly similar to the Diadora Logo, in a similar manner in connection with

1 identical and highly related goods comprises false designation of origin arising
2 under the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a).

3 40. Payless has intentionally engaged in activities that are reasonably
4 calculated to infringe, and have infringed, Diadora's rights in the Diadora Logo in
5 violation of 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act), including but
6 not limited to the fact that Payless has caused goods to enter commerce with the
7 Infringing Logo designation on or in connection with those goods. Payless' use of
8 the Infringing Mark on its goods are false designations of origin that are likely to
9 cause confusion, cause mistake, and deceive as to the affiliation, connection or
10 association of Payless with Diadora and as to the origin, sponsorship, or approval
11 of such goods by Diadora.

12 41. Payless' use of the Infringing Logo is continuing. Without injunctive
13 relief, Diadora has no adequate remedy at law by which to control the continuing
14 injury to its business, reputation, and goodwill. Diadora has been and will
15 continue to be irreparably harmed. No amount of money damages can
16 adequately compensate Diadora if it loses the ability to control the use of its mark,
17 reputation, and goodwill through the false and unauthorized use of its trademark.
18 Diadora is entitled to monetary damages and injunctive relief prohibiting Payless
19 from using the Infringing Logo or any other logotype, trademark or designation
20 which is likely to be confused with the Diadora Logo.

21 42. Payless' use of the Infringing Logo in violation of Diadora's rights
22 has been knowing, willful, deliberate, and with intent to profit from Diadora's
23 goodwill in the Diadora Logo, making this an exceptional case. Accordingly,
24 Diadora is entitled to recover Payless' profits together with Diadora's damages,
25 trebled, costs of the action, and reasonable attorneys' fees pursuant to 15 U.S.C.
26 § 1117.

THIRD CLAIM FOR RELIEF
FEDERAL TRADEMARK DILUTION
15 U.S.C. § 1125(c)

43. Diadora incorporates all prior allegations as if set forth fully herein.

44. This is a claim for federal trademark dilution arising under the Lanham Act, Section 43(c), 15 U.S.C. § 1125(c).

45. Diadora has the exclusive right in the United States to use and protect the Diadora Logo.

46. The Diadora Logo has been used for years and is so globally recognized and associated with Diadora that it is entitled to be recognized as famous and distinctive under 15 U.S.C. § 1125(c).

47. The Diadora Logo has obtained a secondary meaning indicative of origin, relationship, sponsorship and/or association with Diadora and its distinctive reputation for high quality. The purchasing public is likely to attribute Payless' use of the Infringing Logo to Diadora as a source of origin, authorization and/or sponsorship for the products Payless sells, and further, purchase Payless' products in the erroneous belief that Payless is associated with, sponsored by or affiliated with Diadora, when Payless is not.

48. Payless' use of the Infringing Logo on the products it sells constitutes Payless' commercial use in commerce of the Diadora Logo.

49. Diadora has not authorized or licensed to Payless the use of either the Diadora Logo or the Infringing Logo.

50. Payless' unauthorized use of the Infringing Logo in its marketing, sale and distribution of its products is diluting the distinctive quality of the Diadora Logo and the goodwill associated with it in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

1 51. Payless' use of the Infringing Logo is continuing. Such conduct has
2 injured Diadora and said injury will continue unless the Court enjoins Payless from
3 committing further wrongful acts. Without injunctive relief, Diadora has no
4 adequate remedy at law by which to control the continuing injury to its business,
5 reputation, and goodwill. Diadora has been and will continue to be irreparably
6 harmed. No amount of money damages can adequately compensate Diadora if it
7 loses the ability to control the use of its mark, reputation, and goodwill through the
8 false and unauthorized use of its trademark. Diadora is entitled to monetary
9 damages and injunctive relief prohibiting Payless from using the Infringing Logo or
10 any other logotype, trademark or designation which is likely to be confused with
11 the Diadora Logo.

12 52. Payless' use of the Infringing Logo in violation of Diadora's rights
13 has been knowing, willful, deliberate, and with intent to profit from Diadora's
14 goodwill in the Diadora Logo, making this an exceptional case. Accordingly,
15 Diadora is entitled to recover Payless' profits together with Diadora's damages,
16 trebled, costs of the action, and reasonable attorneys' fees pursuant to 15 U.S.C.
17 § 1117.

18 **FOURTH CLAIM FOR RELIEF:**
19 **COMMON LAW TRADEMARK INFRINGEMENT**

20 53. Diadora incorporates all prior allegations as if set forth fully herein.

21 54. Payless' use of the Infringing Logo, a mark identical and thus
22 confusingly similar to the Diadora Logo, in a similar manner in connection with
23 identical and highly related goods comprises common law trademark infringement.

24 55. Payless' use of the Infringing Logo is continuing. Without injunctive
25 relief, Diadora has no adequate remedy at law by which to control the continuing
26 injury to its business, reputation, and goodwill. Diadora has been and will

1 continue to be irreparably harmed. No amount of money damages can
2 adequately compensate Diadora if it loses the ability to control the use of its mark,
3 reputation, and goodwill through the false and unauthorized use of its trademark.
4 Diadora is entitled to monetary damages and injunctive relief prohibiting Payless
5 from using the Infringing Logo or any other logotype, trademark or designation
6 which is likely to be confused with the Diadora Logo.

7 56. Payless has intentionally engaged in activities that are reasonably
8 calculated to infringe, and have infringed, Diadora's common law trademark rights
9 in the Diadora Logo, including actions that cause confusion, mistake, or deceit as
10 to the origin, sponsorship or approval of Payless' products, and actions that create
11 a likelihood of confusion over Diadora and Payless and their respective products.
12 Payless' actions have been knowing, willful and deliberate, making this an
13 exceptional case under the common law.

14 **FIFTH CLAIM FOR RELIEF:**
15 **STATE STATUTORY UNFAIR COMPETITION AND BUSINESS PRACTICES**

16 57. Diadora incorporates all prior allegations as if set forth fully herein.

17 58. Payless' actions, including but not limited to its repeated and
18 ongoing use of the Infringing Logo, a mark identical and thus confusingly similar to
19 the Diadora Logo, in a similar manner in connection with identical and highly
20 related goods, constitutes unfair competition including unfair or deceptive acts,
21 occurring in trade or commerce, impacting the public interest, and causing injury
22 to Diadora's business in violation the Washington State Unfair Business Practices
23 and Consumer Protection Act ("CPA"), RCW 19.86.010-920, and specifically
24 RCW 19.86.020.
25
26

1 59. Payless' business practices alleged above are unfair and deceptive
2 as they have the capacity to deceive a substantial portion of the purchasing public,
3 and are substantially injurious to Diadora and to consumers.

4 60. Pursuant to the CPA, Diadora is entitled to recover the actual
5 damages sustained by Diadora as a result of Payless' unfair, unlawful, and
6 deceptive business practices alleged above, by which Payless has enriched itself
7 at the expense of Diadora and the public generally. Diadora is also entitled to
8 recover the costs of this suit, including but not limited to its reasonable attorneys'
9 fees, as well as treble damages to the extent permitted by the CPA.

10 61. Pursuant to the CPA, Diadora is also entitled to enjoin Payless'
11 further unfair, unlawful, and deceptive business practices as alleged above.
12 Without injunctive relief, Diadora has no means by which to control Payless'
13 deceptive and confusing use of the Infringing Logo in sales and advertisements.

14 **SIXTH CLAIM FOR RELIEF:**
15 **COMMON LAW UNFAIR COMPETITION**

16 62. Diadora incorporates all prior allegations as if set forth fully herein.

17 63. Payless' acts, as alleged above, constitute unfair competition in
18 violation of the common law of the State of Washington.

19 64. As a result of Payless' actions constituting common law unfair
20 competition, Diadora's business has and will suffer injury, including damage to its
21 business, reputation and goodwill, and the loss of sales and profits plaintiff would
22 have made but for Payless' actions.

23 65. Payless' continuing actions will cause Diadora irreparable harm
24 unless the Court restrains and enjoins Payless from continuing those actions. It
25 would be difficult to determine the amount of compensation that could afford
26 Diadora adequate relief for such continuing acts, and a multiplicity of judicial

1 proceedings may be required. Diadora's remedy at law is not adequate to
2 compensate it for the injuries threatened by Payless' continuing conduct.

3 **JURY DEMAND**

4 66. Diadora demands a trial by jury.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Diadora asks this Court:

7 1. Grant a preliminary and permanent injunction enjoining and
8 restraining Payless, its officers, agents, servants and employees, and all those in
9 active concert or participation with it, from:

10 A. Using the Infringing Logo or any other logo type, trademark,
11 or designation that substantially imitates, copies, counterfeits, or makes
12 unauthorized use of the Diadora Logo;

13 B. Manufacturing, distributing, importing, circulating, selling,
14 advertising, offering for sale, moving or otherwise disposing of, any product
15 bearing a simulation, reproduction, counterfeit, copy or colorable imitation of the
16 Diadora Logo;

17 C. Using any simulation, reproduction, counterfeit, copy,
18 colorable or confusingly similar imitation of the Diadora Logo;

19 D. Using any false description or designation of origin or
20 representation (including, without limitation, any letters, words, symbols, or other
21 text) which can, or is likely to lead the trade or public, or individual members
22 thereof, to believe that any product manufactured, imported, advertised,
23 distributed and/or sold by Payless is in any manner associated or connected with
24 Diadora or is sold, licensed, sponsored, or approved by Diadora;

1 E. Engaging in any course of conduct likely to cause confusion,
2 deception or mistake, or to injure Diadora's business reputation or dilute the
3 distinctive quality of Diadora's name and the Diadora Logo;

4 F. Engaging in any other activity constituting an infringement of
5 the Diadora Logo or of Diadora's rights to use or to exploit the same;

6 G. Unfairly competing with Diadora in any manner whatsoever;

7 H. Secreting, destroying, altering, removing, or otherwise dealing
8 with the unauthorized products, or any books or records which contain any
9 information relating to the importing, manufacturing, producing, acquiring,
10 distributing, circulating, selling, marketing, offering for sale, advertising, promoting,
11 renting or displaying of unauthorized products which infringe the Diadora Logo;

12 I. Causing an infringement of the Diadora Logo or of Diadora's
13 rights to use or to exploit said mark, or causing any dilution of Diadora's name,
14 reputation or goodwill; and

15 J. Assisting, aiding, or abetting any other person or business
16 entity in engaging in or performing any of the activities referred to in
17 subparagraphs (A) through (I), above.

18 2. Enter an order:

19 A. Finding that the Payless has unfairly competed with Diadora
20 by the acts complained of herein;

21 B. Finding that the Payless has infringed the Diadora Logo by
22 the acts complained of herein;

23 C. Directing that Payless deliver up for destruction to Diadora all
24 unauthorized products, articles, and advertising material of any kind in its
25 possession or under its control bearing the Infringing Logo or any simulation,
26 reproduction, counterfeit, copy, or colorable imitation thereof, and all plates,

1 molds, matrices, and other means of production of same, pursuant to 15 U.S.C. §
2 1118;

3 D. Requiring Payless to recall all of its products sold under or
4 bearing the Infringing Logo;

5 E. Requiring that Payless, within thirty (30) days after service of
6 notice of the entry of judgment, or an injunction pursuant thereto, file with the
7 Court and serve on Diadora's counsel a written report under oath setting forth in
8 detail the manner in which Payless has complied with the Court's order;

9 F. Awarding to Diadora all of Payless' gross profits and any
10 other damages Diadora has sustained or will sustain as a consequence of
11 Payless' infringement of the Diadora Logo and Payless' unfair competition, and
12 requiring Payless to account for all gains, profits, and advantages derived by it
13 from the sale of its infringing merchandise bearing the Infringing Logo, and
14 trebling or otherwise increasing the award to Diadora, as provided for under 15
15 U.S.C. § 1117, RCW 19.86.090, or as otherwise provided by law;

16 G. Awarding to Diadora the costs of this action together with
17 reasonable attorneys' and investigators' fees and prejudgment interest in
18 accordance with 15 U.S.C. § 1117, RCW 19.86.090, or as otherwise provided by
19 law; and

20 H. Awarding to Diadora such other and further relief as the Court
21 may deem just and proper.

22 //

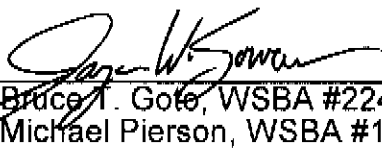
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DATED this 27 day of July, 2007.

RIDDELL WILLIAMS P.S.

By 
Bruce T. Goto, WSBA #22449
Michael Pierson, WSBA #15858
Jayson W. Sowers, WSBA #27618
Attorneys for Plaintiffs DIADORA S.p.A.
and DIADORA AMERICA, INC.

Int. Cls.: 18, 25 and 28

Prior U.S. Cls.: 1, 2, 3, 22, 23, 38, 39, 41 and 50

Reg. No. 3,063,249

United States Patent and Trademark Office

Registered Feb. 28, 2006

TRADEMARK
PRINCIPAL REGISTER



DIADORA-INVICTA SPA (ITALY JOINT STOCK
COMPANY)
VIA MAZZINI 20
CAERANO DI SAN MARCO, ITALY 31031

FOR: SPORTS BAGS, BACKPACKS, DRAW-
STRING SACKS, SHOE BAGS, BRIEFCASES, DUF-
FLE BAGS, BAGS FOR BALLS, RACQUET BAGS, IN
CLASS 18 (U.S. CLS. 1, 2, 3, 22 AND 41).

FIRST USE 0-0-1974; IN COMMERCE 12-1-1980.

FOR: SOCCER FOOTWEAR, TENNIS FOOT-
WEAR, RUNNING FOOTWEAR, ATHLETIC FOOT-
WEAR, SANDALS, SLIPPERS; SOCCER TEAM
APPAREL, NAMELY, JERSEYS, SHORTS, T-
SHIRTS, PRACTICE VESTS; GOALKEEPER APPA-
REL, NAMELY, JERSEYS, PANTS, SHORTS;
WARM-UP JACKETS, WARM-UP PANTS, WARM-
UP SUITS, BENCH COATS, NAMELY COAT INTEN-
DED TO BE WORN OVER ATHLETIC WEAR;
COMPETITIVE TRAINING APPAREL, NAMELY,
JACKETS, PANTS, FLEECEs, SWEATSHIRTS, T-
SHIRTS; WOMEN'S AND MEN'S TENNIS APPAREL,

NAMELY, T-SHIRTS, SKIRTS, DRESSES, TANK
TOPS, VESTS, SHORTS, POLO SHIRTS, WARM-UP
SUITS; T-SHIRTS, SLEEVE TIE-BACKS, ARM-
BANDS, WRISTBANDS, HEADBANDS, GLOVES,
SOCKS, CAPS, HATS, VISORS, IN CLASS 25 (U.S.
CLS. 22 AND 39).

FIRST USE 0-0-1974; IN COMMERCE 12-1-1980.

FOR: SHIN GUARDS AND ANKLE GUARDS
FOR ATHLETIC USE, GOALKEEPER GLOVES,
SOCCER BALLS, IN CLASS 28 (U.S. CLS. 22, 23, 38
AND 50).

FIRST USE 0-0-1974; IN COMMERCE 12-1-1980.

OWNER OF U.S. REG. NOS. 1,313,513, 2,751,758
AND OTHERS.

SER. NO. 78-578,209, FILED 3-2-2005.

JENNIFER CHICOSKI, EXAMINING ATTORNEY

EXHIBIT 1

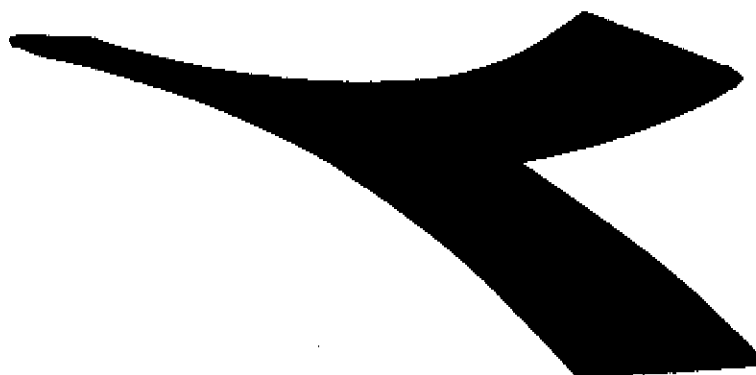
Int. Cls.: 18, 25 and 28

Prior U.S. Cls.: 3, 22, 39 and 41

United States Patent and Trademark Office

Reg. No. 1,324,537
Registered Mar. 12, 1985

TRADEMARK
Principal Register



Calzaturificio F.lli Danieli S.p.A. (Italy corporation)
Via Mazzini, 20
Caerano San Marco, Treviso, Italy 31031

For: ALL PURPOSE SPORTS BAGS, TRAVEL BAGS, HANDBAGS, BRIEFCASES, ATTACHE CASES, SUITCASES, UMBRELLAS, WALKING STICKS, in CLASS 18 (U.S. Cls. 3 and 41).

First use Aug. 1974; in commerce 1977.

For: SHOES, BOOTS, ATHLETIC SHOES, CLOGS, SOCKS, STOCKINGS, JOGGING SUITS, T-SHIRTS, JACKETS, SUITS, PANTS, SINGLETs, ROBES, HATS, CAPS AND CUFFS, WRIST BANDS, GOLF GLOVES, SWEAT BANDS, BATH-ROBES, SHORTS, in CLASS 25 (U.S. Cls. 22 and 39).

First use Aug. 1974; in commerce Nov. 1974.

For: BALLS OF ANY SIZE FOR GAMES, TENNIS NETS AND RACKETS, SPORTING

ARTICLES AND THEIR STRUCTURAL PARTS —NAMESLY, ICE SKATES, ROLLER SKATES, BATTING GLOVES, BASEBALL BATS AND HELMETS, GOLF CLUBS, TABLE TENNIS TABLES AND RACKETS, BOWLING BALLS, SKIS, in CLASS 28 (U.S. Cls. 22 and 39).

First use Aug. 1974; in commerce 1977.

Priority claimed under Sec. 44(d) on Italy application No. 46,084/C/1980, filed Nov. 3, 1980, Reg. No. 326,294, dated Apr. 27, 1981, expires Nov. 3, 2002.

Ser. No. 408,354, filed Jan. 6, 1983.

CRAIG K. MORRIS, Examining Attorney

EXHIBIT 2

Int. Cl.: 25

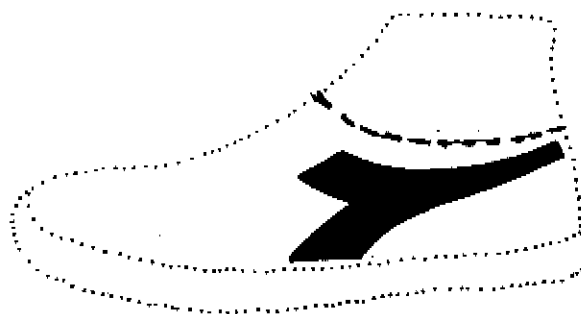
Prior U.S. Cl.: 39

United States Patent and Trademark Office

Reg. No. 1,313,513

Registered Jan. 8, 1985

TRADEMARK
Principal Register



Calzaturificio F.lli Danieli - S.p.A. (Italy joint stock company)
Caerano San Marco, Treviso, Italy, by change of name from
Calzaturificio F.lli Danieli S.N.C. (partnership)
Caerano San Marco, Treviso, Italy

For: SHOES, in CLASS 25 (U.S. Cl. 39).
First use Aug. 1974; in commerce Nov. 1974.
Priority claimed under Sec. 44(d) on Italy application No. 46,076/C/1976, filed Sep. 7, 1976, Reg. No. 298,303, dated Nov. 8, 1976, expires Sep. 7, 1996.

The dotted lines in the drawing are not part of the mark and no claim is made to the dotted lines. The dotted lines serve only to show the position of the mark on the shoes.

Sec. 2(f).

Ser. No. 118,042, filed Mar. 4, 1977.

D. J. FINGERET, Examining Attorney

EXHIBIT 3



Search: type keyword or

Home | About Us | Gift Cards | Contact Us | Site Map | My Account

Home | Brands | Shoes & Accessories | Athletics | Performance | Champion® Idol Athletic

Champion® Idol Athletic

Lot Number: 054047
Width: Regular

This old-school sneak features cool contrast taping and laces up the front for a good fit. Rubber sole is non-marking and flexible. Padded footbed and collar add comfort in every step. Leather/suede and manmade materials. Champion and C logo are trademarks of HBI Brandod Apparel Enterprises, LLC used under license.

Sale Price: \$16.99
[Reg. Price: \$24.99]

1. Size:

Select a size

Size Charts

Measurement Tips

Alternate Views

2. Color:

Grey/BI



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shop by trend

- new arrivals
- as seen in
- cork
- flats
- metallics
- patent
- peep toes
- prints

shop by style

- athletics
- boots
- casuals
- dance
- dress
- industry
- sandals

wide widths
sale

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- backpacks
- handbags
- sunglasses
- watches

shop by brand

- Abaeté for Payless
- Airwalk
- American Ballet Theatre for Spotlights
- American Eagle
- Build-A-Boar Workshop
- Champion
- Dunkman
- Fioni
- Lower East Side
- Minicci
- Montego Bay Club
- Predictions
- SafeTStep
- Spalding
- Tailwind

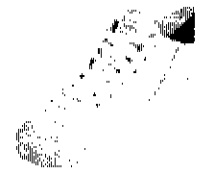
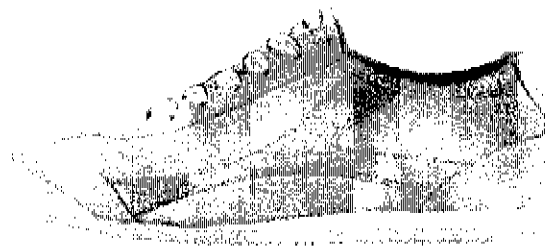


EXHIBIT 4

**in-store
clearance**
select styles up to
**70%
off**
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In-store only. Savings on select
styles. Quantities are limited.



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WWW.RIDDELLWILLIAMS.COM

JAYSON W. SOWERS
206.389.1602
JSOWI-RS@RIDDELLWILLIAMS.COM

July 16, 2007

VIA CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Mr. Matthew E. Rubel
Chief Executive Officer and President
Payless ShoeSource, Inc.
3231 SE Sixth Avenue
Topeka, KS 66607-3207

Re: Infringement of Diadora Marks

Dear Mr. Rubel:

We serve as counsel to Diadora S.p.A. Corporation and Diadora America, Inc. (collectively, "Diadora"). As you may be aware, Diadora is an internationally well-known provider of athletic footwear, clothing, accessories and equipment for various athletic activities.

Diadora is the owner of several registered and unregistered trademarks, including the design marks shown in U.S. Registration Nos. 3,063,249, 1,324,537 and 1,313,513 in International Classes 18, 25, and 28 (collectively, the "Diadora Marks"). A copy of the registrations are enclosed.

The Diadora Marks have been in use in the United States for many decades and identify Diadora as the source for a broad range of products, including athletic shoes and apparel. Diadora has spent substantial time, money and effort to promote and advertise the Diadora Marks. In addition to generating millions of dollars in sales, these efforts have resulted in international consumer recognition and accompanying goodwill of incalculable value. Further information about Diadora and its products can be obtained at its website at www.diadora.com.

It has recently come to our attention that Payless ShoeSource, Inc. ("Payless") is selling a Champion shoe in its physical stores and online called the "Idol Athletic" that uses a design identical to the Diadora Marks. A copy of the Payless website selling the Champion "Idol Athletic" is enclosed for your reference.

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44469.00005

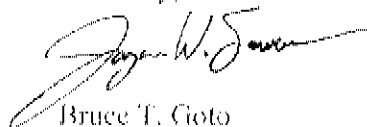
EXHIBIT 5

Mr. Matthew E. Rubel
July 16, 2007
Page 2

Payless' sale of the Idol Athletic shoe, or any other shoe with a similar design, is likely to confuse consumers as to the source of the products, and will damage the reputation and goodwill that Diadora has built up in its business and products. Such actions may be grounds for various legal claims, including common law and statutory trademark infringement, false designation of origin, unfair competition and deceptive trade practice.

Payless has been in business a long time and appears to be a reputable company, so we hope to resolve this promptly. Based on the above concerns and in view of Diadora's senior rights, we request on behalf of Diadora that Payless please immediately cease manufacturing, importing, promoting, distributing and selling its "Idol Athletic" shoe, and using any marks similar to the Diadora Marks. This would include, without limitation, retrieving and destroying all units of such product sent to various retailers. If Payless is unwilling to do so, Diadora will consider taking other action to protect its trademark rights. We urge Payless to consider the ramifications of this letter, and its liability for, among other things, intentional trademark infringement.

Sincerely,



Bruce T. Goto
Jayson W. Sowers
of
RIDDLE E. WILLIAMS P.S.

Enclosures: Copy of U.S. Registration Nos. 3063249, 1324537, 1313513
Copy of Payless website selling Champion "Idol Athletic" Shoe

cc: Diadora America, Inc.

Int. Cls.: 18, 25 and 28

Prior U.S. Cls.: 1, 2, 3, 22, 23, 38, 39, 41 and 50

Reg. No. 3,063,249

United States Patent and Trademark Office

Registered Feb. 28, 2006

TRADEMARK
PRINCIPAL REGISTER



DIADORA-INVICTA SPA (ITALY JOINT STOCK
COMPANY)
VIA MAZZINI 20
CAERANO DI SAN MARCO, ITALY 31031

FOR: SPORTS BAGS, BACKPACKS, DRAW-
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FLE BAGS, BAGS FOR BALLS, RACQUET BAGS, IN
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WEAR, SANDALS, SLIPPERS; SOCCER TEAM
APPAREL, NAMELY, JERSEYS, SHORTS, T-
SHIRTS, PRACTICE VESTS; GOALKEEPER APPA-
REL, NAMELY, JERSEYS, PANTS, SHORTS;
WARM-UP JACKETS, WARM-UP PANTS, WARM-
UP SUITS, BENCH COATS, NAMELY COAT INTEN-
DED TO BE WORN OVER ATHLETIC WEAR;
COMPETITIVE TRAINING APPAREL, NAMELY,
JACKETS, PANTS, FLEECE, SWEATSHIRTS, T-
SHIRTS; WOMEN'S AND MEN'S TENNIS APPAREL,

NAMELY, T-SHIRTS, SKIRTS, DRESSES, TANK
TOPS, VESTS, SHORTS, POLO SHIRTS, WARM-UP
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AND 50).

FIRST USE 0-0-1974; IN COMMERCE 12-1-1980.

OWNER OF U.S. REG. NOS. 1,313,513, 2,751,758
AND OTHERS.

SER. NO. 78-578,209, FILED 3-2-2005.

JENNIFER CLICOSKI, EXAMINING ATTORNEY

Int. Cls.: 18, 25 and 28

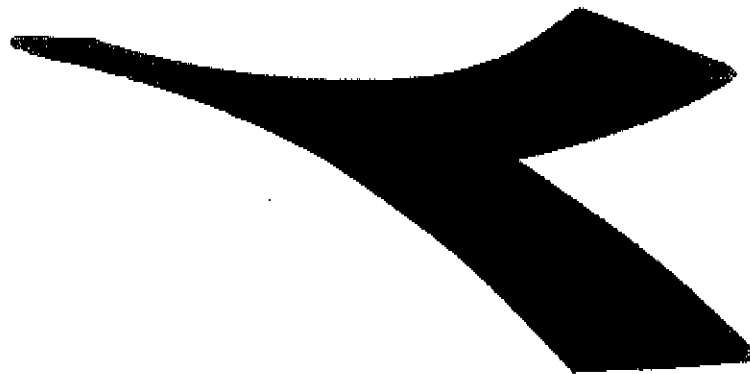
Prior U.S. Cls.: 3, 22, 39 and 41

United States Patent and Trademark Office

Reg. No. 1,324,537

Registered Mar. 12, 1985

TRADEMARK
Principal Register



Calzaturificio F.lli Danieli S.p.A. (Italy corporation)
Via Mazzini, 20
Caerano San Marco, Treviso, Italy 31031

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Ser. No. 408,354, filed Jan. 6, 1983.

CRAIG K. MORRIS, Examining Attorney

Int. Cl.: 25

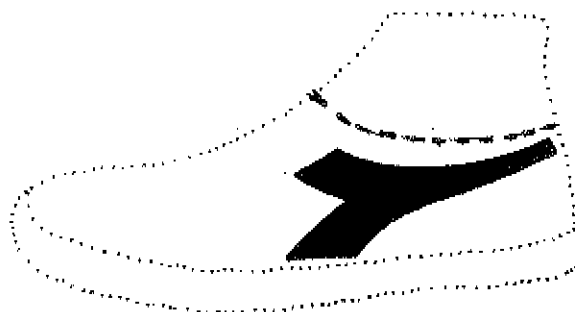
Prior U.S. Cl.: 39

Reg. No. 1,313,513

United States Patent and Trademark Office

Registered Jun. 8, 1985

TRADEMARK
Principal Register



Calzaturificio F.lli Danielli - S.p.A. (Italy joint stock company)
Caerano San Marco, Treviso, Italy, by change of name from
Calzaturificio F.lli Danicli S.N.C. (partnership)
Caerano San Marco, Treviso, Italy

For: SHOES, in CLASS 25 (U.S. Cl. 39).
First use Aug. 1974; in commerce Nov. 1974.
Priority claimed under Sec. 44(d) on Italy application No. 46,076/C/1976, filed Sep. 7, 1976, Reg. No. 298,303, dated Nov. 8, 1976, expires Sep. 7, 1996.

The dotted lines in the drawing are not part of the mark and no claim is made to the dotted lines. The dotted lines serve only to show the position of the mark on the shoes.

Sec. 2(f).

Ser. No. 118,042, filed Mar. 4, 1977.

D. J. FINGERET, Examining Attorney

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Search: type keyword or lot#

Home | Women's Shoes & Accessories | Athletic | Champion® Icol Athletic

Champion® Icol Athletic

free shipping
with any purchase of
\$50 or more

This old-school sneaker features cool contrast taping and laces up the front for a good fit. Rubber sole is non-marking and flexible. Padded footbed and collar add comfort in every step. Leather/suede and manmade materials. Champion and C logo are trademarks of HBI Branded Apparel Enterprises, LLC used under license.

shop by trend

- new arrivals
- as seen in
- cork
- flats
- metallics
- patent
- peep toes
- prints

shop by style

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- boots
- casuals
- dance
- dress
- industry
- sandals

wide widths
sale

shop accessories

- backpacks
- handbags
- sunglasses
- watches

shop by brand

- Abete® for Payless
- Airwalk
- American Ballet Theatre
- for Spotlights
- American Eagle

Lot Number: 054347
Width: Regular

Sale Price: \$16.99
[Reg. Price: \$24.99]

- 1. Size:
- 2. Color: Grey/Blue

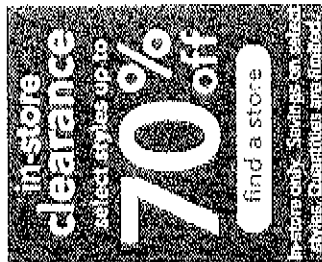
Select a size

- Size Charts
- Measurement Tips
- Alternate Views



Payless ShoeSource

- Build-A-Bear Workshop
- Champion
- Dunkman
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