



УНИВЕРЗИТЕТ У ИСТОЧНОМ САРАЈЕВУ
ПРАВНИ ФАКУЛТЕТ

и

ЕВРОПСКА ОРГАНИЗАЦИЈА ЗА ЈАВНО ПРАВО

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PROTECTION OF COLOR TRADEMARKS IN COMPARATIVE LAW – A CASE STUDY OF THE CHRISTIAN LOUBOUTIN TRADEMARK¹

In today's competitive marketplace, color trademarks have emerged as a particularly controversial aspect of intellectual property law, blurring the line between aesthetic appeal and source-identifying functionality. This paper explores the legal viability of color trademarks through the lens of comparative law, focusing on the landmark case of Christian Louboutin's red sole trademark. The paper first outlines the theoretical and legal framework, focusing on the legal requirements for the registration of color as a trademark (primary and secondary meaning), as well as the doctrine of aesthetic functionality. It then turns to the Christian Louboutin case, which serves as a focal point for exploring the legal challenges in asserting trademark rights over a single color in the fashion industry. By analyzing key judicial decisions from the United States, the European Union, and India, the study examines how different legal systems interpret and apply the concepts of distinctiveness, secondary meaning, and aesthetic functionality.

Key words: Color trademark; Christian Louboutin trademark; Aesthetic Functionality; Comparative law; Case law.

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¹ This work is a result of research within the project “Adapting the Legal Framework to Social and Technological Changes with a Special Focus on Artificial Intelligence”, carried out in 2025 by the Institute of Comparative Law with financial support from the Ministry of Science, Technological Development and Innovation (contract number 451-03-136/2025-03/200049).

1. INTRODUCTORY REMARKS

According to domestic, legally established legal terminology, a trademark is the name for the subjective right of industrial property, which has as its object of protection a designation (sign, mark) by which the trademark holder identifies their product or service in economic transactions in order to distinguish it from the same or similar goods or services of another entity.²

In today's competitive market, product branding has evolved to include not only names and logos, but also non-traditional elements such as shape, packaging, and even color.³ Among these, color trademarks⁴ represent one of the most controversial forms of intellectual property protection, as they blur the line between aesthetic expression and legally protected brand identity.

The issue of distinctiveness—specifically, whether a particular color can serve as a source identifier for consumers—emerges as a central challenge. Unlike words or graphic symbols, colors are limited in number and are often perceived as decorative or functional rather than indicative of origin. This raises a critical legal and commercial question: under what conditions can a color acquire secondary meaning and be eligible for trademark protection?

The most comprehensive answer to this question can be provided through an analysis of judicial decisions in the legal disputes initiated by Christian Louboutin across the globe. His attempt to protect a specific shade of red applied to the soles of high-heeled shoes has sparked global legal debate. Since analyzing the case law in all countries where Christian Louboutin has pursued litigation over infringement of his color trademark would exceed the scope of this paper, three representative jurisdictions from comparative law have been selected for analysis: the United States, the European Union, and India. Court decisions in the United States, the European Union, and India have taken notably different approaches to the issue, each grappling with the balance between brand protection and fair competition.

The aim of this paper is to examine the viability of color trademarks in contemporary intellectual property law, using a comparative approach. Drawing on theoretical foundations and landmark judicial decisions, the

² S. Marković, D. Popović, *Pravo intelektualne svojine*, Pravni fakultet Univerziteta u Beogradu, Beograd 2013, 139.

³ J. Ćeranić Perišić, *Odgovornost internet posrednika za povredu žiga*, Institut za uporedno pravo, Beograd 2020, 11.

⁴ B. Vlašković, „Trodimenzionalni žigovi i žigovi u boji”, *Pravo i privreda* 7–9/2011, 833–844.

analysis seeks to understand whether color, as a brand element, can and should be afforded legal protection in the evolving global marketplace.

The subsequent sections begin with an examination of the theoretical and legal framework, focusing on the legal requirements for the registration of color as a trademark (primary and secondary meaning), as well as the doctrine of aesthetic functionality. This is followed by a detailed analysis of comparative jurisprudence in the case of Christian Louboutin. Special attention is given to the differences in the approaches of the USA, EU, and India toward color trademarks.

2. THEORETICAL AND LEGAL FRAMEWORK

The chapter devoted to the theoretical and legal framework will begin by examining the legal requirements for registering a color as a trademark (primary and secondary meaning), followed by an analysis of the concept and application of aesthetic functionality, and concluding with a review of relevant international sources, including the TRIPS Agreement and the Paris Convention.

2.1. Legal Requirements for Registering Color as a Trademark (primary and secondary meaning)

In trademark law, color has traditionally been considered a non-traditional mark. To be registered as a trademark, a color must meet the general legal requirements of distinctiveness, which include either inherent distinctiveness or acquired distinctiveness (secondary meaning).⁵ In other words, distinctiveness may be shown either by proof that the mark is itself inherently distinctive, or by showing that the mark has acquired, through use, secondary meaning in the public eye.⁶ Inherent distinctiveness refers to a color that is uniquely and instantly identifiable with a product or service, without any additional evidence of consumer recognition. However, this is a rare occurrence, as most colors are naturally descriptive or ornamental and do not immediately convey a particular source.

In most cases, color marks rely on secondary meaning to gain protection. Secondary meaning occurs when a color, through prolonged and exclusive use in commerce, comes to signify a particular brand or source to

⁵ D. E. Moir, “Trademark Protection of Color Alone: How and When Does a Color Develop Secondary Meaning and Why Color Marks Can Never Be Inherently Distinctive”, *Touro Law Review* 2/2011, 407–433.

⁶ Factors that are relevant in determining secondary meaning include: advertising expenditures, consumer studies linking the mark to a source, unsolicited media coverage of the product, sales success, attempts to plagiarize the mark, and the length and exclusivity of the mark's use.

consumers.⁷ This can be demonstrated through various means, such as extensive advertising, consumer surveys, and recognition by the public. In the case of Christian Louboutin's Red Sole, for example, the brand sought to prove that the color red on the sole of their high-heeled shoes had acquired secondary meaning, making it distinctively associated with the Louboutin's brand.

2.2. Aesthetic Functionality – Concept and Application

With the rise of branding and marketing, firms started using trade dress such as product features or packages to identify themselves. Some firms claim an exclusive trademark right on their trade dress. However, granting a trademark right to some trade dresses might hinder competition. For example, if one firm claims trademark on the heart-shaped candy box, it will prevent others from using the same package to compete in the Valentine's Day sweets market.⁸ So U.S. courts developed a doctrine called aesthetic functionality to avoid the competition hindrance consequence. Aesthetic functionality refers to the situation where a trade dress has the aesthetic value and consumers buy the product largely due to that value. Once a court decides a trade dress, such as the heart-shaped box, is aesthetically functional, the trade dress cannot be a trademark owned by any one firm, and every firm can use it in the market. U.S. courts use aesthetic functionality as a legal ground to reject trademark protection of a trade dress when granting such protection would unfairly disadvantage competitors.⁹

“The aesthetic functionality doctrine is situated in an area of substantial overlap between the three branches of intellectual property: patent, copyright, and trademark. Due to this overlap, courts have found doctrine to be confusing and difficult to apply. However, the goals trademark law illuminate the role of the aesthetic functionality doctrine within intellectual property law and suggest how it should be applied. Principal purpose of trademark law is to prevent consumers from mistakenly purchasing goods from the wrong manufacturer.”¹⁰

Therefore, one of the main challenges in protecting color marks is the aesthetic functionality doctrine. Aesthetic functionality argues that certain

⁷ D. E. Moir.

⁸ X. Wang, “Aesthetic Functionality at a Crossroads: What a Troublesome Doctrine Can Learn from Its Past”, *Chicago-Kent Journal of Intellectual Property* 3/2020, 359.

⁹ A. Hocking, A. Desmousseaux, “Why Louboutin Matters: What Red Soles Teach Us about the Strategy of Trade Dress Protection”, *Trademark Reporter* 6/ 2015, 1337–1388.

¹⁰ C. Farmer, “Red in the Eye of the Beholder: The Case for Aesthetic Functionality”, *Berkeley Technology Law Journal* 28/2013, 781.

design elements, including color, may not be eligible for trademark protection if their use is primarily aesthetic and contributes to the product's attractiveness, rather than functioning as a source indicator.

The aesthetic functionality doctrine is grounded in the idea that granting exclusive trademark rights over aesthetic features could impede competition, especially in industries like fashion, where creativity and design are essential to success. If a color is considered functional in enhancing the aesthetic appeal or desirability of a product, it might not qualify for trademark protection. The U.S. Supreme Court's decision in *Qualitex Co. v. Jacobson Products Co.* (1995)¹¹ set an important precedent, ruling that color can serve as a trademark if it is used in a way that identifies the source of goods and is not essential to the use or purpose of the product.

“Aesthetic functionality is best conceived as a subcategory of the functionality doctrine. The functionality doctrine is a legal mechanism that serves to insulate from trademark protection those useful features that, if exclusively owned, might allow a single manufacturer to gain a monopoly over an entire industry. Aesthetic functionality represents one permutation of this doctrine and stands for the notion that certain design features may be competitively valuable-and thus ineligible for trademark protection because of their particular ability to generate consumer appeal.”¹²

2.3. Relevant International Sources (TRIPS, Paris Convention)

Internationally, color trademarks are subject to a variety of legal frameworks. The TRIPS Agreement (Trade-Related Aspects of Intellectual Property Rights)¹³ sets minimum standards for the protection and enforcement of intellectual property rights, including trademarks. Under Article 15 of the TRIPS Agreement, members are required to provide protection for distinctive signs, and color marks are treated as one of the potential categories of protection. However, the flexibility of national laws allows for differences in how color trademarks are treated.

The Paris Convention for the Protection of Industrial Property¹⁴ from 1883, another key international agreement, focuses on ensuring that trademarks (including colors) are protected as part of the overall intellectual property framework. It establishes principles for the protection of trade-

¹¹ *Qualitex Co. v. Jacobson Products Co., Inc.*, 514 U.S. 159, 115 S.Ct. 1300, [1995].

¹² M. E. Parmenter, “Louboutins and Legal Loopholes: Aesthetic Functionality and Fashion”, *Pepperdine Law Review* 4/2013, 1047.

¹³ Agreement on Trade-Related Aspects of Intellectual Property Rights, https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm, 15 Jun 2025.

¹⁴ The Paris Convention for the Protection of Industrial Property, <https://www.wipo.int/treaties/en/ip/paris/>, 15 Jun 2025.

marks, although it does not provide specific guidelines on color trademarks. As such, the application of color as a trademark can vary significantly from country to country, influenced by both national laws and international treaties.

3. CASE STUDY: CHRISTIAN LOUBOUTIN

The analysis of the Christian Louboutin case begins with an examination of the emergence of the red sole as a brand, and continues with the review of major legal disputes related to the infringement of the Christian Louboutin color trademark in comparative jurisprudence. Representative case law from the United States and the European Union are examined, along with more recent case law from India, which is particularly noteworthy for incorporating artificial intelligence into the discourse on color trademark protection.

3.1. The Emergence of the Red Sole as a Brand

Over the years, French shoe fashion designer, Christian Louboutin, developed the signature mark of coloring the outer sole of the women's shoes he designed in a particular shade of red.

The recognizable red soles of Christian Louboutin, in Pantone 18 Chinese Red, were created by chance while the designer was working on a prototype. He saw his assistant painting her nails and was inspired to take a bottle of nail polish and paint the underside of a pair of shoes. Since he created his iconic red soles 33 years ago (in 1992), they have become synonymous with the brand and its creator.

“Though many people cannot pronounce his name correctly (*Lu-bu-TAHn*), his signature red sole is instantly recognizable. When Hollywood starlets cross red carpets and high fashion models strut down runways, and heads turn and eyes drop to the celebrities' feet, lacquered red outsoles on high-heeled, black shoes make a glamorous vivid statement.”¹⁵ Today, it's hard to imagine any glamorous event or fashion show without Louboutin's red soles.

The red sole became a symbol of exclusivity and high-end fashion, and over time, Louboutin sought to protect this distinctive feature legally. In 2008, Louboutin applied for a trademark for the red sole, and his application was granted in several jurisdictions. “A colored sole so famous that the shoe designer has owned a US trademark for red soles on the bottom of

¹⁵ F. Grillo, “Aesthetic functionality: can a single colour on a fashion item act as a trademark?”, *Queen Mary Journal of Intellectual Property* 2/2013, 155.

the footwear since 1 January 2008.”¹⁶ The trademark registration in the United States became a pivotal part of the brand’s strategy to maintain the unique appeal of its footwear. Louboutin’s red sole was recognized not just as a color, but as a trademark that had acquired secondary meaning in the minds of consumers, signifying a high-end product linked to a particular brand.

Following the growing reputation of Christian Louboutin shoes as a fashion statement, other shoemakers were inspired by the design of an outer sole in a particular shade of red. In response, Louboutin initiated various trademark infringement suits around the world, and different defenses were raised by the alleged infringers.

3.2. The United States of America – Christian Louboutin S.A. v Yves Saint Laurent America

In the United States, color trademarks are recognized under Section 2(f) of the Lanham Act, which allows for the registration of a mark that has acquired secondary meaning in the marketplace. As established in cases such as *Qualitex Co. v. Jacobson Products Co.*,¹⁷ the Supreme Court in the U.S. held that colors could function as trademarks if they identify and distinguish the source of goods.

The dispute between Christian Louboutin and Yves Saint Laurent America (YSL) began in 2011 when YSL launched a line of monochromatic red shoes, featuring red soles identical to Louboutin’s signature red. Louboutin filed a lawsuit against YSL, claiming that their use of the red sole on a red shoe violated Louboutin’s trademark rights, resulting in confusion among consumers. Louboutin sought a preliminary injunction to halt irreparable harm to its brand and to forestall the potential destruction of its world famous, federal registered Red Outsole Mark.¹⁸

In the District Court (Southern District of New York),¹⁹ the judge ruled that Louboutin’s red sole mark could not be protected because the red sole was an aesthetic feature of the product and not a functional element. The court also determined that granting exclusive rights to a color (especially one used in fashion) would hinder competition by limiting designers’ creative freedom. The court further emphasized that the aesthetic appeal of

¹⁶ *Ibid.*, 156.

¹⁷ *Qualitex Co. v. Jacobson Products Co., Inc.*, 514 U.S. 159, 115 S.Ct. 1300, [1995].

¹⁸ F. Grillo, 156.

¹⁹ *Christian Louboutin S.A. v YVES SAINT LAURENTAMERICA, INC.*, 778 F. Supp. 2d 445, S.D.N.Y., 2011.

color in fashion played an important role in competition and that no single color could be monopolized as a trademark in the fashion industry.²⁰

“Holding that a 'single colour for fashion items' is never subject to protection, the District Court carved out an exception to the protection afforded to colour trademarks by the Lanham Act and by the Supreme Court in *Qualitex*. It has created a distinction without a difference and it has derived the rule not from any prior cases, but from its own premise that, by (questionable) analogy to great painters, designers in the fashion industry may not be deprived of access to any colour or shade of colour in their work of devising new designs for fashion apparel and accessories. What is more, the Court's *a priori* rule lacks any support in the Lanham Act or in the law of trademarks. On the contrary, the law requires a fact-specific analysis of the particular design/device in the context in which it operates as a source identifier to determine whether there is undue hindrance of competition. Put another way, the benefits to commerce of trademark protection must be balanced against any limitations on competitors; if the hindrance to competition is small or *de minimus*, trademark rights will be upheld.”²¹

Expressing discontent with the court's ruling, Louboutin's lawyers appealed the decision of the District Court in October 2011.

The Second Circuit Court of Appeals, however, reversed the District Court's decision in part. The appellate court agreed that the red sole was not an essential or functional element of the shoe but instead was used to identify the brand. The court found that Louboutin's red sole mark had acquired secondary meaning, as evidenced by consumer recognition and the association of the red sole with Louboutin's brand. However, the court also held that the mark could not extend to situations where the red sole was used in a monochromatic red shoe (as in YSL's case), because consumers did not associate the red sole with Louboutin in that context. The appellate court modified the scope of Louboutin's trademark protection, limiting it to situations where the red sole contrasts with the upper of the shoe.

Louboutin's own consumer surveys show that when consumers were shown the YSL monochrome red shoe, of those consumers who misidentified the pictured shoes as Louboutin-made, nearly everyone cited the red sole of the shoe, rather than its general red colour. The record demonstrates that Louboutin has not established secondary meaning in an application of

²⁰ R. A. Debrow Cornett, “Seeing Red: A Critical Analysis of Christian Louboutin S.A. v. Yves Saint Laurent America, Inc”, *Alabama Law Review* 2/2013, 539–565.

²¹ F. Grillo, 159–160.

a red sole to a red shoe, but only where the red sole contrasts with the 'upper' of the shoe.²²

“Pursuant to Section 37 of the Lanham Act, the Court of Appeal has therefore modified the Red Sole Mark and has instructed the Director of the Patent and Trade Office to limit its registration to only those situations in which the red lacquered outsole contrasts in colour with the adjoining 'upper' of the shoe.”²³

This decision emphasized the importance of consumer perception and the role of secondary meaning in the protection of non-traditional trademarks like color. While Louboutin’s red sole was deemed distinctive and protectable in the context of contrasting shoes, the decision also reflected the balancing act courts must perform between protecting brand identity and ensuring competition remains fair in industries where aesthetics play a significant role.

In the case of *Christian Louboutin v. Yves Saint Laurent*, the Second Circuit Court of Appeals ruled that Louboutin’s trademark was valid only when the red sole contrasted with the upper part of the shoe. This reflects the U.S. legal system’s nuanced approach, where color can be a trademark only if it meets the criteria for distinctiveness, and the context in which the color is used is key to determining whether it functions as a source identifier.

One unique feature of U.S. trademark law is the aesthetic functionality doctrine, which holds that a feature of a product that is aesthetically desirable and crucial to its competitive success may not be protected by trademark law. However, this doctrine was not applied to Louboutin’s red sole, as the court found no functional advantage in the red color itself.

3.3. The European union – Christian Louboutin and Christian Louboutin Sas v van Haren Schoenen BV

Following the growing reputation of Christian Louboutin shoes as a fashion statement, other shoemakers all over the world, including the EU, were inspired by the design of an outer sole in a particular shade of red. In response, Louboutin initiated various trademark infringement suits around the EU, and different defenses were raised by the alleged infringers.

One of the most important infringement suits was initiated in Netherland in May 2013, and its significance lays in the fact that the Dutch court decided to stay the proceedings and refer the matter to the CJEU for a preliminary ruling.

²² *Ibid.*, 161.

²³ *Ibid.*

As for the merits of the dispute, Louboutin claimed trademark infringement by the Dutch shoemaker Van Haren. In defense, Van Haren raised the provision of the then-relevant Article of the 2008 Trademarks Directive, which defines signs that cannot constitute a trademark: “Signs which consist exclusively of: (...) the shape which gives substantial value to the goods.”²⁴ In other words, Van Haren raised the defense of aesthetic functionality.

Given the importance of this legal question, the Dutch court decided to stay the proceedings and refer the matter to the CJEU for a preliminary ruling.²⁵

Very wisely, the Advocate General initially discussed how Christian Louboutin's mark is to be characterized. While it was previously mostly described as a mere color mark, the Advocate General described the mark as a sign consisting of the shape of the goods and sought protection for a color in relation to that shape. As a side note, the mark may be even more precisely described as a position mark in a certain color, i.e., that the outer sole is kept in a certain red that is defined by the Pantone color code.²⁶

Regarding the core issue of the case—whether such trademark is prohibited by aesthetic functionality according to the 2008 Trademarks Directive—the Advocate General suggested that such findings must exclusively relate to the intrinsic value of the shape and must not take into account the attractiveness of the goods flowing from the reputation of the trademark or its proprietor.²⁷

To put it differently, the fact that Christian Louboutin persuaded the fashion world to associate an outer sole of a woman's shoe in a particular shade of red with him cannot be to his detriment. He could have chosen yellow, blue, or green, but he chose this particular shade of red.²⁸

It was quite a surprise that the decision of the Great Chamber gave even broader protection to Christian Louboutin's trademarks. It simply stated in a rather short decision that a sign consisting of a color applied to the sole of a high-heeled shoe does not consist exclusively of a *shape*, within the meaning of the 2008 Trademarks Directive. In other words, the

²⁴ Article 3, subs. (1), letters (e) (iii) of the Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks, *OJ L* 299, 8.11.2008.

²⁵ Case C-163/16, *Christian Louboutin and Christian Louboutin Sas v van Haren Schoenen BV* of 12 June 2018.

²⁶ CJEU Confirms that Louboutin's Red Outer Sole Can Be a Trademark, <https://www.jonesday.com/en/insights/2018/07/cjeu-confirms-that-louboutins-red-outer-sole-can-b>, 16 Jun 2025.

²⁷ *Ibid.*

²⁸ *Ibid.*

court regarded Christian Louboutin’s trademarks as mere color marks, therefore not a color mark relating to a particular shape and thus not falling within the named provision.

However, the CJEU decision only postpones the interesting issue of further defining *aesthetic functionality*. The Trademarks Directive of 2015²⁹ states that “signs which consist exclusively of the shape, *or another characteristic*, which gives substantial value to the goods” cannot be a trademark. By adding the wording “or another characteristic”, nontraditional trademarks other than three-dimensional trademarks may now fall under this provision. Therefore, for any trademarks under the 2015 Trademarks Directive, the issue of aesthetic functionality had to be revisited.

The ruling from the CJEU raised important issues about the limits of color trademarks in fashion. While it recognized that colors can serve as a distinctive mark, it set a high threshold for proving that the use of a single color could be associated with a single brand. This decision has sparked further discussions in the EU about the viability of color trademarks in fashion, particularly when compared to the more flexible approach taken by the U.S. legal system.

In the European Union, the protection of color trademarks has been more restrictive. Under the EU Trade Mark Regulation, the Court of Justice of the European Union has set a high bar for color marks, requiring them to demonstrate not only that the color is distinctive but also that it is capable of distinguishing the goods of one enterprise from those of another.

The EU’s emphasis on distinctiveness is even more pronounced in the context of fashion. Unlike the U.S., where Louboutin was able to establish secondary meaning for his red sole, the CJEU determined that the use of color alone was not enough to justify trademark protection. This illustrates the EU’s stricter interpretation of what constitutes a valid trademark and the higher level of evidence required to prove distinctiveness.

Additionally, the EU’s trademark law reflects a balance between protection and competition, where the courts are cautious about granting exclusive rights to colors that could stifle competition in creative industries

²⁹ Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) [2015] *OJ L* 341/21 (since 30 September 2017 no longer in force).

like fashion. In fact, EU law tends to view color as an aesthetic feature, which must be carefully scrutinized to ensure it does not unduly limit the creativity of other designers.

3.4. Court Decision in India – Shutiq Case and the Role of AI-Evidence

India’s approach to color trademarks is still evolving, but recent cases such as the Shutiq case indicate that India is increasingly looking to international standards for guidance. While India recognizes color as a potential trademark, its Trade Marks Act (1999) requires that the color must have acquired distinctiveness in the market before it can be registered.³⁰ As in the U.S., secondary meaning is essential, but India’s legal system also introduces an element of market competition and the influence of consumer perceptions.³¹

In the Shutiq case, the Indian courts examined whether a color mark could be monopolized without significantly hindering competition. The case involved the use of a specific color pattern by a local designer, who sought to prevent a competitor from using a similar design. This is similar to the aesthetic functionality doctrine in the U.S., where courts assess whether granting trademark protection for a color could stifle competition. India has also started incorporating artificial intelligence (AI) and digital tools in its analysis, helping courts better understand consumer perceptions and trends in color branding. The case highlighted the growing importance of artificial intelligence and digital tools in trademark disputes, with AI being used to analyze consumer perceptions and track brand recognition. The Shutiq case demonstrated that color trademarks in India are increasingly subject to technological advancements, and AI-based evidence may play a role in establishing secondary meaning and consumer recognition of color marks.³²

However, India’s approach is still developing, and there is less established case law compared to the U.S. and the EU. Nevertheless, India’s growing market for fashion and design-related trademarks means that the country is likely to see more cases related to color trademarks in the near

³⁰ P. Kaushik, Nisha, “The Role of Trademarks in the Fashion Industry”, *Jus Corpus Law Journal* 4 2/2024, 48–59

³¹ S. Sainath, “A Critical Comparative Analysis of the Contemporary Challenges Revolving Non-Conventional Trademarks and Its Registerability in India and the USA”, *Indian Journal of Law and Legal Research* 4/2022, 1–19.

³² *Ibid.*

future, with courts continuing to adapt the existing framework to the nuances of the fashion industry.³³

4. CONCLUSION

The primary objective of trademark law is to enable consumers to identify and select products based on consistent quality, while simultaneously safeguarding the producer’s goodwill within the marketplace. The capacity of a mark to distinguish the source of goods is not established by designers—whether in the fashion industry or other consumer product sectors—but rather by consumer perception. In the absence of such an association between a color or design and a specific brand or origin, the design cannot function as a trademark. “But, to give a concrete example, if I – as consumer – recognize red soles as emanating from Louboutin, yellow arches as identifying a McDonald’s restaurant, a red pocket tab signifying Levi’s jeans, plaid as indicating Burberry trench coat and a blue box as indicating jewellery from Tiffany, then the colour and design has reached its goal, it does indeed act as a trademark.”³⁴

The concept of color as a trademark remains viable and relevant in modern trademark law, but its protection must be approached with careful consideration of the distinctiveness of the color, its aesthetic functionality, and its impact on competition. The U.S. has established a relatively flexible framework for color trademarks, while the EU remains more restrictive, ensuring that color marks are only granted in truly distinctive cases. India, with its evolving trademark landscape, is likely to adopt more robust protection as it continues to align with international standards.

For color trademarks to be sustainable, the law must ensure that it strikes a balance between enabling brand recognition and avoiding monopolies that restrict competition. Future developments in AI and the digital market may further shape how color trademarks are understood and applied, allowing for more nuanced and fair decisions that account for the changing nature of consumer behavior and global competition.

³³ *Ibid.*

³⁴ F. Grillo, 165.

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ЗАШТИТА ЖИГА У БОЈИ У УПОРЕДНОМ ПРАВУ – СТУДИЈА СУДСКЕ ПРАКСЕ У ВЕЗИ СА ЖИГОМ *CHRISTIAN* *LOUBOUTIN*

Сажетак

На савременом конкурентном тржишту, жигови у боји представљају посебно контроверзан аспект права интелектуалне својине, јер замагљују границу између естетске привлачности и функције означавања порекла производа. Овај рад истражује правну одрживост жигова у боји кроз призму упоредноправне судске праксе у предмету који се односи на црвени ђон обуће *Christian Louboutin*. У уводном делу рада излаже се теоријски и правни оквир регистрације жигова у боји, укључујући појмове примарног и секундарног значења, као и доктрину естетске функционалности. Затим се анализира судска пракса у предмету *Louboutin* као полазна тачка за разматрање ширег спектра правних изазова у вези са заштитом права на коришћење боје као жига у модној индустрији. Кроз анализу судских одлука у Сједињеним Америчким Државама, Европској унији и Индији, рад испитује како различити правни системи тумаче и примењују принципе дистинктивности, секундарног значења и естетске функционалности.

Кључне речи: *Жиг у боји; Жиг Christian Louboutin; Естетска функционалност; Упоредно право; Судска пракса.*

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