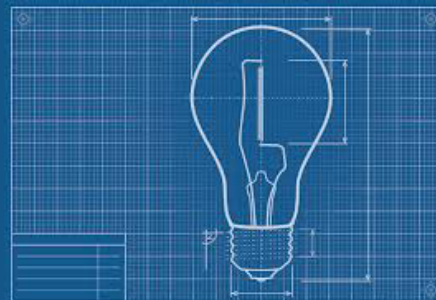


From: Andy Polk <apolk@fdra.org>
Subject: FDRA IP Digest August 2013
Date: November 4, 2013 9:00:28 PM EST
To: apolk@fdra.org
Reply-To: apolk@fdra.org

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FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

Intellectual Property Digest



August 2013

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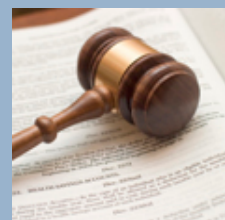
USPTO

General News

The views expressed are solely those of the authors and do not necessarily reflect the views of the FDRA or any of its members.

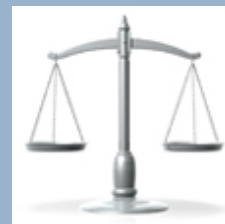
Legislation

There was no new legislation introduced in July.



Litigation

[Cobra Int'l, Inc. v. BCNY Int'l, Inc.](#), 2013 U.S. Dist. LEXIS 105838 (D. Fla. July 29, 2013). Synopsis: In the early stages of litigation, in which plaintiff Cobra International asserts that DCNY, Family Dollar, and Dollar General infringed its patent for a circuit that powers LED lighting in footwear (U.S. Patent No. 5,821,858), a federal district court judge rejects defendants' motion to exclude, in its entirety, the testimony of plaintiffs' expert witness.



[Airwair Int'l LTD v. Vans, Inc.](#), 2013 U.S. Dist. LEXIS 100120 (D. Cal. July 17, 2013). Synopsis:

Federal District Court denies Vans' motion to dismiss a complaint, in which Airwair/Dr. Marten's alleges that a "Dr. Gibson" shoe, produced and sold by a Vans licensee in Asia, violates U.S. trademark law, despite the fact that virtually all of the infringing activity occurred in Asia, not in the United States.

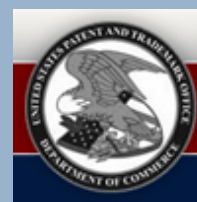
Isaco Int'l Corp. v. EZ, Inc., 2013 TTAB LEXIS 427 (TTAB July 17, 2013). Synopsis: The Trademark Trial and Appeal Board denies EZ Inc's attempt to register the trademark EUROPAPI for shoes and other products (upholding Isaco International's objections to the mark), because EZ filed for trademark registration under 15 U.S.C. § 1051(a), which requires the mark to have been in prior use, and evidence showed that goods marked EUROPAPI had not been sold or transported in commerce prior to the trademark application.

Cristiano Di Thiene S.p.A v. Panagiotis, 2013 TTAB LEXIS 385 (TTAB July 8, 2013). Synopsis: The Trademark Trial and Appeal Board denies registration of the mark AERONAUTICA MILITARE for shoes and other products (upholding Cristiano di Thiene S.p.A.'s objections to the mark), because the applicant failed to provide any evidence of intent to use the mark in commerce as is required under 15 U.S.C. § 1051(b).

USPTO

Utility patents issued in the month of July:

| Pat. No. | Title |
|---------------------------|--|
| 8,495,825 | Forefoot Catapult for Athletic Shoes |
| 8,490,303 | Sole for a Golf Shoe |
| 8,490,302 | Open-Soled Article of Footwear |
| 8,490,301 | Adjustable Forefoot Posting for Orthotic |
| 8,490,300 | Insert for Footwear |
| 8,490,299 | Article of Footwear Having an Upper Incorporating a Knitted Component |
| 8,490,298 | Upper Structure for a Shoe |
| 8,490,297 | Cumulative-Force-Mitigating Apparatus for Substantially-Inclined Shoes |
| 8,490,296 | Article of Footwear with Forefoot Plates |
| 8,490,295 | Insole with Flexible, Shock Absorbing Unit |
| 8,484,865 | Ball Control Insert |
| 8,484,864 | Pressure-Reducing Device |
| 8,484,863 | Top Lift Assembly for a Shoe Heel |
| 8,479,417 | Article of Footwear with Vertical Grooves |
| 8,479,416 | Footwear Component for an Article of Footwear |
| 8,479,415 | Article of Footwear with a Detachable Wrap |
| 8,479,414 | Footwear Insole |
| 8,479,413 | Footwear Insole for Alleviating Arthritis Pain |
| 8,479,412 | Tethered Fluid-Filled Chambers |
| 8,479,411 | Adjustably Vented Shoe and Associated Method |
| 8,475,932 | Compositions of Organic Acid Modified Ionomers Filled with Silica |
| 8,474,158 | Molded Snowshoe with Compound Deck |
| 8,474,157 | Footwear Lacing System |
| 8,474,156 | Vibration Generating Shoe and Vibration Device Thereof |
| 8,474,155 | Article of Footwear with Outsole Web and Midsole Protrusions |
| 8,474,154 | Footwear for Walking or Running with Rolling Action |
| 8,474,153 | Adaptable Shoe Cover |
| 8,474,062 | Calf and Ankle Thermal Protection Device for Motorcyclists |



Patent applications published in the month of July:

| Pub. App. No. | Title |
|-----------------------------|---|
| 20130186786 | Compressible Footwear and Associated Pack |

| | |
|-----------------------------|---|
| 20130185961 | Lighting Shoe |
| 20130185960 | Cleat for a Shoe, Shoe Sole with Such a Cleat and Shoe |
| 20130185959 | Step-In Apparatus, Counter and Shoe |
| 20130185958 | Footwear Having Removable Cover for Toe Area Thereof |
| 20130185957 | Shoe Insole |
| 20130185956 | Sole with Vertical Elements Folded Over Each Other |
| 20130185955 | Ergonomic Footwear |
| 20130185954 | Article of Footwear with Thong Portion Including Grooves |
| 20130181662 | Heated Insoles |
| 20130180136 | Shoe Charm Holder Device |
| 20130180135 | Puppet/Slipper Combination |
| 20130180134 | Footwear Accessory |
| 20130180133 | Boot, Particularly for Ski-Mountaineering or Telemark Skiing |
| 20130180132 | Shoe |
| 20130180131 | Shoe with Conforming Upper |
| 20130180130 | Footwear Accessory Binding System |
| 20130180129 | Novel Method |
| 20130180128 | Middle Sole with Cushioning Effect |
| 20130180127 | Overshoe for High-Heeled Footwear |
| 20130174451 | Shoe or Boot with an Integrated Electrical Device |
| 20130174450 | Infant Shoe and Last Used for Manufacturing Same |
| 20130174449 | Laminate Quarter Panel for a Skate Boot and Skate Boot Formed Therewith |
| 20130174448 | Footwear with Storage Compartment |
| 20130174447 | Article of Footwear with Support Assembly Having Sealed Chamber |
| 20130174446 | Function Screen Printing on Upper |
| 20130174445 | Insole and a Method and a System for Insole Manufacture |
| 20130174444 | Flexible Shoe Sole |
| 20130174443 | Heatable and Coolable Inserts for Footwear |
| 20130167409 | Supporting Structure for Foldable Bottomless Rainproof Shoe Cover |
| 20130167408 | Sole for Working Boots |
| 20130167407 | Athletic Shoe |
| 20130167406 | Working Boots |
| 20130167405 | Replaceable Heel Cushion Cavity |
| 20130167404 | Molded Polymer for Use in Low Temperatures Having a Low Rigidity Factor |
| 20130167403 | Shoe Insole |
| 20130167402 | Sole and Article of Footwear Having a Pod Assembly |
| 20130167401 | Sole and Article of Footwear Having a Pod Assembly |

Design patents issued in the month of July:

| Pat. No. | Title |
|--------------------------|---|
| D687,155 | Foot Covering, No Assignee |
| D686,909 | Fastening Device, Assignee Hickies, Inc. |
| D686,816 | Boot Upper, Assignee Kodiak Group Holdings, Inc. |
| D686,815 | Boot Upper, Assignee Kodiak Group Holdings, Inc. |
| D686,814 | Boot Upper, Assignee Kodiak Group Holdings, Inc. |
| D686,813 | Boot Upper, Assignee Kodiak Group Holdings, Inc. |
| D686,812 | Sole Assembly for a Split-Sole Shoe, Assignee Gavrieli Brands LLC |
| D686,811 | Foundation of a Woman's Shoe, Assignee Stuart Weitzmann IP, LLC |
| D686,810 | Foundation of a Woman's Shoe, Assignee Stuart Weitzmann IP, LLC |
| D686,809 | Shoe, No Assignee |
| D686,808 | Shoe, Assignee Strategic Partners, Inc. |
| D686,807 | Shoe, Assignee Strategic Partners, Inc. |
| D686,806 | Shoe Cover, No Assignee |
| D686,805 | Men's High Top Sneaker, No Assignee |
| D686,406 | Footwear, Assignee Sorel Corporation |
| D686,405 | Shoe Outsole, Assignee NIKE, Inc. |

| | |
|--------------------------|--|
| D686,404 | Footwear, Assignee Montrail Corporation |
| D686,403 | Footwear, Assignee Sorel Corporation |
| D686,402 | Footwear, Assignee Montrail Corporation |
| D686,401 | Footwear, Assignee Montrail Corporation |
| D686,400 | Footwear, Assignee Columbia Sportswear |
| D686,399 | Sandal, Assignee Hurley International LLC |
| D686,398 | Sandals with Two Snap Fasteners, No Assignee |
| D686,397 | Sandal, Assignee NIKE, Inc. |
| | D685,985 Zebra Pattern Insert, Assignee Zephyr Athletic Footwear, Inc. |
| D685,984 | Shoe Bottom, Assignee Skechers U.S.A., Inc. II |
| D685,983 | Shoe Sole, No Assignee |
| D685,982 | Footwear, No Assignee |
| D685,981 | Shoe Heel Protector and Shield, No Assignee |
| D685,567 | Shoe, Assignee NIKE, Inc. |
| D685,566 | Shoe, Assignee Reebok International Limited |
| D685,176 | Shoe Upper, Assignee NIKE, Inc. |
| D685,175 | Shoe Upper, Assignee NIKE, Inc. |
| D685,174 | Portion of a Shoe Upper, Assignee NIKE, Inc. |
| D685,173 | Footwear Piece, Assignee HYI |
| D685,172 | Boot with Fabric Bottom, Assignee Warner, Samuel Jerome |
| D685,171 | Footwear Upper, Assignee Ariat International, Inc. |
| D685,170 | Shoe Upper, Assignee Skechers U.S.A., Inc. II |
| D685,169 | Footwear Piece, Assignee HYI |
| D685,168 | Insole, Assignee Skysole Corporation |
| D685,167 | Shoe Midsole, Assignee NIKE, Inc. |
| D685,166 | Shoe Midsole, Assignee NIKE, Inc. |
| D685,165 | Safety Toe Work Boot, No Assignee |
| D685,164 | Slip Simulation Shoe Cover, Assignee URS Energy & Construction, Inc. |
| D685,163 | Shoe, Assignee Alparqatas S.A. |
| D685,162 | Shoe, Assignee Alparqatas S.A. |

Trademarks published in the month of July:

[Q BY PASQUALE](#)

[Q BY PASQUALE](#)

[SILENCE NEVER SOUNDED SO GOOD.](#)

[C](#)

[ALTUM](#)

[WEE ESSENTIALS](#)

[ME GUSTA](#)

[FOOT PETALS INC.](#)

[JUST COVER IT](#)

[ACE WORK BOOTS](#)

[IWITS, DO YOU?](#)

[LITEFIRE](#)

[R](#)

[HEROIC](#)

[PICCADILLY CLOUD](#)

[A](#)

[AIRWALK KICKS](#)

[DECKERS OUTDOOR CORPORATION](#)

[ADAM TUCKER ME TOO](#)

[ROCK DEMON](#)

[JINNYKIM](#)

[KNOT YOUR AVERAGE FLIP FLOP](#)

[CHIRUCA](#)

[MACARENA](#)

[GELWEAR](#)

[NOT SOCKS](#)
[PROPER FLOPS](#)
[MADE 2 PLAY](#)
[SERGIO TORO](#)
[CHIYU FAMOUS SHOES](#)
[LAKES N RIVERS](#)
[LAKES N RIVERS](#)
[BUSTER BROWN & CO.](#)
[YOGAFLOPS](#)
[KARYN'S COLLECTION](#)
[JOHN VARVATOS APPAREL CORP.](#)
[JOHN VARVATOS APPAREL CORP.](#)
[MARCO SANTI](#)
[ECO-SHARE](#)
[WAYMAKER](#)
[SB SPOT-BILT](#)
[BIKEPRO](#)
[ACTIVEPRO](#)
[EDGEPRO](#)
[RUNPRO](#)
[BOLANO](#)
[TRAILSIDE](#)
[TROFMOC LLC](#)
[SIMPLY PELLE](#)
[ABEO](#)
[M2P](#)
[M2P](#)
[SR STRIDE RITE](#)
[TOTAL SUPPORT](#)
[WAVE EVO CURSORIS](#)
[WAVE EVO LEVITAS](#)
[ISA TAPIA](#)
[ISA TAPIA](#)
[COLLECTION'O](#)
[FREDA SALVADOR](#)
[BOOTZIES](#)
[AND I YOU](#)
[GB](#)
[DARE2LOVE](#)
[PHUYUPATA](#)
[INKKAS](#)
[AMALI](#)
[A&A](#)
[HS HEAVENLY SOLES](#)
[POWERSTRAPZ](#)
[THE BALLETT FLAT REINVENTED](#)
[ISHVARA FORMENTERA](#)
[BB](#)
[KRAZYKIX](#)
[FIT BY NATURE, CRAFTED BY HAND.](#)
[CORRAL](#)
[HYDRO GRIP](#)

General News



Shoemaker Sues Rival
The Post (South Africa)
August 22, 2013
By Sharika Regchand



The makers of Bata Toughees school shoes have run to the Pietermaritzburg High Court to stop a Chatsworth competitor from using their "wavy" shoe soles.

Futura Footwear, whose brands included Toughees and Bata Toughees, also want the court to order that an inquiry take place to determine the sum of royalties it should be awarded by Eugasen Reddy, the sole proprietor of Novita Shoes, for using the soles.

The marketing manager of Futura, Alexander Gordon, said in court papers that Bata footwear had been sold and promoted in the country since the 1930s and had developed a considerable reputation.

Being a market leader in school shoes, Gordon said the design had been copied or imitated by many companies, and the infringers had been dealt with.

He said the "distinctive" sole design had served to distinguish the brand from lookalikes when customers examined shoes before buying them.

"The sole serves to assist customers who are illiterate, to identify the Toughees shoes by visual symbols of the sole design more readily."

Bata Limited had applied and registered the wavy sole pattern as a trademark, called Hank for boys and Pearl for girls.

In May 2007, it came to the marketing department's attention that Novita was selling school shoes with the same overall pattern.

"It is visually identical and is deceptively similar to the registered wave pattern."
Gordon said Reddy was passing off his footwear products as those of Bata's.

In reply, Reddy denied any infringement or passing off its shoes as Bata's. He said the case should be stayed because it had taken so long to come to court.

Dharmalingam Reddy, who had been in the footwear industry for more than 50 years, said in court papers that he had mentored Eugasen Reddy.

He said the sole pattern had not seemed to play any role in the mind of whoever bought the shoes.

He added that in displaying shoes, the soles' patterns were not visible.

The case was adjourned to next year. - The Mercury

Marc Joseph Says Clarks Moccasin Is 'Brazen' Copy
Law360
August 20, 2013
By Beth Winegarner

Fashion footwear designer Marc Joseph NY Inc. hit rival C. & J. Clark America Inc. with a trademark and unfair-competition suit in New York federal court Monday, claiming Clarks' "Dunbar Racer" moccasin is an exact copy of Marc Joseph's best-selling "Cypress Hill" shoe.

Clarks launched the "Dunbar Racer" shoe in the past year, confusing shoppers and retailers who were seeking the more upmarket "Cypress Hill" moccasin Marc Joseph unveiled in 2009, according to the complaint. When the two shoes are held side by side, they're "virtually indistinguishable," down to the

stitched arches and "Marc Joseph bow-tie tassel," the suit said.

"Confusion in the marketplace is evident to MJ, as numerous distributors, retail customers and end users have purchased the [Dunbar Racer] when they intended to purchase MJ's Cypress Hill Shoe. Some have ceased purchasing the MJ Cypress Hill shoe and have started purchasing the [Dunbar Racer] instead," Marc Joseph's lawsuit said.

At least one website has recommended that shoppers looking for the Marc Joseph shoe should buy the Clarks shoe - which sells for a much lower price - instead, the complaint said.

Marc Joseph is asking the court to stop Clarks' "brazen copying" of all the nonfunctional details that make the "Cypress Hill" shoe unique, including the hand-stitched details, the pattern on the rubber soles, the rubber name plate on the back of the heel, the arch detail and the tassels. Clarks' alleged copying has diluted Marc Joseph's trade dress "with the intention of capitalizing on MJ's reputation and goodwill," the complaint said.

Prior to the "Dunbar Racer," "no other shoe in the world ever had these inherently distinctive and nonfunctional details," the complaint said. Both shoes are sold in the same places, including websites, department stores and boutiques, increasing the likelihood of customer confusion, according to Marc Joseph.

The complaint accuses Clarks of violating the federal Lanham Act as well as New York state trademark law and unfair-competition law. The fashion house is seeking an injunction blocking the manufacture and sale of the "Dunbar Racer" as well as actual and treble damages from lost profits as well as punitive damages, the complaint said.

An attorney for Marc Joseph NY did not return a request for comment on the suit Tuesday. Representatives for Clarks could not be reached for comment.

Marc Joseph NY was founded in 2006 by a father-son team, Marc and Joseph Antebi, focusing on the design, manufacture and sale of moccasins, loafers and other casual shoes, according to the company's website. The fashion house opened its first dedicated retail store in Manhattan in 2012. Since the "Cypress Hill" shoe launched, more than a million pairs have sold, the complaint said.

Clarks was founded 185 years ago and has operations in 25 countries around the world, according to its website.

Marc Joseph NY is represented by Gary L. Cutler of Gary L. Cutler PC.

Representation Information for C. & J. Clark America Inc. was not immediately available.

The case is Marc Joseph NY Inc. vs. C. & J. Clark America Inc., case number [1:13-cv-04672](#), in the U.S. District Court for the Southern District of New York

Want To Wear Your College Football Pride On Your Feet For A Few Hundred Dollars?

Forbes.com

August, 18, 2013

By Darren Heitner

A list of licensee products (by category) is available at the Princeton University Trademark Licensing website. Licensees have obtained limited rights to use the Princeton University name and logos owned by the University for a variety of products, and unsurprisingly, the majority of licensees are apparel companies. The "Apparel" category typically includes protection to use marks on t-shirts, shorts, sweatshirts, sweatpants and other garments that cover a person's upper and lower body. A license to use Princeton University's trademarks on shoes falls under a separate "Accessories" classification. It is

a license controlled by one company - JP Crickets.

Atlanta, Georgia-based JP Crickets creates a his-and-her shoe that combines an Italian-made loafer with the comfort of a classic velvet slipper. Its new "University" line of shoes is said to let a consumer show his-or-her school pride while wearing a school logo on an officially licensed Italian-made shoe. Princeton University is one of fifty-five colleges, including the University of Georgia, University of Maryland and University of Alabama, that have entered into licensing agreements with JP Crickets to allow the shoe company to place their logos on the comfortable shoes.

"Princeton was the first school I licensed with," explained JP Crickets CEO Susan Meyer to FORBES. "I went directly to their licensing department and submitted an application. I presented the product, explained what I was doing, paid a fee and and promised a royalty. It's not an exorbitant amount of money. The royalty average is 10% on gross per school."

Meyer is hoping to demonstrate success with the fifty-five schools currently signed to licensing agreements before she expands the collection to include colleges like the University of Florida, which has a more demanding licensing process. She believes that because JP Crickets is not operating in the traditional and cluttered "Apparel" category, and instead operates in a very small category with a luxury product, it will open doors to additional partners. But Meyer also understands that demonstrating success in the first year of these licensing deals is key and that certain standards must be met to create and maintain those relationships.

"Because of the nature of these universities, you have to meet certain standards as a business," said Meyer. "When I went and looked at manufacturing in China as opposed to Italy, I was concerned to produce these logos in with fear that I would have out-the-backdoor duplication. I chose Italy, because I knew I could trust the manufacturers for their fabric and quality. But I mainly did it for the licensing. I basically signed myself over to these universities and I know that it is a risk."

It is a risk Meyer believes is worth taking - she truly believes in her product and the camaraderie it develops among fans of college sports. The cost thus far has not been prohibitive. Meyer says that the largest expense has been manufacturing the shoes, shipping them overseas and paying the required taxes associated therewith. She estimated that it cost her less than \$30,000 to get things started and another \$30,000-\$50,000 to complete the necessary manufacturing process.

There is definitely a market for collegiate licensed products, otherwise there would not be more than nine pages of licensees containing companies that have obtained a limited right to use Princeton University's name and logos. However, while the average consumer may be willing to pay \$20-\$30 for an officially licensed University of Georgia t-shirt, will that same person be convinced to drop \$328 on a pair of JP Crickets University of Georgia black velvet shoes?

Meyer says that the market definitely exists from a numbers perspective, but she also knows that it is a huge shot in the dark to guess what people like and how much money they are willing to pay for a product. Football season is coming up, which is the best time of the year for college sports fans to show their loyalty to their college or university. It will also serve as a great measuring stick for JP Crickets to see just how much potential its University line of shoes has among its target demographic.

Darren Heitner is a Partner at Wolfe Law Miami, P.A. in Miami, Florida, Founder of Sports Agent Blog, and Professor of Sport Agency Management at Indiana University. Learn more about him at <http://www.darrenheitner.com>.

The Maasai People Take Back Their Brand
The Atlantic
August 14, 2013
By Olga Khazan

In East Africa, you can find the semi-nomadic Maasai people herding cattle, wearing intricate jewelry, and performing jubilant dances. Elsewhere, you can find "Masai" sneakers (in British shoe stores), "Masai" tinted panoramic windows (on Land Rovers), and bright-blue "Masai" beach towels (at Louis

Vuitton boutiques).

Many other companies have similarly co-opted the Maasai name, perhaps hoping that it will lend their wares a patina of earthiness or exoticism. Now the tribe would like to claim a share of the profits. To that end, some of its elders are working to trademark its customs and name, with the help of a nonprofit called Light Years IP, which specializes in "intellectual property value capture." Ron Layton, the head of Light Years, has said that the Maasai "brand" might be worth more than \$10 million a year.

Getting that money isn't going to be easy: for one thing, the group will have to fight all the corporate players who have already registered the name. As Ben Goodger, a British lawyer, told me, "the Maasai tribe may have to take their place in line to apply for Maasai."

Such challenges notwithstanding, more and more indigenous groups are staking claims to their traditional knowledge. Last year, the Navajo Nation sued Urban Outfitters over rights to its name; New Zealand has granted patents to the Maori; India recently offered a trademark to tribes making herbal medicines. Compared with these efforts, the Maasai's branding battle will be more global in scope, but the tribe isn't the first to go up against a seemingly unassailable target.

The Sami, a group of indigenous Arctic dwellers, have already taken on Santa Claus-or at any rate, a Finnish tourist attraction called Santa Claus Village. Among their gripes: that the Sami people's customary blue-and-red outfit has been used to costume the park's paid "elves."

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