

**adidas wins latest dispute against H&M in Hague Court
Netherlands - Hoogenraad & Haak, Advertising + IP Advocaten**

**Confusion
Infringement
Enforcement**

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- **adidas finally wins 17-year court battle with H&M**
- **District Court of The Hague held that there was a likelihood of confusion between the two stripe marks**
- **Applied-for cessation order granted against H&M's two-stripe sign and H&M ordered to pay all costs**

In 2016 adidas finally won a 17-year court battle with H&M by a final decision of the Arnhem-Leeuwarden Court of Appeal in the summary proceedings that originally started this saga. On November 8 2017 the District Court of The Hague also ruled in favour of adidas in the main proceedings.

According to the court, adidas retained an interest in bringing proceedings, even after 20 years, since there was still a threat of infringement. H&M had continually refused to sign a commitment to refrain from using a two-stripe design and argued that a blanket ban on the use of two stripes was an unreasonable restriction for selling clothing with two stripes in future.

The court found that the nine invoked adidas trademarks should be considered together as the 'three-stripe trademark' because of the repetition of the three stripes in all of the invoked marks. The court ruled that they all consisted of a pattern of three vertical, parallel stripes of equal width, where the space between the stripes was visually more or less the same as the width of the stripes and the stripes were conducted in the same way with the base colour of the clothing being a contrasting colour and the stripes being applied over the total length of the side of the shoulders, sleeves, side seams, and/or the trouser leg. Even when considering each of the marks on its own, these eight characteristics were the distinctive elements for all of them.

According to the court, the focus of all the adidas trademarks was on the positioning of the three stripes on the clothing. Contrary to the opinion of H&M, the court found that the scope of protection of the trademarks was not limited to black stripes on white clothing and vice versa. The trademark registrations consisted of black-and-white images, but if the colour of the mark was relevant then the registration would have made this clear. Further, the court agreed with adidas that the three-stripe pattern could be regarded as a trademark with reputation and thus received a wider scope of protection.

The court held that the three-stripe trademark was similar to the two-striped pattern of the H&M mark. The two-striped pattern consisted of seven of the eight distinctive characteristics – the only difference was the number of stripes which, according to the court, was not the most distinctive characteristic of the three-stripe trademark. The eight characteristics together determine the overall impression of the trademark. Considering this overall impression of the three-stripe mark and the vague recollection image that the relevant public has when seeing a trademark, the number of stripes was not considered to be a substantial difference that outweighed the similarities.

Market research also showed that a significant part of the public (between 24% and 34%) believed the two-striped clothing originated from adidas. The court therefore held that there was a likelihood of confusion due to the substantial degree of similarity, the high degree of distinctive character and the fact that H&M used the stripes for the same goods and services as the adidas trademark registrations.

The court granted the applied-for cessation order against the H&M two-stripe sign and also in general for patterns consisting of the eight distinctive characteristics of the three-stripe trademark.

H&M was ordered to pay all costs.

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