

# India: Single Color Not Protectable as Trademark

*Christian Louboutin SAS v. Abubaker & Ors*, No. 890/2018 (May 25, 2018)

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One step forward and one step back. Such is the path for Christian Louboutin in his ongoing battle to enforce trademark rights in his famous red sole around the world. The High Court of Delhi held in July 2018 that the designer's red sole is not protectable as a trademark in India. The decision came shortly before the Grand Chamber of the Court of Justice of the European Union ("CJEU") came to the opposite conclusion. According to the Delhi High Court, a single color is not capable of trademark protection.

In 2016, Louboutin brought an infringement action in India against retailers that colored the soles of women's footwear red before selling them. Louboutin alleged infringement by passing off and sought an injunction and damages. The High Court of Delhi held that Louboutin failed to state a cause of action because its registered trademark was incapable of protection under Indian trademark law.

Section 2(m) of India's Trade Marks Act defines a "mark" as any "device, brand, heading, label, ticket, name, signature, word, letter, numeral, shape of goods, packaging or **combination of colors**." Specification of "combination of colors" means that a single color is incapable of trademark protection. The Court dismissed its own precedent holding that a single color was protectable as a trademark in India—including its own ruling in Louboutin's favor in another case—noting that the prior decisions were inconsistent with the strict terms of the Act.

The decision stands in stark contrast to the CJEU's recent [decision](#) in *Christian Louboutin v. Van Haren Schoenen B.V.* holding that the same red sole was capable of protection under EU law because Louboutin's registration explicitly protected the color of the sole and not its shape.

It also stands in contrast to the U.S. decision in *Christian Louboutin S.A. v. Yves Saint Laurent* in which the Court of Appeals for the Second Circuit explicitly reversed the District Court's conclusion that a single color was not protectable as a trademark. The Second Circuit cited Supreme Court decisions recognizing that trademark protection is broadly available under the Lanham Act for any mark that is capable of distinguishing the goods of one person from those of another. Indian law also provides broad protection for "marks" which are capable of distinguishing the goods of one entity from another. But the Indian Court did not consider a single color is not a "mark" under the terms of the Act, as noted above. This narrow definition of "mark" prevented the High Court of Delhi from extending protection to Louboutin's red sole irrespective of the fact that the red sole is globally recognized as a distinctive indication of the Louboutin brand.

The High Court of Delhi's decision exemplifies the challenges to uniform enforcement of trademark rights around the world, strictly adhering to the territorial nature of trademark rights.