

Adidas Vs. Thom Browne

Four stripes vs. three stripes. Luxury vs mainstream. The trademark battle between Adidas and Thom Browne has finally concluded. After a nine-day trial, Thom Browne was not found liable for damages or profits made from sales of its products.¹

Thom Browne is a luxury brand that incorporates a design featuring four horizontal, parallel stripes, encircling the arm of a garment.² Adidas on the other hand is known for its three-stripe design. Because of the similarity Adidas believed Thom Browne's four stripes would cause the general public to confuse the two products.³ Before the two brands battled it out in the court room, Adidas attempted to settle with Thom Browne.⁴ After unsuccessful attempts to settle, Adidas filed a trademark infringement complaint against Thom Browne.⁵

Trademark infringement is the unauthorized use of a trademark or service mark on or in connection with goods and/or services in a manner that is likely to cause confusion, deception, or mistake about the source of the goods and/or services.⁶ Likelihood of confusion was a major element argued in this case. As Adidas argued the design was likely to cause confusion, Thom Browne argued its designs were unlikely to cause confusion because it operates in different markets, serves different customers, and offers its products at strikingly different price points.⁷ Thom Browne also argued that stripes are a common design element for clothing.⁸

When looking at likelihood of confusion a court will consider an array of factors. Some of these factors include: (1) the degree of similarity between the marks at issue; (2) whether the parties' goods and/or services are sufficiently related that consumers are likely to assume (mistakenly) that they come from a common source; (3) how and where the parties' goods or services are advertised, marketed, and sold; (4) the purchasing conditions; (5) the range of prospective purchasers of the goods or services; (6) whether there is any evidence of actual confusion caused by the allegedly infringing mark; (7) the defendant's intent in adopting its mark; and (8) the strength of the plaintiff's mark.⁹

Given these factors and others the jury in the trial ultimately concluded that Thom Browne was not liable for trademark infringement. Do you think the jury got it right or do you think if you saw a four striped garment you would mistake it for Adidas?

¹ Madelyn Schulz, *Thom Browne Wins Case Against Adidas Over Stripes*, Vogue Business (Jan. 12, 2023), <https://www.voguebusiness.com/fashion/thom-browne-wins-case-against-adidas-over-stripes>.

² Alex Binley, *Adidas loses stripes row trademark battle with luxury designer Thom Browne*, BBC News (Jan. 13, 2023), <https://www.bbc.com/news/world-us-canada-64261616>.

³ Schulz, *supra* note 1.

⁴ Angela Wei, *Everything You Need to Know About The Adidas vs. Thom Browne Trademark Case*, Fashionista (Jan. 12, 2023) <https://fashionista.com/2023/01/adidas-thom-browne-trademark-case-lawsuit>.

⁵ *Id.*

⁶ *About Trademark Infringement*, USPTO, <https://www.uspto.gov/page/about-trademark-infringement> (last visited: Jan. 21, 2023).

⁷ Blake Brittain, *Adidas Loses N.Y. Trial Against Thom Browne Over Three-stripe Design*, Reuters (Jan. 12, 2023) <https://www.reuters.com/legal/adidas-loses-ny-trial-against-thom-browne-over-three-stripe-design-2023-01-12/>.

⁸ *Id.*

⁹ *About Trademark Infringement*, USPTO, <https://www.uspto.gov/page/about-trademark-infringement> (last visited: Jan. 21, 2023).