

# Puma loses trademark case

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15 Sep 2009

The Supreme Court of Appeal last week dismissed an application for trademark infringement brought by German manufacturer Puma against South African importer and distributor of footwear Global Warming.

In dismissing the appeal, the court held there were distinguishing features between the two trademarks as Puma is the proprietor of two trademark registrations in SA for its form strip device, a tapering device used on its footwear.

It had instituted a trademark infringement action in the Cape High Court against Global Warming, alleging that it used a mark that was confusingly similar to Puma's form strip device.

Global Warming's footwear also bore the trademarks DT New York or DTNY (Down Town New York).

Global Warming denied that the footwear was similar to Puma's on the grounds that its shoes had a distinctive split down the length of the mark.

Puma claimed royalties, an interdict and delivery of shoes from which the infringing mark could not be removed.

The high court held that the onus rested on Puma to show that the mark used by Global Warming closely resembled its mark and that it was likely to deceive or confuse the average purchaser.

But the court ruled that there were significant distinguishing features between the two marks and said the average buyer would be able to see that Global Warming's footwear was not the same as Puma's shoes.

There was no need to consider the issue of royalties. However, the court was not persuaded that Puma would have been entitled to anything more than the 5% royalty on net sales which the companies had agreed upon.

Puma took the matter on appeal, but the appeal court agreed with the high court's ruling that there were distinguishing characteristics between the marks.

*Source: Business Day*

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