

In the name of the people
Mansoura Economic Court
The second Circuit elementary economic

On the public hearing held on the court on Wednesday corresponding to 31.03.2010

Headed by Mr. EISaid EIMasry	President of the Court.
With Membership Mr. Tamer AlAraby	President in the Court.
With Membership Mr. Ahmed EIMashad	President in the Court.
With attendance of Mr. Fahmy EIFarghaly	Secretary of the Court.

Issued the following provision

In the case registered under the Public table under no. 4 for the year 2009 economic Mansoura.

Filed By

1. adidas International Marketing B.V. of Netherlands
2. adidas AG of Germany the owners of the TM adidas

and their attorney acting is the office of Mr. Youssef Mohammed Hafez, patent attorney and TM agent and Messrs., Nasser Youssef Taha & Mohammed Ahmed Mohammed, Lawyers of 48 Hamdy St., ElZaher District, Cairo.

Against

Mr. legal representative of First for Import & Export the owner of the consignment on Domiat customs under no. 6972 for the year 2009 of Adly & Kesra St. no. 44 Port Said, EIManakh Section, above KOKO fish.

Mr. Manager of the central administration of Domiat customs in his Professional capacity, and be notified in his work at do.

The Court

After the hearings, viewing the documents and consultation:

The conclusion of the case that the company is the filed the case as per the document signed by a lawyer deposited in the office of court clerks on 09.01.2010 declared legally, and asked at the end of it on the defendant. First: to confirm the precautionary seizure order no. 43 in 2009 Mansoura economic orders, issued on 09.12.2009, which was effected as per seizure record. Second:

destroyed the trademark on the goods impounded and existing on Damietta customs declaration No. 6972 of 2009 Damietta customs and imitating to the trademark world famous adidas which is under custody by order No. 43 of 2009 Mansoura economic orders, seized by the Damietta customs and obligate the first defendant to pay expenses for attorney fees, and on the support say that the company is a major global company in manufacturing clothing and sports shoes whether in Egypt or all of the world known with its well known international trademark adidas in its various forms and markings and as it desires to protect her trademarks it registered her trademark internationally under the numbers 566295 – 469033 - 699437 and protecting it in the Arab Republic of Egypt and because of her celebrity status and quality of products and popular consumer to buy its products, and desiring of some traders, manufacturers and importers in the quick-win by the first defendant imported products bearing the trademark abibas imitating to the trademark adidas in Customs declaration No. 6972 of 2009 in Damietta customs on 09.12.2009 filed an order on a petition precautionary seizure of such goods with the executive statement was implemented and precautionary seizing the goods which make her to file this case to confirm the said seizure in accordance with Article 210 of the arguments law.

And as the case has been handled as raised in its proceedings and meetings, in which was attended by the applicant company representative and the representative of the defendant have been combined the seizure order No. 43 of 2009 Mansura economic orders has been viewed by the court and summarized that the applicant company on 9/12/2009 had filed a petition signed by a lawyer to Mr. President of the Economic Court in his capacity as judge of temporary orders to issue an order to precautionary seize the infringing goods Included within the customs declaration No. 6972 for 2009 and located now on Damietta customs, which contain goods bearing the TM abibas imitating to the TM adidas.

And to appointment one of the experts of the trademarks General Administration of, the Commercial Registration to inspect the goods to indicate whether the

goods were required to seize them as fake and infringing the trademark adidas or not and whether the mark is registered legally or not and to investigate whether there are similarities between them, and if they violate the property right and whether this similarity can then cause confusion and ambiguity to the consumer whether or not, with the preparation of report on that support to say that the applicant company one of the famous international companies in manufacturing garments, shoes, in Egypt or in all countries of the world known by its international TM adidas & various forms, trademarks, and desirous of protecting its trademark internationally under the registration No. 566295-469033-699437 registered in the Arab Republic of Egypt known for its quality products and consumer seeks to buy their products and the desire of some traders and manufacturers and importers in the quick-win. So, the first defendant imported shoes bearing the TM abibas within the customs declaration No. 6972 of 2009 located on Damietta customs with the knowledge that the TM imitation of trademarks owned by the applicant companies adidas, which exposing them to physical and moral damage because of serious ill-counterfeit imported products in comparison with the original, and on 9/12/2009 ordered by his Excellency to appoint an expert to perform his duties, and the expert finished his duty and filed his report which ended with the result of "by accessing to the department indexes, files and on the computer show that the mark No. 469033 filed on 03.04.1982 and renewed till 03.04.2012 owned by adidas AG is a word adidas protects and registered on the Class 25 and the mark is registered and protected within the Arabic Republic of Egypt and that the defendant has no applications or registered trademarks in the name of adidas on the products of classes 18-25-28 and has no registered mark with the word abibas the on the same classes, and that a review of the goods contained in the defendant sample with the registration no. 469033 registered in the name of adidas company, referred above found that there was similarity substantially up to degree of correspondence in the word and the label which would cause confusion and deception of the dealers in the product, whether the similarity in overall shape or the ringing voice of the mark that the important thing is the general picture that print the mark in the mind of

the average person in the good trader in terms of convergence of d character in the original and b in imitating and in Venus drawing and goods, which can then cause misunderstanding and confusion to the consumer, and It included the resolution issued on 9/12/2009 to seize the containing of the consignment which bears the imitating trademark abibas, and on 03.02.2010 the representative filed portfolios documents included, the first, a photocopy of the seize order No. 43 of 2009 Mansoura economic orders .. the second, is the original seize order No. 43 of 2009 Mansoura economic orders continued to record attachment site on 3/1/2010, and the payment of a proxy, the first defendant that there is no match in format and content between brands and requested the release of the lost and that session, the court decided custody case to judge where a hearing on 24.12.2010, and then along the today's hearing.

Since the Court like to indicate, first, before addressing the merits of the case is due, legally and as per the text of article 63 of Law No. 82 of 2002 that the trademark are all characteristic of the product or service for others, and include in particular the names taken a distinctive and signatures, words, letters , figures, graphics, logos and addresses of the shops and stamps and seals and images and reliefs and the range of colors that take the form of a special and unique as well as any combination of these elements if used or intended to be used either to distinguish products of the work of industrial or exploitation of the forests or the exploitation of agricultural or extracts of the ground or any goods but to the significance the source of the products or goods or rank or guarantee or the preparation method , either to indicate to perform a service from services and in all cases should be the TM visually perceptible, It was also the text of article 68 of the Act, ((The owner of a well-known trademark, worldwide and in Egypt, shall have the right to enjoy the protection conferred by this Law even if such a mark is not registered in Egypt.

The Trade Registry Department shall, ex officio, reject any application to register any mark which is identical with a well-known mark and is intended for products which are identical with those of the well-known mark, unless the application is submitted by the owner of the well-known mark.

The preceding provision shall apply to applications intended for products which are not identical with those of the well-known mark, where the well-known mark is registered in a country member of the World Trade Organization and in Egypt, and where the use of the mark in relation to those non-identical products is meant to lead people to believe that a connection exists between the owner of the well-known mark and those products, and that such a use may be prejudicial to the interests of the owner of the well-known mark.))

And as prescribed by the court of cassation that the infringement does not required being identically between the two trademarks, only similarity which lead to confusion and mislead the public consumers and cause confusion between products.

(Appeal No. 2274 for the year 55 judicial, session of 12.22.1986, line. 37 page 1016)

It also was prescribed by decree of the Court of Cassation that "the tradition in trademarks infringements crimes is the assault, in similarity rating by the similarities not by differences, but enough to be similarity between them is liable to mislead the public consumers.

It was also prescribed by decree of the Court of Cassation that "the crimes of counterfeiting of trademarks is abuse in the estimation of tradition of the similarities are not objects of the dispute and that the standard of the similarities is what fooled by the average care consumer and attention and what was being challenged, has built his doctrine of non-availability of imitating corner to say that the report of the trademarks office, and the sayings of Mr. Internal Marketing Office agent on Alexandria failed to indicate the extent of congruence between the marks, fake labels, a demonstration is not justified by the justification for the conclusion. that he is not required in the tradition that there is there is a differences between the two trademarks. but enough to for availability there is a similarity between them is liable to mislead the public consumers and cause confusion among the products while he was the rule did not mean, of his statement describing the original trademark and the imitated trademark and

shown his view on the similarities between the proof or denial is dictated spent, it is a minor.

(Appeal No. 1944 for the year 34 juridical, session of 24.05.1965, line 16 page 488)

It also was prescribed by decree of the Court of Cassation that "it doesn't matter that the trademark is not contain characters or symbols or a picture which content another trademark, but which matter is the public image which stays in mind a result of installing this photo or symbols and the image with each other and form, which highlights the tags in a trademark or the other, regardless of the elements which contains them.

(Cassation hearing a set of provisions 06/20/1968 veto year 19, p. 1212)

It also was prescribed by decree of the Court of Cassation is not committed to the trial court to respond to the appeals addressed to the expert's report as long as it has taken as described in this report because it is taken contained therein is sufficient evidence that it did not find in those appeals inattention to what it's worth is the appreciation that it is no authority for the trial court.

(Appeal No. 169 for the year 24 juridical, session of 12.25.1958)

and where, as it was stable, said he would require to distinguish the trademark from each other to be each tag and suffice discrimination and clear diagnosis of the phenomenon of the definition and should not sign the majority of consumers in the slightest confusion or mislead so must stand over the statement of agreement or disagreement between these trademarks and look at the fully identical or similar and similarity is clear, in light of the considerations and elements led by the line and languages, shape and specificity, painting, colors, and speech and hearing, goods class, and products and whether it confuses the average consumer or descended tags into the abyss of deception or not. it was prescribed by the expert's report filed with precautionary seizure order No. 43 of 2009 Mansoura economic orders that by accessing to the indexes of the trademark office, computer files show that the mark No. 469033 filed on 04.03.1982 and renewed till 03.04.2012 and registered by adidas AG company which is the word adidas and registered on class 25 and the mark is registered

and protected within the Arab Republic of Egypt and that the defendant has no registered trademark called adidas on classes 18, 25 & 28 and also does not have a registered trademark of abibas word on the referred classes.

By comparing the trademark on the defendant sample with the trademark No. 469033 registered in the name of to above referred company, adidas, found that there was similarity up to degree of correspondence in the word and the label which would cause confusion and deception to the dealers in the product, whether the similarity in overall shape or ringing voice of the mark, that all that matter is the general picture that leave the mark in the mind of the average person, that in terms of convergence of the letter "d" in the original mark of and "b" in the imitated mark and Venus drawing and products which can then cause misunderstanding and confusion to the consumer, the court believes in what the expert said in its filed report on the precautionary seizure order and take with it as the Court's established that there is match and the similarity is clear between the TM adidas, and, owned by the company and the TM abibas located on the goods belonging to the first defendant on the customs consignment number 6972 for 2009, located Damietta customs taking the language, line, form and ringing voice and similarities in the general shape of the mark was obvious that there is convergence in the letter d in the mark of origin and the character b in the label of counterfeit and flower draw and the goods which carries the Imitated TM are athletic shoes (Kochi) in accordance with a fixed record precautionary seizure and the overall picture leave the mark in the mind as such lead to the events of misunderstanding and confusion to the consumer, from this the court believes that the first defendant company has imported goods bearing a fake trademark abibas imitate the TM, owned by the applicant company and protected by law and are similar to the original adidas which are registered and renewed as per the law on class 25, on clothing products, sports shoes until 03.04.2012 and that this similarity would cause confusion among the public consumers.

As for the first request of the applicant company, to issue a verdict to confirm the precautionary seizure order no. 43 in 2009 Mansoura economic orders, issued on 09.12.2009, and as was legally set and as per the article 115 of Act No. 82 of

2002 that "President of the competent court, at the request of any interested party and under an order issued on a petition to order one or more appropriate precautionary measures and, in particular:

1 - To prove the infringement on the protected right.

2 - an inventory and detailed description of machines and tools used or have been used in committing the crime and the products, goods, signboards, packages, invoices, letters or other means of advertising or other things that may be placed upon the trademark or the statement or the geographical indication subject of the crime, as well as the goods imported from abroad, upon their arrival

3 - Seizure of the things mentioned in clause (2)

The President of the Court in all cases has the right to order to assign one or more experts to assist the implementation clerk and order the applicant to pay suitable deposit.

The applicant must file the dispute to the competent court within 15 days from the date of the matter, otherwise it will be as it is not made.

As per the law and article 319 of Civil Procedure law that the precautionary seizure not occur in the mentioned conditions unless it is right and in it's due time.

However, if the creditor has non-enforceable document or verdict or his debt were not a particular amount, so the seizure occur only by implementation Judge authorizing the seizure and estimate the debt, Provisional estimation.

And requests that with reasoned petition, and in the mentioned case in the previous article, that the petition has to include a full statement of the goods to be seized.

Before the judge issue his order, he has the right to hold a brief investigation if not satisfied with the order supported documents, also he can order to seize no

later than three days from the date of order and required only in the case mentioned in the previous article.

And if the case is raised by the right before the competent court, it may request permission to seize from the President of the jury that follows up the case.

And as it is prescribed by the Court of Cassation that the "orders on petitions _ and demonstrated the texts of tenth part of the Code of Civil Procedure _ are orders issued by temporary orders judges of their authority and final and based on the filed applications them from the concerned parties on the petition and issued the orders in the absence of opponents without causing to hold or temporarily conservatory in cases requiring speed or sudden onset in nature, without prejudice to the right of the origins of the disputed and therefore those commands has no authoritative, and the judge doesn't exhaust his right by issuing a temporary authority, he may change the orders with new ones with a new cause ..

(Appeal No. 450 for the year 48 Judicial, session of 18.12.1978 the collection of Technical Bureau Year 29, p. 1943)

It is also prescribed that the "orders on petitions and shows from the provisions of tenth Part of the first book of the Code of Procedure is the orders issued by Temporal matter judges, as per their temporal authority and based on the applications filed by the Concerned parties on the petition and issued the orders in the absence of liabilities, without causing hold or temporarily conservatory in cases requiring the nature of speed or sudden onset without prejudice to the origins of the right to the disputed and therefore do not possess such authoritative orders not exhaust his authority by issuing a judge it as it may cause breach of something new ..

(Appeal No. 1605 for the year 53 juridical, session of 12.21.1987 a total of technical office of the year 38, p. 1135)

And where it was prescribed from reading the papers that the applicant company applied for precautionary seizure on the goods accumulated on Damietta customs, as the defendant company imported products bearing an imitating trademark to the adidas trademark owned and registered in its name internationally under No. 469033, on customs declaration No. 6972 of 2009 on Damietta customs, because of that the Mr. judge of temporary orders of Mansoura economic court, issued an order on 9/12/2009 to assign an expert from the General Administration of trademarks to examine the seized goods subject to the request who filed report, which ended "by accessing to the department indexes, files and on the computer show that the mark No. 469033 filed on 03.04.1982 and renewed till 03.04.2012 owned by adidas AG is a word adidas protects and registered on the Class 25 and the mark is registered and protected within the Arabic Republic of Egypt and that the defendant has no applications or registered trademarks in the name of adidas on the products of classes 18-25-28 and has no registered mark with the word abibas the on the same classes, and that a review of the goods contained in the defendant sample with the registration no. 469033 registered in the name of adidas company, referred above found that there was similarity substantially up to degree of correspondence in the word and the label which would cause confusion and deception of the dealers in the product, whether the similarity in overall shape or the ringing voice of the mark that the important thing is the general picture that print the mark in the mind of the average person in the good trader in terms of convergence of d character in the original and b in imitating and in Venus drawing and goods that lead and cause to confusion among the public consumers, has included the resolution issued on 09.12.2009 by seizing the consignment that includes the imitating trademark abibas which was implemented on 03.01.2010 and was declared by the defendant company and the company established its case met its conditions formalities prescribed by law and filed her petition on 9/1/2010 and within the period provided by law.

The court had concluded already that the seized goods on Damietta customs declaration No. 6972 to 2009, owned by the first defendant bearing an imitated

trademark, owned by the Prosecutor and then the procedures has met a proposal for according to the true law which provides for him court allowed the attachment and is evidenced and made effective and as will be operative.

And where he and the second request from the applicant company is to issue a verdict of destruction of the trademark on the seized goods, existing on Damietta customs declaration No. 6972 of 2009 Damietta customs and imitations of the well-known adidas, precautionary seizure order No. 43 of 2009 Mansoura economic orders, restrained by Damietta customs was to be legally and what has been the text of Article 117 of the law 82 for the year 2002 that "the court may in any civil suit or a criminal to govern the sale of seized goods or to be seized after deducting the price of compensation, fines or up to dispose of them any other way deemed appropriate by the Court.

The court shall order the destruction of offense marks and may, when appropriate to order the destruction of products, goods and address or addresses assigned, invoices, correspondence or other means of advertising or otherwise, which holds that mark or get the data or geographical indications, in violation of this law, as well as damage to machinery and tools used particularly in the crime.

The court may also order the publication of the verdict in one or more newspapers and at the expense of the convict.

Court may order all or some of the above, even in case of acquittal.

Whereas the court concluded in advance that the goods of the precautionary order number 43 for 2009 Mansoura economic orders bearing an imitating trademark to the trademark adidas, and, owned by the applicant company, and prescribed from the expert report of the and filed with the lawsuit file, the Court are assured that there is similarity between the trademarks in terms of similarity of the letter "d" in the original mark and "b" in the imitating mark, as well as in the shape of Venus on those products and the products themselves.

The court had already concluded that these products bearing an imitating mark to the original mark, owned by the applicant company, which provides for the case with him, and destruction of imitating mark abibas and is on the consignment No. 6972 in 2009 in Damietta Customs.

And whereas that mark placed on the imitating products of the original products, bearing the original mark, the court concluded in advance to the destruction of the trademark on that product and it would inevitably lead to destruction of those products bearing the imitating trademark, and as per the article 117 of the property Protection law has given the court, when appropriate, the right to order the destruction of the products, goods or packages, which bears that mark as will be mentioned in the verdict

As for the expenses, including the attorney fees, the court obligate the first defendant as the loser of the case pursuant to acts 184 / 1 of the Code of Civil Procedure and 187 of the lawyers law replaced by Law No. 10 of 2002.

It is for these reasons:

The court ruled in commercial article:.

1 the validity of the precautionary seizure no. 43 for the year 2009 Mansoura economic orders affixed on 03.01.2010 on goods on the customs declaration No. 6972 for the year 2009 and confirm it.

2 destroy the products bearing the mark abibas imitating to the mark adidas as well as any covers that carry that mark placed on those products which existing on Damietta customs declaration No. 6972 for the year 2009 and obligate the first defendant the expenses and the amount of seventy-five pounds as attorney's fees