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FILED

AUG 09 2021

**SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTH DISTRICT OF CALIFORNIA**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO

AIRWAIR INTERNATIONAL LTD., a
company of the United Kingdom,

Plaintiff,

v.

ITX USA, LLC,

Defendant.

Case No. 3:19-cv-07641-SI

VERDICT

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We, the jury, answer the questions submitted as follows:

Plaintiff AirWair's First Claim, for Infringement of Registered Marks

1. Do you find that Plaintiff established by a preponderance of the evidence that Defendant ITX infringed the '751 Registration (a combination of yellow stitching in the welt area, and a two-tone grooved sole edge)?

Yes No

If your answer to question 1 is no, then answer question 3. If your answer to question 1 is yes, then answer question 2.

2. Circle the Pull & Bear product(s) that infringed the '751 Registration.

- (a) Faux suede chunky boot
- (b) Derby shoe with topstitching
- (c) Black platform derby shoe
- (d) White platform boot

3. Do you find that Plaintiff established by a preponderance of the evidence that the '689 Registration (a sole edge including longitudinal ribbing, and a dark color band over a light color) is valid and protectable?

Yes No

If your answer to question 3 is no, then answer question 6. If your answer to question 3 is yes, answer question 4.

4. Do you find that Plaintiff established by a preponderance of the evidence that Defendant infringed the '689 Registration.

Yes No

If your answer to question 4 is no, then answer question 6. If your answer to question 4 is yes, then answer question 5.

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5. Circle the Pull & Bear product(s) that infringed the '689 Registration.

- a. Faux suede chunky boot
- b. Derby shoe with topstitching
- c. Black platform derby shoe
- d. White platform boot

6. Do you find that Plaintiff established by a preponderance of the evidence that the '692 Registration (longitudinal ribbing and a dark color band over a light color on the outer sole edge, welt stitching, and a tab located at the top back heel of footwear) is valid and protectable?

Yes No

If your answer to question 6 is no, then answer question 9. If your answer to question 6 is yes, then answer question 7.

7. Do you find that Plaintiff established by a preponderance of the evidence that Defendant infringed the '692 Registration.?

Yes No

If your answer to question 7 is no, then answer question 9. If your answer to question 7 is yes, then answer question 8.

8. Circle the Pull & Bear product(s) that infringed the '692 Registration.

- a. Faux suede chunky boot
- b. Derby shoe with topstitching
- c. Black platform derby shoe
- d. White platform boot

Defendant's Counterclaim, for Cancellation

9. Do you find that Defendant established by a preponderance of the evidence that Plaintiff's alleged trade dress for the '689 Registration or the '692 Registration should be cancelled because either is functional or is generic?

a. The '689 Registration, consisting of a sole edge including longitudinal ribbing, and a dark color band over a light color, should be cancelled.

_____ Yes No

b. The '692 Registration, consisting of longitudinal ribbing and a dark color band over a light color on the outer sole edge, welt stitching, and a tab located at the top back heel of footwear, should be cancelled.

_____ Yes No

Answer question 10.

Plaintiff's Second Claim, for Unfair Competition, and Third Claim, for California Unfair Competition

10. Do you find that Plaintiff established by a preponderance of the evidence all of the following four items with respect to the Jadon Design?

- a. the overall visual impression of the Jadon Design, including welt stitching, a grooved sole edge, angled heel, cleat pattern, and platform sole, has acquired secondary meaning.
- b. Plaintiff owns the overall visual impression of the Jadon Design as trade dress.
- c. The overall visual impression of the Jadon Design is nonfunctional.
- d. Defendant used trade dress similar to the overall visual impression of the Jadon Design without the consent of the plaintiff in a manner that is likely to cause confusion among ordinary consumers and the general public as to the source, sponsorship, affiliation, or approval of the defendant's goods.

Yes _____ No

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If your answer to question 10 is no, then answer question 12. If your answer to question 10 is yes, please answer question 11.

11. Circle the Pull & Bear product(s) that infringed the Jadon Design.

- a. Faux suede chunky boot
- b. Derby shoe with topstitching
- c. Black platform derby shoe
- d. White platform boot

Please answer question 12.

Plaintiff's Fourth Claim, for Trademark Dilution, and Fifth Claim, for California Trademark Dilution

12. Do you find that Plaintiff established by a preponderance of the evidence that any of Plaintiff's Trade Dress is famous?

Yes No

If your answer to question 12 is yes, please answer question 13. If your answer to question 12 is no, please answer question 16.

13. Circle all Trade Dress you have found to be famous.

- a. '689 Trade Dress
- b. '692 Trade Dress
- c. '751 Trade Dress
- d. Jadon Design

14. Do you find that Plaintiff established by a preponderance of the evidence that Defendant diluted any of Plaintiff's Trade Dress?

Yes No

1 If your answer to question 14 is yes, please answer question 15. If your answer to question
2 14 is no, please answer question 16.

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4 15. Circle all Trade Dress you have found that Defendant has diluted:

- 5 a. '689 Trade Dress
- 6 b. '692 Trade Dress
- 7 c. '751 Trade Dress
- 8 d. Jadon Design

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10 Damages

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12 16. If your answer to questions 1, 4, 7, 10, or 14 above is yes, what are Plaintiff's total actual
13 damages caused by Defendant's conduct? (Note: if your answer to question 9.a or 9.b is
14 yes, please answer this question only with respect to the '751 Trade Dress/the Jadon
15 Design.)

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18 17. Has Defendant shown by a preponderance of the evidence that Plaintiff failed to use
19 reasonable efforts to mitigate its damages?

20 _____ Yes No

21 If your answer to question 17 is no, answer no further questions, and have the presiding
22 juror sign and date this form. If your answer to question 17 is yes, please answer question
23 18.

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25 18. What is the amount that should be deducted from the damages stated in response to
26 question 16?

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The presiding juror should sign and date this Verdict Form and then return it to the Court.

Dated: 8-9-2021

Signed: Wendy Burdette
Presiding Juror