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THINK LIKE ADIDAS: A QUANTITATIVE ANALYSIS OF ADIDAS' TRADEMARK PROTECTION STRATEGIES

KATIE M. BROWN* & NATASHA T. BRISON**

INTRODUCTION

Trademarks are one of the most valuable assets owned by a sport brand.¹ In marketing, a trademark is defined as a name, slogan, or other identifier used to distinguish goods and services from those owned by competitors.² “From a legal perspective, a trademark is a brand or part of a brand that is given protection because it is capable of exclusive appropriation.”³ In other words, brands and their trademarks may be the subject of unauthorized use by competitors. The Federal Trademark Act of 1946 (“Lanham Act”) prohibits the infringement or unauthorized use of a registered trademark.⁴ The Lanham Act was established to protect consumers from deceitful products and to protect businesses from unfair competition.⁵ Section 1114 of the Lanham Act, in particular, permits an owner of a federally registered trademark to bring a trademark infringement

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1. Katie Brown et al., *An Empirical Examination of Consumer Survey Use in Trademark Litigation*, 39 LOY. L.A. ENT. L. REV. 237, 241 (2019).

2. Sungho Cho, *Empirical Substantiation of Sport Trademark Dilution: Quasi-Experimental Examination of Dilutive Effects*, 25 J. LEGAL ASPECTS SPORT 27, 29 (2015).

3. SIDNEY J. LEVY & DENNIS W. ROOK, *Brands, Trademarks, and The Law*, in BRANDS, CONSUMERS, SYMBOLS, AND RSCH.: SIDNEY J. LEVY ON MKTG. 141, 144 (Sage Publ'ns 1999).

4. Lanham Act, 15 U.S.C. §§ 1051-1141n (2021).

5. Dorothy Cohen, *Trademark Strategy Revisited*, 55 J. MKTG. 46, 46-47 (1991).

action when another person (without authorization) “use[s] in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark.”⁶ The concern is that these imitation strategies may confuse consumers and cause them to purchase products and services they do not intend to purchase.⁷ Therefore, trademarks provide consumers with assurances that the goods or services bearing a specific mark emanate from a single source.⁸ Unfortunately, similarities between marks “may result in the misattribution of source of origin or” the inability of consumers to appropriately identify the goods or services.⁹ Thus, the Lanham Act affords trademark owners protection from imitation products or look-a-like marks that may cause consumers to mistake the similar or knock-off mark with the original mark.¹⁰

When analyzing how best to protect a trademark, brands must be able to value the trademark in terms of product or service identity, potential confusion that may occur by the alleged infringing mark, and how much, financially, the company is willing to spend on the protection. One of the most recognized brands in sport is Adidas. The company has owned the rights to the “three-stripe mark” for over sixty years and proactively fights against trademark infringement.¹¹ Adidas has employed multiple strategies to protect its mark; these strategies include: blocking competing trademark registrations, sending cease and desist letters, and filing trademark infringement lawsuits.¹² As a result of these efforts, Adidas has successfully settled trademark infringement suits against other fashion brand giants such as Skechers, Puma, Marc Jacobs, and Walmart for using stripes on footwear and apparel.¹³ Many of the defendants have claimed Adidas is too aggressive in their pursuit to protect the three stripes.¹⁴ For instance, in September 2019, Adidas lost a trademark infringement

6. Lanham Act, 15 U.S.C. §1114 (2021).

7. Ellen R. Foxman et al., *An Investigation of Factors Contributing to Consumer Brand Confusion*, 24 J. CONSUMER AFF. 170, 171 (1990).

8. Barbara Loken et al., *Consumer “Confusion” of Origin and Brand Similarity Perceptions*, 5 J. PUB. POL’Y & MKTG. 195, 196 (1986).

9. *Id.*

10. *See id.*; Lanham Act, 15 U.S.C. §§ 1051-1141n (2021).

11. Sangeeta Singh-Kurtz, *Adidas Has Sued Pretty Much Everyone Who Has Used Stripes*, QUARTZ (Jun. 21, 2019), <https://qz.com/quartz/1647995/adidas-has-sued-pretty-much-everyone-who-has-used-stripes/>.

12. *See* Katie M. Brown & Natasha T. Brison, *A Tale of Two Trademarks: A US Analysis of the Protection Strategies of Adidas and Converse*, 16 ENT. & SPORTS L.J. 1, 3 (2018).

13. Patrice Perkins, *Think Like Adidas: A Trademark Lesson for Independent Creators*, CREATIVE GENIUS L., <https://creativegeniuslaw.com/think-like-adidas-trademark-lesson-independent-creators/> (last visited Apr. 1, 2022).

14. *Id.*

case against Marubeni Footwear for a two-stripe mark.¹⁵ Adidas argued that two-stripes could look like three-stripes depending on how the stripes are spaced (and colored).¹⁶ The Japanese Patent Office disagreed and determined consumers could easily distinguish between two-stripes and three-stripes, and there was no likelihood of confusion.¹⁷ Although Adidas lost this dispute, it took a little over a year to resolve.¹⁸ In fact, some trademark disputes can last longer, costing brands thousands in legal fees, and unfortunately, resulting in a less than favorable outcome for the trademark owner.¹⁹ Therefore, it is important for brands to be strategic regarding when to settle trademark disputes, and when to litigate.

Previous research has supported the use of statistical methods to analyze litigation outcomes.²⁰ However, there is a dearth of scholarly research from which to glean best practices for developing trademark protection strategies; this fact remains true in the sport brand literature as well.²¹ Thus, this case study seeks to fill this gap by quantitatively analyzing Adidas' legal strategy regarding its trademark protection tactics. Part I of this paper provides a general background of trademark infringement, consumer confusion, and trademark dilution. Part II discusses protecting businesses from trademark infringement and dilution, while Part III examines the existing practice of predicting outcomes in litigation. Part IV evaluates Adidas' legal strategy over a ten-year period, while Part V reports the findings and discusses conclusions. Part VI considers the implications of this study for legal practitioners.

15. Emily Engle, *Adidas Loses Infringement Battle to Japan Brand's Two-Stripe Trademark*, HYPEBEAST (Sept. 17, 2019), <https://hypebeast.com/2019/9/adidas-loses-stripes-trademark-infringement-case-marubeni>.

16. *Id.*

17. *Id.*

18. Masaki Mikami, *Adidas Unsuccessful in an Attempt to Prevent Trademark Protection for Two-Stripes*, MARKS IP L. FIRM (Sept. 8, 2019), <https://www.marks-iplaw.jp/adidas-two-stripes/>.

19. Charles P. Lickson, *Trademark Protection: Is Litigation Worth the Cost?*, IPWATCHDOG (May 23, 2013), <https://www.ipwatchdog.com/2013/05/23/trademark-protection-is-litigation-worth-the-cost/id=40711/>.

20. See Sarah E. Bonner et al., *Fraud Type and Auditor Litigation: An Analysis of SEC Accounting and Auditing Enforcement Releases*, 73 ACCT. REV. 503 (1998); Annie Clement & Kadence A. Otto, *Headfirst Aquatic Incident Court Decisions: The Plaintiff's Odds Symposium: Risk Management Issues in Sports*, 17 J. LEGAL ASPECTS SPORT 107 (2007); Susan D. Franck & Linsey E. Wylie, *Predicting Outcomes in Investment Treaty Arbitration*, 65 DUKE L.J. 459 (2015); David E. Terpstra & Douglas D. Baker, *Outcomes of Sexual Harassment Charges*, 31 ACAD. MGMT. J. 185 (1988); Papis Wongchaisuwat et al., *Predicting Litigation Likelihood and Time to Litigation for Patents*, in SIXTEENTH INT'L CONFERENCE ON ARTIFICIAL INTEL. & LAW PROCEEDINGS OF THE CONFERENCE 257 (Ass'n for Computing Mach. 2017).

21. Katie Brown et al., *An Empirical Examination of Consumer Survey Use in Trademark Litigation*, 39 LOY. L.A. ENT. L. REV. 237, 241 (2019).

I. TRADEMARK INFRINGEMENT AND CONSUMER CONFUSION

As previously discussed, the rudimentary issue regarding trademark confusion centers on consumer confusion.²² In trademark law:

The doctrine of likelihood of confusion . . . accommodates a legal notion that the schematic association between a trademark and goods or services designated by the mark is the central value of the mark. This psychological association is presumed to facilitate consumers' repeated purchases of some goods or services based on their positive consumption experience and/or in response to other marketing efforts conducted by the mark's owner.²³

Therefore, if this association is disrupted by another misleadingly similar mark or other allegedly infringing activities, it would weaken the core function of the trademark and consumer confusion would likely ensue.²⁴

To prevail in a trademark infringement case, the complaining party must establish that it holds a valid trademark, the defendants used the offending mark in commerce in connection with the sale or advertising of any goods, and the defendant used the mark in a manner that is likely to cause consumer confusion.²⁵ Miaoulis and D'Amato provided basic premises and judicial guidelines centering on consumer confusion in trademark infringement cases:

1. Courts assume the consumer does not have the time or desire to examine a trademark in detail;
2. While it is assumed the customer has the brand image stored in their memory, there is no assumption that a side-by-side comparison is readily available or that the customer is even be aware of the defendant's mark;

22. George Miaoulis & Nancy D'Amato, *Consumer Confusion & Trademark Infringement: Presents a New, Broadened Concept of Consumer Confusion, Illustrated By Research Results In the Tic Tac® Case.*, 42 J. MKTG. 48, 49 (1978).

23. Sungho Cho & Anita M. Moorman, *An Examination of the Psychometrical Comparability of Survey Evidence in Sport Trademark Litigation Original Research*, 24 J. LEGAL ASPECTS SPORT 3, 6 (2014).

24. See Irina D. Manta, *In Search of Validity: A New Model for the Content and Procedural Treatment of Trademark Infringement Surveys*, 24 CARDOZO ARTS & ENT. L.J. 1027, 1030 (2006).

25. Lanham Act, 15 U.S.C. §§ 1114, 1125 (2021).

2. Courts assume the buyer is not likely to thoroughly examine the marks, therefore, the first impression of the mark is important.²⁶

These guidelines are limited and do not define what constitutes consumer confusion; however, courts are now increasingly more willing to allow the use of consumer surveys to determine the likelihood of confusion between trademarks.²⁷ “[T]rademark law allows parties to introduce some social science information presenting the state of mind of consumers in trademark litigation such as anecdotal evidence, consumer survey evidence, and experimental data.”²⁸ Consumer survey evidence is the most accepted form of the social science information previously stated because is the most efficient at measuring consumers state of mind and can be more cost-effective for the company.²⁹ Survey evidence is typically introduced with an expert, as the expert will be able to testify to the validity of the methodology and will make inferences based on the results of the survey.³⁰ McGeveran and McKenna noted that there is no quantitative threshold for determining an actionable level of confusion, but courts have found a likelihood of confusion based on surveys showing fifteen percent confusion or less, however, this number has varied based on the circuit and the case at hand.³¹

A. Trademark Dilution

While the Lanham Act protects consumers from confusion, there was no provision in the Act “to protect the value of a trademark from being diluted due through unauthorized use.”³² Subsequently, the Lanham Act was amended under the Federal Trademark Dilution Act of 1995 (FTDA).³³ The FTDA details what dilution is, presents factors to determine if a trademark is distinctive or famous, clarifies what uses of a famous trademark are not subject to the FTDA, and provides potential dilution remedies.³⁴

26. Miaoulis & D’Amato, *supra* note 22.

27. *Id.* at 49-50.

28. Cho & Moorman, *supra* note 23, at 6 (citations omitted).

29. *Id.* at 6-7.

30. *Id.* at 7.

31. William McGeveran & Mark P. McKenna, *Confusion Isn’t Everything*, 89 NOTRE DAME L. REV. 253, 255 (2013).

32. Robert A. Peterson et al., *Trademark Dilution and the Practice of Marketing*, 27 J. ACAD. MKTG. SCI. 255, 258 (1999).

33. *Id.*

34. FEDERAL TRADEMARK DILUTION ACT OF 1995, Pub. L. No. 104-98, 109 Stat. 985 (1996).

The FTDA clarifies that trademark dilution and trademark infringement are different.³⁵ Trademark infringement:

[R]equires establishing a likelihood of consumer confusion, mistake, or deception regarding the source, affiliation, or sponsorship of the products or services. Trademark dilution requires no such demonstration. In cases of trademark dilution, consumer confusion, mistake, or deception can be, but need not be, present. Thus, even if consumers are fully aware that, though they bear the same mark, two different goods or services come from two different and completely independent sources (i.e., consumers are not confused), a case still can be made that the mark has been diluted.³⁶

Trademark dilution is crucial in mark protection, as the practice by competing brands can result in the reduction of brand equity.³⁷ There are two forms of reduction in brand equity that may be caused by dilutive use of a trademark.³⁸ The first, blurring, occurs when psychological associations between a senior mark and its products are weakened by a junior mark.³⁹ Here, consumers have a harder time activating and retrieving their memory associations that link the senior mark to its typical product category.⁴⁰ This dilution reduces the brand power in terms of the brand awareness in Keller's brand equity model.⁴¹ The second form of brand equity reduction due to dilutive uses is tarnishment, which is related to brand image.⁴² Tarnishment is an evaluative dilution which denotes the harmful effects a noncompeting junior mark may have on a senior mark.⁴³ Dilution by tarnishment can occur when a third party uses the senior mark in an inappropriate or unflattering way, which can potentially affect the brand's equity and value.⁴⁴

35. Maureen Morrin & Jacob Jacoby, *Trademark Dilution: Empirical Measures for an Elusive Concept*, 19 J. PUB. POL'Y & MKTG. 265, 266 (2000).

36. *Id.*

37. Julie Manning Magid et al., *Quantifying Brand Image: Empirical Evidence of Trademark Dilution*, 43 AM. BUS. L.J. 1, 7 (2006).

38. See Itamar Simonson, *The Effect of Survey Method on Likelihood of Confusion Estimates: Conceptual Analysis and Empirical Test*, 83 TRADEMARK REP. 364, 369 (1993).

39. *Id.*; Magid et al., *supra* note 37, at 32.

40. Simonson, *supra* note 38, at 368; Magid et al., *supra* note 37, at 32.

41. Cho, *supra* note 2, at 27.

42. Magid et al., *supra* note 37, at 32-33.

43. *Id.*

44. *Id.*

II. PROTECTING BRANDS FROM TRADEMARK INFRINGEMENT AND DILUTION

As previously mentioned, trademarks carry legal weight in terms of representing a brand and protecting specific aspects of the brand. Brands should register their trademarks federally, as they are then provided exclusive rights to prevent others from marketing products with the same or confusingly similar mark.⁴⁵ This provides exclusive rights to prevent others from creating, distributing, or marketing products with the same or confusingly similar mark on or in connection with the goods/services listed in the registration.⁴⁶ By creating a unique mark, a brand can secure investment in marketing efforts and the mark helps promote loyalty with consumers.⁴⁷ The mark also creates a reputation for their brand, provides an image representative of their company, and offers coverage in relevant markets in which the business operates.⁴⁸ Although brands can block competing mark registrations and send cease-and-desist letters to infringers, trademark litigation may be the best strategy to protect their marks.

Intellectual property litigation is known to be a lengthy and expensive endeavor, with the cost of defending a trademark typically in the six-figure range.⁴⁹ The American Intellectual Property Law Association (AIPLA) calculated the average costs of intellectual property litigation in 2015, and depending on the amount in controversy, companies involved in trademark litigation generally spend between \$200,000 to \$1 million through discovery alone.⁵⁰ These numbers ballooned to average costs of \$350,000 upwards to \$1.6 million if a trial ensued.⁵¹ These costs can include outside and local counsel, any services by paralegals, travel and living expenses, court reporter fees, preparations of exhibits, expert witnesses, translators, surveys, and a multitude of other expenses.⁵²

Trademark owners have a responsibility to police and maintain their marks, which can come in the form of opposing trademark registrations by other

45. See Lanham Act, 15 U.S.C. §1114 (2021); See WIPO, MAKING A MARK: AN INTRODUCTION TO TRADEMARKS FOR SMALL AND MEDIUM-SIZED ENTERPRISES 33-34 (2017), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_900_1.pdf.

46. See WIPO, *supra* note 45.

47. *Id.* at 11-12.

48. *Id.* at 11-12, 33-34.

49. Lickson, *supra* note 19.

50. Richard W. Goldstein & Donika P. Pentcheva, *Report of the Economic Survey 2015*, AM. INTELL. PROP. L. ASS'N 38-39 (2015), <http://files.ctctcdn.com/e79ee274201/b6ced6c3-d1ee-4ee7-9873-352dbe08d8fd.pdf>.

51. *Id.*

52. *Id.* at 37.

applicants or filing claims against brands who use imitating or similar trademarks in commerce.⁵³ If brands do not police and maintain their trademarks, they are at risk of losing the registration.⁵⁴ Sport brands are no different, and many of these brands have used litigation as a tool to enjoin others from using deceptively similar or dilutive marks.

III. PREDICTING OUTCOMES IN LITIGATION

There has been ample research exploring the prediction of litigation outcomes in multiple fields.⁵⁵ Terpstra and Baker investigated case variables and sexual harassment litigation outcomes.⁵⁶ The results showed if a complainant has been the victim of a serious type of harassment, and has witnesses and notified management of the issue, it would be less expensive for the employers to settle out of court.⁵⁷ Bonner and colleagues “examine[d] whether certain types of financial reporting fraud result[ed] in a higher likelihood of litigation against independent auditors.”⁵⁸ The authors found auditors were more likely to be sued when financial statements were common or when fraud came from fictitious transactions.⁵⁹ Franck and Wylie aimed to predict outcomes in investment treaty arbitration, and found the most critical variables to predicting these outcomes involved investor identities and the experience of parties’ lawyers.⁶⁰

These examples show the range of scholarship devoted to predicting outcomes in litigation. However, in the area of intellectual property, research has focused on patent litigation.⁶¹ Wongchaisuwat, Klabjan, and McGinnis developed predictive models to estimate the likelihood of litigation for patents and the projected time to litigation.⁶² The authors determined that textual features associated with the referencing of the patent and the financial information of the patent assignee were strong factors among litigated and non-

53. USPTO, BASIC FACTS ABOUT TRADEMARKS 1, 31-32, <https://www.uspto.gov/sites/default/files/documents/Basic-Facts-Booklet.pdf> (last visited Apr. 1, 2022).

54. *Id.*

55. See Bonner et al., *supra* note 20; Franck & Wylie, *supra* note 20; Terpstra & Baker, *supra* note 20.

56. See Terpstra & Baker, *supra* note 20.

57. *Id.* at 193.

58. Bonner et al., *supra* note 20, at 503.

59. *Id.*

60. Franck & Wylie, *supra* note 20, at 459-60.

61. Colleen V. Chien, *Predicting Patent Litigation*, 90 TEX. L. REV. 283 (2011); Wongchaisuwat et al., *supra* note 20.

62. Wongchaisuwat et al., *supra* note 20, at 3.

litigated cases.⁶³ Chien designed an analysis to predict patent litigation and found litigation-bound patents could be identified ahead of time.⁶⁴ This finding encouraged companies to focus on fewer high-risk patents identified by the model, which would save time and expense.⁶⁵

The sport management literature regarding predicting outcomes in litigation has been scarce. Clement and Otto examined the results of court decisions involving headfirst entry into water injuries from 1990 to 2005 to determine the factors that would produce a more favorable outcome towards the plaintiff.⁶⁶ The findings produced best case scenarios for attorneys on both sides regarding head injuries sustained in pools.⁶⁷ The results also provided risk managers insight into what injuries incurred by plaintiffs would be most favorable to the plaintiff when confronted with certain defenses.⁶⁸

To date, there has been little to no research involving prediction of favorable/unfavorable outcomes in trademark litigation, especially in the field of sport management. Trademarks are a brand's most valuable asset, and many sport brands are valued in the billions of dollars.⁶⁹ Nike is the most valuable sport brand as of 2019, with a brand value of \$36.8 million.⁷⁰ The Dallas Cowboys are the most valuable sport team brand at \$1.039 million, while the most valuable event brand is the Super Bowl with a valuation of \$780 million.⁷¹ In spite of the financial success sport brands can achieve, brands may be wary of trademark litigation due to the enormous costs that may arise.⁷² However, being able to predict the likelihood of favorable outcomes may encourage brands to continuously police and maintain their marks.

A. Outcomes in Trademark Litigations

There are multiple outcomes resulting from a trademark owner being able to successfully prove infringement or dilution. The court may order an

63. *Id.* at 18.

64. Chien, *supra* note 61, at 283.

65. *Id.* at 288.

66. Clement & Otto, *supra* note 20, at 107.

67. *Id.* at 119.

68. *Id.* at 118.

69. *Making a Mark: An Introduction to Trademarks for Small and Medium-Sized Enterprises*, WIPO 12 (2017), https://www.wipo.int/edocs/pubdocs/en/wipo_pub_900_1.pdf; Mike Ozanian, *The Forbes Fab 40: Puma Debuts on 2019 List of The World's Most Valuable Sports Brands*, FORBES (2019), <https://www.forbes.com/sites/mikeozanian/2019/10/16/the-forbes-fab-40-puma-debuts-on-2019-list-of-the-worlds-most-valuable-sports-brands/>.

70. Ozanian, *supra*, note 69.

71. *Id.*

72. *See id.*

injunction, require destruction of infringing products, award damages, and/or order the defendant to pay for the plaintiff's attorney's fees.⁷³ A temporary injunction, commonly known as a temporary restraining order, can be issued by the Court in the short-term, "until the court is able to issue something more enduring."⁷⁴ A preliminary injunction is an order by the court requiring parties to cease certain actions, and in trademark litigation, this is typically the use of the alleged infringing trademark before the court's final decision on the merits.⁷⁵ The plaintiff must demonstrate: (1) immediate threat or injury; (2) probability of success on the merits; and (3) harms on defendant not greater than the pleading party.⁷⁶ A permanent injunction preserves this status of non-use indefinitely.⁷⁷

Section 1117 of the Lanham Act enumerates several bases for monetary relief in trademark litigation, also known as damages.⁷⁸ These include (1) accounting of defendant profits, (2) damages sustained by the plaintiff, (3) recovery of costs of the action, and (4) attorney's fees awarded to the successful party.⁷⁹ It is not uncommon for litigation strategies to include a claim for damages and injunctive relief simultaneously.⁸⁰

The remaining potential outcomes considered in this study include declaratory judgment and jury trial. Declaratory judgment is a legally binding decision from the court that resolves legal uncertainty for the litigants and defines the legal relationship between parties and their rights in a dispute.⁸¹ A jury trial allows for a group of persons who are sworn in to determine the outcome of a case.⁸²

73. *About Trademark Infringement*, USPTO, <https://www.uspto.gov/page/about-trademark-infringement> (last visited Apr. 1, 2022).

74. *Injunction*, CORNELL L. SCH., <https://www.law.cornell.edu/wex/injunction> (last visited Apr. 1, 2022).

75. *See id.*

76. Thomas R. Lee, *Preliminary Injunctions and the Status Quo*, 58 WASH. & LEE L. REV. 109, 111 (2001).

77. Ronald J. Ventola II & Samuel W. Silver, *The Value of First Impressions: Considering the Effect of Motions for Preliminary Injunctive Relief on Ultimate Results in IP Cases*, ABA, https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2014-15/september-october/value-first-impressions-effect-motions-preliminary-injunctive-relief-ultimate-results-ip-cases/ (last visited Apr. 1, 2022).

78. Lanham Act, 15 U.S.C. § 1117 (2021).

79. *Id.*

80. *See About Trademark Infringement*, U.S. PAT. & TRADEMARK OFF., <https://www.uspto.gov/page/about-trademark-infringement> (last visited Apr. 1, 2022).

81. *Declaratory Judgment*, CORNELL L. SCH., https://www.law.cornell.edu/wex/declaratory_judgment (last visited Apr. 1, 2022).

82. *Trial*, OFFS. U.S. ATT'YS, <https://www.justice.gov/usao/justice-101/trial> (last visited Apr. 1, 2022).

IV. METHODOLOGY

A. Data Collection

Using Stata 14.0, a binary logistic regression was conducted to analyze the types of claims and requests raised with respect to the outcome of a win or loss for trademark litigation. Using Bloomberg Law, a content analysis of cases between January 2007 and February 2017 was examined; a total of 93 cases were obtained.⁸³ For a case to be included in this study, information detailing the types of claims and requests made by Adidas and outcomes of the cases had to be available for viewing to the authors, per the Bloomberg Law terminal access. The cases analyzed included cases that ended in a verdict as well as cases that were ultimately settled. If the case was ongoing, or the documents were sealed with no decisions made public, the case was excluded from the analysis. This left seventy-seven cases to be evaluated.

The set of independent variables consisted of the various types of claims made and the outcomes requested. Type of claim included trademark infringement, trade dress infringement, trade dress dilution, unfair competition, counterfeiting, trademark dilution, deceptive trade practice, false designation of origin, cybersquatting, injury to business reputation, common law unfair competition, breach of contract, and common law civil conspiracy. The request variables were comprised of the requests Adidas made during the filing of their claims, which included jury trial, declaratory judgement, permanent injunction, damages, injunctive relief, and damages and injunctive relief (jointly). Data was assigned a value of one if the pleading occurred in a particular case (e.g., 1 = claim occurred, 0 = otherwise), and a value of one if the outcome was requested (e.g., 1 = outcome requested, 0 = otherwise). Data was also coded to determine whether Adidas “won” or “loss” based on their pleadings, which served as the dependent variable. A value of 1 was assigned if Adidas received a judgment or settlement in their favor, (1 = outcome in Adidas' favor, 0 = otherwise).

B. Brand Selection and Justification

The use of case studies is promoted as an effective way to study organizations in sport management.⁸⁴ The value of case studies allows

83. BLOOMBERG L., <https://news.bloomberglaw.com/> (last visited Apr. 1, 2022).

84. Arran Caza, *Context Receptivity: Innovation in an Amateur Sport Organization*, 14 J. SPORT MGMT. 227 (2000); Katie Misener & Alison Doherty, *A Case Study of Organizational Capacity in Nonprofit Community Sport*, 23 J. SPORT MGMT. 457 (2009); Erin K. Sharpe, *Resources at the Grassroots of Recreation: Organizational Capacity and Quality of Experience in a Community Sport Organization*, 28 LEISURE SCIS. 385 (2006); Julie A. Stevens & Trevor Slack, *Integrating Social Action and Structural Constraints Towards a More Holistic Explanation of Organizational Change*, INT'L. REV. FOR SOCIO. SPORT, 143 (1998).

researchers to encourage acumen, highlight issues, and generate broader understandings.⁸⁵ While the findings of this current case study may not be generalizable across all sport brand organizations, it does provide interesting results and potentially valuable strategies for brands even outside of sport apparel to utilize if needing to pursue litigation. Intellectual property protection is one of the top concerns for many organizations, and by providing a blueprint of a proactive IP strategy, brands may be able to save time and money protecting their trademarks.⁸⁶ Adidas is one of the more prominent sport brands aggressively pursuing trademark litigation against not only other sport brands, but any person or brand the company believes may potentially infringe upon their iconic stripes.⁸⁷ This aggressive approach has made Adidas the subject of “trademark bully” claims⁸⁸, but the brand has managed to protect the trademarks for over six decades based upon such a hardline strategy.⁸⁹ For instance, Tesla sought to register a trio of horizontal bars for their Model 3 electric car with the U.S. Patent and Trademark Office.⁹⁰ However, Adidas contested the application, as the sport brand alleged the bars would cause consumer confusion should Tesla ever use the logo on any kind of apparel.⁹¹ Tesla eventually withdrew the application.⁹² Given Adidas’ strategy to protect its marks, it is an appropriate brand for this investigation and to draw inference regarding potential best practices when sport brands are developing legal strategies.

C. Analysis

For the binary logistic regression, each outcome of win or loss (dependent variable) was regressed upon each type of claim (independent variables) individually, as each claim is considered autonomously by a jury or fact finder. Trademark infringement and dilution claims were analyzed separately, along with each other type of claim, in order to examine the relationship between the types of cases, claims, and whether the case resulted in a favorable or

85. Robert Stake, *Strategies of Qualitative Inquiry: Case Studies*, SIMON FRASER UNIV., <https://www.sfu.ca/~palys/Stake2003-CaseStudies.pdf> (last visited Apr. 1, 2022).

86. See Craig Guillot, *Intellectual Property Is Just as Important as Your Physical Property; So Why Aren't You Insuring It?*, RISK & INSURANCE (Sept. 16, 2019), <https://riskandinsurance.com/intellectual-property-insurance/>.

87. Kim Bhasin, *Adidas Trademark War Means Three Stripes and You're in Court*, BLOOMBERG (Mar. 15, 2017, 3:00 AM), <https://www.bloomberg.com/news/articles/2017-03-15/adidas-trademark-war-means-three-stripes-and-you-re-out>.

88. Complaint at 3, *Forever 21, Inc. v. Adidas Am., Inc.*, No. 2:17-cv-01752 (C.D. Cal. 2017).

89. Perkins, *supra* note 13.

90. Bhasin, *supra* note 87.

91. *Id.*

92. *Id.*

unfavorable outcome. A goodness-of-fit (GOF) test was performed on each model to determine whether the model was correctly specified. If a p -value is low (such as below .05), the model is rejected; if the p -value is higher, the model passes the GOF tests.⁹³ Permanent injunction as an outcome variable was excluded from the analysis, as there was only one instance of Adidas filing this type of claim.

V. RESULTS AND DISCUSSION

Requests for jury trial yielded the largest pleadings for Adidas ($n = 41$) out of the 77 cases examined; totaling approximately 53% of the sample. Injunctive relief requests ($n = 18$) comprised 23% of the sample, followed by damages and injunctive relief ($n = 12$) at 16%, damages ($n = 4$) at 5%, and declaratory judgement ($n = 2$) rounded out the analysis with 3% of the sample. Table 1 displays the correlation table, which shows no variables were highly correlated. From the factors found to be significant, the odds ratio can then be interpreted. In interpretation of the results, the author refers to a favorable outcome as more or less likely to occur. This is in reference to an identical claim without the variable(s) in question.

A. Injunctive Relief

Table 3 presents logistic regression estimates utilizing each individual type of claim to injunctive relief with win/loss as the outcome variable with good model fit, $\chi^2 = (7, n = 18) = 0.38, p = 0.9998$. Counterfeiting produced negative statistically significant results ($p < .05$), indicating the odds of Adidas receiving a favorable outcome was .26 times less likely to occur when the claim was for counterfeiting than if they did not file a counterfeiting claim. Common law unfair competition was also statistically significant ($p < .05$), with the odds of this type of claim being .09 times less likely to occur when injunctive relief was requested.

The odds of a win when requesting an injunctive relief outcome were 4.83 times more likely to occur when the type of claim included trademark dilution as opposed to not filing for trademark dilution. When Adidas filed a claim for deceptive trade practice, they were 4.83 times more likely to receive a favorable outcome. The odds of a win as a result of filing an injury to business reputation claim was 5.40 times that of claims that did not include injury to business reputation.

93. Raymond E. Wright, *Logistic Regression, in* READING AND UNDERSTANDING MULTIVARIATE STAT. 217, 227 (Laurence G. Grimm & Paul R. Yarnold eds., 1995).

The largest likelihood resulted from a breach of contract claim, as Adidas was 14.93 times more likely to receive a favorable outcome when claiming there was a breach of contract and requesting injunctive relief as opposed to not claiming breach of contract. Adidas sued for breach of contract on multiple occasions along with trademark infringement and dilution cases when previous agreements to cease use of stripes by defendants were potentially violated. The odds of receiving a favorable outcome were .09 times less likely to occur when pleading common law unfair competition.

B. Damages and Injunctive Relief

Table 5 presents logistic regression estimates investigating each individual type of claim when pleaded with damages and injunctive relief with good model fit, $\chi^2 = (4, n = 12) = 6.23, p = 0.1827$). Adidas was 4.50 times more likely to receive a favorable outcome when pleading for damages and injunctive relief when they filed a counterfeiting claim.

However, when filing claims for trademark dilution or deceptive trade practice along with requesting damages and injunctive relief, respectively, the outcome was .102 less likely to result in their favor. The odds of Adidas receiving a favorable outcome when filing for false designation of origin was 4.84 times more likely to occur as opposed to not filing this claim. Adidas was also 6.125 times more likely to receive a favorable outcome when filing for common law unfair competition and pleading for damages and injunctive relief than if they did not include this specific claim.

C. Jury Trial

Table 6 presents logistic regression estimates examining each individual type of claim along with pleading jury trial and whether Adidas received a favorable or unfavorable outcome ($\chi^2 = (9, n = 41) = 15.16, p = 0.0865$). While most of the results were non-significant, a breach of contract claim was statistically significant ($p < .05$). This indicates the odds of the lawsuit resulting in a jury trial was 0.15 times more likely when Adidas filed a breach of contract claim as opposed to not seeking a jury trial for breach of contract.

D. Discussion

For trademark litigation, injunctive relief is a relatively quick outcome for mark owners who have clear support for their infringement claims.⁹⁴ Injunctive relief can be obtained prior to a decision on the case in the form of a temporary

94. See Ventola & Silver, *supra*, note 77.

restraining order or preliminary injunction issued by a court.⁹⁵ Specifically, the mark owners have evidence to prove all three elements of infringement.⁹⁶ First, there is a valid trademark.⁹⁷ This can be supported with proof of registration or use in commerce by the mark owner.⁹⁸ Second, the defendants used the mark in commerce.⁹⁹ A sample of the actual good or service or a copy of an advertisement should meet this requirement.¹⁰⁰ Lastly, the defendant used the mark in a manner which was likely to cause consumer confusion.¹⁰¹ This may be the most difficult to prove. Still, research has shown that survey evidence from consumers can help with proving trademark infringement claims,¹⁰² as there was a “positive and significant relationship between a plaintiff submitting a survey and a finding of likelihood of confusion” by courts.¹⁰³

Adidas v. Skechers included surveys by both parties; and while the Court declined to give controlling weight to either survey on the question of actual confusion, the Court still found that Adidas had a strong showing for a likelihood of confusion.¹⁰⁴ Thus, with the inclusion of a survey in their proof of evidence, Adidas was more likely to receive a favorable outcome or settlement in many of their lawsuits.¹⁰⁵

Adidas has not often asked the court for a declaratory judgment, as there were only two cases available during the years reviewed. The small sample size produced non-significant regression results; however, the strategy is still notable. Adidas only requested and received a declaratory judgment twice, without remedies, which provided for speedy proceedings.¹⁰⁶ In the case of *Adidas v. Bobosky*, the defendant currently had his own lawsuit against Adidas claiming the use of the phrase “We Not Me” by the sport brand during a 2007 “Basketball is a Brotherhood” campaign infringed on the plaintiff’s trademark.¹⁰⁷ Adidas filed a counter lawsuit asking the court for a declaratory judgment, as the brand believed (and the court agreed) that Bobosky’s federal

95. *Id.*

96. *See* Lanham Act, 15 U.S.C. §§ 1114, 1125 (2021).

97. *Id.*

98. *Id.*

99. *Id.*

100. *See* Lanham Act, 15 U.S.C. §§ 1127 (2021).

101. Lanham Act, 15 U.S.C. §§ 1114, 1125 (2021).

102. Katie Brown et al., *An Empirical Examination of Consumer Survey Use in Trademark Litigation*, 39 LOY. L.A. ENT. L. REV. 237, 251-252 (2019).

103. *Id.* at 267.

104. *Adidas Am., Inc. v. Skechers USA, Inc.*, 890 F.3d 747, 755 (9th Cir. 2018).

105. *See id.*

106. *See, e.g., Adidas Am., Inc. v. Bobosky*, No. 10-603, 2010 WL 4365795 (D. Or. 2010).

107. *Id.*

registration was void *ab initio*.¹⁰⁸ Declaratory judgment appeared to be a strategy Adidas only utilized as a reactive measure.

While most trademark cases typically involve obtaining an injunction to put a stop to infringing behavior¹⁰⁹ and have a quick outcome to a case, Adidas appears to favor prolonged litigation in order to force others to decide between continuing to spend funds or settling. Jury trial comprised the largest percentage of pursued outcomes associated with Adidas' filings, which is interesting to note as breach of contract was the lone statistically significant predictor variable to appear in the regression results. This indicates a potential for defendants to argue against breach of contract allegations by Adidas regarding previous settlements. The findings also suggest even though Adidas may be successful in litigation previously with certain defendants, these individuals or brands may find new ways to incorporate stripes into their products and/or marks. Nonetheless, Adidas has continuously pursued litigation against repeat offenders, so much so that others have deemed the sport brand a "trademark bully."¹¹⁰ Adidas has pursued multiple trademark infringement lawsuits against the fashion clothing brand, Forever 21. For example, in 2015, Adidas requested a jury trial and for Forever 21 to immediately cease all sales, distributing, and marketing of sweatshirts featuring cartoons with three stripes down each arm.¹¹¹ Several months later, Adidas filed to voluntarily dismiss the lawsuit without prejudice, as the parties had settled the matter outside of court.¹¹² However, Forever 21 was sued again in 2017 by Adidas for using two stripes on materials such as athletic shoes, with Adidas claiming breach of contract of the previous settlement agreement.¹¹³ Adidas eventually agreed to an out-of-court settlement in the case after many months of litigation, which was a common theme in the jury trial claims by the sport brand.¹¹⁴ The strategy of requesting a jury trial proved fruitful for Adidas, as the brand is willing to pursue lengthy litigation with almost any potential opponent.

108. *Id.*

109. Olivia Maria Baratta & Theodore H. Davis, *Trademark Enforcement in the United States*, LEXOLOGY (Nov. 12, 2018), <https://www.lexology.com/library/detail.aspx?g=f5642fe8-f8a8-47e7-8c38-dd8c8ab3d0a9>.

110. *See* Perkins, *supra* note 13; Complaint at 3, *Forever 21, Inc. v. Adidas Am., Inc.*, No. 2:17-cv-01752 (C.D. Cal. 2017).

111. *A Timeline of the Ugly Battle Between Adidas v. Forever 21*, FASHION L. (July 21, 2017), <https://www.thefashionlaw.com/a-timeline-of-the-ugly-legal-battle-between-adidas-v-forever-21/>.

112. *Id.*

113. *Id.*; *Adidas Am., Inc. v. Forever 21, Inc.*, No. 3:17-cv-00377-YY (D. Or. 2018).

114. *A Timeline of the Ugly Battle Between Adidas v. Forever 21*, FASHION LAW (July 21, 2017), <https://www.thefashionlaw.com/a-timeline-of-the-ugly-legal-battle-between-adidas-v-forever-21/>.

While claims resulting in damages produced non-significant results, potentially due to the small number of times Adidas has requested them, the strategy is worth examining. Adidas sought damages against Payless in 2008, alleging trademark infringement, trade dress infringement, and trademark dilution.¹¹⁵ In a 1994 settlement agreement, Payless agreed to discontinue selling athletic shoes bearing two, three, or four stripes.¹¹⁶ However, Adidas claimed Payless violated this agreement by offering a look-alike version of Adidas' well-known "Superstar" basketball sneaker, decorated with four stripes instead of the famous three stripes.¹¹⁷ Adidas also asserted that Payless infringed on various elements of the Superstar's trade dress, most conspicuously, the design of the rubber "shell toe."¹¹⁸ The Court found Adidas submitted credible evidence of actual harm in the form of consumer surveys and expert witnesses where the evidence showed Payless directly benefitted from consumer confusion, and also negatively impacted consumer perceptions of the Adidas brand as a source of quality footwear.¹¹⁹

The Court found Payless liable for willful infringement and rendered a verdict in favor of Adidas, awarding over \$300 million in damages.¹²⁰ This was a landmark decision in trademark infringement and was one of the lengthiest lawsuits in Adidas' history (spanning over eight years of litigation).¹²¹ While this outcome proved fruitful, Adidas' strategy does not ordinarily involve pursuing damages for actual harm. Being awarded damages in trademark law is rare, as businesses must prove harm and willful violations of the Lanham Act.¹²² However, the U.S. Supreme Court recently made it easier for brands to potentially collect money damages by unanimously ruling that willfulness by the defendant is not a prerequisite for collecting damages.¹²³

With regards to the other claims Adidas pursues in a multitude of their cases, a counterfeiting claim was less likely to result in an outcome of injunctive

115. Adidas Am., Inc. v. Payless Shoesource, Inc., 529 F.Supp.2d 1215, 1222 (D. Or. 2007).

116. *Id.* at 1224.

117. *Id.*

118. *Id.* at 1225.

119. Adidas Am., Inc. v. Payless Shoesource, Inc., 529 F.Supp.2d 1215 (D. Or. 2007).

120. *Id.* at 1270; Robbie DiMasio, *Jury Gives Adidas \$305 Million in Payless Stores Trademark Suit*, OREGONLIVE (Mar. 27, 2019, 7:07 AM), https://www.oregonlive.com/breakingnews/2008/05/Portland_jury_orders_payless_t_1.html.

121. Megan Gambino, *Ten Famous Intellectual Property Disputes*, SMITHSONIAN MAG. (June 21, 2011), <https://www.smithsonianmag.com/history/ten-famous-intellectual-property-disputes-18521880/>.

122. Nicholas A. Gowen & Peter V. Baugher, *Recovering Damages for Trademark Infringement*, BURKE L., https://www.burkelaw.com/media/news/63_Recovering%20Damages%20for%20Trademark%20Infringement.pdf (last visited Apr. 1, 2022).

123. Romag Fasteners, Inc. v. Fossil Group, Inc., 140 S.Ct. 1492, 1493 (2020).

relief but had a much higher probability of receiving injunctive relief and damages, collectively. False designation of origin was also almost five times more likely to result in an outcome of damages and injunctive relief, which is typically filed in conjunction with a counterfeiting claim. These results are intuitive, as Section 1117(b) of the Lanham Act allows for plaintiffs to pursue special monetary remedies against counterfeit products, which are meant to intentionally mislead and deceive consumers into believing the counterfeit is the actual registered product.¹²⁴ A plaintiff can recover actual damages and profits or statutory damages if the use of the counterfeit was willful.¹²⁵ Specifically, brands may have a higher probability of receiving damages and injunctive relief when filing for counterfeiting, as the courts take the counterfeiting problem seriously.¹²⁶ If a brand can prove the counterfeiting was inherently willful or malicious, the likelihood of a favorable outcome is higher than seeking injunctive relief alone.¹²⁷

A noteworthy finding for Adidas included the trademark dilution claims, as they were four times more likely to receive injunctive relief when filing this type of claim as opposed to not. Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(c) entitles owners of famous marks an injunction against commercial use of a mark or trade name that is likely to cause dilution by tarnishment or blurring, regardless of whether actual or likely confusion exists.¹²⁸ The Trademark Dilution Revision Act of 2006 (TDRA) amended the Federal Trademark Dilution Act of 1995 (FTDA) and was enacted following the U.S. Supreme Court's decision in *Moseley v. V Secret Catalogue*.¹²⁹ In *Moseley*, the Court held that a dilution plaintiff must show actual dilution of its mark.¹³⁰ The TDRA's primary purpose was to replace the actual dilution standard and provide that a plaintiff only needs to show a likelihood of dilution to sustain a claim of trademark dilution.¹³¹ The plaintiff does not have to show competition or actual economic injury.¹³² Historically, trademark dilution has been claimed

124. Lanham Act, 15 U.S.C. § 1117 (2021).

125. *Id.*

126. See *What Is Counterfeiting?*, INT'L. ANTICOUNTERFEITING COAL., <https://www.iacc.org/resources/about/what-is-counterfeiting> (last visited Apr. 1, 2022).

127. *Id.*

128. Lanham Act, 15 U.S.C. § 1125(c) (2021).

129. See Trademark Dilution Revision Act of 2006, Pub. L. No. 109-312, 120 Stat. 1730 (2006); *Moseley v. V Secret Catalogue, Inc.*, 123 S.Ct. 1115 (2003).

130. *Moseley v. V Secret Catalogue, Inc.*, 123 S.Ct. 1115, 1124 (2003).

131. Britt N. Lovejoy, *Tarnishing the Dilution by Tarnishment Cause of Action: Starbucks Corp. v. Wolfe's Borough Coffee, Inc. and V Secret Catalogue, Inc. v. Moseley, Compared*, 26 BERKELEY TECH. L.J. 623, 623 (2011).

132. Trademark Dilution Revision Act of 2006, Pub. L. No. 109-312, 120 Stat. 1730 (2006).

difficult to prove; yet, it does not require an extensive burden of proof as of the TDRA's enactment.¹³³ Federal law is favorable to famous marks. So, sport brands may be more likely to prevail with a dilution claim when seeking injunctive relief.¹³⁴

Whether a sport brand seeks a declaratory judgment, injunction and damages, or a jury trial, careful consideration needs to occur to determine the best and most likely outcome of litigation. Although there are several claims which are more likely to result in a positive outcome for a sport brand, trademark litigation remains a necessary strategy. Therefore, regardless of the type of claim, sport brands should be deliberate in their trademark litigation strategies. As demonstrated by Adidas, brands should devote resources (both human and financial) to protect their trademarks. More importantly, sport brands should be purposeful in evaluating the cost benefit analysis of pursuing trademark infringement and dilution litigation. Future research examining the jurisdiction trademark lawsuits were filed in and whether certain jurisdictions are more likely to favor a certain outcome could further strengthen sport brand litigation strategies.

VI. IMPLICATIONS AND FUTURE RESEARCH

This study expands on previous research frameworks conducted in patent litigation by applying regression methods to predict legal outcomes in trademark litigation. The results of this analysis further confirm the value of quantitative methods to identify and verify critical components of a successful legal strategy. Moreover, there has been little research specific to strategies for sport brand trademark litigation best practices. This is important because as the value of sport brands increase, the likelihood of potential damage due to trademark infringers and counterfeiters may increase as well.

For sport practitioners and trademark litigators, this study provides a model for brands to examine their own strategies. Although only one brand was investigated, the results of this study yielded useful information, and future research should include more sport brands, to increase the sample size of cases. This also would provide a more robust predictive model for sport brands seeking to build better trademark litigation strategies. As previously stated, trademark litigation can be lengthy and costly. Given the time, trouble and expense associated with litigation, sport brands would be best served by being proactive in protecting their trademarks. The ability to efficiently identify higher

133. Lovejoy, *supra* note 131, at 649.

134. *See id.* at 623.

probability strategies could reduce the prohibitive cost and manpower investment associated with proactive litigation tactics.

Actively policing attempted and actual use of the mark in commerce by sending cease-and-desist letters, filing claims with the United States International Trade Commission (USITC) to stop importation of counterfeit goods, and initiating oppositions to trademark registration filings, are all ways to attempt to avoid the expense of litigation. Unfortunately, in some instances, litigation may be the only effective method to protect a brand's trademarks against unauthorized users. Therefore, if litigation is pursued, the results of this study provide guidance for sport brands by highlighting the types of claims most likely to deliver certain favorable outcomes. Specifically, sport brands should include multiple types of claims when filing their complaints, i.e., injunctive relief and damages. As noted, court pleadings for a jury trial are only favorable for plaintiffs when associated with a breach of contract claim. So, if a sport brand settles a trademark infringement claim (and the opposing brand continues to infringe upon the trademark), courts typically will rely on those agreements in resolving the dispute.

This study also determined that an adeptness to predict the likelihood of more favorable outcomes enables brands to have a more successful litigation process. While trademark litigation is lengthy and expensive, sport brands can draw inference from Adidas' trademark litigation practices. Previously, Adidas has been described as being aggressive in their trademark protection strategies; however, failing to actively pursue trademark infringers can be detrimental to a sport brand.

For instance, in 2014, Converse filed a complaint with the USITC against thirty-one companies, alleging violations of section 337 of the Tariff Act of 1930.¹³⁵ The filing was an attempt to prohibit the importation of counterfeit shoes from entering the U.S.¹³⁶ Unfortunately, Converse only succeeded in stopping "the importation of any shoe bearing Converse's trademark diamond-patterned outsole;¹³⁷ while, "other trademark registrations were reversed and deemed invalid due in large part to decades (since the 1920s) of unrestricted use of similar looks by competitors."¹³⁸ Converse appealed the decision to the U.S. Court of Appeals for the Federal Circuit, and nearly two years later, the USITC's decision was vacated and remanded for further proceedings.¹³⁹ As of

135. *USITC Institutes Section 337 Investigation of Certain Footwear Products*, U.S. INT'L TRADE COMM'N (Nov. 12, 2014), https://www.usitc.gov/press_room/news_release/2014/er1112mm3.htm.

136. *See id.*

137. Brown & Brison, *supra* note 12.

138. *Id.*

139. *Converse, Inc. v. Int'l Trade Comm'n*, 909 F.3d 1110 (Fed. Cir. 2018).

November 2019, the USITC was still investigating whether to review the remand and extended the target date for completion of its investigation to March 24, 2020.¹⁴⁰ Sadly, Converse represents what could happen if sport brands are not vigilant in protecting their trademarks.

On the other hand, Adidas' trademark protection strategies provide sport brands with the guidance for safeguarding their own intellectual property from infringers, and this study, in particular, reveals a variety of litigation tactics which could be used to protect trademarks. Trademark protection is crucial to sport brands not only due to the time and monetary costs associated with litigation, but also due to the potential harm which may be incurred by consumers. Trademarks, in general, guarantee that consumers are purchasing the goods and services they intended to buy. If a sport brand does not prohibit these competing goods and services from entering the market and protect their marks legally, ultimately, the company will lose brand equity and consumer loyalty, resulting in financial losses that may never be recovered.

140. *USITC Institutes Section 337 Investigation of Certain Footwear Products*, *supra* note 135.

Table I. Correlations.

Variable	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
1 Trademark Infringement	1																			
2 Trade Dress Infringement	0.0471	1																		
3 Trade Dress Dilution	0.0471	1	1																	
4 Unfair Competition	0.6875	0.0686	0.0686	1																
5 Counterfeiting	0.0962	0.1838	0.1838	0.0311	1															
6 Trademark Dilution	0.2776	0.1698	0.1698	0.3174	-0.765	1														
7 Deceptive Trade Practice	0.2776	0.1698	0.1698	0.3174	-0.765	.101	1													
8 False Designation of Origin	0.1959	-0.148	-0.148	0.1958	0.6957	0.8714	0.8714	1												
9 Cybersquatting	0.1199	0.1031	0.1031	0.0354	0.561	0.5424	0.5424	0.4286	1											
10 Injury to Business Reputation	0.0956	0.1096	0.1096	0.139	0.1491	0.3443	0.3443	-0.3	0.2091	1										
11 Common Law Unfair Competition	0.1575	0.1355	0.1355	0.2291	0.7372	-0.798	-0.798	0.7395	0.4846	0.2747	1									
12 Breach of Contract	0.0717	0.1096	0.1096	0.0174	0.2981	0.269	0.269	0.2222	0.2091	0.0455	0.2747	1								
13 Common Law Civil Conspiracy	0.0269	0.0231	0.0231	0.0391	0.1257	-0.136	-0.136	0.0843	0.224	0.0468	0.1705	0.0468	1							
14 Jury Trial	0.1325	0.0542	0.0542	0.0222	0.0333	0.0549	0.0549	0.0205	0.0333	0.1381	0.0124	0.2869	0.1224	1						
15 Declaratory Judgement	0.0382	0.0329	0.0329	0.0556	0.1789	-0.028	-0.028	0.0511	0.1176	0.1667	0.1099	0.0667	0.0187	0.1743	1					
16 Permanent Injunction	0.0269	0.0231	0.0231	0.0391	0.1257	-0.136	-0.136	0.0843	0.224	0.0468	0.1705	0.0468	0.0132	0.1224	0.0187	1				
17 Injunctive Relief	0.1473	0.1112	0.1112	0.0131	0.2577	0.279	0.279	-0.213	0.1316	0.3007	0.3054	0.476	0.0634	0.5895	0.0902	0.0634	1			
18 Damages	0.1295	0.0637	0.0637	0.0404	0.1072	0.175	0.175	0.1377	0.0506	0	0.2128	0.1291	0.0363	0.3375	0.0516	0.0363	0.5725	1		
19 Damages & Injunctive Relief	0.0608	0.0985	0.0985	0.0884	0.255	0.3642	0.3642	0.2846	0.0447	0.1754	0.3293	0.1754	0.267	0.4585	0.0702	0.0493	0.2373	0.1359	1	

Table 2. Regression Results when Declaratory Judgment was Requested.

Variable	Coeff	Std. Error	Odds Ratio	Std. Error
Trademark Infringement	-		-	
Trade Dress Infringement	-		-	
Trade Dress Dilution	-		-	
Unfair Competition	-		-	
Counterfeiting	-		-	
Trademark Dilution	0.350	1.434	0.705	0.580
Deceptive Trade Practice	0.350	1.434	0.705	0.580
False Designation of Origin	0.633	1.435	1.885	2.704
Cybersquatting	1.386	1.440	4.000	5.774
Injury to Business Reputation	1.872	1.454	6.500	9.454
Common Law Unfair Competition	-		-	
Breach of Contract	-		-	
Common Law Civil Conspiracy	-		-	

Note. $n=2$.

* $p<0.10$, ** $p<0.05$, *** $p<.01$

Table 3. Injunctive Relief as Outcome Variable.

Variable	Coeff	Std. Error	Odds Ratio	Std. Error
Trademark Infringement	-1.270	1.039	0.281	0.292
Trade Dress Infringement	-		-	
Trade Dress Dilution	-		-	
Unfair Competition	-0.099	0.865	0.906	0.783
Counterfeiting	-1.355**	0.624	0.258	0.161
Trademark Dilution	1.576**	0.684	4.833	3.306
Deceptive Trade Practice	1.576**	0.684	4.833	3.306
False Designation of Origin	-1.232	0.686	0.282	0.200
Cybersquatting	-0.912	0.810	0.402	0.325
Injury to Business Reputation	1.686**	0.684	5.400	3.696
Common Law Unfair Competition	-2.356**	1.063	0.092	0.098
Breach of Contract	2.704***	0.759	14.933	11.335
Common Law Civil Conspiracy	-	-	-	-

Note. $n=18$.

* $p<0.10$, ** $p<0.05$, *** $p<.01$

Table 4. Damages as Outcome Variable.

Variable	Coeff	Std. Error	Odds Ratio	Std. Error
Trademark Infringement	1.314	1.231	0.269	0.331
Trade Dress Infringement	-	-	-	-
Trade Dress Dilution	-	-	-	-
Unfair Competition	0.405	1.151	0.667	0.768
Counterfeiting	0.802	0.870	0.448	0.390
Trademark Dilution	1.562	1.107	4.769	5.278
Deceptive Trade Practice	1.562	1.107	4.769	5.278
False Designation of Origin	1.266	1.108	0.282	0.313
Cybersquatting	0.492	1.119	0.611	0.684
Injury to Business Reputation	9.160	1.133	1.000	1.133
Common Law Unfair Competition	-	-	-	-
Breach of Contract	0.997	0.910	2.711	2.466
Common Law Civil Conspiracy	-	-	-	-

Note. $n=4$.

* $p<0.10$, ** $p<0.05$, *** $p<.01$

Table 5. Damages and Injunctive Relief as Outcome Variable.

Variable	Coeff	Std. Error	Odds Ratio	Std. Error
Trademark Infringement	-0.631	1.200	0.532	0.639
Trade Dress Infringement	1.052	1.268	2.864	3.630
Trade Dress Dilution	1.052	1.268	2.864	3.630
Unfair Competition	-0.676	0.885	0.508	0.450
Counterfeiting	1.504**	.713	4.500	3.210
Trademark Dilution	2.280***	.818	0.102	0.084
Deceptive Trade Practice	2.280***	.818	0.102	0.084
False Designation of Origin	1.577**	.670	4.840	3.246
Cybersquatting	0.288	0.735	1.333	0.980
Injury to Business Reputation	-	-	-	-
Common Law Unfair Competition	1.812***	0.677	6.125	4.145
Breach of Contract	-	-	-	-
Common Law Civil Conspiracy	-	-	-	-

Note. $n=12$.

Table 6. Jury Trial as Outcome Variable.

Variable	Coeff	Std. Error	Odds Ratio	Std. Error
Trademark Infringement	1.291	1.178	3.636	4.285
Trade Dress Infringement	0.585	1.247	1.795	2.238
Trade Dress Dilution	0.585	1.247	1.795	2.238
Unfair Competition	0.145	0.747	1.156	0.864
Counterfeiting	-0.1334	0.459	0.875	0.401
Trademark Dilution	0.223	0.467	1.250	0.580
Deceptive Trade Practice	0.223	0.464	1.250	0.800
False Designation of Origin	-0.086	0.480	0.917	0.439
Cybersquatting	-0.164	0.562	0.848	0.478
Injury to Business Reputation	-0.803	0.674	0.448	0.302
Common Law Unfair Competition	0.054	0.494	1.055	0.521
Breach of Contract	1.872**	.821	0.154	0.126
Common Law Civil Conspiracy	-	-	-	-

Note. $n=41$.

* $p<0.10$, ** $p<0.05$, *** $p<0.01$