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In-N-Out Claims Trademark and Trade Dress Infringement over Puma's 'Drive Thru' Shoes

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April 04, 2019

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Complaint, In-N-Out Burgers v. Puma North America, Inc. et al, No. 8:19-cv-00413 (C.D. Cal. Mar. 1, 2019), [complaint](#) hosted by heitnerlegal.com.

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On March 1, 2019, the popular California burger chain In-N-Out filed suit against Puma and Los Angeles-based fashion designer Mike Cherman for trademark and trade dress infringement over Puma's new "Cali-0 Drive Thru" and "California Drive Thru" sneakers (collectively, "Drive Thru Shoes"), which In-N-Out claims used marks essentially identical to its federally registered palm tree symbol, U.S. Trademark Registration No. [1935301](#) and No. [1514036](#), and design elements confusingly similar to its federally registered Red and Yellow In-N-Out mark, U.S. Trademark Registration No. [1516560](#), and trade dress.

In-N-Out's complaint alleges five claims: 1) federal trademark infringement under [15 U.S.C. § 1114](#); (2) trademark infringement, trade dress infringement, and false designation of origin under [15 U.S.C. § 1125\(a\)](#); (3) trademark infringement under [Cal. Bus. & Prof. Code § 14245](#); (4) unfair competition under California common law; and (5) unfair competition under [Cal. Bus. & Prof. Code § 17200 et seq.](#) In-N-Out alleges that Puma and Cherman "deliberately intended to trade off the popular and positive goodwill associated with In-N-Out and its Trademarks and Trade Dress by displaying features on the Drive Thru Shoes nearly identical to or including the same elements as In-N-Out's Trademarks and Trade Dress." Included below are In-N-Out's trademarks and trade dress, followed by Puma's alleged infringing sneakers:



Examples of In-N-Out's palm tree mark and the red, white, and yellow color scheme of its trade dress



Puma's Cali-0 Drive Thru shoes



Puma's California Drive Thru shoes

In the complaint, In-N-Out argues that Puma is “[d]eliberately attempting to associate itself and its products with In-N-Out,” by, in addition to using their marks and trade dress, including insoles which feature images of hamburgers and marketing the shoe alongside hamburger imagery. The complaint also points to Cherman, the fashion designer that collaborated with Puma on the Cali-0 Drive Thru shoes, and his long history of using elements from other parties’ brands.

In-N-Out goes on to argue that Puma’s Drive Thru Shoes have created confusion in the marketplace including consumers mistakenly believing that the shoes were an official collaboration between In-N-Out and Puma. The complaint cites to several publications and social media posts as indication

of actual confusion in the marketplace. One Instagram user posted “@innout and @puma callabo. Kinda wanna get them for my in n out days lol” alongside a photo of Puma’s Cali-0 Drive Thru shoes, while another user commented “...protein style burger while im wearing the shoes & the in n out socks lmao.” In-N-Out currently sells its own apparel, including socks, featuring its trademarks and trade dress, and has done so for several years.

In-N-Out has an extensive [history](#) of defending its trademarks and trade dress. In previous disputes, In-N-Out has [stated](#), “[w]e will always vigorously defend our trademarks and trade-dress against any and all copycats and imitators[.]” In recent years, In-N-Out has lodged complaints against the [Grab-N-Go burger chain](#), mom-and-pop [In-N-Out Cleaners](#), and [In-N-Out Discount Market](#). Many of these businesses, due to prohibitive litigation costs, reached agreements with In-N-Out outside of court, and agreed to eliminate the similarities. But, Gerald Sauer on [Law360](#) explains, “Puma is a different animal. It has deep pockets and could, if it chose to, fight the fight.”

Sauer continues that “[t]rade dress registration is based on an applicant’s claim that the ‘total image’ of its good or services is distinctive to that company,” and points out that Puma might be able to fight In-N-Out over the trade dress issue and argue “that there is no likelihood of confusion between lace-up sneakers and ‘Double-Double’ burgers.” Barring settlement, Sauer concludes that this case might lead to courts providing guidance on “intent” in trademark and trade dress law.

In-N-Out seeks an injunction against Puma’s sale of the Drive Thru Shoes, any profits that Puma made on the sale of the Drive Thru Shoes, and punitive damages. Puma and Cherman have until April 15th to respond to In-N-Out’s complaint.

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