Banner & Witcoff Wins Summary Judgment of No Patent Infringement for NIKE, Inc.

October 1, 2010

Banner & Witcoff is pleased to announce that on September 29, 2010, the United States District Court for the Northern District of Illinois granted a motion for summary judgment of no patent infringement in favor of firm client NIKE, Inc. The case, *Furnace Brook LLC v. Aeropostale, Inc. et al.*, 09-cv-04310, was based on allegations that the defendants, through the operation of their respective on-line ordering web sites, were infringing U.S. Patent No. 5,721,832, entitled "Method and Apparatus for an Interactive Computerized Catalog System."

Pending before the Court were cross-motions for summary judgment on the sole issue of whether a prior Federal Circuit decision in *Furnace Brook LLC v. Overstock.com, Inc.*, 230 Fed. App'x 984 (Fed. Cir. 2007)—which involved a defendant with a similar online ordering website—barred Furnace Brook from attempting to enforce the '832 patent against NIKE's online ordering website.

In granting summary judgment, District Judge Virginia M. Kendall concluded, inter alia, that because Furnace Brook had already litigated in a prior action the issue of whether online ordering websites accessible only via the Internet could be accessed by the claimed "telephone terminal[s]," it was barred under the doctrine of collateral estoppel from asserting in this case against NIKE a different claim construction of "telephone terminal" or providing further evidence of alleged infringement. Accordingly, the Court granted NIKE's motion for summary judgment and denied Furnace Brook's cross-motion. The Court contemporaneously entered final judgment in the case in NIKE's favor.

NIKE was represented by Banner & Witcoff, Ltd.'s Chicago-based attorneys Christopher J. Renk, Timothy C. Meece, and Aseet Patel.

Please click here to read *IP Law360's* coverage of this case.

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