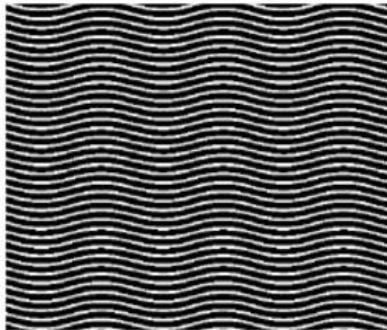


Logo and Minor Differences May Yield Different Overall Visual Impression

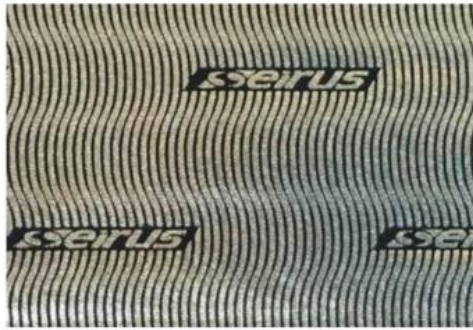
Columbia Sportswear Inc. v. Seirus Innovative Accessories, Inc.,
(Fed. Cir., November 13, 2019)

By: Chris Eggert, Barry Irwin | November 22, 2019

Columbia Sportswear (“Columbia”) sued Seirus Innovative Accessories (“Seirus”) for infringement of both a utility and a design patent relating to a heat management element in cold-weather outerwear. The design patent was directed to a wave-pattern design weave. Seirus established that the utility patent was anticipated and obvious, a finding sustained on appeal, but the district court granted summary judgment of infringement on the design patent claim, and a jury awarded damages of approximately \$3 million. Seirus appealed the grant of summary judgment, arguing that the district court ignored several minor differences in the accused design:



Columbia's D'093 design



Seirus's HeatWave

The Federal Circuit agreed and reversed the finding of summary judgment, remanding the case for a jury trial on infringement. Specifically, the appeals court found that the district court improperly dismissed minor differences, on a piecemeal basis as each individually not impacting the overall visual impressions, such as differences in the size, thickness, and orientation of the wave pattern, rather than considering the similarity of the overall visual impression of the designs from the standpoint of an ordinary observer. *Columbia*, at 18. Additionally, the district court wrongly ignored the logo, relying on a previous Federal Circuit case *L.A. Gear Inc. v. Thom McAn Shoe Co.*, 988 F.2d 1117, 1125 (Fed. Cir. 1993). Now, the Federal Circuit finds that when a logo is part of the design, it is proper to consider a logo's appearance and placement alongside other potential differences in the infringement analysis.