

Haynes Boone Secures Victory Against Nike Over 'Footware' Trademark Application

February 13, 2024 Erin Hennessy, Joseph Lawlor, Annie Allison

PRACTICES Intellectual Property, Intellectual Property Litigation, Trademark and Advertising, Trademark Litigation

A team of Haynes Boone trademark lawyers earned a victory at the Trademark Trial and Appeal Board halting Nike's attempt to secure a U.S. trademark registration for the term "Footware," on Monday, Feb. 12.

Partners [Erin Hennessy](#), [Joe Lawlor](#), and Associate [Annie Allison](#) represented San Antonio Shoe, Inc. ("SAS"), a family-owned, American footwear company known for its hand-crafted products available in over 100 SAS-branded stores and over 1500 retail doors worldwide. The TTAB sided with Haynes Boone's argument that the term "footware" is merely descriptive.

The Haynes Boone team posited that "an ordinary consumer will understand that: (i) 'FOOT' refers to a product worn on the foot; (ii) 'WARE' refers to the advanced hardware and software technologies embedded in the product," and concluded that "'Footware' is merely descriptive for foot-worn wearable technology." The Board agreed, stating that, "as a whole, this combination of FOOT + WARE does not result in a separate distinctive meaning. Even if Applicant is the first to use this particular combination of merely descriptive terms, that does not justify registration if the only significance conveyed by the term is merely descriptive."

"We are proud to have represented our client in leading the charge on this important issue for the entire footwear industry and for consumers," Hennessy said. "This decision will help prevent one player from securing exclusive rights to the descriptive term 'footware' in the rapidly evolving wearable technology space."

"We are glad that the Board agreed with our position that 'footware' is merely descriptive of the foot-worn wearable technologies that are becoming more common in the footwear marketplace," Lawlor said. "This is a helpful decision for brands and consumers, because as smart shoe technologies become more prevalent, no one brand will have a monopoly on this descriptor."

This is the second major victory in short order for Lawlor and the firm's Intellectual Property team, which last month earned a win in the United States Court of Appeals for the Second Circuit [regarding ownership of social media accounts](#).

About Haynes Boone

Founded in 1970, Haynes Boone provides a full spectrum of legal services across multiple sectors, including energy, financial services, private equity and technology. The firm's nearly 700 lawyers practice in 19 offices in California, Colorado, Illinois, New York, North Carolina, Texas, Virginia and Washington, D.C., as well as London, Mexico City and Shanghai. Haynes Boone was recognized in the 2022 BTI Consulting Group's A-Team report, which identified firms commended by in-house counsel for superior client service, and it was ranked 21st in The American Lawyer's 2023 Diversity Scorecard, which evaluated 228 participating firms by the diversity of their attorney populations. For more information, visit haynesboone.com.