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APPENDIX A

NOTE: This order is nonprecedential.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

[Filed 02/05/2019]

2018-2417

ROMAG FASTENERS, INC.,

Plaintiff-Appellant,

v.

FOSSIL, INC., FOSSIL STORES I, INC., MACY'S, INC.,
MACY'S RETAIL HOLDINGS, INC.,

Defendants-Appellees,

DILLARD'S, INC., NORDSTROM, INC.,
THE BON-TON STORES, INC., THE BON-TON
DEPARTMENT STORES, INC., BELK, INC.,
ZAPPOS.COM, INC., ZAPPOS RETAIL, INC.,

Defendants.

Appeal from the United States District Court
for the District of Connecticut in
Nos. 3:10-cv-01827-JBA and 3:11-cv-00929-CFD,
Judge Janet Bond Arterton.

ON MOTION

PER CURIAM.

ORDER

The appellees, Fossil, Inc. and several of its retailers, move to dismiss a portion of Romag Fasteners, Inc.’s appeal. Romag opposes the motion. The appellees reply.

Romag sued appellees for patent and trademark infringement. A jury found Fossil liable for both patent and trademark infringement and made advisory awards. The district court reduced the patent damages because of Romag’s laches and decided that Romag could not recover profits for trademark infringement because the jury found that the trademark infringement was not willful. On appeal, this court affirmed. *See Romag Fasteners, Inc. v. Fossil, Inc.*, 817 F.3d 782 (Fed. Cir. 2016) (“*Romag I*”). We rejected Romag’s argument that Fossil could not invoke a laches defense with regard to the patent infringement claim. We also rejected Romag’s contention that the district court erred in holding that a trademark owner must prove that the infringer acted willfully to recover the infringing defendant’s profits. We concluded that decision was consistent with governing Second Circuit precedent, *see George Basch Co. v. Blue Coral, Inc.*, 968 F.2d 1532, 1540 (2d Cir. 1992), and rejected the argument that such precedent was no longer good law after the 1999 amendments to the Lanham Act.

The Supreme Court of the United States vacated and remanded in light of *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 137 S. Ct. 954 (2017). *Romag Fasteners, Inc. v. Fossil Inc.*, 137 S. Ct. 1373 (2017). Because *SCA Hygiene* “was solely concerned with the defense of laches against a claim for patent infringement damages and d[id] not affect other aspects of our earlier opinion,” on remand we “reinstate[d] our earlier opinion [in *Romag I*] except for” the section

concerning laches, and remanded the case to the district court with instructions to correct the damages amount consistent with the Supreme Court decision. *Romag Fasteners, Inc. v. Fossil, Inc.*, 686 F. App'x 889 (Fed. Cir. 2017). After the district court issued its limited final judgment on the patent claims, Romag filed this appeal.

From its docketing statement and opposition, it appears that Romag once again wishes to brief its challenge to the district court's trademark profits determination, and in particular its assertion that *George Basch* no longer remains good law after the 1999 Amendments. We agree with appellees that such briefing is improper and unnecessary. It is well settled that a "court will not generally revisit an issue once decided in the litigation." *Mendenhall v. Barber-Greene Co.*, 26 F.3d 1573, 1582 (Fed. Cir. 1994); *see also Arizona v. California*, 460 U.S. 605, 618 (1983) (noting generally that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.") Romag has not pointed to any intervening change of Second Circuit law that would call into question our prior determination. We also did not direct any further proceedings on this issue, and the district court took no further action. We thus see no reason to relitigate an issue that has already been fully addressed.

Accordingly,

IT IS ORDERED THAT:

The motion is granted to the extent that the appeal is limited to issues decided by the district court in its orders after the remand from this court (e.g., district court Dkt. Nos. 529, 553, and 560).

Feb. 5, 2019

Date

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FOR THE COURT

/s/ Peter R. Marksteiner

Peter R. Marksteiner

Clerk of Court