

# COURTHOUSE NEWS

A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
A Court Publication Supported by the Attorney Admissions Fund  
Vol. XIV, No. 6, June 12, 2008

## Motion to Transfer

Plaintiff filed a patent infringement action. Defendant designs, manufacturers and markets assemblies for deploying and integrating solar electric systems. Defendant then filed a motion to transfer venue to the Northern District of California. Pursuant to 28 U.S.C. § 1400, and employing the court's broad discretion in this matter, Judge Aiken granted defendant's motion to transfer and transferred the case to the N. D. of California.

Sunpower Corp., Systems v. Sunlink Corp.,  
CV 08-148-AA  
(Opinion, May 21, 2008)  
Plaintiff's Counsel: Brenna Legaard, Susan Pitchford  
Defense Counsel: Randolph Foster

## Trademark Infringement, Jury Trial

After two days of deliberations in a trial before the Honorable Garr M. King, the jury recently returned a verdict in

favor of adidas on claims of infringement and dilution of adidas's Three Stripe Mark and Superstar Trade Dress, as well as related claims. The jury awarded actual damages of \$30,610,179 and, after making a finding of willfulness, a disgorgement of Payless's profits of \$137,003,578. The jury also awarded punitive damages of \$137,003,578 on the related state claims. Judgment will not be entered until the court decides the expected post-trial motions.

(Verdict, May 5, 2008)  
adidas America, Inc. v. Payless Shoesource, Inc.,  
CV 01-1655-KI  
Plaintiff's Counsel: Charles Henn, William Brewster  
Defense Counsel: William Rudy

## Trademark Infringement

Plaintiffs filed a summary judgment motion against defendants on their trademark infringement action. Judge Aiken granted plaintiffs' motion finding it undisputed that plaintiffs' trademark Sta-Natural is a U.S. registered trademark, and therefore the mark is prima facie valid.

Judge Aiken also found it undisputed that defendants were using an identical trademark to sell competing goods to the general public. Therefore, as a matter of law, the court found that defendants were infringing plaintiffs' registered trademark and granted plaintiffs' motion for summary judgment. The court also entered an injunction prohibiting defendants from further use of plaintiffs' trademark.

Dennison v. Angier,  
CV 07-6360-AA  
(Opinion, May 27, 2008)  
Plaintiffs' Counsel: Barry Groce  
Defense Counsel: Dan Angier,  
Pro se

## Americans with Disabilities Act, Jury Trial

Judge Clarke presided over a four-day jury trial in Medford. The jury returned a verdict finding that plaintiff's epilepsy was not the sole reason for defendant's decision to discharge him; but that his epilepsy was a motivating factor in defendant's decision to discharge him; and finally, that plaintiff was a direct threat to his own health and safety as well as to the health and safety of others. Therefore, the jury returned a verdict for the defendant.

(Verdict, June 5, 2008)

Dark v. Curry County

CV 03-3041-CL

Plaintiff's Counsel: Manuel Hernandez

Defense Counsel: Laura

Ledsworth-Wang, Robert Franz

## Section 1983 Claims

Plaintiff brought six claims pursuant to 42 U.S.C. § 1983, a 42 U.S.C. § 1985 claim, and nine state law claims pursuant to the Oregon Tort Claims Act ("OTCA"). Defendants moved for summary judgment on all of plaintiff's federal constitutional claims. The court granted defendant's motion dismissing those claims and declined to exercise

supplemental jurisdiction over plaintiff's remaining state law claims.

Contreras v. Roberts, et al.,

CV 07-366-AA

(Opinion, May 2, 2008)

Plaintiff's Counsel: Edward Merrill

Defense Counsel: Bruce Mowery

## Employment

Judge Aiken granted the City of Portland's motion for summary judgment in an employment action alleging whistleblower retaliation, wrongful discharge, and First Amendment and equal protection violations. Judge Aiken found that plaintiff failed to establish that she engaged in protected speech or disclosed official wrongdoing, because her complaints were made pursuant to her official duties and did not involve serious agency misconduct. Regardless, Judge Aiken found that plaintiff failed to present sufficient evidence that her complaints were causally connected to the adverse employment action. Judge Aiken also found that plaintiff could not prevail under her wrongful discharge claim, because her position was eliminated and she was not discharged. Finally, Judge Aiken found that plaintiff could not prevail under a "class of one" equal protection claim.

Huff v. City of Portland,

Civ. No. 05-1831-AA

(Opinion, April 28, 2008)

Plaintiff's Counsel: Lynn Reiko

Nakamoto

Defendants' Counsel: David A.

Landrum and Jennifer M.

Johnston

In an action alleging state law claims of workers' compensation discrimination and disability discrimination, Judge Aiken granted summary judgment in favor of defendant. Judge Aiken found that plaintiff failed to present evidence that she suffered an adverse employment action because she invoked the workers' compensation system. Further, Judge Aiken found that plaintiff did not present evidence that she was "disabled" within the meaning of the Oregon statute, or that she was a qualified individual.

Barnes v. GE Security, Inc.,

CV 06-1632-AA

(Opinion, April 23, 2008)

Plaintiff's Counsel: Michael Ross

Defense Counsel: Carol Bernick