

## Judge Questions Birkenstock's Delay In Trademark Claim

By **Julie Manganis**

Law360 (April 23, 2026, 6:38 PM EDT) -- A Massachusetts federal judge on Thursday appeared skeptical of Birkenstock's claim that it did not know about White Mountain's lookalike sandals and clogs until 2018, pressing counsel on its delay in pursuing trademark infringement claims.

"I think no reasonable juror could find Birkenstock was not on notice that White Mountain's shoes were on sale," U.S. District Judge Patti B. Saris told lawyers for the rival shoemakers during a hearing on White Mountain's motion to dismiss the 2024 **lawsuit** based on the lengthy delay in bringing it.

White Mountain International and manufacturer American Exchange Time LLC said they have a witness and proof that Birkenstock was well aware of the existence of two of its styles by the mid-1990s, and of a third, newer style well before the four-year window under the doctrine of laches.

Birkenstock, which traces its roots to 18th-century Germany and began selling its shoes in the U.S. in the 1960s, sued White Mountain in 2024, alleging that the company's two-strap and toe loop sandals and a clog style are copycat versions of its famous Arizona, Mayari and Boston models.

White Mountain says its similar-style shoes were sold as far back as the 1980s at now-defunct shoe store chain Fayva. White Mountain began selling shoes under its own brand name in the mid-1990s, at a wide range of retailers, it says.

It says a former national sales manager for Birkenstock testified during a deposition that Birkenstock knew of White Mountain's shoes more than 25 years ago but opted to ignore it and other smaller competitors as part of its business strategy.

White Mountain's counsel, Edmund Ferdinand III of Meister Seelig & Schuster PLLC, at one point during the remote hearing gestured toward several racks of shoes behind him that all bore similarities to Birkenstocks, including styles from the brands Naot and Mephisto.

Ferdinand said White Mountain is just one of approximately 170 companies selling similar sandals and clogs.

The only thing that has changed, he said, is Birkenstock's management.

Ferdinand said statements by past Birkenstock executives to the effect that they were not concerned with "lookalikes" also support White Mountain's argument that the plaintiff is trying to rewrite history to win disgorgement of at least 15 years of profits from the smaller company and an injunction blocking future sales.

"The most stunning admission is their Securities and Exchange Commission statement," Ferdinand said, referring to a disclosure by Birkenstock that it knew of competitors but that it had changed its position on enforcement of its trademark rights.

"They knew they would be here," Ferdinand said in reference to the laches motion, "and they sued anyway."

Birkenstock's lawyer, Douglas Rettew of Finnegan Henderson Farabow Garrett & Dunner LLP, suggested that the company has identified two former employees who say the company did not know of White Mountain's products back then, however.

Rettew said the company is entitled to rely on the progressive encroachment of its trademark, citing a spike in White Mountain sales around 2018 that put the smaller company on Birkenstock's radar.

White Mountain's sales were so small prior to that that Birkenstock had no duty to sue, Rettew told the judge.

"The duty arises when someone becomes as big as White Mountain did in 2018," Rettew told the judge.

Ferdinand later responded that everyone's sales shot up in 2018 during what he called the "ugly shoe trend" — and that Birkenstock's sales went up far more significantly than White Mountain's.

Judge Saris pressed Rettew, asking, "Is laches all or nothing? If you knew about them, which I think you did, but you say they were too small to worry about, is there a partial answer that you're allowed to go after them for the spike, but not when you knew about it?"

Given the dispute over when Birkenstock first knew of the doppelgänger shoes, the judge said she's not sure if she can resolve the issue on summary judgment.

The motion is one of several pending before Judge Saris, who at the start of the hearing chided the attorneys over the number of disputed issues in what she called "a monster case."

The judge opted to address the laches question first, given that her decision could moot the other motions, including White Mountain's motion to dismiss based on Birkenstock's claims being based on "generic" elements, and Birkenstock's motion to dismiss White Mountain's claims that the larger company unfairly forced retailers to sideline its products if they wanted to continue selling the pricier German brand.

Judge Saris also took issue with both sides' requests to seal virtually every filing and proceeding — a request she denied.

"It's a little hard for me to understand how everything is sealed at this point, with stuff that's decades old," Judge Saris told the lawyers.

Birkenstock is represented by Douglas A. Rettew, Elizabeth D. Ferrill, Maxime I. Jarquin, Naresh Kilaru, Jason Tulley, Mark Sommers and Cory C. Bell of Finnegan Henderson Farabow Garrett & Dunner LLP.

White Mountain is represented by Edmund J. Ferdinand III, Alexander Malbin, Robert

Feinland and Eva M. Sullivan of Meister Seelig & Schuster PLLC and Kerry R. Timbers and Kevin R. Mosier of Sunstein LLP.

The case is Birkenstock US Bidco Inc. et al. v. White Mountain International LLC et al., case number 1:24-cv-10610, in the U.S. District Court for the District of Massachusetts.

--Editing by Linda Voorhis.

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