

News

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- Adidas owns most sneaker designs
- Contract will govern separation terms

By Isaiah Poritz and Chris Dolmetsch

(Bloomberg Law) --

Adidas AG's decision to sever ties with the musician Ye has created a morass over how intellectual property rights developed in their multibillion dollar collaboration are split and whether there's a path forward that avoids a court fight.

Ye's company, Mascotte Holdings Inc., appears to operate a portfolio of more than 160 trademark applications and registrations for his Yeezy brand, but Adidas owns the rights to the designs of most Yeezy shoes, including the well known Yeezy Boost 350.

How exactly the divide in IP rights will affect the breakup isn't clear, and the answer will turn on the details of the contract Ye—formerly known as Kanye West—inited with Adidas in 2016, which isn't public, attorneys say.

The contract may include termination clauses that allow one party to take the IP from the other or a "morals" clause that allows early termination of the deal, according to trademark attorney **Josh Gerben**, founder of the Gerben Law Firm PLLC.

"Because we don't know what's in the contract between Adidas and Kanye, we don't know how smooth or how ugly the separation will end up being," he said.

Litigation or arbitration over the collapsed partnership may be possible, but "branding agreements typically include a detailed dispute resolution mechanism," said attorney **David Martinez**, partner at Robins Kaplan LLP.

If the contract allows both parties to maintain ownership of their respective IP, Ye would most likely be able to sell Yeezy apparel on his own—something he indicated he wanted to do in a September **interview** with Bloomberg News.

Those products would need entirely new designs, said attorney **Zak Kurtz** who founded the law firm Sneaker & Streetwear Legal Services.

"If he really wanted, he could probably sell other clothing or possibly footwear," he said. "But when I say 'other,' that will have to be brand new silhouettes and brand new everything that would have his trademarks on it."



A seller shows off the Adidas Yeezy Boost 350 shoe model.

Photographer: Paco Freire/SOPA Images/LightRocket via Getty Images

Adidas' Tuesday **announcement** ending the yearslong partnership comes after **Gap Inc.** and Kering SA's Balenciaga separated from the rapper, who has made a string of antisemitic remarks on social media and caused controversy by wearing a "White Lives Matter" shirt at a Paris fashion show. Gap **announced** Tuesday that it would pull Yeezy-Gap apparel from its stores.

The German sportswear giant said it would end production of Yeezy-branded products and stop all payments to Ye immediately. Ending the partnership will be costly: Adidas said it's expecting a \$247 million hit to net income this year due to the breakup, and outside estimates peg the collaboration as responsible for as much as 8% of the company's revenue.

"At the very least, Adidas will owe Ye royalties for everything that's been sold since the last royalty payment they made to him," said **Heidi Howard Tandy** a partner with Berger Singerman in Miami who specializes in intellectual property law. "Because of the long tail for shipping and sales, and revenue collection, that process could go into 2023."

IP Split

Adidas said it owns the "design rights to existing products" and past and future color combinations of the shoes. Filings with the US Patent and Trademark Office show that Adidas **obtained** a series of design patents for the Yeezy Boost 350 shoe in 2017 and 2018.

The shoes were created by Nic Galway, Adidas' vice president of global design, according to the filings.

The partnership between Ye and Adidas appears to be a "standard licensing deal" that was labeled as a collaboration, according to Kurtz.

"That means that Kanye is licensing to Adidas his trademarks and intellectual property, Yeezy and YZY, to put on shoes and apparel," he said. "Adidas looks to be the one who's doing the manufacturing and the designing, and that's why they're the ones on all the design patents."

The Yeezy business **earned** more than \$500 million in total royalty payments and marketing fees through 2020, the first four years of the Adidas deal. Ye's pact with Adidas gave him a 15% royalty on wholesale Yeezy products, **Forbes reported** in 2019, but Ye told Bloomberg News in September that he wanted to renegotiate to a 20% lifetime agreement.

Filings with the PTO show that his company, Mascotte, has registered or applied to register 164 trademarks related to the Yeezy brand, including "Yeezy," "Donda," and "Yeezus."

The trademarks cover products in a variety of industries from shoes, sportswear, food, and beverages, to cosmetics and products in the metaverse. The Gerben Law Firm, based in Washington, D.C., **compiled** the filings.

Unlike the other Yeezy footwear, Ye did obtain a design patent for the Yeezy Slide in 2020. In a **since deleted** Instagram post from June, Ye accused Adidas of creating knockoff Yeezy Slides.

Brand Value

The fallout may also serve as a warning for companies to complete their due diligence when jumping into co-branding deals, which have risen in popularity in the past few years, said trademark attorney **Kazuho Morita**, who is a partner at Holland & Hart LLP.

Celebrity co-branding can often provide increased sales, consumer hype, and can distribute economic risk, she said. "And really, the more controversial the figure, the bigger the splash—and maybe the bigger the payoff—but there's also this exact type of risk."

In theory, Adidas could continue selling shoes that look identical to Yeezy shoes as long as they don't use the trademarks owned by Ye. But Gerben said the controversy around the partnership has already diminished the value of Adidas' designs.

"If Adidas is going to move forward with any use of a product that resembles something they did with Kanye, I don't think that's going to go over well," he said.

"It is essentially just a complete loss for them."

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