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## **Court Affirms Ruling Against CVS to Stop Sale of Counterfeit and Decoded Davidoff Fragrances**

### ***Decision Helps Protect Consumers from Fake Product in the Marketplace***

**NEW YORK (June 25)** – **Zino Davidoff SA** announced today that on June 19, 2009, the Second Circuit Court of Appeals affirmed the preliminary injunction entered in 2007 by the U.S. District Court of the Southern District of New York stopping the sale of counterfeit and altered DAVIDOFF prestige fragrances to consumers at CVS stores nationwide.

The decision, written by Judge Pierre N. Leval, bars the sale of counterfeit and so-called “decoded” DAVIDOFF fragrance products. “Decoded” products lack a unique production code (“UPC”) applied on the bottle and box of genuine DAVIDOFF fragrances at the time of manufacture. The UPC system facilitates Zino Davidoff’s identification of counterfeit fragrances. In addition, the coding system enables Zino Davidoff to pinpoint and rectify any quality issues with genuine fragrances.

“This win is significant in the fight against counterfeits, which flourish in the gray market,” said Christian Schaffner, member of the Zino Davidoff SA board of directors. “The ruling upholds our anticounterfeiting system and will help ensure a clean marketplace for consumers. We are absolutely committed to providing our customers with genuine fragrances of the highest quality.”

The Court of Appeals decision clearly recognizes that an action for trademark infringement will lie when a defendant sells otherwise genuine product from which an anticounterfeiting device has been removed, regardless of whether consumers are aware of the device. In addition, the Court stated: “Where the alleged infringer has interfered with the trademark holder’s ability to control quality, the trademark holder’s claim is not defeated because of failure to show that the goods sold were defective.” The decision also confirms that, particularly with regard to luxury goods, any damage to packaging may constitute a material difference supporting a finding of trademark infringement.

The Court specifically rejected CVS’s argument that, because it enables Zino Davidoff to control its sales channels, its product coding is not a legitimate quality control. The Court explained: “[T]he mere fact that the UPC system provides Davidoff additional benefits that may be unrelated to quality control does not negate its legitimate function in protecting Davidoff’s marks from quality defects and counterfeiting.”

In recognizing that a defendant may be held liable for trademark infringement even though it may be selling goods manufactured under the authority of the trademark owner, this case reaffirms that a trademark is more than a mere indicator of manufacturing source. Rather, a trademark functions as a seal of approval from the brand owner, guaranteeing the public’s quality expectations of the brand.

The citation for the case is *Zino Davidoff SA v. CVS Corporation, No. 07-2872-CV (June 19, 2009) (Leval, J.)*. Kilpatrick Stockton LLP represents Zino Davidoff SA in the action (Lisa Pearson, Adam Charnes, Christopher Lick and W. Andrew Pequignot on the appeal).

### **About DAVIDOFF**

The DAVIDOFF brand is today one of the world’s most well-known and highly respected brands for luxury accessories products, including several fine fragrances. Zino Davidoff SA launched its DAVIDOFF COOL WATER fragrances for men and women in the U.S. in 1991 and 1997, respectively, to enormous commercial success. DAVIDOFF COOL WATER has consistently ranked among the top selling men’s fragrances worldwide since its launch.