

EXHIBIT E

PROPOSED FINAL JURY INSTRUCTION NO. 58
TRADE DRESS DAMAGES—
ACTUAL OR STATUTORY NOTICE (15 U.S.C. § 1111)

In order for Apple to recover damages, Apple has the burden of proving by a preponderance of the evidence that Samsung Electronics Company, Samsung Electronics America and Samsung Telecommunications America had either statutory or actual notice that Apple's trade dress was registered.

Samsung Electronics Company, Samsung Electronics America, and Samsung Telecommunications America had statutory notice if:

1. Apple displayed with the trade dress the words "Registered in U.S. Patent and Trademark Office,"
2. Apple displayed with the trade dress the words "Reg. U.S. Pat. & Tm. Off." or
3. Apple displayed the trade dress with the letter R enclosed within a circle, thus ®.

Source

Model Instructions No. 15.24; *See also Coach Inc. v. Asia Pac. Trading Co.*, 676 F. Supp. 2d 914, 924 (C.D. Cal. 2009) (where plaintiff sues under both 15 U.S.C. §§ 1114 and 1125(a), "the plain language of § 1117(a) and § 1111 indicates that a plaintiff must meet § 1111's 'actual notice requirement to recover profits or damages'").