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Attorneys for Plaintiff Connor Sport
Court International, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

CONNOR SPORT COURT
INTERNATIONAL, INC., a California
corporation,

Plaintiff,

vs.

RHINO SPORTS, INC., an Arizona
corporation, JOHN E. SHAFFER,
individually, and DOES 1 through 10,
INCLUSIVE,

Defendants.

No.

COMPLAINT

1 Plaintiff Connor Sport Court International, Inc. (hereinafter "Sport Court") by
2 and through counsel, hereby files this Complaint with Jury Demand against
3 Defendants, Rhino Sports, Inc. (hereinafter "Rhino") and John E. Shaffer (hereinafter
4 "Mr. Shaffer") (hereinafter collectively "Rhino/Shaffer") and complains and alleges
5 as follows:

6 PARTIES, JURISDICTION AND VENUE

7 1. Connor Sport Court International, Inc. is a Delaware Corporation with
8 a principal place of business at 939 South 300 West, Salt Lake City, Utah 84104.

9 2. Upon information and belief, Rhino Sports, Inc. is an Arizona
10 corporation with a principal place of business at 15029 North 74th Street, Scottsdale,
11 Arizona 85260.

12 3. Upon information and belief, John E. Shaffer is an individual with a
13 place of residence at 22615 North La Senda Drive, Scottsdale, Arizona 85255, and is
14 the President, CEO, founder and shareholder of Rhino Sports, Inc.

15 4. Sport Court brings this action under the Lanham Act, Title 15, United
16 States Code §1051, *et seq.*, and various other Utah State, Arizona State and common
17 law provisions. Additionally, this action is based on Rhino/Shaffer's unauthorized
18 use of Sport Court's trademarks in violation of the these laws, as well as the
19 Settlement Agreement and Mutual Release of Claims entered into between Sport
20 Court and Rhino/Shaffer, and the Permanent Injunction entered as a result of
21 previous litigation between Sport Court and Rhino/Shaffer.

22 5. This Court has subject matter jurisdiction over this action pursuant to
23 28 U.S.C. §§ 1331, 1338 and 1367. This Court also has subject matter jurisdiction
24 over this action pursuant to the parties' Settlement Agreement and the Stipulation of
25 Dismissal With Prejudice entered in the previous litigation between Sport Court and
26 Rhino/Shaffer.

1 6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391
2 and 1400(b).

3 7. This Court has personal jurisdiction over Rhino/Shaffer inasmuch as
4 Rhino/Shaffer are residents of this jurisdiction.

5 **GENERAL ALLEGATIONS**

6 8. Sport Court is in the business of inventing, developing, manufacturing,
7 distributing, and selling interlocking floor tile systems, among other products, for a
8 wide variety of uses, including indoor and outdoor recreational surfaces. Sport
9 Court's flooring surfaces are used for a variety of purposes including basketball,
10 volleyball and tennis court surfaces. A significant class of purchasers of Sport
11 Court's recreational flooring products is residential homeowners.

12 9. Sport Court is widely considered the founder of the recreational
13 flooring industry and the pioneer in developing the mass-market appeal that these
14 products currently enjoy. Currently, Sport Court enjoys the reputation of being the
15 leader both nationally and internationally in this industry. Since Sport Court's
16 inception in 1974, Sport Court has enjoyed revenues in the hundreds of millions of
17 dollars and has spent tens of millions of dollars in advertising and developing its
18 SPORT COURT brand name. Sport Court and its distributors/dealers have spent
19 approximately \$35 million in the last ten (10) years promoting the SPORT COURT
20 mark and brand. The SPORT COURT trademarks are famous marks that enjoy
21 significant goodwill and customer awareness in the market place.

22 10. Sport Court's methods of product distribution are accomplished
23 primarily through a network of distributors and dealers that promote and sell SPORT
24 COURT brand products directly to the consumer. Sport Court's marketing efforts
25 include traditional print advertising, including magazines, handouts, brochures, other
26 promotionals, and internet based advertising. In the course of Sport Court's business,

1 it has produced at great expense and effort many written materials in the form of
2 marketing handbooks for distributors, installation guidelines for installers and other
3 written materials that are critical to the success of its business. Sport Court has
4 pending copyright applications for these materials.

5 11. Sport Court is the owner of United States Trademark Registration No.
6 1,727,818 (hereinafter “the ‘818 Trademark”) for the mark SPORT COURT for use
7 in connection with “recreational and athletic play surfaces and related equipment for
8 said surfaces; namely, nets, basketball backboards and lighting fixtures sold as a
9 unit” and having a date of first use at least as early as May 1975. (See the
10 Registration Certificate for the ‘818 Trademark attached hereto as Exhibit A.)

11 12. Sport Court is also the owner of United States Trademark Registration
12 No. 1,155,586 (hereinafter “the ‘586 Trademark”) for the mark SPORT COURT for
13 use in connection with “tote bags,” “clothing – namely, sun visors and t-shirts;” and
14 “sports equipment – namely, backboards, nets, racquets, balls, and ball rebounders”
15 and having a date of first use at least as early as March 1978. (See the Registration
16 Certificate for the ‘586 Trademark attached hereto as Exhibit B.)

17 13. Sport Court is also the owner of United States Trademark Registration
18 No. 1,100,976 (hereinafter “the ‘976 Trademark”) for the service mark SPORT
19 COURT for use in connection with “recreational patio installation services” and
20 having a date for first use at least as early as May 1973. (See the Registration
21 Certificate for the ‘976 Trademark attached hereto as Exhibit C.)

22 14. Sport Court is also the owner of United States Trademark Registration
23 No. 1,177,220 (hereinafter “the ‘220 Trademark”) for the trademark/service mark
24 SPORT COURT (and Design) for use in connection with “tote bags;” “clothing –
25 namely, sun visors and t-shirts;” “sports equipment – namely, backboards, nets,
26 racquets, balls, and ball rebounders;” and “recreational patio installation services”

1 and having a date of first use as early as May 1973. (See the Registration Certificate
2 for the `220 Trademark attached hereto as Exhibit D.)

3 15. The marks represented by the `818 Trademark, the `586 Trademark, the
4 `976 Trademark, and the `220 Trademark (hereinafter collectively “SPORT COURT
5 Marks”) have been used continuously in commerce for more than five years, as
6 evidenced by combined Section 8 and 15 Affidavits filed in the United States Patent
7 and Trademark Office for each mark. Accordingly, these registrations are all
8 incontestable pursuant to 15 U.S.C. §1065. Sport Court also has developed extensive
9 common law trademark rights on these and other goods and services.

10 16. On or about September 16, 2002, Rhino filed a Complaint for
11 Declaratory Judgment and Cancellation of Trademark Registrations against Sport
12 Court that was captioned Rhino Sports, Inc. and John E. Shaffer v. Sport Court, Inc.;

13 Case No. 2:02-CV-1815 JAT, in the United States District Court for the District of
14 Arizona (hereinafter “Previous Lawsuit”).

15 17. On or about December 3, 2002, Sport Court filed a Counterclaim in the
16 Previous Lawsuit against Rhino/Shaffer that included, *inter alia*, claims for
17 trademark infringement of the SPORT COURT Marks, unfair competition, and
18 breach of employment and distributor agreements by Mr. Shaffer based on his
19 previous employment with Sport Court in various capacities.

20 18. As part of a negotiated settlement of the Previous Lawsuit, Sport Court
21 and Rhino/Shaffer entered into a Settlement Agreement and Mutual Release of
22 Claims (hereinafter “Settlement Agreement”) on or about March 9, 2004.

23 19. Pursuant to the Settlement Agreement, Sport Court and Rhino/Shaffer
24 submitted a Joint Motion and Stipulation to Entry of Permanent Injunction on or
25 about March 12, 2004. The Permanent Injunction was entered by the Court on or
26 about March 23, 2004.

1 20. Since the conclusion of the Previous Litigation, Sport Court has been
2 working to enforce the Settlement Agreement and the Permanent Injunction. When
3 necessary and as allowed by the terms of the Settlement Agreement, Sport Court has
4 attempted to enlist Rhino/Shaffer's help in enforcing the terms of the Settlement
5 Agreement and the Preliminary Injunction.

6 21. Rhino/Shaffer has violated the Settlement Agreement and Permanent
7 Injunction on several occasions.

8 22. Rhino/Shaffer waits for notification from Sport Court regarding a
9 violation of the Settlement Agreement or Permanent Injunction, and responds with
10 threats, allegations and at best grudging compliance.

11 23. Despite the requirements in the Settlement Agreement that
12 Rhino/Shaffer notify and educate its distributors and dealers regarding acceptable
13 advertising practices and prohibition of the use of the SPORT COURT Marks,
14 Rhino/Shaffer distributors and dealers continue to make unauthorized use of the
15 SPORT COURT Marks.

16 24. Rhino/Shaffer is willfully infringing the SPORT COURT Marks and
17 violating the permanent injunction.

18 25. For example, Sport Court sent a letter dated May 18, 2005 to
19 Rhino/Shaffer concerning violations of the permanent injunction and trademark
20 infringement. (See Letter Dated May 18, 2005, attached hereto as Exhibit E,
21 enclosures omitted.) Specifically, Sport Court discusses issues regarding
22 infringement by Rhino distributors and details current violations of the Permanent
23 Injunction by Rhino/Shaffer and demands compliance with the Permanent Injunction
24 and the Settlement Agreement.

25 26. Rhino/Shaffer's response letter dated July 15, 2005 refuses to
26 acknowledge that Rhino/Shaffer's continued use of the SPORT COURT Marks over

1 a year after the entry of the Permanent Injunction is a violation of the Permanent
2 Injunction or causes Sport Court any harm. (See the Letter Dated July 15, 2005,
3 attached hereto as Exhibit F, enclosures omitted.)

4 27. Sport Court's December 1, 2005 letter to Rhino/Shaffer reflects further
5 attempts by Sport Court to enlist Rhino/Shaffer in enforcing the Settlement
6 Agreement against a third-party claiming to be a Rhino dealer and apparently selling
7 Rhino products. (See Letter Dated December 1, 2005, attached hereto as Exhibit G,
8 enclosures omitted.)

9 28. Rhino/Shaffer's response letter dated February 7, 2006, includes a
10 refusal from Rhino/Shaffer to contact the third-party claiming to be a Rhino dealer
11 and further states that Rhino will simply ignore future correspondence from Sport
12 Court if Rhino deems appropriate. (See the Letter Dated February 7, 2006, attached
13 hereto as Exhibit H.)

14 29. Finally, Sport Court sent a letter dated March 6, 2006 to Rhino/Shaffer
15 stating, "Sport Court will no longer tolerate your client's failure to abide by the terms
16 of the settlement agreement and permanent injunction. In the event Sport Court is
17 forced to continue policing your client's activities, Sport Court will be forced to seek
18 full redress from the Court including all past fees and expenses related to its
19 enforcement of the agreement." (See the Letter Dated March 6, 2006, attached
20 hereto as Exhibit I, enclosures omitted.)

21 30. The letters attached hereto as Exhibits E through I demonstrate the
22 Rhino/Shaffer has continued to violate the Settlement Agreement and the Permanent
23 Injunction, despite Sport Court's repeated efforts to obtain compliance without Court
24 intervention.

25 31. Rhino/Shaffer is currently continuing this practice, and is again in
26 violation of the Settlement Agreement and the Permanent Injunction.

1 32. Rhino/Shaffer is currently utilizing the term “sport court” to direct
2 internet customers to its own website, www.rhinocourts.com. A search of the term
3 “sport court” using the google.com search engine results in Rhino being listed as a
4 “sponsored link” associated with the “sport court” term. (See the Internet search
5 print-out from google.com attached hereto as Exhibit J.)

6 33. Rhino/Shaffer’s utilization of the SPORT COURT Marks to direct
7 internet customers to its own website is a direct violation of the Settlement
8 Agreement and the Permanent Injunction. This violation by Rhino/Shaffer is clearly
9 an intentional violation in complete disregard to the Settlement Agreement and the
10 Permanent Injunction.

11 34. Sport Court has expended considerable amounts of time and resources
12 in enforcing the Settlement Agreement and the Permanent Injunction. Rhino/Shaffer
13 has continually minimized and ignored its obligations under the Settlement
14 Agreement and the Permanent Injunction.

15 **FIRST CAUSE OF ACTION**

16 **(Trademark Infringement, 15 U.S.C. §1114(a))**

17 35. Sport Court hereby incorporates by this reference each and every
18 allegation contained in the foregoing Paragraphs as if set forth fully herein.

19 36. Because Sport Court advertises, markets, distributes, and licenses its
20 products and services under the SPORT COURT Marks described in this Complaint,
21 these trademarks are the means by which Sport Court’s products and services are
22 distinguished from the products and services of others in the same field or related
23 fields.

24 37. Because of Sport Court’s long, continuous, and exclusive use of these
25 trademarks, they have come to mean, and are understood by customers, end users,
26 and the public to signify, products or services of Sport Court.

1 38. Because the goods and services offered and sold by Rhino/Shaffer are
2 identical to the goods and services offered by Sport Court and the marks used by
3 Rhino/Shaffer are identical to the SPORT COURT Marks, Rhino/Shaffer's
4 unauthorized uses of the SPORT COURT Marks are likely to cause confusion, or to
5 cause, mistake, or to deceive consumers that Rhino/Shaffer's goods and services
6 originate from, are sponsored by, or are affiliated with, Sport Court.

7 39. Rhino/Shaffer's use of the term "sport court" as a sponsored link in
8 connection with Rhino/Shaffer's goods and services is likely to cause confusion, or
9 to cause mistake, or to deceive consumers. Rhino/Shaffer's use of the term "sport
10 court" as a search term to create a "sponsored link" with google.com represents an
11 intentional effort to misdirect Sport Court's current and potential customers to
12 Rhino's website. This use is likely to cause confusion, or to cause mistake, or to
13 deceive consumers in light of the SPORT COURT Marks.

14 40. Through these and other activities described herein, Rhino/Shaffer has
15 infringed, directly and contributorily, Sport Court's SPORT COURT Marks under
16 the Lanham Act, 15 U.S.C. §1114(a), and under the common law.

17 41. Sport Court has suffered actual damages as a result of trademark
18 infringement in an amount to be proven at trial. Additionally, the harm to Sport
19 Court arising from Rhino/Shaffer's acts is not fully compensable by money damages.
20 Sport Court has suffered, and continues to suffer, irreparable harm which has no
21 adequate remedy at law and which will continue unless Rhino/Shaffer's conduct is
22 preliminarily and permanently enjoined.

23 42. Since Rhino/Shaffer had specific knowledge of the SPORT COURT
24 Marks, Rhino/Shaffer's continued unauthorized use of the SPORT COURT Marks is
25 willful and intentional. As a result, Sport Court is further entitled to treble damages
26 and an award of costs and attorneys' fees.

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SECOND CAUSE OF ACTION

(Trademark Dilution, 15 U.S.C. §1125(c))

43. Sport Court hereby incorporates by this reference each and every allegation contained in the foregoing Paragraphs as if set forth fully herein.

44. Due to their long, extensive, and exclusive use by Sport Court, and their wide recognition in an industry that Sport Court dominates, the SPORT COURT Marks have become famous, as that term is used in the Lanham Trademark Act.

45. Through these activities, Rhino/Shaffer has diluted, both directly and contributorily, the distinctive quality of the SPORT COURT Marks under the Lanham Act, 15 U.S.C. §1125(c).

46. Sport Court has suffered, and continues to suffer, irreparable harm which will continue unless Rhino/Shaffer's trademark dilution is enjoined as provided in 15 U.S.C. §1125(c)(1).

47. Since Rhino/Shaffer was advised of the SPORT COURT Marks and Sport Court's trademark rights, Rhino/Shaffer's dilution of Sport Court's famous trademarks is willful and intentional, and Sport Court is further entitled to an award of damages as provided under 15 U.S.C. §1125(c)(2). Specifically, Sport Court has suffered actual damages as a result of Rhino/Shaffer's trademark dilution in an amount to be proven at trial, and Sport Court is entitled to an award of enhanced damages for willful infringement, and an award of costs and attorneys' fees.

THIRD CAUSE OF ACTION

(Unfair Competition, 15 U.S.C. §1125(a)(1)(A))

48. Sport Court hereby incorporates by this reference each and every allegation contained in the foregoing Paragraphs as if set forth fully herein.

1 49. Rhino/Shaffer has used in interstate commerce the SPORT COURT
2 Marks and other terms confusingly similar to it in connection with recreational
3 flooring surfaces and related equipment and services, which use is likely to cause
4 confusion, or to cause mistake, or to deceive as to the affiliation, connection,
5 association, origin, sponsorship, or approval of their goods, services, and commercial
6 activities in light of the SPORT COURT Marks.

7 50. By engaging in these activities, Rhino/Shaffer has engaged in unfair
8 competition under 15 U.S.C. §1125(a)(1)(A) and under the common law.

9 51. Sport Court has suffered actual damages as a result of Rhino/Shaffer's
10 unfair competition in an amount to be proven at trial. Additionally, the harm to Sport
11 Court arising from Rhino/Shaffer's acts is not fully compensable by money damages.
12 Sport Court has suffered, and continues to suffer, irreparable harm which has no
13 adequate remedy at law and which will continue unless Rhino/Shaffer's conduct is
14 enjoined.

15 52. Since Rhino/Shaffer was advised of the SPORT COURT Marks and
16 Sport Court's trademark rights, Rhino/Shaffer's continued use of the SPORT
17 COURT Marks is willful and intentional. As a result, Sport Court is further entitled
18 to treble damages and an award of costs and attorneys' fees.

19 **FOURTH CAUSE OF ACTION**

20 **(Breach of Contract)**

21 **(Utah and Arizona Common Law)**

22 53. Sport Court hereby incorporates by this reference each and every
23 allegation contained in the foregoing Paragraphs as if set forth fully herein.

24 54. Rhino/Shaffer entered into a valid Settlement Agreement with Sport
25 Court on or about March 9, 2004.

1 the on-going breach of the covenant of good faith and fair dealing associated with the
2 Settlement Agreement.

3 WHEREFORE, it is respectfully requested that the Court enter a judgment in
4 favor of Sport Court as follows:

5 A. That the Court enter judgment that Rhino/Shaffer has infringed Sport
6 Court's SPORT COURT Marks under 15 U.S.C. §1114(a) and the common law;

7 B. That the Court enter judgment that Rhino/Shaffer has diluted Sport
8 Court's famous SPORT COURT Marks under 15 U.S.C. §1125(c);

9 C. That the Court enter judgment that Rhino/Shaffer has competed
10 unfairly pursuant to 15 U.S.C. §1125(a) and the common law;

11 D. That the Court enter judgment that Rhino/Shaffer has breached the
12 Settlement Agreement under Utah and Arizona common law;

13 E. That the Court enter judgment that Rhino/Shaffer has breached the
14 implied covenant of good faith and fair dealing with respect to the Settlement
15 Agreement with Sport Court;

16 F. That the Court preliminarily and permanently enjoin Rhino/Shaffer
17 from using the mark "SPORT COURT" and any other mark, word, term, name,
18 symbol, or device that is confusingly similar thereto;

19 G. That the Court order Rhino/Shaffer to immediately remove and
20 eliminate the term "sport court" as a "sponsored link" in connection with its internet
21 website;

22 H. That the Court order Rhino/Shaffer to file with this Court and serve
23 upon Sport Court within thirty (30) days after service on Rhino/Shaffer of the
24 injunction granted herein, or such extended period as the Court may direct, a report in
25 writing, under oath, setting forth in detail the manner and form in which
26 Rhino/Shaffer has complied with the injunction and order of the Court;

1 I. That the Court order Rhino/Shaffer to pay damages to Sport Court in an
2 amount to be determined by this Court, but not less than \$250,000;

3 J. That the Court order Rhino/Shaffer to pay Sport Court's attorneys' fees
4 and costs for this action pursuant to both the Lanham Act and the Settlement
5 Agreement;

6 K. That Rhino/Shaffer be temporarily, preliminarily, and permanently
7 enjoined from using directly or indirectly the SPORT COURT Marks;

8 L. That Sport Court be awarded damages, including lost profits, in an
9 amount to be proven at trial, and costs and attorneys' fees for Rhino/Shaffer's willful
10 infringement of the SPORT COURT Marks and Sport Court's trademark rights;

11 M. That the Court order that Rhino/Shaffer be required to pay prejudgment
12 and post-judgment interest until such awards are paid; and

13 N. That the Court award Sport Court such other and further relief as shall
14 seem just and proper to the Court.

15 Pursuant to Federal Rule of Civil Procedure 38(b), Sport Court hereby
16 demands a jury trial on all claims and issues so triable.

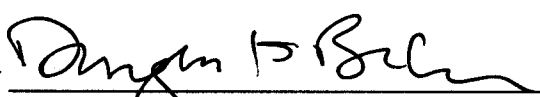
17 Dated this 21st day of December 2006.

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