

1 CALDWELL LESLIE & PROCTOR, PC
 2 JOAN MACK, State Bar No. 180451
 3 *mack@caldwell-leslie.com*
 4 MICHAEL D. ROTH, State Bar No. 217464
 5 *roth@caldwell-leslie.com*
 6 1000 Wilshire Boulevard, Suite 600
 7 Los Angeles, California 90017-2463
 8 Telephone: (213) 629-9040
 9 Facsimile: (213) 629-9022

10 BANNER & WITCOFF, LTD.
 11 CHRISTOPHER J. RENK
 12 *crenk@bannerwitcoff.com*
 13 ERIK S. MAURER
 14 *emaurer@bannerwitcoff.com*
 15 MICHAEL J. HARRIS
 16 *mharris@bannerwitcoff.com*
 17 ERIC J. HAMP
 18 *ehamp@bannerwitcoff.com*
 19 10 S. Wacker Drive, Suite 3000
 20 Chicago, Illinois 60606
 21 Telephone: (312) 463-5000
 22 Facsimile: (312) 463-5001

JS-6

23 Attorneys for Plaintiffs NIKE, INC. and
24 CONVERSE INC.

25 **UNITED STATES DISTRICT COURT**
 26 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

27 NIKE, INC. and CONVERSE INC.,

Case No. CV 12-5240-JFW (AGRx)

28 Plaintiffs/Counterclaim
29 Defendants,

The Honorable John F. Walter

30 v.

Magistrate Judge Alicia G. Rosenberg

31 SUPERSTAR INTERNATIONAL,
 32 INC., AC INT'L TRADING INC., and
 33 SAI LIU,

**[PROPOSED] CONSENT
 JUDGMENT AND PERMANENT
 INJUNCTION ORDER AGAINST
 DEFENDANTS DUN HUANG
 INTERNATIONAL TRADING INC.,
 KING-AIR TRADING INC., JIAN
 QIANG LIU AND XIAO MING WU**

34 Defendants/Counterclaim
35 Plaintiffs,

36 and

37 JEAIR SHOES INC., KING-AIR
 38 TRADING INC., DUN HUANG
 39 INTERNATIONAL TRADING INC.,
 40 XIAO MING WU, JIAN QIANG LIU,
 41 and YUN MEI YUAN,

42 Defendants.

1
2 Plaintiffs NIKE, Inc. (“NIKE”) and Converse Inc. (“Converse”)
3 (collectively, “Plaintiffs”) filed civil action number 12-CV-5240 on June 15, 2012
4 against Dun Huang International Trading Inc. (“Dun Huang”), King-Air Trading
5 Inc. (“King-Air”), Jian Qiang Liu (“J. Liu”), and Xiao Ming Wu (“Wu”)
6 (collectively, “the Dun Huang Defendants”), and other defendants who are not
7 party to this stipulation, asserting claims for (a) trademark infringement under 15
8 U.S.C. § 1114; (b) unfair competition under 15 U.S.C. § 1125(a); (c) trademark
9 dilution under 15 U.S.C. § 1114; (d) trademark infringement and unfair
10 competition under the common law; (e) trademark dilution under the California
11 Business & Professions Code § 14247; (f) unfair competition under the California
12 Business & Professions Code §§ 17200 et seq.; and (g) patent infringement under
13 35 U.S.C. § 271. Plaintiffs duly served their Complaint on the Dun Huang
14 Defendants on June 19, 2012 or June 28, 2012. The Dun Huang Defendants now
15 stipulate and consent to the Court’s entry of this Consent Judgment.

16
17 NOW THEREFORE, upon consent of the parties, IT IS HEREBY
18 ORDERED, ADJUDGED, AND DECREED:

19
20 1. The Court has subject matter jurisdiction over this action pursuant to
21 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

22 2. The Court has personal jurisdiction over the Dun Huang Defendants
23 and venue is proper in this judicial district at least because of the Dun Huang
24 Defendants’ commission of infringing acts in this judicial district.

25 3. The Dun Huang Defendants admit that Converse owns all right, title,
26 and interest in and to the valid and enforceable federal and common law trademark

1 rights in: (a) the distinctive and non-functional overall look of the Chuck Taylor
2 All Star high and low designs, and the midsole and outsole elements of those
3 designs, (b) the design of the two stripes on the midsole of the shoe, the design of
4 the toe cap, the design of the multi-layered toe bumper featuring diamonds and line
5 patterns, any sub-combination of these elements, and the relative position of these
6 elements to each other, (c) U.S. Trademark Registration Nos. 1,588,960;
7 3,258,103; 4,062,112; and 4,065,482, and (d) the appearance of Converse’s “Star
8 in Circle” logos, including U.S. Trademark Registration Nos. 1,789,476 and
9 3,437,967. Converse’s federally registered and common law trademark rights in
10 these designs and/or logos are collectively hereafter referred to as the “Converse
11 Marks.”

12 4. The Dun Huang Defendants admit that the Converse Marks are well
13 known, famous, and associated with Converse, and that the goodwill appurtenant
14 thereto belongs exclusively to Converse.

15 5. The Dun Huang Defendants admit that Converse owns all right, title,
16 and interest in and to the valid and enforceable U.S. Design Patent Nos. D555,332;
17 D618,897; and D619,797, collectively hereafter referred to as the “Converse
18 Patents.”

19 6. The Dun Huang Defendants admit that NIKE owns all right, title, and
20 interest in and to the valid and enforceable U.S. Design Patent Nos. D398,762;
21 D498,912; D504,562; D511,884; D512,214; D529,273; D530,904; and D531,396,
22 collectively hereafter referred to as the “NIKE Patents.”

23 7. The Dun Huang Defendants admit that Dun Huang and King-Air’s
24 promotion of, advertising of, offers to sell, sales, distribution and/or importation of
25 products in connection with the Converse Marks or colorable imitations thereof,
26

1 and/or of shoes bearing a design of the Converse Patents or a substantially similar
2 design, and/or bearing a design of the NIKE Patents or a substantially similar
3 design (collectively hereafter referred to as the “Infringing Footwear”): (a) is likely
4 to cause confusion, mistake, or to deceive as to the affiliation, connection, or
5 association of Dun Huang and King-Air with Converse, or as to the source, origin,
6 sponsorship, or approval of Dun Huang and King-Air’s products by Converse,
7 dilutes the distinctiveness of the Converse Marks, and constitutes false
8 designations of origin, (b) infringes the Converse Patents, and/or (c) infringes the
9 NIKE Patents, respectively.

10 8. The Dun Huang Defendants admit that their actions constitute unfair
11 competition.

12 9. The Dun Huang Defendants and their respective subsidiaries, parents,
13 affiliates, agents, licensees, successors, and assigns and all persons and entities in
14 active concert or participation with them, are permanently enjoined and prohibited
15 from:

16 a. Ordering, marketing, offering to sell, selling, importing and/or
17 distributing – whether directly or indirectly – (i) Infringing Footwear, (ii)
18 products bearing the Converse Marks, including all elements and
19 confusingly similar variations of the Converse Marks, (iii) products bearing
20 the design of one or more of the Converse Patents, (iv) products bearing the
21 design of one or more of the NIKE Patents, or (v) colorable imitations of any
22 of the foregoing items;

23 b. Using – whether directly or indirectly – any of the Converse
24 Marks – including all elements, colorable imitations, and confusingly similar
25 variations of the Converse Marks – in connection with marketing, offering to
26

1 sell, selling, importing or distributing footwear, apparel, or accessories
2 worldwide;

3 c. Aiding, assisting or abetting any other party in doing any act
4 prohibited by sub-paragraphs (a) through (b) above.

5 10. The Dun Huang Defendants shall immediately and permanently
6 remove all references to and depictions of the Infringing Footwear as well as all
7 references to and depictions of the Converse Marks – including all elements,
8 colorable imitations, and confusingly similar variations of the Converse Marks –
9 from any businesses or Internet website(s), email(s), or other electronic material(s)
10 under their control.

11 11. The Dun Huang Defendants shall destroy any and all Infringing
12 Footwear that is returned to them from anyone for any reason.

13 12. If the Dun Huang Defendants violate any of the provisions provided
14 above, NIKE and/or Converse shall be entitled to: (a) bring a lawsuit against any or
15 all of the Dun Huang Defendants and collect damages and/or profits for all
16 violations of the Converse Marks, Converse Patents, and/or NIKE Patents; (b)
17 secure preliminary and permanent injunctions enjoining the Dun Huang
18 Defendants' violations without the need to post bond, (c) collect liquidated
19 damages in the amount of no less than \$15.00 per article of Infringing Footwear
20 product made, promoted, advertised, offered for sale, sold, or imported, as
21 compensation and not as a penalty, it being understood that the damage caused by
22 such a breach would be difficult to determine; and/or (d) payment of NIKE and/or
23 Converse's costs and attorneys' fees resulting from NIKE and/or Converse's
24 enforcement of these provisions.

25 13. Except as provided herein, each party shall bear its own costs and
26

1 attorney fees.

2 14. This Court shall retain jurisdiction over the parties for the purpose of
3 enforcing the terms of this Consent Judgment and Permanent Injunction.

4 15. Judgment is hereby entered in favor of Plaintiffs on all counts of their
5 Complaint as to Dun Huang and King-Air.

6 16. Judgment is hereby entered in favor of Plaintiffs on their counts of
7 unfair competition under 15 U.S.C. § 1125 and unfair competition under the
8 California Business & Professions Code §§ 17200 et seq. as to J. Liu and Wu. The
9 remaining claims of the Plaintiffs' Complaint as to J. Liu and Wu are dismissed
10 with prejudice.

11 17. This Order represents a final adjudication of all claims, counterclaims,
12 and defenses that were, or could have been, brought between Plaintiffs and the Dun
13 Huang Defendants in this case. This Order is intended to be final and shall bind
14 Plaintiffs and the Dun Huang Defendants, and their affiliates and successors on all
15 issues that were or could have been litigated in this proceeding and that no appeal
16 shall be taken here from.

17
18 SO ORDERED:

19
20 Dated: May 17, 2013

John F. Walter /s/
United States District Judge

B.M.A.

Signed for Converse Inc.

Name: Director of Global IP Litigation

Title: BRIAN M. FOGARTY

Date: 5/14/2013

B.M.A.

Signed for NIKE, Inc.

Name: BRIAN M. FOGARTY

Title: Director of Global IP Litigation

Date: 5/14/2013

Signed for Dun Huang International Trading, Inc.

Name: _____

Title: _____

Date: _____

Signed for King-Air Trading, Inc.

Name: _____

Title: _____

Date: _____

Jian Qiang Liu

Date: _____

Xiao Ming Wu

Date: _____

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Signed for Converse Inc.

Name: _____

Title: _____

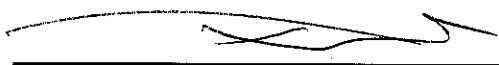
Date: _____

Signed for NIKE, Inc.

Name: _____

Title: _____

Date: _____

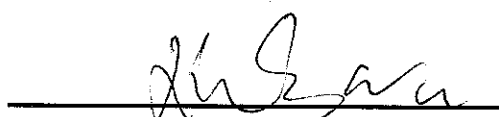


Signed for Dun Huang International Trading, Inc.

Name: JIAN QIANG LIU

Title: Former C.E.O.

Date: 05/13/13

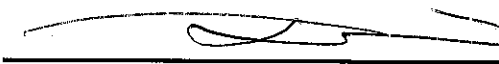


Signed for King-Air Trading, Inc.

Name: XIAO MING WU

Title: Former C.E.O.

Date: 5/13/13



Jian Qiang Liu

Date: 05/13/13



Xiao Ming Wu

Date: 05/13/13