

1 **BRYAN CAVE LLP**  
 Marcy J. Bergman, California Bar No. 75826  
 2 Alexandra C. Whitworth, California Bar No. 303046  
 3 560 Mission Street, 25<sup>th</sup> Floor  
 San Francisco, CA 94105  
 4 Telephone: (415) 675-3400  
 Facsimile: (415) 675-3434  
 5 Email: marcy.bergman@bryancave.com  
 alex.whitworth@bryancave.com

6  
 7 Attorneys for Plaintiff  
 AIRWAIR INTERNATIONAL LTD.

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 AIRWAIR INTERNATIONAL LTD., a  
 12 company of the United Kingdom,

13 Plaintiff,

14 vs.

15 NEXT PLC, a company of the United Kingdom;  
 16 NEXT RETAIL LTD., a company of the United  
 Kingdom; and DOES 1-50,

17 Defendants.

Case No. 3:16-cv-00944

Honorable Susan Illston

**CONSENT JUDGMENT AND  
 PERMANENT INJUNCTION**

Action Filed: February 25, 2016  
 Judge: Honorable Susan Illston

BRYAN CAVE LLP  
 560 MISSION STREET, SUITE 2500  
 SAN FRANCISCO, CALIFORNIA 94105

18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1           The parties hereto having agreed to a settlement of the claims between them, and having  
2 stipulated to entry of this consent judgment, it is hereby ORDERED, ADJUDGED AND  
3 DECREED:

4           1.       This Court has jurisdiction over Defendants Next PLC and Next Retail Ltd.  
5 (collectively, “NEXT”) for the purpose of this Consent Judgment only and over the subject matter  
6 at issue in this action. NEXT consents to jurisdiction of this Court, and this Court retains  
7 jurisdiction for the purpose of executing and enforcing this Consent Judgment and Permanent  
8 Injunction.

9           2.       Plaintiff AirWair International Ltd. (“AirWair”) is the owner of the Dr. Martens®  
10 trade dress for footwear and is the owner of several U.S. registrations for its trade dress in the  
11 United States Patent and Trademark Office, including “the combination of yellow stitching in the  
12 welt area and a two-tone grooved sole edge” (Reg. No. 2,437,751, attached as Exhibit 1); the  
13 yellow “welt stitch located around the perimeter of footwear” (Reg. No. 2,437,750, attached as  
14 Exhibit 2); its DMS undersole design mark (Reg. No. 2,102,468, attached as Exhibit 3, the “DMS  
15 Design Mark”); “the design of an [*sic*] sole edge including longitudinal ribbing, and a dark color  
16 band over a light color” (Reg. No. 2,104,349, attached as Exhibit 4); and “longitudinal ribbing and  
17 a dark color band over a light color on the outer sole edge, welt stitching, and a tab at the top back  
18 heel of footwear” (Reg. No. 2,341,976, attached as Exhibit 5) (the above registrations collectively,  
19 “AirWair Trade Dress Marks”). AirWair has the exclusive right to use the AirWair Trade Dress  
20 Marks in commerce, on or in connection with footwear, and enforces its rights throughout the  
21 world.

22           3.       NEXT acknowledges the validity of the trade dress registrations attached as  
23 Exhibits 1–5.

24           4.       NEXT has imported, distributed, offered for sale, and sold footwear under the style  
25 names “Lace Up Boot (Older Girls),” “Lace Up Boot (Younger Girls),” and “Black Super Heavy  
26 Lace-Ups” that features the AirWair Trade Dress Marks (“NEXT Accused Footwear”).  
27 Representative samples of the NEXT Accused Footwear are shown in Exhibit 6.  
28

1           5.       NEXT represents and warrants that it sold approximately 115 pairs of the NEXT  
2 Infringing Footwear in the United States, with sales revenue totaling approximately £2152. NEXT  
3 further represents that it has no pairs of the NEXT Infringing Footwear remaining in inventory.

4           6.       NEXT represents and warrants that as of the date of this Agreement, it has  
5 discontinued manufacturing, licensing, distributing, advertising, marketing, purchasing or selling  
6 the NEXT Accused Footwear in the United States and worldwide. NEXT further represents and  
7 warrants that it is not currently manufacturing, distributing, selling or offering for sale any  
8 footwear or any component part thereof that includes any of the features that are the subject of any  
9 of the AirWair Trade Dress Marks.

10          7.       NEXT further represents that there is no remaining inventory of any point-of-sale  
11 materials, labels, signs, boxes, prints, catalogs, line sheets, marketing materials, internet web  
12 pages, metatags, packages, papers, other trade dress, and advertisements in the possession of  
13 NEXT bearing images, illustrations, or representations of the enjoined shoes and boots, trade dress  
14 and undersole patterns, nor does it have any plates, molds, matrixes, and other means of making  
15 the same in its possession or control.

16          8.       NEXT, and each of its officers, directors, servants, employees, subsidiaries, and  
17 successors who receive actual notice of this order by personal service or otherwise, are  
18 permanently enjoined from manufacturing, importing, exporting, distributing, licensing, selling,  
19 marketing, advertising, promoting or offering for sale the NEXT Accused Footwear or any  
20 footwear that includes any of the features that are the subject of any of the AIRWAIR Trade Dress  
21 Marks or any component part thereof that includes any of the features that are the subject of any of  
22 the Airwair Trade Dress Marks. NEXT also agrees not to authorize, enable or procure any other  
23 person to do such acts.

24          9.       It is hereby ordered that this action be closed.

25  
26  
27  
28

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

**IT IS SO ORDERED.**

Dated: 10/12/16

By:   
The Honorable Susan Illston  
Judge of the U.S. District Court

Dated: October 5, 2016

**BRYAN CAVE LLP**

By: /s/ Alexandra Whitworth  
Alexandra C. Whitworth  
Attorneys for Plaintiff  
AIRWAIR INTERNATIONAL LTD.

Dated: October 5, 2016

By:   
Defendant NEXT PLC.

Dated: October 5, 2016

By:   
Defendant NEXT RETAIL LTD.

**Attestation:** I, Alexandra C. Whitworth, hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

/s/ Alexandra Whitworth  
Alexandra C. Whitworth

1 **BRYAN CAVE LLP**  
2 Marcy J. Bergman, California Bar No. 75826  
3 Alexandra C. Whitworth, California Bar No. 303046  
4 560 Mission Street, 25<sup>th</sup> Floor  
5 San Francisco, CA 94105  
6 Telephone: (415) 675-3400  
7 Facsimile: (415) 675-3434  
8 Email: marcy.bergman@bryancave.com  
9 alex.whitworth@bryancave.com

10 Attorneys for Plaintiff  
11 AIRWAIR INTERNATIONAL LTD.

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**

14 AIRWAIR INTERNATIONAL LTD., a  
15 company of the United Kingdom,

16 Plaintiff,

17 vs.

18 NEXT PLC, a company of the United Kingdom;  
19 NEXT RETAIL LTD., a company of the United  
20 Kingdom; and DOES 1-50,

21 Defendants.

CASE NO. 3:16-CV-00944-SI

**CERTIFICATE OF SERVICE**

Date Action Filed: February 25, 2016

BRYAN CAVE LLP  
560 MISSION STREET, SUITE 2500  
SAN FRANCISCO, CALIFORNIA 94105

22  
23  
24  
25  
26  
27  
28

