

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

FILED: OCTOBER 13, 2008

08CV5840

JUDGE HIBBLER

MAGISTRATE JUDGE MASON

AO

**Civil Action No.**

**Jury Trial Demanded**

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<b>NIKE, INC.</b>	)
	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>WAL-MART STORES, INC.</b>	)
	)
	)
<b>Defendant.</b>	)
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**COMPLAINT**

The plaintiff, NIKE, Inc. (“NIKE”), for its complaint against defendant, Wal-Mart Stores, Inc. (“Wal-Mart”), alleges as follows:

**THE PARTIES**

1. The plaintiff, NIKE, is a corporation organized and existing under the laws of the State of Oregon and has a principal place of business at One Bowerman Drive, Beaverton, Oregon, 97005.

2. On information and belief, the defendant, Wal-Mart, is a corporation organized under the laws of the State of Delaware, and having a principal place of business at 702 SW Eighth Street, Bentonville, Arkansas 72716, and having established places of business in the Northern District of Illinois, Eastern Division, doing business as Wal-Mart.

**JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

4. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, and 1338(a).

5. This Court may exercise personal jurisdiction over Wal-Mart based upon its contacts with this forum, including, at least, regularly and intentionally doing business here.

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

**GENERAL ALLEGATIONS – THE NIKE DESIGN PATENTS**

7. For many years, NIKE has engaged in the development, manufacture, and sale of a wide array of athletic and fashion footwear, apparel, and sports equipment.

8. NIKE has taken steps to protect its innovative designs, including its footwear-related designs. In particular, NIKE owns various United States design patents relating to its footwear designs. Relevant to this dispute, NIKE is and has been the owner of all right, title, and interest to each of the United States design patents identified in Table 1 (hereafter, the “NIKE Design Patents”) since the date each patent duly and legally issued to NIKE. A copy of each NIKE Design Patent is attached to this Complaint as indicated in Table 1.

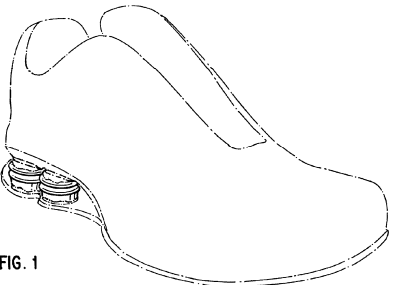

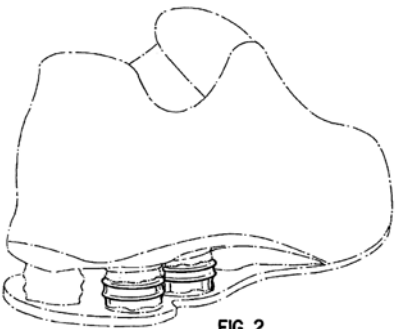

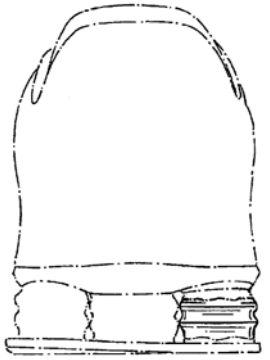

<b>Table 1: NIKE Design Patents</b>		
<b>United States Design Patent Number</b>	<b>Issue Date of Patent</b>	<b>Complaint Exhibit</b>
D498,914 (‘914 patent)	November 30, 2004	A
D499,248 (‘248 patent)	December 7, 2004	B

**GENERAL ALLEGATIONS – DEFENDANT’S INFRINGING ACTIVITIES**

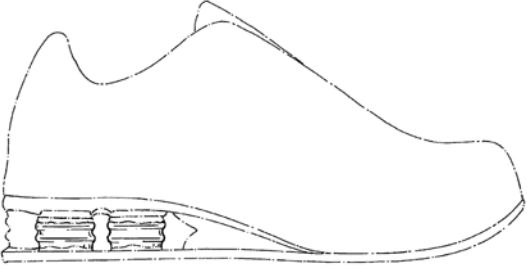

9. On information and belief, without NIKE’s authorization, Wal-Mart has offered for sale and sold in the United States shoes having designs that are covered by the NIKE Design Patents (hereafter, the “Infringing Shoes”). Upon information and belief, Wal-Mart knowingly

and intentionally sold and continues to sell the Infringing Shoes as simulations of NIKE shoes.



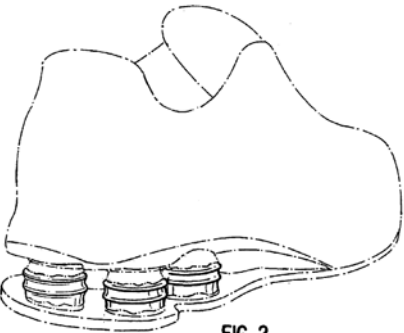

10. Charts 1 and 2 below demonstrate Wal-Mart's infringement by comparing images of the Infringing Shoes sold by Wal-Mart with figures from the NIKE Design Patents.

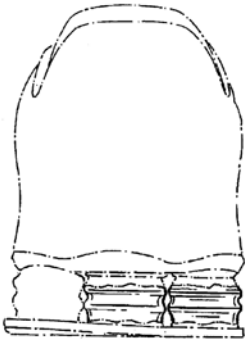

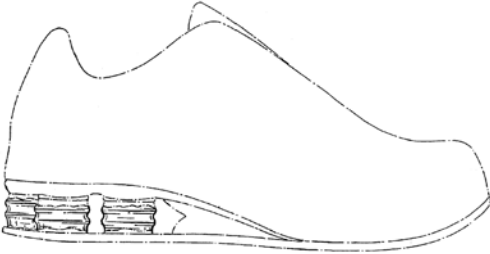

<b>Chart 1: Images Depicting Infringement of NIKE Design Patent D498,914 by the Wal-Mart Shoe</b>	
<b>D498,914</b>	<b>Wal-Mart Shoe</b>
 <p>FIG. 1</p>	
 <p>FIG. 2</p>	
 <p>FIG. 3</p>	

**Chart 1: Images Depicting Infringement of NIKE Design Patent D498,914 by the Wal-Mart Shoe**

D498,914	Wal-Mart Shoe
 <p align="center">FIG. 4</p>	

**Chart 2: Images Depicting Infringement of NIKE Design Patent D499,248 by the Wal-Mart Shoe**

D499,248	Wal-Mart Shoe
 <p align="center">FIG. 1</p>	
 <p align="center">FIG. 2</p>	

<b>Chart 2: Images Depicting Infringement of NIKE Design Patent D499,248 by the Wal-Mart Shoe</b>	
<b>D499,248</b>	<b>Wal-Mart Shoe</b>
 <p style="text-align: center;">FIG. 3</p>	
 <p style="text-align: center;">FIG. 4</p>	

11. Based on information and belief, defendant Wal-Mart has infringed and continues to infringe the NIKE Design Patents within the meaning of 35 U.S.C. §271(a) at least by selling and offering to sell the Infringing Shoes without NIKE’s authorization or license.

12. NIKE has sold and is currently selling its NIKE SHOX footwear models bearing the design claimed in the ‘914 and ‘248 patents. As contemplated by the Patent Act, 35 U.S.C. § 287, NIKE has provided notice of its ‘914 and ‘248 patents by marking the ‘914 and ‘248 patent numbers on NIKE footwear models bearing those patented designs since approximately the time the United States Patent and Trademark Office issued the ‘914 and ‘248 patents.

13. On information and belief, Wal-Mart’s infringement of the NIKE Design Patents

has been and continues to be intentional and willful.

**COUNT 1: PATENT INFRINGEMENT**

14. NIKE re-alleges each and every allegation set forth in paragraphs 1 through 13 above, inclusive, and incorporates them by reference herein.

15. Defendant has made, used, offered to sell, sold, and/or imported into the United States, and still are making, using, offering to sell, selling, and/or importing into the United States, shoes having designs that infringe the NIKE Design Patents without NIKE's authorization.

16. On information and belief, Defendant's infringement has been intentional and willful, making this an exceptional case.

17. NIKE has been and will continue to be irreparably harmed by Defendant's infringement of the NIKE Design Patents.

**JURY DEMAND**

NIKE demands a trial by jury.

**RELIEF SOUGHT**

WHEREFORE, NIKE respectfully prays for:

A. Judgment that Defendant willfully infringed the NIKE Design Patents in violation of 35 U.S.C. § 271(a);

B. An injunction against further infringement of the NIKE Design Patents by Defendant, its agents, servants, employees, officers, and all others controlled by them;

C. An award of damages adequate to compensate NIKE for the patent infringement that has occurred pursuant to 35 U.S.C. § 284, which shall be trebled as a result of Defendant's

willful patent infringement, or an award of Defendant's profits from its infringement pursuant to 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;

D. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. § 285, with prejudgment interest;

E. Such other and further relief as this Court deems just and proper.

Respectfully submitted,

Dated: October 13, 2008

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