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12 Attorneys for Plaintiff, NIKE, Inc.

13  
 14 **UNITED STATES DISTRICT COURT**  
 15 **DISTRICT OF NEVADA**

16 NIKE, INC.	)	Case No.: 2:16-cv-00311-APG-VCF
	)	
17 Plaintiff,	)	
	)	
18 vs.	)	
	)	
19 FUJIAN BESTWINN (CHINA) INDUSTRY	)	<b>TEMPORARY RESTRAINING ORDER AND SEIZURE ORDER</b>
20 CO., LTD. a/k/a XIAMEN BESTWINN IMP. &	)	
21 EXP. CO., LTD.	)	
22 Defendant.	)	
	)	

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 25  
 26 Plaintiff, NIKE, Inc. (“NIKE”) has moved *ex parte* for a Temporary Restraining Order,  
 27 Seizure Order, and a Preliminary Injunction, pursuant to Rule 65 of the Federal Rules of Civil  
 28 Procedure, the Patent Act, 35 U.S.C. § 283, and Local Rule 7-5. NIKE alleges that Defendant

1 Fujian Bestwinn (China) Industry Co., Ltd. a/k/a Xiamen Bestwinn Imp. & Exp. Co., Ltd.  
2 (“Bestwinn”) has made, imported into the United States, sold, offered to sell, distributed,  
3 promoted, and/or advertised at the WSA@Magic (“WSA”) trade show in Las Vegas, Nevada,  
4 numerous shoes that infringe U.S. Patent Nos. D636,573, D666,406, D682,523, D683,119,  
5 D694,501, D696,853, D700,423, D707,032, and D746,037 (because the infringements that are  
6 the subject of this motion generally relate to NIKE’s Flyknit footwear designs, the relevant  
7 patents are referred to hereafter as the “Flyknit Design Patents”). The Court, having duly  
8 considered NIKE’s Complaint, Emergency Motion for *Ex Parte* Temporary Restraining Order,  
9 Seizure Order, and Preliminary Injunction, and the declaration and exhibits submitted therewith,  
10 hereby makes the following findings and conclusions:  
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12           1.       NIKE is likely to succeed on the merits of its patent infringement claims. NIKE  
13 is likely to succeed in showing that the Flyknit Design Patents are owned by NIKE, are valid,  
14 and are enforceable, and that Bestwinn has imported into the United States, sold, offered to sell,  
15 distributed, promoted, and/or advertised shoes bearing designs that infringe the Flyknit Design  
16 Patents (the “Bestwinn Flyknit Design Infringements”). At WSA, Bestwinn has identified its  
17 Flyknit Design Infringements by model numbers 14260, BW71448, and 14149.  
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19           2.       It appears to the Court that Bestwinn is a China-based manufacturer of footwear  
20 products that, with the exception of its temporary presence in Las Vegas during the biannual  
21 WSA show, does not have a regular place of business or assets in the United States. Further,  
22 over the past four years, Bestwinn has established a pattern of importing into the U.S., selling,  
23 and/or offering to sell infringing shoe designs at the WSA show, ignoring NIKE’s cease and  
24 desist letters, and then promptly leaving the United States.  
25

26           3.       Absent an *ex parte* temporary restraining order and seizure order, Bestwinn’s  
27 importation, sale, and/or offers to sell its Flyknit Design Infringements will result in immediate  
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1 and irreparable injury to NIKE in the form of loss of control over its valuable intellectual  
2 property rights, loss of consumer goodwill, and interference with NIKE's ability to exploit the  
3 Flyknit Design Patents. Further, because Bestwinn has no presence in the United States, it may  
4 be difficult or impossible for NIKE to recover a money judgment against Bestwinn.  
5

6 4. The harm to NIKE in denying the requested temporary restraining order and  
7 seizure order outweighs the harm to the legitimate interests of Bestwinn from granting such  
8 relief.

9 5. The public interest weighs in favor of granting NIKE the requested temporary  
10 restraining order and seizure order.

11 6. Bestwinn's Flyknit Design Infringements and materials evidencing Bestwinn's  
12 infringements alleged in the Complaint are in Bestwinn's possession at the WSA show currently  
13 taking place in Las Vegas, Nevada, but these materials would likely be destroyed, moved,  
14 hidden, or otherwise made inaccessible to the Court if NIKE were to proceed on notice to  
15 Bestwinn.  
16

#### 17 **TEMPORARY RESTRAINING ORDER**

18 IT IS THEREFORE ORDERED that, pending a decision by the Court on NIKE's  
19 application for a preliminary injunction, Bestwinn and its officers, agents, servants, employees,  
20 and attorneys; and all other persons acting in active concert or participation with any of them, are  
21 hereby immediately, temporarily restrained from infringing the Flyknit Design Patents at the  
22 WSA show in Las Vegas, Nevada, from February 16-18, 2016. Specifically, Bestwinn is hereby  
23 temporarily restrained from making, using, selling, offering to sell, and importing into the United  
24 States footwear designs covered by U.S. Patent Nos. D636,573, D666,406, D682,523, D683,119,  
25 D694,501, D696,853, D700,423, D707,032, and D746,037, and colorable imitations thereof. In  
26 addition, Bestwinn is hereby temporarily restrained from transferring, moving, returning,  
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1 destroying, or otherwise disposing of any Bestwinn Flyknit Design Infringements except  
2 pursuant to the below Seizure Order.

3 **SEIZURE ORDER**

4 IT IS FURTHER ORDERED that Bestwinn's infringing shoe products, records  
5 (including computers and electronic evidence) of Bestwinn's sales and offers to sell infringing  
6 products, and Bestwinn's promotional display(s), sales equipment, and materials used to  
7 facilitate Bestwinn's infringements (collectively, "Materials") shall be seized by the United  
8 States Marshals Service, assisted by one or more attorneys or representatives of NIKE, at the  
9 booth rented or occupied by Bestwinn at the WSA trade show in Las Vegas, Nevada, during the  
10 period of February 16 through 18, 2016. The shoe products that the United States Marshals shall  
11 seize are Bestwinn product numbers: 14260, BW71448, and 14149. If NIKE identifies more  
12 infringing products, they can petition the Court to amend this Order.  
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14 The United States Marshals Service may use all reasonable force in conducting the  
15 seizure and may open doors, locks, boxes, brief cases, and containers of any type or nature to  
16 locate and identify Materials to be seized. Attorneys and other representatives of NIKE shall  
17 accompany the United States Marshals Service during the seizure to identify the Materials to be  
18 seized. NIKE's counsel shall itemize and take possession of the seized Materials, provide a copy  
19 of the inventory to the United States Marshals Service, and file the inventory with the Court. In  
20 addition, NIKE's counsel may record the contents of Bestwinn's booth and Materials by  
21 photographic and/or videographic means during the seizure action. The United States Marshals  
22 Service shall not retain custody of seized Materials. NIKE agrees to indemnify the United States  
23 Marshals Service and hold it harmless from any suit, claim, cause of action, damage, loss, or  
24 injury arising from the execution of the seizure described in this Order.  
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26 IT IS FURTHER ORDERED that this Order and the Summons and Complaint must be  
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1 served upon Bestwinn, if found, at the time of the seizure, and by other means reasonably  
2 calculated to give Bestwinn notice of this action.

3 IT IS FURTHER ORDERED that, NIKE shall deposit \$25,000 with the Clerk of the  
4 Court as security for this order. To the extent Bestwinn believes that additional security is  
5 necessary pursuant to Rule 65(c), Fed. R. Civ. P., Bestwinn shall file an application to the Court  
6 and provide notice to counsel for NIKE .  
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9 IT IS FURTHER ORDERED that a preliminary injunction hearing is set for \_\_\_\_\_  
10 February 29 \_\_\_\_\_, 2016, at \_\_\_\_\_ 9:00 \_\_\_\_\_ a.m. ' \_\_\_\_\_, in Courtroom 6C  
11 \_\_\_\_\_, before the Hon. Andrew P. Gordon  
12 \_\_\_\_\_.

13 Bestwinn shall file and serve any opposition to NIKE's motion for a preliminary  
14 injunction on or before February 25 \_\_\_\_\_, 2016.

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19 **SIGNED AND ENTERED** this 17th day of February, 2016. at 12:00 p.m.  
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22 **UNITED STATES DISTRICT JUDGE**  
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