

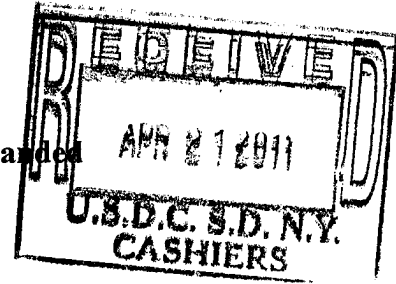
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE BERMAN

11 CV 2724

POINT 3 BASKETBALL, LLC,	}
Plaintiff,	
v.	}
NIKE, INC.,	
Defendant.	}

COMPLAINT  
Jury Trial Demanded



Plaintiff, POINT 3 BASKETBALL, LLC ("Point 3"), by way of complaint against defendant NIKE, INC. ("Nike"), alleges that:

**NATURE OF ACTION**

1. This is an action for trademark infringement in violation of Section 32 of the United States Trademark Act of 1946, as amended, 15 U.S.C. §1114; for false designation of origin and unfair competition in violation of Section 43(a) of the United States Trademark Act of 1946, as amended, 15 U.S.C. §1125(a); for related claims of common law trademark infringement, unfair competition and misappropriation; and for unfair and deceptive trade practices in violation of New York Gen. Bus. Law §349.-L.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. §1121, 28 U.S.C. §§1331, 1338(a) and (b), and 1367.

3. Venue is proper within this judicial district under 28 U.S.C. §1391(b) and (c).

4. Point 3 is a Georgia limited liability company, having a place of business located 747 Ralph McGill Blvd., #231, Atlanta, Georgia 30312.

5. Upon information and belief, defendant Nike is an Oregon corporation, having a place of business located at One Bowerman Drive, Beaverton, Oregon 97005.

6. Upon information and belief, Nike transacts substantial business in this judicial district, and otherwise is subject to the personal jurisdiction of this Court.

### **BACKGROUND**

7. Point 3 is an athletic apparel company, which manufactures, designs, promotes and sells a range of apparel products specifically designed for consumers who play basketball.

8. Point 3 is the owner of U.S. Trademark Registration No. 3,905,847 (“the ‘847 Registration”), for the stylized Point 3 logo identified therein (the “Point 3 Logo”), for use in connection with the goods in Int'l Class 25 identified therein. A copy of the ‘847 Registration is attached hereto as Exhibit A.

9. The Point 3 Logo is used extensively by Point 3 and appears prominently on all of the apparel items that it sells, as well as in all of its advertising and promotional materials. Since its launch, Point 3 has been establishing a reputation within the basketball community for its evolutionary basketball apparel and has garnered significant media coverage in prominent basketball publications. Through the extensive use and marketing of the Point 3 Logo, including on its [www.Point3Basketball.com](http://www.Point3Basketball.com) website, the Point 3 Logo has become uniquely associated with Point 3, the basketball apparel products that it sells, and the concept of an evolution in basketball apparel. Examples of Point 3’s use of the Point 3 Logo are depicted in Exhibit B hereto.

10. Point 3 has continuously used its Point 3 Logo in commerce, in connection with its basketball-related apparel products, since at least as early as April 2010. The ‘847

Registration is evidence of Point 3's exclusive right to use the Point 3 Logo in connection with at least the goods identified therein.

11. Defendant Nike offers for sale and sells a variety of footwear and athletic apparel products, including basketball products. The footwear and apparel products offered for sale and sold by Nike are complementary and often bear the same trademarks or other indicia of source. Upon information and belief, Nike is currently marketing, and intends to introduce for sale, on or about May 5, 2011, a new line of basketball footwear and related apparel, under the name JORDAN FLY WADE ("FLY WADE"). Upon information and belief, in connection with the basketball footwear and related apparel which Nike intends to offer for sale under the FLY WADE name, Nike is using and intends to use a stylized "3" design logo, which is virtually identical to Point 3's Federally registered Point 3 Logo. Internet content depicting Nike's FLY WADE basketball footwear bearing the aforesaid "3" design logo is attached hereto as Exhibit C.

### **COUNT I**

#### **(Trademark Infringement 15 U.S.C. §1114)**

12. Point 3 hereby repeats and re-alleges paragraphs 1 through 11 above as if fully set forth herein.

13. Notwithstanding Point 3's prior established rights in its Point 3 Logo trademark, Nike is using and, upon information and belief, intends to continue using the aforementioned "3" design logo, without authorization by Point 3, in connection with basketball footwear and related apparel.

14. Nike's use in commerce of the "3" design logo, in connection with basketball footwear and related apparel, so nearly resembles, and is virtually identical to, Point 3's Federally registered Point 3 Logo, so as to be likely to cause confusion and mistake and to

deceive and to make consumers mistakenly believe that such footwear and apparel is Point 3's basketball apparel, or that such footwear and apparel is sponsored or approved by, or somehow connected with or related to Point 3.

15. The aforesaid acts of Nike constitute infringement of Point 3's Federally registered Point 3 Logo, in violation of 15 U.S.C. §1114.

16. Upon information and belief, the aforesaid acts of Nike were undertaken in bad faith and with knowledge of Point 3's prior trademark rights in its Point 3 Logo trademark.

17. Point 3 has been and, absent injunctive relief, will continue to be, irreparably harmed by Nike's aforesaid actions, and has further suffered monetary damages in an amount to be determined at trial.

18. Point 3 has no adequate remedy at law.

## **COUNT II**

### **(False Designation of Origin and Unfair Competition)**

19. Point 3 hereby repeats and re-alleges paragraphs 1 through 18 above as if fully set forth herein.

20. Nike's use in commerce of the "3" design logo, in connection with basketball footwear and related apparel, so nearly resembles, and is virtually identical to, Point 3's Point 3 Logo, so as to be likely to cause confusion and mistake, and to deceive, and to make consumers believe that such footwear and apparel is Point 3's basketball apparel, or that such footwear and apparel is sponsored by, approved by or somehow connected with Point 3, with consequent injury to customers and to Point 3.

21. The aforesaid acts of Nike constitute unfair competition and false designation of origin in violation of 15 U.S.C. 1125(a).

22. Upon information and belief, the aforesaid acts of Nike were undertaken in bad faith and with knowledge of Point 3's prior rights in its Point 3 Logo.

23. Point 3 has been and, absent injunctive relief, will continue to be, irreparably harmed by Nike's aforesaid actions, and has further suffered monetary damages in an amount to be determined at trial.

24. Point 3 has no adequate remedy at law.

### **COUNT III**

#### **(Common Law Trademark Infringement and Unfair Competition)**

25. Point 3 hereby repeats and re-alleges paragraphs 1 through 24 above as if fully set forth herein.

26. The aforesaid acts of Nike constitute trademark infringement and unfair competition under the common law of the State of New York.

27. Upon information and belief, Nike's aforesaid acts were undertaken with the willful intention of trading upon Point 3's reputation and goodwill.

28. Point 3 has been, and, absent injunctive relief, will continue to be, irreparably harmed by Nike's aforesaid actions, and has further suffered monetary damages in an amount to be determined at trial.

29. Point 3 has no adequate remedy at law.

### **COUNT IV**

#### **(Common Law Misappropriation)**

30. Point 3 hereby repeats and re-alleges paragraphs 1 through 29 above as if fully set forth herein.

31. By undertaking the acts heretofore described, Nike has appropriated Point 3's Point 3 Logo for its own use and benefit, in violation of Point 3's rights under New York common law.

32. Upon information and belief, Nike's misappropriation of Point 3's Point 3 Logo has been and continues to be willful and intentional.

33. Point 3 has been, and, absent injunctive relief will continue to be, irreparably harmed by Nike's aforesaid actions, and has further suffered monetary damages in an amount to be determined at trial.

34. Point 3 has no adequate remedy at law.

#### **COUNT V**

##### **(Unfair and Deceptive Trade Practices)**

35. Point 3 hereby repeats and re-alleges paragraphs 1 through 34 above as if fully set forth herein.

36. By reason of its deliberate and willful acts as set forth above, which have been undertaken in bad faith, Nike has engaged in deceptive trade practices in the conduct of its business in violation of N.Y. Gen. Bus. Law §349.

37. Point 3 has been, and, absent injunctive relief will continue to be, irreparably harmed by Nike's aforesaid actions, and has further suffered monetary damages in an amount to be determined at trial.

38. Point 3 has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Point 3 hereby prays for judgment against Nike as follows:

1. that Nike's aforesaid use of the "3" design logo constitutes:

- (a) trademark infringement in violation of 15 U.S.C. §1114;
- (b) false designation of origin and unfair competition in violation of 15 U.S.C. §1125(a);
- (b) trademark infringement, unfair competition and misappropriation, in violation of the common law of the State of New York; and
- (c) deceptive acts and practices in violation of N.Y. Gen. Bus. Law §349.

2. that Nike and its officers, directors, agents, servants, employees, attorneys and those persons in active concert or participation or otherwise in privity with them, or any of them, be preliminarily and permanently enjoined from using in any manner the aforesaid "3" design logo and variations thereof, or any other name, term, phrase, mark, design, device or symbol which so resembles or is similar to Point 3's Point 3 Logo, so as to be likely to cause confusion, mistake or deception as to source, origin, sponsorship, approval, affiliation or the like.

3. that Nike deliver up for destruction all products, labels, signs, prints, packages, wrappers, receptacles, advertisements or other materials in its possession, custody or control, and in the possession, custody or control of those in active concert or participation or otherwise in privity with it, which display or contain the "3" design logo, or variations thereof, or which constitute and/or bear any other device, representation or statement in violation of the injunction herein requested by Point 3, and that Nike be ordered to deliver up for destruction all plates, molds, matrices and other means of making the same;

4. that Nike file with the Court and serve upon Point 3, within thirty (30) days after service upon Nike of this Court's injunction issued in this action, a written report, signed under oath, setting forth in detail the manner and form in which Nike has complied with such injunction;

5. that an accounting be made by Nike to Point 3 of all profits, income receipts, gains and advantages derived by Nike from its acts of infringement and other unlawful conduct, and for such sum in addition thereto as the Court shall find just;

6. awarding Point 3 its damages arising out of Nike's infringement and other unlawful acts, together with an amount which is three times the amount found as actual damages, pursuant to 15 U.S.C. §1117;

7. awarding Point 3 an amount of money sufficient to undertake corrective advertising;

8. awarding Point 3 punitive damages based on Nike's willful, wanton and intentional conduct;

9. awarding Point 3 its costs and disbursements, including reasonable attorneys' fees; and

10. awarding Point 3 such other and further relief as to the Court may seem just and proper.

April 21, 2011

POINT 3 BASKETBALL, LLC

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