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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Brooks Sports, Inc.,)	Civil Action No.
)	
Plaintiff,)	COMPLAINT FOR DECLARATORY
)	JUDGMENT OF TRADEMARK
v.)	NONINFRINGEMENT
)	
adidas AG and adidas America, Inc.,)	DEMAND FOR JURY TRIAL
)	
Defendants.)	
)	

Plaintiff, Brooks Sports, Inc. (“Brooks” or “Plaintiff”), by and through its undersigned attorneys, avers and states as follows for its Complaint for Declaratory Judgment:

I. PARTIES

1. Plaintiff is a corporation organized under the laws of the State of Washington with its principal place of business at 19910 North Creek Parkway, #200, Bothell, WA 98011.
2. On information and belief, Defendant adidas AG is a joint stock company organized under the laws of the Federal Republic of Germany with its office and principal place of business at Postfach 1120, D-91072 Herzogenaurach, Federal Republic of Germany.

1 9. Plaintiff's PUREPROJECT collection of shoes is promoted using marketing
2 materials that include images of the new athletic shoes, under the PUREPROJECT umbrella of
3 marks, the famous BROOKS house mark, and one or more distinctive design marks, such the
4 Brooks Chevron marks shown below:



10 Registration No. 2750754



11 Registration No. 2550943

12 10. A representative example of Plaintiff's marketing materials accompanying the
13 PUREPROJECT campaign is as follows:



1 11. Plaintiff's due diligence in advance of selecting its trademarks for its
2 PUREPROJECT campaign and brand revealed that the term "Pure" is highly diluted for goods
3 in International Class 25, including footwear. Searches on the Internet for uses of marks
4 having the term "Pure" in the marketplace also revealed many diluting uses by third parties for
5 footwear.

6
7 12. In connection with the initial brands to be associated with the PUREPROJECT
8 campaign, Plaintiff adopted and on December 7, 2010 filed applications to register with the
9 United Patent and Trademark Office the following trademarks, each for athletic footwear in
10 International Class 25 (collectively, "the PUREPROJECT Marks"):

11 PUREGRIT (App. Sn. 85192752);

12 PUREFLOW (App. Sn. 85192748);

13 PURECONNECT (App. Sn. 85192746);

14 PUREPROJECT (App. Sn. 85192744); and

15 PURECADENCE (App. Sn. 85192750).

16
17 The PURECADENCE application is still pending. All of the other above applications were
18 reviewed by an Examining Attorney at the United States Patent and Trademark Office who
19 found no conflicts with existing registrations or other grounds to refuse registration of any of
20 the applications. The four applications were approved for publication and thereafter published
21 for opposition. Neither Defendant, nor any other third party, opposed registration of any of
22 the four applications. Accordingly, Plaintiff is awaiting a Notice of Allowance in each
23 application. The applications to register PUREGRIT, PUREFLOW, PURECONNECT and
24 PUREPROJECT will issue into U.S. federal trademark registrations once Plaintiff submits
25
26

1 proof that the respective marks are being used on goods sold in Interstate Commerce in the
2 United States.

3 13. Plaintiff has begun manufacturing and distributing samples of athletic shoes to
4 retail partners nationwide bearing the PUREGRIT, PUREFLOW, PURECONNECT and
5 PURECADENCE brands, along with the famous BROOKS house mark, the Brooks Chevron
6 design mark and others. Representative images of the branded shoes are provided below:
7



21 PURECONNECT



22 PURECADENCE

23 14. Consumers and potential customers will readily identify Plaintiff's goods not by
24 the term "PURE", alone, but instead by the PUREPROJECT Marks in their entirety, along
25 with the famous BROOKS house mark, the Brooks Chevron design mark and others.

26 15. Defendants use the term and nickname "adi" as part of a family of "adi"
formative marks, including "adidas," "adiwear," "adilette," "adistar," "adiprene," "adifit,"

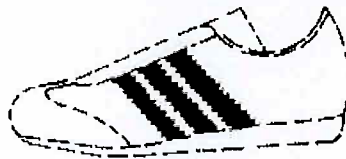
1 “adibody,” “adicolor,” “adifusion,” “adilibria,” “adi-luxe,” “adipure,” “adiracer,” “adistar,”
 2 “adissage,” “adi tex,” “adiboy,” “adigirl,” “adikid,” and “adituff,” among others, for goods in
 3 International Class 25, including footwear.

4 16. The term and nickname “adi” is the dominant portion of each of Defendants’
 5 “adi” formative marks, as “adi” consistently is the first term in every mark and the other terms,
 6 such as “pure”, “racer”, “boy”, “girl” and “kid”, are descriptive and/or diluted. Moreover,
 7 “adi” is the nickname of adidas’s founder Adolf “Adi” Dassler.
 8

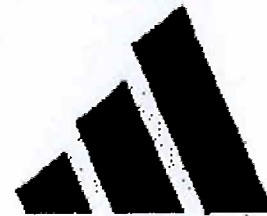
9 17. As one of its formative “adi” marks, Defendants use the mark “adipure” with
 10 accompanying house marks of Defendants, such as those shown below:
 11



16
17 Registration No. 973161



18 Registration No. 1815956



19 Registration No. 2411802

20 18. Customers identify Defendants’ “adi” branded goods, for example “adiwear,”
 21 “adibody,” “adipure,” “adiboy,” “adigirl,” and “adikid,” not based on the words that follow
 22 “adi,” such as “wear,” “body,” “pure,” “boy,” “girl,” or “kid,” but instead based on the entire
 23 “adi” formative mark and Defendants’ house mark and stripes, as shown above. Defendants
 24 cannot credibly claim trademark rights in the portions of the respective marks that follow “adi,”
 25 alone and completely stripped from the “adi” mark, as each “adi” mark is used and perceived
 26 by the consuming public as a unitary mark. Formatting a single, unitary mark in multiple
 colors does not make it multiple marks. For example, customers do not identify Defendants’

1 “adipure” branded goods based on the word “pure” but instead based on the entire “adipure”
2 mark, along with Defendants’ house marks and stripes. Defendants simply do not have any
3 valid trademark rights in the term “pure” alone.

4 19. Representative examples of Defendants’ marketing materials and shoes for its
5 “adipure” mark are as follows:
6



21 **PRE-ORDER YOURS TODAY**

22
23 20. On March 29, 2011, Defendants sent Plaintiff a demand letter stating that
24 Plaintiff’s use of the PUREPROJECT Marks for footwear “infringes and dilutes adidas’s
25 rights,” and demanding that Plaintiff cease all use of the term “pure” in connection with
26 advertising, marketing, or selling of athletic footwear. Defendants threatened “legal action to

1 stop the infringing activity and prevent the October 1 release of Brooks' 'Pure' shoes." (A true
2 and correct copy of adidas's March 29, 2011 demand letter is attached hereto as Exhibit 1).

3 21. On March 30, 2011, Plaintiff responded to Defendants' demand letter explaining
4 that adidas does not own any rights in the word "pure", alone, for footwear. Not only do
5 Defendants not use "pure", per se, as a trademark, but the word "pure" is also highly diluted in
6 connection with footwear, as evidenced by the records at the United States Patent and
7 Trademark Office of marks incorporating "pure" for footwear. For example, Plaintiff pointed
8 out the following exemplary trademark registrations having "pure" as part of a mark for shoes
9 or footwear, which all pre-date adidas's claimed use of "adipure", some by decades:
10

11 PURE ATHLETIC	Reg. 2937200	PUREGARD	Reg. 2999186
12 PURE SPEED	Reg. 2055146	PURE JUICE	Reg. 3423987
PUREFITNESS	Reg. 2631706	PURE DRIVE	Reg. 2663278
13 PUREFITNESS	Reg. 2532217	PURE INSANITY	Reg. 3031806
PURE HOOPS	Reg. 2198024	LIVEPURE	Reg. 3050483
14 PURE DISTANCE	Reg. 2945442	PURE SWEET	Reg. 3386444
PURE COLLECTION	Reg. 3558022	PURE VINTAGE	Reg. 3227962
15 PURE CONCEPT	Reg. 3311189	PUREPLUS	Reg. 2097036
16 PURE BEACH	Reg. 1424926		

17 22. Plaintiff further explained in its March 30, 2011 letter that adidas cannot
18 possibly have a claim to all composite marks with the word "pure" contained therein for
19 footwear and that there was no possibility of confusion between Plaintiff's PUREPROJECT
20 Marks and Defendants' "adipure" mark. (A true and correct copy of Brooks' March 30, 2011
21 response letter is attached hereto as Exhibit 2).

22 23. Plaintiff and Defendants continued with letter and email correspondence through
23 April and well into May, but Defendants did not retract their threat of legal action and
24 posturing that Plaintiff's PUREPROJECT Marks for footwear somehow infringe the trademark
25 rights of Defendants. As of May 12, Defendants were still threatening to seek a preliminary
26

1 injunction blocking or delaying Plaintiff's retail launch. (A true and correct copy of adidas's
2 May 12, 2011 letter is attached hereto as Exhibit 3).

3 24. Defendants' threats, actions and letters towards Plaintiff demonstrate that there
4 is a definite and concrete dispute between the parties regarding whether Plaintiff's
5 PUREPROJECT line of goods and accompanying marketing and use of the PUREPROJECT
6 Marks infringe any trademark rights of Defendants, including rights in the "adipure" mark.
7 Plaintiff requires specific relief from the Court in the form of a declaration of conclusive
8 character that Plaintiff's PUREPROJECT line of goods and accompanying marketing and use
9 of the PUREPROJECT Marks do not infringe any valid rights of Defendants.
10

11 25. Plaintiff has and is investing in the advertising, manufacturing and distribution
12 of its PUREPROJECT line of shoes scheduled for an October 2011 release date. Without such
13 a declaration from the Court, Plaintiff will be in the precarious situation of continuing to invest
14 in its PUREPROJECT campaign and product release with the overhanging real threat of
15 Defendants filing suit and seeking a preliminary injunction.
16

17 26. Defendants have shown themselves to be aggressively litigious. Based on
18 Defendants' actions and statements to date, Plaintiff believes Defendants are preparing to file
19 suit against Plaintiff shortly before, or immediately following, Plaintiff's product launch in
20 October 2011.
21

22 **IV. FIRST COUNT: DECLARATORY JUDGMENT OF NONINFRINGEMENT**

23 27. Plaintiff incorporates by reference and realleges the allegations of paragraphs 1
24 through 26.

25 28. Defendants have alleged that Plaintiff's use and intended use of the
26 PUREPROJECT Marks infringe Defendants' trademark rights.

1 29. The dispute between Plaintiff and Defendants establishes an existing and actual
2 case and controversy between them regarding whether Plaintiff is infringing Defendants'
3 trademark rights.

4 30. An actual and justiciable controversy exists between the parties in that
5 Defendants claim to have rights and interest to the mark "adipure" and the word "pure" and
6 claim that Plaintiff's use of the PUREPROJECT Marks would cause a likelihood of confusion
7 as to the source Defendants' or Plaintiff's goods.

8 31. Plaintiff denies there is a likelihood of confusion between the asserted "adipure"
9 mark and Plaintiff's use of the PUREPROJECT Marks. Further, Plaintiff denies Defendants
10 have any exclusive rights in the word "pure" alone. In the unlikely event the Court finds that
11 Defendants have rights in the word "pure", Plaintiff denies there is a likelihood of confusion
12 between the alleged "pure" mark and Plaintiff's use of the PUREPROJECT Marks.
13

14 32. Based on correspondence from Defendants' attorneys, Plaintiff has a reasonable
15 apprehension that Defendants will initiate suit against Plaintiff and seek to enjoin Plaintiff from
16 continuing to use the PUREPROJECT Marks and any other marks containing the term "Pure"
17 in connection with footwear.
18

19 33. An actual controversy within this Court's jurisdiction exists between the parties,
20 and a declaration from the Court will resolve the controversy. The Court is authorized to issue
21 a declaration of rights under these circumstances pursuant to the Federal Declaratory
22 Judgments Act, 28 U.S.C. §§2201-2202.
23

24 34. Accordingly, Plaintiff hereby seeks a declaratory judgment that its use of the
25 PUREPROJECT Marks does not infringe, has not infringed, and will not infringe, either
26

1 directly or indirectly, any valid trademark rights of Defendants, including any rights
2 Defendants may have in the mark “adipure” or the word “pure.”

3 35. Further, Plaintiff hereby seeks a declaratory judgment that the making, using,
4 selling, importing, or offering to sell products in the United States under the PUREPROJECT
5 Marks does not infringe and has not infringed any valid trademark rights of Defendants,
6 including any rights they may have in the mark “adipure” or the word “pure.”
7

8 36. Plaintiff reserves the right to supplement or amend its claims as more
9 information becomes known regarding the dispute between Plaintiff and Defendants.

10 **V. PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that this Court:

12 1. Declare that Plaintiff’s use of the PUREPROJECT Marks, does not infringe, has
13 not infringed, is not infringing, and will not infringe, either directly or indirectly, any trademark
14 rights of Defendants, including Defendants’ asserted rights to the mark “adipure” or the word
15 “pure”.
16

17 2. Declare that the making, using, selling, importing, advertising, marketing,
18 distributing, and offering to sell Plaintiff’s products in the United States bearing or in
19 association with the PUREPROJECT Marks does not infringe, has not infringed, is not
20 infringing, and will not infringe, either directly or indirectly, any trademark rights of
21 Defendants, including Defendants’ asserted rights to the mark “adipure” or the word “pure”.
22

23 3. Declare that Plaintiff has no other liability to Defendants with respect to its
24 “adipure” or alleged “pure” trademark or Defendants’ other threatened claims, including but
25 not limited to unfair competition claims; and declare that Plaintiff’s products do not infringe,
26

1 violate, dilute or otherwise adversely affect any intellectual property or other rights held by
2 Defendants.

3 4. Declare this case exceptional under 35 U.S.C. §285;

4 5. Award Plaintiff its costs, disbursements, and reasonable attorneys' fees
5 (including expert fees) incurred in this action;
6

7 6. Enter such other and further relief as the Court deems just and proper.

8 **VI. DEMAND FOR JURY TRIAL**

9 Plaintiff demands a trial by jury as to all issues so triable.

10 DATED this 3rd day of June, 2011.

11 Respectfully submitted,

12 SEED IP Law Group PLLC


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17 Attorneys for Plaintiff
18 BROOKS SPORTS, INC.

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