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CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BROOKS SPORTS, INC., a Washington corporation,

Plaintiff,

v.

PAYLESS SHOESOURCE, INC., a Missouri corporation; EXETER BRANDS GROUP, LLC, a limited liability company, organized under the laws of the State of New York; and NIKE, INC., an Oregon corporation,

Defendants.

Case No. **C 07-0695** mjp

COMPLAINT FOR TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION

[JURY TRIAL DEMANDED]



07-CV-00695-CMP

Plaintiff BROOKS SPORTS, INC. alleges as follows:

PARTIES

1. BROOKS SPORTS, INC. (hereinafter "BROOKS" or "Plaintiff") is a Washington corporation with its principal place of business at 19910 North Creek Parkway, Suite 200, Bothell, Washington 98011.

2. Upon information and belief, Defendant PAYLESS SHOESOURCE, INC. (hereinafter "PAYLESS"), is a Missouri corporation with its principal place of business at 3231 SE 6th Street, Topcka, Kansas 66607.

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10. BROOKS owns United States Trademark Registration No. 2,750,754 for a design mark for shoes, footwear and various clothing items. An exemplar of the mark is shown below:



Plaintiff uses and promotes this mark in commerce in connection with its shoes, footwear and clothing items. Plaintiff enjoys substantial goodwill in its mark owing to its lengthy and exclusive use of the mark.

11. BROOKS owns United States Trademark Registration No. 2,550,943 for a design within an oval mark for clothing, namely shoes, boots, slippers, footwear, and various clothing items and accessories. An exemplar of the mark is shown below:



Plaintiff uses and promotes this mark in commerce in connection with its shoes, boots, slippers, footwear, and various clothing items and accessories. Plaintiff enjoys substantial goodwill in the mark owing to its lengthy and exclusive use of the mark.

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1 12. BROOKS owns United States Trademark Registration No. 2,521,124, for a composite
2 mark that contains its logo for clothing, namely shoes, boots, slippers, footwear, and various clothing
3 items and accessories. An exemplar of the mark is shown below:



9 Plaintiff uses and promotes this mark in commerce in connection with its shoes, boots, slippers,
10 footwear, and various clothing items and accessories. Plaintiff enjoys substantial goodwill in the mark
11 owing to its lengthy and exclusive use of the mark.

12
13 13. BROOKS' logo trademark that is the subject of United States Trademark Registration
14 Nos. 2,750,754, 2,550,943 and 2,521,124 is hereinafter referred to as "the BROOKS Logo."

15
16 **DEFENDANTS' WRONGFUL ACTS**

17 14. Upon information and belief, Defendants recently began manufacturing, promoting,
18 offering for sale, and selling in this District and throughout the United States a new line of
19 performance athletic shoes called TAILWIND. All styles of footwear in the TAILWIND line bear a
20 design mark (the "Infringing Logo ") which is substantially identical to the BROOKS Logo . An
21 exemplar of a TAILWIND shoe bearing the Infringing Logo is shown below on the right:



27
28 **BROOKS**



TAILWIND

1 15. On January 24, 2007, Defendant NIKE filed United States Trademark Application
2 Serial No. 77/090465 for a composite mark that contains the Infringing Logo for footwear and
3 apparel. On January 24, 2007 Defendant NIKE filed United States Trademark Application Serial No.
4 77/090,390 for the same composite mark for eyewear, watches, bags, sports equipment, retail services
5 and many other goods and services. NIKE's Application Serial Nos. 77/090,465 and 77/090,390 are
6 hereinafter referred to as "NIKE's Trademark Applications." An exemplar of the composite mark is
7 shown below:



12 16. Using the Infringing Logo, Defendants offer for sale and sell identical goods, such as
13 athletic shoes, as Plaintiff offers for sale and sells under the BROOKS Logo.

14 17. The TAILWIND line of shoes bearing the Infringing Logo is being substantially
15 advertised, promoted, offered for sale and sold in hundreds of stores across the United States,
16 including in the Seattle, Washington area, as well as on the Internet.

17 18. Defendants' goods bearing the Infringing Logo are offered in the same channels of
18 trade as Plaintiff's goods bearing the BROOKS Logo.

19 19. BROOKS has not consented to Defendants' use of the Infringing Logo, nor has
20 BROOKS sponsored, endorsed or approved the goods or services offered or promoted by Defendants.

21 20. Defendants' unauthorized use of the Infringing Logo is likely to cause confusion, to
22 cause mistake, and to deceive an appreciable number of reasonably prudent customers and prospective
23 customers into falsely believing that Defendants' goods are provided, sponsored or approved by
24 BROOKS or that there is a connection or affiliation between BROOKS and Defendants.

25 21. Upon information and belief, Defendants deliberately employ a mark substantially
26 identical to the BROOKS Logo to mislead and confuse consumers into believing that Defendants'
27 goods are provided, sponsored, or approved by BROOKS.

28 ///

1 recover Defendants' profits together with BROOKS' damages, trebled, costs of the action, and
2 reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

3
4 **SECOND CLAIM FOR RELIEF**
5 **UNFAIR COMPETITION UNDER FEDERAL LAW**
6 **(15 U.S.C. § 1125(a))**

7 29. BROOKS incorporates by reference the allegations in paragraphs 1 through 28 above,
8 as if set forth in full herein.

9 30. Defendants' use of the Infringing Logo, a mark identical and thus confusingly similar
10 to the BROOKS Logo, in a similar manner in connection with identical and highly related goods
11 comprises unfair competition of 15 U.S.C. § 1125(a).

12 31. Without injunctive relief, BROOKS has no means by which to control the continuing
13 injury to its reputation and goodwill. BROOKS has been and will continue to be irreparably harmed.
14 No amount of money damages can adequately compensate BROOKS if it loses the ability to control
15 the use of its mark, reputation, and goodwill through the false and unauthorized use of its trademark.
16 BROOKS is entitled to monetary damages and injunctive relief prohibiting Defendants from using the
17 Infringing Logo or any other logotype, trademark or designation which is likely to be confused with
18 the BROOKS Logo.

19 32. Because Defendants' actions have been committed willfully and with intent to profit
20 from Plaintiff's goodwill in the BROOKS Logo, this is an exceptional case and BROOKS is entitled to
21 recover Defendants' profits together with BROOKS' damages, trebled, costs of the action, and
22 reasonable attorneys' fees pursuant to Section 35(a) of the Lanham Act, 15 U.S.C. § 1117(a).

23 **THIRD CLAIM FOR RELIEF**
24 **UNFAIR COMPETITION UNDER WASHINGTON LAW**
25 **(Washington Consumer Protection Act §§ 19.86.10 *et seq.*)**

26 33. BROOKS incorporates by reference the allegations in paragraphs 1 through 32 above,
27 as if set forth in full herein.

28 34. The above acts by Defendants constitute unfair competition and unfair business
practices in violation of the Washington Consumer Protection Act, §§ 19.86.10 *et seq.*, prohibiting

1 unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or
2 commerce.

3 35. Defendants' business practices alleged above are unfair and/or deceptive as they have
4 the capacity to deceive a substantial portion of the purchasing public, and are substantially injurious to
5 BROOKS and to consumers.

6 36. Pursuant to the Washington Consumer Protection Act §§ 19.86.10 *et seq.*, BROOKS is
7 entitled to recover the actual damages sustained by BROOKS as a result of Defendant's unfair,
8 unlawful, and deceptive business practices alleged above, by which Defendants have enriched
9 themselves at the expense of BROOKS and the public generally. BROOKS is also entitled to recover
10 the costs of this suit, including but not limited to its reasonable attorneys' fees.

11 37. Pursuant to the Washington Consumer Protection Act §§ 19.86.10 *et seq.*, BROOKS is
12 also entitled to enjoin further unfair, unlawful, and deceptive business practices by Defendants as
13 alleged above. Without injunctive relief, BROOKS has no means by which to control Defendants'
14 deceptive and confusing use and advertising of the Infringing Logo.

15 **FOURTH CLAIM FOR RELIEF**
16 **UNFAIR COMPETITION UNDER WASHINGTON COMMON LAW**

17 38. BROOKS incorporates by reference the allegations in paragraphs 1 through 37 above,
18 as if set forth in full herein.

19 39. The above acts by Defendants constitute unfair competition and unfair business
20 practices under Washington common law.

21 **PRAYER FOR RELIEF**

22
23 **WHEREFORE**, Plaintiff BROOKS prays for judgment against Defendants as follows:

24 1. That Defendants be enjoined during the pendency of this action, and permanently
25 thereafter, from using the Infringing Logo or any other logotype, trademark or designation which is
26 likely to be confused with the BROOKS Logo;

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1 2. That Defendants be ordered to recall and destroy all goods, packages, labels,
2 advertising and promotional material, and related items which use the Infringing Logo or any other
3 logotype, trademark or designation which is likely to be confused with the BROOKS Logo;

4 3. That Defendants be ordered to account to BROOKS for, and to pay to BROOKS, all of
5 Defendants' profits and all amounts by which Defendants have been unjustly enriched from their acts
6 and practices complained of herein, trebled on grounds that this is an exceptional case and according
7 to the circumstances of the case under Section 35(a) of the Lanham Act;

8 4. Declaring that Defendants are without right or authority to threaten, complain of,
9 challenge, maintain suit, or interfere in any manner with Plaintiff BROOKS' lawful use and right to
10 claim ownership of the BROOKS Logo or any application for registration or registration therefor;

11 5. That Defendants be ordered to pay BROOKS the actual damages suffered by BROOKS
12 as a result of Defendants' wrongful acts in an amount to be determined at trial, trebled on grounds that
13 this is an exceptional case under Section 35(a) of the Lanham Act;

14 6. That Defendants be ordered to pay BROOKS its attorneys' fees and costs on grounds
15 that this is an exceptional case under Section 35(a) of the Lanham Act.;

16 7. That Defendants be ordered to pay BROOKS, pursuant to the Revised Code of
17 Washington, its damages, enhanced in accordance with statute, as well as BROOKS costs and
18 attorney's fees;

19 8. That Defendants be ordered to pay BROOKS prejudgment interest on any monetary
20 award;

21 9. That Defendant NIKE be ordered to expressly abandon NIKE's Trademark
22 Applications with the United States Patent and Trademark Office; and

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10. Such further relief as the Court deems just and proper.

Respectfully submitted,

TOWNSEND and TOWNSEND and CREW LLP

Dated: May 4, 2007.

By 

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Attorneys for Plaintiff
BROOKS SPORTS, INC.

1 **JURY DEMAND**

2 Pursuant to Fed. R. Civ. P. 38(b) and Local Rule 38(b), Plaintiff BROOKS SPORTS hereby
3 demands a trial of this dispute by jury.

4 Respectfully submitted,

5 TOWNSEND and TOWNSEND and CREW LLP

6 Dated: May 4, 2007.

7 By Steven W. Parmelee
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12 *Attorneys for Plaintiff*
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