

FILED

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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

NIKE, INC.,

Case No.

Plaintiff,

6:07-cv-1654-ORL-31-KRS

v.

OMAR LYDNER d/b/a www.rf45.com,
www.retrofeet.com, www.23feet.com,
www.pickyoursole.com and
www.jordans4sale.com; CARL LYDNER
d/b/a www.retrofeet.com; VETA V.
BROWN d/b/a www.multikicks.com
and www.perfectkicks.com; 23FEET, INC.
d/b/a www.23feet.com; and
ANTHONY J. RAMOS

Defendants.

_____ /

COMPLAINT

Plaintiff, Nike, Inc. ("Nike"), by and through its undersigned attorneys,
alleges for its Complaint as follows:

INTRODUCTION

1. Nike files this action against the Defendants, who have unlawfully engaged in the manufacture, duplication, distribution, importation, sale, and offer for sale of counterfeit shoes bearing exact copies or colorable duplications of Nike's trademarked properties.

2. For violations of the Federal Statutes alleged in the Complaint, Nike seeks a Preliminary and Permanent Injunction, damages, costs, and attorneys' fees as authorized by the Lanham Act.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to the federal trademark laws (the "Lanham Act"), 15 U.S.C. §§ 1051-1141. Further, this Court has jurisdiction over Nike's pendent and common law claims pursuant to 28 U.S.C. § 1367.

4. Venue is proper within this District pursuant to 28 U.S.C. § 1391(b) and § 1400(a).

THE PARTIES

5. Plaintiff Nike, Inc. is a corporation duly organized and existing under the laws of the State of Oregon, having its principal place of business in Beaverton, Oregon.

a. Nike is engaged in the manufacture, design, and sale of footwear, apparel, and related accessories. Among other products, Nike manufactures, sells, and distributes basketball and running shoes. Products manufactured and sold by Nike are sold bearing several marks including the "NIKE" mark, an arbitrary and distinctive emblem which has come to be known as the "Swoosh

Design," a composite mark consisting of the word "Nike" and the "Swoosh Design", or an arbitrary and distinctive emblem which has come to be known as "Jumpman". Nike uses these marks on shoes and apparel as trademarks of Nike's high-quality products. Nike also developed and used the "Nike Air" and "Just Do It" marks as trademarks for its shoes and apparel. Nike sells in excess of \$13,000,000,000.00 per year in merchandise bearing its distinctive trademarks.

b. All products noted above are sold with the "NIKE", "Swoosh Design", or composite "NIKE" and "Swoosh Design" marks. Nike adopted and used the "NIKE" and "Swoosh Design" marks in 1971. Some, but not all, of Nike's registered marks and registration numbers are noted below:

- i. Nike registered the "NIKE" mark in block letters on November 2, 1982; Registration No. 1,214,930 in class 25 for footwear.
- ii. Nike registered the "Swoosh Design" on March 5, 1985; Registration No. 1,323,343 in class 25 for footwear.
- iii. Nike registered the composite mark of "NIKE" and the "Swoosh Design" on March 19, 1985; Registration No. 1,325,938 in class 25 for footwear.
- iv. Nike registered the "NIKE AIR" mark on July 3, 1984; Registration No. 1,284,386 in class 25 for footwear.
- v. Nike registered the "AIR JORDAN" mark on November 12, 1985; Registration No. 1,370,283 for footwear and apparel in class 25.

- vi. Nike registered the "AIR JORDAN" design on December 22, 1992 for apparel and sports bags in class 18 and apparel and backpacks in class 25.
- vii. Nike registered the "AIR JORDAN" design on September 16, 1989 for footwear and apparel in class 25.
- viii. Nike registered the "JUST DO IT" mark on January 24, 1995 for apparel in class 25.

Nike's trademarks will hereinafter be collectively referred to as the "Nike Trademarks". These marks are indexed on Exhibit "A".

6. Defendant Omar Lydner d/b/a www.rf45.com, www.retrofeet.com, www.23feet.com, www.pickyoursole.com and www.jordans4sale.com (hereinafter O. Lydner") is an individual doing business in the State of Connecticut at 1995 Barnum Avenue, 3rd Floor, Stratford, CT 06615 under the names "rf45.com," "retrofeet.com," "23feet.com," "pickyoursouls.com," and "jordans4sale.com." Upon information and belief, O. Lydner operates interactive Web sites at the Uniform Resource Locators ("URL") <<http://www.rf45.com>>, <<http://www.retrofeet.com>>, <<http://www.23feet.com>>, <<http://www.pickyoursole.com>> and <<http://www.jordans4sale.com>> which sites sell, offer for sale, and distribute merchandise in this District.

7. Defendant, CARL LYDNER d/b/a www.retrofeet.com (hereinafter "C. Lydner") is an individual doing business in the State of Connecticut at 361 Funston Avenue, Bridgeport, CT 06606 under the name "retrofeet.com." Upon information and belief, C. Lydner operates an interactive Web site at the Uniform Resource Locator ("URL") <<http://www.retrofeet.com>> which site sells, offers for sale, and distributes merchandise in this District.

8. Defendant, VETA V. BROWN d/b/a www.multikicks.com and www.perfectkicks.com (hereinafter "Brown") is an individual doing business in the State of Georgia at 3740 Warwick Way, Snellville, GA 30039 under the names "multikicks.com," and "perfectkicks.com." Upon information and belief, Brown operates interactive Web sites at the Uniform Resource Locators ("URL") <<http://www.multikicks.com>>, and <<http://www.perfectkicks.com>> which sites sell, offer for sale, and distribute merchandise in this District.

9. Defendant, 23FEET, INC. (hereinafter "23feet"), is a corporation organized and existing under the laws of the Sate of Florida and has a principal place of business at 49 East 41st Street, #449, New York, NY 10165. Upon information and belief, 23feet operates interactive Web site at the Uniform Resource Locators ("URL") <<http://www.23feet.com>> which site sells, offers for sale, and distributes merchandise in this District.

10. Defendant, ANTHONY J. RAMOS (hereinafter "Ramos"), is an individual doing business in the State of Florida who is doing business under the

name 23feet, Inc. at 49 East 41st Street, #449, New York, NY 10165, and who is also the president and controlling force for the business known as 23feet, Inc., identified in paragraph 9 above. Upon information and belief, Ramos operates interactive Web site at the Uniform Resource Locator (“URL”) <<http://www.23feet.com>> which site sells, offers for sale, and distributes merchandise in this District. Upon information and belief, Ramos resides at 106 Linen Avenue, Bridgeport, CT 06604.

11. Defendants, O. Lydner, C. Lydner, Brown, 23feet and Ramos will hereinafter be collectively referred to as “Defendants.”

FACTUAL BACKGROUND

12. Nike has used the Nike Trademarks continuously from the date claimed on the registrations in connection with the goods and services noted. The Nike Trademarks are in full force and effect, are owned by Nike, and many have become incontestable pursuant to 15 U.S.C. § 1065. Each of the distinctive trademarks signifies to the purchaser that the product originates exclusively with Nike and is manufactured to standards of the highest quality. Whether Nike manufactures the product itself or licenses others to do it, Nike has ensured that products bearing its trademarks are manufactured to the highest standards. As a result, Nike has established further goodwill in the Nike Trademarks which have become valuable assets of Nike.

13. Because of Nike's longstanding use and large advertising expenditures in support of its marks, the Nike Trademarks have become famous marks as defined by 15 U.S.C. § 1125(c)(1).

14. The enormous popularity of Nike's products is not without costs as evidenced by the increasing number of counterfeiters in the United States and worldwide.

15. Defendants are manufacturing, distributing, offering for sale, and/or selling the Nike Trademarks in the form of counterfeit shoes bearing exact copies or colorable imitations of the Nike Trademarks. See Exhibit "B". Nike has never authorized Defendants to reproduce, manufacture, import, copy, or sell shoes or any product bearing the Nike Trademarks. The counterfeit shoes sold or offered for sale by Defendants are referred to in this complaint as the "Counterfeit Product". Defendants have distributed, offered for sale, or sold the Counterfeit Product through the Web sites located at the URLs <<http://www.rf45.com>>, <<http://www.retrofeet.com>>, <<http://www.23feet.com>>, <<http://www.pickyoursole.com>>, <<http://www.jordans4sale.com>>, <<http://www.multikicks.com>>, and <<http://www.perfectkicks.com>>.

16. Nike has requested that the Defendants cease and desist from their infringing activities. Despite these repeated requests, the Defendants continue to sell and offer for sale of the Counterfeit Product. Defendants performed the complained of acts willfully and with knowledge of the infringement and unfair

competition they would cause and to appropriate and unfairly trade upon Nike's goodwill in the Nike Trademarks. The photographs, attached as Exhibit "C" are samples of the Counterfeit Product sold through the Defendants' Web sites.

COUNT I
Trademark Infringement and Counterfeiting

17. Nike incorporates by reference paragraphs 1 through 16 and brings the following claim for trademark infringement pursuant to 15 U.S.C. § 1114 against the Defendant.

18. Nike owns the exclusive trademark rights to those trademarks indexed on Exhibit "A". All of the trademark registrations are in full force and effect and are owned by Nike. In many cases the trademarks have become incontestable pursuant to 15 U.S.C. § 1065.

19. Nike, or those under its authority, manufacture and distribute all of its products and advertising in conformity with the provisions of the Lanham Act.

20. Notwithstanding Nike's well-known and prior common law and statutory rights in its trademarks, Defendants have adopted and used the Nike Trademarks in the State of Florida and interstate commerce. Defendants committed their acts with actual notice of Nike's federal registration rights, long after Nike established its rights in the trademarks.

21. Defendants committed their acts of infringement within the jurisdiction of this Court. Defendants reproduce, manufacture, import, copy, or sell shoes bearing the Nike Trademarks without Nike's authorization via the Internet. Defendants sold or offered for sale shoes bearing the Nike Trademarks in the Middle District of Florida and interstate commerce, thus creating the likelihood of confusion, deception, and mistake.

22. Defendants imported, manufactured, distributed, sold, or offered for sale counterfeit or unauthorized shoes bearing Nike's distinctive trademarks. Defendants acted with actual and constructive knowledge of Nike's distinctive trademarks and have contributed to the infringing, copying, duplication, sale, and offer for sale of counterfeit copies of merchandise bearing Nike's distinctive trademarks.

23. Defendants' acts of infringement will cause irreparable injury to Nike if Defendants are not restrained by the Court from further violation of Nike's rights as Nike has no adequate remedy at law.

24. Nike has suffered damages as a result of Defendants' acts.

25. Defendants' commercial use of the Nike Trademarks in conjunction with the sale of shoes is an infringement of Nike's registered trademarks and in violation of 15 U.S.C. § 1114.

26. Upon information and belief, Defendants committed the alleged acts intentionally, fraudulently, maliciously, willfully, wantonly, and oppressively with the intent to injure Nike and its business.

COUNT II
False Designation of Origin and False Description

27. Nike incorporates by reference the allegations set forth in paragraphs 1 through 16 and 18 through 26.

28. The Nike Trademarks have acquired a secondary and distinctive meaning such that the public has come to identify the trademarked properties listed on Exhibit "A" with Nike.

29. The unauthorized manufacture of shoes and related merchandise that has been distributed and sold by the Defendants exactly duplicates and appropriates the likeness of the Nike Trademarks, the effect of which is to delude and confuse the public into believing that the shoes have been authorized or sponsored by Nike.

30. The sale of unauthorized products bearing the Nike Trademarks will dilute the goodwill and reputation of Nike.

31. The sale of unauthorized products bearing the Nike Trademarks, which are of an inferior quality to the authorized and authentic product, will further dilute the goodwill and reputation of Nike.

32. Defendants, by misappropriating and using the likeness of the Nike Trademarks and licensed trademarks in connection with the sale of Counterfeit Products, is misrepresenting and will continue to misrepresent and falsely describe to the general public the origin and sponsorship of their products. Defendants have caused such products to enter into interstate commerce with full knowledge of the falsity of the designation of their origin, description, and representation in an effort to mislead the purchasing public into believing that their products are authorized or emanate from Nike.

33. These acts constitute a violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125.

34. The continued use of the likenesses of the Nike Trademarks and licensed trademarks by Defendants has caused, and unless restrained will continue to cause, serious irreparable injury and harm to Nike as Nike has no adequate remedy at law.

35. Defendants have obtained gains, profits, and advantages as a result of his unlawful acts.

36. Nike has suffered monetary damages as a result of Defendants' acts.

COUNT III
Unfair Competition under Florida's Common Law

37. Nike incorporates by reference the allegations set forth in paragraphs 1 through 16, 18 through 26, and 28 through 36.

38. Nike has spent significant sums of money advertising and marketing products and services featuring its trademarked properties, creating a consumer demand for such products and services throughout the United States. Consequently, these products and services have become widely known and accepted.

39. Defendants are using the Nike Trademarks in conjunction with the advertising, marketing, and offering for sale of the Counterfeit Product, thereby passing it off as goods authorized or distributed by Nike.

40. Defendants knowingly and willfully appropriated Nike's trademarked properties in an effort to create the impression that Nike sanctioned their Counterfeit Product in order to misappropriate all of the goodwill associated with Nike's trademarked properties.

41. Defendants' acts constitute unfair competition and, unless enjoined by this Court, will result in the destruction or dilution of the goodwill of Nike's valuable property rights to the unjust enrichment of Defendants.

42. The goods advertised, marketed, and offered for sale by Defendants in conjunction with Nike's trademarked properties are calculated

and likely to deceive and mislead the purchasers who buy them in the belief that they originate with or are authorized by Nike.

43. Defendants' continued passing off of such Counterfeit Product as if such goods originated with or were authorized by Nike has caused and, unless restrained, will continue to cause serious and irreparable injury to Nike.

44. Nike has no adequate remedy at law and is suffering irreparable harm as a result of the actions by Defendants.

45. Defendants committed the acts alleged in this complaint intentionally, fraudulently, maliciously, willfully, wantonly, and oppressively with the intent to injure Nike and its business.

PRAYER FOR RELIEF

WHEREFORE Nike demands interim relief in the form of a Preliminary Injunction and, consistent with that, entry of a judgment against Defendants as follows:

1. Permanent injunctive relief restraining Defendants, their officers, agents, servants, employees, attorneys, and all those in active concert or participation with them from:

a. further infringing each of the Nike Trademarks by importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, displaying, or otherwise disposing of any

products not authorized by Nike bearing any simulation, reproduction, counterfeit, copy, or colorable imitation of any of the Nike Trademarks (“Unauthorized Products”);

b. using any simulation, reproductions, counterfeit, copy, or colorable imitation of any of the Nike Trademarks in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation, or distribution of Unauthorized Products in such fashion as to relate or connect, or tend to relate or connect, such products in any way to Nike, or to any goods sold, manufactured, sponsored, or approved by, or connected with, Nike;

c. making any statement or representation whatsoever, or using any false designation of origin or false description, or performing any act, which can or is likely to lead the trade or public, or individual members thereof, to believe that any products manufactured, distributed, or sold by Defendants are in any manner associated or connected with Nike, or are sold, manufactured, licensed, sponsored, approved, or authorized by Nike;

d. engaging in any other activity constituting unfair competition with Nike, or constituting an infringement of any of the Nike Trademarks or of Nike’s rights in, or to use or to exploit, the Nike Trademarks, or constituting any dilution of Nike’s name, reputation, or goodwill;

e. effecting assignments or transfers, forming new entities or associations or using any other device for the purpose of circumventing or otherwise avoiding the prohibitions set forth in subparagraphs a-d; and

f. secreting, destroying, altering, removing, or otherwise dealing with the Counterfeit Products or any books or records that may contain any information relating to the importing, manufacturing, producing, distributing, circulating, selling, marketing, offering for sale, advertising, promoting, or displaying of all unauthorized products which infringe any of the Nike Trademarks.

2. Directing that Defendants deliver for destruction all Unauthorized Products including shoes and any other merchandise, labels, signs, prints, packages, dyes, wrappers, receptacles, silk screens, heat transfers, embroidery templates, software, and advertisements relating thereto in their possession or under their control bearing any of the Nike Trademarks or any simulation, reproduction, counterfeit, copy, or colorable imitations thereof, and all plates, molds, heat transfers, screens, matrices, software, and other means of making the same.

3. Directing that Defendants delete any and all digital files used to reproduce the Nike Trademarks from any and all computers, CDs, DVDs, hard

drives, floppy disks, or other form of digital file storage which is in Defendants' possession or control.

4. Directing that Defendants remove all Web sites bearing any of the Nike Trademarks or advertising the Unauthorized Products from any and all computers, CDs, DVDs, hard drives, floppy disks, or other form of digital storage format which is in Defendants' possession or control.

5. Directing that Defendants report to this Court within 30 days after a Permanent Injunction is entered to show his compliance with paragraphs 2-4 above.

6. Directing such other relief as the Court may deem appropriate to prevent the trade and public from gaining the erroneous impression that any products manufactured, sold, or otherwise circulated or promoted by Defendants are authorized by Nike or related in any way to Nike's products.

7. That Nike be awarded three times Defendants' profits after an accounting pursuant to 15 U.S.C. § 1114 and § 1117 or, at the election of Nike, statutory damages as provided by § 1117(c) of between \$500.00 and \$100,000.00 per trademark per type of goods sold that is counterfeited by Defendants or, should this Court find that Defendants willfully used a counterfeit mark,

statutory damages of not more than \$1,000,000.00 per trademark per type of goods sold.

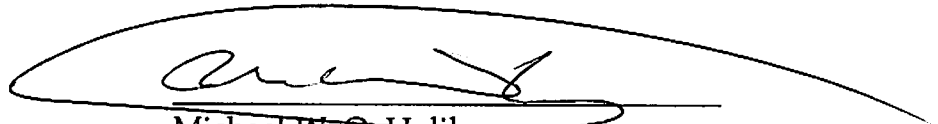
8. That Nike be awarded its reasonable attorneys' fees and investigative fees pursuant to 15 U.S.C. § 1117.

9. That Nike be awarded its costs in bringing this action.

10. That Nike have such other and further relief that this Court deems just.

Dated this 16th day of October 2007.

Respectfully submitted,



Michael W. O. Holihan
Florida Bar No.: 0782165
Holihan Law
1101 North Lake Destiny Road
Suite 275
Maitland, Florida 32751
Telephone: 407-660-8575
Fax: 407-660-0510
Email: michael.holihan@holihanlaw.com
Attorneys and Trial Counsel
for Nike, Inc.