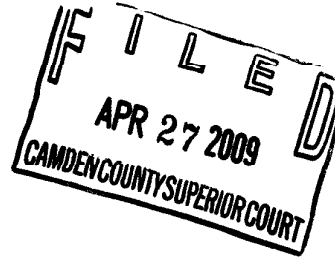


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6 Attorneys for Plaintiff



6 **SUPERIOR COURT OF THE STATE OF NEW JERSEY**
7 **COUNTY OF CAMDEN**

9 **WORLD B FREE f/k/a LLOYD B.**
10 **FREE Plaintiff,**

11 Plaintiff,

12 vs.

13
14 **NIKE, INC, a Delaware corporation;**
15 **SOLE COLLECTOR MAGAZINE, an**
16 **Oregon corporation; NICK DePAULA,**
17 **an individual; and DOES 1-50,**

18 Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
CAMDEN COUNTY
DOCKET # CAM-L- 2105-09

CIVIL ACTION

COMPLAINT

DEMAND FOR JURY TRIAL

19
20 Plaintiff World B. Free (hereinafter "Plaintiff), through his attorneys, hereby alleges,
21 based upon information and belief, except those allegations concerning Plaintiff, which are
22 based upon Plaintiff's personal knowledge, against Defendants Nike, Inc., Sole Collector,
23 Nick DePaula and DOES 1-50 (collectively "Defendant" or "NIKE"), as follows:

24 **INTRODUCTION**

25
26
27 1. This action arises out of Defendant's unauthorized advertisement and sale of
28 products bearing the identity and likeness of plaintiff World B. Free ("Plaintiff"), in willful

1 and conscious disregard of the rights of Plaintiff. Specifically, Plaintiff asserts that his
 2 common law rights in his name under Section 43 of the Lanham Act and his common law
 3 right of privacy have been invaded by the unauthorized appropriation of his name and
 4 identity by Defendant in a version of a shoe and/or basketball sneaker, including but not
 5 limited to, its special edition World B. Free old school basketball sneaker (hereinafter
 6 "*Sneaker*"). Moreover, Plaintiff alleges that NIKE's practice of purposefully using the
 7 likeness of retired National Basketball League ("NBA") players like himself in select
 8 editions of *Sneaker* without prior authorization constitutes an unfair business practice in
 9 violation of New Jersey's Consumer Fraud Act, codified under NJSA 56:8-2 et. seq, and
 10 other common law causes of action. As a proximate result of Defendants' conduct,
 11 Plaintiff has sustained and will continue to sustain injury and damages, in an amount to be
 12 proved at trial.

13
 14 **PARTIES**

15 2. Plaintiff is a citizen of the State of New Jersey residing at 1010 Tamara Court,
 16 Cherry Hill, New Jersey.

17 3. Defendant NIKE is a corporation organized and existing under the laws of the State
 18 of Delaware, with its principal place of business at One Bowerman Drive, Beaverton, Oregon
 19 97005 and approximately 94 regional stores in the state of New Jersey.

20 4. Defendant NIKE is a corporation organized and existing under the laws of the State
 21 of Delaware, with its principal place of business at One Bowerman Drive, Beaverton, Oregon
 22 97005 and approximately 94 regional stores in the state of New Jersey.

23 5. Defendant SOLE COLLECTOR is a corporation organized and existing under the
 24 laws of the State of Oregon, with its principal place of business on the world wide web/internet at
 25 www.solecollector.com.

26 6. Plaintiff is informed and believes, and thereon alleges, that, at all relevant times,
 27 defendant, NICK DEPAULA (hereinafter "DEPAULA or DEFENDANT/s"), was and is a
 28 shareholder, director and alter ego of SOLE COLLETOR, the Senior Writer of SOLE

1 COLLETOR, the Corporate Officer of SOLE COLLETOR, and either an agent, managing agent,
2 employee, general employee, special employee, servant or partner of SOLE COLLETOR, as well
3 as an individual and resident of Eugene, Oregon.

4 7. At all relevant times herein, DOES 1-50 inclusive, were fictitious names for
5 individuals, partnerships, joint ventures, corporations, limited liability corporations or other forms
6 of legal entities, the identities of which are unknown at the present but who are liable to the
7 Plaintiff for committing the acts and/or omissions mentioned herein. The DOES defendants
8 specifically include all members of upper management of NIKE who participated in or failed to
9 remediate the wrongful acts.

10 8. Plaintiff is informed and believes, and thereon alleges, that there exists and, at all
11 times alleged herein, there existed a unity of ownership between DEPAULA, on the one hand, and
12 SOLE COLLETOR, on the other hand, such that any individuality and separateness between
13 DEPAULA, on the one hand, and DEPAULA, on the other hand, have ceased and that DEPAULA
14 completely controlled, dominated, managed and operated said corporation to suit his separate and
15 individual convenience. SOLE COLLETOR is a mere conduit for DEPAULA, who dominated and
16 controlled the business practices to such an extent that any individuality or separateness of SOLE
17 COLLETOR, on the one hand, and DEPAULA, on the other hand, does not and, at all times herein
18 alleged, did not exist.

19 9. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
20 hereto, each of the named Defendants was an agent, employee, general employee, special
21 employee, employer, general employer, special employer, alter ego, joint venturer, servant, or co-
22 conspirator of one or more of the other Defendants and, as such, was acting within the course and
23 scope of said agency, employment, alter ego and/or joint venture, and that each and every defendant
24 aided and assisted the other Defendants in committing the wrongful acts alleged herein.

25 10. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
26 them, conspired and agreed among themselves to do the acts complained of herein and were, in
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1 doing such acts, acting pursuant to and in furtherance of said conspiracy, and each defendant sued
2 herein is, jointly and severally, responsible and liable to Plaintiff for the damages alleged herein.
3

4 FACTUAL ALLEGATIONS

5
6 11. World B. Free was born Lloyd Bernard Free on December 9, 1953. Free was
7 born in Atlanta Georgia and would eventually go to Canarsie High School in Brooklyn,
8 New York. Free had a stellar career at Canarsie and would end up attending Guilford
9 College in North Carolina. It was at Guilford College where Free's legend would begin to
10 take off.

11 12. At Guilford College, Free became a leader on and off the court. With his calm
12 demeanor and loving personality, he became a beacon of strength in the locker room but
13 this certainly would not be outdone by his success on the court. While only a freshman,
14 Free led Guilford to an NAIA National Championship and was named the Most Valuable
15 Player of that tournament. After his time at Guilford, Free dreamed of playing in the NBA
16 even though it was difficult to gain national recognition coming from such a small school
17 but as Free had done all of his life, he beat the odds and achieved his dream.

18 13. In 1975, the Philadelphia 76ers would select Free in the second round of the
19 NBA Draft. Free would embark on a storied career where he would play for the 76ers, San
20 Diego Clippers, Golden State Warriors and the Houston Rockets.¹
21

22 14. Free would become known as one of the most dominant offensive players of
23 his generation. In both the 1978-79 and 1979-1980 campaigns, George "The Ice Man"
24 Gervin and Free led the NBA in scoring. Free's most historic season would come during
25 the 1979-1980 campaign when he would aver 30.2 points per game to go along with 4.2
26 assists and 3.5 rebounds and was named an All-Star that season.²¹
27

28 ¹ Information obtained from NBA.com.

² Information came from Basketball reference.com.

1 15. Free would end up having one of the more illustrious careers in the NBA by
2 averaging 20.3 points per game and being known as a "Game-Changer". Coupled with his
3 NBA stardom, Free also played in the United States Basketball League (USBL) where he
4 led the Miami Tropics to a championship and won the USBL Man of the Year.

5 16. Free's accomplishments on the court are amazing and despite all of the success
6 World B. Free achieved on the basketball court, the most he ever made in a season was in
7 the 1984-85 and 1985-86 seasons when he made \$675,000 per season.² If Free was playing
8 in the NBA today, based upon his statistics and leadership, he would most likely make in
9 the \$10 million range.³ Regardless, of all his court success, Free is even more of a success
10 in the community.

11 17. "World B. Free off of the court and into the community." In 1980, Lloyd Free
12 legally changed his name to World. World was a nickname Free was given from his days
13 in Brooklyn because of his 44 inch vertical leaps and 360 dunks. While he was always
14 known for bringing flamboyant and taking high risk shots, Free decided to change his name
15 not for basketball abilities but because of his quest for peace and tranquility in the world.⁴
16 In 1980, Lloyd Free became World B. Free as a social statement and while he was already
17 beloved by fans and children across the nation, World B. Free became a household name
18 and a marketing campaign dream.

19 18. Free would eventually become the Community Relations Director for the
20 Philadelphia 76ers and he has earned the nickname the "Ambassador of Basketball." In
21 this position, Free leads free basketball clinics through the 76ers Summer Hoops Tour and
22 Basketball 101; delivers motivational messages at school assemblies; visits children's
23 hospitals; hosts anti-violence talks; presents the 76ers Hometown Hero Awards-the list
24 goes on and on. As a motivator, a mentor, a teacher, and a role model, World has
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27 ¹ Information also cited on Wikipedia.org.

28 ² Information came from Basketball Reference.com.

³ Salary of current NBA players obtained on HoopsHype.com.

⁴ Information came from article on Wikipedia.org which was updated February 8, 2009.

1 enlightened and enriched the lives of children across the country and has had a profound
2 effect on youth in the Delaware Valley.

3 19. World B. Free gained even more recognition for his work with children in his
4 community on Nov. 16 of 2006. It was on this date that the Please Touch Museum
5 announced Free as the recipient of their 11th annual "Great Friend To Kids" Community
6 Service award. This award honors individuals and organizations that have made
7 outstanding contributions to enriching the lives of children.¹

8
9 20. Plaintiff is informed and believes, and thereon alleges, that, at all relevant
10 times, defendant, NICK DePAULA (hereinafter "DePAULA or DEFENDANT"), was and
11 is either an agent, product tester, managing agent, brand consultant, employee, general
12 employee, special employee, servant or partner of NIKE, as well as an individual and
13 resident of the Beaverton, Oregon.

14
15 21. On March 16, 2009, an article appeared on-line about Nike House of Hoops:
16 'World B. Free' Nike Blazer. The article was written by Nick DePaula and reads:
17 Continuing the trend of honoring some of the best hoops players from decades past,
18 Nike will soon be dropping this limited edition 'World B. Free' Nike Blazer at the
19 House Of Hoops, paying tribute to the 6'2" scorer that played for teams including the
20 76ers, Warriors and Cavaliers. Taking notes from Free's colorful and flamboyant
21 personality, the Blazer's upper features tie-dyed canvas tying back to World's loving
22 and peaceful outlook on life. The navy leather upper, eye stay and heel notch and
23 also set off by yellow hits along the laces and outsole. You can still find World B.
24 Free at 76er games these days, as he enjoys his role as Community Relations Director
25 and greets fans before every home game. There's no set release date to announce just
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¹ Information gathered from NBA.Com/Sixers Community.

1 yet for the 'World B. Free' Nike Blazer, but we'll be sure to keep you posted as
2 they're coming soon to the House Of Hoops.¹

3
4 22. It is obvious that the name World B. Free is associated for social activism and
5 great basketball feats. In the article written by Nick DePaula, a visual of the Historic Nike
6 Sneaker is shown in full color with the term SOLE and COLLECTOR (Written on the side)
7 as part of the Nike Advertising campaign.²

8
9 **Plaintiff Never Signed Away any Likeness Rights to Defendant**

10
11 23. Plaintiff has never authorized the use of his name or likeness to be used in
12 connection with Defendant's *Sneaker* marketing, development and advertisement
13 campaigning, nor any other shoe product promotional.

14 24. On or about March 20, 2009, Plaintiff learned that NIKE knowingly,
15 intentionally and fraudulently used Plaintiff's likeness in its marketing campaign without
16 obtaining any permission or license from Plaintiff for said use.

17
18 **The Continuing Harm to Plaintiff as a Result of Defendant's Conduct**

19 25. Defendants' wrongful conduct as alleged herein has caused Plaintiff to suffer
20 injuries under state and common law for violations of his right of publicity due to his loss
21 of control over the use of his likeness, causing him to lose monetary compensation as the
22 appropriation of his likeness by Defendant has conferred a substantial pecuniary benefit
23 onto Defendant through select editions of its *Sneaker* that feature Plaintiff.

24 26. Defendant's misappropriation and use of plaintiff's identity in conjunction
25 with the manufacture, distribution and sale of its *Sneaker* campaign is likely to cause
26 confusion among the general public about Plaintiff's endorsement of Defendant's products.
27

28 ¹ House of Hoops Article appeared via on-line research and cited Nick DePaula published on March 16th,
2009.

² Picture taken from DePaula advertising article.

1 In particular, consumers are likely to believe that multiple editions of Defendant's *Sneaker*
2 campaign, are authorized, sponsored, approved, or otherwise related to Plaintiff and his
3 licensees when in fact they are not.

4 27. Plaintiff has been, and continues to be injured by Defendant's deceptive and
5 misleading conduct and unlawful acts.

6 **FIRST COUNT**

7 28. Plaintiff hereby incorporates by reference the allegations contained in the
8 foregoing paragraphs as if fully set forth herein.

9 29. Plaintiff has exclusive ownership rights in his own name and likeness.

10 30. Plaintiff's name and likeness have considerable commercial value based on his
11 status as one of the greatest point guards to have ever played professional Basketball, one
12 of the great scorers in basketball of all times, as well as a community leader spanning four
13 decades.

14 31. Plaintiff has a reasonable interest in the commercial value of his likeness based
15 on the fact that he has retained exclusive ownership and control in his likeness; he can only
16 relinquish control in his likeness through licensing; and he has the right to compensation
17 for use and distribution of his likeness.

18 32. Defendant sold and/or intends to sell multiple editions of its *Sneaker* campaign
19 which depicted Plaintiff's likeness.

20 33. Plaintiff did not license his likeness to Defendant for use in any edition of
21 *Sneaker*.

22 34. The public is likely to conclude, however, that the depiction of Plaintiff's
23 likeness in certain editions of *Sneaker* signifies his endorsement or approval of the
24 campaign.

25 35. Thus, there is a strong likelihood of confusion regarding the source of the
26 campaign.
27
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1 ability to control his public image and dilutes his ability to effectively market such image,
2 all to the detriment of Plaintiff's reputation and goodwill.

3 44. Plaintiff is informed and believes, and thereon alleges that, as a proximate
4 result of Defendant's wrongful use of Plaintiff's likeness in connection with its publicity,
5 advertising and sale of its products, goods, merchandise and services, as alleged herein,
6 Plaintiff has been and/or will be deprived of monetary sums in an amount to be determined
7 at trial.

8 45. Defendant's actions, as described herein, were committed maliciously,
9 intentionally and with a willful and conscious disregard of Plaintiff's rights, making an
10 award of punitive damages appropriate in order to punish and deter Defendant from
11 engaging in the conduct alleged herein.

12 46. Plaintiff is informed and believes, and thereon alleges, that unless restrained
13 by this Court, the Defendant will continue to infringe Plaintiff's right of publicity by
14 continuing to use his likeness in future editions of *Sneaker*.

15 **THIRD COUNT**

16 47. Plaintiff hereby incorporates by reference the allegations contained in the
17 foregoing paragraphs as if fully set forth herein.

18 48. On or about March 16, 2009, Defendant, knowingly and without Plaintiff's
19 prior consent, invaded Plaintiff's right to privacy by appropriating Plaintiff's likeness by
20 including special edition of Plaintiff in its *Sneaker* campaign.

21 49. Plaintiff did not become aware of Defendant's appropriation of his likeness in
22 *Sneaker* until March 2009.

23 50. The appropriations of Plaintiff's likeness were unauthorized and without the
24 prior consent of Plaintiff.

25 51. Defendant's conduct involved the appropriation of various styles of Plaintiff,
26 including but not limited to, his world peace theme, and other inherently distinctive old
27 school themes which make Plaintiff readily identifiable to consumers of *Sneaker* and other
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1 editions of *Sneaker* which feature characteristics of Plaintiff.

2 52. The appropriation by Defendant was for the purpose of increasing sales of its
3 highly popular campaign, *Sneaker*, by using famous retired NBA players, like Plaintiff, to
4 advertise classic NBA styles and retro styles from years past to its customers. The success
5 of this strategy has resulted in impressive sales of several editions of *Sneaker*, which give
6 Basketball fans the opportunity to honor the games history and style changes over the
7 years.

8 53. Plaintiff is informed and believes, and thereon alleges that, as a proximate
9 result of advantage accruing to Defendant from its infringement of Plaintiff's identity, and
10 as a proximate result of the Defendant's wrongful use of Plaintiff's identity in connection
11 with the publicity, advertising and sale of its products, goods, merchandise and services, as
12 alleged herein, Plaintiff has been and/or will be deprived of monetary sums in an amount to
13 be determined at trial.

14 54. Defendant's actions, as described herein, were committed maliciously,
15 intentionally and with a willful and conscious disregard of Plaintiff's rights, making an
16 award of punitive damages appropriate in order to punish and deter Defendant from
17 engaging in the conduct alleged herein.

18 55. Plaintiff is informed and believes, and thereon alleges, that unless restrained
19 by this Court, the Defendant will continue to infringe Plaintiff's right of publicity by
20 continuing to use his likeness in future editions of *Sneaker*.

22 FOURTH COUNT

23 56. Plaintiff hereby incorporates by reference the allegations contained in the
24 foregoing paragraphs as if fully set forth herein.

25 57. New Jersey Consumer Fraud Act § NJSA 56:8-2 et. seq. prohibits acts of
26 unfair competition, which include any "unlawful, unfair or fraudulent business practice."

27 58. By intentionally appropriating the likeness and identities of retired NBA
28 players like Plaintiff, who have never agreed to, nor ever contemplated, authorizing the use

1 of their likeness to be used in connection with a campaign, such as Defendant's *Sneaker*.
2 Defendant has deceived consumers into reasonably believing that all of the former players
3 depicted in various editions of *Sneaker* have consented to the use of their likeness in the
4 game, thereby creating a likelihood that the Defendant's customers, potential customers,
5 and the public generally will be confused or misled as to the source of said endorsement by
6 Plaintiff and other retired NBA players of Defendant's products, merchandise, goods or
7 services. This conduct constitutes unlawful, unfair and fraudulent business practices within
8 the meaning of the New Jersey Consumer Fraud Act § NJSA 56:8-2 et. seq

9
10 59. Specifically, Defendant has violated New Jersey Consumer Fraud Act § NJSA
11 56:8-2's prohibition against engaging in unlawful, unfair or fraudulent acts or practices by:

12 a. Failing to disclose to its customers that Plaintiff has not consented to the
13 use of his likeness in connection with various editions of *Sneaker*, including but not
14 limited to special edition World B. Free sneaker;

15 b. Intentionally appropriating the likeness of Plaintiff and other retired
16 NBA players who never contemplated or authorized the use of their likeness and
17 identities to be used in connection with select editions of Defendant's *Sneaker* so
18 that it could enhance sales of its campaign by advertising to its customers that the
19 characteristics of Plaintiff and other former NBA players could be purchased by its
20 customers; and

21 c. Engaging in this deceptive practice for the sole purpose of reaping
22 windfall profits at the expense of Plaintiff by wrongfully appropriating his likeness,
23 in violation of 15 U.S.C. § 1125(a), in order to enhance sales of its *Sneaker*
24 campaign by misleading the public that Plaintiff endorsed the use of his likeness in
25 certain editions of *Sneaker*, including but not limited to, *Sneaker*.

26 60. The unlawful, unfair and deceptive business practices of Defendant as alleged
27 herein have harmed Plaintiff, and Defendant has derived substantial revenue as a result of
28 the unlawful conduct alleged herein.

1 61. The rights of Plaintiff have been violated by Defendant's unlawful, unfair and
2 deceptive acts and practices, and Defendant has been, and will continue to be, unjustly
3 enriched by the unlawful conduct as alleged herein unless and until the Court provides the
4 relief prayed for below.

5 62. As a direct and proximate result of the unlawful conduct alleged herein,
6 Defendant has been unjustly enriched, and has received and continue to hold ill-gotten
7 gains, in a total amount to be determined at trial. Defendant should be required to disgorge
8 such ill-gotten gains.

9 63. Plaintiff is informed and believes and, on that basis, alleges that unless
10 restrained by this Court, Defendant will continue to infringe Plaintiff's rights of publicity.
11 Otherwise absent such injunctive relief, irreparable harm to Plaintiff is likely to occur, and
12 pecuniary compensation will not afford Plaintiff adequate relief for the damage to
13 Plaintiff's good will and reputation as a result of Defendant's unauthorized appropriation of
14 his likeness.
15

16 WHEREFORE, Plaintiff demands judgment as follows:
17

- 18 a. For an order by the Court enjoining Defendant and his agents, servants, and
19 employees, and all such persons and/or entities acting under, in concert with,
20 or for it from using the likeness of Plaintiff in connection with any of its
21 products or in connection with the marketing, distribution or advertising of
22 any of its products, including but not limited to, the *Sneaker* campaign series;
- 23 b. An order requiring Defendant: (a) to cease the acts of unfair competition
24 alleged herein; (b) to seek authorization from retired NBA players, like
25 Plaintiff, before using their likenesses in its products; and (c) to comply with
26 this State's statutory and common law rights of publicity concerning the use of
27 one's likeness for pecuniary profit or gain;
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- c. An order requiring Defendant to deliver all advertising, merchandise, promotional materials, magazines, and any and all things bearing Plaintiff's likeness to Plaintiff for destruction or other disposition by Plaintiff;
- d. Plaintiff also requests that Defendant be made to account to Plaintiff for all sales of *Sneaker* and all related merchandise, featuring Plaintiff's likeness to the date of judgment herein in order that the Court may order the disgorgement of all profits earned by Defendant as a result of its wrongful acts or such other amount as the Court shall find to be just according to the circumstances of the case;
- e. For general damages according to proof at trial;
- f. For special damages according to proof at trial;
- g. For exemplary or punitive damages against Defendant for their oppressive, fraudulent, and malicious conduct;
- h. Pre-judgment and post-judgment interest at the maximum rate allowable at law;
- i. The costs and disbursements incurred by Plaintiffs in connection with this action, including reasonable attorneys' fees and costs of suit; and
- j. Such other and further relief as the Court deems just and proper.

FIFTH COUNT

64. Plaintiff repeats and reasserts the allegations of the Complaint as fully set forth herein at length.

65. The Defendants have tortuously interfered with the contracts and prospective economic advantage of the Plaintiff.

66. Defendants intentionally, without justification or excuse, interfered with Plaintiff's pursuit of prospective economic or contractual business relationship(s) between Plaintiff and the customers and accounts of Plaintiff.

1 67. Plaintiff had an expectation of economic advantage through these relationships,
2 customer and accounts.

3 68. There is a reasonable probability that the interference has caused and will continue to
4 cause loss of perspective gain to Plaintiff.

5 **THEREFORE**, plaintiff demands judgment against defendants, individually and jointly as
6 follows:

- 7 a. For compensatory damages;
- 8 b. For special damages;
- 9 c. For loss of earnings and future earnings;
- 10 d. For punitive damages;
- 11 e. For all reasonable attorney fees and all costs of suit herein incurred; and
- 12 f. For such other and further relief as the court may deem just and appropriate.

13
14 **SIXTH COUNT**

15 69. Plaintiff restates and incorporates by reference each and every allegation contained in
16 paragraphs 1 through 68, inclusive, and though fully set forth herein.

17 70. Defendants formed a conspiracy and did through their conduct and actions conspire
18 for a common design and/or purpose. Their unlawful purpose and/or lawful purpose to be achieved
19 by unlawful means consisted of misrepresenting that the Nike has an agreement to sneaker bearing
20 Plaintiff's name and likeness and benefitting whether the sneaker sells on the one hand. On the
21 other hand Nike benefits if the sneaker does not sell because plaintiff's true endorsement of the Kix
22 "World B. Free" sneaker has been irreparable harmed. Upon the information and belief, defendants
23 engaged and conspired to injure and to harass plaintiff.

24 71. Plaintiff has suffered ordinary and special damages as result of defendants'
25 conspiracy. In particular, plaintiff's reputation has been damaged.

26 **THEREFORE**, plaintiff demands judgment against defendants, individually and jointly as
27 follows:

- 28 a. For compensatory damages;

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- b. For special damages;
- c. For loss of earnings and future earnings;
- d. For punitive damages;
- e. For all reasonable attorney fees and all costs of suit herein incurred; and
- f. For such other and further relief as the court may deem just and appropriate.

SEVENTH COUNT

72. Plaintiff repeats and reasserts the allegations of the Complaint as fully set forth herein at length.

73. Defendants received benefit from its continued use of the Plaintiff's name and likeness under the Nike brand of sneaker and dilution of Kix World B. Free sneaker.

74. Defendants retained the benefits and have not returned or provided reasonable compensation to Plaintiff.

75. The retention of the benefits without compensation would be unjust.

76. Plaintiff expected remuneration from the Defendants at the time it conferred the benefits to Defendants by associating with Plaintiff's brand and diluting Kix shoe company's association with Plaintiff's brand.

77. As a direct and proximate result, Plaintiff has been damaged.

THEREFORE, plaintiff demands judgment against defendants, individually and jointly as follows:

- a. For compensatory damages;
- b. Equitable relief; and
- c. For such other and further relief as the court may deem just and appropriate.

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JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

DATED: April 22, 2009

MCKENNA MCILWAIN, LLP



TIMOTHY MCILWAIN

Attorneys for Plaintiff

CERTIFICATION PURSUANT TO RULE 4:5-1

The undersigned, Timothy J. McIlwain, Esquire certifies on behalf of the above named plaintiff as follows:

1. I am an attorney admitted to practice law in the State of New Jersey, and have been entrusted with the handling of this matter for the above named plaintiff;
2. The matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated;
3. At this time, there are no other parties who should be joined in this action;
4. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: April 22, 2009

By: 
Timothy J. McIlwain, Esquire