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JUL 08 2009

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
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6 Attorneys for Plaintiff
7 HEATHER LANGENDORFER DBA
8 ATALANTA ATHLETICWEAR

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

13 HEATHER LANGENDORFER dba
14 ATALANTA ATHLECTICWEAR,

15 Plaintiff,

16 v.

17 NIKE, INC.,

18 Defendant.

Case #: **C09 03079**

**COMPLAINT FOR TRADEMARK
INFRINGEMENT,
COUNTERFEITING, FALSE
DESIGNATION OF ORIGIN, AND
UNFAIR COMPETITION**
JURY TRIAL DEMANDED

SC

19
20 Heather Langendorfer, doing business as a sole proprietorship called Atalanta Athleticwear
21 (hereinafter "Plaintiff") brings this action to redress the bad-faith infringement of Atalanta's
22 registered trademarks by Nike, Inc. ("Nike"). Plaintiff alleges as follows, upon actual knowledge
23 with respect to itself and its own acts, and upon information and belief as to all matters:

24 **I. NATURE OF CASE**

25 1. This is an action for trademark infringement and trademark counterfeiting under 15
26 U.S.C. § 114(1), trademark infringement and false designation of origin under 15 U.S.C. § 1125(a)
27 and unfair competition under California Business & Professions Code § 17200.

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II. PARTIES

2. Plaintiff is a sole proprietor who resides in Redwood City, CA.

3. Defendant Nike, Inc. is an Oregon corporation with its principal offices at Beaverton, OR. Nike is a leading supplier of athletic wear, and does business in the State of California.

III. JURISDCITION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to 15 USC 1121 and 28 USC §§ 1331, 1338(a) and (b). Pursuant to 28 USC § 1367, this Court has supplemental jurisdiction over Plaintiff's state law claims because those claims are so related to its federal claims that they form part of the same case or controversy and derived from a common nuclear was of operative facts.

5. This Court has personal jurisdiction over Defendants and venue is proper in the northern district of California pursuant to 28 USC § 1391 (b) and (c), because a substantial part of the events giving rise to these claims occurred in this judicial district.

IV. INTRA-DISTRICT ASSIGNMENT

6. The San Francisco division of the northern district of California is the appropriate division because a substantial part of the events giving rise to these claims occurred in San Mateo County, where Plaintiff's principal place of business is located.

V. BACKGROUND

7. Plaintiff is an entrepreneur, and an avid runner, who lives in Redwood City California. In January 2007, Ms. Langendorfer invented a novel type of running skirt for women, which was designed to avoid the chafing sometimes associated with running shorts. She formed a sole proprietorship called Atalanta Athleticwear in February 2007 to manufacturer, market and sell her athletic apparel.

8. As part of her marketing campaign, Plaintiff developed a unique and catching slogan: "DOES THIS SKIRT MAKE MY BUTT LOOK FAST?" ("Plaintiff's Mark").

9. On July 30, 2007, Plaintiff filed a federal trademark application for Plaintiff's Mark

1 - which was ultimately granted on April 29, 2008 under registration number 77241592. An
2 additional application for Plaintiff's Mark was made on December 29, 2007, and granted on August
3 5, 2008 under registration number 77361547. The latter registration was for "athletic apparel",
4 whereas the former was for "short sets".

5 10. Plaintiff has consistently used Plaintiff's Mark since April 2007 in connection with
6 the sale of the running skirt, and other women's athletic apparel designed and sold by the Plaintiff
7 (the "Plaintiff's Goods"). From April 2007, Plaintiff's Mark has appeared on Plaintiff's website at
8 www.skirtgoddess.com, with the TM superscript designation. A copy of Plaintiff's home page is
9 attached hereto as Exhibit A.

10 11. Among other things, Plaintiff's Mark is printed on the back of a shirt that forms a set
11 with the Plaintiff's running skirt. Attached hereto as Exhibit B is a representation of such shirt.

12 12. Plaintiff also uses Plaintiff's Mark in its other marketing efforts. For instance,
13 attached hereto as Exhibit C is a copy of one of Plaintiff's advertisements in Trail Runner magazine
14 from July 2008.

15 13. Plaintiff has developed notoriety within the niche market for women's athletic and
16 running apparel. Plaintiff regularly participates in special exhibitions for running merchandise
17 where Plaintiff's Mark is conspicuously displayed. For instance, Plaintiff's Mark is used on an 8
18 foot banner that dominates Plaintiff's booth – and this banner has been used at over 20 expositions
19 since its first use at the San Francisco Marathon in August 2007.

20 14. Plaintiff's Mark is highly distinctive and memorable. Customers often find it so
21 irresistible and memorable that they purchase Plaintiffs Goods solely for the mark. Attached as
22 Exhibit D is a screenshot from a Web review of Plaintiff's Goods which states: "There are so many
23 reasons I love Atalanta Athleticwear, and one of them is the question posed on the home page of
24 their web site: 'Does this skirt make my butt look fast?' It just makes me chuckle."

25 VI. DEFENDANT'S WRONGFUL CONDUCT

26 15. In May 2009, Plaintiff became aware that Defendant Nike was using a version of the
27 Plaintiff's Mark on Nike's own athletic apparel. Attached hereto as Exhibit E is a representation of

1 one of Nike's shirts with the slogan: "DOES THIS SHIRT MAKE MY BUTT LOOK FAST?"
2 (emphasis added) (the "Infringing Product").

3 16. At no time has Defendant Nike sought any permission from Plaintiff to use
4 Plaintiff's Mark or any version thereof.

5 17. Defendant's unauthorized use of the Plaintiff's Mark (or nearly identical versions
6 thereof) is, or was, likely to cause confusion, mistake and deception as to the source of the
7 Infringing Product, and is, or was, likely to falsely suggest a sponsorship, connection, license or
8 association of Defendant or the Infringing Product with Plaintiff.

9 18. Defendant's activities have irreparably harmed, and if not enjoined, will continue to
10 irreparably harm the general public, which has an inherent interest in being free from confusion,
11 mistake and deception.

12 19. Defendant's activities have irreparably harmed and, if not enjoined, will continue to
13 irreparably harm Plaintiff and Plaintiff's Marks.

14
15 **FIRST CAUSE OF ACTION**

16 **Trademark Infringement Under 15 and U.S.C. § 1114(1)**

17 20. Plaintiff re-alleges and incorporates by reference each of the allegations contained in
18 paragraphs 1 through 19 of this complaint as though fully set forth herein.

19 21. Defendant's use of Plaintiff's Mark is or was likely to cause confusion, mistake or
20 deception.

21 22. The above described acts of Defendant constitute trademark infringement in
22 violation of 15 U.S.C. § 114(1), entitling Plaintiff to relief.

23 23. Defendant has unfairly profited from the infringing actions alleged herein.

24 24. By reason of Defendant's acts, Plaintiff has suffered damage to the goodwill
25 associated with Plaintiff's Mark.

26 25. Defendant's activities have irreparably harmed, and if not enjoined, will continue to
27

1 irreparably harm the general public, which has an interest in being free from confusion, mistake and
2 deception.

3 26. Defendant's activities have irreparably harmed, and if not enjoined, will continue to
4 irreparably harm Plaintiff and Plaintiff's Mark.

5 27. By reason of Defendant's acts, Plaintiff's remedy at law is not adequate to
6 compensate for the injuries inflicted by Defendant. Accordingly, Plaintiff is entitled to preliminary
7 and permanent injunctive relief pursuant to 15 USC § 1116.

8 28. By reason of Defendant's willful acts, Plaintiff is entitled to damages, and that those
9 damages be trebled under 15 USC § 1117.

10 29. This is an exceptional case making Plaintiff eligible for an award of attorney's fees
11 under 15 USC § 1117.

12 **SECOND CAUSE OF ACTION**

13 **(Trademark Infringement and False Designation of Origin under 15 U.S.C. §1125(A))**

14
15 30. Plaintiff re-alleges and incorporates by reference each of the allegations contained in
16 paragraphs 1 through 29 of this complaint as though fully set forth herein.

17 31. Defendant's use in commerce of Plaintiff's Mark, and variations thereof, is likely to
18 cause confusion, or to cause mistake, or to deceive the relevant public that the Infringing Products
19 are authorized, sponsored or approved by or affiliated with Plaintiff.

20 32. The above described acts of Defendant constitute trademark infringement of
21 Plaintiff's Mark and false designation of origin in violation of 15 U.S.C. § 1125(a), entitling
22 Plaintiff to relief.

23 33. Defendant has unfairly profited from the actions alleged.

24 34. By reason of Defendant's acts alleged herein, Plaintiff has suffered damage to the
25 goodwill associated with Plaintiff's Mark.

26 35. Defendant's activities have irreparably harmed, and it's not enjoined, will continue to
27 irreparably harm the general public which has an interest in being free from confusion, mistake and

1 deception.

2 36. Defendant's activities have irreparably harmed, and if not enjoined, will continue to
3 irreparably harm Plaintiff and Plaintiff's Mark.

4 37. By reason of Defendant's acts, Plaintiff's remedy at law is not adequate to
5 compensate for the injuries inflicted by Defendant. Accordingly, Plaintiff is entitled to preliminary
6 and permanent injunctive relief pursuant to 15 USC § 1116 .

7 38. By reason of Defendant's willful acts, Plaintiff is entitled to damages, and that those
8 damages be trebled under 15 USC § 1117.

9 39. This is an exceptional case making Plaintiff eligible for an award of attorney's fees
10 under 15 USC § 1117.

11 **THIRD CAUSE OF ACTION**

12 **(Counterfeiting under 15 U.S.C. § 114(1))**

13 40. Plaintiff re-alleges and incorporates by reference each of the allegations contained in
14 paragraphs 1 through 39 of this complaint as though fully set forth herein.

15 41. Defendant's use of Plaintiff's Mark and substantially indistinguishable variations
16 thereof in connection with the Infringing Products is likely to cause confusion, mistake or
17 deception.

18 42. The above described acts of Defendant constitute counterfeiting in violation of 15
19 USC § 1114(1), entitling Plaintiff to relief.

20 43. Defendant has unfairly profited from the actions alleged.

21 44. By reason of Defendant's acts alleged herein, Plaintiff has suffered damage to the
22 goodwill associated with Plaintiff's Mark.

23 45. Defendant's activities have irreparably harmed, and if not enjoined, will continue to
24 irreparably harmed the general public which has an interest in being free from confusion, mistake
25 and deception.

26 46. Defendant's activities have irreparably harmed and if not enjoined will continue to
27 reparable harm Plaintiff and Plaintiff's Mark.

1 54. Defendant's conduct has been intentional and willful and in conscious disregard of
2 Plaintiff's rights and, therefore, Plaintiff is entitled to its attorneys' fees.

3
4 **REQUEST FOR RELIEF**

5 1. Therefore, Plaintiff respectfully requests judgment as follows:

6 2. That Defendant and its agents, employees, representatives and all persons acting in
7 concert with it, be preliminarily and permanently enjoined, directly or indirectly, by any means
8 whatsoever from using Plaintiff's Mark;

9 3. That Defendant account for, and disgorge, all profits it has derived by reason of the
10 unlawful acts complained of herein;

11 4. That Defendant be ordered to pay damages, and that those damages be trebled, under
12 15 U.S.C. § 1117;

13 5. That Defendant be ordered to pay statutory damages, on election by Plaintiff, in an
14 amount up to \$1 million for each counterfeit, due to the willful nature of Defendant's
15 counterfeiting;

16 6. That Defendant be ordered to pay Plaintiff's reasonable attorneys' fees, prejudgment
17 interest, and costs of this action under 15 USC 1117, and

18 7. That Plaintiff be awarded such other relief as may be appropriate.
19

20 Respectfully Submitted,

21 NARANCIC & KATZMAN, PC

22 /s/ Perry J. Narancic

23 Perry J. Narancic

24 Attorneys for Plaintiff
25 HEATHER LANGENDORGER DBA
26 ATALANTA ATHLECTICWEAR
27

Dated: July 7, 2009

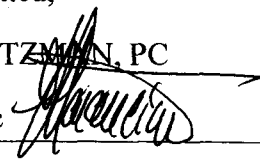
Demand for Jury Trial

Plaintiff hereby demands a trial by jury to decide all issues so triable in this case.

Respectfully Submitted,

NARANCIC & KATZMAN, PC

/s/ Perry J. Narancic



Perry J. Narancic

Dated: July 7, 2009

Attorneys for Plaintiff
HEATHER LANGENDORGER DBA
ATALANTA ATHLECTICWEAR

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