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11
12 Attorneys for Plaintiff, NIKE, Inc.

13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15
16 NIKE, INC.)

17 Plaintiff,)

18 vs.)

19 FUJIAN BESTWINN (CHINA) INDUSTRY)
CO., LTD. a/k/a XIAMEN BESTWINN IMP. &)
20 EXP. CO., LTD.)

21 Defendant.)
22

Case No.: 2:16-cv-00311

COMPLAINT

(JURY DEMAND)

23 Plaintiff, NIKE, Inc. for its complaint against Defendant, Fujian Bestwinn (China)
24 Industry Co., Ltd. a/k/a Xiamen Bestwinn Imp. & Exp. Co., Ltd., states as follows:

25 **I. PARTIES**

26 1. NIKE is a corporation organized under the laws of the State of Oregon and has a
27 principal place of business at One Bowerman Drive, Beaverton, Oregon 97005. NIKE is the
28

1 **III. GENERAL ALLEGATIONS**

2 **A. NIKE’s Design Patents**

3 7. For many years, NIKE has designed, marketed, and distributed a wide array of
4 athletic and fashion footwear, apparel, and sports equipment.

5
6 8. NIKE has taken steps to protect its innovative designs, including its footwear-
7 related designs. In particular, NIKE owns various United States patents relating to its footwear
8 designs. Relevant to this dispute, NIKE owns all right, title, and interest in, and has the right to
9 sue and recover for past, present, and future infringement of, each of the design patents identified
10 in Table 1 (collectively hereafter, the “NIKE Design Patents”) from the date each patent duly and
11 legally issued to NIKE. A copy of each NIKE Design Patent is attached to this Complaint as
12 indicated in Table 1.
13

14 **TABLE 1: NIKE Design Patents**

United States Design Patent No.	Issue Date of Patent	Complaint Exhibit
D636,573	April 26, 2011	A
D666,405	September 4, 2012	B
D666,406	September 4, 2012	C
D673,765	January 8, 2013	D
D682,523	May 21, 2013	E
D683,119	May 28, 2013	F
D683,946	June 11, 2013	G
D694,501	December 12, 2013	H
D696,849	January 7, 2014	I
D696,853	January 7, 2014	J

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TABLE 1: NIKE Design Patents		
United States Design Patent No.	Issue Date of Patent	Complaint Exhibit
D700,423	March 4, 2014	K
D701,689	April 1, 2014	L
D707,027	June 17, 2014	M
D707,028	June 17, 2014	N
D707,032	June 17, 2014	O
D707,033	June 17, 2014	P
D710,579	August 12, 2014	Q
D746,037	December 29, 2015	R

9. The NIKE Design Patents are presumed to be valid.

B. Bestwinn’s Infringing Activities

10. Without NIKE’s authorization, Bestwinn has made, used, sold, offered to sell, and/or imported into the United States shoes bearing designs that have the same or substantially similar overall visual impression as the designs covered by the NIKE Design Patents (hereafter, the “Infringing Shoes”).

11. On information and belief, Bestwinn promotes and sells Infringing Shoes at least twice yearly at the WSA trade shows in Las Vegas, Nevada. According to the WSA’s website, the WSA trade show, held in February and August of each year, “offer[s] the largest selection of fast fashion footwear anywhere in the world,” and has “a global base of product and buyers from over 100 countries.” (Compl. Ex. S, <http://www.magiconline.com/wsa-at-magic>, last visited February 1, 2016).

12. Pursuant to 35 U.S.C. § 287 and 15 U.S.C. § 1111, NIKE has on several

1 occasions notified Bestwinn that it is infringing NIKE's rights by making, using, selling, offering
2 to sell, and/or importing Infringing Shoes into the United States, including shoes identified by
3 Bestwinn Model Numbers: 90088, BW1001, BW1002, BW1003, BW71389, BW71389A—
4 BW71389P, BW71390, BW71390A—BW71390C, BW71391, BW71391A-BW71391E,
5 BW71390A-1—BW71390C-1, BW71391A-1, BW71391B-1, BW71391D-1, BW71392,
6 BW71392A—BW71392N, BW71392-1 and BW71392A-1—BW71392E-1.
7

8 13. Many of the infringing models are shown in Bestwinn catalogs that Bestwinn uses
9 as promotional material at WSA trade shows. Excerpts of Bestwinn's catalogs are attached as
10 Compl. Ex. T, and specific examples of Infringing Shoes are compared to NIKE Design Patents
11 in Table 4 below. However, because Bestwinn does not provide identifying indicia on all of its
12 Infringing Shoes and because NIKE has not been able to secure an image of each Infringing
13 Shoe, Table 4 is not an all-inclusive list of Bestwinn's Infringing Shoes.
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TABLE 4: Example Infringements

<u>Representative NIKE Design Patent Figure</u>	<u>Representative Infringing Shoes</u>
 <p>U.S. Pat. No. D666,405 <i>See Compl. Ex. B</i></p>	 <p>Model No. BW71390</p>
 <p>U.S. Pat. No. D666,406 <i>See Compl. Ex. C</i></p>	 <p>Model No. BW713901</p>
 <p>U.S. Pat. No. D673,765 <i>See Compl. Ex. D</i></p>	 <p>Model No. BW71389F</p>

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TABLE 4: Example Infringements

<u>Representative NIKE Design Patent Figure</u>	<u>Representative Infringing Shoes</u>
 <p data-bbox="743 718 799 743">FIG. 1</p> <p data-bbox="462 760 771 835">U.S. Pat. No. D683,946 See Compl. Ex. G</p>	 <p data-bbox="1133 751 1360 787">Model No. 90088</p>
 <p data-bbox="750 1213 808 1239">FIG. 1</p> <p data-bbox="462 1249 771 1318">U.S. Pat. No. D696,849 See Compl. Ex. I</p>	 <p data-bbox="1096 1218 1404 1249">Model No. BW71389H</p>
 <p data-bbox="571 1669 636 1694">FIG. 2</p> <p data-bbox="462 1711 771 1785">U.S. Pat. No. D696,853 See Compl. Ex. J</p>	 <p data-bbox="1096 1690 1404 1722">Model No. BW71392F</p>

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TABLE 4: Example Infringements

<u>Representative NIKE Design Patent Figure</u>	<u>Representative Infringing Shoes</u>
 <p>FIG. 2</p> <p>U.S. Pat. No. D700,423 <i>See Compl. Ex. K</i></p>	 <p>Model No. BW71392F</p>
 <p>FIG. 1</p> <p>U.S. Pat. No. D701,689 <i>See Compl. Ex. L</i></p>	 <p>Model No. BW71389A</p>
 <p>FIG. 1</p> <p>U.S. Pat. No. D707,027 <i>See Compl. Ex. M</i></p>	 <p>Model No. BW71390A</p>

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TABLE 4: Example Infringements

<u>Representative NIKE Design Patent Figure</u>	<u>Representative Infringing Shoes</u>
 <p data-bbox="747 743 803 772">FIG. 1</p> <p data-bbox="462 827 771 890">U.S. Pat. No. D707,028 See Compl. Ex. N</p>	 <p data-bbox="1096 758 1404 787">Model No. BW71390B</p>
 <p data-bbox="565 1241 641 1270">FIG. 2</p> <p data-bbox="462 1283 771 1346">U.S. Pat. No. D707,032 See Compl. Ex. O</p>	 <p data-bbox="1104 1251 1388 1281">Model No. BW71392</p>
 <p data-bbox="755 1730 820 1759">FIG. 1</p> <p data-bbox="462 1801 771 1864">U.S. Pat. No. D707,033 See Compl. Ex. P</p>	 <p data-bbox="1096 1751 1404 1780">Model No. BW71390B</p>

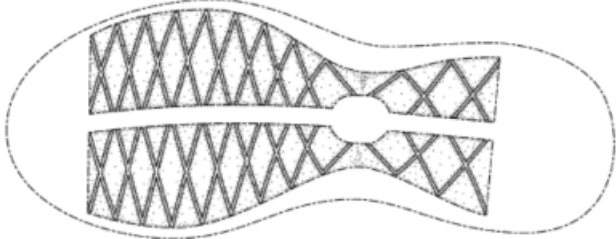
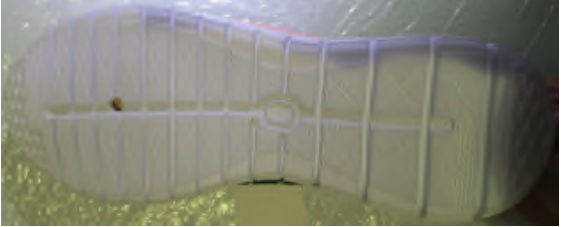
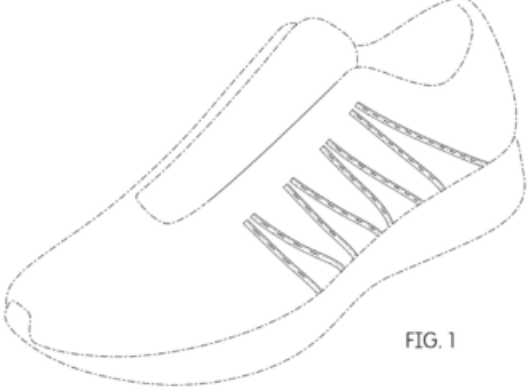

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TABLE 4: Example Infringements

<u>Representative NIKE Design Patent Figure</u>	<u>Representative Infringing Shoes</u>
 <p data-bbox="495 777 535 798">FIG. 1</p> <p data-bbox="462 840 771 913">U.S. Pat. No. D710,579 See Compl. Ex. Q</p>	 <p data-bbox="1096 777 1404 808">Model No. BW71389N</p>
 <p data-bbox="462 1165 771 1239">U.S. Pat. No. D682,523 See Compl. Ex. E</p>  <p data-bbox="462 1522 771 1596">U.S. Pat. No. D683,119 See Compl. Ex. F</p>	 <p data-bbox="1104 1386 1388 1417">Model No. BW71448</p>
 <p data-bbox="462 1879 771 1953">U.S. Pat. No. D746,037 See Compl. Ex. R</p>	 <p data-bbox="1104 1900 1388 1932">Model No. BW71448</p>

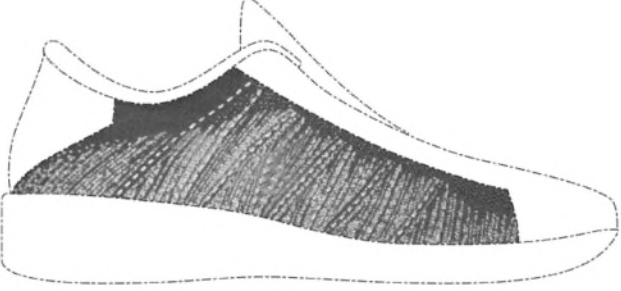

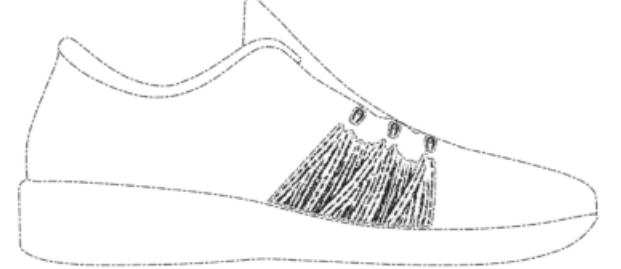

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TABLE 4: Example Infringements

<u>Representative NIKE Design Patent Figure</u>	<u>Representative Infringing Shoes</u>
 <p data-bbox="461 638 768 709">U.S. Pat. No. D636,573 <i>See Compl. Ex. A</i></p>	 <p data-bbox="1133 621 1365 653">Model No. 14149</p>
 <p data-bbox="753 1041 808 1066">FIG. 1</p> <p data-bbox="461 1108 768 1180">U.S. Pat. No. D666,406 <i>See Compl. Ex. C</i></p>	 <p data-bbox="1133 1062 1365 1094">Model No. 14149</p>

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TABLE 4: Example Infringements

<u>Representative NIKE Design Patent Figure</u>	<u>Representative Infringing Shoes</u>
 <p>FIG. 2</p> <p>U.S. Pat. No. D700,423 <i>See Compl. Ex. K</i></p>	 <p>Model No. 14260</p>
 <p>FIG. 2</p> <p>U.S. Pat. No. D707,032 <i>See Compl. Ex. O</i></p>	
 <p>FIG. 2</p> <p>U.S. Pat. No. D696,853 <i>See Compl. Ex. J</i></p>	

14. NIKE never authorized Bestwinn to use the NIKE Design Patents.

15. On information and belief, Bestwinn knew of the NIKE Design Patents before it began making, using, selling, offering to sell, and/or importing Infringing Shoes into the United

1 States.

2 16. On information and belief, Bestwinn continued making, using, selling, offering to
3 sell, and/or importing Infringing Shoes into the United States with knowledge of the NIKE
4 Design Patents and after NIKE provided Bestwinn notice of its infringements.

5 17. A detailed history of NIKE's infringement notices to Bestwinn follows. At the
6 WSA trade show held from August 18-21, 2013, NIKE representatives visited the Bestwinn
7 company booth and notified Bestwinn that Bestwinn's promotion and offer to sell certain
8 products at the WSA trade show, including model number 90088, infringed NIKE's U.S. Patent
9 Nos. D683,946 and D683,948. NIKE's representatives provided Bestwinn with copies of these
10 NIKE patents.

11 18. On September 4, 2013, NIKE's counsel sent a notice letter to Bestwinn's business
12 address in China. The letter, attached as Compl. Ex. U, reiterated NIKE's assertions of
13 infringement with regard to NIKE's U.S. Patent Nos. D683,946 and D683,948, and provided
14 additional copies of each. NIKE's letter requested Bestwinn's response. Bestwinn never
15 responded.

16 19. On February 7, 2014, NIKE's counsel sent a second notice letter to Bestwinn's
17 business address in China. NIKE's second notice letter, attached as Compl. Ex. V, confirmed
18 NIKE's earlier notifications in anticipation of the upcoming February, 2014 WSA trade show.
19 NIKE's second notice letter further informed Bestwinn of additional design patents issued to
20 NIKE since the previous WSA trade show. NIKE's letter requested Bestwinn's response.
21 Bestwinn never responded to NIKE's second letter.

22 20. On August 28, 2014, NIKE representatives received a forwarded copy of an email
23 from Bestwinn representative Candice Huang (candice@bestwinn.com) to info@lunge.de, titled
24 "Nike style Flyknit sport shoes the hottest item at Magic [WSA] Show!" In the email, a redacted
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1 copy of which is attached as Compl. Ex. W, Ms. Huang promoted and offered Infringing Shoes
2 for sale, noting that Bestwinn's "NIKE style flyknit sport shoes were very popular on the fair,"
3 and that Bestwinn "got many sample orders and some official orders from there." Ms. Huang
4 described the Infringing Shoes, noting that "[t]he upper is flyknit, we have many different color
5 combination and patterns for your choice. For outsole, we have air cushion outsole which is
6 colorful and looks very cool." Ms. Huang explained that "[w]e now have full size from 28-35#
7 for kids, 36-41# for women, and 41-46# for men," and provided several product catalogs.

9 21. At the WSA trade show held from August 17-20, 2014, NIKE representatives
10 again visited the Bestwinn company booth and observed Bestwinn offering to sell additional
11 Infringing Shoes. As a result, on January 22, 2015, NIKE sent a third notice letter to Bestwinn's
12 business address in China. NIKE's third notice letter, attached as Compl. Ex. X, notified
13 Bestwinn that Bestwinn's promotion and offer to sell certain products at the August, 2014, WSA
14 trade show, including model numbers BW1001, BW1002, BW1003, BW71389, BW71389A-
15 BW71389P, BW71390, BW71390A—BW71390C, BW71391, BW71391A—BW71391E,
16 BW71390A-1, BW71390B-1, BW71390C-1, BW71391A-1, BW71391B-1, BW71391D-1,
17 BW71392, BW71392A—BW71392N, BW71392-1, and BW71392A-1—BW71392E-1,
18 infringed one or more of NIKE's U.S. Patent Nos. D666,405; D666,406; D673,765; D682,523;
19 D696,849; D696,853; D701,689; D707,027; D707,028; D707,032; D707,033; and D710,579.
20 NIKE enclosed copies of each referenced patent in its third notice letter. NIKE's letter requested
21 Bestwinn's response. Bestwinn never responded.

22 22. On December 18, 2015, in anticipation of the WSA trade show taking place now,
23 NIKE sent a fourth letter to Bestwinn's business address in China. NIKE's fourth notice letter,
24 attached as Compl. Ex. Y, referenced each of NIKE's earlier notice letters and requested
25 Bestwinn's response. Bestwinn never responded.
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1 C. A temporary, preliminary, and permanent injunction against further infringement
2 of the NIKE Design Patents and colorable imitations thereof by Bestwinn, its officers, agents,
3 servants, employees, and attorneys, and all others in active concert or participation with any of
4 them;

5
6 D. An order pursuant to the Court's inherent authority directing the seizure of all
7 Infringing Shoes, or any other copy, reproduction, or colorable imitation of the NIKE Design
8 Patents that are in Bestwinn's possession or control, including all advertising and other materials
9 used in furtherance of Bestwinn's infringements whether in hard copy or electronic form;

10 E. An award of damages adequate to compensate NIKE for the patent infringements
11 that have occurred pursuant to 35 U.S.C. § 284, which shall be trebled as a result of Bestwinn's
12 willful patent infringement, or an award of Bestwinn's profits from its infringements pursuant to
13 35 U.S.C. § 289, whichever is greater, together with prejudgment interest and costs;

14
15 F. An assessment of costs, including reasonable attorney fees and expenses, pursuant
16 to 35 U.S.C. § 285, with prejudgment interest; and

17 G. Such other and further relief as this Court deems just and proper.

18 **IV. DEMAND FOR JURY TRIAL**

19 Pursuant to Fed. R. Civ. P. 28, NIKE hereby demands a trial by jury on all issues for
20 which a trial by jury may be had.

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22 Dated: February 17, 2016

Respectfully submitted,

23 /s/ Michael J. McCue
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