

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

POINT 3 BASKETBALL, LLC,

Plaintiff,

v.

NIKE, INC.,

Defendant.

CIVIL ACTION FILE

NO. \_\_\_\_\_

**COMPLAINT AND JURY DEMAND**

Plaintiff POINT 3 Basketball, LLC (“POINT 3”), for its complaint against Defendant Nike, Inc. (“Nike”), states and alleges as follows:

**PARTIES**

1. POINT 3 Basketball, LLC is a Georgia limited liability company with its principal place of business at 449 Moreland Avenue, Suite 201, Atlanta, Georgia 30307.

2. POINT 3 sells a line of basketball apparel utilizing its DRYV<sup>®</sup> Moisture Control Technology. This technology is described in U.S. Patent No. 8,769,716 (“the ’716 Patent”), a copy of which is attached as Exhibit A. POINT 3’s DRYV<sup>®</sup> Moisture Control Technology has received industry recognition and praise. For example, in its May 2012 issue, Apparel Magazine selected POINT 3

as one of 33 Innovator Award Winners. A copy of an excerpt from the May 2012 issue is attached as Exhibit B.

3. Nike, Inc. is an Oregon corporation with a principal place of business located at One Bowerman Drive, Beaverton, Oregon 97005-6453.

### **JURISDICTION**

4. This is an action for patent infringement under the patent laws of the United States, Title 35, United States Code, Section 271 *et seq.* and arising from Nike's acts of infringement of the '716 Patent through its importation, manufacture, use, offer for sale, and sale of athletic clothing that utilizes a combination of moisture wicking and moisture absorbing materials, including, without limitation, Nike Hyper Elite Shorts for the University of Kentucky, Duke University, Syracuse University, University of Florida, University of Arizona, University of Oregon, the University of Connecticut and Baylor University, Nike's LeBron Outdoor Tech Shorts, LeBron Outdoor Tech Sleeveless Top, KD (Kevin Durant) Outdoor Tech Shorts, KD (Kevin Durant) Outdoor Tech Sleeveless Top, Kobe Outdoor Tech Shorts, Kobe Outdoor Tech Sleeveless Top, Nike Elite Outdoor Tech Shorts, and Nike Elite Outdoor Tech Sleeveless Top.

5. This Court has subject matter jurisdiction over the claims and causes of action asserted in this Complaint because the claims arise under the patent laws of the United States.

6. Nike is subject to general and specific personal jurisdiction in the Northern District of Georgia under the Georgia Long Arm Statute (O.C.G.A. § 9-10-91) and consistent with the principles of due process, because Nike offers its products for sale in this District, has transacted business in this District, has committed acts of patent infringement in this District, and/or has placed infringing products into the stream of commerce through established distribution channels with the expectation that such products will be purchased by residents of this District, for example, distribution of its infringing athletic clothing to Nike stores in this District. For example, Nike has stores located throughout Georgia, including, but not limited to, Nike Lenox at 3393 Peachtree Road NE, Atlanta, Georgia 30326. Nike is also specifically authorized to transact business in the State of Georgia and has a Registered Agent, namely National Registered Agents, Inc., located at 1201 Peachtree Street N.E., Suite 1240, Atlanta, Georgia 30361. Thus, Nike does and has had substantial, systematic and continuous business transactions in Georgia, and has, as is readily apparent, at a minimum, offered to provide and/or has provided to customers specifically within this District and

throughout the State of Georgia products that fall within the scope of one or more claims of the '716 Patent.

7. Venue is proper in this District under 28 U.S.C. § 1391(b) and § 1400(b).

**THE PLAINTIFF'S PATENT**

8. On July 8, 2014, the U.S. Patent and Trademark Office duly and legally issued the '716 Patent, titled "Moisture Control Garment."

9. POINT 3 is the owner by assignment of all right, title, and interest in and to the '716 Patent, including the right to sue for past damages, and has standing to sue for infringement of the '716 Patent.

**FIRST CLAIM FOR RELIEF  
PATENT INFRINGEMENT OF THE '716 PATENT**

10. POINT 3 hereby incorporates Paragraphs 1 through 9 set forth above as if fully set forth herein.

11. Nike has directly infringed and continues to directly infringe at least claim 1 of the '716 Patent by importing, making, offering to sell, and/or selling, in or into the United States, athletic clothing as claimed in the '716 Patent. The accused athletic clothing products that embody the inventions claimed in the '716 Patent include, without limitation, Nike Hyper Elite Shorts for the University of Kentucky, Duke University, Syracuse University, University of Florida, University

of Arizona, University of Oregon, the University of Connecticut and Baylor University, Nike's LeBron Outdoor Tech Shorts, LeBron Outdoor Tech Sleeveless Top, KD (Kevin Durant) Outdoor Tech Shorts, KD (Kevin Durant) Outdoor Tech Sleeveless Top, Kobe Outdoor Tech Shorts, Kobe Outdoor Tech Sleeveless Top, Nike Elite Outdoor Tech Shorts, and Nike Elite Outdoor Tech Sleeveless Top.

12. POINT 3 has complied with the statutory marking requirement by placing a notice of the '716 Patent on all of its products with DRYV<sup>®</sup> Moisture Control Technology that it manufactures and sells.

13. Further, POINT 3 has complied with the statutory requirement of giving notice of the '716 Patent to Nike at least by filing this lawsuit and by providing Nike with a copy of this complaint.

14. Still further, on information and belief, Nike has had notice of the '716 Patent since at least August 11, 2014.

15. POINT 3 is informed and believes, and thereon alleges, that Nike's infringement of the '716 Patent has been and continues to be willful.

16. As a direct and proximate cause of Nike's conduct, POINT 3 has suffered and will continue to suffer irreparable injury, for which it has no adequate remedy at law.

17. POINT 3 has also been damaged and, until an injunction issues, will continue to be damaged in an amount yet to be determined.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff POINT 3 prays that this Court:

a. Enter a judgment that Nike has directly infringed at least one of the claims of the '716 Patent;

b. Grant a preliminary injunction enjoining Nike and its agents, servants, officers, directors, employees, and persons or entities acting in concert with Nike from directly infringing the claims of the '716 Patent;

c. Grant a permanent injunction enjoining Nike and its agents, servants, officers, directors, employees, and persons or entities acting in concert with Nike from directly infringing the claims of the '716 Patent;

d. Award POINT 3 damages in an amount sufficient to compensate POINT 3 for Nike's infringement of the '716 Patent, but not less than a reasonable royalty and the trebling of such damages because of the willful nature of Nike's infringement;

e. Award POINT 3 interest and costs pursuant to 35 U.S.C. § 284;

f. Declare this case exceptional under 35 U.S.C. § 285 and award POINT 3 its reasonable attorneys' fees, expenses, and costs incurred in this action; and

g. Grant such other and further relief that the Court finds just and equitable.

**DEMAND FOR JURY TRIAL**

Plaintiff POINT 3 demands a jury trial on all issues so triable.

Respectfully submitted this 6<sup>th</sup> day of March, 2015.

KENT LAW, P.C.

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