

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO.

FRED FREY,

Plaintiff,

vs.

NIKE, INC.

Defendant.

_____ /

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fred Frey (“Mr. Frey”) hereby sues Defendant NIKE, Inc. (“NIKE”) for patent infringement, and for his Complaint alleges as follows:

THE PARTIES

1. Mr. Frey is an individual who resides in Broward County, Florida.
2. NIKE is a corporation organized and existing under the laws of the state of Oregon, with its principal place of business in Beaverton, Oregon.

JURISDICTION AND VENUE

3. This Court has federal question jurisdiction of this action under 28 U.S.C. §§ 1331 and 1338(a) because Mr. Frey seeks relief under the Patent Act, 35 U.S.C. § 271 *et seq.*, including remedies for infringement of a United States Patent owned by Mr. Frey.
4. NIKE is subject to personal jurisdiction in this state under Fla. Stat. section 48.193 because NIKE has transacted and continues to transact business in this state, has contracted to supply services or products in this state, and/or has caused tortious injury in this state.

5. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(b) because a substantial part of the events giving rise to these claims occurred in this judicial district, because Mr. Frey has suffered injury in this district, and because NIKE resides in this district under the patent venue statute by having committed acts of alleged patent infringement in this district.

COUNT I – PATENT INFRINGEMENT

6. Mr. Frey repeats and realleges each and all of the allegations contained in paragraphs 1-5 above as though fully set forth herein.

7. Mr. Frey is the inventor of United States Design Patent No. 393,138 (“the ‘138 Patent”), which was duly and lawfully issued on April 7, 1998 by the United States Patent and Trademark Office. A true and correct copy of the ‘138 Patent is attached hereto as Exhibit “A.” Mr. Frey owned the ‘138 Patent throughout the period of NIKE’s infringing acts, and still owns the patent.

8. NIKE has infringed the ‘138 Patent by, during the term of the patent, making, selling, offering to sell, and/or importing products having a design that embodies the patented invention, without Mr. Frey’s authorization or consent.

9. Mr. Frey gave NIKE written notice of the infringement.

10. NIKE generated substantial profits based on its infringement of the ‘138 Patent in an amount to be proven at trial.

11. Mr. Frey was damaged by NIKE’s infringement of the ‘138 Patent in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Mr. Frey prays for the following relief:

- A. That the Court finds NIKE liable for infringement of United States Design Patent No. 393,138.
- B. That the Court awards Mr. Frey the profits generated by NIKE's infringement pursuant to 35 U.S.C. § 289.
- C. That the Court, in the alternative to an award of profits under 35 U.S.C. § 289, awards Mr. Frey compensatory damages of not less than a reasonable royalty, in accordance with 35 U.S.C. § 284.
- D. That the Court awards Mr. Frey his taxable costs, expenses, and pre-judgment and post-judgment interest.
- E. That the Court grants such other and further relief as the Court deems just and proper.

JURY DEMAND

Mr. Frey demands trial by jury on all issues so triable.

Dated: December 16, 2013

Respectfully submitted,

s/John C. Carey

John C. Carey / Florida Bar No. 78379

jcarey@careyrodriguez.com

Ernesto M. Rubi / Florida Bar No. 92014

erubi@careyrodriguez.com

CAREY RODRIGUEZ GREENBERG

O'KEEFE, LLP

1395 Brickell Avenue, Suite 700

Miami, Florida 33131

Telephone: (305) 372-7474

Facsimile: (305) 372-7475

Counsel for Plaintiff Fred Frey