

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

SPORTBRAIN HOLDINGS INC.,

Plaintiff,

v.

NIKE, INC.,

Defendant.

Civil Action No. 2:13-cv-00001-JRG-RSP

**AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

Plaintiff Sportbrain Holdings Inc. (“Plaintiff” or “Sportbrain”), by and through its undersigned counsel, files this Amended Complaint for Patent Infringement against Defendant Nike, Inc. (“Defendant” or “Nike”) as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendant's infringement of Plaintiff's United States Patent No. 7,454,002 entitled “*Integrating Personal Data Capturing Functionality Into a Portable Computing Device and a Wireless Communication Device*” (hereinafter, the “’002 patent” or the “Patent-in-Suit”). A copy of the ‘002 patent, is attached hereto as Exhibit A. Plaintiff is the owner of the Patent-in-Suit. Plaintiff seeks injunctive relief and monetary damages.

**PARTIES**

2. Sportbrain is a corporation organized and existing under the laws of the state of Texas since November 19, 2010. Plaintiff maintains its principal place of business at 6700

Woodlands Parkway No. 230-181, The Woodlands, Montgomery County, Texas 77382-2575. Plaintiff is the exclusive licensee of the Patent-in-Suit, and possesses all rights thereto, including the exclusive right to exclude the Defendant from making, using, selling, offering to sell or importing in this district and elsewhere into the United States the patented invention(s) of the Patent-in-Suit, the right to sublicense the Patent-in-Suit, and to sue the Defendant for infringement and recover past damages.

3. Upon information and belief, Nike is a corporation duly organized and existing under the laws of the State of Oregon with its principal place of business located at One Bowerman Drive, Beaverton, Washington County, Oregon, 97005. Defendant may be served through its registered agent, Hilary K. Crane, at the same address. Upon information and belief, Defendant is also registered as a foreign corporation with the State of Texas as a foreign corporation and may also be served through its registered agent, National Registered Agents, Inc., 1021 Main Street, Suite 1150, Houston, Texas, 77002.

### **JURISDICTION AND VENUE**

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because: Defendant has minimum contacts within the State of Texas and in the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the

State of Texas; Defendant regularly conducts business within the State of Texas and in the Eastern District of Texas.

6. More specifically, Defendant, directly and/or through its intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas and in the Eastern District of Texas. Defendant's business activity consists of "Design, Development And Worldwide Marketing And Selling Of Footwear, Apparel, Equipment, And Accessory Products."<sup>1</sup>

7. Upon information and belief, Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has many paying customers who are residents of the State of Texas and in the Eastern District of Texas and who use Defendant's products and services in the State of Texas and in the Eastern District of Texas.

8. Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

9. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b).

**COUNT I:**  
**INFRINGEMENT OF U.S. PATENT NO. 7,454,002**

10. Plaintiff re-alleges and incorporates by reference each of Paragraph 1 - 9 above.

11. The '002 Patent was duly and legally issued by the United States Patent and Trademark Office on November 18, 2008 after full and fair examination. Plaintiff is the

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<sup>1</sup> Source: Registry Number 8739914, Amended Annual Report (filed: August 1, 2012), available at <http://records.sos.state.or.us/webdrawer/webdrawer.dll/webdrawer/rec/2264474/view/SOS%20-%20Corporation%20-%20Business%20Entity%20Filing%20Records%20-%208739914.PDF>

exclusive licensee of the '002 Patent, and possesses all right, title and interest in the '002 Patent including the right to enforce the '002 Patent, and the right to sue Defendant for infringement and recover past damages.

12. On information and belief, Defendant has had knowledge of the '002 Patent as early as January 7, 2013 when it received service of the Original Complaint in this matter.

13. On information and belief, Defendant operates, advertises, and controls its website, www.Nike.com, through which Defendant advertises, sells, offers to sell, provides services and/or educates customers about its Products and Services, including the Nike+ FuelBand activity tracker and the Nike+ Running App.

14. Plaintiff is informed and believes that Defendant has infringed and continues to infringe the '002 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Defendant has infringed and continues to infringe one or more claims of the '002 Patent by making, using, selling, providing, advertising and/or importing, directly or through intermediaries, in this district and elsewhere in the United States, devices for integrating a personal data capturing functionality into a wireless communication device and for analyzing and supplying feedback information to a user through the combined use of the personal parameter receiver, a wireless communication device, a network server, and website in this district and elsewhere in the United States through its website. Specifically, one or more of Defendant's Products and Services, including but not limited to the Nike+ FuelBand activity tracker and the Nike+ Running App, infringe one or more of the claims of the '002 Patent when used by the Defendant. Defendant's infringing Products and Services are available for sale on its website and through various retailers located in this district.

15. Plaintiff is informed and believes that Defendant in conjunction with its customers have infringed and continue to infringe the '002 Patent, either literally or under the doctrine of equivalents. Upon information and belief, Defendant and its customers have collectively infringed and continue to infringe one or more claims of the '002 Patent by making, using, selling, providing, advertising and/or importing, directly or through intermediaries, in this district and elsewhere in the United States, devices for integrating a personal data capturing functionality into a wireless communication device and for analyzing and supplying feedback information to a user through the combined use of the personal parameter receiver, a wireless communication device, a network server, and website in this district and elsewhere in the United States through its website. Specifically, one or more of Defendant's Products and Services, including but not limited to the Nike+ FuelBand activity tracker and the Nike+ Running App, infringe one or more of the claims of the '002 Patent when used by Defendant's customers with input, support, tools and other assistance from Defendant.

16. Upon information and belief, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '002 Patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled and otherwise caused its customers to use Defendant's Products and Services for integrating a personal data capturing functionality into a wireless communication device and for analyzing and supplying feedback information to a user through the combined use of the personal parameter receiver, a wireless communication device, a network server, and website in this district and elsewhere in the United States through its website. Despite its knowledge of the existence of '002 Patent since as early as January 7, 2013, Defendant, upon information and belief, continues to encourage, instruct, enable and otherwise

cause its customers to use its Products and Services in a manner which infringes the '002 Patent. Upon information and belief, Defendant has specifically intended that its customers use its Products and Services in such a way that infringes the '002 Patent by, at a minimum, providing and supporting the Products and Services and instructing its customers on how to use said Products and Services in such a way that infringes the '002 Patent and knew that its actions, including but not limited to providing said Products and Services and instruction, would induce, have induced, and will continue to induce infringement by its customers. Specifically, Defendant has encouraged, instructed, enabled and otherwise caused its customers to use one or more of Defendant's Products and Services, including but not limited to the Nike+ FuelBand activity tracker and the Nike+ Running App, to infringe one or more of the claims of the '002 Patent when used by Defendant's customers with the assistance and support of Defendant.

17. Upon information and belief, Defendant has contributed to and continues to contribute to the infringement of one or more claims of the '002 patent in this district and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged, instructed, enabled and otherwise caused its customers to use its Products and Services, such as but not limited to the Nike+ FuelBand activity tracker and the Nike+ Running App, having been provided by Defendant to its customers for the primary purpose of causing infringing acts by said customers by offering to sell, and selling (directly or through intermediaries), to its customers, its Products and Services and that its customers have utilized said Products and Services in a manner that infringes one or more claims of the '002 patent. Defendant has had knowledge of the '002 patent as early as January 7, 2013. Upon information and belief, Defendant has specifically intended and/or specifically intends that its customers use Defendant's Products and Services in such a way that infringes the '002 patent by, at minimum,

providing its activity trackers and associated services along with instructions to its customers on how to use the Defendant's Products and Services in such a way that infringes the '002 patent, and knew and/or knows that its Products and Services are especially made and/or adapted for user(s) to infringe one or more claims of the '002 patent with the assistance and support of Defendant, and, therefore, are not staple articles or commodities of commerce suitable for a substantial non-infringing use.

18. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

19. Since it was made aware of the '002 Patent as early as January 7, 2013, Defendant has continued to provide its Products and Services to its customers.

20. Despite its knowledge of the '002 Patent at least since January 7, 2013, upon information and belief, Defendant's aforesaid activities have continued without a reasonable basis for continuing its infringing actions.

21. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

22. Defendant's infringement of Plaintiff's rights under the '002 Patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

**JURY DEMAND**

23. Plaintiff demands a trial by jury on all issues.

**PRAYER FOR RELIEF**

Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patent-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by the Defendant and/or its customers;
- B. An adjudication that Defendant has induced infringement of one or more claims of the Patent-in-Suit;
- C. An adjudication that Defendant has contributed to the infringement of one or more claims of the Patent-in-Suit;
- D. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with prejudgment interest pursuant to 35 U.S.C. § 284;
- E. That, should Defendant's acts of infringement be found to be willful from the time that Defendant became aware of the infringing nature of its actions, that the Court award treble damages for the period of such willful infringement pursuant to 35 U.S.C. § 284;
- F. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant from further acts of infringement with respect to the claims of the Patent-in-Suit;
- G. That this Court declare this to be an exceptional case and award Plaintiff its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,
- H. Any further relief that this Court deems just and proper.

Respectfully submitted this 22nd day of March 2013.

*Attorneys for Plaintiff*  
*Sportbrain Holdings Inc.*

s/ M. Blair Clinton

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 22nd day of March, 2013.

s/ M. Blair Clinton  
M. Blair Clinton