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KAWHI LEONARD

14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

17 KAWHI LEONARD,
18 Plaintiff,
19 v.
20 NIKE, INC.
21 Defendant.

CASE NO.: '19CV1035 BAS BGS

COMPLAINT FOR:
DECLARATORY RELIEF
[JURY TRIAL DEMANDED]

Action Filed:
Trial Date: None set

24 Plaintiff KAWHI LEONARD (“Plaintiff” or “Leonard”), an individual, by
25 and through his undersigned attorneys, hereby alleges as follows against Defendant
26 NIKE, INC. (“Defendant” or “Nike”):

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1 **INTRODUCTION**

2 1. In 2011, just after being drafted to the National Basketball Association
3 (the “NBA”), Kawhi Leonard authored a unique logo that included elements that
4 were meaningful and unique to him. Leonard traced his notably large hand, and,
5 inside the hand, drew stylized versions of his initials “KL” and the number that he
6 had worn for much of his career, “2.” The drawing Leonard authored was an
7 extension and continuation of drawings he had been creating since early in his
8 college career.

9 2. Several years later, as part of an endorsement deal with Nike, Leonard
10 allowed Nike to use on certain merchandise the logo he created while Leonard
11 continued to use the logo on non-Nike goods.

12 3. Unbeknownst to Leonard and without his consent, Nike filed an
13 application for copyright registration of his logo and falsely represented in the
14 application that Nike had authored the logo.

15 4. Leonard intends to use the logo on clothing lines, footwear and on
16 other products and, among other things, in connection with sports camps and
17 charity functions, but Nike explicitly has objected to such uses.

18 5. As set forth below, Leonard brings this action seeking a declaratory
19 judgment of non-infringement and that Leonard is the author of the logo and Nike,
20 in registering for copyright of Leonard’s logo, committed fraud on the Copyright
21 Office.

22 **JURISDICTION AND VENUE**

23 6. This Court has original subject matter jurisdiction over Leonard’s
24 claims pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and
25 2202, as well as under 28 U.S.C. § 1338.

26 7. Personal jurisdiction exists over Nike pursuant to California Code of
27 Civil Procedure § 410.10.

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1 16. Leonard has worn jersey number “2” through much of his career and,
2 at times before that, the number “22.”

3 **B. Leonard Authors the Logo**

4 17. Since at least his college years, Leonard contemplated and conceived
5 of ideas for a personal logo which would be unique to him and reflect something
6 meaningful relating to his own image.

7 18. In late December 2011 or January 2012, Leonard refined a logo he had
8 been creating for several years that encompassed his large and powerful hands, his
9 initials and his jersey number (the “Leonard Logo”).

10 19. Leonard shared his original work of authorship with family and
11 friends, solicited the advice and expertise of a creative designer, received comments
12 and suggestions, and made modifications to his design.

13 **C. Leonard and Nike**

14 20. On October 26, 2011, Nike and Leonard signed a “Men’s Pro
15 Basketball Contract” (the “Nike Agreement”).

16 21. The Nike Agreement term was from October 1, 2011 to September 30,
17 2014, and thereafter extended in a series of agreements finally expiring on
18 September 30, 2018.

19 22. The purpose of the Nike Agreement was for Leonard to provide
20 “personal services and expertise in the sport of professional basketball and
21 endorsement of the Nike brand and use of Nike products.”

22 23. At some point during the term of the Nike Agreement, Nike began
23 discussions with Leonard about creating a unique logo to affix to merchandise to be
24 sold under the Nike Agreement.

25 24. Nike provided to Leonard its ideas for modifying the logo that Leonard
26 had designed.

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1 25. Leonard for the most part rejected Nike’s concepts and, instead,
2 forwarded to Nike the Leonard Logo which Leonard said he would permit Nike to
3 use during the term of the Nike Agreement (under his supervision and control).

4 26. Nike reviewed the Leonard Logo, modified it, and returned pro formas
5 to Leonard in the Spring 2014.

6 27. Leonard rejected those proposals as well.

7 28. In early Summer 2014, Nike provided additional proposals to Leonard
8 using the Leonard Logo.

9 29. Leonard accepted one of the June 2014 proposals and granted Nike
10 permission to affix that logo, based upon the Leonard Logo, on Nike merchandise
11 during the term of the Nike Agreement.

12 30. Nike confirmed that the agreed-upon logo had not previously been
13 registered by any third-party.

14 31. At the same time, Leonard’s representatives confirmed that Leonard
15 continued to own the Leonard Logo.

16 32. Leonard never transferred the rights to the Leonard Logo to Nike –
17 conversely, as the many communications, including text and e-mails show, Leonard
18 permitted Nike to use the Leonard Logo for their mutual benefit and for the specific
19 purpose of effectuating the Nike Agreement for the term of the contract.

20 33. Indeed, Nike representatives recognized Leonard’s rights to the
21 Leonard Logo – referring to it as “Kawhi’s logo” in written communications with
22 Leonard.

23 34. Leonard, without dispute or challenge from Nike, continued to use the
24 Leonard Logo on non-Nike goods, including apparel and merchandise used for
25 basketball camps, appearances and charity events, even while Nike was affixing
26 Leonard’s Logo to Nike merchandise.

27 35. Consistent with Nike’s position as a party without any ownership in
28 the Leonard Logo, Nike refused to act several times when Leonard’s

1 representatives learned that third-parties were using the Leonard Logo without
2 authorization and reached out to Nike for assistance and advice in halting the
3 unauthorized use.

4 **D. Nike's Copyright Registration**

5 36. Without Leonard's knowledge or consent, Nike filed an application
6 with the United States Copyright Office to register the "Kawhi Leonard Logo."

7 37. On or about May 11, 2017, the application was granted and the
8 Leonard Logo was given Registration No. VA0002097900.

9 38. On the application, Nike claimed authorship of the Logo and rights
10 and permissions to the Leonard Logo.

11 39. Further, Nike claimed that the Leonard Logo was authored in 2014 and
12 first published on October 28, 2014.

13 40. Nike's claim to ownership of the Leonard Logo is premised on the
14 false representations Nike made in its copyright application that it authored the
15 logo.

16 41. Nike never notified Leonard of its intention to attempt to copyright the
17 Leonard Logo nor did it notify Leonard when the copyright was awarded.

18 **E. Leonard's Trademark Registration**

19 42. On November 9, 2017, Leonard applied for, and subsequently received
20 registration of, two trademarks in three different categories of registration
21 consisting of, and inspired by, Leonard's creation of the Leonard Logo, one an
22 image of his hand, his initials and jersey number and a second logo based upon
23 letters and numbers corresponding to Leonard's initials and jersey number (the
24 "Leonard Trademarks").

25 43. As set forth above, Leonard had been developing, and authored, the
26 Leonard Logo on his own, independent of Nike, and continued to use the Leonard
27 Logo for non-Nike products while also permitting Nike to borrow the Leonard

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1 Logo in his joint pursuit with Nike to merchandise products within the scope of the
2 Nike Agreement and for the term of the Nike Agreement.

3 **F. The Controversy**

4 44. Leonard intends in the near future to use the Leonard Logo on apparel
5 and footwear that he is actively developing and intends to bring to market and to
6 affix on items he intends to distribute in connection with sports camps and charity
7 events, and to affix on other products to be determined. Use of the Leonard Logo
8 is vital to Leonard's ability to continue to grow his brand and expand both his
9 commercial reach and influence with charities with which he is involved.

10 45. On December 21, 2018, John Matterazzo, Nike's VP & Global
11 Counsel for Sports Marketing, wrote to one of Leonard's representatives, stating
12 that Nike owns the Leonard Logo pursuant to the Nike Agreement and Nike's
13 copyright registration of the Leonard Logo. Matterazzo demanded that Leonard
14 cease using the Leonard Logo on non-Nike merchandise.

15 46. On January 30, 2019, Leonard's counsel responded by requesting that
16 Nike rescind its copyrights in the Leonard Logo and informing Nike that Leonard
17 intended to continue to use the Leonard Logo and Leonard Trademarks on non-
18 Nike merchandise and might affix the Leonard Logo and Leonard Trademarks to
19 the shoes he would be wearing as a player for the Raptors.

20 47. On March 11, 2019, Nike responded that it owns all intellectual
21 property rights in the Leonard Logo and demanding that Leonard immediately
22 cease and desist from what Nike claimed was the unauthorized use of the Leonard
23 Logo.

24 **CLAIM FOR RELIEF**

25 (Declaratory Judgment)

26 48. Plaintiff incorporates by reference each and every allegation in the
27 foregoing paragraphs of this Complaint.

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1 49. An actual controversy exists as a result of Defendant’s filings with the
2 Copyright Office, Leonard’s intentions, established plans and need to use the
3 Leonard Logo on products, and Defendant’s demands that Leonard cease and desist
4 from using the Leonard Logo.

5 50. Plaintiff authored and owns the Leonard Logo.

6 51. Defendant did not author the Leonard Logo.

7 52. To the extent Defendant contributed any effort to the creation of the
8 Leonard Logo, such efforts did not constitute copyrightable material and/or
9 constitute a “work for hire” within the meaning of 17 U.S.C. §101.

10 53. Defendant has no rights in the Leonard Logo.

11 54. Defendant is not entitled to copyright registration of the Leonard Logo.

12 55. Defendant defrauded the Copyright Office by intentionally
13 misrepresenting the author of the Leonard Logo.

14 56. As a consequence of the foregoing, Plaintiff seeks a declaratory
15 judgment that (i) Leonard is the sole author of the Leonard Logo; (ii) Leonard’s use
16 of the Leonard Logo does not infringe any rights of Nike, including without
17 limitation any rights Nike may claim to possess with respect to the Leonard Logo;
18 and (iii) Defendant committed fraud on the Copyright Office in registering the
19 Leonard Logo.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff respectfully requests judgment against Defendant as
22 follows:

23 (a) For a declaration pursuant to, inter alia, 17 U.S.C. §§ 101 and 201(a)
24 that:

25 (i) Leonard is the sole author of the Leonard Logo;

26 (ii) Leonard’s use of the Leonard Logo does not infringe any rights
27 of Nike, including without limitation any rights Nike may claim
28 to possess with respect to the Leonard Logo; and

- 1 (iii) Defendant committed fraud on the Copyright Office in
- 2 registering the Leonard Logo; and
- 3 (b) Any such other and further relief as this Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Plaintiff Kahwi Leonard, an individual, hereby demands a jury trial.

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7 DATED: June 3, 2019

8 **SULLIVAN & WORCESTER LLP**
By: PETER R. GINSBERG
(PRO HAC VICE PENDING)
MITCHELL C. STEIN
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