IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

KAWHI LEONARD,

Plaintiff/Counter-Defendant,

v.

NIKE INC.,

Defendant/Counter-Claimant.

Case No. 3:19-cv-01586-MO

OPINION AND ORDER

MOSMAN, J.,

On April 22, 2020, I heard oral argument on Defendant Nike's Motion for Judgment on the Pleadings [ECF 54]. Min. [ECF 75]. At the hearing, I granted Nike's motion with respect to its ownership of the "Claw Design" logo and, as a result, I dismissed Plaintiff Kawhi Leonard's claims with prejudice. *Id.* I took under advisement Nike's motion with respect to Nike's remaining counterclaims. *Id.* The following opinion briefly supplements my analysis on the ownership question and resolves the issues I took under advisement.

LEGAL STANDARD

Under Federal Rule of Procedure 12(c), "[j]udgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Hal Roach Studios,*

Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1989) (citation omitted). In resolving the motion, the allegations of the non-moving party are credited as true, while the allegations of the moving party which have been denied are deemed false. *Id.* The court, however, is "not required to accept as true conclusory allegations which are contradicted by documents referred to in the complaint." *See Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1295-96 (9th Cir. 1998) (citation omitted).

DISCUSSION

I. Supplemental Discussion of Nike's Ownership of the "Claw Design."

As I stated at oral argument, ownership over the Claw Design turns on the "Men's Pro Basketball Contract" ("Nike Contract") entered into by Mr. Leonard and Nike.[1] Tr. [ECR 76] at 6-7. The relevant provision is Paragraph 8(a) of the Standard Terms, which states:

> **8. OWNERSHIP OF NIKE MARKS, DESIGNS & CREATIVES.**
>
> (a) [Leonard] acknowledges that NIKE exclusively owns all rights, title and interest in and to the NIKE Marks and that **NIKE shall exclusively own** all rights, title and interest in and to **any logos**, trademarks, service marks, characters, personas, **copyrights**, shoe or other product designs, patents, trade secrets or other forms of intellectual property **created by NIKE** . . . ***or [Leonard]*** in connection with this Contract;

Nike Contract [16-1] at 7 (emphasis added).[2]

I held that the Nike Contract established Nike's ownership of the Claw Design because the Claw Design is (1) a new piece of intellectual property (2) created "in connection with" the Nike Contract. Tr. [76] at 39-40. The following supplements my analysis on these two points.

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[1] A copy of the Nike Contract is attached as Exhibit A to Nike's Answer [ECF 16-1].

[2] I cite to the ECF page number for this source.

A. Whether the "Claw Design" constitutes new intellectual property.

The "Claw Design" is Nike's terminology for the following image:

Nike Answer [ECF 16] at 2.

Both Nike and Mr. Leonard have registered copyrights for the Claw Design. *Id.* ¶ 3; Nike Countercl.[3] [16] ¶¶ 40-41; Leonard Answer to Countercl. [ECF 26] ¶¶ 40-41. The dispute over who is the proper owner of the Claw Design is the core issue in this case.

The other image relevant to this case is what Nike terms the "Leonard Sketch":

Nike Answer [16] at 2.

[3] Nike's counterclaims begin on Page 11 of its Answer & Counterclaim [ECF 16], and the numeration of paragraphs restarts at 1.

While Nike asserts that this case is a tale of two images, Mr. Leonard refers throughout the pleadings and his briefings to a singular "Leonard Logo." *See, e.g.*, Resp. [ECF 57] at 5. As discussed extensively at oral argument, this is because Mr. Leonard's theory is that no new intellectual property was created during the term of the Nike Contract; rather, the "Claw Design" is a mere modification of a preexisting logo that Mr. Leonard designed and created independent of Nike and the Nike Contract. *See id.* I rejected that theory at oral argument and do not retread my analysis here. *See* Tr. [76] at 39-40. I supplement my remarks only to demonstrate that Mr. Leonard's own pleadings—which I must accept as true for the purposes of this motion—reveal that, as a factual matter, the above two images are the relevant images in play.[4]

Mr. Leonard's pleadings, accepted as true and read in the light most favorable to him, demonstrate the following: (1) at some point before entering the Nike Contract, Mr. Leonard had the idea to create a logo which incorporated his initials and the number "2" into a drawing of his hand; (2) Mr. Leonard, also before entering the Nike Contract, created the "Leonard Sketch" as a draft of that idea; (3) during the period of the Nike Contract,[5] Mr. Leonard sent the Leonard Sketch to Nike's design team; and (4) after an iterative design process involving Mr. Leonard and the Nike design team, the "Claw Design" logo was created in the summer of 2014. Below, I walk through how each of the preceding points can be readily discerned from the pleadings.

First, there is no dispute that Mr. Leonard conceived of the idea for a logo involving his initials and his hand prior to entering the Nike Contract. Compl. [ECF 1] ¶ 17.

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[4] The factual existence of the two separate images, as discerned from the pleadings, is a separate matter from the legal question of whether those two images should be treated as the same piece of intellectual property.

[5] The Nike Contract ran from October 2011 to September 2018. Compl. [1] ¶¶ 20-21.

Second and third, Mr. Leonard describes that "[i]n late December 2011 or January 2012, Leonard refined a logo he had been creating for several years that encompassed his large and powerful hands, his initials and his jersey number" and that, at some point prior to Spring 2014, he sent this logo design to Nike. *Id.* ¶¶ 18, 25-26. This logo design is the only physical expression of Mr. Leonard's idea that Mr. Leonard alleges he sent to Nike. While Mr. Leonard refers to this logo design as the "Leonard Logo," his answers to Nike's counterclaims reveal that, at this point, the factual image we are talking about is the "Leonard Sketch" copied above. Nike Countercl. [16] ¶ 26; Leonard Answer [26] ¶ 26 (admitting that during the term of the Nike Contract, Mr. Leonard sent Nike the "Leonard Sketch").

Fourth, after Mr. Leonard sent Nike the Leonard Sketch, the Nike design team reviewed the Sketch and sent Mr. Leonard proposals for a "modified" version of the Leonard Sketch in Spring 2014. Compl. [1] ¶ 26. Mr. Leonard rejected those proposals. *Id*. ¶ 27. "In early Summer 2014, Nike provided additional proposals to Leonard using the [Leonard Sketch]." *Id.* ¶ 28. "Leonard accepted one of the June 2014 proposals and granted Nike permission to affix **that logo**, *based upon* the [Leonard Sketch], on Nike merchandise during the term of the Nike Agreement." *Id.* ¶ 29 (emphasis added). "[T]hat logo" is the "Claw Design." Nike Countercl. [16] ¶ 28-29; Leonard Answer [26] ¶ 29 (admitting that the "Claw Design" was affixed to Nike merchandise that was worn and endorsed by Mr. Leonard). And for the reasons stated at oral argument, the Claw Design constitutes a new, distinct piece of intellectual property. Tr. [76] at 6-9, 39-40.

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