

SETTLEMENT AND LICENSE AGREEMENT

This Settlement and License Agreement (the "Agreement") is made and entered into as of the date of the last signature set forth on the signature page below (the "Effective Date") by and between Mayfonk Athletic, LLC, a company organized and existing under the laws of the State of Florida, having offices at 808 NE 20th Ave, Ft. Lauderdale, Florida 33304 ("Licensor"), and NIKE, Inc., a corporation organized and existing under the laws of the State of Oregon, having offices at One Bowerman Drive, Beaverton, Oregon 97005 ("Licensee"). Licensor and Licensee are individually referred to herein as a "Party," and collectively as the "Parties."

WITNESSETH

WHEREAS, Licensor has filed an action against Licensee alleging infringement of United States Patent Number No. 8,860,584 ("the '584 patent") in an action styled *Mayfonk Athletic, LLC v. Nike, Inc.*, pending in the United States District Court for the District of Oregon (Case Number 3:14-cv-423) (the "Litigation");

WHEREAS, Licensee has filed two petitions requesting *inter partes* review of the validity of the claims of the '584 patent by the United States Patent and Trademark Office, Patent Trial and Appeal Board (Case Nos. IPR2015-00655 and IPR2015-00656, respectively) (collectively, "the IPR Actions"), which petitions were granted by United States Patent and Trademark Office, Patent Trial and Appeal Board (hereinafter, "USPTO") on or about August 10, 2015;

WHEREAS the Parties now desire to resolve all claims in the Litigation related to the '584 patent, and also desire to resolve the IPR Actions, and therefore enter into this Agreement providing for a full, final, complete and global settlement of all claims and causes of action in the Litigation related to the '584 patent and the IPR Actions, and for certain releases, licenses and covenants not to sue, all on the terms and conditions set forth herein;

WHEREAS Licensee denies any and all claims of infringement with respect to this Agreement and the Litigation and denies that any claims of the '584 patent are valid, but nonetheless wishes to obtain a royalty-free license and release for all past, present and future activities with respect to the '584 patent, and Licensor is willing to grant such a license;

WHEREAS Licensor denies that any claim of the '584 patent is invalid;

NOW, THEREFORE, in consideration of the above promises and mutual covenants hereinafter contained, the Parties agree as follows:

SECTION 1: DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

"Affiliate" means any individual, firm, corporation, subsidiary, or other form of business organization which, either directly or indirectly, controls, is now or hereafter controlled by, or is under common control with any Party. For purposes of this agreement, control is exercised solely by an entity created-by-law, and an organization shall be regarded as in control of another organization if it owns or directly or indirectly controls (a) more than fifty percent (50%) of the shares entitled to vote for the election of directors or persons performing similar functions, or (b) more than fifty percent (50%) of the total combined voting power entitled to elect or appoint directors; however, any such company or other legal

entity shall be deemed an Affiliate only for as long as such control exists, and thereafter it shall have no further rights under this Agreement, including ongoing license rights. In the event that a Person is not an Affiliate as of the Effective Date of this Agreement, but later becomes an Affiliate through a transaction or series of related transactions (a "Joining Affiliate"), such Joining Affiliate shall be deemed to be an Affiliate for the purposes of this Agreement upon completion of such transaction or transactions. In the event an Affiliate covered by this Agreement ceases to be an Affiliate (a "Departing Affiliate"), any rights under this Agreement shall continue to apply to such Departing Affiliate only with respect to any activity conducted by the Departing Affiliate during the period of time it was an Affiliate.

"Licensed Patent" means United States Patent Number No. 8,860,584.

"Licensed Products" means any products or related services that have been, are, or will be made, used, sold, offered for sale, or imported by or on behalf of Licensee or its Affiliates, or that Licensee or its Affiliates had made, have made, or will have made by any third party on behalf of Licensee or its Affiliates.

"Person" means an individual, trust, corporation, partnership, joint venture, limited liability company, association, unincorporated organization or other legal entity.

"Third Party" means any Person other than a Party to this Agreement.

SECTION 2: LICENSE, RELEASES AND COVENANTS

2.1 License. Licensors hereby grants to Licensee and its Affiliates a royalty-free, irrevocable, non-exclusive, non-transferable, non-assignable (except as permitted in Section 5 below), without the right to sublicense, worldwide license under the Licensed Patent, to make, have made, use, import, export, distribute, sell, offer for sale, develop and advertise the Licensed Products. In addition, Licensors hereby grants to the vendors, suppliers, manufacturers, developers, distributors, contractors, hosts, customers and end-users of Licensee and its Affiliates ("Licensee Third Parties") a royalty-free, non-exclusive, non-transferable and non-assignable, without the right to sublicense, worldwide license under the Licensed Patent, to make, have made, use, import, export, distribute, sell, offer for sale, develop and advertise the Licensed Products.

2.2 Licensors Release of Licensee and Licensee Third Parties. Licensors hereby releases Licensee, its Affiliates, officers, directors, managers, members, employees, agents, experts, consultants and attorneys from alleged liability related to: (i) any and all past, current or future alleged infringement of the Licensed Patent; and (ii) any and all claims, counterclaims, causes of action, or rights asserted in the Litigation with respect to the Licensed Patent. In addition, Licensors hereby releases Licensee Third Parties from alleged liability with respect to making, having made, using, importing, exporting, distributing, selling, offering for sale, developing or advertising Licensed Products.

2.3 Licensors Covenant Not to Sue Licensee and Licensee Third Parties. Subject to the compliance by Licensee and its Affiliates with the terms and conditions of this Agreement, Licensors covenants not to sue: (i) Licensee or Licensee's Affiliates for alleged infringement (direct or indirect) of the Licensed Patent; and (ii) any Licensee Third Party for alleged infringement of the Licensed Patent with respect to making, having made, using, importing, exporting, distributing, selling, offering for sale, developing or advertising Licensed Products.

2.4 Licensee Release of Licensors. Subject to Licensors's compliance with the terms and conditions of this Agreement, Licensee on behalf of itself and its Affiliates releases Licensors and its Affiliates, officers,

directors, managers, members, employees, agents, experts, consultants and attorneys from alleged liability related to the claims, counterclaims, causes of action and rights asserted in the Litigation with respect to the Licensed Patent.

2.5 No Other Rights / No Implied License. No rights or covenants are granted to either party under any Patents aside from the Licensed Patent, whether by implication, estoppel or otherwise.

2.6 Releases. The releases in this Agreement include an express, informed, knowing and voluntary waiver and relinquishment to the fullest extent permitted by law. In this connection, the Parties acknowledge that they may have sustained damages, losses, costs or expenses which are presently unknown and unsuspected and that such damages, losses, costs or expenses as may have been sustained may give rise to additional damages, losses, costs or expenses in the future. The Parties hereto further acknowledge that they have negotiated this Agreement taking into account presently unsuspected and unknown claims, counterclaims, causes of action, damages, losses, costs and expenses, and the Parties hereto voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule or common law principle, in law or equity, relating to limitations on general releases. The Parties voluntarily and with full knowledge of its significance, expressly waive and relinquish any and all rights they may have under any state or federal statute, rule or common law principle, in law or equity, relating to limitations on releases. Specifically, each Party hereby expressly waives any rights it may have under California Civil Code Section 1542 (or any other similar law in any jurisdiction), which provides that: **“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”**

2.7 No Admission of Liability. The terms and provisions set forth in this Agreement are not and shall not be construed as an admission by Licensee of the infringement, validity or enforceability of the Licensed Patent.

SECTION 3: ADDITIONAL CONSIDERATION

3.1 No Payment for Rights Granted. Licensee shall pay Licensor \$0 (zero dollars) for the license to the Licensed Patent and other rights described in this Agreement.

3.2 Dismissal of the Litigation. Within five (5) court days of the Effective Date of this Agreement, the Parties shall cause their respective counsel to execute and file documents dismissing with prejudice all claims and counterclaims asserted by and against the Parties in the Litigation with respect to the Licensed Patent. The Parties shall promptly proceed with any and all additional procedures needed to dismiss with prejudice the parties' claims and counterclaims regarding the Licensed Patent in the Litigation. The Parties acknowledge and agree that this Agreement is enforceable according to its terms with respect to final dismissal with prejudice of all claims and counterclaims in the Litigation with respect to the Licensed Patent.

3.3 Termination of the IPR Actions. Within five (5) court days after the Court dismisses with prejudice all claims and counterclaims in the Litigation regarding the Licensed Patent, the Parties shall cause their respective counsel to execute and file documents jointly moving for termination of the IPR Actions. The parties acknowledge and agree that this Agreement may be submitted to the USPTO in conjunction with respective motions to terminate the IPR Actions. The Parties shall promptly proceed with any and all additional procedures needed to terminate the IPR Actions. To the extent the USPTO does not grant the Parties' motion to terminate the IPR Actions, Licensee agrees to join a motion to vacate the dismissal of the Litigation pursuant to Rule 60 of the Federal Rules of Civil Procedure. Licensee, its Affiliates,

officers, directors, managers, members, and employees further agree that they will not file any additional petitions seeking *inter partes* review of the Licensed Patent, or initiate any other administrative proceeding before the United States Patent and Trademark Appeal Board or the United States Patent Office requesting that any claims of the Licensed Patent be found invalid. The foregoing sentence shall not apply if Licensee or any of its Affiliates, officers, directors, managers, members, or employees are sued in any action alleging infringement of the Licensed Patent. The Parties acknowledge and agree that this Agreement is enforceable according to its terms with respect to the motions to terminate the IPR Actions.

SECTION 4: TERM OF AGREEMENT

4.1 Term. The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the Licensed Patent, or expiration of any right to assert any claim for infringement of the Licensed Patent, whichever is later.

4.2 Agreement Obligations Not Released. Notwithstanding anything to the contrary herein, the Parties reserve all rights and remedies, including damages and equitable relief (other than recession, termination or reformation of this Agreement to the extent not expressly provided for herein) for breach of this Agreement by the other Party and nothing herein releases any Party from its respective obligations under this Agreement or prevents any Party from enforcing the terms and conditions of this Agreement against the other Parties.

SECTION 5: ASSIGNMENT

5.1 Limitations on Assignment. Except as expressly permitted in this Section, neither Party may grant or assign any rights or delegate any duties under this Agreement to any Third Party without the prior written consent of the other.

5.2 Permitted Assignment by Licensee. Notwithstanding the provisions of Section 5.1, Licensee may assign its rights under this Agreement, in whole or in part, without Licensor's prior written consent, as follows: (i) in connection with a transaction effected solely for the purposes of changing the form or jurisdiction of organization of Licensee or a reorganization, restructuring, or transaction with Licensee and one or more of its Affiliates where substantially all of the business of Licensee and one or more Affiliates that were, immediately prior to such transaction, subject to this Agreement remain, immediately after such transaction, subject to this Agreement; or (ii) as part of a sale, transfer, or spin-off of a substantial portion of its business to a Third Party acquirer (a "Licensee Acquirer"), provided that (a) the Licensee Acquirer is not a party to a written communication by Licensor asserting a patent infringement claim or lawsuit filed by Licensor with respect to one or more of the Licensed Patent and pending at the time Licensee conducts such sale, transfer or spin-off; and (b) the rights of Licensee hereunder so assigned, including any licenses, releases and covenants not to sue only extend to Licensed Products existing as of the date of such sale, transfer or spin-off and will not extend to any other products, services or activities conducted by the Licensee Acquirer or any of its Affiliates, subsidiaries, related entities or related companies prior to, on or after the effective date of the assignment even if the same type of activities were conducted by Licensee. In addition to the foregoing, all releases and covenants of Licensee and its Affiliates contained herein shall run with the rights of Licensee being assigned or transferred and shall be binding on any successors-in-interest, transferees, or assigns thereof. Licensee shall not assign or otherwise transfer any right hereunder to any other party unless (i) such sale or assignment is subject to all of the terms and conditions of this Agreement, and (ii) such other party executes an agreement agreeing to be bound by all of the terms and conditions of this Agreement with respect to the rights being transferred or assigned.

5.3 Permitted Assignment by Licensor. Notwithstanding the provisions of Section 5.1, Licensor shall be permitted to sell, grant, assign, license, sublicense, or otherwise transfer any of its rights to the Licensed Patent ("Transferred Patents"). All license rights, releases and covenants of Licensor contained herein shall run with the Transferred Patents and shall be binding on any successors-in-interest, licensees, transferees, or assigns thereof. Licensor and its Affiliates shall not sell, grant, assign, license, sublicense, or otherwise transfer any right under any Licensed Patent to any other party unless such other party executes an agreement in writing that it will comply with all of the terms and conditions of this Agreement.

5.4 Unpermitted Assignment Void. Any attempted transfer, license, assignment, or grant in contravention of this Section shall be null and void. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their permitted successors and assigns.

SECTION 6: MISCELLANEOUS PROVISIONS

6.1 Representations:

6.1.1 Licensor Representations: Licensor represents and warrants, with respect to the Licensed Patent only, as of the Effective Date that: (i) Licensor owns the Licensed Patent, and has the full rights to grant the licenses, releases and covenants with respect to the Licensed Patent of the full scope set forth herein; (ii) Licensor has not assigned or otherwise transferred to any other Person any rights to the Licensed Patent that would prevent Licensor from conveying the full scope of rights set forth herein; and (iii) the person executing this Agreement on behalf of Licensor has the full right and authority to enter into this Agreement on Licensor's behalf.

6.1.2 Licensee Representations: Licensee represents and warrants as of the Effective Date that: (i) Licensee has the right to grant the releases of the full scope set forth herein; (ii) the person executing this Agreement on behalf of Licensee has the full right and authority to enter into this Agreement on Licensee's behalf.

6.1.3 No Warranties. Nothing contained in this Agreement shall be construed as: (i) a warranty or representation by either Party that any manufacture, sale, use or other disposition of products by the other Party has been or will be free from infringement of any Patents; (ii) an agreement by either Party to bring or prosecute actions or suits against Third Parties for infringement, or conferring any right to the other Party to bring or prosecute actions or suits against Third Parties for infringement; (iii) conferring any right to the other Party to use in advertising, publicity, or otherwise, any trademark, trade name or names of either Party, or any contraction, abbreviation or simulation thereof without the prior written consent of the other Party; or (iv) conferring by implication, estoppel or otherwise, upon either Party, any right (including a license) under other Patents except for the rights expressly granted hereunder.

6.2 Notices. All notices required or permitted to be given hereunder shall be in writing and shall be delivered by hand, or if dispatched by prepaid air courier with package tracing capabilities or by registered or certified airmail, postage prepaid, addressed as follows:

If to Licensor:

Mayfonk Athletic, Inc.
P.O. Box 16084
Plantation, FL 33318
ATTN: Martin Matak

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