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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Matthew Reed,

Plaintiff,

v.

Nike, Inc. an Oregon Corporation,
Rasheed Wallace, and Weiden +
Kennedy,

Defendants.

Case No. **CV 05-198**
COMPLAINT
COPYRIGHT INFRINGEMENT
ACCOUNTING
DEMAND FOR A JURY TRIAL

JURISDICTION AND VENUE

1. This is an action for copyright infringement arising under the Copyright Act, 17 USC § 101 *et seq.* This court has jurisdiction over these federal claims pursuant to 28 USC §§ 1331 and 1338 (a) and over the state law claim under principles of supplemental jurisdiction 28 U.S.C. § 1367.

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2. Venue is proper in this district under 28 USC §§ 1391 (b)(2), (c) and § 1400(a) because the copyright infringement and other wrongful acts that give rise to these claims occurred in this district and because the corporate defendant is an Oregon Corporation with its principal place of business located in Oregon.

FACTUAL BACKGROUND

3. Plaintiff Mr. Matthew Reed, is a principal in the business, TigerLily Tattoo and Design Works. Plaintiff's place of business is located in Portland Oregon. Mr. Reed works in various media including in artwork that is then transferred to the human body and applied to the skin in the form of tattoos. At his business location he is engaged in the design, production, and application of graphic artwork in the form of tattoos. Mr. Reed has operated TigerLily Tattoo and Design Works since 1998.

4. Plaintiff is informed and believes that Defendant is an Oregon corporation doing business as Nike Inc, with its principle place of business in Beaverton Oregon and is engaged in the business of manufacture and sales of sporting equipment including equipment and apparel specific to the sport of basketball.

5. Plaintiff is informed and believes that at all relevant times Defendant Wallace resided in Portland, Oregon and that Rasheed Wallace is a player in the National Basketball Association ("NBA") and is currently employed by the Detroit Pistons. Mr. Wallace has an agreement with NIKE to promote their products.

6. Plaintiff is informed and believes that Defendant Weiden + Kennedy is an advertising agency doing business with its principal place of business in Portland Oregon. Plaintiff is informed and believes that Weiden + Kennedy is employed by Nike in the creation, management and coordination of its advertising campaigns and of the advertising campaign described hereinafter.

7. Matt Reed in addition to working as a tattoo artist has extensive experience as a self-employed graphic artist working in Portland Oregon area. In addition to his natural artistic

talents Mr. Reed received training from Pacific Northwest College of Art but left before receiving a degree to pursue training as a tattoo artist in Portland. Mr. Reed worked on a contract basis at the Sea Tramp Tattoo Co. prior to and after becoming a licensed tattoo artist in 1994 and continued at Sea Tramp Tattoo Co. until 1998.

8. While working full time as a designer and tattoo artist Mr. Reed's reputation has increased. He has been commissioned to create and apply his works on several athletes.

9. In 1998 on a recommendation, Mr. Wallace contacted Mr. Reed to discuss the creation of a large work to be applied to Mr. Wallace's upper right arm. Mr. Wallace had just relocated to the Portland area having been traded to the local NBA franchise the Portland Trailblazers.

10. As is routine in the tattoo business, Mr. Wallace had a meeting with Mr. Reed to discuss the artwork that would become the tattoo. Mr. Reed listened to the ideas for the tattoo presented by Mr. Wallace, which included incorporating an Egyptian themed family design with a king and queen and three children with a stylized sun in the background. Mr. Reed took notes and made sketches. Mr. Reed then relied on his experience and referred to various texts that included representations of the period Egyptian artwork to create the artwork, which became the tattoo.

11. During this initial meeting Mr. Wallace signed an Information and Release Document (Exhibit A). This was the only written agreement between the parties and does not include any mention of the assignment of Mr. Reed's copyright interest in the work.

12. In the second meeting, Mr. Reed presented Mr. Wallace with a sketch that would become the proposed tattoo (Exhibit B). Mr. Wallace suggested a few changes, including a change in the headdress of the king and a change of the orientation of the staff, all of which were drawn by Reed on the master drawing. Mr. Reed measured the artwork on Mr. Wallace's arm and then began the process of creating the stencil, an intermediate step from which the drawing would be transferred to Mr. Wallace's upper arm.

13. The tattoo was applied to Mr. Wallace's upper arm over a total of three sessions. Mr. Wallace paid Mr. Reed the sum of Four hundred fifty dollars (\$450). Mr. Reed considered this

price low for the tattoo but believed that he and his business would receive exposure as a result of the tattoo being on an NBA player.

14. After completing the tattoo on Mr. Wallace's arm, Mr. Reed observed the tattoo during televised NBA games in which Mr. Wallace participated as a player. Mr. Reed expected that public display of the tattoo on Mr. Wallace's arm, and such exposure would be considered common in the tattoo industry.

15. During the spring of 2004, Mr. Reed became aware that the tattoo he had applied to Mr. Wallace's arm was being featured as part of an advertising campaign including a commercial for Nike highlighting Mr. Wallace. That commercial, which was broadcast on television and over the Internet, features the tattoo filling the screen in a close up, then the tattoo and the process of its creation are simulated by a computerized method with a voice over by Mr. Wallace describing the tattoo and its meaning.

16. Mr. Reed was never contacted by Nike, Weiden + Kennedy or Mr. Wallace concerning the featured use of his original artwork in the commercial.

17. Mr. Reed has been issued Copyright Registration Number VA 1-265-074 for the Egyptian Family Pencil Drawing that was the basis for the tattoo applied to Mr. Wallace's arm.

FIRST CLAIM FOR RELIEF

(Copyright Infringement - 17 USC § 101 *et seq*)

(Against Defendants Nike and Weiden + Kennedy)

18. Plaintiff realleges and incorporates by reference each and every allegation of paragraphs 1 through 17 inclusive.

19. Plaintiff is the owner of all right, title and interest to the original artwork from which the tattoo on Mr. Wallace's arm was created.

20. The artwork from which the tattoo on Mr. Wallace's arm was created is original with Plaintiff and is copyrightable subject matter.

21. Defendants, Nike and Weiden + Kennedy, have copied, reproduced, distributed, adapted

and/or publicly displayed Plaintiff's Copyrighted Work without the consent, permission or authority of Plaintiff thereby directly infringing Plaintiff's Copyright.

22. Defendants' Nike and Weiden + Kennedy, conduct constitutes infringement of Plaintiff's copyright and exclusive rights under Copyright in violation of Sections 106 and 501 of the Copyright Act 17 USC §§ 106 and 501.

23. Each infringement of Plaintiff's rights in and to the Copyrighted Work constitutes a separate and distinct act of infringement.

24. The acts of infringement by Defendants Nike and Weiden + Kennedy, have been willful, intentional and purposeful, in reckless disregard of and with indifference to the rights of Plaintiff.

25. As a direct and proximate result of the infringements by Defendants Nike and Weiden + Kennedy of Plaintiff's Copyright and exclusive rights under copyright, Plaintiff is entitled to his actual damages and Defendants Nike's and Weiden + Kennedy's profits pursuant to 17 USC § 504 (b). Plaintiff is also entitled to prejudgment interest on any damage award.

26. The conduct of Defendants Nike and Weiden + Kennedy is causing and unless enjoined and restrained by this Court, will continue to cause irreparable injury that cannot be fully compensated in money. Plaintiff has no adequate remedy at law. Pursuant to 17 USC § 502, Plaintiff is entitled to injunctive relief prohibiting further infringements of his Copyright.

SECOND CLAIM FOR RELIEF

(Contributory Copyright Infringement - 17 USC § 101 *et seq*)

(Against Defendant Rasheed Wallace)

27. Plaintiff realleges and incorporates by reference each and every allegation of paragraphs 1 through 17 inclusive and paragraphs 19 and 20.

28. Plaintiff is informed and believes that Defendant Rasheed Wallace advised the other Defendants that he had exclusive ownership of all intellectual property rights in connection with the tattoo on his upper arm. Defendant Wallace had reason to know that the other Defendants would rely upon this representation in the creation of the advertising campaign referred to herein.

an incidental use, of the tattoo.

2. Plaintiff's share of the revenue realized by Mr. Wallace from his exploitation of the co owned artwork.
3. Prejudgment interest on any damages awarded.
4. For Plaintiff's costs and disbursements incurred herein.

JURY DEMAND

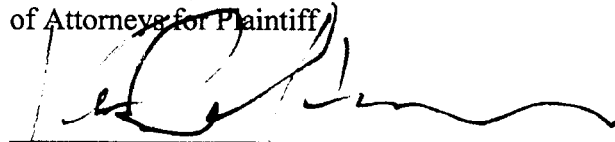
Plaintiff demands a trial by jury of all issues so triable.

February 10, 2005.

Respectfully submitted,



Robert Swider, OSB #82127
of Attorneys for Plaintiff



Haver & Associates
Kohel Haver, OSB #86203
of Attorneys for Plaintiff

SEA TRAMP TATTOO CO.

Information and Release Document

Date: June 12 1998

Name: FRANK WALLACE

Time: 30

Date of Birth: 9/17/74

Artist: Matt

Tattoo Design: Royal Family

Location: 8:30 am Duration: _____

It is important to inform your artist of any medical or skin conditions that you may have. Please indicate by marking the box following the conditions listed:

Diabetes.....	<input type="checkbox"/>	Allergies.....	<input type="checkbox"/>
Cold sores / fever blisters.....	<input type="checkbox"/>	Epilepsy.....	<input type="checkbox"/>
Heart Conditions.....	<input type="checkbox"/>	Hemophilia.....	<input type="checkbox"/>
Medication which thins the blood.....	<input type="checkbox"/>	Psoriasis or eczema.....	<input type="checkbox"/>
Other.....	_____		

This information will help ensure the safety of you and the artist performing your tattoo. Information shall be kept confidential. Thank You!

Release

I certify by my signature below, the following:

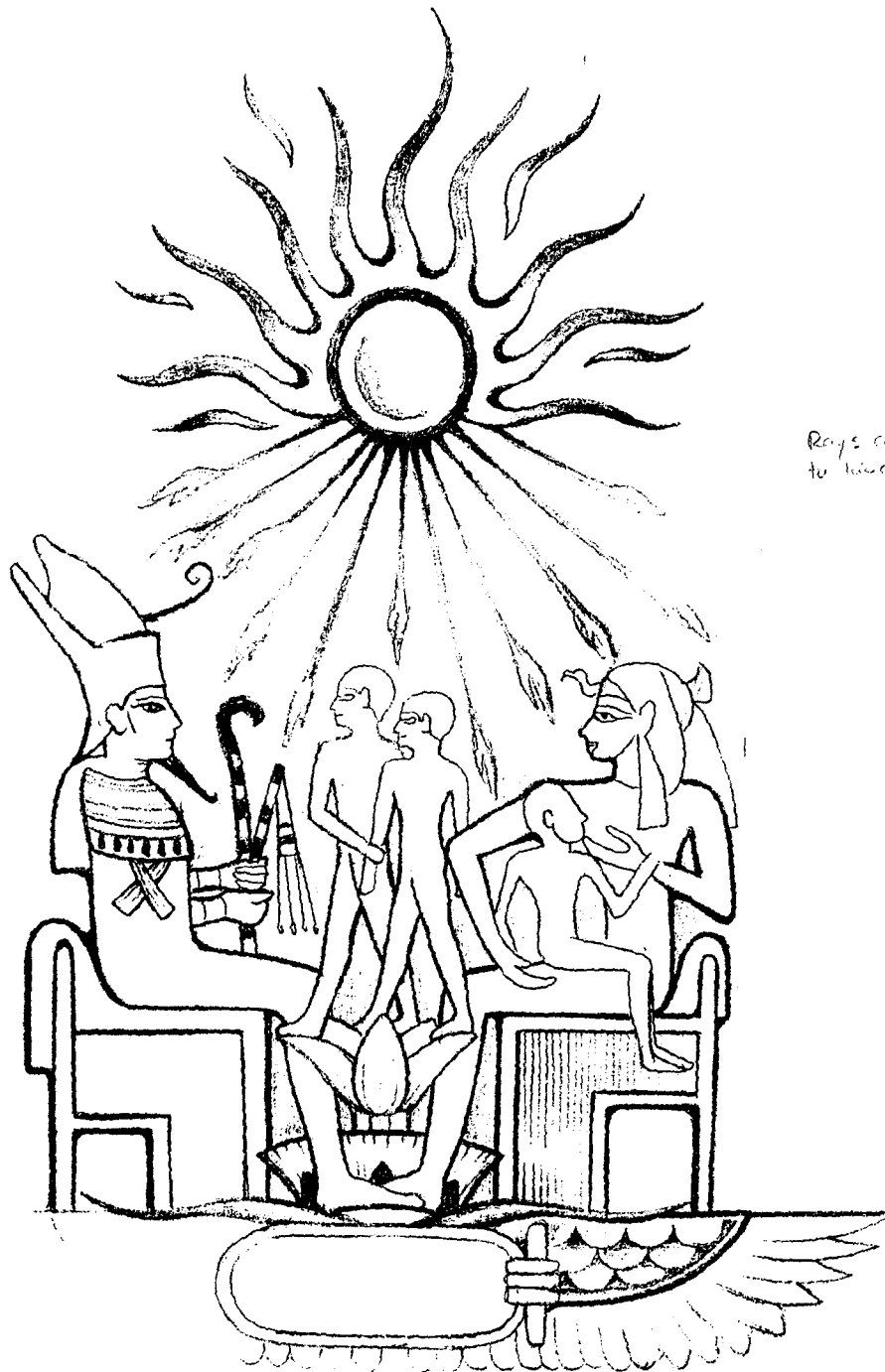
- #1. I am over 18 years of age.
- #2. I am not under the influence of liquor or intoxicating drugs.
- #3. I freely consent to having this tattoo applied.
- #4. I acknowledge that the methods of sanitation and sterilization used by SEA TRAMP TATTOO CO. and agents are in full accordance with and beyond those demanded by state and local health authorities.
- #5. I have been given written instructions concerning the care of a new tattoo and fully understand my responsibility concerning this.
- #6. I understand all of the above and hereby release SEA TRAMP TATTOO CO. and its employees or business associates from any liability whatsoever.

Signature: _____

Date: 6/12/98

Address: _____

Phone: _____



Rays come down
to touch chairs, etc.

Exhibit B