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A newsletter brought to you by the Sports Law Group at Proskauer.

Welcome to *Three Point Shot*, a newsletter brought to you by the Sports Law Group at Proskauer. *Three Point Shot* brings you the latest in sports law-related news and provides you with links to related materials. In this issue, we feature contributions from our talented group of summer associates. Thanks to Aman Sankineni, Colleen A. Sharkey and Erin C. McAree.

Your feedback, thoughts and comments on the content of any issue are encouraged and welcome. We hope you enjoy this and future issues.

Edited by **Robert E. Freeman**

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Nike and Sneaker Customizer Lace Up a Settlement

On June 18, 2025, Nike, Inc. (“Nike”) and Dominic Ciambrone (“Ciambrone”), founder of the shoe customization outfit, The Shoe Surgeon, entered into a confidential settlement and agreed to an accompanying [consent judgment](#) in New York district court, signaling the end of a trademark dispute over The Shoe Surgeon’s alleged sale of unauthorized Nike-branded shoes and DIY kits to create custom lookalikes that had the sneaker and IP communities watching every step. [See below, an image from the complaint that presents one snapshot of the breadth of The Shoe Surgeon’s activities].



The consent judgment, which reflects a negotiated settlement between the parties, essentially limits Ciambrone, his partners and his company S2, Inc. (collectively, the “Defendants”) from certain unauthorized sneaker customization activities involving the commercial use of Nike’s trademarks and branding that might cause consumer confusion, with a carveout that allows Defendants to create custom, non-commercial pieces involving Nike shoes or branding in special situations. The settlement also requires Defendants to pay an undisclosed sum to Nike. ([Nike v. S2, Inc.](#), No. 24-05307 (S.D.N.Y. Consent Judgment June 23, 2025)).

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Ciambrone is a Los Angeles-based designer and entrepreneur who rose to prominence through his artistry and intricate, high-end customizations of popular sneaker silhouettes. Ciambrone's individual journey kicked off in the early 2000s when he started experimenting with sneaker customization in high school as a form of self-expression. He founded "The Shoe Surgeon" alongside his business partner, Imbimbo, in late 2017, a brand that stitches together craftsmanship, luxury materials, and streetwear aesthetics to create bespoke sneakers that often retail for thousands of dollars. His studio in South L.A. became a hub for sneaker artistry, attracting celebrity clients, collectors, and even corporate collaborators, all of whom wanted to get a foot in the door.

Nike and Ciambrone initially shared a collaborative relationship. For example, in 2023 Nike commissioned him to create custom sneakers for high-profile moments. However, the relationship between Nike and Ciambrone began to fray as Ciambrone's business grew. Nike took issue when it alleged the Shoe Surgeon expanded from being a "bespoke, one-of-one shoe customizer" for specific clients or artistic display to "build a business around Nike's brand and shoes, selling "Nike" products that were significantly altered Nike shoes (what Nike termed "Infringing New Shoes") or else shoes created from scratch bearing the "Swoosh" that Nike claimed looked like artistically recreated Nike-branded shoes. [See image from the complaint below]. According to Nike, this was an attempt "to build an entire multifaceted retail empire through their unauthorized use of Nike's trademark rights...."



Moreover, Nike claimed that the Defendants were implying Nike's endorsement or sponsorship and using Nike's intellectual property and trademarks to enter into collaborations and digital rights agreements involving

customized Nike shoes for well-known brands, all without Nike's permission. The complaint also alleged that Defendants were selling shoe-making kits and running an "academy" that allegedly teaches customers how to make customized replicas of Nike sneakers. Thus, the core of Nike's argument was that the Defendants' business model of deconstructing authentic Nike sneakers and rebuilding them into high-end, bespoke designs amounted to unauthorized commercial use of Nike's protected intellectual property.

Nike alleged that it had meetings with Defendants to resolve the IP-related issues and discuss potential future projects, but that such actions only resulted in takedowns of certain products and what it called "perceived compliance." After discussions broke down, Nike filed a [complaint](#) in July 2024 against Defendants, alleging trademark infringement, false designation of origin, and dilution under the Lanham Act, as well as counterfeiting and unfair competition under New York law. Nike sought monetary damages and a permanent injunction barring Defendants from selling infringing Nike shoes and DIY kits to make infringing "Nike" shoes, from entering into shoe customization agreements with third party brands using Nike IP, and marketing customization classes featuring replicas of Nike shoes.

The Defendants responded to the complaint with a 100-page [answer and counterclaims](#) filed in November 2024, asserting numerous affirmative defenses (such as fair use and the first sale doctrine) and claiming that Nike was liable for defamation and/or trade libel for the statements it had issued about the Defendants and for unjust enrichment from allegedly gaining knowledge about shoe customization from Ciambrone and acquiring his "lifetime of customization know-how" in order to re-brand its customization businesses. Defendants also sought a declaratory judgment that Nike's trade dress registrations should be declared functional and unenforceable. Most relevantly, the Defendants challenged Nike's basic theory of infringement, stating that The Shoe Surgeon had not shifted its business model from authentic and creative customizations and denying that "they — or any person — require[s] Nike's permission to customize authentic Nike shoes into art." In its Answer, Defendants characterized certain online

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sales where they purchase an original Nike shoe to use as a base for a customized shoe for the customer as non-infringing and denied that they produce any “Nike-branded shoes entirely from scratch.” Defendants admitted that Ciambrone did not seek Nike’s permission to start customizing Nike shoes, but claim that thereafter, “Nike repeatedly came to him to exploit his expertise and collaborate with The Shoe Surgeon on customization classes...[and] implying that Nike approved The Shoe Surgeon continuing to customize Nike shoes and offer customization classes using Nike shoes.”

Preferring to put this case back in the box, the parties eventually reached a confidential settlement in June 2025. Under the terms of the [consent judgment](#) entered by the court, the Defendants conceded liability on most of Nike’s legal claims and acknowledged the validity of Nike’s various marks. Defendants also agreed, among other things, to be permanently benched from manufacturing, promoting, advertising, distributing, or selling any products or digital assets that use Nike’s trademarks, trade dress, or other protected elements in a way that is likely to cause consumer confusion or cause a mistaken belief that such products are sponsored by Nike. The consent judgment also bars Defendants from offering deconstruction or reconstruction workshops featuring Nike’s marks or manufacturing or selling shoe-making products used to make shoes that feature Nike’s marks or a “colorable imitation.” Moving forward, The Shoe Surgeon is permitted to provide certain “one of one” customization services as long as such services include a written disclosure that the services are (a) not authorized by Nike, (b) may impact the performance of the genuine shoes, and (c) are provided for personal and non-commercial purposes. The judgment also requires the Defendants to remove online listings containing “counterfeit or infringing products” and “unauthorized prior collaborations” featuring Nike’s marks from their website within thirty days. While the monetary terms of the settlement remain confidential, the scope of the injunctive relief suggests that Nike viewed this case as a full-court press aimed at setting a precedent for how it will handle similar disputes going forward.

The Southern District of New York has become a frequent venue for Nike’s IP enforcement efforts, with Nike being increasingly willing to litigate against what it

sees as unauthorized commercial exploitation of its designs. The case highlights the interesting IP issues when artistic creativity meets commercialization, as well as the fine line between customization and infringement. While the sneaker world thrives on innovation and reinterpretation, the legal landscape and existing IP laws present boundaries that are still being written (and designed).

Chakras Align: Appeals Court Rules Yoga Is Protected Speech, Enjoins Local Ordinance

Inhale, hold: Yoga conventionally cultivates a profound sense of calm, strength and balance for its practitioners, but a San Diego, California ordinance prohibiting the teaching of yoga to groups of four or more in city shoreline parks and beaches disrupted that serenity. Instead of rolling up their mats for good, the yogis struck a pose in district court and can, at least temporarily, practice again on the sand just in time for summer after the Ninth Circuit reversed an adverse lower court ruling and ordered the district court to grant the yoga instructors’ motion for a preliminary injunction enjoining the ban. ([Hubbard v. City of San Diego](#), No. 24-4613 (9th Cir. June 4, 2025)).

The underlying dispute arose in 2024 when the City of San Diego amended the City’s Municipal Code and adopted [Ordinance No. 21775](#) (the “Ordinance”). Aimed at regulating commercial activity and sidewalk vendors and controlling crowds in the parks, the Ordinance, among other things, prohibited non-expressive commercial and service activities in shoreline parks and beaches absent the City Manager’s written consent. Under Section 63.0102 of the Ordinance, “[e]xcept expressive activity authorized” by Section 63.0502, “it is unlawful to carry on or conduct commercial activity, to provide any service, or to . . . require someone to . . . pay a fee before providing a service, even if characterized as a donation, without the written consent of the City Manager” in public parks and on beaches. The Ordinance then provided a list of examples of services, which “include[s] massage, yoga, dog training, fitness classes, equipment rental....” Under Section 63.0502 of the Ordinance, “[e]xpressive activity means all forms of

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speech and expressive conduct,” but “does not include,” among other things, “teaching yoga.”

Thus, unfortunately for the yogis of San Diego, the Ordinance explicitly included group activities like teaching yoga in its definitions of banned commercial activity and placed yoga outside its definition of protected “expressive activity.” The Ordinance further stated that teaching yoga to four or more persons is a “service” activity that is impermissible, even if providing the service is done on a donation-basis.

This ushered in disharmony for yoga instructors Steven Hubbard and Amy Baack (“Plaintiffs”). These instructors engaged in years-long practices of hosting donation-only yoga classes set in various city parks and beaches. With the Ordinance in effect, city park rangers issued citations to Hubbard in spring 2024 and threatened to issue a citation for Baack for teaching their respective yoga classes. And, around the same time, city employees allegedly told Baack they do not issue any permits for fitness in any shoreline park. As a result, in June 2024 the pair filed a facially and as-applied First Amendment challenge to San Diego’s ban on their yoga classes in the parks. Practicing legal mindfulness, Plaintiffs quickly [moved](#) for a temporary restraining order and preliminary injunction enjoining enforcement of the Ordinance’s prohibition on the teaching of yoga in city parks. Plaintiffs argued that the ban was not a content-neutral time, place, and manner regulation of expressive activity (contending that teaching yoga is “pure speech”) but rather it “explicitly” targeted “teaching yoga in a public forum.” The City [opposed the motion](#) and responded that “Plaintiffs’ conduct, teaching a yoga class, is activity that is regulated because it is commercial activity that gathers large groups of people. The Challenged Ordinance only incidentally, if in fact it does at all, burden speech.”

The district court [denied](#) the motion, finding that the Ordinance was “content-neutral” and Plaintiffs failed to demonstrate their First Amendment claims were likely to succeed on the merits because they did not establish that teaching yoga is a constitutionally protected activity. Harnessing the breath of fire and determined to resume shoreline yoga, Plaintiffs appealed the ruling to the Ninth Circuit.

Exhale: The Ninth Circuit released the tension on June 4, 2025.

The appeals court outlined that to achieve the “‘extraordinary’” remedy of a preliminary injunction, Plaintiffs must first demonstrate that they are likely to succeed on the merits of their First Amendment challenge. This analysis proceeds in three steps: 1) determining whether the First Amendment protects the speech, 2) considering the nature of the forum where the speech occurs, and 3) examining whether the justifications for excluding the speech from the forum pass the requisite scrutiny standard.

Stepping on the mat, the court initially addressed whether the First Amendment protects teaching yoga. The court answered in the affirmative, stating that the First Amendment’s protections for speech encompass situations where a teacher’s “‘speech to [students] imparts a ‘specific skill’ or communicates advice derived from ‘specialized knowledge.’” In discussing yoga’s traditions of study, the court cited a prior Ninth Circuit decision regarding the issue of yoga and copyright, which we covered in a [prior edition of Three Point Shot](#). The court concluded that restraining how yoga is taught, therefore, restricts Plaintiffs’ First Amendment rights to disseminate information from their specialized knowledge of yoga. On a related issue of the yoga classes’ forum, the court noted that San Diego’s parks and beaches are “traditional public forums” which have a long tradition devoted to assembly and debate.

Finally, the appeals court found that the content-based nature of the Ordinance is “obvious” and ruled that San Diego’s justifications for targeting yoga in its Ordinance did not pass muster, particularly since the Ordinance permits the teaching of subjects such as tai chi and Shakespeare at shoreline parks and beaches while the teaching of yoga is prohibited. The court explained that because the Ordinance is not content neutral, it does not qualify as a valid time, place, and manner restriction, and is “presumptively unconstitutional,” unless the City meets its burden of proving that the Ordinance “furthers a compelling interest and is narrowly tailored to achieve that interest.” The court stated that the Ordinance fails such a strict scrutiny analysis. San Diego attempted to argue that excluding yoga in parks and beaches furthers the City’s compelling interest of public safety, but the

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court swiftly flowed past that justification when the City failed to explain how teaching yoga negatively impacts those interests and why an existing regulation on large groups in the park and on expressive activity that blocks pedestrian flow and traffic did not already address such concerns.

Thus, the court ruled Plaintiffs were likely to succeed on the merits of their as-applied First Amendment claim. It also found that the remaining factors — the risk for irreparable harm, the balance of equities, and the public interest — all weigh in Plaintiffs' favor as well, given the "serious First Amendment questions" at issue. With its analysis complete, the Ninth Circuit instructed the district court to enter a preliminary injunction in favor of Plaintiffs. Subsequently, the City of San Diego filed a petition for rehearing en banc.

On remand, the lower court [granted](#) Plaintiffs' the preliminary injunction on June 13, 2025.

Thanks to the Ninth Circuit, yoga can return to San Diego's shoreline parks and beaches, at least for now. As the parties continue litigating the legal challenge in district court (indeed, Plaintiffs have filed an amended complaint; the City has filed a motion to dismiss), the case, which pits public safety regulation versus expressive group activity in public spaces, is not yet over.

Skiing's Inherent Risks: Idaho Supreme Court Shields Sun Valley Slopes

On June 25, 2025, Sun Valley Company ("Sun Valley"), which operates the renowned Sun Valley Ski Resort in Idaho, successfully took its defense of a tort suit to the top of the Idaho judicial mountain, where the Idaho Supreme Court ruled that the plaintiff failed to show the ski resort abrogated its standard of care when it marked its snowmaking equipment on the slopes. ([Milus v. Sun Valley Co.](#), No. 49693-2022 (Idaho June 25, 2025)).

Sun Valley Resort, established in 1936, is widely regarded as America's first destination ski resort. The resort features two mountains, 121 runs, and over [2,400 acres of skiable terrain](#). Since its early days, the resort has maintained its prestige, beauty...and, most importantly, its fantastic ski trails and conditions. Most skiers cherish fond memories of their time on the

mountain with family and friends, yet skiing comes with the possibility of serious injury. Over the past decade, for example, the average number of ski-related deaths in the United States has reportedly been [42 per year](#), with a decline to 35 deaths in the 2023-2024 season. Despite increased helmet use and the industry's efforts to maintain groomed slopes, install more warning signs and expand safety measures, there remain inherent dangers to skiing — something the Idaho Supreme Court ultimately acknowledged after some legal back and forth.

The case stemmed from a tragic incident when, on November 30, 2019, Stewart Milus was skiing at Sun Valley Resort and collided with a piece of snowmaking equipment labelled as Snow Gun 16, which was positioned in the middle of Lower River Run on Bald Mountain. Mr. Milus died following the incident. In September 2020 his surviving widow, Laura Milus ("Plaintiff"), filed a wrongful death suit in an Idaho state court. The complaint alleged that Sun Valley breached two of its duties under the state's Responsibilities and Liabilities of Skiers and Ski Area Operations Act (Idaho Code 6-1101 to 6-1109) ("the Act"), which is the state statute that covers the responsibilities of skiers and ski area operators, including various safety-related duties required of ski area operators. Specifically, Plaintiff claimed Sun Valley violated Section 6-1103(2), which imposes a duty on ski area operators to mark with a "visible sign" or "warning implement" the location of snowmaking equipment on ski slopes and trails, and Section 6-1103(6), which imposes a duty to place a conspicuous notice at or near the top of a trail or slope that is open to the public when "snowmaking operations being undertaken." Sun Valley argued that, among other things, it had satisfied its statutory duty under the Act because it covered Snow Gun 16 in yellow padding, which, it contended, constituted an adequate warning implement. Alternatively, Sun Valley argued that Plaintiff's claims were barred under the Act because Mr. Milus had assumed the risk of injury while skiing (Section 6-1106 of the Act details when a skier assumes the risk of injuries resulting from participating in the sport of skiing and lists various ski slope conditions that skiers are responsible for navigating).

In March 2022 the district court granted summary judgment for Sun Valley after concluding that the yellow padding on Snow Gun 16 satisfied the duty under the

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Act and that Sun Valley's had no duty to place a warning sign at the top of the ski run because there was no snowmaking occurring at the time of the incident. The Plaintiff appealed. After granting Sun Valley's request for a rehearing of its initial decision in December 2023, the Idaho Supreme Court affirmed the lower court's dismissal, albeit on slightly different grounds.

First, the Idaho Supreme Court had to examine precedent to determine what standard, if any, ski operators should be held to when undertaking safety duties under the Act. While the district court found Sun Valley did not have to undertake its duties under any standard of care, the high court ruled that: "[T]he Act imposes duties on ski area operators and that those operators are held to an ordinarily prudent person standard of care when performing those duties." In short, the court read the Act to require a reasonable duty of care when undertaking the enumerated safety duties under the Act (which included snowmaking equipment warnings) but no duty of care if a ski resort voluntarily undertakes any additional safety measures outside of those required under the statute. When looking at the merits of Plaintiff's claim, the Idaho Supreme Court found no genuine issue of material fact whether the yellow padding on the snowmaking machine constituted a "warning implement" since the plaintiff's argument focused on the machine's location — outside the rule's scope — rather than the adequacy of the warning. As to the second claim, the court held that there was a genuine issue of fact as to Plaintiff's claim that Sun Valley failed to erect proper warning signs at the top of the ski run informing skiers about the snowmaking equipment (which the court interpreted as required even if snowmaking was not actively occurring at the time of the incident).

Still, the court cleared the claim by accepting Sun Valley's assumption of the risk defense. The Idaho Supreme Court concluded that even if Plaintiff established an issue of fact about the warning sign, the record established that Snow Gun 16 was plainly marked in accordance with the Act and Mr. Milus assumed the risk of colliding with snowmaking equipment "that was plainly visible or was plainly marked." The court explained how the Act creates an assumption of risk defense and outlines a specific list of risks assumed by skiers.

Under Section 6-1106 of the Act:

"Duties of Skiers. It is recognized that skiing as a recreational sport is hazardous to skiers, regardless of all feasible safety measures that can be taken."

"Each skier expressly assumes the risk of and legal responsibility for any injury to person or property that results from participation in the sport of skiing including any injury caused by the following, all whether above or below snow surface: [...] snowmaking and snowgrooming equipment which is plainly visible or plainly marked in accordance with the provisions of section 6-1103, Idaho Code."

In the end, the district court's summary judgment decision in favor of Sun Valley was affirmed.

This case is a stark reminder that skiing, by its very nature, carries a risk of injury. Even when resorts post warnings, groom trails, and deploy safety protocols, accidents — and sadly, fatalities — can still occur. For ski resorts like Sun Valley, the Idaho Ski Area Liability Act creates certain duties for ski resorts but also outlines certain specific duties for skiers, listing those risks that skiers necessarily assume when they are on the slopes, attempting to create a balance that values safety but also gives resorts a critical shield to allow their continued operation.

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Proskauer has more than 50 years of experience counseling the world's premier sports organizations on their most critical and complex matters.

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