

**BRYAN CAVE LLP**

Marcy J. Bergman, California Bar No. 75826  
Alexandra C. Whitworth, California Bar No. 303046  
Three Embarcadero Center, 7<sup>th</sup> Floor  
San Francisco, CA 94111-4070  
Telephone: (415) 675-3400  
Facsimile: (415) 675-3434  
Email: marcy.bergman@bryancave.com  
alex.whitworth@bryancave.com

Attorneys for Plaintiff  
AIRWAIR INTERNATIONAL LTD.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

AIRWAIR INTERNATIONAL LTD., a  
company of the United Kingdom,

Plaintiff,

vs.

NEXT PLC, a company of the United Kingdom;  
NEXT RETAIL LTD., a company of the United  
Kingdom; and DOES 1-50,

Defendants.

Case No. 3:16-cv-00944

Honorable Susan Illston

**AMENDED CONSENT JUDGMENT AND  
PERMANENT INJUNCTION**

Action Filed: February 25, 2016  
Judge: Honorable Susan Illston

BRYAN CAVE LLP  
THREE EMBARCADERO CENTER, 7<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94111-4070

1 The parties hereto having agreed to a settlement of the claims between them, and having  
 2 stipulated to entry of this consent judgment, it is hereby ORDERED, ADJUDGED AND  
 3 DECREED:

4 1. This Court has jurisdiction over Defendants Next PLC and Next Retail Ltd.  
 5 (collectively, “NEXT”) for the purpose of this Consent Judgment only and over the subject matter  
 6 at issue in this action. NEXT consents to jurisdiction of this Court, and this Court retains  
 7 jurisdiction for the purpose of executing and enforcing this Consent Judgment and Permanent  
 8 Injunction.

9 2. Plaintiff AirWair International Ltd. (“AirWair”) is the owner of the Dr. Martens®  
 10 trade dress for footwear and is the owner of several U.S. registrations for its trade dress in the  
 11 United States Patent and Trademark Office, including “the combination of yellow stitching in the  
 12 welt area and a two-tone grooved sole edge” (Reg. No. 2,437,751, attached as Exhibit 1); the  
 13 yellow “welt stitch located around the perimeter of footwear” (Reg. No. 2,437,750, attached as  
 14 Exhibit 2); its DMS undersole design mark (Reg. No. 2,102,468, attached as Exhibit 3, the “DMS  
 15 Design Mark”); “the design of an [*sic*] sole edge including longitudinal ribbing, and a dark color  
 16 band over a light color” (Reg. No. 2,104,349, attached as Exhibit 4); and “longitudinal ribbing and  
 17 a dark color band over a light color on the outer sole edge, welt stitching, and a tab at the top back  
 18 heel of footwear” (Reg. No. 2,341,976, attached as Exhibit 5) (the above registrations collectively,  
 19 “AirWair Trade Dress Marks”). AirWair has the exclusive right to use the AirWair Trade Dress  
 20 Marks in commerce, on or in connection with footwear, and enforces its rights throughout the  
 21 world.

22 3. NEXT acknowledges the validity of the trade dress registrations attached as  
 23 Exhibits 1–5.

24 4. NEXT has imported, distributed, offered for sale, and sold footwear under the style  
 25 names “Lace Up Boot (Older Girls),” “Lace Up Boot (Younger Girls),” and “Black Super Heavy  
 26 Lace-Ups” that features the AirWair Trade Dress Marks (“NEXT Accused Footwear”).  
 27 Representative samples of the NEXT Accused Footwear are shown in Exhibit 6.  
 28

1           5.       NEXT represents and warrants that it sold approximately 115 pairs of the NEXT  
2     Infringing Footwear in the United States, with sales revenue totaling approximately £2152. NEXT  
3     further represents that it has no pairs of the NEXT Infringing Footwear remaining in inventory.

4           6.       NEXT represents and warrants that as of the date of this Agreement, it has  
5     discontinued manufacturing, licensing, distributing, advertising, marketing, purchasing or selling  
6     the NEXT Accused Footwear in the United States and worldwide. NEXT further represents and  
7     warrants that it is not currently manufacturing, distributing, selling or offering for sale any  
8     footwear or any component part thereof that includes any of the features that are the subject of any  
9     of the AirWair Trade Dress Marks.


10          7.       NEXT further represents that there is no remaining inventory of any point-of-sale  
11     materials, labels, signs, boxes, prints, catalogs, line sheets, marketing materials, internet web  
12     pages, metatags, packages, papers, other trade dress, and advertisements in the possession of  
13     NEXT bearing images, illustrations, or representations of the enjoined shoes and boots, trade dress  
14     and undersole patterns, nor does it have any plates, molds, matrixes, and other means of making  
15     the same in its possession or control.

16          8.       NEXT, and each of its officers, directors, servants, employees, subsidiaries, and  
17     successors who receive actual notice of this order by personal service or otherwise, are  
18     permanently enjoined from manufacturing, importing, exporting, distributing, licensing, selling,  
19     marketing, advertising, promoting or offering for sale the NEXT Accused Footwear or any  
20     footwear that includes any of the features that are the subject of any of the AIRWAIR Trade Dress  
21     Marks or any component part thereof that includes any of the features that are the subject of any of  
22     the Airwair Trade Dress Marks. NEXT also agrees not to authorize, enable or procure any other  
23     person to do such acts.

24          9.       It is hereby ordered that this action be closed.  
25  
26  
27  
28

1 **IT IS SO ORDERED.**

2  
3  
4 Dated: 10/24/16

By:   
The Honorable Susan Illston  
Judge of the U.S. District Court

5  
6  
7  
8 Dated: October 20, 2016

**BRYAN CAVE LLP**

9  
10 By: /s/ Alexandra Whitworth  
Alexandra C. Whitworth  
Attorneys for Plaintiff  
AIRWAIR INTERNATIONAL LTD.

11  
12 Dated: October 20, 2016

13  
14 By:   
15 Defendant NEXT PLC

16  
17 Dated: October 20, 2016

18  
19 By:   
20 Defendant NEXT RETAIL LTD.

21  
22 **Attestation:** I, Alexandra C. Whitworth, hereby attest that concurrence in the filing of this  
23 document has been obtained from each of the other signatories.

24  
25 /s/ Alexandra Whitworth  
Alexandra C. Whitworth

# Exhibit 1

**Int. Cl.: 25**

**Prior U.S. Cl.: 39**

**United States Patent and Trademark Office**

**Reg. No. 2,437,751**

**Registered Mar. 27, 2001**

**TRADEMARK  
PRINCIPAL REGISTER**



R. GRIGGS GROUP LIMITED (UNITED KING-  
DOM CORPORATION)  
COBBS LANE, WOLLASTON, WELLINGBOROUGH  
NORTHANTS NN8 7SW, UNITED KINGDOM

THE MARK CONSISTS OF THE COMBINATION  
OF YELLOW STITCHING IN THE WELT AREA  
AND A TWO-TONE GROOVED SOLE EDGE.

FOR: FOOTWEAR, IN CLASS 25 (U.S. CL. 39).

SEC. 2(F).

FIRST USE 4-1-1960; IN COMMERCE 0-0-1984.

SER. NO. 74-494,466, FILED 2-25-1994.

THE DRAWING OF THE WELT STITCH IS LINED  
FOR THE COLOR YELLOW, AND CLAIM IS MADE  
TO COLOR.

CATHERINE KAISER KREBS, EXAMINING AT-  
TORNEY

# Exhibit 2

**Int. Cl.: 25**

**Prior U.S. Cl.: 39**

**United States Patent and Trademark Office**

**Reg. No. 2,437,750**

**Registered Mar. 27, 2001**

**TRADEMARK  
PRINCIPAL REGISTER**



R.GRIGGS GROUP LIMITED (UNITED KING-  
DOM CORPORATION)  
COBBS LANE, WOLLASTON  
WELLINGBOROUGH, NORTHANTS NN8 7SW,  
UNITED KINGDOM

FOR: FOOTWEAR, IN CLASS 25 (U.S. CL. 39).

FIRST USE 4-1-1960; IN COMMERCE 0-0-1984.

THE DRAWING OF THE WELT STITCH IS LINED  
FOR THE COLOR YELLOW AND CLAIM IS MADE  
TO COLOR.

THE MARK CONSISTS OF A WELT STITCH  
LOCATED AROUND THE PERIMETER OF FOOT-  
WEAR. THE PHANTOM LINING IS NOT A PART  
THE MARK, BUT MERELY INDICATES THE POSI-  
TION OF THE MARK.

SEC. 2(F).

SER. NO. 74-494,463, FILED 2-25-1994.

CATHERINE KAISER KREBS, EXAMINING AT-  
TORNEY



# Exhibit 3

Int. Cl.: 25

Prior U.S. Cls.: 22 and 39

Reg. No. 2,102,468

**United States Patent and Trademark Office**

Registered Oct. 7, 1997

**TRADEMARK  
PRINCIPAL REGISTER**



R. GRIGGS GROUP LIMITED (UNITED KING-  
DOM CORPORATION)  
COBBS LANE, WOLLASTON, WELLINGBOR-  
OUGH  
NORTHANTS NN8 7SW, UNITED KINGDOM

FOR: FOOTWEAR, IN CLASS 25 (U.S. CLS. 22  
AND 39).

FIRST USE 8-0-1992, FIRST USED IN AN-  
OTHER FORM IN 1978; IN COMMERCE

9-0-1992, FIRST USED IN COMMERCE IN AN-  
OTHER FORM IN 1984.

THE PHANTOM LINING IS NOT A PART OF  
THE MARK, BUT MERELY INDICATES THE  
POSITION OF THE MARK.

THE MARK CONSISTS OF THE DESIGN OF  
AN UNDERSOLE.

SER. NO. 74-502,418, FILED 3-21-1994.

JEFFREY LOOK, EXAMINING ATTORNEY

# Exhibit 4

Int. Cl.: 25

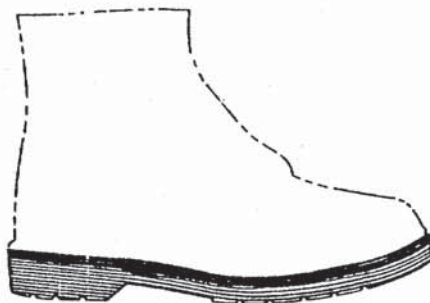
Prior U.S. Cls.: 22 and 39

Reg. No. 2,104,349

**United States Patent and Trademark Office**

Registered Oct. 7, 1997

**TRADEMARK  
SUPPLEMENTAL REGISTER**



R. GRIGGS GROUP LIMITED (UNITED KING-  
DOM CORPORATION)  
COBBS LANE, WOLLASTON  
WELLINGBOROUGH, NORTHANTS NN8 7SW,  
UNITED KINGDOM

FOR: FOOTWEAR, IN CLASS 25 (U.S. CLS. 22  
AND 39).

FIRST USE 4-1-1960; IN COMMERCE  
0-0-1984.

THE PHANTOM LINING IS NOT A PART OF  
THE MARK, BUT MERELY INDICATES THE  
POSITION OF THE MARK.

THE MARK CONSISTS OF THE DESIGN OF  
AN SOLE EDGE INCLUDING LONGITUDI-  
NAL RIBBING, AND A DARK COLOR BAND  
OVER A LIGHT COLOR.

SER. NO. 74-494,464, FILED P.R. 2-25-1994;  
AM. S.R. 5-30-1997.

CATHERINE KAISER KREBS, EXAMINING  
ATTORNEY

# Exhibit 5

**Int. Cl.: 25**

**Prior U.S. Cl.: 39**

**United States Patent and Trademark Office**

**Reg. No. 2,341,976**

**Registered Apr. 11, 2000**

**TRADEMARK  
SUPPLEMENTAL REGISTER**



R. GRIGGS GROUP LIMITED (UNITED KING-  
DOM CORPORATION)  
COBBS LANE, WOLLASTON  
WELLINGBOROUGH, NORTHANTS NN8 7SW,  
UNITED KINGDOM

FOR: FOOTWEAR, IN CLASS 25 (U.S. CL. 39).  
FIRST USE 0-0-1960; IN COMMERCE  
0-0-1984.

THE MARK CONSISTS OF LONGITUDINAL  
RIBBING AND A DARK COLOR BAND OVER

A LIGHT COLOR ON THE OUTER SOLE  
EDGE, WELT STITCHING, AND A TAB LO-  
CATED AT THE TOP BACK HEEL OF FOOT-  
WEAR.

SER. NO. 74-494,465, FILED P.R. 2-25-1994;  
AM. S.R. 3-11-1999.

CATHERINE KAISER KREBS, EXAMINING  
ATTORNEY

# Exhibit 6

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### Lace Up Boot (Older Girls)

862-231

Colour

 Black

Size

Please Choose



[ADD TO BAG](#)

Upper: other materials. Lining and sock: textile. Outer sole: other materials.

\$44 - \$55



### Colourblock Knit Sweater (3-16yrs)

869-091

Colour

 Pink

Size

Please Choose



[ADD TO BAG](#)

74% acrylic 18% polyester 8% nylon.

\$24 - \$33



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### Grey Star Print Jegging (3-16yrs)

148-137

Size

Please Choose



[ADD TO BAG](#)

78% cotton 20% polyester 2% elastane.

\$26 - \$37



### Fairisle Pattern Beanie (3-16yrs)

659-549

Size

Please Choose



[ADD TO BAG](#)

65% acrylic 35% polyester.

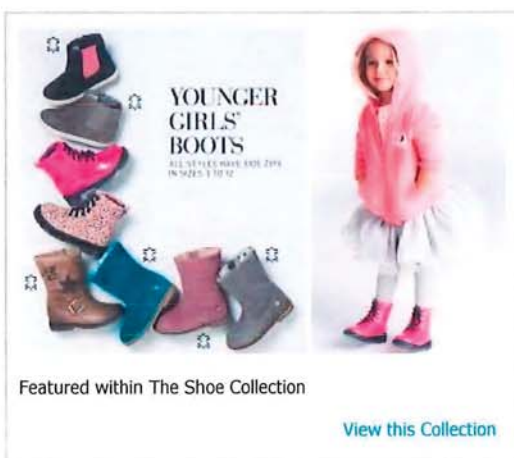
\$11 - \$15







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### Lace-Up Boots (Younger Girls)

775-926

Colour

 Pink 

Size

Please Choose 



[ADD TO BAG](#)


Upper: other materials. Lining and sock: textile. Outer sole: other materials.



### Pink Zip Through Hoody (3mths-6yrs)

880-575

Size

Please Choose 



[ADD TO BAG](#)


With elephant embroidery.  
60% cotton 40% polyester.



### Three Pack Star And Stripe Long Sleeve T-Shirts (3-16yrs)

856-106

Size

Please Choose 



[ADD TO BAG](#)

Grey Star 60% cotton 40% polyester. White Star 100% cotton.  
Stripe 93% cotton 4% polyester 3% metallised fibre.



### Grey Tutu (3mths-6yrs)

892-354

Size

Please Choose 



[ADD TO BAG](#)

100% polyester. Lining 100% cotton.

### Three Pack Stripe, Grey Marl And Spot Tights (0mths-16yrs)

\$19 - \$27







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### Black Super Heavy Lace-Ups

798-214

\$69

Size

Please Choose



[ADD TO BAG](#)

Upper: other materials. Lining and sock: other materials/leather. Outer sole: other materials.



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BRYAN CAVE LLP  
THREE EMBARCADERO CENTER, 7<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94111-4070

**BRYAN CAVE LLP**

Marcy J. Bergman, California Bar No. 75826  
Alexandra C. Whitworth, California Bar No. 303046  
Three Embarcadero Center, 7<sup>th</sup> Floor  
San Francisco, CA 94111-4070  
Telephone: (415) 675-3400  
Facsimile: (415) 675-3434  
Email: marcy.bergman@bryancave.com  
alex.whitworth@bryancave.com

Attorneys for Plaintiff  
AIRWAIR INTERNATIONAL LTD.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

AIRWAIR INTERNATIONAL LTD., a  
company of the United Kingdom,

Plaintiff,

vs.

NEXT PLC, a company of the United Kingdom;  
NEXT RETAIL LTD., a company of the United  
Kingdom; and DOES 1-50,

Defendants.

CASE NO. 3:16-CV-00944-SI

**CERTIFICATE OF SERVICE**

Date Action Filed: February 25, 2016



**CERTIFICATE OF SERVICE**

I am employed in the aforesaid County, State of California; I am over the age of eighteen years and not a party to the within entitled action; my business address is: Three Embarcadero Center, 7<sup>th</sup> Floor, San Francisco, California 94111.

On October 20, 2016, I caused to be served on the interested parties in said action the within:

- **AMENDED CONSENT JUDGMENT AND PERMANENT INJUNCTION**

on the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Adam M Cohen, Esq.  
Dana Susman, Esq.  
Kane Kessler, P.C.  
666 Third Avenue  
New York, NY 10017-4041  
Tel: (212) 541-6222  
[acohen@kanedessler.com](mailto:acohen@kanedessler.com)  
[dsusman@kanekessler.com](mailto:dsusman@kanekessler.com)

*Attorneys for Defendants*  
**Next Plc and Next Retail Ltd.**

Next Plc.  
Desford Road  
Enderby  
Leicester  
LE19 4AT

Defendant

Next Retail Ltd.  
Desford Road  
Enderby  
Leicester  
LE19 4AT

Defendant

**[X] BY FEDERAL EXPRESS:** I placed such envelope for deposit in the Federal Express drop slot for service by Federal Express. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with Federal Express on that same day at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if service is more than one day after date of deposit for express service in affidavit.

I declare that I am employed within the office of a member of the bar of this Court at whose direction the service was made. Executed on **October 20, 2016**, at San Francisco, California.

/s/ Angela Franklin

Angela Franklin