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Under Armour Loses Bid To End Shoe Trademark Spat

By **Jonathan Randles**

Law360, New York (July 08, 2014, 5:36 PM ET) -- A California federal judge on Monday refused to end a lawsuit alleging Under Armour Inc. and other sports apparel retailers sold an athletic shoe that violated a trademark associated with Gravity Defyer Corp.'s shoes, a decision that sets the stage for a potential jury trial.

U.S. District Judge John Kronstadt denied a motion for summary judgment brought by Under Armour, Finish Line Inc., Foot Locker Inc. and other retailers that sold Micro G Defy brand shoes. Judge Kronstadt said questions remain as to whether customers were confused between the Micro G Defy and Gravity Defyer shoes.

The decision gives plaintiff Gravity Defyer the opportunity to present its trademark infringement case to a jury. The company owns a trademark for "G Defy" on footwear with springs in the heels. Barring a settlement, trial is scheduled to begin Sept. 16, according to Gravity Defyer's attorney Robert Lauson of Lauson & Tarver LLP.

Lauson said he will likely meet with attorneys representing the defendants at least once before the trial is scheduled to begin. If a settlement is not reached, Lauson said he would ask the jury for approximately \$9 million in damages.

Gravity Defyer **filed the lawsuit last year** and claims that when companies began selling Micro G Defy shoes, customers searching online for Gravity Defyer shoes were buried by Web page results for Under Armour's product. Lauson said the defendants agreed to stop advertising the Micro G Defy shortly after the lawsuit was filed.

Pointing out that both Gravity Defyer and Micro G Defy are athletic shoes that were advertised as providing extra "bounce" to customers, Judge Kronstadt said Tuesday that "there is a genuine issue of fact with respect to whether the ordinary consumer is likely to associate the two products".

Nordstrom Inc., Dick's Sporting Goods Inc., Champs Sports, Sport Chalet Inc., Zappos IP Inc., Backcountry.com Inc. Rogan Shoes Inc., Road Runner Sports Retail Inc., MonkeySports Inc., Holabird Sports LLC and Eastbay Inc. are also listed as defendants in the case.

Attorneys representing the defendants did not return a message seeking comment.

Gravity Defyer is represented by Robert J. Lauson of Lauson & Tarver LLP and Leon Small.

The defendants are represented by Allan E. Anderson and Jerrold Abeles of Arent Fox LLP and Arnold E. Sklar and Alan J. Hart of Ropers Majeski Kohn & Bentley PC.

The case is Gravity Defyer Corp. v. Under Armour Inc. et al., case number 2:13-cv-01842, in

the U.S. District Court for the Central District of California.

--Additional reporting by Stewart Bishop. Editing by Christine Chun.

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