

## Brooks Boots Puma Running Shoe IP Suit To Wash.

By **Lauren Berg**

*Law360 (January 23, 2023, 11:19 PM EST)* -- Brooks Sports Inc. can move to Seattle federal court a lawsuit claiming it infringed rival Puma's patented shoe foam technology and "Nitro" trademark to sell running shoes, an Indiana federal judge ruled Friday, saying the parties' dispute has stronger ties to the Evergreen State.

U.S. District Judge Richard L. Young in an 11-page order granted Brooks' motion to transfer the case from the Hoosier State to the Seattle division of the Western District of Washington, finding that there's not much tying Puma North America Inc.'s case to its chosen venue of Indiana.

"Ordinarily, a plaintiff's choice of forum is accorded a great deal of deference," Judge Young said. "Puma's choice of forum is entitled to little deference. Puma is not an Indiana corporation, is not headquartered in Indiana, and has only one brick-and-mortar store in Indiana (out of over 100 in the United States)."

"Moreover, the events at issue in this case did not occur in Indiana," he added. "The Western District of Washington has stronger ties to the parties' dispute than this district."

In a July complaint, Puma asserted that Brooks' Aurora BL running shoe was made by infringing Puma's design patent. Puma also alleged that recent marketing materials for Brooks' shoes, claiming that consumers can "Run on Nitro" and "Nitro-infuse" their athletics, infringe Puma's exclusive rights to use the Nitro mark for footwear.

Nitro refers to the nitrogen gas used to create the foam in the soles of Puma's Nitro brand of shoes, which is meant to give the shoes a lighter feel while running.

Puma said it has been selling the Nitro line since March 2021 and that it became aware of Brooks' alleged infringement later that year when a Puma worker photographed allegedly infringing signs, stands and handouts used by Brooks at a Texas trade show.

Puma alleged that Brooks has a "routine practice" of infringing its intellectual property and must be directed to stop, forfeit any profits it made from its alleged infringement and cover Puma's legal fees.



Geoffrey Potter



Aron Fischer



Lachlan Campbell-  
Verduyn

Brooks in September lobbed counterclaims against Puma, alleging that its rival doesn't have any rights to "nitro" and denied infringing its rights to the "nitro" mark. Brooks also claims that it didn't infringe the claimed design of Puma's patent and that the claims of the patent are invalid.

In his order Friday, Judge Young said the issue of venue in such intellectual property cases focuses on where the accused infringer does business and where the design and manufacture of the accused products took place.

In this case, Brooks is headquartered in Seattle, the accused products and related marketing campaigns were designed in Seattle and all but one of Brooks' key designers, developers and executives live in the Seattle area — not in Indiana, the order states.

Brooks' research labs and facilities are in Seattle — where evidence relating to the company's products and marketing campaign are located — while Puma's research and development labs are in Germany and Massachusetts, according to the order. However, most of the evidence is electronically stored and could be easily sent to either Washington or Indiana, so it doesn't have much bearing on the venue issue, the judge said.

But, Brooks' witnesses largely reside in the Seattle area, so while Puma's witnesses live in Germany and Massachusetts and would have to travel regardless, transferring the case to Washington would significantly cut down on required flights, according to the order.

"Because Brooks will need to travel only if the court denies transfer and Puma will have to travel regardless of the court's decision, the court finds the convenience factor weighs in favor of transfer," Judge Young said.

Counsel for the parties did not immediately respond to requests for comment Monday evening.

The patent-in-suit is Puma's U.S. Design Patent No. D897,075.

Puma is represented by Joel E. Tragesser, Michael T. Piery, James J. Aquilina and Otto E. Hinks of Quarles & Brady LLP.

Brooks is represented by Kevin M. Toner and Ryan T. Leagre of Plews Shadley Racher & Braun LLP and Aron Fischer, Geoffrey Potter, Lachlan Campbell-Verduyn, Henry Wainhouse and Colleen O'Leary of Patterson Belknap Webb & Tyler LLP.

The case is Puma SE et al. v. Brooks Sports Inc., case number 1:22-cv-01362, in the U.S. District Court for the Western District of Washington.

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