

## Nike Voluntarily Dismisses Closely Watched Lawsuit Against Olympic Hopeful

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June 24, 2016

Nike has voluntarily dismissed a lawsuit it had filed against middle-distance runner and Olympic hopeful Boris Berian.

At issue was whether Berian breached an endorsement agreement with Nike when—after the agreement’s expiration but within the time in which Nike could match third-party offers—Berian entered into a new agreement with rival company New Balance.

The lawsuit has been the talk of the athletics community, not only because of what some have perceived to be a Goliathan stance taken by Nike, but also because it evidenced an increasingly competitive and lucrative endorsement field, and one in which guaranteed contracts are becoming more common.

Nike’s agreement with Berian gave Nike the exclusive right to Berian’s endorsement of athletic footwear and apparel through Dec. 31, 2015. For 180 days after the expiration of that term, Nike had the right to match any endorsement offer that a third-party presented to Berian.

In January 2016, New Balance offered Berian a three-year contract that included annual compensation of \$125,000 and other ranking, time, and competition bonuses, according to documents Berian filed in the lawsuit. The New Balance proposal notably excluded any “reductions,” which are contractual provisions that give sponsors the right to reduce compensation if an athlete fails to meet certain performance expectations.

Berian presented Nike with New Balance’s term sheet. Nike responded that it was matching the offer, subject to the inclusion of “industry standard” reductions. Berian viewed Nike’s response as a declination to match New Balance’s offer, while Nike viewed the response as a binding contract.

When Berian proceeded with New Balance, Nike filed suit in a U.S. District Court in Oregon and sought to restrain him from entering into a contract with or otherwise endorsing New Balance.

In response to Nike’s request for an injunction, Berian provided statements from other athletes who declared that reductions were not standard in the industry and that companies like Brooks, Oiselle, and New Balance often excluded such provisions from their contracts.

After issuing a temporary restraining order, the court heard oral arguments on the injunction issue on June 22, 2016, and was expected to rule the following week. Nike announced on June 23, however, that it had decided to voluntarily dismiss the lawsuit. In its statement Nike expressed that it “legitimately exercised its right to match the New Balance offer” but that it also “recognize[d] that this [was] a significant time for [Berian],” that it wished to “eliminate this distraction” for him, and that it wished him “the best of luck and success in the future.”

In a second affidavit that Nike submitted in support of its request for injunctive relief, it conceded that it was willing to match the New Balance offer “regardless of whether it included reductions.”

As athletes and apparel companies jockey for opportunities in this Olympic year, we can expect reductions to continue to be an issue in negotiations.

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