

Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52, in connection with Defendant's advertising, marketing, and sale of purported toning footwear products, including Defendant's EasyTone footwear and RunTone running shoes.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), and 1345, and 15 U.S.C. §§ 45(a), 52, and 53(b).

3. Venue is proper in this district under 28 U.S.C. § 1391(c), and 15 U.S.C. § 53(b).

PLAINTIFF

4. The FTC is an independent agency of the United States Government created by statute. 15 U.S.C. §§ 41-58. The FTC enforces Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC also enforces Section 12 of the FTC Act, 15 U.S.C. § 52, which prohibits false advertisements for food, drugs, devices, services, or cosmetics in or affecting commerce.

5. The FTC is authorized to initiate federal district court proceedings, by its own attorneys, to enjoin violations of the FTC Act and to secure such equitable relief as may be appropriate in each case, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies. 15 U.S.C. § 53(b).

DEFENDANT

6. **Defendant Reebok International Ltd.** ("Reebok"), is a Massachusetts corporation with its principal place of business at 1895 JW Foster Boulevard, Canton, MA 02021. Reebok is a member of the adidas Group, which is headed by adidas AG located at Adi-Dassler-Platz 1-2, 91074, Herzogenaurach, Germany. Reebok transacts or has transacted business in this district and throughout the United States. At all times material to this Complaint, acting alone or in concert with

others, Reebok has advertised, marketed, distributed, or sold footwear products, including purported toning footwear products, to consumers throughout the United States.

COMMERCE

7. At all times material to this Complaint, Defendant has maintained a substantial course of trade in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

THE TONING FOOTWEAR INDUSTRY

8. “Toning” shoes — shoes that purportedly provide health and fitness benefits such as toning and strengthening muscles in the lower body — have been described as the newest trend in footwear. Unlike traditional athletic shoes, which are designed to provide the wearer with support, toning shoes are designed to create slight instability. Companies offering toning shoes generally contend that the instability the shoe causes will force muscles to work harder to stabilize, resulting in benefits such as muscle toning, shaping, and strengthening.

9. It has been reported that toning shoe sales in the United States increased from \$17 million in 2008 to approximately \$145 million in 2009. Toning shoe sales peaked in 2010 with sales close to \$1 billion.

DEFENDANT’S BUSINESS ACTIVITIES

10. Defendant has manufactured, labeled, advertised, offered for sale, sold and/or distributed purported toning footwear products, including the EasyTone product line, since at least March 2009, and RunTone running shoes since approximately March 2010.

11. Consumers can purchase EasyTone walking shoes and RunTone running shoes for approximately \$100.00 from various third parties such as Dick’s Sporting Goods, Famous Footwear, Lady Footlocker, and Nordstrom, and directly from Defendant at Reebok’s online retail store (at

www.reebok.com), Reebok's Concept Stores, and Reebok's Outlet Stores. Consumers can purchase EasyTone flip flops at some of the same locations for approximately \$60.00. From certain mid-priced retailers, including J.C. Penney Co., and Kohl's Corp., consumers can purchase Defendant's SimplyTone walking shoes, a discounted version of Defendant's EasyTone walking shoes, for approximately \$80.00.

12. Defendant represents, among other things, that walking in EasyTone footwear is proven to tone and strengthen the lower body — toning and strengthening the gluteus maximus muscle 28% more than walking in a typical walking shoe, and toning and strengthening both the hamstring and calf muscles 11% more than walking in a typical walking shoe. Defendant manufactures EasyTone footwear primarily for women, and markets its EasyTone shoes as suitable to wear during everyday activities.

13. Defendant describes RunTone footwear as a “close cousin” to its EasyTone footwear. Defendant represents, among other things, that running in RunTone shoes increases muscle activation, toning, strength, and endurance as compared to running in typical running shoes. Defendant manufactures RunTone running shoes for both men and women.

14. Defendant has also advertised JumpTone and TrainTone purported toning footwear, which Defendant manufactured, labeled, advertised, offered for sale, sold and/or distributed starting in approximately September 2010. Defendant has represented that wearing JumpTone shoes will strengthen key leg muscles and thus allow athletes to improve their vertical leap. Defendant has represented that TrainTone offers similar benefits to EasyTone, but is more suitable for fitness classes and training sessions, and that it will allow women to get more toned with every step. JumpTone and TrainTone footwear can be purchased directly from Defendant at Reebok's online

retail store (at www.reebok.com) and/or at other online sites for approximately \$100.00 a pair. Defendant manufactures JumpTone for men and TrainTone for women.

15. Defendant sometimes refers to its line of toning footwear, including EasyTone, RunTone, JumpTone, and TrainTone, as ReeTone.

EasyTone Footwear Products

16. Defendant has advertised its EasyTone footwear products through a variety of media: print advertisements and inserts in newspapers distributed nationwide; print advertisements in nationally disseminated magazines, such as *People*, *In Style*, and *Us Weekly*; the Internet, including Websites owned or operated by or on behalf of Reebok, such as www.reebok.com, Facebook, Twitter, and YouTube; and television commercials, including commercials on major networks such as CBS and ABC.

17. To induce consumers to purchase its EasyTone footwear products, Defendant has disseminated or caused to be disseminated advertisements, including, but not necessarily limited to, the attached Exhibits 1 through 11. These advertisements frequently display women who are very toned, scantily-clad, and sometimes nude, and contain the following statements or depictions, among others:

- A. **Television and Internet Advertisement:** “Presenter 30” (Exhibit 1, transcript at 1; Exhibit 2, CD-ROM).

[on screen: toned woman wearing tank top and very short shorts, speaking to the camera]

Reebok EasyTone shoes not only look fantastic, they’ll help make your legs and butt look great, too. It’s the shoe proven [on screen: camera zooms to woman’s backside] – dude – [camera moves back to woman’s face and upper body] to work your hamstrings and calves up to 11% harder and tones your butt up to 28% more than regular sneakers. Just by walking. [camera zooms

to woman's backside; woman clears throat, says "excuse me" and motions for camera to move up; camera moves up] I take it - you would agree?

Voice Over:

Reebok EasyTone. With balance ball inspired technology.
Better legs and a better butt with every step.

- B. **Television and Internet Advertisement:** "Dialogue 30" (Exhibit 1, transcript at 2; Exhibit 2, CD-ROM).

[on screen: woman's breasts partially covered by undergarment, breasts are "speaking" to one other]

Breast 1: Hey, did ya see? Nobody's staring at us anymore.

Breast 2: Hmm, aren't we still hot?

Breast 1: Totally! You know what? It's all because of that stupid butt down there.

Breast 2: Yeah, stupid butt. Gets all the attention now.

Breast 1: She's so tight now. So round. So pretty.

Breast 2: And so stupid.

Voice Over:

Make your boobs jealous. With the shoe proven to tone your butt up to 28% more and your hamstrings and calves up to 11% more than regular sneakers.
Reebok EasyTone. With balance ball inspired technology.
Better legs and a better butt with every step.

- C. EasyTone. Balance ball inspired technology with moving air creates micro instability toning and strengthening butt and key leg muscles as you walk. 28% gluteus maximus 11% hamstrings 11% calves (Exhibit 3)
- D. GET A BETTER BUTT. GET BETTER LEGS. GET EASYTONE. EasyTone sole technology gives you up to 28% more toning in your calves, hamstrings, and, oh yes, your butt. (Exhibit 4)
- E. nice booty. great sole. 11% more toning in your thighs and calves 28% more toning in your butt (Exhibit 5)

- F. EASYTONE TONES KEY LEG MUSCLES WITH EVERY STEP.
(Exhibit 6)
- G. EASYTONE The better way to a better butt
With EasyTone you get
Up to 28% more toning in your glutes
Up to 11% in your calves & hamstrings (Exhibit 7)
- H. Men will be speechless. Women will be jealous. And no one will know that
the reason's on your feet. Discover up to 28% more of a workout for your
butt. And up to 11% more for your hamstrings and calves.
EASYTONE
Balance ball inspired technology with moving air creates micro-instability
toning and strengthening butt and key leg muscles as you walk. (Exhibit 8)
- I. Lab results show improvements in muscle tone when tested in the lab
(Exhibit 9 at 1, and at <http://www.reebok.com/US/womens/easytone-shoes>
(last visited August 19, 2010))
- J. [Y]ou can get firmer thanks to our patented sole technology, which emulates
walking on sand. EasyTone technology improves muscle tone in the
hamstrings, calves and glutes up to 28% (Exhibit 10)
- K. Get a better butt and better legs with every step. With the EasyTone Flip
Flop, you can get firmer thanks to our unique sole technology. EasyTone's
pockets of moving air promote micro-instability, helping to improve muscle
tone in the glutes, calves and hamstrings (Exhibit 11)

RunTone Running Shoes

18. Defendant has advertised its RunTone running shoes through a variety of media, including print advertisements in nationally disseminated magazines and on the Internet at Websites owned or operated by or on behalf of Reebok such as www.reebok.com.

19. To induce consumers to purchase its RunTone running shoes, Defendant has disseminated or caused to be disseminated advertisements, including, but not necessarily limited to,

the attached Exhibits 12 through 16. These advertisements sometimes display women who are very toned and scantily-clad, and contain the following statements, among others:

- A. Get the results you want at a faster pace. Balance ball inspired technology with moving air creates micro-instability, so you tone and strengthen key muscles with every run. RUNTONE (Exhibit 12)
- B. Tones Key Leg Muscles With Every Run. (Exhibit 13)
- C. Reetone TONING TECHNOLOGY NOW FOR RUNNING: RUNTONE. TONE YOUR BUTT AND LEGS MORE WITH EVERY RUN. (Exhibit 14)
- D. Reetone EASYTONE SHOES HELP TONE YOUR BUTT AND LEGS WITH EVERY STEP. AVAILABLE SOON: RUNTONE FOR RUNNING AND TRRAINTONE FOR WORKING OUT. (Exhibit 15)
- E. [T]he muscle-toning shoe you can wear while running, training and working out. Compared to a traditional running shoe, RunTone, a close cousin to our EasyTone shoe, encourages more activation in key leg muscles like the calves and quads . . . RunTone patented sole technology features 8 pods of moving air that force your muscles to work harder; encourages increased muscle activation, toning, strength and endurance. (Exhibit 16)

VIOLATIONS OF THE FTC ACT

20. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), prohibits “unfair or deceptive acts or practices in or affecting commerce.”

21. Section 12 of the FTC Act, 15 U.S.C. § 52, prohibits the dissemination of any false advertisement in or affecting commerce for the purpose of inducing, or which is likely to induce, the purchase of food, drugs, devices, services, or cosmetics. For the purposes of Section 12 of the FTC Act, 15 U.S.C. § 52, Defendant’s purported toning footwear products, including EasyTone and RunTone footwear products, are “device[s]” as defined in Section 15(d) of the FTC Act, 15 U.S.C. § 55(d).

COUNT I

22. Through the means described in Paragraphs 16 and 17, including through use of the product name EasyTone, Defendant has represented, directly or indirectly, expressly or by implication, that walking in EasyTone footwear will tone and strengthen the legs and the butt more than walking in a typical walking shoe.

23. In truth and in fact, the representation set forth in Paragraph 22 was not substantiated at the time the representation was made.

24. Therefore, the making of the representation as set forth in Paragraph 22 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT II

25. Through the means described in Paragraphs 16 and 17, Defendant has represented, directly or indirectly, expressly or by implication, that laboratory tests show that when compared to walking in a typical walking shoe, walking in EasyTone footwear will improve muscle tone and strength by 28% in the gluteus maximus, 11% in the hamstrings, and 11% in the calves.

26. In truth and in fact, laboratory tests do not show that, when compared to walking in a typical walking shoe, walking in EasyTone footwear will improve muscle tone and strength by 28% in the gluteus maximus, 11% in the hamstrings, and 11% in the calves.

27. Therefore, the making of the representation as set forth in Paragraph 25 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

COUNT III

28. Through the means described in Paragraphs 18 and 19, including through use of the product name RunTone, Defendant has represented, directly or indirectly, expressly or by implication, that running in RunTone shoes will tone and strengthen the legs and butt more than running in a typical running shoe.

29. In truth and in fact, the representation set forth in Paragraph 28 was not substantiated at the time the representation was made.

30. Therefore, the making of the representation as set forth in Paragraph 28 of this Complaint constitutes a deceptive act or practice and the making of false advertisements, in or affecting commerce, in violation of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52.

CONSUMER INJURY

31. Consumers have suffered and will continue to suffer substantial injury as a result of Defendant's violations of the FTC Act. In addition, Defendant has been unjustly enriched as a result of its unlawful acts or practices. Absent injunctive relief by this Court, Defendant is likely to continue to injure consumers, reap unjust enrichment, and harm the public interest.

THIS COURT'S POWER TO GRANT RELIEF

32. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court to grant injunctive and such other relief as the Court may deem appropriate to halt and redress violations of any provision of law enforced by the FTC. The Court, in the exercise of its equitable jurisdiction, may award ancillary relief, including rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies, to prevent and remedy any violation of any provision of law enforced by the FTC.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff FTC, pursuant to Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and the Court's own equitable powers, requests that the Court:

A. Award Plaintiff such preliminary injunctive and ancillary relief as may be necessary to avert the likelihood of consumer injury during the pendency of this action and to preserve the possibility of effective final relief, including, but not limited to, a preliminary injunction;

B. Enter a permanent injunction to prevent future violations of the FTC Act by Defendant;

C. Award such relief as the Court finds necessary to redress injury to consumers resulting from Defendant's violations of the FTC Act, including, but not limited to, rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies; and

D. Award Plaintiff the costs of bringing this action, as well as such other and additional relief as the Court may determine to be just and proper.

Respectfully submitted,

WILLARD K. TOM
General Counsel

Dated: September 28, 2011

s/Larissa L. Bungo

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