

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

Docket No.

v.

SKECHERS U.S.A., INC., d/b/a SKECHERS,

Judge

Defendant.

**COMPLAINT FOR PERMANENT INJUNCTION
AND OTHER EQUITABLE RELIEF**

Plaintiff, the Federal Trade Commission (FTC), for its Complaint alleges:

1. Plaintiff FTC brings this action under Section 13(b) of the Federal Trade Commission Act (FTC Act), 15 U.S.C. § 53(b), to obtain preliminary and permanent injunctive relief, rescission or reformation of contracts, restitution, the refund of monies paid, disgorgement of ill-gotten monies, and other equitable relief for Defendant's acts or practices, in violation of 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 Shape-ups footwear.

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 Skechers U.S.A., Inc.** (Skechers), is a Delaware corporation with its principal place of business at 228 Manhattan Beach Blvd., Manhattan Beach, California 90266. Skechers 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, Skechers 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 fastest growing trend in footwear through 2010. 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, resulting in benefits such as weight loss and 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 advertised, marketed, distributed, offered for sale, and sold purported toning footwear products, including the Shape-ups product line since at least April 2009, and Resistance Runner, Toners, and Tone-ups since approximately the summer of 2010.

11. Consumers can purchase Shape-ups walking shoes for approximately \$100, and Resistance Runner, Toners, and Tone-ups from approximately \$60 up to approximately \$100, from various third parties, such as Famous Footwear, Finish Line, Lady Foot Locker, Dillard’s,

Kohl's, and Nordstrom, and/or directly from Defendant at Skechers' retail and online (*e.g.*, www.skechers.com) stores.

Shape-ups

12. Defendant has advertised its Shape-ups footwear products through a variety of media: print advertisements and inserts in newspapers distributed nationwide; print advertisements in nationally disseminated magazines, such as *O*, *The Oprah Magazine*, *People*, and *InStyle*; the Internet, including websites owned or operated by or on behalf of Skechers, such as www.skechers.com, www.myshapeups.com, and on Facebook, Twitter, and YouTube; and television commercials on nationally syndicated television programs, such as "Oprah," and on numerous national cable television networks, including ESPN, Nickelodeon, and FIT TV.

13. To induce consumers to purchase its Shape-ups footwear products, Defendant has disseminated or caused to be disseminated advertisements, including, but not necessarily limited to, the attached Exhibits 1 through 4. These advertisements frequently display women and men who are well-toned, and contain the following statements or depictions, among others:

- A. SHAPE UP WHILE YOU WALK.
(Exhibits 1, 3; *see also* Exhibit 4 at p. 1.)

- B. GET IN SHAPE WITHOUT SETTING FOOT IN A GYM.
(Exhibits 1, 3; *see also* Exhibit 4 at p. 3.)

- C. *Shape-ups* will help you lose weight
and improve your circulation, creating a
healthier you!
(Exhibit 4 at p. 2.)

D. DESIGNED TO:

- PROMOTE WEIGHT LOSS
- TONE MUSCLES
- IMPROVE POSTURE

(Exhibit 1.)

E. **Television and Internet Advertisement:** Super Bowl Ad 2011, “Break Up 2 Shape Up”

[Kim Kardashian, wearing form-fitting exercise apparel, in an exercise room with her personal trainer]

[T]hings just aren’t working out. Well, that’s not completely true. I’m working out. It’s not someone else. It’s something else [camera moves to her Shape-ups shoes]. Bye, bye trainer. Hello, Shape-ups.

(Exhibit 2, transcript; Exhibit 2A, CD-ROM)

F. **Television and Internet Advertisement:** “Newest Move”

[Actress Brooke Burke, at home with her children]

The newest move in fitness is tying your shoelaces. Because once my Skechers Shape-ups are on snug and comfy, I’m toning my muscles, strengthening my core, burning calories. Why? Because Shape-ups really work. No matter what I do, or what they [camera pans to children] do. Skechers Shape-ups. Step into your new body.

(Exhibit 2, transcript; Exhibit 2B, CD-ROM)

G. “After performing a six-week clinical trial testing the benefits of SKECHERS Shape-ups, I am confident in recommending them to patients to increase their low back endurance and improve gluteal strength. Patients also benefited [*sic*] from weight loss and improved body composition.”

– Dr. Steve Gautreau, California

(Exhibits 1, 3; Exhibit 4 at p. 2.)

H. *Shape-ups* are designed to help you strengthen your muscles,

including your back, abdomen and
calves.

(Exhibit 4 at p. 2.)

- I. Four clinical studies in the US and Japan show that *Shape-ups* **increase muscle activity and energy consumption over standard fitness shoes!***

Doctors and researchers have confirmed that walking in *Shape-ups* can have major benefits on our health, including:

- More toned and strengthened leg, back, buttock and abdominal muscles
- Reduced body fat
- Improved circulation, aerobic conditioning and exercise tolerance
- Improved posture, relieving muscle tension and back/joint problems.

* * *

*These independent case studies were commissioned by SKECHERS. Results may vary from person to person. For the greatest results, walking in Shape-ups should be combined with a proper diet and regular exercise regimen.

(Exhibit 4 at p. 5.)

J. Shape-ups **CLINICAL CASE STUDIES**

Study 1

THE BENEFITS OF SKECHERS *Shape-ups* ON WEIGHT LOSS, BODY TONING AND MUSCLE STRENGTHENING*

* * *

RESULTS

The average results for *Shape-ups* wearers included:

- **2.78 lbs. of weight loss** (vs. 0.30 lbs. for the control group)
- **A 1.31% reduction of body fat** (vs. 0.57% for the control group)
- **A 114% improvement in glutei, hamstring and gastrocnemius muscles** (vs. 68% for the control group)
- **A 23% improvement in low back endurance strength** (vs. 0.04% for the control group)

These findings allow us to conclude that a *Shape-ups* walking program can improve fitness markers such as weight loss, improved body composition and certain muscle strength gains.

*These independent case studies were commissioned by SKECHERS. Results may vary from person to person. For the greatest results, walking in Shape-ups should be combined with a proper diet and regular exercise regimen.

(Exhibit 4 at p. 7.)

14. Defendant has represented that the clinical studies conducted on the Shape-ups footwear products were independent case studies. In fact, two of the four studies conducted on the Shape-ups footwear products were conducted by chiropractor Steven Gautreau, who is or was a compensated endorser for Shape-ups, and who is married to a senior vice president of marketing at Skechers.

15. The first study Dr. Gautreau conducted purportedly was a six-week study with eight participants. Defendant reported that the study showed that participants wearing Shape-ups footwear lost

an average of 3.25 pounds, and represented that further weight loss and other improvements could be assumed with continued use of the footwear. Among other defects in the study, it did not include a control group — that is, a group of participants who wore standard fitness shoes to serve as a comparison to the group wearing the Shape-ups footwear product.

16. The second study Dr. Gautreau conducted purportedly was an eight-week study with eighty participants. Defendant reported that the study showed that participants wearing Shape-ups footwear lost an average of 2.78 pounds, compared to 0.30 pounds for the control group that wore standard fitness shoes, and reduced their body fat 1.31%, compared to 0.57% for the control group that wore standard fitness shoes. Defendant further represented that the study allowed for the conclusion that a Shape-ups walking program can improve fitness markers such as weight loss and improved body composition. In fact, the study has numerous defects. The data relied upon during the study were altered and incomplete: some participants wearing the Shape-ups footwear gained weight and/or increased their body fat percentage, but were falsely reported as having lost weight and/or reduced their body fat percentage; two subjects who were in the control group and lost weight had their data falsely attributed to the Shape-ups group; and data were missing or not collected for some of the study's participants. In addition, some of the study's participants were connected to the researchers: the wives of two of the study's co-authors, the parents of one of the study's co-authors, and employees of and/or persons associated with Dr. Gautreau.

Resistance Runner

17. Defendant has advertised its Resistance Runner 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 Skechers, such as www.skechers.com and www.JoinTheResistance.com, and on YouTube.

18. To induce consumers to purchase its Resistance Runner running shoes, Defendant has disseminated or caused to be disseminated advertisements, including, but not necessarily limited to, the attached Exhibit 5. These advertisements contain the following statements, among others:

run less. get more:
JOIN THE RESISTANCE

* * *

85% HELPS INCREASE POSTURAL MUSCLE ACTIVATION UP TO 85%	71% HELPS INCREASE GLUTEUS MEDIUS MUSCLE ACTIVATION UP TO 71%
68% HELPS INCREASE CALF MUSCLE ACTIVATION UP TO 68%	13.2% HELPS BURN UP TO 13.2% MORE CALORIES

(Exhibit 5.)

19. In fact, each muscle activation percentage cited by Defendant is based on the readings from a single subject in a one-day study, and thus none is representative of what consumers could reasonably expect to achieve from wearing Resistance Runner.

Shape-ups Toners

20. Defendant has advertised its Shape-ups Toners walking 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 Skechers, such as www.skechers.com, and on YouTube.

21. To induce consumers to purchase its Shape-ups Toners, Defendant has disseminated or caused to be disseminated advertisements, including, but not necessarily limited to, the attached Exhibit 6. These advertisements contain the following statements, among others:

A. Make your **Bottom** half your **Better** half.
(Exhibit 6 at p. 1.)

B. DESIGNED TO HELP:

	ACTIVATE	
CALF	THIGH	BUTTOCK
MUSCLES	MUSCLES	MUSCLES

(Exhibit 6 at p. 1.)

C. EXPERTS AGREE YOU'LL SEE RESULTS

Leading podiatrists, fitness experts and medical research have confirmed that walking often in the proper footwear may reduce stress, increase weight loss, relieve tension, tone muscles and burn calories. Shape-ups Toners with Kinetic Toning Pods are designed to help you walk with a positive impact, change the way you approach exercise, and enhance the way you feel.

(Exhibit 6 at p. 2.)

D. Ideal for busy women for all ages, Shape-ups Toners may help burn more calories, improve agility, strengthen calf and thigh muscles, firm your buttocks and increase general fitness, without an additional time commitment.

(Exhibit 6 at p. 4.)

22. Defendant did not conduct product-specific studies of Shape-ups Toners.

Tone-ups

23. Defendant has advertised its Tone-ups footwear 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 Skechers, such as www.skechers.com, and on YouTube.

24. To induce consumers to purchase its Tone-ups footwear, Defendant has disseminated or caused to be disseminated advertisements, including, but not necessarily limited to, the attached Exhibit 7 pertaining to its Tone-ups slip-on shoes, and Exhibit 8 pertaining to its Tone-ups fitness shoes. These advertisements contain the following statements, among others:

- A. TONE UP WHILE YOU WALK.
(Exhibit 7 at p. 1.)
- B. Designed to help:
 - Burn more calories
 - Tone muscles
 - Improve posture(Exhibit 7 at p. 1.)
- C. [Tone-ups sandals] are a great new way to help tone your legs, get more exercise and lose weight while you walk!
(Exhibit 7 at p. 1.)
- D. [Tone-ups Fitness] Make your bottom half your better half!
(Exhibit 8.)

25. Defendant did not conduct product-specific studies of the Tone-ups footwear.

VIOLATIONS OF THE FTC ACT

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

27. 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 Shape-ups, Resistance Runner, Toners, and Tone-ups, are “device[s]” as defined in Section 15(d) of the FTC Act, 15 U.S.C. § 55(d).

COUNT I

Unlawful Claims Regarding Clinical Study of “Shape-Ups”

28. Through the means described in Paragraphs 12 through 14, Defendant has represented, directly or indirectly, expressly or by implication, that in a clinical study, Shape-ups wearers:

- A. lost an average of 2.78 pounds in eight weeks, compared to .30 pounds for the control group that wore standard fitness shoes; and
- B. reduced their body fat by an average of 1.31% in eight weeks, compared to 0.57% for the control group that wore standard fitness shoes.

29. In truth and in fact, Shape-ups wearers, in the referenced clinical study, did not:

- A. lose an average of 2.78 pounds in eight weeks, compared to .30 pounds for the control group that wore standard fitness shoes; or
- B. reduce their body fat by an average of 1.31% in eight weeks, compared to 0.57% for the control group that wore standard fitness shoes.

30. Therefore, the making of the representations 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.

COUNT II

Unlawful Claims Regarding Weight Loss and Body Fat Reduction Benefits of “Shape-Ups”

31. Through the means described in Paragraphs 12 and 13, including through use of the product name, “Shape-ups,” Defendant has represented, directly or indirectly, expressly or by implication, that walking in Shape-ups footwear will result in more weight loss and more body fat reduction, including as much as 2.78 pounds of weight and 1.31% of body fat in eight weeks, than walking in standard fitness shoes.

32. In truth and in fact, the representations set forth in Paragraph 31 were not substantiated at the time the representations were made.

33. Therefore, the making of the representations set forth in Paragraph 31 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

Unlawful Claims Regarding Muscle Strengthening and Toning Benefits of “Shape-Ups”

34. Through the means described in Paragraphs 12 and 13, including through use of the product name, “Shape-ups,” Defendant has represented, directly or indirectly, expressly or by implication, that walking in Shape-ups footwear will strengthen and tone leg, back, buttock, and abdominal muscles more than walking in standard fitness shoes.

35. In truth and in fact, the representations set forth in Paragraph 34 were not substantiated at the time the representations were made.

36. Therefore, the making of the representations set forth in Paragraph 34 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 IV

Unlawful Claims Regarding Circulation and Aerobic Conditioning Benefits of “Shape-Ups”

37. Through the means described in Paragraphs 12 and 13, including through use of the product name, “Shape-ups,” Defendant has represented, directly or indirectly, expressly or by implication, that walking in Shape-ups footwear will improve overall circulation and aerobic conditioning more than walking in standard fitness shoes.

38. In truth and in fact, the representations set forth in Paragraph 37 were not substantiated at the time the representations were made.

39. Therefore, the making of the representations set forth in Paragraph 37 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 V

Deceptive Omissions Regarding Endorser of “Shape-Ups”

40. Through the means described in Paragraphs 12 through 14, Defendant has represented, directly or indirectly, expressly or by implication, that Dr. Steven Gautreau endorses or has endorsed Defendant’s Shape-ups footwear, based upon his independent, objective study of the product. Defendant has failed to disclose, or to adequately disclose, material information about Dr. Gautreau’s endorsement, including that Defendant paid Dr. Gautreau to conduct the purported study, and that he is married to a senior vice president of marketing at Skechers. These facts would be material to consumers in their purchase or use decisions regarding Defendant’s product. Therefore, the failure to disclose these facts, in light of the representation made, 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 VI

Unlawful Claims Regarding Benefits of “Resistance Runner”

41. Through the means described in Paragraphs 17 and 18, Defendant has represented, directly or indirectly, expressly or by implication, that:

- A. tests show that running in Resistance Runner footwear will increase postural muscle activation up to 85%, increase gluteus medius muscle activation up to

71%, and increase calf muscle activation up to 68% more than running in standard running shoes; and

- B. running in Resistance Runner footwear will increase postural muscle activation, increase gluteus medius muscle activation, and increase calf muscle activation more than running in standard running shoes.

42. In truth and in fact, the representations set forth in Paragraph 41 are false or were not substantiated at the time the representations were made.

43. Therefore, the making of the representations set forth in Paragraph 41 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 VII

Unlawful Claims Regarding Benefits of “Shape-Ups Toners”

44. Through the means described in Paragraphs 20 and 21, including through use of the product name, “Shape-ups Toners,” Defendant has represented, directly or indirectly, expressly or by implication, that walking in Shape-ups Toners footwear will cause the wearer to burn more calories and lose more weight, and will tone and strengthen calf, thigh, and buttocks muscles more than walking in standard fitness shoes.

45. In truth and in fact, the representations set forth in Paragraph 44 were not substantiated at the time the representations were made.

46. Therefore, the making of the representations set forth in Paragraph 44 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 VIII

Unlawful Claims Regarding Benefits of “Tone-Ups”

47. Through the means described in Paragraphs 23 and 24, including through use of the product name, “Tone-ups,” Defendant has represented, directly or indirectly, expressly or by implication, that walking in Tone-ups footwear will cause the wearer to burn calories and lose weight, more than walking in standard shoes.

48. In truth and in fact, the representations set forth in Paragraph 47 were not substantiated at the time the representations were made.

49. Therefore, the making of the representations set forth in Paragraph 47 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

50. 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

51. 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

JON MILLER STEIGER
Director, East Central Region

Dated: May 14, 2012

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