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IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF MARION

| FOR THE COUNTY OF MARION                          |  |  |  |
|---|--|--|--|
| STATE OF OREGON, ex rel. JOHN R. KROGER,          | ) Case No. 120160  |  |  |
| OREGON ATTORNEY GENERAL,                          | )<br>) COMPLAINT   |  |  |
| Plaintiff,  | )  |  |  |
| V.  | <ul><li>) Unlawful Trade Practices Act,</li><li>) ORS 646.605 to 646.656</li></ul> |  |  |
| SKECHERS USA, INC., d/b/a SKECHERS,               | j  |  |  |
| a Delaware corporation,                           | ) NOT SUBJECT TO MANDATORY<br>) ARBITRATION  |  |  |
| Defendant.  | ) ARBITRATION  |  |  |
|   | ) PLAINTIFF NOT SUBJECT TO   |  |  |
|   | ) FILING FEES, PURSUANT TO<br>) ORS 20.140   |  |  |
|   |  |  |  |
| This civil law enforcement proc                   | reeding is brought in the name of the State of                                     |  |  |
| •   | igh John Kroger, Attorney General (hereinafter                                     |  |  |
|   |  |  |  |
| "the State," "Attorney General," or "Plaintiff"), | pursuant to ORS 180.060, ORS 646.605(5) and  |  |  |
| ORS 646.632(1).                                   |  |  |  |
| 2. The Oregon Department of Justic                | e has commenced these proceedings against the                                      |  |  |
| above named Defendant for violations of the Ore   | egon Unlawful Trade Practices Act (UTPA).  |  |  |
| 3. The Attorney General has reason                | to believe that the above-named Defendant has                                      |  |  |
| violated the UTPA by, among other things, fail    | ing to substantiate benefit claims the Defendant                                   |  |  |

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| 1  | made for its rocker-bottom footwear products, including Shape-ups, Tone-ups, and the Skecher        |  |  |
|----|---|--|--|
| 2  | Resistance Runner.  |  |  |
| 3  | 4. The Attorney General has reason to believe that this action is in the public                     |  |  |
| 4  | interest.   |  |  |
| 5  | 5. This Complaint is being filed concurrently with a Stipulated General Judgment.                   |  |  |
| 6  | The Defendant has agreed to waive the requirement of ten days' notice of contemplated legal         |  |  |
| 7  | action as set forth in ORS 646.632(2).  |  |  |
| 8  | JURISDICTION AND VENUE  |  |  |
| 9  | 6. This Court has personal jurisdiction over Defendant pursuant to ORCP 4 A(4).                     |  |  |
| 10 | Venue is proper in Marion County pursuant to ORS 646.605(1)(c), as it is where the alleged          |  |  |
| 11 |   |  |  |
| 12 | THE PARTIES   |  |  |
| 13 | 7. Plaintiff, State of Oregon ex rel. John Kroger, Attorney General, is charged with                |  |  |
| 14 | enforcing the Unlawful Trade Practices Act, ORS 646.605 to 646.656, which prohibits                 |  |  |
| 15 | unconscionable or deceptive acts or practices committed in the course of trade or commerce.         |  |  |
| 16 | Pursuant to ORS 646.632(1), the Attorney General may initiate civil law enforcement                 |  |  |
| 17 | proceedings in the name of the State to stop violations of the UTPA and to secure such equitable    |  |  |
| 18 | and other relief as may be appropriate in each case. The State of Oregon brings this action to      |  |  |
| 19 | secure a permanent injunction, attorneys' fees, civil penalties, and other equitable relief against |  |  |
| 20 | the Defendant for engaging in unfair and deceptive acts or practices in connection with the         |  |  |
| 21 | advertising, marketing, and sale of its footwear products.  |  |  |
| 22 | 8. The Defendant, Skechers USA, Inc., is incorporated in Delaware with its principal                |  |  |
| 23 | place of business in Manhattan Beach, California. The Defendant has marketed, distributed, and      |  |  |
| 24 | sold shoe products to consumers throughout the United States, including Oregon. Skechers            |  |  |
| 25 | USA. Inc. is a publicly traded corporation.   |  |  |

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| 1  | GENERAL ALLEGATIONS   |  |  |
|----|---|--|--|
| 2  | The State of Oregon alleges that at all times material herein:                                      |  |  |
| 3  | 9. The Defendant has made health-related claims in the marketing, packaging,                        |  |  |
| 4  | advertising, offering, and selling of its line of rocker-bottom shoe products including Shape-ups,  |  |  |
| 5  | Tone-ups, and the Skechers Resistance Runner that were not substantiated by competent and           |  |  |
| 6  | reliable scientific evidence at the time the claims were made.                                      |  |  |
| 7  | 10. The Defendant has asserted, without adequate support, that its rocker-bottom shoe               |  |  |
| 8  | products cause one to lose weight, burn calories, improve one's circulation, fight cellulite, firm, |  |  |
| 9  | tone or strengthen thigh, buttock and back muscles.   |  |  |
| 10 | SPECIFIC ALLEGATIONS  |  |  |
| 11 | 11. Rocker-bottom shoes are shoes that are designed to be unstable when worn.                       |  |  |
| 12 | Unlike traditional shoes, rocker-bottom shoes contain a deeper, curved midsole that purports to     |  |  |
| 13 | simulate walking on sand and the kinematics of long-distance, barefoot runners.                     |  |  |
| 14 | 12. In 2008, following the commercial success of a smaller competitor Masai                         |  |  |
| 15 | Barefoot Technology (MBT) with rocker-bottom shoes, Skechers USA, Inc. launched its own             |  |  |
| 16 | line of rocker-bottom footwear products nationwide.   |  |  |
| 17 | 13. Skechers' version of a rocker-bottom shoe is made of firm and compressible                      |  |  |
| 18 | polyurethane and is much lighter and more flexible than the MBT version.                            |  |  |
| 19 | 14. Skechers sold its line of rocker-bottom shoes to consumers in Oregon through its                |  |  |
| 20 | websites (myshapeups.com and skechers.com), through its own brick-and-mortar retail stores,         |  |  |
| 21 | and through third party retailers like Famous Footwear, Footlocker, Dillard's and others.           |  |  |
| 22 | 15. From the product launch until the present, Skechers rocker-bottom shoes have                    |  |  |
| 23 | sold at various retail prices, but have most often been sold for between \$110 and \$120.           |  |  |
| 24 | ///   |  |  |
| 25 |   |  |  |
| 26 | Page 3 - COMPLAINT<br>LS/JUSTICE #3392796-v1  |  |  |

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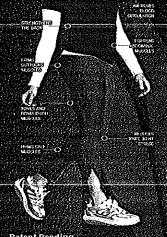
| 1  | 16. In the course of marketing its rocker-bottom shoe lines including in                          |  |  |  |
|----|---|--|--|--|
| 2  | advertisements such as Exhibit A to this Complaint, Skechers has asserted a wide-range of         |  |  |  |
| 3  | purported benefits, including that its products:  |  |  |  |
| 4  | Create or promote weight loss;  |  |  |  |
| 5  | Burn more calories;   |  |  |  |
| 6  | • Firm buttocks muscles;  |  |  |  |
| 7  | Reduce or fight cellulite;  |  |  |  |
| 8  | Improve blood circulation;  |  |  |  |
| 9  | • Firm calf muscles;  |  |  |  |
| 10 | Reduce joint stress;  |  |  |  |
| 11 | Tone and firm thigh muscles;  |  |  |  |
| 12 | Tighten abdominal muscles;  |  |  |  |
| 13 | Strengthen back muscles;  |  |  |  |
| 14 | Improve sleep; and  |  |  |  |
| 15 | Reduce stress   |  |  |  |
| 16 | when it did not have competent and reliable scientific evidence to substantiate the claims at the |  |  |  |
| 17 | time that they were made.   |  |  |  |
| 18 | 17. Skechers has marketed its rocker-bottom footwear products to both men and                     |  |  |  |
| 19 | women, but has focused most of its marketing efforts on fitness-conscious or fitness-aspiring     |  |  |  |
| 20 | women in their 20's and 30's.   |  |  |  |
| 21 | 18. In marketing to women, Skechers especially highlighted the purported ability of               |  |  |  |
| 22 | its rocker-bottom shoes to cause weight loss and firm buttocks muscles as shown in Exhibit B to   |  |  |  |
| 23 | this Complaint.   |  |  |  |
| 24 | ///   |  |  |  |
| 25 | <i>III</i>  |  |  |  |
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| 1  | 19. The Defendant misled consumers, including those in Oregon, regarding the facts              |  |  |  |
|----|---|--|--|--|
| 2  | through its advertisements, product labeling, and marketing materials about its rocker-bottom   |  |  |  |
| 3  | shoe products.  |  |  |  |
| 4  | VIOLATIONS OF LAW   |  |  |  |
| 5  | OREGON UNLAWFUL TRADE PRACTICES ACT   |  |  |  |
| 6  | 20. The State incorporates by reference and re-alleges each allegation contained in             |  |  |  |
| 7  |   |  |  |  |
| 8  | paragraph 1-19.   |  |  |  |
|    | 21. The Defendant's representations in advertisements and product sales as alleged in           |  |  |  |
| 9  | this Complaint occurred in "trade" and/or "commerce" as defined in ORS 646.605(8) and           |  |  |  |
| 10 | constitutes the offering of, or providing of, "goods" and/or "services" as defined in ORS       |  |  |  |
| 11 | 646,605(6)(a).  |  |  |  |
| 12 | 22. All of the acts and practices engaged in and employed by the Defendants as                  |  |  |  |
| 13 | alleged herein, are unfair or deceptive acts or practices affecting the conduct of any trade or |  |  |  |
| 14 | commerce in Oregon, which are declared unlawful by ORS 646.608 et seq.                          |  |  |  |
| 15 | 23. Each and every unfair or deceptive act or practice engaged in by the Defendant as           |  |  |  |
| 16 | recited above constitutes a separate violation of the Unlawful Trade Practices Act pursuant to  |  |  |  |
| 17 | ORS 646.607(1) and ORS 646.608(1)(e).   |  |  |  |
| 18 | 24. By making health benefit or other claims without competent and reliable scientific          |  |  |  |
| 19 | evidence to substantiate them, the Defendants have violated ORS 646.608(1)(b) & (e) with each   |  |  |  |
| 20 | representation.   |  |  |  |
| 21 | PRAYER FOR RELIEF   |  |  |  |
| 22 | WHEREFORE, Plaintiff State of Oregon, ex rel. John Kroger, Attorney General,                    |  |  |  |
| 23 | pursuant to the Oregon Unlawful Trade Practices Act, the Attorney General's general statutory   |  |  |  |
| 24 | authority, the Attorney General's authority at common law and this Court's equitable powers,    |  |  |  |
| 25 | prays for relief as follows:  |  |  |  |
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| 1        | 1.  | That this Court accept and adopt the parties' Stipulated General Judgment and     |  |
|----------|---|---|--|
| 2        | thereby adjudge and decree that the Defendant has engaged in the aforementioned acts of |   |  |
| 3        | practices which violate the Oregon Unlawful Trade Practices Act.                        |   |  |
| 4        | 2.  | That pursuant to ORS 646.632(1), this Court permanently enjoins and restrains     |  |
| 5        | the Defendan  | at from engaging in the aforementioned acts or practices which violate the Oregon |  |
| 6        | Unlawful Tra  | de Practices Act.   |  |
| 7        | 3.  | Payment to the State of Oregon, pursuant to ORS 646.632(8) and ORS 646.642,       |  |
| 8        | of appropriat   | e civil penalties and/or reimbursement of reasonable costs, including attorneys'  |  |
| 9        | fees, and/or other appropriate payment.   |   |  |
| 10       | 4.  | Such other relief as this Court deems just and proper pursuant to ORS 646.605 et  |  |
| 11       | seq.  |   |  |
| 12       |   |   |  |
| 13       | DATE  | ED this 16th day of May, 2012.  |  |
| 14       |   | Respectfully submitted,   |  |
| 15       |   | JOHN KROGER, Attorney General   |  |
| 16       |   |   |  |
| 17       |   | Luike Salmony   |  |
| 18<br>19 |   | LUCILLE SALMONY, OSB # 903790 Senior Assistant Attorney General                   |  |
| 20       |   | Oregon Department of Justice Financial Fraud/Consumer Protection Section          |  |
| 21       |   | 1162 Court Street NE<br>Salem, OR 97301-4096                                      |  |
| 22       |   | Phone: 503-934-4400<br>Fax: 503-378-5017  |  |
| 23       |   | Lucille.Salmony@doj.state.or.us<br>Attorneys for the State of Oregon              |  |
| 24       |   |   |  |
| 25       |   |   |  |
| 26       |   |   |  |
|          | Page 6 - C<br>LS/JUSTICE  | COMPLAINT<br>#3392796-v1  |  |

## **EXHIBIT A**







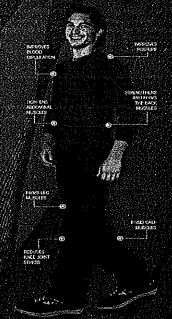


## Get in Shape Without Setting Foot in a Gym.

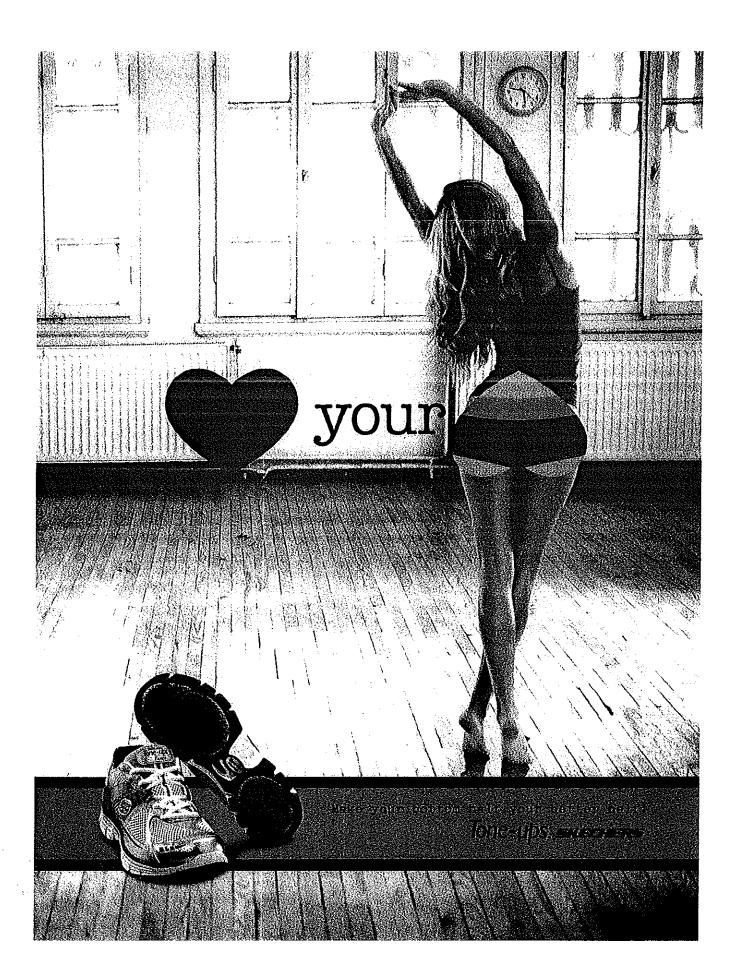
## Designed to:

- Promote weight loss
- Tone muscles
- Improve posture
- Reduce stress on knees and ankles





## EXHIBIT B





STATE OF OREGON Sounty of Marion ss

The foregoing copy has been compared and is certified by me as a full, true and correct copy of the original on file in my office and in my custody, in Testimony Whereof, I have hereunto set my hand and affixed the seal of the

Court on:

TRIAL COURT ADMINISTRATOR