

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE: SKECHERS TONING SHOES
PRODUCTS LIABILITY LITIGATION

MASTER FILE No. 3:11-MD-2308-TBR

MDL No. 2308

Honorable Thomas B. Russell

This document relates to:

Grabowski v. Skechers U.S.A., Inc., S.D.
California, C.A. No. 3:10-01300

Case No.: 3:12-CV-00204-TBR

**DECLARATION OF JEANNE C. FINEGAN, APR, CONCERNING
IMPLEMENTATION AND ADEQUACY OF CLASS MEMBER NOTIFICATION
PROGRAM**

I, JEANNE C. FINEGAN declare as follows:

INTRODUCTION

1. I am a Senior Vice President of The Garden City Group, Inc. (“GCG”). This Declaration is based upon my personal knowledge, as well as on information provided to me by Class Counsel, my staff and the Court Appointed Claims Administrator as well as information reasonably relied upon in the fields of advertising, media and communications.

QUALIFICATIONS

2. A comprehensive description of my credentials and experience that qualify me to provide expert opinions on the adequacy of class action notice programs was previously filed with this Court on May 15 2012. In summary, I have served as an expert, directly responsible

for the design and implementation of hundreds of class action notice programs, some of which are the largest and most complex programs ever filed in both the United States and in Canada.

3. I have more than 20 years of communications and advertising experience, and I am the only Notice Expert accredited in Public Relations (APR) by the Universal Accreditation Board, a program administered by the Public Relations Society of America. Further, I have provided expert testimony before Congress on issues of notice. Also, I have lectured, published and been cited extensively on various aspects of legal noticing, product recall and crisis communications and have served the Consumer Product Safety Commission (“CPSC”) as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns.

4. In evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example, in *DeHoyos, et al. v. Allstate Ins. Co.*, No. SA-01-CA-1010 (W.D.Tx.), in the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African-American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts.

5. And recently in *Stern v. AT&T Mobility Wireless*, No. 09-cv-1112 CAS-AGR (C.D.Cal.), in the Final Approval Order, the Honorable Christina A. Snyder stated:

[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

6. Further, in *Stefanyshyn v. Consolidated Industries*, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.), in the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

The notices provided a neutral, informative, and clear explanation of the Settlement. ... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the “best practicable” notice of the proposed Settlement.

7. A comprehensive description of my credentials and experience is attached as Exhibit A.

NOTICE PROGRAM

8. As described in the *Order Preliminarily Certifying a Class for Settlement Purposes, Preliminarily Approving the Class Settlement, Appointing Class Counsel, Directing the Issuance of Notice to the Class, Scheduling A Fairness Hearing and Issuing Related Orders*, (“Order”), and pursuant to the *Settlement Agreement* dated August 13, 2012 I was appointed by the Court to be the Media Notice Administrator to implement a broad-reaching legal notice program (the “Notice Program”) to inform Class Members of the proposed class action Settlement between plaintiffs and Defendant Skechers U.S.A, Inc., Further, as described in the Order, the Court certified a Settlement class in the litigation as follows:

All persons or entities that during the Class Period - from August 1, 2008, until and including August 13, 2012 - purchased in the United States any Eligible Shoes. “Eligible Shoes” means the Skechers footwear sold in the following toning categories: (a) Shape-up rocker bottom shoes (“Shape-ups”); (b) Resistance Runner rocker bottom shoes (“Resistance Runner”); (c) Shape-up Toners/Trainers, and Tone-ups with podded outsoles (“Podded Sole Shoes”); and (d) Tone-ups non-podded sandals, boots, clogs, and trainers (“Tone-ups (Non-Podded Sole)”). Excluded from the Class are: (a) Skechers’s Board members or executive-level officers, including its attorneys; (b) persons or entities who purchased the Eligible Shoes primarily for resale; (c) retailers or re-sellers of Eligible Shoes; (d) governmental entities; (e) persons or entities who purchased Eligible Shoes via the Internet or other remote means while not residing in the United States; and (f) any persons or entities who or which timely and properly excluded themselves from the Class [as provided in the Settlement Agreement].

9. The purpose of this Declaration is to report to the Court, that in compliance with the Court’s Order, all elements of the Notice Program (“Program”) have been successfully

implemented. The Program commenced on September 9, 2012 and was completed on October 28, 2012.

10. This Declaration also describes and details why this Program was one of the most comprehensive, robust notice programs in recent history, exceeding our original projections by reaching 89 percent of Class Members, who are *Women 18 to 44*, and 84 percent of *All Adults 18 to 44 years of age*, on average 5 times; delivering over 732,000,000 impressions, or opportunities to see the notice through traditional media, news articles, online advertising, mobile advertising and social media and blogs. It will also describe why this Notice Program was consistent with similar Court Approved best notice practicable Notice Programs to reach Class Members in this case.

IMPLEMENTATION

11. As previously detailed in my first Declaration, this Notice Program took into consideration potential Class Member response during the notice period, and therefore, was originally designed to provide two phases of advertising. However, given that our initial reach goals were exceeded, combined with the response to this program, at the direction of the Parties, only Phase I (“Notice Program”) was implemented.

12. Pursuant to the Order, paragraph 3, the Class (“Class”), the class is defined follows:

All persons or entities that, during the Class Period, August 1, 2008 up to and including the date of the first dissemination of the notice to the Class, purchased in the United States any Eligible Shoes. “Eligible Shoes” means the Skechers’ footwear sold in the following toning categories: (a) Shape-ups rocker bottom shoes (“Shape-ups”); (b) Resistance Runner rocker bottom shoes (“Resistance Runner”); (c) Shape-ups Toners/Trainers, and Tone-ups with podded outsoles (“Podded Sole Shoes”); and (d) Tone-ups non-podded sandals, boots, clogs, and trainers (“Tone-up (Non-Podded Sole)”). Excluded from the Class are: (a) Skechers’ Board members or executive-level officers, including its attorneys; (b) persons or entities who purchased the Eligible Shoes primarily for the purpose of resale; (c) retailers or re-sellers of Eligible Shoes; (d) governmental entities; (e) persons or entities who purchased the Eligible Shoes via the Internet or other remote means while not residing in the United States; and (f) any persons or entities who or which timely and properly excluded themselves from the Class as provided for below.

13. In compliance with Paragraph 9 of the Order, the Notice Program was designed to reach the target audience, through direct mail, and a comprehensive paid media program, which incorporated traditional and new media outlets, along with the creation of a Settlement website and an Official Facebook Settlement page where Class Members could obtain information about the Settlement, find important Court documents including the Settlement class notice and claim form, and a toll-free hot-line where Class Members could obtain basic information about the Settlement, as well as request that a claim packet be mailed to them, or seek other assistance. Specifically, the proposed Notice Program included the following components:

- Direct mail notice to by first-class U.S. mail to reasonably identifiable Class Members
- CAFA Notice to appropriate state and federal government officials
- Publication of a short-form notice (“Summary Notice”) in a nationally circulated consumer magazine
- Banner advertising in English and Spanish on highly trafficked web sites
- Mobile banner advertising on MSN Mobile
- Banner advertising on Pandora
- A national press release in English and Spanish; as well as targeted to the Fitness and Nutrition category
- A blog release to key health and fitness blogs
- A Facebook Settlement page
- Social Media Release
- An informational website (www.Skecherssettlement.com) on which the notices and other important Court documents are posted
- A toll-free information line 1-866-325-4186, where Class Members could call 24/7 for more information, about the Settlement, including but not limited to requesting copies of the claim packet, and an option to speak to a live operator
- A link from the Federal Trade Commission (“FTC”) web site to the official Settlement web site; and
- A link from Class Counsel’s website: Blood Hurst & O’Reardon, LLP (www.bholaw.com), and Milberg LLP (www.milberg.com)

DIRECT MAIL, CAFA NOTICE, WEBSITE, FACEBOOK PAGE AND TOLL-FREE**NUMBER**

14. Pursuant to the terms of the Settlement Agreement p. 16, section B, it is my understanding that the Settlement Administrator implemented direct mail notice and CAFA Notice, created a website and Facebook page and set up a toll free line. For complete details of the direct mail effort, *see* Declaration of Caroline P. Barazesh, PMP.

NOTICE PUBLICATION- MAGAZINE

15. Pursuant to the Court's Order, the Summary Notice was published two times in *People Magazine*. Attached as Exhibit B is the proof of publication for *People Magazine*.

Title	Circulation	Readership	Unit Size	Insertions	Issue Dates
<i>People Magazine</i>	3,613,902	43,366,824	Full Page	2	10/8/12 10/22/12

Source: MRI Doublebase 2011

INTERNET

16. Pursuant to the Court's Order Banner Advertising appeared on the following Internet properties:

Website	URL	Run Dates
Yahoo! RON	yahoo.com	9/9/12 - 10/20/12
Yahoo! Health	Health.yahoo.net	9/9/12 - 10/20/12
Yahoo! Mail	Mail.yahoo.com	9/9/12 - 10/20/12
Real Media Group Network	Various	9/9/12 - 10/20/12
Facebook	Facebook.com	9/9/12 - 10/20/12
Univision	Univision.com	9/9/12 - 10/20/12
MSN Hotmail	Hotmail.com	9/9/12 - 10/20/12
MSN Health & Fitness	Health.msn.com	9/9/12 - 10/20/12
Fox News	Foxnews.com	9/9/12 - 10/20/12

Prevention	Prevention.com	9/9/12 - 10/20/12
Runners World	Runnersworld.com	9/9/12 - 10/20/12

17. Banner ads allowed users to self-identify themselves as potential Class Members, where they may then “click” on the banner and then link directly to the official website for more information. Screen shots of the banner ads are attached as Exhibit C.

MOBILE BANNER ADVERTISING

18. In compliance with the Court’s Order mobile banner and streaming radio banner advertising appeared on the properties below. Attached as Exhibit D are screen shots of the Pandora mobile banners.

<u>MOBILE SCHEDULE</u>	
Website	Run Dates
MSN Mobile – Run of Site	9/9/12 -10/8/12

<u>PANDORA STREAMING INTERNET RADIO SCHEDULE</u>	
Website	Run Dates
Pandora – Web Banner and Mobile Banner	10/1/12 -10/28/12

PRESS RELEASE

19. A neutral press release was issued broadly over PR Newswire’s English and Hispanic newlines, including a microlist category, Fitness and Nutrition. My staff and I closely monitored the media for resulting articles and mentions of the class action settlement. In total, nearly 364 articles were published on the Settlement, with more than 300 articles appearing in English and another 63 published in Spanish.

SOCIAL MEDIA RELEASE

20. A social media release is included as a specialty release from PR Newswire. A social media release includes a 100 character social networking post to a variety of PR Newswire's social network presences including Twitter, LinkedIn and Facebook. The release will include case information and filing instructions.

BLOG RELEASE

21. As a further enhancement to this robust notice program, we issued a press release to blogs covering fitness and exercise, dieting, nutrition, jogging/running, and sports. As a result of the release over 6 blogs posted information about the Settlement. A report of the English, Spanish and blog releases and resulting articles and mentions is attached as Exhibit E.

FTC AND CLASS COUNSELS' WEB SITE

LINKS TO THE OFFICIAL SETTLEMENT WEBSITE

22. Additionally, links to the Official Website are found on the Federal Trade Commission ("FTC") web site and Class Counsel's website: Blood Hurst & O'Reardon, LLP (www.bholaw.com), and Milberg LLP (www.milberg.com).

CONCLUSION

23. Using tools and methods accepted within the advertising industry, the media outreach effort alone described in this program exceeded our original projections to reach an estimated 84 to 89 percent of the target audience, with an average frequency of over 5 times, which provided Notice to members of this class, consistent with the media delivery in other best notice practicable court approved notice programs in similar matters.

24. I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 12, 2012, in Lake Oswego, Oregon.


JEANNE C. FINEGAN