

EXHIBIT 5

THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY

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

**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**

This motion having been brought before the Court jointly by Plaintiff and Skechers U.S.A., Inc. (“Skechers”); and *Grabowski v. Skechers U.S.A., Inc.*, No. 3:12-cv-00204 (W.D. Ky.), having been originally filed on June 18, 2010 in the United States District Court for the Southern District of California (the “*Grabowski Action*” or “*Action*”); and

The *Grabowski Action* alleges, on behalf of a nationwide class of consumers, that Skechers violated California’s Consumers Legal Remedies Act (“CLRA”), Civ. Code §1770, *et seq.* and the Unfair Competition Law (“UCL”), Bus. & Prof. Code §17200, *et seq.*, and is liable for breach of express warranty; and

A first amended complaint was filed in the *Grabowski Action* on February 18, 2011, and a second amended complaint was filed on May 11, 2012. The amended complaints were substantively identical to the original complaint, and re-alleged Skechers’ violations of California’s consumer protection laws, and asserted claims for breach of warranty. The first

amended complaint also sought damages as permitted by the CLRA, and the second amended complaint included claims relating to Skechers' Toners/Trainers, Tone-ups, and Resistance Runner shoes besides Shape-ups.

Skechers filed an answer to the first amended complaint on March 7, 2011 and an answer to the second amended complaint on May 15, 2012, in which it expressly denied any and all wrongdoing alleged in the action, and neither admitted nor conceded any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it in this action.

Class Counsel has conducted a thorough examination, investigation, and evaluation of the relevant law, facts, and allegations to assess the merits of the claims and potential claims to determine the strength of both defenses and liability sought in the Action; and

Class Counsel, on behalf of Plaintiff Grabowski and the other members of the Class having engaged in extensive discovery. In particular, Skechers has produced the following documentation regarding Eligible Shoes: (i) product design, initiative and development; (ii) scientific studies and research; (iii) marketing, advertising, media and public relations; and (iv) sales and pricing data. In total, Plaintiffs' Counsel was given access to approximately 6,574 documents encompassing over 24,500 pages and over 13.5 GB of data. Skechers also has given Plaintiff access to key personnel at Skechers to interview. Before entering into this Settlement Agreement, Plaintiffs' Counsel had conducted a thorough examination and evaluation of the relevant law, facts and allegations to assess the merits of the claims and could reasonably assess the strength of Plaintiff Grabowski's claims and Skechers' liability, including its defenses; and

On May 16, 2012, working in conjunction with Class Counsel, the Federal Trade Commission ("FTC") entered into a Stipulated Final Judgment and Order for Permanent

Injunction and Other Equitable Relief (“Stipulated Order”) with Skechers concerning its Skechers Toning Shoes. Pursuant to the Stipulated Order, the FTC filed a Complaint for Permanent Injunction and Other Equitable Relief against Skechers and its Skechers Toning Shoes alleging violations of the Federal Trade Commission Act and specifically 15 U.S.C. § 45(a), which prohibits “unfair or deceptive acts or practices in or affecting commerce,” and 15 U.S.C. § 52, which prohibits the dissemination of any false advertisement in or affecting commerce. Actions by the Attorneys General in 44 states and the District of Columbia (the “AG Actions”) were filed against Skechers. Consent Judgments and Agreed Final Judgments (“Consent and Agreed Final Judgments”) were or will be entered in the AG Actions, settling all claims. This Settlement between Plaintiff and Skechers and the Stipulated Order entered into between the FTC and Skechers, and the Consent and Agreed Final Judgments entered into between Skechers and the state Attorneys General, are the products of work performed by Class Counsel, the FTC, and the state Attorneys General in conjunction, and the foregoing have coordinated these resolutions to maximize the settlement consideration available to the Class under this Settlement, including the monetary relief available to Class Members.

The Parties having entered into a Settlement Agreement in which the Parties have agreed to settle the Action, pursuant to the terms of the Settlement Agreement, subject to the approval and determination of the Court as to the fairness, reasonableness, and adequacy of the settlement which, if approved, will result in dismissal of the Action with prejudice; and

The Court having reviewed the Settlement Agreement, including the exhibits attached thereto (together, the “Settlement Agreement”) and all prior proceedings herein, and good cause appearing based on the record,

IT IS on this ____ day of _____, 2012, ORDERED, ADJUDGED, AND DECREED as follows (all capitalized terms being defined as they are defined in the Settlement Agreement unless otherwise specified or defined herein):

1. **Stay of the Action.** All non-settlement-related proceedings in the Action are hereby stayed and suspended until further order of this Court.

2. **Preliminary Class Certification for Settlement Purposes Only.** The Action is preliminarily certified as a class action for settlement purposes only, pursuant to Fed. R. Civ. P. 23(a) and (b)(3). The Court preliminarily finds for settlement purposes that: (a) the Class certified herein numbers at least in the tens of thousands of persons, and that joinder of all such persons would be impracticable, (b) there are issues of law and fact that are typical and common to the Class, and that those issues predominate over individual questions; (c) a class action on behalf of the certified Class is superior to other available means of adjudicating this dispute; and (d) as set forth in paragraph 4, below, Plaintiff Grabowski and Class Counsel are adequate representatives of the Class. Skechers retains all rights to assert that this action may not be certified as a class action, other than for settlement purposes.

3. **Class Definition.** The Class shall consist of all persons or entities that, during the Class Period, August 1, 2008 [TO DATE], 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.

4. **Class Representatives and Class Counsel.** Plaintiff Grabowski is designated as representative of the conditionally certified Class. The Court preliminarily finds that she is similarly situated to absent Class Members and therefore typical of the Class, and that she will be an adequate Class Representative. Timothy G. Blood, of Blood Hurst & O'Reardon LLP; and Janine L. Pollack, of Milberg LLP, whom the Court finds are experienced and adequate counsel, are hereby designated as Class Counsel.

5. **Preliminary Settlement Approval.** Upon preliminary review, the Court finds that the Settlement Agreement and the settlement it incorporates, appears fair, reasonable and adequate. Manual for Complex Litigation (Fourth) § 21.632 (2004). Accordingly, the Settlement Agreement is preliminarily approved and is sufficient to warrant sending notice to the Class.

6. **Jurisdiction.** The Court has subject-matter jurisdiction over the Action pursuant to 28 U.S.C. §§ 1332 and 1367, and personal jurisdiction over the Parties before it. Additionally, venue is proper in this District pursuant to 28 U.S.C. § 1391.

7. **Fairness Hearing.** A Fairness Hearing shall be held on _____ at _____ at the United States District Court for the Western District of Kentucky, 601 West Broadway, Room 202, Louisville, Kentucky 40202-2227, to determine, among other things: (a) whether the Action should be finally certified as a class action for settlement purposes pursuant to Fed. R. Civ. P. 23(a), and (b)(3); (b) whether the settlement of the Action should be

approved as fair, reasonable and adequate, and finally approved pursuant to Fed. R. Civ. P. 23(e); (c) whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement Agreement; (d) whether Class Members should be bound by the release set forth in the Settlement Agreement; (e) whether Class Members and related persons should be subject to a permanent injunction; (f) whether the application of Class Counsel for an award of Attorneys' Fees and Expenses should be approved pursuant to Fed. R. Civ. P. 23(h); and (g) whether the application of the named Plaintiffs for incentive awards should be approved. The submissions of the Parties in support of the settlement, including Plaintiffs' Counsel's application for Attorneys' Fees and Expenses and incentive awards, shall be filed with the Court no later than fifteen (15) days prior to the deadline for the submission of objections and may be supplemented up to seven days prior to the Fairness Hearing.

8. **Administration.** In consultation with and with the approval of Skechers, Class Counsel is hereby authorized to establish the means necessary to administer the proposed settlement and implement the Claim Process, in accordance with the terms of the Agreement.

9. **Class Notice.** The proposed Class Notice, Summary Settlement Notice and the notice methodology described in the Settlement Agreement and the Declaration of the Media Notice Administrator are hereby approved.

a. Pursuant to the Settlement Agreement, the Court appoints Jeanne Finegan of the Garden City Group, Inc. to be the Media Notice Administrator and BMC Group to be the Class Action Settlement Administrator to help implement the terms of the Settlement Agreement.

b. Beginning not later than thirty (30) days after entry of this Preliminary Approval Order and to be substantially completed not later than ninety (90) days

before the Fairness Hearing and subject to the requirements of the Preliminary Approval Order and the Settlement Agreement, the Class Action Settlement Administrator shall commence sending the Class Notice by First Class U.S. Mail, proper postage prepaid, to: (i) each reasonably identifiable Class Member's last known address reasonably obtainable from Skechers, which addresses shall be provided to the Class Action Settlement Administrator by Skechers no later than five (5) business days after entry of this Preliminary Approval Order, subject to the existence of such information and its current possession, if at all, by Skechers; and (ii) each appropriate State and Federal official, as specified in 28 U.S.C. § 1715. The distribution of the Class Notice shall otherwise comply with Fed. R. Civ. P. 23 and any other applicable statute, law, or rule, including, but not limited to, the Due Process Clause of the United States Constitution.

c. The Class Action Settlement Administrator shall: (a) promptly re-mail any notices returned by the United States Postal Service with a forwarding address that are received by the Class Action Settlement Administrator at least forty-five (45) days before the Fairness Hearing; (b) by itself or using one or more address research firms, as soon as practicable following receipt of any returned notices that do not include a forwarding address, research any such returned mail for better addresses and promptly mail copies of the Class Notice to the better addresses so found.

d. The Media Notice Administrator shall begin publication of the Summary Settlement Notice not later than thirty (30) days after entry of this Preliminary Approval Order, and shall have the publication of the Summary

Settlement Notice completed not later than sixty (60) days thereafter. The Media Notice Administrator shall publish the Summary Settlement Notice as described in the Declaration of the Media Notice Administrator and in such additional newspapers, magazines and/or other media outlets as shall be agreed upon by the Parties.

e. The Class Action Settlement Administrator shall begin accepting Claim Forms as they are submitted by Class Members for processing, which shall begin no later than six (6) months after entry of this Preliminary Approval Order.

f. The Class Action Settlement Administrator shall establish an Internet website, www.Skecherssettlement.com, which will inform Class Members of the terms of this Agreement, their rights, dates and deadlines, and related information. The website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court, and will be operational and live by the date of the first publication of the Summary Settlement Notice or mailing of the Class Notice, whichever is earlier.

g. The Class Action Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members. This toll-free telephone number will be operational by the date of the first publication of the Summary Settlement Notice or mailing of the Class Notice, whichever is earlier.

h. Not later than ten (10) days before the date of the Fairness Hearing, the Class Action Settlement Administrator shall file with the Court a list of those persons who have opted out or excluded themselves from the Settlement.

i. Not later than forty-five (45) days before the date of the Fairness Hearing, the Media Notice Administrator or the Class Action Settlement Administrator shall file with the Court the details outlining the scope, methods, and results of the media notice program.

10. **Findings Concerning Notice.** The Court finds that the form, content and method of giving notice to the Class as described in Paragraph 9 of this order: (a) will constitute the best practicable notice; (b) is reasonably calculated, under the circumstances, to apprise the Class Members of the pendency of the Action, the terms of the proposed settlement, and their rights under the proposed settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and other rights under the terms of the Settlement Agreement; (c) are reasonable and constitute due, adequate, and sufficient notice to all Class Members and other persons entitled to receive notice; and (d) meet all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Fed. R. Civ. P. 23(c) and (e) and the Due Process Clause(s) of the United States Constitution. The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices.

11. **Exclusion from Class.** Any Class Member who wishes to be excluded from the Class must mail a signed, written request for exclusion to the Class Action Settlement Administrator at the address provided in the Class Notice, postmarked no later than thirty (30) days before the date scheduled in paragraph 7 above for the Fairness Hearing, or as the Court otherwise may direct. Any person or entity requesting exclusion is requested to include in the signed written request the information set forth in Part VII of the Class Notice. The Class Action Settlement Administrator shall forward copies of any written requests for exclusion to

Class Counsel and Skechers' Counsel. The Class Action Settlement Administrator shall file a list reflecting all timely requests for exclusion with the Court no later than ten (10) days before the Fairness Hearing. If the proposed settlement is finally approved, any potential Class Member who has not submitted a timely written request for exclusion from the Class shall be bound by all subsequent proceedings, orders and judgments in the Action, including but not limited to the Release, even if the potential Class Member previously initiated or subsequently initiates any litigation against any or all of the Released Parties relating to the claims and transaction released in the Action. Persons who properly exclude themselves from the Class shall not be entitled to participate in the benefits of the Settlement Agreement. Skechers' Counsel shall provide to the Class Action Settlement Administrator, within ten (10) business days of the entry of this Preliminary Approval Order, a list of all counsel for anyone who has litigation against Skechers that involves Eligible Shoes. The Class Action Settlement Administrator shall mail copies of the Class Notice to all such legal counsel. Skechers will promptly direct the Class Action Settlement Administrator to serve the Class Notice on counsel for any Class Members who subsequently initiate litigation, arbitration, or other proceedings against Skechers relating to claims alleging events occurring during the Class Period, the Eligible Shoes, and/or otherwise involving the Release.

12. **Objections and Appearances.** Any Class Member or counsel hired at any Class Member's own expense who complies with the requirements of this paragraph may object to any aspect of the proposed settlement.

a. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement Agreement, the proposed Settlement, the award of Attorneys' Fees

and Expenses, or the individual awards to Plaintiffs, must deliver to the Class Counsel identified in the Class Notice and to Skechers' Counsel, and file with the Court, no later than thirty (30) days before the date scheduled in paragraph 7 above for the Fairness Hearing, or as the Court otherwise may direct: (a) a written statement of objections, as well as the specific reason(s), if any, for each objection, including any legal and factual support the Class Member wishes to bring to the Court's attention; (b) any evidence or other information the Class Member wishes to introduce in support of the objections; (c) a statement of whether the Class Member intends to appear and argue at the Fairness Hearing; and (d) a list all the Class Member's purchase(s) of Eligible Shoes. Class Members may do so either on their own or through an attorney retained at their own expense. The objection must include proof of purchase of the Eligible Shoes. Acceptable proof of purchase includes an itemized cash register receipt, a credit card receipt or a credit card statement that sufficiently indicates the purchase of the Eligible Shoes. Any Class Member filing an objection may be required to sit for deposition regarding matters concerning the objection.

b. Any Class Member who files and serves a written objection, as described above, may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of the Settlement Agreement or the proposed Settlement, or to the award of Attorneys' Fees and Expenses or awards to the individual Plaintiffs. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to

one of the Class Counsel identified in the Class Notice and to Skechers' Counsel, and file said notice with the Court, no later than thirty (30) days before the date scheduled in paragraph 7 above for the Fairness Hearing, or as the Court may otherwise direct. Any Class Member who fails to comply with the provisions in this section shall waive and forfeit any and all rights he or she may have to appear separately and/or to object, and shall be bound by all the terms of the Settlement Agreement, this Order, and by all proceedings, orders, and judgments, including, but not limited to, the Release in the Settlement Agreement in the Action.

13. **Preliminary Injunction.** All Class Members and/or their representatives who do not timely exclude themselves from the Class are hereby preliminarily barred and enjoined from filing, commencing, prosecuting, maintaining, intervening in, participating in, conducting, or continuing litigation as class members, putative class members, or otherwise against Skechers (or against any of its related parties or affiliates), and/or from receiving any benefits from, any lawsuit, administrative, or regulatory proceeding or order in any jurisdiction, based on or relating to the claims or causes of actions or the facts, and circumstances relating thereto, relating to the Eligible Shoes, the Action, and/or the Release. In addition, all such persons are hereby preliminarily barred and enjoined from filing, commencing, or prosecuting a lawsuit against Skechers (or against any of its related parties or affiliates) as a class action, a separate class, or group for purposes of pursuing a putative class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of Class Members who do not timely exclude themselves from the Class, arising out of, based on or relating to the claims, causes of action, facts and/or circumstances relating thereto, relating to the Eligible Shoes, the Action and/or the Release.

Specifically, the following actions are hereby preliminary enjoined: *Morga v. Skechers U.S.A., Inc.*, No. 3:10-CV-1780 (S.D. Cal. filed August 25, 2010); *Hochberg v. Skechers U.S.A. Inc.*, No. CV11-5751 (E.D.N.Y. filed Nov. 23, 2011); *Lovston v. Skechers U.S.A., Inc.*, No. 4:11-CV-0460 DPM (Ark. Cir. Ct. filed May 13, 2011); *Tomlinson v. Skechers U.S.A., Inc.*, No. CV 2011-121-7 (Ark. Cir. Ct. filed Jan. 13, 2011); *Stalker v. Skechers U.S.A., Inc.*, No. CV 10-05460 SJO (JEMx) (C.D. Cal. filed July 2, 2010); *Loss et al. v. Skechers U.S.A., Inc. et al.*, No. 3:12-CV-78-H (W.D. Ky. filed February 10, 2012); and *Boatright et. al. v. Skechers, U.S.A., Inc. et al.* No. 3:12-CV-87-S (W.D. Ky. filed February 15, 2012). Pursuant to 28 U.S.C. §§ 1651(a) and 2283, the Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over this Action.

14. **Post-Office Box(es).** The Class Action Settlement Administrator or their designated agent(s) shall rent one or more post-office boxes in the name of the Clerk of the Court, to be used for receiving requests for exclusion from the Class and any other communications. Other than the Court or the Clerk of Court and the Notice Administrator, only Skechers, Skechers' Counsel, Class Counsel and their designated agents shall have access to these post-office box(es).

15. **Disclosure of Objections.** The Class Action Settlement Administrator, Skechers' Counsel and Class Counsel shall promptly furnish to each other copies of any and all objections or written requests for exclusion that might come into their possession.

16. **Termination of Settlement.** This Order shall become null and void and shall be without prejudice to the rights of the parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if: (a) the settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement

Agreement; (b) the settlement is terminated in accordance with the Settlement Agreement; or (c) the settlement does not become effective as required by the terms of the Settlement Agreement for any other reason. In such event, the settlement and Settlement Agreement shall become null and void and be of no further force and effect, and neither the Settlement Agreement nor the Court's orders, including this Order, relating to the settlement shall be used or referred to for any purpose whatsoever.

17. **Use of Order.** This Order shall be of no force or effect if the settlement does not become final and shall not be construed or used as an admission, concession, or declaration by or against Skechers of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Plaintiff Grabowski or the other Class Members that their claims lack merit or that the relief requested is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have in this Action or in any other lawsuit.

18. **Access to Documents.** During the pendency of this Court's consideration of the proposed Settlement Agreement, Class Members and/or their attorneys shall be allowed access, at their own expense, at a place designated by Class Counsel, to the documents disclosed through discovery in this Action to Class Counsel by Skechers, for the sole purpose of evaluating the fairness, reasonableness and adequacy of the proposed settlement, provided that such persons shall not be allowed access to these materials unless and until they enter into the Confidentiality Agreement, which is attached as an Exhibit to the Settlement Agreement. The terms and conditions of the Confidentiality Agreement are incorporated herein by reference and, if breached, may be the basis for a finding of contempt of Court. Only Class Members who

have not excluded themselves from the Class will be allowed to review the documents produced by Skechers in the Action.

19. **Retaining Jurisdiction.** This Court shall maintain continuing jurisdiction over these settlement proceedings to assure the effectuation thereof for the benefit of the Class.

20. **Continuance of Hearing.** The Court reserves the right to adjourn or continue the Fairness Hearing without further written notice.

Honorable Thomas B. Russell
UNITED STATES DISTRICT JUDGE