

CANADA

(Class Action)
SUPERIOR COURT

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

E. CUNNING

NO: 500-06-000629-127

Petitioner

-vs.-

FITFLOP LIMITED

Respondent

**AMENDED MOTION TO AUTHORIZE THE BRINGING OF A CLASS ACTION
&
TO ASCRIBE THE STATUS OF REPRESENTATIVE
(Art. 1002 C.C.P. and following)**

TO ONE OF THE HONOURABLE JUSTICES OF THE SUPERIOR COURT,
SITTING IN AND FOR THE DISTRICT OF MONTREAL, YOUR PETITIONER
STATES AS FOLLOWS:

I. GENERAL PRESENTATION

A) The Action

1. Petitioner wishes to institute a class action on behalf of the following group, of which she is a member, namely:

- all residents in Canada who have purchased FITFLOP Footwear, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased FITFLOP Footwear, or any other group to be determined by the Court;

2. The terms “FitFlop Footwear” refers to all past and present men’s and women’s style sandals, boots, clogs, slippers, and shoes marketed with the Respondent’s “Microwobbleboard™ Technology”;



3. Petitioner contends that the Respondent marketed and sold FitFlop Footwear through the use of false or misleading advertisements and representations regarding their ability to provide significant health benefits by altering users' gait, without any further changes in a consumer's diet or exercise routine;
4. Specifically, the Respondent has represented that wearing FitFlop Footwear will lead to numerous health benefits and that purchasers will:
 - a. Reduce lower back strain;
 - b. Reduce hip joint stress;
 - c. Reduce ankle joint stress;
 - d. Reduce knee joint stress;
 - e. Reduce foot pressure concentration;
 - f. Reduce cellulite and slim and tone thighs;
 - g. Increase quadriceps muscle activation (up to 16%);
 - h. Increase calf muscle activation (up to 11%);
 - i. Increase bottom muscle activity (up to 30%);
 - j. Increase hamstring muscle activation (up to 16%);
 - k. Improve core muscle strength;
 - l. Improve muscle tone;
 - m. Encourage better posture and stronger muscles;
 - n. Burn calories;
 - o. Strengthen and tone muscles in the feet, legs, buttocks, stomach and back;
 - p. Increase leg muscle activity and circulation;
5. In fact, virtually all independent scientific studies have verified that none of the benefits promised by the Respondent are actually realized by the consumer and that there is no evidence to support the claims that FitFlop Footwear products provide any health benefits whatsoever compared to regular athletic and walking shoes;



6. By reason of these actions and omissions, the Respondent induced consumers into purchasing FitFlop Footwear products that do not live up to their promised results, thereby causing Petitioners and the members of the class to suffer economic damages and physical injuries, which they are entitled to claim;

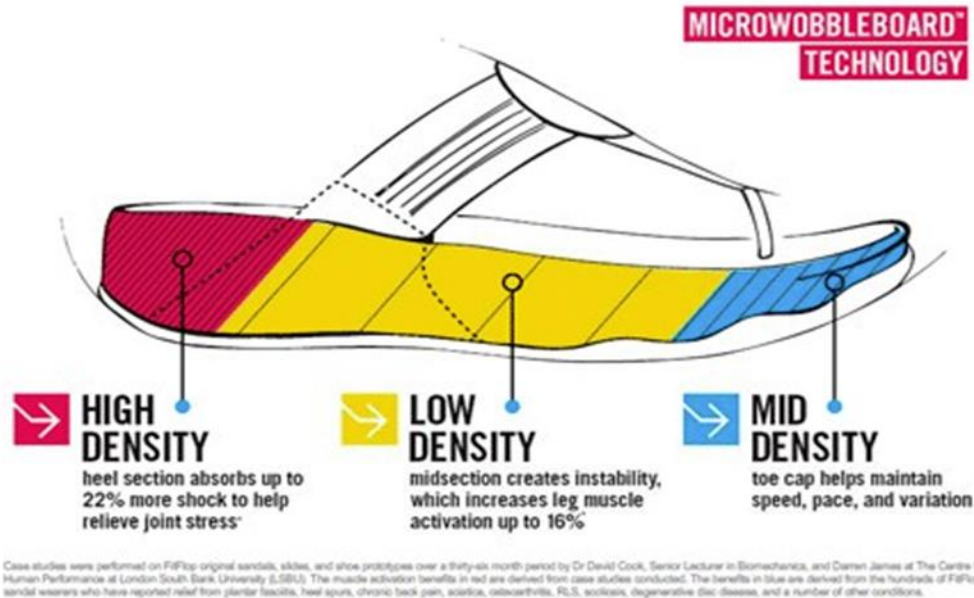
B) The Respondent

7. Respondent FitFlop Limited (“FitFlop”) is an English company based in London. It is a lifestyle and athletic footwear company that designs and sells footwear, including FitFlop Footwear, to men, women and children of all ages;
8. During the relevant time period, Respondent FitFlop has been responsible for the manufacture, design, marketing, distribution, promotion and/or sale of FitFlop Footwear throughout Canada, including within the Province of Quebec;

C) The Situation

9. FitFlop Footwear products are shoes that purportedly provide health and fitness benefits such as toning and strengthening muscles in the lower body. Unlike traditional athletic shoes, which are designed to provide the wearer with support, FitFlop Footwear is designed with a patent pending Microwobbleboard™ design to create a slight instability. The theory of FitFlop Footwear is that the instability the shoe causes will force muscles to work harder to stabilize, resulting in benefits such as muscle toning, shaping and strengthening;
10. The Respondent represents that its expensive FitFlop Footwear (ranging from \$50-\$240 per pair) with its “Microwobbleboard™ Technology” will provide to anyone who wears it a variety of health benefits that ordinary footwear cannot provide;
11. The Respondent claims that the instability created by the Microwobbleboard™ design (essentially three different densities of foam rubber made of a chemical called ethylene vinyl acetate (“EVA”)), results in increased toning, increased muscle activity, and reduction of joint strain;
12. All styles of FitFlop Footwear that the Respondent manufactures, and/or advertises, markets and sells feature the Microwobbleboard™ Technology, which the Respondent describes as a three-part system comprised of: (1) a high density heel that “absorbs up to 22% more shock to help relieve joint stress;” (2) a low density midsection that “creates instability, which increases leg muscle activation up to 16%,” and (3) a mid density toe cap that “helps maintain speed, pace, and variation” in walking, as illustrated below;





13. Paradoxically, these precise percentages have been wholly inconsistent in the Respondent's marketing campaign. As an example, even the product labelling attached to certain of the products themselves asserts a different percentage of muscle activation than otherwise advertised. Whereas the above picture represents that leg muscle activation is increased up to 16%; certain product labels represent that leg and bottom muscle activation is increased up to 30%;
14. The Respondent's misleading marketing campaign begins with the products' name - FitFlop – along with its deceptive trademarked taglines: "GET A WORKOUT WHILE YOU WALK™", "IT'S THE FLIP FLOP WITH THE GYM BUILT-IN", and "RELIEF YOU CAN WEAR ON YOUR FEET™"; the whole as appears more fully from a copy of the Respondent's product labelling, produced herein, *en liasse*, as **Exhibit R-1**;
15. The Respondent has uniformly represented that the Microwobbleboard™ technology allows consumers to "get a workout while you walk" because the shape and density of the soles are "biomechanically engineered" to increase the time that your leg muscles are engaged as compared with ordinary shoes;
16. The "How They Work" page on the Respondent's website states:
- FitFlop Footwear is biomechanically engineered to help tone and tighten your leg muscles while you walk in them. Studies at the Centre for Human Performance at London South Bank University ("LSBU") show that normal walking in FitFlop sandals can help:

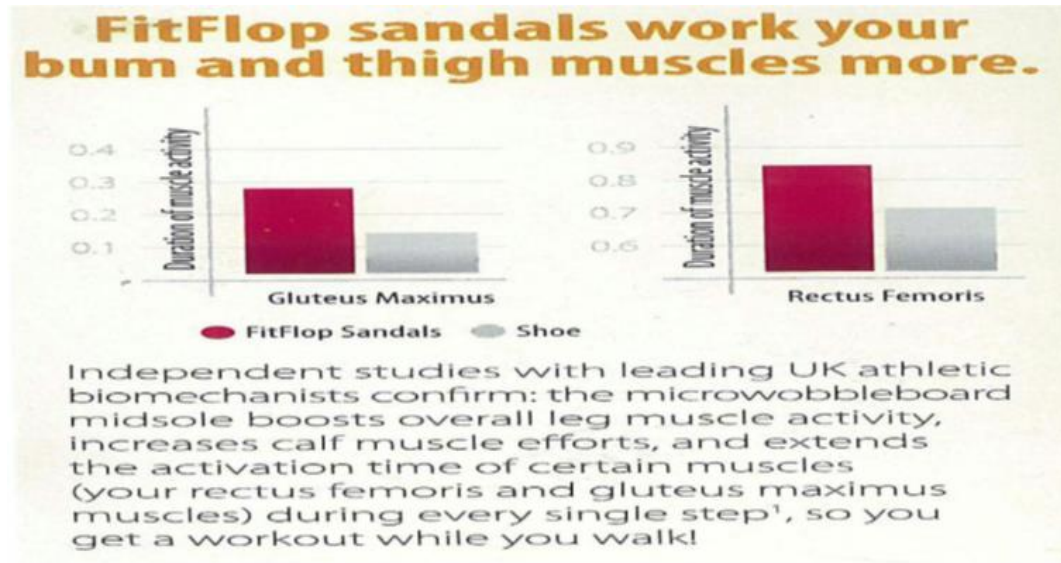


- ...Increase leg and bottom muscle activity (up to 30%) (so you feel less ache in your hips and knees),
- Absorb more shock than a normal shoe (up to 22%),
- ...Realign ground force reaction closer to your joints,
- Reduce foot pressure,

The whole as appears more fully from a copy of the Respondent's website <http://www.fitflop.com/scat/howtheywork>, produced herein as **Exhibit R-2**;

17. Further, the Respondent makes these deceptive health benefit claims on the product labelling that are attached to FitFlop Footwear, some of which appears below:





18. The Respondent has conveyed and continues to convey its deceptive claims about FitFlop Footwear through a variety of media, including point of sale displays, magazines, newspapers, the internet, social media websites, outdoor billboards, bus wraparounds and on the product packaging;

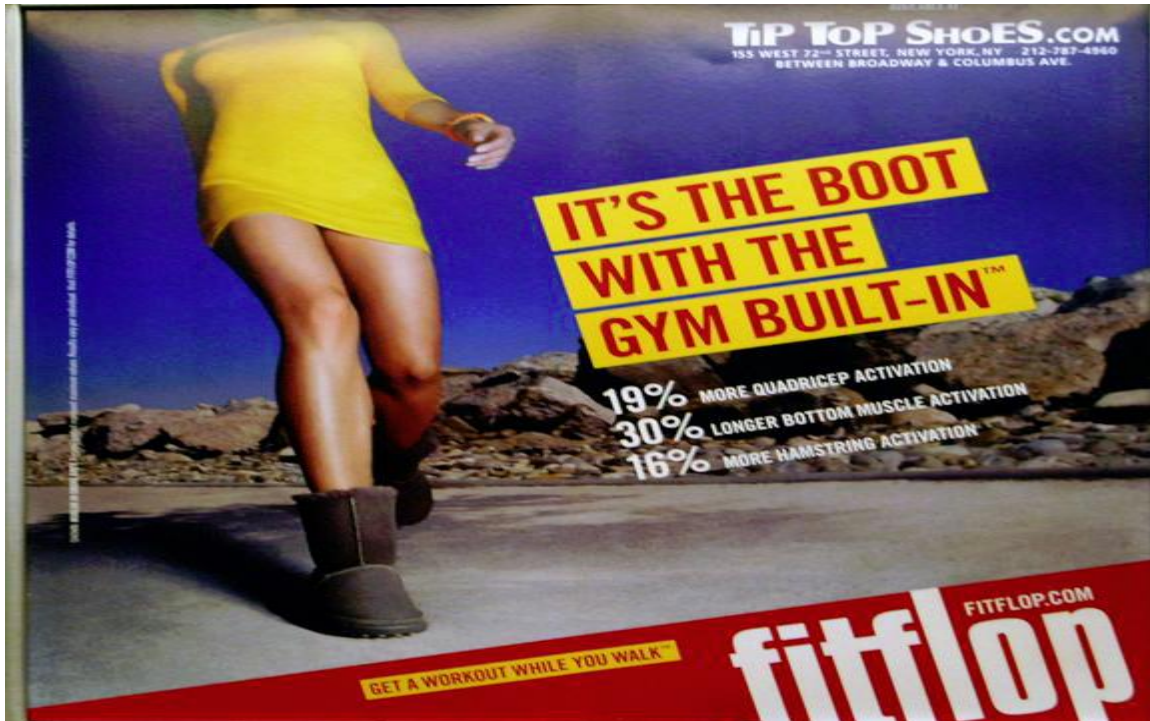
19. Some of the specific representations made by FitFlop through print advertisements as well as through online advertising are that walking in FitFlop Footwear:

- Improves core muscle strength;
- Absorbs shock on feet, knees and back;
- Encourages better posture and stronger muscles;
- Burns calories;
- Mimics barefoot walking, but with more of a challenge;
- Can help reduce cellulite and slim and tone thighs
- Improves muscle tone;
- Strengthens and tones muscles in the feet, legs, buttocks, stomach and back;
- Increases leg muscle activity and circulation;
- Reduces lower back strain;
- Reduces hip joint stress;
- Increases quadriceps muscle activation (up to 16%);
- Reduces knee joint stress;
- Increases calf muscle activation (up to 11%);
- Reduces ankle joint stress;
- Reduces foot pressure concentration;
- Increases bottom muscle activity (up to 30%);
- Increases hamstring muscle activation (up to 16%);



The whole as appears more fully from a copy of three such advertisements, produced herein, *en liasse*, as **Exhibit R-3**;

20. The Respondent's print advertisements contain substantially similar deceptive messages about the ability of FitFlop Footwear to provide health benefits, as illustrated below:



21. All of the Respondent's advertisements convey the same message – that FitFlop Footwear provides increased muscle toning over traditional footwear simply by walking in it, two such examples are illustrated below:





22. Through its labeling and advertising the Respondent has consistently conveyed the message that FitFlop Footwear products provide increased muscle activation over traditional footwear, resulting in increased muscle toning and related health benefits simply by walking in them;
23. To further reinforce the appearance that its claims are legitimate and that FitFlop Footwear is different from ordinary footwear, the Respondent has consistently represented that its product line has “the backing of the medical profession ... from top physiotherapists to leading podiatrists”, the whole as appears more fully from a copy of the Press Release entitled “FitFlop Shoes – Can They Be Beaten?” dated October 12, 2010, produced herein as **Exhibit R-4**;
24. The Respondent claims that FitFlop Footwear’s major health benefits have been shown in clinical studies. On the product labelling (Exhibit R-1), the Respondent states that studies at the Centre for Human Performance at LSBU show that normal walking in Fit Flop sandals' can help:
- Increase leg, calf and gluteal muscle activity,
 - Improve your posture,
 - Mimic the gait of barefoot walking but with more muscle load, and
 - Improve muscle tone;
25. The Respondent has been consistent in its claims that FitFlop Footwear is scientifically proven to provide the alleged health benefits. However, as outlined above in paragraph 13, these “scientific claims” are not always



consistent with its advertisements. For example, while the advertisements allege certain specific percentages, the FitFlop website (Exhibit R-2) states:

Studies at the Centre for Human Performance at London South Bank University (“LSBU Study”) show that normal walking in FitFlop sandals can help: (a) “increase leg and bottom muscle activity (up to 30%). (so you feel less ache in your hips and knees);” (b) “absorb more shock than a normal shoe (up to 22%);” (c) “help realign ground force reaction closer to your joints;” and (d) “reduce foot pressure and pain from heel spurs and plantar fasciitis.”

26. In truth and in fact, these representations were not substantiated at the times that they were made and there are no well-designed, reliable scientific studies that support the Respondent’s health benefits claim;

27. Contrary to the Respondent’s statements about the increased muscle activation effect of its FitFlop Footwear, walking in FitFlop Footwear provides no greater amount of muscle activation or exercise response than walking in ordinary footwear. Indeed, clinical evidence actually advises that the Respondent’s claims regarding the FitFlop Footwear are deceptive and that wearing FitFlop products could actually result in harm to the wearer;

28. In a recent study entitled “THE PHYSIOLOGIC AND ELECTROMYOGRAPHIC RESPONSES TO WALKING IN REGULAR ATHLETIC SHOES VERSUS “FITNESS SHOES” by John P. Porcari, Ph.D., John Greany, Ph.D., Stephanie Tepper, B.S., Brian Edmonson, B.S., Carl Foster, Ph.D. from the Departments of Physical Therapy and Exercise and Sport Science, University of Wisconsin-La Crosse it states:

“The “clinical” studies supporting the benefits of these shoes have all been non-peer reviewed and internally funded. A review of these studies finds that they generally had small sample sizes, lacked adequate research control, and had questionable or no statistical analyses.

...

Because there seems to be unsubstantiated claims about the benefits of walking in fitness shoes, the purpose of this study was two fold: First was to evaluate the exercise responses (heart rate, oxygen consumption, caloric expenditure, and ratings of perceived exertion) to walking in regular athletic shoes compared to fitness shoes. The second was to evaluate muscle activation (via electromyography) when walking in regular athletic shoes compared to fitness shoes. This investigation was conducted as two separate studies using two separate groups of subjects.

...

There was no significant difference in EMG levels in the gastrocnemius, rectus femoris, biceps femoris, gluteus maximus, erector spinae, or rectus abdominus between the four types of shoes. It can be seen that EMG



activity was generally higher at the higher workloads (i.e., 3.0/0% grade vs. 3.5 mph/0% grade vs. 3.5 mph/5% grade), as expected.

...

The results of this study found no evidence that walking in fitness shoes had any positive effect on exercise heart rate, oxygen consumption, or caloric expenditure compared to walking in a regular running shoe.

Based upon the results of this study, wearing so-called fitness shoes will have no beneficial effect on exercise intensity or caloric expenditure compared to wearing a regular running shoe. Additionally, there is no evidence that wearing shoes with an unstable sole design will improve muscle strength and tone more than wearing a regular running shoe.”

The whole as appears more fully from a copy of said scientific study, produced herein as **Exhibit R-5**;

29. In a summary of this study by the American Council on exercise (“ACE”), the following further remarks were made:

“For the exercise response study, researchers recruited 12 physically active female volunteers, ages 19 to 24 years. All study subjects completed a dozen five-minute exercise trials in which they walked on a treadmill for five minutes wearing each type of shoe. The shoe order was randomized as the subjects were asked to walk at 3.0 mph with a 0% grade hill; 3.5 mph/0% grade; and at 3.5 mph/5.0% grade. Meanwhile researchers monitored each subject’s oxygen consumption, heart rate, ratings of perceived exertion (RPE) and caloric expenditure.

To measure muscle activation, researchers recruited a second group of 12 physically active female volunteers, ages 21 to 27 years, who performed a similar battery of five-minute treadmill trials (as explained above) rotating shoes at random. Researchers used electromyography (a.k.a. EMG) to record muscle activity in six muscle areas: gastrocnemius (calf), rectus femoris (quads), biceps femoris (hamstrings), gluteus maximus (buttocks), erector spinae (back), and rectus abdominis (abs), as subjects walked in each of the four pairs of shoes. As a baseline for EMG analysis, maximum voluntary isometric contractions (MVIC) on all muscles were also performed using manual muscle techniques prior to testing.”

...

“Do you feel different when you’re wearing these shoes? Of course you do because you’re walking on probably an inch worth of cushioning,” explains Porcari. “They feel different, and that’s why when people first wear them they’re probably going to be sore because you’re using different muscles. But if you wear any sort of abnormal shoes that you’re not used to wearing, your muscles are going to get sore. Is that going to translate into



toning your butt, hamstrings and calves? Nope. Your body is just going to get used to it.”

The whole as appears more fully from a copy of said summary, produced herein as **Exhibit R-6**;

30. The ACE concluded that: “Across the board, none of the toning shoes showed statistically significant increases in either exercise response or muscle activation during any of the treadmill trials” and that “there is simply no evidence to support the claims that these shoes will help wearers exercise more intensely, burn more calories or improve muscle strength and tone”;

31. A USA Today article stated in part:

“A growing number of doctors are warning that toning shoes don’t deliver on their marketing promises and could cause injuries by, among other things, changing a person’s gait, or way of walking.

Claims that Toning Shoes can significantly contribute to person’s fitness are “utter nonsense.””

The whole as appears more fully from a copy of the article entitled “A revolutionary sneaker, or overhyped gimmick?” dated June 20, 2010, produced herein as **Exhibit R-7**;

31.1 In another recent scientific study published in Clinical Biomechanics, conducted by K.E. Burgess and P.A. Swinton, entitled “ Do Fitflops™ increase lowerlimb muscle activity?”, researchers compared the muscle activity of women wearing Fitflops to those wearing regular flipflops and to those barefoot when participating in different tasks to simulate daily living activities, the whole as appears more fully from a copy of the study, produced herein as **Exhibit R-12**;

31.2 The following conclusions were drawn from the study:

“In conclusion the results presented here indicate that there are no differences in lower limb muscle activity during simulated activities of daily living between Fitflops™ and flip flop and barefoot control conditions in a healthy recreationally active female population. It is possible that the Fitflops™ did not induce the level of instability required to increase the activity in these larger lower leg muscles, however it is still possible that wearing Fitflops™ could increase activity in smaller stabilising muscles not monitored here, therefore this needs to be investigated. However, it is unclear how this would make any major change to energy expenditure which would have an impact on health. Based on the current study’s results the use of



Fitflops™ is questioned as a means of increasing muscle activity of the medial gastrocnemius, biceps femoris, rectus femoris and gluteus maximus during activities of daily living in a healthy recreationally active female population”;

32. The Respondent’s representations are deceptive. In fact, many notable physicians and podiatrists will not endorse FitFlop Footwear. For example, the president of the American Academy of Podiatric Sports Medicine stated that toning shoes pose “major risks, especially for adults. Creating instability, on adults especially is not a good thing,” the whole as appears more fully from a copy of the article entitled “Can EasyTone, FitFlops, TrimTreads or other shoes tone your body?” dated August 24, 2010, produced herein as **Exhibit R-8**;
33. Moreover, one published study conducted to determine the effectiveness of unstable shoe construction (rocker bottom shoes) on reducing pain and increasing balance in persons with knee osteoarthritis found that there was no significant difference between the test group that wore an unstable shoe construction and the control group in either pain reduction or increased balance, the whole as appears more fully from a copy of said study entitled “*Unstable Shoe Construction and Reduction of Pain in Osteoarthritis Patients*” written by Benno M. Nigg *et al.* and published by the peer-reviewed journal *Medicine & Science in Sports & Exercise* in 2006, produced herein as **Exhibit R-9**;
34. Not only does FitFlop Footwear not provide the benefits as claimed, they have significant drawbacks which FitFlop has omitted from its advertising. Specifically, because FitFlop Footwear is designed to constantly challenge the user’s balance, they are unsuitable for users with flat feet, or those who have pre-existing difficulties maintaining their balance. Additionally, consumers who are more prone to injury in areas that are responsible for maintaining balance (such as the hamstring or ankle) will exacerbate that risk by using FitFlop Footwear;
35. Even though walking in FitFlop Footwear offers no greater benefit in toning or muscle activation than walking in traditional (and lower-priced) walking shoes, FitFlop Footwear has been a huge commercial success for the Respondent; “FitFlop ha[s] been the top selling fitness Footwear brand since their launch a few years ago,” the whole as appears more fully from a copy of the Press Release entitled “Customers Are Getting Excited About FitFlops Spring 2011 Collection” dated November 12, 2010, produced herein as **Exhibit R-10**;
36. The advertisements and representations made by the Respondent as set forth herein were, and are, false or misleading. The acts and practices of the Respondent as alleged herein constitute unfair or deceptive acts or practices and the making of false advertisements;



37. As a result of the Respondent's deceptive claims, consumers have purchased a product that does not perform as advertised. Moreover, the Respondent has been able to charge a significant price premium for FitFlop Footwear over other traditional, comparable footwear products that do not make deceptive health benefits claims;
38. Consumers were induced into purchasing FitFlop Footwear through the use of false and misleading representations, thereby vitiating their consent and entitling them to claim a refund for the purchase price of the product;

II. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY THE PETITIONER

39. Petitioner purchased FitFlop Footwear in Spring 2012 from Chaussure Porto in Mega Centre Notre-Dame at 2264 Desserte Autoroute 13 O, in Sainte-Dorothée, Quebec for approximately \$50 plus taxes;
40. Petitioner believed, from having seen FitFlop marketing and having read their product labelling, that the FitFlop Footwear would cause her to tone and strengthen her muscles and cause her to lose weight without any further changes in a diet or exercise routine;
41. Petitioner has since discovered, while researching online, that these product claims have not been scientifically proven and that a class action was filed in the United States for this same product due to false advertising, the whole as appears more fully from a copy of said Class Action Complaint and the accompanying exhibits as if recited at full length, produced herein as **Exhibit R-11A**, its amended version **Exhibit R-11B**, and another U.S. Class Action Complaint **Exhibit R-11C**;
42. In consequence, Petitioner feels that she has been misled by FitFlop and that had she known the true facts, the Petitioner would not have purchased the FitFlop Footwear;
43. Petitioner's damages are a direct and proximate result of the Respondent's conduct and the company's false and misleading advertising;
44. In consequence of the foregoing, Petitioner is justified in claiming damages;

III. FACTS GIVING RISE TO AN INDIVIDUAL ACTION BY EACH OF THE MEMBERS OF THE GROUP

45. Every member of the class has purchased FitFlop Footwear believing that it would provide them health benefits such as to cause them to tone and strengthen their muscles, due to the Respondent's marketing, advertising, and labelling;



46. The class members were, therefore, induced into error by the Respondent's false and misleading advertising;
47. Had the Respondent disclosed the truth about their FitFlop Footwear, that they did not offer any extra health benefits such as toning or strengthening over regular shoes, reasonable consumers would not have purchased them;
48. Each member of the class is justified in claiming at least one or more of the following as damages:
- a. The purchase price of their FitFlop Footwear;
 - b. Punitive damages;
49. Respondent engaged in wrongful conduct, while at the same time obtaining, under false pretences, significant sums of money from class members;
50. All of these damages to the class members are a direct and proximate result of the Respondent's conduct and their false and misleading advertising;

IV. CONDITIONS REQUIRED TO INSTITUTE A CLASS ACTION

- A) The composition of the class renders the application of articles 59 or 67 C.C.P. difficult or impractical
51. Petitioner is unaware of the specific number of persons who purchased FitFlop Footwear, however, it is safe to estimate that it is in the tens of thousands (if not hundreds of thousands);
52. Class members are numerous and are scattered across the entire province and country;
53. In addition, given the costs and risks inherent in an action before the courts, many people will hesitate to institute an individual action against the Respondent. Even if the class members themselves could afford such individual litigation, the court system could not as it would be overloaded. Further, individual litigation of the factual and legal issues raised by the conduct of the Respondent would increase delay and expense to all parties and to the court system;
54. Also, a multitude of actions instituted in different jurisdictions, both territorial (different provinces) and judicial districts (same province), risks having contradictory judgements on questions of fact and law that are similar or related to all members of the class;



55. These facts demonstrate that it would be impractical, if not impossible, to contact each and every member of the class to obtain mandates and to join them in one action;
56. In these circumstances, a class action is the only appropriate procedure for all of the members of the class to effectively pursue their respective rights and have access to justice;
- B) The questions of fact and law which are identical, similar, or related with respect to each of the class members with regard to the Respondent and that which the Petitioner wishes to have adjudicated upon by this class action
57. Individual questions, if any, pale by comparison to the numerous common questions that predominate;
58. The damages sustained by the class members flow, in each instance, from a common nucleus of operative facts, namely, the Respondent's misconduct;
59. The recourses of the members raise identical, similar or related questions of fact or law, namely:
- A) Did the Respondent engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of its FitFlop Footwear?
 - B) Is the Respondent liable to the class members for reimbursement of the purchase price of the FitFlop Footwear as a result of its misconduct?
 - C) Should an injunctive remedy be ordered to prohibit the Respondent from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct?
 - D) Is the Respondent responsible to pay compensatory and/or punitive damages to class members and in what amount?
60. The interests of justice favour that this motion be granted in accordance with its conclusions;

V. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

61. The action that the Petitioner wishes to institute on behalf of the members of the class is an action in damages and an injunctive remedy;
62. The conclusions that the Petitioner wishes to introduce by way of a motion to institute proceedings are:



GRANT the class action of the Petitioner and each of the members of the class;

ORDER the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct;

DECLARE the Defendant liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendant to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendant to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

A) The Petitioner requests that she be attributed the status of representative of the Class

63. Petitioner is a member of the class;

64. Petitioner is ready and available to manage and direct the present action in the interest of the members of the class that they wish to represent and is determined to lead the present dossier until a final resolution of the matter, the whole for the benefit of the class, as well as, to dedicate the time necessary for the present action before the Courts of Quebec and the *Fonds d'aide aux recours collectifs*, as the case may be, and to collaborate with her attorneys;



65. Petitioner has the capacity and interest to fairly and adequately protect and represent the interest of the members of the class;
66. Petitioner has given the mandate to her attorneys to obtain all relevant information with respect to the present action and intends to keep informed of all developments;
67. Petitioner, with the assistance of her attorneys, is ready and available to dedicate the time necessary for this action and to collaborate with other members of the class and to keep them informed;
68. Petitioner is in good faith and has instituted this action for the sole goal of having her rights, as well as the rights of other class members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of the Respondent's conduct;
69. Petitioner understands the nature of the action;
70. Petitioner's interests are not antagonistic to those of other members of the class;
- 70.1 Petitioner has given instructions to her attorneys to put information about this class action on their website and to collect the coordinates of those class members that wish to be kept informed and participate in any resolution of the present matter, the whole as will be shown at the authorization hearing and the potential class members' private information will be deposited under seal;
- 70.2 Petitioner agreed to be examined out of court on July 9th 2013 on her allegations (as authorized by the Court) and intends to be present for Court hearings, as may be required and necessary;
- 70.3 Petitioner has spent time researching this issue on the internet and meeting with her attorneys to prepare her file. In so doing, she came across a recent study (previously produced as Exhibit R-12). In addition, her research has led her to believe that the issue of false and misleading advertising is widespread and scientifically evident;
- B) The Petitioner suggests that this class action be exercised before the Superior Court of justice in the district of Montreal
71. A great number of the members of the class reside in the judicial district of Montreal and in the appeal district of Montreal;
72. The Petitioner's attorneys practice their profession in the judicial district of Montreal;



73. The present motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT:

GRANT the present motion;

AUTHORIZE the bringing of a class action in the form of a motion to institute proceedings in damages and for injunctive relief;

ASCRIBE the Petitioner the status of representative of the persons included in the class herein described as:

- all residents in Canada who have purchased FITFLOP Footwear, or any other group to be determined by the Court;

Alternately (or as a subclass)

- all residents in Quebec who have purchased FITFLOP Footwear, or any other group to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- A) Did the Respondent engage in unfair, false, misleading, or deceptive acts or practices regarding the marketing and sale of its FitFlop Footwear?
- B) Is the Respondent liable to the class members for reimbursement of the purchase price of the FitFlop Footwear as a result of its misconduct?
- C) Should an injunctive remedy be ordered to prohibit the Respondent from continuing to perpetrate its unfair, false, misleading, and/or deceptive conduct?
- D) Is the Respondent responsible to pay compensatory and/or punitive damages to class members and in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

GRANT the class action of the Petitioner and each of the members of the class;



ORDER the Defendant to cease from continuing its unfair, false, misleading, and/or deceptive conduct;

DECLARE the Defendant liable for the damages suffered by the Petitioner and each of the members of the class;

CONDEMN the Defendant to pay to each member of the class a sum to be determined in compensation of the damages suffered, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay to each of the members of the class, punitive damages, and ORDER collective recovery of these sums;

CONDEMN the Defendant to pay interest and additional indemnity on the above sums according to law from the date of service of the motion to authorize a class action;

ORDER the Defendant to deposit in the office of this court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including expert and notice fees;

RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

DECLARE that all members of the class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the group in accordance with article 1006 C.C.P. within sixty (60) days from the judgement to be rendered herein in LA PRESSE, the GLOBE & MAIL and the NATIONAL POST;

ORDER that said notice be available on the Respondent's website with a link stating "Notice to FitFlop Footwear owners";



RENDER any other order that this Honourable court shall determine and that is in the interest of the members of the class;

THE WHOLE with costs, including all publications fees.

Montreal, September 12, 2013



CONSUMER LAW GROUP INC.
Per: Me Jeff Orenstein
Attorneys for the Petitioner