

IN THE MATTER OF

ASICS TIGER CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3328. Complaint, Apr. 17, 1991—Decision, Apr. 17, 1991

This consent order prohibits, among other things, a California manufacturer of athletic shoes from making performance and injury-reduction claims about its athletic shoes unless it possesses competent and reliable evidence to substantiate those claims.

Appearances

For the Commission: *Janet M. Evans* and *Joel Winston*.

For the respondent: *George Miron, Wyman, Bautzer, Kuchel & Silbert*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that respondent Asics Tiger Corporation, a corporation, has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it would be in the public interest, hereby issues its complaint stating its charges as follows:

PARAGRAPH 1. Respondent Asics Tiger Corporation is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California. Respondent's office and principal place of business is located at 10540 Talbert Avenue, Fountain Valley, California.

PAR. 2. Respondent, at all times mentioned herein, has maintained a substantial course of business, including the acts and practices hereinafter set forth, which are in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 3. Respondent advertises, offers for sale, sells and distributes athletic shoes, including Asics Gel shoes.

PAR. 4. In the course and conduct of its business, in order to induce the sale of Asics Gel athletic shoes, respondent has disseminated or caused the dissemination of advertisements and promotional materi-

als. Typical of respondent's advertisements and promotional materials for its Asics Gel athletic shoes, but not necessarily all-inclusive thereof, are the advertisements attached hereto as Exhibits A-E. The aforesaid advertisements and promotional materials contain the following statements and depictions:

1. A newly-developed silicone gel is being used to enhance shock absorption in athletic shoes ... The gel, called Asics' Gel, was engineered to dispel 28% more impact than shoes that use air as a shock absorber. That means runners can reduce strike force on the foot by 1.2 million pounds during the course of one 10K run. (Complaint Exhibit A).

2. Welcome to an amazing advancement in high-tech shock absorption for sport shoes Welcome to ASICS' GEL Greater shock absorption protects you from painful shinsplints, stress fractures, knee and hip aches and bone bruises. Studies using our GT II running shoe prove ASICS' GEL dispels 28% more injury-causing impact than the leading "air" shoes ASICS' GEL significantly reduces painful injuries caused by inadequate shock absorption. (Complaint Exhibit B).

3. Introducing ASICS' GEL. The best shock absorption ever put in a sport shoe ASICS' GEL gives you greater shock absorption and stability than other protective systems, including conventional foams or air cushioning. Studies using our GT II running shoes indicate ASICS' GEL dispels up to 28% more injury-reducing impact than the leading "air" shoes. (Complaint Exhibit C).

4. ASICS' GEL SYSTEM RANKS #1 IN BIOMECHANICAL TESTS. In recent tests for stability and shock absorption performed by Dr. Barry Bates of the University of Oregon's Biomechanics Sports Medicine Laboratory, ASICS' GEL cushioning system combined with today's more conventional materials proved to be the most stable and best shock absorbing system used in this comparison of athletic shoes. [Followed by chart comparing ASICS GT II, ASICS Gel-Lyte, New Balance 995, Brooks Nexus, and Nike Air Max.] (Complaint Exhibit D) (Emphasis added).

5. Shinsplints. Stress fractures. Bone bruises. Knee and hip aches. They're the price too many women are paying for wearing aerobic shoes that don't absorb all the shock they should....Asics Tiger now protects you with ASICS' GEL—a shock absorption breakthrough that's more effective than the air or foam cushioning you're wearing now Biochemical tests indicate our Ensemble aerobics shoe with ASICS' GEL absorbs more forefoot impact than shoes many are calling "state of the art"— 15% more than Reebok Instructor, 17% more than Avia 440, and 23% more than Nike Air Conditioner. (Complaint Exhibit E).

PAR. 5. Through the statements referred to in paragraph four, and others not specifically set forth herein, respondent has represented, directly or by implication, that:

1. Asics' GT II running shoes absorb 28% more shock than athletic shoes relying on air as a shock absorber, including the leading "air" shoe.

2. Asics' GT II and Gel-Lyte shoes absorb more shock than New Balance 995, Brooks Nexus, and Nike Air Max.

3. Asics' Ensemble aerobic shoes absorb 15% more shock than Reebok Instructor, 17% more shock than Avia 440, and 23% more shock than Nike Air Conditioner.

4. Persons using Asics' athletic shoes will suffer fewer impact-related injuries than persons using other athletic shoes, including "air" shoes.

PAR. 6. Through the use of the statements and representations referred to in paragraphs four and five, and others not specifically set forth herein, respondent has represented, directly or by implication, that at the time it made said representations, respondent possessed and relied upon a reasonable basis, consisting of competent and reliable evidence, for such representations.

PAR. 7. In truth and in fact, at the time respondent made said representations, respondent did not possess and rely upon a reasonable basis, consisting of competent and reliable evidence, for such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements referred to in paragraph four, and others not specifically set forth herein, respondent has represented directly or by implication, that scientific tests prove the accuracy of the claims set forth in paragraph five.

PAR. 9. In truth and in fact, scientific tests do not prove the accuracy of the claims set forth in paragraph five. Therefore, the representation set forth in paragraph eight, was, and is, false and misleading.

PAR. 10. The dissemination by respondent of the aforesaid false and misleading representations, as herein alleged, constituted, and now constitutes, unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Commissioner Starek not participating.

EXHIBIT A

COMPLAINT EXHIBIT A**SMITH & MYERS**
ADVERTISING, INC.#9
000016NEWS FOR IMMEDIATE RELEASECONTACT:

Melissa Field
Public Relations
(714) 547-7600

NEWLY-DEVELOPED SILICONE GEL DESIGNED TO ENHANCE
SHOCK ABSORPTION IN ATHLETIC SHOES

(SANTA ANA, CA) April 24, 1986 -- A newly-developed silicone gel is being used to enhance shock absorption in athletic shoes. The gel* is marketed in America exclusively by Asics Tiger Corporation in the new GT-II running shoe, and is scheduled to appear in new models of Tiger fitness, basketball, tennis and track shoes by late 1986.

For the runner, Tiger's biomechanical tests show that 25% of injuries stem from insufficient shock absorption. The gel, called Asics' Gel, was engineered to dispel 28% more impact than shoes that use air as a shock absorber. That means runners can reduce strike force on the foot by 1.2 million pounds during the course of one 10K run.

Asics' Gel disperses shock from a vertical to a horizontal angle. In the new GT-II, Tiger utilizes 3mm of gel in a pad located at the forefoot reflex point and 5mm of gel in a pad positioned at the rearfoot reflex point. Midsole deterioration is delayed because the gel pads rest above the compression-molded EVA midsole.

-more-

TIGER - NEWLY-DEVELOPED SILICONE GEL DESIGNED
ADD ONE

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The damages of overpronation also are reduced because the GT-II features a 10mm heel pillar, sculpted orthotic insole, vertical midsole extension collar and stabilizing upper straps. Designed for high performance mileage runners, the shoe incorporates escaine reinforcements which gives the upper a longer life, and a tri-density outsole with black carbon gum rubber to extend overall wear. A breathable nylon mesh forefoot with nylon mesh vamp provides stability and comfort while a nylon mesh saddle delivers arch support.

The new Tiger GT-II Asics' Gel running shoe is available in white and royal colors, in men's sizes 4-13. Suggested retail price is \$85.95.

Contact: Pete Cappelli, National Promotions And Advertising Manager, Asics Tiger Corporation, 3030 South Susan Street, Santa Ana, California 92704, (714) 754-0451.

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* The gel was developed by Geltec Co. Ltd. of Japan.

EXHIBIT B

COMPLAINT EXHIBIT B

ASICS' GEL

Greater shock absorption protects you from painful shins, sprains, stress fractures, knee and hip aches and bone bruises. Studies using our GEL II running shoe prove ASICS' GEL disperses 28% more injury-causing impact than the leading air shoe.

Why play around with obsolete equipment? Protect yourself with sports shoes that deliver superior stability and shock absorption: Asics Tiger... with ASICS' GEL.

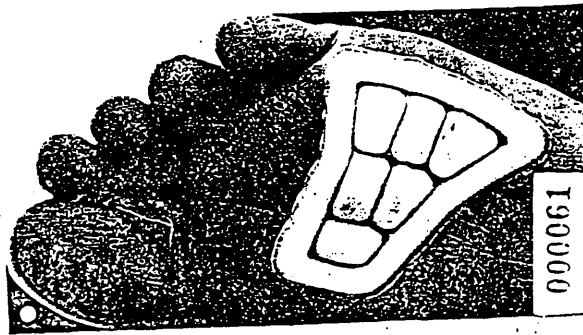
Encapsulated in pads and automatically located at forefoot and heel, ASICS' GEL significantly reduces painful injuries caused by inadequate shock absorption.

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Welcome to an amazing advancement in high tech shock absorption for sports shoes. The leading edge in comfort, performance, stability and injury prevention. The first shock absorber of its kind ever designed into an athletic shoe available in America.

Developed from a new class of engineering compounds pioneered by Geltec, Ltd., ASICS' GEL is a viscous, silicone-based formulation. Molded into a pad and anatomically placed into each shoe, it offers far greater stability and shock absorption properties than conventional foam or air cushioning.

Greater stability means reduced arch pain, ankle sprains and tendonitis.



ASICS' GEL is truly a technological breakthrough in high-performance athletic shoes. Originally designed for use in nets, protective wear, carpenters and industrial areas, ASICS' GEL is now the proven art in sports shoe absorbents.

ASICS' GEL's unique properties disperse incoming vertical shock into a horizontal direction. result is unsurpassed protection against the stress of repeated impact from above or below. Also able and lightweight, ASICS' GEL is all-around performance other material can match.

ASICS TIGER CORP.
ASICS TIGER CORP.
ASICS TIGER CORP.
ASICS TIGER CORP.

EXHIBIT C

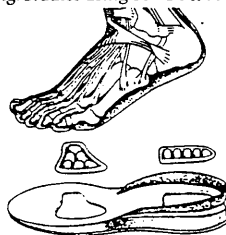
COMPLAINT EXHIBIT C

Introducing
ASICS' GEL. The
best shock absorption
ever put in a sports shoe.

You're serious about fitness, so your feet take a pounding. A pounding that can cause painful injuries and keep you on the sidelines.

Now ASICS' GEL is changing all that.

ASICS' GEL gives you greater shock absorption and stability than other protective systems, including conventional foams or air cushioning. Studies using our GT II running



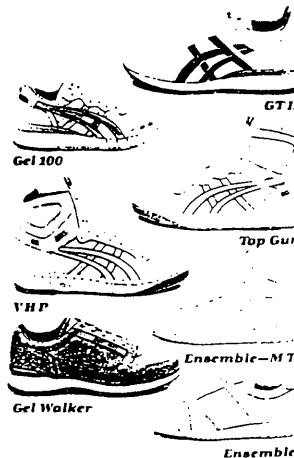
Encapsulated in pods and anatomically located at fore and/or rear foot reflex points. ASICS' GEL significantly reduces painful injuries caused by inadequate

shoes indicate ASICS' GEL dispels up to 28% more injury-inducing impact than the leading "air" shoes.

What makes ASICS' GEL so superior? Its unique, silicone formula disperses incoming vertical shock into a horizontal direction, giving unsurpassed protection against the effects of repeated impact from above or below. Greater shock absorption protects against painful shinsplints, stress fractures, knee and hip aches and bone bruises. In addition, you gain greater stability that reduces arch pain, ankle sprains and tendinitis.

ASICS' GEL is so effective, we've added it to 13 shoe models for seven sports—from aerobics and running, to basketball and walking—with others now under development.

Insist on the sport shoes that deliver superior stability and shock absorption. Asics Tiger, with ASICS' GEL. The only shock absorption of its kind available in America. Try a pair by calling 1-800-447-4700 for your nearest ASICS Dealer.

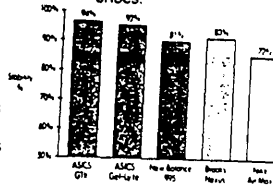


ASICS TIGER CORP.

Don't Be Shocked By Your Athletic Shoe's Performance.

When athletes jump, they land with a force that can equal up to ten times their body weight. For a 160-pound basketball player making a rebound, that means more than three quarters of a ton of force sending shock waves back through the bones, muscles, cartilage, tendons and ligaments. And every participant in a 10K run must endure about 2.4 million pounds of punishment. Each year, there are thousands of sports injuries stemming directly from inferior athletic shoe design. From shoes that fail to provide adequate shock absorption or proper stability.

absorbing system used in this comparison of athletic shoes.



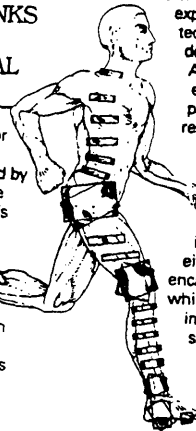
**"ASICS' GEL
SYSTEM"
IS A
TRUE ORIGINAL**

Combining the shock absorption breakthroughs of the most advanced gel technology with our own athletic shoe expertise, ASICS' technologists developed the ASICS' GEL encapsulated pads. As a result, these pads, each designed for a specific purpose and location, absorb more impact than either foam or encapsulated air while greatly improving the shoe's stability.

**"ASICS' GEL
SYSTEM" RANKS
#1 IN BIO-
MECHANICAL
TESTING.**

In recent tests for stability and shock absorption performed by Dr. Barry Bates of the University of Oregon's Biomechanics Sports Medicine Laboratory, ASICS' GEL cushioning system combined with today's more conventional materials proved to be the most stable and best shock

Shock attenuation results in less damaging force transmission to the body



ASICS' GEL



ASICS THE CHOICE OF
FANATICS

ASICS TIGER CORP.
3030 South Susan • Santa Ana, CA 92704

Complaint

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EXHIBIT E

asics
THE CHOICE OF
FANATICS

COMPLAINT EXHIBIT E

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Introducing
ASICS' GEL™.

The best shock
absorption ever
put in a women's
fitness shoe.

Shinsplints. Stress fractures.
Bone bruises. Knee and hip aches.
They're the price too many women
are paying for wearing aerobics
shoes that don't absorb all the shock
they should.

The truth can be painful, but it
doesn't have to be. Because Asics
Tiger now protects you with ASICS'
GEL—a shock absorption break-
through that's more effective than
the air or foam cushioning in the
shoes you're wearing now.

ASICS' GEL pads
significantly reduce
injury-related
impact.



Already proven
effective in our
running shoes,
ASICS' GEL is a
semi-fluid silicone
substance with amazing
shock absorption



qualities. It works
by dispersing
incoming vertical
force into a horizontal
direction, giving you
greater stability and unbeat-
able protection against the
dangerous effects of repeated impact
from above or below.

Biomechanical tests indicate
our Ensemble aerobics shoe with
ASICS' GEL absorbs more forefoot
impact than shoes many are calling
"state-of-the-art"—15% more than
Reebok Instructor, 17% more than
Avia 440® and 23% more than Nike
Air Conditioner.®

Think about the hundreds of
steps you take in just one aerobics
class. Then try the shoe that takes
steps to put something better
between you and impact-related
injuries. Ensemble with ASICS'

GEL. Call 1-800-447-4700 for
the Asics Tiger Dealer
near you.

Asics® is a registered trademark of Asics Corporation. All rights reserved.

ASICS TIGER CORP.

Ensemble

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Asics Tiger Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 10540 Talbert Avenue, Fountain Valley, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

PART I

It is ordered, That respondent Asics Tiger Corporation, a corporation, its successors and assigns, and its officers, agents, representa-

tives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, labelling, packaging, offering for sale, sale or distribution of any athletic shoes in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, if contrary to fact, that tests prove:

A. That Asics' GT II running shoes absorb 28% more impact than athletic shoes relying on air as a shock absorber, including the leading "air" shoe.

B. That Asics' GT II and Gel-Lyte shoes absorb more shock than New Balance 995, Brooks Nexus, and Nike Air Max.

C. That Asics' Ensemble aerobic shoes absorb 15% more shock than Reebok Instructor, 17% more shock than Avia 440, and 23% more shock than Nike Air Conditioner including "air" shoes.

D. That persons using Asics' athletic shoes will suffer fewer impact-related injuries than persons using other athletic shoes including "air" shoes.

PART II

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary or division or other device, in connection with the advertising, offering for sale, sale or distribution of any athletic shoes, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the contents, validity, results, conclusions, or interpretations of any test or study.

PART III

It is further ordered, That respondent, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any athletic shoes in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, any performance characteristic(s) of any such product unless at the time of making such representation respondent possesses and relies upon a reasonable basis consisting of competent and reliable evidence which substanti-

ates the representation. To the extent such evidence consists of tests, experiments, analysis, research, studies or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if those tests, experiments, analyses, research, studies or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

PART IV

It is further ordered, That for three (3) years after the date of the last dissemination of the representation to which they pertain, respondent shall maintain and upon request make available to the Federal Trade Commission or its staff for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this order; and

B. All test reports, studies, surveys, demonstrations or other materials in its possession or control that contradict, qualify, or call into question the representation or the basis upon which respondent relied for such representation, including complaints from consumers.

PART V

It is further ordered, That respondent shall forthwith distribute a copy of this order to all operating divisions, subsidiaries, franchisees, officers, managerial employees, and all of its employees or agents engaged in the preparation and placement of advertisements or promotional materials covered by this order and shall obtain from each such employee a signed statement acknowledging receipt of the order.

PART VI

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations under this order.

PART VII

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order and at such other times as the

Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Commissioner Starek not participating.

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Interlocutory Order

IN THE MATTER OF

R.R. DONNELLEY & SONS CO., ET AL.

Docket 9243. Interlocutory Order, April 19, 1991

ORDER

Based upon the Motion to Dismiss Meredith Corporation as a Respondent and Stipulation of All Parties With Respect Thereto ("Stipulation"), filed by counsel on April 19, 1991,

It is ordered, That Meredith Corporation be, and it hereby is, dismissed as a respondent in this proceeding.

It is further ordered, That the Stipulation is accepted, and it shall be binding upon the parties thereto.