

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)

1990 North California Blvd., Suite 940

Walnut Creek, CA 94596

Telephone: (925) 300-4455

Facsimile: (925) 407-2700

E-mail: ltfisher@bursor.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

CECELIA MOSHER-CLARK, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

GRAVITY DEFYER MEDICAL
TECHNOLOGY CORPORATION,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Cecelia Mosher-Clark (“Plaintiff”) brings this action on behalf of herself and all
2 others similarly situated against Defendant Gravity Defyer Medical Technology Corporation
3 (“Defendant” or “GDMT”) for the manufacture, marketing, and sale of shoes and sneakers sold under
4 the brand name “Gravity Defyer” and using VersoShock technology (the “Footwear”).¹ Plaintiff
5 makes the following allegations pursuant to the investigation of her counsel and based upon
6 information and belief, except as to the allegations specifically pertaining to herself, which are based
7 on personal knowledge.

8 NATURE OF THE ACTION

9 1. This is a class action on behalf of purchasers of Defendant’s shoes and sneakers in
10 the United States. Since at least 2016, Defendant has advertised that the Footwear contains soles
11 with VersoShock technology, which it claims are “clinically proven” to provide significant pain
12 relief, including neck, knee, back, ankle, and foot pain. In reality though, the Footwear is not
13 “clinically proven” to provide pain relief, including relief for knee pain, back pain, ankle pain, and
14 foot pain, nor does it provide pain relief at all.

15 2. As part of its marketing approach, Defendant makes extensive “clinically shown” or
16 “clinically roven” claims about the pain-relieving properties of its Footwear. Defendant purports to
17 back up its claims with a double-blind study conducted by the Olive View UCLA Medical Center.
18 This study bears significant flaws and is unreliable, however, and Defendant’s use of this study to
19 bolster its claims about the Footwear is highly misleading.

20 3. The National Advertising Division of the Better Business Bureau has repeatedly
21 demanded that Defendant reform its marketing of the Footwear. Indeed, Defendant’s deception has
22 led the FTC to file a complaint (the “FTC Complaint”) against Defendant for its unlawful conduct.²
23 Yet, Defendant continues to knowingly make these representations because consumers are willing
24

25
26 ¹ The Footwear refers to all of Defendant’s shoes or sneakers sold with Versoshock technology, as
27 listed here: <https://www.gravitydefyer.com/features/versoshock>. These include but are not limited
28 to the Gravity Defyer Pain Relief Women’s G-Defy Mighty Walk Athletic Shoes.

² Complaint, *FTC v. Gravity Defyer*, File Number 1923117, https://www.ftc.gov/system/files/ftc_gov/pdf/1923114GravityDefyerComplaintExhibitArev.pdf.

1 to pay more for products they believe have been specifically designed to and proven to provide pain
2 relief for various conditions.

3 4. Had Defendant disclosed that the Footwear was not in fact “clinically proven” to
4 provide extensive neck, back, knee, ankle, and foot pain relief, and that the Footwear did not in fact
5 provide pain relief, Plaintiff and members of the Class would not have purchased the Footwear, or
6 would have paid significantly less for the Footwear than they did.

7 5. Plaintiff and members of the Class were accordingly injured by the price premium
8 they paid for the Footwear due to Defendant’s misrepresentation that the Footwear was clinically
9 proven to provide extensive neck, knee, back, ankle, and foot pain relief, when in fact, the Footwear
10 does not provide such pain relief at all, let alone that it is not “clinically proven” to do so.

11 6. Plaintiff brings this action individually and on behalf of a class of all other similarly
12 situated purchasers for a permanent injunction, and to recover damages and restitution for:
13 (i) violation of California’s Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the
14 “UCL”); (ii) violation of California’s Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, *et*
15 *seq.* (the “CLRA”); (iii) violation of California’s False Advertising Law, Cal. Bus. & Prof. Code
16 §§ 17500, *et seq.* (the “FAL”); (iv) violation of the Song-Beverly Consumer Warranty Act, Cal. Civ.
17 Code §§ 1790, *et seq.* and California Commercial Code § 2314; (v) violation of the Magnuson-Moss
18 Warranty Act, 15 U.S.C. §§ 2301, *et seq.*; (vi) breach of express warranty under U.C.C. § 2-313; and
19 (vii) breach of implied warranty under U.C.C. § 2-314.

20 **FACTUAL ALLEGATIONS COMMON TO ALL PARTIES**

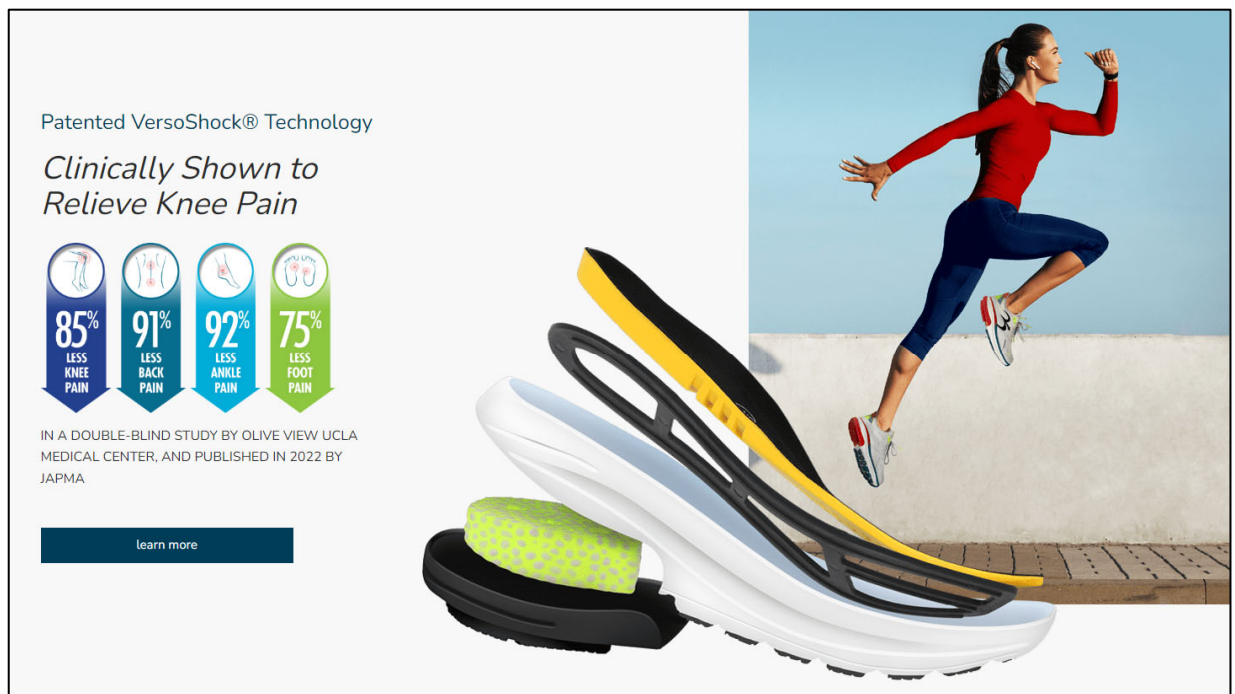
21 7. Since 2011, Defendant has manufactured, marketed, sold, and distributed footwear to
22 consumers.

23 8. Defendant offers over 100 different styles of shoes for men and women, including
24 athletic shoes, casual shoes, dress shoes, hiking shoes and boots, and sandals.

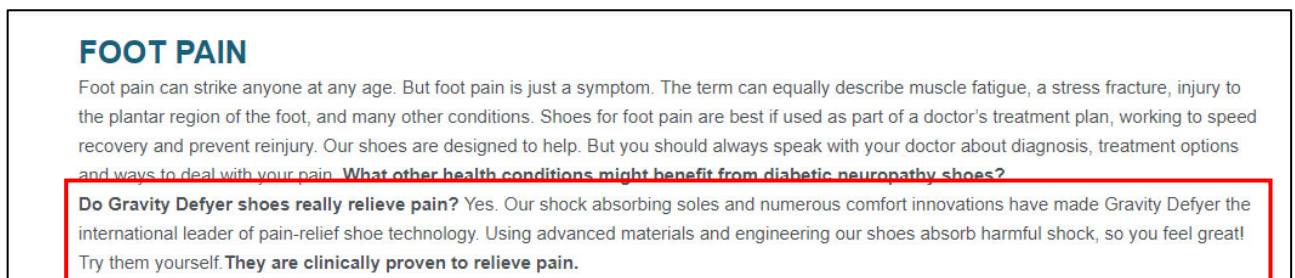
25 9. Defendant sells its Footwear to consumers throughout the United States, including to
26 consumers in this District, through Defendant’s website, www.gravitydefyer.com; its in-house call
27 center; stores located in Los Angeles, Huntington Beach, Palm Desert, and Encino, CA; and retailers
28 such as The Walking Company, Hammacher Schlemmer, and Shoe City.

1 10. The Footwear sells for between \$60, on the low end, for some sandals with Veroshock
2 technology, and \$235, on the high end, for work boots with Veroshock technology.³

3 11. Defendant leans heavily on the promise that its Footwear will provide significant
4 levels of pain relief. Indeed, Defendant’s homepage features the following graphic, which states that
5 a “double-blind study by Olive View UCLA Medical Center”⁴ has demonstrated that the Footwear
6 is “clinically shown to relieve knee pain” by 85%, along with back pain by 91%, ankle pain by 92%,
7 and foot pain by 75%.



19 12. Defendant also made representations in other areas of its website that the Footwear
20 “really relieve[s] pain” and is “clinically proven to relieve pain”:



26 ³ <https://www.gravitydefyer.com/features/versoshock?order=onlinecustomerprice:desc>.

27 ⁴ The study was in fact commissioned by Gravity Defyer, and the Olive View UCLA Medical
28 Center is a hospital system that is an entirely separate organization from the University of California, Los Angeles.

13. Defendant made substantially similar or identical representations in other advertisements, such as magazines and Defendant’s catalogue, each promising that the Footwear was “clinically proven” to provide knee, back, ankle, and foot pain, or telling consumers they could “live life pain free”:

The advertisement for Gravity Defyer shoes features a dark background. At the top, the logo 'gravity defyer' is displayed in green and white, with 'MEDICAL TECHNOLOGY CORPORATION' in smaller text below it. The headline 'LIVE LIFE WITHOUT PAIN' is in large white letters, followed by a list of ailments: 'Plantar Fasciitis • Arthritis • Joint Pain • Heel Spurs • Back & Knee Pain'. On the left, a grey and red sneaker is shown with a blue shock absorber on the sole. On the right, a foot is shown with a glowing orange area on the heel, indicating pain relief. A testimonial from 'Bill F.' reads: 'I've had lower back pain for years. Walking in these shoes was life changing for me. I feel like I'm walking on air.' Below the shoe, the text 'PATENTED VERSOSHOCK® SOLE SHOCK ABSORPTION SYSTEM' is written. Four vertical banners show icons of joints and percentages: 85% LESS KNEE PAIN, 91% LESS BACK PAIN, 92% LESS ANKLE PAIN, and 75% LESS FOOT PAIN. A list of benefits includes 'Ultimate Comfort', 'Renewed Energy', 'Maximum Protection', and 'Improve Posture'. A small note at the bottom states: '*Results of a double-blind study conducted by Olive View UCLA Medical Center'.

An excerpt of a magazine ad that ran from approximately 2018 to 2020

//
//
//
//
//
//
//

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.