

# Under Armour lawsuit the latest in campaign to 'protect this house'

Lawsuit against Skecher's the latest of claims against rivals and others

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Under Armour Inc.'s lawsuit against Skechers U.S.A. Inc. for allegedly copying its "Protect This House. I Will." ad campaign is the latest in a series of legal skirmishes between the Baltimore-based apparel and shoe company and its rivals and other businesses.

Under Armour filed a complaint Tuesday in the U.S. District Court of Maryland that accuses California-based Skechers of "slavishly" copying the look and feel of its ad campaign with Skechers' own commercial for athletic shoes. Both commercials, the suit says, feature fast-paced sequences of athlete close-ups in "cavernous" warehouses and gyms, pursuing the same workout tasks – pegboard climbing, whipping heavy ropes, boxing and jumping hurdles.

Under Armour also points to the soundtrack: an aggressive upbeat tempo, loud bass line, and heavy percussion sounds that underscore "the athletes' determination, effort, and physical feats." Chord progression, melody, tempo and rhythm are all similar in Skechers' commercial, the suit says.

Under Armour launched its "Protect This House" campaign in early 2010; the Skechers commercial in question began airing last summer, according to the lawsuit.

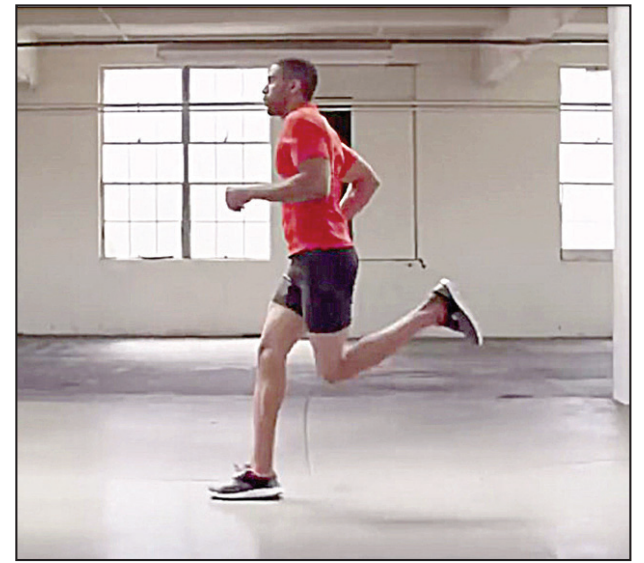
A Skechers spokesperson declined to comment, saying the company does not comment on pending litigation.

Under Armour paints an unflattering picture of Skechers as a rip-off artist in the complaint, citing as example Skechers' "Bobs" shoe that appeared to take after the popular "Toms" brand, both in design and with the charity element of donating footwear to the needy for every pair sold.

The suit also cites a piece written by Melanie Wells for Forbes in 2001, which says, "Designers at the company quickly 'approximate' styles of sneakers, sandals and loafers soon after they hit the street in New York, London or Amsterdam. They roll out hundreds of designs a year, spotting a fad and getting their version into stores in three months, beating rivals by a month or more."

Under Armour has a history of going after competitors and other companies for alleged trademark infringement. In May 2009, Under Armour sued Denver-based Navajo Manufacturing Co. Inc., accusing the company of selling "knock-off" sunglasses with an interlocking "U" and "A" logo they said was similar to their own. The companies settled in October.

In November 2011, Under Armour filed suit against Energy Armor Inc., claiming the Jacksonville, Fla. company – which sells silicone bracelets with "negative ion" technology



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Under Armour argues that ads for Skechers and UA (shown above) are too similar, with the same look and feel.

– came too close to the "Protect This House" tagline with its own "Protect Your Body" catchphrase. The following July, Under Armour entered a notice of voluntary dismissal. The president of Energy Armor said at the time

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JONATHAN WACHS

PRINCIPAL AT BALTIMORE-BASED OFFIT KURMAN

that no money was involved in the settlement agreement.

In April 2012, Under Armour sued California-based Body Armor Nutrition LLC, a sports beverage company, accusing them of trademark infringement on its name, logo and tagline. That case was settled in December 2013, with the companies agreeing to dismiss all claims and counterclaims with prejudice.

In February 2013, Under Armour accused Nike of using the words "I will" to sell its products, a phrase that Under Armour has trademarked. The companies settled a year later.

And last month, Under Armour sued Florida-based fishing apparel company Salt Armour Inc. for trademark infringement, pointing to the use of the names "Salt Armour" and "Defense Armour."

In both the Energy Armor and Body Armor cases, the executives of the smaller companies said they felt they were the David to Under Armour's Goliath.

Under Armour itself has been the target of litigation. Nike sued Under Armour for allegedly copying its moisture-wicking Dri-Fit clothing line, a case that was dismissed in 2006. And in February 2014, Adidas sued Under Armour for infringing a patent on athletic performance-tracking technology. That case remains open, and a jury trial is scheduled for June 2016.

Jim Astrachan, an intellectual property lawyer with Astrachan Gunst Thomas who also teaches trademark law, said Under Armour doesn't seem "particularly enamored" with its own case – or else the company would have demanded a preliminary injunction – more immediate than a permanent one.

"But they feel as if there is enough to offend them," he added. "They feel like the idea has been copied. But in copyright law, ideas are like air. They're free."

As in the other infringement cases Under Armour has pursued, this one probably won't make it to trial, Astrachan said. But there's a bigger-picture strategy at play, he said.

"I think that Under Armour's throwing its elbows around under the basket," he said, and trying to create some space for its brand. "It doesn't like it, and it's sending a message: don't get too close to us. We're going to sue you if you do."

Jonathan Wachs, a principal at Baltimore-based Offit Kurman, said the claim is part of a "fairly consistent campaign by Under Armour to protect its marks and intellectual property assets to the maximum extent permitted by law."

But that protectiveness is common theme in the world of sports apparel and athletic shoes, said Scott Johnson, principal and chair of law firm Ober Kaler's intellectual property group.

"They're very fiercely protective of their relatively... small differences that make huge differences in their market acceptance and their trademark and trade dress and design patent-type assets,"

Johnson said. "I don't think Under Armour is either ill-advised or alone in its pursuit of protecting and enforcing its intellectual property rights."