



## SUMMARY

This petition urges the Federal Communications Commission to address an unprecedented escalation in the commercialization of children's television. On October 11, 2010, the cable network Nicktoons is scheduled to air the series premiere of *Zevo-3*, the first children's television program starring characters that are known to children only as commercial logos and spokescharacters. The show's broadcast will violate the time limits on commercial matter established by Congress in the Children's Television Act of 1990, as well as several of the Commission's longstanding policies to protect children from overcommercialization.

*Zevo-3* was developed by Skechers Entertainment, a division of the shoe manufacturer Skechers USA, and features three superheroes named Kewl Breeze, Elastika, and Z-Strap, who battle the evil Dr. Stankfoot. Skechers created these characters to promote specific lines of shoes to children and have used them extensively in marketing campaigns aimed at children. Unlike other television shows based on toys or media properties, *Zevo-3* stars characters that previously existed only in marketing vehicles for Skechers shoes, such as television commercials and comic books created to promote Skechers kids' shoes. For children, the characters Z-Strap, Elastika, and Kewl Breeze embody the shoe lines they represent, so much so that retailers report that kids often refer to the shoes by character name rather than by the shoe model.

Because Kewl Breeze, Elastika, and Z-Strap are commercial logos, *Zevo-3* must be considered a promotion for Skechers shoes. The broadcast of *Zevo-3* on Nicktoons, therefore, will violate the requirement that that no cable operator shall air more than 10.5 minutes of commercial matter per hour on weekdays or 12 minutes on weekends during children's programming.

## TABLE OF CONTENTS

I. Introduction.....	1
II. Background.....	1
A. <i>Zevo-3</i> .....	1
B. <i>Zevo-3</i> Is a Children’s Television Show Subject to Commercial Time Limits and Other Safeguards Against Overcommercialization.....	2
III. <i>Zevo-3</i> Will Feature Children’s Advertising Icons That Promote Skechers’ Shoes For Children.....	3
A. Z-Strap, Kewl Breeze, and Elastika Promote Shoes for Children Under Thirteen.....	3
B. Skechers Comic Books Were Designed to Promote Skechers Shoes to Children.....	4
C. Television Commercials Featuring Elastika, Kewl Breeze, and Z-Strap Promote Skechers Shoes to Children.....	8
D. Kewl Breeze, Elastika, and Z-Strap Are Known to Children Only as Commercial Logos and Spokescharacters.....	10
IV. The Broadcast of <i>Zevo-3</i> Will Violate the Public Interest.....	11
A. <i>Zevo-3</i> Will Violate Time Limits on Commercial Matter During Children’s Programming.....	11
1. Because <i>Zevo-3</i> Features Commercial Spokescharacters, the Entire Program Should Be Considered Commercial Matter.....	11
2. The Characters and Images in <i>Zevo-3</i> Directly Reference Skechers Shoes.....	12
B. <i>Zevo-3</i> Violates the Commission’s Longstanding Requirements that Programming Content Be Separated From Commercial Matter.....	14
C. <i>Zevo-3</i> Will Open the Floodgates to the Development and Broadcast of Other Children’s Programs Based on Commercial Logos.....	16
V. Conclusion.....	17
VI. <a href="#">Appendix</a> .....	18
Todd Wasserman, “New Skechers Kiddie Show Is Going to Walk a Fine Line,” <i>Brandweek</i> , June 15, 2010.....	A-1
“Sneak Preview DVDs of New Animated Kids' Television Series <i>Zevo-3</i> to Be Distributed in SKECHERS Shoe Boxes; Footwear Company To Support SKECHERS Entertainment TV Debut with Giveaways in One Million Kids Shoe Boxes,” <i>Business Wire</i> , June 8, 2010.....	A-3
Kate Calder, “Skechers Sneaks Into Toons,” <i>KidScreen</i> , November 25, 2009...	A-5

Moonscoop Distribution: <i>Zevo-3</i> .....	A-7
“Star of the Shoe,” <i>License! Global</i> , June 1, 2010.....	A-8
“Kids’ Buzz: Chilled Out...Taking It Down...Political Steps,” <i>Footwear News</i> , July 24, 2006.....	A-10
“SKECHERS Footwear Announces Licensing Agreement with Adjmi Apparel to Produce Children's Clothing Line,” <i>Business Wire</i> , January 6, 2009.....	A-12
Stuart Elliott, “THE MEDIA BUSINESS: ADVERTISING; Commercial Cartoon Furor Grows,” <i>New York Times</i> , March 5, 1992.....	A-14
“THE MEDIA BUSINESS; TV Cartoon Plans Are Dropped,” <i>New York Times</i> , March 31, 1992.....	A-17
Skechers Comic, “Kewl Breeze and His Air-Fueled Airators: Dodge Ball Destruction”.....	A-18
Skechers Comic, “Z-Strap: The Tangler at Sk8 Park!”.....	A-25
Skechers Comic, “Z-Strap: Enter the Street Lacers”.....	A-33

## VII. Attachments

DVD #1: *Zevo-3* Episode 101

DVD #2: *Zevo-3* Episode 104, “Daddy Dearest”

DVD #3: Skechers Commercials: “Cool Breeze Uses His Airators”; “Elastica Saves Amusement Park”; “Z-Strap Conquers Shoe Lace Villain”; “Laces Are a Bad Idea”

## **I. Introduction**

Campaign for a Commercial-Free Childhood (“CCFC”)<sup>1</sup> respectfully requests that the Federal Communications Commission (“FCC” or “Commission”) issue a declaratory ruling under 47 CFR §1.2 that the children’s program *Zevo-3* is a program-length commercial and thus, its transmission by Nicktoons violates both §102 of the Children’s Television Act, 47 USC §303a(b), and FCC Rule 76.225, 47 CFR 76.225, which limit the amount of advertising allowed on children’s television programs shown on cable stations. As explained below, *Zevo-3* is the first children’s television show that features characters previously known to children only as logos, or commercial spokescharacters. It was developed by Skechers Entertainment, a division of the shoe manufacturer Skechers USA.

*Zevo-3* is built around three “superhero” characters, Z-Strap, Elastika, and Kewl Breeze, which were created by Skechers for the sole purpose of promoting Skechers’ shoes to children under the age of thirteen. For several years, these characters have been featured in Skechers marketing materials, including comic book advertisements and television commercials. For children, these characters have become the embodiment of the shoe lines they represent, so much so that retailers report that kids often ask for a shoe by character name rather than the shoe model.

Because the entire show is a promotion for Skechers shoes, Nicktoons will at a minimum violate the requirement that no cable operator shall air more than 10.5 minutes of commercial matter per hour on weekdays or 12 minutes on weekends during children’s programming.

## **II. Background**

### **A. *Zevo-3***

*Zevo-3* is an animated children’s television program scheduled to air on October 11, 2010 on Nicktoons,<sup>2</sup> a children’s network available in 57 million homes via cable and satellite systems.<sup>3</sup> The show will be produced by Skechers Entertainment in conjunction with the

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<sup>1</sup> CCFC is a national coalition of health care professionals, educators, advocacy groups, parents, and individuals who counter the harmful effects of advertising on children.

<sup>2</sup> Todd Wasserman, “New Skechers Kiddie Show Is Going to Walk a Fine Line,” *Brandweek*, June 15, 2010, [http://www.brandweek.com/bw/content\\_display/news-and-features/promotion-incentive/e3i3e9fe8a77ad6bd90f589c7649edfca51](http://www.brandweek.com/bw/content_display/news-and-features/promotion-incentive/e3i3e9fe8a77ad6bd90f589c7649edfca51).

<sup>3</sup> “Sneak Preview DVDs of New Animated Kids' Television Series *Zevo-3* to Be Distributed in SKECHERS Shoe Boxes; Footwear Company To Support SKECHERS Entertainment TV Debut with Giveaways in One Million Kids

Moonscoop Group.<sup>4</sup> Skechers Entertainment is a division of Skechers USA, Inc., a company known best for its various lines of shoes for children and adults.<sup>5</sup> *Zevo-3* is the first television show produced by Skechers Entertainment, which was formed in 2009 to capitalize on the popularity of characters featured in Skechers television advertisements and promotional comic books.<sup>6</sup>

*Zevo-3* is the story of three teenagers who, after being exposed to the “mysterious Zevo Compound,” are transformed into the superheroes Z-Strap, Elastika, and Kewl Breeze.<sup>7</sup> As described in detail in Section III, all three superheroes were originally created to promote specific lines of Skechers children’s shoes and have been featured in television commercials and promotional comic books for children over the past four years. Prior to the broadcast of *Zevo-3*, these characters could only have been known to children as commercial logos for Skechers.

### **B. *Zevo-3* Is a Children’s Television Show Subject to Commercial Time Limits and Other Safeguards Against Overcommercialization**

The intended audience for *Zevo-3* is children under thirteen. A Skechers USA press release referred to the show as a “new animated kids’ television series” and a “fresh entertainment property for kids.”<sup>8</sup> The target audience for *Zevo-3* has been described as “kids ages 6 to 11.”<sup>9</sup> Skechers is promoting the show by distributing a “sneak peek DVD insert in one million [children’s] shoe boxes for back-to-school.”<sup>10</sup> The show will air on Viacom’s Nicktoons, described in a Skechers press release about *Zevo-3* as “the fastest growing kids’ network.”<sup>11</sup> While no time of day has been announced for the show’s regular run, a sneak preview of *Zevo-3* aired at 5:00 PM EST on Sunday, August 22—a time when young children are likely to make up a substantial portion of the audience.<sup>12</sup> The fact that the show is animated and its plot revolves

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Shoe Boxes,” *Business Wire*, June 8, 2010. [http://phx.corporate-ir.net/phoenix.zhtml?c=80336&p=irol-newsArticle\\_print&ID=1435944&highlight](http://phx.corporate-ir.net/phoenix.zhtml?c=80336&p=irol-newsArticle_print&ID=1435944&highlight)

<sup>4</sup> Id.

<sup>5</sup> Kate Calder, “Skechers Sneaks Into Toons,” *KidScreen*, November 25, 2009, <http://www.kidscreen.com/articles/magazine/20091125/skechers.html>.

<sup>6</sup> Id.

<sup>7</sup> Moonscoop Distribution: *Zevo-3*, <http://www.moonscoop.com/distribution-53.html>, Accessed July 19, 2010.

<sup>8</sup> “Sneak Preview DVDs,” supra note 3.

<sup>9</sup> “Star of the Shoe,” *License! Global*, June 1, 2010, <http://www.licensemag.com/licensemag/Case+Study/Star-of-the-Shoe/ArticleStandard/Article/detail/672993>

<sup>10</sup> “Sneak Preview DVDs,” supra note 3.

<sup>11</sup> Id.

<sup>12</sup> Nickutopia, <http://www.nickutopia.com/2010/08/10/nickelodeon-zevo-3/>, Accessed August 23, 2010.

around teenagers who are transformed into superheroes is further evidence that *Zevo-3* is intended for a young audience.<sup>13</sup>

Since *Zevo-3* is clearly a children's television program, it is subject to the safeguards against overcommercialization established by Congress in the Children's Television Act,<sup>14</sup> most notably the time limitations on commercial matter of 12 minutes per hour on weekends and 10.5 minutes per hour on weekdays. (Currently, *Zevo-3* is scheduled to be broadcast on Mondays, which would subject the show to the 10.5 minute weekday standard.) *Zevo-3* is also subject to the Commission's "longstanding policies that are designed to protect children from confusion that may result from the intermixture of program and commercial material in children's television programming."<sup>15</sup> These policies include a prohibition on program-length commercials<sup>16</sup> and host-selling,<sup>17</sup> and call for a clear separation between commercial content and programming matter.<sup>18</sup>

### **III. *Zevo-3* Will Feature Children's Advertising Icons That Promote Skechers' Shoes For Children**

#### **A. Z-Strap, Kewl Breeze, and Elastika Promote Shoes for Children Under Thirteen**

*Zevo-3* revolves around the superheroes Z-Strap, Elastika, and Kewl Breeze.<sup>19</sup> As the Skechers website makes clear, each character is tied to a specific type of children's shoe:

- Elastika - The stretchable superhero and spokesgirl for SKECHERS Bunjees casual and athletic shoes, Elastika uses her elastic powers to perform heroic deeds and make getting dressed super easy.<sup>20</sup>
- Kewl Breeze - Official spokeshero of SKECHERS Airators casual and athletic shoes, Kewl Breeze uses his powers of ventilation and refreshing breezes to banish Dr. Stankfoot and stinky sneakers alike.<sup>21</sup>

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<sup>13</sup> Moonscoop Distribution: *Zevo-3*, supra note 7.

<sup>14</sup> Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303b; 47 C.F.R. § 73.670; 47 C.F.R. § 76.255

<sup>15</sup> Sponsorship Identification Rules and Embedded Advertising, Notice of Inquiry and Notice of Proposed Rulemaking, MB Docket 08-90 (rel. June 26, 2008) [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/FCC-08-155A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-155A1.pdf).

<sup>16</sup> *Policies and Rules Concerning Children's Television Programming*, Report and Order, 6 FCC Rcd, 2118 (1991),

<sup>17</sup> *Children's Television Programming*, 6 FCC Rcd at 2117-8.

<sup>18</sup> *Policies and Rules Concerning Children's Television Programming*, Order on Reconsideration, 6 FCC Rcd at 5097.

<sup>19</sup> Moonscoop Distribution, *Zevo-3*, supra note 13.

<sup>20</sup> Skechers Shoepedia, <http://www.skechers.com/info/shoepedia>, Accessed July 30, 2010.

- Z-Strap - The official Spokeshero of SKECHERS Z-Strap shoes, Z-Strap is all about fast action and easy wearing fun.<sup>22</sup>

It is important to note that each of the lines of shoes embodied by these spokescharacters—Airators, Z-Straps, and Elastika Bunjees—is designed for children. Z-Strap and Elastika Bunjees are sold in newborn/toddler and youth sizes, while Airators are sold only in youth sizes. None of the three lines is made for adults.<sup>23</sup>

Each line of shoes is also marketed as having its own unique feature that appeals to kids. Airators are a “collection of SKECHERS athletic casual kids' shoes that feature a flow-through ventilation design that keeps kids' feet feeling cool and fresh.”<sup>24</sup> Elastika Bunjees are “[e]lastic slip-on sneakers for girls”<sup>25</sup> that feature, instead of traditional shoe laces, “a laced stretch cord front for easy slip on fit.”<sup>26</sup> Similarly, Z-Strap shoes for boys “replace laces with a quick elastic and Velcro® Z Strap, so you can get going quickly and save the day with Z-Strap.”<sup>27</sup>

### **B. Skechers Comic Books Were Designed to Promote Skechers Shoes to Children**

In 2006, Skechers began producing comic books that were given away in shoe boxes with the purchase of Skechers Airators. From the beginning, Skechers intended to use the comics not only to drive sales through the use of a premium give-away, but also to use the comic book characters to spur interest in the shoes themselves. At the time, a shoe industry trade publication specifically described Kewl Breeze as a character created by Skechers to promote the new Airators brand:

Manhattan Beach, Calif.-based Skechers is rolling out a new series of sneakers for boys that incorporates what's described as "air cooling" technology. Dubbed Airators, each shoe features a ventilated foot bed, pumping chamber and perforated insole that fuse into a shock-absorbing, moisture-management system. As a special gift-with-purchase, each pair of Airators (above) sold comes with a free comic book chronicling the adventures of *Kewl Breeze*, a superhero character

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<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> See sizing information at <http://www.skechers.com/shoes-and-clothing/brands/elastika/list>, <http://www.skechers.com/shoes-and-clothing/brands/z-strap/list> and <http://www.skechers.com/shoes-and-clothing/brands/airators/list>.

<sup>24</sup> Skechers Shoepedia, supra note 20.

<sup>25</sup> Skechers Elastika Bungees, <http://www.skechers.com/shoes-and-clothing/brands/elastika/list>, Accessed August 1, 2010.

<sup>26</sup> Skechers Shoepedia, supra note 20.

<sup>27</sup> Id.

created by Skechers to promote the line. The shoes are priced to retail for \$47 in department stores and chains where other Skechers product is sold.<sup>28</sup>

The fact that the comics were designed to promote Skechers shoes is confirmed by Jerome K Moore, an artist Skechers hired to work on characters' development. Here is his description of his work for Skechers on Kewl Breeze:



Kewl Breeze sketch by Jerome K Moore

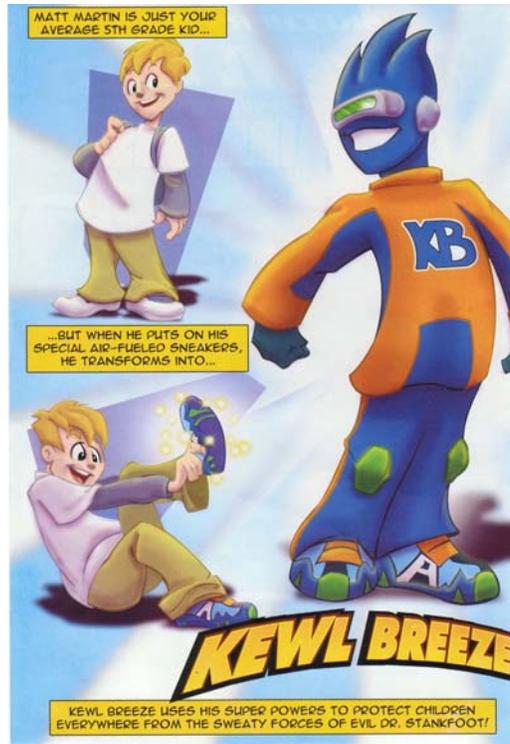
The Skechers sneaker company has comic book-inspired characters that I was hired to give a polish to, if I could. Clearly, the focus must always be the shoes, thus the oversized feet.<sup>29</sup>

An analysis of the comic books' content demonstrates that they are explicitly designed to promote Skechers' shoes. Not only is Skechers product placement featured in the comic books, but the plots revolve around the shoes. For example, the comic book *Kewl Breeze and His Air-Fueled Airators: Dodge Ball Destruction* begins by explaining that the main character's special power is tied to his Airator shoes.

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<sup>28</sup> "Kids' Buzz: Chilled Out...Taking It Down...Political Steps," *Footwear News*, July 24, 2006, Vol. 62, Iss. 30, p. 147.

<sup>29</sup> <http://jerome-k-moore.deviantart.com/art/Kewl-Breeze-119755080?qj=17&q=sort%3Atime+favby%3Avest&qo=4224>, Accessed August 16, 2010. Singer also describes his work on Elastika: "Clearly, the focus must always be the shoes, thus the oversized feet, or in this case, forced perspective and foreshortening," <http://browse.deviantart.com/?qh=&section=&global=1&q=elastika#/d1zarel>, Accessed August 16, 2010.



*Kewl Breeze and His Air-Fueled Airators: Dodge  
Ball Destruction, p. 1*

Later in the same issue of this comic book, when students are being pummeled in dodge ball by the evil Dr. Stankfoot, Kewl Breeze comes to the rescue by passing out Skechers Airators. The sequence even includes a diagram of the air bag technology that is the defining feature of the Airators product line.



*Kewl Breeze and His Air-Fueled Airators: Dodge  
Ball Destruction, p. 7*

In *Z-Strap: Enter the Street Lacers*, the villain’s “weak spot” is his shoe laces, which prove inferior to Z-Strap’s Velcro fastener. Similarly, in *Z-Strap: The Tangler at Sk8 Park!*, the villain “The Tangler” is defeated when children’s sneakers are upgraded from traditional shoe laces to Skechers Z-Strap technology. After the children’s victory, Z-Strap proclaims, “Never, ever tie your shoes again.” A variation of this phrase (“You might never, ever tie your shoes again” or “Never tie your shoes again”) is used repeatedly as a slogan for Z-Strap sneakers in television commercials<sup>30</sup> and on the Skechers website.<sup>31</sup>

<sup>30</sup> See, for example, <http://www.youtube.com/watch?v=kq9GKuE5vXc>, Accessed June 30, 2010.

<sup>31</sup> Skechers Z-Strap Shoes, <http://www.skechers.com/shoes-and-clothing/brands/z-strap/list>, Accessed August 1, 2010.



*ZStrap: The Tangler at Sk8 Park!*, pp. 9-10

It is clear that the comics serve as advertisements for Skechers shoes for children. *Zevo-3*, therefore, is markedly different from other television shows that have been created around comic book properties (e.g. *The Fantastic Four: World's Greatest Heroes*). The characters that will star in *Zevo-3* were created solely to promote Skechers Z-Strap, Airators, and Elastika Bunjee shoes and have no existence outside of that commercial context.

### **C. Television Commercials Featuring Elastika, Kewl Breeze, and Z-Strap Promote Skechers Shoes to Children**

Following the initial success of the comic books, Skechers began airing television commercials featuring Z-Strap, Elastika, and Kewl Breeze.<sup>32</sup> Like the comic books, these advertisements explicitly link each of the characters to a specific line of Skechers shoes. The first of these commercials, for Skechers Airators, aired in 2007. It once again depicted Kewl Breeze as the spokescharacter for Airators and linked the superhero's special power to the shoe's special feature:

*Narrator*: The enemies of food comfort are everywhere.

*Purple villain*: Hot, sweaty

*Dr. Stankfoot (villain)*: Stinky feet

<sup>32</sup> Wasserman, *supra* note 2.

*Narrator:* From Skechers, Kewl Breeze blows in to save the day.

*Kid:* It's Kewl Breeze!

*Narrator:* And his new Airators, the sneakers that can breathe!

*Narrator:* Shock-absorber air bag technology blasts cool air between your toes with every step you take. And with some of the coolest styles ever imagined—

*Kewl Breeze:* Stankfoot doesn't stand a chance.

*Stank Foot:* Blaaaa, that's cool.

*Narrator:* Airators, by Skechers (shoes that can breathe)<sup>33</sup>

By 2008, a similar commercial was airing featuring Elastika, once again linking the spokescharacter to the shoe line's special feature.<sup>34</sup> ("Here comes Elastika wearing her Skechers. Elastika's super bungee bands make shoes go on fast and stay on tight."<sup>35</sup>) Ads for Z-Strap shoes featuring the spokescharacter Z-Strap have been airing since at least 2009. Like the comic books, the first television commercial featuring the character Z-Strap linked his special powers to the defining feature of Skechers Z-strap shoes:

*Narrator:* A tangled mess of dirty shoe laces has tied up kids everywhere.

(Kids scream, villain laughs)

*Narrator:* But now, from Skechers, a new hero emerges.

*Narrators:* Z-Strap!

*Narrator:* Super Z-Straps are fast. Super Z-Straps lock on tight with some serious grip action.

*Villain:* Z-Strap...

*Narrator:* You might never, ever tie your shoes again. Z-Strap, by Skechers.<sup>36</sup>

As the October premiere of *Zevo-3* approaches, Skechers continues to feature Z-Strap in television ads aimed at children. Since June 1, 2010 a Skechers advertisement featuring Z-Strap has aired on the children's television networks Nickelodeon, Nicktoons, Cartoon Network, and Disney XD more than 600 times.<sup>37</sup> The commercial reinforces the explicit link between the

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<sup>33</sup> <http://www.youtube.com/watch?v=AbML0zG6bhQ>, Accessed June 30, 2010.

<sup>34</sup> The commercial was posted to Skechers YouTube Channel as "Elastika TV Commercial Skechers Kids" on January 10, 2008. It's possible that it aired on television prior to the posting.

<http://www.youtube.com/watch?v=dYtXK1A3j6g>, Accessed June 30, 2010.

<sup>35</sup> <http://www.youtube.com/watch?v=dYtXK1A3j6g>, Accessed June 30, 2010.

<sup>36</sup> <http://www.youtube.com/watch?v=kq9GKuE5vXc>, Accessed June 30, 2010.

<sup>37</sup> The commercials were spotted as part of CCFC's routine monitoring of children's television networks.

character Z-Strap and the line of shoes he embodies, by cutting back and forth between the animated Z-Strap wearing Z-Strap shoes and an actual Z-Strap shoe, while the narrator intones:

Super Z-Strap is back. Super Z-Strap locks on and stays on with serious grip action. Oooh, laces are a bad idea. You may never, ever, never tie your shoes again. Super Z-Strap. By Skechers.

#### **D. Kewl Breeze, Elastika, and Z-Strap Are Known to Children Only as Commercial Logos and Spokescharacters**

As the above analysis demonstrates, Skechers created Kewl Breeze, Elastika, and Z-Strap to promote specific lines of shoes, and Skechers continues to use these characters exclusively as spokescharacters for its lines of children's shoes. On more than one occasion, Skechers executives have credited these characters with driving the sales of Skechers children's shoes. In 2007, Skechers CFO Fred Schneider noted, "we have these characters who we are really excited about to really drive some of this [children's shoe] business for us."<sup>38</sup> Similarly, in a 2009 press release, Skechers' president Michael Greenberg said:

SKECHERS Kids has become the number one children's footwear resource for many key accounts and independents. Our colorful and comfortable range has met the needs of the smaller set for fifteen years, and has continued to grow - thanks in part to the birth of our characters - Elastika®, Kewl Breeze®, Super Z Strap® and HyDee Hi-Top®. On most weekends and through many weeknights, we are entertaining children on leading network and cable stations with creative, memorable and appealing spots. We hear the positive reaction from accounts as children and their parents request the latest styles they saw on TV.<sup>39</sup>

For children, the connection between the characters Elastika, Kewl Breeze, and Z-Strap and the shoes they embody is so powerful that kids who want to purchase the shoes often ask for the shoes by character name rather than by actual shoe model.<sup>40</sup> It is hard to imagine that children, who for years have only been familiar with these characters as commercial icons, will suddenly be able to make a distinction between the commercial characters and the characters on *Zevo-3*.

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<sup>38</sup> "Skechers USA, Inc at Wedbush Morgan Securities California Dreamin' Conference – Final," *FD (Fair Disclosure) Wire*, December 12, 2007

<sup>39</sup> "SKECHERS Footwear Announces Licensing Agreement with Adjmi Apparel to Produce Children's Clothing Line," *Business Wire*, January 6, 2009.

<sup>40</sup> Calder, *supra* note 5.

#### **IV. The Broadcast of *Zevo-3* Will Violate the Public Interest**

By broadcasting *Zevo-3*, the first children's television program built around commercial spokescharacters, Nicktoons and its parent company, Viacom, will violate their public interest obligation. Both Congress and the FCC have long recognized that children are particularly vulnerable to advertising. The Children's Television Act of 1990 says that "special safeguards are appropriate to protect children from overcommercialization on television."<sup>41</sup> The FCC "has several longstanding policies that are designed to protect children from confusion that may result from the intermixture of program and commercial material in children's television programming."<sup>42</sup>

Broadcast of *Zevo-3* will violate the public interest, and Congress's mandate to protect children from overcommercialization on television, in three ways. First and foremost, because *Zevo-3* stars commercial spokescharacters, it will violate the time limits established by Congress and the FCC to limit commercial matter during children's television programming. Second, *Zevo-3* will violate the Commission's policy requiring strict separation of programming and commercial content. Finally, the broadcast of *Zevo-3* will open the floodgates to the development and broadcast of other children's programs based on commercial logos.

##### **A. *Zevo-3* Will Violate Time Limits on Commercial Matter During Children's Programming**

###### **1. Because *Zevo-3* Features Commercial Spokescharacters, the Entire Program Should Be Considered Commercial Matter**

Both §102 of the Children's Television Act, 47 USC §303a(b), and FCC Rule 76.225, 47 CFR 76.225 limit the amount of advertising on children's television programs shown on cable stations. Currently cable operators can show no more than 10.5 minutes of commercial matter per hour on weekdays or 12 minutes on weekends. *Zevo-3* is currently scheduled to air on Mondays and thus will be subject to the lower weekday limit.

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<sup>41</sup> Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S. C. §§ 303b; 47 C.F.R. § 73.670; 47 C.F.R. § 76.255.

<sup>42</sup> Sponsorship Identification Rules and Embedded Advertising, Notice of Inquiry and Notice of Proposed Rulemaking, MB Docket 08-90 (rel. June 26, 2008).

*Zevo-3* producers have indicated that there will be no Skechers product placement during the show (which would be prohibited by the Commission's rules on host-selling anyway).<sup>43</sup> Yet given that Z-Strap, Kewl Breeze and Elastika's entire existence to date has been as logos and marketing vehicles for Skechers shoes, children are unlikely to distinguish between their roles as commercial icons and their roles in *Zevo-3*.

This confusion is likely to be exacerbated by the fact that Skechers continues to use Z-Strap, Kewl Breeze, and Elastika as commercial logos. From August 15-29, 2010—the two weeks surrounding the August 22 sneak preview of *Zevo-3* on Nicktoons—Campaign for a Commercial-Free Childhood found 87 Skechers advertisements featuring Z-Strap on children's cable networks between the hours of 8:00 AM and 8:00 PM. In addition, Kristin Van Cott, Senior Vice President of Creative Development for Skechers Entertainment, has indicated that Skechers will continue to advertise on Nicktoons even after the regular season premiere of *Zevo-3*.<sup>44</sup>

Skechers will receive an advertising boost from the repeated exposure of its spokescharacters during *Zevo-3*. The thirty-minute program length will allow Skechers to shape children's perceptions of Kewl Breeze, Z-Strap and Elastika (as cool, heroic, etc.) much more than a traditional fifteen- or thirty-second commercial. As a result, every time Kewl Breeze, Z-Strap or Elastika appears on screen—whether it is in *Zevo-3* or an ad that airs during other programming—Skechers will be promoted.

Any appearance of Elastika, Z-Strap, or Kewl Breeze should be counted towards commercial time limits, whether or not they are wearing shoes that are identifiable as Skechers in the show. Since *Zevo-3*'s thirty-minute program length (including commercial breaks) is nearly triple the time allowed per hour for commercial matter during children's weekday television programming, we urge the Commission to declare that the show's broadcast will violate the commercial time limits dictated by Congress.

## **2. The Characters and Images in *Zevo-3* Directly Reference Skechers Shoes**

It is Skechers own entertainment division—not Nicktoons or an independent production company—that is responsible for developing and producing *Zevo-3*. In other words, the company that is producing the show has a vested interest in selling more Skechers shoes. It is

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<sup>43</sup> Calder, *supra* note 5; Wasserman, *supra* note 2.

<sup>44</sup> Wasserman, *supra* note 2.

not surprising, therefore, that in the three episodes available to CCFC for viewing, *Zevo-3*'s promotion of Skechers' shoes goes beyond focusing its narrative on the company's commercial icons.<sup>45</sup>

First, the primary villain of *Zevo-3* is Dr. Stankfoot. Like Kewl Breeze, Elastika, and Z-Strap, Dr. Stankfoot appears regularly in Skechers comic book advertisements and television commercials. The Skechers Shoepedia web page describes Dr. Stankfoot:

The nemesis of Kewl Breeze, this mad doctor seeks to make all kids' feet as stinky as his. SKECHERS Airators and the cooling powers of Kewl Breeze make sure his plans will never succeed.<sup>46</sup>

In television commercials and comics (e.g. *Kewl Breeze and His Air-Fueled Airators: Dodge Ball Destruction*, described in Section III), Dr. Stankfoot's attempts to spread foot odor are foiled by the special feature of Skechers Airators, the shoe's "air cooling technology." In *Zevo-3*, Dr. Stankfoot's "fatal foot odor" is one of his primary weapons.<sup>47</sup> The appearance of Dr. Stankfoot in *Zevo-3*, as well as the invocation of his name and its explicit reference to foot odor, serve as a distinct promotion for Skechers Airators shoes.

Similarly, two of the superheroes' special powers in the show are directly tied to the special function of the shoes they promote. Kewl Breeze is known for his "ice and wind power," once again referencing the special "cooling technology" of Skechers Airators.<sup>48</sup> Elastika's special power is her "super powered hair" that stretches like the elastic bands that hold together Skechers Elastika shoes.<sup>49</sup>

In order to allay fears about the commercial nature of *Zevo-3*, the show's producers emphasize that the show will not include product placement.<sup>50</sup> Yet while it is true that no Skechers shoes are named in *Zevo-3*, the shoes that the character Elastika wears in the show share important features with Skechers Elastika shoes, for which she serves as a spokescharacter. Skechers Elastika Bunjee shoes "feature a laced stretch cord front for easy slip on fit."<sup>51</sup> In

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<sup>45</sup> One of these episodes aired as a sneak preview on Nicktoons on August 22, 2010 and is available at <http://www.youtube.com/user/TheZevo3>. The other two episodes were provided as screeners to CCFC by Sayles & Winnikoff Communications, a public relations firm that is promoting *Zevo-3*.

<sup>46</sup> Skechers Shoepedia, supra note 20.

<sup>47</sup> *Zevo-3*: Stankfoot, <http://zevo-3.com/about/characters/stankfoot.html>, Accessed August 30, 2010.

<sup>48</sup> *Zevo-3*: Kewl Breeze, <http://zevo-3.com/about/characters/kewlbreeze.html>, Accessed August 30, 2010.

<sup>49</sup> *Zevo-3*: Elastika, <http://zevo-3.com/about/characters/elastika.html>, Accessed August 30, 2010.

<sup>50</sup> Wasserman, supra note 2.

<sup>51</sup> Skechers Shoepedia, supra note 20.

*Zevo-3*, Elastika’s shoes frequently change, but the one constant is that they feature elastic laces that emphasize their slip-on fit. None of the other characters appear to have elastic laces on their shoes.



Screen shot from *Zevo-3* Episode #104, “Daddy Dearest”



Screen shot from *Zevo-3* Episode #105, “Beneath the City”

It is important to emphasize that because *Zevo-3* features commercial spokescharacters that embody specific lines of Skechers’ shoes, the entire show should be considered a promotion for Skechers, regardless of the show’s actual content. Nevertheless, the show’s content suggests additional reasons to be concerned about the hyper-commercialized nature of *Zevo-3*. For this reason, as well as the concerns outlined in Section III, we urge the Commission to declare that all of the content in *Zevo-3* is commercial matter, and therefore the broadcast of *Zevo-3* will exceed time limits for commercial matter in children’s television programming.

**B. *Zevo-3* Violates the Commission’s Longstanding Requirements that Programming Content Be Separated From Commercial Matter**

*Zevo-3* will also violate the Commission’s policies against the intermingling of commercial and programming matter and the prohibition against host-selling on children’s television. For almost forty years, the FCC has required broadcasters to:

Employ adequate separation techniques to assist children in distinguishing commercial from program material, and to eliminate . . . characters from commenting on products, or in any manner suggesting endorsement.

Broadcasters are also advised to guard against excessive commercialization and to avoid any practice within children's program material which may tend to deceive a child viewer.<sup>52</sup>

The Commission also has a longstanding ban against host-selling, or "the use of program talent to deliver commercials."<sup>53</sup> The Commission has described this prohibition as:

A special application of our more general policy requiring separation of program and commercial material in order to help children distinguish between the two.

Host-selling also takes unfair advantage of the trust which children place in program characters.<sup>54</sup>

The broadcast of *Zevo-3* will violate these policies. The main characters of *Zevo-3* are walking and talking advertisements for specific lines of Skechers shoes. There is no way to separate the programming content from the commercial content of *Zevo-3* because the programming content *is* commercial content. Bumpers cannot be used to separate the commercial logos Z-Strap, Elastika, and Kewl Breeze from the characters Z-Strap, Elastika, and Kewl Breeze that appear in *Zevo-3*.

The failure to separate commercial content from programming is deceptive. Because they are inextricably linked to the shoes they represent, every appearance of Z-Strap, Elastika, or Kewl Breeze in *Zevo-3* will promote Skechers. Yet because this promotion is embedded so deeply into the narrative of *Zevo-3*, children are unlikely to recognize that *Zevo-3* is trying, by forging an identification with the superhero characters Kewl Breeze, Z-Strap, and Elastika, to sell them on Skechers shoes.

*Zevo-3* will also violate the principle behind the Commission's prohibition on host-selling. While the show will not bring "program elements into the commercial breaks within a program," it will bring commercial characters into the program, thus confusing and deceiving children through the dual-roles of Elastika, Z-Strap and Kewl Breeze. Both *Zevo-3* and Skechers commercials will feature similar settings and ancillary characters (e.g. the evil Dr. Stankfoot), making it even more difficult for children to distinguish *Zevo-3* from Skechers ads. These similarities are one reason why *Zevo-3* will be more inherently deceptive than commercials that

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<sup>52</sup> April 12 Order, 6 F.C.C. Rcd at 2118, aff'd August 26 Order, 6 F.C.C. Rcd at 5098-99.

<sup>53</sup> April 12 Order, 6 F.C.C. Rcd at 2118 & n 147 Reaffirmed in Policies and Rules Concerning Children's Television Programming; Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, 6 F.C.C. Rcd 5093-99 (1991) ("August 26 Order").

<sup>54</sup> August 26 Order, 6 F.C.C. Rcd at 5097.

feature animated television characters promoting other companies' products (e.g. a cereal advertisement featuring SpongeBob SquarePants).

For these reasons, we urge the Commission to declare that *Zevo-3* violates the Commission's policies that require separation of commercial and programming matter and prohibit host-selling on children's television.

### **C. *Zevo-3* Will Open the Floodgates to the Development and Broadcast of Other Children's Programs Based on Commercial Logos**

*Zevo-3* is not the first planned children's television program based on a commercial spokescharacter. In 1992, *Yo! It's the Chester Cheetah Show!*, starring Frito-Lay's spokescharacter for Cheetos, was scheduled to air on Fox Television. A coalition of advocates petitioned the FCC for a declaratory ruling that *Yo! It's the Chester Cheetah Show!* was not in the public interest for many of the same reasons CCFC is objecting to *Zevo-3*.<sup>55</sup> "His only previous television appearances," the petitioners wrote of Chester Cheetah, "indeed his entire existence, have been in traditional commercial spots designed to sell a product."<sup>56</sup> Within weeks, Fox Television dropped its plans for the show.<sup>57</sup>

It is important to note that at the time, there were also plans for a syndicated cartoon starring Cheesasaurus Rex, a cheese-colored dinosaur that appeared in advertising for Kraft Macaroni and Cheese. After the coalition filed its petition, those plans were dropped as well.<sup>58</sup> Clearly broadcasters were concerned that the FCC would find their programming was not in the public interest.

In the intervening eighteen years, no children's television programming based on spokescharacters was developed. Now Skechers and Nicktoons are attempting to escalate commercialization on children's television. If they are successful, we can expect other companies to follow suit. A McDonald's show featuring Ronald McDonald, a Burger King show featuring the King, a Kellogg show featuring Tony the Tiger—these are just some the possible children's television programs we may see in the future unless the Commission rules that the broadcast of *Zevo-3* violates commercial time limits and is not in the public interest.

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<sup>55</sup> Act for Children's Television, et al. Petition for Declaratory Ruling That the Broadcast of "Yo! It's the Chester Cheetah Show!" Violates the Public Interest, March 5, 1992.

<sup>56</sup> Stuart Elliott, "THE MEDIA BUSINESS: ADVERTISING; Commercial Cartoon Furor Grows," *New York Times*, March 5, 1992.

<sup>57</sup> "THE MEDIA BUSINESS; TV Cartoon Plans Are Dropped," *New York Times*, March 31, 1992.

<sup>58</sup> *Id.*

## V. Conclusion

Z-Strap, Elastika, and Kewl Breeze *are* advertisements for Skechers children's shoes, regardless of whether they are wearing Skechers or talking about them. Any television appearance by these spokescharacters—either in a traditional commercial or on *Zevo-3*—should be considered commercial matter. The broadcast of *Zevo-3* on Nicktoons, therefore, will violate the limit of 10.5 minutes of commercial matter per weekday hour established by Congress for children's television programming. It will also violate Commission policies that require strict separation of program material from commercial matter.

Because *Zevo-3* will violate these longstanding and important policies, we ask the Commission to fulfill its Congressional mandate to protect children from overcommercialization by issuing a declaratory ruling that the show's broadcast is not in the public interest. Such a ruling would send a strong message that excessive commercialism will not be permitted on children's television. It will also prevent other companies from creating children's television programming solely for the purpose of promoting their commercial spokescharacters and the products that they represent.

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## VI. Appendix

Available online at <http://www.commercialfreechildhood.org/pdf/skechersfccappendix.pdf>.

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“Sneak Preview DVDs of New Animated Kids' Television Series Zevo-3 to Be Distributed in SKECHERS Shoe Boxes; Footwear Company To Support SKECHERS Entertainment TV Debut with Giveaways in One Million Kids Shoe Boxes,” <i>Business Wire</i> , June 8, 2010.....	A-3
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“Star of the Shoe,” <i>License! Global</i> , June 1, 2010.....	A-8
“Kids’ Buzz: Chilled Out...Taking It Down...Political Steps,” <i>Footwear News</i> , July 24, 2006.....	A-10
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Stuart Elliott, “THE MEDIA BUSINESS: ADVERTISING; Commercial Cartoon Furor Grows,” <i>New York Times</i> , March 5, 1992.....	A-14
“THE MEDIA BUSINESS; TV Cartoon Plans Are Dropped,” <i>New York Times</i> , March 31, 1992.....	A-17
Skechers Comic, “Kewl Breeze and His Air-Fueled Airators: Dodge Ball Destruction”.....	A-18
Skechers Comic, “Z-Strap: The Tangler at Sk8 Park!”.....	A-25
Skechers Comic, “Z-Strap: Enter the Street Lacers”.....	A-33