

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

<b>IN RE:</b>	:	
<b>SKECHERS TONING SHOE</b>	:	<b>CASE: <u>3:11-md-02308-TBR</u></b>
<b>PRODUCT LIABILITY LITIGATION</b>	:	
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<b>This Document Applies to All Actions</b>	:	<b>MDL No.: 2308</b>
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	:	<b>Judge Thomas B. Russell</b>

**DISCOVERY ORDER NO. 2:**  
**ELECTRONIC DISCOVERY AND DOCUMENT PRODUCTION**

This Discovery Order No. 2 shall apply to all personal injury claims pending before the Court in MDL No. 2308.

**1. Exchange of E-Discovery Materials.**

Within sixty (60) days of the date of this Order, the parties shall exchange the following information:

For Defendants:

- a. a list of the most likely custodians of relevant electronic materials, including a brief description of each person’s title and responsibilities;
- b. a list of each relevant electronic system that has been in place at all relevant times and a general description of each system, including the nature, scope, character, organization, and formats employed in each system;
- c. any other pertinent information about their electronic documents and whether those electronic documents are not reasonably accessible as set forth in Rule 26(b)(2)(B).

d. the name of the individual responsible for the party's electronic document retention policies ("the retention coordinator");

e. a general description of the party's electronic document retention policies;

For Plaintiffs:

f. a list of "custodians" including named Plaintiffs, family members, treating physicians, and any other party likely to possess evidence relevant to Plaintiffs' claims;

g. a list of "electronic systems" including all computers and any other location where Plaintiffs maintain relevant "documents" as defined herein, along with a general description of the types of relevant material contained in each system;

h. a general description of each Plaintiff's retention habits, including location of websites or hard drives;

For Plaintiffs and Defendants:

i. all documents evidencing those electronic document retention policies ;

j. the name of the individual who shall serve as the party's "e-discovery liaison;" and

k. a description of any problems reasonably anticipated to arise in connection with e-discovery.

**2. E-Discovery Conference.**

The parties shall discuss the parameters of their anticipated e-discovery prior to the next status conference on this matter, which is scheduled, by separate Order, to occur on June 15, 2012, at 12:00PM, and shall be prepared to address e-discovery at that conference. Two weeks prior to the conference, the parties shall provide the Court with all areas of disagreement and their positions on the matter. At this Conference, the parties shall attempt to agree on a limited subset of Defendants' custodians from which all responsive documents shall be produced.

### **3. E-Discovery Liaison.**

No later than thirty (30) days from the date of this Order, to promote communication and cooperation between the parties, each party shall designate a lawyer who must be:

- a. familiar with the party's electronic systems and capabilities in order to explain these systems and answer relevant questions;
- b. knowledgeable about the technical aspects of e-discovery, including electronic document storage, organization, and format issues;
- c. prepared to participate in e-discovery dispute resolutions; and,
- d. responsible for organizing the party's e-discovery efforts to ensure consistency and thoroughness and, generally, to facilitate the e-discovery process.

No later than thirty (30) days from the date of this Order, to promote communication and cooperation between the parties, the e-discovery liaison must identify the technical person who will be available for meet and confers. This technical person must have requisite experience and familiarity with Skechers' electronic systems and capabilities in order to explain these systems and answer relevant questions.

### **4. Search Methodology.**

If the parties intend to employ an electronic search to locate relevant electronic documents, the parties shall disclose, within thirty (30) days after the service of document requests, any restrictions as to the scope and the method which might affect their ability to conduct a complete electronic search of the electronic documents. The parties shall attempt to reach agreement as to the method of searching, and the words, terms, and phrases to be searched with the assistance of the respective e-discovery liaisons, who are charged with familiarity with the parties' respective systems. The parties also shall attempt to reach agreement as to the timing and conditions of any additional searches which may become necessary in the normal course of discovery. To minimize the expense, the parties may

consider limiting the scope of the electronic search (e.g., time frames, fields, document types, etc.).

#### **5. Timing of E-Discovery**

Discovery of electronic documents shall proceed in the following sequenced fashion:

a. after receiving requests for document production, the responding party shall search sources for the agreed-upon custodians, or in the absence of agreed upon custodians, their documents, other than those not reasonably accessible as set forth in Fed. R. Civ. Pro. 26(b)(2)(B), and produce responsive electronic documents in accordance with Fed. R. Civ. Pro. 26(b)(2);

b. electronic searches of documents identified as not reasonably accessible shall not be conducted until the initial electronic document search has been completed and shall only be authorized upon a finding of good cause as outlined in Rule 26(b)(2)(B); and

c. on-site inspections of electronic media under Fed. R. Civ. P. 34(b) shall not be permitted, absent exceptional circumstances where good cause and specific need have been demonstrated.

#### **6. Format**

If practicable, documents shall be produced in the following format:

- a. Electronic data:
  - i. single page TIFF images.
  - ii. For Excel documents, natives shall be included along with the TIFF'd version.

- iii. OCR/Extracted text (multi-page text files) shall be de-duplicated globally across all custodians. Provide the name of the custodians from whom the duplicates were removed in a field named "DUPLICATE."
- iv. Metadata in a DAT file using Concordance standard delimiters. DAT should include the following fields:
  - DOCID
  - ENDDOC#
  - BEGATTCH
  - ENDATTCH
  - PARENTID
  - ATTCHIDS
  - PGCOUNT
  - FROM
  - TO
  - CC
  - BCC
  - SUBJECT
  - DATESENT
  - AUTHOR
  - DOCTITLE
  - DATECRTD (Date Created)
  - DATESVD (Date Last Modified)
  - DATELACC (Date Last Accessed)

- CUSTODIAN
  - FILENAME
  - FILEPATH (Original Filepath)
  - FILEEXT (File Extension)
  - DUPLICATE (Custodian names for where the duplicates were removed from)
  - FAMILYID (An ID that is unique to the entire family group (e-mail and attachments))
- v. Concordance OPT file
- vi. Control list for the Fulltext (DOCID, PATH TO MULTIPAGE TXT FILE)- for example: A0000001,\FULLTEXT\001\A0000001.TXT
- b. Paper
- i. Single page TIFF images
  - ii. DAT file including the following fields:
    - DOCID
    - EndDoc#
    - PGCount
  - iii. Concordance OPT file
  - iv. If OCR is available- Multipage Text Files & Control List (DOCID, PATH TO MULTIPAGE TXT FILE).

If a producing party deviates from the foregoing format requirements, the parties shall meet and confer to attempt to resolve any disputes.

## **7. Costs.**

The costs of discovery shall be borne by each party, however the Court may award permissible costs associated with electronic discovery pursuant to Rule 26(b)(2)(B) and at the conclusion of the matter pursuant to 28 U.S.C. 1920(4).

**IT IS SO ORDERED.**