

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:

SKECHERS TONING SHOE
PRODUCT LIABILITY LITIGATION

: CASE: 3:11-md-02308-TBR

:

: MDL No.: 2308

:

This Document Applies to All Actions

:

: Judge Thomas B. Russell

PRACTICE AND PROCEDURE ORDER NO. 2 (Service and Direct Filing)

I. Scope of Order

This Order applies to personal injury claims brought by a U.S. citizen or resident based on his or her purchase of Skechers Toning Shoes® and the subsequent injury alleged to have been caused by those shoes that (i) currently are pending in MDL No. 2308 or (ii) will be filed in , removed to, or transferred to this Court (collectively “the MDL Proceedings”).

II. Direct Filing of Cases in MDL No. 2308

A. In order to eliminate delays and reduce costs associated with transfer to this Court of cases filed in or removed to other federal district courts, and to promote judicial efficiency, any plaintiff whose case would be subject to transfer to MDL No. 2308 may file his or her case directly in the MDL Proceedings in the Western District of Kentucky. Cases filed directly in this MDL shall not be filed on behalf of multiple plaintiffs. Rather, cases filed directly shall only be filed on behalf of a single plaintiff, and, if applicable, the plaintiff’s spouse.

B. Each case filed directly in the MDL Proceedings by a plaintiff who resides in a federal district other than the Western District of Kentucky will be filed in the MDL Proceedings for purposes of pretrial proceedings, consistent with the Judicial Panel on Multidistrict Litigation’s December 19, 2011 Transfer Order.

C. Defendants will not challenge the venue of any action filed directly in the MDL Proceedings in the Western District of Kentucky for purposes of pretrial proceedings. Upon the completion of all pretrial proceedings applicable to a case directly

filed in this Court pursuant to this Order, this Court, pursuant to 28 U.S.C. §1404(a), will transfer that case to the federal district court in the district where the case is properly venued.

D. Defendants do not waive their *Lexecon* rights to have each case remanded to a district of proper venue for trial. Defendants do not consent to trial in the MDL, but reserve their right to consent on an individual basis.

E. The complaint for each case filed directly in the MDL Proceedings shall allege the proper venue for the action and plead all necessary venue allegations, including, but not limited to, (1) the plaintiff's place of residence, (2) where the product was purchased, (3) where the product was used, and (4) where the alleged injury occurred.

F. The foregoing provisions do not preclude the parties from agreeing, at a future date, to try in this District certain cases filed pursuant to this Order.

G. The inclusion of any action in In Re: Skechers Toning Shoe Product Liability Litigation, MDL No. 2308, whether such action was or will be filed originally or directly in the Western District of Kentucky, shall not constitute a determination by this Court that the jurisdiction or venue is proper in this District.

H. The fact that a case was filed directly in the MDL Proceedings pursuant to this Order will have no impact on choice of law, including the statute of limitations that otherwise would apply to an individual case had it been filed in another district court and transferred to this Court pursuant to 28 U.S.C. § 1407.

I. Any complaint that is directly filed in MDL No. 2308 before this Court shall bear the following caption:

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

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

H. Any attorney admitted to practice and in good standing in any United States District Court is admitted *pro hac vice* in this litigation and association of co-counsel for purposes of litigation, including direct filing, is not required.

I. Prior to any plaintiff’s lawyer filing a complaint directly in the United States District Court for the Western District of Kentucky, that attorney must register for and have a Kentucky CM/ECF login name and password. Cases can only open during normal business hours Monday through Friday.

III. Service of Process

A. Some complaints list as defendants other names of Skechers.

1. Skechers U.S.A., Inc. admits that it is in the business of distributing, marketing, and selling exercise footwear, including Shape-ups® and Tone-ups® shoes. These shoes are manufactured by third-parties, and, absent agreement, the relationship between Skechers, U.S.A., Inc. and the thrid-party manufacturer may be subject to discovery.
2. Skechers U.S.A., Inc. II admits that it is a wholly owned subsidiary of Skechers U.S.A., Inc.

Certain complaints name additional Skechers entities as defendants. The term “other Skechers entities,” as used herein, includes Skechers Fitness Group.

B. Defendants Skechers U.S.A., Inc. and Skechers U.S.A. Inc., II agree without waiver of any defenses, to accept service of process pursuant to the terms of this Order in certain toning shoe cases commenced in, removed to or transferred to this MDL.

C. Plaintiffs who have not already served Skechers U.S.A. Inc. or Skechers U.S.A Inc., II through original process shall have sixty (60) days after the date a case is docketed in this MDL to serve the Complaint together with a Summons as follows:

By Certified Mail, Return Receipt Requested, upon Skechers U.S.A., Inc.'s Liaison Counsel:

Jill F. Endicott
DINSMORE & SHOHL LLP
101 South Fifth Street, Suite 2500
Louisville, KY 40202
Phone: (502) 581-8000
Fax: (502) 581-8111
Email: jill.endicott@dinsmore.com

By Certified Mail, Return Receipt Requested, upon Skechers U.S.A. Inc., II Liaison Counsel:

Jill F. Endicott
DINSMORE & SHOHL LLP
101 South Fifth Street, Suite 2500
Louisville, KY 40202
Phone: (502) 581-8000
Fax: (502) 581-8111
Email: jill.endicott@dinsmore.com

A copy of each notice transmitted to any defendant in the foregoing manner also shall be emailed to:

michael.eagen@dinsmore.com

D. Service will be effective only if addressed as above. General mailing to any defendant or use of other methods of transmission (e.g., Federal Express or DHL) will not be sufficient to effect service. Service will be effective ten (10) days after the date of delivery. Other than those based on formal service of process, defendants reserve all other rights and defenses available to them under federal or state law and under applicable treaties and conventions. Prior to moving to dismiss a case for a defect in service under parts III.C and III.D, defendants shall service notice of the defect on plaintiff's counsel and provide 30 days for plaintiff to cure the defect.

E. The other Skechers entities are relieved of any obligation to answer complaints until further order of this Court. If plaintiffs believe that discovery demonstrates the involvement of one or more of the other Skechers entities in the subject matter of this litigation in a way that will require plaintiffs to pursue one or more of the other Skechers entities as defendants, plaintiffs shall meet and confer with defendants concerning whether discovery is required from those entities and, if no agreement is reached after meeting and conferring with the defendants, the parties shall seek the Court's guidance before plaintiffs commence any such discovery.

IT IS SO ORDERED.