

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

THERESA CROAK)
3476 North Wilshire Dr.)
Palatine, IL 60067)

and)

NEIL CROAK)
3476 North Wilshire Dr.)
Palatine, IL 60067)

Plaintiffs,)

vs.)

SKECHERS, U.S.A., Inc.)
228 Manhattan Beach Blvd.,)
Manhattan Beach, CA 90266)

Serve: Philip Paccione)
228 Manhattan Beach Blvd.,)
Manhattan Beach, CA 90266)

And)

SKECHERS, U.S.A., Inc., II)
228 Manhattan Beach Blvd.,)
Manhattan Beach, CA 90266)

Serve: Philip Paccione)
228 Manhattan Beach Blvd.,)
Manhattan Beach, CA 90266)

And)

SKECHERS FITNESS GROUP)
228 Manhattan Beach Blvd.,)
Manhattan Beach, CA 90266)

Serve: Philip Paccione)
228 Manhattan Beach Blvd.,)

Case No. _____

**COMPLAINT WITH
DEMAND FOR JURY TRIAL**

Manhattan Beach, CA 90266)
)
Defendants)
_____)

COMPLAINT AND JURY DEMAND

COME NOW the Plaintiffs, Theresa Croak and Neil Croak, by counsel, and for their Complaint against the Defendants, state as follows:

PREAMBLE

Skechers is a shoe company that manufactures toning shoes, including Skechers Shape-ups and Tone-ups. These shoes have a pronounced rocker bottom sole. Skechers markets and promotes its toning shoes as footwear that will provide countless health benefits including improved cardiac function and orthopedic benefits. It markets and promotes its toning shoes to be worn in place of other athletic shoes during daily activities, exercise routines, and in the workplace. Skechers Shape-ups slogans include: “Shape Up While You Walk” and “Shape Up While You Work.”

Skechers intentionally designs its toning shoes to create instability and to change gait mechanics. It is well established in the medical literature, however, that changing one’s gait can and does cause chronic injuries. Such injuries include stress fractures, joint injuries, and tendon and ligament injuries. Moreover, shoes that create instability can and do cause people wearing them to fall. Despite this existing body of literature and numerous complaints to the company about chronic and traumatic injuries, Skechers has and continues to market and promote this footwear without performing any safety testing.

In fact, toning shoes provide no additional health benefits than do regular athletic and walking shoes. The American Council on Exercise (ACE) commissioned an

independent study by the University of Wisconsin to determine if toning shoes provide the benefits that they market and promote to the public. Based on those study results, the ACE concluded that: “Across the board, none of the toning shoes showed statistically significant increases in either exercise response or muscle activation during any of the treadmill trials,” ACE says. “There is simply no evidence to support the claims that these shoes will help wearers exercise more intensely, burn more calories or improve muscle strength and tone.”

The health risks of Skechers outweigh the absence of any benefit provided to the wearer. Indeed, as of May 2011, Consumer Reports has documented that Skechers has seen more reports of injuries or complaints than any other product in its database. This is not surprising, because by altering gait mechanics and creating instability, Skechers places consumers at increased risk for chronic injuries such as stress fractures and tendon ruptures, as well as acute injuries from falling.

PARTIES

1. The Plaintiff, Theresa Croak, is and was at all times relevant hereto, a resident of Cook County, Illinois.

2. The Plaintiff, Neil Croak, is and was at all times relevant hereto, a resident of Cook County, Illinois.

3. The Defendant, Skechers U.S.A., Inc., is a corporation organized and existing under the laws of the state of Delaware, with its principle place of business at 228 Manhattan Beach Blvd., Manhattan Beach, CA 90266. At all times relevant hereto, Skechers conducted regular and sustained business in the District of Columbia by

labeling, marketing, distributing, promoting and selling its products in the District of Columbia.

4. The Defendant, Skechers U.S.A., Inc. II, is a corporation organized and existing under the laws of the state of Delaware, with its principle place of business at 228 Manhattan Beach Blvd., Manhattan Beach, CA 90266. At all times relevant hereto, Skechers conducted regular and sustained business in the District of Columbia by labeling, marketing, distributing, promoting and selling its products in the District of Columbia. Skechers U.S.A., Inc., and Skechers U.S.A., Inc. II, will be herein referred to collectively as “Skechers”.

5. Skechers Fitness Group is a trademarked subsidiary of Skechers U.S.A., Inc. II with its principle place of business at 228 Manhattan Beach Blvd., Manhattan Beach, CA 90266. At all times relevant hereto, Skechers conducted regular and sustained business in the District of Columbia by labeling, marketing, distributing, promoting and selling its products in the District of Columbia.

JURISDICTION AND VENUE

6. The Plaintiff’s injury, which was a result of wearing the Defendants’ product, occurred in the District of Columbia.

7. Subject matter of this action arises under 28 U.S.C. § 1332. The parties are citizens of different states, and the amount in controversy between the parties exceeds the sum of \$75,000.00, exclusive of interest and costs.

8. This Court has personal jurisdiction of the Defendants because the Defendants transact business and the wrongs complained of herein arose in the District of Columbia.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because, inter alia, the Plaintiff was injured in the District of Columbia, and therefore a substantial part of the events giving rise to the Plaintiff's claims occurred in the District of Columbia, and because the Defendants transact business in this district.

FACTUAL BACKGROUND

10. Plaintiff Theresa Croak saw many television and print advertisements touting the benefits of Skechers Shape-Up toning shoes. Relying upon those ads, specifically, the many health benefits of wearing Skechers Shape-ups, Theresa Croak purchased a pair of Skechers Shape-ups on May 18, 2009 from Skechers' internet website.

11. After wearing the shoes for 25-45 minute periods for two weeks after purchase, Plaintiff began wearing these shoes during her daily activities and to work in Palatine, Illinois. Mrs. Croak read the informational material and watched the instructional DVD that accompanies the shoes before she wore them.

12. On August 13, 2009, Theresa Croak was walking while sightseeing with her family on a sidewalk in Washington, D.C. Suddenly and without warning, her Skechers Shape-ups toning shoe pronated inward and caused her left ankle to roll sideways resulting in excruciating pain.

13. Ms. Croak believed that she had merely sprained her ankle and tolerated the pain for a period of time. On or about October 29, 2009, Plaintiff Theresa Croak presented to Barrington Orthopedic Specialists where she was diagnosed with a left ankle sprain by Dr. Daryl Luke. The Plaintiff's ankle was placed in a short leg cast and she was

given a lace-up ankle brace to be used after the cast was removed. However, Plaintiff's pain continued.

14. On or about December 7, 2009, an MRI was taken of the Plaintiff's left ankle that demonstrated a longitudinal split tear of the peroneus brevis tendon.

15. On December 8, 2009, the Plaintiff, Theresa Croak, came under the care of orthopedic surgeon Dr. Raymond O'Hara who informed Mrs. Croak that she had a left peroneal tendon tear that required surgery.

16. On January 6, 2010, Plaintiff underwent surgery by Dr. O'Hara at Hoffman Estates Surgery Center in Hoffman Estates, Illinois to repair the left peroneus brevis tendon tear.

17. Plaintiff incurred significant medical expenses as a result of the surgery she underwent to repair the left peroneus brevis tendon tear, will incur future medical expenses as her injury is permanent, lost wages as a result of being unable to work, her ability to labor and earn money has been impaired, she is at increased risk for future health problems and disability, and she has suffered physical pain and mental anguish.

18. Unbeknownst to Theresa Croak, she purchased shoes that provided no additional benefit to her health. Instead, she was lulled into purchasing a dangerous product that the Defendant knew produced a substantial risk of causing chronic injuries and inducing falls because of Skechers' elevated and unstable, rocker-bottom sole. This elevation alters gait mechanics and creates instability. Had Mrs. Croak known that the toning shoe provided no benefit to her health, she would not have purchased or worn the shoes, and would not have incurred the injuries or damages she did as a result of her use of the shoes.

Count One-Strict Liability

19. Plaintiffs incorporate by reference, paragraphs 1 through 17 of the complaint.

20. The Defendants, Skechers U.S.A., Inc., Skechers U.S.A., Inc., II, and Skechers Fitness Group (hereinafter referred to collectively as “Skechers”) were, and are, in the business of designing, manufacturing, distributing, marketing and selling specialty exercise footwear called Shape-ups.

21. That prior to, and in April 2010, Skechers did design, manufacture, and distribute Shape-ups footwear that was sold in the District of Columbia.

22. That the Shape-ups shoes purchased and worn by the Plaintiff, Theresa Croak, from May 2009 through August 2009, were in a defective condition and unreasonably dangerous in that the design of the shoe changes gait mechanics and creates instability that can and does cause the consumer wearing the shoe suffer chronic injuries and to fall, and that such defective design is not open and obvious to the consumer but was known, or should have been known, to the Defendant at the time of the Plaintiff’s injury.

23. That the Shape-ups shoes purchased and worn by the Plaintiff, Theresa Croak, from May 2009 through August 2009, were in a defective condition and unreasonably dangerous in that they did not include any warning or instruction that warned consumers of the fact that the design of the shoes could cause them to suffer chronic injuries and/or fall and suffer acute injury despite the fact that the Defendant, Skechers, knew or should have known of this dangerous propensity of its Shape-ups footwear and it was not a danger that was open or obvious to the Plaintiff.

24. As a direct and proximate result of the defective Shape-ups shoes placed into the stream of commerce by the Defendant, Skechers, the Plaintiff, Theresa Croak, suffered severe physical injury, pain and suffering, mental anguish, and damages that included past and future economic loss and past and future medical expenses.

Count Two-Negligence

25. Plaintiffs incorporate by reference, paragraphs 1 through 23 of the complaint.

26. The Defendant, Skechers, failed to comply with the existing standard of care, and failed to exercise the ordinary care required of a reasonably prudent manufacturer and seller of athletic footwear by designing, manufacturing, promoting and selling an athletic shoe that was designed and intended to change gait mechanics and cause instability, and by failing to warn of, or discover and foresee, the dangers created by a shoe that is designed in this manner when the Defendant, Skechers, put the Shape-ups shoes on the market.

27. The Defendant, Skechers, failed to comply with the existing standard of care, or exercise the ordinary care required of a reasonably prudent manufacturer and seller of athletic footwear by designing, manufacturing, promoting and selling an athletic shoe that was designed and intended to change gait mechanics and cause instability without providing an adequate warning to consumers, including the Plaintiff, Theresa Croak, of all risks and dangers associated with such a design that the Defendant, Skechers, knew or should have known or foreseen at the time it placed the Shape-ups footwear in the stream of commerce.

28. As a direct and proximate result of the negligence of the Defendant, Skechers, the Plaintiff, Theresa Croak, suffered severe physical injury, pain and suffering, mental anguish, and damages that included past and future economic loss and past and future medical expenses. Had Mrs. Croak been warned that the shoes provided no additional health benefit to her than ordinary sneakers, or been apprised of the dangers attendant to these shoes, she never would have purchased the Skechers Shape-ups, and would not have been injured or damaged in the manner specified herein.

Count Three-Breach of Express Warranty

29. Plaintiffs incorporate by reference, paragraphs 1 through 27 of the complaint.

30. The Defendant, Skechers, did expressly warrant to consumers, including the Plaintiff, Theresa Croak that the Shape-ups shoes were safe and effective for use as an athletic shoe that will:

- (a) Promote weight loss;
- (b) Tone muscles;
- (c) Improve posture;
- (d) Reduce stress on knee and ankle joints;
- (e) Improve your life by changing the way you walk;
- (f) Improve coordination; and
- (g) Get in shape without setting foot in a gym.

30. The Defendant, Skechers, did expressly warrant to consumers, including the Plaintiff, Theresa Croak that the Shape-ups shoes were safe and effective if worn during physical exercise that included:

- (a) Walking regularly; and
- (b) Switching up one's gait by slowing down, or kicking it up a notch to get the blood flowing.

31. The Plaintiff, Theresa Croak, did rely on these affirmations of fact and promises made by the Defendant, Skechers when she wore these shoes to walk for exercise in her neighborhood, to work and for other every day activities.

32. The Defendant, Skechers, breached the express warranty it made to the Plaintiff in that the Shape-ups shoes, which were sold by Skechers, were not safe for their intended use and could not conform to the specific and express affirmations of fact and promises made by the Defendant, Skechers, to consumers, including the Plaintiff.

33. As a direct and proximate result of the Plaintiff's reliance on these affirmations of fact and promises made by the Defendant, Skechers, she suffered severe physical injury, pain and suffering, mental anguish, and damages that included past and future economic loss and past and future medical expenses.

Count Four-Breach of Implied Warranty of Merchantability

34. Plaintiffs incorporate by reference, paragraphs 1 through 33 of the complaint.

35. The Defendant, Skechers, is a merchant with respect to goods of the kind like the Shape-ups footwear purchased by the Plaintiff, Theresa Croak, and it impliedly warranted that the Shape-ups shoes were merchantable.

36. The Defendant, Skechers, breached its implied warranty of merchantability to the Plaintiff in that the Shape-ups shoes which were sold by Skechers were unmerchantable because:

- (a) the Shape-ups shoes were not safe for their intended use;
- (b) the Shape-ups shoes were not adequately packaged and labeled;
- (c) the Shape-ups shoes did not conform to statements made on the labels.

37. As a direct and proximate result of the breach of the implied warranty of merchantability by the Defendant, Skechers, the Plaintiff, Theresa Croak, suffered severe physical injury, pain and suffering, mental anguish, and damages that included past and future economic loss and past and future medical expenses.

Count Five-
Breach of Implied Warranty of Fitness for Particular Purpose

38. Plaintiffs incorporate by reference, paragraphs 1 through 37 of the complaint.

39. The Defendant, Skechers, is a merchant with respect to goods of the kind like the Shape-ups footwear purchased by the Plaintiff, Theresa Croak, and it impliedly warranted that the Shape-ups shoes were fit for the particular purpose of being worn during exercise, including walking, and for everyday activities.

40. The Defendant, Skechers, knew or had reason to know of the purpose for which the Shape-ups footwear would be used by consumers, including the Plaintiff, Theresa Croak and that purpose included wearing the shoes while engaging in physical exercise such as walking for 25-45 minutes for the first two weeks after initially wearing the shoes and increasing that time by ten minutes each week subsequent.

41. The Plaintiff, Theresa Croak, relied on the skill and judgment of the Defendant, Skechers, when she selected athletic footwear that she believed to be

appropriate for use in exercise by walking in her neighborhood and in using in everyday activities.

42. The Defendant, Skechers, breached its implied warranty of fitness for a particular purpose to the Plaintiff, Theresa Croak, in that the Shape-ups shoes were defective and unreasonably dangerous because they caused instability making them inappropriate for use as athletic footwear during exercise and everyday activities.

43. As a direct and proximate result of the breach of the implied warranty of fitness for a particular purpose by the Defendant, Skechers, the Plaintiff, Theresa Croak, suffered severe physical injury, pain and suffering, mental anguish, and damages that included past and future economic loss and past and future medical expenses.

Count Six-Fraud

44. Plaintiffs incorporate by reference, paragraphs 1 through 43 of the complaint.

45. The Defendant, Skechers, was the seller of the Shape-ups footwear that was purchased by the Plaintiff, Theresa Croak, on May 18, 2009, and that Plaintiff was wearing on August 13, 2009 in the District of Columbia.

46. In regard to the Shape-ups footwear purchased and worn by the Plaintiff, Theresa Croak, the Defendant, Skechers made multiple material representations about the shoes that included:

- a. Get in shape without setting foot in a gym;
- b. Designed to promote weight loss, tone muscles, and improve posture;
- c. Tightens abdominal muscles;

- d. Improves blood circulation;
- e. Improves posture;
- f. Strengthens the back;
- g. Firms buttocks muscles;
- h. Tones and firms thigh muscles;
- i. Firms calf muscles;
- j. Increase cardiovascular health;
- k. Reduce stress on knee and ankle joints;
- l. Relieve muscle tension and fatigue;
- m. Forces you to engage muscles not normally used when walking on hard ground;
- n. Reduce impact on your joints and lower back;
- o. Improve your life by changing the way you walk;
- p. Improve stamina and metabolism.

47. These material representations made by the Defendant, Skechers, were false as proven by a study from the University of Wisconsin that was commissioned by the American Council on Exercise.

48. That when the Defendant, Skechers, made these material representations, it knew that they were false, and it made the material representations recklessly without any knowledge of their truth and a positive assertion. Specifically, many of the representations are not supported by the four “studies” that the Defendant, Skechers, cites as support for the claims, and for those representations that the Defendant bases on the

“studies”, those results were misrepresented in order to be construed as supporting these representations.

49. The Defendant, Skechers, made these false, material representations with the intention of inducing buyers, including the Plaintiff, Theresa Croak, to act by purchasing the Shape-ups footwear by appealing to the buyers’ desire to own athletic footwear that would result in numerous health benefits.

50. The Plaintiff, Theresa Croak, acted in reliance on these material representations made by the Defendant, Skechers, in that she purchased these shoes specifically under the belief that they would provide the claimed health benefits if used in the manner directed by the labeling.

51. That the Plaintiff, Theresa Croak, suffered injury as a result of her reliance on these false, material representations because she purchased the Shape-ups footwear and wore the shoes during exercise walks, to work and during everyday activities and in so doing the shoes caused her to suffer a left peroneus brevis tendon tear. As a result she suffered actual damages, including medical expenses, lost wages, pain and suffering and the cost of the Skechers Shape-ups shoes.

Count 7– Loss of Consortium

52. Plaintiffs incorporate by reference, paragraphs 1 through 51 of the complaint.

53. At all relevant times stated herein, the Plaintiff, Neil Croak, was and is the husband and spouse of Plaintiff, Theresa Croak.

54. As a result of the injuries sustained by Plaintiff, Theresa Croak, as set forth above, Plaintiff, Neil Croak, has suffered loss of consortium, including but not

limited to mental anguish and the loss of his wife's support, services, society, companionship, comfort, affection, love, and solace.

55. As a result of the injuries sustained by Plaintiff, Theresa Croak, as set forth above, Plaintiffs Theresa Croak and Neil Croak sustained damages to their marital relationship as a result of the personal injuries sustained by Theresa Croak.

Accordingly, Plaintiff, Neil Croak, seeks and is entitled to compensatory damages in an amount to be determined at trial.

Count Seven-Punitive Damages

56. Plaintiffs incorporate by reference, paragraphs 1 through 55 of the complaint.

57. The Defendant, Skechers, acted willfully, maliciously, wantonly and oppressively by knowingly making material representations about the Shape-ups footwear that it knew to be false or totally unsupported by any legitimate scientific study based on a reliable methodology.

58. The Defendant, Skechers, had actual knowledge that buyers of its Shape-ups footwear would be enticed to use the shoes in athletic endeavors such as those promoted by the Defendant in order to achieve the benefits that the Defendant advertised, and that by so doing, the buyers, including the Plaintiff, would subject themselves to serious personal injury due to the shoe's design that made it unstable and particular inappropriate and dangerous for such uses.

59. That the willful, wanton, malicious, and oppressive acts of the Defendant, which demonstrated a reckless disregard for the health and safety of consumers of the

Defendant's product, entitle the Plaintiffs, Theresa Croak and Neil Croak, to an award of punitive damages.

PRAYER

WHEREFORE, Plaintiffs pray for judgment against the Defendants, in an amount exceeding the minimum jurisdictional limit of this Court, for compensatory damages and punitive damages, plus interest, attorneys' fees, and costs.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all claims so triable in this action.

Respectfully Submitted,

JANET, JENNER & SUGGS, LLC

By: _____
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