

NO. 98CI 02954

JEFFERSON CIRCUIT COURT
FIFTH DIVISION

TRACY SKAGGS

and

JAMES DAVID HARDIN
by Tracy Skaggs, next friend
and guardian

and

MARK SKAGGS
by Tracy Skaggs, next friend
and guardian

PLAINTIFFS

vs.

WAL-MART STORES EAST, INC.

DEFENDANT

and

21ST CENTURY PETS

DEFENDANT

AMENDED COMPLAINT

Come the Plaintiffs, Tracy Skaggs, James Hardin and Mark Skaggs, through Counsel, and for their cause of action against the Defendants, Wal-Mart Stores East, Inc. and 21st Century Pets, state as follows:

1. At all times herein mentioned, Defendants are engaged in the business of manufacturing, assembling, and inspecting, packaging, labeling, designing, distributing, testing, analyzing, recommending, merchandising, advertising, promoting, supplying and selling to wholesale distributors and retailers for resale to consumers and the general public, a certain product and its component part, ingredients and constitutes, hereinafter referred to as an indoor pet boundary fence

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and transmitter for use by consumers in the care and training of domestic dogs.

2. That on or about January 4, 1996. defendants sold, supplied and distributed said indoor pet boundary fence and transmitter to Plaintiffs for use by Plaintiffs in their home.

3. That Plaintiffs purchased said product for the particular use for which the product was designed, and specifically, for the care and use of Baby Bear, a domestic pet dog, which dog prior to his death, was a member of Plaintiffs' family.

4. That Plaintiffs employed said device in their home and in conjunction with the training of Baby Bear from the date of purchase until on or about January 15, 1996 when Baby Bear sustained a terminal injury as a result of the aforementioned product.

5. That as a result of the herein described conduct of Defendants, Plaintiffs were caused to suffer serious mental pain and anguish.

6. That as a further result of the herein described conduct of Defendants, Plaintiffs were required and did employ veterinarians to examine, treat and care for Baby Bear and incurred expenses as a result thereof.

7. That prior to the date upon which the product was purchased and used by Plaintiffs, Defendants knew, or should have known, that said product was extremely dangerous and unsafe for use by the general public for the aforesaid purposes. The dangers of said product included the type of malfunction which resulted in the death of Baby bear. The Defendants failed to take appropriate action to cure the nature of the defects or to appropriately warn users of said product of such dangerous characteristics. Defendants thereby, acted with fraud, oppression and with malice against the Plaintiffs.

It is believed the wrongful conduct was done with the advance knowledge,

authentication and/or notification of an officer, director and/or managing agent of each of the corporate Defendants.

FIRST CAUSE OF ACTION

STRICT LIABILITY

The Plaintiffs hereby reiterate and incorporate by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

8. That at all times herein mentioned, the aforesaid product was **defective and unsafe**, in that it was dangerous for the purposes of animal control and training and cause grievous injury and death to the Plaintiffs' pet, Baby Bear, when used for such purposes.

9. That Defendants knew that the aforesaid product was to be **used by the user** without inspection of defects therein, or any of its components or ingredients.

10. That Plaintiffs neither knew, nor had reason to know, at the time of the purchase of the aforesaid product, or at any time prior thereto, of the existence of the foregoing described defect.

SECOND CAUSE OF ACTION

NEGLIGENCE

The Plaintiffs hereby reiterate and incorporate by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

11. That at all times herein mentioned, Defendants had a duty to **properly manufacture, compound, test, inspect, package, label, distribute, market, examine, maintain and prepare for use and sale**, the aforesaid product.

12. That at all times herein mentioned, said Defendants **knew, or in the exercise of reasonable care, should have known**, that the aforesaid product was of such a nature that it was not properly

manufactured, compounded, tested, inspected, packaged, labeled, distributed, recommended, displayed, sold, examined, and failed to manufacture, compound, test, inspect, package, label, distribute, recommend display, sell and/or examine the aforesaid product as required by law, in that it was dangerous and unsafe to use for the purposes for which same was intended.

13. As a proximate result of the aforesaid carelessness, negligence, wanton and reckless disregard for Plaintiffs' rights as evidenced by Defendants' conduct, Plaintiffs sustained damages and injuries as herein alleged.

THIRD CAUSE OF ACTION

BREACH OF EXPRESSED WARRANTY

The Plaintiffs hereby reiterate and incorporate by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

14. That at all times herein mentioned, the Defendants manufactured, compounded, packaged, distributed, recommended, merchandised, advertised, promoted and sold the aforesaid product as heretofore described, and prior to the time said product was used by the Plaintiffs, Defendants impliedly warranted to the Plaintiffs, that said product was of merchantable quality and safe for the use for which it was intended.

15. That Plaintiffs relied on the skill and the judgment of Defendants in using the aforesaid product.

16. That the device was unsafe for its intended use, nor was it of merchantable quality, as warranted by Defendants in that it had very dangerous propensities when put to its intended use and causes severe injury and death to pets. The aforesaid product did proximately cause the Plaintiffs to sustain damages and injuries as herein alleged.

FOURTH CAUSE OF ACTION

BREACH OF EXPRESSED WARRANTY

The Plaintiffs hereby reiterate and incorporate by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

17. The aforementioned manufacturing, compounding, packaging, designing, distributing, testing, constructing, fabricating, analyzing, recommending, merchandising, advertising, promoting and selling of the aforesaid product, was expressly warranted by Defendants to be safe for Plaintiffs and other consumers in need of training or control for their pets.

18. That at the time of making the express warranties, Defendants had knowledge of the purposes for which the aforesaid product was to be used and warranted the same to be in all respects, fit, safe, effective and proper for such purposes.

19. That Plaintiffs reasonably relied upon the skill and judgment of the Defendants and upon said express warranties in using the aforesaid product. The said warranties and representations were untrue in that the product caused severe injury and death to the Plaintiffs' pet dog, Baby Bear, and was unsafe and, therefore, unsuited for the use for which it was intended, and could and did thereby, proximately cause Plaintiffs to sustain damages and injuries as herein alleged.

FIFTH CAUSE OF ACTION

FRAUD

The Plaintiffs hereby reiterate and incorporate by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

20. That Defendants falsely and fraudulently represented to the Plaintiffs and other members of the general public, that the aforesaid product was safe for use in animal control and training. The

representations by Defendants were, in fact, false. The true facts were that the aforesaid product was not safe for said purposes and was, in fact, dangerous to Plaintiffs' pet dog, Baby Bear.

21. That when Defendants made the aforesaid representations, they knew or should have known them to be false, and said representations were made by the Defendants with the intent to defraud and deceive Plaintiffs and with the intent to induce Plaintiffs to act in the manner herein alleged, i.e., to use the aforesaid product for animal control and training.

22. That as a proximate result of Defendants' fraud and deceit, Plaintiffs were caused to sustain the herein described injuries and damages.

23. That in doing the acts herein alleged, Defendants acted with oppression, fraud and malice, and Plaintiffs are therefore, entitled to punitive damages to deter Defendants and others from engaging in similar conduct in the future. Said wrongful conduct it is believed was done with the advance knowledge, authorization and/or ratification of an officer, director and/or managing agent of each Defendant.

SIXTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

The Plaintiffs hereby reiterate and incorporate by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

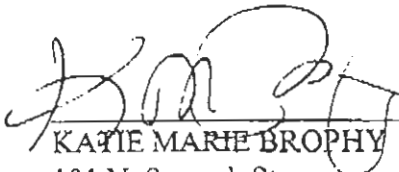
24. That Defendants falsely represented to Plaintiffs and other members of the general public, that the aforesaid product was safe for said purposes, when the true fact was that the product was and is, dangerous to the health and body of pet dogs.

25. That Defendants made representations with wanton and reckless disregard for the rights of others and with no reasonable grounds for believing them to be true, and/or Defendants did not

have accurate or sufficient information concerning the aforesaid representations, and Defendants were apparently not aware that without such information, they could not accurately make the aforesaid representations.

WHEREFORE, Plaintiffs, Tracy Skaggs, James David Hardin and Mark Skaggs, demand as follows:

1. Judgment for compensatory damages against said Defendants, jointly and severally, in an amount to be proven at trial, plus interest therein at the rate of 12% per annum from the date of Judgment until paid.
2. Punitive damages against the Defendants, jointly and severally, in an amount to be proven at trial, plus interest therein at the rate of 12% per annum from the date of judgment until paid.
3. Pre-judgment interest.
4. Plaintiffs' costs herein incurred.
5. For a trial by jury on all issues so triable.
6. Any and all other relief to which Plaintiffs may appear entitled.


KATIE MARIE BROPHY
101 N. Seventh Street
Louisville, Kentucky 40202
502-561-3486
Attorney for Plaintiffs

CERTIFICATION

I hereby certify that a copy of the foregoing was mailed on this the 28th day of March, 1999
to:

Mr. Julian E. Kennamer
Attorney for Defendants
315 Guthrie Green, 4th Floor
Louisville, Kentucky 40202


KATIE MARIE BROPHY