

NO. 98CI 02954

TRACY SKAGGS
10415 West Manslick Road
Fairdale, KY 40118

and

JAMES DAVID HARDIN
10415 West Manslick Road
Fairdale, KY 40118
by Tracy Skaggs, next friend
and guardian

and

MARK SKAGGS
10415 West Manslick Road
Fairdale, KY 40118
by Tracy Skaggs, next friend
and guardian

vs.

WAL-MART STORES EAST, INC.
DBA Wal-Mart
Serve: CT Corporation
KY Home Life, 239 South 5th Street
Louisville, KY 40202

and

21ST CENTURY PETS
351 East State Road
Winter Springs, FL 32708
Serve: Kentucky Secretary of State
Frankfort, KY 40601

JEFFERSON CIRCUIT COURT
DIVISION FIVE (5)

JEFFERSON CIRCUIT COURT
DIVISION

PLAINTIFF

PLAINTIFF

PLAINTIFF

DEFENDANT

DEFENDANT

COMPLAINT

Come the plaintiffs, Tracy Skaggs, James David Hardin and Mark Skaggs, by counsel, and for their cause of action against the Defendants, Wal-Mart and 21st Century

Pets states as follow:

JEFFERSON CIRCUIT COURT 250.62
DIVISION FIVE (5)

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 boundry fence 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 Boundry fence and transmitter to plaintiffs for use by plaintiffs in their home.

3. Plaintiffs purchased said product for the particular use for which the product was designed, 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 terminable injury as a result of the above mentioned product.

5. As a result of the herein described conduct of the defendants, plaintiffs were caused to suffer serious mental pain and anguish.

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

7. 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. 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 defendants.

Is it 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

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

8. 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 caused grievous injury and death to the plaintiffs pet Baby Bear when used for such purposes.

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

10. Plaintiff 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

Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

11. 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. 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 purpose for which it was intended.

13. As a proximate result of the aforesaid carelessness and negligence of said defendants, the aforesaid product caused severe injury and death to the plaintiffs pet dog and thereby proximately caused plaintiffs to sustain damages and I njuries as herein alleged.

THIRD CAUSE OF ACTION

BREACH OF EXPRESSED WARRANTY

B. of Implied Warr.

Plaintiff hereby incorporates by reference, as it fully set forth herein, each and every allegation contained above in this Complaint.

14. At all times herein mentioned, defendants manufactured, compounded, packaged, distributed, recommended, merchandised, advertised, promoted and sold the aforesaid product as herein-at-ove 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. Plaintiffs relied on the skill and the judgment of defendants in using the aforesaid product.

16. 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 or 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

Plaintiffs hereby 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. At the time of making the expresses warranties, defendants had knowledge of the purpose for which the aforesaid product was to be used and warranted the same to be, in all respects, fit, safe and effective and proper for such purpose.

19. Plaintiffs reasonably relied upon the skill and judgment of the defendants and upon said expresses 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 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

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

20. 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 purpose and was, in fact, dangerous to plaintiffs pet dog.

21. When defendants made the aforesaid representations, they knew or should have know 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. As a proximate result of defendants fraud and deceit, plaintiffs were caused to sustain the herein described injuries and damages.

23. In doing the acts herein alleged, the defendants acted with oppression, fraud and malice, and the 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 advanced knowledge, authorization and/or ratification of an officer, director and/or managing agent of each defendant.

SIXTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

Plaintiff hereby incorporates by reference, as if fully set forth herein, each and every allegation contained above in this Complaint.

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

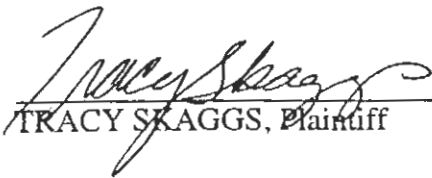
25. It is believed defendants made the aforesaid representations with no reasonable grounds for believing them to be true, and/or defendants did not have accurate or sufficient

information concerning the aforesaid representations, and defendants were apparently not aware that without such information, they could not accurately make the aforesaid representations.

WHEREOF, Plaintiffs, Tracy Skaggs, James David Hardin, Mark Skaggs demands as follows:

1. Judgment for compensatory damages against defendants, jointly and severally, in an amount to be proven at trial plus interest thereon 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 plus interest thereon at the rate of 12% per annum from the date of judgment until paid.
3. Pre-judgment interest.
4. Their costs herein incurred.
5. Trial by jury of all issues properly so triable.
6. All other relief to which plaintiffs may appear entitled.

I swear the above is true and correct to the best of my knowledge and belief.



TRACY SKAGGS, Plaintiff

State of Kentucky }
 }
County of Jefferson }

Subscribed, sworn and acknowledged to before me by Tracy Skaggs on this the 14th
day of April, 1998.

Commission Expires: _____ MY COMMISSION EXPIRES 1/23/2002



Prepared By:



KATIE MARIE BROPHY
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