

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

SWANN B. JAFFURS,

Plaintiff,

v

Civil Action No.: _____

JURY TRIAL DEMANDED

FUEL BARONS, INC.,

Defendant.

COMPLAINT

Plaintiff, Swann B. Jaffurs, by and through undersigned counsel, and for her complaint against Defendant Fuel Barons, Inc., states as follows:

THE PARTIES, JURISDICTION AND VENUE

1. At all relevant times, Plaintiff Swann B. Jaffurs was and is a resident of Knoxville, Tennessee.
2. This Honorable Court has jurisdiction to hear this matter pursuant to 28 U.S.C. §1332.
3. Defendant, FUEL BARONS, INC. is a Nevada corporation with its corporate headquarters and principal place of business in Douglas County, Nevada and has not procured a certificate of authority from the the Tennessee Secretary of State to conduct business in the State of Tennessee. As such, Defendant FUEL

BARONS, INC., is subject to service of process through the Tennessee Secretary of State as its agent for service of process by virtue of Tenn. Code Ann. § 48-15-104(b). At all times relevant herein, FUEL BARONS, INC. conducted substantial business in Tennessee and the cause of action arises out a tortuous injury by act or omission in Tennessee and, therefore, personal jurisdiction is proper under Tenn. Code Ann. § 20-2-223.

4. Venue of this action properly lies in the Eastern District of Tennessee pursuant to 28 U.S.C. § 1391(a) as it is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

FACTS COMMON TO ALL COUNTS

5. In the summer of 2010, Swann B. Jaffurs had purchased a Napa Home and Garden “Firelites” firepot.
6. A Napa Home and Garden “Firelites” firepot is a device comprised of a ceramic pot with a stainless steel cup in the middle.
7. At the same time, Swann B. Jaffurs purchased a bottle of Napa Home and Garden “pourable eco-gel fuel” (UPC Code: 0-46654 07587-2) directly from Napa Home & Garden.
8. Napa Home and Garden “pourable eco-gel fuel” is poured into the firepot’s cup and then lit on fire. No wick is needed.
9. On September 13, 2010, Swann B. Jaffurs was enjoying the evening hours on the back patio of her home in Knoxville.

10. Swann B. Jaffurs decided to use her Napa Home and Garden “Firelites” firepot containing Napa Home and Garden “pourable eco-gel fuel.”
11. The Napa Home and Garden “Firelites” firepot had been used without incident that day, but had run out of “pourable eco-gel fuel.” Mrs. Jaffurs looked closely at the firepot and saw no flame or fuel whatsoever. Only then did Mrs. Jaffurs pour the fuel into the firepot.
12. Immediately and without any warning, a torch-like directional flame originated from the Napa Home and Garden “Firelites” fireport and the Napa Home and Garden “pourable” eco-gel fuel” bottle. The ignited “pourable eco-gel fuel” exploded into a fireball spreading to the surrounding area.
13. At a result, Mrs. Jaffurs’s right lower leg became engulfed in flames and as a result, Mrs. Jaffurs sustained a severe burn to her leg, causing permanent scarring and other damage.
14. The Napa Home and Garden “Firelites” firepot purchased in 2010 did not contain warnings or instruction of any kind.
15. The Napa Home and Garden “pourable eco-gel fuel” bottle proclaims that the fuel is “Planet Safe & People Safe.”
16. The Napa Home and Garden “pourable eco-gel fuel” bottle further proclaims that it “is the cleanest and safest fuel you can buy.”
17. The Napa Home and Garden “pourable eco-gel fuel” bottle also proclaims that it is “the Safe Pourable Gel.”
18. On June 23, 2011, Napa Home and Garden issued a press release stating that the United States Comsumer Product Safety Commission issued a recall of all

pourable gel fuels sold by Napa Home and Garden and manufactured by Defendant Fuel Barons, Inc. Accordingly, based upon information and belief, Plaintiff avers the “pourable eco-gel fuel” sold under the Napa Home and Garden name is designed and/or manufactured by Defendant Fuel Barons, Inc.

19. Defendant, Fuel Barons, Inc. began its business in January 2009, manufacturing a form of ethanol for indoor ventless fireplaces.
20. Shortly thereafter, Defendant FUEL BARONS, INC. began manufacturing a “Formula 4” of ethanol in a pourable gel form, which was distilled from “consumer waste” and was called “pourable eco-gel fuel”.
21. Upon information and belief, this “pourable eco-gel fuel” was packaged under the labels of other companies, including Defendant NAPA HOME & GARDEN, INC. as Napa Home and Garden “pourable eco-gel fuel.”
22. On or about February 2010, Defendant FUEL BARONS, INC. began manufacturing a “second generation” of its “pourable eco-gel fuel” sold and packaged under the labels of other companies, including Defendant NAPA HOME & GARDEN, INC. as Napa Home and Garden “pourable eco-gel fuel.”
23. According to a Material Safety Data Safety (MSDS) sheet, which was not distributed to consumers nor included with the purchase of either the Napa Home and Garden “Firelites” firepot and the Napa Home and Garden “pourable eco-gel fuel” bottle, for the second generation of the “pourable eco-gel fuel,” the primary ingredient of the Napa Home and Garden “pourable eco-gel fuel” is Ethyl Alcohol, with more than ninety percent (90%) of the product containing Ethyl Alcohol.

24. According to a Material Safety Data Safety (MSDS) sheet, which was not distributed to consumers nor included with the Napa Home and Garden “Firelites” firepot and the Napa Home and Garden “pourable eco-gel fuel” bottle, for the third generation of the “pourable eco-gel fuel” is Ethyl Alcohol, with more than eighty percent (80%) of the product containing Ethyl Alcohol.
25. Ethyl Alcohol is a clear, colorless, volatile, and flammable liquid.
26. Ethyl Alcohol is a Class IB flammable liquid according to the National Fire Protection Association.
27. According to both of the aforementioned MSDS sheets, the second and third generations of The Napa Home and Garden “pourable eco-gel fuel” have a vapor density of 1.6, which is greater than the vapor density of propane and approximately sixty percent (60%) heavier than air.

DAMAGES

28. As a direct and proximate result of the Defendant’s negligent and/or grossly negligent misconduct or omissions, Swann B. Jaffurs:
 - (i) suffered serious personal injuries which have caused permanent impairment;
 - (ii) endured physical pain and suffering;
 - (iii) suffered mental and emotional distress;
 - (iv) suffered scarring and permanent disfigurement;
 - (v) has incurred unnecessary medical expenses – past, present and future;
 - (vi) experienced loss of enjoyment of life – past, present and future;

- (vii) has been injured and damaged on such other and further particulars as the evidence may show.

CLAIMS FOR RELIEF

COUNT ONE

Negligence and Gross Negligence

29. Defendant FUEL BARONS, INC owes Plaintiff Swann B. Jaffurs a duty of reasonable care and were negligent, grossly negligent, willful, wanton, reckless and careless and breached its duty of care by:
- (i) failing to adopt and implement adequate safety hierarchy procedures and policies.
 - (ii) failing to use reasonable care and precautions to ensure the safe use of a Napa Home and Garden “pourable eco-gel fuel” by users;
 - (iii) failing to exercise reasonable care in the design and packaging of the Napa Home and Garden “pourable eco-gel fuel”;
 - (iv) failing to incorporate safeguards into the design of the Napa Home and Garden “pourable eco-gel fuel” bottle to prevent the emission of a high volume of combustible and explosive vapor which makes it unreasonable dangerous;
 - (v) failing to exercise reasonable care in the manufacturing of the Napa Home and Garden “pourable eco-gel fuel”;
 - (vi) failing to exercise reasonable care in the testing of the Napa Home and Garden “pourable eco-gel fuel”;

- (vii) failing to exercise reasonable care in the inspection of the Napa Home and Garden “pourable eco-gel fuel”;
 - (viii) failing to adopt and implement adequate warnings for the Napa Home and Garden “pourable eco-gel fuel”;
 - (ix) failing to incorporate appropriate quality assurance procedures in the ongoing distribution of its products; and
 - (x) on such other and further particulars as the evidence may show.
30. As a direct and proximate result of FUEL BARONS, INC.’s negligence and the breaches complained herein, Plaintiff, Swann B. Jaffurs, suffered burn injuries, excruciating pain and suffering, mental anguish, emotional distress, and scarring and permanent disfigurement,

COUNT TWO

Negligent Manufacturing

31. Plaintiff adopts and re-alleges each prior paragraph, where relevant, as if set forth fully herein.
32. Defendant FUEL BARONS, INC., the manufacturer of the Napa Home and Garden “pourable eco-gel fuel” in question, owed a duty of reasonable care to Plaintiff Swann B. Jaffurs in the manufacturing of the Napa Home and Garden “pourable eco-gel fuel”, and were negligent, gross negligent, willful, wanton, reckless and careless and breached their duty of care to the Plaintiff by:
- (i) failing to conform to the specifications of the Napa Home and Garden “pourable eco-gel fuel”;

- (ii) failing to exercise reasonable care in the manufacturing of the Napa Home and Garden “pourable eco-gel fuel”;
 - (iii) failing to use proper materials in the Napa Home and Garden “pourable eco-gel fuel”;
 - (iv) failing to properly manufacture the Napa Home and Garden “pourable eco-gel fuel”;
 - (v) manufacturing and placing into the stream of commerce a product that was defective and unreasonably dangerous;
 - (vi) failing to incorporate appropriate quality assurance procedures in the ongoing distribution of its products; and
 - (vii) on such other and further particulars as the evidence may show.
33. As a direct and proximate result of FUEL BARONS, INC.’s defective manufacturing of the “eco-gel fuel” and the breaches complained herein, Plaintiff, Swann B. Jaffurs, suffered injuries, excruciating pain and suffering, mental anguish, emotional distress, and scarring and permanent disfigurement.

COUNT THREE

Negligent Failure to Warn

34. Defendant FUEL BARONS, INC. as manufacturer of Napa Home and Garden “pourable eco-gel fuel”, owed duties to warn of foreseeable dangerous conditions of the Napa Home and Garden “pourable eco-gel fuel” which would impair its safety.

35. Defendant FUEL BARONS, INC. knew or should have known that Napa Home and Garden “pourable eco-gel fuel” would be used to replenish Napa Home and Garden “Firelites” firepots once the fuel level in the firepots became low and/or empty.
36. As a result, it was foreseeable to Defendant FUEL BARONS, INC. that Napa Home and Garden “pourable eco-gel fuel” would be used to replenish Napa Home and Garden “Firelites” firepots once the fuel level in the firepots became low and/or empty.
37. Defendant FUEL BARONS, INC. knew or should have known that the process of replenishing the Napa Home and Garden “Firelites” firepot with the Napa Home and Garden “pourable eco-gel fuel” could make the firepot and/or fuel dangerous for its intended use.
38. Defendant FUEL BARONS, INC. would have no reason to believe that users would realize this potential danger.
39. Defendant FUEL BARONS, INC. failed to exercise reasonable care to inform users of the firepot and fuel’s dangerous condition created by refilling the firepot with fuel required for its intended use.
40. Defendant FUEL BARONS, INC. failed to exercise reasonable care with the packaging to properly convey safety requirements.
41. As a direct and proximate result of FUEL BARONS, INC.’s failure to warn of the dangers of refilling the Napa Home and Garden “firelites” firepot with Napa Home and Garden “eco-gel fuel” and the breaches complained herein, Plaintiff, Swann

B. Jaffurs suffered injuries, excruciating pain and suffering, mental anguish, emotional distress, and scarring and permanent disfigurement.

COUNT FOUR

Strict Liability in Tort Pursuant to
Tennessee Products Liability Act of 1978, as amended
(Tenn. Code Ann. §29-28-101 et seq.).

42. At all relevant times, there was in full force and effect certain statutes of the State of Tennessee pertaining to manufacturers of defective products as set forth in the Tennessee Products Liability Act of 1978 (Tenn. Code Ann. §29-28-101 et seq., as amended).
43. Pursuant to the Tennessee Products Liability Act of 1978, Defendant FUEL BARONS, INC. is strictly liable for designing, testing, manufacturing, distributing, selling, and/or placing a defective and unreasonably dangerous product into the stream of commerce.
44. At all times relevant herein, the Napa Home and Garden “pourable eco-gel fuel” was defective and unreasonably dangerous as to its design, manufacture, packaging, distribution and warnings, causing the fuel to be in a defective condition that made it unreasonably dangerous for its intended use.
45. At all times relevant herein, FUEL BARONS, INC. manufactured the Napa Home and Garden “pourable eco-gel fuel”.
46. The Napa Home and Garden “pourable eco-gel fuel” was used in an intended and/or foreseeable manner when the accident alleged herein occurred.

47. Plaintiffs neither misused nor materially altered said fuel, and at the time of the incident complained of herein, the fuel was in the same or substantially similar condition that it was in at the time of purchase.
48. The Napa Home and Garden “pourable eco-gel fuel” are unreasonably dangerous and defective because these products emit a high volume of combustible and explosive vapor that burns almost colorless, which makes ignition of vapors possible without warning, resulting in torch-like flames causing serious burns and/or injuries to its users.
49. At all times herein, FUEL BARONS, INC. had the technology and knowledge to incorporate a “vapor barrier” in the bottle of this product, that would have been economic and profitable to produce on a mass scale, and would have protected Plaintiff from the harm and injury that they suffered.
50. At all times herein, Defendant FUEL BARONS, INC. had a duty to warn users of the dangers associated with the Napa Home and Garden “pourable eco-gel fuel.”
51. Defendant FUEL BARONS, INC. failed to warn of the inherent and latent defects that made this product dangerous and unsafe for its intended use.
52. Defendant, FUEL BARONS, INC. failed to provide a product that met all applicable state and federal regulations.
53. Defendant FUEL BARONS, INC. failed to design, test, manufacture, inspect, and/or sell a product that was safe for its intended use.
54. Due to the defective condition set forth herein, the dangerous and ultra hazardous product caused the injuries to plaintiff.

55. As a direct and proximate result of the defects contained herein, Plaintiff, Swann B. Jaffurs, suffered injuries, including third degree burns, excruciating pain and suffering, mental anguish, emotional distress, and scarring and permanent disfigurement.

WHEREFORE, Plaintiff SWANN B. JAFFURS requests compensatory damages to be determined by a jury, not to exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). Plaintiff further requests discretionary costs and costs of the Court Clerk be taxed to the Defendant FUEL BARONS, INC.

Respectfully submitted,

FOX & FARLEY

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