UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WILLIAM COX, Individually, as Parent and Next Friend and as Personal Representative of the ESTATE of MATTHEW J. COX, and ANN COX, Individually and as Parent and Next Friend of Matthew J. Cox, Plaintiffs,	
	C.A. No.
v.	
BRAND 44, LLC, AMAZON.COM, INC., and PLAYTHINGS PAST LLC, Defendants.	

COMPLAINT AND JURY DEMAND

INTRODUCTION

This action arises out of the wrongful death of Matthew J. Cox on December 26, 2013. At the time of the incident, Matthew was ten (10) years old. He was a wonderful, healthy, vibrant, athletic boy who had a lust and passion for life. Matthew was a loving member of the Cox family; a role model for his siblings; and a passionate and popular athlete, particularly as a standout in youth hockey.

On December 26, 2013, Matthew Cox, together with his parents, William and Ann Cox, and his siblings, visited Matthew's aunt and uncle, Christopher and Kara Dupill, at their home at 4 Shagbark Road in South Easton, Massachusetts. The Dupill family had recently purchased a Slackers Zipline from the Defendants, Playthings Past, LLC and Amazon.com. The product was designed and manufactured by the Defendants, Brand 44, LLC.

On the morning of December 26, 2013, Matthew Cox used the Slackers Zipline, which was affixed to two trees in the backyard of the Dupills' property. As he was using the Zipline, the device failed and/or caused/contributed to the failure of one of the trees which was used to anchor the device. As a result of the incident, Matthew Cox sustained severe and fatal injuries.

Immediately after the incident, family members and neighbors responded to the incident and attempted to assist Matthew. It was readily apparent that Matthew had

sustained severe and permanent injuries. As he lay on the ground, his parents observed blood coming out of his nose.

Emergency personnel responded to the scene and rendered care to Matthew. At the scene of the incident, Matthew was found lying prone on the ground and unresponsive. Emergency personnel identified fresh bruising on his lower back and midway up his torso. He also had severe bleeding and lacerations on the head. There was discussion about "Medflighting" Matthew to Boston but it was unavailable due to weather conditions.

Matthew was transported via ambulance to the Good Samaritan Medical Center in Brockton. He was diagnosed with a crushed skull, pulmonary contusions, and a dilated stomach.

Matthew was then transferred urgently to the Children's Hospital in Boston for further care and treatment. Matthew remained at Children's Hospital until January 24, 2014. At the Children's Hospital, he underwent an extensive surgery to remove a significant portion of his skull to allow his brain to swell (and avoid immediate and fatal complications associated with the swelling). Following the surgery, he was transferred to the intensive care unit where he was placed on life support. He remained in a medically-induced coma until he expired on January 24, 2014. Substantial medical expenses and costs were incurred in connection with this incident.

The Defendants in this case are liable to the Cox family for the damages and losses they have sustained because the Defendants designed, manufactured, distributed, marketed and sold a product that was defective, inherently unsafe and hazardous, and unreasonably dangerous or not suitable for its intended uses. The Defendants breached their duties to properly design, test and inspect the Zipline and provided proper warnings, instructions and advice regarding the product. The Defendants knew or reasonably should have known that the Zipline was unsafe for residential use. The Defendants should have designed the product to ensure that it was used only with trees of a sufficient diameter and height to sustain the weight associated with the use of the product. The Defendants also failed to ensure that the length of the sling and cable were sufficient to affix the device to larger, healthy trees that were readily available near the failed tree. Additionally, the Defendants failed to provide any device or equipment to enable the end-user to ascertain if the trees were healthy or diseased. The warnings and instructions which accompanied the Zipline were woefully inadequate and rendered the product not reasonably safe for use. Specifically, the instructions relating to the installation of the device and prohibiting the use of helmets were inaccurate, misleading and inappropriate, and they rendered the device unreasonably hazardous and unsafe. The Defendants breached the implied warranties of merchantability and fitness for a particular purpose.

PARTIES

1. Plaintiffs, William Cox, Individually, and as Parent, Next Friend and Personal Representative of the Estate of Matthew J. Cox, and Ann Cox, Individually and as Parent and Next Friend of Matthew J. Cox (hereinafter "Plaintiff"), reside in Hanover, Plymouth County, Massachusetts.

2. Defendant, Brand 44, LLC (hereinafter "Brand 44"), is a limited liability company existing under the laws of Colorado with a principal place of business at 4040 Holly Street, Unit 10 in Denver, Denver County, Colorado, and was, at all times relevant and all times hereinafter mentioned, doing and conducting business in the Commonwealth of Massachusetts.

3. Defendant, Amazon.com, Inc. (hereinafter "Amazon"), is a corporation existing under the laws of Delaware with a principal place of business at 410 Terry Avenue North in Seattle, King County, Washington, and was, at all times relevant and all times hereinafter mentioned, doing and conducting business in the Commonwealth of Massachusetts.

4. Defendant, Playthings Past, LLC (hereinafter "Playthings") is a limited liability corporation existing under the laws of Connecticut with a principal place of business at 105 Sunrise Hill Circle, in Orange, Connecticut, and was, at all times relevant and all times hereinafter mentioned, doing and conducting business in the Commonwealth of Massachusetts.

GENERAL ALLEGATIONS

5. Plaintiffs, William and Ann Cox, are the parents of the decedent, Matthew J. Cox.

6. At all times relevant and all times hereinafter mentioned, Defendant, Brand 44, was in the business of designing, manufacturing, supplying, distributing, and selling backyard adventure products, specifically the Slackers Zipline.

7. At all times relevant and all times hereinafter mentioned, Defendants, Amazon and Playthings, were in the business of selling, advertising, distributing, supplying, marketing, shipping, and delivering retail products, including, Slackers Ziplines, to consumers in Massachusetts.

8. In or about December of 2013, Christopher Dupill and his family purchased and/or procured a Slackers Zipline (which was designed, manufactured, supplied, distributed, and sold by Brand 44) from Defendants, Amazon and Playthings.

9. On December 26, 2013, the Slackers Zipline (hereinafter "Zipline") was affixed to two trees in the backyard of the Dupill's property at 4 Shagbark Road in South Easton, Bristol County, Massachusetts.

10. On or about December 26, 2013, Matthew J. Cox used the Zipline in the backyard of the Dupill's property.

11. As Matthew Cox was using the device, the Zipline failed and/or caused/contributed to the failure of one of the trees anchoring the device. Matthew Cox sustained severe and fatal injuries and experienced significant pain and suffering as a result of the incident.

12. As a direct and proximate result of the negligence and breaches of warranties and duties of the defendants, the Zipline caused/contributed to cause the death of Matthew Cox and severe damages, all to the loss and detriment of the Plaintiff.

COUNT I
NEGLIGENCE v. ALL DEFENDANTS

13. Plaintiffs repeat, re-allege, and incorporate by reference the allegations set forth in paragraphs 1 through 13 above, as if expressly written and set forth herein.

14. The aforesaid incident and death of Matthew J. Cox, and the damages sustained by Plaintiffs were proximately caused by the negligence and breaches of duties owed to them by the Defendants including but not limited to, the following:

a. Failing to properly design the Zipline;
b. Failing to properly manufacture the Zipline;
c. Failing to adequately test the Zipline to assess, determine, eliminate, and/or reduce the risk of injury;
d. Placing in the channels of trade a product that Defendants knew, or with reasonable care should have known, was unreasonably dangerous and unsafe;
e. Marketing an inherently unsafe and/or dangerous product;
f. Misrepresenting the Zipline was safe when Defendants knew, or with reasonable care should have known, that the Zipline was dangerous and unsafe;

g. Failing to adequately warn that the Zipline could cause serious injury and/or death;

h. Failing to make appropriate recommendations or instructions concerning the installation, maintenance and use of the Zipline;

i. Failing to properly withdraw and/or recall the Zipline and/or its component parts from the marketplace;

j. Failing to comply with applicable federal, state, and/or local statutes and/or regulations concerning the design, manufacture, labeling, distribution, supply, and/or sale of the Zipline; and,

k. Otherwise failing to exercise reasonable care under the circumstances that then and there existed.

WHEREFORE, Plaintiffs respectfully demand judgment be entered on their behalf against the Defendants in the maximum amount recoverable by law, plus interest, costs, and attorneys' fees, and all other amounts that are recoverable by law.

COUNT II
WRONGFUL DEATH v. ALL DEFENDANTS

15. Plaintiffs repeat, re-allege, and incorporate by reference the allegations set forth in paragraphs 1 through 15, as if expressly written and set forth herein.

16. This is a wrongful death action against the Defendants.

17. At all times on and before December 26, 2013, Defendants owed Matthew J. Cox a duty to properly design, manufacture, supply, distribute, sell, and package the

Zipline as to not cause injury or harm and to act in a reasonably safe, careful, and non-negligent manner. Defendants breached their duty of care.

18. As a direct and proximate result of the negligence and breaches of duties of Defendant, Matthew Cox experienced traumatic injuries, significant pain, suffering and death.

19. As a direct and proximate result of the Defendants' negligence and Matthew Cox's death, his Estate and next of kin incurred expenses and loss, including, medical, funeral and burial expenses. In addition, as a direct and proximate result of the Defendants' aforesaid negligence and Matthew Cox's death, his next of kin has suffered, and will continue to suffer in the future, a significant and devastating loss based upon the fair monetary value of Matthew to them, including but not limited to, the lost value of his reasonably expected net income, services, protection, care, assistance, society, companionship, comfort, guidance, counsel, and advice.

WHEREFORE, Plaintiffs respectfully demand judgment be entered on their behalf against the Defendants in the maximum amount recoverable by law, plus interest, costs, and attorneys' fees, and all other amounts that are recoverable by law.

COUNT III
LOSS OF CONSORTIUM v. ALL DEFENDANTS

20. Plaintiffs repeat, re-allege, and incorporate by reference the allegations set forth in paragraphs 1 through 20 above, as if expressly re-written and set forth herein.

21. Plaintiffs were the lawful parents of the decedent, Matthew J. Cox.

22. As a direct and proximate result of Defendants' negligence in causing the injury and death of Matthew Cox, Plaintiffs have been caused to suffer the loss of their son Matthew Cox's care, comfort, counsel, affection, society, companionship, and consortium. Plaintiffs are entitled to compensation for loss of consortium under Mass. Gen. L. ch. 229 and ch. 231.

WHEREFORE, Plaintiffs respectfully demand judgment be entered on their behalf against the Defendants in the maximum amount recoverable by law, plus interest, costs, and attorneys' fees, and all other amounts that are recoverable by law.

COUNT IV
BREACH OF WARRANTIES v. ALL DEFENDANTS

23. Plaintiffs repeat, re-allege, and incorporate by reference the allegations set forth in paragraphs 1 through 23 above, as if expressly re-written and set forth herein.

24. Defendants designed, manufactured, assembled, distributed and sold a product, namely, the Zipline.

25. Defendants expressly and impliedly warranted that its product was safe, merchantable, and fit for its intended uses. Defendants were merchants with respect to goods of the kind involved in the Incident. Defendants knew or had reason to know of the particular purpose for which the goods were required, and that the purchaser and Plaintiffs were relying on Defendants' skill and judgment to select and/or furnish suitable goods. Defendants also knew or had reason to know that Matthew Cox, and those utilizing the goods, relied on the warranties made by Defendants.

26. Defendants breached these warranties because the Zipline was unsafe, not of merchantable quality, and unfit for its intended uses and purposes.

27. Plaintiffs suffered damages and/or harm as a direct and proximate result of the breaches of said warranties by Defendants

WHEREFORE, Plaintiffs respectfully demand judgment be entered on their behalf against the Defendants in the maximum amount recoverable by law, plus interest, costs, and attorneys' fees, and all other amounts that are recoverable by law.

COUNT V
PUNITIVE DAMAGES v. ALL DEFENDANTS

28. Plaintiffs repeat, re-allege, and incorporate by reference the allegations set forth in paragraphs 1 through 28 above, as if expressly re-written and set forth herein.

29. Matthew Cox's death was caused by the malicious, willful, wanton or reckless conduct of the defendant or by the gross negligence of the Defendants.

30. Plaintiffs are therefore entitled to recover punitive damages on account of Defendants acts or omissions.

WHEREFORE, Plaintiffs respectfully demand judgment be entered on their behalf against the Defendants in the maximum amount recoverable by law, plus interest, costs, and attorneys' fees, and all other amounts that are recoverable by law.

COUNT VI
PAIN AND SUFFERING (G.L. c. 231 § 6D) v. ALL DEFENDANTS

31. Plaintiffs repeat, re-allege, and incorporate by reference the allegations set forth in paragraphs 1 through 31 above, as if expressly re-written and set forth herein.

32. Defendants owed a duty of care to Plaintiffs.

33. Defendants breached the duty of care owed to the Plaintiffs.

34. As a proximate result of the Defendants' negligence, Matthew Cox endured severe pain and suffering.

WHEREFORE, Plaintiffs respectfully demand judgment be entered on their behalf against the Defendants in the maximum amount recoverable by law, plus interest, costs, and attorneys' fees, and all other amounts that are recoverable by law.

COUNT VII
STRICT LIABILITY V. ALL DEFENDANTS

36. Plaintiffs repeat, re-allege and incorporate by reference the allegations set forth in paragraphs 1 through 35 above, as if expressly re-written and set forth herein

37. Defendants designed, created, manufactured, packaged, labeled, sold, supplied and distributed the Zipline with inadequate warnings and in a defective and unreasonably dangerous condition under Section 402A of the Restatement (Second) of Torts, in each of the following ways:

a. Failing to properly design the Zipline;

b. Failing to properly manufacture the Zipline;

c. Failing to adequately test the Zipline to assess, determine, eliminate, and/or reduce the risk of injury;

d. Placing in the channels of trade a product that Defendants knew, or with reasonable care should have known, was unreasonably dangerous and unsafe;

e. Marketing an inherently unsafe and/or dangerous product;

f. Misrepresenting the Zipline was safe when Defendants knew, or with reasonable care should have known, that the Zipline was dangerous and unsafe;

g. Failing to adequately warn that the Zipline could cause serious injury and/or death;

h. Failing to make appropriate recommendations instructions concerning the installation, maintenance and use of the Zipline;

i. Failing to properly withdraw and/or recall the Zipline and/or its component parts from the marketplace;

j. Failing to comply with applicable federal, state, and/or local statutes and/or regulations concerning the design, manufacture, labeling, distribution, supply, and/or sale of the Zipline; and,

k. Otherwise failing to exercise reasonable care under the circumstances that then and there existed.

38. Defendants, by its failure to adequate warn and by virtue of its product's defective and unreasonably dangerous condition, caused the foregoing injuries and are strictly liable for the damages sustained by the Plaintiffs herein.

WHEREFORE, Plaintiffs respectfully demand judgment be entered on their behalf against the Defendants in the maximum amount recoverable by law, plus interest, costs, and attorneys' fees, and all other amounts that are recoverable by law.

DEMANDS FOR RELIEF

WHEREFORE, Plaintiffs request that this Honorable Court:

1. Enter a judgment against Defendants declaring them legally and financially responsible for the damages Plaintiffs sustained or incurred;

2. Award Plaintiffs compensatory and punitive damages against Defendants in an amount equal to the damages incurred and suffered;

3. Award Plaintiffs the costs of suit, including attorneys' and expert witnesses' fees;

4. Award Plaintiffs interest, including but not limited to, pre-judgment interest; and,

5. Fashion such other relief as the Court deems just and proper.

Respectfully Submitted,
Plaintiffs,
By his attorneys,

/s/ Christopher M. Reilly

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