

YES / **NO**

EXHIBITS

CASE NO. 2020 L 1943

DATE: 2/18/20

CASE TYPE: Product Liability

PAGE COUNT: 16

CASE NOTE

CONAIR CASE

Return Date: No return date scheduled
Hearing Date: No hearing scheduled
Civil Action Cover Sheet - Case Initiation

Courtroom Number: No hearing scheduled

Location: No hearing scheduled

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

FILED
2/18/2020 12:00 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL

EMILY HERGERT, individually and on behalf of all others similiary situated, et al

v.

CONAIR CORPORATION

8506620

2020L001943
No.

CIVIL ACTION COVER SHEET - CASE INITIATION

A Civil Action Cover Sheet - Case Initiation shall be filed with the complaint in all civil actions. The information contained herein is for administrative purposes only and cannot be introduced into evidence. Please check the box in front of the appropriate case type which best characterizes your action. Only one (1) case type may be checked with this cover sheet.

Jury Demand Yes No

PERSONAL INJURY/WRONGFUL DEATH

CASE TYPES:

- 027 Motor Vehicle
- 040 Medical Malpractice
- 047 Asbestos
- 048 Dram Shop
- 049 Product Liability
- 051 Construction Injuries
(including Structural Work Act, Road Construction Injuries Act and negligence)
- 052 Railroad/FELA
- 053 Pediatric Lead Exposure
- 061 Other Personal Injury/Wrongful Death
- 063 Intentional Tort
- 064 Miscellaneous Statutory Action
(Please Specify Below**)
- 065 Premises Liability
- 078 Fen-phen/Redux Litigation
- 199 Silicone Implant

TAX & MISCELLANEOUS REMEDIES

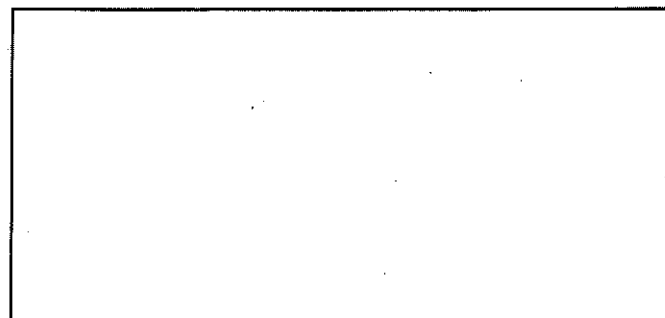
CASE TYPES:

- 007 Confessions of Judgment
- 008 Replevin
- 009 Tax
- 015 Condemnation
- 017 Detinue
- 029 Unemployment Compensation
- 031 Foreign Transcript
- 036 Administrative Review Action
- 085 Petition to Register Foreign Judgment
- 099 All Other Extraordinary Remedies

By: Michelle N. Schneiderheinze

(Attorney)

(Pro Se)



(FILE STAMP)

COMMERCIAL LITIGATION

CASE TYPES:

- 002 Breach of Contract
- 070 Professional Malpractice
(other than legal or medical)
- 071 Fraud (other than legal or medical)
- 072 Consumer Fraud
- 073 Breach of Warranty
- 074 Statutory Action
(Please specify below.**)
- 075 Other Commercial Litigation
(Please specify below.**)
- 076 Retaliatory Discharge

OTHER ACTIONS

CASE TYPES:

- 062 Property Damage
- 066 Legal Malpractice
- 077 Libel/Slander
- 079 Petition for Qualified Orders
- 084 Petition to Issue Subpoena
- 100 Petition for Discovery

**

Primary Email: m.schneiderheinze@vlaw.com

Secondary Email: m.beckhart@vlaw.com

Tertiary Email: _____

Pro Se Only: I have read and agree to the terms of the Clerk's Office Electronic Notice Policy and choose to opt in to electronic notice form the Clerk's Office for this case at this email address: _____

FILED DATE: 2/18/2020 12:00 AM 2020L001943

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS
LAW DIVISION

EMILY HERGERT, individually and on)
behalf of all others similarly situated; and)
JULIE MCCLANAHAN, individually and)
on behalf of all others similarly situated,)

Plaintiffs,)

vs.)

CONAIR CORPORATION, a Delaware)
corporation authorized to do business in the)
State of Illinois,)

Defendant.)

No.

JURY DEMANDED

COMPLAINT

NOW COMES Plaintiffs, EMILY HERGERT and JULIE MCCLANAHAN, individually and on behalf of all others similarly situated, by and through attorney Michelle N.

Schneiderheinze of the law firm of VanDerGinst Law, P.C., and for their cause of action against Defendant, CONAIR CORPORATION, a Delaware corporation authorized to do business in the State of Illinois states as follows:

COMMON ALLEGATIONS

1. The Plaintiffs and Class are individuals who purchased defective hair dryers manufactured, designed, sold and/or marketed by Defendant within the State of Illinois.
2. At all times material hereto, Plaintiff, EMILY HERGERT, was a resident of Sherrard, Mercer County, Illinois.
3. At all times material hereto, Plaintiff, JULIE MCCLANAHAN, was a resident of Atkinson, Henry County, IL.
4. At all times material hereto, Defendant, CONAIR CORPORATION, (hereinafter

“CONAIR”) was a Delaware corporation authorized to do business in Illinois with its registered agent located at 208 South LaSalle Street, Suite 814 Chicago, IL 60604.

5. At all times material hereto, Defendant CONAIR, was engaged in the manufacturing, design, distribution, and/or selling of a Conair Infiniti Pro Hair Styler Series 259Y, (hereinafter “Dryer”).

6. That Plaintiff, EMILY HERGERT, purchased a Conair Infiniti Pro Hair Styler, Series 259Y.

7. That on or about May 20, 2018, Plaintiff, EMILY HERGERT, was blow drying her hair, the Dryer started to spark and caught fire, causing a burn to her right wrist/forearm.

8. That Plaintiff, JULIE MCCLANAHAN, purchased Conair Infiniti Pro Hair Styler, Series 259Y.

9. That on February 26, 2018, Plaintiff, JULIE MCCLANAHAN, was blow drying her hair, the Dryer started to spark and caught fire, causing a burn to her right wrist/forearm.

10. Plaintiffs while using the Dryers for its intended purpose, experienced substantially similar incidents/injuries, resulting from the same manufacturing and/or design defects.

11. In each incident, the Dryers malfunctioned even though they were equipped with “safety plugs” designed to recognize a change in the electrical current.

12. In each case the “safety plugs” did not prevent the Dryer from sparking and causing injury.

13. While the exact number of members in the Class is unknown at this time, Plaintiffs have reason to believe hundreds of consumers have purchased Defendant’s defective Conair Infiniti Pro Hair Styler, Series 259Y in Illinois.

14. The number of Class members could be discerned from the records maintained by Defendant and by identifying Class members who registered their product with CONAIR.

15. At all times material hereto Defendant, CONAIR, had a duty to design, manufacture, sell, and distribute its Dryer so that it was neither defective, nor unreasonably dangerous when put to the use for which it was designed, manufactured, distributed and sold.

16. That the aforementioned Dryer was defective and unreasonably dangerous in one or more of the following respects:

a.) Was designed and/or manufactured in such a way as to allow it to spark and catch fire;

b.) the line cord that connects the cord to the Dryers would break down prematurely due to defective design/manufacturing creating arching and/or sparks which can lead the device to catch fire;

c.) Was designed and/or manufactured in such a way as to cause the "safety plug," (designed to recognize a change in the electrical current) to malfunction;

and/or

d.) Failed to provide sufficient and adequate instructions and/or warnings to consumers or users of the Dryer with respect to hazards inherent in its use including but not limited to the reasonable possibility that it could spark and/or cause a fire.

17. That the unreasonable dangerous condition of the Dryer existed at the time it left the control of Defendant, CONAIR, and remained in that condition until the aforesaid accidents.

18. That as a proximate cause of the aforesaid, Plaintiffs and Class members have become disabled, disfigured, incurred pain and suffering and will sustain pain and suffering in the future, incurred medical expenses and will incur medical and hospital expenses in the future.

19. That as a proximate cause of the aforesaid, Class members are at risk of becoming disabled, disfigured, suffering and sustaining pain, and incurring medical expenses.

20. Defendant was well aware of these defects and that the defects posed a serious safety hazard, but concealed that information from Plaintiffs and consumers to make a profit, to maintain an edge over its competitors, and to place consumers under the false belief that its products were safe.

21. On information and belief, and based upon facts likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, through testing, research, and complaints, among other things, Defendant knew or should have known that the Dryers were defective because of their propensity to spark and catch fire during normal and intended use.

22. On information and belief, and based upon facts likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, CONAIR concealed and omitted information regarding the above alleged defects in their advertising, marketing, warranty documents accompanying the Dryers and other communications in a manner that has deceptive and is likely to continue to deceive consumers and the public.

23. On information and belief, and based upon the facts likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, Defendant knew the defects posed a serious safety hazard, but concealed that information from Plaintiffs and the Class.

24. Conair's wrongful acts caused Plaintiffs and the Class to purchase hair dryers they otherwise would not have purchased, to pay more for those hair dryers than they would have paid, and to continue to be subjected to the potential of serious bodily injury as a result of the defects.

25. Plaintiffs bring this action on their own behalf and as a Class Action on behalf of all persons (a) who reside in Illinois and purchased the Dryer from the date that it was first made available to consumers in Illinois through the present and (b) who were injured by a Dryer from February 24, 2019 through the present in Illinois.

26. Excluded from the Class are: Defendant, any entities in which Defendant has a controlling interest, any of its parents, subsidiaries, affiliates, officers, directors, employees and members of such persons' immediate families, the presiding judge(s) in this case and his, her or their immediate family, and those who purchased the Dryers for resale.

27. Plaintiffs reserve the right to amend the definition of the Class if discovery or further investigation reveals that the Class should be expanded or otherwise modified.

28. Plaintiffs and the members of the Class are so numerous and geographically disperse that joinder of all members individually, in one action or otherwise, is impractical.

29. Defendant's national marketing and advertising campaigns target consumers across the country.

30. The precise number of Class members and their identities are unknown to Plaintiffs at this time but will be determined through discovery.

31. Class members may be notified of the pendency of this action by mail and/or publication.

32. This action involves questions of law and fact common to Plaintiffs and all members of the Class, which include the following: (a) Whether the Dryers contain the defect alleged herein; (b) Whether Defendant failed to appropriately warn Class members of the potential dangers from use of the Dryers; (c) Whether Defendant had actual or imputed knowledge of the defects but did not disclose it to Plaintiffs or the Class; (d) Whether Defendants promoted the Dryers with false and misleading statements of fact and material omissions; (e)

Whether the alleged conduct constitutes violation of the laws asserted herein; (f) Whether Plaintiffs and Class Members sustained damages resulting from Defendant's conduct and, if so, the proper measure of damages or other relief.

33. These and other questions of law and/or fact are common to the Class and predominate over any questions affecting only individual Class members:

34. The claims of the named Plaintiffs are typical of the claims of the proposed Class, and Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to, or which directly conflict with, the interests of the other members of the Class.

35. Plaintiffs have engaged the services of counsel who are experienced in complex class litigation, who will adequately prosecute this action, and who will assert and protect the rights of and otherwise represent Plaintiffs and the absent Class Members.

36. Plaintiffs' claims are typical of those of the absent Class Members because Plaintiffs and the Class Members each sustained damages arising from Defendant's wrongful conduct, as alleged more fully herein.

37. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

38. The expense and burden of individual litigation would make it impracticable for proposed Class members to prosecute their claims individually.

39. Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude maintenance as a class action.

COUNT I
NEGLIGENCE – CONAIR

1-39. Plaintiffs restate and realleges paragraphs 1-39 of the Common Allegations as and for paragraphs 1-39 of Count I.

40. Plaintiffs bring this claim individually and on behalf of the Class.

41. That at all times material hereto, it was the duty of Defendant, CONAIR, to exercise due care in the design, testing, manufacturing, marketing, and selling of the Dryer such that it would be reasonably safe for its intended use.

42. Defendant, CONAIR knew or should reasonably have known that Plaintiffs, as members of the general public for whose use the Dryer was placed into interstate commerce, would be likely to use the Dryer in the manner described in the Complaint.

43. Defendant, CONAIR, knew or reasonably should have known of the dangers associated with the manner and circumstances of Plaintiff's foreseeable use of the Dryer, which danger would not be open and obvious to the general public.

44. Notwithstanding the aforesaid duty, Defendant, CONAIR, negligently and carelessly committed one or more of the following acts or omissions.

a.) designed and/or manufactured the Dryer in such a way as to allow it to spark and/or catch fire;

b.) designed and/or manufactured the Dryer in a way that allows the line cord that connects the cord to the Dryers to break down prematurely creating arching and/or sparks which can lead the device to catch fire;

c.) designed and/or manufactured the Dryer in such a way as to cause the "safety plug," (designed to recognize a change in the electrical current) to malfunction;

and/or

d.) Failed to provide sufficient and adequate instructions and/or warnings to consumers or users of the Dryer with respect to hazards inherent in its use including but not limited to the reasonable possibility that it could spark and/or cause a fire.

45. That as a proximate cause of the aforesaid negligence of the defendant, Plaintiffs are disabled, disfigured, incurred pain and suffering and will sustain pain and suffering in the future, incurred medical and hospital expenses and will incur medical and hospital expenses in the future, lost wages and have an impaired earning capacity.

WHEREFORE, Plaintiffs, EMILY HERGERT and JULIE MCCLANAHAN, individually and on behalf of the Class pray for judgment against Defendant, CONAIR, in an amount in excess of Fifty Thousand Dollars (\$50,000.00), plus costs of suit and such other relief as this Court deems equitable and just.

COUNT II
STRICT LIABILITY - CONAIR

1-39. Plaintiffs restate and realleges paragraphs 1-39 of the Common Allegations as and for paragraphs 1-39 of Count II.

40. Plaintiffs bring this claim individually and on behalf of the Class.

41. That at all times material hereto, Defendant had a duty to design, manufacture, sell, and distribute its Dryer so that it was neither defective, nor unreasonably dangerous when put to the use for which it was designed, manufactured, distributed and sold.

42. That the aforementioned Dryer was defective and unreasonably dangerous in one or more of the following respects:

a.) it was designed and/or manufactured in a way as to allow it to spark and catch fire;

b.) it was designed and/or manufactured in a way that allows the line cord that connects the cord to the Dryers to break down prematurely creating arching and/or sparks which can lead the device to catch fire;

c.) it was designed and/or manufactured in such a way as to cause the "safety plug," (designed to recognize a change in the electrical current) to malfunction;

and/or

d.) Defendant failed to provide sufficient and adequate instructions and/or warnings to consumers or users of the Dryer with respect to hazards inherent in its use including but not limited to the reasonable possibility that it could spark and/or cause a fire.

43. That as a proximate cause of the aforesaid conduct of the defendant, Plaintiffs are disabled, disfigured, incurred pain and suffering and will sustain pain and suffering in the future, incurred medical and hospital expenses and will incur medical and hospital expenses in the future, lost wages and have an impaired earning capacity.

WHEREFORE, Plaintiffs, EMILY HERGERT and JULIE MCCLANAHAN, individually and on behalf of the Class pray for judgment against Defendant, CONAIR, in an amount in excess of Fifty Thousand Dollars (\$50,000.00), plus costs of suit and such other relief as this Court deems equitable and just.

COUNT III
BREACH OF IMPLIED WARRANTY OF FITNESS FOR PARTICULAR PURPOSE

1-39. Plaintiffs restate and realleges paragraphs 1-39 of the Common Allegations as and for paragraphs 1-39 of Count III.

40. Plaintiffs bring this claim individually and on behalf of the Class.

41. At the time of the sale of the Dryer, Defendant, CONAIR, knew or should have known that the Dryer would be used in a manner reasonably similar to that described in this Complaint.

42. At all times material hereto Defendant, CONAIR, knew or should have known that buyers of the Dryer, such as Plaintiffs, would rely on the seller's skill and judgment to select goods suitable for that purpose.

43. At all times relevant hereto, there was a duty imposed by law which requires that a manufacturer or seller's product be reasonably fit for the purposes for which such products are used, and that product be acceptable in trade for the product description.

44. Notwithstanding the aforementioned duty, at the time of delivery, the Dryer sold to Plaintiffs was not fit for use because it contained a defect that caused it to spark and/or catch fire and did not otherwise perform as represented.

45. Defendant was notified that the Dryer was not fit for use within a reasonable time after the defect manifested to Plaintiffs and the Class.

46. As a result of the aforesaid, Plaintiffs and the Class sustained damages.

47. The Dryer was not fit for the particular purpose for which Defendant, CONAIR knew or should have known it would be used for.

48. Plaintiffs are disabled, disfigured, incurred pain and suffering and will sustain pain and suffering in the future, incurred medical and hospital expenses and will incur medical and hospital expenses in the future, and sustained lost wages as a result of the Dryer malfunctioning.

49. Defendant's aforesaid conduct was a proximate cause of Plaintiffs injuries.

WHEREFORE, Plaintiffs, EMILY HERGERT and JULIE MCCLANAHAN, individually and on behalf of the Class pray for judgment against Defendant, CONAIR, in an

amount in excess of Fifty Thousand Dollars (\$50,000.00), plus costs of suit and such other relief as this Court deems equitable and just.

**COUNT IV
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**

1-39. Plaintiffs restate and realleges paragraphs 1-39 of the Common Allegations as and for paragraphs 1-39 of Count IV.

40. Plaintiffs bring this claim individually and on behalf of the Class.

41. At the time of the sale of Dryer, Defendant, CONAIR, knew or should have known that the Dryer would be used in a manner reasonably similar to that described in this Complaint.

42. At all times material hereto Defendant, Conair, knew or should have known that buyers of the Dryer, such as Plaintiffs, would rely on the seller's skill and judgment to select goods suitable for that purpose.

43. At all times relevant hereto, there was a duty imposed by law which requires that a manufacturer or seller's product be reasonably fit for the purposes for which such products are used, and that product be acceptable in trade for the product description.

44. Notwithstanding the aforementioned duty, at the time of delivery, the Dryer sold to Plaintiffs was not merchantable because it contained a defect that caused it to spark and/or catch fire and did not otherwise perform as represented.

45. Defendant was notified that the Dryer was not merchantable within a reasonable time after the defect manifested to Plaintiffs and the Class.

46. As a result of the non-merchantability of the Dryer, Plaintiffs and the Class sustained damages.

47. Plaintiffs are disabled, disfigured, incurred pain and suffering and will sustain pain and suffering in the future, incurred medical and hospital expenses and will incur medical and hospital expenses in the future, and sustained lost wages as a result of the Dryer malfunctioning.

48. Defendant's aforesaid conduct was a proximate cause of Plaintiffs injuries.

WHEREFORE, Plaintiffs, EMILY HERGERT and JULIE MCCLANAHAN, individually and on behalf of the Class pray for judgment against Defendant, CONAIR, in an amount in excess of Fifty Thousand Dollars (\$50,000.00), plus costs of suit and such other relief as this Court deems equitable and just.

COUNT V
VIOLATION OF THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT

1-39. Plaintiffs restate and realleges paragraphs 1-39 of the Common Allegations as and for paragraphs 1-39 of Count V.

40. Plaintiffs bring this claim individually and on behalf of the Class.

41. At all times relevant hereto there was in full force and effect the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et. seq. (the "Act").

Similar statutes which provides in relevant part as follows:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deceptive, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the "Uniform Deceptive Trade Practices Act," approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.

815 ILCS 505/2 (footnotes omitted).

42. Plaintiffs and other members of the Class, as purchasers of the Dryer, are consumers within the meaning of the Act given that Defendant's business activities involve trade or commerce, are addressed to the market generally and otherwise implicate consumer protection concerns.

43. Defendant also knowingly concealed, suppressed and consciously omitted material facts to Plaintiffs and other members of the Class knowing that consumers would rely on the advertisements and packaging and Defendant's uniform representations to purchase the Dryer.

44. Defendant intended that Plaintiffs and the other members of the Class rely on Defendant's representations.

45. CONAIR's material misrepresentations set forth above constitute unconscionable commercial practices, deception, fraud, false promise, misrepresentation and/or omission of material facts as to the nature of the goods, in violation of the Act.

46. Once the defect in the Dryer became apparent to Defendant, consumers (such as Plaintiffs) were entitled to disclosure of that fact because a significant risk of injury would be a material fact in a consumer's decision-making process, and, without Defendant's disclosure consumers would not necessarily know that there is such a risk.

47. Defendant intended that Plaintiffs and the other members of the Class would rely on the deception by purchasing the Dryer, unaware of the material facts and omissions described above.

48. Defendant knew that its customers would rely on its representations that the Dryer was safe when used as directed and knew that consumers would rely upon its silence as to any known risk injury as evidence that the Product was safe.

49. This conduct constitutes consumer fraud within the meaning of the Act.

50. Plaintiffs and the other members of the Class suffered damages as a proximate result of the unfair acts or practices of Defendant alleged herein.

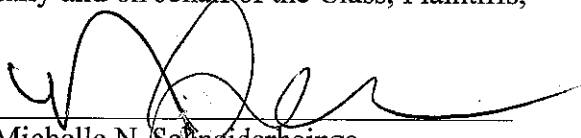
51. Defendant's misrepresentations and/or omissions of material fact were done knowingly, intentionally, willfully or with reckless disregard for the consequences of its actions.

52. Plaintiffs and other members of the Class would not have purchased the Dryer but for the promised benefits and concealment of any risk of harm because the Dryer as sold had no intrinsic value to them.

WHEREFORE, Plaintiffs, EMILY HERGERT and JULIE MCCLANAHAN, individually and on behalf of the Class pray for judgment against Defendant, CONAIR, in an amount in excess of Fifty Thousand Dollars (\$50,000.00), plus costs of suit and such other relief as this Court deems equitable and just.

EMILY HERGERT and JULIE MCCLANAHAN,
individually and on behalf of the Class, Plaintiffs,

By:


Michelle N. Schneiderheinze
#64445 (ARDC 6272646)

FOR:
VANDERGINST LAW, P.C.
4950 38th Avenue
Moline, IL 61265
Phone: (309)788-5297
Fax: (309)517-3020
Email: m.schneiderheinze@vlaw.com

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS
LAW DIVISION

EMILY HERGERT, individually and on)
behalf of all others similarly situated; and)
JULIE MCCLANAHAN, individually and)
on behalf of all others similarly situated,)

Plaintiffs,)

vs.)

CONAIR CORPORATION, a Delaware)
corporation authorized to do business in the)
State of Illinois,)

Defendant.)

No.

JURY DEMANDED

JURY DEMAND

COMES NOW the Plaintiffs, EMILY HERGERT and JULIE MCCLANAHAN,
individually and on behalf of all others similarly situated by and through Attorney Michelle N.
Schneiderheinze, of the law firm of VANDERGINST LAW, P.C., and hereby demands a trial by
jury of twelve persons with regard to the issues and facts so triable in cause herein.

EMILY HERGERT and JULIE
MCCLANAHAN, Plaintiffs,

By:


Michelle N. Schneiderheinze
#64445 (ARDC 6272646)

FOR:
VANDERGINST LAW, P.C.
4950 38th Avenue
Moline, IL 61265
Phone: (309)788-5297
Fax: (309)517-3020
Email: m.schneiderheinze@vlaw.com