

GWINNETT COUNTY STATE COURT

STATE OF GEORGIA

**RICHARD AND MELISSA BOSE,
Individually and as Next Friends of
SPENSER BOSE, and SPENSER BOSE,**

Plaintiffs,

vs.

**TIPPMANN PNEUMATICS, INC., JEFF
TEVES, and JOHN DOES 1-5,**

Defendants.

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* **JURY TRIAL DEMANDED**
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* **CASE NO.:04C-13090-3**
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SUMMONS

TO CHEROKEE AIR PRODUCTS INC., d/b/a TIPPMANN PNEUMATICS, INC.:

You are hereby summoned and required to file with the Clerk of said court and serve upon the Plaintiffs' attorney, whose name and address is:

P. Charles Scholle
P. Charles Scholle, P.C.
6340 Sugarloaf Parkway, Suite 200
Duluth, Georgia 30097
(678)775-6830

an Answer to the Complaint which is herewith served upon you, within 30 days after service of this Summons upon you exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in this Complaint.

This _____ day of _____, _____.

Clerk of Superior Court

By _____
Deputy Clerk

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JURY TRIAL DEMANDED

CASE NO.:04C-13090-3

PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DAMAGES

COMES NOW SPENSER BOSE, a minor, by and through his legal guardians, parents and next friends, RICHARD and MELISSA BOSE, and RICHARD and MELISSA BOSE Individually and as Parents of SPENSER BOSE, a Minor, Plaintiffs in this action, and file this Amended Complaint for Damages against Defendants as follows:

ORIGINAL COMPLAINT FOR DAMAGES

Plaintiffs' original Complaint for Damages was filed in this court on November 10, 2004. PLAINTIFFS RE-ALLEGE AND INCORPORATE BY REFERENCE ALL COUNTS AND PARAGRAPHS OF THEIR ORIGINAL COMPLAINT FOR DAMAGES. Plaintiffs amend their original Complaint to add Defendant TIPPMANN PNEUMATICS, INC. and JOHN DOES 1-5 as party Defendants. Defendant JEFF TEVES remains a Defendant. Plaintiffs begin the enumerations in this Amended Complaint at the point after the last numbered paragraph of the original Complaint.

PARTIES AND JURISDICTION

17.

1

All Plaintiffs are citizens of the State of Georgia and reside in Duluth, Georgia.

18.

Existing Defendant JEFF TEVES has admitted that he has been validly served and that he is subject to the jurisdiction and venue of this Court.

19.

Defendant TIPPMANN PNEUMATICS, INC. (hereinafter "TIPPMAN") is an Indiana corporation with its principal place of business and offices located in Fort Wayne, Indiana. Defendant TIPPMAN is subject to the jurisdiction of this Court pursuant to O.C.G.A. § 9-10-91 because TIPPMAN regularly solicits business in Georgia and sells its products directly to Georgia consumers; TIPPMAN sells its products to distributors in Georgia with the expectation and knowledge that they will be purchased by Georgia consumers; TIPPMAN committed a tortuous act which caused damages in Georgia, and TIPPMAN derives substantial revenue from products used in Georgia. Defendant TIPPMAN may be served by delivery of Summons and a Second Original of this Complaint to a company official or to its registered agent for service of process.

20.

The true names or capacities of Defendants named herein as John Does (1-5) [hereinafter collectively referred to as "John Does"] are unknown to the Plaintiffs, who therefore sue said Defendants by such fictitious names. Plaintiffs will amend the complaint to show said John Does' true names and service addresses when the same have been ascertained. Plaintiffs identify John Does as either joint tortfeasors or possible additional liable parties. Plaintiffs allege on information and belief that John Does are in some manner responsible for the acts or omissions alleged herein.

21.

Venue in the above-styled civil action is proper in this County and Court.

FACTUAL BACKGROUND

22.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 21 above as if they were fully restated verbatim herein.

23.

Defendant TIPPMANN is in the business of designing, manufacturing, assembling, testing, inspecting, marketing, selling, distributing, and servicing paintball guns and paintball gun accessories.

24.

At some time prior to March 22, 2003, the parents of Defendant JEFF TEVES purchased a Tippmann 98 Custom model paintball gun designed and manufactured by Defendant TIPPMANN (hereinafter "Paintball Gun"). The 98 Custom model resembles a firearm and is classified by Defendant TIPPMANN as a dangerous weapon. The Paintball Gun utilizes a carbon dioxide powered high-pressure system to fire balls of paint at opponents in combat-simulated "war games."

25.

On or about March 22, 2003, Plaintiff SPENSER BOSE, Defendant JEFF TEVES and two other boys went to a vacant lot in a subdivision in Gwinnett County, Georgia, where they intended to play paintball games. The boys entered a trailer in order to dress for the game, prepare their guns and store their belongings.

26.

Neither Plaintiff SPENSER BOSE nor any of the other boys were wearing protective goggles or masks at the time, as the game had not begun.

27.

While in the trailer, before beginning the paintball games, Defendant JEFF TEVES attempted to install the CO2 cylinder cartridge into the adapter on his Paintball Gun. When he attempted to screw the CO2 into the gun, the cartridge violently erupted, creating a loud noise and causing the Paintball Gun to discharge on its own. A paintball from Defendant JEFF TEVES's Paintball Gun struck Plaintiff SPENSER BOSE in the left eye with great force.

28.

The Paintball Gun should not have discharged or misfired without deliberate action to fire the gun by Defendant JEFF TEVES.

29.

The Paintball Gun malfunctioned and was defective because it should not have discharged while the CO2 cylinder was being inserted.

30.

The Paintball Gun should have come with a warning that the Paintball gun could discharge while the CO2 cylinder is being installed.

31.

There Paintball Gun should have also been equipped with a safety mechanism whereby the gas would not be forced out of the cylinder prior to its complete installation into the firearm.

32.

The Paintball Gun should have been equipped with a valve whereby the gas could have only been released after an accessible handle or switch was activated by the operator.

33.

The 98 Custom model manufactured by Defendant TIPPMANN and purchased by the parents of Defendant JEFF TEVES was equipped with a safety button that, when engaged, prevented

the gun from being fired. Defendant TIPPMANN, however, failed to include any markings or labels on the gun to indicate whether the safety was in the “safe” position or the “fire” position at any given time and it was impossible to tell without pulling the trigger.

34.

Defendant JEFF TEVES was handling his loaded Tippmann Paintball Gun at a time when he believed the safety was engaged in the “safe” position and the gun could not be fired.

35.

The Paintball Gun should have been equipped with a safety mechanism that was properly marked and/or labeled to indicate whether the safety was in the “safe” position or the “fire” position at any given time. On this particular paintball gun, however, the safety mechanism was not marked or labeled in any way, and thus it was impossible to determine whether the safety was in the “safe” position or the “fire” position.

36.

The acts and omissions of Defendant TIPPMANN as set forth herein were willful and showed an entire lack of care and a conscious indifference to the consequences, justifying an award of exemplary damages against Defendant TIPPMANN.

COUNT TWO

STRICT PRODUCTS LIABILITY – DEFENDANT TIPPMANN PNEUMATICS

37.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 36 above as if they were fully restated verbatim herein.

38.

Defendant TIPPMANN designed and manufactured the paintball gun involved in the

incident-in-suit.

39.

Defendant TIPPMANN was engaged in the business of selling paintball guns for use and consumption.

40.

Defendant TIPPMANN sold the paintball gun involved in the incident-in-suit.

41.

The Paintball Gun was defective in its design and manufacture because it discharged a projectile while the cylinder was being inserted into the gun.

42.

The Paintball Gun was defective in its design and manufacture because it was not equipped with a safety mechanism that prevented the discharge of gas from the air cylinder while the cylinder was being screwed into the gun.

43.

The Paintball Gun was defective in its design and manufacture because it was not equipped with a safety button that was properly marked and/or labeled to indicate whether the safety was in the “safe” position or the “fire” position at any given time.

44.

Because of the above defects, the Paintball Gun was unreasonably dangerous to a person who might reasonably be expected to use or be affected by the product.

45.

The Paintball Gun was defective at the time it was sold by Defendant TIPPMANN or at the

time it left Defendant TIPPMANN's control.

46.

The Paintball Gun was expected to reach the user without substantial change in the condition in which it was sold.

47.

The Paintball Gun did reach the user without substantial change in the condition in which it was sold.

48.

Plaintiff SPENSER BOSE was a person who would reasonably be expected to use or be affected by the Paintball Gun, and at all times Defendant JEFF TEVES used the paintball gun in a negligent but reasonably foreseeable fashion.

49.

As a direct and proximate result of the defect in the Paintball Gun, Plaintiff SPENSER BOSE sustained catastrophic injuries and damages, including loss of sight in one eye, medical expenses, mental and physical pain and suffering, and disfigurement. These injuries are permanent, and, in the future, Plaintiff SPENSER BOSE will suffer loss of sight in one eye, medical and other necessary expenses, mental and physical pain and suffering, and disfigurement.

50.

By reason of the foregoing, Plaintiffs are entitled to recover special and general compensatory damages from Defendant TIPPMANN in an amount to be proven at trial.

COUNT THREE

NEGLIGENCE – DEFENDANT TIPPMANN PNEUMATICS

51.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 50 above as if they were fully restated verbatim herein.

52.

Defendant TIPPMANN was negligent in manufacturing the 98 Custom model gun because Defendant failed to exercise reasonable care to prevent the product from creating an unreasonable risk of harm to a person who might reasonably be expected to use or be affected by the product while it was being used in the manner Defendant might reasonably have expected. In particular, the Paintball Gun was designed in such a way that the gun could discharge while the user was installing the CO2 container, was designed in such a way that the user could not turn the gas on after there was a tight, reliable fit between the gas cylinder and the gun, and because it was not equipped with a safety mechanism that was properly marked and/or labeled to indicate whether the safety was in the “safe” position or the “fire” position at any given time.

53.

As a direct and proximate result of Defendant’s negligence, Plaintiff SPENSER BOSE sustained catastrophic injuries and damages, including loss of sight in one eye, medical expenses, mental and physical pain and suffering, and disfigurement. These injuries are permanent, and, in the future, Plaintiff SPENSER BOSE will suffer loss of sight in one eye, medical and other necessary expenses, mental and physical pain and suffering, and disfigurement.

54.

By reason of the foregoing, Plaintiffs are entitled to recover special and general compensatory damages from Defendant TIPPMAN in an amount to be proven at trial.

COUNT FOUR

JOINT AND SEVERAL LIABILITY

55.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 54 above as if they were fully restated verbatim herein.

56.

The acts and omissions of both Defendants as set forth above combined to proximately cause the catastrophic injuries and damages sustained by Plaintiff SPENSER BOSE. Thus, Defendants are jointly and severally liable to Plaintiffs for the full amount of Plaintiffs' compensatory damages, including damages for permanent loss of sight in one eye, past and future medical expenses, mental and physical pain and suffering, and disfigurement.

COUNT FIVE

PUNITIVE DAMAGES – DEFENDANT TIPPMANN PNEUMATICS

57.

Plaintiffs re-allege and incorporate by reference paragraphs 1 through 56 above as if they were fully restated verbatim herein.

58.

Defendant TIPPMANN's conduct in designing, manufacturing, and selling the paintball gun in a state where it could discharge unexpectedly while installing the CO2 cartridge and without a properly marked or labeled safety mechanism exhibits an entire lack of care and a conscious disregard for the safety of those who are expected to use or be affected by the gun.

59.

As a direct and proximate result of Defendant TIPPMANN's wrongful conduct, Plaintiffs are

entitled to judgment against Defendant TIPPMANN for exemplary damages to deter similar conduct in the future and to punish Defendant TIPPMANN for its wrongful acts, in an amount to be determined by the enlightened conscience of the finder of fact.

WHEREFORE, Plaintiffs pray that summons issue, that Defendants be served and made to appear and answer, that a JURY TRIAL be held, that Defendants be held jointly and severally liable to Plaintiffs, and that Plaintiffs be awarded judgment in Plaintiffs' favor and against the Defendants as follows:

- (a) Under Counts One, Two, Three, and Four, that Plaintiffs be awarded compensatory damages against Defendant TIPPMANN PNEUMATICS, INC. and Defendant JEFF TEVES, jointly and severally, in an amount to be determined by a jury of Plaintiffs' peers for the general and special damages suffered by Plaintiff SPENSER BOSE;
- (b) Under Count Five, that Plaintiffs be awarded punitive damages against Defendant TIPPMANN PNEUMATICS, INC. in an amount sufficient to punish and deter;
- (c) That the cost of this action be levied against Defendants;
- (d) That Plaintiffs be awarded special damages in an amount as may be shown by the evidence and proven at trial;
- (e) That Defendants be charged with all Court costs attributable to this action and such other costs reasonably incurred in the prosecution and trial of this case; and
- (f) That Plaintiffs be granted such other and further relief as may be shown by the evidence and the law, and as this Court may deem just and appropriate.

RESPECTFULLY SUBMITTED THIS _____ DAY OF _____, _____.

P. Charles Scholle
Attorney for Plaintiffs
Georgia Bar Number 629736

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Duluth, Georgia 30097
(678)775-6830