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STATE OF WISCONSIN      CIRCUIT COURT      MILWAUKEE COUNTY

~~07CV0006268~~

Charles B. Lewitzke  
2244 South 65<sup>th</sup> Street  
Milwaukee, WI 53219,

Plaintiff,

v.

Helen of Troy Limited  
1 Helen of Troy Plaza  
El Paso, TX 79912,

Unilever Home & Personal Care USA,  
a division of Conopco, Inc.  
700 Sylvan Avenue  
Englewood Cliffs, NJ 07632,

Wal-Mart Stores, Inc.  
Registered Agent:  
CT Corporation System  
8025 Excelsior Drive, Ste. 200  
Madison, WI 53717,

Centers for Medicare & Medicaid Services,  
7500 Security Blvd.  
Baltimore, MD 21244,

and

ABC Insurance,  
a fictitiously-named entity,

Defendants.

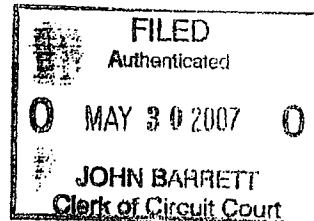
Case No. \_\_\_\_\_  
Case Code: 30107

8/16/07  
GA

Served on  
Helen of Troy  
on 8/16/07

HON. RICHARD J. SANKOVITZ, BR. 29

CIVIL E



SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other

legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

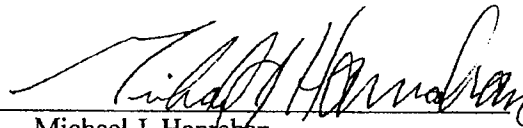
Within forty-five (45) days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is 901 North Ninth Street, Milwaukee, Wisconsin, and to Fox, O'Neill & Shannon, S.C., plaintiff's attorneys, whose address is 622 North Water Street, Milwaukee, Wisconsin. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 30<sup>th</sup> day of May, 2007.

FOX, O'NEILL & SHANNON, S.C.  
Attorneys for Plaintiff

BY:

  
Michael J. Hanrahan  
State Bar No. 1019483

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(414) 273-3939

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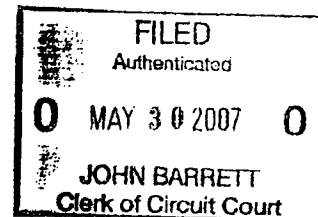
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Defendants.



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**COMPLAINT**

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Now comes the plaintiff, Charles B. Lewitzke, by and through his attorneys, Fox, O'Neill & Shannon, S.C. who alleges a cause of action as follows:

1. Charles B. Lewitzke is an adult resident of the state of Wisconsin who resides at 2244 South 65<sup>th</sup> Street, Milwaukee, Wisconsin 53219. Mr. Lewitzke has resided in Milwaukee County at all times relevant to this action.

2. Defendant Helen of Troy Limited is a foreign corporation with corporate offices located at 1 Helen of Troy Plaza, El Paso, Texas 79912. Helen of Troy designs, produces and markets brand-name personal care products. As of the date of Mr. Lewitzke's injury on May 31, 2004, Helen of Troy owned and was marketing the Brut brand of cologne, including the particular personal care products used by the plaintiff in this case, which were "Brut Splash On Lotion" and "Brut Deodorant Spray." Upon information and belief, Helen of Troy purchased the Brut product line from Unilever Home & Personal Care USA at a time relevant to this claim and assumed the liability for marketing Brut personal care products.

3. Unilever Home & Personal Care USA is a foreign corporate entity that has operated as a division of Conopco, Inc., a foreign corporation, with corporate offices located at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. Upon information and belief, Conopco is a subsidiary of Unilever United States, Inc., whose corporate is located at 700 Sylvan Avenue, Englewood Cliffs, New Jersey 07632. Previously, Unilever Home & Personal Care USA had also done business as Chesebrough Ponds USA Company, with business offices located at 33 Benedict Place, Greenwich, Connecticut 06830. Upon information and belief, at times relevant hereto, Unilever Home & Personal Care USA produced and marketed Brut personal care products, including the particular products used by the plaintiff in this case.

4. Wal-Mart Stores, Inc. is a foreign corporation whose registered agent in the State of Wisconsin is CT Corporation System, 8025 Excelsior Drive, Suite 200, Madison, WI 53717. Wal-Mart is involved in the business of selling products to retail consumers, including the sale of the Brut personal care products at issue in this case. Mr. Lewitzke purchased the Brut personal care products that are at issue in this case at a Wal-Mart store in Milwaukee County.

5. The Centers for Medicare & Medicaid Services (CMS) is an entity authorized by the U.S. Department of Health and Human Services to administer claims for reimbursement and/or subrogation of medical expenses paid by the Medicare program. Medicare paid certain medical expenses incurred by Mr. Lewitzke as a result of the injuries he sustained in the event giving rise to this claim. Upon information and belief, CMS has a right to claim reimbursement and/or subrogation of medical expenses paid on behalf of Mr. Lewitzke.

6. ABC Insurance Company is a fictitiously named insurance entity, which upon information and belief, provided liability insurance to Helen of Troy Limited for personal injury claims made against Helen of Troy Limited during the relevant time. ABC Insurance Company is a proper party to this action under Wisconsin's Direct Action Statute. Upon learning the actual name of this insurance entity, Plaintiff intends to amend the complaint to name the actual insurance entity.

7. Jurisdiction in this action is appropriate because Helen of Troy Limited and Unilever Home & Personal Care USA have done and continue to do substantial business in Milwaukee County through the marketing and sale of their various consumer

products in Milwaukee County. Also, Mr. Lewitzke purchased the Brut products at issue in this case at a Walmart retail store in Milwaukee County.

8. On May 31, 2004, Charles B. Lewitzke was camping with family members at a campground outside of Wisconsin Dells, Wisconsin. On May 31, 2004, Mr. Lewitzke got up in the morning, washed up and shaved in a bathhouse on the camp grounds and applied Brut "Splash-On Lotion" on his face, neck and chest by using his hands. He also used a Brut aerosol "Deodorant Spray" product. After leaving the bathhouse, he went to the fire pit utilized by his camping group and attempted to start a camp fire so that breakfast could be cooked. While doing so, the parts of his body on which he had applied the Brut products ignited, causing burns to his hands, chest and neck. The design of the Brut products and their packaging were the direct and proximate cause of the injuries sustained by Mr. Lewitzke. As a result of his injuries, Mr. Lewitzke incurred medical expenses and has suffered pain and disability. At all times relevant hereto, Mr. Lewitzke was exercising ordinary care for his own safety.

**FIRST CAUSE OF ACTION - STRICT LIABILITY CLAIM (As to all Defendants)**

9. The plaintiff incorporates paragraphs 1 through 8 of the complaint by reference as if each of these paragraphs were set forth herein in their entirety.

10. The defendants designed, manufactured and sold the Brut products. The Brut "Splash-On Lotion" and "Deodorant Spray" products that were manufactured and sold by the defendants were defective because they were unreasonably dangerous and were not safe to use to the extent contemplated by reasonable and ordinary users of the products. Additionally, the labeling of the Brut products did not render the products safe.

11. The defendants are strictly liable to the plaintiff for the harm proximately caused by their manufacture and sale of an unsafe and defective product.

**SECOND CAUSE OF ACTION – NEGLIGENCE (As to the Helen of Troy and  
Unilever Defendants)**

12. The plaintiff incorporates paragraphs 1 through 11 of the complaint by reference as if each of these paragraphs were set forth herein in their entirety.

13. The Helen of Troy and Unilever Home and Personal Care defendants, designed, manufactured, distributed and sold personal care products that were not reasonably safe as designed, constructed, manufactured or sold. The defendants were negligent in the design, manufacture, distribution and sale of the Brut personal care products that were purchased and used by Lewitzke and the products were not made reasonably safe by adequate warnings and/or instructions to users.

14. Once the defendants learned, or in the exercise of reasonable care should have learned, of the risk of the flash fire and burning of users of their Brut personal care products, the defendants had a duty to re-design, modify and/or provide additional warnings and training to users of the product in order to eliminate or minimize the risk of flash fire and burning of users. The defendants were negligent for failing to take such steps.

15. The Brut “Splash-On Lotion” and “Deodorant Spray” products were used by Mr. Lewitzke in a manner foreseeable to the defendants, and Mr. Lewitzke exercised ordinary care for his own safety while using the products.

16. The plaintiff was injured and sustained damages as the proximate result of the defendants’ negligent acts or omissions.

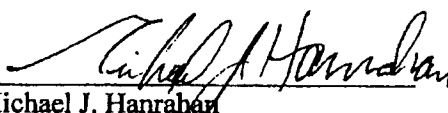
WHEREFORE, the plaintiff prays for the following relief:

A. That the court award the plaintiff judgment against the defendants jointly and severally, in such a sum as to fully and fairly compensate the plaintiff for all general, special, incidental and consequential damages incurred, or to be incurred by the plaintiff as the direct and proximate result of the improper acts and omissions of the defendants.

B. That the court award the plaintiff all costs, disbursements and attorneys fees as allowed by law and any other relief which the court deems just and equitable.

Dated this 30<sup>th</sup> day of May, 2007.

FOX, O'NEILL & SHANNON, S.C.  
Attorneys for Plaintiff

By:   
Michael J. Hanrahan  
State Bar No. 1019483

P.O. ADDRESS:  
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