

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Jessica Lang,)	C/A No. 6:08-642-HFF
)	
)	Plaintiff,
)	
)	PLAINTIFF’S AMENDED COMPLAINT
Versus)	
)	
Victoria’s Secret Stores, LLC; Victoria’s Secret)	
Stores, Inc. (East Reynoldsburg, Ohio); Limited)	
Brands, Inc., and John Doe Corporations 1-10,)	
)	
<u>Defendants.</u>)	

The Plaintiff, complaining of Defendants, amends her Complaint and alleges as follows:

Parties

1. Jessica Lang (hereafter “Plaintiff”) is an individual, and at all times relevant hereto, a resident of Greenville, South Carolina.

2. On information and belief, Defendant, Victoria’s Secret Stores, LLC (hereafter “VS Stores, LLC), is a Limited Liability Corporation existing under the laws of the state of South Carolina, and at all times relevant hereto, was engaged in the business of marketing, selling and distributing Victoria’s Secret products and having its principal place of business in Greenville County, South Carolina.

3. On information and belief, Defendant, Victoria’s Secret Stores, Inc. (hereafter “VS Stores, Inc.) is a duly formed corporation, organized and existing under the laws of the state of Ohio, and at all times relevant hereto, was engaged in the business of manufacturing, marketing, selling and distributing of Victoria’s Secret products in the United States, having its headquarters and principal place of business located at 4 Limited Pkwy., East Reynoldsburg, Ohio 43068.

4. On information and belief, Defendant, Limited Brands, Inc. (hereafter Limited) is the parent corporation of both VS Stores LLC and VS Stores, Inc., and at all times relevant hereto, was engaged in the business of manufacturing, marketing, selling and distributing of Victoria's Secret products in the United States, having its headquarters and principal place of business located at either Three Limited Parkway, Columbus, OH 43230 or 1114 Avenue of the Americas 24th Floor, New York, NY 10036.

5. On information and belief, John Doe Corporations 1-10 are and at all times relevant to this action were engaged in the business of manufacturing, marketing, selling and distributing of Victoria's Secret products in the United States, having its headquarters and principal place of business located at either Three Limited Parkway, Columbus, OH 43230 or 1114 Avenue of the Americas 24th Floor, New York, NY 10036.

6. Jurisdiction and venue are proper in Greenville County, South Carolina.

General Factual Allegations

7. Plaintiffs re-allege and reiterate the allegations of the preceding paragraphs as if fully re-stated herein.

8. Plaintiff was, at the time of the below described malfunction, employed by Alegis Group (hereafter "employer"), and, prior to this occurrence, was in good standing and secure in her employment.

9. Plaintiff was, prior to and at the time of the below described malfunction, pursuing a career as a model.

10. All Defendants are now, and at all times relevant hereto were, in the business of designing, manufacturing, constructing, assembling, inspecting, and selling various types of women's lingerie and "unmentionables", including brassieres, doing business under the moniker Victoria's Secret.

11. On January 30, 2005, Plaintiff purchased a brassiere (model VS Pad Strap/Con Model/Item # 05977421) from the Haywood location of the Victoria's Secret Stores (hereafter "the brassiere").

12. On February 12, 2005, at Ms. Lang's residence at 660 Halton Road, Apartment 2-C in Greenville S.C., at approximately 5:00 a.m. Ms. Lang felt discomfort in her breast caused by the brassiere.

13. When attempting to remove the brassiere in order to alleviate the discomfort, the brassiere malfunctioned, lacerating Plaintiff's chest and left breast, 3 inches x ¼ inch deep, resulting in scarring.

14. Plaintiff immediately went to the nearest Doctor's Care location, known as Doctor's Care Berea (hereafter "Doctor's Care"), located at 701 Congaree Road, Greenville, South Carolina 29609, where she was initially treated for her injuries sustained in the occurrence.

15. Plaintiff was out of work for several days following the events of February 12th, described above, and, as a result, was terminated by employer.

For a First Cause of Action
(Negligence as to all Defendants)

16. Plaintiff re-alleges and reiterates the allegations of the preceding paragraphs as if fully re-stated herein.

17. At all times mentioned in this complaint, defendants so negligently and carelessly designed, manufactured, constructed, assembled, inspected, and sold the brassiere that it was dangerous and unsafe for its intended uses.

18. At all times mentioned in this complaint, defendants so negligently and carelessly inspected, maintained, and sold the brassiere that it was dangerous and unsafe for its intended uses.

19. As a direct and proximate result of the negligence and carelessness of Defendants as described above, Plaintiff suffered the aforementioned injuries, and resulting damages as will be shown unto this honorable court, including but not limited to:

- a. Lost wages;
- b. Pain and suffering;
- c. Future Disability;
- d. Loss of Prospective Business Relations; and
- e. Medical Expenses.

For a Second Cause of Action
(Strict Products Liability as to all Defendants)

20. Plaintiff re-alleges and reiterates the allegations of the preceding paragraphs as if fully re-stated herein.

21. Defendants are liable under strict liability theories to Plaintiff, in particular, upon information and belief, Defendants are sellers of a products, which was sold and placed into the stream of commerce in a defective condition and are therefore liable to the buyer for replacement of the products, and the damages consequently caused by the products.

22. Defendants were engaged in the business of selling such products, and were expected to and did reach the user or consumer, Plaintiff, without substantial change in the condition in which it is sold.

23. Thus, even if Defendants had utilized care in the preparation and sale of the products, a duty which Defendants owed and breached, which is denied, Defendants would be liable to Plaintiff for their conduct.

24. At all times relevant hereto, the brassiere and its component parts were defective as to design, manufacture, and warnings, causing the brassiere and its component

parts to be in a dangerous and defective condition that made them unsafe for their intended use.

25. As a direct and proximate result of the defective and dangerous condition of the brassiere described above, Plaintiff's chest and left breast were lacerated.

26. As a further direct and proximate result of the defective and dangerous condition of the brassiere, Plaintiff suffered the aforementioned injuries, and resulting damages as will be shown unto this honorable court, including but not limited to:

- a. Lost wages;
- b. Pain and suffering;
- c. Future Disability;
- d. Loss of Prospective Business Relations; and
- e. Medical Expenses.

For a Third Cause of Action
(Breach Express Warranty – Breach of the Implied Warranty of Merchantability)

27. Plaintiff re-alleges and reiterates the allegations of the preceding paragraphs as if fully re-stated herein.

28. Defendants are merchants selling goods to Plaintiff or which arrived in Plaintiff's hands in substantially the same condition as when they left the hands of Defendants.

29. The goods were not "merchantable" at the time of sale.

30. Plaintiff was damaged by said goods.

31. The defect or other condition amounting to a breach of the implied warranty of merchantability proximately caused the damages referenced above, including but not limited to:

- a. Lost wages;
- b. Pain and suffering;

- c. Future Disability;
- d. Loss of Prospective Business Relations; and
- e. Medical Expenses.

32. Defendants further expressly warranted to Plaintiffs that the brassiere was in an appropriate condition when it was not and that it otherwise conformed to the description of suitable products, when it, in fact, did not.

33. Plaintiff suffered damages as a consequence of her reliance on the warranties and representations of Defendants.

34. Plaintiff is entitled to actual and punitive damages due to Defendants' actions.

For a Fourth Cause of Action
(Breach of Express Warranty – Breach of the Implied Warranty of Fitness for a Particular Purpose)

35. Plaintiff re-alleges and reiterates the allegations of the preceding paragraphs as if fully re-stated herein.

36. Defendants are merchants selling goods to Plaintiff or which arrived in Plaintiff's hands in substantially the same condition as when they left the hands of Defendants.

37. Defendants represented that the good would be suitable for the particular purpose for which they were designed, namely to serve as a support undergarment.

38. The goods were not fit for the particular purpose at the time of sale.

39. Plaintiff was damaged by such goods.

40. The defect or other condition amounting to a breach of the implied warranty of fitness for a particular purpose proximately caused the damages referenced above, including but not limited to:

- a. Lost wages;
- b. Pain and suffering;

- c. Future Disability;
- d. Loss of Prospective Business Relations; and
- e. Medical Expenses.

41. Defendants further expressly warranted to Plaintiff that the brassiere was in an appropriate condition when it was not and that it otherwise conformed to the description of suitable products, when, in fact, it did not.

42. Plaintiff suffered damages as a consequence of her reliance on the warranties and representations of Defendants.

43. Plaintiff is entitled to actual and punitive damages due to Defendants' actions.

For a Fifth Cause of Action
(Negligent Infliction of Emotional Distress)

44. Plaintiff re-alleges and reiterates the allegations of the preceding paragraphs as if fully re-stated herein.

45. As a direct and proximate result of Defendants' aforementioned and pled negligence, Plaintiff has suffered and will continue to suffer severe emotional distress resulting from the occurrence, including.

46. Plaintiff is entitled to actual and punitive damages due to Defendants' actions.

WHEREFORE, Plaintiff prays for a judgment against Defendants jointly and severally for actual damages in the amount that will fully, fairly and justly compensate Plaintiff, punitive damages, for the cost of this action, attorneys' fees, and for such other and further relief as this court deems just and proper.

RESPECTFULLY SUBMITTED,

HUGHEY LAW FIRM, LLC

_____/s Nathan Hughey

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