

2023-40074 / Court: 164

CAUSE NO.

ALFREDA ANN WHITLEY	§	IN THE DISTRICT COURT
	§	
vs.	§	JUDICIAL DISTRICT
	§	
ACADEMY, LTD d/b/a	§	
ACADEMY SPORTS + OUTDOORS	§	HARRIS COUNTY, TEXAS
	§	

PLAINTIFF'S PETITION & REQUEST FOR RELIEF

Plaintiff, **ALFREDA ANN WHITLEY**, (hereinafter referred to as "Plaintiff" or "Alfreda"), by and through her undersigned counsel, **JOHNSON BECKER, PLLC**, hereby submit the following Complaint and Demand for Jury Trial against Defendant **ACADEMY, LTD d/b/a ACADEMY SPORTS + OUTDOORS** (hereinafter generally referred to as "Defendant" or "Academy"), and allege the following upon personal knowledge and belief, and investigation of counsel:

A. DISCOVERY CONTROL PLAN

1. Discovery in this matter is intended to be conducted pursuant to Level 3 of the Discovery Control Plan as set forth in Rule 190 of the TEXAS RULES OF CIVIL PROCEDURE.

B. STATEMENT ON MONETARY RELIEF SOUGHT

2. In accordance with TEXAS RULE OF CIVIL PROCEDURE 47(c), Plaintiff seeks monetary relief over \$250,000.00.

3. Pursuant to Tex. R. Civ. P. 47(b) Plaintiff seeks damages in an amount within the jurisdictional limits of this Court. A jury, however, will determine the amount of monetary relief awarded. Plaintiff also seeks pre-judgment and post-judgment interest at the highest legal rate.

C. PARTIES

4. Plaintiff is resident and citizen of the City of Pearland, Brazoria County, Texas.

5. Defendant Academy is a Texas Corporation, which has its principal place of business at 646 S Flores St, San Antonio.

D. JURISDICTION AND VENUE

6. At all times relevant herein, Defendant Academy caused tortious actions and/or omissions committed in whole or in part within Texas, which resulted in injuries to Plaintiff in Texas, and Defendant Academy regularly does or solicits business in Texas, engages in persistent conduct directed towards Texas, and derives substantial revenue from goods used or consumed in Texas. Therefore, general and specific personal jurisdiction over Plaintiff's claims against Defendant Academy is proper pursuant to Tex. Civ. Prac. & Rem. Code § 17.042.

7. Jurisdiction is proper under Tex. Civ. Prac. & Rem. Code § 17.042. This matter is properly before this Court because the amount in controversy, exclusive of costs and attorney fees, exceeds this Court's jurisdictional requirements in that Plaintiff seeks monetary relief over \$250,000.00 because Plaintiff has incurred permanent injuries during the foreseeable use of a "Ozone 500 Bike" Model Number 164538 manufactured, marketed, sold and distributed by the Defendant due to a rear shock spring on the bicycles that can become stuck, creating a pinch point between the spring and the seat, posing a risk of injury, and causing the bicycles to stop unexpectedly, posing a fall hazard to the rider.

8. Venue in this Court is proper pursuant to Tex. Civ. Prac. & Rem. Code § 15.002. in that Defendant is resident of Harris County.

E. FACTS

9. Academy designs, manufactures, markets, imports, distributes, and sell a wide-range consumer sporting goods, including bicycles and bicycle related accessories, which specifically includes the subject "Ozone 500 Bike" Model Number 164538 model (hereinafter generally referred to as "bicycle(s)").

10. Defendant designed, manufactured and ultimately sold a product that suffers from serious and dangerous defects. Said defects cause significant risk of bodily harm and injury to its consumers; just as it did to the Plaintiff in this case.

11. Specifically, said defects manifest themselves when the rear shock spring on the bicycles becomes stuck, creating a pinch point between the spring and the seat, posing a risk of injury, and causing the bicycles to stop unexpectedly, posing a fall hazard to the rider.

12. In or around May 2021, Alfreda bought the subject bicycle from Defendant Academy to give as a gift to her daughter for her birthday.

13. On July 3, 2021, Alfreda's daughter was riding the subject bicycle she'd received for her birthday. As the girl was riding, the seat of the bike suddenly collapsed onto the rear tire.

14. Alfreda's father picked up the bike and held it steady so Alfreda could try to fix the problem. Alfreda tugged at the rear shock spring. As she did, spring released and smashed into her middle finger on her right hand.

15. As a result of the incident, Alfreda suffered, *inter alia*, an avulsion fracture.

16. The Ozone 500 Bicycle, which includes the subject bicycle, was recalled on July 14, 2021; ***just 11 days after the incident***. Academy Sports + Outdoors and the Consumer Product Safety Commission issued the recall of the Ozone 500 that were sold from October 2020 to May 2021. The Consumer Product Safety Commission noted that the rear shock spring on the bicycles can become stuck, creating a pinch point between the spring and the seat, posing a risk of injury, or causing the bicycles to stop unexpectedly, posing a fall hazard to the rider. A copy of the CPSC's Recall Notice is attached hereto as Exhibit 'A'.

17. By reason of the forgoing acts or omissions, Plaintiff used the Bicycle with the reasonable expectations that it was properly designed and manufactured, free from defects of any kind, and that it was safe for its intended, foreseeable use.

18. Plaintiff used the Bicycle for its intended purpose and did so in a manner that was reasonable and foreseeable by Defendant.

19. However, the Bicycle was defectively designed and manufactured by Defendant.

20. Defendant's Bicycles possess defects that make them unreasonably dangerous for their intended use by consumers because they can unexpectedly overheat or catch fire.

21. Economic, safer alternative designs were available that could have prevented the Bicycle's seat from creating a pinch point.

22. As a direct and proximate result of Defendant's concealment of such defects, its failure to warn consumers of such defects, its failure to remove a product with such defects from the stream of commerce, and its negligent design of such products, Plaintiff used an unreasonably dangerous Bicycle, which resulted in significant and painful bodily injuries.

23. Consequently, the Plaintiff in this case seek damages resulting from the use of Defendant's Bicycle as described above, which has caused the Plaintiff to suffer serious bodily injuries, medical expenses, physical pain, mental anguish, diminished enjoyment of life, and other damages.

F. CAUSES OF ACTION

COUNT 1

STRICT LIABILITY – DESIGN/MANUFACTURING/MARKETING DEFECT

24. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

25. At the time of Plaintiff's injuries, Defendant's bicycles, were defective and unreasonably dangerous for use by foreseeable consumers, including Plaintiff.

26. Defendant's bicycles, including the subject bicycle, were in the same or substantially similar condition as when they left the possession of Defendant. Specifically, in or around May 2021, Plaintiff purchased the subject bicycle new and directly from the Defendant.

27. Plaintiff did not misuse or materially alter the bicycle.

28. The bicycle did not perform as safely as an ordinary consumer would have expected them to perform when used in a reasonably foreseeable way, including riding and subsequently maintaining the subject bicycle.

29. Defendant's bicycles, including the subject bicycle, and the seats in particular, deviated in its construction or quality from its specifications or planned output in a manner that rendered it unreasonably dangerous.

30. Defendant knew or should have known that the stoneware created a significant shatter hazard.

31. Defendant's actions and omissions were the direct and proximate cause of the Plaintiff's injuries and damages.

COUNT 2 **NEGLIGENCE**

32. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

33. Defendant had a duty of reasonable care to manufacture, market, and sell non-defective bicycles that are reasonably safe for their intended uses by consumers, such as Plaintiff and her family.

34. Defendant failed to exercise ordinary care in the sale, warnings, quality assurance, quality control, distribution, advertising, promotion, sale and marketing of its bicycles in that Defendant's bicycles, including the subject bicycle, and the seats in particular, deviated in their construction or quality from its specifications or planned output in a manner that rendered it unreasonably dangerous in that it created a pinch hazard.

35. Defendant knew or should have known that the seat created a significant pinch hazard.

36. Defendant's actions and omissions were the direct and proximate cause of the Plaintiff's injuries and damages.

COUNT 3
BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

37. Plaintiff incorporates by reference each preceding and succeeding paragraph as though set forth fully at length herein.

38. At the time Defendant marketed, distributed and sold its bicycles to the Plaintiff in this case, Defendant warranted that its bicycles were merchantable for which they were intended.

39. Members of the consuming public, including consumers such as the Plaintiff, were intended third-party beneficiaries of the warranty.

40. In or around May 2021, Plaintiff purchased the subject bicycle new and directly from the Defendant.

41. Defendant's bicycles, and in particular, the subject bicycle, was not merchantable because the stoneware of the subject bicycle deviated in its construction or quality in an unreasonably dangerous manner in that it created a pinch hazard.

45. Plaintiff provided Defendant with Notice of her claim on or about August 3, 2021.

46. The Plaintiff in this case purchased and used the subject bicycle with the reasonable expectation that it was properly designed and manufactured, free from defects of any kind, and that it was safe for its intended, foreseeable use.

47. Defendant's breach of implied warranty of merchantability was the direct and proximate cause of Plaintiff's injury and damages.

G. INJURIES & DAMAGES

48. By reason of the above, Plaintiff has suffered losses and damages in a sum that exceeds jurisdictional limits of this Court, for which Plaintiff hereby sues.

49. As a direct and proximate result of Defendant's negligence and wrongful misconduct as described herein, Plaintiff has suffered and will continue to suffer physical and emotional injuries and damages including past, present, and future physical and emotional pain and suffering as a result of the Incident. Plaintiff is entitled to recover damages from Defendant for these injuries in an amount which shall be proven at trial.

50. As a direct and proximate result of Defendant's negligence and wrongful misconduct, as set forth herein, Plaintiff has incurred and will continue to incur the loss of full enjoyment of life and disfigurement as a result of the Incident. Plaintiff is entitled to recover damages for loss of the full enjoyment of life and disfigurement from Defendant in an amount to be proven at trial.

H. JURY DEMAND

51. Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

I. CONCLUSION & PRAYER

52. For these reasons, Plaintiff asks the Court to award Plaintiff a judgment against Defendant for the following: (a) actual damages, (b) prejudgment and post judgment interest, (c) court costs, (d) attorney fees, and (e) all other relief to which Plaintiff is entitled.

DATED this 29th day of June 2023.

CLARK - von PLONSKI – ANDERSON

By: /s/ Collen A. Clark

COLLEN A. CLARK

State Bar No. 04309100

JACOB L. von PLONSKI

State Bar No. 24098554

R. CONNOR BARBE

State Bar No. 24108598

LINDA LE

State Bar No. 24126312

3500 Maple Avenue, Suite 1250

Dallas, Texas 75219

214-780-0500

214-780-0501 Fax

eservice@cypalaw.com

ATTORNEYS FOR PLAINTIFF

In association with:

JOHNSON BECKER, PLLC

Adam J. Kress, Esq. (#0397289)

Pro Hac Vice to be filed

444 Cedar Street, Suite 1800

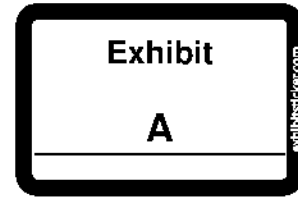
(612) 436-1800 / (612) 436-1801 (fax)

akress@johnsonbecker.com

Attorneys for Plaintiff



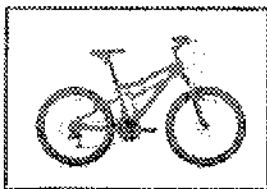
United States
**CONSUMER PRODUCT
SAFETY COMMISSION**



Academy Sports + Outdoors Recalls Ozone 500 Girls' and Boys' Elevate 24-Inch Bicycles Due to Fall and Injury Hazards



Recalled Ozone 500 Girls' Elevate 24 in Bicycle



Name of Product:

Ozone 500® Girls' and Boys' Elevate 24-Inch Bicycles

Hazard:

The rear shock spring on the bicycles can become stuck, creating a pinch point between the spring and the seat, posing a risk of injury, or causing the bicycles to stop unexpectedly, posing a fall hazard to the rider.

Remedy:

Refund

Replace

Repair

Recall Date:

July 14, 2021

Units:

About 3,860

Consumer Contact

Academy Sports + Outdoors toll-free at 888-922-2336 from 7 a.m. to 10 p.m. CT daily, email at customerservice@academy.com, or online at www.academy.com and click on "Product Recalls" at the bottom of the page for more information.

Recall Details

Description:

This recall involves the Ozone 500 Girls' and Boys' Elevate 24-Inch Bicycles. "Ozone 500" is printed on the frame. The girls' bicycle frame is fuchsia with black script and the boys' bicycle frame is black with red script. The following style numbers can be found on the seat tube.

Style Number	Description
164538	Ozone 500 Girls' Elevate 24 in Bicycles
164540	Ozone 500 Boys' Elevate 24 in Bicycles

Remedy:

Consumers should immediately stop using the recalled bicycles and bring them to any Academy Sports + Outdoors store for a free repair or a full refund. Consumers can also contact Academy Sports + Outdoors for a replacement shock and repair instructions or to receive a pre-paid shipping label to return the bicycle for a full refund.

Incidents/Injuries:

Academy has received one report of a person injuring their hand under the seat when the rear shock spring compressed.

Sold At:

Academy Sports + Outdoors stores and online at www.academy.com from October 2020 through May 2021 for about \$300.

Importer(s):

Academy Ltd., d/b/a Academy Sports + Outdoors, of Katy, Texas

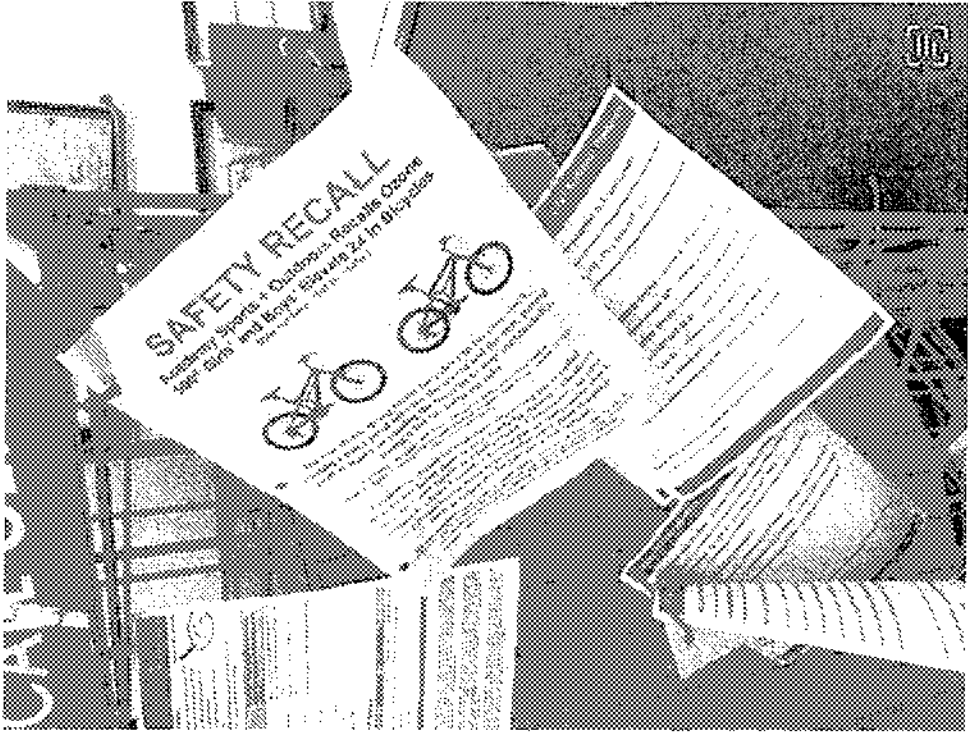
Manufactured In:

China

Recall number:

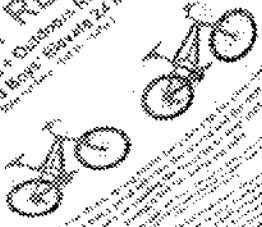
21-163

Fast Track Recall



SAFETY RECALL

Mongoose Sports & Outdoor Recreable Goods
Last Year's and This Year's Bicycles



Due to a manufacturing defect, Mongoose Sports & Outdoor Recreable Goods is recalling certain bicycles manufactured between January 1, 2001 and December 31, 2001. The recalled bicycles are the Mongoose Sports & Outdoor Recreable Goods 24" and 26" bicycles. The recalled bicycles are sold in the United States, Canada, and Mexico. The recalled bicycles are sold in the United States, Canada, and Mexico. The recalled bicycles are sold in the United States, Canada, and Mexico.

Due to a manufacturing defect, Mongoose Sports & Outdoor Recreable Goods is recalling certain bicycles manufactured between January 1, 2001 and December 31, 2001. The recalled bicycles are the Mongoose Sports & Outdoor Recreable Goods 24" and 26" bicycles. The recalled bicycles are sold in the United States, Canada, and Mexico. The recalled bicycles are sold in the United States, Canada, and Mexico.

CHAMP
Due to a manufacturing defect, Mongoose Sports & Outdoor Recreable Goods is recalling certain bicycles manufactured between January 1, 2001 and December 31, 2001. The recalled bicycles are the Mongoose Sports & Outdoor Recreable Goods 24" and 26" bicycles. The recalled bicycles are sold in the United States, Canada, and Mexico. The recalled bicycles are sold in the United States, Canada, and Mexico.

