

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

MIA KELLEY and MITCH KELLEY,)
 Husband and wife,)
)
 Plaintiffs)
)
 versus)
)
 SKILLING INSTITUTE, LLC, an Arizona)
 Limited Liability Company; and WARREN)
 J. STARNES,)
)
 Defendants.)

Case No. _____

PETITION

Plaintiffs state:

Jurisdiction and Venue

1. Plaintiffs Mia Kelley and Mitch Kelley are residents of the State of Missouri.
2. At all times herein concerned Plaintiff Mitch Kelley is and was the lawfully wedded husband of Mia Kelley.
3. Defendant Skilling Institute, LLC is a Limited Liability Company organized under the laws of the State of Arizona.
4. Defendant Skilling Institute, LCC has neither registered agent nor office in the State of Missouri, and is not registered to do business within this State.
5. Defendant Skilling Institute, LLC may be served with process by serving its Statutory Agent within the State of Arizona, to wit: Warren J. Starnes, 4340 E. Indian School, No. 21, Phoenix, Arizona 85018.

6. Defendant Warren J. Starnes is a resident of the State of Arizona and can be served with process by serving said individual at 4340 E. Indian School, No. 21, Phoenix, Arizona 85018.
7. This Court has jurisdiction over the defendants by reason of the Missouri Long Arm Statute, §506.500, RSMo, in that the causes of action arise from the transaction of business within this State, the making of a contract within this State, and commission of tortious acts within this State, as well as violation of the Missouri Merchandising Practices Act within this State.
8. The tortious acts herein complained of occurred in whole or in substantial part in the State of Missouri. Venue is proper in Jackson County, Missouri, as no defendants reside in the State of Missouri.

Facts

9. Defendant Skilling Institute, LLC sells and markets a product under the name of Photon Genius.
10. The Photon Genius constitutes “Merchandise” as that term is defined in section ¶407.010(4), RSMo.
11. Defendant Warren J. Starnes is and at all times herein concerned was the sole member of Defendant Skilling Institute, LLC.
12. As an agent, employee, salesman, and member of and for Defendant Skilling Institute, LLC, Defendant Warren J. Starnes is a “Person” as that term is defined in §407.010(5), RSMo.
13. As a business entity, Defendant Skilling Institute, LLC is a “Person” as that term is defined in §407.010(5), RSMo.

14. In physical design, the Photon Genius product resembles an upright tanning bed complete with light tubes of various colors. A copy of the web page promoting the merchandise is attached hereto as Ex. A.
15. The Photon Genius is marketed by defendants as “revolutionary” and as “noticeably improving the human body’s powers to strengthen, heal, and regenerate naturally.”
16. The Photon Genius is marketed by defendants as a “dynamic alternative cancer therapy and Lyme disease treatment, as well as to improve quality of life issues in a wide variety of other serious conditions.”
17. The Photon Genius is marketed by defendants as being based upon the inventions of Ed Skilling, described as an “Historic Electronic Genius Electronic Engineer/Developer.”
18. The Photon Genius is marketed by defendants as generating “the Genius dynamics of Photon Genetic Energy, Life-force Energy Transmission, Harmonic Frequency Tube Technology, Harmonic Infrared Energy, Transmission to communicate with all the cells of the body to balance and enliven all systems and organs of the human body. The Photon-Genius transmits, imprints, and reminds the human body at the cellular level of the essential creative process of perpetual enlivening energy that results in more natural and empowers regenerative processes throughout the body.”
19. The Photon Genius is marketed by defendants as being “a wonderfully safe and easy-to-use means of achieving ever-accelerating levels of health, wellness and more efficient natural regeneration and rejuvenation.”
20. The Photon Genius is marketed by defendants as having numerous other health benefits such as “renews tension, stress and fatigue,” “relieves pain, muscle tension

and fatigue,” “improves flow within the lymphatic system to reduce inflammation,” and “reduces pathogenic bacteria, fungus and parasites.”

21. The Photon Genius is marketed by defendants as being beneficial for numerous disorders, including heartburn, hemorrhoids, diabetes, inflammation and swelling, abnormal nerve function, arthritis, and neuralgia.
22. Plaintiff Mia Kelly spoke with defendant Warren J. Starnes and inquired whether the Photon Genius would be beneficial for her multiple sclerosis and Lyme disease. Mr. Starnes, and by and through him Skilling Institute, LLC, assured her it would be beneficial.
23. At no time did defendants, or either of them, submit the Photon Genius to the Food and Drug Administration for approval.
24. At no time did defendants, or either of them, receive approval from the Food and Drug Administration for the Photon Genius.
25. Plaintiff Mia Kelly and her husband Mitch Kelly ordered a Photon Genius from defendants and took delivery of same in or about October, 2012. The order was made from Missouri and delivery was made in Missouri.
26. The defendants marketed the Photon Genius to plaintiffs and other prospective purchasers within the State of Missouri.
27. The purchase of the Photon Genius was for primarily personal or family purposes.
28. The purchase price of the Photon Genius from defendants by plaintiffs was approximately Twenty-Seven Thousand Dollars.

29. Upon using the Photon Genius, plaintiff Mia Kelly became seriously injured and debilitated, suffering grievous and permanent injuries to her entire body and sustaining damages as are more fully set forth hereinafter.

Count I - Missouri Merchandising Practices Act Violation

30. The above and foregoing paragraphs 1 through 26 are incorporated herein as if fully set forth *in haec verba*.

31. At all times herein concerned defendants were engaged in the trade and commerce of selling the Photon Genius device.

32. At all times herein concerned defendants were engaged in the sale of the Photon Genius to plaintiffs.

33. The Photon Genius is merchandise as that term is defined and used in the Missouri Merchandising Practices Act, Sec's 407.010 *et seq*, Revised Statutes of Missouri.

34. Defendants advertised the Photon Genius within the State of Missouri.

35. Defendants sold and delivered to plaintiffs the Photon Genius within the State of Missouri.

36. The above-described representations by defendants regarding the scientific and medicinal nature of the Photon Genius and its alleged health and wellness benefits, including its appropriateness for use in treating multiple sclerosis and Lyme disease, were deceptive, fraudulent, false, misrepresentations in connection with the advertisement and sale of the Photon Genius in trade and commerce in Missouri to plaintiffs.

37. The defendants furthermore concealed, suppressed, and omitted the true nature of the Photon Genius, which is little more than the use of colored light tubes in a tanning-

bed like frame, in connection with the advertisement and sale of the Photon Genius in trade and commerce in Missouri to plaintiffs.

38. The misrepresentations, concealment and omissions were material facts to the purchase by plaintiffs of the Photon Genius.
39. The Photon Genius which defendants advertised and sold to plaintiffs was worthless for the purpose for which it was advertised and sold, that is the treatment and improvement of plaintiff Mia Kelly's multiple sclerosis and Lyme disease.
40. The Photon Genius directly caused or directly contributed to cause or aggravate grievous, serious, permanent and progressive injuries and damages to plaintiff Mia Kelly's person. Said injuries and damages have required and will continue to require physician, medical, pharmaceutical, and other medical care and treatment, all to the expense of plaintiff Mia Kelly.
41. The defendants, at all times herein concerned, made the aforesaid misrepresentations with the intent that plaintiffs rely on such representations in purchasing the Photon Genius.
42. The representations were false.
43. Defendants knew their representations were false at the time they were made. In the alternative, defendants made the representations without knowing whether they were true or false.
44. The defendants' representations were material to the purchase of the Photon Genius.
45. Plaintiffs relied upon the representations by defendants in purchasing the Photon Genius.
46. Plaintiffs' reliance upon the representations was reasonable under the circumstances.

47. As a result of the purchase of the Photon Genius by plaintiffs upon reliance of the false representations by defendants, plaintiffs expended the sum of Twenty-Seven Thousand Dollars upon the device which was worthless for the purpose for which it was purchased and sold.
48. As a result of the purchase and use of the Photon Genius by plaintiffs upon reliance of the false representations by defendants, plaintiff Mia Kelly was injured and damaged as above described.
49. As a result of the injuries and damages to his wife Mia Kelly, plaintiff Mitch Kelly was directly caused or directly contributed to be caused the loss of services and consortium of his wife.
50. Defendants aforesaid conduct was motivated by evil greed and was committed with a black heart with full knowledge and intent that they preyed upon persons with difficult-to-treat conditions who were the most vulnerable to the type of snake oil merchandising defendants were engaged in, and plaintiffs are entitled to seek and obtain punitive damages for the complete indifference and conscious disregard displayed by defendants for the safety of plaintiff Mia Kelly and others.

WHEREFORE, plaintiffs pray judgment against defendants jointly and severally, for actual damages in such sum as will fairly and justly compensate plaintiffs; for punitive damages in such sum as will serve to punish defendants for their conduct and to deter defendants and others from engaging in the same or similar conduct; for their costs herein incurred; and for such other and further relief as to this Court seems fit and proper in the premises.

Count II – Common Law Fraud

51. Plaintiffs here incorporate the above and foregoing paragraphs 1 through 48 inclusive as if fully set forth *in haec verba*.

52. The above-described conduct of defendants further constitute common-law fraud.

WHEREFORE, plaintiffs pray judgment against defendants jointly and severally, for actual damages in such sum as will fairly and justly compensate plaintiffs; for punitive damages in such sum as will serve to punish defendants for their conduct and to deter defendants and others from engaging in the same or similar conduct; for their costs herein incurred; and for such other and further relief as to this Court seems fit and proper in the premises.

Count III – Strict Liability in Tort (Product Defect)

53. Plaintiffs here incorporate the above and foregoing paragraphs 1 through 50 inclusive as if fully set forth *in haec verba*.

54. Defendants sold the Photon Genius in the course of defendants' business.

55. At the time the Photon Genius was sold it was then in a condition unreasonably dangerous when put to a reasonably anticipated use.

56. The Photon Genius was used in a manner reasonably anticipated.

57. By reason of the Photon Genius being in an unreasonably dangerous condition when sold, the Photon Genius directly caused or directly contributed to cause or aggravate grievous, serious, permanent and progressive injuries and damages to plaintiff Mia Kelly's person. Said injuries and damages have required and will continue to require physician, medical, pharmaceutical, and other medical care and treatment, all to the expense of plaintiff Mia Kelly.

58. As a result of the injuries and damages to his wife Mia Kelly, plaintiff Mitch Kelly was directly caused or directly contributed to be caused the loss of services and consortium of his wife.

WHEREFORE, plaintiffs pray judgment against defendants, jointly and severally, in such sum as will fairly and justly compensate plaintiffs; for their costs herein incurred; and for such other and further relief as to this Court seems fit and proper in the premises.

Count IV – Breach of Implied Warranty of Fitness

59. Plaintiffs here incorporate the above and foregoing paragraphs 1 through 56 inclusive as if fully set forth *in haec verba*.

60. At the time defendants sold to plaintiffs the Photon Genius, defendants knew or should have known of the use to which the produce was purchased, being the treatment of multiple sclerosis and Lyme disease.

61. Plaintiffs reasonably relied upon defendants' judgment that the Photon Genius was fit for the purpose of treating multiple sclerosis and Lyme disease.

62. When the Photon Genius was sold by defendants, it was not fit for the purpose of treatment of multiple sclerosis and Lyme disease.

63. Within a reasonable time after plaintiffs knew the product was not fit for such use, plaintiffs gave defendants notice thereof.

64. By reason of the Photon Genius not being fit for the purpose of treating multiple sclerosis and Lyme disease when sold, the Photon Genius directly caused or directly contributed to cause or aggravate grievous, serious, permanent and progressive injuries and damages to plaintiff Mia Kelly's person. Said injuries and damages have

required and will continue to require physician, medical, pharmaceutical, and other medical care and treatment, all to the expense of plaintiff Mia Kelly.

65. As a result of the injuries and damages to his wife Mia Kelly, plaintiff Mitch Kelly was directly caused or directly contributed to be caused the loss of services and consortium of his wife.

WHEREFORE, plaintiffs pray judgment against defendants, jointly and severally, in such sum as will fairly and justly compensate plaintiffs; for their costs herein incurred; and for such other and further relief as to this Court seems fit and proper in the premises.

Count V – Breach of Implied Warranty of Merchantability

66. Plaintiffs here incorporate the above and foregoing paragraphs 1 through 63 inclusive as if fully set forth *in haec verba*.

67. When the Photon Genius was sold by defendants to plaintiffs, it was not fit for one of its ordinary purposes, being the treatment of multiple sclerosis and Lyme disease.

68. Plaintiff Mia Kelly used the Photon Genius for one of its ordinary purposes, being the treatment of multiple sclerosis and Lyme disease.

69. Within a reasonable period of time after plaintiffs knew the product was not fit for such purpose, plaintiffs gave defendants notice thereof.

70. By reason of the Photon Genius not being fit for one of its ordinary purposes, being treating multiple sclerosis and Lyme disease when sold, the Photon Genius directly caused or directly contributed to cause or aggravate grievous, serious, permanent and progressive injuries and damages to plaintiff Mia Kelly's person. Said injuries and damages have required and will continue to require physician, medical,

pharmaceutical, and other medical care and treatment, all to the expense of plaintiff Mia Kelly.

71. As a result of the injuries and damages to his wife Mia Kelly, plaintiff Mitch Kelly was directly caused or directly contributed to be caused the loss of services and consortium of his wife.

WHEREFORE, plaintiffs pray judgment against defendants, jointly and severally, in such sum as will fairly and justly compensate plaintiffs; for their costs herein incurred; and for such other and further relief as to this Court seems fit and proper in the premises.

Respectfully submitted,

/s/ Glenn R. Gulick, Jr.
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