

1 **TITLE: COLD DRINK BLENDER**
2 **SUBJECT: TORTS**
3 **FILE: TORT07J.QUE**
4

5 Manufacturer designed and manufactured a “Cold Drink Blender,” which it sold through retail
6 stores throughout the country. The Cold Drink Blender consists of three components: a base that
7 houses the motor, a glass container for liquids with mixing blades inside on the bottom, and a
8 removable cover for the container to prevent liquids from overflowing during mixing. A
9 manufacturer’s brochure that came with the Cold Drink Blender states that it is “perfect for
10 making all of your favorite cold drinks, like mixed fruit drinks and milk shakes, and it even
11 crushes ice to make frozen drinks like daiquiris and piña coladas,” and cautioned, “Do not fill
12 beyond 2 inches of the top.”
13

14 Retailer sold one of the Cold Drink Blenders to Consumer. One day, Consumer was following a
15 recipe for vegetable soup that called for thickening the soup by liquefying the vegetables. After
16 deciding to use her Cold Drink Blender for this purpose, Consumer filled the glass container to
17 the top with hot soup, placed it on the base, put the cover on top, and turned the blender on the
18 highest speed. The high speed rotation of the mixing blades forced the contents to the top of the
19 container, pushed off the cover, and splashed hot soup all over Consumer, who was severely
20 burned by the hot soup.
21

22 Consumer filed a lawsuit against Manufacturer and Retailer, pleading claims for strict products
23 liability and negligence. In her complaint, Consumer stated that the Cold Drink Blender was not
24 equipped with a cover that locked onto the top of the container in such a way as to prevent it
25 from coming off during operation and that the failure to equip the blender with this safety feature
26 was a cause of her injuries.
27

28 Manufacturer moved to dismiss the complaint against it on the following grounds:
29

30 (1) Consumer’s injury was caused by her own misuse of the Cold
31 Drink Blender which, as implied by its name, was intended for mixing only
32 cold substances.
33

34 (2) Consumer’s injury was caused by her own lack of care, as
35 she overfilled the Cold Drink Blender and operated it at high speed.
36

37 (3) The design of the Cold Drink Blender was not defective
38 since It complied with design standards set forth in federal
39 regulations promulgated by the federal Consumer Products Safety
40 Commission, which do not require any locking mechanism.
41

42 Retailer moved to dismiss the complaint against it on the following ground:
43

44 (4) Retailer played no part in the manufacture of the Cold Drink
45 Blender and therefore should not be held responsible for a defect in its

- 1 design.
- 2
- 3 How should the court rule on each ground of both motions to dismiss? Discuss.

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6 A motion to dismiss should be granted only where there are no triable issues so fact, and the
7 moving party is entitled to judgment as a matter of law.
8

9 **I. Motion to Dismiss based on misuse of the product.**
10

11 A product is designed defectively if the designer did not take reasonable precautions against
12 foreseeable misuse. Putting hot fluids in a Cold Drink Blender is probably within the foreseeable
13 misuse of the product. The name of the product implies it was intended for mixing cold
14 substances. But the intended use is not in dispute. The issue is would a reasonable person
15 believe that hot substances could be safely blended.
16

17 This is an issue upon which reasonable people could disagree. It is a triable issue of fact. The
18 motion should be denied.
19

20 **A. Was the Product Defective When Used with Hot Substances?**
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22 Was the Blender defective when used for hot substances? The test for a design defect is either
23 the Feasible Alternatives Test, used by the ALI, or the Consumer Expectation Test, used in a
24 minority of jurisdictions, such as California.
25

26 **1. Feasible Alternatives Test**
27

28 Under this test, the product was defectively designed if there were practical feasible alternatives.
29 The courts look to a number of factors. This include
30

31 Usefulness of the product-	For example, cigarettes vs. a medical device
32 Functional utility-	Is the danger needed to make the product serve its purpose.
33 Psychological utility-	Would an increase in safety have a dramatic negative 34 effect on appearance
35 Social cost-	How many people have already been injured, and balance 36 the cost of injuries against the burden of redesigned product
37 Cost to redesign	

38

39 Here, a Cold Drink Blender is a useful product. Functional utility is a factor against
40 Manufacturer because the absence of a locked top to the blender is not necessary to its function.
41 The psychological cost is a factor against the defendant because a lock top on a blender is not
42 ugly. Social cost cannot be estimated because we have no facts about it. The cost of redesign,
43 and the increase in the ultimate cost of the new product are small therefore this factor is also
44 against defendant. In summary, whether or not there are feasible alternatives is a triable issue of
45 fact. The motion should be denied.

3 **2. Consumer Expectation Test**
4

5 A few jurisdictions use the Consumer Expectation Test. The issue is whether or not the product
6 was more dangerous than a reasonable consumer would expect, when used to mix hot
7 substances.
8

9 There are arguments on both sides of this issue. On the one hand, the name of the product
10 indicates it was designed for blending cold substances. But it does not say it should not be used
11 for hot substances. A reasonable consumer could probably believe it was at least safe, or he or
12 she would have been warned. Certainly this Consumer thought the product was safe. This is a
13 triable issue because reasonable minds could differ. Motion to dismiss on these grounds should
14 be denied.
15

16 **C. Inadequate warnings**
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18 The product can also be defective because of inadequate warnings. Here, there was a warning
19 which read “Do not fill beyond 2 inches of the top.” This may not be an adequate warning. For
20 example, it does not indicate the consequences, such as personal injury, damage to the product,
21 product will not blend well if over filled, etc. Also, the warnings do say “do not use hot
22 substances.”
23

24 Reasonable minds could differ as to whether or not these warnings were adequate. The motion
25 to dismiss on these grounds should be denied.
26

27 **II. Consumers Contributory Negligence**
28

29 Was the consumer negligent is using the blender for hot substances, in the face of the name of the
30 product “Cold Drink Blender” and the numerous examples of the proper use of the substance.
31 The examples include “mixing all of your favorite cold drinks like milk shakes, frozen daiquiris,
32 ..., even crushes ice.” This makes it clear that the intended use was for cold substances. But this
33 is not a warning that injury may occur if hot substances are used.
34

35 Contributory negligence used to be a total defense to negligence actions. This is no longer true.
36 Nowadays, contributory negligence is treated under comparative negligence doctrines, and result
37 in a reduction in recovery, not a total denial of recovery.
38

39 In strict liability cases, the same policy is followed - reduction in recovery.
40

41 Therefore, whether or not Consumer was negligent is relevant, and is a triable issue. The motion
42 to dismiss on these grounds should be denied..
43

44 **III. Compliance with federal Consumer Products Safety Commission requirements**
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1 The general rule is that compliance with governmental regulations is only a factor in products
2 liability cases. It is not conclusive for either negligence cases, or strict liability cases. Motion to
3 dismiss on these grounds should be denied.
4

5 **IV. Liability of Retailer**

6 **A. Strict Liability**

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8
9 Retailer's defense that it did not participate in the manufacture of the blender is not a defense to
10 strict liability action. The rule is that everyone in the commercial chain of distribution is strictly
11 liable for harm caused by a defective product, if the product was defective when it left that
12 person.
13

14 **B. Negligence**

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16 Negligence actions are different. A retailer is liable for his or her own negligence, but not the
17 negligence of others in the chain of manufacturing or distribution.
18

19 Retailers motion should be denied as to the complaint for strict liability because Retailer if the
20 product is defective, Retailer is liable.
21

22 Retailer may be entitled to dismissal as to the negligence claim. This is so because Consumer's
23 complaint does not allege any acts of negligence by Retailer. For example, if Retailer knew that
24 others had been hurt in this way by this blender, and continued to sell it, Retailer could be liable
25 for negligence. However, no such claim was made. The only conduct of Retailer in the
26 complaint is that Retailer sold the blender.
27

28 Since there is no claim of negligent conduct of Retailer, the negligence action should be
29 dismissed because negligence was not claimed in the pleadings. This is not exactly the same as
30 the basis for Retailer's motion to dismiss because "it played not part in the manufacture and
31 should not be held responsible for defects in its design." It is however almost the same claim,
32 and the court should grant the motion to dismiss the negligence complaint against Retailer.
33

34 Word count: 1062