

CASE NO.

OLDHAM CIRCUIT COURT
DIVISION _____

NICOLE BALLINGER as Guardian of
TRISTAN BALLINGER, a Minor
2005 Clear View Drive
Lagrange, KY 40031

PLAINTIFF

vs.

COMPLAINT
(Filed Electronically)

AMAZON.COM, INC.
410 Terry Avenue North
Seattle, WA 98109

DEFENDANTS

Registered Agent: Corporation Service Company
251 Little Falls Drive
Wilmington, DE 19808

Serve: Kentucky Secretary of State

UNKNOWN DEFENDANTS who were persons,
corporations, and/or unincorporated associations
acting as agents, employees, subsidiaries and affiliates
of Amazon.com, Inc.

Appoint: Warning Order Attorney

and

MELIA SHARP
2010 Clear View Drive
Lagrange, KY 40031

*** **

Comes the Plaintiff, Nicole Ballinger, as Guardian of Tristan Ballinger, a Minor, by
counsel, and for her cause of action against the Defendants, Amazon.com, Inc., Unknown
Defendants and Melia Sharp, states as follows:

PARTIES AND JURISDICTION

1. At all times mentioned herein, the Plaintiff, Nicole Ballinger, resides at 2005 Clear View Drive in Lagrange, Oldham County, Kentucky, and is bringing this action after having been qualified and appointed by the Oldham District Court on July 18, 2017 as the Guardian of Tristan Ballinger, her minor son. Attached to this Complaint is the Order Appointing Guardian designating Nicole Ballinger as the Guardian for her minor son. Tristan Ballinger is sixteen years old and resides with his mother, Nicole Ballinger, and father, Michael Ballinger, in Lagrange, Kentucky.

2. The Defendant, Amazon.com, Inc., is a Delaware corporation and has no known registered agent within the Commonwealth of Kentucky upon whom process may be served.

3. The Defendant, Amazon.com, Inc., is a corporation with the power to sue and be sued in its own name. Amazon.com, Inc. and its multitude of wholly-owned subsidiaries and affiliated corporations are worldwide sellers and distributors of products through the well-known website Amazon.com. Amazon.com, Inc. has no parent company. Amazon.com, Inc. and its wholly-owned subsidiaries and affiliated corporations have woven a corporate web of thousands of entities throughout the United States and abroad, thus rendering potential litigants unable to pinpoint precisely which Amazon entities are engaged in the conduct at issue.

4. Upon information and belief, the Defendant, Amazon.com, Inc., its wholly-owned subsidiaries and affiliated corporations surpassed Walmart in 2015 as the most valuable retailer in the United States by market capitalization. Amazon is the fourth most valuable public company in the world, the largest internet company by revenue in the world and the eighth largest employer in the United States. Amazon.com, Inc.'s business activities throughout the United States in general, and in Oldham County, Kentucky in particular, are regular, recurrent and pervasive.

5. At all times mentioned herein, the Unknown Defendants are persons, corporations or unincorporated associations having no known address or registered agent for service of process within the Commonwealth of Kentucky that acted as agents, employees, subsidiaries and affiliates of Amazon.com, Inc. Plaintiffs will amend this Complaint pursuant to Kentucky Rule of Civil Procedure 15 once the proper identities of Unknown Defendants are ascertained.

6. Amazon.com, Inc. and Unknown Defendants (hereinafter referred to collectively as “Amazon” or the “Amazon Defendants”) are subject to the jurisdiction of the Oldham County Circuit Court for the reasons that said Defendants have purposely availed themselves of the privilege of acting and transacting business within the Commonwealth of Kentucky and Oldham County in particular; that the Defendants’ contact with this state and Oldham County has been continuous and systematic; that the incident giving rise to this litigation occurred in Oldham County; and that the Amazon Defendants otherwise have sufficient minimum contacts with the Commonwealth of Kentucky and Oldham County to make an exercise of jurisdiction over them reasonable.

7. The Defendant, Melia Sharp, is a minor and a resident of Lagrange, Oldham County, Kentucky.

8. The amount in controversy in this case exceeds the minimum jurisdictional limits of the Oldham Circuit Court.

9. Venue is proper in the Oldham Circuit Court because Plaintiff and one Defendant reside in Oldham County, Kentucky; because Amazon.com, Inc. and Unknown Defendants continually transact business within the Commonwealth of Kentucky and in Oldham County in particular; because a substantial part of the events or omissions giving rise to this action occurred

within Oldham County; and because eyewitnesses to the events described herein and other persons with pertinent information reside in Oldham County.

FACTUAL BACKGROUND

10. At all times mentioned herein, the Amazon Defendants sold through their website, Amazon.com, various products offered for sale by Top Swords, Inc. Top Swords, Inc. conducts a web-based mail order business from its headquarters in Dallas, Georgia.

11. Top Swords, Inc., offers hundreds of models of swords, daggers, knives, machetes, scimitars, helmets, armor, chainmail, chest guards, shields, mace balls, batons, stun guns and airsoft guns and accessories, most of Chinese manufacture. Top Swords, Inc. uses Amazon to process its online orders and ship its merchandise throughout North America.

12. At all times mentioned herein, the Defendant, Amazon, through its website and that of Top Swords, Inc., marketed, advertised and offered for sale at \$19.95 a samurai sword or “katana” known as the “Anime Reino De Rasos Charlotte Cuulhourne Sword,” SKU: SK908-405CA. According to Top Swords, Inc.’s website, the Anime Reino De Rasos Charlotte Cuulhourne Sword “is seen carried by the Arrancar known as Charlotte Cuulhourne he’s part of Sosuke’s Army.” The sword has an overall length of forty-one inches (41”) and a blade length of twenty-seven inches (27”). The sword features a “440 stainless steel blade with a rose pattern cast metal guard and purple nylon cord wrap handle.” The sword comes with a high-gloss wooden sheath. As further enticement to prospective customers, the website boasts “It’s a sword dieing for your attention.”

13. The Amazon Defendants were involved in the packaging, labeling, marketing, sale and/or distribution of the Anime Reino De Rasos Charlotte Cuulhourne Sword.

14. Between July 15, 2012 and October 14, 2012, one Rich Timpone purchased through Amazon's website several units of the samurai sword known as the Anime Reino De Rasos Charlotte Cuulhourne Sword offered for sale by Top Swords, Inc. (Copies of emails documenting these purchases are attached as Exhibit A). It was the intention of Rich Timpone to present these swords at an upcoming employee awards banquet to several employees under his direct supervision.

15. The Defendant, Amazon, received payment for each order and either Amazon or Top Swords, Inc. then packaged and placed in the stream of commerce the swords and wooden sheaths ordered by Mr. Timpone. The swords were delivered to Mr. Timpone at his Cincinnati, Ohio workplace in plain, brown, corrugated cardboard boxes with styrofoam inserts. There were no owner's manuals, labels, stickers, warnings, package inserts or documents of any kind included within the shipments.

16. On or about October 24, 2012, Mindy Ballinger, an employee under the direct supervision of Rich Timpone, attended the aforementioned employee awards banquet and was presented with an Anime Reino De Rasos Charlotte Cuulhourne Sword.

17. Shortly after receiving the Anime Reino De Rasos Charlotte Cuulhourne Sword, Mindy Ballinger decided to give it to her brother, Plaintiff Michael Ballinger, an avid outdoorsman and collector of firearms and knives. The sword went into storage initially but resurfaced in the home of Michael Ballinger and Nicole Ballinger in the fall of 2016.

18. On November 16, 2016, Melia Sharp and J.K., both fifteen years of age, visited Tristan Ballinger, also fifteen, at the Ballingers' home in Lagrange, Kentucky. Tristan Ballinger exhibited to his friends his "new sword," the Anime Reino De Rasos Charlotte Cuulhourne Sword, which was then in its original, like-new, unaltered and unmodified condition.

19. The three friends adjourned to the deck behind the Ballingers' home where Tristan Ballinger, J.K. and Melia Sharp hatched a plan to use the sword to chop plastic water bottles tossed into the air, to film their activities, and then to post the video of their exploits on Instagram, Snapchat or other social media. Melia Sharp then acted as director, choreographer and videographer as Tristan Ballinger and J.K. each took turns tossing a plastic water bottle into the air while the other attempted to strike the airborne bottle with the sword.

20. As J.K. swung the sword at a plastic bottle, the steel blade of the sword disengaged from the handle, flew as much as twenty feet, and struck Tristan Ballinger, effectively impaling him through the forehead.

21. Tristan Ballinger required emergency transport from his home to the Level One Trauma Center at University of Louisville Hospital where he was diagnosed with a penetrating traumatic brain injury with brain compression, malignant edema, intraventricular hemorrhage, subdural hemorrhage and bilateral anterior cerebral territory infarct. Tristan Ballinger was intubated and ventilated, underwent a bicoronal craniectomy, endured placement of an extraventricular drain, received a tracheostomy, had a PEG tube placed, and spent approximately six weeks in a coma before being discharged to Frazier Rehabilitation Institute.

22. Subsequent investigation, including evidence gathered at the scene by Oldham County Police and cell phone video footage of the incident captured by Melia Sharp, revealed that

- a) the subject Anime Reino De Rasos Charlotte Cuulhourne Sword was not a "full tang" sword, i.e., one in which the back portion of the blade component extends the full length of the grip portion of the handle;
- b) the tang of the subject sword extended only seven centimeters (7 cm) into the handle;

- c) the blade was secured not by bolts or rivets running through the handle and the blade but by what appears to be rubber cement;
- d) the subject sword was sold, packaged, shipped and distributed by Amazon and Top Swords, Inc. to Rich Timpone and the ultimate users and consumers of the product with no owner's manual, warnings or other documentation of any kind to alert the users and ultimate consumers that the sword was of less than full tang design and construction, that the blade extended only 7 centimeters into the handle, that the blade was not secured by bolts or rivets through the handle and the blade but by an adhesive akin to rubber cement, and that the sword was intended for display purposes only and not for the purposes to which swords are typically applied, including chopping, slicing, sparring, swordplay, pretend sword fighting and horseplay;
- e) the steel blade disengaged from the sword handle as a result of the centrifugal force generated by the swing of J.K. and not upon contact with any object; and
- f) neither Amazon's website, nor Top Swords, Inc.'s website, nor the sword's packaging, nor the sword itself bore any warnings or notices of any kind suggesting to the buyer or the ultimate consumer of the product that the Anime Reino De Rasos Charlotte Cuulhourne Sword was a "toy" or intended for decorative purposes only or otherwise unfit for the purposes to which swords are typically applied.

COUNT I – STRICT LIABILITY

23. Plaintiffs reiterate and incorporate by reference each and every allegation set forth in paragraphs 1-22 above.

24. Amazon is strictly liable for inspecting, labeling, marketing, selling, distributing, failing to warn of, and placing into the stream of commerce a product that was defective and

unreasonably dangerous to the foreseeable users and consumers thereof, including Tristan Ballinger.

25. The Anime Reino De Rasos Charlotte Cuulhourne Sword was patently defective and unreasonably dangerous because the sword's design and manufacture provided no effective means of preventing disengagement of the blade from the sword handle making it unreasonably dangerous when used or misused in an intended or reasonably foreseeable way.

26. The Anime Reino De Rasos Charlotte Cuulhourne Sword was patently defective and unreasonably dangerous because the Defendants failed to test and inspect the product for blade disengagement, making it unreasonably dangerous when used or misused in an intended or reasonably foreseeable way.

27. The Anime Reino De Rasos Charlotte Cuulhourne Sword was patently defective and unreasonably dangerous because the Amazon Defendants failed to warn the foreseeable users and consumers of the product, including Tristan Ballinger, of the dangers, risks and potential for injury associated with using the sword for the purposes to which swords are typically applied and for anything other than display purposes.

28. J.K.'s and Tristan Ballinger's particular use of the Anime Reino De Rasos Charlotte Cuulhourne Sword on November 16, 2016, whether intended by the Amazon Defendants or not, was reasonably foreseeable in light of the purposes to which swords are typically applied, namely chopping, slicing, sparring, swordplay, pretend sword fighting and horseplay and in light of the Defendants' failure to warn that the sword was unfit, ill-suited and dangerous for such applications.

29. To the extent the Amazon Defendants were wholesalers, distributors or retailers of the subject Anime Reino De Rasos Charlotte Cuulhourne Sword, and not manufacturers, those Defendants knew or should have known at the time of sale or distribution that the sword was in a

defective condition, unreasonably dangerous to the foreseeable users and consumers thereof, including Tristan Ballinger.

30. The failure of the Defendants to test, inspect, label, market, distribute, sell, warn of, and place into the stream of commerce a samurai sword that was safe for consumer use and to avoid or minimize an unreasonable risk of harm likely to result in the product's known environment of use was a substantial factor in causing Tristan Ballinger's injuries.

31. As the direct and proximate results of the Amazon Defendants' testing, inspecting, labeling, marketing, selling, distributing, failing to warn of, and placing into the stream of commerce a product that was defective and unreasonably dangerous to the foreseeable users and consumers thereof, Tristan Ballinger has been grievously and permanently injured, has been caused to incur medical expenses, will be caused to incur medical expenses in the future, has had his ability to labor and earn wages permanently impaired, has endured great pain and suffering of body and mind, and will endure great pain and suffering of body and mind in the future.

COUNT II – NEGLIGENCE OF AMAZON

32. The Plaintiffs reiterate and incorporate by reference each and every allegation set forth in paragraphs 1-31 above.

33. The Amazon Defendants had a duty to individuals, including Tristan Ballinger, to exercise reasonable and ordinary care in the testing, inspecting, labeling, packaging, marketing, warning, selling and distribution of the Anime Reino De Rasos Charlotte Cuulhourne Sword. This duty required Defendants to ensure that their sword did not pose an unreasonable risk of bodily harm to Tristan Ballinger and all other consumers, and similarly required the Defendants to warn of the risks, dangers and potential for injury associated with using the sword for the purposes to which swords are typically applied and for anything other than display purposes.

34. Amazon breached its duty of care and was negligent in the testing, inspecting, labeling, packaging, marketing, warning, selling and distribution of the Anime Reino De Rasos Charlotte Cuulhourne Sword in many respects including, but not limited to, the following:

- a) Failing to test the sword so as to avoid an unreasonable risk of harm to the foreseeable users and consumers thereof, including Tristan Ballinger, arising from the sharp steel blade disengaging from the sword handle;
- b) Failing to inspect the sword so as to avoid an unreasonable risk of harm to the foreseeable users and consumers thereof, including Tristan Ballinger, arising from the sharp steel blade disengaging from the sword handle;
- c) Failing to use reasonable and ordinary care in labeling and packaging the sword to warn its foreseeable users and consumers, including Tristan Ballinger, that the sword was unsuitable for the purposes to which swords are typically applied and for anything other than display purposes and that the blade was prone to disengagement, so as to avoid an unreasonable risk of harm to the foreseeable users and consumers thereof, including Tristan Ballinger;
- d) Failing to anticipate that the foreseeable users and consumers of its sword, including Tristan Ballinger, might use the sword for the purposes to which swords are typically applied—including chopping, slicing, sparring, swordplay, pretend sword fighting and horseplay—and warning against such uses, regardless of the purpose for which the sword was originally designed and manufactured;
- e) Negligently and carelessly marketing and promoting the Anime Reino De Rasos Charlotte Cuulhourne Sword on its website without mentioning or warning that the sword was

suitable for display purposes only and unreasonably dangerous, ill-suited and unsafe for the purposes to which swords are typically applied;

- f) Failing to use reasonable care in the distribution and sale of its Anime Reino De Rasos Charlotte Cuulhourne Sword to avoid an unreasonable risk of harm to the foreseeable users and consumers thereof, including Tristan Ballinger, when it knew or, in the exercise of ordinary care should have known, that the sword was unreasonably dangerous, ill-suited and unsafe for the purposes to which swords are typically applied;
- g) Failing to conduct post-market vigilance or surveillance by monitoring and properly reacting to numerous cases of katana blade disengagements well documented on You Tube and other internet sites;

35. Amazon knew or should have known at the time of distribution or sale of the Anime Reino De Rasos Charlotte Cuulhourne Sword that the product was defective and unreasonably dangerous to its foreseeable users.

36. Amazon's negligence was a substantial factor in causing the injuries to Tristan Ballinger.

37. As the direct and proximate results of the Amazon Defendants' negligent acts and omissions, as specifically alleged herein, Tristan Ballinger has been grievously and permanently injured, has been caused to incur medical expenses, will be caused to incur medical expenses in the future, has had his ability to labor and earn wages permanently impaired, has endured great pain and suffering of body and mind, and will endure great pain and suffering of body and mind in the future.

COUNT III - BREACH OF WARRANTIES

38. The Plaintiffs reiterate and incorporate by reference each and every allegation set forth in paragraphs 1-37 above.

39. The Amazon Defendants expressly warranted and/or impliedly warranted that the subject samurai sword was safe, merchantable and fit for the purposes for which it was manufactured and for sale to the ultimate consumer.

40. The Amazon Defendants breached the aforementioned warranties in that the Anime Reino De Rasos Charlotte Cuulhourne Sword was unsafe, not of merchantable quality, and unfit and dangerous for the particular purposes for which it was intended and unfit for sale to the ultimate consumer.

41. Amazon's breach of one or more of said warranties was a substantial factor in causing the injuries sustained by Tristan Ballinger.

42. As the direct and proximate results of the Amazon Defendants' breach of warranties, both express and implied, Tristan Ballinger has been grievously and permanently injured, has been caused to incur medical expenses, will be caused to incur medical expenses in the future, has had his ability to labor and earn wages permanently impaired, has endured great pain and suffering of body and mind, and will endure great pain and suffering of body and mind in the future.

COUNT IV - MISREPRESENTATION

43. The Plaintiffs reiterate and incorporate by reference each and every allegation set forth in paragraphs 1-42 above.

44. Amazon represented to the public, including Plaintiffs and Tristan Ballinger, that the subject samurai sword was safe, reliable and suitable for the use being made of it by Tristan

Ballinger at the time of his injury, when, in fact, the sword was unsafe, unreliable and not suitable for its intended and advertised use.

45. Amazon's misrepresentations were substantial factors in causing the injuries sustained by Tristan Ballinger.

46. As the direct and proximate results of the Amazon Defendants' misrepresentation, Tristan Ballinger has been grievously and permanently injured, has been caused to incur medical expenses, will be caused to incur medical expenses in the future, has had his ability to labor and earn wages permanently impaired, has endured great pain and suffering of body and mind, and will endure great pain and suffering of body and mind in the future.

COUNT V - DUTY TO WARN

47. The Plaintiffs reiterate and incorporate by reference each and every allegation set forth in paragraphs 1-46 above.

48. The Amazon Defendants knew or, in the exercise of ordinary care, should have known that the Anime Reino De Rasos Charlotte Cuulhourne Sword was not safe, reliable, or suitable for its intended use at the time of purchase, which imposed a duty upon Amazon to warn the class of individuals who would be placed in a position of unreasonable danger by use of the sword, including Tristan Ballinger. Amazon did not comply with its duty to warn of the sword's dangerous condition.

49. Amazon's negligent failure to warn was a substantial factor in causing the injuries sustained by Tristan Ballinger.

50. As a direct result of the Amazon Defendants' failure to warn of the sword's dangerous condition, Tristan Ballinger has been grievously and permanently injured, has been caused to incur medical expenses, will be caused to incur medical expenses in the future, has had

his ability to labor and earn wages permanently impaired, has endured great pain and suffering of body and mind, and will endure great pain and suffering of body and mind in the future.

COUNT VI – GROSS NEGLIGENCE

51. The Plaintiffs reiterate and incorporate by reference each and every allegation set forth in paragraphs 1-50 above.

52. At all times mentioned herein, the Amazon acted willfully, with malice, and with a reckless indifference to, or flagrant disregard for, the health and safety of the public in general, and Tristan Ballinger in particular.

53. The Defendants acted with a subjective awareness that the Anime Reino De Rasos Charlotte Cuulhourne Sword was not safe, reliable, or suitable for the purposes to which swords are typically applied, and with a subjective awareness that a disengaging steel blade posed a substantial risk of serious bodily injury and death to the foreseeable users and consumers of the sword and to persons in close proximity to the users and consumers.

54. The Amazon Defendants acted consciously, willfully, maliciously and with a reckless disregard for the health and welfare of the public in general, and Tristan Ballinger in particular, by selling—or alternatively, requiring its supplier, Top Swords, LLC, to furnish for sale in the American market—a sword that was reasonably safe for foreseeable users and consumers, instead of a nominally cheaper, inherently dangerous and defective product, thus manifesting a priority of profits over people.

55. Amazon acted consciously, willfully, maliciously and with a reckless disregard for the health and welfare of the public in general, and Tristan Ballinger in particular, by deliberately depriving the swords' foreseeable users and consumers, including Tristan Ballinger, of any owner's manuals, warnings, labels, stickers or documentation of any kind to warn of the substantial

risks of blade disengagement and associated serious bodily injury and death. In so doing, Amazon saved a few cents per unit shipped, once again exhibiting a priority for profits over people.

56. The Amazon Defendants' gross negligence was a substantial factor in causing the injuries sustained by Tristan Ballinger.

57. As the direct and proximate results of Amazon's gross negligence, Tristan Ballinger has been grievously and permanently injured, has been caused to incur medical expenses, will be caused to incur medical expenses in the future, has had his ability to labor and earn wages permanently impaired, has endured great pain and suffering of body and mind, and will endure great pain and suffering of body and mind in the future.

58. An award of punitive or exemplary damages is appropriate and necessary to punish Amazon and to deter it from engaging in such misconduct in the future and to effect significant change in the way Amazon, as the country's largest retailer, tests, inspects, markets, promotes, warns about, packages, labels, sells and distributes its products.

COUNT VII – NEGLIGENCE OF MELIA SHARP

59. The Plaintiffs reiterate and incorporate by reference each and every allegation set forth in paragraphs 1-58 above.

60. At all times mentioned herein, it was the duty of Melia Sharp to exercise ordinary care for the safety and well-being of others in her company or in such close proximity as to be affected by her actions.

61. Melia Sharp violated her duty by failing to exercise ordinary care for the safety and well-being of other people in her company and for Tristan Ballinger in particular. Specifically, Melia Sharp

a) acted not as an innocent bystander but as an active director, choreographer and

videographer of the stunt that injured Tristan Ballinger;

- b) encouraged and induced two fifteen-year-old boys to engage in reckless and dangerous behavior with a promise of Instagram or Snapchat notoriety; and
- c) failed to ascertain, or even inquire into, whether the sword being used by J.K. and Tristan Ballinger was suitable for the use being made of it at the time of Tristan Ballinger's injury.

62. Melia Sharp's negligence was a substantial factor in causing the injuries sustained by Tristan Ballinger.

63. As the direct and proximate results of Melia Sharp's negligence, Tristan Ballinger has been grievously and permanently injured, has been caused to incur medical expenses, will be caused to incur medical expenses in the future, has had his ability to labor and earn wages permanently impaired, has endured great pain and suffering of body and mind, and will endure great pain and suffering of body and mind in the future.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Nicole Ballinger, as Guardian of Tristan Ballinger, a Minor, demands judgment against the Defendants, Amazon.com, Inc., Unknown Defendants and Melia Sharp, as follows:

1. Compensatory damages to fairly and reasonably compensate Plaintiffs for the injuries, damages and loss to Tristan Ballinger;
2. Punitive damages against the Amazon Defendants;
3. Attorneys' fees;
4. Costs herein incurred;
5. Trial by jury; and

6. Any and all other relief to which Plaintiffs may appear entitled.

Respectfully submitted,

SLECHTER LAW FIRM, PLLC

/s/ Mat A. Slechter

MAT A. SLECHTER

2507 Bush Ridge Drive, Suite A

Louisville, Kentucky 40245

P: (502) 384-7400

F: (502) 384-7403

mat@kytrialfirm.com