

International Product Liability and Safety: As Illustrated By The Aqua Dots Litigation



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The Aqua Dots Tale: The Product



The Aqua Dots Tale: Spring/Summer 2007

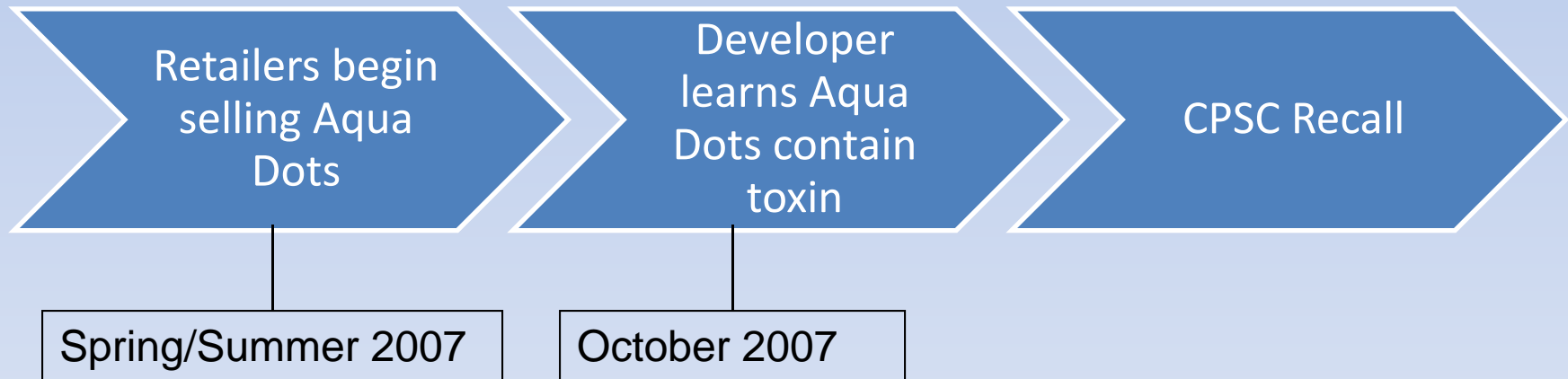


Retailers
begin
selling
Aqua Dots

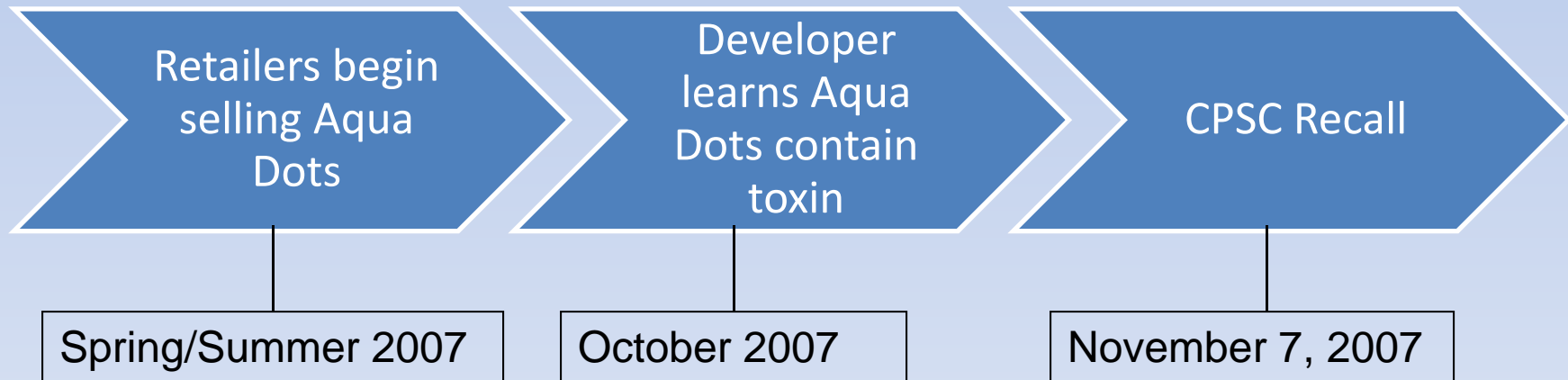
The Aqua Dots Tale: October 2007



The Aqua Dots Tale: November 7, 2007



The Aqua Dots Tale: Timeline



The Aqua Dots Tale: Background

- GHB = date rape drug



The Aqua Dots Tale: Background

- GHB = date rape drug
 - In high doses, GHB thought to have depressive effects on the human nervous system



The Aqua Dots Tale: The Lawsuit

- Plaintiffs

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- Plaintiffs
 - Did not participate in recall

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 - Contract
 - Statutory Claims

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 - Tort
 - Contract
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 - None suffered personal or physical injury

The Aqua Dots Tale: The Lawsuit

- Plaintiffs
 - Did not participate in recall
 - Filed putative class action suit
 - Causes of Action:
 - Tort
 - Contract
 - Statutory Claims
 - None suffered personal or physical injury
 - None ingested Aqua Dots

The Aqua Dots Tale: The Lawsuit

- Defendants

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- Defendants
 - Moose Enterprise Pty Ltd (“Moose”)



The Aqua Dots Tale: The Lawsuit

- Defendants
 - Moose Enterprise Pty Ltd (“Moose”)
 - Australian Company



The Aqua Dots Tale: The Lawsuit

- Defendants
 - Moose Enterprise Pty Ltd (“Moose”)
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 - Developed Aqua Dots



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- Spin Master Ltd & Spin Master Inc.



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- Spin Master Ltd & Spin Master Inc.

- Imported and sold Aqua Dots



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- Developed Aqua Dots



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- Retailers (Target, Toys “R” Us, Walmart)

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- Defendants

- Moose Enterprise Pty Ltd (“Moose”)

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- Developed Aqua Dots



- Spin Master Ltd & Spin Master Inc.

- Imported and sold Aqua Dots



- Retailers (Target, Toys “R” Us, Walmart)

- Offered 388,760 refunds (over \$5 Million) to customers who returned Aqua Dots after recall

The Aqua Dots Tale: The Lawsuit

- Third-Party Defendants

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 - JSSY Limited



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- Third-Party Defendants
 - JSSY Limited
 - Manufactured product



The Aqua Dots Tale: The Lawsuit

- Third-Party Defendants
 - JSSY Limited
 - Manufactured product
 - Did not inform Moose that it substituted ingredients to give rise to lawsuit



The Aqua Dots Tale: The Lawsuit

The Tort Claims:

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The Tort Claims:

Negligence

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The Tort Claims:

Negligence

Strict Liability

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Consumer Product Safety Act Claims

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MUST THERE BE A PHYSICAL INJURY TO PURSUE THESE CLAIMS?

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Consumer Product Safety Act Claims

MUST THERE BE A PHYSICAL INJURY TO PURSUE THESE CLAIMS?

**Economic Loss Doctrine – where Plaintiff sues for purely economic losses, he must have a contract with the Defendant to recover.

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The Contract/Warranty Claims:

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Uniform Commercial Code (“UCC”) Claims

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Misrepresentation to consumers in United States

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Implied Warranty

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- Requires notice and intended product use

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Questions to Consider:

The Aqua Dots Tale: The Lawsuit

The Contract/Warranty Claims:

Uniform Commercial Code (“UCC”) Claims

Misrepresentation to consumers in United States

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Questions to Consider:

Did Plaintiffs read labels before purchasing?

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Questions to Consider:

Did Plaintiffs read labels before purchasing?

Did Plaintiffs rely on the warranty?

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Uniform Commercial Code (“UCC”) Claims

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Questions to Consider:

Did Plaintiffs read labels before purchasing?

Did Plaintiffs rely on the warranty?

Did Plaintiffs know that Moose made representations about the American Society for Testing and Materials Standards?

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The Contract/Warranty Claims:

Uniform Commercial Code (“UCC”) Claims

Misrepresentation to consumers in United States

Implied Warranty

- Requires notice and intended product use

Questions to Consider:

Did Plaintiffs read labels before purchasing?

Did Plaintiffs rely on the warranty?

Did Plaintiffs know that Moose made representations about the American Society for Testing and Materials Standards?

Can Plaintiffs recover for product misuse, i.e., ingestion?

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The Unjust Enrichment Claim:

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The Unjust Enrichment Claim:

- ✓ Must show Moose benefited from unjust or unconscionable conduct
- ✓ Or that Plaintiffs suffered any detriment from their purchase of Aqua Dots

The Aqua Dots Tale: The Lawsuit

Other Claims:

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Other Claims:

- ❖ Warnings Claims

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Other Claims:

- ❖ Warnings Claims
- ❖ State Consumer Fraud Act

The Aqua Dots Tale: The Lawsuit

Other Claims:

- ❖ Warnings Claims
- ❖ State Consumer Fraud Act
- ❖ Violation of State Deceptive Practices Act

The Aqua Dots Tale: The Lawsuit

Other Claims:

- ❖ Warnings Claims
- ❖ State Consumer Fraud Act
- ❖ Violation of State Deceptive Practices Act
- ❖ State Consumer Protection Laws

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- ❖ State Consumer Fraud Act
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What damages are available?

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What damages are available?

❖ Compensatory

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What damages are available?

- ❖ Compensatory
- ❖ Punitive

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What damages are available?

- ❖ Compensatory
- ❖ Punitive
- ❖ Other