

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY, FLORIDA**

**CASE NO:**

**DUSTIN BAGWELL,**

**Plaintiff,**

**vs.**

**TRISTAR PRODUCTS INC., d/b/a Power Pressure  
Cooker XL, a Pennsylvania Corporation and  
BED BATH & BEYOND, INC., d/b/a BBB a  
New York Corporation**

**Defendants. /**

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**COMPLAINT**

Plaintiff, **DUSTIN BAGWELL** (“BAGWELL”), by and through undersigned counsel hereby sue Defendants, **TRISTAR PRODUCTS INC., d/b/a Power Pressure Cooker XL**, a Pennsylvania Corporation (“TRISTAR”), and **BED BATH & BEYOND INC., d/b/a BBB**, a New York Corporation (“BBB”) in support thereof and states:

**JURISDICTION AND VENUE**

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000) exclusive of interest, costs and attorneys’ fees.
2. Plaintiff Dustin Bagwell is an individual who resided in Titusville, Brevard County, Florida at the time this cause of action arose and who presently resides in said jurisdiction.

3. Defendant **TRISTAR PRODUCTS, INC.**, d/b/a **Power Pressure Cooker XL** (“TRISTAR”) is incorporated under the laws of the State of Pennsylvania, with its principal place of business located at 492 US-46, Fairfield, New Jersey 07004.
4. Defendant TRISTAR’s registered agent for service of process is Kitty S. Barile, c/o Leisawitz Heller et al. located at 2620 Westview Drive, Wyomissing Pennsylvania 19610.
5. Defendant **BED BATH & BEYOND, INC.**, d/b/a **BBB** (“BBB”) is incorporated under the laws of New York, with its principal place of business located at 650 Liberty Avenue, Union, New Jersey, 07083.
6. Defendant BBB’S registered agent for service of process is THE PRENTICE-HALL CORPORATION SYSTEM, INC. located at 1202 Hayes St. Ste. 105, Tallahassee Florida 32301.
7. Defendants Tristar, and BBB submitted to the jurisdiction of this Court by doing personally or through their agents the following acts:
  - a. Committing a tortious act within this state by selling and delivering defective products to persons, firms, or corporations in this state via its distributors, dealers, wholesalers, and brokers. These defective products were used by consumers in Florida in the ordinary course of commerce and trade;
  - b. Conducting and engaging in substantial business and other activities in Florida by selling products to persons, firms, or corporations in this state via its distributors, wholesalers, dealers, and brokers. Such products were used by consumers in Florida in the ordinary course of commerce and trade;

- c. The acts and omissions of Defendants Tristar and BBB caused injury to the Plaintiff while in Florida. At or about the time the Plaintiff was injured the Defendants engaged in solicitation activities in Florida to promote sale, consumption, use, maintenance, and/or repair of their products; and
  - d. Selling products with knowledge or reason to foresee that these products would be shipped in interstate commerce and would reach the market of Florida users or consumers.
8. Venue is proper in Brevard County because Plaintiff resides in Brevard County and a substantial part of the events or omissions of the incident giving rise to this complaint took place in Titusville, Brevard County, Florida.

### **BACKGROUND**

9. On November 27, 2015, Plaintiff BAGWELL's sister purchased a Power Pressure Cooker XL Model Number PPC790 (the "subject pressure cooker") from Defendant BBB's online store.
10. The subject pressure cooker was designed, manufactured, assembled, tested, inspected, labeled, developed, promoted, marketed, advertised, sold, and/or distributed by Defendant TRISTAR.
11. On December 25, 2015, Plaintiff BAGWELL received the subject pressure cooker as a gift from his sister for the holidays.
12. The subject pressure cooker is marketed by TRISTAR in a way that would intentionally mislead a consumer into believing the product was reasonably safe, with multiple safeguards that were well-tested and would function to prevent the exact kind of harmful pressured explosion that is the subject of this lawsuit including but not limited to:

- a. “lock” on the cooker itself that is intended to prevent the top from coming off or removed until pressure had dissipated;
  - b. “spring loaded” safety pressure release which enables steam and pressure to escape around the pot lid should all other features fail by automatically separating the inner pot from the rubber gasket;
  - c. A temperature “cut-off” device that automatically shuts off power supply in the event the pressure cooker malfunctions and exceeds a safe internal temperature; and
  - d. A “back up” safety release valve to automatically release pressure build up beyond a maximum setting.
13. On or about March 21, 2016, Plaintiff BAGWELL was in his home and decided to use the subject pressure cooker to prepare a meal for his family.
14. Plaintiff BAGWELL placed a frozen chicken in the subject pressure cooker and set it to cook for thirty minutes. Plaintiff BAGWELL was using the subject pressure cooker in a normal and foreseeable fashion in accordance with its intended purpose. The subject pressure cooker ran through its thirty minutes and set itself to standby warmer mode.
15. Plaintiff BAGWELL approached the subject pressure cooker, selected the cancel button, and placed the pressure valve into the open position to release the steam. During this time, Plaintiff BAGWELL washed dishes while his wife prepared biscuits in the oven.
16. At approximately 5:08 P.M., while Plaintiff BAGWELL was turning the lid slowly on the subject pressure, suddenly and without warning, the subject pressure cooker exploded and the lid shot up in the air causing all of the scalding contents of the subject pressure cooker to fly up and out onto Plaintiff BAGWELL.

17. Plaintiff BAGWELL was rushed to the emergency room at Parrish Medical Center (“PMC”) in Titusville, Florida, where he was treated in the burn unit.
18. While at PMC, Plaintiff BAGWELL was treated for extensive burns, which included first and second degree burns to his abdomen and upper thigh. Plaintiff BAGWELL required an overnight stay in the hospital and was then referred to Parish Medical Wound Care center to treat the burns he sustained.
19. Plaintiff BAGWELL underwent treatment and debridement of the affected areas from March 30, 2016 to April 27, 2016.
20. As a result of a malfunction of the subject pressure cooker, Plaintiff BAGWELL sustained severe, permanent, and life-altering first and second degree burns.
21. When Defendants sold and/or distributed the subject pressure cooker, it was expected to and did reach its eventual consumer, without substantial change in its condition.
22. At the time of the sale and distribution of the subject pressure cooker by the Defendants, it was in a defective condition, which defect was the proximate cause of the injuries and damages sustained by Plaintiff BAGWELL, and for which Defendants are strictly liable.
23. Plaintiff BAGWELL did not change or alter the condition of the subject pressure cooker from the time of its purchase from Defendant BBB until the accident occurred on March 21, 2016.

## **COUNT I**

### **STRICT LIABILITY AGAINST TRISTAR**

24. All preceding paragraphs are incorporated by reference as if stated fully herein.
25. TRISTAR is in the business of designing, manufacturing, assembling, testing, inspecting, labeling, developing, promoting, marketing, advertising, selling and/or distributing the subject pressure cooker that forms the basis of this lawsuit.

26. Defendant TRISTAR placed the subject pressure cooker on the market with knowledge that it would be used without inspecting for dangers or defects. Defendant TRISTAR knew or should have known that the ultimate users, operators or consumers, including but not limited to Plaintiff BAGWELL would not or could not properly inspect these products for dangerous conditions and that the detection of such defects and dangerous would be beyond the capabilities of such persons.
27. The subject pressure cooker failed to perform as an ordinary consumer would reasonably expect.
28. The subject pressure cooker that TRISAR designed, manufactured, assembled, tested, labeled, developed, promoted, marketed, advertised, sold, and/or distributed was in an unreasonable, unsafe, defective and dangerous condition which was hazardous to users including Plaintiff BAGWELL.
29. Specifically, the top of the subject pressure cooker was capable of (and did) explode and come off in the ordinary, foreseeable, and proper use of cooking food with the product, without any adequate warning to the consumer that such a failure would foreseeably occur.
30. Plaintiff BAGWELL was injured while using the subject pressure cooker for its intended purpose, in a foreseeable manner, and in accordance with the instructions that accompanied the subject pressure cooker.
31. Furthermore, TRISTAR marketed the subject pressure cooker in a defective manner in that TRISTAR failed to warn or inform consumers of the unreasonably dangerous properties of the subject pressure cooker and methods by which consumers such as Plaintiff BAGWELL could protect, prevent, and/or mitigate such dangers.

32. The subject pressure cooker was defective due to inadequate, or the absence of, warnings or instructions, including warning stickers, placards, or proper documentation to alert users regarding the hazardous conditions described herein.
33. The unreasonable, unsafe, defective and dangerous subject pressure cooker existed at the time it left TRISTAR's possession.
34. The subject pressure cooker was expected to, and did reach consumers (including Plaintiff BAGWELL), without substantial change in the condition in which it was designed, manufactured, assembled, tested, inspected, labeled, developed, promoted, marketed, advertised, sold, and/or distributed by TRISTAR.
35. For the reasons set forth above, the subject pressure cooker was unreasonably defective, unsafe, and dangerous to foreseeable users including Plaintiff BAGWELL.
36. As a direct and proximate cause of the foregoing conduct of Defendant TRISTAR, Plaintiff BAGWELL sustained serious and permanent bodily injuries resulting in pain and suffering, permanent impairment, disability, mental anguish, inconvenience, loss of the enjoyment of life, expense of medical care and treatment, expense of hospitalization, lost wages in the past, and the loss of ability to earn wages in the future.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL** demands judgment against the Defendant **TRISTAR PRODUCTS, INC.**, for damages costs interest and other such relief this Court deems just.

**COUNT II**  
**NEGLIGENCE AGAINST TRISTAR**

37. All preceding paragraphs are incorporated by reference as if stated fully herein.

38. TRISTAR knew or in the exercise of due care should have known the subject pressure cooker would be used without inspection in an unreasonably dangerous condition that would create a foreseeable risk of harm to users, including Plaintiff BAGWELL.
39. TRISTAR owed a duty to reasonably and safely design, manufacture, assemble, test, inspect, label, develop, promote, market, advertise, sell, and/or distribute the subject pressure cooker.
40. TRISTAR also owed a duty to adequately warn of dangers posed by the subject pressure cooker's design.
41. TRISTAR breached the duty owed to Plaintiff BAGWELL by negligently designing, manufacturing, assembling, testing, inspecting, labeling, developing, promoting, marketing, advertising, selling, and/or distributing the subject pressure cooker when it was not in a reasonably safe condition for foreseeable use as a reasonable consumer would expect.
42. TRISTAR was additionally negligent and breached its duty in that it failed to give adequate or proper warnings or instructions, and failed to make appropriate post-marketing efforts to prevent known incidents, such as the one that forms the basis of this lawsuit.
43. Plaintiff BAGWELL had no control over the method or manner in which the subject pressure cooker was designed, manufactured, assembled, tested, inspected, labeled, developed, promoted, marketed, advertised, sold, and/or distributed and it came to Plaintiff BAGWELL's possession in the same condition it was in when it left Defendant's control.



44. The negligence described above directly and proximately caused the incident and the injuries sustained by Plaintiff BAGWELL in that it directly and in natural continuous sequence, produced, or sustainably contributed to his injuries.
45. As a direct and proximate result of the foregoing negligence of TRISTAR, Plaintiff BAGWELL sustained serious and permanent bodily injuries, resulting in pain and suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL** demands judgment against the Defendant **TRISTAR PRODUCTS, INC.**, for damages costs interest and other such relief this Court deems just.

### **COUNT III**

#### **BREACH OF WARRANTY AGAINST TRISTAR**

46. All preceding paragraphs are incorporated by reference as if stated fully herein.
47. The defect in the subject pressure cooker does not conform to the merchantable condition impliedly represented by TRISTAR at the time that Plaintiff BAGWELL's sister purchased the subject pressure cooker.
48. TRISTAR was a merchant with respect to the subject pressure cooker and the subject pressure cooker was not merchantable as warranted.
49. TRISTAR impliedly warranted to the public generally and to Plaintiff BAGWELL's sister specifically that the subject pressure cooker was of merchantable quality.
50. TRISTAR impliedly warranted that the subject pressure cooker was safe and fit for the purpose intended when used under ordinary circumstances and in an ordinary manner.

51. TRISTAR knew, or reasonably should have known, of the purpose for which Plaintiff BAGWELL's sister purchased the subject pressure cooker, that Plaintiff BAGWELL's sister was relying upon TRISTAR's skill and judgment to select and furnish a suitable product, and that the subject pressure cooker was unfit for the purpose for which it was intended to be used.
52. TRISTAR's breaches of warranty were an actual and legal cause of the Plaintiff BAGWELL's injuries and damages.
53. As a direct and proximate result of the foregoing negligence of TRISTAR, Plaintiff BAGWELL sustained serious and permanent bodily injuries, resulting in pain and suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL** demands judgment against the Defendant **TRISTAR PRODUCTS, INC.**, for damages costs interest and other such relief this Court deems just.

**COUNT IV**  
**TRISTAR'S VIOLATION OF THE FLORIDA DECEPTIVE**  
**AND UNFAIR TRADE PRACTICES ACT**

54. All preceding paragraphs are incorporated by reference as if stated fully herein.
55. Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce...." Fla. Stat. § 501.204(1). Defendant

TRISTAR participated in unfair and deceptive trade practices that violated the FDUTPA, as more fully described herein.

56. Defendant TRISTAR engaged in unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the defective subject pressure cooker in violation of The Florida Deceptive and Unfair Trade Practices Act.
57. Defendant TRISTAR's misrepresentations and omissions regarding the purported safety and reliability of the defective subject pressure cooker were likely to deceive a reasonable purchaser, like Plaintiff BAGWELL, and the information would have been material to a reasonable purchaser.
58. Defendant TRISTAR engaged in these fraudulent and deceptive trade practices in furtherance of its business.
59. Had Plaintiff BAGWELL or his sister known that subject pressure cooker posed a significant safety and life-threatening defect, she would not have purchased it.
60. As a direct and proximate cause result of Defendant TRISTAR's violations of the FDUPTA, Plaintiff BAGWELL suffered actual damages.
61. Defendant TRISTAR's conduct constitutes unconscionable acts or practices, and unfair or deceptive practices in violation of Fla. Stat. § 501.204(1), and this Court should award Plaintiff BAGWELL his costs and attorneys' fees pursuant to Fla. Stat. § 501.2105.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL** demands judgment against Defendant, **TRISTAR PRODUCTS, INC.**, for damages, costs, interest and attorneys' fees pursuant to Fla. Stat. § 501.2105, and for such other and further relief as this Court deems just and proper.

#### COUNT V

#### STRICT LIABILITY AGAINST BED BATH AND BEYOND

62. All preceding paragraphs are incorporated by reference as if stated fully herein.

63. BBB is in the business of testing, inspecting, labeling, promoting, marketing, advertising, selling and/or distributing the subject pressure cooker that forms the basis of this lawsuit.
64. Defendant BBB placed the subject pressure cooker on the market with knowledge that it would be used without inspecting for dangers or defects. Defendant BBB knew or should have known that the ultimate users, operators or consumers including but not limited to Plaintiff BAGWELL would not or could not properly inspect these products for dangerous conditions and that the detection of such defects and dangerous would be beyond the capabilities of such persons.
65. The subject pressure cooker failed to perform as an ordinary consumer would reasonably expect.
66. The subject pressure cooker that BBB tested, inspected, labeled, promoted, marketed, advertised, sold, and/or distributed was in an unreasonable, unsafe, defective and dangerous condition which was hazardous to users including Plaintiff BAGWELL.
67. Specifically, the top of the subject pressure cooker was capable of (and did) explode and come off in the ordinary, foreseeable, and proper use of cooking food with the product, without any adequate warning to the consumer that such a failure would foreseeably occur.
68. Plaintiff BAGWELL was injured using the subject pressure cooker for its intended purpose, in a foreseeable manner, and in accordance with the instructions that accompanied the subject pressure cooker.
69. Furthermore, BBB marketed the subject pressure cooker in a defective manner in that BBB failed to warn or inform consumers of the unreasonably dangerous properties of the

subject pressure cooker and methods by which consumers such as Plaintiff BAGWELL could protect, prevent, and/or mitigate such dangers.

70. The subject pressure cooker was defective due to inadequate, or the absence of, warnings or instructions, including warning stickers, placards, or proper documentation to alert users regarding the hazardous conditions described herein.
71. The unreasonable, unsafe, defective and dangerous subject pressure cooker existed at the time it left BBB's possession.
72. The subject pressure cooker was expected to, and did reach consumers (including Plaintiff BAGWELL), without substantial change in the condition in which it tested, inspected, labeled, promoted, marketed, advertised, sold, and/or distributed by BBB.
73. For the reasons set forth above, the subject pressure cooker was unreasonably defective, unsafe, and dangerous to foreseeable users including Plaintiff BAGWELL.
74. As a direct and proximate cause of the foregoing conduct of Defendant BBB, Plaintiff BAGWELL sustained serious and permanent bodily injuries resulting in pain and suffering, permanent impairment, disability, mental anguish, inconvenience, loss of the enjoyment of life, expense of medical care and treatment, expense of hospitalization, lost wages in the past, and the loss of ability to earn wages in the future.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL** demands judgment against the Defendant **BED BATH & BEYOND, INC.**, for damages costs interest and other such relief this Court deems just.

**COUNT VI**  
**NEGLIGENCE AGAINST BED BATH & BEYOND**

75. All preceding paragraphs are incorporated by reference as if stated fully herein.

76. BBB knew or in the exercise of due care should have known the subject pressure cooker would be used without inspection in an unreasonably dangerous condition that would create a foreseeable risk of harm to users, including Plaintiff BAGWELL.
77. BBB owed a duty to reasonably and safely test, inspect, label, promote, market, advertise, sell, and/or distribute the subject pressure cooker.
78. BBB also owed a duty to adequately warn of dangers posed by the subject pressure cooker's design.
79. BBB breached the duty owed to Plaintiff BAGWELL by negligently testing, inspecting, labeling, promoting, marketing, advertising, selling, and/or distributing the subject pressure cooker when it was not in a reasonably safe condition for foreseeable use as a reasonable consumer would expect.
80. BBB was additionally negligent and breached its duty in that it failed to give adequate or proper warnings or instructions, and failed to make appropriate post-marketing efforts to prevent known incidents, such as the one that forms the subject of this complaint.
81. Plaintiff BAGWELL had no control over the method or manner in which the subject pressure cooker was tested, inspected, labeled, promoted, marketed, advertised, sold, and/or distributed and it came to Plaintiff BAGWELL's possession in the same condition it as in when it left Defendant's control.
82. The negligence described caused the incident and the injuries sustained by Plaintiff BAGWELL in that it directly and in natural continuous sequence, produced, or sustainably contributed to his injuries.
83. As a direct and proximate result of the foregoing negligence of BBB, Plaintiff BAGWELL sustained serious and permanent bodily injuries, resulting in pain and

suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL** demands judgment against the Defendant **BED BATH & BEYOND, INC.**, for damages costs interest and other such relief this Court deems just.

### COUNT VII

#### BREACH OF WARRANTY AGAINST BED BATH & BEYOND

84. All preceding paragraphs are incorporated by reference as if stated fully herein.
85. The defect in the subject pressure cooker does not conform to the merchantable condition impliedly represented by BBB at the time that Plaintiff BAGWELL's sister purchased the subject pressure cooker.
86. BBB impliedly warranted to the public generally and to Plaintiff BAGWELL's sister specifically that the subject pressure cooker was of merchantable quality.
87. BBB was a merchant with respect to the subject pressure cooker and the subject pressure cooker was not merchantable as warranted.
88. BBB impliedly warranted that the subject pressure cooker was safe and fit for the purpose intended when used under ordinary circumstances and in an ordinary manner.
89. BBB knew, or reasonably should have known, of the purpose for which Plaintiff BAGWELL's sister purchased the subject pressure cooker, that Plaintiff BAGWELL's sister was relying upon BBB's skill and judgment to select and furnish a suitable product, and that the subject pressure cooker was unfit for the purpose for which it was intended to be used.

90. BBB's breaches of warranty were an actual and legal cause of the Plaintiff BAGWELL's injuries and damages.

91. As a direct and proximate result of the foregoing negligence of BBB, Plaintiff BAGWELL sustained serious and permanent bodily injuries, resulting in pain and suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL** demands judgment against the Defendant **BED BATH & BEYOND, INC.**, for damages costs interest and other such relief this Court deems just.

**JURY DEMAND**

Plaintiff, **DUSTIN BAGWELL**, hereby demands a jury trial on all issues so triable.

**WHEREFORE**, Plaintiff, **DUSTIN BAGWELL**, demands judgment against Defendants, **TRISTAR PRODUCTS INC.**, d/b/a **Power Pressure Cooker XL**, and **BED BATH & BEYOND, INC.**, d/b/a **BBB**, for pre-judgment interest as allowed by law; post-judgment interest as allowed by law; actual damages; cost of suit; and such other relief, at law or equity, to which Plaintiffs may be justly entitled.

**RESPECTFULLY** submitted this 20<sup>th</sup> day of OCTOBER, 2016.

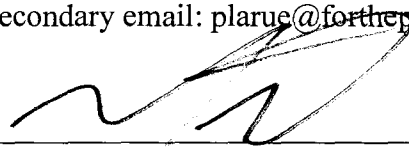


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