

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TONY AND JENNIE PUNCH,	:	
as Parents and Natural Guardians	:	
of Lincoln Punch, a minor, and in	:	ERIE DIVISION
their own right	:	
375 Valley Park Drive	:	CIVIL ACTION NO. 1:12-cv-00154 SPB
Sugar Grove, PA 16350	:	
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
DOLLAR TREE STORES, INC.	:	
500 Volvo Parkway	:	
Chesapeake, VA 23320	:	<u>JURY TRIAL DEMANDED</u>
	:	
Defendant.	:	

FIRST AMENDED COMPLAINT

1. Plaintiffs, Tony Punch and Jennie Punch, are the Parents and Natural Guardians of Lincoln Punch, a minor.
2. Tony Punch, Jennie Punch and Lincoln Punch are all citizens and residents of the Commonwealth of Pennsylvania, residing therein at 375 Valley Park Drive, Sugar Grove, PA 16350.
3. Defendant, Dollar Tree Stores, Inc., is a corporation or other jural entity incorporated in the State of Virginia, with a principal place of business of 500 Volvo Parkway, Chesapeake, VA 23320.

4. On or about April 12, 2011, Lincoln Punch's older sibling was using and/or handling a pair of lighted tweezers that were powered by button batteries.

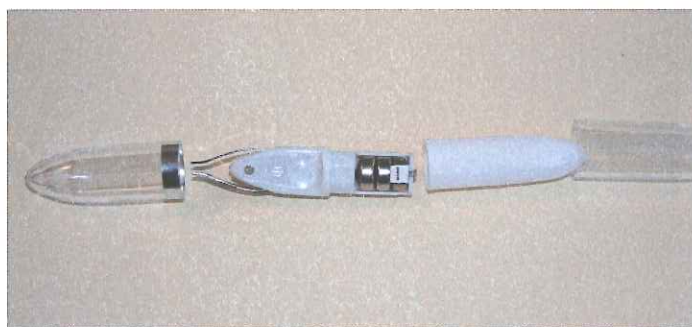
5. On or about April 12, 2011, the button batteries came out while the older sibling was using the tweezers.

6. On or about April 12, 2011, Lincoln Punch was caused to ingest multiple button batteries that had come out of a pair of lighted tweezers, after being given these by his older sibling.

7. The subject tweezers had been purchased by Lincoln's mother, Jennie Punch, from a Dollar Tree retail store.

8. The subject tweezers are cylindrical with a hard plastic base and a plastic cap that covers the tweezing end.

9. The subject tweezers are toy-like in that they are a small object that can be easily gripped by a child and have an attractive, battery-powered light that can be turned on and off.



10. The subject tweezers were sold loose, in a bin, at the Dollar Tree store, and did not include any packaging, warnings or instructions. Specifically, the subject tweezers did not contain any warnings that there were button batteries inside that could be easily accessed and/or removed by children. There were no warnings that the tweezers should be kept out of the reach of children and not used or handled by children.

11. Because the subject tweezers were sold without any packaging, warnings, or instructions, Tony and Jennie Punch were unaware that the subject tweezers were unsafe to be used by children, that the batteries were easily accessible to children, and that the tweezers should be kept out of reach of children.

12. The fact that the tweezers had a light and magnifying glass indicated to Jennie Punch that the subject tweezers were specifically designed to be used on children to remove splinters and small objects from their skin.

13. Given the toy-like appearance of the tweezers and the lack of warnings specifically instructing parents to keep the tweezers out of reach, it was entirely foreseeable that a child would handle or use the tweezers.

14. Given the attractive design of the tweezers and the lack of warnings, it was not apparent that a young child was not an intended user of the tweezers.

15. The subject tweezers were made in China.

16. The subject tweezers were improperly designed and constructed, such that the button batteries could be easily accessed and removed by anyone, including young children.

17. Multiple alternative designs existed that would have restricted and prevented a child from accessing the battery compartment.

18. Such alternative designs were feasible, available, and would have required no extra cost in manufacturing the tweezers.

19. Such alternative designs were necessary given the obvious dangers of battery ingestion by children and the statistics indicating that the number of battery-related emergency department visits for children increased from 2,591 in 1990 to 5,525 in 2009, with the majority of cases involving batteries from household products.

20. The button batteries that Lincoln Punch ingested became lodged in his trachea and stomach, causing substantial damage to his body before being surgically removed.

21. As a result of ingesting the button batteries, Lincoln lost all of the toes on his right foot, all of the toes on his left foot, his left forefoot, portions of all fingers on his right hand, and portions of four fingers on his left hand.

22. As a result of the ingestion, Lincoln suffered kidney damage, cardiac damage, gastrointestinal damage, and other injuries identified in his medical records.

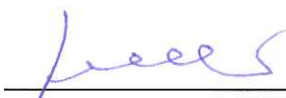
23. As a result of the button battery ingestion, Lincoln Punch has experienced physical and emotional pain and suffering, loss of life's pleasures, humiliation, embarrassment and disfigurement, medical expenses, and lost earning capacity.

24. The subject tweezers, sold by Dollar Tree, were dangerous and defective in that they contained button batteries, they failed to restrict access to the button batteries, failed to contain appropriate warnings or instructions, and failed to adequately protect and hold the button batteries.

25. Dollar Tree was also negligent and careless in selling this product without any warnings or instructions and without alerting customers to the potential dangers of button batteries.

WHEREFORE, Jennie Punch and Tony Punch, as Parents and Natural Guardians of Lincoln Punch, a minor, and in their own right, demand judgment against defendant, Dollar Tree Stores, Inc., for damages, along with interest and costs of suit.

KLINE & SPECTER
A Professional Corporation

By: 
SHANIN SPECTER, ESQUIRE
DOMINIC C. GUERRINI, ESQUIRE
1525 Locust Street
Nineteenth Floor
Philadelphia, PA 19102
(215) 772-1000
Attorneys for Plaintiffs

Dated: 10/1/12