

## [Products Liability Law Daily Wrap Up, DEFENSES TO LIABILITY—SPORTS AND RECREATIONAL EQUIPMENT—M.D. Tenn.: Amazon not a ‘seller’ or otherwise liable for hovercraft fire damages, \(May 31, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Leah S. Poniatowski, J.D.

A family could not recover against Amazon.com, Inc. for the damages resulting from a fire caused by a hoverboard the family purchased on Amazon’s website because the company was not a "seller" under Tennessee’s products liability laws, a federal district court in Tennessee ruled. In addition, the court found that the retailer did not have a duty to warn post-sale of any dangers, and it did not make any misrepresentations or violate the state consumer protection act (*Fox v. Amazon.com, Inc.*, May 30, 2018. Campbell, W.).

A mother purchased a FITURBO F1 self-balancing scooter, also known as a hoverboard, for her son in November, 2015, from W2M Trading Corporation through the Amazon Marketplace after doing research on the website for similar products. W2M sold the hoverboard under the "friendly name" (a name used by sellers for identification on the website) of "-DEAL-," which was indicated on the purchase receipt. The receipt was sent by "amazon.com" and the package was delivered from China in a shipping box marked with the "Amazon" trademark.

Around the same time, knowledge of issues with the hoverboards emerged, prompting Amazon to initiate an internal investigation. The company’s product safety team produced a report on December 10, 2015. The leaders of the product safety, product quality, and legal teams met and agreed to suspend sale of all hoverboards, to implement a contingency plan to monitor for news reports or complaints of fires or explosions, and to issue a "non-alarmist" communication to purchasers of the hoverboards. The mother had received the email, but she did not recall reading it. She gave her son the hoverboard for Christmas and on January 9, 2016, it caused a fire that consumed their entire home and personal belongings. The family filed a lawsuit against Amazon, W2M, and other Amazon entities for violations of the Tennessee Products Liability Act and the Tennessee Consumer Protection Act, negligent failure to warn, and intentional and/or negligent misrepresentation.

**"Seller" under TPLA.** Pursuant to the Tennessee Products Liability Act of 1978 (TPLA), manufacturers or sellers of defective or unreasonably dangerous goods may be liable for the injuries caused by those products. The TPLA defined "seller" as:

a retailer, wholesaler, or distributor, and means any individual or entity engaged in the business of selling a product, whether such sale is for resale, or for use or consumption. ‘Seller’ also includes a lessor or bailor engaged in the business of leasing or bailment of a product.

Sellers may be liable under the TPLA when they did not manufacture the product if the manufacturer is not subject to service of process. In the present case, the hoverboard’s manufacturer was unknown.

The court found that Amazon did not meet the TPLA definition because Amazon did not satisfy the legal definition of a "retailer" or the dictionary definition of "distributor." The facts showed that Amazon did not hold title to the hovercraft, did not set its price, and did not market or otherwise make representations about the hovercraft. Amazon’s assistance with shipping was merely to facilitate the sale—nothing more.

Moreover, the family failed to establish that Amazon was a "bailor" under Tennessee law because Amazon acted as the "bailee," which was not listed in the TPLA definition of "seller." Despite the policy arguments made by the family, the court explained that only the state legislature had that power to extend liability to a business such as Amazon's. Consequently, Amazon did not violate the TPLA.

**Failure to warn.** The court explained that Tennessee has not adopted the Restatement (Third) of Torts' post-sale duty to warn and there are no state supreme court or appellate court decisions adopting that cause of action in Tennessee. In the absence of any indication that the courts would adopt it, the court declined to recognize a post-sale duty to warn. Additionally, although "special relationships" may merit recognizing a duty to warn, the relationship between Amazon and W2M was not among those identified in case law, and Tennessee courts refuse to impose a post-sale duty on manufacturers or sellers. With respect to the communication sent by Amazon concerning the hovercraft, the court determined that there was not enough established law in Tennessee to hold that Amazon was liable to the family when Amazon voluntarily assumed the duty to warn. Accordingly, the failure to warn claim failed.

**Remaining issues.** The court also concluded that Amazon did not intentionally or negligently misrepresent the hoverboards. Specifically, the communication sent to the mother did not contain any false representations by not explicitly detailing the fire or explosion hazards; further, there was no reliance on the communication because the mother asserted that she did not remember receiving it. The communication alerted purchasers to seek more information about the safety issues and offered to refund their money and, thus, there was no "trick or contrivance" to support the family's claim. The claim under the Tennessee Consumer Protection Act (TCPA) also failed because the family did not establish a causal link between the fire and the seller's "friendly name" used on Amazon. Therefore, Amazon's motion for summary judgment on all claims was granted.

This case is No. [3:16-cv-03013](#).

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Companies: Amazon.com, Inc.; W2M Trading Corp.

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