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## Products Liability Action Against Manufacturers and Retailers of Synthetic Marijuana in Kentucky (/full-blog/2014/02/products-liability-action-against.html)



(<https://static.squarespace.com/static/53fe85a0e4b0516a0c4fed1a/54002444e4b0123f9872f024/54002446e4b0123f9872f05d/1409295430232/1000w/>)

*Image Source (<http://borderzine.com/2012/12/spice-%E2%80%93-the-cheap-cannabis-imitator-has-dangerous-effects/>)*

By: Scarlett Steuart, Staff Member

Since its appearance in 2006, the use of synthetic marijuana, commonly known as “Spice,” has been on the rise.<sup>[i]</sup>

([file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\\_edn1](file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#_edn1))  
Spice is a combination of herbs laced with synthetic chemicals, and when used, it produces a similar experience as marijuana.<sup>[ii]</sup>

([file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\\_edn2](file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#_edn2))  
The Spice label only includes the warning “not for human consumption.”<sup>[iii]</sup>

([file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\\_edn3](file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#_edn3))  
As a result of the marketing and labeling of synthetic marijuana, primarily young people are being injured. With the criminal law system struggling to keep up with the rapid development and changes of synthetic marijuana, products liability law may be an option of redress. Focusing on Kentucky law, a controversial issue exists as to whether or not a products liability claim for synthetic marijuana is currently permissible.

In 1966, the Kentucky Court of Appeals recognized strict liability in the case *Dealers Transport Company v. Battery Distributing Company*.<sup>[iv]</sup>

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn4) In 1978, the Kentucky General Assembly enacted the Products Liability Act of Kentucky.[v]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn5) The Act's scope is broad and is intended to apply to all products liability claims.[vi]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn6) The Act also creates certain presumptions of non-defectiveness, until rebutted by a preponderance of the evidence, based upon time periods.[vii]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn7) Additionally, the Act seeks to limit who may be held liable.[viii]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn8) If a manufacturer is identified and subject to the jurisdiction of the court, those in the chain of distribution, such as wholesaler distributors or retailers, may avoid liability.[ix]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn9) However, a defendant in the chain of distribution may be held liable if they knew or should have known that the product was defective and unreasonably dangerous to the consumer.[x]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn10)

The issue in a synthetic marijuana products liability claim is whether the cautionary language of "not for human consumption" constitutes an adequate warning in the light of the foreseeable use and user of the product. In order to be found defective, the plaintiff would be required to show that the risks posed by consuming synthetic marijuana outweigh the manufacturer's burden of including additional warnings on the synthetic marijuana's packaging.[xi]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn11) The Kentucky courts might consider the warning inadequate because it is not proportional to the potential risks. The warning fails to provide adequate notice of the possible dangers of misusing the product and consumption, which includes the symptoms of rapid heart rate, vomiting, confusion, hallucinations, withdrawal, and addiction symptoms.[xii]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_edn12) If the warning is deemed inadequate, then the synthetic marijuana was sold in a defective condition unreasonably dangerous.

Additionally, wholesale distributors and retailers may be held liable since they have been alerted to the fact that the synthetic marijuana contains an inadequate warning regarding its consumption. Distributors and retailers, such as gas stations, are aware, or should be aware, that packaging only contains the warning "not for human consumption" and that many young people are purchasing synthetic marijuana and suffering from adverse health effects due to consumption. By failing to take action, Kentucky courts may be willing to hold wholesale distributors and retailers liable along with the manufacturers.

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[i] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref1) National Institute on Drug Abuse. DrugFacts: Spice (Synthetic Marijuana), 1, available at <http://www.drugabuse.gov/publications/drugfacts/spice-synthetic-marijuana> (revised December 2012).

[ii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref2) *Id.*

[iii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref3) *Id.*

[iv] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref4) *Dealers Transport Co. v. Battery Distributing Co.*, 402 S.W.2d 441, 445-46 (Ky. App. 1965).

[v] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref5) KRS 411.300-411.350.

[vi] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref6) KRS 411.300(1).

[vii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref7) KRS 411.310.

[viii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref8) KRS 411.320.

[ix] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref9) KRS 411.340.

[x] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref10) *Id.*

[xi] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref11) See *Nichols v. Union Underwear Co., Inc.*, 602 S.W.2d 429, 433 (Ky. 1980).

[xii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Steuart%20Blog%201%20post%20.docx#\_ednref12) National Institute on Drug Abuse. DrugFacts: Spice (Synthetic Marijuana), <http://www.drugabuse.gov/publications/drugfacts/spice-synthetic-marijuana> (last revised December 2012).



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