

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**ANNE F. DANAHER,
811 W. 45th St.
Kansas City, MO 64111**

Plaintiff ,

v.

Case No.: 08-CV-2293 JAR/DJW

**WILD OATS MARKETS, INC.,
Serve resident agent:
The Corporation Company, Inc.
515 South Kansas Ave.
Topeka, KS 66603**

and

**KAREN S. KENNEY,
5306 Roe Ave.
Roeland Park, KS 66205**

Defendants.

COMPLAINT

COMES NOW the Plaintiff Anne F. Danaher, by and through John G. O'Connor of Robb, Taylor & O'Connor, and for her cause of action against the defendants, and each of them, does allege and state as follows.

1. At all times relevant hereto the Plaintiff Anne F. Danaher has been a citizen of Missouri.
2. At all times relevant hereto the Defendant Wild Oats Markets, Inc. is and has been

a Delaware Corporation which may be served by serving its resident agent The Corporation Company, Inc., 515 South Kansas Ave., Topeka, Kansas 66603.

3. At all times relevant hereto the Defendant Karen S. Kenney is and has been a citizen of Kansas who may be served at 5306 Roe Ave., in Roeland Park, Kansas.

4. The parties in the instant matter are citizens of different states; the amount in controversy exceeds \$75,000.00; and this Court has diversity jurisdiction pursuant to 28 U.S.C. 1332.

5. The occurrence which is the subject matter of this action took place in Johnson County, Kansas and venue properly lies with this Court pursuant to 28 U.S.C. 1391(a).

6. On June 28, 2003, the Plaintiff purchased two ear candles from a retail facility operated by the Defendant Wild Oats Markets, Inc., at 4301 Main Street, in Kansas City, Missouri.

7. The ear candles sold to Plaintiff by the Defendant Wild Oats Markets, Inc., were designed, manufactured and sold for the purpose of performing an alternative medicine procedure known variantly as ear candling, ear coning or thermal-auricular therapy, and which procedure is alleged to have benefits including the removal of ear wax and other otic debris.

8. On June 30, 2006, the Plaintiff hired the Defendant Kenney to perform an ear candling procedure utilizing the ear candles the Plaintiff had purchased from the Defendant Wild Oats Markets, Inc. on June 28, 2003.

9. On June 30, 2006, in the course of the ear candling procedure performed by the Defendant Kenney, the Plaintiff suffered a burn to her right inner ear and the destruction of her right tympanic membrane resulting in severe conductive hearing loss.

10. The ear candle involved in the Plaintiff's injury was in a defective condition and was

unreasonably dangerous when it was sold due to its propensity to cause the kind of injury suffered by Plaintiff and the Defendant Wild Oats Markets, Inc. is therefore strictly liable in tort for the Plaintiff's injuries.

11. The Plaintiff's injuries of June 30, 2006, resulted from the negligence of the Defendant Wild Oats Markets, Inc., and its agents and employees, including but not limited to failing to discover the dangerous propensity of ear candles and failing to warn the Plaintiff regarding the risk of injury inherent in their use.

12. The Defendant Wild Oats Markets, Inc. is liable for the breach of warranties of merchantability and fitness for a particular purpose in the sale of ear candles to the Plaintiff and her resultant injury during their use.

13. The Defendant Wild Oats Markets, Inc., and its agents and employees, acted in a grossly negligent and wanton manner in selling ear candles to the Plaintiff when they knew or should have known that such devices have no medical or health value and that their use creates a significant risk of the type of injury which the Plaintiff suffered on June 30, 2006.

14. The Plaintiff's injury of June 30, 2006 resulted in whole or in part from the negligence of the Defendant Karen S. Kenney in failing to warn the Plaintiff regarding the potential for injury and failing to prevent candle residue from entering the Plaintiff's ear canal.

15. As a result of the above-referenced occurrence of June 30, 2006 and negligence of the Defendants, and each of them, the Plaintiff has been caused to suffer permanent conductive hearing loss and to experience and incur medical expenses, lost wages, disabilities, pain, suffering and mental anguish, all in the past, and is reasonably likely to experience and incur additional such damages in the future.

WHEREFORE, as a result of the above, the Plaintiff prays for judgment in her favor and against the Defendants and for her actual damages in an amount in excess of \$75,000.00, as well as punitive damages and attorney fees against the Defendant Wild Oats Markets, Inc., together with the costs of this action and such further and additional relief as the court deems just and equitable in the premises.

ROBB, TAYLOR & O'CONNOR

s/ John G. O'Connor

John G. O'Connor
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DESIGNATION OF PLACE OF TRIAL

COMES NOW the Plaintiff and hereby designate Kansas City, Kansas as the place of trial.

ROBB, TAYLOR & O'CONNOR

s/ John G. O'Connor

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DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff and demand a trial by jury of all issues of fact herein.

ROBB, TAYLOR & O'CONNOR

s/ John G. O'Connor

John G. O'Connor

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