

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

Michael Dinges)
1325 Brandywine Rd.)
Lee’s Summit, MO 64064)

Plaintiff,

Demand for Jury Trial

v.

Case No.

PETITION – CLASS ACTION

Black & Decker (U.S.), Inc.,)
Individually and d/b/a DeWalt)
Industrial Tool Co.,)
701 E. Joppa Rd.)
Towson, Maryland 21286)

Defendant.

CLASS ACTION PETITION & DEMAND FOR JURY TRIAL

Comes now Plaintiff, individually and on behalf of similarly situated plaintiffs, for his complaint for damages against Defendant Black & Decker (U.S.) Inc. d/b/a DeWalt Industrial Tool Co. (“Defendant”).

NATURE OF ACTION

1. Plaintiff brings this action on his own behalf and as a representative of a class of persons consisting of all individuals who purchased a DeWalt bonded abrasive wheel (“Defective Product”) that was manufactured, produced, distributed, and/or sold by Defendant. This matter arises out of negligent acts, errors and omissions, including those for which Defendant is strictly liable, committed by the Defendant against Plaintiff causing Plaintiff and the putative class to suffer economic injury.

2. Plaintiff brings this action individually and as a class representative to recover damages for violations of Missouri Merchandising Practices Act, Mo. Ann. Stat. §§ 407.010 *et seq.*, among other claims, for economic and injunctive relief against Defendant which manufactured, tested, distributed, promoted and sold the Defective Product.

3. Plaintiff, on behalf of himself and the putative class, seeks a refund for monies paid as a result of his purchase of the Defective Product, and further seeks injunctive relief, enjoining Defendant from selling the Defective Product.

PARTIES

4. Defendant Black & Decker (U.S.) Inc. d/b/a DeWalt Industrial Tool Co. (hereinafter “DeWalt” and/or Defendant), is incorporated in the state of Maryland and is registered in the state of Missouri and can be served at CSC-Lawyers Incorporating Service Company, 221 Bolivar Street, Jefferson City, MO 65101. Defendant is engaged in the business of testing, developing, manufacturing, labeling, marketing, distributing, promoting, supplying and/or selling, either directly or indirectly, through third parties and/or related entities, the Defective Product.

5. Defendant transacted business and/or committed tortious acts within the state of Missouri. Defendant designs, manufactures, processes, distributes, installs, uses, and/or sells dangerous and/or defective products in Missouri. Defendant placed the defective and dangerous products into the stream of commerce, sold and/or supplied said products for use, used said products, and/or transacted business and committed tortious acts in Missouri from which Plaintiff’s claims arise.

6. Plaintiff Michael Dinges is an individual residing in Lee's Summit, Missouri. Plaintiff is a "person" and has purchased one or more of the Defective Products in a "sale," as those terms are defined in § 407.010 R.S.Mo. At the time the product was purchased, Plaintiff was unaware that the product was defective and that the product was not fit for the ordinary purposes for which the product is used in that, when used as reasonably anticipated, the Defective Product gives way, cracks, splits, explodes, and fails if used after its shelf life.

JURISDICTION AND VENUE

7. This Court has personal jurisdiction over Defendant pursuant to § 506.500 R.S.Mo. in that Defendant transacts business within the state of Missouri.

8. Venue is proper in this Court pursuant to § 508.040 R.S.Mo., because Plaintiff's cause of action accrued in Jackson County, Missouri.

9. The total amount in controversy as to the Plaintiff and each individual member of the proposed class alleged herein does not exceed seventy-four thousand nine hundred ninety-nine dollars (\$74,999.00), including any treble or punitive damages, interests and costs. In addition, neither the Plaintiff nor any member of the Plaintiff's Class assert any federal question.

FACTUAL ALLEGATIONS

10. The Defective Product made the subject of this suit, which is manufactured, produced, distributed, and sold by Defendant, is unreasonably dangerous.

11. Defendant failed to disclose, concealed, reveal, or otherwise provide notice to consumers, including Plaintiff, in Defendant's advertising, packaging, labeling or otherwise that these products were defective and that the products are not fit for the ordinary purposes for which the products are used in that, when used as reasonably anticipated, the Defective Product gives way, cracks, splits, explodes and fails.

12. Specifically, Defendant failed to disclose, concealed, reveal, or otherwise provide notice to consumers, including Plaintiff that the Defective Product has a shelf life and expires, and that if the Defective Product is used after the expiration date it will give way, crack, split, explode and fail, to wit:

[Picture on next page]



13. Defendant knew its Defective Product expired and created an unreasonable risk of giving way, cracking, splitting, exploding, failing, and harming consumers, yet it failed to warn Plaintiff and all other similarly situated consumers about this risk.

14. Industry standards required Defendant to include a clear expiration date on the label. For example, the Health and Safety Executive Committee states in its *Safety in the use of abrasive wheels* handbook the following, “All organic bonded wheels for hand-held applications will bear a use-by date of three years from the date of manufacture.”

15. Defendant had the capability and means to create an alternative label that clearly warned about the expiration date.

CLASS ACTION ALLEGATIONS

16. Plaintiff brings this class action pursuant to Missouri Rule of Civil Procedure 52.08 on behalf of himself and the following class of similarly situated persons: all persons who purchased a DeWalt bonded abrasive wheel for personal or family use.

17. Excluded from the Class is Defendant, including any parent, subsidiary, affiliate or controlled person of Defendant; Defendant's officers, directors, agents or employees; the judicial officers assigned to this litigation; and members of their staffs and immediate families. Also excluded from the Class are those claiming they have suffered a personal injury as result of the Defective Product.

18. The proposed Class meets all requirements for class certification. The Class satisfies the numerosity standards. The Class is believed to number in the thousands of persons. As a result, joinder of all Class Members in a single action is impracticable. Class Members may be informed of the pendency of this Class Action by published and broadcast notice.

19. There are questions of fact and law common to the Class which predominate over any questions affecting only individual members. The questions of law and fact common to the Class arising from Defendant's actions include, without limitation, the following:

- a. Whether, in marketing and selling the Defective Product, Defendant failed to disclose the dangers and risks of the Defective Product;
- b. Whether Defendant failed to disclose and/or concealed the material fact that the Defective Product expired;

- c. Whether Defendant failed to warn adequately of the dangers of using the Defective Product after it expires;
- d. Whether Defendant knew or should have known that using the Defective Product after it expires can cause it to fail and lead to serious injuries;
- e. Whether Defendant adequately tested the Defective Product prior to distribution and sales in the market place;
- f. Whether Defendant continued to manufacture, market, distribute, and sell the Defective Product notwithstanding its knowledge of the products dangerous nature and risks of expiration;
- g. Whether Defendant knowingly omitted, suppressed or concealed material facts about the unsafe and defective nature of the Defective Product from the consuming public;
- h. Whether Defendant's conduct violated Missouri's Merchandising Practices Act.

20. The questions set forth above predominate over any questions affecting only individual persons, and a class action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of this controversy.

21. A class action is the appropriate method for the fair and efficient adjudication of this controversy. The presentation of separate actions by individual Class Members could create a risk of inconsistent and varying adjudications,

establish incompatible standards of conduct for Defendant, and/or substantially impair or impede the ability of Class Members to protect their interests.

22. Plaintiff is an adequate representative of the Class because he is a member of the Class and his interest does not conflict with the interests of the members of the Class he seeks to represent. The interests of the members of the Class will be fairly and adequately protected by the Plaintiff and his undersigned counsel, who have extensive experience prosecuting complex class action litigation.

23. Plaintiff seeks a refund of monies paid as a result of his purchase of the Defective Product, that occurred following Defendant's wrongful and improper conduct in connection with the manufacture, marketing, distribution, testing, promotion, labeling and/or selling of the Defective Product.

24. Plaintiff specifically excludes from this class action any damages, losses, or other relief of any kind arising from the personal injuries suffered by those class members personally injured by the Defective Product because it failed when used after the expiration date. This class action seeks only the economic and injunctive relief requested herein to which class members are entitled under the Missouri Merchandising Practices Act.

25. Maintenance of this action as a class action is a fair and efficient method for the adjudication of this controversy. It would be impracticable and undesirable for each member of the Class who suffered harm to bring a separate action since the Defective Product costs less than ten dollars individually. In addition, the maintenance of separate actions would place a substantial and unnecessary burden

on the courts and could result in inconsistent adjudications, while a single class action can determine, with judicial economy, the rights of all Class Members.

26. Notice can be provided to Class Members by using techniques and forms of notice similar to those customarily used in other defective-product cases and complex class actions.

CLAIM FOR RELIEF

COUNT I – VIOLATION OF THE MISSOURI MERCHANDISING PRACTICE ACT

27. Plaintiff re-alleges and incorporates herein all other allegations in this Petition.

28. The acts and practices engaged in by Defendant, and described herein, constitute unlawful, unfair and/or fraudulent business practices in violation of the Missouri Merchandising Practices Act, Mo. Ann. Stat. §§ 407.010 *et seq.*

29. Defendant engaged in unlawful practices including deception, false promises, misrepresentation, and/or the concealment, suppression, or omission of material facts in connection with the sale, distribution or advertisement of the Defective Product in violation of Mo. Rev. Stat. § 407.020.

30. Plaintiff purchased the Defective Product, a product that was falsely represented, as stated above, in violation of the Missouri Merchandising Practices Act and as a result Plaintiff suffered economic damages in that the product he purchased was worth less than the product he thought he had purchased had Defendant not omitted material facts.

31. Plaintiff and the Class acted as reasonable consumers would in light of all circumstances.

32. Defendant's actions and omissions would cause a reasonable person to enter in the sale and transaction that resulted in damages to Plaintiff and the Class.

33. As a result of Defendant's actions and omissions, Plaintiff and the Class suffered economic damages that can be calculated with a reasonable degree of certainty, including a refund of the monies paid as a result of their purchases.

34. Plaintiff and the Class also seek injunctive relief, enjoining Defendant from selling the Defective Product and by adding a clear warning and expiration date on the Defective Product.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages in excess of the jurisdictional limit as determined at trial, injunctive relief, for the costs of this action, attorney's fees, and for such further relief as the Court deems fair and reasonable.

COUNT II – UNJUST ENRICHMENT

35. Plaintiff re-alleges and incorporates herein all other allegations in this Petition.

36. Plaintiff and the Class purchased products from the Defendant that they would not have purchased had they known that the products, when used as anticipated, crack, split, explode and fail.

37. The Defendant was therefore unjustly enriched at the expense of and to the detriment of the Plaintiff and the Class.

38. Plaintiff and the Class are therefore entitled to restitution from the Defendant, and seek an order requiring the Defendant to disgorge all profits, benefits and other compensation the Defendant obtained from the sale of these products.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages, in excess of the jurisdictional limit and as determined at trial, for the costs of this action, and for such further relief as the Court deems fair and reasonable.

COUNT III – STRICT LIABILITY IN TORT – DESIGN DEFECT

39. Plaintiff re-alleges and incorporates herein all other allegations in this Petition.

40. Defendant manufactured and/or supplied the Defective Product in question within the ordinary course of its business.

41. Plaintiff purchased the Defective Product. The Defective Product failed to warn Plaintiff that it expired, and that if used as reasonably anticipated after the expiration date it was at a substantial risk of cracking, exploding, and injuring Plaintiff and the Class.

42. Defendant knew or should have known of the dangerous nature of the Defective Product and its likelihood to fail at the time of its design, manufacture, sale, testing, transportation, distribution, supply, and use. Notwithstanding, Defendant failed to take safety precautions to prevent economic injury to Plaintiff and failed to warn and/or instruct Plaintiff and others of the defective and unreasonably dangerous nature of said product, including the failure to place a clear expiration date on the label, instructing Plaintiff and consumers not to use after the expiration date.

43. Defendant's defective and unreasonably dangerous product directly and proximately caused economic injuries to Plaintiff and the Class.

44. Defendant's product was used in the manner reasonably anticipated by Defendant and installed per Defendant's instructions.

45. At the time of the design, manufacture, processing, packaging, distribution, sale and/or use of Defendant's product, said product was defective as designed because of its propensity, among other things, to crack, split, warp, splinter, explode and otherwise fail if used after the expiration date, resulting in injury.

46. As a result of Defendant's product's propensity to cause injury, as described above, Defendant's product was unreasonably dangerous and defective when put to the use anticipated by Defendant.

47. As a direct and proximate result of the dangerous and defective condition of Defendant's product and Defendant's failure to warn of the dangers thereof, Plaintiff has suffered economic injuries.

48. At the time of Defendant's design, manufacture, processing, distribution, sale and/or use of the Defective Product, Defendant knew of the dangerous condition of said product and supplied it with deliberate and/or intentional disregard for making any warning, instruction, or other precaution to prevent injuries and thereby showed complete indifference to and/or conscious disregard for the safety of others. Defendant's conduct which caused this damage was willful, wanton, and/or in reckless disregard for the rights of Plaintiff and the Class.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages, in excess of the jurisdictional limit and as determined at trial, for the costs of this action, and for such further relief as the Court deems fair and reasonable.

COUNT IV – STRICT LIABILITY IN TORT – FAILURE TO WARN

49. Plaintiff re-alleges and incorporates herein all other allegations in this Petition.

50. Defendant designed, manufactured, processed, packaged, distributed, marketed, sold and supplied, and labeled the Defective Product at issue, without including and/or making adequate instructions on the use of the product to reduce and/or eliminate the dangerous components thereof, and/or without warnings that the Defective Product expires and that it would crack, split, splinter, warp, explode and otherwise fail and become dangerous and cause injury.

51. As a result of Defendant's failure to adequately instruct on use, including the expiration date, and/or avoidance or to warn of the dangerous characteristics of the product, said product was defective and unreasonably dangerous when put to the use reasonably anticipated by Defendant.

52. As a direct and proximate result of the dangerous and defective condition of Defendant's product and Defendant's failure to instruct and/or warn of the dangers thereof, Plaintiff suffered economic injuries.

53. At the time of their design, manufacture, processing, packaging, distribution, marketing, sale, supply and/or use of the Defective Product at issue, Defendant knew of the dangerous condition of said product and supplied it with

deliberate and/or intentional disregard for making any warning, instruction, or other precaution to prevent injuries and thereby showed complete indifference to and/or conscious disregard for the safety of others. Defendant's conduct which caused this damage was willful, wanton, and/or in reckless disregard for the rights of Plaintiff and the Class.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages, in excess of the jurisdictional limit and as determined at trial, for the costs of this action, and for such further relief as the Court deems fair and reasonable.

COUNT V – NEGLIGENCE

54. Plaintiff re-alleges and incorporates herein all other allegations in this Petition.

55. Defendant designed, manufactured, distributed, tested, sold, applied, used and/or supplied the Defective Product at issue.

56. Defendant held itself out as a corporation capable of reasonably and prudently developing, manufacturing, marketing, supplying, testing, distributing, applying, using, supplying, and selling the Defective Product at issue and therefore had the duty to have and exercise the knowledge of an expert on such product.

57. Defendant knew or should have known that the Defective Product created an unreasonable risk of bodily harm, including the risk of breaking and exploding causing serious and catastrophic injuries.

58. As designers, manufacturers, processors, packagers, distributors, marketers, sellers, users, applicers and suppliers of the Defective Product at issue,

Defendant had a duty to exercise due care and the ordinary, reasonable and technical skill and competence that is required of designers, manufacturers, processors, packagers, distributors, marketers, sellers, suppliers, and others in a similar situation, including, without limitation, the duty to test its products; the duty to acquire and maintain the knowledge of an expert; the duty to design, manufacture, process, distribute, market, sell, and/or supply its product free from defects and/or latent defects; the duty to adequately warn of product defects and/or hazards, which duty continued even after the sale of said products; and the duty to market, advertise, sell and supply products with adequate information and warnings about the risk of failure and propensity to cause serious injuries.

59. Defendant failed to use due care under the circumstances and thereby breached its duties as set forth above and was careless and negligent in the performance of its said duties to Plaintiff and the Class.

60. As a direct and proximate result of the dangerous and defective condition of Defendant's products and Defendant's failure to warn of the dangers thereof, Plaintiff and the Class suffered economic injuries.

61. At the time of Defendant's design, manufacture, processing, distribution, marketing, selling, supplying and/or use of the Defective Product at issue, Defendant knew of the dangerous condition of said products and supplied them with deliberate and/or intentional disregard for not making any warning, instruction, or other precaution to prevent injuries and thereby showed complete indifference to and/or conscious disregard for the safety of others. Defendant's conduct which caused

this damage was willful, wanton, and/or in reckless disregard for the rights of Plaintiff and the Class.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages, in excess of the jurisdictional limit and as determined at trial, for the costs of this action, and for such further relief as the Court deems fair and reasonable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, requests relief and judgment against Defendant as follows:

- a. That the Court enter an order certifying the Class, appointing Plaintiff as a representative of the Class, appointing Plaintiff's counsel as class counsel, and directing that reasonable notice of this action, as provided by Missouri Rules of Civil Procedure 52.08(c)(2), be given to the Class;
- b. For a judgment against Defendant for the causes of action alleged against it;
- c. For damages in an amount to be proven at trial;
- d. For appropriate injunctive relief, enjoining the Defendant from selling the Defective Product and ordering it to warn consumers that the Defective Product expires;
- e. For attorney's fees;
- f. For Plaintiff's costs incurred; and
- g. For such other relief in law or equity as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: June 7, 2021

Respectfully submitted,

HUMPHREY, FARRINGTON, & McCLAIN, P.C.

/s/ Paul D. Anderson

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was filed via the Court's electronic filing system this 7th day of June, 2021.

/s/ Paul D. Anderson

ATTORNEY FOR PLAINTIFF