

CASE NO.

080102954

JEFFERSON CIRCUIT COURT
DIVISION _____
JUDGE _____

HOMER D. WOODEN
12313 Crosswind Drive
Louisville, KY 40243

PLAINTIFFS

and

ADA JUNE WOODEN
12313 Crosswind Drive
Louisville, KY 40243

VS.

COMPLAINT

JEFFERSON CIRCUIT COURT
DIVISION THREE (3)

HOME DEPOT U.S.A., INC.
2455 Paces Ferry Road
Atlanta, GA 30339

DEFENDANTS

*Serve: Corporation Service Company
421 West Main Street
Frankfort, KY 40601*

A COPY
ATTEST: DAVID L. NICHOLSON, CLERK
JEFFERSON CIRCUIT COURT
LOUISVILLE, KENTUCKY
BY S.M.U. D.C.

and

BERNZOMATIC, INC., A DIVISION OF NEWELL RUBBERMAID
92 Grant Street
Wilmington, OH 45177

*Serve: Secretary of State
Commonwealth of Kentucky
P.O. Box 718
Frankfort, Kentucky 40602*

and

NEWELL RUBBERMAID INC.
29 East Stephenson Street
Freeport, IL 61032

*Serve: Secretary of State
Commonwealth of Kentucky
P.O. Box 718
Frankfort, KY 40602*

and

**WESTERN INDUSTRIES, INC.
ENGINEERED PRODUCTS GROUP
441 South 10th Street
Watertown, WI 53094**

*Serve: Secretary of State
Commonwealth of Kentucky
P.O. Box 718
Frankfort, KY 40602*

and

**WORTHINGTON INDUSTRIES INCORPORATED
200 Old Wilson Bridge Road
Columbus, OH 43085**

*Serve: C.T. Corporation Systems
1511 Kentucky Home Life Building
Louisville, KY 40202*

and

**BOC GROUP, INC.
575 Mountain Avenue
Murray Hill, NJ 07974-2082**

*Serve: Secretary of State
Commonwealth of Kentucky
P.O. Box 718
Frankfort, KY 40602*

Plaintiffs, by counsel, for their claim for relief herein, state as follows:

COUNT I

- (1) At all times relevant hereto the Plaintiffs, Homer D. Wooden and Ada June Wooden were residents of Jefferson County, Kentucky.
- (2) Plaintiffs are informed and believe that Defendant, Home Depot U.S.A., Inc. (here and after referred to as Home Depot) is a Georgia corporation with its the principle place of business at 2455 Paces Ferry Road, Atlanta, Georgia, 30339. Plaintiffs are further informed and

believe that Home Depot does business in the state of Kentucky and at all times relevant to this lawsuit promoted, marketed, distributed, developed and sold in this state and in interstate commerce to Plaintiffs, the MAPP gas torch, Bernzomatic brand model TS4000 with date stamp June of 2002 along with a 16 ounce MAPP gas cylinder which has the serial number 10E116E.

(3) Plaintiffs are informed and believe that Defendant, Bernzomatic Inc., Division of Newell Rubbermaid Inc. is a New York corporation with its principle place of business at 92 Grant Street, Wilmington, Ohio 45177. Plaintiffs are further informed and believe that Bernzomatic does business in Kentucky and at all times relevant to this lawsuit promoted, marketed, distributed, developed, manufactured and sold the previously identified gas torch and cylinder in this state and in interstate commerce.

(4) Plaintiffs are informed and believe that Defendant, Newell Rubbermaid, Inc. is a Georgia corporation with a principle place of business at 29 East Stephenson Street, Freeport, Illinois 61032. Plaintiffs are further informed and believe that Newell Rubbermaid Inc. does business in Kentucky and at all times relevant to this lawsuit promoted, marketed, distributed, developed, manufactured and sold the previously described gas torch and cylinder in this state and interstate commerce.

(5) Plaintiffs are informed and believe that Defendant, Western Industries, Inc. Engineered Products Group is a Wisconsin corporation with a principle place of business of 441 South 10th Street, Watertown, Wisconsin 53094. Plaintiffs are further informed and believe that Western Industries Inc. Engineered Products Group promoted, marketed, distributed, developed, manufactured and sold the previously described gas torch and cylinder in this state and interstate commerce.

(6) Plaintiffs are informed and believe that Defendant, Worthington Industries

Incorporated is an Ohio corporation with its principle place of business at 200 Old Wilson Bridge Road, Columbus, Ohio 43085. Plaintiffs are further informed and believe that Worthington Industries Incorporated does business in Kentucky and at all times relevant to this lawsuit promoted, marketed, distributed, developed, manufactured and sold the aforesaid previously identified gas torch and cylinder in this state and interstate commerce.

(7) Plaintiffs are informed and believe that Defendant, BOC Group, Inc., is a New Jersey corporation with principle offices at 575 Mountain Avenue, Murray Hill, New Jersey 07974-2082. Plaintiffs are further informed and believe the BOC Group, Inc. does business in Kentucky, and at all times relevant hereto, promoted, marketed, distributed, developed, manufactured and sold the aforesaid gas torch and cylinder in this state and interstate commerce.

(8) The Jefferson County Kentucky Circuit Court has jurisdiction of this action pursuant to KRS 454.210.

(9) Venue is proper in the Jefferson County Kentucky Circuit Court pursuant to KRS 454.210. The incident complained of and damages suffered by the Plaintiffs herein occurred in Jefferson County Kentucky.

(10) On or about March 21, 2007, Plaintiff, Homer D. Wooden, was using the previously described torch and gas cylinder when the inlet valve on the subject gas cylinder fractured do to normal operation and the subject cylinder released gas as a result of a manufacturing defect causing a flash of fugitive gas which seriously injured Mr. Wooden. This incident occurred at Mr. Wooden's residence in Jefferson County Kentucky.

(11) As a direct and proximate result of the acts and omissions of these Defendants jointly and or severally the Plaintiff, Homer D. Wooden, sustained permanent and devastating

injuries. These injuries have caused and will continue to cause extensive pain and suffering, emotional distress and have substantially reduced the Plaintiff, Homer D. Wooden's, ability to enjoy life; the Plaintiff, Homer D. Wooden, has sustained economic loss, including loss of earnings and diminished loss of earning capacity in amounts to be determined; has had to spend substantial sums of money for medical, hospital and related care and will be required to do so in the future. Plaintiff, Homer D. Wooden's damages exceed the minimum jurisdiction of this court.

(12) Plaintiffs are informed and believe that at all material times the Defendants jointly and or severally did design, create, manufacture, package, distribute, supply, market, sell, promote and advertise the previously described gas torch and cylinder.

(13) At all material times Defendants jointly and or severally have the duty to exercise reasonable care in all aspects of the testing, labeling, marketing, manufacturing and sale of the aforesaid gas torch and cylinder and to provide adequate warnings regarding the use of said products.

(14) These Defendants jointly and or severally, failed to exercise ordinary care in the manufacturing, sale, testing, warning and distribution of the aforesaid gas torch and cylinder. These Defendants knew or should have known that these products created an unreasonably dangerous risk of injury and they negligently failed to warn Plaintiff, Homer D. Wooden.

(15) Defendants, Bernzomatic, Inc., Newell Rubbermaid Inc., Western Industries, Inc. Engineered Products Group, Worthington Industries, Inc., and BOC Group, Inc., by virtue of KRS 454.210, have appointed the Secretary of State of the Commonwealth of Kentucky as their agent for service of process.

(16) Plaintiff, Homer D. Wooden, purchased the previously identified torch and gas

cylinder from the Home Depot store located at 964 Beckenridge Lane, Louisville, Kentucky prior to the incident complained of herein.

(17) At the time of the occurrence referred to in the complaint herein, Plaintiff, Homer D. Wooden and Ada June Wooden were husband and wife and continue to be husband and wife. The conduct of the Defendants herein set forth caused the loss of society, companionship, consortium and assistance all to the damage of the Plaintiff, Ada June Wooden, in amounts in excess of the minimum jurisdiction of this court.

COUNT II

(18) Plaintiff incorporates by reference all preceding paragraphs and allegations of this complaint as if fully set forth herein.

(19) Defendant, Bernzomatic, Inc., a division of Newell Rubbermaid should be held strictly liable as the designer, manufacture, distributor and seller of the previously identified torch and gas cylinder which was sold to the Plaintiff, Homer D. Wooden, in a defective condition and unreasonably dangerous to expected users.

(20) Defendant, Bernzomatic, Inc., a division of Newell Rubbermaid as designer, manufacture, distributor and seller of the torch and gas cylinder previously identified herein made implied and express warranties that said torch and gas cylinder were fit for the general uses and purposes intended, and that it was free from any defects in design or construction.

(21) Defendant, Bernzomatic, Inc., a division of Newell Rubbermaid negligently designed, manufactured, marketed and distributed the aforesaid torch and gas cylinder in such a manner that it created an unreasonable risk of physical harm and injury; to Plaintiff, Homer D. Wooden.

(22) Defendant, Bernzomatic, Inc., a division of Newell Rubbermaid, unreasonably

failed to warn Plaintiff, Homer D. Wooden, of the known and foreseeable hazards of said torch and gas cylinder both before and after the sale of said torch and gas cylinder.

(23) Defendant, Bernzomatic, Inc., a division of Newell Rubbermaid, as a result of its actions and omissions is a direct and proximate cause of the injuries suffered by the Plaintiffs in the incidents complained of herein.

COUNT III

(24) Plaintiff incorporates by reference all preceding paragraphs and allegations of this complaint as is fully set forth herein.

(25) Defendant, Newell Rubbermaid, Inc., should be held strictly liable as the designer, manufacture, distributor and seller of the previously identified torch and gas cylinder which was sold to the Plaintiff, Homer D. Wooden, in a defective condition and unreasonably dangerous to expected users.

(26) Defendant, Newell Rubbermaid, Inc., as designer, manufacture, distributor, seller as well as through it's marketing the torch and gas cylinder previously identified herein made implied and express warranties that said torch and gas cylinder were fit for general uses and purposes intended, and that it was free from any defects in design or construction.

(27) Defendant, Newell Rubbermaid, Inc., negligently designed, manufactured, marketed and distributed the aforesaid torch and gas cylinder in such a manner that it created an unreasonable risk of physical harm and injury; this negligence included but is not limited to improper and dangerous design, testing and inspection.

(28) Defendant, Newell Rubbermaid, Inc., unreasonably failed to warn of the known and foreseeable hazards of said torch and gas cylinder both before and after the sale of said torch and gas cylinder.

(29) Defendant, Newell Rubbermaid, Inc., as a result of its actions and omissions is a direct and proximate cause of the injuries suffered by the Plaintiffs in the incidents complained of herein.

COUNT IV

(30) Plaintiff incorporates by reference all preceding paragraphs and allegations of this complaint as if fully set forth herein.

(31) Defendant, Western Industries, Inc. Engineered Products Group, should be held strictly liable as the designer, manufacture, distributor and seller of the previously identified torch and gas cylinder which was sold to the Plaintiff, Homer D. Wooden, in a defective condition and unreasonably dangerous to expected users.

(32) Defendant, Western Industries, Inc. Engineered Products Group, as designer, manufacture, distributor, seller as well as through it's marketing the torch and gas cylinder previously identified herein made implied and express warranties that said torch and gas cylinder were fit for general uses and purposes intended, and that it was free from any defects in design or construction.

(33) Defendant, Western Industries, Inc. Engineered Products Group, negligently designed, manufactured, marketed and distributed the aforesaid torch and gas cylinder in such a manner that it created unreasonable risk of physical harm and injury; this negligence included but is not limited to improper and dangerous design testing, and inspection.

(34) Defendant, Western Industries, Inc. Engineered Products Group, unreasonably failed to warn of the known and foreseeable hazards of said torch and gas cylinder both before and after the sale of said torch and gas cylinder.

(35) Defendant, Western Industries, Inc. Engineered Products Group, as a result of its

actions and omissions is a direct and proximate cause of the injuries suffered by the Plaintiffs in the incidents complained of herein.

COUNT V

(36) Plaintiff incorporates by reference all preceding paragraphs and allegations of this complaint as if fully set forth herein.

(37) Defendant, Worthington Industries, Inc., should be held strictly liable as the designer, manufacture, distributor and seller of the previously identified torch and gas cylinder which was sold to the Plaintiff, Homer D. Wooden, in a defective condition and unreasonably dangerous to expected users.

(38) Defendant, Worthington Industries, Inc., as designer, manufacture, distributor, seller as well as through it's marketing the torch and gas cylinder previously identified herein made implied and express warranties that said torch and gas cylinder were fit for general uses and purposes intended, and that it was free from any defects in design or construction.

(39) Defendant, Worthington Industries, Inc., negligently designed, manufactured, marketed and distributed the aforesaid torch and gas cylinder in such a manner that it created unreasonable risk of physical harm and injury; this negligence included but is not limited to improper and dangerous design, testing and inspection.

(40) Defendant, Worthington Industries, Inc., unreasonably failed to warn of the known and foreseeable hazards of said torch and gas cylinder both before and after the sale of said torch and gas cylinder.

(41) Defendant, Worthington Industries, Inc., as a result of its actions and omissions is a direct and proximate cause of the injuries suffered by the Plaintiffs in the incidents complained of herein.

COUNT VI

(42) Plaintiff incorporates by reference all preceding paragraphs and allegations of this complaint as if fully set forth herein.

(43) Defendant, BOC Group, Inc., should be held strictly liable as the designer, manufacture, distributor and seller of the previously identified torch and gas cylinder which was sold to the Plaintiff, Homer D. Wooden, in a defective condition and unreasonably dangerous to expected users.

(44) Defendant, BOC Group, Inc., as designer, manufacture, distributor, seller as well as through it's marketing the torch and gas cylinder previously identified herein made implied and express warranties that said torch and gas cylinder were fit for general uses and purposes intended, and that it was free from any defects in design or construction.

(45) Defendant, BOC Group, Inc., negligently designed, manufactured, marketed and distributed the aforesaid torch and gas cylinder in such a manner that it created unreasonable risk of physical harm and injury; this negligence includes but is not limited to improper and dangerous design, testing and inspection.

(46) Defendant, BOC Group, Inc., unreasonably failed to warn of the known and foreseeable hazards of said torch and gas cylinder both before and after the sale of said torch and gas cylinder.

(47) Defendant, BOC Group, Inc., as a result of its actions and omissions is a direct and proximate cause of the injuries suffered by the Plaintiffs in the incidents complained of herein.

COUNT VII

(48) Plaintiff incorporates by reference all preceding paragraphs and allegations of this

complaint as if fully set forth herein.

(49) Defendant, Home Depot U.S.A., Inc., should be held strictly liable as the designer, manufacture, distributor and seller of the previously identified torch and gas cylinder which was sold to the Plaintiff, Homer D. Wooden, in a defective condition and unreasonably dangerous to expected users.

(50) Defendant, Home Depot U.S.A., Inc., as designer, manufacture, distributor, seller as well as through it's marketing the torch and gas cylinder previously identified herein made implied and express warranties that said torch and gas cylinder were fit for general uses and purposes intended, and that it was free from any defects in its design or construction.

(51) Defendant, Home Depot U.S.A., Inc., negligently designed, manufactured, marketed and distributed the aforesaid torch and gas cylinder in such a manner that it created unreasonable risk of physical harm and injury; this negligence included but is not limited to improper and dangerous design, testing and inspection.

(52) Defendant, Home Depot U.S.A., Inc., unreasonably failed to warn of the known and foreseeable hazards of said torch and gas cylinder both before and after the sale of said torch and gas cylinder.

(53) Defendant, Home Depot U.S.A., Inc., as a result of its actions and omissions is a direct and proximate cause of the injuries suffered by the Plaintiffs in the incidents complained of herein.

COUNT VIII

(54) As a direct and proximate result of the injuries to the Plaintiff, Homer D. Wooden, which are permanent and disabling in nature, he is entitled to recover the following damages:

(a) Medical, hospital, nursing, rehabilitation and related care and expenses, both in

the past and through his lifetime;

(b) Physical and mental pain suffering both past and future;

(c) Lost earnings to the time of trial;

(d) Permanent impairment of his power and ability to earn income all to his damage

in amounts in excess of minimum jurisdiction of this court.

COUNT VIII

(55) Plaintiff, Ada June Wooden, at the time of the occurrence complained of herein and of all other relevant times was the wife of the Plaintiff, Homer D. Wooden, and continues to be his wife. The conduct of the Defendants as set forth above caused injury to the marital relationship of Plaintiffs including a loss of society, companionship, affection, assistance, and consortium all to her damage in amounts in excess to the minimum jurisdiction of this court.

COUNT X

(56) Plaintiffs incorporates by reference all preceding paragraphs and allegations in this complaint as if fully set forth herein.

(57) Defendants falsely represented to the Plaintiffs that the aforesaid torch and gas cylinder were safe when used as instructed and labeled. These representations were false.

(58) Defendants failed to exercise reasonable care in asserting the accuracy of the information regarding the safe use of the aforesaid torch and gas cylinder and otherwise failed to exercise reasonable care in communicating the information to the plaintiffs in this case.

(59) In reasonable reliance upon Defendants misrepresentations, the Plaintiffs were induced to use and did use the aforesaid torch and gas cylinder.

(60) As a direct proximate result of Defendants misrepresentations, Plaintiffs sustained the damages and injuries as set forth in previous paragraphs of this complaint.

COUNT XI

(61) Plaintiffs incorporates by reference all preceding paragraphs and allegations of this complaint as if fully set forth herein.

(62) By reason of their conduct as alleged herein, Defendants violated the provisions of KRS 367 as it refers to consumer protection by inducing the Plaintiffs through the use of false and or misleading advertising representations and statements.

(63) By engaging in the conduct described above the Defendants have violated and continue to violate Kentucky's Consumer Protection Act by and among other things:

(a) Engaging in unfair or deceptive trade practices as defined in this statute by making false and misleading or oral and written statements that have capacity, tendency or effect of deceiving or misleading consumers.

(b) Engaging in unfair and deceptive trade practices as defined in this statute by making representations that their products have an approval, characteristics, ingredient, use or benefit which they do not have.

(c) Engaging an unfair or deceptive trade practices as defined in this statute by failing to state material facts the admission of which deceived or tended to deceive, including but not limited to, facts relating to the subject product.

(d) Engaging in unfair or deceptive trade practices as defined in this statute through deception, fraud, misrepresentation and knowing concealment, suppression or admission of material facts with the intent that consumers rely upon the same in connection with the use and continued use of the torch and gas cylinder described in this complaint.

(64) Plaintiffs prays that they be awarded all damages as previously stated herein and additional damages permitted under the Consumer Protection Act.

COUNT XII

(65) Defendants, jointly and or severally actually knew of the defective nature of the torch and gas cylinder previously described herein and continued to design, manufacture, market and sell said products in disregard of foreseeable harm to Plaintiffs and such conduct constitutes grossly negligent conduct as to entitle Plaintiffs to punitive damages.

WHEREFORE Plaintiffs pray for judgment against the Defendants jointly and or severely for their compensatory and punitive damages in amounts in excess of minimum jurisdiction of this court, trial by jury on all issues so tribal, their costs herein expended including attorneys fees, prejudgment interest, other costs as provided by law and for such other relief as the court deems proper.



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