

2. Defendants marketing and promotion of the Products relies on false and misleading claims that the Products are manufactured and designed by Black & Decker or Farberware, when in fact they are not; and that the Products do not provide “cups” in amount of 8 fluid ounces as is commonly known by consumers in the United States as the amount of a “cup.”

3. Plaintiff, and those similarly situated, relied on these Defendants’ material misrepresentations when purchasing the Products. Moreover, these material misrepresentations caused Plaintiff and Class Members to pay more than they otherwise would have paid for the Products.

4. Plaintiff asserts claims on his own behalf and on behalf all other similarly situated individual residents of the United States (“Class” or “Class Members”) for violations of Wis. Stat. §100.18, fraud, and for breach of express warranty.

JURISDICTION AND VENUE

5. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to Wis. Stat. § 801.05(1). Defendant Spectrum Brands Holdings, Inc. has its principal place of business in Wisconsin and is engaged in substantial and not isolated activities within this state.

6. The court further has jurisdiction to grant the relief sought by the Plaintiff pursuant to Wis. Stat. § 801.05(3). Defendants’ misleading marketing practices were directed at Wisconsin residents in Wisconsin.

7. Venue in Dane County is proper in that Defendant Spectrum Brands Holdings, Inc., has its principal place of business in Dane County.

THE PARTIES

8. Plaintiff is an individual residing in the State of New Jersey. Plaintiff purchased Defendants’ 12-cup coffee maker for personal use during the Class Period. In doing so, Plaintiff

relied upon advertising and other promotional materials, which were jointly prepared and approved by Defendants and their agents and disseminated through the advertising media, and within third party retail stores and websites, containing the misrepresentations alleged herein. Plaintiff would not have purchased the Product if he had known that Defendants' representations about the brand of the product and the cup-capacity were false and deceptive.

9. Defendant Applica Consumer Products, Inc. ("Applica") is a corporation with its principal office or place of business at 3633 South Flamingo Road, Miramar, FL 33027. At times relevant to this Complaint, Defendant has advertised, marketed, and sold a variety of small kitchen appliances, throughout the United States and the State of Wisconsin. Defendant transacts or has transacted business in this County and throughout the United States. Defendant, directly and through its agents, has substantial contacts with and receives substantial benefits and income from and through the State of Wisconsin and this County. Applica is a wholly owned subsidiary of Defendant Spectrum Brands Holdings, Inc.

10. Defendant Spectrum Brands Holdings, Inc. ("Holdings"), is a corporation with its principal office or place of business at 3001 Deming Way, Middleton, WI 53562. At times relevant to this Complaint, Defendant has advertised, marketed, and sold a variety of small kitchen appliances, throughout the United States and the State of Wisconsin. Defendant transacts or has transacted business in this County and throughout the United States. Defendant, directly and through its agents, has substantial contacts with and receives substantial benefits and income from and throughout the State of Wisconsin and this County. According to Holdings most recent Annual Report on Form 10-K, dated November 16, 2017, Holdings "manufactures, markets and/or distributes its products in approximately 160 countries in the North America ("NA"); Europe, Middle East & Africa ("EMEA"); Latin America ("LATAM") and Asia-Pacific

(“APAC”) regions through a variety of trade channels, including retailers, wholesalers and distributors, original equipment manufacturers (“OEMs”), construction companies and hearing aid professionals.” Upon information and belief, Defendant has the right of complete or substantial control over all of the operations and business practices of Applica and Spectrum.

FACTUAL ALLEGATIONS

11. Founded over 100 years ago, Black & Decker and Farberware are two of the most well-known and most admired brands in America. The brand names are synonymous with quality, engineering, and performance. Defendants sought to capitalize on the reputation and market presence of these brands as a part of its strategy to advertise and market a “portfolio of market-leading, well-known and widely trusted brands.” (<http://spectrumbrands.com/AboutUs/>)

12. On information and belief, Defendants acquired a license to use these brand names on certain small kitchen appliance products, including Black & Decker brand air fryers, blenders, can openers, coffee grinders, coffee makers, electric knives, food processors, grills, irons, juicers, kettles, mixers, quesadilla makers, rice cookers, skilletts and other surface cookers, slow cookers, steamers and other container cookers, toasters, toaster ovens, and waffle makers; and Farberware brand coffee urns and percolators, food processors, and toaster ovens (i.e. the “Products”).

13. Defendants advertise and sell the Products nationwide in a variety of styles and “cup”-capacities through brick & mortar and internet retailers such as Walmart, Target, Home Depot, Lowes Stores and Sears, among others.

14. Defendants uniformly market the Products across a variety of media, including print, the internet, product packaging, and in-store displays.

Misrepresentation That the Products Are Genuine Black & Decker and Farberware Models

15. Defendants consistently and uniformly represent that the Products are genuine

“Black & Decker” and “Farberware” made products.

16. By way of example, with respect to the Black & Decker branded Products, on walmart.com consumers the Products are represented as:

- a. “BLACK+DECKER 12-Cup Programmable Coffee Maker”;
- b. “Brand: BLACK+DECKER”; and
- c. “Hot coffee is good coffee. That's what you get with the BLACK + DECKER CM2036S 12-Cup Thermal Programmable Coffeemaker.”

See <https://www.walmart.com/ip/BLACK-DECKER-12-Cup-Programmable-Coffee-Maker-Thermal-Carafe-CM2036S/51800327> (last accessed: October 8, 2018).

17. This website further states that while Walmart “aim[s] to provide accurate product information, it is provided by manufacturers, suppliers and others . . .” *See* https://www.target.com/p/black-decker-12-cup-programmable-coffee-maker/-/A-13806559?clkid=446fae97N99655af67676130194d0aa08&lnm=81938&afid=NeuIntel%2C%20LLC&ref=tgt_adv_xasd0002 (last accessed: October 8, 2018).

18. Similarly, on target.com the Products are represented as:

- a. “The BLACK + DECKER™ 12-Cup Programmable Coffeemaker is engineered to use optimal water temperatures to brew delicious coffee whenever you need it.
- b. “Capacity (Volume): 12.0 cup;” and
- c. “Cup Capacity: 12.0”

See https://www.target.com/p/black-decker-12-cup-programmable-coffee-maker/-/A-13806559?clkid=446fae97N99655af67676130194d0aa08&lnm=81938&afid=NeuIntel%2C%20LLC&ref=tgt_adv_xasd0002 (last accessed: October 8, 2018). This website further states this information is “FROM MANUFACTURER.”

19. Likewise, on homedepot.com the products are represented as:

- a. “BLACK+DECKER;”
- b. “12-Cup Programmable Coffee Maker;” and
- c. “Duralife glass carafe is durable; holds 12 -cups of coffee.”

See <https://www.homedepot.com/p/BLACK-DECKER-12-Cup-Programmable-Coffee-Maker-CM2020B/206667219> (last accessed: October 8, 2018).

20. Defendants make similar representations with respect to the Farberware branded Products. For example, on Walmart.com the Products are represented as:

- a. “Farberware 4-12 Cup Coffee Maker;”
- b. “Premium percolator;”
- c. And “2-12 cup capacity.”

See <https://www.walmart.com/ip/Farberware-4-12-Percolator-Stainless-Steel-FCP412/14320964> (last accessed October 8, 2018)

21. Similarly, on Amazon.com, the Products are represented as:

- a. Farberware 8-Cup Percolator, Stainless Steel, FCP280

See https://www.amazon.com/Farberware-8-Cup-Percolator-Stainless-FCP280/dp/B00004R946/ref=sr_1_5?ie=UTF8&qid=1538673540&sr=8-5&keywords=farberware+percolator (last accessed October 8, 2018).

22. Whether in store, or online, Defendants fail to advise consumers in a clear and prominent manner that it is actually Defendants, not Black & Decker or Farberware that manufactures and warrants the Products.

23. In other words, the Products are not genuine Black & Decker or Farberware products. Defendants are actually selling Applica/Spectrum-made products under the guise of the

Black & Decker and Farberware brand names in order to convince consumers to purchase the Products and/or pay more than they otherwise would for the Products.

Misrepresentation That the Products Provide 8-Fluid Ounce “Cups”

24. As set forth above, Defendants uniformly advertise and market the Products in terms of “cup” capacity (e.g. 5, 8, or 12 “cups”).

25. Consumers in the United States generally believe and know that a “cup” of liquid equals 8-fluid ounces. The United States Food and Drug Administration (“FDA”) defines the “Reference Amounts Customarily Consumed” (“RACC”) tables used by food manufacturers to determine the serving size on the Nutrition Facts Panel, and the USDA Food Safety and Inspection Services labels. The FDA official reference amount for a cup of coffee was 8 ounces (240 mL).

26. Defendants’ Products, however, provide substantially less than 8-fluid ounces per “cup” (approximately 5.5 -fluid ounces).

27. Because Defendants fail to advise consumers that the cup capacity is not based on the United States’ generally-accepted 8-fluid ounce cup measurement, the Products provide substantially fewer “cups” than advertised and stated on the Products’ packaging.

Plaintiff’s Purchase of the Products

28. Plaintiff purchased a Black & Decker 12-cup coffeemaker in New Jersey during the proposed Class Period. Plaintiff suffered ascertainable and pecuniary loss because he would not have purchased the Product had he known that Defendants’ representations about the brand and the cup size and capacity of the Products was false and misleading.

CLASS ALLEGATIONS

29. Plaintiff brings this class action on behalf of himself, and as a class action on behalf of the following putative class (the “Class”):

All individual residents of the United States who purchased one or more covered Products between February 5, 2014 and the present. The term “covered Products” means and refers to small kitchen appliances produced by or for Spectrum Brands pursuant to a license agreement, including Black & Decker brand air fryers, blenders, can openers, coffee grinders, coffee makers, electric knives, food processors, grills, irons, juicers, kettles, mixers, quesadilla makers, rice cookers, skillets and other surface cookers, slow cookers, steamers and other container cookers, toasters, toaster ovens, and waffle makers; and Farberware brand coffee urns and percolators, food processors, and toaster ovens. Excluded from the Class are: (1) Individuals who, at any point, have served as a Distributor for Defendants; (2) Defendants and all directors, officers, employees, partners, principals, shareholders and agents of Defendants; (3) Any currently sitting Wisconsin State Court Judge or Justice, and the current spouse and all other persons within the third-degree of consanguinity to such judge/justice.

Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified.

30. Plaintiff does not know the exact number of members of the putative Class. Due to the nature of the trade and commerce involved, however, Plaintiff is informed and believes that the total number of Class members is at least in the millions, and that members of the Class are numerous and geographically dispersed throughout the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery, including Defendants’ records, either manually or through computerized searches. The disposition of the claims of the Class members in a single class action will provide substantial benefits to all parties and to the Court.

31. If necessary, notice of this action may be affected to the proposed Class through publication in a manner authorized in Wisconsin law, and/or the Federal Rules of Civil

Procedure. Also, Class members may be notified of the pendency of this action by mail and/or email, through the distribution records of Defendant, third party retailers, and vendors.

32. All of the dispositive questions of law and fact are common to the Class. The common questions include:

- a. whether Defendants misrepresented and/or omitted that the Products were produced, manufactured, and/or warranted by Black & Decker or Farberware, when they are not;
- b. whether Defendants misrepresented and/or omitted the true cup capacity of the Products by failing advise consumers that the cup capacity is not based on an 8 fluid ounce cup of coffee as is commonly known, when in fact, Defendants based the cup capacity on an 5-6 fluid ounce cup;;
- c. whether Defendants' advertising and labeling claims set forth above are unlawful, untrue, or are misleading, or reasonably likely to deceive;
- d. whether Defendants' conduct is fraudulent and/or violates public policy;
- e. whether Defendants' engaged in unfair, unlawful and/or fraudulent business practices in labeling, marketing and distributing the Products;
- f. whether Defendants' knew or should have known that the representations were false;
- g. whether Defendants engaged in false advertising with respect to the Products;
- h. whether Defendants' knowingly concealed or misrepresented material facts for the purpose of inducing consumers into spending money on the Products and cause consumers to suffer pecuniary loss;

- i. whether Defendants' representations, concealments and non-disclosures concerning the Products are likely to deceive the consumer;
- j. whether Defendants' representations, concealments and non-disclosures concerning the Products violate Wisconsin law and the common law;
- k. whether Defendants should be permanently enjoined from making the claims at issue; and
- l. whether Plaintiff and the Class are entitled to restitution and damages.

33. Plaintiff's claims are typical of those of the proposed Class, and Plaintiff will fairly and adequately represent and protect the interests of the proposed Class. Plaintiff does not have any interests that are antagonistic to those of the proposed Class. Plaintiff has retained counsel competent and experienced in the prosecution of this type of litigation.

34. The questions of law and fact common to the Class members, some of which are set out above, predominate over any questions affecting only individual Class members.

35. A class action is the superior method for the fair and just adjudication of this controversy. The expense and burden of individual suits makes it impossible and impracticable for members of the proposed Class to prosecute their claims individually and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

36. The trial and litigation of Plaintiff's and the proposed Class's claims are manageable. Defendants have acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief and declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

VIOLATION OF WISCONSIN DECEPTIVE TRADE PRACTICES ACT

(Wis. Stat. Ann. §100.18, *et seq.*)

37. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

38. Plaintiff brings this claim individually and on behalf of the proposed Class against Defendants.

39. This cause of action is brought pursuant to Wisconsin's Deceptive Trade Practices Act, Wisconsin Statutes § 100.18 (the "WDTPA"). Defendants' conduct violates Wis. Stat. § 100.18, which provides that no "firm, corporation or association ... with intent to sell, distribute, increase the consumption of ... any... merchandise ... directly or indirectly, to the public for sale ... shall make, publish, disseminate, circulate, or place before the public ... in this state, in a ... label ... or in any other way similar or dissimilar to the foregoing, an advertisement, announcement, statement or representation of any kind to the public ... which ... contains any assertion, representation or statement of fact which is untrue, deceptive or misleading."

40. Plaintiff and the Class Members are members of the public who have "suffer[ed] pecuniary loss because of a violation" of 100.18. Wis. Stat. § 100.18(11)(b)(2).

41. As alleged throughout this Complaint, Defendants deliberately engaged in deceptive and unlawful marketing in violation of Wisconsin law by representing to the Class that the Products are genuine Black & Decker and Farberware products produced and warranted by

Black & Decker and Farberware, when in fact, they are not; and providing the commonly known 8-fluid ounce cup, when in fact, they do not.

42. Plaintiff and the Class relied upon Defendants' deceptive and unlawful marketing practices.

43. Plaintiff and the Class Members are entitled to:

- a. damages;
- b. "costs, including reasonable attorney fees"; and
- c. other relief which the court deems proper.

Wis. Stat. § 100.18(11)(b)(2).

44. Plaintiff and the Class Members are entitled to punitive damages. Wis. Stat. § 100.20(5).

SECOND CAUSE OF ACTION

FRAUD

45. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

46. Plaintiff brings this claim individually and on behalf of the proposed Class against Defendants.

47. Defendants represented, in a single, consistent and uniform manner, the alleged features and brand of the Products.

48. Defendants' statements about the Products as set forth more fully above are false.

49. Thus, Defendants knew that the representations set forth herein were false when such representations were made and/or made the representations recklessly and without regard for the truth.

50. Plaintiff and the Class reasonably relied upon Defendants' false representations in

purchasing the Products, including, without limitation, the representation that the Products were manufactured and produced by Black & Decker and Farberware, when in fact they are not; and the Products provide “cups” in the commonly known amount of 8-fluid ounces.

51. Defendants’ misleading and fraudulent conduct was knowing, deliberate, wanton, willful, oppressive and undertaken in conscious disregard of, and with reckless indifference to, Plaintiff and members of the Class’ interest, and otherwise of the character warranting the imposition of punitive damages.

52. Plaintiff and the Class suffered real economic losses and harm as a result of Defendants’ intentional misrepresentations and active concealment, as set forth specifically herein.

53. Plaintiff’s and the Class’s reliance on Defendants’ representations were a substantial factor in causing the harm to Plaintiff and the Class.

THIRD CAUSE OF ACTION

BREACH OF EXPRESS WARRANTY

54. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs as if fully set forth herein.

55. Plaintiff brings this claim individually and on behalf of the proposed Class against Defendants.

56. Defendants provided Plaintiff and members of the Class with written express warranties including, but not limited to, warranties that the Products are genuine Black & Decker and Farberware products, manufactured by Black & Decker and Farberware, when in fact, they are not; and that the Products provide the commonly known 8-fluid ounces provided in a cup, when in fact, the Products provide substantially less.

57. Plaintiff and members of the Class purchased the Products believing them to

conform to the express warranties.

58. Defendants breached these warranties.

59. As a proximate result of the breach of warranties by Defendants, Plaintiffs and the members of the Class did not receive goods as warranted and did not receive the benefit of the bargain. They have, therefore, been injured and have suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and as representative of all other persons similarly situated, prays for judgment against Defendants, as follows:

1. An order certifying that the action may be maintained as a Class Action;
2. An order enjoining Defendants from pursuing the policies, acts, and practices complained of herein;
3. An order requiring Defendants to pay restitution to Plaintiff and all members of the Class;
4. An order requiring Defendants to pay damages to Plaintiff and all members of the Class;
5. An order requiring Defendants to pay punitive damages to Plaintiff and all members of the Class;
6. For pre-judgment interest from the date of filing this suit;
7. For reasonable attorneys' fees;
8. Costs of this suit; and,
9. Such other and further relief as the Court may deem necessary and appropriate.

DATED: October 10, 2018

Respectfully submitted,

ADEMI & O'REILLY, LLP

By: /s/ John D. Blythin

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