

**IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI**

CHRISTINE MENDOZA and TONYA
DOOLEY, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

UNITED INDUSTRIES CORPORATION,

Defendant.

Case No. _____

Div.:

CLASS ACTION PETITION

JURY TRIAL DEMAND

PETITION AND JURY DEMAND – CLASS ACTION

Plaintiffs Christine Mendoza and Tonya Dooley (“Plaintiffs”), individually and on behalf of all others similarly situated, allege the following facts and claims against Defendant United Industries Corporation (“Defendant”) upon personal knowledge, investigation of counsel, and information and belief.

NATURE OF THE CASE

1. Defendant is a top distributor of consumer-facing pest control products in the United States.
2. Plaintiffs bring this class-action lawsuit against Defendant based on Defendant’s misleading, deceptive and unlawful conduct in packaging, marketing and labeling three of its products: (i) Cutter Citro Guard Citronella Candles, (ii) Repel Insect Repellent Citronella Candles (collectively, the “Candles”), and (iii) Hot Shot Fogger with Odor Neutralizer (“Hot Shot,” and together with the Candles, the “Products”).

3. Defendant represents on the front-facing, principal display panel of its Hot Shot Product that it “kills on contact,” “controls heavy infestations,” “keeps killing up to 2 months,” “kills roaches, fleas, ants (except fire ants), spiders, & other listed insects,” and “kills hidden bugs ... penetrates into crevices, cracks & carpet fibers,” (the “Hot Shot Representations”).

4. In addition, Defendant represents on the front-facing, principal display panel of its Candles’ packaging that its Citronella Candles “repel[] mosquitoes & other flying insects:” (the “Candle Representation”).

5. In purchasing the Products, Plaintiffs and consumers were injured, including based on a loss of the benefit of the bargain between what was represented and what was received. In addition, Plaintiffs and consumers unwittingly purchased Products that were misbranded under the law.

6. Accordingly, Plaintiffs bring this action behalf of themselves and all others similarly situated to recover damages for Defendant’s false, deceptive, and misleading conduct. Plaintiffs seek damages, reasonable attorneys’ fees and costs, and disgorgement of all benefits Defendant has enjoyed from its unlawful and deceptive business practices, as detailed herein. Plaintiffs make these allegations based on their personal knowledge as to themselves and their own acts and observations, and otherwise, on information and belief based on investigation of counsel.

PARTIES

7. Christine Mendoza is a citizen of Missouri who resides in Rolla, Missouri. Ms. Mendoza purchased a Hot Shot fogger from a Walmart store located in Rolla, Missouri, in the Summer 2020 for approximately \$6. Prior to purchase, Ms. Mendoza carefully read the Hot Shot labeling, including the representations that it “kills on contact,” “controls heavy infestations,” “keeps killing up to 2 months,” “kills roaches, fleas, ants (except fire ants), spiders, & other

listed insects,” and that it “kills hidden bugs ... penetrates into cracks, crevices & carpet fibers.” Ms. Mendoza believed these statements to mean that Hot Shot would kill roaches, fleas, ants, and spiders, and that it would effectively control these insects from home infestations. Ms. Mendoza relied on these representations in that she would not have purchased Hot Shot at all, or would have only been willing to pay a substantially reduced price for Hot Shot, had she known that these representations were false and misleading. Plaintiff Mendoza used Hotshot as directed, but it did not provide effective insect control as advertised.

8. Plaintiff Tonya Dooley is a citizen of Missouri who resides in Rolla, Missouri. Ms. Dooley purchased a Cutter Citro Guard Citronella Candle from a Walmart store located in Rolla, Missouri, in October 2020 for approximately \$7. Prior to purchase, Ms. Dooley carefully read the Cutter Citro Guard Citronella Candle’s labeling, including the representation that it “repels mosquitos & other flying insects.” Ms. Dooley believed this statement to mean that the Product would repel mosquitos and other flying insects, and relied on it in that she would not have purchased the Candle at all, or would have only been willing to pay a substantially reduced price for the Candle, had she known that these representations were false and misleading. Ms. Dooley used the Candle according to its directions and was bitten by mosquitoes. The Candle was ineffective to repel mosquitoes.

9. Defendant United Industries Corporation is a Delaware corporation with its principal place of business in Earth City, Missouri. Defendant United Industries Corporation, a subsidiary of Spectrum Brands, is the leading manufacturer of consumer pest control products in the United States. Defendant United Industries Corporation manufactures and distributes the Products under the Cutter, Repel, and Hot Shot brand names.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action because the amount in controversy exceeds the minimum jurisdictional limits of the Court. Plaintiffs believe and allege that the total value of their individual claims is at most equal to the refund of the purchase price they paid for the Products.

11. Venue is proper in this Court pursuant to § 508.010 RSMo as Plaintiffs reside in Phelps County, Missouri and further, as alleged, were first injured in Phelps County, Missouri.

12. This Court has personal jurisdiction over Defendant United Industries Corporation pursuant to § 506.500 RSMo as Defendant's principal place of business is Earth City, Missouri, and Defendant has had more than sufficient minimum contact with the State of Missouri and has availed itself of the privilege of conducting business in this state. As explained below, Defendant has committed affirmative tortious acts within the State of Missouri that give rise to civil liability including distributing and selling the misbranded Products throughout the State of Missouri.

FACTUAL ALLEGATIONS

I. ALLEGATIONS CONCERNING HOT SHOT

A. Defendant's Representations about the Hot Shot Product are False and Misleading

13. Defendant manufactures, labels, markets, promotes, advertises and sells the Hot Shot Product. The following image depicts the Product, including the Product purchased by Plaintiff Mendoza:



14. Defendant uniformly advertises, labels and represents the Hot Shot Product “kills on contact,” “controls heavy infestations,” “keeps killing up to 2 months,” “kills roaches, fleas, ants (except fire ants), spiders, & other listed insects,” and “kills hidden bugs ... penetrates into crevices, cracks & carpet fibers.”

15. Defendant’s Hot Shot Representations are false and misleading. As explained below, Hot Shot is ineffective for pest control because it cannot reach into hiding spots where pests dwell and because the pests it targets are resistant to cypermethrin, the product’s active ingredient.

16. The draw to consumers for using insect foggers, such as Hot Shot (also sometimes referred to as “bug bombs”), is easily understood. Many consumers are desperate to alleviate

pest problems in their homes, but do not wish to incur the expense of hiring a pest control professional. So they purchase Hot Shot in the hopes of an easy fix. As the New York Times has noted, “in the battle against bugs, it is often low-income neighborhoods that suffer the most. After all, when the choice comes down to a \$175 visit from an exterminator or a \$3 fogger, the fogger will most often win out.”¹

17. It is therefore unsurprising that insect foggers, such as Hot Shot, are so popular. The U.S. Environmental Protection Agency (“EPA”) has estimated that approximately 50 million foggers are used annually.²

18. Unfortunately for consumers, Defendant’s Hot Shot Product does not perform as stated. As Dr. Michael Potter, an entomology professor at the University of Kentucky, has explained, “[w]hile foggers require little effort to use, they seldom resolve, and can exacerbate, indoor pest problems.”³ As explained below, this is true for two reasons.

19. First, when foggers are activated, “[t]he entire contents are released upwards, into the airspace, where the aerosol droplets remain suspended for a period of time and then gradually settle onto floors, counter tops and other surfaces.” However, “[w]hen applied in this manner, very little insecticide actually penetrates into cracks, voids, and other secluded locations where cockroaches, ants, bed bugs, and most other household pests congregate and spend most of their time.”⁴

¹ Marc Santora, *Explosion in Apartment Highlights Risks of Using Chemical Foggers to Kill Insects*, NY Times, July 12, 2013, available at <https://www.nytimes.com/2013/07/13/nyregion/a-risky-weapon-in-the-fight-against-insects.html>.

² Susan C. Jones, *Ineffectiveness of Over-the-Counter Total-Release Foggers Against the Bed Bug (Heteroptera: Cimicidae)*, 105 J. of Econ. Entomology 3 at pp. 957-963 (June 2012), available at <https://academic.oup.com/jee/article/105/3/957/913369>.

³ Michael F. Potter, *Limitations of Home Insect Foggers (“Bug Bombs”)*, College of Agriculture Food and Environ. at University of Kentucky, available at <https://entomology.ca.uky.edu/ef643>.

⁴ *Id.*

20. This is a big problem because, as Defendant's own product packaging suggests, the "cracks" and "crevices" are where the insects live and breed. Simply put, the product cannot be effective if it cannot reach the pests.

21. Second, the active ingredients in the Hot Shot Product, cypermethrin and tetramethrin, are forms of pyrethrin, which is theoretically supposed to act as an insecticide. However, pyrethrins "are seldom lethal to roaches, ants, ... spiders ... and other crawling pests."⁵ That is because these insects quickly build up a resistance to this chemical. As an article in the Journal of Pesticide Reform noted: "Resistance to cypermethrin has developed quickly in insects exposed frequently. Both agricultural and household pest species have developed resistance. The degree of resistance is usually measured with a resistance ratio, the ratio between the amount of a pesticide required to kill a resistant insect and the amount required to kill average (non-resistant) insects. ... Among household pests, resistance ratios have ranged from 5 to 100. (The resistance ratio of 5 was enough to render synthetic pyrethroids ineffective)."⁶

22. Independent peer-reviewed research published in the journal *BMC Public Health* explained the problem with insect foggers as threefold: "First ... wild cockroaches could behaviorally avoid the insecticide residues. Second, aerosolized particles from [foggers] likely failed to reach places where cockroaches normally shelter. We found relatively little insecticide residues on walls near the [fogger] discharge sites, compared to horizontal surfaces. Since cockroaches are often found under horizontal surfaces (e.g., under the kitchen sink, under

⁵ *Id.*

⁶ Caroline Cox, *Cypermethrin*, 16 J. of Pesticide Reform 2 (Summer 1996), available at <https://d3n8a8pro7vhmx.cloudfront.net/ncap/pages/26/attachments/original/1428423343/cypermethrin.pdf?1428423343>.

countertops, under shelves), they likely avoid the large insecticide deposits on the tops of horizontal surfaces. Finally, and most significantly, extensive and pervasive pyrethroid resistance has evolved in German cockroach populations over the last 3 decades, rendering even residual spray formulations, which deliver pyrethroids directly to aggregation and foraging sites, ineffective in cockroach abatement.”⁷

23. Upon information and belief, Defendant has sold millions of units of Hot Shot to unsuspecting consumers through false promises of effectiveness.

II. ALLEGATIONS CONCERNING THE CANDLES

A. Defendant’s Representations about the Candle Products are False and Misleading

24. Cutter Citro Guard Citronella Candles and Repel Insect Repellent Citronella Candles are both manufactured and distributed by Defendant. The Candles both contain 3% citronella. They share the same exact formula and composition, and have nearly-identical label claims and packaging. They are essentially the same product, just with different brand names affixed to their labels.

25. Defendant represents on the front of the Candles’ packaging that the Citronella Candles “repel[] mosquitoes & other flying insects:” The following image depicts the Product, including the Product purchased by Plaintiff Dooley:

⁷ Zachary C. DeVries, et al., *Exposure risks and ineffectiveness of total release foggers (TRFs) used for cockroach control in residential settings*, BMC Public Health (28 January 2019), available at <https://bmcpublihealth.biomedcentral.com/articles/10.1186/s12889-018-6371-z>.



26. Contrary to Defendant’s material representations and omissions, the Candles do not live up to their label representations. The Candles are ineffective to repel mosquitos.

27. For instance, independent research published in the Journal of Insect Science found that Defendant’s Cutter Citro Guard Citronella Candles had “no repellency effect” on mosquitos and “did not significantly reduce mosquito attraction.”⁸ In fact, the investigators actually observed that the candles “combined with a human subject attracted slightly *more* mosquitos than the human bait person alone.” One of the study’s authors commented in a separate news article that “citronella does not deter these mosquitos in any way.”⁹

28. These results were also corroborated by independent research published in the Journal of the American Mosquito Control Association, which found that 5% citronella candles (with a significantly higher citronella concentration than the Candles, which contain only 3% citronella) did no more to repel mosquitos than control candles. Specifically, the authors

⁸ <https://academic.oup.com/jinsectscience/article/17/1/24/2996380>

⁹ <https://gizmodo.com/anti-mosquito-candles-totally-dont-work-1792597535> (emphasis added)

concluded that “citronella candles are not very effective in repelling mosquitoes, and use of citronella by the general public should be discouraged.”¹⁰

29. But Defendant already knows that its Candles are ineffective to repel mosquitos, and that consumers are mistaken as to citronella’s effectiveness. Defendant’s parent company, Spectrum Brands, published a press release in July of 2016 titled “With Zika Threat Looming, Americans Don’t Know How to Prevent Mosquito Bites.”¹¹ In the press release, Spectrum Brands reported findings of a survey it conducted, which “found **many misconceptions** about mosquito repellents and active ingredients. For example, 67% of respondents identified citronella as a very or somewhat effective active ingredient for repelling insects. **However, citronella is not one of the active ingredients that the CDC recommends as effective.**”¹² (emphasis added).

30. Thus, with almost no awareness of the irony involved, Defendant’s own parent company, which is far and away the largest seller of citronella candles by volume in the United States, flat out admitted that consumers who believe that citronella is a “very or somewhat effective active ingredient for repelling insects” are under a “misconception.”

31. Defendant also knows that its Candles are ineffective to repel mosquitoes because it was literally newsworthy. In May of 2016, Inside Edition, a nationally syndicated television news program, ran a news segment titled, “*Amid Zika Virus Fears, What's The Best Way To Keep Mosquitoes Away?*” to “find out which repellents work, and which don’t.”¹³ In the news

¹⁰ https://docit.tips/download/ability-of-essential-oil-candles-to-repel-biting-insects-in_pdf

¹¹ <https://investor.spectrumbrands.com/news-releases/news-release-details/zika-threat-looming-americans-dont-know-how-prevent-mosquito?ID=2185860&c=75225&p=irol-newsArticle>

¹² *Id.*

¹³ <https://www.insideedition.com/investigative/16372-amid-zika-virus-fears-whats-the-best-way-to-keep-mosquitoes-away>

segment, various mosquito repellent products were put to the test at the USDA Mosquito and Fly Research Unit in Gainesville, Florida, headed by world-renowned entomologist, Uli Bernier.¹⁴ Uli Bernier was the National Program Leader of the Agricultural Research Service for the USDA.

32. Defendant's Repel Citronella Candle was among the products tested for efficacy against repelling mosquitoes. At the 1:45 mark, "the scientists released 500 mosquitoes into [a] special outdoor cage to see if [Defendant's Repel Citronella Candle] really worked":¹⁵



33. And despite standing in direct proximity of Defendant's lit Citronella Candle, both the news anchor and Mr. Bernier were still swarmed by mosquitoes. Indeed, the news anchor said "I'm holding this candle, fumes coming in my face," and then turns to Mr. Bernier and said, "you've got one on your nose, you've got one on your forehead," to which Mr. Bernier replied to the news anchor, "you've got one on your beard, you've got one on your shirt":

¹⁴ *Id.*

¹⁵ *Id.*







34. Mr. Bernier was then asked, point-blank: “on a scale of 1 to 10, how effective is this candle?” and responded, “unfortunately, this is going to give us about a 1.”¹⁶

35. Defendant was clearly aware of the Inside Edition news segment concerning the ineffectiveness of its Candles because Defendant, like most companies, cares about its reputation and regularly monitors its publicity.

36. Upon information and belief, Inside Edition notified the manufacturers of the products tested on the news segment before airing the program. This is additional evidence that Defendant was well-aware of the ineffectiveness of its Candles but decided to sell them anyway in pursuit of financial gain to the detriment of consumers.

37. Upon information and belief, Defendant has sold millions of units of the Candles throughout the United States.

¹⁶ *Id.*

III. PLAINTIFFS PAID A PREMIUM FOR THE PRODUCTS AND WERE MISLED

38. Plaintiffs purchased the Products during the class period, including during 2020.

39. Plaintiff Mendoza purchased the Hot Shot fogger from a Walmart store located in Rolla, Missouri, in the Summer of 2020 for approximately \$6.00. Plaintiff Mendoza purchased the Hot Shot Product, which prominently states on the front label that it “kills on contact,” “controls heavy infestations,” “keeps killing up to 2 months,” “kills roaches, fleas, ants (except fire ants), spiders, & other listed insects,” and that it “kills hidden bugs ... penetrates into cracks, crevices & carpet fibers.”

40. Plaintiff Dooley purchased a Cutter Citro Guard Citronella Candle from a Walmart store located in Rolla, Missouri, in October 2020 for approximately \$7.00. Plaintiff Dooley purchased the Candle, which prominently states on the front label that it “repels mosquitos & other flying insects.”

41. Plaintiffs purchased the Products for personal and family use. The price paid by Plaintiffs were representative of the price paid by similarly situated consumers who purchased the Products. In addition, the Hot Shot Representations and Candle Representation on the Products purchased by Plaintiffs were the same as the Representations on the Products purchased by members of the Class.

42. In purchasing the Hot Shot Product, Plaintiff Mendoza carefully read the Hot Shot Product labeling, including the representations that it “kills on contact,” “controls heavy infestations,” “keeps killing up to 2 months,” “kills roaches, fleas, ants (except fire ants), spiders, & other listed insects,” and that it “kills hidden bugs ... penetrates into cracks, crevices & carpet fibers.” Plaintiff Mendoza, acting reasonably under the circumstances, purchased the Hot Shot Product with the reasonable belief that the Hot Shot Representations were true.

43. In purchasing the Hot Shot Product, Plaintiff Mendoza acted as a reasonable consumer would in light of all circumstances. Plaintiff Mendoza purchased the Hot Shot Product for the particular purposes of killing roaches, fleas, ants, and spiders, and reasonably relied on Defendant's Representations that the Hot Shot Product would effectively control these insects. Plaintiff Mendoza used the Hot Shot Product as directed, but the Product did not perform in accordance with Defendant's express Representations.

44. Plaintiff Mendoza was damaged in that she would not have purchased the Hot Shot Product if she had known the truth, or would have paid less for it. In addition, Plaintiff Mendoza was denied the benefit of the bargain between what was represented, a Product that conformed to the Hot Shot Representations, and what she received—a Product that did not perform as represented.

45. In purchasing the Cutter Citro Guard Citronella Candle, Ms. Dooley carefully read the Candle's labeling, including the representation that it "repels mosquitos & other flying insects," and, acting reasonably under the circumstances, purchase the Candle with the reasonable belief that the Candle Representation was true. In purchasing the Candle Product, Plaintiff Dooley acted as a reasonable consumer would in light of all circumstances. Plaintiff purchased the Candle Products for the particular purpose that it would repel mosquitos and other flying insects and reasonably relied on Defendant's Representation. Plaintiff Dooley used the Candle Product as directed, but the Product did not perform in accordance with Defendant's express Representation.

46. Plaintiff Dooley was damaged in that she would not have purchased the Candle Product if she had known the truth, or would have paid less for it. In addition, Plaintiff Dooley was denied the benefit of the bargain between what was represented, a Product that conformed to

the Candle Representation, and what she received—a Product that did not perform as represented.

47. Defendant knew or should have known that reasonable consumers would consider the Representations on the Products material in deciding to purchase the Products and made the Representations to induce consumers to purchase the Products. Defendant's false and deceptive Representations would and did in fact mislead reasonable consumers and would and did in fact cause reasonable persons to enter into transactions that resulted in the damages alleged herein.

48. At the time Plaintiffs purchased the Products, Plaintiffs did not know, and had no reason to know, that the Products' labels and advertising were misleading, deceptive and unlawful as set forth herein. Plaintiffs would not have purchased the Products, or would have purchased them on different terms, if they had known the truth.

49. Plaintiffs suffered damages and an ascertainable loss because the Products as actually received were worth less than the Products as represented by Defendant. Plaintiffs' individual damages described herein, including the purchase price of the Products, are sufficiently definite and objectively capable of being calculated with a reasonable degree of certainty.

50. Defendant knew, or should have known that the Products' Representations were materially, false, deceptive and misleading. Defendant's omission and concealment of material facts concerning the Products misled reasonable consumers and caused reasonable persons to enter into transactions that resulted in the damages alleged herein.

CLASS DEFINITIONS

51. Plaintiffs hereby re-allege and incorporate the foregoing allegations as if set forth herein in their entirety.

52. Plaintiffs seek to represent the following Class and Subclass (collectively defined as the “Class”), as follows:

All citizens of the United States, who, within the six years preceding the filing of this Complaint, purchased Defendant’s Products (the “Nationwide Class”); and

All members of the Nationwide Class that purchased Defendant’s Products in the state of Missouri (the “Missouri Subclass”).

53. Excluded from the Class are: (a) federal, state, and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendant has a controlling interest, to include, but not limited to, their legal representative, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; and (d) any judicial officer in the lawsuit and/or persons within the third degree of consanguinity to such judge.

CLASS ALLEGATIONS

54. Plaintiffs hereby re-allege and incorporate the foregoing allegations as if set forth herein in their entirety.

55. Upon information and belief, the Class consists of hundreds of thousands of purchasers dispersed throughout the United States. Accordingly, it would be impracticable to join all members of the Class before the Court.

56. There are numerous and substantial questions of law or fact common to all members of the Class that predominate over any individual issues. Included within the common questions of law or fact are:

a. Whether Defendant made misrepresentations and false statements in violation of the law;

- b. Whether Defendant engaged in unfair practices in violation of the law;
- c. Whether Defendant engaged in concealment or omission of any material fact in violation of the law;
- d. Whether Defendant has been unjustly enriched by the sale of the Products;
- e. Whether Plaintiffs and Class Members have sustained damages as a result of Defendant's unlawful conduct; and
- f. The proper measure of damages sustained by Plaintiffs and the Class Members,

57. Plaintiffs' claims are typical of the claims of members of the Class, in that they share the above-referenced facts and legal claims or questions with members of the Class, there is a sufficient relationship between the damage to Plaintiffs and Defendant's conduct affecting members of the Class, and Plaintiffs have no interests adverse to the interests of other members of the Class.

58. Plaintiffs will fairly and adequately protect the interests of members of the Class and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

59. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all members of the Class is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable.

60. The claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class.

61. Absent a Class, the members of the Class will continue to suffer damage and Defendant's unlawful conduct will continue without remedy while Defendant profits from and enjoys its ill-gotten gains.

62. Given the size of individual Class members' claims, few, if any, members could afford to or would seek legal redress individually for the wrongs Defendant committed against them, and absent members have no substantial interest in individually controlling the prosecution of individual actions.

63. When the liability of Defendant has been adjudicated, claims of all members of the Class can be administered efficiently and/or determined uniformly by the Court.

64. This action presents no difficulty that would impede its management by the Court as a class action which is the best available means by which Plaintiffs and members of the Class can seek redress for the harm caused to them by Defendant.

65. Because Plaintiffs seek relief for all members of the Class, the prosecution of separate actions by individual members would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendant.

66. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

CLAIMS FOR RELIEF

COUNT I

**Violation of Missouri's Merchandising Practices Act
Misrepresentation and False Statements
(For the Missouri Subclass)**

67. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

68. Plaintiffs bring this claim individually and on behalf of the Missouri Consumer Subclass for Defendant's violations of the MMPA. The MMPA "is designed to regulate the marketplace to the advantage of those traditionally thought to have unequal bargaining power as well as those who may fall victim to unfair practices." *Huch v. Charter Commc'ns Inc.*, 290 S.W. 3d 721, 725 (Mo. banc. 2009). The MMPA provides that it is unlawful to "act, use or employ . . . deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce" § 407.020.1, RSMo.

69. The MMPA applies to acts committed "before, during or after the sale, advertisement or solicitation" of merchandise, and provides a cause of action for "any person who purchases or leases merchandise primarily for personal, family or household purposes." § 407.020 is intended to supplement the definitions of common law fraud to "preserve fundamental honesty, fair play and right dealings in public transactions."

70. Defendant's conduct as described herein constitutes the act, use or employment of deception, fraud, false pretenses, false promises, misrepresentation, unfair practices and/or the concealment, suppression, or omission of any material facts in connection with the sale or advertisement of any merchandise in trade or commerce in that Defendant makes material false representations and omissions.

71. Defendant's misrepresentations and omissions as set forth herein are material in that they relate to matters that are important to reasonable consumers and/or are likely to affect the purchasing decisions or conduct of reasonable consumers.

72. In violation of the MMPA, Defendant employed fraud, deception, false promise, misrepresentation and/or the knowing concealment, suppression or omission of material facts in its manufacture, sale and advertisement of the Products.

73. Plaintiffs and the Missouri Consumer Subclass members purchased the Products for personal, family, or household purposes.

74. Plaintiffs and Missouri Consumer Subclass members suffered an ascertainable loss as a result of Defendant's unlawful conduct because the actual value of the Products as purchased was less than the value of the Products as represented.

75. In addition, Defendant's conduct has caused Plaintiffs and the Missouri Consumer Subclass members irreparable injury. As described herein, Defendant has engaged in unlawful and misleading conduct on a routine and automated basis, harming Missouri consumers in a uniform manner. Unless restrained and enjoined, Defendant will continue such conduct. As authorized under § 407.025.2, RSMo., Plaintiffs request injunctive relief, and such other equitable relief as the Court deems just and proper.

COUNT II

Violation of Missouri's Merchandising Practices Act Unfair Practice, 15 CSR 60-8.020 (For the Missouri Subclass)

76. Plaintiffs repeat and re-allege the allegations of the preceding paragraphs as if fully set forth herein.

77. The MMPA prohibits as an unlawful practice the act, use or employment of any "unfair practice" in connection with the sale or advertisement of any merchandise in trade or

commerce. § 407.020.1, RSMo.

78. “Unfair practice” is defined as “any practice which –

(A) Either

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

15 CSR 60-8.020.

79. Defendant’s actions, as alleged herein, constitute an unfair practice.

80. Plaintiffs purchased the Products for personal, family, or household purposes.

81. Plaintiffs suffered an ascertainable loss as a result of Defendant’s unlawful conduct because the actual value of the Products as purchased was less than the value of the Products as represented.

82. Plaintiffs are also entitled to recover attorney fees as authorized by § 407.025.

COUNT III

Breach of Express Warranty (For the Nationwide Class including the Subclass)

83. Plaintiffs incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

84. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Defendant.

85. In connection with the sale of the Candles, Defendant, as the designer, manufacturer, marketer, distributor, and/or seller issued a written warranty by representing that the Candles “repels mosquitos & other flying insects.” In fact, the Candles do not conform to this representation because the Candles are ineffective to repel mosquitos and other flying

insects.

86. In connection with the sale of Hot Shot, Defendant, as the designer, manufacturer, marketer, distributor, and/or seller issued written warranties by representing that Hot Shot “kills on contact,” “controls heavy infestations,” “keeps killing up to 2 months,” “kills roaches, fleas, ants (except fire ants), spiders, & other listed insects,” and that it “kills hidden bugs ... penetrates into cracks, crevices & carpet fibers.” In fact, Hot Shot does not conform to these representations because Hot Shot is ineffective for its stated purposes.

87. Defendant, through its advertising and labeling of the Products, created express warranties that the Products would comport with their label Representations.

88. The express warranties appear on all labels of the Products and specifically relate to the goods being sold.

89. Despite Defendant’s express warranties, the Products do not conform with the Representations. Thus, the Products were and are not what Defendant represented them to be.

90. Accordingly, Defendant breached its express warranties about the Products.

91. Plaintiffs and Class members were injured as a direct and proximate result of Defendant’s breaches because (a) they would not have purchased the Products if they had known that the Products were ineffective, and (b) they overpaid for the Products on account of their misrepresentations. In addition, Plaintiffs and members of the Class have suffered and continue to suffer economic losses and other general and specific damages including, but not limited to, the amounts paid for the Products, and any interest that would have accrued on those monies, in an amount to be proven at trial.

COUNT IV

Fraud

(For the Nationwide Class including the Subclass)

92. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

93. Plaintiffs bring this claim individually and on behalf of the members of the proposed Class against Defendant.

94. As discussed above, Defendant made express Representations on the labels of the products that were false and misleading.

95. Defendant misrepresented the efficacy of the Products on the Product labeling.

96. The false and misleading Representations and omissions were made with knowledge of their falsehood. Defendant is a top distributor of pest repellent products in the United States. Defendant is undoubtedly aware of the studies described herein and the news segment, which aired on national television, finding that its Products do not work. Defendant is also undoubtedly aware of its parent company's own press release and consumer survey findings, which stated that citronella is not one of the ingredients that the CDC recommends as effective, and that 67% of consumers surveyed mistakenly believe that citronella is a very or somewhat effective active ingredient for repelling insects. Nonetheless, Defendant continues to sell its ineffective and worthless Candles to unsuspecting consumers.

97. The false and misleading representations and omissions were made by Defendant, upon which Plaintiffs and members of the proposed Class reasonably and justifiably relied, and were intended to induce and actually induced Plaintiffs members of the proposed Class to purchase the Products.

98. The fraudulent actions of Defendant caused damage to Plaintiffs and members of the proposed Class, who are entitled to damages and other legal and equitable relief as a result.

COUNT V

Unjust Enrichment
(For the Nationwide Class including the Subclass)

99. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth above as though fully set forth herein.

100. By purchasing the Products, Plaintiffs and members of the Class conferred a benefit on Defendant in the form of the purchase price of the Products.

101. Defendant had knowledge of such benefits.

102. Defendant appreciated the benefit because, were consumers not to purchase the Products, Defendant would not generate revenue from the sales of the Products.

103. Defendant's acceptance and retention of the benefit is inequitable and unjust because the benefit was obtained by Defendant's fraudulent and misleading Representations and omissions.

104. Equity cannot in good conscience permit Defendant to be economically enriched for such actions at Plaintiffs' and Class members expense and therefore restitution and/or disgorgement of such economic enrichment is required.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all similarly situated persons, seeks judgment against Defendant, as follows:

- a. For an order certifying the Nationwide Class and the Missouri Consumer Subclass; naming Plaintiffs as representatives the Class; and naming Plaintiffs' attorneys as Class Counsel to represent the Class;

- b. For an order declaring that Defendant's conduct violates the statutes and laws referenced herein;
- c. For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;
- d. For an order awarding all compensatory damages, in an amount to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- g. For an order of restitution and all other forms of equitable monetary relief;
- h. For an order requiring Defendant to cease and desist from selling their Products in violation of law; enjoining Defendant from continuing to label, market, advertise, distribute, and sell the Products in the unlawful manner described herein; and ordering Defendant to engage in corrective action;
- i. For an order awarding Plaintiffs and the Class their reasonable attorneys' fees, expenses and costs of suit; and
- j. For all such other and further relief as may be just and proper.

Dated this May 4, 2021.

Christine Mendoza and Tonya Dooley, Individually,
and on Behalf of a Class of Similarly Situated Individuals,

STEELMAN & GAUNT

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