

**UNITED STATES DISTRICT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MICHAEL LAMOUREAUX and  
DOUGLAS ARNOLD,

Plaintiffs,

vs

Case No. 07-CV-10949  
Hon. Nancy G. Edmunds  
Referral Judge: Paul J. Komives

HOME DEPOT U.S.A., INC.  
a Delaware Corporation,  
TRUE VALUE COMPANY,  
a Delaware Corporation, d/b/a TRUSERV,  
NEWELL RUBBERMAID, INC.,  
a Delaware Corporation, d/b/a  
BERNZOMATIC, and  
WESTERN INDUSTRIES, INC.,  
A Foreign Corporation,

Defendants.

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**FIRST AMENDED COMPLAINT**  
**AND RELIANCE UPON DEMAND FOR JURY TRIAL PREVIOUSLY FILED**

NOW COME the Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS ARNOLD, by and  
through their attorneys, ROTHSTEIN, ERLICH AND ROTHSTEIN, P.L.L.C., and for their First

Amended Complaint against the Defendants herein show unto this Honorable Court as follows:

**General Allegations**

1a. That the Plaintiff, MICHAEL LAMOUREAUX, was at all relevant times herein a resident of the Township of Redford, County of Wayne, State of Michigan.

1b. That the Plaintiff, DOUGLAS ARNOLD, was at all relevant times herein a resident of the Township of Redford, County of Wayne, State of Michigan.

2a. That upon information and belief, the Defendant, HOME DEPOT U.S.A., INC., is a Delaware corporation qualified to do business in Michigan, and was at all times relevant herein conducting a regular part of their business in the City of Livonia, County of Wayne, State of Michigan.

2b. That upon information and belief, the Defendant, TRUE VALUE COMPANY d/b/a TruServ, is a Delaware corporation qualified to do business in Michigan, and was at all times relevant herein conducting a regular part of their business in the City of Livonia, County of Wayne, State of Michigan.

2c. That upon information and belief, the Defendant, NEWELL RUBBERMAID, INC. d/b/a Bernzomatic, is a Delaware corporation qualified to do business in Michigan, and was at all times relevant herein conducting a regular part of their business in the City of Livonia, County of Wayne, State of Michigan.

2d. That upon information and belief, the Defendant, WESTERN INDUSTRIES, INC., is a Foreign corporation qualified to do business in Michigan, and was at all times relevant herein conducting a regular part of their business in the City of Livonia, County of Wayne, State of Michigan.

3. This cause of action arose in the Township of Redford, County of Wayne, State of

Michigan.

4. The amount in controversy exceeds Twenty Five Thousand and (\$25,000.00) 00/100 dollars, exclusive of interest, costs and attorney fees.

**Count I - Negligence/Gross Negligence**

5. Plaintiffs herein re-incorporate and re-allege Paragraphs 1 through 4 of the General Allegations of this Complaint with the same force and effect as if same were set forth in full hereunder, and further state:

6. On or about April 26, 2004, Plaintiff, MICHAEL LAMOUREAUX, purchased a *Bernzomatic* "TS4000 Trigger Start Torch", a product as defined under Michigan statutory and common law, which was manufactured, designed, marketed, and/or sold by Defendants, HOME DEPOT U.S.A., INC., TRUE VALUE COMPANY d/b/a TruServ, NEWELL RUBBERMAID, INC. d/b/a BERNZOMATIC and WESTERN INDUSTRIES, INC., at Defendant, HOME DEPOT U.S.A., INC.'s, store located at 13500 Middlebelt Road, Livonia, Michigan,.

7. That Plaintiff, MICHAEL LAMOUREAUX, purchased a *Bernzomatic* fuel cylinder (#10A70W) from Defendant TRUE VALUE COMPANY, a product as defined under Michigan statutory and common law, which was manufactured, designed, marketed, and/or sold by Defendants, TRUE VALUE COMPANY d/b/a TruServ, NEWELL RUBBERMAID, INC. d/b/a BERNZOMATIC and WESTERN INDUSTRIES, INC.

8. That on or about April 26, 2004, Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS ARNOLD, while working at Plaintiff, MICHAEL LAMOUREAUX's, home in Redford Township, Michigan, used the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder.

9. That on or about April 26, 2004, Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS ARNOLD, were exercising all reasonable care and caution when they were using the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder as they were intended, designed and marketed to be used, in a reasonably foreseeable and intended manner.

10. That on or about April 26, 2004, while Plaintiffs were using the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder to heat a metal screw in a reasonably foreseeable and intended manner, the cylinder suddenly and without warning exploded, causing Plaintiffs to be showered with methyl acetylene propadiene and flames and suffer the injuries hereinafter set forth.

11. That at all times relevant and material hereto, said *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder were defective in manufacture, construction, design and/or labeling, and failed to comply with relevant state, federal and consumer safety rules, standards and/or regulations.

12. That the Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS ARNOLD, did not know nor should they have known that the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder presented an unreasonable risk of injury as that suffered by Plaintiffs.

13. That Defendants were negligent and/or grossly negligent in the manufacture, design, sale, distribution and/or labeling of the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder and their conduct was so reckless as to demonstrate a substantial lack of concern for whether an injury would result.

14. That the Defendants were negligent and/or grossly negligent by virtue of their marketing of said *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder having made implied and expressed warranties that the torch and fuel cylinder were reasonably fit for the general uses and purposes intended, that they were free of any defects in their design or construction

and/or manufacture, and were in a safe, fit and complete condition at the time sold.

15. That Defendants breached the following duties owed to Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS ARNOLD, both statutory and common law, by way of illustration and not limitation:

- A. Defendants knew or should have known of the defective and hazardous condition of the torch and/or fuel cylinder based upon scientific and/or technical information reasonably available at the time of sale/distribution of the products;
- B. Defendants had actual and/or constructive knowledge that this model and series of torch and/or fuel cylinder were defective at the time of sale and/or distribution;
- C. Defendants had actual and/or constructive knowledge that there was a substantial likelihood the defective and hazardous condition of this torch and/or fuel cylinder would cause the injuries sustained by Plaintiffs;
- D. Defendants willfully and wantonly disregarded their actual and/or constructive knowledge of the defect(s) and the substantial likelihood it would cause severe injuries;
- E. Failing to implement generally accepted production practices at the time of manufacture distribution and sale of the torch and/or fuel cylinder, which provide practical and technically feasible alternatives in production practice currently available and would have prevented the harm without impairing the usefulness or desirability of the torch and/or fuel cylinder;
- F. Defendants failed to reasonably inspect and/or test the torch and/or fuel

- cylinder and/or their components during and after the course of manufacturing and prior to the time of sale to render or ensure the product safe for its users;
- G. Failing to furnish a torch and/or fuel cylinder which were not unreasonably dangerous when used in the manner they were intended;
  - H. Failing to design a torch and/or fuel cylinder safe for their intended and reasonably anticipated uses;
  - I. Failing to use reasonable and ordinary care in planning or designing a torch and/or fuel cylinder so that it is reasonably safe for its intended purposes;
  - J. Manufacturing, designing, selling, marketing, maintaining and/or distributing a torch and/or fuel cylinder which were not reasonably fit for their intended uses;
  - K. Failing to take precautions or make reasonable efforts to protect against risks that are unreasonable and foreseeable;
  - L. Failing to supply appropriate warnings or instructions necessary for safe use;
  - M. Manufacturing, designing, selling, marketing, maintaining and/or distributing a torch and/or fuel cylinder carelessly and heedlessly in willful disregard of the safety of the public, without due caution and circumspection, so as to endanger persons and property;
  - N. Failing to adequately warn users of the torch and/or fuel cylinder's latent risks of injury;
  - O. Failing to warn of dangers Defendants knew or had reason to know of in the torch and/or fuel cylinder's manufacture, design, assembly, maintenance and display;

- P. Failing to provide conspicuous warnings of danger Defendants knew or had reason to know which were reasonably foreseeable;
- Q. Allowing a dangerous product to be placed into commerce by manufacturing, designing, selling, marketing, maintaining and/or distributing a torch and/or fuel cylinder that was defective;
- R. Allowing a dangerous product to exist by selling and distributing and/or making available for use to Plaintiffs, a torch and/or fuel cylinder which was defectively designed, maintained and/or manufactured;
- S. Failing to reasonably supervise the manufacture, design, assembly, storage and display of the torch and/or fuel cylinder to insure that their condition was safe for the public's use;
- T. Failing to properly train, supervise, manage and /or instruct their employees, agents and/or representatives;
- U. Hiring and/or contracting the use of inferior employees who were not properly supervised, instructed, monitored or qualified to manufacture, design, assemble, store, display or stack the torch kit and/or its components;
- W. Committing other acts of negligence not yet known but which will be ascertained through the course of discovery in said litigation.

16. That in the happening of the aforestated incident, the Plaintiffs were not negligent, but rather the Plaintiffs' injuries were the sole, direct, and proximate result of the Defendants' negligence and breaches of duties.

17. That as a direct and proximate result of the Defendants' breaches of duties, negligence, and gross negligence, the Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS

ARNOLD, suffered severe burns, lacerations, multiple scars and other injuries requiring medical treatment, including but not limited to injury to their muscles, ligaments, nerves and nervous system, including injury to their, heads, faces, necks, shoulders, backs, arms, hands and other parts of their bodies which include multiple scars.

18. That as a result of the said incident the Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS ARNOLD, were made to suffer painful and debilitating injuries and scarring requiring medical treatment, including hospital treatment, surgery, physical rehabilitation therapy, nursing services, and/or other medical treatment.

19. That as a result of the said incident, the Plaintiffs suffered severe embarrassment, distress, discomfort, inconvenience, mental anguish, pain and suffering; and Plaintiffs have incurred significant doctor bills, medical bills, and hospital bills and will continue to do so in the future.

20. That additionally, the Plaintiffs suffered significant loss of earnings, income and/or a permanent diminution of their earning capacity and that, because of the nature of said injuries, the Plaintiffs have been and continue to be unable to participate in many of the activities of life in which they were able to indulge in prior to said injuries.

WHEREFORE, the Plaintiffs pray for judgment in favor of Plaintiffs and against the Defendants in whatever amount this Court deems Plaintiffs are entitled, together with interest, costs, and reasonable attorney fees.

#### **Count II - Breach Of Warranties**

21. Plaintiffs herein re-incorporate and re-allege Paragraphs 1 through 4 of the General Allegations, Paragraphs 5 through 20 of Count I, of his Complaint with the same force and effect as if same were set forth in full hereunder, and further state:

22. The Defendants, made implied and expressed warranties regarding this *Bernzomatic*

"TS4000 Trigger Start Torch" which included, but were not limited to, a warranty as to its merchantability and a warranty of fitness.

23. The Defendants, made implied and expressed warranties regarding this *Bernzomatic* fuel cylinder which included, but were not limited to, a warranty as to its merchantability and a warranty of fitness.

24. That despite the Defendants' implied and expressed warranties, the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder were defective and/or unsafe at the time of their sale to Plaintiffs and/or other members of the public.

25. That as stated more specifically above, Plaintiffs, MICHAEL LAMOUREAUX and DOUGLAS ARNOLD, suffered and/or sustained serious personal injuries, non-economic and economic damages as a direct and proximate result of the defect and/or defects with the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder.

26. That in the happening of the complained of incident, Plaintiffs were exercising all due care and caution, and were not negligent or using the product in an inappropriate or unforeseeable manner.

27. The Defendants' implied and expressed warranties induced and caused Plaintiffs to rely upon Defendants' claims and representations when they used Defendants' torch and *Bernzomatic* fuel cylinder.

28. The Defendants expressly and impliedly warranted that the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder were fit for the ordinary purposes for which they were used and intended to be used.

29. The Defendants expressly and impliedly warranted that the *Bernzomatic* "TS4000 Trigger Start Torch" and *Bernzomatic* fuel cylinder were fit for the particular purpose of consumers

using the same to provide heat to various metal objects such as screws.

30. The Defendants' express and implied warranties extended and applied to Plaintiffs, consumers, whom Defendants intended and/or should have reasonably expected to purchase, consume, use and/or be affected by this torch and/or fuel cylinder.

31. That any disclaimers and/or attempt to disclaim the express and/or implied warranties extended by Defendants were ineffective and unreasonable.

32. That any disclaimers and/or attempt to disclaim the express and/or implied warranties extended by Defendants were not conspicuous to the average consumer or reasonable person such as Plaintiffs.

33. That any disclaimers and/or attempt to disclaim the express and/or warranties extended by Defendants did not contain proper disclosures or information warning of the potential hazards or dangers posed by Defendants' torch and/or fuel cylinder.

WHEREFORE, the Plaintiffs pray for judgment in favor of Plaintiffs and against the Defendants in whatever amount this Court deems Plaintiffs are entitled, together with interest, costs, and reasonable attorney fees.

Respectfully submitted,

By: s/Mario J. Azzopardi  
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Dated: April 26, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on June 1, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: Matthew J. Stanczyk, and I hereby certify that I have mailed by United States Postal Service the papers to the following non-ECF participant: Matthew J. Stanczyk, Plunkett & Cooney, P.C., 535 Griswold St., Ste. 2400, Detroit, MI 48226.

By: s/MarioJ.Azzopardi  
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