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BY: MICHAEL ANTHONY DE FINO
IDENTIFICATION NO.: 27547

2541 South Broad Street
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THOMAS TUCKER

vs.

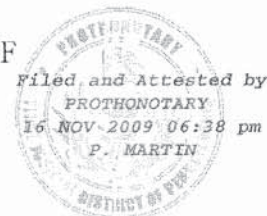
BERNZOMATIC, AN UNICORP.
OF IRWIN INDUSTRIAL TOOL COMPANY
AND
HOME DEPOT, USA, INC.
AND

WORTHINGTON INDUSTRIES, INC. AND CHILTON PRODUCTS
CIVIL ACTION COMPLAINT
2. P. PRODUCTS LIABILITY

ATTORNEY FOR PLAINTIFF

: COURT OF COMMON PLEAS
: PHILADELPHIA COUNTY
: JULY TERM, 2008

: No.: 000228



You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERENCE SERVICE

1101 Market Street, 11th Floor
Philadelphia, PA 19107-2911

(215) 238-1701

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) days, de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

SERVICIO DE REFERENCIA LEGAL

1101 Market Street, 11th Floor
Filadelfia, PA 19107-2911

(215) 238-1701

1. The Plaintiff, Thomas Tucker is an individual residing at 1447 North 55th Street, Philadelphia, PA 19131.
2. The Defendant, Bernzomatic, an unincorporated division of Irwin Industrial Tool Company whose main office is located at 1 Bernzomatic Drive, Medina New York 14103.
3. The Defendant, Home Depot, USA, Inc. is a corporation whose corporate office is located at 2455 Paces Ferry Road, NW, Atlanta, Georgia 30339.
4. The Defendant, Worthington Industries, Inc. is a corporation whose corporate office is located at 200 Wilson Bride Road, Columbus, Ohio 43085.
5. The Defendant, Chilton Products, a Division of Western Industries is a corporation whose corporate office is located at 1215 North 62nd Street, Milwaukee, WI 53213.
6. At all times mentioned herein, the Defendant, Bernzomatic, an unincorporated division of Irwin Industrial Tool Company (hereinafter "Bernzomatic"), was duly authorized to undertake and undertaking business within the County of Philadelphia and engaging in the design, manufacturing, distribution and sale of products including a Bernzomatic Mapp Gas dispenser/torch.
7. At all times herein, Defendant, THE HOME DEPOT, Inc., a corporation (hereinafter Home Depot) was duly authorized to undertake and undertaking business in the County of Philadelphia and engaging in the sale and distribution of products, including but not limited to the Bernzomatic Mapp Gas Dispenser/torch.
8. At all times herein mentioned, the Defendant, Worthington Industries was duly authorized to undertake and undertaking in the County of Philadelphia and engaging in

the sale and distribution of products, including but not limited to the Bernzomatic Mapp Gas Dispenser/torch.

9. At all times herein mentioned, the Defendant, Chilton Products was duly authorized to undertake and undertaking in the County of Philadelphia and engaging in the sale and distribution of products, including but not limited to the Bernzomatic Mapp Gas Dispenser/torch.
10. At all times herein mentioned, Defendants and each of them, were the agents, servants and employees of their respective co-defendants,
11. On July 6, 2007, Plaintiff, Thomas Tucker was working on a pipe at the store located in Philadelphia, PA. He was using the product, Bernzomatic Mapp Gas Dispenser Torch which was manufactured by Defendants, Bernzomatic, Worthington Industries, Inc. and Chilton Products and which was distributed by the Defendant, Home Depot. At this time, the plaintiff, Thomas Tucker was using the torch when it exploded in his face, causing serious burns to his face.
12. As a direct and proximate result of the negligent, careless, wrongful and/or reckless conduct of the defendants and each of them in the design, manufacture, distribution and sale of said produce, specifically a Bernzomatic Mapp Gas Dispenser Torch, the plaintiff, Thomas Tucker sustained permanent and personal injuries consisting of including but not limited to severe burns when the Bernzomatic Mapp Gas Dispenser Torch leaked and or otherwise emitted highly flammable gas which exploded in the plaintiff's face. The Plaintiff has had and will undergo medical treatment for which he has and will incur medical expenses. The Plaintiff also has and will sustained a loss of earnings and loss of earning capacity associated with his inability to be engaged in his

usual employment. The Plaintiff has also sustained and will great mental and emotional distress on account of his injuries.

COUNT I
NEGLIGENCE
THOMAS TUCKER v. ALL DEFENDANTS

13. Plaintiff, Thomas Tucker, incorporates by reference all allegations of paragraphs 1-12 as though set forth in full herein.
14. At all times mentioned herein, Defendants, Bernzomatic, Home Depot, Worthington Industries, Inc. and Chilton Products were engaged in the business of designing, manufacturing, labeling, packaging, distributing, testing, constructing, fabricating, modifying, analyzing, recommending, merchandising, advertising, servicing, maintaining, repairing, promoting and selling torches for industrial and other usages including but not limited to the Bernzomatic Mapp Gas Dispenser Torch and like devices to members of the general public for purpose of use in various applications including the construction, repair and maintenance of pipes.
15. At all times mentioned herein, Defendants, and each of them, had a duty to properly design, manufacture, label, package, distribute, test, construct, fabricate, modify, analyze, recommend, merchandise, advertise, service, maintain, repair, promote and sell said Bernzomatic Mapp Gas Dispenser Torch and their component parts.
16. At all times mentioned herein, Defendants, and each of them, knew, or in the exercise of reasonable care, should have known, that said Bernzomatic Mapp Gas Dispenser Torches are products of such nature that if not properly designed, manufactured, labeled, packaged, distributed, tested, constructed, fabricated, modified, analyzed,

recommended, merchandised, advertised, services, maintained, repaired, promoted, and sold, could and would cause serious injury and damage.

17. Prior to designing, manufacturing, labeling, packaging, distributing, testing constructing, fabricating, modifying, analyzing, recommending, merchandising, advertising, servicing, maintaining, repairing, promoting, and selling said devices and machines which caused said Plaintiff's injuries and damages, Defendants, and each of them, knew that the design, manufacture, labeling, packaging, distributing, testing, constructing, fabricating, modification, analysis, recommendation, merchandising, advertisement, servicing, maintenance, repairing and devices had, and would continue to, cause injuries when used in a reasonably foreseeable manner.

18. At the time of the accident, the Defendants and each of them breached the implied warranties set forth above. The breach of implied warranties was a legal cause and a substantial factor in causing the injuries and damages sustained by Plaintiff which are set forth above.

19. Defendants knew that their product was unsafe and that its unsafe condition could and would result in serious injury. The negligence, gross negligence, carelessness, recklessness, and callous disregard for safety of Defendants consisted of the following acts and omissions:

- a. Failure to incorporate on the Bernzomatic Mapp Gas Torch Dispenser (also referred to as "torch") reasonable and necessary safety devices and guards;
- b. Failure to assess the hazards and risks of injury associated with the foreseeable used and misuses of the torch;

- c. Failure to exercise due care in the safety analysis, hazard analysis, and product design of the torch;
- d. Failure to determine and eliminate to the fullest extent possible risks of injury associated with the torch;
- e. Failure to provide with the sale of their product sufficient warnings as to the reasonably foreseeable risk of injury inherent in the torch and the reasonably foreseeable incidents in severe accidents associated with the use of Defendant's products;
- f. Failure to give sufficient instructions so that the purchasers and users of the torch would have sufficient information, preparation, and training in the safe and proper use of the torch;
- g. Failure to reasonably warn of the foreseeable dangers inherent in the use and operation of the torch;
- h. Failure to exercise due care under the circumstances;
- i. Designing, manufacturing, and selling the torch in a condition unsafe for its foreseeable use;
- j. Failure to design, manufacture, fabricate, and sell the torch with reasonable care;
- k. Failure to properly test the torch to determine whether or not it was safe to use without causing serious bodily injury;
- l. Such other acts of negligence as discovery will reveal.

20. The injuries sustained by Plaintiff, Thomas Tucker, were a direct and proximate result of the negligence, gross negligence, and reckless disregard for safety of Defendants, their

agents, servants, and employees. Plaintiff has sustained losses and damages as outlines previously in the Complaint.

WHEREFORE, Thomas Tucker demands compensatory and punitive damages against the Defendants, jointly and severally, in an amount in excess of \$50,000, plus costs, damages for delay and such other relief as the Court deems just.

COUNT II
STRICT LIABILITY
THOMAS TUCKER v. ALL DEFENDANTS

21. Plaintiff, incorporates by reference all allegations of paragraph 1-20 as though set forth in full herein.

22. Defendants, and each of them, designed, manufactured, compounded, labeled, packaged, distributed, tested, constructed, fabricated, modified, analyzed, merchandized, advertised, promoted, and sold devices and machines in question including the Bernzomatic Mapp Gas Torch Dispenser which were intended by Defendants, and each of them, to be used for the purpose of welding and fabricating component parts of goods and other sues to be sold to the public.

23. At all times mentioned herein, Defendants, and each of them, knew that said products, to wit, the Bernzomatic Mapp Gas Torch Dispenser were to be purchased and used without inspection for defects.

24. At all times mentioned herein, said devices and machines were unsafe for their intended use by reason of defects in design and manufacture since they would fail to operate properly while in use, thus causing damages and injuries.

25. At all times mentioned herein, the risk of danger inherent in the design of the subject devices and machines outweighed the benefits of that design.

26. At all times mentioned herein, the subject devices and machines failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner.
27. On or about July 6, 2007, the subject device, failed and cause Plaintiff to sustain grievous personal injuries and other damages. The Defendants and each of them manufactured distributed and sold the subject device with a manufacturing and or design defect which was a legal cause and a substantial factor in causing the injuries and damages sustained by Plaintiff.

WHEREFORE, Plaintiff, Thomas Tucker demands compensatory and punitive damages against the Defendants, jointly and severally, in an amount in excess of \$50,000, plus costs, damages for delay and such other relief as the Court deems just.

COUNT III
BREACH OF WARRANTIES
THOMAS TUCKER v. ALL DEFENDANTS

28. Plaintiff incorporates by reference each and every preceding paragraph as though set forth fully at length.
29. In designing, manufacturing, assembling, marketing, promoting, selling and/or otherwise introducing the Bernzomatic Mapp Gas Dispenser Torch, Defendants expressly and impliedly warranted that the Bernzomatic Mapp Gas Dispenser Torch was merchantable, fit and safe for the ordinary and particular purposes for which it was supplied, and that it was free from defects.
30. Defendants expressly warranted that their Bernzomatic Mapp Gas Dispenser Torch was safe for its intended use.

31. Defendants, and each of them, breached their express and implied warranties in that the Bernzomatic Mapp Gas Dispenser Torch was not merchantable, was not fit and safe for the ordinary and particular purposes for which it was supplied, and was defective.
32. As a direct and proximate result of the Defendants' breach of express and implied warranties, Plaintiff, Thomas Tucker severe injuries on July 6, 2007.
33. The Defendants were provided timely notice of the defect.

WHEREFORE, Plaintiff Thomas Tucker demands compensatory and punitive damages against the Defendants, jointly and severally, in an amount in excess of \$50,000.00, plus costs, damages for delay and such other relief as the Court deems just.

BY:


MICHAEL ANTHONY DE FINO, ESQUIRE
ATTORNEY FOR PLAINTIFF

VERIFICATION

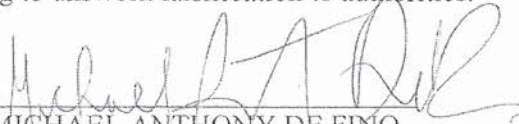
The averments or denial of facts contained in the foregoing are true based upon the signer's personal knowledge or information and belief. If the foregoing contains averments which are inconsistent in fact, signer has been unable, after reasonable investigation, to ascertain which of the inconsistent averments are true, but signer had knowledge or information sufficient to form a belief that one of them is true. This verification is made subject to the penalties of 18 Pa.C.S. 4904 relating to unsworn falsification to authorities.

Dated: 11/15/09

 Thomas Tucker

VERIFICATION

Michael Anthony De Fino, Esquire, hereby states that he is the attorney in this action and verifies that the statements made in the foregoing Complaint are true and correct to the best of his knowledge, information and belief. The undersigned understands that the statements therein are made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities.


MICHAEL ANTHONY DE FINO