

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

HOMER D. WOODEN, et al.	:	CASE NO. 3:08cv185
	:	
Plaintiffs	:	(Judge Charles R. Simpson, III)
	:	(Magistrate Dave Whalin)
v.	:	
	:	
HOME DEPOT U.S.A., INC., et al.	:	ANSWER OF DEFENDANT
	:	WORTHINGTON INDUSTRIES
Defendants	:	INCORPORATED
	:	
	:	

Comes now Defendant, Worthington Industries Incorporated, and for its Answer to Plaintiffs' Complaint states as follows:

FIRST DEFENSE
COUNT I

1. For want of knowledge sufficient to form a belief as to the truth thereof, Defendant denies the allegations contained in paragraphs 1 through 5, 7 through 10, 12, 16 and 17 of Plaintiffs' Complaint.

2. In response to paragraph 6 of Plaintiffs' Complaint, Defendant admits that it is an Ohio corporation with its principal place of business at 200 Old Wilson Bridge Road, Columbus, Ohio 43085, and denies the remaining allegations contained in said paragraph.

3. In response to paragraphs 11, and 13 through 15 of Plaintiffs' Complaint, Defendant denies the allegations as they pertain to this answering defendant, and for want of knowledge sufficient to form a belief as to the truth thereof, denies the remaining allegations contained in said paragraphs.

COUNT II

4. In response to paragraph 18 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 17 of Plaintiffs' Complaint.

5. The allegations contained in paragraphs 19 through 23 of Plaintiffs' Complaint are not directed to this answering Defendant, and to the extent any answer is required, Defendant denies the allegations in said paragraphs.

COUNT III

6. In response to paragraph 24 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 23 of Plaintiffs' Complaint.

7. The allegations contained in paragraphs 25 through 29 of Plaintiffs' Complaint are not directed to this answering Defendant, and to the extent any answer is required, Defendant denies the allegations in said paragraphs.

COUNT IV

8. In response to paragraph 30 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 29 of Plaintiffs' Complaint.

9. The allegations contained in paragraphs 31 through 35 of Plaintiffs' Complaint are not directed to this answering Defendant, and to the extent any answer is required, Defendant denies the allegations in said paragraphs.

COUNT V

10. In response to paragraph 36 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 35 of Plaintiffs' Complaint.

11. Defendant denies the allegations contained in paragraphs 37 through 41 of Plaintiffs' Complaint

COUNT VI

12. In response to paragraph 42 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 41 of Plaintiffs' Complaint.

13. The allegations contained in paragraphs 43 through 47 of Plaintiffs' Complaint are not directed to this answering Defendant, and to the extent any answer is required, Defendant denies the allegations in said paragraphs.

COUNT VII

14. In response to paragraph 48 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 47 of Plaintiffs' Complaint.

15. The allegations contained in paragraphs 49 through 53 of Plaintiffs' Complaint are not directed to this answering Defendant, and to the extent any answer is required, Defendant denies the allegations in said paragraphs.

COUNT VIII

16. In response to paragraph 54 of Plaintiffs' Complaint, Defendant specifically denies that it is liable for any injury suffered by Plaintiff, or any damages incurred by him, and therefore denies the allegations in said paragraph.

COUNT IX

17. In response to paragraph 55 of Plaintiffs' Complaint, Defendant specifically denies that any conduct by it caused injury to either Plaintiff or to their marital relationship, and therefore denies the allegations contained in said paragraph.

COUNT X

18. In response to paragraph 56 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 55 of Plaintiffs' Complaint.

19. Defendants deny the allegations contained in paragraphs 57 through 60 as they pertain to this answering Defendant, and for want of knowledge sufficient to form a belief as to the truth thereof, denies the remaining allegations contained in said paragraphs.

COUNT XI

20. In response to paragraph 61 of Plaintiffs' Complaint, Defendant incorporates, as if fully rewritten herein, its answers to paragraphs 1 through 60 of Plaintiffs' Complaint.

21. Defendants deny the allegations contained in paragraphs 62 and 63 as they pertain to this answering Defendant, and for want of knowledge sufficient to form a belief as to the truth thereof, denies the remaining allegations contained in said paragraphs.

22. In response to paragraph 64 of Plaintiffs' Complaint, Defendant specifically denies that Plaintiffs are entitled to damages under any of the claims in their Complaint, and therefore denies the allegations contained in said paragraph.

COUNT XII

23. Defendant denies the allegations contained in paragraph 65 of Plaintiffs' Complaint as they pertain to this answering Defendant, and for want of knowledge sufficient to form a belief as to the truth thereof, denies the remaining allegations contained in said paragraph.

SECOND DEFENSE

24. For its second and further defense, Defendant states that Plaintiffs' Complaint fails to state a claim against this answering Defendant upon which relief can be granted.

THIRD DEFENSE

25. For its third and further defense, Defendant states that Plaintiffs' alleged damages are the direct and proximate result of the misuse and/or alteration of and/or failure to properly maintain the product in question, thus barring or diminishing Plaintiffs' claims herein.

FOURTH DEFENSE

26. For its fourth and further defense, Defendant states that Plaintiffs' alleged damages are the direct and proximate result of the actions and/or inactions of some other person or entity, not employed by nor under the control of this answering Defendant, and for whose actions and/or inactions this Defendant is not liable.

FIFTH DEFENSE

27. For its fifth and further defense, Defendant states that the product in question was substantially altered after it left the possession of this answering Defendant, thus barring Plaintiffs' claims herein.

SIXTH DEFENSE

28. For its sixth and further defense, Defendant states that Plaintiffs' alleged damages are the direct and proximate result of the actions or inactions of Plaintiff Homer Wooden himself, thus barring or diminishing Plaintiffs' claims herein.

SEVENTH DEFENSE

29. For its seventh and further defense, Defendant states that Plaintiffs' alleged damages are the direct and proximate result of the contributory negligence and/or the assumption of risk and/or the primary assumption of risk of Homer Wooden, thus barring or diminishing Plaintiffs' claims herein.

EIGHTH DEFENSE

30. For its eighth and further defense, Defendant states that Plaintiffs' alleged damages are the direct and proximate result of an unforeseeable, intervening and/or superseding cause, for which this Defendant is not liable.

NINTH DEFENSE

31. For its ninth and further defense, Defendant states that Plaintiffs' alleged damages are barred by the appropriate statute of limitations and/or statute of repose.

TENTH DEFENSE

32. For its tenth and further defense, Defendant expressly reserves the right to add additional affirmative defenses as discovery progresses.

WHEREFORE, having fully answered, Defendant Worthington Industries Incorporated prays that Plaintiffs' Complaint be dismissed at their costs, and that they take nothing thereby.

Respectfully submitted,

/s/ Carolyn A. Taggart
Carolyn A. Taggart (85072)
Porter Wright Morris & Arthur LLP
250 E. Fifth Street, Suite 2200
Cincinnati, OH 45202
Phone: (513) 369-4231
Fax: (513) 421-0991
ctaggart@porterwright.com

Counsel for Defendant
Worthington Industries Incorporated

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Defendant Worthington Industries Incorporated was filed electronically with the Court on this 11th day of April, 2008. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record.

/s/ Carolyn A. Taggart
Carolyn A. Taggart