

IN THE CIRCUIT COURT OF CASS COUNTY, MISSOURI

SHAWN HORNBECK on behalf of)	
himself and others similarly situated;)	
)	
Plaintiff,)	
)	Case No. _____
v.)	
)	
OLD WORLD INDUSTRIES, LLC)	
Serve Registered Agent)	
CT Corporation System)	
120 South Central Ave.)	
Clayton, MO 63105)	
)	
Defendants.)	

CLASS ACTION PETITION

COMES NOW Plaintiff, on behalf of himself and all others similarly situated, and for his causes of action states and alleges as follows:

PARTIES

1. Plaintiff Shawn Hornbeck is a citizen and resident of Peculiar, Missouri.
2. Defendant Old World Industries LLC (Old World) is for-profit company authorized to do business in the State of Missouri with its principal place of business in Northbrook, Illinois. Defendant Old World has advertised and sold its products, including its Shield 303 Tractor Hydraulic Fluid, in Cass County and throughout the State of Missouri.
3. Defendant’s conduct has harmed consumers like Plaintiff by inducing them to purchase and use its “303” tractor hydraulic fluid, specifically Shield 303 Tractor Hydraulic Fluid (303 THF Product) on the false promise that the 303 THF Product meets certain specifications and by directly or implicitly representing that the product is safe for use in farm, construction and logging equipment and has certain characteristics and qualities that protect

equipment from wear and damage when, in reality, the product does not meet any specifications and cause harm, increased wear and damage to consumers' equipment.

JURISDICTION AND VENUE

4. Pursuant to § 508.010.4 RSMo, Cass County Circuit Court, State of Missouri, is an appropriate venue because the false representations, deceptive, dishonest, and misleading practices, and the unjust enrichment, occurred in Cass County and elsewhere in the State of Missouri.

5. The Circuit Court of Cass County, Missouri has personal jurisdiction over Defendant because Defendant transacts business in Missouri, with their various advertising methods and product sales directed toward Missouri residents. Additionally, Plaintiff purchased the 303 THF Product at issue in Cass County, Missouri.

6. This is a civil case in which the Cass County Circuit Court, State of Missouri, has jurisdiction pursuant to Mo. Const., Art. V. § 14.

7. The total amount in controversy as to Plaintiff and each individual Member of the proposed Class alleged herein does not exceed seventy-four thousand nine hundred ninety-nine dollars (\$74,999.00), including treble damages, punitive damages, interest, costs, and attorneys' fees. Plaintiff specifically disclaims any relief, whether in law or in equity, in excess of \$74,999. In addition, neither the Plaintiff nor any Member of the proposed Class assert any federal question.

8. The proposed Class in this case includes only those persons who purchased the 303 THF Product at issue in the State of Missouri. The amount in controversy for all proposed Class Members does not exceed five million dollars (\$5,000,000.00).

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. Defendant Old World is in the business of manufacturing certain merchandise or retail products which are to be sold in trade or commerce at retail stores within Cass County and other Counties throughout the State of Missouri.

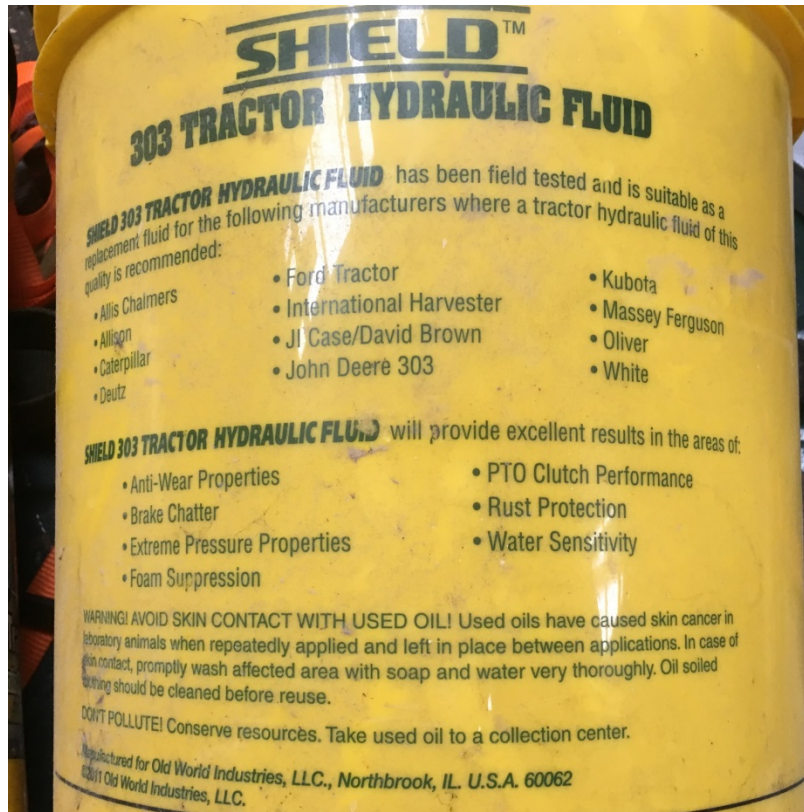
10. During some or all of the five year period prior to the filing of this Class Action Petition, Defendant Old World manufactured, sold and advertised in yellow buckets its 303 THF Product called Shield 303 Tractor Hydraulic Fluid.

Defendants' Deceptive Marketing and Advertising

11. During some or all of the five year period prior to the filing of this Class Action Petition, Defendant Old World marketed the Shield 303 Tractor Hydraulic Fluid (1) as a fluid that provides excellent results in the areas of anti-wear properties, brake chatter, extreme pressure properties, foam suppression, PTO clutch performance, rust protection and water sensitivity, and (2) as a fluid designed for use in equipment of manufacturers where a product of its quality is recommended, including Allis-Chalmers, Massey Ferguson, Deutz, JI Case/David Brown, Allison, International Harvester, White, Kubota, John Deere 303, Oliver, Ford Tractor and Caterpillar.

12. Defendant's marketing and advertising of its 303 THF Product has been widespread, continuous and contained on various signs, labels and advertisements throughout the State of Missouri for years.

13. Shield 303 Tractor Hydraulic Fluid labeling contained the following information:



14. These representations were also contained in Defendant’s advertising circulars and/or on Defendant’s websites.

15. By marketing and advertising its 303 THF Product in the foregoing manner, and by describing the product using words such as “field tested” and “excellent results,” Defendant has created an image in the minds of Plaintiff and other consumers that would lead a reasonable consumer to conclude that Defendant’s 303 THF Product was completely safe and effective for use in consumers’ equipment.

16. Defendant’s advertising and marketing of its 303 THF Product was material to the reasonable consumer.

17. At the time of Defendant's advertisements, marketing and other representations, and as Defendant already knew, the representations regarding its 303 THF Product were false, deceptive and misleading to consumers seeking to purchase tractor hydraulic fluid.

18. The John Deere "303" designation is over 50 years old and has been obsolete for many years. Defendant knew that at the time it was marketing and selling its 303 THF Product during the Class Period, there were no specifications available for "303" tractor hydraulic fluid and, therefore, no way to ensure the accuracy of representations that its 303 THF Product was in compliance with any known specifications.

19. As Defendant knew, the 303 THF Product manufactured by Defendant and sold in the yellow buckets lacked some or all of the additives required to provide the advertised "results."

20. As Defendant knew, the 303 THF Product it manufactured and sold in the yellow buckets did not meet any current specs for any manufacturers of farm, logging and construction equipment.

The State of Missouri's Testing of 303 THF

21. In the summer of 2017, the Missouri Department of Agriculture sampled 14 different 303 THF products, many of which claimed to work in almost every tractor. All 14 of these 303 THF products failed to meet any current specifications and were found to be underperforming to the point that damage was likely to result from use.

22. The Missouri Department of Agriculture notified the retailers that the products were misbranded because they failed to meet any current tractor manufacturer's specifications.

23. On information and belief, Shield 303 was among the 303 THF products the Missouri Department of Agriculture tested and that failed to meet any current specifications and was likely to cause damage to equipment.

Plaintiffs' Experience with Defendants' Advertising and Products

24. In the five year period prior to the filing of this Class Action Petition, Plaintiff purchased Defendant's 303 THF Product, primarily for personal, family, or household purposes.

25. As with all members of the Class, in the five year period prior to the filing of this Class Action Petition, Plaintiff purchased Defendant's 303 THF Product upon the representations set forth above.

26. In the five year period prior to the filing of this Class Action Petition, Plaintiff Shawn Hornbeck purchased and used Shield 303 which was manufactured by Old World. Plaintiff purchased the Shield 303 in Cass County and paid approximately \$20 per bucket.

27. The 303 THF Product was used by Plaintiff Hornbeck for personal use on the following equipment: John Deere Skid Steer Loader Hydraulic System, John Deere B Tractor, JD 50 Tractor Hydraulic Lift, Hay Wagon Lift Cylinder, Log Splitter Hydraulic Tank, 1952 Chevy Grain Truck Lift Cylinder, and 1958 International Dump Lift System.

28. Plaintiff reasonably relied upon Defendant's own statements and advertisements concerning the particular qualities and benefits of the 303 THF Product.

29. A reasonable consumer would consider Defendant's statements and advertisements when looking to purchase a tractor hydraulic fluid. As a result of using Defendant's 303 THF Product, Plaintiff and Class Members: (a) paid a sum of money for a product that was not as represented; (b) received a lesser product than advertised and marketed; (c) were deprived of the benefit of the bargain because the 303 THF Product was different than

what Defendant represented; (d) were deprived of the benefit of the bargain because the 303 THF Product had less value than what was represented; and (e) did not receive a product that measured up to their expectations as created by Defendant.

30. When Defendant Old World manufactured, marketed, advertised, distributed, and sold Plaintiff and Class Members its 303 THF Product, Defendant knew or should have known that product (1) did not provide excellent results in the areas of anti-wear properties, brake chatter, extreme pressure properties, foam suppression, PTO clutch performance, rust protection and water sensitivity, and (2) was not appropriate for use in equipment of manufacturers where a product of its quality is recommended, including Allis-Chalmers, Massey Ferguson, Deutz, JI Case/David Brown, Allison, International Harvester, White, Kubota, John Deere 303, Oliver, Ford Tractor and Caterpillar.

31. Plaintiff used the 303 THF Product in the manner in which Defendant advised it could and should be used.

32. As a result of Defendant's 303 THF Product not meeting specifications as advertised, marketed, warranted, and promised, Defendant violated the Missouri Merchandising Practices Act, fraudulently or negligently induced Plaintiff and Class Members to purchase its products through material misrepresentations, and was unjustly enriched.

33. This action is brought by Plaintiff against Defendant to recover all money paid by Plaintiff and Class Members to Defendant for purchase of its 303 THF Product which was marketed, advertised, and sold in the dishonest, misleading, and deceptive manners noted herein.

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this Class Action pursuant to Missouri Rules of Civil Procedure 52.08, on behalf of himself and the following Class of similarly situated persons:

All individuals who purchased Shield 303 Tractor Hydraulic Fluid in Missouri at any point in time from May 25, 2013 to present.

35. Excluded from the Class are Defendant, including any parent, subsidiary, affiliate or controlled person of Defendant; Defendant's officers, directors, agents, employees and their immediate family members, as well as the judicial officers assigned to this litigation and members of their staffs and immediate families.

36. The 303 THF Product at issue was sold across Missouri through retailers. The Class Members may be identified through use of sales receipts, affidavits, or through sales records.

37. The proposed Class is so numerous that joinder of all Class Members is impracticable. Although the exact number and identity of each Class Member is not known at this time, there are thousands of members of the Class.

38. There are questions of fact and law common to the Class which predominate over questions affecting only individual Class Members. The questions of law and fact common to each Class arising from Defendant's actions include, without limitation, the following:

- a. Whether Defendant's 303 THF Product was being advertised and marketed as alleged in paragraphs 11-15, above;
- b. Whether Defendant's 303 THF Product in actuality was as alleged in paragraphs 17-23 and 29-30, above;
- c. Whether Defendant's manufacturing, advertising, marketing, and/or sale of its 303 THF Product was deceptive, unfair, and/or dishonest;
- d. Whether Defendant's representations regarding its 303 THF Product were false and made knowingly by Defendant, and were therefore deceptions, frauds, false pretenses, false promises, and/or misrepresentations as described in 407.020 RSMo and a violation thereof;
- e. Whether Defendant's representations were false and made negligently by Defendant, and were therefore deceptions, frauds, false pretenses, false

promises, and/or misrepresentations as described in 407.020 RSMo and a violation thereof; and,

f. Whether Defendant was unjustly enriched.

39. Plaintiff's claims are typical of those in the putative Class because he purchased Defendant's 303 THF Product and was similarly treated.

40. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of other Members of the Class. The interests of the other Class Members will be fairly and adequately protected by Plaintiff and counsel, who have extensive experience prosecuting complex litigation and class actions.

41. A Class Action is the appropriate method for the fair and efficient adjudication of this controversy. It would be impracticable, cost prohibitive, and undesirable for each member of the Class to bring a separate action. In addition, the presentation of separate actions by individual Class Members creates the risk of inconsistent and varying adjudications, establishes incompatible standards of conduct for Defendant, and/or substantially impairs or impedes the ability of Class Members to protect their interests. A single Class Action can determine, with judicial economy, the right of the Members of the Class.

42. A Class Action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of this controversy.

43. Class certification is also appropriate because Defendant has acted or refused to act on grounds generally applicable to the Class. The Class Action is based on Defendant's acts and omissions with respect to the Class as a whole, not on facts or law applicable only to the representative Plaintiff. All Class Members who purchased Defendant's 3030 THF Product were

treated similarly. Thus, all Class Members have the same legal right to an interest in relief for damages associated with the violations enumerated herein.

44. Plaintiff asserts in Counts I through VI, below, the following claims on behalf of himself and the Class:

- Count I – Missouri Merchandising Practices Act Violations
- Count II – Breach of Express Warranty
- Count III – Breach of Implied Warranty
- Count IV – Fraud/Misrepresentation
- Count V – Negligence
- Count VI – Unjust Enrichment

COUNT I
(Violations of Missouri’s Merchandising Practices Act)
(Plaintiff and All Class Members Who Purchased For Personal, Family, Household Use)

45. Plaintiff incorporates by reference all preceding paragraphs of the Class Action Petition as if fully set forth herein.

46. Plaintiff and many Class Members purchased Defendant’s 303 THF Product for personal, family, or household purposes.

47. Defendant’s representations set forth in paragraphs 11-15, above, including without limitation the representations that its 303 THF Product was fit to be used in older tractors and other equipment, and that its 303 THF Product met specifications, were unfair, deceptive, false and misleading and made knowingly by Defendant or without knowledge as to their truth or falsity and were therefore deceptions, frauds, false pretenses, false promises, and misrepresentations as described at § 407.020 RSMo, and therefore a violation of the Missouri Merchandising Practices Act.

48. Defendant's representations set forth in paragraphs 11-15, above, including without limitation the representations that its 303 THF Product was fit to be used in older tractors and other equipment, and that its 303 THF Product met specifications, also constituted the omission or suppression of a material fact in violation of § 407.020 RSMo in that Defendant's 303 THF Product was not appropriate for use and did not meet specification as advertised, marketed, and sold.

49. Defendant's conduct as set forth herein with regard to the marketing and sale of its 303 THF Product constitutes unlawful, unfair and/or fraudulent business practices in violation of the Missouri Merchandising Practices Act, §§ 407.010 *et seq.*

50. Defendant engaged in unlawful practices including deception, false promises, misrepresentation, and/or the concealment, suppression or omission of material facts in connection with the marketing and sale of its 303 THF Product, all in violation of §407.020 RSMo.

51. Plaintiff and Class Members have suffered economic and other damages as a result of Defendant's conduct with regard to the marketing and sale of its 303 THF Product.

52. As a direct and proximate result of Defendant's illegal conduct, Plaintiff and Class Members have suffered ascertainable losses of money.

53. Defendant's conduct as described herein was intentional and in violation of § 407.020 RSMo, and the regulations of the Attorney General of Missouri promulgated thereunder.

54. Defendant's conduct is such that an award of punitive damages against Defendant is appropriate.

COUNT II

(Breach of Express Warranty – Plaintiff and All Class Members)

55. Plaintiff incorporates by reference all preceding paragraphs of the Class Action Petition as if fully set forth herein.

56. Plaintiff and Class Members purchased Defendant’s 303 THF Product.

57. As set forth above, Defendant made common statements of facts regarding the quality and use of its 303 THF Product.

58. The common statements Defendant made regarding the 303 THF Product were a material factor in inducing Plaintiff and Class Members to purchase the 303 THF Product and therefore became part of the basis of the benefit of the bargain and an express warranty.

59. Plaintiff and the Class Members reasonably relied on the common statements of fact.

60. As set forth above, the 303 THF Product did not conform to the statements of Defendant. As a result, Plaintiff and the Class Members did not receive goods as warranted by Defendant.

61. Defendant has received timely notifications of the defects in its 303 THF Product.

62. The failure of the 303 THF Product to conform to the statements of Defendant has caused injury to Plaintiff and Class Members.

COUNT III

(Breach of Implied Warranty – Plaintiff and All Class Members)

63. Plaintiff incorporates by reference all preceding paragraphs of the Class Action Petition as if fully set forth herein.

64. Defendant directly or indirectly sold the 303 THF Product to Plaintiff and Class Members for use as described above.

65. As set forth above, at the time Defendant sold the 303 THF Product, that product was not fit for its ordinary use and the use described by Defendant.

66. Plaintiff and Class Members used the 303 THF Product for its ordinary purpose and the use described by Defendant.

67. Defendant has received timely notification of the defect in its 303 THF Product.

68. The failure of the 303 THF Product to be fit for its ordinary purpose has cause injury to Plaintiff and Class Members.

COUNT IV
(Fraudulent Misrepresentation – Plaintiff and All Class Members)

69. Plaintiff incorporates by reference all preceding paragraphs of the Class Action Petition as if fully set forth herein.

70. Defendant made representations regarding its 303 THF Product, as set forth above, including without limitation the representations that the 303 THF Product was fit to be used in older tractors and other equipment, that the 303 THF Product met specifications, and that the 303 THF Product provided certain qualities, results and benefits, were false and made knowingly by Defendant, and were therefore fraudulent.

71. Defendant's representations set forth above, including without limitation the representations that the 303 THF Product was fit to be used in older tractors and other equipment, that the 303 THF Product met specifications, and that the 303 THF Product provided certain qualities, results and benefits, were false and made knowingly by Defendant, and were therefore fraudulent.

72. Defendant's representations as set forth above, including without limitation the representations that the 303 THF Product was fit to be used in older tractors and other equipment, and that the 303 THF Product met specifications, and that the 303 THF Product

provided certain qualities, results and benefits, were made by Defendant with the intent that Plaintiff and other Class Members rely on such representations.

73. Defendant's representations as set forth above, including without limitation the representations that the 303 THF Product was fit to be used in older tractors and other equipment, that the 303 THF Product met specifications, and that the 303 THF Product provided certain qualities, results and benefits, were made by Defendant despite knowing the representations were false at the time the representations were made, and/or without knowledge of the truth or falsity of the representations.

74. Defendant's representations were material to the purchase of the 303 THF Product.

75. Plaintiff and Class Members relied on Defendant's representations, and such reliance was reasonable under the circumstances.

76. Defendant's conduct as set forth herein with regard to the marketing and sale of 303 THF Product constitutes fraud on Plaintiffs and all Class Members.

77. Plaintiff and Class Members have been economically damaged by Defendant's fraudulent conduct with regard to the marketing and sale of its 303 THF Product.

78. As a direct and proximate result of Defendant's illegal conduct, Plaintiff and Class Members have suffered ascertainable losses of money and other damages.

79. Defendant's conduct as described herein was intentional and/or in reckless disregard for the rights of Plaintiff and other Class Members.

80. Defendant's conduct is such that an award of punitive damages against Defendant is appropriate.

COUNT V
(Negligent Misrepresentation – Plaintiff and All Class Members)

81. Plaintiff incorporates by reference all preceding paragraphs of the Class Action Petition as if fully set forth herein.

82. Defendant made representations regarding its 303 THF Product, as set forth above, including without limitation the representations that the 303 THF Product was fit to be used in older tractors and other equipment, that the 303 THF Product met specifications, and that the 303 THF Product provided certain qualities, results and benefits, were false and made knowingly by Defendant, and were therefore fraudulent.

83. Such representations were made by Defendant with the intent that Plaintiff and the Class Members rely on such representations in purchasing Defendant's 303 THF Product.

84. Such representations were material to Plaintiff's and the Class Members' purchase of Defendant's 303 THF Product.

85. Such representations were false.

86. Defendant failed to use ordinary care and was negligent in making and/or allowing to be made the representations set forth above.

87. Plaintiff and the Class Members relied on such representations and such reliance was reasonable under the circumstances.

88. Plaintiff and Class Members have been economically damaged by Defendant's negligent conduct with regard to the marketing and sale of its 303 THF Product.

89. As a direct and proximate result of Defendant's negligent conduct, Plaintiff and Class Members have suffered ascertainable losses of money.

COUNT VI
(Unjust Enrichment – Plaintiff and All Class Members)

90. Plaintiff incorporates by reference all preceding paragraphs of the Class Action Petition as if fully set forth herein.

91. As a result of Defendant's deceptive, fraudulent, and misleading advertising, marketing, and sales of its 303 THF Product, Plaintiff and the Class Members purchased Defendant's 303 THF Product and conferred a benefit upon Defendant, which Defendant appreciated and accepted.

92. Defendant was enriched at the expense of Plaintiff and other Class Members through the payment of the purchase price for Defendant's 303 THF Product.

93. Under the circumstances, it would be against equity and good conscience to permit Defendant to retain the ill-gotten benefits that it received from Plaintiff and the other Class Members, in light of the fact that the 303 THF Product purchased by Plaintiff and the other Members of the Class was not what Defendant represented it to be. Thus, it would be inequitable or unjust for Defendant to retain the benefit without restitution to Plaintiff and the other Members of the Class for the monies paid to Defendant for the 303 THF Product.

WHEREFORE, Plaintiff, on behalf of himself and the Class described in this Class Action Petition, respectfully requests that:

- A. The Court certify the Class pursuant to Rule 52.08 and § 407.025 RSMo, and adjudge Plaintiff and counsel to be adequate representative thereof;
- B. The Court enter an Order requiring Defendant to pay actual and punitive damages to Plaintiff and the other Members of the Class;
- C. The Court enter an Order awarding Plaintiff, individually and on behalf of the other Members of the Class, the expenses and costs of suit, including

reasonable attorneys' fees and reimbursement of reasonable expenses, to the extent provided by law;

- D. The Court enter an Order awarding to Plaintiff, individually and on behalf of other Members of the Class, pre-and post-judgment interest, to the extent allowable; and,
- E. For such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues of fact and damages in this action.

Date: May 25, 2018

Respectfully submitted,

WHITE, GRAHAM, BUCKLEY,
& CARR, L.L.C

BY: /s/ Bryan T. White
Gene P. Graham, Jr. MO 34950
Bryan T. White MO 58805
19049 East Valley View Parkway
Independence, Missouri 64055
(816) 373-9080 Fax: (816) 373-9319
ggraham@wagblaw.com
bwhite@wagblaw.com

-and-

HORN AYLWARD & BANDY, LLC

BY: /s/ Dirk Hubbard
Thomas V. Bender, MO Bar #28099
Dirk Hubbard, MO Bar #37936
2600 Grand, Ste. 1100
Kansas City, MO 64108
(816) 421-0700
(816) 421-0899 (Fax)
dhubbard@hab-law.com

-and-

CLAYTON JONES, ATTORNEY AT LAW

BY: /s/ Clayton A. Jones
Clayton Jones MO51802
P.O. Box 257
405 W. 58 Hwy.
Raymore, MO 64083
Office: (816) 318-4266
Fax: (816) 318-4267
claytonjoneslaw.com

**ATTORNEYS FOR PLAINTIFFS
AND CLASS MEMBERS**