

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

Clayton T. Merritt, on behalf of himself)	
and those similarly situated,)	
)	
Plaintiff,)	
)	
v.)	Case No. _____
)	
TARGET CORPORATION)	
Serve: C T CORPORATION SYSTEM)	
120 SOUTH CENTRAL AVENUE)	
CLAYTON, MO 63105)	
)	
Defendant.)	

CLASS ACTION PETITION

COMES NOW Plaintiff Clayton T. Merritt (referred herein as “Plaintiff”), by and through his undersigned counsel, and for his Class Action Petition, alleges as follows:

INTRODUCTION

1. Plaintiff brings this action against defendant Target Corporation (referred to herein as “Target” or “Defendant”), on behalf of himself and all other similarly situated individuals who purchased Target’s furniture products based on false and deceptive advertising.

2. Plaintiff and others similarly situated purchased the products from Target after being misled by the images of the products portrayed on the products packaging. The images of the Products contained items photographically “placed” on the furniture in misleading ways, creating the false impression that the furniture could hold such items when, in reality, the size and dimensions of the furniture products could not hold such photographically inserted items.

3. This misled Plaintiff, and others, into purchasing these furniture products, believing they would be capable of serving certain functions when, in fact, they could not.

PARTIES

4. Plaintiff Clayton T. Merritt is a consumer aged over 18, natural person, and was a resident of the City of St. Louis at the time he purchased the furniture discussed herein.

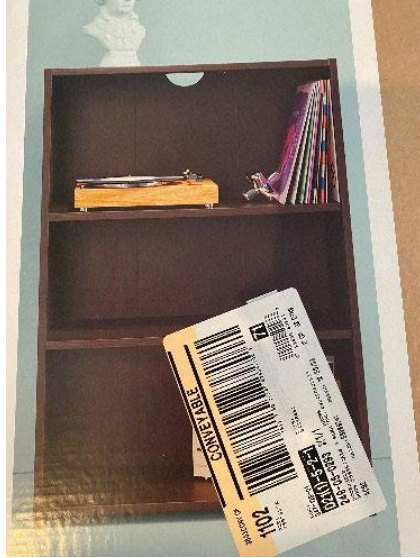
5. Defendant Target is one of the largest retailers in the United States. Target is a Minnesota corporation licensed to do business in Missouri and every other state in the union, maintained agents for the customary transaction of business in Missouri, and conducted substantial and not isolated business activity within this state. Target's principal place of business is in Minneapolis, Minnesota. Its principal business consists of operating almost two thousand stores nationwide that sell general merchandise.

6. Whenever reference in this Class Action Complaint is made to any act by Target or its subsidiaries, affiliates, distributors, retailers and other related entities and suppliers, such allegation shall be deemed to mean that the principals, officers, directors, employees, agents, and/or representatives of Target committed, knew of, performed, authorized, ratified and/or directed that act or transaction on behalf of Target while engaged in the scope of their duties.

FACTUAL ALLEGATIONS

7. This is a class action against Target for falsely representing several furniture products as having different dimensions and measurements by using misleading, doctored, or altered photographs on the product packaging to misrepresent or give a false impression as to the true dimensions of the products.

8. For example, the picture on the Room Essentials 3-Shelf Bookcase (the "Bookcase") product packaging shows a stack of vinyl records that fit perfectly in the Bookcase, as well as a record player with its front "feet" fitting nicely on the Bookcase:



6. In particular, the image on the packaging shows full-sized vinyl records and a record player fitting within the height and depth of the Bookcase. The image also shows the front feet of a record player fitting on a shelf on the Bookcase. Despite the misleading photographs contained on the packaging for the shelf. Those items do not fit on the actual Bookcase when it is assembled because the depth is approximately 5 to 6 inches too narrow to fit those items. The image below shows a vinyl record placed on the actual Bookcase after it is assembled, sticking out of the Bookcase because it is not deep enough to fit the items falsely depicted on the packaging as fitting perfectly:



7. The true dimensions—in particular, the depth of the Bookcase—are inadequate to accommodate a full-sized vinyl or record player. This is despite the fact that the picture on the packaging clearly shows that the *height* of the shelves can accommodate full-sized vinyl records. The image on the packaging, thus, was clearly doctored in some way to falsely appear as if full-sized vinyl records and a record player would not stick out beyond the depth of the Bookcase, when, in fact, is exactly what occurs when a consumer places those items on the Bookcase.

8. In December of 2023, Plaintiff was looking to purchase a Bookcase to store his vinyl record player and vinyl records. He went to a Target store in St. Louis City/County, Missouri, for this purpose. While at the store, he asked a Target employee whether Target sold any shelves that could store a record player and full vinyl records. The Target employee indicated that, yes, Target sold such a shelf, and directed him toward the Room Essentials 3-Shelf bookcase.

9. This Target employee specifically referenced the photograph on the packaging of the Bookcase as the basis for telling Plaintiff that it would be suitable for the purpose he had in mind—i.e., using the Bookcase to store a record player and vinyl records.

10. Based on the product packaging and the statements of the Target employee, Plaintiff believed the shelving would be able to hold his vinyl record player and vinyl records and purchased the Bookcase for approximately \$30.00. Plaintiff assembled his new Bookcase and found that both his vinyl record player and his vinyl records could not fit on the shelf because the depth of the actual Bookcase was approximately 5 to 6 inches too narrow to fit those items as the images below demonstrate:



11. Because the Bookcase's dimensions did not match the product packaging, Plaintiff had to purchase a different shelf at another store to fulfill the purpose that he thought—based on Target's packaging and the statements of its employee—the Target Bookcase was able to fulfill.

12. Plaintiff would not have purchased the Room Essentials 3-Shelf Bookshelf if he knew that his vinyl record player and vinyl records would not fit on the shelf as depicted on the product packaging.

13. Defendant Target maintains a pattern and practice of using deceptive photographs on the shelf and bookcase products (the “Products”) sold in its stores and online across the U.S.—including but not limited to the Bookcase¹—to mislead consumers into believing the Products are capable of fulfilling functions that, in fact, they cannot fulfill, thus inducing consumers to purchase the Products and overpay for them. Upon information and belief, these photographs include images of objects that are not physically placed onto a Product, but are instead photographically inserted onto the image of the Product to make it falsely appear as if the Product can hold objects when, in fact, the Product cannot.

14. The advertising, labeling, and product packaging for the Products at issue in this case were prepared and/or approved by Target and its agents, and were disseminated by Target and its agents through advertising and labeling containing the misrepresentations alleged herein.

15. The packaging and advertising for the Products were designed to encourage consumers to purchase the Products and misled reasonable consumers, including Plaintiff and the Class members into purchasing the Products. Target markets and distributes the Products, and is the company that created and/or authorized the unlawful, fraudulent, unfair, misleading and/or deceptive advertising and statements about the Products.

16. Plaintiff alleges that, at all times relevant herein, Target and its subsidiaries, affiliates, and other related entities and suppliers, as well as their respective employees, were the agents, servants and employees of Target and at all times relevant herein, each was acting within the purpose and scope of that agency and employment.

17. In addition, Plaintiff alleges that, in committing the wrongful acts alleged herein, Target, in concert with its subsidiaries, affiliates, and/or other related entities and suppliers, and

¹ Additional products containing misleading pictures on the packaging will be identified throughout discovery.

their respective employees, planned, participated in and furthered a common scheme to induce members of the public to purchase the Products by means of untrue, misleading, deceptive, and/or fraudulent representations, and that Target participated in the making of such representations in that it disseminated those misrepresentations and/or caused them to be disseminated.

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action on behalf of himself and all other similarly situated individuals pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and seeks certification of the following Class against defendant for violations of the Uniform Commercial Code and State Consumer Protection Statutes:

All persons within the United States who purchased one of the Products within the statute of limitations period, including any tolling period (the “Class” and “Class Period”). Excluded from the Class are Defendant’s current or former officers, directors, and employees; counsel for Plaintiff and Defendant; and the judicial officer to whom this lawsuit is assigned.

19. Plaintiff reserves the right to amend the definition of the Class if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

20. Plaintiff reserves the right to establish sub-classes as appropriate.

21. There is a well-defined community of interest among members of the Class, and the disposition of the claims of these members of the Class in a single action will provide substantial benefits to all parties and to the Court.

22. The members of the Class are so numerous that joinder of all members of the Class is impracticable. The Class is sufficiently numerous that joinder of all members of the Class in a single action is impracticable under Missouri Rule of Civil Procedure Rule 52.08(a)(1), and the resolution of their claims through the procedure of a class action will be of benefit to the parties and the Court.

23. Plaintiff's claims are typical of the claims of the members of the Class whom he seeks to represent because Plaintiff and each member of the Class has been subjected to the same deceptive and improper practices by Defendant and have been damaged in the same manner.

24. Plaintiff will fairly and adequately represent and protect the interests of the members of the Class as required by Missouri Rule of Civil Procedure Rule 52.08(a)(4). Plaintiff has no interests that are adverse to those of the members of the Class that she seeks to represent. Plaintiff is committed to the vigorous prosecution of this action and, to that end, Plaintiff has retained counsel that is competent and experienced in handling complex class action litigation on behalf of consumers.

25. A class action is superior to all other available methods of the fair and efficient adjudication of the claims asserted in this Complaint under Missouri Rule of Civil Procedure 52.08(b)(3) because:

- a. The expense and burden of individual litigation would not be economically feasible for members of the Class to seek to redress their claims other than through the procedure of a class action.
- b. If separate actions were brought by individual members of the Class, the resulting multiplicity of lawsuits would cause members to seek to redress their claims other than through the procedure of a class action; and
- c. Absent a class action, Defendant likely would retain the benefits of its wrongdoing, and there would be a failure of justice.

26. Common questions of law and fact exist as to the members of the Class, as required by Missouri Rule of Civil Procedure 52.08(a)(2), and predominate over any questions that affect

individual members of the Class within the meaning of Missouri Rule of Civil Procedure 52.08(b)(3).

27. The common questions of fact include, but are not limited to, the following:

- a. Whether Defendant breached an express warranty on the Products by misrepresenting a sample or model of the product;
- b. Whether the practice by Defendant of selling falsely advertised products violate the UCC Implied Warranty of Fitness for a Particular Purpose;
- c. Whether Defendant engaged in unlawful, unfair, misleading, and/or deceptive business acts or practices which violated the Missouri Merchandising Practices Act and other State Consumer Protection Statutes; and
- d. Whether Plaintiff and members of the Class are entitled to an award of reasonable attorneys' fees, pre-judgment interest, and costs of this suit.

28. Plaintiff and the members of the Class purchased merchandise primarily for personal, family, or household purposes and thereby suffered an ascertainable loss of money or property, real or personal, as a result of use/employment by another person of a practice declared unlawful by RSMo. § 407.020.

29. Plaintiff and the members of the Class allege that:

- a. Plaintiff and the members of the Class acted as a reasonable consumer would in light of all circumstances;
- b. The unlawful acts used by Target would cause a reasonable person to enter into this transaction by leading them to believe the Bookcase, and other Products, are larger and fit for purposes that, in reality, they were/are not fit to fulfill; and

c. Individual damages are sufficiently definitive and objective evidence will allow the loss to be calculated with a reasonable degree of certainty.

30. Plaintiff is not aware of any difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

COUNT I – UCC BREACH OF EXPRESS WARRANTY

31. Plaintiff incorporates the previous allegations as if they were alleged in this Count.

32. Plaintiff and the members of the Class are “buyers” within the meaning defined by the Uniform Commercial Code § 2-103 (“UCC”).

33. Defendant is a “merchant” and a “seller” within the meaning defined by the UCC § 2-103.

34. Under the UCC § 2-313(1)(c), express warranties are created by a seller by any sample or model which is made part of the basis of the bargain and creates a warranty that the whole of the goods shall conform to the sample or model. The images on the Products’ packaging were a sample or model of the Products.

35. Likewise, UCC § 2-313(1)(b) provides that any description of goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description. The images on the Products’ packaging were a description of the Products.

36. Plaintiff and the members of the Class bought the Products based on the description, sample or model, making the sample part of the basis of the bargain.

37. The actual product purchased by Plaintiff and other members of the class did not conform to the description, sample, or model depicted on the Packaging of the Products.

38. Defendant has breached its express warranty that the Products will conform to the photographs on the packaging of the Products.

39. Plaintiff and the members of the Class have been aggrieved by Defendant's breach of Express Warranty.

40. Plaintiff and the members of the Class suffered damages amounting to, at a minimum, the price that they paid for the Products.

41. The damages suffered by Plaintiff and the members of the Class were directly and proximately caused by Defendants breach of the UCC Express Warranty.

42. Plaintiff and the members of the Class were damaged by these breaches of the Express Warranty, at least in the amount of money they paid to Defendant for the Products.

WHEREFORE Plaintiff respectfully requests this Court enter judgment in favor of Plaintiff and the Class in excess of \$25,000.00, attorney's fees, costs, and such other relief as set forth in the prayer for relief below and as the Court deems just.

**COUNT II – UCC BREACH OF IMPLIED
WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**

43. Plaintiff incorporates the previous allegations as if they were alleged in this Count.

44. Under the UCC § 2-315, the Implied Warranty of Fitness for a Particular Purpose arises where the seller at the time of contracting has reason to know any particular purpose for which the goods are required, and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods.

45. Defendant has breached the UCC Warranty of Fitness for a Particular Purpose.

46. Defendant had reason to know that by depicting a particular purpose for the goods on the Product's packaging that a reasonable buyer would rely on the packaging to imply that it is fit for that purpose.

47. Defendant made false representations of the products by using materially inaccurate photographs on the Products' packaging.

48. Plaintiff, the members of the Class, and numerous other reasonable consumers purchased the Products after viewing and relying on materially inaccurate photographs on the Products' packaging that led them to believe that the products were fit for the purpose depicted therein.

49. Plaintiff and the members of the Class have been aggrieved by Defendant's breach of the UCC Implied Warranty of Fitness for a Particular Purpose.

50. Reasonable consumers rely on Defendant to honestly market and accurately label the Products.

51. Plaintiff and the members of the Class suffered damages amounting to, at a minimum, the price that they paid for the Products.

52. The damages suffered by Plaintiff and the members of the Class were directly and proximately caused by Defendants breach of the UCC Implied Warranty of Fitness for a Particular purpose.

53. Plaintiff and the Class members were damaged by these breaches of the Implied Warranty of Fitness for a Particular Purpose, at least in the amount of money they paid to Defendant for the Products.

WHEREFORE Plaintiff respectfully requests this Court enter judgment in favor of Plaintiff and the Class in excess of \$25,000.00, attorney's fees, costs, and such other relief as set forth in the prayer for relief below and as the Court deems just.

COUNT III – STATE CONSUMER PROTECTION STATUTE VIOLATIONS

54. Plaintiff realleges all preceding paragraphs and incorporates them by this reference as if fully set forth herein.

55. Plaintiff and the class members defined herein are persons entitled to protection of state consumer protection statutes in the following states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming (hereinafter the “consumer protection statutes”).²

56. These statutes allow for the bringing of a private right of action and for plaintiffs to obtain injunctive and equitable relief against defendants, like Target.

57. As to Plaintiff, he is entitled to pursue an action against Target under the Missouri Merchandising Practices Act, RSMo. § 407.010, et seq.

58. Plaintiff and the class members purchased the Products primarily for personal, family, or household purposes. These are the types of transactions covered by the consumer protection statutes.

59. Defendant is an entity subject to these consumer protection statutes.

² The consumer protection statutes are: Ala.Code 1975 § 8-19-10 (Alabama); AS 45.50.471-45.50.561 (Alaska); A.R.S. § § 44-1521 to 44-1534 (Arizona); A.C.A. § 4-88-107 (Arkansas); Cal.Civ.Code § 1750, et seq. (California); C.R.S.A. § 6-1-101, et seq. (Colorado); C.G.S.A. § 42-110b et seq. (Connecticut); 6 Del.C. § 2513 et seq. (Delaware); F.S.A. § 501.204 (Florida); GA ST § 10-1-393 (Georgia); HRS § 481A-1 (Hawaii); 815 ILCS 505/10a (Illinois); IC 24-5-0.5-4 (Indiana); I.C.A. § 714H.5 (Iowa); K.S.A. 50-634 (Kansas); KRS § 367.220 (Kentucky); LSA-R.S. 51:1409 (Louisiana); 5 M.R.S.A. § 213 (Maine); MD Code, Commercial Law, § 13-408 (Maryland); M.G.L.A. 93A § 9 (Massachusetts); M.C.L.A. 445.911 (Michigan); MSA § 325F.69 and MSA § 8.31 (Minnesota); RSMo. § 407.025 (Missouri); MCA 30-14-133 (Montana); Neb.Rev.St. § 59-1609 (Nebraska); N.R.S. 41.600 (Nevada); N.H. Rev. Stat. § 358-A:10 (New Hampshire); N.J.S.A. 56:8-19 (New Jersey – treble damages); N.M.S.A. 1978, § 57-12-10 (New Mexico); N.Y. Gen. Bus. Law § 349 (New York); N.C.G.S.A. § 75-16 (North Carolina – treble damages); NDCC, 51-15-09 (North Dakota – treble damages); R.C. § 1345.09 (Ohio); 15 Okl.St. Ann. § 753 (Oklahoma); O.R.S. § 646.638 (Oregon); 73 P.S. § 201-9.2 (Pennsylvania); RI ST § 6-13.1-5.2 (Rhode Island); SC ST § 39-5-140 (South Carolina); SDCL § 37-24-31 (South Dakota); T. C. A. § 47-18-109 (Tennessee); V.T.C.A., Bus. & C. § 17.50 (Texas); U.C.A. 1953 § 13-11-19 (Utah); 9 V.S.A. § 2461 (Vermont – treble damages); VA Code Ann. § 59.1-204 (Virginia); RCWA 19.86.090 (Washington – treble damages); W. Va. Code, § 46A-6-106 (West Virginia); W.S.A. 425.301-425.309 (Wisconsin); W.S.1977 § 40-12-108 (Wyoming).

60. The act, use or employment by any person of any 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 is declared to be an unlawful process under the Missouri Merchandising Practices Act, RSMo. § 407.020 and other the consumer protection statutes.

61. Target engaged in deception, fraud, false pretenses, false promises, misrepresentation, unfair practices or the concealment, suppression, or omission of material facts to trick Plaintiff and the Class members into believing that the Products were something that they were not.

62. Plaintiff and the Class Members suffered damages amounting to, at a minimum, the price that they paid for the Products.

63. Pursuant to these consumer protection statutes, Plaintiff and the class seek actual damages, costs, and reasonable attorney's fees.

WHEREFORE Plaintiff respectfully requests this Court enter judgment in favor of Plaintiff and the Class in excess of \$25,000.00, attorney's fees, costs, and such other relief as set forth in the prayer for relief below and as the Court deems just.

JURY DEMAND

70. Plaintiff and the members of the Class demand a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually, and on behalf of each member of the proposed Class prays the Court grant the following relief:

- a. Enter an order certifying this action as a class action and appointing Clayton T. Merritt as the representative of the Class;

- b. Enter an order appointing Benjamin McIntosh of SWMW Law, LLC, as counsel and lead counsel of the Class;
- c. In the event that the Class is certified, enter judgment in excess of \$25,000.00 in favor of Plaintiffs and members of the Class in at least the sum paid for the Products.
- d. Enter judgment awarding Plaintiff a reasonable service award for serving as a representative of the Class;
- e. Enter judgment awarding pre-judgment interest, post-judgment interest, costs, attorney' fees, and any further and additional relief as the Court deems just or to which Plaintiff and the members of the Class may be entitled to.

Respectfully Submitted,
SWMW LAW, LLC

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [‘Clearly Doctored’: Target Lawsuit Claims Bookshelf Packaging Images Misrepresent Product Dimensions](#)
