

Lowe's Sued in Class Action Over Mulch Labels

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Lowe's Home Centers LLC has been slapped with a class action lawsuit by customers claiming bags of the home improvement retailer's brand of mulch and that of its suppliers falsely advertise the amount of product they contain.

Plaintiffs Amy Joseph of Illinois and Glenn McMillan of California filed their complaint May 27 in the U.S. District Court for the Northern District of Illinois Eastern Division against defendants Lowe's Home Centers, Lebanon Seaboard Corp., and Oldcastle Lawn & Garden Inc., alleging the companies represent that the brands of mulch they sell come in bags containing two cubic feet of mulch.

However, plaintiffs claim these bags "contain substantially and materially less than two (2) cubic feet of mulch."

The suit asserts that by "short packing" the bags of mulch, defendants are able to increase their profit margins, and save money on the cost of freight.

The class action was brought by plaintiffs to "to halt the dissemination of these false and misleading advertising messages...and to obtain redress for those who have purchased defendants' offending mulch products," the complaint states.

Lowe's, based in Wilkesboro, North Carolina, markets and sells the Premium Mulch, Preen Mulch and Oldcastle Mulch products complained of by plaintiffs, the suit said.

Plaintiffs Joseph and McMillan claim after they purchased bags of mulch from Lowe's they "discovered that their bags contained substantially and materially less mulch than advertised."

Plaintiffs said their counsel hired a private investigator to measure the quantity of mulch found in multiple bags of Premium Mulch, Preen Mulch, Timberline Mulch, and NoFloat Mulch purchased from three of Lowe's retail stores. The investigation revealed that each bag contained an average of approximately 1.5 cubic feet of mulch, or 25% less mulch than advertised in each bag, plaintiffs claim.

The suit contains counts of fraudulent misrepresentation, unjust enrichment, and violations of the consumer fraud and deceptive trade practices laws against all defendants. Additional claims of relief are sought against Lowe's for violation of California's False Advertising Law and breach of contract.

Plaintiffs seek to have defendants institute procedures to ensure each bag of mulch contains two cubic feet or alter their advertising and labeling of bags to reflect the actual amount of mulch contained. They also seek an unspecified amount of actual, treble and punitive damages.

The proposed class includes anyone in the United States who purchased one or more bags of defendants' mulch products on or after May 27, 2004. Plaintiffs estimate there are thousands of class members based on the dominance of Lowe's and its suppliers in the marketplace.

Note: The plaintiffs are represented by Thomas A. Zimmerman, Jr., Adam M. Tamburelli and Frank J. Stretz of Zimmerman Law Offices, P.C.