

Lowe's Class Action Lawsuit Filed Over Missing Mulch

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A class action lawsuit filed Tuesday accuses Lowe's Home Centers LLC of short-changing customers by underfilling its bags of mulch.

Plaintiffs Amy Joseph and Glenn McMillan allege in the Lowe's mulch class action lawsuit that Lowe's and two suppliers sold bags of mulch advertised as containing 2.0 cubic feet of mulch, enough to cover 12 square feet two inches deep, but that allegedly only contained 1.5 cubic feet of the garden product. The customers claim that the home repair and gardening giant colluded with its suppliers Lebanon Seaboard Corp. and Oldcastle Lawn & Garden Inc. in the alleged false advertising scheme in order to save on shipping costs and increase the company's profit margins.

Joseph alleges she purchased bags of mulch from Lowe's in early May in Naperville, Ill.; McMillan purchased bags of mulch from Lowe's in Bakersfield, Calif. in mid-April. Both say they relied on packaging statements that the bags contained 2.0 cubic feet of mulch each. When they brought the products home and used them, say the plaintiffs, they discovered the bags contained substantially and materially less mulch than advertised.

The plaintiff's counsel in the Lowe's class action lawsuit then hired a private investigator, according to court documents, who purchased multiple bags of Lowe's Premium Mulch, Preen Mulch, Timberline Mulch, and NoFloat Mulch and measured their contents. The investigator reported that he found that each bag contained 1.5 cubic feet of mulch, or 25% less than the package advertised.

The Lowe's mulch class action lawsuit alleges a motive for the discrepancy between the amount indicated on the package and the amount its investigator found in the bags. "By 'short packing' the bags of mulch, Defendants are able to (a) increase their profit margin per bag by selling a lesser amount of mulch than advertised, and (b) save money on the cost of freight, as they can put more bags of mulch on a truck if there is less mulch in the bag," the Lowe's class action lawsuit states.

The Lowe's class action lawsuit also takes the home improvement retailer to task for in-store advertisements that state four packages of mulch will cover 50 square feet of garden space with two inches of mulch. "It is mathematically impossible for four bags of two cubic feet of Premium mulch to cover fifty square feet at a depth of two inches," the plaintiffs state. "Thus, even if there is two cubic feet of mulch in the bag, Lowe's representations that four bags of two cubic feet of Premium Mulch will cover fifty square feet at a depth of two inches are still false."

The Lowe's class action lawsuit is bringing claims for fraudulent misrepresentation, unjust enrichment, breach of contract and violations of the consumer protection and false advertising statutes of all 50 states, plus the District of Columbia, accusing the defendants of underfilling bags of mulch. Lowe's contracts with various third-party distributors that manufacture, package

and distribute the retailer's proprietary "Premium Mulch" to its 1,800 stores nationwide, say the plaintiffs, and the private-label product is sold along with the Preen, Timberline and NoFloat mulches produced by the co-defendants.

Joseph and McMillan say that Lowe's, Lebanon and Oldcastle represent, with their product packaging, in-store signage and print, television and online advertising, that the mulch packages contain two cubic feet of mulch, and that the plaintiffs relied on these statements when purchasing the product.

The plaintiffs are seeking to represent other customers who purchased from Lowe's one or more bags of Preen Mulch, Premium Mulch, Timberline Mulch, or NoFloat Mulch on or after May 27, 2004.

The Lowe's class action lawsuit is seeking an order enjoining Lowe's from selling packages of mulch which advertise more than the product contains; restitution and any other equitable relief; actual damages, treble damages, punitive damages; and reimbursement for attorney's fees.

The plaintiffs are represented by Thomas A. Zimmerman, Adam M. Tamburelli and Frank J. Stretz of Zimmerman Law Offices PC.