

STATE OF ILLINOIS)
)SS
COUNTY OF COOK)

FIRM I.D. NO. 91211

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

MARK LOEWES,)

Plaintiff,)

-vs-)

THE BERNZOMATIC CORPORATION and)
NEWELL RUBBERMAID INC., a corporation,)
d/b/a THE BERNZOMATIC CORPORATION,)

Defendants.)

No. _____

COMPLAINT AT LAW

NOW COMES the Plaintiff, MARK LOEWES, by and through his attorneys, GOLDSTEIN & FLUXGOLD, P.C., and complaining of the Defendants, THE BERNZOMATIC CORPORATION, and NEWELL RUBBERMAID INC., a corporation, d/b/a THE BERNZOMATIC CORPORATION, and each of them, as follows:

COUNT I

1) That on or before June 27, 2005, and for some time prior and subsequent thereto, the Defendant, THE BERNZOMATIC CORPORATION, was engaged in the business of designing, preparing, manufacturing, maintaining, advertising, distributing, supplying, and selling various types of hand held torches and accessories, including but not limited to hand held torches and component parts thereof.

2) That on or about March 26, 2005, Plaintiff, MARK LOEWES, purchased a hand held torch and component parts thereof, commonly known and described as a Bernzomatic TS4000ZKC Trigger-Start Torch Kit, which was designed, prepared, manufactured, advertised, distributed, supplied and sold by the Defendant, THE BERNZOMATIC CORPORATION.

3) That at all times material herein, the Defendant, THE BERNZOMATIC CORPORATION, had the duty to design, prepare, manufacture, advertise, distribute, supply, and sell said torch with adequate control devices to prevent flames from exiting vent holes for the safety and protection of Plaintiff, MARK LOEWES, and others then and there present.

4) That on June 27, 2005, and at all times prior thereto, the Plaintiff, MARK LOEWES, was in the exercise of ordinary care and caution for his own safety.

5) That at the time of the occurrence hereinafter complained of and prior thereto, the Defendant, THE BERNZOMATIC CORPORATION, by and through its duly authorized agents, servants and/or employees, carelessly and negligently:

- (a) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torches and component parts thereof, that would be likely to malfunction during usage;
- (b) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torches with inadequate safety devices, so that said torch was a dangerous instrumentality and likely to cause severe and permanent injuries to persons using said hand held torch in the ordinary and usual manner, or in the manner in which the said Defendant should have reasonably anticipated;
- (c) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torches which were likely to cause severe and permanent injuries to persons using said torches in the ordinary and usual manner, or in the manner in which the said Defendant should have reasonably anticipated;
- (d) Failed to give adequate instruction and warning concerning the necessity of periodic inspection, maintenance and danger during use of said hand held torches;

(e) Failed to install on said hand held torches certain protective or safety devices reasonably adequate to prevent fire from exiting through air vents in the handles of said torches and becoming fire hazards to persons using said hand held torches in the usual manner, or in the manner in which the said Defendant should have reasonably anticipated;

(f) Failed to install on said hand held torches protective or safety devices reasonably adequate to prevent the said hand held torches from injuring persons, including the Plaintiff herein, during usage;

(g) Failed to properly inspect said hand held torches to determine whether reasonably safe for the purpose for which intended;

(h) Failed to give a reasonably adequate warning to those persons, including the Plaintiff, MARK LOEWES, who would be subjected to the possibility of said hand held torches leaking and becoming unreasonable fire hazards to persons using the torch in the ordinary and customary manner;

(i) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torch with air vents in handle of said torch, creating a fire hazard to persons using said hand held torch in the ordinary and customary manner, or in the manner in which the said Defendant should have reasonably anticipated.

(j) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torch without an adequate cut-off valve in said torch, creating a fire hazard to persons using said hand held torch in the ordinary and customary manner, or in the manner in which the said Defendant should have reasonably anticipated.

(k) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torch in manner that permitted and allowed fuel and fire to exit vents in handle of said torch.

6) That as a direct and proximate result of one or more of the foregoing careless and negligent acts of the Defendant, THE BERNZOMATIC CORPORATION, fire exited through the air vent in handle of said torch and Plaintiff, MARK LOEWES, was unable to stop the flow of gas due to absence of a proper cut-off valve, leading to the explosion of said torch while being used in the usual and customary manner by the Plaintiff, or in the manner in which the said Defendant should have reasonably anticipated.

7) That as a direct and proximate result of one or more of the foregoing wrongful acts and omissions of the Defendant, the Plaintiff, MARK LOEWES, was then and there injured both internally and externally; that he sustained a severe shock and damage to his nervous system and other systems of his body; that he suffered severe and permanent injuries; that he suffered acute and prolonged physical and mental pain and suffering; and that he became liable for great sums of money for medical, hospital care and treatment, as well as incurring other expenses, including wage loss.

8) That the Plaintiff's damages are in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE, the Plaintiff, MARK LOEWES, prays judgment against the Defendant, THE BERNZOMATIC CORPORATION, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT II

1) That on or before June 27, 2005, and for some time prior and subsequent thereto, the Defendant, THE BERNZOMATIC CORPORATION, was engaged in the business of designing, preparing, manufacturing, maintaining, advertising, distributing, supplying, and selling various types of hand held torches and accessories, including but not limited hand held torches and component parts thereof.

2) That on or about March 26, 2005, Plaintiff, MARK LOEWES, purchased a hand held torch and component parts thereof, commonly known and described as a Bernzomatic TS4000ZKC Trigger-Start Torch Kit, which was designed, prepared, manufactured, advertised, distributed, supplied and sold by the Defendant, THE BERNZOMATIC CORPORATION.

3) That on June 27, 2005, and at all times material herein, the Plaintiff, MARK LOEWES,

was in the exercise of ordinary care and caution for his own safety.

4) That said hand held torch and component parts thereof was at the time of its manufacture and at the time it left the possession of the Defendant, THE BERNZOMATIC CORPORATION, unreasonably dangerous by reason of one or more of the following defects or conditions of the product:

a) The hand held torch contained a defective control knob that failed to prevent fuel from burning even after the knob was turned to the "off" position.

b) The hand held torch contained a defective, unreasonably dangerous, and improper venting system.

c) The manufacturer's carton for the hand held torch contained inadequate warnings and instructions.

d) The pamphlet inserted in the manufacturer's carton for the hand held torch contained inadequate warnings and instructions.

e) The manufacturer's carton and the pamphlet insert of instructions did not give any warning of the tendency of the hand held torch to leak and burn even with proper use of the control knob.

5) That on June 27, 2005, as a direct and proximate result of one or more of the foregoing unsafe conditions under the control of the Defendant, THE BERNZOMATIC CORPORATION, fire exited through the air vent in handle of said torch and Plaintiff, MARK LOEWES, was unable to stop the flow of gas due to absence of a proper cut-off valve, leading to the explosion of said torch while being used in the usual and customary manner by the Plaintiff, or in the manner in which the said Defendant should have reasonably anticipated.

6) That as a direct and proximate result of one or more of the foregoing wrongful acts and omissions of the Defendant, the Plaintiff, MARK LOEWES, was then and there injured both internally and externally; that he sustained a severe shock and damage to his nervous system and

other systems of his body; that he suffered severe and permanent injuries; that he suffered acute and prolonged physical and mental pain and suffering; and that he became liable for great sums of money for medical, hospital care and treatment, as well as incurring other expenses, including wage loss.

7) That the Plaintiff's damages are in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE, the Plaintiff, MARK LOEWES, prays judgment against the Defendant, THE BERNZOMATIC CORPORATION, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT III

1) - 3) Plaintiff, MARK LOEWES, restates and realleges paragraphs 1) through 3) inclusive of Count II hereof as and for paragraphs 1) through 3) inclusive of this Count III as though specifically realleged herein and hereby incorporates the same by this reference.

4) That when said hand held torch and component parts thereof was designed, manufactured, distributed and sold by the Defendant, THE BERNZOMATIC CORPORATION, there was an implied warranty of merchantability.

5) That in violation of said warranty, on June 27, 2005, when the hand held torch was used by the Plaintiff, MARK LOEWES, fire exited through the air vent in handle of said torch and Plaintiff, MARK LOEWES, was unable to stop the flow of gas due to absence of a proper cut-off valve, leading to the explosion of said torch while being used in the usual and customary manner by the Plaintiff, or in the manner in which the said Defendant should have reasonably anticipated.

6) That as a direct and proximate result of said breach of warranty, the Plaintiff, MARK LOEWES, suffered from severe injuries.

7) That as a direct and proximate result of one or more of the foregoing wrongful acts and omissions of the Defendant, the Plaintiff, MARK LOEWES, was then and there injured both internally and externally; that he sustained a severe shock and damage to his nervous system and other systems of his body; that he suffered severe and permanent injuries; that he suffered acute and prolonged physical and mental pain and suffering; and that he became liable for great sums of money for medical, hospital care and treatment, as well as incurring other expenses, including wage loss.

8) That the Plaintiff's damages are in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE, the Plaintiff, MARK LOEWES, prays judgment against the Defendant, THE BERNZOMATIC CORPORATION, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT IV

1) That on or before June 27, 2005, and for some time prior and subsequent thereto, the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, was engaged in the business of designing, preparing, manufacturing, maintaining, advertising, distributing, supplying, and selling various types of hand held torches and accessories, including but not limited to hand held torches and component parts thereof.

2) That on or about March 26, 2005, Plaintiff, MARK LOEWES, purchased a hand held torch and component parts thereof, commonly known and described as a Bernzomatic TS4000ZKC Trigger-Start Torch Kit, which was designed, prepared, manufactured, advertised, distributed, supplied and sold by the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION.

3) That at all times material herein, the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, had the duty to design, prepare, manufacture, advertise, distribute, supply, and sell said torch with adequate control devices to prevent flames from exiting vent holes for the safety and protection of Plaintiff, MARK LOEWES, and others then and there present.

4) That on June 27, 2005, and at all times prior thereto, the Plaintiff, MARK LOEWES, was in the exercise of ordinary care and caution for his own safety.

5) That at the time of the occurrence hereinafter complained of and prior thereto, the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, by and through its duly authorized agents, servants and/or employees, carelessly and negligently:

(a) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torches and component parts thereof, that would be likely to malfunction during usage;

(b) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torches with inadequate safety devices, so that said torch was a dangerous instrumentality and likely to cause severe and permanent injuries to persons using said hand held torch in the ordinary and usual manner, or in the manner in which the said Defendant should have reasonably anticipated;

(c) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torches which were likely to cause severe and permanent injuries to persons using said torches in the ordinary and usual manner, or in the manner in which the said Defendant should have reasonably anticipated;

(d) Failed to give adequate instruction and warning concerning the necessity of periodic inspection, maintenance and danger during use of said hand held torches;

(e) Failed to install on said hand held torches certain protective or safety devices reasonably adequate to prevent fire from exiting through air vents in the handles of said torches and becoming fire hazards to persons using said hand held torches in the usual

manner, or in the manner in which the said Defendant should have reasonably anticipated;

(f) Failed to install on said hand held torches protective or safety devices reasonably adequate to prevent the said hand held torches from injuring persons, including the Plaintiff herein, during usage;

(g) Failed to properly inspect said hand held torches to determine whether reasonably safe for the purpose for which intended;

(h) Failed to give a reasonably adequate warning to those persons, including the Plaintiff, MARK LOEWES, who would be subjected to the possibility of said hand held torches leaking and becoming unreasonable fire hazards to persons using the torch in the ordinary and customary manner;

(i) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torch with air vents in handle of said torch, creating a fire hazard to persons using said hand held torch in the ordinary and customary manner, or in the manner in which the said Defendant should have reasonably anticipated.

(j) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torch without an adequate cut-off valve in said torch, creating a fire hazard to persons using said hand held torch in the ordinary and customary manner, or in the manner in which the said Defendant should have reasonably anticipated.

(k) Designed, prepared, manufactured, maintained, advertised, distributed, supplied and sold said hand held torch in manner that permitted and allowed fuel and fire to exit vents in handle of said torch.

6) That as a direct and proximate result of one or more of the foregoing careless and negligent acts of the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, fire exited through the air vent in handle of said torch and Plaintiff, MARK LOEWES, was unable to stop the flow of gas due to absence of a proper cut-off valve, leading to the explosion of said torch while being used in the usual and customary manner by the Plaintiff, or in the manner in which the said Defendant should have reasonably anticipated.

7) That as a direct and proximate result of one or more of the foregoing wrongful acts and omissions of the Defendant, the Plaintiff, MARK LOEWES, was then and there injured both

internally and externally; that he sustained a severe shock and damage to his nervous system and other systems of his body; that he suffered severe and permanent injuries; that he suffered acute and prolonged physical and mental pain and suffering; and that he became liable for great sums of money for medical, hospital care and treatment, as well as incurring other expenses, including wage loss.

8) That the Plaintiff's damages are in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE, the Plaintiff, MARK LOEWES, prays judgment against the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT V

1) That on or before June 27, 2005, and for some time prior and subsequent thereto, the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, was engaged in the business of designing, preparing, manufacturing, maintaining, advertising, distributing, supplying, and selling various types of hand held torches and accessories, including but not limited to hand held torches and component parts thereof.

2) That on or about March 26, 2005, Plaintiff, MARK LOEWES, purchased a hand held torch and component parts thereof, commonly known and described as a Bernzomatic TS4000ZKC Trigger-Start Torch Kit, which was designed, prepared, manufactured, advertised, distributed, supplied and sold by the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION.

3) That on June 27, 2005, and at all times material herein, the Plaintiff, MARK LOEWES, was in the exercise of ordinary care and caution for his own safety.

4) That said hand held torch and component parts thereof was at the time of its manufacture and at the time it left the possession of the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, unreasonably dangerous by reason of one or more of the following defects or conditions of the product:

- a) The hand held torch contained a defective control knob that failed to prevent fuel from burning even after the knob was turned to the "off" position.
- b) The hand held torch contained a defective, unreasonably dangerous, and improper venting system.
- c) The manufacturer's carton for the hand held torch contained inadequate warnings and instructions.
- d) The pamphlet inserted in the manufacturer's carton for the hand held torch contained inadequate warnings and instructions.
- e) The manufacturer's carton and the pamphlet insert of instructions did not give any warning of the tendency of the hand held torch to leak and burn even with proper use of the control knob.

5) That on June 27, 2005, as a direct and proximate result of one or more of the foregoing unsafe conditions under the control of the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION fire exited through the air vent in handle of said torch and Plaintiff, MARK LOEWES, was unable to stop the flow of gas due to absence of a proper cut-off valve, leading to the explosion of said torch while being used in the usual and customary manner by the Plaintiff, or in the manner in which the said Defendant should have reasonably anticipated.

6) That as a direct and proximate result of one or more of the foregoing wrongful acts and omissions of the Defendant, the Plaintiff, MARK LOEWES, was then and there injured both internally and externally; that he sustained a severe shock and damage to his nervous system and

other systems of his body; that he suffered severe and permanent injuries; that he suffered acute and prolonged physical and mental pain and suffering; and that he became liable for great sums of money for medical, hospital care and treatment, as well as incurring other expenses, including wage loss.

7) That the Plaintiff's damages are in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE, the Plaintiff, MARK LOEWES, prays judgment against the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

COUNT VI

1) - 3) Plaintiff, MARK LOEWES, restates and realleges paragraphs 1) through 3) inclusive of Count V hereof as and for paragraphs 1) through 3) inclusive of this Count VI as though specifically realleged herein and hereby incorporates the same by this reference.

4) That when said hand held torch and component parts thereof was designed, manufactured, distributed and sold by the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, there was an implied warranty of merchantability.

5) That in violation of said warranty, on June 27, 2005, when the hand held torch was used by the Plaintiff, MARK LOEWES, fire exited through the air vent in handle of said torch and Plaintiff, MARK LOEWES, was unable to stop the flow of gas due to absence of a proper cut-off valve, leading to the explosion of said torch while being used in the usual and customary manner by the Plaintiff, or in the manner in which the said Defendant should have reasonably anticipated.

6) That as a direct and proximate result of said breach of warranty, the Plaintiff, MARK LOEWES, suffered from severe injuries.

7) That as a direct and proximate result of one or more of the foregoing wrongful acts and omissions of the Defendant, the Plaintiff, MARK LOEWES, was then and there injured both internally and externally; that he sustained a severe shock and damage to his nervous system and other systems of his body; that he suffered severe and permanent injuries; that he suffered acute and prolonged physical and mental pain and suffering; and that he became liable for great sums of money for medical, hospital care and treatment, as well as incurring other expenses, including wage loss.

8) That the Plaintiff's damages are in excess of FIFTY THOUSAND DOLLARS (\$50,000.00), the minimum jurisdictional amount of this Court.

WHEREFORE, the Plaintiff, MARK LOEWES, prays judgment against the Defendant, NEWELL RUBBERMAID INC., A CORPORATION, D/B/A THE BERNZOMATIC CORPORATION, for a sum in excess of FIFTY THOUSAND DOLLARS (\$50,000.00).

MARK LOEWES, Plaintiff

By:


One of Plaintiff's Attorneys

GOLDSTEIN & FLUXGOLD, P.C.
33 North Dearborn Street
Suite 1015
Chicago, Illinois 60602
(312) 726-7772