

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

VIRGINIA STROH,	)	
Individually, and on behalf of all others	)	
similarly situated,	)	CASE NO. 1:11-cv-02232-CAB
	)	
PLAINTIFF,	)	JUDGE BOYKO
	)	
-vs-	)	<b>FIRST AMENDED CLASS ACTION</b>
	)	<b>COMPLAINT</b>
GENTEK BUILDING PRODUCTS, INC.,	)	<b>(Jury Demand Endorsed Hereon)</b>
	)	
And	)	
	)	
ASSOCIATED MATERIALS, INC.	)	
	)	
DEFENDANTS.	)	

Named Plaintiff Virginia Stroh, individually and on behalf of all others similarly situated, by and through undersigned counsel and pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), alleges on personal knowledge and on information and belief as follows:

**INTRODUCTION**

1. Named Plaintiff brings this action for monetary damages, declaratory and equitable relief, and/or disgorgement of profits on behalf of herself and all similarly situated individuals who are the original owners of exterior aluminum or steel siding manufactured, warranted, advertised and/or sold by Gentek Building Products, Inc. (“Gentek”) and/or Associated Materials LLC (“Associated Materials”), or their predecessors, successors or subsidiaries.

2. Defendants have improperly attempted to impose terms and conditions upon warranties issued by it that were not disclosed in writing to purchasers of their steel and aluminum siding products.

3. The siding at issue herein is warranted by Defendants against cracking, chipping, flaking, peeling or splitting, as well as certain other manufacturing defects. The express warranty, given to purchasers at the point of sale, remains in effect for the life of the original purchaser, if that purchaser is an individual. If the purchaser is a corporate or governmental entity, the warranty remains in effect for 50 years. The warranty may be transferred to a subsequent purchaser, in which case it remains in effect for 50 years from the date of the original installation.

4. The steel and aluminum siding manufactured by Defendants is inherently defective because it begins to peel, chip and crack within the original warranty period. Defendants are obligated by the specific terms of the warranty to either repair, replace or in the case of siding sold in 1995 and thereafter, refinish the siding.

5. As a result of the defect, Named Plaintiff and thousands of others own inherently defective siding that is failing to perform as warranted and in turn, Defendants have received thousands of warranty claims related to the defect and, given the length of the warranty, will continue to receive claims in the future.

6. When an owner contacts Defendants for warranty service, Defendants require the owner to provide an invoice specifying the brand of siding or a numbered warranty as “proof” that the siding on the home was manufactured by Gentek. This requirement is not contained in the express terms of the warranty and, because the siding can be identified as having been

manufactured by Gentek by simply looking at it, is unnecessary to determine whether it was in fact manufactured by Gentek.

### **PARTIES**

7. Named Plaintiff Virginia Stroh resides in Alexandria, Minnesota. She is the owner of siding manufactured by Defendants.

8. Defendant Gentek is a Delaware corporation with its principal place of business in Beachwood, Ohio. Gentek manufactures, warrants, advertises and sells steel, aluminum and vinyl exterior siding to consumers and commercial entities in North America and internationally under the Gentek brand name. At some times relevant hereto, it did business under the name Alcan Building Products.

9. Defendant Associated Materials is a Delaware limited liability company with its principal place of business in Cuyahoga Falls, Ohio. Associated Materials is the parent company of Gentek. It manufactures, warrants, advertises and sells steel, aluminum and vinyl exterior siding to consumers and commercial entities in North America and internationally under the Alside, Gentek, Revere, Ultraguard, Preservation and Alpine brand names.

### **JURISDICTION AND VENUE**

10. This court has original jurisdiction over this action under the Class Action Fairness Act, 28 U.S.C. §1332(d), because this is a class action in which (i) there are 100 or more members in the proposed class; (ii) members of the class are citizens of states different from that of Defendants; and (iii) the claims of the proposed class members exceed \$5 million in the aggregate.

11. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendants are residents of this District, and because a substantial part of the events or omissions giving rise to the claims occurred within this district.

### CLASS ACTION ALLEGATIONS

12. Named Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of herself and a class defined as all owners in the United States of steel and aluminum siding manufactured by Defendants who have been denied warranty service because of their inability to produce either (1) a numbered warranty or (2) a receipt specifying the brand of siding installed and the address at which it was installed. Excluded from the Class are Defendants, as well as Defendants' affiliates, employees, officers and directors, including franchised dealers, and any person who has experienced physical injury as a result of the defects at issue in this litigation. Named Plaintiff reserves the right to amend this Class definition if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

13. The members of the Class are so numerous that joinder of all members would be impracticable. Named Plaintiff reasonably estimates that there are hundreds of Class members.

14. The members of the Class are readily identifiable from information and records in Defendants' possession, custody or control. The disposition of these claims will provide substantial benefits to the Class.

15. There are questions of law and fact common to the members of the Class that predominate over any questions affecting only individual Class members, including, **but not limited to**, the following:

- a. Whether, by the misconduct set forth in this Complaint, Defendants have engaged in unfair or unlawful business practices with respect to administering their warranty;
- b. Whether Defendants' conduct is a deceptive practice as defined at R.C. 1345.02;
- c. Whether Defendants have breached the express warranty pertaining to the siding;
- d. Whether the express terms of the warranty permit Defendants to demand an original receipt or numbered warranty as proof of the origin of the siding at issue; and
- e. Whether Defendants have been unjustly enriched by the sale of the siding to Named Plaintiff and Class Members.

16. Named Plaintiff's claims are typical of the claims of the members of the Class. Named Plaintiff has no interests antagonistic to those of the Class and is not subject to any unique defenses.

17. Named Plaintiff will fairly and adequately protect the interests of all members of the Class and has retained attorneys experienced in class action and complex litigation.

18. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:

- a. It is economically impractical for members of the class to prosecute separate actions, and to Named Plaintiff's knowledge, no significant litigation has been commenced by individual class members;
- b. Prosecution as a class action will eliminate the possibility of repetitious litigation; and
- c. A class action will enable claims to be handled in an orderly and expeditious manner, will save time and expense and will ensure uniformity of decisions.

### **SUBSTANTIVE ALLEGATIONS**

19. The exterior siding at issue here has been manufactured, marketed and distributed by Defendants since at least 1988, both directly to consumers and through Defendants' established network of distributors and contractors. The siding is sold with what is termed a "Lifetime Warranty".

20. The Lifetime Warranty that each purchaser receives warrants against the siding containing manufacturing defects which result in cracking, chipping, flaking, peeling or splitting of the paint. The Lifetime Warranty remains in effect for the life of the original purchaser, if the purchaser is a natural person. Other purchasers, such as corporations or governmental entities, receive a fifty-year warranty.

21. Steel and aluminum siding manufactured by Defendants since at least 1988 has contained a substantial defect that causes the paint to peel prematurely. As a result, thousands of owners have submitted warranty claims to Defendants.

22. Defendants have been aware of the existence of this defect since at least 2001, and, on information and belief, for a significant period prior to that time.

23. The increasing cost of future warranty claims was cited as a reason why Alcoa Building Products ended negotiations to purchase Defendant Gentek in 2001.

24. In November, 2001, Defendant Gentek filed suit against The Sherwin Williams Company alleging that Sherwin Williams had sold it defective paint coatings for application to Gentek's steel and aluminum siding, and that as a result Gentek had, as of that date, received approximately 1,100 warranty claims related to peeling paint on its aluminum and steel siding manufactured after 1988. The lawsuit was removed to this Court and assigned Case No. 1:02-cv-00013-JRA. Sherwin Williams ultimately prevailed in that litigation, with no determination made as to which party was at fault for the failure of the paint.

25. On information and belief, the number of warranty claims relating to peeling paint on siding manufactured after 1988 has continued to increase, and, due to the length of the warranty, will continue to do so into the future.

26. The cost of honoring the warranty in the face of the defects contained in their products has caused Defendants to find ways to decrease the number of claims it accepts. One way in which Defendants accomplish this is to require proof that the damaged siding was manufactured by Gentek, in the form of either an original invoice specifying the brand of siding and address at which it is to be installed, or a warranty certificate signed by the original installer.

27. Defendants specifically inform each owner, in writing, that this information is necessary to determine which warranty is applicable to the siding. Defendants' excuse is a pretext for its improper attempt to deny warranty coverage. By simply looking at the siding at issue, Defendants, and anyone with a reasonable familiarity with variations in siding, can identify not only the manufacturer of siding, but also the brand (i.e., Alside, Revere, or Gentek) and the name of the color of the paint with which it is coated.

28. On or about 2009, Named Plaintiff Virginia Stroh discovered that the siding on her home was peeling. At that time, Mrs. Stroh was advised by a local contractor that the siding on her home was manufactured by Gentek.

29. Mrs. Stroh contacted Gentek to obtain warranty coverage. Gentek advised her, in writing as it does with all warranty claimants, that it would require acceptable proof of purchase in the form of either (1) a receipt for the siding specifying the brand and that it was to be used for the claimant's address; or (2) a copy of the warranty signed by the contractor at the time of installation. It also advised her that it would require digital photographs of the damaged areas.

30. Mrs. Stroh advised Gentek that she did not own a digital camera, and was unsure whether she had the paperwork Gentek required. Gentek's representative advised Mrs. Stroh that it could not provide further assistance.

31. In 2010, as the peeling on the siding continued, Mrs. Stroh enlisted the help of a local contractor to take photographs of the siding. She again contacted Gentek, and in November, 2010, submitted its "Homeowner Self Inspection Report" (Exhibit 1), along with photographs of the affected areas, the receipt she received from the original installer (Exhibit 2), and a copy of a canceled check written to the installer at the time of installation (Exhibit 2).

32. At the time of installation, Mrs. Stroh received the receipt from her installer attached as Exhibit 2. It is the only receipt she received from the installer.

33. On or about July 28, 2011, Gentek responded to Mrs. Stroh's concerns in the letter attached hereto as Exhibit 3. Therein, Gentek informs Mrs. Stroh that "each of the products we produce has a different warranty almost every year", and therefore it is "crucial" that it receive "precise" details about the siding so that it can "determine what coverage" can be offered.

34. These statements are misleading, because Gentek does not have "a different warranty almost every year", and when there are variations, those variations do not affect its basic obligations under the warranty, i.e., to "repair, replace or refinish" peeling siding.

35. Moreover, Gentek can or should be able to identify its siding on sight. An independent lab was able to identify Mrs. Stroh's siding as Gentek-manufactured Alside brand siding, in Glacier White.

**FIRST CAUSE OF ACTION**  
**VIOLATION OF OHIO'S CONSUMER SALES PRACTICES ACT**

36. Named Plaintiff hereby incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

37. Named Plaintiff is a “consumer” as that term is defined at R.C. §1345.01(D).

38. Defendants are “suppliers” as that term is defined at R.C. §1345.01(C).

39. The transactions in which Named Plaintiff and Class Members purchased the siding were “consumer transactions” as that term is defined at R.C. §1345.01(A).

40. Defendants committed a deceptive act in connection with the consumer transactions at issue herein by failing to honor their warranty and imposing additional requirements on Named Plaintiff and Class Members that were outside the requirements contained in Named Plaintiff’s express warranty. Such practice violates R.C. § 1345.02(B)(1), (5) and (10).

41. The courts of Ohio have previously found that a supplier’s failure to honor a warranty constitutes a deceptive practice. *See, e.g., Brown v. Lyons* (1974), 43 Ohio Misc. 14, 332 N.E.2d 380, (Second Dist. 1989) (PIF #10000304); *Teeters Constr. v. Dort*, 142 Ohio Misc. 2d 1, 18 (Ohio Mun. Ct. 2006) (PIF #10002511); *Fisher v. Buckeye Home Improvements, Inc* (Franklin Cty. C.P. 1993) (PIF #10001352); *Mosley v. Performance Mitsubishi*, Case No. 90CVF214 (Fairfield M.C. 1992) (PIF #10001326). All of the foregoing decisions are available in the Public Inspection file maintained by the Ohio Attorney General.

42. The courts of Ohio have previously found that a supplier’s practice of failing to state material exclusions, reservations, limitations, modifications, or conditions in the warranty constitutes an unfair and deceptive act or practice. *See Montgomery v. Automotive Warranty Corporation*, Case No. 02 CVH 078386 (PIF No. 10002104); and *Petro v. Level Propane Gases, Inc.*, Case No. -1-CVH-01-018 (2003) (PIF No. 10002198).

**SECOND CAUSE OF ACTION**  
**BREACH OF EXPRESS WARRANTY**

43. Named Plaintiff hereby incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

44. The written warranty provides that Defendants warrant against the siding containing a defect that will result in peeling paint and contains a promise that Defendants will repair, replace or refinish the siding if such defect exists.

45. Named Plaintiff has complied with all valid conditions precedent to performance of the Defendants' obligations under the warranty, and has otherwise performed all valid obligations required of her.

46. Defendants have breached the warranty by refusing to repair, replace, or refinish the Named Plaintiff's siding and by imposing additional requirements on warranty service that are not found in the express warranties.

47. Defendants have received sufficient and timely notice of the breaches of warranty alleged herein.

48. As a result of Defendants' breach of warranty, Named Plaintiff and members of the Class have suffered damages in an amount to be determined at trial, including compensatory, consequential, and punitive damages.

**THIRD CAUSE OF ACTION**  
**VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT**  
**15 U.S.C. 2302**

49. Named Plaintiff hereby incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

50. The siding sold to Class Members is a “consumer product” within the meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(1).

51. Named Plaintiff and Class members are “consumers” within the meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(3).

52. Defendants are each a “warrantor” within the meaning of the Magnuson-Moss Act, 15 U.S.C. § 2301(4)-(5).

53. Defendants’ express warranty is a “written warranty” within the meaning of the Magnuson-Moss Act, 15 U.S.C. §2301(6).

54. Defendants’ conduct as described above violates 15 U.S.C. § 2302, which requires a warrantor to “fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty.”

55. Defendants’ conduct as described above violates 16 C.F.R. 701.3, which requires that all terms of a written warranty be disclosed therein, including a step-by-step explanation of the procedure which the consumer should follow in order to obtain performance of any warranty obligation,,

56. Defendants’ conduct as described above violates 15 U.S.C. 2306, which requires that a supplier “fully, clearly, and conspicuously discloses [the] terms and conditions [of a service contract] in simple and readily understood language.”

**FOURTH CAUSE OF ACTION**  
**UNJUST ENRICHMENT**

57. Named Plaintiff restates the allegations above, except for paragraphs 43 through 48, as if fully rewritten herein.

58. During the class period, Named Plaintiff and Class Members conferred upon Defendants, without knowledge of the actual requirements of the express warranty, payments for the siding and its corresponding express warranty, which constituted benefits to the Defendants which were non-gratuitous, and were conferred with Defendants' knowledge.

59. Defendants have profited unjustly from those funds, to the detriment of the Named Plaintiff, and it would be unjust and inequitable to permit Defendants to retain the benefit without compensating Named Plaintiff and the Class.

**FIFTH CAUSE OF ACTION**  
**INJUNCTIVE RELIEF**

60. Named Plaintiff hereby incorporates the preceding paragraphs of this Complaint as if fully set forth herein.

61. Due to the nature of the defect, it is likely that the paint on the siding will continue to delaminate in the same or different areas in the future, and Named Plaintiff and those class members whose claims have been denied for failure to provide the proof of purchase demanded by Gentek will have the need to make claims under the warranty in the future.

62. Named Plaintiff has no adequate remedy at law for future unlawful conduct by Defendants in connection with the warranty claims.

63. Unless enjoined, Defendants will continue to impose additional requirements under the express warranty.

64. The continuing nature of Defendants' acts will necessitate a separate action by Named Plaintiff and each Class member for damages for each act and would subject Named Plaintiff, each Class member, Defendants, and this Court to the expense, annoyance, and inconvenience of a multiplicity of suits.

65. For these reasons, the failure of Defendants to uphold their contractual obligations and impose additional requirements causes irreparable injury to Plaintiff and the Class.

66. An injunction prohibiting Defendants from continuing to engage in practices found to be deceptive pursuant to R.C. 1345.02 or in violation of express warranties will serve the public interest, and will prevent Defendants from causing further damage to Named Plaintiff and the Class.

67. Named Plaintiff and the Class are entitled to an injunction prohibiting Defendants from continuing to engage in the unlawful practices alleged herein.

**WHEREFORE**, Named Plaintiff, on behalf of herself and all others similarly situated, prays for a judgment against Defendants as follows:

a. For an order certifying the proposed Class herein under Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3) and appointing Named Plaintiff and her counsel of record to represent said Class;

b. For an order awarding actual and consequential damages to Named Plaintiff and members of the class

c. For an order that Defendants be permanently enjoined from engaging in the unlawful activities and practices complained of herein;

d. For an order awarding restitution and disgorgement of all monies paid by Named Plaintiff and the Class Members and/or ill-gotten gains realized by Defendants as a direct result of Defendants' unlawful, deceptive and/or unfair business practices complained of herein;

e. For an order imposing a constructive trust for the benefit of Named Plaintiff and the Class Members upon all charges paid by Named Plaintiff and the Class Members;

f. For declaratory relief as this Court deems appropriate;

- g. For attorneys' fees and costs of suit, including expert witness fees;
- h. For an order awarding pre-judgment and post-judgment interest as prescribed by law;
- i. For actual and punitive damages plus interest thereon; and,
- j. For such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

A trial by the maximum number of jurors permitted by law is hereby demanded.

Dated: January 10, 2012

Respectfully submitted,

/s/ Barbara Quinn Smith

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