

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ROBERT MCKEAGE and)
JANET MCKEAGE,)
)
Plaintiffs,)
)
vs.)
)
BASS PRO OUTDOOR WORLD, LLC,)
TMBC, LLC, TRACKER MARINE RETAIL,)
LLC, AND TRAVIS BOATS AND)
MOTORS BATON ROUGE, LLC)
)
Defendants.)

Case No. 6:12-CV-3157

**DEFENDANTS' ANSWER TO PLAINTIFFS'
FIFTH AMENDED CLASS ACTION COMPLAINT**

Defendants, for their Answer to Plaintiffs' Fifth Amended Class Action Complaint, state as follows:

INTRODUCTION

1. Defendants are without sufficient knowledge or information as to whether Plaintiffs are residents of Franklin County, Missouri. Defendants deny the remaining allegations of paragraph 1.

2. Defendants admit that they are duly existing companies. Defendants deny that they have retail stores throughout the country. Defendants admit that the purchase referenced in Plaintiff's Fifth Amended Class Action Complaint occurred at a TMBC, LLC business located in St. Charles County, Missouri. Defendants deny the remaining allegations of paragraph 2.

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3. The allegations of paragraph 3 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied. By way of further answer, defendants state that Travis Boats and Motors Baton Rouge, LLC is a Louisiana limited liability company with its principal place of business in Louisiana. Travis Boats and Motors Baton Rouge, LLC's sole member is Travis Boats and Motors, LLC, a Texas limited liability company. Travis Boats and Motors, LLC's sole member is Tracker Marine Retail, LLC, a Delaware limited liability company. Tracker Marine Retail, LLC's sole member is Bass Pro Group, LLC, a Delaware limited liability company. The members of Bass Pro Group, LLC are American Sportsman Holdings Company, a Missouri corporation that has its principal place of business in Missouri, and two individuals that are citizens of Missouri.

3. The allegations of paragraph 4 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

4. Defendants state that TMBC, LLC is in the business of selling boats, boat trailers, boating accessories, ATVs, and other products. Defendants state that certain documents, such as bills of sale, invoices, title work, financing documents, and other documents, are sometimes completed in connection with the sale and/or lease of boats, boat trailers, boat accessories, boat motors, ATVs, and other products sold at TMBC, LLC business locations. The nature, number, and form of these documents and the process by which they are completed varies from transaction to transaction, store to store, state to state, and over time, depending on state and local requirements, individual store and store employee practices, and depending on the individual

preferences of the customer and the specific products they have chosen to purchase. Defendants deny all other allegations of paragraph 5.

5. Defendants deny the allegations of paragraph 6.

6. Defendants deny the allegations of paragraph 7.

7. The allegations of paragraph 8 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

8. The allegations of paragraph 9 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

9. The allegations of paragraph 10 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

10. The allegations of paragraph 11 constitute legal conclusions to which no response is required. To the, extent that this paragraph contains factual allegations, those allegations are denied.

11. The allegations of paragraph 12 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

12. Defendants admit that Plaintiff's purchased a 2008 Tracker Avalanche boat and boat trailer from TMBC on or about May 23, 2008. Defendants deny the remaining allegations of paragraph 13.

13. Defendants state that the attached purchase agreement speaks for itself and is the best evidence of its terms. To the extent any response is required to paragraph 14, Defendants deny its allegations.

14. Defendants deny the allegations of paragraph 15.

15. Defendants admit that the subject transaction took place at TMBC's business location in St Charles County, Missouri. Defendants deny the remaining allegations of paragraph 16.

16. Defendants state that the referenced agreements speak for themselves and are the best evidence of their terms. To the extent any response is required to paragraph 17, Defendants deny its allegations.

17. Defendants deny the allegations of paragraph 18.

18. Defendants deny the allegations of paragraph 19.

19. Defendants deny the allegations of paragraph 20.

20. Defendants deny the allegations of paragraph 21.

CLASS ACTION ALLEGATIONS

21. Defendants incorporate by reference their responses to paragraphs 1 through 21 as if fully set forth herein.

22. The allegations of paragraph 23 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

23. The allegations of paragraph 24 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

24. The allegations of paragraph 25 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

25. The allegations of paragraph 26 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

26. The allegations of paragraph 27 and each of its subparts constitute legal conclusions to which no response is required. To the extent that this paragraph and its subparts contain factual allegations, those allegations are denied.

27. The allegations of paragraph 28 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

28. The allegations of paragraph 29 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

29. The allegations of paragraph 30 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

30. The allegations of paragraph 31 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

COUNT I: DAMAGES FOR VIOLATION OF 484.010 et seq. RSMo.

31. Defendants incorporate by reference their responses to paragraphs 1 through 31 as if fully set forth herein.

32. Defendants state that RSMo. § 484.010, *et seq.* speaks for itself and is the best evidence of its terms. To the extent any response is required to paragraph 33, Defendants deny its allegations.

33. The allegations of paragraph 34 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

34. Defendants deny the allegations of paragraph 35.

35. The allegations of paragraph 36 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

36. The allegations of paragraph 37 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

37. The allegations of paragraph 38 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

COUNT II: DAMAGES FOR VIOLATION OF § 407.010, et seq. RSMo.

38. Defendants incorporate by reference their responses to paragraphs 1 through 38 as if fully set forth herein.

39. Defendants state that RSMo. § 407.010 speaks for itself and is the best evidence of its terms. To the extent any response is required to paragraph 40, Defendants deny its allegations.

40. The allegations of paragraph 41 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

41. Defendants deny the allegations of paragraph 42.

42. Defendants deny the allegations of paragraph 43.

43. Defendants deny the allegations of paragraph 44.

44. The allegations of paragraph 45 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

COUNT III: MONEY HAD AND RECEIVED

45. Defendants incorporate by reference their responses to paragraphs 1-45 as if fully set forth herein.

46. Defendants deny the allegations of paragraph 47.

47. The allegations of paragraph 48 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

48. The allegations of paragraph 49 constitute legal conclusions to which no response is required. To the extent that this paragraph contains factual allegations, those allegations are denied.

COUNT IV: RESCISSION/REVOCAION OF PLAINTIFFS' BOAT PURCHASE

49. Defendants incorporate by reference their responses to paragraphs 1 through 49 as if fully set forth herein.

50. Defendants deny the allegations of paragraph 51.

51. Defendants deny the allegations of paragraph 52.

52. Defendants deny the allegations of paragraph 53.

53. Defendants deny the allegations of paragraph 54.

AFFIRMATIVE DEFENSES

A. Plaintiffs lack standing to bring any claims against Defendant Bass Pro Outdoor World, LLC.

B. Plaintiffs lack standing to bring any claims against Defendant Tracker Marine Retail, LLC.

C. Plaintiffs lack standing to bring any claims against Defendant Travis Boats and Motors Baton Rouge, LLC.

D. Count I of Plaintiffs' Fifth Amended Class Action Complaint fails to state a claim upon which relief can be granted.

E. Count II of Plaintiffs' Fifth Amended Class Action Complaint fails to state a claim upon which relief can be granted.

F. Count III of Plaintiffs' Fifth Amended Class Action Complaint fails to state a claim upon which relief can be granted.

G. Count IV of Plaintiffs' Fifth Amended Class Action Complaint fails to state a claim upon which relief can be granted.

H. Plaintiffs' claims and those of the proposed class members are barred by the applicable statutes of limitations.

I. Plaintiffs' claims against Travis Boats and Motors Baton Rouge, LLC are barred by the applicable statutes of limitations.

J. Counts I-IV of Plaintiffs' Fifth Amended Class Action Complaint are barred by the voluntary payment doctrine.

K. Count I of Plaintiffs' Fifth Amended Class Action Complaint fails because the fees charged to Plaintiffs and the proposed class member (if any) were in no way-related to the "practice of the law" or "law business" as those terms are defined by RSMo. § 484.010.

L. Count I of Plaintiffs' Fifth Amended Class Action Complaint's request for treble damages violates the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 10 of the Missouri Constitution.

M. Counts I through IV of Plaintiffs' Fifth Amended Class Action Complaint are barred because they violate the dormant Commerce Clause of the United States Constitution, which prohibits one state from directly regulating commerce in another state or from projecting its regulatory authority into another state.

N. Counts I through IV of the Plaintiffs' Fifth Amended Class Action Complaint are barred because they violate the Full Faith and Credit Clause of the United States Constitution.

O. Count II of Plaintiffs' Fifth Amended Class Action Complaint fails to the extent the merchandise purchased by Plaintiffs and the proposed class members was not "primarily for personal, family or household purposes" as required by RSMo, § 407.025.

P. Plaintiffs' claims are barred by the doctrine of laches.

Q. Plaintiffs' claims are barred by the doctrine of unclean hands.

R. Plaintiffs' request for an award of punitive damages would violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, § 10 of the Missouri Constitution in that Defendants did not act reprehensibly so as to justify an award of punitive damages. This case involves purely economic harm; Plaintiffs have not pleaded and cannot prove any improper motive of Defendants that justifies an award of punitive damages.

S. This case may not be maintained as a class action because:

1. There is no question of law or fact common to the putative class;
2. Plaintiff's claims are not typical of the putative class;
3. Plaintiffs will not fairly and adequately protect the interests of the putative class;
4. Common issues of fact or law do not predominate over questions affecting only individual members;
5. A class action is not a superior method for the fair and efficient adjudication of this controversy;
6. Other requirements of maintaining a class action under federal law have not been met.

T. Plaintiffs and the putative class they seek to represent are not entitled to relief because there is no injury, or no injury caused by Defendants. Defendants have not violated any of the laws of the State of Missouri or any other state.

U. Plaintiffs' claims are barred, in whole or in part, because the alleged conduct of Defendants was undertaken in good faith for a valid business purpose.

V. Defendants reserve the right to amend their Answer and raise additional affirmative defenses that may become available during the course of discovery in this matter.

WHEREFORE, having fully answered Plaintiffs' Fifth Amended Class Action Complaint, Defendants pray for judgment in their favor on all counts, together with their costs and fees incurred herein, and for such other and further relief as the Court deems just.

s/ Jason C. Smith

Bryan Wade #41939
Jason C. Smith #57657
HUSCH BLACKWELL LLP
901 St. Louis Street, Suite 1800
Springfield, MO 65806
T: (417) 268-4000
F: (417) 268-4040
bryan.wade@huschblackwell.com
jason.smith@huschblackwell.com

and

James D. Griffin #33370
4801 Main Street, Suite 1000
Kansas City, MO 64112
T: (816) 983-8000
F: (816) 983-8080
james.griffin@huschblackwell.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2012 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

Steve Garner
Chandler Gregg
Strong-Garner-Bauer, P.C.
415 E. Chestnut Expressway
Springfield, MO 65802
T: 417.887.4300
sgarner@stronglaw.com
chandler@stronglaw.com

David L. Baylard
Baylard, Billington, Dempsey & Jensen, P, C,
30 South McKinley
Union, MO 63084
T: 636-583-5103
dbaylard@bbd-law.com

Attorneys for Plaintiffs

s/ Jason C. Smith
