

BURSOR & FISHER, P.A.

L. Timothy Fisher (State Bar No. 191626)

1990 N. California Blvd., Suite 940

Walnut Creek, CA 94596

Telephone: (925) 300-4455

Facsimile: (925) 407-2700

Email: ltfisher@bursor.com

BURSOR & FISHER, P.A.

Andrew J. Obergfell (*pro hac vice* forthcoming)

888 Seventh Avenue

New York, NY 10019

Telephone: (212) 989-9113

Facsimile: (212) 989-9163

E-Mail: aobergfell@bursor.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PHILIP SMITH, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

E-FILLIATE, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Philip Smith (“Plaintiff”) brings this action on behalf of himself, and all
2 others similarly situated against Defendant E-Filliate, Inc. (“Defendant”) for the manufacture,
3 distribution, and sale of the DeWALT Jobsite Pro Wireless Earphones (the “Product”). Plaintiff
4 makes the following allegations pursuant to the investigation of his counsel and based upon
5 information and belief, except as to the allegations specifically pertaining to himself, which is
6 based on personal knowledge.
7

8 NATURE OF ACTION

9 1. This is a class action complaint against Defendant for the manufacture, distribution,
10 and sale of the Jobsite Pro Wireless Earphones sold under the DeWALT brand, all of which suffer
11 from an identical defect in design. Specifically, the Products are prone to overheating during
12 charging or use and create the potential for a burn or fire hazard. Earphones that pose such a
13 hazard are unreasonably dangerous compared to the utility of the Product. Moreover, such a defect
14 can render the Product unusable during periods of overheating. As such, this defect rendered the
15 Product unsuitable for its principal and intended purpose. Further, had Plaintiff been aware of this
16 serious defect, he would not have purchased the Product, or would have paid significantly less for
17 it.
18

19 2. On December 1, 2021, the United States Consumer Product Safety Commission
20 (“CPSC”) issued a recall notice of approximately 301,800 units of the Products due to the prevalent
21 nature of the defect (the “Product Recall”).
22

23 3. Plaintiff brings his claims against Defendant individually and on behalf of a class of
24 all other similarly situated purchasers of the Product for (i) violation of New York General
25 Business Law § 349; (ii) violation of New York General Business Law § 350;
26 (iii) breach of implied warranty; (iv) violation of the Magnuson-Moss Warranty Act; and (v) unjust
27 enrichment.
28

PARTIES

1
2 4. Plaintiff Philip Smith is, and at all times relevant to this action has been, a resident
3 of Rochester, New York and a domiciliary of New York. On or about December of 2020, Mr.
4 Smith purchased a pair of the DeWALT Jobsite Pro Wireless Earphones from a Lowe's hardware
5 store located in Greece, New York. Mr. Smith purchased the Product because he believed it was fit
6 for use as earphones. However, the Product Mr. Smith purchased was not fit for use as earphones
7 due to the Product's risk of overheating. Mr. Smith's belief that the earphones were fit for their
8 intended purpose formed the basis of the bargain, and Mr. Smith would not have purchased the
9 Product or would have paid significantly less for the Product had he known that the Product was
10 unfit to perform its intended purpose.
11

12 5. The Product that Mr. Smith purchased began to malfunction shortly after he
13 purchased it because the Product would overheat during use. The Product that Mr. Smith
14 purchased does not contain a manufacturer code and is included in the Product Recall.
15

16 6. Mr. Smith reviewed the Product's packaging prior to purchase. Defendant disclosed
17 on the packaging that the Product was an earphone and described features typical of earphones but
18 did not disclose the defect. Had there been a disclosure, Mr. Smith would not have purchased the
19 Product because the defect would have been material to him, or at the very least, he would have
20 purchased the Product at a substantially reduced price. Mr. Smith relied on the packaging in
21 making his purchase decision.
22

23 7. Mr. Smith did not submit a claim through the CPSC. Mr. Smith contacted
24 DeWALT for information regarding a refund for the Product but did not receive any such
25 information. The remedy offered by the recall was insufficient because it only provided a
26 replacement, as opposed to a full refund for the defective earphones. Mr. Smith is also entitled to
27 statutory damages under New York law.
28

1 8. Plaintiff suffered economic injury from the Product Defect because he purchased an
2 item that was worth less than what had been represented to him.

3 9. Defendant E-Filliate, Inc. is a Delaware corporation with its principal place of
4 business at 11321 White Rock Road, Rancho Cordova, California 95742. Defendant markets,
5 distributes, and sells the Product throughout the United States and the State of New York.
6 Defendant sells the Product directly to consumers through several retail stores, including Lowe's,
7 Home Depot, True Value, Aubuchon Hardware, Orgill, and Mid-States.
8

9 **JURISDICTION AND VENUE**

10 10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
11 § 1332(d) because there are more than 100 class members and the aggregate amount in controversy
12 exceeds \$5,000,000, exclusive of interest, fees, and costs, and at least one Class member is a
13 citizen of a state different from Defendants.
14

15 11. This Court has general personal jurisdiction over Defendant because Defendant has
16 its principal place of business in this District.

17 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because it is a judicial
18 District in which Defendant resides.

19 **COMMON FACTUAL ALLEGATIONS**

20 **The Overheating Defect**

21 22 13. Defendant E-Filliate, Inc. is a manufacturing company that partners with several
23 brand name companies, including DeWALT. Among the various items manufactured and sold by
24 E-Filliate is the Jobsite Wireless Pro Earphone sold under the DeWALT brand, which is the
25 Product at issue here.

26 27 14. The Product is primarily sold at retail stores across the country, including Lowe's,
28 Home Depot, True Value, Aubuchon Hardware, Orgill, and Mid-States.

1 15. The Product was made with a design defect, causing the Product to overheat, posing
2 a significant hazard for burns and fires (hereinafter, the “Product Defect”). The Product Defect
3 was substantially likely to materialize during the useful life of the Product.

4 16. Over 300,000 units of the Product were sold in the U.S. at approximately \$65 each.

5 17. Upon information and belief, Defendant sold a large number of the Products, and
6 thus profited enormously from their failure to disclose the Product Defect sooner.

7 18. The Product Defect at issue here involves a critical safety-related component of the
8 Product, and it was unsafe to use the Product with the design defect. Defendant had knowledge of
9 the defect, which was not known to Plaintiffs or class members.

10 19. Defendant made partial representations to Plaintiff and class members, while
11 suppressing the safety defect. Specifically, by displaying the Product and describing its features,
12 the product packaging implied that the Product was suitable for use as an earphone, without
13 disclosing that it had a critical safety-related defect that could result in harm to users of the
14 Product.
15

16
17 **The Inadequate Recall Of The Product**

18 20. In December of 2021, there was a recall of the Product.

19 21. The recall was due to a serious injury and safety hazard associated with the Product.
20 Specifically, it was admitted that its Product had a defect in design and materials that caused the
21 earphones to overheat. This resulted in numerous reports of burns and fires associated with the
22 defect.
23

24 22. The entirety of the recall remedy available to consumers was the ability to contact
25 the Product manufacturer for a replacement, on the condition that the original product be shipped to
26 Defendant. No financial compensation was offered to consumers.
27
28

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.