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

IN RE: SMITTY'S/CAM2 303 TRACTOR HYDRAULIC FLUID MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION	)	MDL No. 2936
	)	Master Case No. 4:20-MD-02936-SRB

ORDER

Before the Court is Defendants Smitty's Supply, Inc. ("Smitty's") and CAM2 International, LLC ("CAM2") (collectively, "Defendants") Motion for Summary Judgment on the Claims of Plaintiff Mark Hazeltine. (Doc. #814.) For the reasons discussed below, the motion is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

This MDL arises from Defendant's manufacture, sale, and marketing of tractor hydraulic fluid ("THF"), a multifunctional lubricant designed to offer certain protective benefits when used in tractors and heavy equipment as a hydraulic fluid, transmission fluid, and gear oil. Plaintiffs represent a putative class of consumers who purchased at least one of four allegedly defective products at issue in this case: Smitty's Super S Super Trac 303 Tractor Hydraulic Fluid ("Smitty's Super Trac 303"), Smitty's Super S 303 Tractor Hydraulic Fluid ("Smitty's Super S 303"), CAM2's Promax 303 Tractor Hydraulic Oil ("CAM2 Promax 303"), and CAM2's 303 Tractor Hydraulic Oil ("CAM2 303") (collectively, the "303 THF Products"). Defendants Smitty's and CAM2 manufactured the 303 THF Products, which were sold nationwide by multiple retailers under various label names.

A. Plaintiff Mark Hazeltine

Plaintiff Mark Hazeltine ("Hazeltine") is a Missouri resident who purchased the 303 THF Products in Missouri. Hazeltine operates a 1987 Ford 1710 tractor and Bush Hog log ("the

Equipment"), which he purchased used in 1999. Hazeltine has no knowledge about the Equipment's maintenance or performance history prior to his purchase. Hazeltine does not know what kind of hydraulic fluid he used in the Equipment before 2014.

Between 2014 and 2017, Hazeltine purchase eight five-gallon buckets of CAM2 Promax 303 in Missouri. CAM2 Promax 303 contained the following label located on the back of the product ("the Label"):

> CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID is suitable as a replacement for the following manufacturers where a tractor hydraulic fluid of this performance level is recommended: Allis Chalmers®, Allison, Caterpillar®, Deutz, Ford® Tractor, International Harvester®, JI Case®/David Brown®, John Deere® 303 J20A, Kubota®, Massey Ferguson®, Oliver®, [and] White®.
>
> CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID is formulated from a blend of highly refined base oils and superior additives. CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID provides performance in the areas of antiwear, PTO clutch, rust protection, extreme pressure properties, water sensitivity, foam surpression and brake chatter reduction.
>
> CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID is recommended for ambient temperatures between +32°F and 104°F (0°C to 40°C). For ambient temperatures outside this range or where a premium tractor hydraulic/transmission oil is required, please use a CAM2® Premium Tractor Hydraulic Fluid.
>
> ***Misapplication may cause severe performance problems. CAM2® PROMAX™ TRACTOR HYDRAULIC 303 FLUID has not been recommended by any OEM for model years later than 1974. For equipment built after 1974 requiring multi-functional fluid, use a CAM2® Premium Tractor Hydraulic Fluid.***

(Doc. #815-2, p. 2) (emphasis in original). Plaintiff read the Label before purchasing CAM2 Promax 303 for the first time.

B. The Instant Action

Plaintiffs initiated suit against Defendants in multiple federal district courts where the 303 THF products were sold. On February 11, 2020, Defendants requested all pending actions be consolidated and transferred pursuant to 28 U.S.C. § 1407. On June 2, 2020, the J.P.M.L.

consolidated and transferred the eight then-pending actions to the Western District of Missouri.[1] *See In re: Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2936, 2020 WL 2848377, at *1 (J.M.P.L. June 2, 2020). Following the creation of this MDL, Plaintiffs filed another lawsuit, *Feldkamp v. Smitty's Supply, Inc.*, No. 20-cv-02177, in the U.S. District Court for the Central District of Illinois, which was subsequently transferred to this Court. Pursuant to this Court's order dated August 3, 2020, Plaintiffs were permitted to file a Consolidated Amended Complaint that would serve to supersede all prior pleadings in the individual cases that were consolidated. Further, this Court's August 3, 2020 Order permitted direct joinder of new claims through the Consolidated Amended Complaint.

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint ("FACC"). On October 25, 2021, Defendants filed a motion to dismiss the FACC, which the Court granted in part and denied in part on March 9, 2022. *See* (Doc. #451.) On April 21, 2023, Plaintiffs filed a Fifth Amended Consolidated Complaint ("5ACC").[2]

Hazeltine seeks to represent a class of Missouri purchasers and asserts the following claims: (1) Count I, Negligence; (2) Count II, Breach of Express Warranty; (3) Count III, Breach of Implied Warranty of Merchantability; (4) Count IV, Breach of Implied Warranty of Fitness for a Particular Purpose; (5) Count V, Unjust Enrichment, (6) Count VI, Fraudulent Misrepresentation; (7) Count VII, Negligent Misrepresentation; (8) Count XXII, Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010.

[1] The pending actions consolidated before the undersigned are as follows: *Buford v. Smitty's Supply Inc.*, No. 19-cv-00082 (E. D. Ark.); *Fosdick v. Smitty's Supply Inc.*, No. 19-cv-01850 (N. D. Iowa); *Blackmore v. Smitty's Supply Inc.*, No. 19-cv-04052 (N.D. Iowa); *Zornes v. Smitty's Supply, Inc.*, No. 19-cv-0257 (D. Kan.); *Wurth v. Smitty's Supply Inc.*, No. 19-cv-00092 (W.D. Ky.); *Mabie v. Smitty's Supply, Inc.*, No. 19-cv-3008 (S.D. Tx.); *Klingenberg v. Smitty's Supply, Inc.*, No. 19-cv-2684 (D. Minn.); and *Graves v. Smitty's Supply, Inc.*, No. 19-cv-5089 (W.D. Mo.).

[2] The instant motion was filed before the 5ACC. Although an amended complaint supersedes the original complaint, the Court finds that the 5ACC did not affect the substance of this motion and treats the instant motion for summary judgment as a motion for summary judgment on the 5ACC. *See Cartier v. Wells Fargo Bank, N.A.*, 547 Fed. Appx. 800, 804 (8th Cir. 2013) (finding a district court did not abuse its discretion in treating a motion to dismiss an original complaint as a motion to dismiss an amended complaint).

On March 29, 2023, Defendants filed the instant motion for summary judgment on Hazeltine's claims pursuant to Federal Rule of Civil Procedure 56. Hazeltine opposes the motion.

II. LEGAL STANDARD

Under Rule 56, summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of identifying "the basis for its motion, and must identify those portions of the record which it believes demonstrate the absence of a genuine issue of material fact." *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (cleaned up). If the moving party makes this showing, "the nonmovant must respond by submitting evidentiary materials that set out specific facts showing that there is a genuine issue for trial." *Id.* (quotation marks omitted). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Id.* (quotation marks omitted).

III. DISCUSSION

Defendants argue that they are entitled to summary judgment because (1) Hazeltine cannot show causation; (2) Counts II–IV, alleging breach of express and implied warranties, fail because the 303 THF Products' labels disclosed the warranties Hazeltine alleges were breached; and (3) Count V, alleging unjust enrichment, fails because he cannot show Defendants retained a benefit. Each argument is addressed separately below. The parties agree and the Court finds that Missouri law applies.[3]

[3] *See* (Doc. #451, p. 12) ("Applying the relevant choice of law rules, the Court finds that for all identified conflicts of law each Plaintiff's home state's laws shall apply to their respective claims.").

A. Causation

Defendants argue they are entitled to summary judgment on Hazeltine's claims because Hazeltine read the Label, which informed him "not to use CAM2 Promax in equipment manufactured after 1974 or else risk severe performance problems," and that "knowledge negates the causation element of all Mr. Hazeltine's claims, warranting summary judgment." (Doc. #815, p. 10.) Hazeltine disagrees, arguing the evidence shows Hazeltine did not "understand that the 303 fluid would harm his equipment." (Doc. #874, p. 21.)

The Court agrees with Defendants that causation is a necessary element of Hazeltine's claims. *See Stanley v. City of Independence*, 995 S.W.2d 485, 487 (Mo. banc 1999) (negligence); *Havens Steel Co v. Randolph Eng'g Co.*, 613 F.Supp. 514, 530–31 (W.D. Mo. 1985) (breach of express warranty); *Pro Serv. Auto., L.L.C. v. Lenan Corp.*, 469 F.3d 1210, 1214 (8th Cir. 2006) (breach of implied warranty); *Harris v. Smith*, 250 S.W.3d 804, 809 (Mo. App. 2008) (fraudulent and negligent misrepresentations); *Owen v. Gen. Motors Corp.*, 533 F.3d 913, 922 (8th Cir. 2008) (MMPA).

The Court finds that Defendants have shown they are entitled to summary judgment on Counts V and XXII. In Defendants' reply brief, they cite to *Bratton v. Hershey Co.*, No. 2:16-CV-4322-C-NKL, 2018 WL 934899, at *3 (W.D. Mo. Feb. 16, 2018), which states that "[a] plaintiff who 'did not care' about an allegedly misleading marketing practice, or who 'knew about' the practice and 'purchased . . . [the] products anyway,' was not injured by the practice." *Id.* at *2 (alterations in original). Further, the plaintiff "knew roughly what he was getting every time he purchased" the product and, therefore, could not "establish that [the defendant's] retention of the purported benefit was unjust–a critical element of his unjust enrichment claim." *Id.* at *4. Here, the record shows that Hazeltine read the Label before purchasing CAM2 Promax 303, including its language directing consumers to purchase a different product for equipment

manufactured after 1974. Thus, the Court finds that summary judgment is warranted as to Counts V and XXII.[4]

However, as to Counts I–VII, the Court agrees with Hazeltine in that Defendants "assert only generically that causation is required for all claims without articulating what causation entails for any particular claim or what point they assert from any of the cases cited." (Doc. #874, p. 22.) Beyond citing cases establishing causation as an element of Hazeltine's claims, Defendants give little to no guidance or explanation to the Court as to how the Label's disclaimer negates causation. In the initial motion, Defendants cite to *Menz v. New Holland North America, Inc.*, 507 F.3d 1107, 1111 (8th Cir. 2007); but the Court finds *Menz* is not relevant or dispositive because it disposes of strict liability failure to warn claims for the plaintiff's failure to show a warning would have altered his behavior, which is an essential element of such claims.[5]

Defendants have failed to explain to the Court how Hazeltine reading the Label's disclaimer has broken the causal chain or otherwise negated essential elements of Counts I–IV and VI–VII. As Defendants have not shown they are entitled to summary judgment on Counts I–IV and VI–VII, the Court must reject this argument. *See Spann v. Lombardi*, 960 F.3d 1085, 1088 (8th Cir. 2020) ("[A] district court does not abuse its discretion by declining to address an argument for summary judgment that is not properly briefed.").

[4] As the Court finds summary judgment is warranted on Count V, the Court need not address Defendants' argument that they are entitled to summary judgment on Count V because Hazeltine "purchase CAM2 Promax 303 THF from Rural King in Wentzville, Missouri" and cannot show "Defendants retained a benefit" or that "any retention of benefit was unjust." (Doc. #815, p. 13.)

[5] Defendants also cite to the Court's prior Order granting Defendants summary judgment as to Plaintiff Dale Wendt's misrepresentation claims. (Doc. #998, pp. 6–8.) However, the Defendants adequately supported their arguments as to Wendt's misrepresentation claims such that the Court found that summary judgment was appropriate.

B. Counts II–IV, Breach of Express and Implied Warranties

Defendants argue that "Hazeltine's express and implied warranty claims also fail because the same misapplication disclaimer that he read and disregarded expressly disclaimed any representations that the product was suitable for his equipment." (Doc. #815, p. 10.) Hazeltine disagrees, arguing that the Label did not disclaim express and implied warranties made by Defendants because it "is informationally meaningless" and was not "conspicuous." (Doc. #874, p. 28.) The Court will address each warranty claim separately.

1. Count II, Breach of Express Warranty

"An express warranty is created by any 'affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain . . . that the goods shall conform to the affirmation or promise." *Renaissance Leasing, LLC v. Vermeer Mfg. Co.*, 322 S.W.3d 112, 122 (Mo. banc 2010) (quoting Mo. Rev. Stat. § 400.2-313.1(a)). A seller may disclaim express warranties. "[W]ords or conduct tending to negate or limit warranty shall be construed wherever reasonable as consistent with each other; but . . . negation or limitation is inoperative to the extent that such construction is unreasonable." Mo. Rev. Stat. § 400.2-316(1).

Here, the Court finds that summary judgment is appropriate on Count II. The Label states that CAM2 Promax 303 "has not been recommended by any OEM for model years later than 1974," directs consumer to use a different product in equipment manufactured after 1974, and warns consumers that "[m]isapplication may cause severe performance problems. (Doc. #815-2, p. 2) (emphasis omitted). The Court finds that this construction is reasonable and disclaims the Label's statements regarding performance benefits resulting from the use of CAM2 Promax 303. Accordingly, the Court finds that summary judgment is appropriate on Count II.[6]

[6] As the Court finds summary judgment is appropriate on Count II, the Court need not address Hazeltine's argument that the disclaimer failed to disclose that CAM2 Promax 303 is in fact not a tractor hydraulic fluid at all.

2. Count III, Breach of Implied Warranty of Merchantability

"An implied warranty arises by operation of law[,]" and such "[w]arranties are implied for each transaction according to the presumed intent of the parties." *Renaissance Leasing*, 322 S.W.3d at 129 (citation omitted). "[T]o exclude or modify the implied warranty of merchantability[,] . . . the language must mention merchantability and . . . must be conspicuous[.]" Mo. Rev. Stat. § 400.2-316(2).

As to Hazeltine's implied warranty of merchantability claim, the Court finds that Defendants are not entitled to summary judgment because the Label contains no mention of the term merchantability–which is clearly required by § 400.2-316(2) in order to disclaim an implied warranty of merchantability. *See Oldham's Farm Sausage Co. v. Salco, Inc.*, 633 S.W.2d 177, 181 (Mo. App. W.D. 1982) (holding that "in order to disclaim the implied warranty of merchantability the provision must be both 'conspicuous' and mention the word 'merchantability.'"); *see Karr-Bick Kitchens*, 932 S.W.2d at 879 ("Under § 400.2-316(2), RSMo (1994), an implied warranty of merchantability may be excluded by a conspicuous writing which mentions the term 'merchantability[.]'"). Accordingly, Defendants' argument is rejected.[7]

3. Count IV, Breach of Implied Warranty of Fitness for a Particular Purpose

"[T]o exclude or modify any implied warranty of fitness the exclusion must be by a writing and conspicuous." "Language is 'conspicuous' if it is 'in larger or other contrasting type or color.'" *Karr-Bick Kitchens*, 932 S.W.2d at 879 (quoting Mo. Rev. Stat. § 400.1-201(10)).

[7] Defendants argue that "Section 400.2-316 does not require specific language to disclaim warranties. . . Rather, it provides *examples* of how a merchant can provide a disclaimer. . . . A conspicuous warning displayed via prominent package markings is all that is needed." (Doc. #1005, p. 20.) Defendants cite *Karr-Bick Kitchens*, 932 S.W.2d at 879. However, in *Karr-Bick Kitchens*, "[t]he language of the disclaimer also specifically referred to 'merchantability'" and "therefore, effectively disclaimed any implied warranties of merchantability." *Id.* at 879. Even if Defendants are correct about the requirements of § 400.2-316, the disclaimer still must be conspicuous. As discussed below, the Court finds that the label is not conspicuous such that Defendants' arguments are rejected regardless.

"Whether language is 'conspicuous' or not is for the decision of the trial court." *Id.* (citing § 400.1-201(20)).

Depicted below is a photo the Label:

(Doc. #815-2, p. 2.)

The Court finds that the Label's disclaimer language is not conspicuous. The disclaimer language is in the same font, color, and size as the other language contained on the Label. And even though it is bold and italic, the disclaimer language's bold and italic font is not so differentiated from the remainder of the Label such that "a reasonable person against whom it is to operate ought to have noticed it." *Global Petromarine v. G.T. Sales & Mfg., Inc.*, No. 06-0189-CV-W-FJG, 2010 WL 5257659, at *4 (W.D. Mo. Dec. 17, 2010). Accordingly, the Court rejects Defendants' argument and finds that summary judgment is not appropriate.[8]

[8] As the Court finds that the disclaimer language of the Label is not conspicuous, the Court need not address Hazeltine's argument that the disclaimer failed to disclose that CAM2 Promax 303 is in fact not a tractor hydraulic fluid at all.

IV. CONCLUSION

Accordingly, Defendants Partial Motion for Summary Judgment on the Claims of Plaintiff Mark Hazeltine (Doc. #814) is GRANTED IN PART and DENIED IN PART. Defendants' motion is GRANTED as to Counts II, V, and XXII, and DENIED in all other respects.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: July 25, 2023