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This was too good to pass up. Rich



Home Depot: Class action over size of 2x4s, other lumber, lacks foundation, should be tossed

by [Jonathan Bilyk](#) |
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Facing a class action lawsuit claiming the retailer should be made to pay for selling lumber that doesn't measure up to its listed dimensions, Home Depot has hammered back, arguing it should not be made to answer for simply selling its products using terms common within the home improvement and construction business.

On June 1, Home Depot asked a Chicago federal judge to throw out the legal action raised earlier this spring through attorneys with the Chicago-based McGuire Law firm asserting Home Depot should be held liable because its two-by-fours don't actually measure two inches by four inches, and other pieces of lumber similarly don't live up to their listed dimensions.

"Retailers such as Home Depot did not create these lumber sizing standards or naming conventions and should not be subject to suit simply for following them," Home Depot argued in its motion to dismiss. "Plaintiff's attempt to turn this accepted lumber naming convention into a class action lawsuit should be rejected. To do otherwise would ignore nearly a century of standardization and disturb an entire industry's reliance on these lumber names."

Plaintiff Mikhail Abramov filed his lawsuit in March, alleging the retailer's practice of listing lumber according to its "nominal dimensions" amounted to little more than false advertising, allowing Home Depot and other retailers to shortchange customers the lumber they expected to receive for the price paid.

The complaint noted, for instance, "the most commonly used 2" x 4" – 8' framing lumber actually measures 1.5" x 3.5" – 8'."

"Nowhere does Defendant state that the advertised dimensions are not the actual dimensions of the products, that the advertised dimensions were 'nominal' dimensions, or anything else to indicate that the products' actual dimensions differ from those explicitly stated on the advertising and product labeling," Abramov's complaint said.

Abramov noted he had purchased a piece of lumber listed as measuring four inches wide by four inches high and six feet long (4x4x6) at Home Depot's Palatine store in December 2016. However, when he



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measured the lumber piece at home, its actual dimensions were 3.5x3.5x6, “which was 12.5 percent shorter in height and width, and approximately 23 percent less overall material than advertised and represented by (Home Depot.)”

In its motion to dismiss, Home Depot asserted Abramov lacks any foundation for his legal claims, saying it is common practice at all lumber yards and home improvement stores selling lumber to refer to pieces of lumber by their nominal dimensions, even if their actual dimensions don’t precisely correspond.

“Neither Home Depot nor any other lumber supplier sells a 4x4 of dressed lumber that measures exactly 4 inches by 4 inches,” Home Depot said. “While Plaintiff alleges he would not have purchased the lumber, he could not have purchased a piece of dressed lumber with the 4 inch by 4 inch measurements he sought.”

Further, the retailer said, Abramov’s discovery that the lumber he purchased didn’t correspond to its nominal dimensions should have “come as no surprise,” as the actual dimensions of lumber pieces sold by Home Depot are listed on Home Depot’s product pages on its website – product pages Abramov introduced as evidence - and in many other published sources.

“The label and tag ... like those used in the rest of the lumber industry, reflected only the standard naming practice and were intended to allow customers to shop for and compare dimensional lumber of a similar size,” Home Depot said.

“And, if there was any doubt as to the actual dimensions of nominal lumber, Plaintiff had an opportunity to confirm the size prior to purchase on Home Depot’s webpage, as several customers did, or even by measuring it himself like he did after he returned home,” Home Depot said.

Home Depot argued Abramov essentially received what he paid for, a usable piece of lumber that conformed to industry standards.

Home Depot is represented in the action by attorneys with the firms of Polsinelli P.C., of Chicago, and King & Spalding LLP, of Atlanta.

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