

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

DEE C. WALTER	:	CASE NO.
	:	
Plaintiff,	:	
	:	
v.	:	<b>COMPLAINT AND JURY DEMAND</b>
	:	
MAC TOOLS, INC., a Division of STANLEY BLACK & DECKER, INC.,	:	
	:	
Defendant.	:	
	:	

Plaintiff Dee C. Walter (“Plaintiff”), by and through his attorneys, Marks & Klein, LLP, for his Complaint as against Defendant Mac Tools, Inc., (“Mac” or “Mac Tools”), a division of Stanley Black & Decker, Inc., (“Stanley Black & Decker”) (collectively “Defendant”), allege and aver as follows:

**NATURE OF THIS ACTION**

1. This lawsuit arises from Defendant’s willful failure to properly compensate Plaintiff, who is a former Mac Tools distributor, for certain warranty and repair work that Defendant requires all Mac Tools distributors to perform, in violation of the Fair Labor Standards Act 29 U.S.C. § 201 et. seq. (“FLSA”).
2. While Defendants have historically purported to sell “distributorships”, not franchises, Plaintiff did indeed purchase a franchise as defined by state and federal law.
3. Defendants have violated Federal Trade Commission (FTC) Rule 436, which requires a franchisor, such as Defendant, to provide a prospective investor/franchisee with 23

Items of information that is critically necessary for Plaintiff, or other potential franchisees, to fully evaluate the nature of the business investment being contemplated.

4. With regard to state-specific laws, Defendant violated Connecticut law, particularly the Connecticut Unfair Trade Practices Act (“CUTPA”), by, among other things, failing to provide Plaintiff the necessary Uniform Franchise Offering Circular (“UFOC”), before Plaintiff purchased his Mac Tool Distributorship, which in reality is a franchise.

Furthermore, since Plaintiff purchased a Mac Tools franchise, as opposed to a distributorship, Defendants also violated the Minnesota Franchise Act, by improperly terminating Plaintiff’s franchise and not allowing him the necessary time to cure any alleged “defaults” Defendants allege Plaintiff had pursuant to his franchise agreement with Defendant.

5. As a result of Defendants’ foregoing violations of state and federal law, Plaintiff seeks compensatory, punitive, statutory, and treble damages, as well as attorneys’ fees and costs from Defendant.

### **THE PARTIES**

6. Plaintiff is an individual with a principal place of residence in the State of Minnesota.

7. Plaintiff was formerly employed as a Mac Tools distributor in the State of Minnesota.

8. Mac Tools is a division of Stanley Black & Decker with a business address at 505 North Cleveland Avenue Suite 200, Westerville, Ohio 43082.

9. Stanley Black & Decker is a publicly owned company with its principal place of business in New Britain, Connecticut.

10. Mac and Stanley Black & Decker sell its tools primarily to mechanics in the automotive aftermarket industry through a distribution network of distributors.

### **JURISDICTION AND VENUE**

11. Jurisdiction in this matter is based on 29 U.S.C. §201 et seq. because one of Plaintiff's claims arises under the FLSA.

12. This Court has jurisdiction over this action under its pendant jurisdiction, and under diversity of citizenship jurisdiction, 28 U.S.C. 1332, as Plaintiff is a resident of the State of Minnesota and Stanley Black & Decker is a Corporation incorporated in the State of Delaware, with a principal place of business in New Britain, Connecticut.

13. Venue is proper in this judicial district under 28 U.S.C. §1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District, as Stanley's principal place of business is in this District.

### **FACTUAL BACKGROUND**

14. Mac is a nationwide franchisor/distributor of automotive electronic diagnostic equipment and automotive tools.

15. Plaintiff is a former franchisee/distributor who sold Mac tools primarily to Minnesota automotive mechanics who Plaintiff visited on a weekly basis for tool sales, service, and credit account collections.

16. On or about August 10, 1982 Plaintiff entered into a document labeled "Distributor Agreement" pursuant to which Mac and Stanley Black & Decker conveyed to Plaintiff the right to operate a Mac Tool distributorship and use Mac's trademarks. Attached hereto as **Exhibit A** is a true and correct copy of the Distributor Agreement entered into by Plaintiff.

17. In reality, the “Distributor Agreement” constitutes the sale of a franchise, pursuant to both federal and various state laws that afford Plaintiff certain rights and protections.

18. Defendant’s business scheme involves capitalizing on Stanley’s superior economic power to make its distributors artificial consumers and undisclosed franchisees for its automotive tool sales business. That artificial consumer market consists of Plaintiff, as well as other distributors throughout the country, who have become Mac Distributors, and bought Mac tools in the hopes of re-selling those tools to mechanics, the intended end users.

19. Mac captures its “distributors” with false promises, then dominates, controls, and exploits them in the artificial market Mac created in violation of Connecticut and Minnesota law. The motivation for the business scheme is to inflate Mac’s sales and profits and to create the illusion of corporate growth and business success. The business scheme is a coordinated series of fraudulent, deceptive, and illegal acts that include, but is not limited to the following:

- a. Mac, as part of its recruitment process, tells potential distributors that they will earn better than average wages, but in reality a high percentage of Mac distributors fail, yet this information is not disclosed to the prospective distributor;
- b. Mac misrepresents that the route of customer calls to whom Mac distributors are permitted to re-sell tools purchased from Stanley’s Mac Division is an economically viable list of potential customers, when in fact, the route of customer calls is inadequate in terms of market potential to absorb the amount of tools that Mac requires the distributors, such as Plaintiff, to purchase from it;
- c. While promising plaintiff and other distributors/franchisees a degree of autonomy, once recruited, Mac aggressively dominates and controls the methods, details, and day-to-day business activities of the distributors to the detriment of the

distributors and for the sole and exclusive purpose of inflating Mac's sales and profits;

d. The artificially created Mac consumer market for its automotive tool products is not subject to the normal free economy market forces of supply and demand. Rather, the purchase and sale of Mac products is dominated and controlled by Mac by requiring, without cause or justification, its distributors to adhere to an 80% "National Distributor Average" and to purchase tools from Mac in amounts that are contrary to the distributors' best interests as there are not enough qualified purchasers in the assigned route and call of customers.

20. The Distributor Agreement controls the methods, details, and day-to-day business activities of the distributors.

21. Each Distributor Agreement contains a distributor's "List of Route and Customer Calls", (i.e., customers) which contains the names and addresses **of the only persons** to whom distributors are allowed by Mac to re-sell Mac tools. The content of every List of "Route and Customer Calls" is dictated exclusively by Mac. *See Exhibits A* at ¶¶ 3.1(a), 4.

22. Mac's control over the List of "Route and Customer Calls" is absolute. *See Exhibits A* at ¶ 4.

23. Additionally, every action taken by the distributors must be in accord with Mac requirements ranging from routine paperwork to buying and selling tools, to ordering and storing inventory, to the right kind of Mac approved clothes to purchase and wear to work. Essentially, Mac dictates every minute of a distributor's day with an "iron fist." Attached hereto as **Exhibit B** is a true and correct copy of a Mac Distributor To-Do List that is included in a Mac Tool School Journal distributed to every Mac Distributor. Also attached hereto as **Exhibit C** is a true and correct copy of a Mac Distributor's Operations Checklist included in the Mac Tool School

Journal that is distributed to all Mac Distributors and all Mac Distributors must follow. *See also Exhibits A* at ¶¶ 3.1(d) and (e).

24. Distributors are required to lease or purchase a truck or van that complies with the specifications contained in the Distribution Agreement and shall use the van when making all sales and service calls. *See Exhibit A* at ¶ 3.11.

25. Additionally, distributors are required to lease or purchase a computer that complies with a Mac approved program, along with computer software that conforms to specifications contained in the Program. Attached hereto as **Exhibit D** is a true and correct copy of a MBA Start-up Procedures checklist that all Mac Distributors must follow. *See also Exhibits A* at ¶ 3.12.

26. Moreover, Mac has an absolute right to inspect the operation of a distributor's business, including speaking with a distributor's customers, inspecting a distributor's truck, conduct an inventory of the products on a distributor's truck, and sending a Mac representative to ride along on a distributor's route to ensure that the distributor is complying with all of the regulations implemented by Mac and Stanley Black & Decker. *See Exhibits A* at ¶ 3.8.

27. Furthermore, Mac and Stanley Black & Decker mandate that each distributor conduct his business in strict accordance with the Mac Operations Manual and the Distribution Agreement.

28. A significant requirement that the Distributor Agreement, as well as the preceding "Disclosure Document" failed to disclose was the fact that distributors would have to perform certain repair and warranty work on broken tools purchased by Mac customers.

Mac and Stanley willfully failed to disclose any of the repair work that a distributor must perform in both the Disclosure Agreement and the Distributor Agreement. Instead of properly

disclosing this additional, material and significant obligation to Plaintiff and other distributors prior to their entry into the various agreements, Mac and Stanley instead thrust these obligations on unsuspecting distributors after they have already entered into the system. Had these burdensome obligations originally been disclosed by Defendants, plaintiff would not have entered into the various agreements and the Mac franchise system.

29. Mac's failure to disclose the numerous hours of warranty repair work that a distributor would have to perform each week, and Stanley failure to pay distributors a statutory mandated wage for the services performed *constitutes an intentional fraud by omission* and a violation of the Fair Labor Standards Act (FLSA).

30. Mac requirement that Plaintiff perform uncompensated repair work violation the express provisions of the FLSA.

31. The over-burdensome nature of the undisclosed and uncompensated required repair work speaks for itself. Specifically, Mac required Plaintiff to repair or replace any broken items a customer may have had that were under warranty. Attached hereto as **Exhibit E** is a true and correct copy of a Warranty Prefix Code Sheet showing that Distributors are required to repair certain items. Also attached hereto as **Exhibit F** is a true and correct copy of the Mac MBA User Manual showing the process all Mac Distributors were to use for taking repairs for Mac Customers.

32. By way of example, Plaintiff was required to replace "stripped gears" in the heads of ratchet wrenches or replace defective tool chest drawer rails. Mac failed to compensate Plaintiff for the time he spent repairing this equipment. Attached hereto as **Exhibit G** is a true and correct copy of a Mac Tool School Sheet showing that Distributors were required to replace all broken ratchets.

33. Furthermore, Mac required Plaintiff to spend countless hours throughout each week packaging and returning broken warranty tools such as air guns, electronic diagnostic equipment, and floor jacks, without compensating Plaintiff for his time. Attached hereto as **Exhibit H** is a true and correct copy of the Mac MBA User Manual showing the lengthy process a Mac Distributor is to follow in order to return warranty products to Mac.

34. Additionally, Plaintiff incurred significant expenses in the hundreds of dollars on shipping charges returning warranty items to Mac, without Mac ever reimbursing Plaintiff.

35. Mac also required Plaintiff to spend countless hours per week repossessing equipment that Mac customers purchased directly from Mac, but could no longer afford to pay for. Attached hereto as **Exhibit I** is a true and correct copy of the MAC MBA User Manual instructing Mac Distributors on the specific way in which all Mac Distributors are to perform repossessions.

#### **ADMISSIONS MADE BY STANLEY**

36. Despite their steadfast, long-term denial that they were operating a franchise business, on or about October 18, 2011, during Stanley's third quarter public earnings call (Q3 2011 Results - Earnings Call) John F. Lundgren ("Lundgren"), Stanley's Chief Executive Officer ("CEO"), President and Director admitted that Mac distributors are franchises.

37. During that discussion, Lundgren, *specifically and unequivocally admitted*, a fact both Mac and Stanley had previously denied, that Mac Tools was indeed a franchise and not an independent distributorship by stating:

Jim mentioned the Mac aficionados. I think most people on the phone understand how the Mac model works. *They're essentially franchisees*. And while they drive Mac trucks, everything on their truck isn't Mac. (Emphasis Added.)



**FIRST COUNT**  
**VIOLATION OF CUTPA**

38. Plaintiff repeats the allegations of the Complaint as if set forth at length herein.

39. This Count is for damages for violation of the Connecticut Unfair Trade Practices Act, Section 42-110 (b) (“CUTPA”) which prohibits “unfair or deceptive acts or practices in the conduct of any trade or commerce.

40. The Distribution Agreement constitutes a franchise under FTC Rule, 16 C.F.R. 436.2(a).

41. FTC Rule 436 requires a franchisor to provide a prospective investor/franchisee with an offering circular containing 23 Items of information that is critically necessary for Plaintiff, or other potential franchisees, to fully evaluate the nature of the business investment being contemplated.

42. Defendant failed to provide the required offering circular to Plaintiff as proscribed by Federal Regulation in connection with Plaintiff’s purchase of a Mac franchise.

43. In addition, Defendant sold the Mac distributorship to Plaintiff based upon the use of materially false and misleading oral and written statements concerning the proposed business opportunity and the assistance that Defendant would provide, including training, operational assistance and anticipated financial success, all in violation of the Federal Regulation. Defendant also concealed additional material obligations of its franchisees, specifically an obligation to perform uncompensated warranty repair work and to incur significant out-of-pocket expenses in the process.

44. The relationship between Defendant and Plaintiff satisfy the Federal Trade Commission guidelines for the definition of a franchise. The FTC defines a franchise as “any continuing commercial relationship whereby a person (hereinafter ‘franchisee’) offers, sells or

distributes . . . goods, commodities or services which are: identified by a trademark, service mark, trade name, advertising, or other commercial symbol designating another person (hereinafter ‘franchisor’) and where the franchisor exercises “a significant degree of control over the franchisee’s method of operation.”

45. The Distributor Agreement between Plaintiff and Mac requires the distributor to spend substantial amounts of money, including but not limited to minimum inventory, a truck, lease of Mac computer and Mac uniform attire.

46. In violation of the FTC, Plaintiff invested in a franchised business without having been provided with the legally required disclosure document commonly referred to as a Uniform Franchise Offering Circular (“UFOC”), which document if properly prepared and distributed would have outlined over twenty items of information by which a perspective franchisee could evaluate the nature of the business opportunity.

47. Perhaps most critical to the disclosures not made by Mac are the names, addresses, and phone numbers of the existing and former Mac distributors. Such disclosures required by the FTC would have provided Plaintiff with critical facts and information which he could have used to intelligently determine the reputation of Defendant and the viability of a Mac distributorship and whether he wanted to enter into a business relationship with Defendant.

48. Upon information and belief, Defendant was aware at all relevant times that its Distributor Agreement violated the FTC and that a Mac distributorship is really the sale of a franchise and that the company was under an obligation to give each prospective distributor the information required by the FTC regulations.

49. Defendant did not inform Plaintiff that it had improperly caused them to invest in a non-disclosed franchised business opportunity.

50. As a result of the violations of the FTC Rule 436 alleged herein, Plaintiff suffered damages.

51. The acts for which this Count of the Complaint is being filed occurred under the direction of Defendant Stanley, initiated at Stanley “world headquarters” in New Britain, Connecticut, making all Stanley transactions involving Plaintiff subject to the provisions of the Connecticut Unfair Trade Practices Act Section 42-110 (b).

WHEREFORE, Plaintiff respectfully prays that this Court find Defendant in violation of CUTPA and award the following:

a. A declaration that the relationship between Defendants Mac/Stanley and its distributors such as Plaintiff constitutes a relationship between “Franchisor” and “Franchisee” as those terms are defined under FTC Rule 436 and that Defendants are obligated to comply, and have heretofore failed to comply, with all material aspects of any and all regulations and attendant disclosure obligations governing franchisors proscribed under FTC Rule 436, as incorporated into the laws of the State of Connecticut, particularly the CUTPA;

b. Compensatory damages;

c. Punitive damages under Conn. Gen. Stat. 42-110g(a);

d. Attorneys’ fees and costs;

e. Such other relief as this Court finds reasonable and proper.

**SECOND COUNT**  
**VIOLATION OF THE MINNESOTA FRANCHISE ACT**

52. Plaintiff repeats the allegations of the Complaint as if set forth at length herein.

53. Pursuant to the MFA, Minn Stat. Ann. § 80C.01 et seq., Plaintiff and Defendant entered into a franchise agreement for the distribution and sale of Stanley products.

54. Due to the fact that the parties entered into a franchise agreement, Plaintiff is entitled to the protections of the MFA.

55. In accordance with MFA § 80C.01, the Distribution Agreement between Plaintiff and Defendant granted Plaintiff the right to engage in business offering and selling Mac products, using the Mac Tools, trade name, trademarks and other related marks.

56. In accordance with MFA § 80C.01, Plaintiff and Defendant share a community of interest as both Plaintiff and Defendant profit from the sale of Mac Tools to the end user, as Plaintiff earns a profit for each tool sold and Defendant will then sell more Mac Tools to the Plaintiff distributor.

57. Finally, in accordance with MFA § 80C.01, Plaintiff paid an initial fee, for the right to operate a Mac Tools distributorship.

58. Accordingly, the distributorship arrangement between Plaintiff and Defendant is a franchise within the meaning of the MFA.

59. As Plaintiff is a franchise of Defendant, Plaintiff is accorded the full protections of the MFA.

60. Section 80C.14 of the MFA, provides that a franchisor like Defendant, cannot terminate a franchise unless the franchisor gives the franchisee written notice setting forth all the reasons for the termination at least 90 days in advance of said termination and the franchisee fails to correct the reasons stated for termination within 60 days of receipt of said notice.

61. Moreover, a franchisor cannot terminate a franchise agreement without the requisite good cause.

62. On or about September 12, 2011, Mac sent Plaintiff a letter advising him that he only had 35 days to cure the alleged default to his Distributorship Agreement. Attached hereto as Exhibit – is a true and correct copy of the September 12, 2011 letter.

63. Then on October 18, 2011, Mac sent Plaintiff another letter advising that Mac had terminated Plaintiff's Distributor Agreement on October 17, 2011.

64. Based on the foregoing, Mac violated the MFA by terminating Plaintiff's Distributor Agreement without the requisite good cause and for not giving Plaintiff enough time under the MFA to cure his alleged default.

WHEREFORE, Plaintiff respectfully prays that this Court find Defendant in violation of MFA and award the following:

- a. A declaration that the relationship between Defendants Mac/Stanley and its distributors such as Plaintiff constitutes a relationship between "Franchisor" and "Franchisee" as those terms are defined under FTC Rule 436 and that Defendants are obligated to comply, and have heretofore failed to comply, with all material aspects of any and all regulations and attendant disclosure obligations governing franchisors proscribed under FTC Rule 436, as incorporated into the laws of the State of Minnesota, particularly the MFA;
- b. Compensatory damages;
- b. Attorneys' fees and costs;
- c. Such other relief as this Court finds reasonable and proper.

**THIRD COUNT**  
**VIOLATION OF THE FAIR LABOR STANDARDS ACT**

65. Plaintiff repeats the allegations of the Complaint as if set forth at length herein.

66. Prior to becoming a distributor, Mac failed to advise Plaintiff, either verbally or through certain documents Mac provided Plaintiff that Plaintiff would be required to perform certain warranty repair work.

67. In fact, Mac only lists sales related duties and functions, thereby fraudulently inducing Plaintiff to become warranty repairmen for no compensation.

68. At all relevant times, Mac controlled every aspect of Plaintiff's methods, details and day-to-day business activities pursuant to the Distributor Agreement.

69. The uncompensated warranty repair duties (*see* ¶¶ 30– 35, *supra*) that Mac required Plaintiff to perform included fixing customer's warranty items and boxing and shipping other broken warranty items back to Mac.

70. Mac never compensated Plaintiff for performing these required duties, nor did Mac ever reimburse Plaintiff for the money he spent shipping these warranty items back to Mac.

71. While so employed, Plaintiff consistently spent between ten (10) and fifteen (15) hours a week performing these unpaid job requirements for Mac.

72. Plaintiff is entitled to receive compensation for all hours worked in a given week while performing required warranty tool repair and boxing and shipping warranty materials back to Mac.

73. Plaintiff was in all respects, non-exempt employees entitled to receive wage payments pursuant to the FLSA while performing required warranty and repair work for Mac.

74. Mac and Stanley Black & Decker are employers within the meaning of the FLSA.

75. Mac and Stanley Black & Decker have withheld and diverted wages in violation of the FLSA for all required warranty and repair work performed by Plaintiff.

76. Pursuant to the FLSA, Plaintiff has a private right of action against Mac and Stanley Black & Decker their employers, for the full amount of wrongfully withheld or diverted wages.

WHEREFORE, Plaintiff respectfully prays that this Court find Defendant in violation of the unpaid wages provisions of the FLSA and award the following:

- a. Unpaid wages;
- b. Liquidated damages;
- c. Attorneys' fees and costs of suit;
- d. Prejudgment interest;
- e. A declaratory judgment that Plaintiff was acting as employees of Mac while performing any repair or warranty work entitling them to unpaid wages under the FLSA.

**FOURTH COUNT**  
**VIOLATION OF THE MINNESOTA FAIR LABOR STANDARDS ACT**

77. Plaintiff repeats the allegations of the Complaint as if set forth in length herein.

78. Plaintiff was an employee of Defendant within the meaning of Minn. Stat. § 177.23 and Minn. Stat. § 177.24, while performing the required warranty and repair work for Defendant.

79. Defendant was the employer of Plaintiff within the meaning of Minn. Stat. § 177.23 and Minn. Stat. § 177.24 while Plaintiff performed the required warranty and repair work for Defendant.

80. Defendant constitutes “large employers” within the meaning of Minn. Stat. § 177.24(1) (1).

81. Pursuant to Minn. Stat. § 177.24, Plaintiff was entitled to be paid no less than \$6.15 per hour for each hour he performed warranty and repair work for Defendant.

82. Defendant failed to pay Plaintiff the statutory minimum wage for all hours worked as required by Minn. Stat. § 177.24(1)(1).

83. As a direct result of Defendant’s unlawful conduct, Plaintiff has suffered damages in an amount to be determined at trial.

84. Defendant’s actions in violating the above named statute was willful and not the result of mistake or inadvertence.

WHEREFORE, Plaintiff respectfully prays that this Court find Defendant in violation of the unpaid wages provisions of the MFLSA and award the following:

- a. Unpaid wages;
- b. Liquidated damages;
- c. Attorneys’ fees and costs of suit;
- d. Prejudgment interest;
- e. A declaratory judgment that Plaintiff was acting as employees of Mac while performing any repair or warranty work entitling them to unpaid wages under the MFLSA.



**DESIGNATION OF TRIAL COUNSEL**

Gerald A. Marks, Esq. is hereby designated as trial counsel for Plaintiff.

**JURY DEMAND**

Plaintiff demands trial by jury.

Dated: December 8, 2011

Respectfully Submitted,

**BERDON, YOUNG & MARGOLIS, P.C.**

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