

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHOP-VAC CORPORATION,)	
)	
Plaintiff,)	
)	
v.)	No. 10 C 1066
)	
ALTON INDUSTRY LTD. GROUP,)	
etc.,)	
)	
Defendant.)	

MEMORANDUM ORDER

Shop-Vac Corporation ("Shop-Vac") has filed its Reply to the Counterclaims brought against it by Alton Industry Ltd. Group ("Alton"). This sua sponte memorandum order addresses some problematic aspects of the affirmative defenses ("ADs") included as part of that responsive pleading.

AD 1 is really the equivalent of a Fed. R. Civ. P. ("Rule") 12(b)(6) attack on the sufficiency of Alton's Counterclaims. Quite apart from the question whether it is procedurally appropriate to label such a contention as an AD (contrast the types of matters listed in Rule 8(c), and see App'x ¶5 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001)), if Shop-Vac wishes to dismiss the Counterclaims on that basis it must do so by an appropriate motion supported by an appropriate memorandum. Moreover, that must be done promptly, failing which the contention of failure to state a claim is forfeited. AD 1 is therefore stricken without prejudice.

ADs 2 and 4 are simply labels that, although they do fit

within Rule 8(c), they fail to satisfy the obligations of notice pleading that apply to claimants and respondents alike. Both of those ADs are also stricken, but without prejudice to their possibly being reasserted with appropriate fleshing out.

Finally, ADs 3 and 5 contradict allegations in Alton's Counterclaims and are therefore inappropriate (again see App'x ¶5 to State Farm). Those ADs are stricken as well.



Milton I. Shadur
Senior United States District Judge

Date: June 7, 2010