

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI**

| | | |
|--|---|--------------------------|
| WILLIAM BAZZELL and |) | |
| TONI BAZZELL, Husband |) | |
| and Wife, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | CASE NO.: |
| |) | 4:07-cv-01104-CAS |
| |) | |
| DIKAR S. COOP. LTD., |) | |
| a foreign corporation, and |) | |
| WAL-MART STORES, INC., |) | |
| d/b/a Wal-Mart, and |) | |
| SAM'S WEST, INC., |) | |
| d/b/a Sam's Club, and |) | |
| BLACKPOWDER PRODUCTS, INC., |) | |
| d/b/a Blackpowder Products, and |) | |
| CONNECTICUT VALLEY ARMS, INC.) |) | |
| d/b/a Connecticut Valley Arms, |) | |
| |) | |
| Defendants. |) | |

**DEFENDANT DIKAR S. COOP. LTD.'S ANSWER AND
RESPONSE TO PLAINTIFFS' COMPLAINT**

COMES NOW Dikar S. Coop., named as a Defendant in the above-styled matter, without subjecting itself to the jurisdiction of this Court, and hereby responds to Plaintiffs' Complaint, as follows:

I. PARTIES

1. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 1 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

2. Denied as pled. In further response to Paragraph 2 of Plaintiffs' Complaint, however, Defendant admits that it is a foreign Co-Operative in the Country of

Spain. Defendant admits generally it was engaged in the business of “designing, manufacturing, assembling, distributing, and selling finished firearms products,” generally, and that those produces may ultimately be used in the United States. Defendant further does admit that it designed and manufactured the Apollo muzzleloader rifle product line. The remainder of Paragraph 2 is denied as pled.

3. Denied as pled.

4. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 4 of Plaintiffs’ Complaint, and therefore can neither admit nor deny same.

5. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 5 of Plaintiffs’ Complaint, and therefore can neither admit nor deny same.

VENUE AND JURISDICTION

6. As to this Defendant, the allegations in paragraph 6 of Plaintiffs’ Complaint are denied.

7. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 7 of Plaintiffs’ Complaint, and therefore can neither admit nor deny same.

8. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 8 of Plaintiffs’ Complaint, and therefore can neither admit nor deny same.

GENERAL ALLEGATIONS

9. Denied as pled.

10. Denied as pled.

11. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 11 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

12. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 12 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

13. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 13, including all sections A through H of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

COUNT I

STRICT LIABILITY OF DEFENDANTS DIKAR, BPI, CVA, WAL-MART, AND SAM'S

14. Denied.

15. Denied.

Responding to the Wherefore, on Count I, clause in Plaintiffs' Complaint following Paragraph 15, Defendant states that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendant prays that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendant and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief the Court deems just and proper.

COUNT II

NEGLIGENCE OF DEFENDANT DIKAR

16. Defendant denies Paragraph 16 of Plaintiffs' Complaint, including all subparts.

NEGLIGENCE OF DEFENDANTS BPI, CVA, WAL-MART, AND SAM'S

17. Paragraph 17 of Plaintiffs' Complaint is denied, including all subparts.

18. Paragraph 18 of Plaintiffs' Complaint is denied, including all subparts.

Responding to the Wherefore, on Count II, clause in Plaintiffs' Complaint following Paragraph 18, Defendant states that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendant prays that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendant and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief the Court deems just and proper.

COUNT III

FAILURE TO WARN

19. In response to Paragraph 19 of Plaintiffs' Complaint, Defendant incorporates and adopts its responses to all other paragraphs of Plaintiff's Complaint, as well as all defenses set forth, as if fully set forth herein.

20. Denied.

21. Denied.

Responding to the Wherefore, on Count III, clause in Plaintiffs' Complaint following Paragraph 21, Defendant states that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendant prays that Plaintiffs'

Complaint be dismissed, that judgment be entered in favor of Defendant and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief the Court deems just and proper.

COUNT IV

NEGLIGENTLY SUPPLYING DANGEROUS INSTRUMENTALITY

22. In response to Paragraph 22 of Plaintiffs' Complaint, Defendant incorporates and adopts its responses to all other paragraphs of Plaintiff's Complaint, as well as all defenses set forth, as if fully set forth herein.

23. Denied.

24. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 24 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

25. This Defendant does not know the meaning intended by Plaintiffs' phraseology and the extent thereof, and therefore, Defendant moves for a more definite statement, and accordingly, is without knowledge or information sufficient to form a belief as to the matters asserted in paragraph 25 of Plaintiffs' Complaint, and can neither admit nor deny the same.

26. Denied.

27. Denied.

Responding to the Wherefore, on Count IV, clause in Plaintiffs' Complaint following Paragraph 27, Defendant states that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendant prays that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendant and against

Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief the Court deems just and proper.

COUNT V

PLAINTIFF TONI BAZZELL'S DAMAGES FOR LOSS OF SPOUSAL CONSORTIUM AND SERVICES

28. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in Paragraph 28 of Plaintiffs' Complaint, and therefore can neither admit nor deny same.

Responding to the Wherefore, on Count V, clause in Plaintiffs' Complaint following Paragraph 28, Defendant states that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendant prays that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendant and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief the Court deems just and proper.

COUNT VI

PUNITIVE DAMAGES

29. In response to Paragraph 29 of Plaintiffs' Complaint, Defendant incorporates and adopts its responses to all other paragraphs of Plaintiff's Complaint, as well as all defenses set forth, as if fully set forth herein.

30. Denied.

31. Denied. In further response to Paragraph 31 of Plaintiffs' Complaint, Defendant states that principals of international comity would preclude the award of any punitive damages against Dikar based upon any activity outside the United States, and the Commerce Clause would likewise preclude any such allegation or liability in the future.

Responding to the Wherefore clause in Plaintiffs' Complaint following Paragraph 31, Defendant states that no answer is required. To the extent any response or answer is required, same is denied. Further, Defendant prays that Plaintiffs' Complaint be dismissed, that judgment be entered in favor of Defendant and against Plaintiffs, and that all costs be cast against Plaintiffs, and for such other and further relief the Court deems just and proper.

AFFIRMATIVE DEFENSES

1. There may have been an insufficiency of service upon this Defendant.
2. This Court lacks jurisdiction over the person of the Defendant as it is a foreign Co-Operative without an office or place of business in the United States.
3. The Plaintiffs' Complaint fails to state a claim against the Defendant upon which relief may be sought.
4. Defendant states that whatever injuries or damages Plaintiffs may have sustained, if any, may have been the direct and proximate result of Plaintiffs' own carelessness, negligence, and/or comparative fault.
5. Defendant states that Plaintiff William Bazzell failed to use ordinary care.
6. Defendant states that any alleged injury or damage sustained by Plaintiff William Bazzell was the result of Plaintiff's assumption of the risk of any injury or damage, and therefore Plaintiff is unable to recover any sum whatsoever from Defendant.
7. Plaintiff William Bazzell's claims against Defendant Dikar are barred, in whole or in part, as a result of the improper use of the subject muzzle

loader, if any, and said improper use was not reasonably foreseeable or expected by Defendant Dikar.

8. Plaintiffs' damages, if any, were the proximate result, in whole or in part, of Plaintiffs' failure to reasonably mitigate his damages.
9. Defendant states that there was an intervening and/or superseding cause such that Defendant has no liability to Plaintiffs.
10. Defendant states that the product, at the time of the alleged accident, was not in a substantially similar condition as it was at the time of manufacture.
11. Defendant states that the product at issue was state of the art.
12. Plaintiffs' action may be preempted by federal and/or state law.
13. Plaintiffs William Bazzell's claims may be barred by any applicable statute of repose.
14. Plaintiff William Bazzell's claims may be barred, in whole or in part, by the failure to read and heed the applicable warnings on the product label.
15. Plaintiff's claim for punitive damages violates the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments of the Constitution of the United States in that:
 - a. It is a violation of the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution to impose punitive damages, which are penal in nature, against a civil defendant upon the Plaintiff's satisfying a burden of proof which is less than the

“beyond a reasonable doubt” burden of proof required in criminal cases.

- b. The procedures pursuant to which punitive damages are awarded fail to provide a reasonable limit on the amount of the award against Dikar, which thereby violate the due process clause of the Fourteenth Amendment.
- c. The procedures pursuant to which punitive damages are awarded fail to provide specific standards for the amount of the award of punitive damages which thereby violates the due process clause of the Fourteenth Amendment of the United States Constitution.
- d. The procedures pursuant to which punitive damages are awarded result in the imposition of different penalties for the same or similar act, and thus, violate the equal protection clause of the Fourteenth Amendment of the United States Constitution.
- e. The procedures pursuant to which punitive damages are awarded permit the imposition of punitive damages in excess of the maximum criminal fine for the same or similar conduct, which thereby infringes the due process clause of the Fifth and Fourteenth Amendments and the equal protection clause of the Fourteenth Amendment of the United States Constitution.
- f. The due process clause of the Fifth and Fourteenth Amendments precludes the award of punitive damages against Dikar based upon activities outside Kentucky and the United States.

- g. The procedures pursuant to which punitive damages are awarded permit the imposition of excessive fines in violation of the Eighth Amendment of the United States Constitution.
 - h. The due process clause of the Fifth and Fourteenth Amendments precludes the award of punitive damages against Dikar based merely upon negligent or grossly negligent conduct.
16. Principles of international comity preclude the award of punitive damages against Dikar based upon activities that occurred outside the United States.
 17. The commerce clause precludes the award of punitive damages against Dikar based upon activities that occurred outside of Missouri and the United States.
 18. Defendant reserves its right to amend this Answer to assert any other defenses that becomes available or appear subsequently in this case.

WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant prays for judgment in its favor and against Plaintiffs, that all costs be cast against Plaintiffs, for trial by a jury on all triable issues, and for such other and further relief as the Court deems just and proper.

James E. Singer
BOVIS, KYLE & BURCH, L.L.C.
53 Perimeter Center East, Third Floor
Atlanta, Georgia, 30346-2298
(770) 391-9100
(770) 668-0878 (Fax)
jes@boviskyle.net

LEWIS, RICE & FINGERSH L.C.

By: /s/ David L. Coffman

David L. Coffman, #2838
David A. Fitzpatrick, #523123
500 North Broadway, Suite 2000
St. Louis, Missouri 63102
(314) 444-7600
(314) 241-6056 (Fax)
dcoffman@lewisrice.com
dfitzpatrick@lewisrice.com

Attorneys for Defendant Dikar S. Coop. Ltd.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of October, 2007, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Morry S. Cole, #77854
GRAY, RITTER & GRAHAM, P.C.
701 Market Street, Suite 800
St. Louis, Missouri 63101
(314) 241-5620 (*phone*)
(314) 241-4140 (*fax*)
mcole@grgpc.com (*email*)

Attorneys for Plaintiffs
William & Toni Bazzell

James E. Whaley, #4691
BROWN & JAMES, P.C.
1010 Market Street, 20th Floor
St. Louis, Missouri 63101-2000
(314) 421-3400 (*phone*)
(314) 421-3128 (*fax*)
jwhaley@blpc.com (*email*)

Attorneys for Defendants
Wal-Mart Stores, Inc. and
Sam's West, Inc. d/b/a Sam's Club

/s/ David A. Fitzpatrick_____