

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

CHARLES A. SMITH, SR.,)	
)	
Plaintiff,)	
)	CIVIL ACTION
v.)	NO. 1:08CV00046
)	
D.C. 1980, INC.; D.C. 1980, INC. f/k/a)	
CONNECTICUT VALLEY ARMS, INC.;)	
BLACKPOWDER PRODUCTS, INC.;)	
CONNECTICUT VALLEY ARMS, INC.;)	
and DIKAR S. COOP. LTDA.,)	
)	
Defendants.)	

ANSWER OF BLACKPOWDER PRODUCTS, INC.

COMES NOW Blackpowder Products, Inc. (“BPI”), appearing specially, by and through its undersigned counsel, and hereby answers Plaintiff’s Complaint in the above matter as follows:

FIRST DEFENSE

Plaintiff’s Complaint fails state a claim against this Defendant upon which relief may be granted.

SECOND DEFENSE

This Court lacks jurisdiction over this Defendant in the current litigation.

THIRD DEFENSE

Without waiving its Motion to Dismiss for Lack of Personal Jurisdiction, but relying specifically thereon, BPI responds to the specifically numbered allegations of Plaintiff's Complaint as follows:

COUNT I

The Parties

1. BPI is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph one of Plaintiff's Complaint, and therefore can neither admit nor deny same.

2. Paragraph two of Plaintiff's Complaint is denied as pled.

3. Paragraph three of Plaintiff's Complaint is denied as pled.

4. In response to paragraph four of Plaintiff's Complaint, the first paragraph of paragraph four is admitted. The second paragraph of paragraph four of Plaintiff's Complaint is denied.

5. Paragraph five contains allegations against a non-U.S. Defendant and not this Defendant; therefore no answer of this Defendant is required in response to paragraph five.

COUNT II

Jurisdiction and Venue

1. This Defendant restates and realleges all affirmative defenses herein, as well as its responses to each and every allegation of Plaintiff's Complaint as set forth in response to Count I.

2. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph two of Plaintiff's Complaint and therefore can neither admit nor deny same.

3. Upon information and belief paragraph three of Plaintiff's Complaint is admitted.

4. Paragraph four of Plaintiff's Complaint does not require an answer from this Defendant as it does not allege a fact. To the extent a response is required, paragraph four is denied as it applies to this Defendant.

COUNT III

The Facts

1. This Defendant restates and realleges all affirmative defenses herein, as well as its responses to each and every allegation of Plaintiff's Complaint as set forth in response to Count I, and Count II.

2. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph two of Plaintiff's Complaint and therefore can neither admit nor deny same.

3. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph three of Plaintiff's Complaint and therefore can neither admit nor deny same.

4. This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph four of Plaintiff's Complaint and therefore can neither admit nor deny same.

5. Paragraph five of Plaintiff's Complaint is denied.

COUNT IV

Strict Liability

1. This Defendant restates and realleges all affirmative defenses herein, as well as its responses to each and every allegation of Plaintiff's Complaint as set forth in response to Count I, Count II, and Count III.

2. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph two of Count IV of Plaintiff's Complaint is denied as to this Defendant.

3. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph three of Count IV of Plaintiff's Complaint is denied as to this Defendant.

4. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph four of Count IV of Plaintiff's Complaint is denied as to this Defendant.

5. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph five of Count IV of Plaintiff's Complaint is denied as to this Defendant.

COUNT V

Negligence

1. This Defendant restates and realleges all affirmative defenses herein, as well as its responses to each and every allegation of Plaintiff's Complaint as set forth in response to Count I, Count II, Count III, and Count IV.

2. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph two of Count V of Plaintiff's Complaint is denied as to this Defendant.

3. Paragraph three of Count V of Plaintiff's Complaint is denied.

COUNT VI

Failure to Warn

1. This Defendant restates and realleges all affirmative defenses herein, as well as its responses to each and every allegation of Plaintiff's Complaint as set forth in response to Count I, Count II, Count III, Count IV, and Count V.

2. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph two of Count VI of Plaintiff's Complaint is denied as to this Defendant.

3. Paragraph three of Count VI of Plaintiff's Complaint is denied.

COUNT VII

Breach of Warranties

1. This Defendant restates and realleges all affirmative defenses herein, as well as its responses to each and every allegation of Plaintiff's Complaint as set forth in response to Count I, Count II, Count III, Count IV, Count V, and Count VI.

2. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph two of Count VII of Plaintiff's Complaint is denied as to this Defendant.

3. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph three of Count VII of Plaintiff's Complaint is denied as to this Defendant.

4. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph four of Count VII of Plaintiff's Complaint is denied as to this Defendant.

COUNT VIII

Injuries and Damages

1. This Defendant restates and realleges all affirmative defenses herein, as well as its responses to each and every allegation of Plaintiff's Complaint as set forth in response to Count I, Count II, Count III, Count IV, Count V, Count VI, and Count VII.

2. Denying liability as to this Defendant, this Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the matters

asserted with respect to Plaintiff's injuries and damages and therefore can neither admit nor deny same.

3. This Defendant denies it designed, manufactured, distributed, or sold the gun at issue, therefore, paragraph three of Count VIII of Plaintiff's Complaint is denied as to this Defendant.

FOURTH DEFENSE

BPI denies that it is liable to the plaintiff in the amount sued for, or any amount, for any reason whatsoever.

FIFTH DEFENSE

BPI affirmatively alleges that the plaintiff's negligence was a or the proximate cause of the alleged incident.

SIXTH DEFENSE

The plaintiff voluntarily and knowingly assumed the risk of incurring the injuries or damages alleged.

SEVENTH DEFENSE

The incident and injuries alleged are the result of the acts or omissions of others for whom this defendant is not responsible and/or a cause or causes over which this defendant had no control and for which it is not responsible to the plaintiff.

EIGHTH DEFENSE

BPI denies that it was guilty of any negligence or the breach of any duty that it may have owed to the plaintiff.

NINTH DEFENSE

BPI denies that it made or breached any warranty of any kind whatsoever with reference to the gun.

TENTH DEFENSE

BPI affirmatively alleges that the injuries, damages and losses alleged to have been sustained by the plaintiff were the result of an abuse or misuse of the gun.

ELEVENTH DEFENSE

BPI avers that it did not make the expressed or implied warranties alleged in the Complaint.

TWELFTH DEFENSE

BPI avers that plaintiff did not rely upon any warranties or representations allegedly made or extended upon the sale of the gun.

THIRTEENTH DEFENSE

BPI avers that the plaintiff failed to comply with the instructions, directions, and/or warnings accompanying the product manufactured and distributed and upon which the plaintiff bases his claim and plaintiff's failure to comply with these instructions was the sole and proximate cause of the damages.

FOURTEENTH DEFENSE

Any danger associated with the gun was open and obvious.

FIFTEENTH DEFENSE

Plaintiff's claims are barred because at all relevant times, plaintiff was a knowledgeable user who is aware of the alleged hazards and therefore plaintiff expressly or impliedly assumed the risk of any alleged damages.

SIXTEENTH DEFENSE

Plaintiff's causes of action are barred because a reasonable consumer would have been aware of the alleged risks imposed by the gun.

SEVENTEENTH DEFENSE

Plaintiff's causes of action are barred because the alleged damages resulted from new and independent, unforeseeable, superceding and/or intervening causes unrelated to the conduct of, or the product alleged to have caused the damages, by BPI.

EIGHTEENTH DEFENSE

Plaintiff's causes of action are barred because the alleged damages were not proximately caused by any act or omission of BPI.

NINETEENTH DEFENSE

Plaintiff's breach of warranty causes of action are barred by the Uniform Commercial Code as enacted in Virginia.

TWENTIETH DEFENSE

To the extent the plaintiff alleges a continuing duty to warn, such cause of action is barred under Virginia law.

TWENTY-FIRST DEFENSE

BPI hereby gives notice that it intends to rely upon such other defenses that become available to it during the course of discovery and other proceedings and thus reserves the right to amend this list to assert such other defenses to which it may be entitled.

WHEREFORE, defendant Blackpowder Products, Inc. moves the Court to dismiss plaintiff's Complaint and to award its costs incurred in the defense of this action.

BLACKPOWDER PRODUCTS, INC.

By Counsel

s/ W. Bradford Stallard
W. Bradford Stallard
VSB No. 28149
PENN, STUART & ESKRIDGE
P.O. Box 2288
Abingdon, Virginia 24212-2288
Telephone: 276/628-5151
Facsimile: 276/628-5621

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2009, the foregoing Answer was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties, if any, will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

s/ W. Bradford Stallard