

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Glen Underwood,	)	
	)	
Plaintiff,	)	
	)	Case No. 2:10-cv-104
v.	)	
	)	Judge: Marbley
Connecticut Valley Arms, Inc.,	)	
Blackpowder Products, Inc., Cabela's, Inc.,	)	Magistrate Judge: King
Hodgdon Powder Company, Powerbelt	)	
Bullets, Dikar S. Coop., Ltd., and John	)	
Doe Defendants #1-5,	)	
	)	
Defendants.	)	

**ANSWER OF BLACKPOWDER PRODUCTS, INC.**

COMES NOW Blackpowder Products, Inc. ("BPI") and hereby answers Plaintiff's  
Complaint in the time allowed by law, as extended, as follows:

**FIRST DEFENSE**

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

**SECOND DEFENSE**

Plaintiff's claims for punitive damages fail to state a claim upon which relief may be  
granted.

**THIRD DEFENSE**

There is no basis in law or fact for the imposition for punitive damages with respect to  
Plaintiff's claims against this Defendant, as Defendant at all times acted in good faith and  
without malice.

**FOURTH DEFENSE**

The Plaintiff's Complaint, to the extent that he seeks punitive damages, violates Defendant's rights to procedural due process under the Fourteenth Amendment of the United States Constitution, and therefore fails to state a cause of action or set forth a claim upon which damages can be awarded.

**FIFTH DEFENSE**

The Plaintiff's Complaint, to the extent that he seeks punitive damages violates Defendant's right to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution, and violates Defendant's right to substantive due process as provided in the Fifth and Fourteenth Amendment of the United States Constitution, and therefore fails to state a cause of action or set forth a claim supporting the punitive damages claims.

**SIXTH DEFENSE**

The claims for punitive damages are barred by the provision of Article VI of the Constitution of the United States.

**SEVENTH DEFENSE**

Responding to the specifically enumerated allegations of Plaintiff's Complaint, Defendant shows the Court the following:

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 Plaintiff's Complaint, and therefore can neither admit nor deny same.

2.

Paragraph 2 of Plaintiff's Complaint is denied as pled. In further response, however, BPI does admit that it is a corporation organized under the laws of the State of Georgia, and that it regularly conducted business in the State of Ohio. The remainder of the allegations are specifically denied in their entirety.

3.

Paragraph 3 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

4.

Paragraph 4 of Plaintiff's Complaint Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

5.

Paragraph 5 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

6.

Paragraph 6 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

7.

Paragraph 7 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

8.

Paragraph 8 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

9.

Paragraph 9 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

10.

Paragraph 10 of Plaintiff's Complaint does not allege a fact relative to this Defendant, and therefore no response is required. However, to the extent any allegation or liability is attempted to be alleged against this Defendant by said paragraph, same is denied in its entirety.

11.

This Defendant admits that jurisdiction is proper in the Federal Court where this matter is now pending as removed.

12.

This Defendant admits that venue is proper in this Court as removed.

13.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 13 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

14.

Paragraph 14 of Plaintiff's Complaint is denied as pled. In further response, however, this Defendant does admit that the muzzleloader referenced was both imported, marketed, and placed in the stream of commerce by this Defendant, BPI.

15.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 15 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

16.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 16 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

17.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 17 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

18.

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

19.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 19 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

20.

This Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted in paragraph 20 of Plaintiff's Complaint, and therefore can neither admit nor deny same.

21.

Paragraph 21 is denied as to this Defendant.

22.

Paragraph 22 is denied as to this Defendant.

23.

In response to paragraph 23 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

24.

Paragraph 24 of Plaintiff's Complaint is denied to the extent it implies or alleges any duty owed by any Defendant greater than or inconsistent with that set forth in Ohio law. Defendant further denies any breach of any applicable duty.

25.

Paragraph 25 of Plaintiff's Complaint is denied.

26.

Paragraph 26 of Plaintiff's Complaint is denied.

27.

Paragraph 27 of Plaintiff's Complaint is denied.

28.

Paragraph 28 of Plaintiff's Complaint is denied.

29.

Paragraph 29 of Plaintiff's Complaint is denied.

30.

In response to paragraph 30 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

31.

Paragraph 31 of Plaintiff's Complaint is denied.

32.

Paragraph 32 of Plaintiff's Complaint is denied as pled. In further response, however, Defendant BPI does admit that it marketed, advertised, sold, and/or otherwise introduced into the stream of commerce the muzzleloader at issue. The remainder of the paragraph is denied.

33.

Paragraph 33 of Plaintiff's Complaint is denied.

34.

Paragraph 34 of Plaintiff's Complaint is denied.

35.

Paragraph 35 of Plaintiff's Complaint is denied.

36.

Paragraph 36 of Plaintiff's Complaint is denied.

37.

Paragraph 37 of Plaintiff's Complaint is denied.

38.

Paragraph 38 of Plaintiff's Complaint is denied.

39.

In response to paragraph 39 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

40.

Paragraph 40 of Plaintiff's Complaint is denied.



41.

Paragraph 41 of Plaintiff's Complaint is denied.

42.

Paragraph 42 of Plaintiff's Complaint is denied.

43.

In response to paragraph 43 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

44.

Paragraph 44 of Plaintiff's Complaint is denied.

45.

Paragraph 45 of Plaintiff's Complaint is denied.

46.

Paragraph 46 of Plaintiff's Complaint is denied.

47.

Paragraph 47 of Plaintiff's Complaint is denied.

48.

Paragraph 48 of Plaintiff's Complaint is denied.

49.

Paragraph 49 of Plaintiff's Complaint is denied.

50.

Paragraph 50 of Plaintiff's Complaint is denied.

51.

Paragraph 51 of Plaintiff's Complaint is denied.

52.

In response to paragraph 52 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

53.

Paragraph 53 of Plaintiff's Complaint is denied as pled. Defendant further states that Ohio law with respect to implied warranties speaks for itself.

54.

Paragraph 54 of Plaintiff's Complaint is denied.

55.

Paragraph 55 of Plaintiff's Complaint is denied.

56.

Paragraph 56 of Plaintiff's Complaint is denied.

57.

Paragraph 57 of Plaintiff's Complaint is denied.

58.

In response to paragraph 58 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

59.

Paragraph 59 of Plaintiff's Complaint is denied to the extent the Plaintiff alleges, implies, or attempts to allege any warranty or representation other than, or inconsistent with, that set forth in Defendant's instruction manual.

60.

Paragraph 60 of Plaintiff's Complaint is denied.

61.

Paragraph 61 of Plaintiff's Complaint is denied.

62.

Paragraph 62 of Plaintiff's Complaint is denied.

63.

Paragraph 63 of Plaintiff's Complaint is denied.

64.

In response to paragraph 64 of Plaintiff's Complaint, Defendant incorporates its response to all other specifically enumerated paragraphs contained herein, and further, all the defenses set forth.

65.

Paragraph 65 of Plaintiff's Complaint is denied.

#### **EIGHTH DEFENSE**

The alleged injury and damages sustained by the Plaintiff was the direct and proximate result of Plaintiff's own sole negligence and conduct, or in the alternative, Plaintiff's comparative negligence, in failing to properly maintain the muzzleloader, failing to follow the

instructions for use of the muzzleloader, failing to follow basic firearm safety handling and failing to familiarize himself with and to have knowledge of the warnings given for the use of the muzzleloader, all of which serves to completely bar or reduce any recovery herein.

**NINETH DEFENSE**

At all further times relevant herein, the Plaintiff was properly warned in the use of the muzzleloader allegedly being used at the time of the accident, and said muzzleloader was not defective in design, manufacture, construction, composition, installation, operation, warnings, or for the use for which it was intended.

**TENTH DEFENSE**

Plaintiffs claim is barred by the doctrine of assumption of the risk.

**ELEVENTH DEFENSE**

At all times relevant herein, the Plaintiff failed to mitigate his damages.

**TWELFTH DEFENSE**

Alternatively, and at all further times relevant herein, the cause of this accident was the negligence of third persons for whom this Defendant is not responsible or liable.

**THIRTEENTH DEFENSE**

At all times Defendant complied with all provisions of relevant product safety and/or product liability statutes and/or other laws applicable to it.

**JURY DEMAND**

Defendant, Blackpowder Products, Inc., requests trial by jury on all issues herein.

WHEREFORE, Defendant Blackpowder Products, Inc., prays that its Answer be filed and that after all legal delays and due proceedings are had, that there be judgment herein in favor

of Blackpowder Products, Inc., and against Plaintiff Glen Underwood, dismissing his original Complaint , with prejudice, and at Plaintiff's costs, and for trial by jury on all issues herein.

Respectfully submitted,

/s/David A. Herd  
David A. Herd (0059448)  
John C. Nemeth & Associates  
21 East Frankfort Street  
Columbus, Ohio 43206  
(614) 443-4866 Phone  
(614) 443-4860 Fax  
[herd@nemethlaw.com](mailto:herd@nemethlaw.com)  
Attorney for Cabela's, Inc. and  
Blackpowder Products, Inc.

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by Electronic Pacer to all Counsel this 1<sup>st</sup> day of March 1, 2009:

Daniel N. Abraham  
536 South High Street  
Columbus, OH 43215  
(614) 228-6453 Phone  
(614) 228-7122 Fax  
[dabraham@csalawfirm.com](mailto:dabraham@csalawfirm.com)  
Attorney for Plaintiff

James E. Singer, Esq.  
Bovis, Kyle & Burch, LLC  
Third Floor, 53 Petimeter Center East  
Atlanta, GA 30343  
Connecticut Valley Arms, Inc.  
Attorneys for Connecticut Valley Arms,  
Blackpowder Products, Inc. and Cabela's, Inc.  
[jes@boviskyle.com](mailto:jes@boviskyle.com)

Audrey K. Bentz, Esq.  
David B. Shaver, Esq.

9200 South Hills Blvd.  
Cleveland, OH 44147  
Attorneys for Defendant  
Hodgdon Power Co.  
[Audrey.bentz@janiklaw.com](mailto:Audrey.bentz@janiklaw.com)

Hugh J. Bode, Esq.  
Reminger Co. LPA  
1400 Midland Building  
101 Prospect Ave., West  
Cleveland, Oh 44115  
[hbode@reminger.com](mailto:hbode@reminger.com)

&

Anthony Piscioti, Esq.  
30 Columbia Turnpike, Ste. 103  
Florham Park, NJ 07932  
[apisciotti@pmblegalfirm.com](mailto:apisciotti@pmblegalfirm.com)  
Attorneys for Defendant Accura Bullets, LLC  
d/b/a Powerbelt Bullets i/s/h/a  
Power Bullets

/s/David A. Herd  
David A. Herd (0059448)