

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

GLEN UNDERWOOD,)	CASE NO. 2:10-CV-00104
)	
Plaintiff,)	JUDGE MARBLEY
)	
v.)	MAGISTRATE JUDGE KING
)	
CONNECTICUT VALLEY ARMS,)	<u>ANSWER OF DEFENDANT HODGDON</u>
INC., et al.,)	<u>POWDER COMPANY</u>
)	
Defendants.)	(Jury Demand Endorsed Hereon)

Defendant Hodgdon Powder Company (“HPC”) states for its answer and affirmative defenses to Plaintiff Glen Underwood’s (“Plaintiff”) Complaint as follows:

1. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 1 of Plaintiff’s Complaint.
2. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 2 of Plaintiff’s Complaint.
3. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 3 of Plaintiff’s Complaint.
4. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 4 of Plaintiff’s Complaint.
5. HPC admits that it is incorporated in Kansas. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 5 of Plaintiff’s Complaint.
6. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 6 of Plaintiff’s Complaint.

7. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 7 of Plaintiff's Complaint.

8. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 8 of Plaintiff's Complaint.

9. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 9 of Plaintiff's Complaint.

10. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 10 of Plaintiff's Complaint.

11. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 11 of Plaintiff's Complaint.

12. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 12 of Plaintiff's Complaint.

13. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 13 of Plaintiff's Complaint.

14. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 14 of Plaintiff's Complaint.

15. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 15 of Plaintiff's Complaint.

16. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 16 of Plaintiff's Complaint.

17. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 17 of Plaintiff's Complaint.

18. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 18 of Plaintiff's Complaint.

19. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 19 of Plaintiff's Complaint.

20. HPC is without knowledge or information sufficient to admit or deny the allegations contained in paragraph 20 of Plaintiff's Complaint.

21. HPC denies that it was negligent in any way. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 21 of Plaintiff's Complaint.

22. HPC denies that it was negligent in any way. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 22 of Plaintiff's Complaint.

23. HPC restates and reavers paragraphs 1-22 of its Answer.

24. HPC denies the allegations contained in paragraph 24 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 24 of Plaintiff's Complaint.

25. HPC denies the allegations contained in paragraph 25 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 25 of Plaintiff's Complaint.

26. HPC denies the allegations contained in paragraph 26 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information

sufficient to admit or deny the remaining allegations contained in paragraph 26 of Plaintiff's Complaint.

27. HPC denies the allegations contained in paragraph 27 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 27 of Plaintiff's Complaint.

28. HPC denies the allegations contained in paragraph 28 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 28 of Plaintiff's Complaint.

29. HPC denies the allegations contained in paragraph 29 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 29 of Plaintiff's Complaint.

30. HPC restates and reavers paragraphs 1-29 of its Answer.

31. HPC denies the allegations contained in paragraph 31 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 31 of Plaintiff's Complaint.

32. HPC denies the allegations contained in paragraph 32 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 32 of Plaintiff's Complaint.

33. HPC denies the allegations contained in paragraph 33 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 33 of Plaintiff's Complaint.

34. HPC denies the allegations contained in paragraph 34 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 34 of Plaintiff's Complaint.

35. HPC denies the allegations contained in paragraph 35 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 35 of Plaintiff's Complaint.

36. HPC denies the allegations contained in paragraph 36 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 36 of Plaintiff's Complaint.

37. HPC denies the allegations contained in paragraph 37 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 37 of Plaintiff's Complaint.

38. HPC denies the allegations contained in paragraph 38 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information

sufficient to admit or deny the remaining allegations contained in paragraph 38 of Plaintiff's Complaint.

39. HPC restates and reavers paragraphs 1-38 of its Answer.

40. HPC denies the allegations contained in paragraph 40 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 40 of Plaintiff's Complaint.

41. HPC denies the allegations contained in paragraph 41 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 41 of Plaintiff's Complaint.

42. HPC denies the allegations contained in paragraph 42 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 42 of Plaintiff's Complaint.

43. HPC restates and reavers paragraphs 1-42 of its Answer.

44. HPC denies the allegations contained in paragraph 44 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 44 of Plaintiff's Complaint.

45. HPC denies the allegations contained in paragraph 45 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information

sufficient to admit or deny the remaining allegations contained in paragraph 45 of Plaintiff's Complaint.

46. HPC denies the allegations contained in paragraph 46 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 46 of Plaintiff's Complaint.

47. HPC denies the allegations contained in paragraph 47 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 47 of Plaintiff's Complaint.

48. HPC denies the allegations contained in paragraph 48 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 48 of Plaintiff's Complaint.

49. HPC denies the allegations contained in paragraph 49 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 49 of Plaintiff's Complaint.

50. HPC denies the allegations contained in paragraph 50 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 50 of Plaintiff's Complaint.

51. HPC denies the allegations contained in paragraph 51 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 51 of Plaintiff's Complaint.

52. HPC restates and reavers paragraphs 1-51 of its Answer.

53. HPC denies the allegations contained in paragraph 53 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 53 of Plaintiff's Complaint.

54. HPC denies the allegations contained in paragraph 54 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 54 of Plaintiff's Complaint.

55. HPC denies the allegations contained in paragraph 55 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 55 of Plaintiff's Complaint.

56. HPC denies the allegations contained in paragraph 56 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 56 of Plaintiff's Complaint.

57. HPC denies the allegations contained in paragraph 57 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information

sufficient to admit or deny the remaining allegations contained in paragraph 57 of Plaintiff's Complaint.

58. HPC restates and reavers paragraphs 1-57 of its Answer.

59. HPC denies the allegations contained in paragraph 59 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 59 of Plaintiff's Complaint.

60. HPC denies the allegations contained in paragraph 60 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 60 of Plaintiff's Complaint.

61. HPC denies the allegations contained in paragraph 61 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 61 of Plaintiff's Complaint.

62. HPC denies the allegations contained in paragraph 62 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 62 of Plaintiff's Complaint.

63. HPC denies the allegations contained in paragraph 63 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 63 of Plaintiff's Complaint.

64. HPC restates and reavers paragraphs 1-63 of its Answer.

65. HPC denies the allegations contained in paragraph 65 of Plaintiff's Complaint to the extent they apply to HPC. Further answering, HPC is without knowledge or information sufficient to admit or deny the remaining allegations contained in paragraph 65 of Plaintiff's Complaint.

SECOND DEFENSE

66. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

67. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint is barred by the applicable statute of limitations.

FOURTH DEFENSE

68. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint is barred due to insufficiency of process and/or insufficiency of service of process.

FIFTH DEFENSE

69. HPC affirmatively alleges, in the alternative, that Plaintiff has failed to join all necessary parties for a just adjudication of the captioned matter

SIXTH DEFENSE

70. HPC affirmatively alleges, in the alternative, that it owed no duty to Plaintiff as a matter of law.

SEVENTH DEFENSE

71. HPC affirmatively alleges, in the alternative, that HPC neither knew nor reasonably should have known that the subject product presented a foreseeable risk of harm to the Plaintiff in the intended or foreseeable use of the subject product.

EIGHTH DEFENSE

72. HPC affirmatively alleges, in the alternative, that Plaintiff's claims are barred under the doctrines of superseding and/or intervening cause.

NINTH DEFENSE

73. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint is barred as Plaintiff assumed the risk, expressly, impliedly, primarily, secondarily, or otherwise, incidental to the allegations set forth in Plaintiff's Complaint.

TENTH DEFENSE

74. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint is barred by the doctrines of res judicata and collateral estoppel.

ELEVENTH DEFENSE

75. HPC affirmatively alleges, in the alternative, that Plaintiff's claims are barred by the equitable doctrine(s) of laches, waiver, unclean hands, and/or estoppel.

TWELFTH DEFENSE

76. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint is barred by the provisions of Ohio Revised Code §§2307.31-2307.79.

THIRTEENTH DEFENSE

77. HPC affirmatively alleges, in the alternative, that the subject product was not defective and at the time of manufacture, a practical and feasible alternative design or

formulation was not available that would have prevented the harm for which the Plaintiff seeks to recover compensatory damages without substantially impairing the usefulness or intended purpose of the product.

FOURTEENTH DEFENSE

78. HPC affirmatively alleges, in the alternative, that Plaintiff has failed to mitigate his damages, if any.

FIFTEENTH DEFENSE

79. HPC affirmatively alleges, in the alternative, that any damages sustained by Plaintiff are a result of the negligence of Plaintiff, which negligence is greater than the combined negligence of HPC.

SIXTEENTH DEFENSE

80. HPC affirmatively alleges, in the alternative, that Plaintiff's recovery of damages, if any, are subject to the defenses, caps, requirements and statutory provisions of Ohio Revised Code §2315.18.

SEVENTEENTH DEFENSE

81. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint is subject to Ohio Revised Code §2315.18 and its limitations on compensatory damages.

EIGHTEENTH DEFENSE

82. HPC affirmatively alleges, in the alternative, that the damages alleged in Plaintiff's Complaint, if any, were caused solely by the acts or omissions of persons and/or entities other than HPC, and over whose conduct HPC had no control, right to control, responsibility or reason to anticipate.

NINETEENTH DEFENSE

83. HPC affirmatively alleges, in the alternative, that any damages sustained by Plaintiff, as alleged in Plaintiff's Complaint, is the direct and proximate result of misuse of the subject product by third persons not under the control of HPC.

TWENTIETH DEFENSE

84. HPC affirmatively alleges, in the alternative, to the extent payments have been paid to Plaintiff or on Plaintiff's behalf, such payments must be set off against damages awarded herein.

TWENTY-FIRST DEFENSE

85. HPC affirmatively alleges, in the alternative, that the subject product was not defective in design or manufacture, as alleged in Plaintiff's Complaint, in that any damage sustained by Plaintiff was caused by an inherent characteristic of the subject product which is a generic aspect of the subject product and cannot be eliminated without substantially compromising the subject product's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge of the community.

TWENTY-SECOND DEFENSE

86. HPC affirmatively alleges, in the alternative, that the subject product was not defective due to inadequate warning or instruction, as alleged in Plaintiff's Complaint, in that any damage sustained by Plaintiff is the direct and proximate result of an open and obvious risk of the subject product and/or a risk of the subject product that is common knowledge.

TWENTY-THIRD DEFENSE

87. HPC affirmatively alleges, in the alternative, that any damages sustained by Plaintiff is the direct and proximate result of the failure of Plaintiff to use the subject product in

accordance with adequate instructions and warnings provided by the manufacturer of the subject product.

TWENTY-FOURTH DEFENSE

88. HPC affirmatively alleges, in the alternative, that any damages sustained by Plaintiff, as alleged in Plaintiff's Complaint, is the direct and proximate result of substantial alteration of the subject product by third persons not under the control of HPC.

TWENTY-FIFTH DEFENSE

89. HPC affirmatively alleges, in the alternative, that Plaintiff's Complaint is subject to the requirements of good faith pursuant to Rule 11, Ohio Revised Code §2323.42 and §2323.51, *et seq.*, and the common law.

TWENTY-SIXTH DEFENSE

90. HPC respectfully reserve the right to amend its Answer to add such additional affirmative defenses, cross-claims, counterclaims, and/or third-party claims as may be disclosed during the course of discovery in the captioned matter.

Respectfully submitted,

STEVEN G. JANIK (0021934)
AUDREY K. BENTZ (0081361)
JANIK L.L.P.
9200 South Hills Boulevard, Suite 300
Cleveland, Ohio 44147-3521
(440) 838-7600 • Fax (440) 838-7601
Email: Steven.Janik@Janiklaw.com
Audrey.Bentz@Janiklaw.com

Counsel for Hodgdon Powder Company

JURY DEMAND

Hodgdon Powder Company demands a trial by the maximum number of jurors allowed
by law.

/s/Audrey K. Bentz

STEVEN G. JANIK (0021934)
AUDREY K. BENTZ (0081361)
JANIK L.L.P.

Counsel for Hodgdon Powder Company

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically this **1st** day of **March, 2010**. Notice of this filing will be sent to Parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Audrey K. Bentz

AUDREY K. BENTZ (0081361)

JANIK L.L.P.

Counsel for Hodgdon Powder Company