

Ally

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED

JAN 21 2003

ROBERT H. SHEMPELL, CLERK
BY: *[Signature]*
DEPUTY

JAMES BAXLEY AND
TAMMIE BAXLEY

Plaintiffs

VS.

BLACKPOWDER PRODUCTS, INC

Defendants

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CV02-1901-A

JUDGE LITTLE

MAGISTRATE JUDGE KIRK

Jury Trial

ANSWER

COMES NOW Blackpowder Products Inc., named as Defendant in the above styled matter, by and through counsel, and files this its Answer to Plaintiffs' Complaint and shows this honorable court the following:

FIRST DEFENSE

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

SECOND DEFENSE

Responding to the specific allegations contained in Plaintiffs' Complaint Defendant shows 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 one of Plaintiffs' Complaint and therefore can neither admit nor deny the same.

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2.

Paragraph two of Plaintiffs' Complaint with respect to this Defendant, Blackpowder Products Inc., is admitted. Paragraph two of Plaintiffs' Complaint with respect to Connecticut Valley Arms Inc., is denied as pled.

3.

In response to paragraph three of Plaintiffs' Complaint this Defendant admits that there is diversity of citizenship; however, denies the amount in controversy to be sufficient to bestow jurisdiction.

4.

Paragraph four with respect to this Defendant is admitted.

5.

The allegations contained in paragraph five of Plaintiffs' Complaint are denied in their entirety.

6.

The allegations contained in paragraph six of Plaintiffs' Complaint are denied as pled. In further response, Defendant states that it is without knowledge or information sufficient to form a belief as to the truth of the matters of when the Plaintiff purchased the rifle bearing the serial number as alleged; however, admits that this Defendant did import into the United States and place in the stream of commerce the rifle bearing the serial number as alleged in paragraph six.

7.

The allegations contained in paragraph seven of Plaintiffs' Complaint are denied.

8.

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

9.

The allegations contained in paragraph nine of Plaintiffs' Complaint are denied.

10.

The allegations contained in paragraph ten of Plaintiffs' Complaint are denied.

11.

The allegations contained in paragraph eleven of Plaintiffs' Complaint are denied.

12.

The allegations contained in paragraph twelve of Plaintiffs' Complaint are denied.

13.

The allegations contained in paragraph thirteen of Plaintiffs' Complaint are denied.

14.

The allegations contained in paragraph fourteen of Plaintiffs' Complaint, including all subparts are denied.

15.

Initially, Defendant states that paragraph fifteen of Plaintiffs' Complaint requires no response. To the extent that it requires any response, Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted and

therefore can neither admit nor deny the same. In further response, however, to the extent any liability is alleged or implied by said paragraph against this Defendant, same is denied.

16.

Initially, Defendant states that paragraph sixteen of Plaintiffs' Complaint requires no response. To the extent that it requires any response, Defendant is without knowledge or information sufficient to form a belief as to the truth of the matters asserted and therefore can neither admit nor deny same. In further response, however, to the extent any liability is alleged or implied by said paragraph against this Defendant, same is denied.

17.

The allegations contained in paragraph seventeen of Plaintiffs' Complaint are denied as pled.

18.

The allegations contained in paragraph eighteen of Plaintiffs' Complaint are denied.

THIRD DEFENSE

For a third separate and distinct defense, Defendant states that the sole and only cause of the event and injury alleged by plaintiffs was the neglect, fault and misuse of the product by the plaintiff, James Baxley and defendants plead the such fault in complete bar to plaintiffs' recovery of any damages.

FOURTH DEFENSE

For a fourth separate and distinct defense, though denying negligence in any respect, or liability in any respect, Defendant states that any alleged injury or damage sustained by the Plaintiffs was a result of James Baxley's own negligence and fault and Defendant pleads James Baxley's comparative fault in reduction of any award of damages to Plaintiffs in accordance with Louisiana law.

FIFTH DEFENSE

For a fifth separate and distinct defense, the Defendant states that James Baxley assumed the risk of any injury or damages by his conduct, had the last clear chance to avoid any such injury or damage, and that any injury or damages sustained by the Plaintiffs was therefore the result of James Baxley's assumption of the risk or failure to exercise reasonable care for his own safety, and therefore Plaintiffs are unable to recover any sum whatsoever from this Defendant.

SIXTH DEFENSE

James Baxley's injuries and Plaintiffs damages were caused by a misuse, modification or alteration of the muzzleloading firearm at issue, and therefore, Plaintiffs are unable to recover any sum whatsoever from this Defendant.

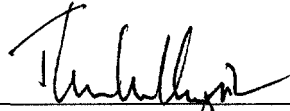
SEVENTH DEFENSE

Though Defendant did not design, manufacturer, or assemble the muzzleloading firearm at issue, nonetheless the design, manufacture, assembly, warranty and labeling of the firearm at issue were in conformity with the generally recognized state of the art at the time of the subject firearm was designed, manufactured, and labeled, and therefore Plaintiffs are unable to recover any sum whatsoever from this Defendant.

Jury Trial

Defendant demands jury trial of all issues so triable.

WHEREFORE, having fully Answered Plaintiffs' Complaint, Defendant prays that the same be dismissed and that judgment be entered in favor of Defendant against Plaintiffs, that all costs be cast against Plaintiffs, for a jury trial on all triable issues, and for such other and further relief as this Court deems just or proper.



Thomas M. Hayes III
Louisiana Bar No. 06685

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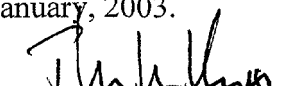
CERTIFICATE OF SERVICE

I, THOMAS M. HAYES, III, do hereby certify that a copy of the above and foregoing document was mailed or delivered to each of the following parties:

Mr. Robert M. Baldwin
Mr. D. Brian Allen
Hudson, Potts & Bernstein
Post Office Box 3008
Monroe, Louisiana 71210-3008
Attorneys for Plaintiffs

Mr. Darrell R. Avery
Avery & Robinson
216 6th Street
Jonesboro, Louisiana 71251
Attorney for Plaintiffs

Monroe, Louisiana, this 17th day of January, 2003.



Thomas M. Hayes, III

LAW OFFICES

HAYES, HARKEY, SMITH & CASCIO, L.L.P.

2811 KILPATRICK BOULEVARD (71201)

P. O. BOX 8032 (71211-8032)

MONROE, LOUISIANA

January 17, 2003

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Mr. Robert Shemwell
Clerk of Court
United States District Court
Western District of Louisiana
1167 Federal Building
300 Fannin Street
Shreveport, Louisiana 71101

RECEIVED

JAN 21 2003

ROBERT H. SMITH, CLERK
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT, LOUISIANA

IN RE: James Baxley and Tammie Baxley
vs.
Connecticut Valley Arms, Inc. and Black Powder Products, Inc.
United States District Court, Western District of Louisiana
Alexandria Division, CV 02-1901-A
Judge Little, Magistrate Judge Kirk

Dear Mr. Shemwell:

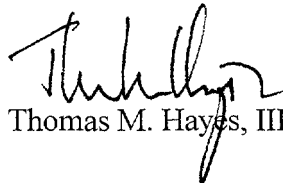
Enclosed please find the original and one copy of an Answer on behalf of Blackpowder Products, Inc. in the captioned matter. Please file the original in the record, conform the attached copy and return it to me in the enclosed envelope.

With copy of this letter, I am serving all counsel with a copy of this Answer.

With kind regards, I remain

Sincerely yours,

HAYES, HARKEY, SMITH & CASCIO

BY: 
Thomas M. Hayes, III

TMH:mas
Enclosures

cc: Mr. Robert Baldwin/Mr. D. Brian Allen
Mr. Darrell Avery