

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF LOUISIANA

JEFFREY MICHAEL SMITH,)	
Individually, and as administrator of)	CIVIL ACTION FILE
The estate of his minor child KIRSTEN)	NO. 09-4501
SMITH, and KITTIE SMITH,)	
)	JUDGE Sarah Vance
Plaintiffs,)	
)	MAGISTRATE JUDGE
v.)	Daniel E. Knowles
)	
DIKAR S. COOP. LTD, A FOREIGN)	JURY TRIAL
CORPORATION, and D.C. 1980, INC.,)	
)	
Defendants.)	

ANSWER OF D.C. 1980, INC.

COMES NOW, D.C. 1980, Inc. a Defendant in the above styled matter, and hereby responds to Plaintiff's Complaint as follows:

FIRST DEFENSE

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

SECOND DEFENSE

Responding to the specific allegations of Plaintiff's Complaint, Defendant shows as follows:

I.

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

II.

Denied as pled. In further response, however, Defendant admits that Co-Defendant Dikar is a foreign corporation with its principal place of business as set forth in paragraph II, and that it did design and manufacture the muzzleloading firearm at issue in the Plaintiff's Complaint, and further that it can be served pursuant to the terms of the Hague Convention Treaty, as the country of Spain and the United States are member countries to the Treaty.

III.

Paragraph III of Plaintiff's Complaint is denied as pled; however, this Defendant does admit that it, when it was previously named Connecticut Valley Arms, Inc., imported and sold the CVA Hawken model involved in Plaintiff's Complaint.

IV.

Paragraph IV of Plaintiff's Complaint is denied as to this Defendant as pled; however, this Defendant does not object to the venue or jurisdiction of this Court.

V.

Admitted.

VI.

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

VII.

This Defendant denies paragraph VII as pled. This Defendant is not a manufacturer or designer of any muzzleloading firearm. However, in further response, this Defendant admits it did sell the muzzleloading firearm which is the subject of this suit.

VIII.

Paragraph VIII of Plaintiff's Complaint is vague, and thus, Defendant demands a more definite statement. In further response, however, this Defendant did market and place in the stream of commerce the CVA Hawken sidelock muzzleloader in 1994.

IX.

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

X.

Denied.

XI.

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

XII.

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

XIII.

Denied.

XIV.

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

XV.

Denied.

XVI.

Denied.

XVII.

Denied.

XVIII.

Denied.

THIRD 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 contributory 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 by placing his hand over the end of a loaded and cocked gun, failing to familiarize himself with and to have knowledge of the warnings given for the use of the muzzleloader, and knowing that he was assuming the risk of any injury and damages, all of which serves to completely bar or reduce any recovery herein.

FOURTH 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.

FIFTH DEFENSE

At all times relevant herein, the Plaintiffs failed to mitigate their damages.

SIXTH 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.

SEVENTH DEFENSE

At all further times relevant herein, Defendant specifically pleads the requirements of and any and all affirmative defenses available as provided for by Act 64 of 1988, as amended, known as the Louisiana Product Liability Act, LSA-R. S. 9:2800.51 through 28.59.


JURY DEMAND

Defendant, D.C. 1980, Inc., requests trial by jury on all issues herein.

WHEREFORE, Defendant D.C. 1980, 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 Defendant D.C. 1980, Inc., and against Plaintiffs Jeffrey Michael Smith, individually, and as administrator of the estate of his minor child Kirsten

Smith, and Kittie Smith, dismissing their original Complaint for Damages, with prejudice, and at Plaintiff's costs, and for trial by jury on all issues herein.

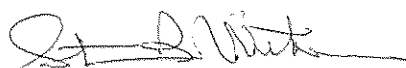
This 16th day of September, 2009.


/s/ Steven B. Witman
Steven B. Witman, Esquire
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Attorney for D.C. 1980, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on 16th day of September, 2009, a copy of the foregoing Answer was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to John W. deGravelles, Esq. and to Randolph W. Hunter, Esq. by operation of the Court's electronic filing system, and by depositing same, postage prepaid and properly addressed, in the United States Mail this 16th day of September, 2009.



/s/ Steven B. Witman

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