

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<b>GLEN UNDERWOOD,</b>	:	<b>CASE NO. 2:10-CV-00104</b>
	:	
<b>Plaintiff,</b>	:	<b>JUDGE A.L. MARBLEY</b>
	:	
<b>v.</b>	:	<b>MAGISTRATE JUDGE KING</b>
	:	
<b>CONNECTICUT VALLEY ARMS,</b>	:	
<b>INC.; BLACKPOWDER PRODUCTS,</b>	:	
<b>INC.; CABELA’S INC.; HODGDON</b>	:	
<b>POWDER COMPANY; POWERBELT</b>	:	<b><u>ANSWER OF ACCURA BULLETS</u></b>
<b>BULLETS; DIKAR, S. COOP., LTD.;</b>	:	
<b>and JOHN DOE DEFENDANTS #1-5,</b>	:	<b><u>JURY DEMAND</u></b>
	:	<i>Electronically Filed</i>
<b>Defendants.</b>	:	

Defendant Accura Bullets, LLC d/b/a Powerbelt Bullets i/s/h/a Powerbelt Bullets (“Powerbelt”), by and through its undersigned counsel, files its Answer to Plaintiff’s Complaint and respectfully sets forth as follows:

1. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “1” of the Plaintiff’s Complaint.
2. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “2” of the Plaintiff’s Complaint.
3. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “3” of the Plaintiff’s Complaint.

4. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “4” of the Plaintiff’s Complaint.

5. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “5” of the Plaintiff’s Complaint.

6. Defendant admits that it is an Idaho corporation. Defendant denies all of the other allegations in paragraph “6” of Plaintiff’s Complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “7” of the Plaintiff’s Complaint.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “8” of the Plaintiff’s Complaint.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “9” of the Plaintiff’s Complaint.

10. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “10” of the Plaintiff’s Complaint.

11. Defendant denies the allegations contained in the paragraph designated as “11” of Plaintiff’s Complaint and refers all questions of law to this Court.

12. Defendant denies the allegations contained in the paragraph designated as “12” of Plaintiff’s Complaint and refers all questions of law to this Court.

13. Defendant denies the allegations contained in the paragraph designated as “13” of Plaintiff’s Complaint and refers all questions of law to this Court.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “14” of the Plaintiff’s Complaint.

15. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “15” of the Plaintiff’s Complaint.

16. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “16” of the Plaintiff’s Complaint.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “17” of the Plaintiff’s Complaint.

18. Defendant denies the allegations contained in the paragraph designated as “18” of the Plaintiff’s Complaint.

19. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “19” of the Plaintiff’s Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “20” of the Plaintiff’s Complaint.

21. Defendant denies the allegations contained in the paragraph designated as “21” of Plaintiff’s Complaint and refers all questions of law to this Court.

22. Defendant denies the allegations contained in the paragraph designated as “22” of Plaintiff’s Complaint and refers all questions of law to this Court.

**FIRST CAUSE OF ACTION**  
**NEGLIGENCE**

23. Defendant repeats and realleges each and every answer to the allegations contained in the paragraphs designated as “1” through “22” in the Plaintiff’s Complaint with the same force and effect as if more fully set forth herein.

24. Defendant denies the allegations contained in the paragraph designated as “24” of Plaintiff’s Complaint and refers all questions of law to this Court.

25. Defendant denies the allegations contained in the paragraph designated as “25” of Plaintiff’s Complaint and refers all questions of law to this Court.

26. Defendant denies the allegations contained in the paragraph designated as “26” of Plaintiff’s Complaint and refers all questions of law to this Court.

27. Defendant denies the allegations contained in the paragraph designated as “27” of Plaintiff’s Complaint and refers all questions of law to this Court.

28. Defendant denies the allegations contained in the paragraph designated as “28” of Plaintiff’s Complaint and refers all questions of law to this Court.

29. Defendant denies the allegations contained in the paragraph designated as “29” of Plaintiff’s Complaint and refers all questions of law to this Court.

**SECOND CAUSE OF ACTION**  
**PRODUCTS LIABILITY**

30. Defendant repeats and realleges each and every answer to the allegations contained in the paragraphs designated as “1” through “29” in the Plaintiff’s Complaint with the same force and effect as if more fully set forth herein.

31. Defendant denies the allegations contained in the paragraph designated as “31” of Plaintiff’s Complaint and refers all questions of law to this Court.

32. Defendant denies the allegations contained in the paragraph designated as “32” of Plaintiff’s Complaint and refers all questions of law to this Court.

33. Defendant denies the allegations contained in the paragraph designated as “33” of Plaintiff’s Complaint and refers all questions of law to this Court.

34. Defendant denies the allegations contained in the paragraph designated as “34” of Plaintiff’s Complaint and refers all questions of law to this Court.

35. Defendant denies the allegations contained in the paragraph designated as “35” of Plaintiff’s Complaint and refers all questions of law to this Court.

36. Defendant denies that there was any defect in the bullets manufactured by Defendant and further denies the remaining allegations contained in the paragraph designated as “36” of Plaintiff’s Complaint and refers all questions of law to this Court.

37. Defendant denies the allegations contained in the paragraph designated as “37” of Plaintiff’s Complaint and refers all questions of law to this Court.

38. Defendant denies the allegations contained in the paragraph designated as “38” of Plaintiff’s Complaint and refers all questions of law to this Court.

**DEFECT DUE TO NONCONFORMANCE WITH  
MANUFACTURER’S REPRESENTATION**

39. Defendant repeats and realleges each and every answer to the allegations contained in the paragraphs designated as “1” through “38” in the Plaintiff’s Complaint with the same force and effect as if more fully set forth herein.

40. Defendant denies the allegations contained in the paragraph designated as “40” of Plaintiff’s Complaint and refers all questions of law to this Court.

41. Defendant denies the allegations contained in the paragraph designated as “41” of Plaintiff’s Complaint and refers all questions of law to this Court.

42. Defendant denies the allegations contained in the paragraph designated as “42” of Plaintiff’s Complaint and refers all questions of law to this Court.

**DEFECTIVE DESIGN, FORMULATION, AND/OR  
MANUFACTURE OR CONSTRUCTION**

43. Defendant repeats and realleges each and every answer to the allegations contained in the paragraphs designated as “1” through “42” in the Plaintiff’s Complaint with the same force and effect as if more fully set forth herein.

44. Defendant denies the allegations contained in the paragraph designated as “44” of Plaintiff’s Complaint and refers all questions of law to this Court.

45. Defendant denies the allegations contained in the paragraph designated as “45” of Plaintiff’s Complaint and refers all questions of law to this Court.

46. Defendant denies that there was any defect in the bullets manufactured by defendant and further denies the remaining allegations contained in the paragraph designated as “46” of Plaintiff’s Complaint and refers all questions of law to this Court.

47. Defendant denies the allegations contained in the paragraph designated as “47” of Plaintiff’s Complaint and refers all questions of law to this Court.

48. Defendant denies the allegations contained in the paragraph designated as “48” of Plaintiff’s Complaint and refers all questions of law to this Court.

49. Defendant denies the allegations contained in the paragraph designated as “49” of Plaintiff’s Complaint and refers all questions of law to this Court.

50. Defendant denies the allegations contained in the paragraph designated as “50” of Plaintiff’s Complaint and refers all questions of law to this Court.

51. Defendant denies the allegations contained in the paragraph designated as “51” of Plaintiff’s Complaint and refers all questions of law to this Court.

**THIRD CAUSE OF ACTION**  
**BREACH OF IMPLIED WARRANTY**

52. Defendant repeats and realleges each and every answer to the allegations contained in the paragraphs designated as “1” through “51” in the Plaintiff’s Complaint with the same force and effect as if more fully set forth herein.

53. Defendant denies the allegations contained in the paragraph designated as “53” of Plaintiff’s Complaint and refers all questions of law to this Court.

54. Defendant denies the allegations contained in the paragraph designated as “54” of Plaintiff’s Complaint and refers all questions of law to this Court.

55. Defendant denies the allegations contained in the paragraph designated as “55” of Plaintiff’s Complaint and refers all questions of law to this Court.

56. Defendant denies the allegations contained in the paragraph designated as “56” of Plaintiff’s Complaint and refers all questions of law to this Court.

57. Defendant denies the allegations contained in the paragraph designated as “57” of Plaintiff’s Complaint and refers all questions of law to this Court.

**FOURTH CAUSE OF ACTION**  
**BREACH OF EXPRESS WARRANTY**

58. Defendant repeats and realleges each and every answer to the allegations contained in the paragraphs designated as “1” through “57” in the Plaintiff’s Complaint with the same force and effect as if more fully set forth herein.

59. Defendant denies the allegations contained in the paragraph designated as “59” of Plaintiff’s Complaint and refers all questions of law to this Court.

60. Defendant denies the allegations contained in the paragraph designated as “60” of Plaintiff’s Complaint and refers all questions of law to this Court.

61. Defendant denies the allegations contained in the paragraph designated as “61” of Plaintiff’s Complaint and refers all questions of law to this Court.

62. Defendant denies the allegations contained in the paragraph designated as “62” of Plaintiff’s Complaint and refers all questions of law to this Court.

63. Defendant denies the allegations contained in the paragraph designated as “63” of Plaintiff’s Complaint and refers all questions of law to this Court.

**FIFTH CAUSE OF ACTION**  
**PUNITIVE DAMAGES**

64. Defendant repeats and realleges each and every answer to the allegations contained in the paragraphs designated as “1” through “63” in the Plaintiff’s Complaint with the same force and effect as if more fully set forth herein.

65. Defendant denies the allegations contained in the paragraph designated as “65” of Plaintiff’s Complaint and refers all questions of law to this Court.

WHEREFORE, this answering Defendant hereby demands judgment in its favor, dismissing Plaintiff’s Complaint, together with costs of suit, attorneys’ fees and interest.

**AFFIRMATIVE DEFENSES**

**FIRST SEPARATE DEFENSE**

66. The Complaint Fails to State a Cause of Action.

**SECOND SEPARATE DEFENSE**

67. This claim is barred in whole or in part by the applicable statute of limitations.

**THIRD SEPARATE DEFENSE**

68. Any injury or damage which plaintiff may have sustained was the result of the act or acts of a third person or persons over whom this defendant had no control.

**FOURTH SEPARATE DEFENSE**

69. Any injuries and/or damages alleged by the plaintiffs were not proximately caused by any acts or omissions on the part of this defendant.

**FIFTH SEPARATE DEFENSE**

70. The product was provided with instruction and warning materials which if heeded by the plaintiff would have prevented the alleged incident.

**SIXTH SEPARATE DEFENSE**

71. Plaintiffs' claims are barred or must be reduced by operation of the Plaintiff's Contributory Negligence or Comparative Fault pursuant to Ohio Revised Code sections 2315.33 through 2315.32.

**SEVENTH SEPARATE DEFENSE**

72. Defendant pleads all available defenses pursuant to the Ohio Product Liability Act, Ohio Revised Code sections 2307.71 through 2307.80.

**EIGHTH SEPARATE DEFENSE**

73. Defendant asserts that Plaintiff's claim is barred by his express and implied assumption of the risk.

**NINTH SEPARATE DEFENSE**

74. Plaintiff's Complaint fails to join one or more indispensable parties.

**TENTH SEPARATE DEFENSE**

75. Plaintiff's claims are barred because the product described in Plaintiffs' Complaint was not unreasonably dangerous when used in a reasonably foreseeable manner for its intended use, and therefore, recovery against defendants is barred.

**ELEVENTH SEPARATE DEFENSE**

76. Plaintiff's duty to warn claim is barred because any alleged condition complained of by Plaintiff was an open and obvious risk or a risk that is a matter of common knowledge.

**TWELFTH SEPARATE DEFENSE**

77. Plaintiff's claims are barred, in whole or in part, because the bullet was not defective in design or formulation because the harm for which Plaintiff seeks to recover compensatory damages was caused by inherent characteristics of the product which is a generic aspect of the bullet that cannot be eliminated without substantially compromising the bullet's usefulness or desirability and which is recognized by the ordinary person with the ordinary knowledge common to the community.

**THIRTEENTH SEPARATE DEFENSE**

78. Plaintiff's claims are barred, in whole or in part, because there was no feasible mechanism or devices available at the time the bullet was manufactured and/or distributed which would have prevented the subject incident.

**FOURTEENTH SEPARATE DEFENSE**

79. The product was not defective in design or formulation because at the time the product left the control of Defendant a practical and technically feasible alternative design or formulation was not available that would have prevented the harm for which plaintiff seeks to recover without substantially impairing the usefulness or intended purpose of the product.

**FIFTEENTH SEPARATE DEFENSE**

80. Plaintiff's claims for punitive damages are barred by the following: Commerce Clause of Article I, Section 8 of the U.S. Constitution; the Contracts Clause of Article I, Section 10 of the U.S. Constitution; the prohibition against ex post facto laws embodied in Article I,

Section 10 of the U.S. Constitution; the Supremacy Clause of Article VI of the U.S. Constitution; the First, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America; as well as the due process and equal protection provisions contained in the Constitution of the Commonwealth of Ohio. An award of punitive damages is not justified under the facts of this case and any such award will constitute a denial of equal protection, a denial of due process and/or the imposition of an excessive fine. An award of punitive damages must conform with the law as set forth in State Farm Automobile Ins. Co. v. Campbell, 538 U.S. 408 (2003), BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996), Cooper Industries, Inc. v. Leatherman Tool Group, 532 U.S. 424 (2001), and such other and future cases interpreting the laws involving the bases, standards, burdens of proof and amounts of punitive or exemplary damages under the given set of facts and circumstances. In the unlikely event that the issue of punitive damages is properly put before a trier of fact in this case, defendant is entitled to a unanimous jury verdict as to such a finding of fact and to bifurcation of this “punishment” phase and to a jury instruction that mandates a Clear and Convincing burden of proof.

**SIXTEENTH SEPARATE DEFENSE**

81. No act or omission of defendant was malicious, willful, wanton, reckless, or grossly negligent, and therefore any award of punitive damages is barred.

**SEVENTEENTH SEPARATE DEFENSE**

82. The incident product was not abnormally dangerous because it could be used safely.

**EIGHTEENTH SEPARATE DEFENSE**

83. The intervening negligent acts or omissions of other persons or entities may have constituted superseding causes of the accident or incident of which plaintiffs complain, and any

injuries or damages allegedly suffered by the plaintiffs was caused by such superseding negligence of other persons and/or entities.

**NINETEENTH SEPARATE DEFENSE**

84. Defendant asserts all of the protections provided in Ohio Revised Code Section 2307.80 including a bifurcated trial relating to punitive damages and application of the Clear and Convincing Evidence standard of Proof on any punitive damages claim.

**TWENTIETH SEPARATE DEFENSE**

85. Defendant asserts all of the protections and limitations as to punitive damages contained in Ohio Revised Code section 2315.21.

**TWENTY-FIRST SEPARATE DEFENSE**

86. Plaintiffs failed to give timely or proper notice to this answering defendant of any alleged breach of warranty, and as such, such claims are barred.

**TWENTY-SECOND SEPARATE DEFENSE**

87. That this answering Defendant effectively excluded and limited certain warranties pursuant to section 2-316 of the UNIFORM COMMERCIAL CODE and other Sections relating thereto.

**TWENTY-THIRD SEPARATE DEFENSE**

88. That the Plaintiff, having accepted the product, herein is barred from any remedy entitled to him to recover damages from the answering Defendant pursuant to Section 2-607 and Section 2-608 of the UNIFORM COMMERCIAL CODE and other Sections relating thereto.

**TWENTY-FOURTH SEPARATE DEFENSE**

89. Defendant reserves the right to plead other defenses, affirmative or otherwise, which may become known during their continuing investigation, and during discovery in this action.

WHEREFORE, this answering defendant hereby demands judgment in its favor, dismissing Plaintiff's Complaint, together with costs of suit, attorneys' fees and interest.

Respectfully submitted,

/s/ Hugh J. Bode

Hugh J. Bode, Esq. (0000487)

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**Attorneys for Defendant Accura Bullets, LLC  
d/b/a Powerbelt Bullets i/s/h/a Powerbelt Bullets**

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38, Defendant Accura Bullets, LLC demands a trial by jury on all issues appropriate for the jury to consider.

Dated: February 12, 2010  
Cleveland, Ohio

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 12<sup>th</sup> day of February, 2010, **Defendant Accura Bullets, LLC's Answer with Jury Demand** was filed via ECF for the United States District Court for the Southern District of Ohio to all parties of record.

*/s/ Hugh J. Bode* \_\_\_\_\_

Hugh J. Bode, Esq. (0000487)

REMINER

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**Attorney for Defendant Accura Bullets,  
LLC d/b/a Powerbelt Bullets i/s/h/a  
Powerbelt Bullets**