

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
EASTERN DIVISION**

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**DAKOTA FLOWERS,**

**Plaintiff,**

**vs.**

**NO.** \_\_\_\_\_

**“STOEGER” INDUSTRIES, a division of  
Bennelli USA Corporation, and  
“GANDER MOUNTAIN” COMPANY,**

**Defendants.**

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**COMPLAINT**

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COMES NOW, the Plaintiff, Dakota Flowers (hereinafter “Plaintiff”), and sues the Defendants, “Stoeger” Industries, a division of Bennelli USA Corporation (hereinafter “Stoeger”) and “Gander Mountain” Company (hereinafter ““Gander Mountain””), both jointly and severally, for damages and for cause of action would show to the Court that:

**JURISDICTION AND VENUE**

1. Jurisdiction is founded on the diversity of citizenship and an amount pursuant to 28 USCA 1332, in that the Plaintiff is and was at all times hereinafter mentioned, a resident of Henderson County Tennessee.

2. Defendant, “Stoeger” Industries, was and is now a division of Bennelli USA Corporation duly organized under the laws of the State of Maryland, with its principal place of business at 17603 Indian Head Highway, Acco Keek, MD 20607. “Stoeger” Industries was and is doing business in Tennessee, at all times herein complained of, and did commit a tortuous act as herein alleged in Tennessee.

3. Defendant “Gander Mountain”, was, and is, now a Corporation duly organized under the laws of the State of Minnesota, with its principal place of business at 180 East 5<sup>th</sup> Street, Suite 1300, St. Paul, Minnesota.

4. The matters in controversy exceed, exclusive of interests and costs, the sum of Seventy-Five Thousand and 00/100 dollars (\$75,000.00). Every issue of law and fact herein is wholly between the citizens of different states.

### **FACTS**

5. At all times herein complained of, the Defendant “Stoeger” Industries, a division of Bennelli USA Corporation was engaged in the business of designing, manufacturing, inspecting, assembling, selling and distributing shotguns, parts and accessories, including but not limited to, one (1) 12 Gauge Ben Conder Blue W/O O/U Shotgun (hereinafter referred to as “Shotgun”), along with all the component parts of said “Shotgun.”

6. On or about November 10, 2008, the Plaintiff Dakota Flowers, purchased from the Defendant “Gander Mountain” the “Shotgun” in Jackson, Madison County, Tennessee.

7. At all times herein complained of, the Defendant, ““Gander Mountain”,” was engaged in the business of selling and servicing shotguns and other firearms, specifically the shotguns and other firearms manufactured and sold by the Defendant “Stoeger.” Plaintiff would show to the Court that at all times herein complained of Defendant, ““Gander Mountain”” was so much under the control of the Defendant, “Stoeger,” that any and all acts, actions and/or omissions of the Defendant, ““Gander Mountain”,” are imputed to the Defendant, “Stoeger” for which the Defendant “Stoeger” is equally liable.

8. On or about February 5, 2009, at approximately 5:00 p.m. a malfunction occurred in the "Shotgun," designed, manufactured, inspected, sold and distributed by "Stoeger," and subsequently sold by "Gander Mountain" to Plaintiff

9. As the direct and proximate result of the malfunction in the "Shotgun," the weapon's barrel exploded, injuring the Plaintiff and, subsequently destroying the "Shotgun."

10. Plaintiff alleges that the Defendant "Gander Mountain," and thereby the Defendant, "Stoeger," is guilty of the following common law acts of negligence and omissions, each and all of which, individually and concurrently, was and were the direct and proximate cause of the personal injuries herein complained of, in that "Gander Mountain."

(a) Negligently and carelessly failed to properly inspect or test the "Shotgun" for defects, which a reasonable inspection would have revealed.

(b) Negligently and carelessly failed to warn of a defective condition of the "Shotgun," when they knew or should have known of the defective condition.

(c) Negligently and carelessly serviced the "Shotgun" so that the defect was not observed or corrected.

(d) Negligently and carelessly provided the Plaintiff with a "Shotgun" that was defective, deficient, unsafe and not in proper working condition.

(e) Negligently and carelessly failing to adequately and properly protect the Plaintiff against the defects in the "Shotgun."

(f) Negligently and carelessly failing to test the "Shotgun" to such an extent as would reveal the defective condition to a reasonable person of superior knowledge of firearms.

(g) Negligently and carelessly misrepresenting that the “Shotgun” was of high quality, character, reliability, safety and performance, to such an extent that the Defendants knew that the Plaintiff would justifiably rely upon their representations.

(h) In negligently and carelessly failing to exercise ordinary and reasonable care under the circumstances providing a good and safe “Shotgun.”

11. Plaintiff alleges that the Defendant, “Stoeger” is guilty of the following common law acts of negligence and omissions, each and all of which individually and concurrently was and were a direct and proximate cause of the property damages herein complained of, over and above the acts of its agent, “Gander Mountain”, in that “Stoeger:”

(a) Negligently and carelessly designed the “Shotgun.”

(b) Negligently and carelessly manufactured, assembled, inspected, installed and sold a “Shotgun” with defective components.

(c) Negligently and carelessly failed to warn the Plaintiff of the defective condition that it knew or should have known existed within the “Shotgun.”

(d) Negligently and carelessly failed to test the “Shotgun” so that the latent defect would be discovered and corrected before the delivery to the consumer.

(e) Negligently and carelessly failed to effectuate a proper program by which latent defects and irregularities could be detected before the “Shotgun” is delivered to the consumer.

(f) Negligently and carelessly failed to exercise ordinary and reasonable care under the circumstances to deliver a safe and reliable “Shotgun” to the Plaintiff.

(g) Negligently and carelessly misrepresenting that the “Shotgun” was of high quality, character, reliability, safety and performance from the use of booklets, trade name,

written representations, advertisements, all of which the Defendant knew or should have known were misrepresentative of the condition of the “Shotgun.”

12. As a direct and proximate result of the defects in the “Shotgun,” caused by the negligent acts and/or omissions of the Defendants as herein complained of, the “Shotgun” malfunctioned, ultimately causing personal injuries to the Plaintiff.

13. Plaintiff alleges that the Defendants, both jointly and severally, are liable to the Plaintiff based upon the Restatement of Torts 2d, §402A, as adopted in Tennessee, in that on the date of the sale, the Defendants were engaged in the business of selling firearms, specifically the “Shotgun,” herein complained of, and that the “Shotgun” was expected to and did reach the consumer, Plaintiff without substantial change in the condition in which it was sold, and that at the time of the sale the “Shotgun” was in defective condition, unreasonably dangerous to the consumer. Restatement of Torts 2d, §402A, specifically reading as follows:

402A Special Liability of Seller of Product for Physical Harm to User or Consumer.

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

- a) the seller is engaged in the business of selling such a product and
- b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

- a) the seller has exercised all possible care in the preparation and sale of his product, and

- b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

14. The violation of the above section of the Restatement of Torts 2d, as adopted in Tennessee, being a direct and proximate cause of the personal injuries of the Plaintiff.

15. Prior to the purchase of the "Shotgun," as herein alleged, the Defendants induced purchases of this "Shotgun" by expressing warranting to the Plaintiff by advertisements directed to the attention of the public and particularly to the ultimate consumer, Plaintiff, that such consumers could safely use and depend upon shotguns manufactured and sold by the Defendants, and that such use would require no special precautions. Defendants further made numerous other representations prior to the sale, expressly warranting the safety, dependability, character, quality, reliability and performance and that these oral expressed warranties, along with the advertisements expressly warranting the "Shotgun" became part of the basis of the bargain and the Plaintiff did rely upon the skill and judgment of the Defendants express warranties. These express warranties were not true and as a direct and proximate result of the breach of these express warranties, the explosion as herein alleged occurred and caused the Plaintiff's personal injuries.

16. Defendants, and each of them, both jointly and severally, breached §47-2-314 of the Tennessee Code Annotated, which was in full force and effect at the time of the sale, in that the Defendants impliedly warranted the "Shotgun," sold to the Plaintiff, to be a merchantable quality, fit, safe and in proper condition for the ordinary use which shotguns are designed and used for.

17. Defendants breached §47-2-314 of the Tennessee Code Annotated, which was in full force and effect at the time of the sale, in that the Defendants impliedly warranted the

“Shotgun” to be fit for using as a “Shotgun,” the purpose for which it was designed, and that it was safe and suitable for the use made by the Plaintiff.

18. In purchasing and using the “Shotgun,” the Plaintiff relied upon the Defendants skill and judgment, and the implied warranty of the fitness for the purpose for which the Plaintiffs had purchased the “Shotgun.”

19. At the time of the sale herein complained of, the implied warranties were not true, the “Shotgun” was not suitable and reasonably fit to be used for the purpose for which it was purchased by the Plaintiff and the “Shotgun” was not of merchantable quality. Rather, it was unfit, unsafe and unusable for the purpose for which it was intended. The defective condition constituted a breach of the Defendant’s implied warranty of fitness for a particular purpose and merchantability, which was the direct and proximate cause of the property damages of the plaintiff.

20. As a further proximate result of the Defendants’ negligence and/or wrongful acts, as heretofore described, Plaintiff also lost the use of its personal property.

21. Plaintiff would show to this Honorable Court that as a direct and proximate result of the aforescribed acts of negligence, he was seriously and permanently injured, as Plaintiff suffered personal injuries, including but not limited to, severe headaches, contusions and abrasions about his arm, hand and face, loss of hearing, and extreme fright and shock to his entire system, for all of the above type mentioned personal injuries, Plaintiff sues the Defendants for just compensation for injuries inflicted upon him by these Defendants.

22. In addition, Plaintiff sues in this lawsuit to recover all past, future, known and unknown medical expenses, in the form of doctors, hospitals, drugs, nurse’s care and attention in an effort to reduce the Plaintiff’s permanent and temporary disability in that he has been unable

to work as a result of this incident and thereby has and will be caused in the future to lose large sums of money in the form of wages.

23. Plaintiff would further show that he has expended large sums of money as a direct and proximate result of the Defendants' negligence and/or wrongful acts in an effort to mitigate the damages, that were caused both jointly and severally by the Defendants.

WHEREFORE, Plaintiff, Dakota Flowers sues the Defendants, individually and/or concurrently for the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), compensatory damages and demands a jury to try the issues when joined.

Respectfully submitted,

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