

**UNITED STATES DISTRICT COURT
DISTRICT COURT OF COLORADO**

PREDATOR INTERNATIONAL, INC.,)	
a Colorado corporation,)	
)	
Plaintiff/Counter-Defendant,)	
)	
vs.)	Case No. 09 cv 00970-PAB-KMT
)	
GAMO OUTDOOR USA, INC.,)	DEMAND FOR JURY TRIAL
a Florida corporation, and)	
INDUSTRIALS EL GAMO, S.A.,)	
a Spanish corporation,)	
)	
Defendants/Counter-Plaintiff.)	

**DEFENDANT GAMO OUTDOOR USA, INC.’S and DEFENDANT INDUSTRIAS EL
GAMO S.A. n/k/a GAMO OUTDOOR S.L.’S
ANSWER AND AFFIRMATIVE DEFENSES TO
FOURTH AMENDED COMPLAINT AND COUNTERCLAIMS**

Defendants, GAMO OUTDOOR USA, INC. (“GAMO USA”) and INDUSTRIAS EL GAMO S.A., *now known as*, GAMO OUTDOOR S.L., a Spanish corporation (“GAMO SPAIN”) (hereinafter collectively referred to as “GAMO”), by counsel, SWANSON, MARTIN & BELL, LLP and PATTON BOGGS LLP, for their Answer and Affirmative Defenses to Plaintiff PREDATOR INTERNATIONAL, INC.’s (“PREDATOR”) Fourth Amended Complaint (“the Complaint”), state as follows:

THE PARTIES

1. Plaintiff Predator International, Inc. (“Predator”) is a corporation organized under the laws of the State of Colorado having a principal place of business at 4401 S. Broadway, Suite 201, Englewood, Colorado, 80113.

ANSWER: GAMO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same.

2. Upon information and belief, Defendant Gamo Outdoor USA, Inc. (“Gamo”) is a corporation organized under the laws of the State of Florida having a principal place of business at 3911 SW 47th Avenue, Suite 194, Fort Lauderdale, Florida, 33314.

ANSWER: GAMO admits the allegations contained in Paragraph 2 of the Complaint.

3. Upon information and belief, Defendant Industrias El Gamo, S.A. is a corporation organized and existing under the laws of Spain having a principal place of business at Santa Creu Calafell KM 10, Sant Boi de Llobregat, Barcelona, 08830. Defendants are hereinafter collectively referred to as “Gamo.”

ANSWER: GAMO admits that INDUSTRIAS EL GAMO S.A. was extinguished and merged into GAMO OUTDOOR S.L., a Spanish corporation, in 2009. GAMO OUTDOOR S.L. has a principal place of business at Santa Creu Calafell KM 10, Sant Boi de Llobregat, Barcelona, 08830.

4. Predator is in the business of manufacturing, distributing, and selling high performance air gun pellets in interstate commerce and internationally.

ANSWER: GAMO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Complaint and therefore denies the same.

5. Upon information and belief, Defendants are in the business of designing, manufacturing, distributing, and selling airguns and airgun pellets in interstate commerce and internationally.

ANSWER: GAMO admits that GAMO SPAIN is in the business of manufacturing, distributing and selling airguns and airgun pellets internationally. GAMO admits that GAMO USA it is in the business of distributing and selling airguns and airgun pellets in interstate commerce. GAMO denies the remaining allegations contained in Paragraph 5 of the Complaint.

JURISDICTION

6. This action arises under the Lanham Act, 15 U.S.C. §1051, *et seq.*, the Copyright Act, Colorado Consumer Protection Act, C.R.S. §6-1-101, *et seq.*, and the principles of common law in the State of Colorado and pertaining to trade dress infringement, unjust enrichment, and unfair competition.

ANSWER: GAMO admits that this action arises under the Lanham Act, 15 U.S.C. §1051, *et seq.*, and the Copyright Act, but denies that the claims asserted in the Fourth Amended Complaint are valid and denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. This is a civil action for federal trade dress infringement, copyright infringement, violation of the Colorado Consumer Protection Act, and common law unfair competition, trade dress infringement, and unjust enrichment.

ANSWER: GAMO admits that this is a civil action for federal trade dress infringement and copyright infringement, but denies that the claims asserted in

the Complaint are valid and denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. This Court has jurisdiction over the counts of this action based on 28 U.S.C. §§1331, 1338, and 1367.

ANSWER: GAMO admits the allegations contained in Paragraph 8 of the Complaint.

9. Upon information and belief, this Court has personal jurisdiction over the Defendants by virtue of the Defendants' acts of offering products for sale in this District.

ANSWER: GAMO denies the allegations contained in Paragraph 9 of the Complaint.

10. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) and (c).

ANSWER: GAMO denies the allegations contained in Paragraph 10 of the Complaint.

FACTUAL BACKGROUND OF CLAIMS

11. Since at least as early as 2002, Predator has been manufacturing, distributing, and selling a polymer tipped airgun pellet in the United States and internationally. At that time, the pellets were called Predator Premium Hunting Pellets. Since 2007, they've been sold under the mark POLYMAG. See POLYMAG product image and description attached hereto as Exhibit 1.

ANSWER: GAMO is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and therefore denies the same.

17.^{[sic]¹} On its website and in its brochure, the Predator describes the POLYMAG as follows: “The Predator Polymag™ (polymer tip pellet) was designed specifically to be the most effective and efficient airgun hunting ammunition available. See Exhibit 1.”

ANSWER: GAMO admits a document labeled Exhibit 1 is attached to the Complaint and states that the document speaks for itself. GAMO otherwise denies the allegations contained in Paragraph 17 of the Complaint.

18. On its website, Predator also describes the POLYMAG as follows:

Experience better accuracy, deeper penetration and higher velocity with Predator’s revolutionary new hunting Polymags™ (polymer tip pellet). Hollow point design creates instant expansion on impact allowing for the taking of larger animals. Hard polymer tip provides excellent flight characteristics. See Exhibit 1.

ANSWER: GAMO admits a document labeled Exhibit 1 is attached to the Complaint and states that the document speaks for itself. GAMO otherwise denies the allegations contained in Paragraph 18 of the Complaint.

19. Elsewhere on Predator’s website, the features of the POLYMAG are described by Predator as follows:

The Predator Polymag™ (polymer tip pellet) features a traditional hollow point design in a standard airgun application. The aerodynamic shape and hard polymer tip provide excellent flight characteristics. Other features include:

- Higher Velocity & Flat Trajectory
- Very Accurate and Efficient
- Allows for Deeper Penetration
- Instant Expansion on Impact
- Light Weight (.177 cal weighs 8gr., 22 weighs 16 gr)

¹ GAMO notes that paragraphs 12 through and including 16 are omitted from Predator’s Fourth Amended Complaint.

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