UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA
(PITTSBURGH DIVISION)

BATTLE BORN MUNITIONS INC. 171 Coney Island Drive Sparks, NV 89431, Plaintiff, v. DICK'S SPORTING GOODS, INC. 345 Court Street Corapolis, PA 15108 Defendant.	Case No. JURY TRIAL DEMANDED

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, BATTLE BORN MUNITIONS INC. ("BBM"), by and through undersigned counsel, and brings this Complaint against DICK'S SPORTING GOODS, INC. ("Dick's"), and alleges as follows:

1. This action arises from breach of contract and fraud by Dick's. BBM is licensed by the U.S. Department of State to broker the international sale of ammunition and other munitions. On or about January 5, 2016, BBM entered into Dick's standard-form PD Domestic Vendor Agreement (attached hereto as Exhibit A) (hereinafter, the "Vendor Agreement"). The Vendor Agreement establishes basic terms for BBM's sale of ammunition to Dick's under the brand name "Field and Stream" for resale at Dick's retail stores.

PARTIES

2. BBM is a corporation organized and existing under the laws of the State of Nevada with its principal place of business at 171 Coney Island Drive, Sparks, Nevada 89431.

3. Dick's is a corporation organized and existing under the laws of the State of

Delaware with its headquarters located at 345 Court Street, Corapolis, Pennsylvania 15108. Dick's is a sporting goods retailer that operates over 700 stores primarily in the eastern United States. Dick's also owns and operates the "Field & Stream" retail chain and brand name.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds $75,000, exclusive of interest and costs.

5. The Vendor Agreement provides as follows:

> **Governing Law; Jurisdiction.** This Vendor Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to the principles of conflicts of laws. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Allegheny County, Pennsylvania, for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is brought in an inconvenient forum, or that the venue of such suit, action or proceeding is improper.

FACTS

6. In negotiating a purchase order under the Vendor Agreement, Dick's promised that if BBM agreed to procure, customize, brand and package certain quantities and calibers of ammunition, Dick's would take delivery no later than November 16, 2016. This was a material misrepresentation as Dick's knew at the time it was made that it would not take delivery of the branded ammunition in November 2016, as promised. After BBM performed all of its obligations, Dick's refused to take delivery of the branded ammunition in November 2016 as BBM had expected and reasonably anticipated up until that time. As a result, BBM was forced to warehouse the branded ammunition until August 2017, at which time Dick's finally took delivery. BBM thus suffered substantial economic and lost opportunity damages.

7. The Vendor Agreement provides for payment within 60 days of delivery (i.e., net 60) at the latest. A two percent discount is applied to payments made within 30 days of delivery (i.e., 2%, net 30). (Exhibit A).

8. The packaging and headstamp of the BBM-supplied ammunition were branded as Field and Stream, the trademark of which is owned by American Sports Licensing, LLC, a subsidiary of Dick's. Accordingly, due to licensing considerations and the terms of the Vendor Agreement, the ammunition could not be sold to a third party when Dick's refused to take delivery by November 2016.

9. BBM's suppliers for the branded ammunition were two foreign companies - Igman, d.d. ("Igman") and RUAG Hungarian Ammotec, Inc. ("RUAG"). Based on the schedule proposed by Dick's, BBM paid its suppliers for the branded ammunition in full prior to November 2016. This was a capital investment of $4,492,550: Igman - $2,296,741 and RUAG - $2,195,809.

10. Since Dick's represented it would take delivery of the branded inventory no later than November 2016, BBM reasonably anticipated, under the terms of the Vendor Agreement, that it would recoup its capital by December 2016 (2%, net 30), or at the latest January 2017 (net 60). However, by the end of 2016, Dick's had failed to take delivery of branded inventory in the value of $3,071,910. Based on Dick's representation that it would take delivery of all branded ammunition no later than November 2016, BBM reasonably anticipated having an additional $3,071,910 of cash on hand by the end of 2016. This substantial cash shortfall caused BBM to suffer both incidental and consequential damages.

11. Pursuant to the Vendor Agreement, Dick's was entitled to a two percent (2%) discount for payment of invoices within 30 days of delivery. In breach of its contractual

obligations, Dick's frequently took the 2% discount even when payment was made more than 30 days after its due date. BBM sustained a total financial loss of $108,462 as a result of Dick's underpayments for inventory that was delivered in 2016 and 2017.

12. Dick's also improperly deducted chargebacks from BBM invoices. Pursuant to the Vendor Agreement, chargebacks are deductions taken when delivered inventory does not meet certain specifications. Dick's failed to provide any support or detail for the chargebacks deducted from amounts owed BBM despite repeated requests to do so. BBM sustained a total financial loss of $14,608 as a result of Dick's improper chargebacks against inventory delivered in 2016 and 2017.

13. BBM's reliance on Dick's representation that it would take delivery of the branded inventory no later than November 2016 caused BBM to incur warehousing and insurance costs that would otherwise not have been incurred. Additional warehousing costs of $45,125 were incurred by BBM (including storage, handling and labor) through August 2017, when Dick's finally drew down the last of the inventory.

14. BBM's reliance on Dick's representation that it would take delivery of the branded inventory no later than November 2016 caused BBM to incur additional insurance costs. The Vendor Agreement required BBM to carry $10 million in product liability insurance, which BBM purchased for 2016. It was required to renew the product liability insurance policy in 2017 since Dick's failed to perform and misrepresented that it would take delivery of the branded inventory no later than November 2016. The additional cost of product liability insurance in 2017 was $32,743.

15. BBM incurred a substantial loss of profits when it lost the opportunity to sell twelve (12) Bell helicopters to the government of Lebanon. BBM is a registered broker in good

standing with the U.S. Department of State International Traffic of Arms Regulation and holds several licenses with the U.S. Department of Justice, including Class 6 manufacturer, Class 8 importer, and Class 11 importer of war and destructive devices.

16. BBM has a successful history of brokering helicopter sales to foreign governments. BBM personnel spent almost a year negotiating the sale of 12 helicopters to Lebanon. BBM spent more than $65,000 in associated travel and lodging toward completing of the transaction. On December 7, 2016, the government of Lebanon placed a $48 million purchase order with BBM for 12 Bell 407 GXP helicopters. The U.S. Department of Commerce, Bureau of Industry and Security, approved the sale by issuing an export license.

17. Bell Helicopters' sales price to BBM for the helicopters for transfer to Lebanon was $37.2 million. To secure Bell's production costs, BBM was required to deposit ten percent (10%) - $3.72 million.

18. As shown above, BBM tied up $4,492,550 of its liquidity in 2016 in reliance on Dick's representation that it would take delivery of the branded ammunition no later than November 2016. However, by the end of 2016, BBM had not been paid for more than $3 million of the branded inventory - funds that BBM planned to have recouped at the end of 2016 to cover the $3.72 million deposit to Bell. The Lebanese government terminated the arrangement due to BBM's inability to perform in or about April 2017. During this window of opportunity to close the deal with the Lebanese, BBM would have had sufficient cash to make the deposit if it were not for Dick's failure to perform and BBM's detrimental reliance on Dick's misrepresentation that it would take delivery of the branded ammunition no later than November 2016.

19. As a direct and proximate cause of Dick's misrepresentation that it would take delivery of the branded ammunition no later than November 2016, BBM lost reasonably-

anticipated profits of $5,224,000 on the anticipated helicopter transaction with the government of Lebanon.

20. Dick's fraudulent inducement of BBM to enter into a contract for the Vendor Agreement of Field and Stream branded ammunition, by way of the misrepresentation that it would take delivery no later than November 2016, is not interwoven with its performance under the Vendor Agreement. The fraudulent inducement was extraneous to the subject matter of the Vendor Agreement. Like most other large, publicly-owned, "bricks-and-mortar" retailers, the value of Dick's stock is under pressure due to competition from internet-based retailers. Stock market analysts consider inventory turnover to be a vital measure of a retailer's financial performance. The number of days inventory sits on a retailer's shelves prior to sale is an important factor. The day sales of inventory ("DSI") is a financial measure of a company's performance that gives investors an idea of how long it takes a company to turn inventory into sales. A low DSI indicates that a retailer is achieving satisfactory inventory turnover and is attractive to investors.

21. In order to bolster the value of its stock in 2016 and 2017, Dick's sought to lower its DSI by manipulating its branded inventory. BBM was a victim of this manipulation. BBM could not sell the branded ammunition to a third party. BBM was forced to warehouse Dick's house-branded goods for more than 365 days. Meanwhile, since Dick's refused to take delivery on the schedule it initially proposed, the house-branded goods were not counted as inventory for purposes of calculating Dick's DSI. Through its manipulation of house branded inventory on a large scale Dick's achieves twin goals: (i) a lower DSI since the branded goods are not counted as inventory, and (ii) a ready-supply of branded goods (warehoused at the vendor's expense) that it can draw down at its convenience. BBM's branded ammunition is just one incidence among

many of “house” goods caught up in Dick’s efforts to manipulate its market value.

22. Further, in anticipation of a significant hike in the retail price of ammunition in the domestic market in late 2016, Dick’s effected a plan to manipulate the market for the retail sale of the most popular calibers. Dick’s leveraged its balance sheet to entice vendors and manufacturers to supply it with ammunition by misrepresenting inventory deliveries and payment timelines. Dick’s developed a plan to buy sufficient inventories of ammunition to meet its near-term sales demands and to then increase vendor inventory commitments (from companies such as BBM) to an “over and above” volume. Thus tying up the manufacturing capacity of key manufacturers and obtaining sufficient control of the retail calibers to manipulate the market price. The plan was to hoard ammunition inventories in the warehouses of it vendors. By gaining control of enough supply of retail ammunition available to the market, Dick’s planned to set the price as demand rose.

23. To this end, Dick’s ordered excessive amounts of ammunition branded with their house brand, “Field & Stream.” Vendors were unable to re-sell the branded ammunition to a third-party due to Dick’s branding, both on boxes and head stamp. Vendors had no option but to involuntarily warehouse the ammunition on Dick’s behalf until such time as Dick’s determined that demand was sufficiently high for it to manipulate retail prices. To this end, Dick’s failed to make any reasonable effort to market the house-brand ammunition during the key holiday-season sales period. Dick’s did not widely distribute house-brand ammunition to its stores, nor did it promote sales in its retail brochures. Meanwhile, competing brands of ammunition were provided significantly higher in-store marketing profiles and support, and the house-branded ammunition was offered for retail at a significantly higher price point than was represented to vendors.

24. Market manipulation is a business practice used by Dick's in the past. In October 2008, Dick's settled FTC charges that of market manipulation in the market for the retail sale of golf merchandise. Dick's has engaged in a pattern of unreasonable and unlawful business practices designed to manipulate retail markets for its benefit and to the disadvantage of vendors and consumers.

25. In the instant case, Dick's fraudulent promises induced BBM to enter into the Vendor Agreement and to tie-up its capital for an unreasonable period. Dick's never intended to take delivery of the house-branded ammunition by November 2016, as promised. The fraudulent promises were made to induce BBM to agree to the terms of the Vendor Agreement, as such they are collateral to Dick's performance under the contract.

COUNT I
(Breach of Contract)

26. BBM repeats and realleges paragraphs 1 through 25 as though fully set forth herein.

27. In Pennsylvania breach of contract entails: (a) the existence of a contract, (b) a breach of a duty imposed by the contract, and (c) resulting damages.

28. The parties entered into a Vendor Agreement, which provides basic terms for the sale pursuant to purchase orders of Field and Stream branded ammunition.

29. Dick's submitted a purchase order to BBM for house branded ammunition and agreed that it would take delivery of the goods no later than November 2016, and would pay for the goods net 60 days, at the latest.

30. Dick's breached by failing to take delivery of the goods by November 2016, as agreed.

31. Dick's breached the Vendor Agreement by improperly discounting invoices at

2%, net 30, even though they were not timely paid.

32. Dick's breached the Vendor Agreement by discounting BBM's invoices for improper chargebacks.

33. BBM performed its obligations under the Vendor Agreement and Purchase Order.

34. As a direct and proximate cause of Dick's breach of contract, BBM has suffered incidental damages and economic or consequential damages (lost future profits/opportunity).

COUNT II
(Fraudulent Inducement)

35. BBM repeats and realleges paragraphs 1 through 34 as though fully set forth herein.

36. Dick's misrepresented to BBM that it would take delivery of branded ammunition no later than November 2016 in order to induce BBM to agree to the contract.

37. Dick's misrepresentation, a direct falsehood, was calculated to deceive BBM.

38. The misrepresentation was material to the Vendor Agreement and was made falsely by Dick's.

39. Dick's knew the representation that it would take delivery by November 2016 was false, or Dick's made the representation with reckless disregard to its truth or falsity.

40. Dick's intended to mislead BBM when it misrepresented that it would take delivery by November 2016. BBM was justified in relying on the misrepresentation, and did so to its substantial detriment. Dick's concealed the falsity of its representation from BBM until it refused to take delivery of the branded ammunition in November 2016.

41. As a direct and proximate cause of BBM's reliance on Dick's misrepresentation BBM has suffered incidental damages and economic or consequential damages (lost future profits/opportunity).

COUNT III
(Negligent Misrepresentation)

42. BBM repeats and realleges paragraphs 1 through 41 as though fully set forth herein.

43. Dick's failed to exercise reasonable care and/or competence in communicating the timeline under which it would take delivery of branded ammunition from BBM.

44. Dick's was aware, or reasonably should have been aware, that BBM would rely on its promise to take delivery of the branded ammunition no later than November 2016. And, in fact, that BBM relied on the false and reckless representation to its detriment. Dick's acted wantonly and in reckless disregard of the damages caused to BBM. Dick's misrepresentation constitutes gross negligence.

45. BBM was justified in relying on BBM's promise to take delivery of the branded ammunition no later than November 2016, and did so to its substantial detriment. Dick's concealed the falsity of its representation from BBM until it refused to take delivery of the branded ammunition in November 2016.

46. As a direct and proximate cause of BBM's reliance on Dick's misrepresentation BBM has suffered incidental damages and economic or consequential damages (lost future profits/opportunity).

PRAYER FOR RELIEF

WHEREFORE, BBM respectfully requests that this Honorable Court grant the following relief:

(a) An award of incidental damages in an amount not less than $200,938 plus pre- and post-judgment interest at the maximum rate permitted by law.

(b) An award of consequential damages for lost profits in an amount not less than $5,224,000, plus pre- and post-judgment interest at the maximum rate permitted by law.

(c) Costs, litigation expenses, and attorneys' fees as are available under applicable law.

(d) Such other and further relief as the Court deems proper and just.

JURY TRIAL DEMANDED

A jury trial is demanded by Plaintiff as to all matters.

Respectfully submitted,

/s/ John M. Shoreman

John M. Shoreman
DC 407626
McFadden & Shoreman
1050 Connecticut Avenue,
NW Suite 500
Washington, DC 20036
(202) 772-3188
Fax (202) 204-8610
jmshoreman@verizon.net

/s/ Mario B. Williams

Mario B. Williams
GA 235254
Pro Hac Vice Motion Forthcoming
Nexus Derechos Humanos Attorneys, Inc.
44 Broad Street, NW, Suite 200
Atlanta, Georgia 30303
(404) 254-0442
Fax (703) 935-2453
mwilliams@ndhlawyers.com

Counsel for Plaintiff