

STATE OF INDIANA

IN THE LAKE SUPERIOR COURT  
CIVIL DIVISION ROOM ONE  
HAMMOND, INDIANA

COUNTY OF LAKE

CITY OF GARY, INDIANA

Plaintiff,

v.

SMITH & WESSON CORP., *et al.*

Defendants,

)

)

) CASE NO. 45D01-1211-CT-233

)

) The Honorable John M. Sedia

)

)

**CITY OF GARY'S RESPONSE IN OPPOSITION TO  
RUGER'S MOTION TO COMPEL OR, ALTERNATIVELY, FOR SANCTIONS**

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**INTRODUCTION**

On November 17, 2023, a three-year-old boy accidentally shot and killed his two-year-old brother in Gary, Indiana with a handgun.<sup>1</sup> On August 30, 2023, a five-year-old boy accidentally killed himself with a handgun in Gary.<sup>2</sup> And on December 4, 2023, the same day that Defendant Ruger filed the instant Motion, a three-year-old boy died after being shot accidentally in his home in Merrillville, Indiana.<sup>3</sup> In the midst of these and other deaths from accidental gunshot wounds, Ruger seeks a ruling from this Court in the guise of a discovery ruling to foreclose the issue of the effects of its false advertising on gun violence in the City. Ruger has not shown that it is entitled to such a ruling. Ruger's motion should be denied.

In the alternative, Ruger seeks to compel further responses to its Interrogatory No. 4 from the City. That request is also without merit. The City has made clear that it fully intends to

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<sup>1</sup> <https://abc7chicago.com/gary-shooting-police-georgia-street-boy-shot/14079618/>

<sup>2</sup> <https://www.cbsnews.com/chicago/news/boy-5-killed-shooting-in-gary/>

<sup>3</sup> <https://www.nbcchicago.com/news/local/merrillville-police-gives-update-after-toddler-fatally-shot-inside-home/3295392/>

supplement its answer as it uncovers additional evidence, which will likely include these recent toddlers' deaths. There is no basis to move to compel now.

Ruger's motion suffers a fundamental flaw. Ignoring rulings by the Supreme Court and the Court of Appeals, Ruger asks this Court to accept Ruger's unsupported argument that its false and misleading advertising in Gary—that firearms ownership increases personal safety—gives rise to a cause of action if and only if the City can tie a particular piece of its misleading advertising to a particular gun and a particular accidental death or suicide in Gary. This Court should reject Ruger's invitation for the reasons discussed below.

### **LEGAL STANDARD**

Trial courts have “broad discretion on issues of discovery and their orders carry a strong presumption of correctness.” *Fox v. Franciscan All., Inc.*, 204 N.E.3d 320, 330 (Ind. Ct. App. 2022), *transfer denied*, 220 N.E.3d 59 (Ind. 2023). A ruling on a motion to compel will not be overturned unless it is “against the logic and effect of the facts and circumstances before the court, or the reasonable, probable and actual deductions flowing therefrom.” *Id.*

### **ARGUMENT**

Ruger's motion should be denied because it ignores controlling law and distorts the course of discovery in this case.

**A. The City's deceptive-marketing claims against Ruger are not limited to proving that it has been harmed by accidental deaths and suicides.**

Ruger's Motion should be denied because it depends on a false premise. Ruger contends that the City's deceptive-advertising claims against it are limited to recovering “municipal funds” expended “in responding to accidental firearm injuries and suicides” involving Ruger handguns in Gary. Mot. at 2.

Not so. Count II of the Complaint alleges that Ruger and the other Manufacturer Defendants have “knowingly” and “intentionally . . . deceived” residents of Gary by advertising that handgun ownership “enhances personal security”—even after countless tragedies and numerous studies have conclusively proved otherwise—and the City has been and continues to be harmed by “unintentional shootings, teen suicides, *domestic disputes and other acts of violence.*” *City of Gary v. Smith & Wesson Corp.*, 126 N.E.3d 813, 830 (Ind. Ct. App. 2019) (“*Gary III*”) (citing Compl. ¶¶ 61-62, 64, 76) (emphasis added); *see City of Gary v. Smith & Wesson Corp.*, 801 N.E.2d 1222, 1247 (Ind. 2003) (“*Gary I*”). Consequently, both the Indiana Supreme Court and the Indiana Court of Appeals have held that the City “may be entitled to both damages and injunctive relief” based on Ruger’s abusive advertising tactics. *Gary III*. at 831 (citing Ind. Code § 35-43-5-3(a)(9)); *see Gary I* at 1247.

Ruger’s argument that the City has not “identified a single accidental discharge or a suicide in a Gary home involving a Ruger firearm” is, thus, legally meaningless. Mot. at 3. The City’s claims are, without limitation, based on the “illegitimate secondary market in handguns” that Ruger’s (and the other Manufacturer-Defendants’) illegal conduct has created and the thousands of “acts of violence” that have been caused by that conduct and which have injured the City. *Gary III* at 831 (citing Compl. ¶ 77); *see Gary I* at 1247 (The City’s deceptive-advertising claims can be supported by “both intentional and accidental gunshot injuries” caused by “lawfully and unlawfully” sold firearms.).

Even if the City’s actionable harms were limited to accidental deaths and suicides (they are not), the City can prove its deceptive marketing claims against Ruger for injuries caused by other manufacturers’ firearms. Under Ind. Code § 35-43-5-3(a)(9), a person who “disseminates to the public an advertisement that the person knows is false, misleading, or deceptive, with intent to

promote the purchase or sale of property or the acceptance of employment ... commits deception, a Class A misdemeanor.” See *Gary III* at 831. In the context of the City’s deceptive-advertising claim against Ruger, the City will need to prove that Ruger’s violations of the statute caused the City’s injuries and damages, but causation can be shown multiple ways. See *Gresser v. Dow Chem. Co.*, 989 N.E.2d 339, 348–49 (Ind. Ct. App. 2013) (“In order to recover on a negligence claim, plaintiffs must establish three elements: ‘(1) a duty on the part of the defendant . . . ; (2) the defendant's failure to conform its conduct to the requisite standard of care . . . ; and (3) injury to the plaintiffs proximately caused by the defendant's breach of its duty.’”); *Gary III* at 821. Nothing precludes the City from proving that Ruger’s false advertising caused a purchaser to buy another manufacturer’s firearm that he or she used to commit an accidental or intentional “act of violence” in Gary. See *Gary III* at 831 (citing Compl. ¶ 77). Similarly, the City can prove its claim for injunctive relief based on Ruger’s deceptive advertising even if “acts of violence” have not yet occurred—provided that firearms used to commit those “acts of violence” in the future were purchased due to Ruger’s deceptive advertising. See *Gary I* at 1246-47 (“The City has stated facts that, if proven, support the conclusion that it has incurred some expenses as the result of” defendants’ illegal advertising “and will incur more in the future.”); *Gary III* at 831; *Hannum Wagle & Cline Eng'g, Inc. v. Am. Consulting, Inc.*, 64 N.E.3d 863, 876 (Ind. Ct. App. 2016) (Verdict entering injunction based on “a present and imminent threat to future business” upheld.).

The *Gary I* and *Gary III* rulings did not limit the City’s ability to prove its claims as Ruger asks this Court to do here. Ruger’s attempt to artificially limit the evidence the City can use to prove its claims should be rejected here too, and Ruger’s motion should thus be denied.

**B. The City’s response to Interrogatory No. 4 is neither evasive nor incomplete.**

Ruger’s contention that “Interrogatory No. 4 remain[s] unanswered” is simply untrue. Mot. at 4. The City has produced numerous examples of Ruger’s products being used to commit “acts

of violence” in the City. See Mot. Ex. 2 at 56 (providing *selected* examples drawn from the City’s document production). The City has also produced examples of Ruger’s deceptive advertising. See *id.* at 69-70 (citing, e.g., COGI 0002441). While certain examples of Ruger’s deceptive advertising are publicly available online (see images below), once discovery is complete (including of Ruger), the City is confident there will be other examples of such misconduct in the record, and it plans to supplement its responses accordingly.

**GREAT NEW PRODUCTS FROM RUGER**

**MAX-9™ WITH READYDOT™ OPTIC**  
The MAX-9™ with Ruger ReadyDot™ Optic is slim, lightweight and compact for personal protection while still providing a capacity of up to 12+1 rounds of 9mm Luger ammunition. The Ruger ReadyDot™ Optic is an ultra-reliable IX reflex sight that utilizes the light-gathering properties of fiber optics and is designed specifically to co-witness with the Ruger MAX-9™ pistol.

**SECURITY-380™**  
Chambered in .380 Auto, the Security-380™ is full-featured, ideally sized, modestly priced, and designed for hours of range training with minimal fatigue.

**MARK IV™ 22/45™ LITE WITH CLEAR ANODIZED FINISH**  
Featuring a mounting position for a standard Shield RMS footprint reflex optic in place of the Picatinny rail, the Mark IV™ 22/45™ Lite with Clear Anodized Finish features a raised front fiber optic sight and an adjustable rear sight that co-witness with most micro red dot optics.

**SFAR™**  
Chambered in 7.62 (NATO) / .308 Win, the SFAR™ combines the ballistic advantages of .308 Winchester with the size of a traditional MSR, while remaining smaller and lighter than comparable .308-sized rifles.

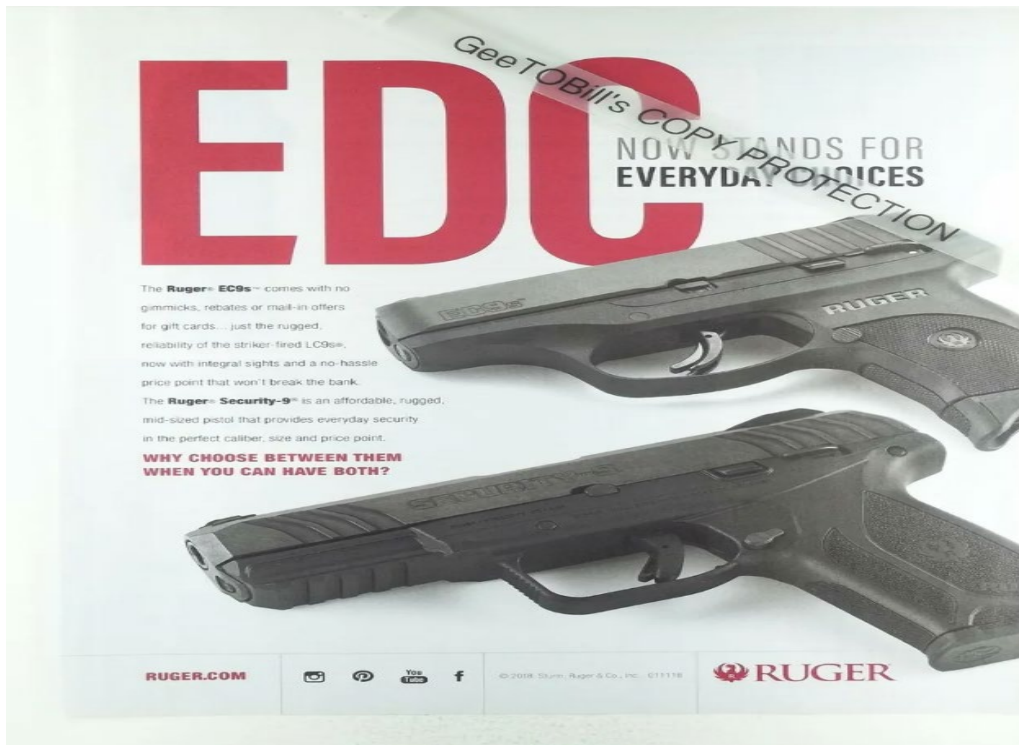
**LC CHARGER™**  
This large-format pistol based on the Ruger LC Carbine™ utilizes the same magazines and controls as the innovative Ruger 5.7™ pistol and features a 10.3" threaded barrel, ambidextrous manual safety, and a reversible magazine release.

**SUPER WRANGLER™**  
The Super Wrangler™ features a robust steel cylinder frame and ships with two cylinders, allowing you to convert between inexpensive .22 LR ammunition and powerful .22 W&M ammunition.

**LEARN MORE**

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**RUGER** | *Mark IV*



Above are two images retrieved from the internet. Both tell consumers that handgun ownership enhances personal safety (touting that guns provide “everyday security” and “personal protection”) despite the mass of evidence (including as produced by the City) showing otherwise. Mot. Ex. 2 at 71-74. The City has also produced detailed evidence of the costs it has incurred because of the violence Ruger’s deception fuels. *Id.* Ex. 2 at 60-64.

Discovery in this case is not over. Witness depositions have not been conducted. Each of the identities of Gary residents who have been injured by Ruger’s conduct have yet to be fully ascertained. Case files from the Lake County Sheriff’s Department—which generally processes homicide scenes in Gary—also have not been reviewed. And the City also has yet to disclose experts, whose testimony will be critical to proving the City’s damages and crafting appropriate injunctive relief. Mot. Ex. 2 at 60-64.

Ruger’s contention that the City’s responses to Interrogatory No. 4 are incomplete is also disingenuous. Ruger itself has inspected many years of the City’s pre-2012, non-digitized case

files. *See* Ex. A (Ruger’s Motion to Serve in Excess of Thirty Interrogatories, filed on September 7, 2004, at ¶¶ 3-4). It is not clear whether Ruger made any post-2004 arrangements to review those records (as it did in 2004) that the City made available for inspection. Ruger also has not meaningfully discussed with counsel for the City the production of ESI in its possession, custody, and control.<sup>4</sup> Finally, Ruger has failed to cooperate in discovery of its own records, and thus critical evidence relating to Ruger’s misconduct, responsive to Interrogatory No. 4, has not been identified by the City because Ruger has refused to make such records available in discovery.

### CONCLUSION

For the foregoing reasons, the Court should deny Ruger’s Motion.

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<sup>4</sup> After many months and five formal requests *simply to schedule* an initial meet and confer about Ruger’s ESI, Ruger agreed to have a brief discussion, but was not prepared to provide any details about what it had collected and preserved, who it had collected it from, what data sources were collected, and anything else about its information systems and data. *See* Ex. B (Meet and Confer attempts by the City).

Dated: December 19, 2023

Respectfully submitted by:

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on this 19th day of December, 2023, he caused the foregoing to be filed through the Court's electronic filing system and sent by electronic mail to:

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