

misdemeanor.” *City of Gary v. Smith & Wesson Corp.*, 126 N.E. 2d 813, 831 (Ind. Ct. App. 2019). The City’s claim for violation of Section 35-43-5-3(a)(9) is that it has been harmed because Ruger allegedly falsely marketed firearms for personal protection in the home when Ruger allegedly knew or should have known that the presence of a firearm in the home increases the risk of accidental injuries and suicides. *Id.* at 838-831. The harm allegedly sustained by the City is its expenditure of municipal funds in responding to accidental firearm injuries and suicides in Gary homes.

In light of the ruling by the Court of Appeals, Ruger and the other Manufacturer Defendants served the following interrogatory on March 26, 2021 to be answered by the City:

4. Identify each instance in which the City of Gary was harmed as a result of a Defendant Manufacturer’s advertisement or promotion of handgun ownership in the home for personal protection or security. As to each such instance, state the following:
 - (a) The identity of the Defendant Manufacturer that published the advertisement or promotion;
 - (b) A description of the specific advertisement or promotion;
 - (c) A description, with particularity, of the manner in which the specific advertisement or promotion was allegedly false, misleading or deceptive;
 - (d) The identity of the person or persons who read, saw or otherwise relied on the specific advertisement or promotion;
 - (e) The date(s) on which a person was harmed by the specific advertisement or promotion;
 - (f) The manner in which a person was harmed by the specific advertisement or promotion, including whether pecuniary loss was sustained by the person;
 - (g) The manner in which the City of Gary was harmed by each identified advertisement or promotion, including whether pecuniary loss was sustained by the City of Gary; and

- (h) If the City of Gary alleges that it sustained a pecuniary loss as a result of the specific advertisement or promotion, the nature and amount of the loss sustained as a result of each identified advertisement or promotion.

The Court's July 21, 2022 Order

The City responded to Interrogatory No. 4 on December 30, 2021 with objections, an incomplete and evasive answer, and a production of documents purportedly responsive to the interrogatory. Neither the City's answer nor the documents it produced identified a single accidental discharge or a suicide in a Gary home involving a Ruger firearm. On April 2, 2022, Ruger moved to compel the City to serve complete non-evasive answers to Interrogatory No. 4. On July 21, 2022, the Court granted Ruger's motion and gave the City five additional months—until December 30, 2022—to serve “meaningful and non-evasive responses” to Defendant Manufacturers' March 26, 2021 discovery requests. (Ex. 1 – July 21, 2022 Order on Manufacturer Defendants' Motion to Compel Discovery). In its Order, the Court reminded the City “of the panoply of remedies set forth in Trial Rule 37 to combat gamesmanship and evasiveness.” (*Id.*). Those remedies include “dismissing the action or proceeding or any part thereof.” Ind. Trial Rule 37(B)(2)(c).

On December 30, 2022, the City served its Second Supplemental Answers and Objections to the Defendant Manufacturers' Interrogatories. (Ex. 2 – The City of Gary's Second Supplemental Answers and Objections to the Defendant Manufacturers' Interrogatories). In its Second Supplemental Answers, the City again set forth its evasive, argumentative, and non-responsive 60-page supplemental interrogatory answer served a year earlier, and provided a brief and equally non-responsive Second Supplemental Answer merely identifying additional documents produced. (Ex. 2 at pp. 64-66). Again, the documents produced by the did not identify the occurrence of an

accidental discharge or a suicide in a Gary of home involving a Ruger firearm. Thus, Interrogatory No. 4 remained unanswered as to Ruger—nearly two years after the interrogatory had been served.

The Court’s June 12, 2023 Order

On January 26, 2023, Ruger and the other Manufacturer Defendants filed their Motion for Sanctions seeking, in part, the preclusion of evidence that Ruger knowingly violated a statute, regulation, or ordinance governing the marketing of firearms. The Court denied the motion but ordered on June 12, 2023 that “[r]esponses to all outstanding discovery by all parties shall fully, completely, and in a non-evasive manner be made on or before November 2, 2023.” (Ex. 3 – June 12, 2023 Order on Motion for Sanctions). *The City, however, did not comply with the Court’s June 12, 2023 order despite being cautioned by the Court a year earlier about “the remedies available under Trial Rule 37 to combat gamesmanship and evasiveness.”* (Ex. 1). The City did not serve supplemental responses to Interrogatory No. 4 (or supplemental responses to any other outstanding discovery served by Ruger and other Manufacturer Defendants) by the court-ordered deadline, and Interrogatory No. 4 remained unanswered as to Ruger. The City has not identified a single home firearm accident or suicide in Gary involving a Ruger firearm, and yet it refuses to acknowledge in answer to Interrogatory No. 4 that it has no evidence to support its claim that it has been harmed because Ruger violated Section 35-43-5-3(a)(9). And despite the absence of evidence that Ruger’s marketing activities have required the City to expend municipal funds, the City continues to unreasonably press Ruger for further discovery related to Ruger’s marketing activities.¹

¹ Even if the City had disclosed the occurrence of a home firearm accident or suicide in Gary involving a Ruger firearm, Interrogatory No. 4 required the City to identify the advertisement that deceived the firearm’s owner, the firearm’s owner’s identity, and the manner in which the City was harmed by the advertisement through its expenditure of municipal funds. None of this information is in Ruger’s possession, or the possession of any other Manufacturer Defendant. And the information is not in the possession of third party retailer firearm dealers from whom the City seeks discovery. Only the City knows how and when it has been harmed—if at all—as a result of home firearm accidents and firearm suicides.

Argument

Fact discovery closes on February 2, 2024. Ruger was entitled to know more than two years ago what evidence the City has to support its claim that the City's been harmed as a result of Ruger's alleged marketing in violation of Section 35-43-5-3(a)(9), and with fact discovery closing, Ruger is certainly entitled to know now what evidence the City has, if any. If the City does not have the information requested in Interrogatory No. 4 and its sub-parts, Ruger is entitled to the City's answer that the City's does not have supporting evidence.

Indeed, the City's failure to serve a supplemental answer to Interrogatory No. 4 by the court-ordered November 2, 2023 deadline—despite being cautioned two years ago of the consequences of its evasive discovery responses—justifies an order precluding the City from presenting evidence that it has been harmed as a result of Ruger's alleged violation Section 35-43-5-3(a)(9). *See Wozniak v. N. Ind. Pub. Serv. Co.*, 620 N.E.2d 33, 36 (Ind. Ct. App. 1993) (sanction is just when the party was given additional time within which to respond and was warned that a sanction would be entered for failing to comply). With regard to accidental firearm injuries and suicides in Gary—the subject matter of Interrogatory No. 4—the City cannot hide behind a professed need to obtain discovery from others before responding with the information it possesses, or acknowledging it does not possess the requested information.²

WHEREFORE, Ruger respectfully request an order compelling the City to promptly serve non-evasive answers to Interrogatory No. 4 and its subparts disclosing evidence of home firearm accidents and suicides in Gary involving Ruger firearms and the related requested information

² Counsel for Ruger and the City met and conferred on November 29, 2023 regarding the City's failure to supplement its responses to Ruger's discovery requests, including the City's failure to identify home firearm accidents and suicides involving Ruger firearms, by November 2, 2023. When asked whether the City had disclosed such an incident, counsel for the City stated he did not know and would have to review the documents produced.

regarding such incidents or acknowledging the absence of such evidence, or alternatively, an order precluding evidence that Ruger has caused the City harm by marketing the firearms its manufactures for personal protection in alleged violation of Indiana Code Section 35-43-5-3(a)(9).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 4, 2023, I electronically served the foregoing document via the Indiana E-Filing System (IEFS) and/or email upon the following persons:

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