

THE GUN INDUSTRY'S ADVERTISING: EFFECTIVE, DEADLY, AND ACTIONABLE

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Submitted by Brady, Giffords Law Center to Prevent Gun Violence, and March For Our Lives, in partnership
with the Firearms Accountability Counsel Taskforce.

firearmsaccountability.org

**The Gun Industry’s Advertising:
Effective, Deadly, and Actionable**

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I. The FTC Must Investigate and Regulate the Gun Industry’s Unfair and Deceptive Advertising.

The FTC’s Bureau of Consumer Protection has a clear mandate: to protect consumers from unfair and deceptive practices in the marketplace. But, thus far, the FTC has failed to fulfill this mandate with respect to the gun industry. The FTC is failing consumers, failing our democracy, and failing the millions of Americans who have lost their lives or their loved ones to gun violence. The FTC’s inaction has also harmed countless more Americans who must live with the scars, trauma, and emotional and economic damage that America’s gun violence epidemic, fomented by the gun industry for profit, has caused. The FTC can and must change this. No industry—regardless of its political clout—should be immune from scrutiny of its marketing and advertising.

This Petition, brought by Brady, Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”), and March For Our Lives, in partnership with the FACT Coalition (collectively, “Petitioners”), demands that the FTC exercise its broad investigative and enforcement powers to investigate and regulate the gun industry’s advertising practices. As we show, the FTC’s inaction has allowed the gun industry to spend decades using unfair and deceptive advertising to sell deadly weapons to an American public that has been falsely led to believe that gun ownership is a safe way to protect their home and family.

This message is working. We see its dangerous efficacy, sadly, every day. On October 6, 2021, four people were injured in a shooting at Timberview High School in Arlington, Texas after a fight broke out at the school. The following day, text messages between a Timberview student and his mother went viral:

Today 9:15 AM

mom there's a shooting

mom

help

Where

pls

school

mom

fr

Am calling police

Where are u

school

ms hererra

mom i'm scared

Are u safe

idk mom

When the public sought to understand how yet another school shooting could have happened, a spokeswoman for the shooter’s family explained that the young shooter had allegedly been bullied and robbed at school. “The decision he made, taking the gun, we’re not justifying that,” the spokeswoman said. “That was not right. But he was trying to protect himself.”¹

The deceptive “guns as a safe means of protection” message has been taking hold in the American psyche for decades, while the FTC has effectively given the gun industry a free pass. In 1996, when Brady (then known as the Center to Prevent Handgun Violence) first asked the FTC to investigate the gun industry’s egregious advertising, the FTC took no action.

At that time, the American public understood—accurately and consistent with public health data—that owning a gun or having a gun in the home made them, their families, and their loved ones less safe, not more safe. But decades of unfair and deceptive advertising—unchecked by the FTC—have flipped the script. Americans now believe, against all the evidence, that having a gun in their home or on their person makes them and their loved ones safer. Like the shooter at Timberview, they believe that guns are the ideal means of protection.

If the gun industry’s primary message were true—if guns actually made Americans safer—then, as gun ownership has increased, violence should have decreased, making America an extraordinarily safe nation. But the horrifying reality shows the opposite. On the same day as the Timberview shooting, four shooters in New Orleans opened fire on four men working on a stormwater drainage project for an environmental nonprofit.² A man in Oakland was killed in a drive-by shooting outside of his home.³ A 15-year-old boy accidentally shot himself in Portsmouth, Virginia.⁴ This single day is a tragic snapshot in a much longer, unbroken string of deadly gun violence.

On an average day in 2020, more than 120 Americans were killed by a gun, and that year, 45,222 people lost their lives to gun violence—the most ever recorded by the Centers for Disease Control and Prevention (“CDC”).⁵ Middle- and high school-age children are now more likely to die from a gun injury than from any other single cause of death.⁶ That tragic statistic bears repeating: *Middle- and high school-age children are now more likely to die from a gun injury than any other single cause of death.* It is the FTC’s responsibility to use its investigative powers to determine what it can do to curb this crisis—as it did decades ago to protect children from the dangerous marketing practices of tobacco companies. And the FTC’s action against the tobacco industry is by no means the only example of the FTC acting on its mandate to protect children directly or indirectly from deceptive and unfair practices. In the last year, the FTC, along with members of Congress⁷ and a coalition of state attorneys general,⁸ has sought information from social media platforms on how their practices impact children and teens.⁹ The FTC cannot in good conscience continue to pick and choose when to use its mandate to protect children while ignoring the dangerous advertising practices for a product that is killing American children.

The gun industry has spent years propagating unfair and deceptive advertisements to convince the American public to believe that what is deadly will protect them. And while Americans die, the gun industry profits. Over the last 25 years, it has sold more guns than ever before through its highly effective and unlawful advertising. The gun industry is not above the law. The FTC must act.

II. The Gun Industry's Advertising Is Both Unfair and Deceptive—and Therefore Actionable.

Section 5 of the FTC Act prohibits “unfair or deceptive acts or practices in or affecting commerce.”¹⁰ We demonstrate below that the gun industry has been running unfair and deceptive advertisements for more than a quarter century.

A. Unfair practices

An advertisement is unfair where: (a) it causes or is likely to cause substantial injury to consumers; (b) the injury is not reasonably avoidable by consumers; and (c) the injury is not outweighed by any countervailing benefits to consumers or competitors.¹¹

The FTC considers an injury to be substantial “if it does a small harm to a large number of people, or if it raises a significant risk of concrete harm.”¹² For example, an advertisement that creates “[u]nwarranted health and safety risks” may be unfair.¹³ Similarly, the FTC has stated that advertising practices that result in a serious risk of severe physical injury, even to a small number of people, may be unfair, particularly where the advertising is “injurious in its net effect” on the American public.¹⁴ Further, where advertising is likely to result in serious bodily injury, the FTC considers it “especially likely” that a cost-benefit analysis will support a finding of unfairness.¹⁵

The FTC has also found advertisements to be unfair where they “unreasonably create[] or take[] advantage of an obstacle to the free exercise of consumer decision-making,” for example by withholding information that may be critical to informed comparison and consumer choice.¹⁶ The Commission has made clear that, when the advertised product potentially poses a risk to consumers’ health and safety, general warnings, or instructions may not be enough to put consumers on guard. And, where consumers are unaware of particular risks because advertisers have withheld information, the FTC has found that the consumers cannot reasonably avoid those risks.¹⁷

B. Deceptive practices

An advertisement is deceptive if it includes any representations or omissions that are (a) material to a consumer’s decision to purchase a product and (b) likely to mislead a reasonable consumer.¹⁸

The FTC has found representations or omissions to be material if they are “likely to affect a consumer’s choice of or conduct regarding a product.”¹⁹ The Commission has also made clear that any express or implied claims in advertisements that the advertiser specifically intended to convey or that involve the safety, purpose, or efficacy of the product are presumptively material.²⁰ For example, in an enforcement action from the 1980s against a manufacturer of heat detectors, the FTC found the manufacturer’s advertisements to be deceptive where the manufacturer claimed that its heat detectors provided an effective warning to allow people to escape from house fires and were as effective as smoke detectors in that function, but evidence showed that these claims were false.²¹

III. The Gun Industry's Advertising Has Misled Consumers into Believing that Guns Make Them Safer, While Deaths and Injuries from Gun Violence Have Only Risen.

A. The gun industry has been manipulating consumers and pushing the limits of advertising for decades.

All evidence shows that guns make Americans less safe, not more safe. Studies consistently confirm that gun possession, ownership, and use are associated with increased risks of death and injury.²² When individuals keep guns in their homes, the odds are greater that the gun will kill or injure them, their family members, and any cohabitants than that it will protect them.²³ The same is true when people carry guns outside the home.²⁴

In rare instances, some gun owners do successfully use their weapons in the midst of the extreme terror of self- or home-defense. But the evidence establishes that any such examples are the exception rather than the rule. Contrary to this reality, the gun industry's advertisements ubiquitously claim that guns unequivocally enhance safety and are necessary to protect consumers and their families.

This false message leads to many injuries and deaths, often of children. Guns that are purchased to protect families frequently end up being used in “family fire”²⁵ shootings—used by children to unintentionally shoot themselves, their brothers or sisters, or others; used in suicides; and used against women in domestic abuse. Other guns brought into the home for self-defense are often stolen and used in crime. These consequences of gun ownership are far more common, and more foreseeable, than the use of guns in any legitimate self-defense or home protection.

Free from any oversight, the gun industry has pushed its false claims for decades. Twenty-five years ago, in February 1996, Brady submitted a petition to the FTC requesting that the Commission “order handgun manufacturers to refrain from publishing advertisements that suggest their products will make the owner and his or her family safer when, in fact, bringing a handgun into the home actually decreases safety.”²⁶ Brady pointed to specific unfair and deceptive advertisements, some of which are reproduced below, that propagated this message by suggesting that an unsecured, unlocked handgun on a bedside table would “tip the odds” in favor of the gun owner, act as an efficient form of “homeowner’s insurance,” and otherwise provide “safe[], reliab[le], and functional[]” protection for the gunowner’s family.²⁷ These advertisements ran in the *Ladies’ Home Journal* in the 1990s:




Model 86 .380 A&C
9-round magazine, double action

Tip the odds in your favor.

Introducing the Beretta Model 86, the only .380 automatic pistol with a tip-up barrel for easy and rapid loading. It allows for safe storage with an empty chamber, but simple, one-step loading in an emergency. Plus you'll get 9-1 firepower and all the safety, reliability and functional features traditionally found in Beretta medium frame pistols. If you're considering a handgun for personal protection, here's one that offers it all. See the Model 86 at your nearest Beretta Dealer, or contact Beretta U.S.A. Corp., 17601 Beretta Drive, Accokeek, MD 20607, (301) 283-2191.


 **Beretta U.S.A.**



Beretta 84F
Beretta 85F
13-round magazine double action
Model 85F .380 S&W magazine

Homeowner's Insurance.

When you're protecting what's yours, only two things matter in a handgun... accurate firepower and total reliability. That's why Beretta's 84F and 85F models are preferred for both police backup and personal use. Both include features found on the legendary 92F, including open slide design, external hammer, firing pin catch and trigger bar disconnector. Family protection is too important for second-best... see your nearest Beretta dealer or contact Beretta U.S.A. Corp., 17601 Beretta Drive, Accokeek, MD 20607, (301) 283-2191.

 **Beretta U.S.A.**

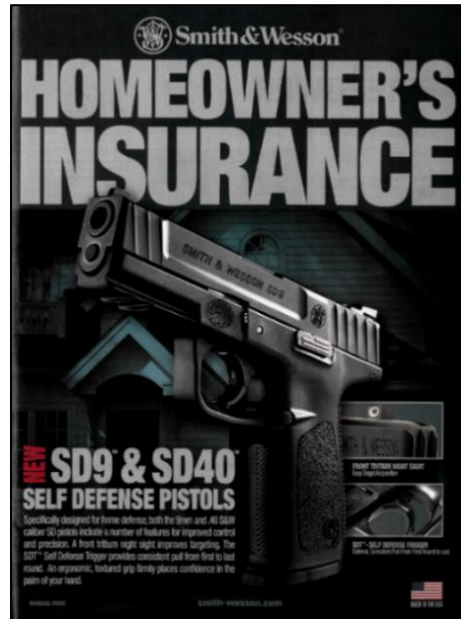
As discussed further below, when Brady submitted its 1996 petition, most Americans correctly believed that keeping a gun in their home would not make them safer. The FTC took no public action in response to the 1996 petition. Later the same year, Congress passed the Dickey Amendment, which prohibited the CDC from using funds to promote gun control. This provision had the practical effect of ending federal research into gun violence.²⁸ The gun industry thus continued its advertising practices with impunity, and was further bolstered by additional liability shields, including the Protection of Lawful Commerce in Arms Act (“PLCAA”) that was passed in 2005.²⁹

In recent years, Smith & Wesson, one of the largest players in the industry, ran the advertisement below—a nearly shot-for-shot recreation of the advertisements that Brady identified as unfair and deceptive more than 25 years ago.³⁰ The advertisement asks if the consumer has a firearm at their bedside, despite the fact that the method of storage depicted violates safe storage laws in about a dozen states:³¹



(Smith & Wesson Instagram post from Jan. 3, 2020,
last visited Mar. 27, 2022)

Contemporary advertising also continues to propagate the misleading message that guns constitute effective home defense. For example, the Smith & Wesson advertisement below describes a gun as “homeowner’s insurance,” twice invokes “self-defense,” and claims that the gun is “specifically designed for home defense” with no substantiation.³²



(In 2010 and 2011, Smith & Wesson ran this ad four times to a national audience in *Field & Stream Magazine*, *Combat Handguns*, and *Guns & Ammo*.)

Advertisements from Beretta use the hashtag #winthefight to convey that the weapons can be used as a means of self-protection or defense:³³

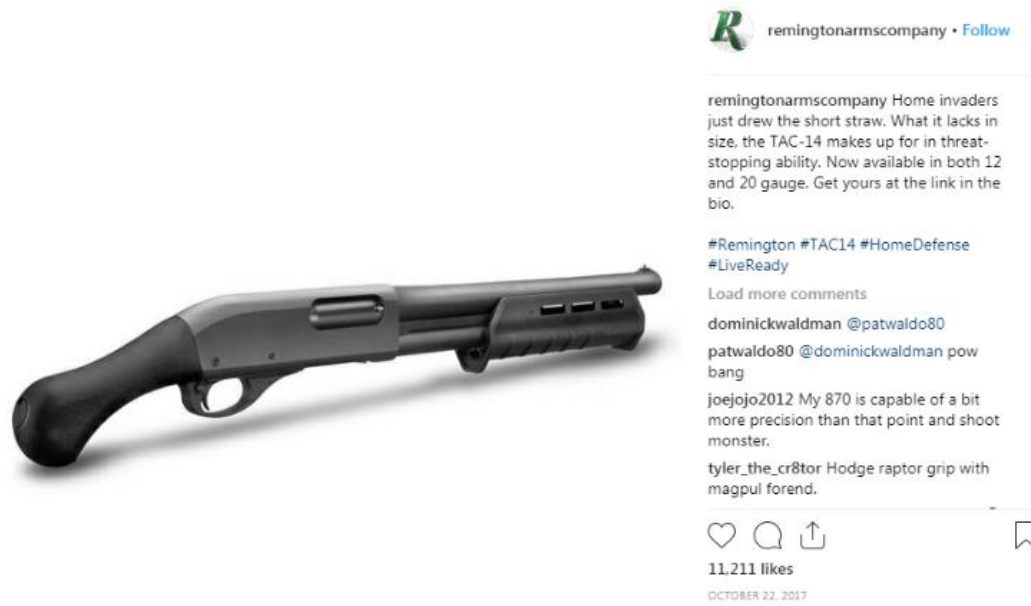


(Beretta Instagram post from May 25, 2018, last visited Mar. 27, 2022)



(Beretta Instagram post from Nov. 5, 2018, last visited Mar. 27, 2022)

A Remington advertisement says that one of its weapons has “threat-stopping ability” and that “[h]ome invaders just drew the short straw,” and uses the hashtag #HomeDefense.³⁴



(Remington Facebook post from Oct. 22, 2017)

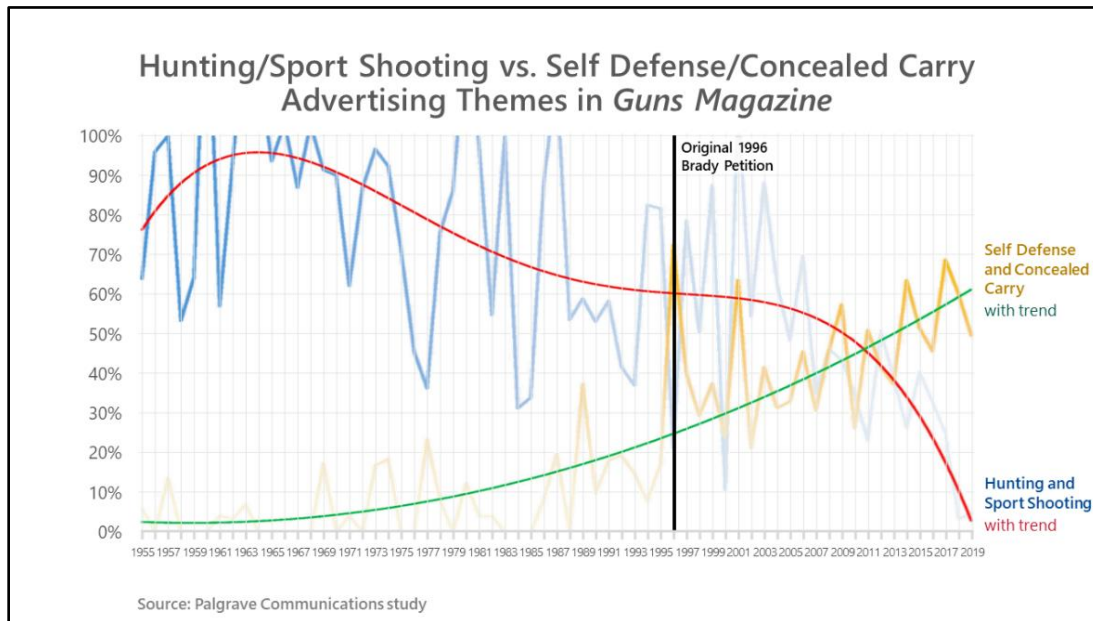
A Glock advertisement quotes a purported user as saying, “Thank you for making a gun I trust our lives with,” and uses the hashtag #ProtectTheFamily.³⁵



(Glock Instagram post from Mar. 14, 2017,
last visited Mar. 27, 2022)

These advertisements are neither accidents nor anomalies. Rather, the gun industry has made a calculated marketing decision to convince Americans that they need guns inside their homes—or, ideally, with them at all times—to protect themselves and their families.

Studies examining the gun industry’s advertising practices have identified a clear trend towards advertisements focused on personal protection in the last 25 years. For example, a 2020 study that analyzed advertisements in *Guns* magazine from 1955 to 2019 found that the advertisements demonstrated a clear “shift in the core emphasis of US gun culture”—while advertisements previously promoted guns primarily for “hunting and recreational shooting,” contemporary ads relentlessly focus on the purported need for “armed self-defense”.³⁶



B. The gun industry’s unfair and deceptive advertisements now reach more consumers than ever through social media and other advertising platforms.

The gun industry’s shift to advertising increasingly focused on concealed carry and self-defense has corresponded with the advent of social media platforms and massive overhauls of the marketing industry itself. The gun industry is now able to target and reach a larger—and younger—audience than ever before.³⁷ Key players in the industry have amassed huge social media followings in recent years. For example:

- Glock has 2.1 million Instagram followers, 1.9 million Facebook likes, and 72,700 YouTube subscribers.³⁸
- Ruger has 632,000 Instagram followers, 603,600 Facebook likes, and 101,000 YouTube subscribers.³⁹
- Smith & Wesson has 1.1 million Instagram followers, 1.46 million Facebook likes, and 125,000 YouTube subscribers.⁴⁰

Each of these players—along with essentially every major player in the gun industry—regularly posts content and advertises on these platforms, allowing them to directly engage with millions of consumers daily. These social media posts and advertisements are often geared towards young audiences, who are both particularly susceptible to advertisements for inherently

dangerous products⁴¹ like guns and particularly valuable life-long customers for the industry. The National Shooting Sports Foundation has even issued guidance recommending that the gun industry (a) “use social media and web sites to raise interest and help youth find ways to hunt and target shoot”; (b) “team with current online media firms to take advantage of their reach and their abilities to communicate with youth”; and (c) emphasize “fun” messages “because youth are online to be entertained.”⁴²

Despite the fact that federal and state laws nationwide set minimum ages to purchase or possess firearms, the gun industry places no age-verification restrictions on its online content or advertising, making it an outlier among industries selling inherently dangerous products—including alcoholic beverages, tobacco products, and even lottery tickets—which routinely use such restrictions to limit youth access to their content.

Gun industry participants have targeted children across other media as well.* At the January 2022 SHOT Show in Las Vegas, Illinois gun manufacturer WEE1 Tactical unveiled an AR-15 style rifle for children that it dubbed the “JR-15.”⁴³ The WEE1 promotional materials include logos of boy and girl skull-and-crossbones with pacifiers in their mouths and targets in their eyes:



* This Petition does not focus on the gun industry’s practice of targeting youth audiences, although it recognizes the practice as both widespread and particularly dangerous. Petitioners are prepared to supplement this Petition with additional information regarding this pervasive and pernicious practice, if it would aid the FTC.

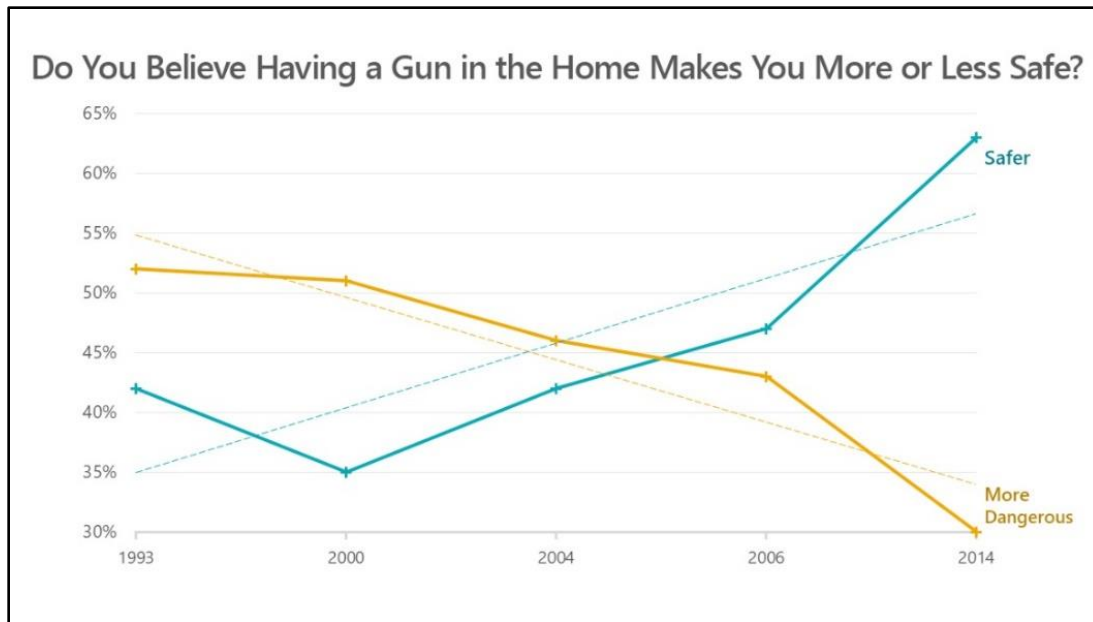
The advertisements claim that the JR-15 “looks, feels, and operates just like Mom and Dad’s gun,” and tells parents to “get em one like yours.” In conformity with the deceptive trend of claiming that guns offer safety, the manufacturer has also stated publicly that it “believe[s] that this introduction early on will produce a deep respect for firearms that continue and last for a lifetime of safety!”⁴⁴



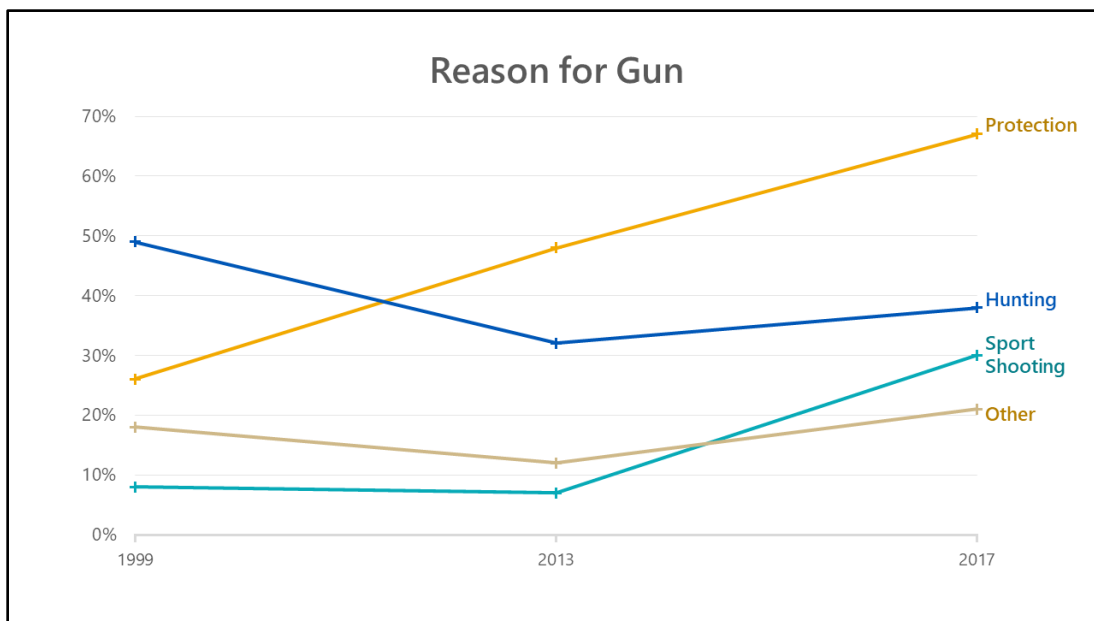
(A page from Wee1 Tactical's JR-15 brochure that has since been taken down from its website)

C. The gun industry's onslaught of misleading advertising claiming that guns offer safety has worked.

The gun industry's decades-long campaign to push the message that guns make people safer has proven highly effective. The graph below demonstrates that, as the gun industry began manipulating the public with its distorted safety and self-defense message in the late 1990s, once-skeptical Americans came to believe it. In 2000, only 35 percent of Americans believed that having a gun in their home would make them safer; by 2014, that number had skyrocketed to 63 percent.⁴⁵ Conversely, while in 2000 the majority of Americans believed that having a gun in their home made it a more dangerous place to be, that number had fallen to 30 percent by 2014.⁴⁶



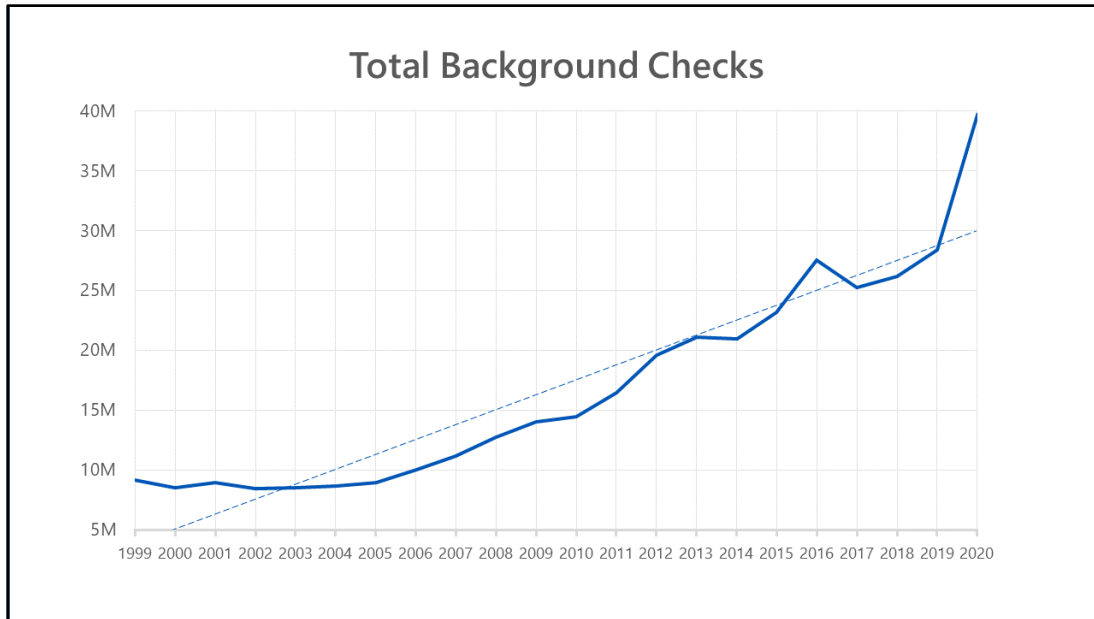
Similarly, as the graph below demonstrates, the number of Americans citing personal protection as a primary reason for buying a gun grew dramatically during this period, from just over 25 percent in 1999 to over 65 percent in 2017.⁴⁷ As discussed further below, however, research continues to show that guns only increase danger. Put differently, the evidence that guns do not make people safer has not changed; only Americans' perception has.



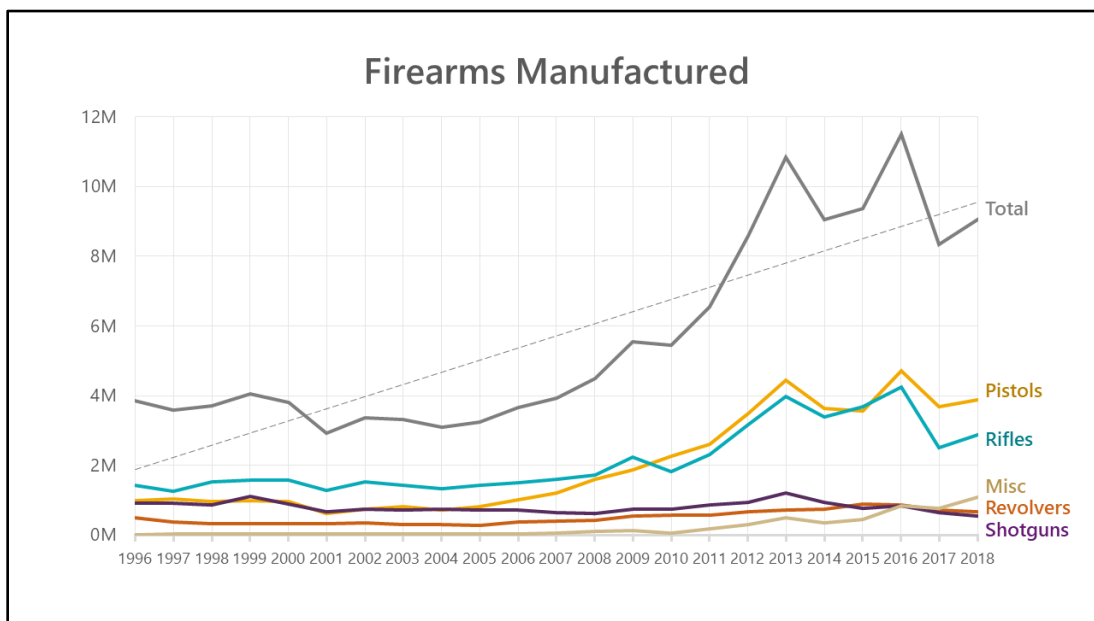
D. The gun industry is reaping unprecedented profits from the success of its unfair and deceptive message.

The gun industry's unfair and deceptive advertising has resulted in unprecedented profits. By any measure, the gun industry is booming. For example, as shown below, the total background

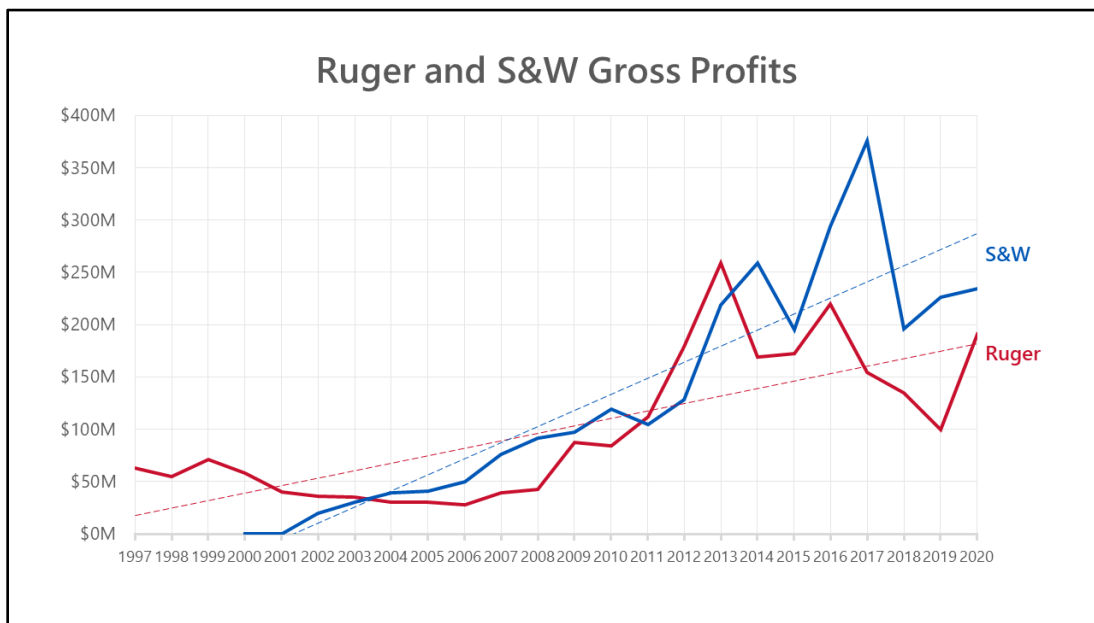
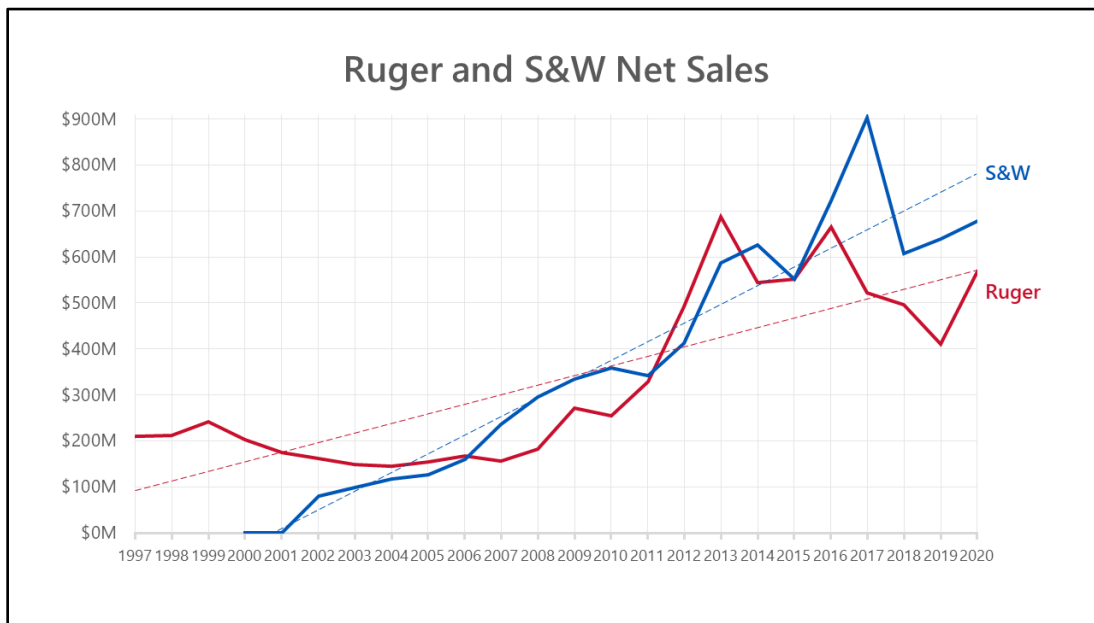
checks conducted annually by the National Instant Criminal Background Check System (“NICS”)—a metric often used as a proxy for gun sales in the U.S. because sales are not tracked independently—has increased substantially over the last 20 years.⁴⁸ This was especially true in 2020, when a new record for the number of NICS checks was set *almost every single month*. This trend continued through 2021.⁴⁹



The quantity of guns manufactured in the U.S. has also increased substantially—particularly with respect to pistols, which are frequently depicted in self-defense-focused advertisements.⁵⁰



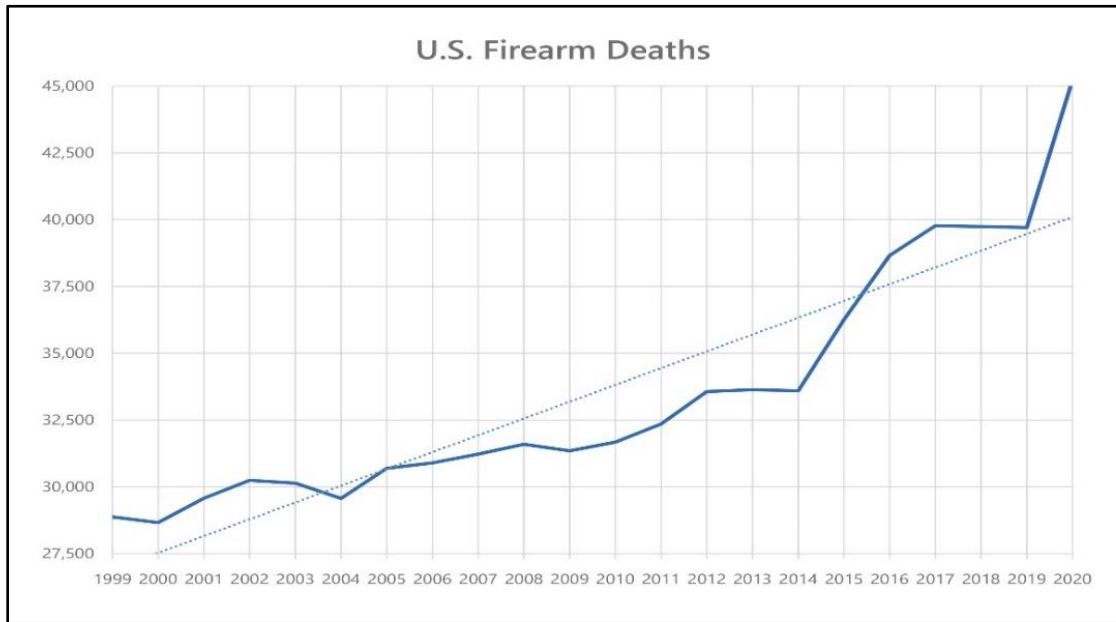
These increases in gun manufacturing and sales have translated into growing profits for the gun industry. The charts below show a significant increase in both Ruger's and Smith & Wesson's net sales and gross profits over the last two decades:⁵¹



E. Gun violence has risen sharply.

If the gun industry's advertisements claiming that guns make people safer were true, then, as gun manufacturing and ownership skyrocketed over the last several decades, Americans should have seen a decrease in gun violence. The opposite is true. As the gun industry makes millions propagating its unfair and deceptive message, the number of gun-related deaths in the U.S. has increased sharply.

The graph below quantifies gun-related deaths over the last 25 years, based on CDC data:⁵²



Gun deaths are now among the leading causes of death nationwide, and more than 45,000 people were killed by guns in 2020.⁵³ Middle- and high school-age children are more likely to die from a gun injury than from any other single cause of death.⁵⁴

IV. The Gun Industry's Advertising Is Actionable.

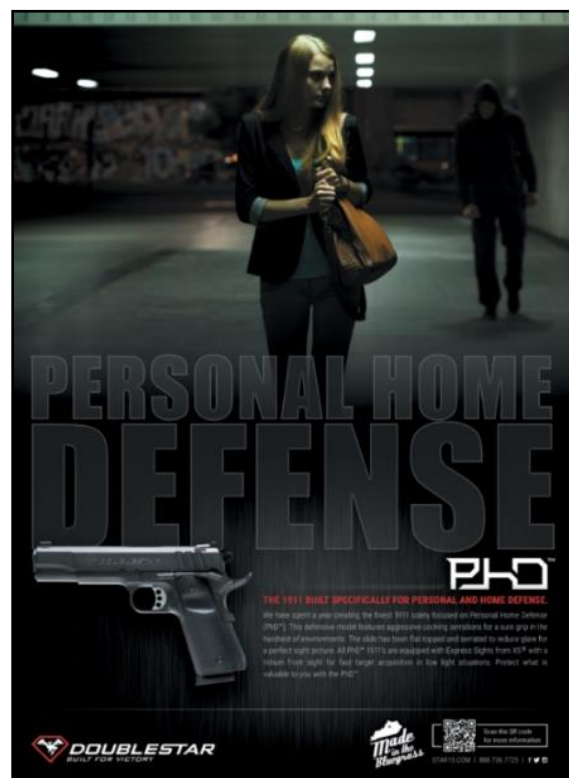
Over the past 25 years, the gun industry's advertising has focused on the misrepresentation that guns make people safer. This core misrepresentation has been bolstered by related, and similarly unfair and deceptive, claims that guns are safer than alternative protection mechanisms, and that guns can be used by anyone, anywhere for self-protection. The advertising that perpetuates these misrepresentations is both unfair and deceptive, and thus falls clearly within the scope of the FTC's investigative and enforcement powers.

A. The message that guns make people safer is unfair and deceptive.

As discussed above, the false message that guns make people safer is fundamental to the gun industry's advertising practices. While the examples discussed above focus generally on home defense, the gun industry has also preyed on fear to tailor this message specifically to women—telling them that when they are armed, they have nothing to be afraid of:⁵⁵



(Smith & Wesson Instagram post from May 28, 2020, last visited Mar. 27, 2022)



(DoubleStar ran this ad in 2016 to a national audience in *Shooting Illustrated*)

This core message is often bolstered by unsubstantiated claims that the advertised weapons have special features that make them particularly suited to self-defense. The DoubleStar advertisement, for example, claims that the gun is “built specifically for personal and home defense,” and boasts the “finest” and “perfect” features for this purpose.

This message is unfair and deceptive.

As an initial matter, none of these guns have any special features that make them more suitable than any other handgun to protect their owners. For example, none of these guns employ any technology—such as fingerprint technology or other “smart gun” innovations—designed to prevent homicides, suicides, and unintentional shootings by children, thieves, or other unauthorized users. Many of these guns also lack readily available safety features, such as internal locking mechanisms; chamber load indicators that alert a user when there is a round in the chamber; and magazine disconnect mechanisms that prevent a gun from firing when the magazine is removed. Some manufacturers and retailers have explicitly told shareholders they will not develop or sell guns with such technology, despite any potential safety benefits, because other members of the gun industry have faced significant backlash from gun lobbying groups for voicing support for these innovations.⁵⁶

The DoubleStar advertisement shown above is a good example of this refusal to adopt even the most basic safety features. The Petitioners consulted with a firearms expert who confirmed that the DoubleStar “PhD”—which stands for “Personal Home Defense”—1911 is no different in any way from other 1911 pistols currently being manufactured by at least a dozen manufacturers, including Colt, Ruger, and Springfield. According to the expert, every standard-size 1911 is built with a 5-inch barrel, uses a magazine with a 7- or 8-round capacity, weighs around 40 ounces, and is 8.5 inches long. Further, the serrated hammer that DoubleStar purportedly created for personal home defense is the exact same kind of hammer and trigger used by the standard Ruger 1911.⁵⁷

More fundamentally, there is a landslide of public health evidence demonstrating that guns make people less safe, not more safe, particularly when guns are kept in the home. Study after study confirms that a gun in the home increases each family member’s risk of becoming the victim of criminal assault and homicide, an unintentional shooting, or completed suicide. And, despite the gun industry’s targeted messaging that women and families are safer with a gun, these risks are especially acute for women facing domestic violence, for children, and for young adults.

For example, studies show that individuals who live in a home with a gun, particularly women and children, are at a substantially increased risk of committing suicide with a firearm. These studies are particularly notable when one considers that the vast majority of people who attempt suicide survive⁵⁸ and do not attempt suicide again.⁵⁹ This is not the case when firearms are in the home:

- People are at least **40 times** more likely to die if they attempt suicide with a gun instead of other common methods.⁶⁰
- Almost **53 percent** of suicide deaths involve firearms.⁶¹
- A 2020 study that followed 26 million California residents for over 12 years found that men who owned handguns committed suicide with a firearm at a rate nearly **eight times** higher than men without guns.⁶² The study also found that women who owned handguns committed suicide with a firearm at a rate **35 times** higher than women without handguns.⁶³

- The risk of suicide is up to **five times** higher for people living in a home with a gun, and up to **nine times** higher if the gun is stored loaded.⁶⁴
- For children aged 10 to 19, each 10 percent increase in household gun ownership in a state increases the youth suicide rate by **more than 25 percent**.⁶⁵

Studies also establish that having a gun in the home substantially increases the risk of becoming a victim of criminal homicide:

- A 2013 study established that the risk of homicide is substantially higher for people living in homes with a gun.⁶⁶ The same study demonstrated that, for each percentage point increase in aggregate gun ownership in a state, the firearm homicide rate increased by **0.9 percent**.⁶⁷
- According to a 2019 study, the risk of homicide is especially elevated for victims of domestic violence: women in abusive relationships living in homes with a gun face a **fivefold** increase in their risk of becoming a homicide victim.⁶⁸
- A 2022 study that followed 17.6 million California residents for over 12 years found that adults who did not own a handgun but lived with someone who did were almost **three times** more likely to be a victim of homicide than adults living in households without a handgun.⁶⁹ The same study found that cohabitants of handgun owners were **seven times** more likely than adults from gun-free homes to be killed by a spouse or partner.⁷⁰

People living in homes with a gun also face a significantly increased risk of becoming the victim of an unintentional shooting:

- Multiple studies have established that individuals in homes with a gun are **3.4 times** more likely to be the victim of unintentional shootings.⁷¹
- This risk is particularly acute for children and young adults: one study examining data from 1998 to 2002 found that the rate of unintentional gunshot fatalities among children was **16 times** higher in the 15 states with the highest levels of gun ownership than in the six states with the lowest levels.⁷²

These shocking statistics should not be interpreted as abstract risks—these tragedies happen to real people. On November 4, 2020, a Florida man reached for his handgun to investigate what he thought were sounds of an intruder.⁷³ He left his bedroom, saw a shape in the hallway, and shot and killed his wife. She was six months pregnant. The baby died as well, after being delivered early.⁷⁴ In December 2021, an Ohio man heard his home security alarm, and shot what he thought was an intruder but was, in fact, his 16-year-old daughter.⁷⁵ She was killed.

As a result of the self-protection myth consistently propagated by gun manufacturers, more than 480 American families experience the traumatic loss of unintentional murder every year.⁷⁶ Moreover, as demonstrated above, the improper storage of firearms in a family home can pose deadly risks to children and bystanders. In January 2017, a four-year-old from Texas accidentally

shot himself with his grandmother's handgun.⁷⁷ His grandmother stored the gun underneath his bed. Every day, eight children and teens are unintentionally shot in instances of family fire.⁷⁸

These risks greatly exceed any potential benefit of having a gun at the ready. Research shows that the legitimate and effective use of a gun in self- or home-defense is exceedingly rare. When public health researchers analyzed data from the National Crime Victim Survey from 2007–2011, they found little evidence that the use of a gun in self-defense reduces the likelihood of injury or property loss as compared to other protective actions.⁷⁹

Moreover, many self-reported instances of defensive gun use are likely illegal. In one study, a majority of criminal court judges found that most instances of self-reported defensive gun use were “probably illegal.”⁸⁰ The research establishes that **for every instance in which a gun in the home was used in successful self-defense, there were seven criminal assaults or homicides, four unintentional shootings, and 11 attempted or successful suicides.**⁸¹

The fact that the majority of “defensive” gun use is probably illegal is not surprising. The NRA dedicates an entire lesson in its “Basic Protection in the Home” course to “potential criminal and civil legal actions . . . subsequent to a defensive encounter” with a gun.⁸² The NRA has deemed a basic understanding of potential criminal and civil liability so important for its students that it requires that lesson be taught by “a licensed attorney or other individual certified by the state to instruct this area of law.”⁸³ The NRA even sought to create a special insurance—called “Carry Guard”—to pay the legal fees associated with defensive use of guns.⁸⁴ Although the NRA ultimately stopped offering Carry Guard after two years, it was not alone in recognizing the need for “self-defense” insurance; other packages, including those offered by the US Concealed Carry Association and Second Call Defense, cover legal fees, provide bail bonding, operate advice hotlines, and provide access to lawyers.⁸⁵

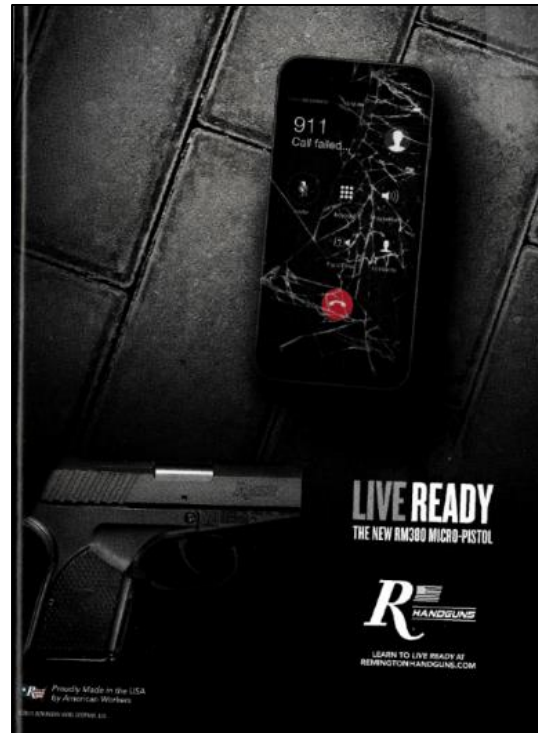
Guns in the home make people demonstrably less safe and open them up to criminal and civil liability when used as advertised. The gun industry's unchecked advertising fails to address any of these risks, thereby misleading the American public and rendering them unable to avoid the risks.

B. The message that guns are safer than alternative protection mechanisms is unfair and deceptive.

Another misleading message used to support the core falsehood that guns make people safer is that guns are safer than alternative protection mechanisms. For example, the three advertisements below tell consumers that a gun is more effective and efficient for protecting personal safety than calling 911:⁸⁶



(Anthony's Firearm Warehouse Instagram post from Sept. 23, 2020, last visited Mar. 27, 2022)



(Remington ran this advertisement in the *Concealed Carry Handguns: Self-Defense Buyer's Guide*)



(Liberty Ammunition Twitter post from Jan. 26, 2016, last visited Mar. 27, 2022)

The below advertisement from Lone Wolf Arms suggests that police can no longer protect the community and that people should engage in self-help:⁸⁷



(Lone Wolf Arms Instagram post from June 18, 2020,
last visited Mar. 27, 2022)

This message is unfair and deceptive.

Using a gun in self-defense means engaging in a lethal or potentially lethal confrontation. This comes with risks that far outweigh those of de-escalating the situation. In fact, public health research demonstrates that engaging in such confrontations puts people at a relatively high risk of injury, even if they have a gun, and even if they manage to wield it effectively. In comparison, de-escalation—running away, hiding, calling the police, or pretending to cooperate—puts people at a lower risk of injury compared with defensive gun use.

The chart that follows draws on data from a 2015 study to compare the risks of injury associated with taking particular actions in response to an attacker.⁸⁸ The average risk of injury to individuals when they either (a) call the police or a guard or (b) run away or hide from their attacker is **2.2 percent** and **2.4 percent**, respectively. By contrast, the average risk of injury to individuals when they retaliate by attacking or threatening their attacker with a gun is **4.1 percent**. The de-escalation tactics of calling for help or running and hiding represent the safest courses of action. These differences are statistically significant.

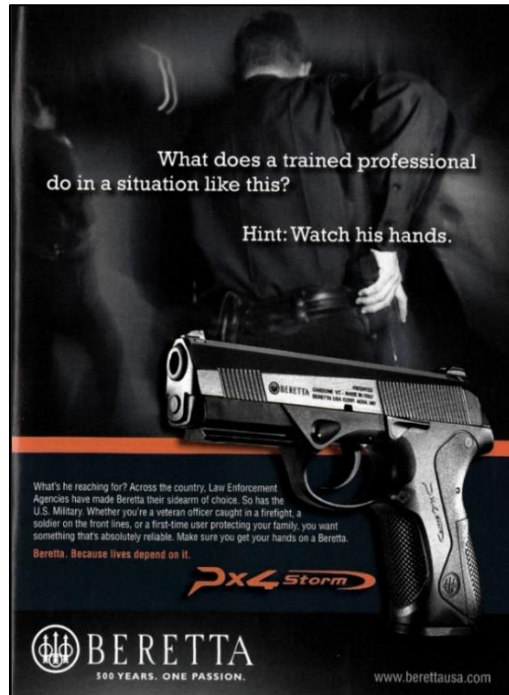
Type of Action	Injured After Taking Action
Called police or guard	2.2%
Ran or drove away (or tried), hid, locked door	2.4%
Attacked or threatened with gun	4.1%
Attacked or threatened with other weapon	5.3%
Attacked or threatened without a weapon	6.8%
Defended self or property (struggled, ducked, blocked blows, held onto property)	8.5%
Average for all actions	4.2

These data make clear that, at a minimum, people are less likely to be injured if they call the police, run away, or hide than if they escalate the situation by confronting their attacker, even with a gun.

These facts are neither surprising nor unknown to the gun industry. NRA training manuals acknowledge that personal defense situations are risky, dangerous, and undesirable.⁸⁹ Among the first lessons that students cover in the NRA’s “Basic Personal Protection in the Home” course is that guns are “a tool of last resort,” which should be “used only when deadly force is absolutely unavoidable.”⁹⁰ Instructors in that course are told to say: “The best way to win a confrontation is to avoid a confrontation.”⁹¹ Yet, advertisement after advertisement tells customers to do the exact opposite while pushing the false narrative that guns do not just make people safer, but do a better job than other precautions of keeping people safe.

C. The message that guns can make anyone, anywhere safer is unfair and deceptive.

The gun industry also perpetuates the falsehood that guns make people safer by expressly or implicitly claiming in advertisements that anyone can safely and effectively use guns, and that they can do so anywhere without restriction. For example, the advertisement that follows conveys that first-time gun users can be as effective in using a gun as trained professionals. It claims: “[w]hether you’re a veteran officer caught in a firefight, a soldier on the front lines or a *first-time user* protecting your family, you want something that’s absolutely reliable [and should m]ake sure to get your hands on a Beretta.”⁹²



(Beretta ran this ad to a national audience in 2011 in *Combat Handguns*)

Similarly, Smith & Wesson advertises one of its guns with the caption “it is that easy,” and another as fit for use by both law enforcement professionals and consumers alike.⁹³



6,037 likes
smithandwessoninc Yes, it is that easy.
The M&P 380 Shield EZ is easy to rack, easy to pack
and ideal for your conceal carry.
#mandp #easydoesit #thismandpisforyou

(Smith & Wesson Instagram post from Dec. 1, 2018,
last visited Mar. 27, 2022)



3,993 likes
smithandwessoninc #MandPMonday Whether
deployed as a backup sidearm for law enforcement
personnel, a deep concealment pistol for plain-clothes
officers or a personal protection firearm for consumers,
the M&P 45 SHIELD™ can be carried comfortably and
confidently, all day. Learn more at smith-wesson.com/
mpshield (link in bio) #mandp #experience
#confidence

(Smith & Wesson Instagram post from May 23, 2016,
last visited Mar. 27, 2022)

This message is unfair and deceptive.

Contrary to the misrepresentation that a “first-time user” can reliably and accurately use a gun in self-defense, it is extremely difficult even for trained professionals to do so. Such situations are uncertain and fluctuate quickly, and they create tremendous stress. Studies demonstrate that even police officers—who receive regular training on how to use a gun defensively—miss a majority of the time when they fire their guns. For example, one study demonstrated that, between 1998 and 2006, the average hit rate for New York Police Department (“NYPD”) officers during gunfights was only **18 percent**.⁹⁴ Further, even when there was no return fire, NYPD officers hit their targets only **30 percent** of the time.⁹⁵ The Los Angeles Police Department (“LAPD”) had similar results: in 2016, the LAPD reported that their officers hit their targets **33.4 percent** of the time.⁹⁶

The reasons for this consistently low hit rate are not limited to the difficulty of properly aiming and shooting a gun, although such difficulties are great. Studies establish that stress affects the body by inhibiting the very fine motor skills required to aim and fire a gun accurately, even for individuals who have extensive training—let alone for first-time users.⁹⁷

And, even under no stress, it often takes multiple shots to incapacitate an attacker, as NRA training manuals acknowledge.⁹⁸ Thus, the reality is directly at odds not just with the gun industry’s messaging that first-time users can pick up a gun and effectively defend themselves and their families, but also with the messaging that they can do so with only a single shot.

The advertisement below is one of many examples promoting the “one & done” capability of a gun or particular brand of ammunition, while propagating the key message that guns make people safer:⁹⁹

**CIVIL DEFENSE,
WHAT YOU NEED
TO PROTECT
WHAT'S MOST
PRECIOUS.**

Liberty Ammunition's personal defense line **Civil Defense**, provides you with the **One & Done** capability you and your family need and deserve!

- ½ Felt Recoil
- 3X Terminal Effect
- Match Grade Accuracy
- Lead Free
- Reduced Over Penetration

Available in .380 Auto, 9mm +P, 10mm, .40 S&W, .45 ACP +P, .38 Special, .357 Magnum and .45 Long Colt

LIBERTY AMMUNITION
CIVIL DEFENSE
9mm +P
4000 FPS

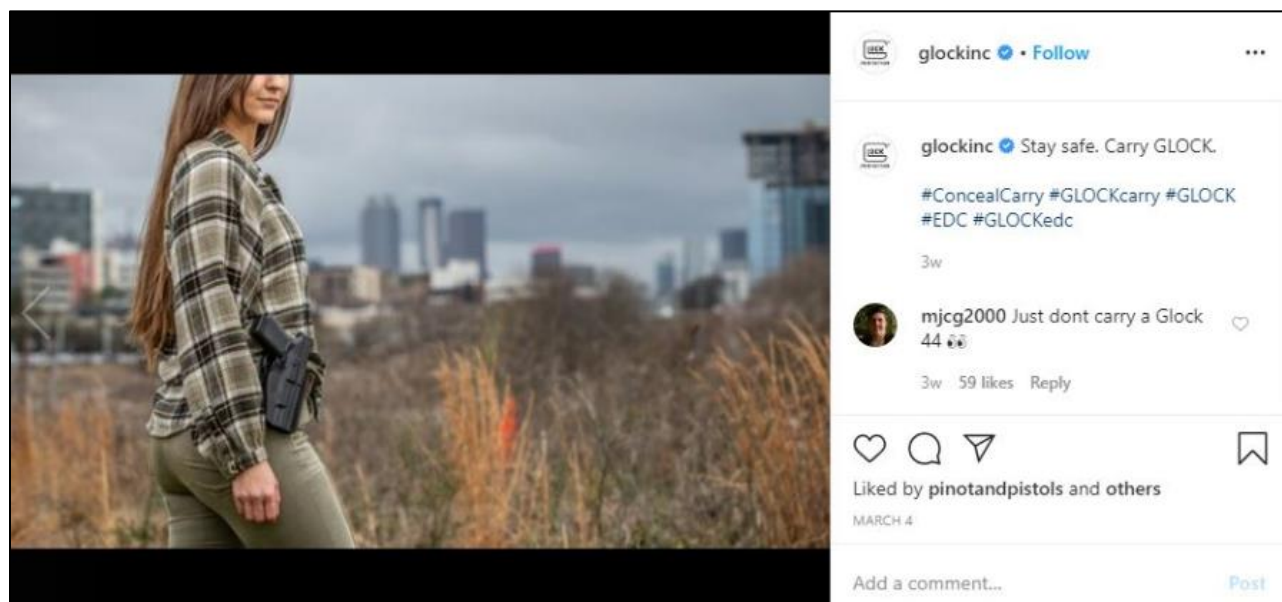
ONE
LIBERTY
AMMUNITION
& DONE
libertyammunition.com

(Liberty Ammunition ran this ad to a national audience in *Combat Handguns*)

Additionally, the two advertisements below convey that consumers who purchase a gun can and should take it with them everywhere—both in their car (where it will be more effective at protecting them than other safety features) and on their person, while, again, telling consumers that the guns are “built for victory” and will help them “stay safe”.¹⁰⁰



(DoubleStar Instagram post from Feb. 28, 2019, last visited Mar. 27, 2022)



(Glock Inc Instagram post from Mar. 4, 2020, last visited Mar. 27, 2022)

These messages are unfair and deceptive.

Most states, including those governing a vast majority of the U.S. population, require individuals to have a permit to carry a gun off their own property, and essentially all states have at least some restrictions on when and how a person can do so.¹⁰¹ These advertisements fail to provide any disclosures to that effect and thereby mislead consumers, and lead them to engage in conduct that makes them less safe.

D. The gun industry's advertising is both unfair and deceptive.

1. *The gun industry's advertising is unfair.*

As demonstrated above, the gun industry's pervasive perpetuation of its misleading messages constitutes an unfair practice. Myriad public health studies demonstrate that guns—particularly guns stored and used in the home—pose real risks of serious physical injury and death, which outweigh any alleged protective benefit that the gun may afford. As one of the studies discussed above shows, for every instance in which a gun in the home is used in successful self-defense, there are seven criminal assaults or homicides, four unintentional shootings, and 11 attempted or successful suicides.¹⁰²

Further, the gun industry's advertising is effective: after decades of hearing its misleading messages, consumers now believe them and have purchased guns in droves for the specific purpose of self- or home-defense. And gun deaths and injuries have substantially increased, not decreased. This incongruity demonstrates that the reasonable consumer, who has been bombarded with the gun industry's advertising for decades, has not been provided with complete information about the risks of owning and using firearms, and thus cannot reasonably avoid those risks.

For example, while these advertisements regularly claim that guns make people safer, they rarely—if ever—disclose the well-documented safety risks of keeping a gun in a home. They also fail to disclose that consumers who respond to attacks with firearms are more likely to be injured than consumers who avail themselves of alternative methods, like calling the authorities or otherwise de-escalating the confrontation. These advertisements also amplify potentially illegal behavior—like storing guns in demonstrably unsafe ways (e.g., loaded and unlocked on a bedside table), or suggesting that any individual has the ability to carry a gun anywhere they want.

The gun industry's advertising causes consumers substantial injury that they cannot reasonably avoid and that is not outweighed by countervailing benefits. These advertising practices are thus unfair.

2. *The gun industry's advertising is deceptive.*

The gun industry's advertising is likewise deceptive. Both expressly and implicitly, the gun industry's advertisements consistently claim that guns make people safer, that they are more effective than other means of protection, and that guns can be carried and used effectively by anyone, anywhere. These are material misrepresentations. In addition to the fact that these misrepresentations have demonstrably impacted consumer behavior—indeed, people increasingly believe the falsehood that guns make them safer, and increasingly purchase them for self-defense—these misrepresentations concern the safety and efficacy of guns, and are therefore

presumptively material. They are also likely to mislead reasonable consumers—and, again, have been demonstrably successful in doing so. As discussed in Part IV.A–C, all credible scientific research, as well as the NRA’s own training materials, confirms that guns do not make people safer, are not more effective than alternative means of self-defense, and cannot be used safely and effectively by anyone, anywhere. Yet people continue buying guns precisely because the gun industry’s advertising has convinced them of the opposite.

E. The FTC has previously brought enforcement actions based on similarly unfair and deceptive advertisements.

The FTC has the broad authority to investigate and regulate the gun industry for its consistent violations of Section 5 of the FTC Act, as it has done in analogous contexts. For example, the FTC has previously taken action against:

- The Tobacco Industry. As the health and safety risks of tobacco became increasingly clear in the mid-twentieth century, the FTC investigated the industry’s advertising practices—particularly its claims related to the health and safety of its products and its targeted advertising towards children. The investigation led to multiple enforcement actions against key industry players¹⁰³ and, ultimately, to significant regulation of the industry to ensure that its advertisements accurately characterized the risks of tobacco.
- The Cannabidiol Industry. In March 2021, the FTC entered orders against six sellers of cannabidiol (“CBD”) products.¹⁰⁴ The FTC’s underlying complaints had alleged that the CBD sellers made unsubstantiated claims in their advertisements that CBD products can cure certain ailments and diseases, prevent cognitive decline or pain, act as effectively as other painkillers, and are generally safe for consumers.¹⁰⁵ The FTC found that these claims were not based on any reliable studies or scientific literature and were thus “false or misleading, or were not substantiated at the time the representations were made.”¹⁰⁶
- The E-Cigarette Industry. In May 2018, the FTC issued 13 warning letters under Section 5 to various manufacturers, distributors, and retailers of e-cigarettes, whose advertising and labelling practices appeared designed to target children.¹⁰⁷ Further, in late 2019 and early 2021, the FTC issued orders to multiple e-cigarette manufacturers seeking information on their sales, advertising, and promotional expenditures in order to investigate the e-cigarette market and ensure that manufacturers accurately convey the public health risks of their products to consumers.¹⁰⁸
- Various Industries in Response to COVID-19. The FTC has also taken action against companies in a variety of industries that have engaged in unfair or deceptive practices preying on consumers’ fears and vulnerabilities stemming from the COVID-19 pandemic.¹⁰⁹ In particular, the FTC has sent numerous warning letters to companies that had made unsubstantiated claims that their products can treat or prevent COVID-19.¹¹⁰

V. The Gun Industry's Advertising Is Deadly, and Becoming More So.

The gun industry has been freely perpetuating its unfair and deceptive messages for decades. The results of this campaign are devastating:

- **More than 120 Americans are killed each day with guns, and nearly 45,000 are killed with guns each year.**¹¹¹
- **Gun injuries are a leading cause of death in the United States.**¹¹²
- **Gun violence has surpassed car accidents as a leading cause of death for Americans between the ages of 15 and 29.**¹¹³
- **Almost a quarter of the guns purchased in 2020 were used in a crime within six months of purchase.**¹¹⁴

Moreover, the gun industry has begun pushing even more dangerous themes in its advertisements to target and radicalize certain consumers, convincing them that they need expensive, military-grade weaponry for everyday use.

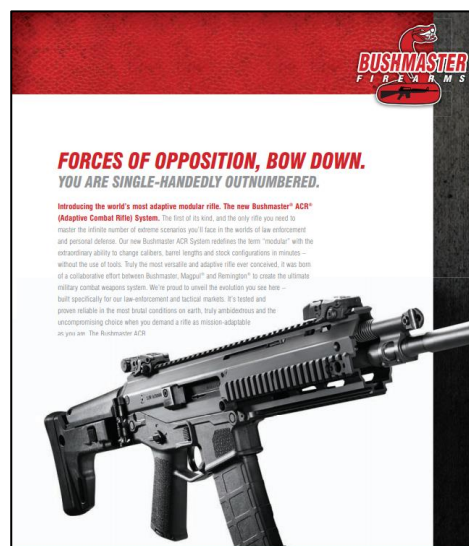
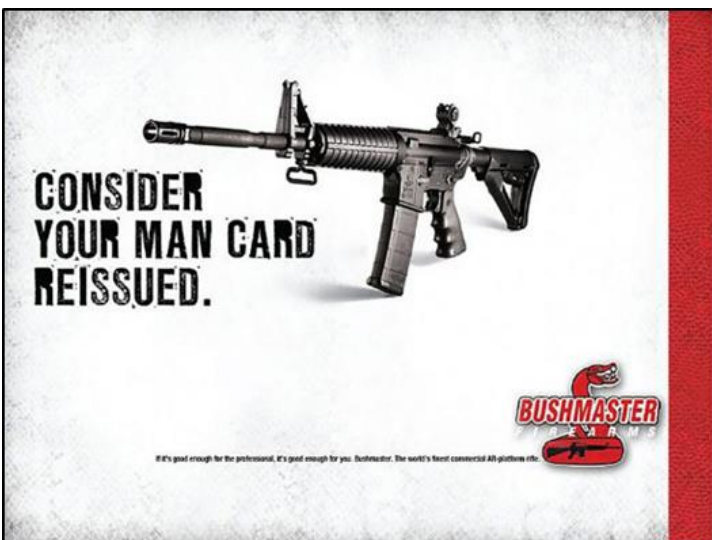
In mid-2020, Brady and Everytown Law filed a petition with the FTC that described how Smith & Wesson brands its consumer guns as “Military and Law Enforcement” weapons and otherwise targets paramilitary civilian groups using the “halo effect.”¹¹⁵ Several other manufacturers are also spreading this militant message.

Daniel Defense told its consumers to “use what they use,” referring to soldiers in combat:¹¹⁶



(Daniel Defense Instagram post from April 27, 2016, last visited Mar. 27, 2022)

Bushmaster told radicalized young men—including the Sandy Hook shooter—that using an assault rifle is the only way to be a man, and advertised its weapons as “the ultimate military combat weapons system” that would make “forces of opposition, bow down”.¹¹⁷



(Bushmaster ran this advertisement to a national audience in *Maxim*)

DoubleStar posted an action shot of a shooter in a clown mask, showed young users how to create Fortnite-branded assault rifles to make first-person shooter fantasies a reality, and told its consumers that “violence is the way” and that “half the battle . . . is extreme violence”.¹¹⁸



(DoubleStar Instagram post from Aug. 18, 2015, last visited Mar. 27, 2022)



(DoubleStar Instagram post from Sept. 16, 2018, last visited Mar. 27, 2022)



(DoubleStar Instagram post from May 13, 2020, last visited Mar. 27, 2022)[†]

Other gun manufacturers and distributors use similar rhetoric to radicalize consumers and increase profits. And it doesn't stop there. The gun industry has preyed on people's fears related to COVID-19,¹¹⁹ encouraged the use of weapons at racial justice protests,¹²⁰ and characterized gun owners as an independent army that should "stand up and resist the growing tyranny".¹²¹



(Armalite Instagram post from Mar. 25, 2020, last visited Mar. 27, 2022)

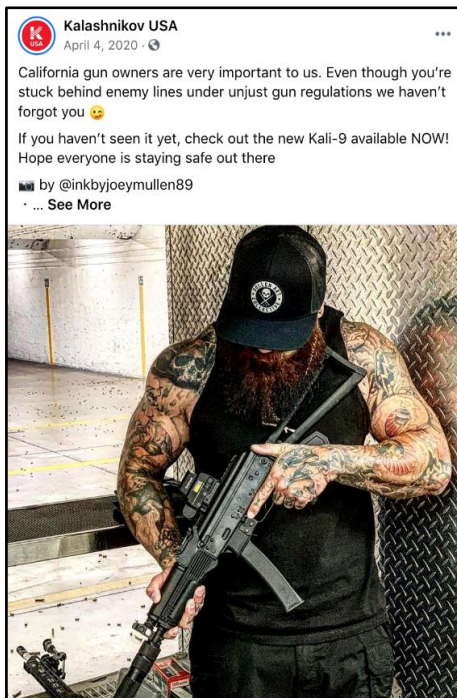


(Georgia Arms Instagram post from Oct. 88, 2020, last visited Mar. 27, 2022)

[†] Although this specific advertisement is for blades, the radical rhetoric epitomizes the themes that pervade DoubleStar's advertising strategy.



(Impact Arms Instagram post from Aug. 3, 2020, last visited Mar. 27, 2022)

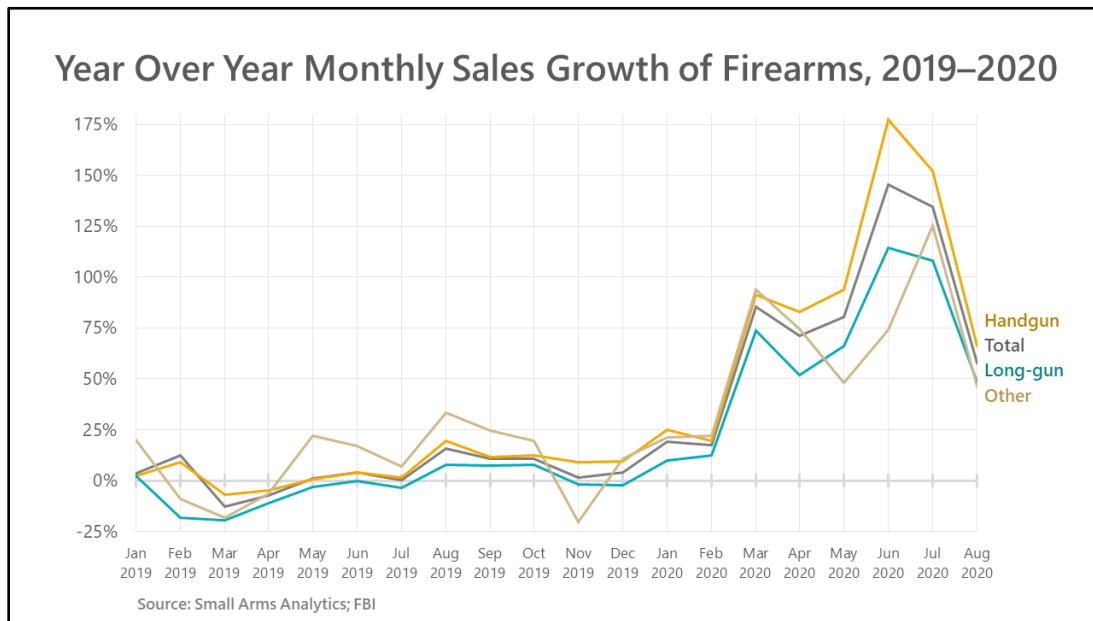


(Kalashnikov USA Instagram post from Apr. 4, 2020, last visited Mar. 27, 2022)

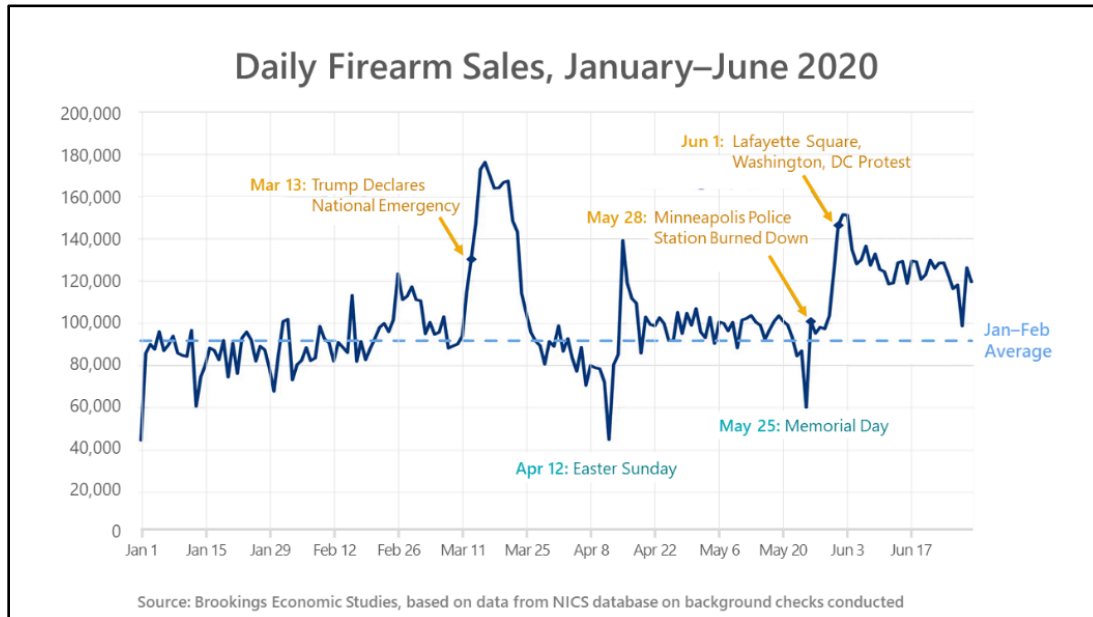


(AR500 Armour Twitter post from Oct. 12, 2020, last visited on Mar. 27, 2022)

Unsurprisingly, 2020 was a banner year for gun sales across all metrics.¹²² The chart below shows gun sales from 2019 (already at a high relative to years past) through mid-2020:¹²³



The chart below examines sales from January to June 2020, including key dates during that time period that impacted sales:¹²⁴



In total, the gun industry sold roughly 20.7 million guns in 2020, an increase of nearly 64 percent over 2019.¹²⁵ In December alone, the number of background checks for firearms hit 3.9 million—a record at the time, which soon fell below the 4.3 and 4.6 million background checks in January and March 2021, respectively.¹²⁶

As the gun industry's sales and profits broke records, so did the resulting gun violence. Mass shootings surged by nearly 50 percent in 2020.¹²⁷ Many states reported unprecedented levels of gun-related harms, with some of the country's largest cities reporting a 30 percent spike in homicides.¹²⁸ Nearly 20,000 Americans were killed in gun homicides, over 24,000 took their own lives with guns, and tens of thousands more were injured with guns.¹²⁹ States with more background checks—signifying more purchases of new guns—saw greater increases in new guns recovered in and traced to crimes.¹³⁰

2021 brought more of the same. There were 693 mass shootings¹³¹ in 2021, compared with 611 in 2020 and 417 in 2019.¹³² These shootings resulted in 702 deaths and 2,844 injuries.¹³³ The victims included a nine-year-old boy who died in his mother's arms in a courtyard, a police officer and father of seven who died in a grocery store after responding to emergency calls, and a grandmother who was murdered in the spa where she worked to provide for her family.¹³⁴ Over 24,000 Americans took their lives in moments of desperation made irreversible by the finality of a gunshot.¹³⁵ About 40,500 more were injured by a gunshot, often leading to lifelong physical and psychological trauma.¹³⁶

VI. The Gun Industry Requires Regulation.

The egregious advertising shown in this Petition—and its deadly repercussions—makes clear that the gun industry has no plans to stop perpetuating its false message of safety so long as it results in more profits. After years of inaction from the FTC, the gun industry has come to believe it is above the law.

When the New Jersey Attorney General served Smith & Wesson with a subpoena seeking “evidence of consumer fraud relating to advertising” as part of a lawful investigation into its advertising practices, Smith & Wesson not only refused to comply, but also sued the Attorney General in federal court.¹³⁷ Smith & Wesson alleged that the subpoena sought to “suppress and punish” the company's “lawful speech regarding gun ownership,” and accused the Attorney General of having an “anti-Second Amendment agenda.”¹³⁸ Smith & Wesson also argued that, through the creation of the PLCAA, Congress sought to prevent not only all lawsuits against the gun industry, but also “all manner of attacks on the firearms industry through the use of legal process.”¹³⁹ In other words, Smith & Wesson has taken the position that it is above the law, and exempt even from investigation by any enforcement agency. This is an impunity that no other industry would dare to assert, particularly in response to a standard administrative subpoena.

Petitioners expect that stakeholders of the gun industry will seek to make similar First Amendment challenges to any FTC investigation into their practices. Any such challenges would be meritless for at least three reasons. *First*, an administrative subpoena does not “regulate” speech because it seeks only the production of documents through a legal process. *See SEC v. McGoff*, 647 F.2d 185, 187 (D.C. Cir. 1981). *Second*, an administrative subpoena would seek information regarding potentially fraudulent statements, deceptions, and misrepresentations—none of which are protected by the First Amendment. *Finally*, an administrative subpoena does not deny or restrict access to any particular forum based on content. In any event, the potential for industry objections should not deter the FTC from fulfilling its mandate to protect consumers. Any contrary

conclusion would render the FTC powerless to investigate and regulate the unfair and deceptive practices that it is charged with eliminating.[‡]

The gun industry has also used the tactical measure of filing for bankruptcy to avoid accountability. In 2020, just eight months after the Supreme Court of Connecticut held that wrongful death lawsuits filed by the families of victims of the Sandy Hook massacre could proceed against Remington under an exception to the PLCAA, Remington triggered an automatic stay of the litigation by filing for bankruptcy¹⁴⁰—notwithstanding the fact that 2020 and 2021 were banner years for gun sales. Similarly, in January 2020, the NRA filed for bankruptcy just five months after the New York Attorney General filed a lawsuit seeking to dissolve the organization for violations of state law.¹⁴¹ The Bankruptcy Court for the Northern District of Texas dismissed the NRA’s bankruptcy petition because it “was not filed in good faith.”¹⁴² The court held that “the NRA’s purpose in filing bankruptcy is less like a traditional bankruptcy case in which a debtor is faced with financial difficulties or a judgment that it cannot satisfy and more like cases in which courts have found bankruptcy was filed to gain an unfair advantage in litigation or to avoid a regulatory scheme.”¹⁴³

VII. Conclusion

The FTC has a responsibility to act now, as it has done to stop other industries’ harmful advertising practices. Like the tobacco industry, the gun industry has been able to successfully manipulate the American public into believing that its lethal product is safe and will make them safer through decades of unfair and deceptive advertising. And again, it is the FTC that must enforce consumer protection and advertising regulations by holding the gun industry accountable, and requiring, at a minimum, disclosures that address safety, legality, and other risks associated with the possession and use of guns.

By continuing to allow the gun industry’s advertising practices to go unchecked, the FTC is signaling to the industry that it is above the law. The FTC must exercise its power to enforce consumer protection laws before the industry can inflict even more harm than it already has. On behalf of all of the American families and communities that have lost loved ones to and lived in fear of gun violence, Petitioners respectfully ask the FTC to exercise its power and fulfill its mandate to protect the American public.

[‡] As with other points in this Petition, Petitioners are prepared to present supplemental information to the FTC concerning any potential First Amendment challenges.

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- ¹ A student arrested in a school shooting is released. His family says he was bullied, NPR (Oct. 8, 2021), <https://www.npr.org/2021/10/08/1044340122/mansfield-arlington-texas-timberview-high-school-shooting-released>.
- ² Ramon Antonio Vargas, *4 men shot at Gen. Taylor and Annunciation streets while doing drainage work*, NOLA.COM (Oct. 6, 2021), https://www.nola.com/news/crime_police/article_501e3532-26d4-11ec-8836-5726f9854e5b.html.
- ³ Harry Harris, *Man dies after Oakland drive-by shooting*, EAST BAY TIMES (Oct. 6, 2021), <https://www.eastbaytimes.com/2021/10/06/drive-by-shooting-in-oakland-leaves-man-in-grave-condition>.
- ⁴ Sarah Hammond, *Portsmouth police say child accidentally shot self in Midtown area*, 13NewsNow (Oct. 7, 2021), <https://www.13newsnow.com/article/news/crime/child-shot-portsmouth-harvard-road/291-f64c033d-8458-4a50-81d6-64d597290a47>.
- ⁵ WONDER Online Database, CTRS. DISEASE CONTROL (2020), <https://wonder.cdc.gov/ucd-icd10.html> (Dataset: Group Results by “Injury Mechanism & All Other Leading Causes”; Year/Month: “2020”); see also Jennifer Mascia, *It’s Official: Gun Deaths Hit an All-Time High in 2020*, THE TRACE (Jan. 7, 2022), <https://www.thetrace.org/2022/01/gun-violence-homicide-suicide-cdc-data-2020>.
- ⁶ WONDER Online Database, CTRS. DISEASE CONTROL (2020), <https://wonder.cdc.gov/ucd-icd10.html> (Dataset: Group by “Injury Mechanism & All other Leading Causes Multiple Cause of Death, 1999-2020”; Five-Year Age Groups: “5-9 years”, “10-14 years”, & “15-19 years”); Rebecca Cunningham, *The Facts on the US Children and Teens Killed by Firearms*, MICH. HEALTH LAB (Aug. 6, 2019), <https://labblog.uofmhealth.org/lab-report/facts-on-us-children-and-teens-killed-by-firearms>.
- ⁷ Makena Kelly, *Congress will investigate claims that Instagram harms teens*, THE VERGE (Sept. 15, 2021), <https://www.theverge.com/2021/9/15/22675802/facebook-instagram-teens-harm-blumenthal-blackburn-markey-kids>.
- ⁸ Cat Zakrzewski, *Coalition of state attorneys general launches probe into whether TikTok harms children and teens*, WASH. POST. (Mar. 2, 2022), <https://www.washingtonpost.com/technology/2022/03/02/state-attorneys-general-tiktok>.
- ⁹ *FTC Issues Orders to Nine Social Media and Video Streaming Services Seeking Data About How They Collect, Use, and Present Information*, FED. TRADE COMM’N (Dec. 14, 2020), <https://www.ftc.gov/news-events/news/press-releases/2020/12/ftc-issues-orders-nine-social-media-video-streaming-services-seeking-data-about-how-they-collect-use>.
- ¹⁰ 15 U.S.C. § 45(a)(1).
- ¹¹ *Id.* § 45(n).
- ¹² *FTC Policy Statement on Unfairness*, FED. TRADE COMM’N (Dec. 17, 1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.
- ¹³ *Id.*
- ¹⁴ *Id.*; see also *In the Matter of International Harvester Co.*, 1984 WL 565290, at *97 (1984).
- ¹⁵ *In the Matter of International Harvester Co.*, 1984 WL 565290, at *90 n. 58.
- ¹⁶ *FTC Policy Statement on Unfairness*, *supra* note 12, at 1074.
- ¹⁷ *In the Matter of International Harvester*, 1984 WL 565290, at *90-*91.
- ¹⁸ *Letter from Fed. Trade Comm’n Chairman James C. Miller III to Hon. John D. Dingell*, at 1-2 (Oct. 14, 1983) (appended to the majority opinion in *In re Cliffdale Associates*, 103 F.T.C. 110 (1984)).
- ¹⁹ *Id.* at 5.
- ²⁰ *Id.*
- ²¹ *In re Figgie Int’l, Inc.*, 107 F.T.C. 313, 1986 WL 722111, at *58-*61 (1986).

22 *See infra* notes 58-81.

23 *See infra* notes 58-81.

24 *See, e.g.,* Charles C. Branas et al., *Investigating the link between gun possession and gun assault*, 99 AM. J. OF PUB. HEALTH 2034, 2037 (Nov. 2009).

25 Family fire is a shooting involving an improperly stored or misused gun in the home that results in death or injury. Unintentional shootings, suicide, and intentional shootings are all forms of family fire. *Home*, END FAMILY FIRE, <https://www.endfamilyfire.org>, (last visited Mar. 19, 2022)

26 *Petition of the Center to Prevent Handgun Violence, American Academy of Pediatrics, American Public Health Association, American Association of Suicidology, American Academy of Child and Adolescent Psychiatry, and the National Association of Children’s Hospitals and Related Institutions before the Federal Trade Commission* at 17 (Feb. 14, 1996).

27 “Tip the Odds in Your Favor” Advertising Campaign, BERETTA U.S.A. (Feb. 1993); “Homeowner’s Insurance” Advertising Campaign, BERETTA U.S.A. (Nov. 1991).

28 Allen Rostron, *The Dickey Amendment on Federal Funding for Research on Gun Violence: A Legal Dissection*, 108 AM. J. PUBLIC HEALTH 865, 866 (Jul. 2018).

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July 15, 2022

Samuel Levine
Director, Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Complaint and Request for Investigation of Daniel Defense LLC

Dear Director Levine,

This Complaint is submitted on behalf of Everytown for Gun Safety, the nation's largest gun violence prevention organization.

Everytown respectfully requests that the Federal Trade Commission (the "Commission") use its powers under the Federal Trade Commission Act ("FTC Act") to investigate and take strong regulatory action with respect to the marketing practices of Daniel Defense, LLC, a privately held gun manufacturer located in Black Creek, Georgia. As set forth below, there is substantial evidence that Daniel Defense has violated, and is violating, the FTC Act by marketing assault weapons to the civilian market with violent and militaristic imagery, unfairly implying that civilians can use their weapons for offensive combat-like missions, and appealing particularly to the thrill-seeking and impulsive tendencies of susceptible teens and young men who are attracted to violence and military fantasies.

Over the past two months, Americans have repeatedly witnessed the devastating consequences when such teenage and young men, armed with assault weapons, act out these violent fantasies. On May 24, 2022, one such shooter used a Daniel Defense AR-15-style rifle, specifically a DDM4 V7 rifle, to commit a horrific school shooting at Robb Elementary School in Uvalde, Texas. Daniel Defense has described this type of rifle as "extremely maneuverable and easy to move around barriers"—a description more apt for combat, as opposed to hunting or target shooting.¹ Over the course of approximately 80 minutes, the 18-year-old shooter used his DDM4 V7 rifle to slaughter 19 children and two teachers and to injure 17 more children.²

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² Reese Oxner & Carla Astudillo, *What we know, minute by minute, about how the Uvalde shooting and police response unfolded* (June 21, 2022), <https://www.texastribune.org/2022/05/27/uvalde-texas-school-shooting-timeline/>; Bill Chappell, Joe Hernandez, & Rachel Treisman, *What we know about the victims of the Uvalde school shooting*, NPR (May 31, 2022),

A review of the content and placement of Daniel Defense’s marketing shows that the company regularly appeals to civilian consumers attracted to violent and militaristic imagery and to what is presented as the thrill and excitement of combat. A sampling of this marketing can be found at pages 7-15. In keeping with this strategy, Daniel Defense also utilizes violent first-person-shooter video games, such as *Call of Duty*, to promote its rifles. (See pages 18-20.) It also appears, based on the content and placement of Daniel Defense’s marketing, that part of the company’s profit strategy is to get children and teens hooked on its products at an early age by using marketing that draws heavily on pop culture themes that are particularly attractive to teens, such as posting an image of the artist Post Malone, standing in front of a liquor cabinet holding a Daniel Defense rifle, with the caption “MK18 got me feeling like a rockstar.” (See pages 21-23.)

While the marketing included herein lacks any obvious reference to civilian self-defense or hunting animals, it *does* contain references and images associated with killing and hunting people. For example, one social media post from 2021 features a person dressed up for Halloween as a murderous guard from the Netflix show *Squid Game* (in which the guards use guns to execute game players), holding a Daniel Defense MK18 rifle, with the caption: “#SquidGame would have been better if they used MK18s.” (See page 22.) In a YouTube video posted by the company in 2017, a group of heavily armed men in military-like garb are seen arriving by helicopter and executing a raid with Daniel Defense assault rifles. (See page 14.) While the video showcases Daniel Defense’s “Military and Law Enforcement Brand” of assault rifles, in reality, these rifles are being promoted to the general public on YouTube and are available for purchase by the general public.

The company’s approach aligns with broader gun industry marketing trends.³ A 2020 study of gun company and influencer content on YouTube and Twitter found

<https://www.npr.org/2022/05/27/1101286508/what-we-know-about-the-victims-of-the-ualde-school-shooting>.

³ In May 2020 and August 2021, Everytown, along with Fred Guttenberg and Brady filed complaints with the FTC, urging the Commission to investigate Smith & Wesson’s marketing practices with respect to its line of “M&P” assault rifles. Both letters can be found at <https://everytownlaw.org/case/everytown-calls-on-the-ftc-to-investigate-smith-wessons-dangerous-assault-rifle-marketing-practices/>. It should be noted that the 21-year-old man accused of perpetrating the July 4, 2022, mass shooting in Highland Park, IL, is alleged to have done so with a Smith & Wesson M&P rifle. See Becky Sullivan, Highland Park suspect confessed to the July 4th shooting, Prosecutors Say, NPR (July 6, 2022), <https://www.npr.org/2022/07/06/1109987663/highland-park-parade-shooting-suspect-robert-crimo-iii>. In addition, the Uvalde shooter purchased a Smith & Wesson M&P rifle on his 18th birthday but is alleged to have kept it in the trunk of his car during the shooting. Reese Oxner et al., *supra* note 2.

that “[m]ilitary, patriotic, and law enforcement themes” were “commonplace,” and “glorification of military gun use were easily found in contemporary gun advertising.”⁴ And the *New York Times* recently reported that, beginning in the 2000s, the gun industry engaged in a campaign to “woo millions of men who liked to buy gear that made them feel like soldiers and the police.”⁵ As the article explains:

Gun companies have spent the last two decades scrutinizing their market and refocusing their message away from hunting toward selling handguns for personal safety, as well as military-style weapons attractive to mostly young men. The sales pitch—rooted in self-defense, machismo and an overarching sense of fear—has been remarkably successful.⁶

Daniel Defense’s marketing does not exist in the abstract. The company markets AR-15-style rifles against the backdrop of decades of mass shooters selecting such rifles as their weapons of choice. But marketing such weapons with military imagery and implying that it is suitable for civilians to use these weapons to engage in offensive, combat-like missions exploits the heightened susceptibility of young people, particularly teenage boys and post-adolescent men, to product advertising, as well as their heightened propensities for risky, and too-often violent, behavior. In short, Daniel Defense preys on at-risk young men to sell an aggressive, hypermasculine, and militaristic fantasy and, by extension, the very real weapons that make a perverted version of that fantasy possible.

For these and other reasons further explained below, we respectfully submit that there is substantial evidence warranting an investigation and strong remedial action with respect to Daniel Defense’s marketing.

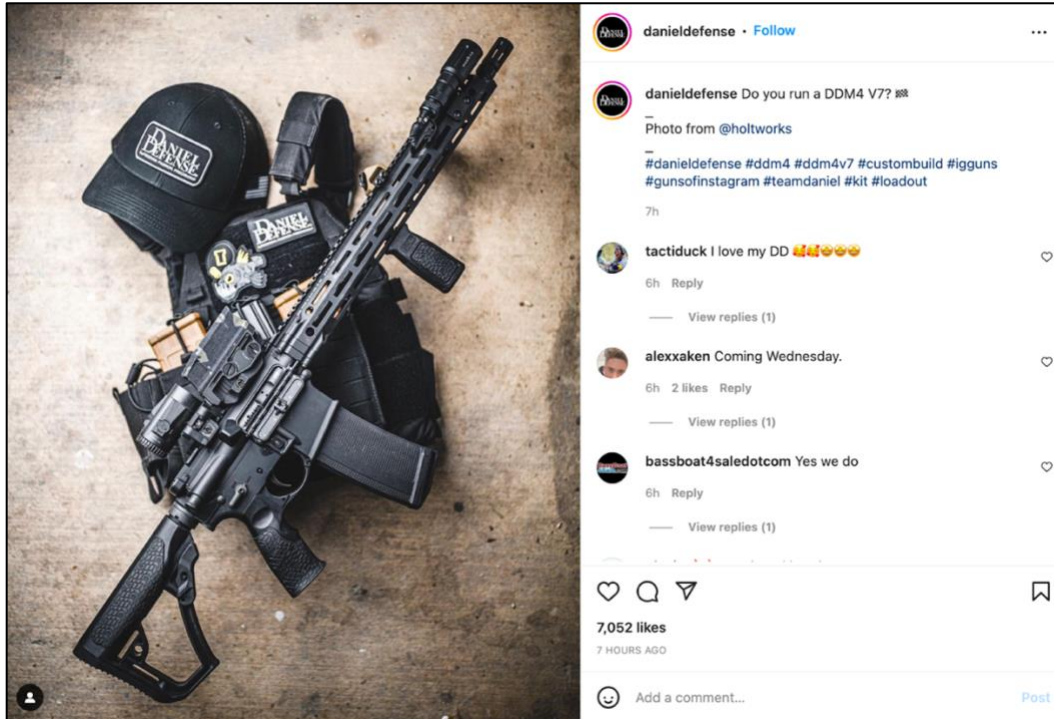
⁴ Lisa Jordan et al., *Characteristics of Gun Advertisements on Social Media: Systematic Search and Content Analysis of Twitter and YouTube Posts*, J. of Med. Internet Research vol. 22,3 e15736. (Mar. 27, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7148552/>. The study identified other common themes in gun advertising including, disturbingly, “[e]xploitation of stranger rape.” *Id.*; see also Aimee Picchi, *#Gunporn #pewpew: How gunmakers market firearms to young Americans*, CBS News (June 8, 2022), <https://www.cbsnews.com/news/gun-assault-weapons-young-americans-ar-15-gun-control/>.

⁵ Mike McIntire, Glenn Thrush, & Eric Lipton, *Gun Sellers’ Message to Americans: Man Up*, N.Y. Times (June 18, 2022), <https://www.nytimes.com/2022/06/18/us/firearm-gun-sales.html>.

⁶ *Id.*

DANIEL DEFENSE'S MARKETING

On May 24, 2022, Daniel Defense published an Instagram post promoting its DDM4 V7 rifle:⁷



The post included the #loadout, a reference to a set of objects to be carried into battle by a soldier, or, in the parlance of the video game *Call of Duty*, the weapons that a player uses in battle.⁸ That same day, an 18-year-old took a DDM4 V7 rifle that he had purchased on his birthday, brought it to Robb Elementary School and used it to massacre 19 children and two teachers.

In its post, Daniel Defense showed its DDM4 V7 rifle lying on top of a plate carrier, a military-grade form of body armor. To be clear: there is no legitimate reason for a civilian to pair such a semiautomatic rifle with bulletproof body armor. Indeed, several high-profile mass shooters have used this combination to deadly and tragic

⁷ Todd C. Frankel, *Maker of Uvalde shooter's rifle posted image of child with gun before massacre*, The Washington Post (May 26, 2022), <https://www.washingtonpost.com/business/2022/05/26/daniel-defense-uvalde-shooting-rifle-photo-tweets/>.

⁸ Collins Dictionary, Definition of Loadout, <https://www.collinsdictionary.com/us/dictionary/english/loadout>; Call of Duty: In-Game Terms, <https://www.callofduty.com/content/atvi/callofduty/warzone/web/nz/strategyguide/basic-training/in-game-terms.html>.

effect, including the perpetrators of the mass shootings in Aurora, Colorado; San Bernardino, California; Boulder, Colorado; and, notably, Buffalo, New York.⁹

The content and placement of Daniel Defense’s marketing strongly suggests that the company markets its products, including its AR-15-style rifles, to teenagers and young adults. It does so through, *inter alia*, social media content and print advertising. In particular, Daniel Defense promotes its products heavily on Instagram, which has a user base that skews young.¹⁰ Unlike many other companies that sell age-restricted products and that limit access to their social media content for underage viewers, Daniel Defense does not appear to take any steps to restrict access to its Instagram account by users who are under the legal age for purchasing its products.¹¹ In fact, Daniel Defense’s social media posts, such as the now-deleted Twitter post below, make it apparent that the company sees no problem with youth exposure to firearms:

⁹ Becky Sullivan, *Body armor, worn by Buffalo shooter, faces far fewer regulations than guns*, NPR (May 20, 2022), <https://www.npr.org/2022/05/20/1100263364/buffalo-shooter-body-armor-fewer-regulations-than-guns>.

¹⁰ Studies show that Instagram’s users in the United States are disproportionately young and that just under three-quarters of all U.S. teenagers use Instagram. See Katherine Schaeffer, *7 facts about Americans and Instagram*, Pew Research Center (Oct. 7, 2021), <https://www.pewresearch.org/fact-tank/2021/10/07/7-facts-about-americans-and-instagram/>; Brooke Auxier & Monica Anderson, *Social Media Use in 2021*, Pew Research Center (Apr. 7, 2021), <https://www.pewresearch.org/internet/2021/04/07/social-media-use-in-2021/>; Statista, *Distribution of Instagram users in the United States as of March 2022, by age group* (Apr. 22, 2022), <https://www.statista.com/statistics/398166/us-instagram-user-age-distribution/>.

¹¹ Daniel Defense has 599,000 Instagram followers, <https://www.instagram.com/danieldefense/?hl=en>; on Facebook, it boasts almost 260,000 followers, <https://www.facebook.com/DanielDefense>; and on YouTube, it has over 65,000 subscribers, <https://www.youtube.com/channel/UC-y0QNNNujtB2PLjrHDwnPg>. Its Twitter account, has over 135,000 followers, <https://twitter.com/DanielDefense>.



Common themes in the company’s marketing include military and combat imagery and content inspired by popular culture. Marketing that draws on these themes enables Daniel Defense to appeal to young male civilian consumers, which can in turn translate to market growth by priming young buyers to purchase AR-15-style rifles as soon as they are legally able.¹² Some illustrative examples of Daniel Defense’s marketing are included in the sections below.

¹² See Aimee Picchi, *#Gunporn #pewpew: How gunmakers market firearms to young Americans*, CBS News (June 8, 2022), <https://www.cbsnews.com/news/gun-assault-weapons-young-americans-ar-15-gun-control/>.

A. Promoting Daniel Defense's Products as Combat Weapons

Daniel Defense's marketing frequently depicts apparent military and law enforcement operations and gear, even though publicly-available evidence strongly suggests that the majority of Daniel Defense assault rifle sales are to civilians.¹³ In fact, much of the company's marketing is done through social media platforms like Instagram, which has a largely civilian audience.¹⁴



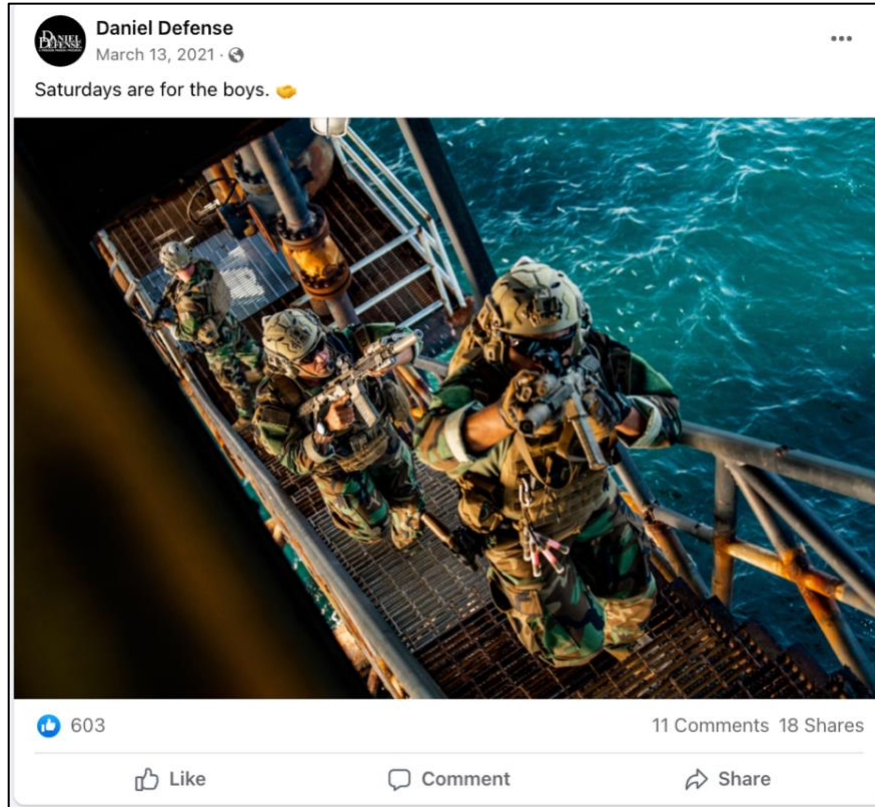
Image from Daniel Defense 2022 print catalog



Instagram (Sep. 27, 2021)

¹³ See e.g., Frequently Asked Questions, <https://danieldefense.com/faq>.

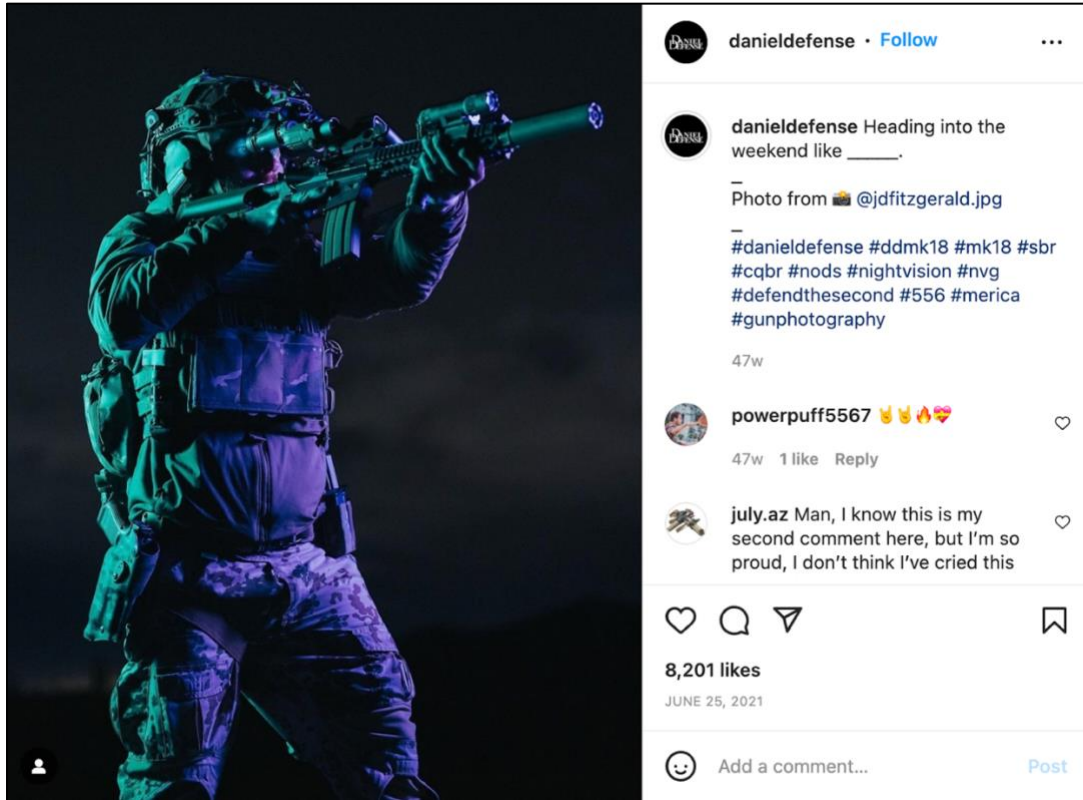
¹⁴ Many of the posts appear to feature actors dressed up as members of the military or law enforcement.



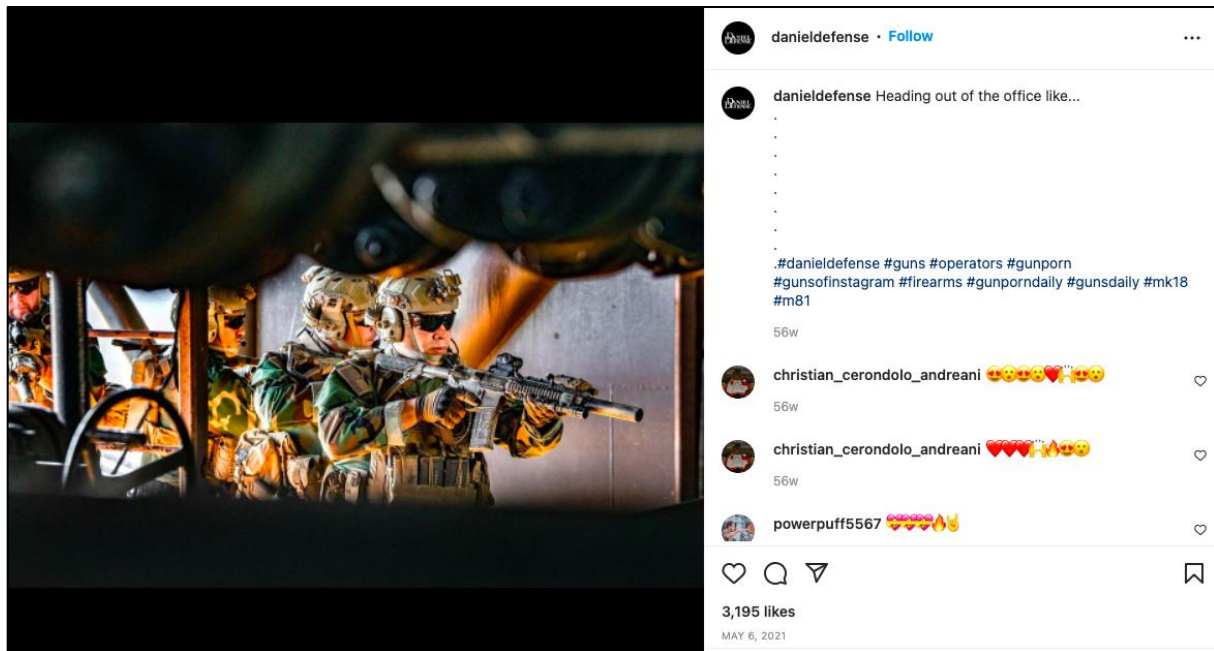
[Facebook](#) (Mar. 13, 2021)



[Facebook](#) (Nov. 18, 2019)



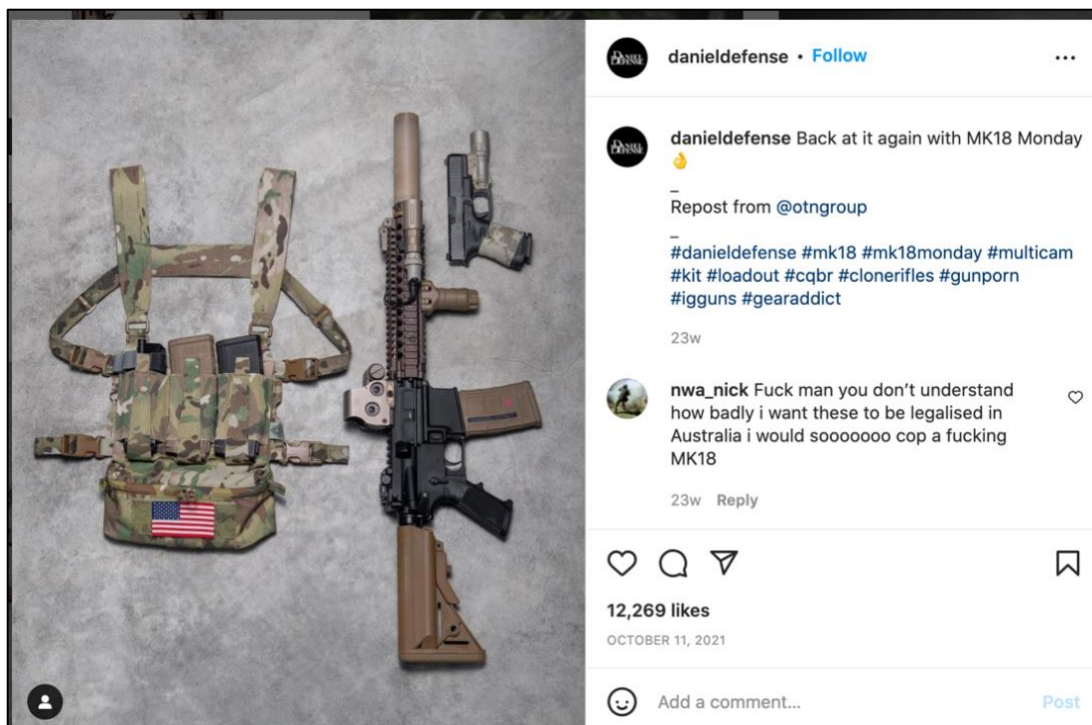
Instagram (June 25, 2021)



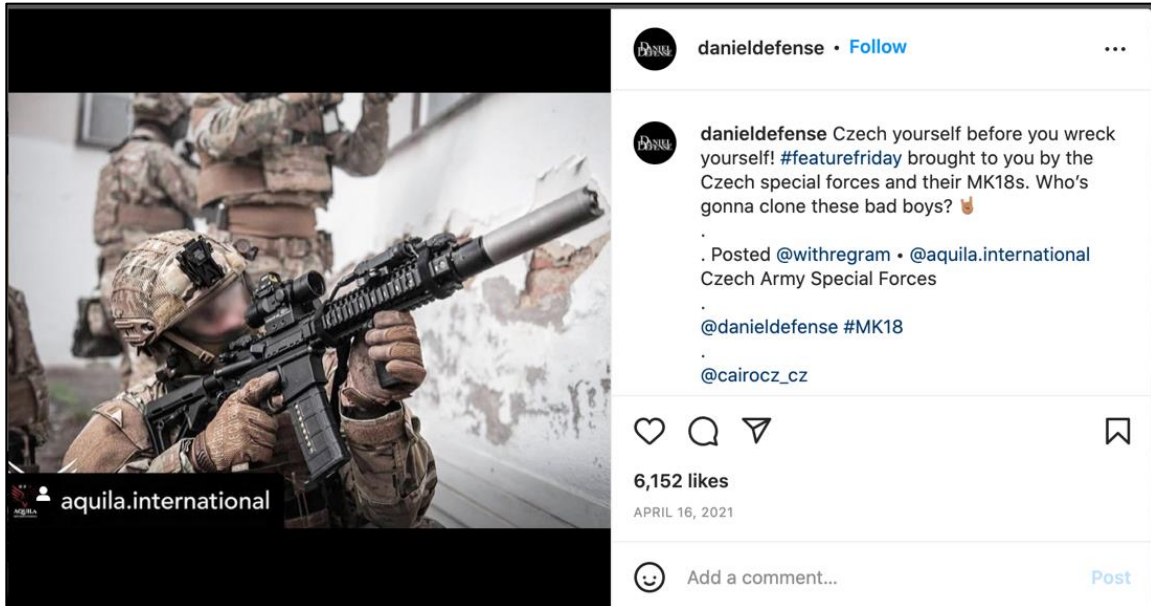
Instagram (May 6, 2021)



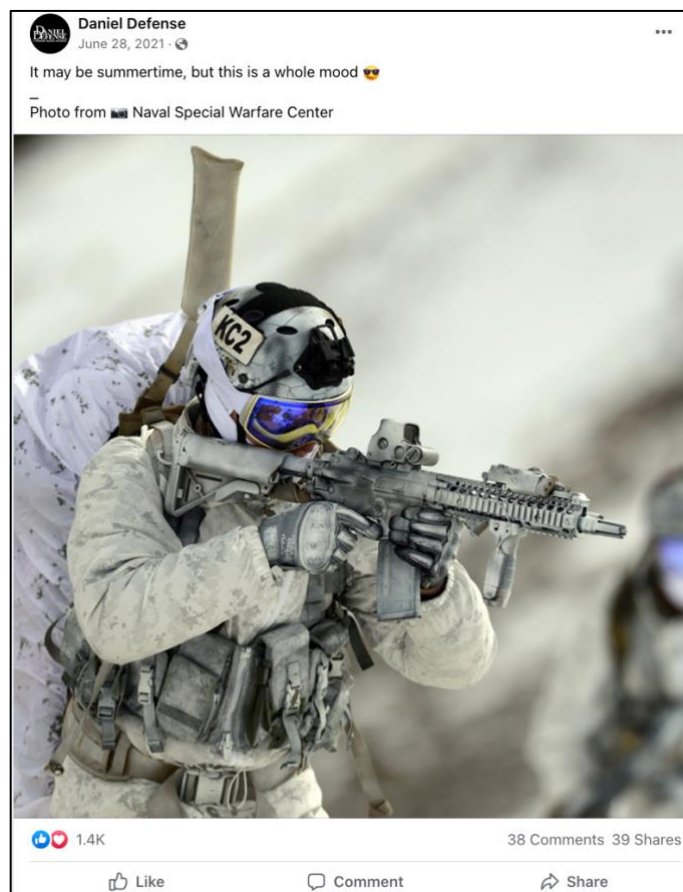
Instagram (Mar. 2, 2022)



Instagram (Oct. 11, 2021)



Caption reads in part, “Who’s gonna clone these bad boys?”
[Instagram](#) (Apr. 16, 2021)



[Facebook](#) (June 28, 2021)

In its print advertising, the civilian consumer is encouraged to “use what they use.”



Print advertisement available on [Facebook](#) (May 30, 2012)



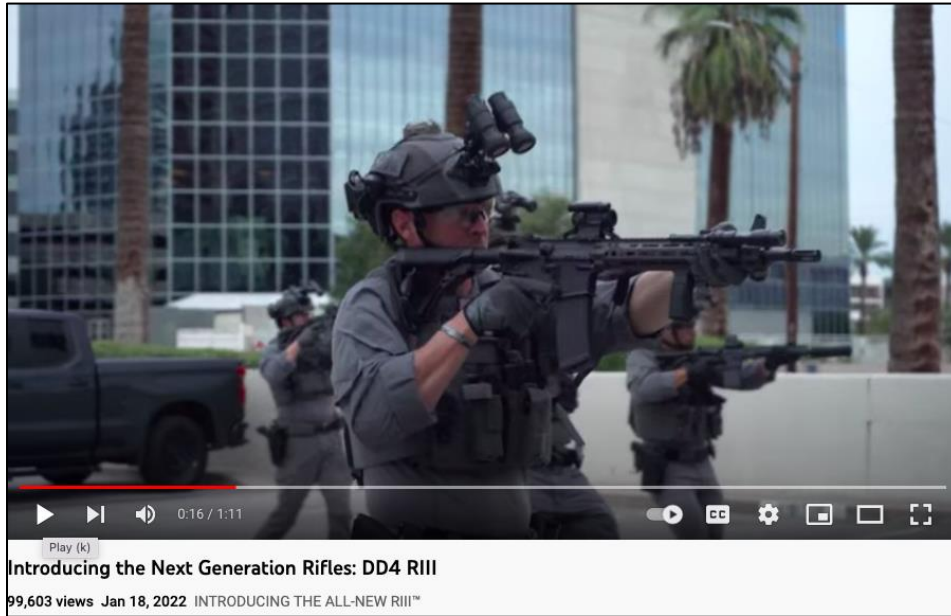
Print advertisement available on [Facebook](#) (April 26, 2012)

Along with social media content and print advertisements, Daniel Defense has produced videos depicting (fictional) military service members using its weapons. Hallmarks of these videos, two of which are highlighted here, include music scores, camera work, and choreographed sequences that call to mind big-budget action films.

For instance, Daniel Defense recently introduced a “revolutionary” new rifle that pairs the company’s “DD4 lower receiver” with its rail system “modeled after the proven RIS II developed for SOCOM.”¹⁵ While Daniel Defense does sell its rail system to the U.S. Special Operations Command, the pitch assumes that the targeted civilian consumer understands, without being told, that “SOCOM” stands for “Special Operations Command.” The announcement arrived with a slick video promotion, posted on the company’s website and on YouTube. The video intercuts footage of a

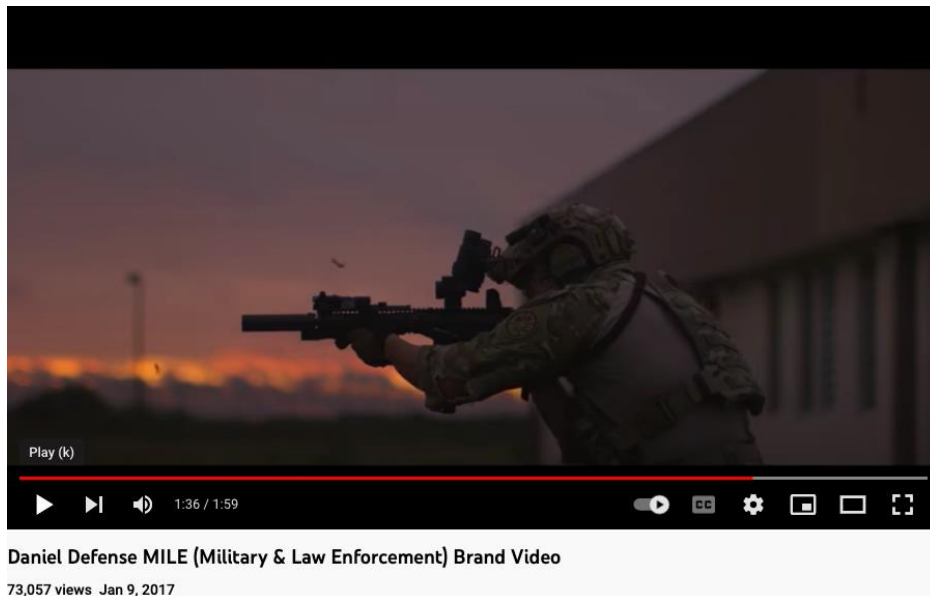
¹⁵ Daniel Defense, *Introducing the All-New RIII*, <https://danieldefense.com/riii> (last accessed June 9, 2022); see also Michael Daly, *Uvalde Shooter’s Gunmaker Hypes ‘Revolutionary’ New Killing Machine*, *The Daily Beast* (June 8, 2022), <https://www.thedailybeast.com/uvalde-shooter-salvador-ramos-gunmaker-daniel-defense-hypes-revolutionary-new-killing-machine?ref=home>.

civilian target shooter with footage of what appears to be an armed military team moving in formation, all set to a pounding rhythm.



Still image from Daniel Defense promotional video. [YouTube](#) (Jan. 18, 2022)

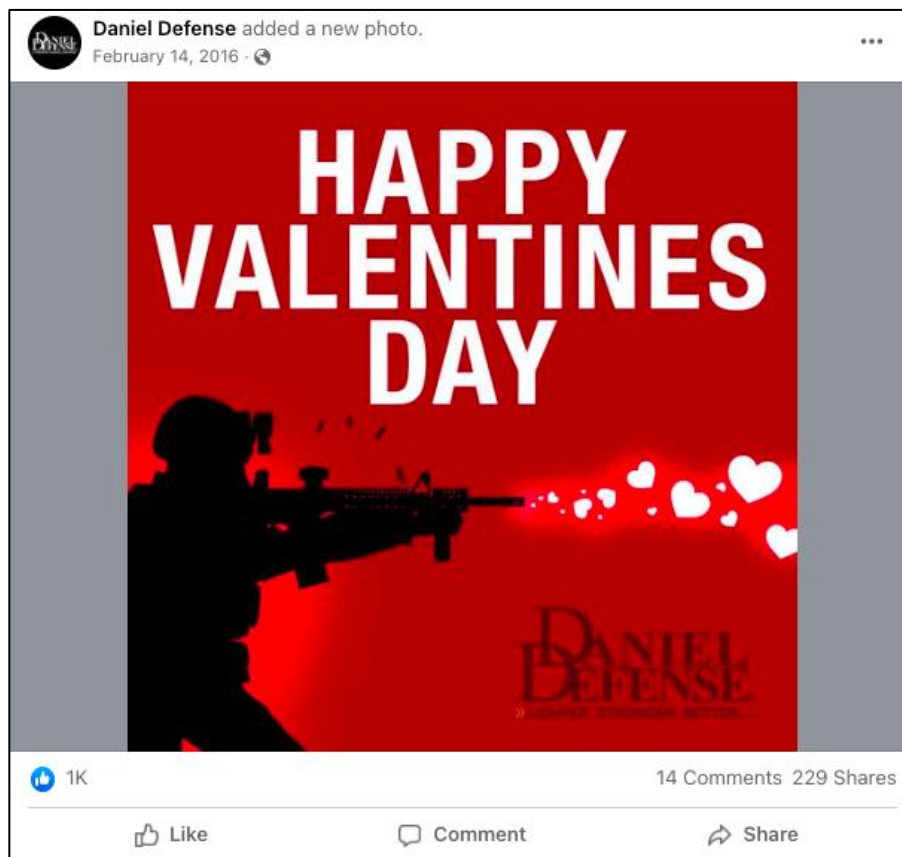
Similarly, the video below – which Daniel Defense posted on YouTube – portrays a military raid on an abandoned building. It features sweeping shots of a dramatic helicopter arrival, professional stunt work, an American flag patch on a generic soldier's arm, and suspense-building soundtrack, all in the name of promoting Daniel Defense's rifles as military-grade weapons available to civilians.



Still image from Daniel Defense promotional video. [YouTube](#) (Jan. 9, 2017)

Such marketing suggests that Daniel Defense has chosen to aggressively market its rifles so that consumers will associate them with the military and offensive combat-like operations. The company's strategy appears in part to be to position itself as a purveyor of weapons trusted by real-life soldiers, thereby making the military aspirations, or fantasies, held by many civilian consumers—and particularly young male consumers—seem achievable. For a young consumer who is attracted to the excitement and risk of combat and susceptible to suggestive marketing, Daniel Defense offers a taste of the military experience—and the suggestion, based on the marketing's placement and content, that the company's weapons can be used by civilians for offensive, military-like missions. As detailed further below, we believe such marketing violates the FTC Act.

Daniel Defense's reliance on militaristic imagery even extends to its Valentine's Day marketing, such as the post below, which shows a silhouette of a soldier shooting an assault rifle,



[*Facebook*](#) (Feb. 14, 2016)

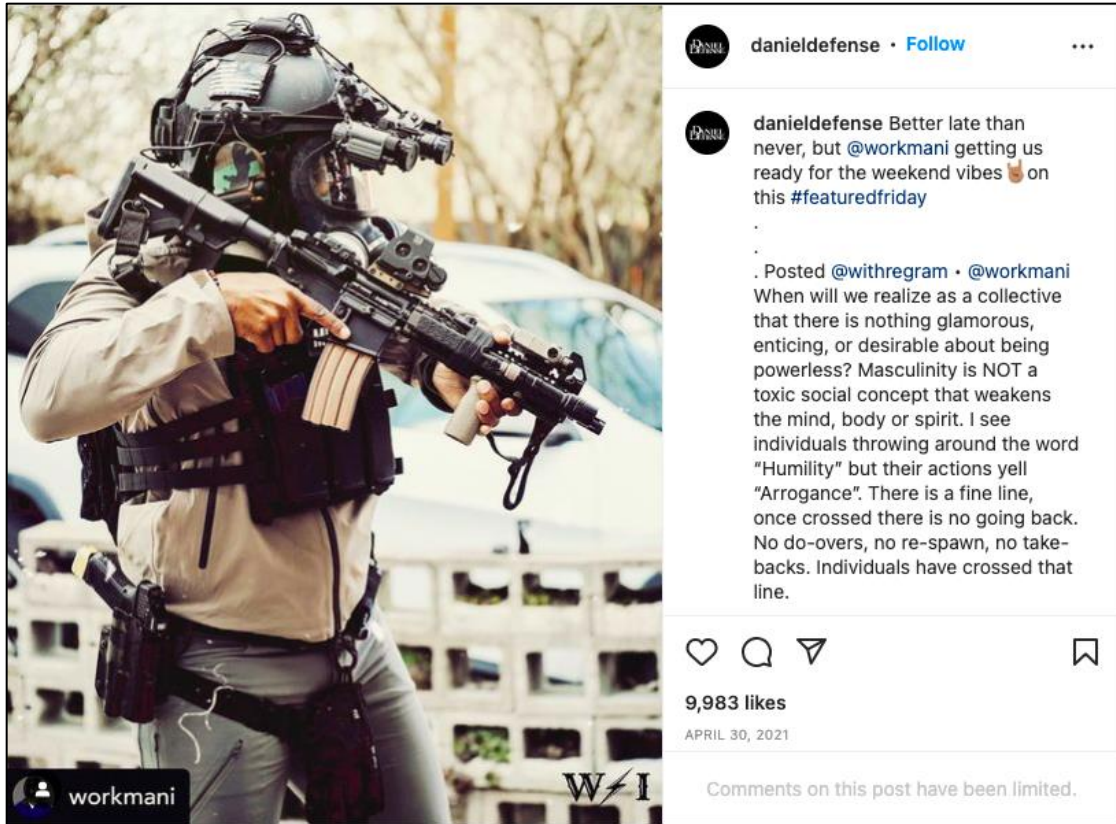
Daniel Defense's Valentines' Day marketing also employs imagery of target shooting featuring hearts that are hand painted onto targets with what could be red paint or blood:



[Facebook](#) (Feb. 14, 2020)

Such marketing is especially troubling in light of the connection between domestic violence, misogyny and gun violence, including mass shootings.¹⁶ In another recent and notable Instagram post, Daniel Defense re-published the message of a user who blatantly linked proficiency in shooting AR-15-style rifles with “masculinity” and power. This post features the shooter wearing a ballistic helmet, night-vision gear, a gas mask, and a plate carrier—a combination that has no legitimate use in the civilian market.

¹⁶ Everytown, *Misogyny, Extremism, and Gun Violence* (Jan. 13, 2022), <https://everytownresearch.org/report/misogyny-extremism-and-gun-violence/#the-role-of-firearms-in-acts-of-violent-misogyny>.

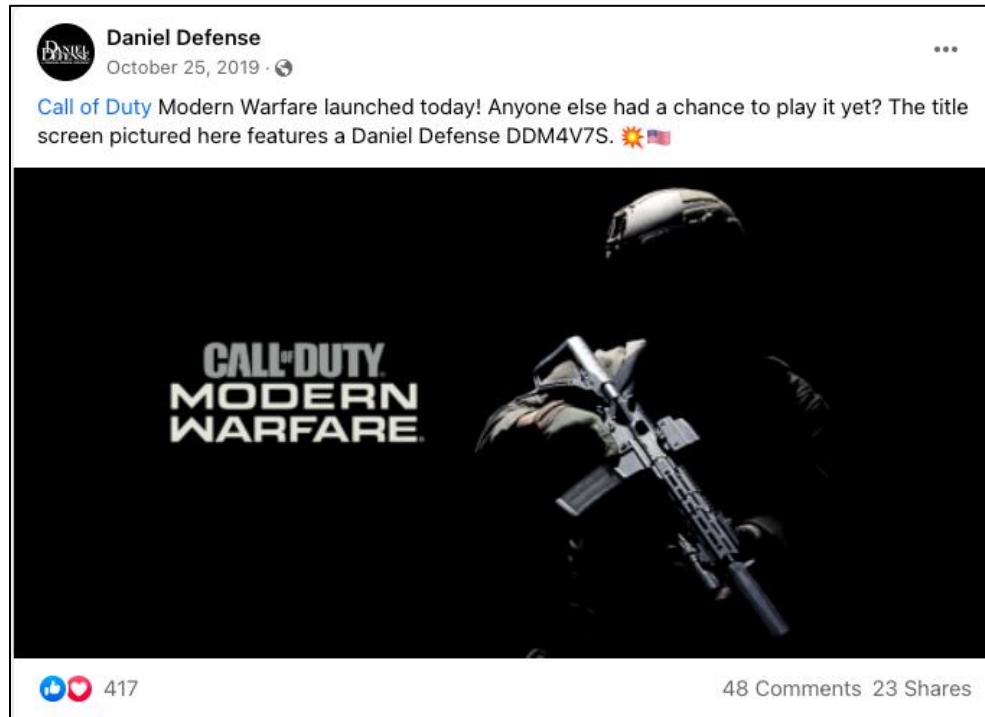


Caption, which is partially obscured in the screengrab above, reads, in part: “When will we realize as a collective that there is nothing glamorous, enticing, or desirable about being powerless? Masculinity is NOT a toxic social concept that weakens the mind, body or spirit. . . Be deliberate, meticulous and calculated in your thoughts and actions. I will be ramping it up, enhancing my proficiency. You should too. Or don’t and suffer the consequences. Everything has a price. What are you willing to pay?” [Instagram](#) (Apr. 30, 2021)

* * *

B. Promoting Weapons through First-Person-Shooter Video Games

Daniel Defense also publishes social media content that references the *Call of Duty* video game franchise. For example, according to the Facebook post below, the Daniel Defense DDM4 V7S rifle is featured in the cover art for *Call of Duty: Modern Warfare*:



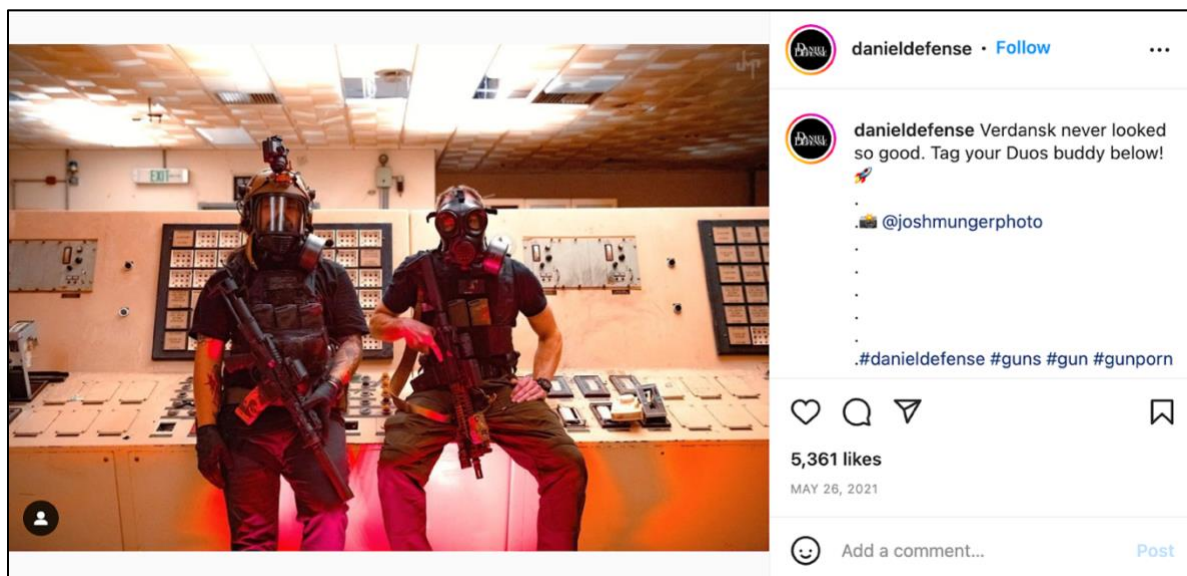
[Facebook](#) (Oct. 25, 2019)

As seen below, Daniel Defense also uses hashtags such as #callofduty and #cod to make its *Call of Duty* references on social media more explicit.¹⁷

¹⁷ See, e.g., Daniel Defense Instagram posts dated September 28, 2021 (<https://www.instagram.com/p/CUX4q0BJ3UV/>) and November 19, 2020 (<https://www.instagram.com/p/CHygY-el9GD/>).



Caption reads: “The circle is closing...,” a reference to an obstacle called “Circle Collapse” that occurs in Call of Duty: Warzone. [Instagram](#) (June 7, 2021)



Caption reads: “Verdansk never looked so good. Tag your Duos buddy below!” “Verdansk” is the name of a fictional city in the Call of Duty franchise.¹⁸ “Duos” is a term referring to a pair of people who play a video game together in a specific “duos” game mode. [Instagram](#) (May 26, 2021)

¹⁸ Verdansk, CallofDuty.com (accessed on June 6, 2022), <https://www.callofduty.com/warzone/strategyguide/tac-map-atlas/verdansk-north>.

Daniel Defense's promotional material referencing *Call of Duty* appears to be aimed at appealing to young consumers, some of whom are perversely excited by and attracted to reenacting the video game experience in real life. First-person shooter video games like *Call of Duty* are popular among teenagers and young adults, including the Uvalde, Highland Park, Parkland, and El Paso mass shooters.¹⁹ A 2017 survey conducted by the *Washington Post* and the University of Massachusetts-Lowell showed that 89% of males between the age of 14-21 have watched or played competitive online video games, and that *Call of Duty* was by far the most popular game among gamers between the ages of 14 and 21:²⁰

Which online competitive video game do you play the most?		
	Adults	Teens/Young adults
Call of Duty/Black Ops	12%	24%
Grand Theft Auto	6	17
Overwatch	5	7
Battlefield One	5	7
Minecraft	1	5
League of Legends	7	4
FIFA	5	4
Super Smash Bros	2	4
Battlegrounds	2	3
World of Warcraft	2	3
Counter Strike	1	2
Destiny	2	1
NBA 2K	2	1
Hearthstone	1	1
Rainbow Six	1	1
Rocket League	1	1
MLB: The Show	*	1
Paladins	0	1
Halo	2	*
Madden NFL	2	*
Mario Kart	2	*
Dota	1	*
Street Fighter	1	*
Gears of War	2	0
Mortal Kombat	1	0
Other*	25	12
No opinion	6	1

*Other included any game that didn't total at least 1 percent

¹⁹ See Nicholas Bogel-Burroughs, *The Texas gunman had few friends in high school, classmates say*, N.Y. Times (May 25, 2022), <https://www.nytimes.com/2022/05/25/us/texas-shooting-gunman-bullied.html>; Video games and violence, explained, The Week (Sep. 15, 2019), <https://theweek.com/articles/864451/video-games-violence-explained>; Megan O'Matz, *Violent video games may have primed the Parkland school shooter*, South Florida Sun-Sentinel (Apr. 29, 2019), <https://www.sun-sentinel.com/local/broward/parkland/florida-school-shooting/fl-ne-nikolas-cruz-mental-health-services-20190425-story.html>; Patrick Reilly, *Highland Park gunman Robert Crimo posted Call of Duty clips showing characters shooting from rooftops*, New York Post (July 6, 2022), <https://nypost.com/2022/07/06/robert-crimo-posted-call-of-duty-clips-of-characters-shooting-from-rooftops/>.

²⁰ Emily Guskin, *Teenagers are fueling a competitive gaming tidal wave*, Washington Post (Mar. 9, 2018), <https://www.washingtonpost.com/news/sports/wp/2018/03/09/teenagers-are-fueling-an-e-gaming-tidal-wave/>.

C. Marketing That Draws on Pop Culture to Draw in Young Consumers

Daniel Defense also publishes content referencing pop culture characters and themes, in an apparent attempt to attract younger audiences who it can then expose to militaristic marketing.²¹ Although many consumer brands draw on pop culture to appeal to young consumers, Daniel Defense uses this strategy to sell lethal weapons.

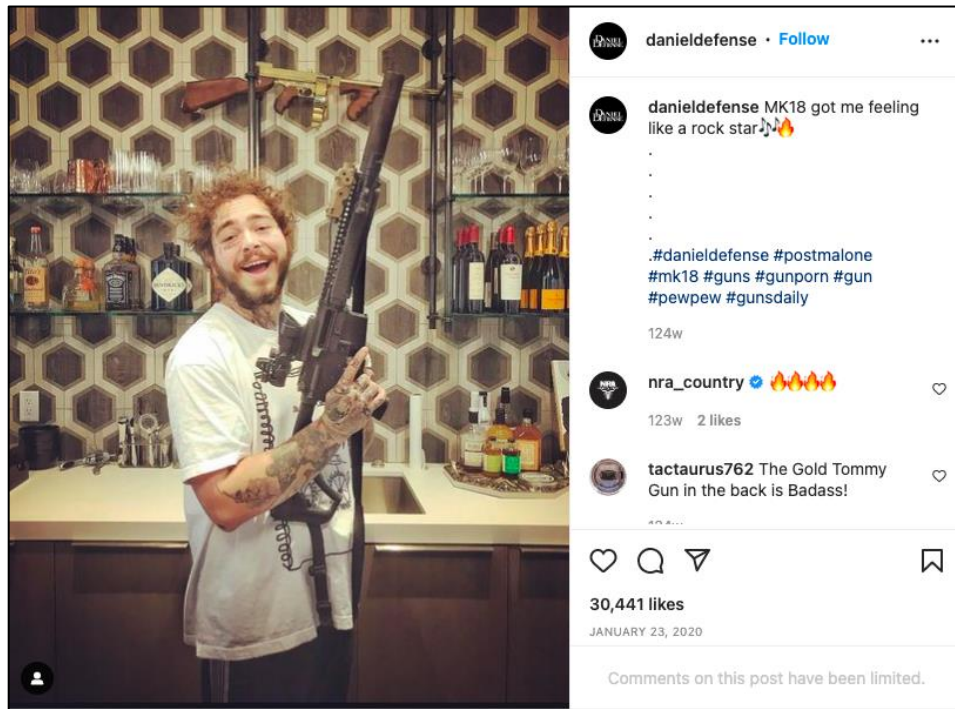


Image of Post Malone, a popular musician and producer, holding a Daniel Defense rifle, with the caption “MK18 got me feeling like a rockstar.” [Instagram](#) (Jan. 23, 2020)

²¹ See *New Study Shows Culturally Relevant Brands Are More Relevant to Consumers*, AdAge (Oct. 1, 2019) (“Brand involvement in culture is especially important among consumers between the ages of 18 and 35, and those on Twitter versus the general population are more passionate, informed and feel more strongly about brands aligning with culture.”), <https://adage.com/article/twitter/brands-culture-twitter-impact/2200401>.



Individual dressed as a guard from Squid Game, a hyperviolent Netflix show.
[Instagram](#) (Oct. 31, 2021)



DDM4 V7 rifle paired with a Star Wars mask and Hawaiian print shirt, the latter of which is a symbol for the extremist boogaloo movement.²² [Instagram](#) (Feb. 12, 2020)

²² Nathan Taylor Pemberton, *What Do You Do When Extremism Comes for the Hawaiian Shirt?*, N.Y. Times (June 29, 2020), <https://www.nytimes.com/2020/06/29/style/boogaloo-hawaiian-shirt.html>.



[Instagram](#) (Dec. 27, 2021)

Daniel Defense’s youth-oriented and pop-culture-infused marketing is consistent with trends within the broader gun industry. The National Shooting Sports Foundation (“NSSF”)—an industry trade group with ties to Daniel Defense²³—has for years promoted shooting sports to children in order to increase profits for the gun industry.²⁴ For example, the NSSF advises the use of peer pressure and gateway products to get younger people shooting:

Although peer pressure and influence are often thought of in a negative context, such influence can often mean a

²³ NSSF, *NSSF Welcomes Marty Daniel to Board of Governors*, <https://www.nssf.org/articles/nssf-welcomes-marty-daniel-to-board-of-governors/> (last accessed June 9, 2022); *NSSF Membership – Why Join NSSF?*, <https://www.nssf.org/membership/why-join-nssf/>.

²⁴ See e.g., NSSF, *Getting Youth Involved*, Plus One Movement (“Our youth is the future of shooting sports so it’s important to get them involved and keep them involved. It’s important to get youth involved because it increases the number of members in the shooting sports...”), <https://www.nssf.org/plusone/>; Responsive Management National Shooting Sports Foundation Hunting, Fishing, Sport Shooting, and Archery Recruitment, Retention, and Reactivation: A Practitioner’s Guide (2017) (“[One] approach is to reactivate parents in their mid-30s to early-40s and subsequently let them recruit their children.”).

positive effect on youth. Earlier research on peer involvement in hunting and target shooting . . . suggests that getting youth talking about hunting and target shooting in a way that promotes the sports as “cool” activities may help to increase the likelihood of participation among youth.

[Y]outh ambassadors and others should focus on getting newcomers to take a first step into target shooting through any means, whether a BB or pellet gun, paintball gun, or archery bow. The point should be to get newcomers started shooting something, with the natural next step being a move toward actual firearms.²⁵

As discussed below, the promotion of potentially deadly products to young people, many of whom are more prone to impulsive, risky and thrill-seeking behavior can have dangerous and devastating consequences.

The Importance of Responsible Marketing for Deadly Products

The Daniel Defense marketing catalogued in the preceding pages does not exist in the abstract. It occurs at a time of increasing mass shootings committed with AR-15-style assault rifles. This section first provides a background on AR-15-style rifles, and explains that they are often the weapon of choice for perpetrators of the deadliest mass shootings. It then outlines the risks of marketing potentially deadly products to adolescents and young adults, and shows how the Uvalde shooter fits the profile that made him particularly susceptible to deceptive and/or unfair firearms marketing.

A. AR-15-Style Military-Inspired Rifles Are Often the Weapon of Choice for Young, Male Perpetrators of Highly Destructive Mass Shootings

The first AR-15 rifles were designed by Armalite for the U.S. military.²⁶ Armalite’s goal was to create a lightweight, portable rifle that would allow

²⁵ Hunting Heritage Trust & NSSF, *Understanding the Impact of Peer Influence on Youth Participation in Hunting and Target Shooting* at xix-xxii, 1-5 (2012), https://nssf.force.com/CPBase_item?id=a13150000079w1HAAQ; see also NSSF, *Understanding Activities that Compete with Hunting and Target Shooting* at i, vii (2011), https://nssf.force.com/CPBase_item?id=a13150000079w1FAAQ.

²⁵ *Id.* at vii.

²⁶ Jennifer Mascia, *What Is an AR-15 Rifle, Exactly?*, The Trace (June 7, 2022), <https://www.thetrace.org/2022/06/ar15-rifle-assault-weapon-ban/>. The “AR” in “AR-15” stands for “Armalite.”

combatants to quickly put many rounds on a target from distances of 500 yards.²⁷ Armalite ultimately sold its design to Colt Manufacturing, which began producing select-fire AR-15 rifles for the military (renamed the M16, and eventually leading to the shorter-barreled M4 variant) and semiautomatic versions for civilians.²⁸ Thus, AR-15-style rifles sold in the civilian market, including Daniel Defense’s models, are based on military rifles designed to kill enemies on the battlefield.

Daniel Defense currently manufactures and sells over two dozen models of rifles, including 19 models of AR-15-style rifles and six large-caliber models of semiautomatic AR-10-style rifles. The DDM4 V7 rifle comes equipped with a high-capacity, 32-round magazine.²⁹ Daniel Defense has explained that the “M4” in “DDM4 V7” is a nod to the “iconic M4 carbine used by rifles U.S. military forces,” after which Daniel Defense models its DDM4 rifles.³⁰

In addition to their high rates of fire, AR-15-style rifles like the DDM4 V7 discharge rounds that travel much faster than handgun bullets. This translates to more lethal damage to the human body. While handgun bullets typically travel in a linear path through the body and create relatively small entry and exit wounds, AR-15 rounds hit the human body with such velocity that they can shred organs, kill large swaths of tissue, and leave exit wounds “the size of an orange.”³¹ A Uvalde pediatrician who responded to the shooting has described two children whose bodies had been “pulverized” and “decapitated.” The bodies of several victims, disfigured beyond recognition, were identified by their DNA; one 10-year-old victim’s body was identified based on her green Converse sneakers.³²

²⁷ Tim Dickinson, *How the AR-15 Became Mass Shooters’ Weapon of Choice*, Rolling Stone (Feb. 22, 2018), <https://www.rollingstone.com/politics/politics-features/all-american-killer-how-the-ar-15-became-mass-shooters-weapon-of-choice-107819/>.

²⁸ James Dao, *Aurora Gunman’s Arsenal: Shotgun, Semiautomatic Rifle and, at the End, a Pistol*, N.Y. Times (Jul. 23, 2012), <https://www.nytimes.com/2012/07/24/us/aurora-gunmans-lethal-arsenal.html>.

²⁹ Daniel Defense, *DDM4 V7*, <https://danieldefense.com/ddm4-v7.html>; *DD Magazine*, <https://danieldefense.com/dd-magazine.html> (both last accessed June 8, 2022).

³⁰ Daniel Defense, *Comparing the Features of the Daniel Defense Rifle Line*, <https://danieldefense.com/wire/firearm-features> (last accessed June 8, 2020).

³¹ Heather Sher, *What I Saw Treating the Victims From Parkland Should Change the Debate on Guns*, The Atlantic (Feb. 22, 2018), <https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/>.

³² Nicholas Bogel-Burroughs, *An Uvalde pediatrician says he will ‘never forget what I saw’ after the shooting*, N.Y. Times (June 8, 2022), <https://www.nytimes.com/2022/06/08/us/uvalde-pediatrician-shooting.html>; Jaclyn Diaz, *The story of a Uvalde victim's green shoes captures the White House's attention*,

Of the 10 most destructive mass shootings committed in the United States between January 2012 and the present—that is, the 10 mass shootings with the highest counts of gunshot injuries and deaths in the last decade—70 percent (seven total) were perpetrated by male shooters between the ages of 18 and 26.³³ This is disproportionate to the percentage of the United States population represented by this age group. For comparison, people of all genders aged 18 to 26 comprise only 12 percent of the U.S. population.³⁴

Of those seven shootings, six involved the use of an AR-15-style rifle, including the Uvalde shooting:

- a. Aurora, Colorado: A 24-year-old male shooter killed 12 people and injured 70 on July 20, 2012, using, among other firearms, a Smith & Wesson M&P15 rifle³⁵;

NPR (June 7, 2022), <https://www.npr.org/2022/06/07/1103577387/matthew-mcconaughey-green-converse-shoes-sneakers-uvalde-maite-rodriguez>.

³³ As used here, the term “mass shooting” designates a shooting in which at least four people were killed, excluding the shooter. The referenced list of the 10 most destructive mass shootings committed between January 2012 and the present is as follows: (1) the Las Vegas, Nevada shooting on October 1, 2017 (60 killed, 411 injured); (2) the Orlando, Florida shooting on June 12, 2016 (49 killed, 53 injured); (3) the Aurora, Colorado shooting on July 20, 2012 (12 killed, 70 injured); (4) the El Paso, Texas shooting on August 3, 2019 (23 killed, 23 injured); (5) the Sutherland Springs, Texas shooting on November 5, 2017 (25 people killed, including a pregnant woman, and 20 injured); (6) the Uvalde, Texas shooting on May 24, 2022 (21 killed, 17 injured); (7) the San Bernardino, California shooting on December 2, 2015 (14 killed, 22 injured); (8) the Parkland, Texas shooting on February 14, 2018 (17 killed, 17 injured); (9) the Highland Park, Illinois shooting on July 4, 2022 (7 killed; 46 injured); (10) the Newtown, Connecticut shooting on December 14, 2012 (27 killed, two injured).

³⁴ Everytown calculated the relevant population percentage based on the 2019 data in the data set titled *Annual Estimates of the Resident Population by Single Year of Age and Sex for the United States: April 1, 2010 to July 1, 2019* and provided by the U.S. Census Bureau. The data set is available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-national-detail.html>.

³⁵ James Dao, *supra* note 28; Ann O’Neill, *Theater shooter Holmes gets 12 life sentences, plus 3,318 years*, CNN (Aug. 27, 2015), <https://www.cnn.com/2015/08/26/us/james-holmes-aurora-massacre-sentencing/index.html>; Julia Jacobo, *A look back at the Aurora, Colorado movie theater shooting 5 years later*, ABC News (Jul. 20, 2017),

- b. Newtown, Connecticut: A 20-year-old male shooter killed 27 people and injured two more, first in his home and then at an elementary school, on December 14, 2012, using a Bushmaster XM15-E2S rifle³⁶;
- c. Sutherland Springs, Texas: A 26-year-old male shooter killed 25 people, including a pregnant woman, and wounded 20 more in Sutherland Springs, Texas on November 5, 2017, using a Ruger AR-556 rifle³⁷;
- d. Parkland, Florida: A 19-year-old male shooter killed 17 people and injured 17 more in Parkland, Florida, on February 14, 2018, using a Smith & Wesson M&P15 rifle;³⁸
- e. Uvalde, Texas: An 18-year-old male shooter killed 21 people and injured 17 more, at his grandparents' home and at Robb Elementary School, on May 24, 2022, using a Daniel Defense DDM4 V7.³⁹
- f. Highland Park, Illinois: A 21-year-old male is alleged to have killed 7 people and injured 46 more at a parade on July 4, 2022, using a Smith & Wesson M&P15 rifle.⁴⁰

<https://abcnews.go.com/US/back-aurora-colorado-movie-theater-shooting-years/story?id=48730066>.

³⁶ *Sandy Hook Shooting Fast Facts*, CNN (Nov. 22, 2019), <https://www.cnn.com/2013/06/07/us/connecticut-shootings-fast-facts/index.html>.

³⁷ Adam Goldman et al., *Texas Church Shooting Video Shows Gunman's Methodical Attack, Official Says*, The N.Y. Times (Nov. 8, 2017), <https://www.nytimes.com/2017/11/08/us/texas-shooting-video-devin-kelley.html>.

³⁸ Bart Johnson, *Florida shooting suspect bought gun legally, authorities say*, USA Today (Feb. 15, 2018), <https://www.usatoday.com/story/news/2018/02/15/florida-shooting-suspect-bought-gun-legally-authorities-say/340606002/>.

³⁹ Bill Chappell et al., *supra* note 2; Michael Daly, *supra* note 15.

⁴⁰ *7th Person Dies Day After Highland Park Parade Mass shooting*, NBC Chicago (July 5, 2022), <https://www.nbcchicago.com/news/local/7th-person-dies-day-after-highland-park-parade-mass-shooting/2873971/>; Sullivan, *supra* n. 3. The seventh mass shooting in this category was perpetrated by a 21-year-old male shooter in El Paso, Texas on August 3, 2019. The El Paso shooter is believed to have used an AK-47-style semiautomatic rifle. Julio-Cesar Chavez, *Death toll reaches 23 from last year's mass shooting in El Paso, Texas*, Reuters (Apr. 26, 2020), <https://www.reuters.com/article/us-texas-shooting/death-toll-reaches-23-from-last-years-mass-shooting-in-el-paso-texas-idUSKCN22901V>. The AK-47 is an assault rifle model descended from Soviet military rifles, in an evolution similar to that of modern AR-15-style rifles from U.S. military rifles. See C.J. Chivers, *Tools of Modern Terror: How the AK-47 and AR-15 Evolved Into Rifles of Choice for Mass Shootings*,

In short, AR-15-style rifles are often the weapon of choice for the young, male shooters who disproportionately commit the most destructive mass shootings.⁴¹

Moreover, research has revealed a link between such mass shootings and both domestic violence and misogyny. A review by Everytown of mass shootings committed between 2009 and 2020 revealed that the majority of mass shooters shot a family member or a current or former intimate partner, among their other victims.⁴² For instance, the perpetrator of the 2012 Newtown, Connecticut, shooting shot and killed his mother before killing 26 students and staff at Sandy Hook Elementary School.⁴³ The perpetrator of the 2017 Sutherland Springs, Texas, shooting killed his grandmother-in-law during the attack. He also had a history of assaulting his wife and child.⁴⁴

The Uvalde shooter joined these ranks by shooting his grandmother prior to his attack on Robb Elementary. As discussed below, he had also threatened multiple girls with sexual assault. He thus fit a related pattern observed among mass shooters, which is a history of stalking, harassment, or violence against women.⁴⁵

The overlap between misogyny and mass gun violence is not coincidental:

The N.Y. Times (Aug. 4, 2016), <https://www.nytimes.com/interactive/2016/world/ak-47-mass-shootings.html>.

⁴¹ Additionally, the arsenal of the 64-year-old Las Vegas shooter, who killed 58 people and injured 413 more, included four AR-15-style rifles manufactured by Daniel Defense. See Timothy Bella, *Families sue Uvalde gunman, signal possible action against gunmaker*, The Washington Post (Jun. 6, 2022), <https://www.washingtonpost.com/nation/2022/06/04/uvalde-shooting-lawsuits-daniel-defense-marketing/>.

⁴² Everytown, *Mass Shootings in America* (Nov. 21, 2020), <https://everytownresearch.org/maps/mass-shootings-in-america/#domestic-violence-was-a-part-of-most-mass-shootings>.

⁴³ Maya Salam, *Adam Lanza Threatened Sandy Hook Killings Years Earlier, Records Show*, N.Y. Times (Oct. 26, 2017), <https://www.nytimes.com/2017/10/26/us/adam-lanza-sandy-hook.html>.

⁴⁴ Holly Yan, AnneClaire Stapleton, & Darran Simon, *Authorities: Texas church shooter had three gunshot wounds*, CNN (Nov. 7, 2017), <https://www.cnn.com/2017/11/06/us/texas-church-shooting/index.html>.

⁴⁵ Everytown, *Guns and Violence Against Women* (Oct. 17, 2019), <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/>; Mark Follman, *Armed and Misogynist: How Toxic Masculinity Fuels Mass Shootings*, Mother Jones (May/June 2019), <https://www.motherjones.com/crime-justice/2019/06/domestic-violence-misogyny-incels-mass-shootings/>.

Research has found that among the many reasons people purchase firearms, a sense of empowerment is one that particularly resonates with men, who tend to find greater feelings of empowerment from gun ownership. *Firearms can provide or re-instill a feeling of power, and are even explicitly marketed as doing so.* Additionally, surveys of young men have found that perceived threats to masculinity and social status are associated with both attraction to firearms and fantasies about mass murder.⁴⁶

This is why marketing, such as Daniel Defense's, which promotes hypermasculine power, military fantasies, and the association of romantic love with firearms is particularly dangerous.

B. Adolescents and Young Adults Are More Prone to Impulsive, Risky, and Thrill-Seeking Behavior and Are Highly Susceptible to Advertising.

Adolescents and young adults—who are disproportionately represented among the most destructive mass shooters—are more likely than other age groups to engage in risky, thrill-seeking, violent, and impulsive behavior.⁴⁷ They are also highly susceptible to product advertising.

Decades of scientific evidence demonstrate that the onset of intense, thrill-seeking urges associated with puberty outpaces the development of the area of the brain responsible for judgment and impulse control, which continues into young adulthood. As a result, adolescents and post-adolescents have less capacity for mature judgment and self-control than older adults and are more likely to engage in risky behaviors.⁴⁸ Moreover, negative emotions such as anger, depression, and anxiety—

⁴⁶ Everytown, *Misogyny, Extremism, and Gun Violence* (Jan. 13, 2022) (citations omitted and emphasis added), <https://everytownresearch.org/report/misogyny-extremism-and-gun-violence/#the-role-of-firearms-in-acts-of-violent-misogyny>.

⁴⁷ See Glenn Thrush & Matt Richtel, *A Disturbing New Pattern in Mass Shootings: Young Assailants*, N.Y. Times (June 2, 2022), <https://www.nytimes.com/2022/06/02/us/politics/mass-shootings-young-men-guns.html>

⁴⁸ Cornelia Pechmann et al., *Impulsive and Self-Conscious: Adolescents' Vulnerability to Advertising and Promotion*, J. Pub. Policy & Marketing, 202, 203-07 (2005), available at <https://journals.sagepub.com/doi/10.1509/jppm.2005.24.2.202>; See also Laurence Steinberg, *A Social Neuroscience Perspective on Adolescent Risk-Taking*, 28 Developmental Rev. 78 (2008), available at <https://www.ncbi.nlm.nih.gov/pubmed/18509515?dopt=Abstract>; Agnieszka Tymula et al., *Adolescents' risk-taking behavior is driven by tolerance to ambiguity*, 109 PNAS

which are more strongly felt by adolescents—can dilute the already weak control adolescents and post-adolescents exercise over their impulses and urges.⁴⁹ Studies have further shown that this predilection for risky, thrill-seeking behavior extends to violent criminal behavior. Indeed, a disproportionate amount of violent crime in the United States is committed by individuals between the ages of 15 and 24, and 18- to 20-year-olds are offenders in gun homicides at a rate nearly *four times higher* than adults 21 and older.⁵⁰

Adolescents and young adults also exhibit increased susceptibility to advertisements, and research indicates that they are particularly receptive to advertisements that depict impulsive, thrill-seeking behavior.⁵¹ For instance, companies promoting products such as tobacco and alcohol have exploited the vulnerability of young consumers to advertisements that promote thrill-seeking conduct in order to hook them early and convert them into lifelong purchasers of their products.⁵²

17135 (Oct. 16, 2012), <https://www.pnas.org/content/109/42/17135>; Nina S. Mounts, *Why Are Teen Brains Designed for Risk-taking?*, Psychology Today (Jun. 9, 2015), <https://www.psychologytoday.com/us/blog/the-wide-wide-world-psychology/201506/why-are-teen-brains-designed-risk-taking>; Newport Academy, *The Truth About Teens and Risky Behavior* (Apr. 24, 2017), <https://www.newportacademy.com/resources/mental-health/truth-about-teens-risky-behavior/>.

⁴⁹ Pechmann et al., *supra* note 47, at 207-09; see also Lisa Rapaport, *Emotional distress tied to weapon use for teens*, Reuters (Feb. 5, 2016), <https://www.reuters.com/article/us-health-adolescents-arms/emotional-distress-tied-to-weapon-use-for-teens-idUSKCN0VE2A3>; Renata Sikora, *Risk behaviors at late childhood and early adolescence as predictors of depression symptoms*, 17 Current Problems of Psychiatry 173 (2016), <https://sciencedirect.com/article/10.1515/cpp-2016-0018>.

⁵⁰ Brad J. Bushman et al., *Youth Violence: What We Know and What We Need to Know*, 71 Am. Psychologist 17, 19 (2016), available at <https://escholarship.org/uc/item/1ck4f58h>; Everytown for Gun Safety, *Permitless Carry: Carrying a Concealed Gun in Public with No Permit and No Training* (Feb. 2020), https://everytownresearch.org/permitless-carry/#foot_note_anchor_10.

⁵¹ See Pechmann et al., *supra* note 47, at 202, 214.

⁵² See Center on Alcohol Marketing and Youth, *Alcohol Advertising and Youth*, John Hopkins Bloomberg School of Public Health (2007) (“Research clearly indicates that, in addition to parents and peers, alcohol advertising and marketing have a significant impact on youth decisions to drink.”), <https://web.archive.org/web/20201201221507/http://www.camy.org/resources/fact-sheets/alcohol-advertising-and-youth/>; John J. Pierce et al., *Ass’n Between Receptivity to Tobacco Advertising and Progression to Tobacco Use in Youth and Young Adults in the PATH Study*, 172 JAMA Pediatrics 444 (2018) (“Our study reinforces that tobacco

Research further suggests that one propensity can feed the other; adolescents may be particularly responsive to advertisements portraying impulsive or risky behavior when they are in a negative emotional state involving, for instance, depression or anger. As studies have shown, such adolescents are more vulnerable to acting on impulse to seek immediate gratification.⁵³

The Uvalde shooter fit the above profile to a T. He has been described as a lonely teenager with an unstable home life who displayed violent and self-harm tendencies.⁵⁴ In particular, the shooter had threatened multiple girls with sexual assault via social media.⁵⁵ He was also a fan of the first-person-shooter game *Call of Duty*.⁵⁶ In short, the shooter was both at risk of violence and fit the young, male demographic that – as outlined above – appears to be targeted by the content and placement of Daniel Defense’s marketing. On his 18th birthday, the shooter purchased two rifles, including a Daniel Defense DDM4 V7.⁵⁷ One week after his birthday, the shooter carried out his massacre.

DANIEL DEFENSE ADVERTISING AND THE FTC ACT

The evidence outlined provides strong support for finding that Daniel Defense’s marketing practices are unfair and/or deceptive under Section 5 of the FTC Act, 15 U.S.C. § 45(a). “[I]t is well established that the FTC Act and state analogues . . . not only govern the marketing of firearms, but also prohibit advertisements that promote or model the unsafe or illegal use of potentially dangerous products.” *Soto v. Bushmaster*, 331 Conn. 53, 202 A.3d 262, 309-310 (Ct. 2019).

To demonstrate an “unfair act or practice,” the Commission must show that the act or practice “[1] causes or is likely to cause substantial injury to consumers [2]

product marketing continues to be an important contributor to tobacco use among young people.”), <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2676069>

⁵³ See Pechmann et al., *supra* note 47, at 207-08, 214

⁵⁴ Robert Klemko, Silvia Foster-Frau, & Shawn Boburg, *Gunman bought two rifles, hundreds of rounds in days before massacre*, The Washington Post (May 25, 2022), <https://www.washingtonpost.com/nation/2022/05/25/uvalde-texas-school-shooting-gunman/>

⁵⁵ Daniel A. Medina, Isabelle Chapman, Jeff Winter, & Casey Tolan, *Uvalde gunman threatened rapes and school shootings on social media app Yubo in weeks leading up to the massacre, users say*, CNN (May 28, 2022), <https://www.cnn.com/2022/05/27/us/yubo-app-salvador-ramos-threats-invs/index.html>.

⁵⁶ Robert Klemko et al., *supra* note 53; Nicholas Bogel-Burroughs, *The Texas gunman had few friends in high school, classmates say*, N.Y. Times (May 25, 2022), <https://www.nytimes.com/2022/05/25/us/texas-shooting-gunman-bullied.html>.

⁵⁷ Reese Oxner et al., *supra* note 2.

which is not reasonably avoidable by consumers themselves and [3] not outweighed by countervailing benefits to consumers or to competition.” *Id.* § 45(n); *see also FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244 n.5 (2015). To demonstrate a deceptive act or practice, the Commission must show that [1] the representation, omission, or practice “is likely to mislead the consumer”; [2] the consumer’s interpretation of the representation, omission or practice is reasonable; and [3] the representation, omission, or practice is material. FTC Policy Statement on Deception (Oct. 14, 1983), https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf.

Seven of the ten most destructive mass shootings in the last decade were perpetrated by young, male shooters, and six of those seven involved AR-15-style rifles. Despite these patterns, Daniel Defense markets its AR-15-style rifles using military imagery and the implication that it is suitable for civilians to use these weapons to engage in offensive, combat-like missions. And it chooses to place these advertisements on social media, which skews to a younger demographic. The coupling of the content and placement of the marketing reflects practices that are both material and likely to cause substantial injury.

One of the company’s consumers perpetrated the Uvalde massacre, after shooting his grandmother in an act of domestic violence, resulting not only in the death of 21 people and grievous physical injuries to many others, but also emotional and psychological trauma for the survivors.

Absent intervention by the FTC, the continuation of Daniel Defense’s marketing is likely to lead to future tragedy. These harms are severe, and their brunt is likely to be borne by innocent third parties, including children. The Commission has been particularly sensitive to such extreme injuries befalling vulnerable and unsuspecting third parties. For example, the Commission alleged that respondents had committed an unfair act or practice by developing and selling “stalking” apps that allowed purchasers to surreptitiously monitor another person’s activities on that person’s mobile phone or computer. *See Complaint, Retina-X Studios, LLC*. C-4711 (F.T.C. Mar. 26, 2020). The Commission alleged that this practice resulted in substantial injuries to innocent third parties that were not reasonably avoidable and not outweighed by countervailing benefits. *Id.* at 4. Mass shootings do even greater damage to communities in innumerable ways by diminishing a community’s sense of security and enjoyment of life, in addition to the unacceptable loss of life—and victims have no reasonable way of avoiding these harms.

The Commission has long recognized that adolescents and young adults comprise a class of purchasers highly susceptible to undue influence. Prior

enforcement actions demonstrate that advertisements designed to induce young people to use dangerous products can be unfair under the law. In particular, Daniel Defense’s marketing strategy toward adolescent and young adult men is reminiscent of tactics adopted by the tobacco industry of using direct marketing aimed at children to increase profits. These tactics famously included using cartoons such as Joe Camel in order to make cigarettes “attractive” to young people. *See In re R.J. Reynolds Tobacco Co.*, 127 F.T.C. 49 (1999). The Commission found that these marketing practices were unfair because the “campaign would have a substantial appeal to children and adolescents” and that it “would cause many children and adolescents below the age of 18 to smoke Camel cigarettes.” *Id.* at 50. More recently, the Commission has warned against e-cigarettes that use labeling or advertising that resemble kid-friendly food products, such as juice boxes, candies, or cookies.⁵⁸

Daniel Defense could tailor its marketing to less susceptible consumers, institute age-gating, cease the use of military and violent imagery and any suggestion that its weapons can be used by civilians for combat-like missions, and disclose the serious known dangers associated with its weapons. These would not be burdensome reforms. As one recent study of gun industry marketing concluded: “Reducing the appeal of assault weapons, and limiting advertisements of guns to police, veterans, and armed service members, by better understanding and intervening in gun advertising could translate into fewer gun-related deaths.”⁵⁹

The associated costs would clearly not outweigh the harms likely to flow from the continuation of Daniel Defense’s marketing. Accordingly, the benefits that Americans would enjoy from less militaristic and youth-oriented marketing would outweigh any potential costs to Daniel Defense.

* * *

The Commission has the legal authority to investigate and prevent Daniel Defense from employing marketing practices that violate the FTC Act. For the reasons outlined above, we respectfully submit that there is strong evidence that the company’s marketing practices are unfair and/or misleading and therefore unlawful. The need to stop these dangerous practices is urgent and clear. Therefore, Everytown urges the Commission to take all appropriate action to ensure that Daniel Defense’s marketing practices are reformed to eliminate or at least reduce the risk that they contribute to future gun violence.

⁵⁸ See Press Release, Fed. Trade Comm’n, *FTC, FDA Take Action Against Companies Marketing E-liquids That Resemble Children’s Juice Boxes, Candies, and Cookies* (May 1, 2018), <https://www.ftc.gov/news-events/press-releases/2018/05/ftc-fda-take-action-against-companies-marketing-e-liquids>.

⁵⁹ Lisa Jordan et al., *supra* note 4.

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