

September 12, 2022

The Honorable Lina M. Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington DC 20580

Dear Chair Khan:

We write to urge the Federal Trade Commission (FTC) to undertake an investigation and consider regulation of the unfair and deceptive advertising practices used by the firearms industry.

Following the horrific massacre at Robb Elementary School in Uvalde, Texas on May 24, 2022, Daniel Defense—the manufacturer of the assault rifle used in the attack—has come under increased and warranted scrutiny for its advertising practices. Daniel Defense touts military contracts and ties in order to market weapons of war to the general public, and specifically targets and tailors its advertisements to children and teenagers with invocations of and references to popular first-person shooter video games like Call of Duty—a game reportedly played by the 18-year-old shooter in Uvalde.¹

Daniel Defense is not the only firearms manufacturer that has, appropriately, come under mounting scrutiny for its advertising practices. For example, in February 2022, the families of nine victims murdered at Sandy Hook Elementary School secured a settlement against Remington Arms—the manufacturer of the firearm used to kill 20 children and six educators in Newtown, Connecticut almost 10 years ago—for its own marketing tactics. Daniel Defense and Remington, however, are far from outliers in the firearms industry. The industry regularly and routinely makes false and misleading representations about firearm safety and unfairly exploits children and teenagers through unfair and deceptive marketing practices, including targeting teenagers, particularly young men, with advertising for military-style weapons. Time and again, these practices have had deadly consequences.

The FTC has the power to address these deceptive marketing practices that threaten consumers and public safety. Section 5 of the Federal Trade Commission Act empowers the FTC to investigate and regulate “unfair or deceptive acts or practices in or affecting commerce,” including in the advertising of products.² The FTC has previously investigated and taken strong

¹ David Yaffe-Bellany & Jessica Silver-Greenberg, *Gun in Texas Shooting Came from Company Known for Pushing Boundaries*, N.Y. TIMES (May 28, 2022), <https://www.nytimes.com/2022/05/28/business/daniel-defense-rifle-texas-shooting-gun.html?referringSource=articleShare>.

² Federal Trade Commission Act, 15 U.S.C. §§ 41-58.

action against other industries for similar false and misleading safety-related claims, particularly when such claims target and endanger children. The tobacco and e-cigarette industries are perhaps the paradigmatic example. Since the 1940s, the FTC has brought enforcement actions against tobacco companies for unfair and deceptive claims over the health and safety of cigarettes—most prominently with its lawsuit against R.J. Reynolds over the use of the Joe Camel cartoon to market to children.

The same should be done here with respect to the firearms industry and the unsubstantiated claims it has made—and continues to make—in its advertisements. For decades, the firearms industry has marketed firearms to consumers as a safe and proven product to protect themselves and their homes. Consumers should be informed of all the substantial and unavoidable risks that come with firearm ownership, possession, and use, and the FTC is in the best position to make sure that the firearms industry tells them—and tells them accurately.

The first petition calling for the FTC to investigate the firearms industry was filed in 1996³—more than 25 years ago—and numerous petitions have been filed in the intervening years. A petition for an investigation filed in April by the Firearms Accountability Counsel Taskforce (FACT) documents in chilling detail how the firearms industry has knowingly engaged in a long pattern of unfair and deceptive advertising to mislead the American public into erroneously believing that gun ownership makes them safer, when the available evidence overwhelmingly proves the opposite.⁴ The petition also highlights the violent results of the industry’s efforts to “target and radicalize” consumers by “convincing them that they need expensive, military-grade weaponry for everyday use.”⁵ The petition includes examples of efforts that targeted young men in particular with connections to video games and claims that owning military-grade weapons was the only path to manhood. Everytown for Gun Safety, Brady, and Fred Guttenberg, whose daughter Jamie was killed in the 2018 Parkland shooting, filed a petition in May 2020, and followed up with a letter last year reiterating their request for an investigation of Smith & Wesson’s marketing practices.⁶ And, in July, Everytown for Gun Safety filed a petition specifically focused on the highly violent and militarized marketing practices of Daniel Defense, to which teens and young men are particularly susceptible.⁷ The FTC, however, has never taken public action in response to the petitions that have exposed these practices.

These petitions show that the available evidence strongly demonstrates that firearm possession, ownership, and use render consumers substantially less safe and substantially more at risk of

³ Petition of the Ctr. to Prevent Handgun Violence, Am. Acad. of Pediatrics, Am. Pub. Health Ass’n, Am. Ass’n of Suicidology, Am. Acad. of Child and Adolescent Psychiatry, and Nat’l Ass’n of Child.’s Hospitals and Related Insts. before the Fed. Trade Comm’n at 17 (Feb. 14, 1996).

⁴ Petition of the Firearms Accountability Counsel Task Force, Brady, Giffords L. Ctr. to Prevent Gun Violence, and March for Our Lives before the Fed. Trade Comm’n, *The Gun Industry’s Advertising: Effective, Deadly, and Actionable*, at 22 (Apr. 7, 2022), <https://firearmsaccountability.org/FTCPetition.pdf>.

⁵ *Id.* at 27.

⁶ Petition of Everytown for Gun Safety, Brady, and Fred Guttenberg before the Fed. Trade Comm’n (Aug. 17, 2021), <https://everytownlaw.org/wp-content/uploads/sites/5/2021/08/2021.08.17-SW-FTC-Submission.pdf>.

⁷ Petition of Everytown for Gun Safety before the Fed. Trade Comm’n, Complaint and Request for Investigation of Daniel Defense LLC (July 15, 2022), <https://everytownlaw.org/wp-content/uploads/sites/5/2022/07/Daniel-Defense-FTC-Complaint.pdf>.

injury and death with limited, if any, protective benefit.⁸ The rare instances in which a gun owner successfully uses a firearm for self-defense are far outweighed by the vastly higher number of injuries and deaths for the owners, family members, and other cohabitants. In fact, research indicates that for each instance in which a firearm in the home is used successfully in self-defense, there are 11 attempted or completed firearm suicides, seven criminal assaults or homicides involving a firearm, and four unintentional shootings.⁹

That fact comports with broader gun violence research and data. More than half of the near 46,000 suicides reported to the Centers for Disease Control and Prevention (CDC) in 2020 involved firearms.¹⁰ 64 Americans die by firearm suicide every day,¹¹ and 700 children die by firearm suicide each year.¹² Firearm suicides are almost always deadly: 9 out of 10 firearm suicide attempts result in death.¹³ In addition, unintentional and accidental shootings are also a serious problem specific to firearm possession, ownership, and use—particularly for children. Well over four million children live in households with at least one unlocked and loaded firearm.¹⁴ Although 70 percent of parents reported that adolescents could not access firearms in their household, more than one-third of children in those households reported being able to access the firearm in less than five minutes.¹⁵ Every day, eight children are unintentionally injured or killed due to an unlocked or unsupervised gun in the home.¹⁶ In 2022, so far, there have been at least 181 unintentional shootings by children, resulting in 77 deaths and 115 injuries.¹⁷ In 2021, there were almost 400—including 163 deaths and 248 injuries.¹⁸

None of this evidence is new. We and, more importantly, the firearms industry, have known for decades that firearm possession, ownership, and use can have serious—often deadly—irreversible consequences. But that has never stopped the firearms industry from advertising guns as indispensable to protect oneself in and outside the home. If anything, the firearms industry has doubled-down on its unfair and deceptive advertising¹⁹ with a specific emphasis on military and law enforcement grade firearms and a particular focus on children and teenagers,

⁸ Petition of the Firearms Accountability Counsel Task Force, Brady, Giffords L. Ctr. to Prevent Gun Violence, and March for Our Lives before the Fed. Trade Comm'n, *The Gun Industry's Advertising: Effective, Deadly, and Actionable* at 22 (Apr. 7, 2022), <https://firearmsaccountability.org/FTCPetition.pdf>.

⁹ *Id.* at 18.

¹⁰ *Suicide and Self-Harm Injury*, CTNS. FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/nchs/fastats/suicide.htm>.

¹¹ *Statistics*, PREVENT FIREARM SUICIDE – THE EDUCATIONAL FUND TO STOP GUN VIOLENCE, <https://preventfirearmsuicide.efsgv.org/about-firearm-suicide/statistics/>.

¹² *Fact Sheet: Unload, Lock, and Separate*, EVERYTOWN: EVERYTOWN RSCH. & POL'Y, (last updated Nov. 2, 2021), <https://everytownresearch.org/report/unload-lock-and-separate-secure-storage-practices-to-reduce-gun-violence/>.

¹³ PREVENT FIREARM SUICIDE, *supra* note 11.

¹⁴ Nora Biette-Timmons, *Roughly 4.6 Million American Kids Live in Homes with Unlocked, Loaded Guns*, THE TRACE (May 21, 2018), <https://www.thetrace.org/newsletter/study-american-children-unlocked-loaded-gun-storage/> (citing the National Firearms Survey of 2015).

¹⁵ *Child & Consumer Safety: Child Access Prevention & Safe Storage*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/child-consumer-safety/child-access-prevention/#:~:text=73%25%20of%20children%20under%20age,the%20knowledge%20of%20their%20parents.>

¹⁶ *End Family Fire*, BRADY, <https://www.bradyunited.org/program/end-family-fire>.

¹⁷ *#NotAnAccident Index*, EVERYTOWN: EVERYTOWN RSCH. & POL'Y, <https://everytownresearch.org/maps/notanaccident/>, (last visited Sept. 7, 2022).

¹⁸ *Id.*

¹⁹ David Yamane, Paul Yamane & Sebastian L. Ivory, *Targeted Advertising: Documenting the Emergence of Gun Culture 2.0 in Guns Magazine, 1955–2019*, 6 PALGRAVE COMM'NS 1, 4 (Apr. 15, 2020).

using video games, popular musicians and television shows, and even Santa Claus to market its products.²⁰

This scheme has worked—to the benefit of the firearms industry and the detriment of consumers. Evidence shows that decades of deceptive advertising has deceived Americans into believing, inaccurately, that having a gun in the home decreases the risk of violence when the opposite is true. This mistaken belief has led to a historic surge in gun sales and industry profits²¹ tragically in tandem with the number of gun-related deaths in the United States.²² Data from the CDC shows that gun deaths in 2020 in the United States reached the highest level ever recorded—45,000.²³ In 2020, firearms were also, for the first time, the leading cause of death among children and teenagers—a 29-percent increase from 2019.²⁴ Firearms are now among the leading causes of death nationwide, as more than 120 Americans are killed each day with a gun.²⁵ If the firearms industry’s commercial representations were based on fact and evidence instead of profit motives, the gun violence trendline would be trending downward. Reality reflects otherwise.

The FTC must act to ensure that the firearms industry, which has operated without oversight and with impunity for far too long, is held accountable for misleading consumers about the harms guns can cause to themselves, their children, and their communities. To that end, we encourage the FTC to make full use of all its tools and authorities to investigate and regulate the firearms industry’s unfair and deceptive advertising practices.

Sincerely,



RICHARD BLUMENTHAL
United States Senate



EDWARD J. MARKEY
United States Senate



CHRISTOPHER S. MURPHY
United States Senate



RICHARD J. DURBIN
United States Senate

²⁰ Yaffe-Bellany, et al., *supra* note 1.

²¹ See Paul Waldman, Opinion, *Gun Sales Have Exploded. Funny, That Didn't Make Us All Safer.*, WASH. POST (May 18, 2022) <https://www.washingtonpost.com/opinions/2022/05/18/gun-sales-exploded-didnt-make-us-safer/> (citing National Instant Criminal Background Check data).

²² John Gramlich, *What the Data Says About Gun Deaths in the U.S.*, PEW RSCH. CTR. (Feb. 3, 2022), <https://www.pewresearch.org/fact-tank/2022/02/03/what-the-data-says-about-gun-deaths-in-the-u-s/>.

²³ CTRS. FOR DISEASE CONTROL, *supra* note 10.

²⁴ Aria Bendix, *In a First, Firearms Were Leading Cause of Death for U.S. Children and Teens in 2020*, NBC NEWS (Apr. 22, 2022), <https://www.nbcnews.com/health/health-news/guns-leading-cause-death-children-teens-rcna25443>.

²⁵ Ari Davis, et al., *A Year in Review: 2020 Gun Deaths In the U.S.*, JOHNS HOPKINS CTR. FOR GUN VIOLENCE SOLUTIONS, at 29 (2022), <https://publichealth.jhu.edu/sites/default/files/2022-05/2020-gun-deaths-in-the-us-4-28-2022-b.pdf>.



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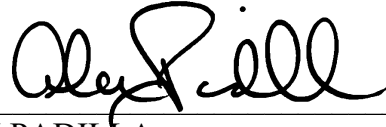
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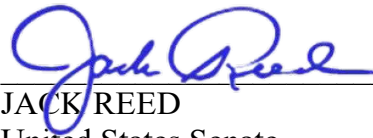
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