

Buffalo Sues Firearms Makers Over Gun Violence And Deaths

By **Mike Curley**

Law360 (December 20, 2022, 7:13 PM EST) -- The city of Buffalo on Tuesday launched a suit against more than 30 firearms companies, including Glock Inc., Smith & Wesson Brands Inc. and Bushmaster Firearms Industries Inc., seeking to hold them liable for gun violence and deaths that have hit the city in recent years.

In the nearly 200-page **complaint**, the city included firearms makers, distributors and the makers of so-called ghost guns, which are kits and parts that can be used to assemble a working firearm. The suit alleges that these companies have failed to prevent distribution of guns to be used in violent crime, and market the weapons in ways that promote violence.

"Members of our community have suffered too much and for too long from gun violence," Mayor Byron W. Brown said in a press release Tuesday. "We must do everything we can to decrease gun violence. Enabling the possession of illegal guns destroys lives and deeply affects our neighborhoods, especially in Black and Brown communities. I am proud to stand up to the gun industry and fight for the safety of people living, working and visiting the city of Buffalo."

According to the complaint, gun violence has been increasing year by year in Buffalo despite the city's efforts to curb violence, citing as an example the May shooting at Tops Friendly Market, in which 10 people were killed and 13 wounded using a Bushmaster XM-15.

The city alleged that the gun companies have marketed the weapons in ways that appeal to people with criminal intent, such as focusing on the high capacity and ease of concealment. The city also said in the complaint that the companies oversupply firearms at a rate higher than the legitimate market can bear, which induces sales in the secondary market.

At the same time, the city wrote, dealers are not properly trained to avoid straw sales, and the companies have not tracked where their guns end up or how often they are used in violent crimes.

According to the complaint, in the last few years Buffalo has been near the top of the list of cities in which firearms have been recovered after a crime in New York, and while some guns used in crime initiated as legal sales, the failure to institute proper distribution practices ends with them in the hands of criminals, the city wrote.

"Gun violence is only getting worse, and it is impacting the entire community," Salvatore C. Badala of Napoli Shkolnik PLLC, representing the city, said in the press release. "The city of Buffalo decided to move forward and bring change."

The city alleged that there are reasonable measures available to help keep guns off the illegal market, such as by monitoring the sale and distribution of guns through downstream distributors, and training dealers to recognize when a buyer has an illicit purpose in mind.

"Like the opioid epidemic we are proud to help communities deal with another public health tragedy: illegal guns," Hunter J. Shkolnik of Napoli Shkolnik PLLC told Law360 on Tuesday. "The deaths have to stop."

Shayna E. Sacks of Napoli Shkolnik PLLC added that the suit does not seek to restrict legal gun ownership, only to hold the companies responsible for illegal gun possession and the resulting effect

on communities.

Ghost guns in particular can be sold online without a background check, the city wrote, adding they can be purchased by people who otherwise would not be legally allowed to own a firearm. According to the complaint, the Buffalo Police Department seized 13 times as many ghost guns in 2021 as they did in 2020. The city added that this is only recovered ghost guns, and "countless more" may be on the streets.

"All defendants have betrayed their obligations under New York law through a persistent course of misconduct, all while failing to take the necessary steps — or any steps at all — to keep their ghost gun products and firearms out of the hands of people who are prohibited from accessing firearms," the city wrote. "Indeed, there are numerous common-sense, scientifically grounded policies and practices that, if implemented, would reduce the risk of defendants' guns being used in murder, suicide or violent crime."

In a statement Tuesday, Bushmaster said it has received notice of the suit, but hasn't had a chance to review it yet.

"Upon first blush, the verified allegations against Bushmaster Firearms Industries Inc. are false," the company said in its statement. "Our counsel is currently reviewing the complaint and evaluating a path forward to address both this lawsuit and the potentially libelous claims made against Bushmaster Firearms Industries Inc."

Representatives for the other gun companies could not immediately be reached for comment Tuesday.

The city is represented by Salvatore C. Badala, Shayna E. Sacks, Paul J. Napoli and Hunter J. Shkolnik of Napoli Shkolnik PLLC and in-house by Corporation Counsel Cavette A. Chambers.

Counsel information for the defendant companies was not available Tuesday.

The case is the City of Buffalo v. Smith & Wesson Brands Inc. et al., index number unavailable, in the Supreme Court of the State of New York, County of Erie.

--Editing by John C. Davenport.