

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

<p><b>DISTRICT OF COLUMBIA,</b></p> <p style="text-align:center"><b>Plaintiff,</b></p> <p style="text-align:center"><b>v.</b></p> <p><b>POLYMER80, INC.,</b></p> <p style="text-align:center"><b>Defendant.</b></p>	<p><b>Case No. 2020 CA 002878 B</b></p> <p><b>Judge Ebony M. Scott</b></p> <p><b>Next Court Event: Mediation January 11, 2023 at 9:00 a.m.</b></p>
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**ORDER GRANTING IN PART AND DENYING IN PART THE DISTRICT OF  
COLUMBIA’S MOTION FOR SUMMARY JUDGMENT FOR VIOLATIONS OF THE  
CONSUMER PROTECTION PROCEDURES ACT**

This matter is before the Court on the District of Columbia’s Motion for Summary Judgment for Violations of the Consumer Protection Procedures Act (“Plaintiff’s Motion for Summary Judgment”), filed on March 21, 2022. Defendant filed a Memorandum of Points and Authorities of Polymer80, Inc. in Opposition to Plaintiff’s Motion for Summary Judgment (“Defendant’s Opposition”) on April 11, 2022, and Plaintiff subsequently filed the District’s Reply in Further Support of its Motion for Summary Judgment (“Plaintiff’s Reply”) on April 22, 2022. Upon consideration of the Motion, the Opposition, the Reply, and the entire record herein, the Court grants in part and denies in part the Motion.

**I. FACTUAL BACKGROUND**

The instant matter involves an action by the District of Columbia (“the District”) against Polymer80, Inc. (“Polymer80”) for violations of section 28-3904 of the Consumer Protection Procedures Act (“CPPA”). *See* D.C. Code §§ 28-3901 *et seq.* In the Complaint, filed on June 24, 2020, the District pled that Polymer80 violated the CPPA by: (1) making misleading representations to District consumers; and (2) violating the District’s gun laws. The District

alleges that Polymer80 misleadingly advertised and sold illegal "unserialized" handguns and semi-automatic rifles to consumers in the District through a website and network of dealers. *See* Compl. ¶ 1. The District also alleges that Polymer80's webpage contained a Statement and two Frequently Asked Questions ("FAQs") regarding sales in the District and/or to District consumers that were false. *See* Pl.'s Statement of Material Facts Not in Disp. ¶¶ 19, 22, 23. Further, Polymer80's webpage contained no information about the products' legality under state and local law. *See* Compl. at ¶ 30. The District further alleges that through the website and network of dealers, Polymer80 sold a variety of almost complete firearms that consumers can easily finish at home. *Id.* at ¶ 1. These firearms included a variety of "Buy, Build, Shoot" kits with all the parts necessary to create a fully functioning firearm. *See id.* Additionally, according to the District, Polymer80 sold 19 firearms to District consumers without being licensed in the District to sale firearms, without conducting a background check on consumers, and without the firearms having serial numbers. *See id.* at. ¶ 50; *see also* Pl.'s Statement of Material Facts Not in Disp. ¶ 25.

On March 21, 2022, the District filed its Motion for Summary Judgment seeking summary judgment on Counts I and Count II of the Complaint, the issuance of a permanent injunction, and civil penalties in the amount of \$4,038,000.

## **II. LEGAL STANDARD**

Pursuant to Super. Ct. Civ. R. 56(c), summary judgment is granted where the record shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law. *See Osbourne v. Capital City Mortgage Corp.*, 667 A.2d 1321, 1324 (D.C. 1995); *see also Smith v. Washington Metropolitan Area Transit Authority*, 631 A.2d 387, 390 (D.C. 1993). "A genuine issue of material fact exists if the record contains 'some significant probative evidence ... so that a reasonable fact-finder would return a verdict for the non-moving party.'" *Brown v.*

*1301 K Street Limited Partnership*, 31 A.3d 902, 908 (D.C. 2011) (citing *1836 S Street Tenants Ass’n v. Estate of Battle*, 965 A.2d 832, 836 (D.C. 2009) (footnote omitted)). To determine which facts are “material,” a court must look to the substantive law on which each claim rests. See *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The moving party has the burden to establish that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. See *Osborne*, 667 A.2d at 1324. If the moving party carries this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. See *Bruno v. Western Union Financial Services, Inc.*, 973 A.2d 713, 716 (D.C. 2009) (quotations and citations omitted); see also *Osbourne*, 667 A.2d at 1324. The non-moving party may not carry this burden merely with conclusory allegations, *Greene v. Dalton*, 164 F.3d 671,675 (D.C. Cir. 1999); rather he or she “must produce at least enough evidence to make out a prima facie case in support of his [or her] position.” *Bruno*, 973 A.2d at 717. A motion for summary judgment should be granted only if (1) taking all reasonable inferences in the light most favorable to the nonmoving party, (2) a reasonable juror, acting reasonably, could not find for the nonmoving party, (3) under the appropriate burden of proof. See *Nader v. de Toledano*, 408 A.2d 31, 42 (D.C. 1979), *cert. denied*, 444 U.S. 1078 (1980).

### **III. ANALYSIS**

#### **A. Firearms**

In the Motion, the District contends that Polymer80 sold firearms to District consumers. See generally Pl.’s Mot. for Summ. J. The Plaintiff further contends that Polymer80’s handgun frames, semi-automatic receivers, and Buy, Build, and Shoot kits are firearms under the District’s Firearm Control Regulations Act of 1975 (“FCRA”) because they can be, and are designed to be, readily converted to fully functioning firearms. See Pl.’s Mot. for Summ. J. 7.

In Opposition, Polymer80 argues that Polymer80's products are simply not firearms. *See generally* Def.'s Opp'n. Polymer80 argues that the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has repeatedly found that representative samples of the products at issue are not firearms. *Id.* at 33. Polymer80 also argues that the principal product at issue is Polymer80's unfinished blanks that, with additional machining and fabrication, can become finished frames and receivers. *See id.* at 34. Polymer80 further argues that the FCRA and Gun Control Act of 1968 ("GCA"), reveal that the "readily converted" phraseology does not apply to the "frame or receiver" portion of either definition. Moreover, Polymer80 argues that the FCRA and GCA do not contemplate nor permit any inquiry into whether or not unfinished frames and receiver blanks can be readily converted into finished firearms. *See id.* at 35. Additionally, Polymer80 argues that in the ATF's view, the readily converted test in the introductory portion of the GCA's firearm definition has no application to a frame or receiver. *See id.* Thus, according to Polymer80, an unfinished frame or receiver blank is not a frame or receiver and hence not a firearm. *See id.* at 36.

In furtherance of their argument, Polymer80 points to the fact that the Omnibus Public Safety and Justice Amendment Act of 2020 ("Omnibus Act"), which became final on April 27, 2021, amended the FCRA to expand the definition of ghost guns to include unfinished frames or receivers. *See id.* 42. According to Polymer80's methodology, if products of the type sold by Polymer80 were plainly firearms under the FCRA, then these amendments would not have been necessary. *See id.* 43. To buttress its argument, Polymer80 also points to the Ghost Gun Clarification Temporary Amendment Act of 2021 ("Clarification Act"), which Polymer80 argues places the duty on the consumer, who completes the manufacture and assembly of components

into a functioning gun, to serialize and register the self-manufactured firearm. *See* Def.’s Opp’n, 45.

In its Reply, the District argues, *inter alia*, that updated legislation does not mean that Polymer80’s core products are not and were not readily converted into firearms, in any way, and that the legislation did not change the definition of “readily converted”. *See* Pl.’s Reply 8. The District argues that the amended legislation merely expanded the prohibition of ghost guns – a prohibition that Polymer80 was already subject to – and that the D.C. Council is “free to expand prohibitions on unserialized firearms . . . .” *Id.*

As a preliminary matter, the Court finds that Polymer80’s handgun frames, semi-automatic receivers, and Buy, Build, Shoot kits are firearms. Under the GCA, a firearm is defined as “any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or destructive device.” 18 U.S.C. § 921(3). Under the FCRA, a firearm is defined as “any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to expel a projectile or projectiles by the action of an explosive; the frame or receiver of any such device; or any firearm muffler or silencer.” D.C. Code § 7-2501.01(9). In the instant case, Polymer80 sold unfinished handgun frames, unfinished semi-automatic receivers, and Buy, Build, Shoot kits to District consumers, and these products are (and were) readily converted into firearms. *See* Pl.’s Mot. for Summ. J. Aff. McFarlin. Polymer80 itself demonstrates just how readily convertible its unfinished handgun frames, receivers, and Buy, Build, Shoot kits are. On Polymer80’s website, they provide instructions to consumers on how to build firearms with these unfinished frames, receivers, and Buy, Build, Shoot kits. *See* Pl.’s Mot. for Summ. J. Ex. 32. Polymer80 also provides links to YouTube videos that provide instructions

on how to complete the assembly of the firearms. *See id.* Additionally, the Court is not persuaded by the Defendant's argument that the FCRA and GCA make no mention of unfinished frames or receivers<sup>1</sup> because both the FCRA and GCA include specific language that defines firearms as readily converted weapons,<sup>2</sup> regardless of their operability. *See* D.C. Code § 7-2501.01; *see also* 18 U.S.C. § 921(a)(3). Thus, the Court finds that the unfinished receivers, frames, and Buy, Build, Shoot kits sold by Polymer80 to District consumers are firearms under District law.

### **B. Count I**

In the Motion, the Plaintiff contends that the Defendant violated the CPPA because it falsely and misleadingly advertised illegal firearms to District consumers. The Plaintiff also contends that the Defendant affirmatively misrepresented the legality of its products in the District. *See* Pl.'s Mot. for Summ. J. 7. According to the Plaintiff, from at least January 16, 2017 through June 24, 2022, Defendant prominently advertised on its homepage and FAQs page that its products were legal. *Id.* at 8.

In the Opposition, the Defendant argues that the company's website is not misleading under the District's "reasonable consumer" standard. *See* Def.'s Opp'n. 20. The Defendant further argues that whether information "has a tendency to mislead" is based on the "reasonable consumer" standard and is usually a question of fact. *Id.* at 21. The Defendant also argues that the Plaintiff has not presented evidence establishing that there was customer deception. *See id.* Additionally, the Defendant argues that no reasonable consumer could have read the Statement on its website to

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<sup>1</sup> Polymer80 cites to the ATF's interpretation of the GCA to argue that an unfinished frame or receiver blank is not a firearm. *See* Def.'s Opp'n 33-36. However, this Court is not bound by the ATF's interpretation of the GCA.

<sup>2</sup> Polymer80's argument that the FCRA was amended because the FCRA did not clearly include Polymer80's products as firearms is untenable. As the District argues in its Reply, the amendments did not change the FCRA's language that defined firearms as weapons that are readily converted. *See* Pl.'s Reply 8.

refer to any Company product other than the G150 because the Statement referred to a single product, and because Polymer80 provided a link to the ATF Determination Letter regarding that very product. *See id.* at 23. The Defendant further argues that the ATF Determination Letter as to the G150 does accurately reflect its legality under the GCA. *See id.*

### **1. False Representations**

Here, the Court finds that Polymer80 violated the CPPA with regards to D.C. Code § 28-3904 (a),(b),(e-1). Under the CPPA, “it is a violation for any person to engage in an unfair or deceptive trade practice, whether or not any consumer is in fact misled, deceived, or damaged. . . .” D.C. Code § 28-3904. Thus, “a consumer need not prove that she was misled, deceived, or damaged by a merchant’s actions.” *Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1004 (D.C. 2020)(internal quotation marks and citations omitted). For claims of unfair or deceptive trade practices, a person violates the CPPA if they (1) represent that goods have approval or certification that they do not have, (2) represent that they have approval that they do not have; or (3) represent that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. *See* D.C. Code § 28-3904 (a),(b),(e-1). Additionally, an alleged unfair trade practice is considered “in terms of how the practice would be viewed and understood by a reasonable consumer.” *Saucier v. Countrywide Home Loans*, 64 A.3d 428, 442 (D.C. 2013) (internal quotation marks and citations omitted).

#### *The Statement*

There is no dispute that the following statement appeared on Polymer80’s website:

Is it legal? YES! The Polymer80 G150 unit is well within the defined parameters of a “receiver blank” defined by the ATF and therefore has not yet reached a stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968 (GCA).

*See* Def.’s Opp’n. 22.

The Court finds that the statement is a false representation because it (1) represented that the Polymer80 G150 firearm had approval in the District of Columbia when it did not, (2) represented that Polymer80 had approval or certification to sell the firearm to District consumers when it did not, and (3) represented that District consumers would have gained the right to possess the firearm if they purchased the firearm on Polymer80's website. In the statement, when asked "Is it legal?" Polymer80 answers the question with "YES!" and cites to the ATF Determination which is *not* binding on the District. Thus, Polymer80's statement is a false representation under the CPPA.

FAQ #1

There is no dispute that the following FAQ #1 appeared on Polymer80's website:

May I lawfully make a firearm for my own personal use, provided it is not being made for resale? "(From the ATF Website): Firearms may be lawfully made by persons who do not hold a manufacturer's license under the GCA provided they are not for sale or distribution and the maker is not prohibited from receiving or possessing firearms.

*See* Def.'s Opp'n. 23, *see also* Pl.'s Mot. for Summ. J. Ex. 4.

With respect to FAQ #1, the Court reaches the same conclusion as above. Namely, that the statement is a false representation that firearms sold by Polymer80 were approved by the District when they were not, Polymer80 had approval to sell firearms to District consumers, when it did not, and that if a consumer made a purchase on Polymer80's website they would have the right to possess the firearm in the District, which they did not. Indeed, Polymer80 presents the question "May I lawfully make a firearm for my own personal use, provided it is not being made for resale?" and responds by informing consumers that, under the GCA, firearms may be lawfully made by a person so long as they are not for sale or distribution. This information is simply not true for District consumers.



## FAQ # 2

There is no dispute that the following FAQ #2 appeared on Polymer80's website:

Is it legal to assemble to assemble a firearm from commercially available parts kits that can be purchased via internet []? For your information, per provisions of the Gun Control Act (GCA of 1968). 18 U.S.C. Chapter 44, an unlicensed individual may make a firearm for his personal use, but not for sale or distribution. For further information on rulings and classifications go to the ATF Firearms website.

*See* Def.'s Opp'n. 23.

With respect to FAQ #2, the Court reaches the same conclusion as above. Namely, that the statement is simply false as it relates to District consumers, as it represents that firearms sold by Polymer80 were approved by the District when they were not, Polymer80 had approval to sell firearms to District consumers when it did not, and that unlicensed District consumers could make and possess Polymer80's firearms for their own personal use, which they could not.

Based upon the foregoing, and viewing all reasonable inferences in the light most favorable to the nonmoving party, the Court concludes that Polymer80 violated the CPPA with respect to D.C. Code § 28-3904 (a),(b),(e-1), and that the District is entitled to summary judgment as to these claims as a matter of law.

## **2. Materiality**

The Court finds that Summary Judgment is not proper as to the District's claims arising under D.C. Code § 28-3904(e),(f). A person violates the CPPA if they misrepresent a material fact which has a tendency to mislead; or fail to state a material fact if such failure tends to mislead. *See* D.C. Code § 28-3904(e),(f). "For purposes of § 28-3904(e) or (f), a misrepresentation or omission is 'material' if a reasonable person 'would attach importance to its existence or nonexistence in determining his or her choice of action in the transaction' or 'the maker of the

representation knows or has reason to know’ that the recipient likely ‘regard[s] the matter as important in determining his or her choice of action.’” *Frankeny*, 225 A.3d at 1005 (citing *Saucier*, 64 A.3d at 442 (quoting Restatement (Second) Torts § 538(2) (Am. Law Inst. 1977)). However, the actual determination of whether statements are both material and misleading “is a question of fact for the jury and not a question of law for the court.” *Saucier*, 64 A.3d at 445; *see also Frankeny*, 225 A.3d at 1005 (“Ordinarily materiality is a question for the factfinder.”)(citations omitted)); *Mann v. Bahi*, 251 F. Supp. 3d 112, 126 (D.D.C. 2017) (“[F]or claims under subsections (e), (f), and (f-1) [of the CPAA], whether Tri-Cities’ misrepresentations or omissions (if any) pertained to material facts and had a tendency to mislead are also questions for a jury.”).

Additionally, the Court notes that it agrees with Polymer80 that the burden of proof for misrepresentation claims under D.C. Code § 28-3904(e) and (f) is clear and convincing evidence. *See Frankeny*, 225 A.3d at 1005. In *Frankeny*, the appellant/patient alleged that the appellee/medical provider violated D.C. Code § 28-3904 (e) and (f) when the medical provider failed to inform the patient that her procedure would be performed by a first year medical resident, rather than the seasoned board certified surgeon she selected. *See id.* at 1002. The patient alleged that the failure constituted a material misrepresentation. *See id.* In analyzing the CPPA claim, the Court of Appeals held that the burden of proof for CPAA claims alleging material misrepresentations is clear and convincing evidence. In following *Frankeny*, this Court holds that the Plaintiff must prove its claims under D.C. Code § 28-3904 (e) and (f) by clear and convincing evidence.

Here, the parties dispute whether the language advertised on Polymer80’s website through the Statement and two FAQs (collectively “Statements”) were material facts which had a tendency

to mislead District consumers into believing that purchasing Polymer80's products (which the Court has found to be firearms) was legal in the District, and whether Polymer80's omissions had the same tendency to mislead customers. In viewing the evidence in a light most favorable to the Defendant, the evidence is sufficient to place into dispute whether Polymer80 misrepresented or omitted material facts that tended to mislead a reasonable consumer into believing that purchasing firearms from Polymer80's website was legal. *See, e.g., Frankeny*, 225 A.3d at 1009. While the Court finds that Polymer80 made misrepresentations and omissions on its website regarding their products, as noted *supra*, the actual determination of whether these misrepresentations and omissions were both material and tended to mislead is a question of fact for the jury. Indeed, a jury could find that Polymer80's Statements were material facts which had a tendency to mislead reasonable consumers into believing that it was legal to purchase firearms from Polymer80's website. Alternatively, a jury might conclude that Polymer80's Statements were not material facts which mislead reasonable consumers into believing that their purchase, and possession, of these firearms, was legal in the District. Thus, the Court finds that there is a genuine dispute of material facts as to whether Polymer80's Statements were material facts which had a tendency to mislead reasonable consumers. As such, summary judgment as to the District's claims arising under D.C. Code § 28-3904(e),(f) is denied.

### **C. Count II**

In the Motion, the District contends that Polymer80 violated the CPPA by selling illegal firearms to District consumers. *See* Pl.'s Mot. for Summ. J. 10. The District further contends that Polymer80 sold firearms through Polymer80's website and dealers, which violates the District's law by selling unregistered firearms to District consumers and delivering firearms to purchasers. *See id.*

In the Opposition, Polymer80 argues that Count II fails as a matter of law since the District cannot assert a claim that an alleged violation of the FCRA is a violation of the CPPA. *See* Def.’s Opp’n. 29. Polymer80 further argues that the District is not a consumer suing under D.C. Code § 28-3905 and that the Attorney General for the District of Columbia cannot avail himself of the consumer aspects of the law. *See id.* at 30. Polymer80 also argues that District lawsuits are limited to the conduct and violations of statutes expressly described in D.C. Code § 28-3904 and not any District law. *See id.* at 31.<sup>3</sup>

“The Consumer Protection Procedures Act is a ‘comprehensive statute’ with an extensive regulatory framework designed to ‘remedy all improper trade practices.’” *Osbourne*, 727 A.2d at 325 (citing *Atwater v. District of Columbia Dep’t of Consumer & Regulatory Affairs*, 566 A.2d 462, 465 (D.C. 1989) (citing D.C. Code § 28-3901(b)(1))). Further, “the CPPA protects consumers from unlawful trade practices enumerated in § 28-3904, as well as practices prohibited by other statutes and common law.” *Osbourne*, 727 A.2d at 325 (citations omitted).

Under D.C. Code § 7-2504.01(b), “no person or organization shall engage in the business of selling, purchasing, or repairing any firearm, destructive device, parts therefor, or ammunitions without first obtaining a dealer’s license.” Moreover, no person or organization in the District shall receive, possess, control, transfer, offer for sale, sell, give, or deliver any destructive device unless that person or organization holds a valid registration certificate for the firearm. *See* D.C. Code § 7-2502.01(a). Additionally, no person or organization in the District shall possess or control any firearm, unless the person or organization holds a valid registration certificate for the firearm. *See* D.C. Code § 7-2502.01. Moreover, under D.C. Code § 7-2504.08, no licensee shall sell or offer for sale any firearm which does not have imbedded into the metal portion of such

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<sup>3</sup> The Court notes that Polymer80 also argues that its products are not firearms, however, the Court addressed this issue in Section A.

firearm a unique manufacturer's identification number or serial number, unless the licensee shall have imbedded into the metal portion of such firearm a unique dealer's identification number. The District also requires a seller to deliver a firearm to the purchaser after ten days have elapsed from the date of purchase. *See* D.C. Code § 22-4508.

Here, the Court finds that the District has satisfied its burden in establishing that there is no genuine issue of material fact that Polymer80 violated the District's gun laws, which in turn, served as a violation of the CPPA. Polymer80 violated District law by selling firearms to District consumers without the requisite licenses,<sup>4</sup> and failing to comply with the series of restrictions and requirements the District imposes on licensees. Additionally, Polymer80's firearms violated District law because the firearms were not registered and failed to have an identification number or serial number. Accordingly, the District is entitled to summary judgment as to Count II as a matter of law.

#### **D. Permanent Injunction**

In the Motion, the District contends that Polymer80 should be permanently enjoined from engaging in future conduct reasonably related to its committed violations. *See* Pl.'s Mot. for Summ. J. 11. In the Opposition, Polymer80 argues that the District cannot seek a permanent injunction against the advertisement and sale of lawful products because Polymer80's products are not banned under District Law, as it now stands. *See* Def.'s Opp'n. 45. Polymer80 further argues that the requested relief is unnecessary because Polymer80 ceased all sales of the products at issue in the District since July 27, 2020. *Id.* at 46. Additionally, Polymer80 argues that a permanent injunction concerning Polymer80's distributors and dealers does not meet the requirement for

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<sup>4</sup> The Court notes that the parties do not dispute that Polymer80 sold 19 of its firearms to District consumers. *See* Polymer80 Statement of Material Facts in Disp. ¶ 25; *see also* Pl.'s Statement of Material Facts Not in Disp. ¶ 25.

injunctive relief under the CPPA because the District has not proffered any proof of sales of Company products by the third parties to local residents, and failed to allege any deceptive advertising by them. *See id.*

Here, the Court finds that a permanent injunction is proper. Pursuant to D.C. Code § 28-3909(a), “if the Attorney General for the District of Columbia has reason to believe that any person is using or intends to use any method, act, or practice in violation of section . . . 28-3904, and if it is in the public interest, the Attorney General, in the name of the District of Columbia, may bring an action in the Superior Court of the District of Columbia to obtain a temporary or permanent injunction prohibiting the use of the method, act, or practice and requiring the violator to take affirmative action . . . .” Additionally, “a plaintiff seeking forward-looking relief, such as an injunction, must allege facts showing that the injunction is necessary to prevent injury otherwise likely to happen in the future . . . .” *Ramirez v. Salvaterra*, 232 A.3d 169, 183 (D.C. 2020)(internal quotation marks and citations omitted). Given the Court’s ruling that Polymer80 violated the CPPA and the District’s gun laws, and Polymer80’s alarming belief that the sale of its firearms is now legal in the District, to prohibit future sales of its firearms to District consumers, the Court shall grant the Plaintiff’s request for a permanent injunction.<sup>5</sup>

#### **E. Damages**

The District contends that the Court should order the maximum civil penalty for each violation of the CPPA, which totals \$4,038,000. *See* Pl.’s Mot. for Summ. J. 13. The District further contends that the CPPA authorizes civil penalties for each violation, and that Polymer80

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<sup>5</sup> Given the Court’s ruling, the District of Columbia's Opposed Motion for Preliminary Injunction, filed on June 26, 2020, is DENIED AS MOOT.

should be penalized each day Polymer80's website contained false, deceptive, or misleading advertisement. *See id.* at 14-15.

In Opposition, Polymer80 argues that the civil penalty calculated has no backing in law or record evidence. *See* Def.'s Opp'n. 47. Polymer80 also argues that the District's cited authority does not support entry of the civil penalties. *See id.* According to Polymer80, given the lengthy history of interactions between Polymer80 and ATF, even if Polymer80 is found liable, it is not rational to impose a maximum civil penalty here. *See id.* at 51.

At the onset, the Court notes that "a determination of a civil penalty is not an essential function of a jury trial, and ... the Seventh Amendment does not require a jury trial for that purpose in a civil action." *Tull v. United States*, 481 U.S. 412, 427 (1987). The amount of a civil penalty is an issue for the Court to decide. *See id.* "A court can require retribution for wrongful conduct based on the seriousness of the violations, the number of prior violations, and the lack of good-faith efforts to comply with the relevant requirements. It may also seek to deter future violations by basing the penalty on its economic impact." *Id.* at 422-423 (internal citations omitted).

Here, the Court finds that the District is entitled to civil penalties for Polymer80's violation of the CPPA – namely D.C. Code § 28-3904(a),(b),(e-1). Pursuant to D.C. Code § 28-3909(b)(1), the District may recover from a merchant who engaged in a first violation of § 28-3904, a civil penalty of not more than \$5,000 for each violation.<sup>6</sup> Based upon the record, Polymer80 sold the first illegal firearm to a District consumer on March 17, 2017. *See* Pl.'s Mot. for Summ. J. 14. Polymer80 continued sales in the District until at least June 24, 2020.<sup>7</sup> *See id.* at 15, *see also id.*

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<sup>6</sup> The Court notes that prior to the amendment of the statute on July 17, 2018, under D.C. Code § 28-3909 (b)(1) (2014), the civil penalty was \$1,000 per violation.

<sup>7</sup> The Court notes that on June 23, 2020, a District consumer canceled their order, and another District order was voided. On July 4, 2020, a District consumer purchased a Grip Module, and on July 9, 2020, a District consumer was refunded. *See* Pl.'s Mot. for Summ. J. Ex. 48.

at Ex. 48. From the time Polymer80 sold its first firearm to a District consumer on March 17, 2017 to July 16, 2017 (the day before section 28-3909(b)(1) was amended), Polymer80 engaged in unfair and deceptive trade practices, by making false representations to District consumers on its website, for 488 days. From July 17, 2017 to June 24, 2020 (the day the District filed its Complaint),<sup>8</sup> Polymer80 continued to engage in unfair and deceptive trade practices for another 710 days. These false representations included:

- The Polymer80 G150 firearm had approval in the District of Columbia;
- Polymer80 had approval or certification to sell the G150 firearm to District consumers;
- District consumers gained the right to possess the firearms purchased on Polymer80's website;
- Firearms sold by Polymer80 were approved by the District;
- Polymer80 had approval to sell firearms to District consumers; and
- Unlicensed District consumers could make and possess Polymer80's firearms for their own personal use.

*See* Section III(B)(1) *supra*. Each day that Polymer80 violated the CPPA by making the above referenced false representations about the use and purchase of its firearms, in contravention of the public interest that the Districts seeks to uphold pursuant to D.C. Code § 28-3909(a), a civil penalty shall be imposed. In addition to the 1,198 days that Polymer80 made false representations on its website, it is undisputed that Polymer80 sold 19 firearms to District consumers directly from its website. *See* Polymer80 Statement of Material Facts in Disp. ¶ 25; *see also* Pl.'s Statement of Material Facts Not in Disp. ¶ 25. Considering these factors as a whole, the Court imposes a civil penalty of \$4,038,000 for each day that Polymer80 violated the CPPA, as follows:

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<sup>8</sup> The Court notes Polymer80 voluntarily ceased all sales of the products at issue in the District on July 27, 2020. *See* Def.'s Opp'n. 46. However, the District is only seeking civil penalties through June 24, 2020.



<b>CPA Violations</b>	<b>Number of Days</b>	<b>Statutory Civil Penalty Amount</b>	<b>Civil Penalty Assessed</b>
March 17, 2017 to July 16, 2017	488	\$1,000	\$488,000
July 17, 2017 to June 24, 2020	710	\$5,000	\$3,550,000
			<b>TOTAL: \$4,038,000</b>

Therefore, upon consideration of the Motion, the Opposition, the Reply, and the entire record herein, the Court GRANTS IN PART and DENIES IN PART Plaintiff’s Motion for Summary Judgment. Accordingly, on this **10<sup>th</sup> day of August, 2022**, it is hereby

**ORDERED** that Plaintiff’s Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART**; it is further

**ORDERED** that Plaintiff’s Motion for Summary Judgment as to Count I claims arising under D.C. Code § 28-3904 (a),(b),(e-1) is **GRANTED**; it is further

**ORDERED** that Plaintiff’s Motion for Summary Judgment as to Count I claims arising under D.C. Code § 28-3904 (e), (f) is **DENIED**; it is further

**ORDERED** that Plaintiff’s Motion for Summary Judgment regarding Count II is **GRANTED**; it is further

**ORDERED** that Plaintiff’s request for a Permanent Injunction is **GRANTED**; it is further

**ORDERED** that Polymer80 is prohibited from making misrepresentations regarding the legality of its firearms in the District of Columbia; it is further

**ORDERED** that Polymer80 is prohibited from selling all handgun frames, lower receivers, or Buy, Build, Shoot kits and any comparable products to District consumers both directly and indirectly through its dealers and distributors; it is further

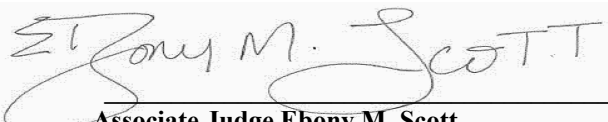
**ORDERED** that Polymer80 is required to notify all of its dealers and distributors, past, present, and future that it is illegal to sell Polymer80 handgun frames, lower receivers, and Buy, Build, Shoot kits to residents of the District of Columbia; it is further

**ORDERED** that Polymer80 is required to prominently notify all visitors to [www.polymer80.com](http://www.polymer80.com), on each individual product page, that Polymer80 handgun frames, lower receivers, Buy, Build, Shoot kits and any comparable products are illegal to purchase and possess in the District of Columbia; it is further

**ORDERED** that Polymer80 is required to prominently notify all visitors to its website's dealers and distributors page that Polymer80 handgun frames, lower receivers, Buy, Build, Shoot kits, and comparable products cannot be sold to residents of the District of Columbia and are illegal to possess in the District of Columbia; and it is further

**ORDERED** that within thirty (30) days of the entry of the instant Order, Polymer80 shall pay the District of Columbia the sum of \$4,038,000 as a civil penalty pursuant to D.C. Code § 28-3909(b).

**SO ORDERED.**



Associate Judge Ebony M. Scott  
*(Signed in Chambers)*

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