

Firearms Technology Criminal Branch
Report of Technical Examination



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To:

Special Agent (b) (6)
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Date: SEP 15 2020

UI#: (b)(7)(A)

RE: Firearms and Narcotics

FTCB#: 2020-682 (b) (6)
315018

Date Exhibits Received: 9/9/2020

Type of Examination Requested:

Delivered By: FedEx (b) (6)

Examination, Test, Classification

Exhibits:

13. (b)(3) - 26 USC 6103 (b) (6) 12 gauge firearm, serial number (b) (6) (suspected short-barreled shotgun).

Pertinent Authority:

Title 28 of the United States Code (U.S.C.) provides the Bureau of Alcohol, Tobacco Firearms and Explosives (ATF) the authority to investigate criminal and regulatory violations of Federal firearms law at the direction of the Attorney General. Under the corresponding Federal regulation at 28 CFR § 0.130, the Attorney General provides ATF with the authority to investigate, administer, and enforce the laws related to firearms, in relevant part, under 18 U.S.C. Chapter 44 (Gun Control Act) and 26 U.S.C. Chapter 53 (National Firearms Act). Pursuant to the aforementioned statutory and regulatory authority, the ATF Firearms Ammunition and Technology Division (FATD) provides expert technical support on firearms and ammunition to federal, state and local law enforcement agencies regarding the Gun Control Act and the National Firearms Act.

The Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term “firearm” to include:

“...(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or silencer or (D) any destructive device. Such term does not include an antique firearm.”

The GCA, 18 U.S.C. § 921(a)(5), defines “shotgun” to mean:

“...a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger.”

Pertinent Authority (cont.):

The GCA, 18 U.S.C. § 921(a)(6), defines “**short-barreled shotgun**” to mean:

“...a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.”

The National Firearms Act (NFA), 26 U.S.C. § 5845(a), defines “**firearm**” as:

“...(1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon, as defined in subsection (e) (6) a machinegun; (7) any silencer (as defined in 18 U.S.C. § 921); and (8) a destructive device. The term ‘firearm’ shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the ...[Attorney General]... finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector’s item and is not likely to be used as a weapon.”

Background:

ATF evaluates a firearm with a “*stabilizing brace*” accessory attached to determine whether the firearm is intended to be fired from the shoulder or if the “*stabilizing brace*” accessory is legitimately used to fire a heavy firearm with one hand.

In determining whether a firearm is “intended” to be fired from the shoulder, ATF considers the weapon’s objective design features and uses, as well as the manufacturer’s stated intent. While FATD considers a manufacturer’s stated intent in classifying any product, it is not required to simply accept those statements when contradicted by objective evidence including the design and intended use of the item in question. See *Sig-Sauer v. Brandon*, 826 F.3d 598 (1st Cir. 2016). To rely exclusively on a manufacturer’s assertion would permit manufacturers to market devices under their own classification, whether or not they may have a legitimate alternate use; simply by asserting that they are neither designed nor intended for any illicit use. Classifications based solely on the stated intent of the manufacturer would create an absurd result: Federal regulation of only those items the manufacturer wanted to market as such, leaving other items completely unregulated.

The objective design features considered to determine whether the weapon is designed, made and intended to be held and fired with one hand, with an attached “*stabilizing brace*” accessory or, alternatively, is a weapon intended to be fired from the shoulder include, but are not limited to:

- The type and caliber of firearm to which the “*stabilizing brace*” accessory is installed;
- The weight and length of the firearm used with the “*stabilizing brace*;”
- The “length of pull” when installed on a firearm. While 13-1/2 inches is an *extreme limit* indicator, it does not serve as a demarcation line; shoulder fired weapons may possess a “length of pull” as little as 7 inches (see *Troy Tomahawk Short*);

Background (cont.):

- The attachment method of the “*stabilizing brace*” accessory, to include modified stock attachments, extended receiver extensions, and the use of spacers;
- The objective design features of the attached “*stabilizing brace*” accessory, to include:
 - Function of the accessory when utilized as a “*stabilizing brace*” compared to alternate use as a shouldering device;
 - Design of the “*stabilizing brace*” compared to known shoulder stock designs;
 - Rear contact surface area of the “*stabilizing brace*,”
 - Material used to make the accessory;
 - Shared or interchangeable parts with known shoulder stocks;
- Appropriate aim point when utilizing the “*stabilizing brace*” accessory, no upward or downward slant;
- Presence of a secondary grip, demonstrating the weapon is not designed be held and fired by one hand;
- Incorporation of sights/scopes that possess eye relief incompatible with one-handed firing;
- Installation of other peripheral accessories, to include bipods/monopods, large capacity magazines/drums, etc.

In addition to the objective design features of a submitted sample, FATD also considers the marketing of both the accessory and the firearm to which it is assembled, compared to the manufacturer’s stated intent when submitting an item. FATD has found that manufacturers often assert that a device is a “*stabilizing brace*” when submitting a firearm for classification. The same manufacturers will then advertise their products as devices that permit customers to fire their “*pistols*” from the shoulder – that is, making a “**short-barreled rifle**” without complying with the requirements of the NFA. This is far from the “incidental” use of an arm brace as a shouldering device, but is instead marketing material that directly contradicts the stated purpose as submitted to ATF. FATD also examines how the device is actually being utilized by members of the firearms industry, firearm writers and enthusiasts, and the general public. These sources provide insight into any inconsistencies between a manufacturer’s stated intent in marketing their product and the actual use of the product, i.e., as a “*stabilizing brace*” or a shouldering device.

“*Stabilizing brace*” accessories may function to assist injured veterans and others fire large, heavy handguns, but the presence of such a device is not by itself determinative as to the classification of that weapon under the NFA. ATF makes this classification based on the objective design features of firearms as configured. Based on these objective design characteristics, attachment of a “*stabilizing brace*” accessory can result in the redesign of a firearm or pistol into a “**short-barreled rifle**” or “**short-barreled shotgun**,” because such firearm is redesigned such that it is intended to be fired from the shoulder.

In conclusion, ATF does not regulate the manufacture, sale or possession of firearm accessories, such as stocks, secondary grips, or “*stabilizing braces*.” While these items are unregulated on their own, attachment of these items could change the classification of the firearm to which they are attached. Therefore, depending on the overall objective design features of a weapon, the attachment of a “*stabilizing brace*” accessory could design or redesign a weapon to be fired from the shoulder. Any firearm designed or redesigned to be fired from the shoulder with a rifled barrel of less than 16 inches or a smoothbore barrel of less than 18 would be classified as a NFA “**firearm**.”

Findings:

Exhibit 13 is a 12 gauge firearm assembled by (b)(3) - 26 USC 6103

As received, Exhibit 13 is equipped with an SB Tactical SBA3 “Pistol Stabilizing Brace” accessory, which has been previously and repetitively determined to be a shouldering device, not a “stabilizing brace” (discussed below).

The Exhibit has an overall length of approximately (b) (4) inches (with shouldering device extended) and contains a smoothbore barrel approximately (b) (4) inches in length. I determined the overall length of Exhibit 13 by placing the Exhibit on a flat surface, and measuring the distance between the extreme ends of the Exhibit (shouldering device extended), along a line parallel to the center line of the bore. Additionally, I measured the barrel of Exhibit 13 in the following manner: I closed the bolt, placed the Exhibit on a flat surface, inserted a graduated cylindrical scale into the muzzle of the barrel until it touched the bolt face, noted the measurement, and removed the rod from the barrel.

During my examination, I observed the following markings:

The right side of the receiver

(b)(3) - 26 USC 6103

The left side of the receiver

(b)(3) - 26 USC 6103, (b)(6)

As stated above, in determining whether a firearm with a “stabilizing brace” accessory is “intended” to be fired from the shoulder, ATF considers the weapon’s objective design features and overall configuration. The objective design features considered when determining whether the weapon is designed, made and intended to be held and fired with one hand, with an attached “stabilizing brace” accessory, or alternatively, when a weapon is intended to be fired from the shoulder include, but are not limited to: the weight and overall length of the firearm utilizing the “stabilizing brace” accessory; the length of pull; the design of the “stabilizing brace” accessory as compared to known shoulder stocks; the attachment method for the “stabilizing brace” accessory; whether the “stabilizing brace” accessory functions as designed when assembled on the firearm; presence of a secondary grip which demonstrates the weapon is not designed to be held and fired with one hand; incorporation of sights/scopes that possess eye relief incompatible with one-handed firing; and any other peripheral accessories that demonstrate the weapon is intended to be fired from the shoulder.

Findings (cont.):

ATF's Firearms Technology Industry Services Branch (FTISB) previously notified SB Tactical that:

"FTISB does not approve "stabilizing braces" which are similar or based off of shoulder stock designs." (see FTISB letter #308999, dated July 18, 2018, attached).

Since the date of this notification, SB Tactical has continued to market these accessories as *"ATF Compliant Pistol Stabilizing Braces."* Although ATF has made a consistent effort to inform SB Tactical they are perpetuating a false narrative regarding the accessories they market, SB Tactical has taken the position that ATF has no authority to regulate an accessory manufacturer. This has essentially left SB Tactical's business partners, such as (b)(3) - 26 USC 6103, in the position where they are unknowingly manufacturing and marketing unregistered NFA firearms.

In February 2019, SB Tactical was made aware, through outside sources, that ATF determined in a criminal examination that the SBA3 accessory is a shouldering device and not a "stabilizing brace." Although SB Tactical is aware of this determination, it has continued to attempt to flood the market with the SBA3 accessory, misleading its business partners that the attachment of the accessory will not change the classification of a firearm.

In September 2019, while handling the resolution regarding (b)(3) - 26 USC 6103, which were classified as "short-barreled shotguns," ATF's Chief Counsel informed (b)(3) - 26 USC 6103 (b)(3) - 26 USC 6103 SBA3 accessory was very similar in design to a recent classification FATD had made and would also likely be classified as a "short-barreled shotgun" as well. After Chief Counsel informed (b)(3) - 26 USC 6103 that they may be selling an additional unregistered NFA "firearm," their legal counsel (b) (6) provided a response (see attached letter), rejecting the "guidance." Rejecting this information, (b)(3) - 26 USC 6103 (b)(3) with SBA3 accessory was never submitted for classification.

When measuring the distance between the center of the trigger of Exhibit 13 and the center of the SBA3 accessory rear surface, the submitted firearm has a length of pull of approximately (b) (4) inches when fully extended. ATF considers any firearm with a "length of pull" over 13-1/2 inches to be an indicator that the firearm is designed to be fired from the shoulder. Therefore, Exhibit 13 possesses a "length of pull" consistent with similar shotguns and useful for shouldering the firearm.

The SBA3 "Pistol Stabilizing Brace" accessory contains two bifurcated (split) rubber flaps and a Velcro strap which wrap around a shooter's arm. Unlike the original SB Tactical SB15 "stabilizing brace" accessory, the rubber flaps have been greatly reduced in size, resulting in the flaps on the SBA3 "Pistol Stabilizing Brace" accessory being nearly ineffectual. An attempt was made to utilize the SBA3 "Pistol Stabilizing Brace" accessory in accordance with the manufacturer's stated intent of "stabilizing" one-handed firing. In the collapsed position, the flaps on the SBA3 "Pistol Stabilizing Brace" accessory barely fit around a portion of the shooter's arm providing limited "stabilizing" support. In the extended position, the flaps on the SBA3 "Pistol Stabilizing Brace" accessory are completely ineffective and the accessory provides limited "stabilizing" support.

Findings (cont.):

Further, the examination revealed that the included Velcro strap is manufactured out an elastic material. This appears to be an attempt to make the SBA3 accessory “usable” as a “*stabilizing brace*” as SB Tactical has been aware that the strap is too short to wrap around a shooter’s arm in the extended position. While this allows the strap to be stretched around the shooter’s arm, it also results in the elimination of “*stabilizing*” support - the strap stretches as opposed to securing the firearm to the shooter’s arm.

Finally, during the attempt to use the SBA3 accessory “*as designed to stabilize*” one-handed firing, it was determined that this resulted in an impractical downward trajectory of any projectiles expelled from this firearm (see attached photographs). Conversely, the SBA3 accessory provides a comfortable and practical shouldering device for the submitted firearm.

Therefore, although the (b)(3) - 26 USC 6103 with SBA3 accessory” is marketed by (b)(3) - 26 USC 6103 as a non-NFA “*GCA firearm*,” the Exhibit’s objective design features including: utilizing the SBA3 accessory (a known shouldering device), incorporating a length of pull consistent with shoulder-fired weapons, an Velcro strap manufactured from elastic material, and incorporating an impractical downward slant, do not support this self-classification. Instead, the objective design of Exhibit 13 including the incorporation of the SBA3 “*Pistol Stabilizing Brace*” accessory, supports the conclusion that the Exhibit is designed and intended to be fired from the shoulder.

As received, Exhibit 13 is a weapon designed, made, and intended to be fired from the shoulder and designed and made to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger; therefore, Exhibit 13 is a “**shotgun**” as defined. Exhibit 13, being a shotgun having a barrel of less than 18 inches in length, is a “**short-barreled shotgun**” as defined.

I test-fired Exhibit 13 on September 11, 2020, at the ATF test range, Martinsburg, West Virginia, using commercially available, Winchester brand, 12 gauge ammunition. After I inserted a one-round ammunition load, set the selector to the “*FIRE*” position, chambered the round, and pulled the trigger, Exhibit 13 successfully expelled a projectile by the action of an explosive. I inserted a two-round ammunition load, charged and chambered the first round, and pulled the trigger, Exhibit 13 fired a single round of ammunition for each pull of the trigger.

Conclusions:

Exhibit 13, being a weapon which will expel a projectile by the action of an explosive and incorporating the receiver of such a weapon, is a “**firearm**” as defined in 18 U.S.C. § 921(a)(3)(A)&(B).

Exhibit 13, being a weapon that is designed, made, and intended to be fired from the shoulder and designed and made to use the energy of an explosive to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger; is a “**shotgun**” as defined in 18 U.S.C. § 921(a)(5).

Exhibit 13, being a shotgun having a barrel less than 18 inches in length, is a “**short-barreled shotgun**” as defined in 18 U.S.C. § 921(a)(6).

Exhibit 13, being a shotgun having a barrel less than 18 inches in length, is a “**firearm**” as defined in 26 U.S.C. § 5845(a)(1).

Examined by:

(b) (6)

Firearms Enforcement Officer

Approved by:

(b) (6)

Chief, Firearms Technology Criminal Branch

Attachments: 13 pages bearing 25 photographs,
FTISB letter #308999
Letter from (b)(3) - 26 USC 6103, (b)(6)
FTISB letter #311192

Enclosed is a Firearms Technology Criminal Branch report provided in response to your request for assistance. (b)(3) - 26 USC 6103

(b)(3) - 26 USC 6103