



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, D.C. 20226

SEP 18 1992

James H. Jeffries, III  
Attorney at Law  
3019 Lake Forest Drive  
Greensboro, NC 27408

Dear Mr. Jeffries:

This is in response to your letter of July 14, 1992, on behalf of Mr. Noel Napolilli of Fairbanks, Alaska. You ask that the Bureau of Alcohol, Tobacco and Firearms (ATF) return to Mr. Napolilli both the MP40 machinegun which he submitted to ATF for examination, and the ATF Form 3 purporting to show the registration of the firearm pursuant to the National Firearms Act (NFA).

Initially, it should be noted that weapons within the scope of the NFA may be lawfully registered only pursuant to their lawful importation or manufacture or transfer of a weapon previously registered. Also, possessors of these weapons were allowed to register them during a brief amnesty period in 1968. The regulations implementing the NFA also permit State law enforcement agencies to register and retain for official use previously unregistered weapons. Except as stated above, subsequent to the amnesty period an unregistered weapon could not be legitimized by registration. Such a weapon is contraband which is subject to seizure and forfeiture.

We agree with your observation that prior to Mr. Napolilli's production of the above mentioned Form 3, ATF had no record of registration of the MP40 machinegun to Mr. Napolilli or any other person. However, we disagree with your contention that the absence of records suggests that the weapon could have been lawfully imported into or manufactured in the United States or otherwise legally registered under the NFA.

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Mr. Napolilli's Form 3 and our examination of the MP40 machinegun suffice to show that the weapon is contraband. The Form 3 indicates that the weapon was manufactured by a firm in Springfield, Ohio. However, our examination of the weapon reveals it to have been manufactured in Germany and to be in its original configuration. Therefore, the weapon could not possibly have been manufactured or remanufactured in Ohio. Thus, the weapon could not have been lawfully registered and legitimized by the Ohio manufacturer.

Nor was the weapon lawfully imported into the United States. NFA weapons are generally importable if imported by federally licensed importers for Federal or State governmental entities or as sales samples for use by licensees to generate sales to such entities. Imported weapons must be registered pursuant to the NFA, and any subsequent transfer of the weapons must be to licensees as sales samples or to other government agencies. The registration documents reflect these restrictions. Significantly, Mr. Napolilli's Form 3 bears no such restriction. In addition, licensed importers are required to identify imported firearms with a serial number and the name and location of the importer. The subject MP40 machinegun bears none of the markings required to be placed on the weapon by an importer. Therefore, we believe that the absence of any ATF record of the importation of the weapon, Mr. Napolilli's Form 3, and the absence of the requisite markings on the weapon show that the weapon was not lawfully imported into the United States.

In view of the absence of any ATF record of the registration of the weapon, we do not believe that the weapon was registered during the 1968 amnesty period. We would also note that the information on Mr. Napolilli's Form 3 indicating the "manufacture" of the weapon by a company in Ohio is inconsistent with an amnesty registration. We would also note that the subject machinegun could not have been a weapon retained by a State law enforcement agency for official use and registered on ATF Form 10, since these weapons may only be transferred to another such agency for official use.

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In conclusion, we believe that the absence of ATF records showing the registration of the MP40 machinegun is understandable in view of the fact that the weapon was unlawfully imported into the United States and is contraband. As previously stated, the law does not provide for the lawful registration and possession of such a weapon. Assuming that Mr. Napolilli's Form 3 registration of the weapon is genuine and that ATF approved the form, the form should not have been approved since the weapon was not a registrable item. Therefore, we cannot comply with your request that the weapon be returned to Mr. Napolilli. We have complied with your request to return his Form 3 by returning it directly to him at his Fairbanks, Alaska, address.

We regret that our response could not be more favorable.

Sincerely,



Wayne Miller  
Chief, NFA Branch