

OWNERS OF "REMANUFACTURED" GUNS BEWARE!

by James H. Jeffries, III

The Bureau of Alcohol, Tobacco and Firearms is quietly taking a very hard and unjust line on all remanufactured machineguns which do not bear physical evidence of having been legally disabled and then remanufactured. If your Form 2, 3 or 4 suggests that the gun was "remanufactured" but the gun itself is an import in pristine condition, then you are headed for trouble.

BATF's unannounced position apparently is that unless a foreign-made gun was imported as a dealer sample or was registered during the 1968 amnesty, it cannot be in the country legally unless it came in as a DEWATs (deactivated war trophy) and was subsequently "REWATTED" on a Form 2. Thus any foreign-made gun which is not a dealer sample and was not amnesty-registered, and which does not have a torch-cut receiver and evidence of rewelding -- or other marks of having once been legally deactivated -- is absolute contraband subject to seizure, forfeiture and destruction.

The harsh effect of this unpublished position is that no matter how long the gun has been in the country, no matter how many compliance inspections it has undergone, no matter how many previous transfers of the gun BATF has approved, no matter how innocent and law-abiding the present owner (or how much he paid for the firearm), the gun will be arbitrarily seized, forfeited and destroyed.

In two recent cases in which I am counsel, in widely separated locations, BATF has taken exactly this position. This must be viewed as a secret national policy because it is emanating from the Firearms Technology Branch of the National Office which oversees and advises (and thus makes policy for) all BATF offices and districts. The only present remedy an owner has is to risk thousands of dollars in an uphill judicial fight to overturn the forfeiture. While this is wonderful news for us lawyers, it is a travesty of justice for the law-abiding Title II owners of the country and a classic example of bureaucratic overkill.

To demonstrate the unfairness of this newly-asserted BATF position, in one of my cases BATF lost or destroyed all previous registration data on the collector-grade MP-40 in question. After first suggesting that my client must have forged his Form 3 for the gun (a claim later dropped after BATF's own laboratory confirmed that the form was authentic), BATF continues to insist that the gun is nevertheless contraband because it is an original, apparently uncut German MP-40 with a defunct Ohio manufacturer's ID super-engraved on the receiver. Therefore, BATF says, it must have originally been registered as "remanufactured." But, they continue, since there is no physical evidence of remanufacture, the original registration must have been false and the gun is therefore illegal contraband. Never mind that BATF has lost the only evidence which could prove how the gun was originally registered. Never mind that BATF cannot prove the gun was not registered during the 1968 amnesty (because it has lost its own records). Never mind that the gun has apparently been in the United States peacefully

and openly for more than 40 years. Never mind that BATF has officially approved at least three transfers of the gun during the past ten years. Never mind that the current owner is an upstanding, law-abiding, tax-paying citizen who paid \$2,000 in good faith for a lawfully registered and transferred gun. Never mind that BATF refuses ever to reveal prior registration data on a Title II firearm to a transferee. You buy at your own risk and there is no statute of limitations.

In summary, if you own a foreign-made, non-dealer sample machinegun with no evidence of remanufacture (e.g., all original parts, no cuts, no welds, etc.), and you do not know if the gun was amnesty-registered (or know that it was not), then you've got a permanent problem which will not go away. Some day, somewhere, when you least expect it, you're going to lose your gun to your friendly federal government.

When you receive your BATF notice of intent to forfeit, you will learn how the last surviving wild California condor felt just before it was accidentally killed by a federal wildlife agent. ("We're from the government. We're here to help you.") You will discover that you have just 30 days to post a \$2,500 cash bond (which will be lost if you are not successful) and file a formal claim; you will then have to hire a lawyer and litigate in United States District Court. Several months or years and thousands of dollars later, you may learn that it has all been in vain and it is all over -- except for the costs of the proceeding which may be assessed against you. Oh yes, your next compliance inspection will also be a very educational experience. Hell hath no fury like a scorned bureaucrat.

The only solutions to this problem are legislation -- persuading Congress to put a statute of limitations on the seizure of machineguns based solely on their allegedly illegal origin forty or fifty years ago -- or bringing sufficient political pressure on BATF to reverse this mindless anti-gun owner policy. Neither solution is necessarily attractive. Attempting to get BATF's attention is somewhat akin to the phenomenon of a dinosaur chewing on its own tail -- the message takes forever to reach the brain. And it's not much of a brain to begin with.

Asking Congress to directly loosen restrictions on machineguns is probably on the order of asking it to vote for congressional pay decreases or term limitations. However, a minor adjustment in the administrative provisions of the National Firearms Act could solve the problem without major congressional heartburn. How about an amendment to section 5872 of Title 26 of the United States Code (the NFA forfeiture provision) by adding a new subsection (c) as follows:

(c) Limitation.-- No firearm the registration or transfer form for which has been approved by the Secretary may be forfeited or seized as contraband from an innocent registrant or transferee who had no knowledge of any legal defect in the importation or manufacture of the firearm.

This amendment would give legal content to the now meaningless

paper shuffle presently conducted by the NFA Branch clerks. If transfers are weighty enough to pay bureaucrats to record, and serious enough to be surrounded with criminal sanctions, they are important enough for the government to treat them with respect and attention and to give them legal effect which binds both the purchaser and the government. The citizen will be prosecuted for a false statement. But BATF can routinely and carelessly authorize 100 transfers of the same gun to 99 successive innocent purchasers and then fifty years later say, "Oops. Never mind." That's not right.

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