

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

February 7, 2007

Mr. Jason A. Davis
Attorney at Law
Trutanich Michel LLP
180 East Ocean Blvd, #200
Long Beach, CA 90802

Re: Receivers Seized by DOJ on January 27, 2006

Dear Mr. Davis:

I am writing regarding the two hundred and twenty-eight (228) AR-15 style lower receivers that were seized by agents of the Firearms Division of the California Department of Justice (DOJ) from RMB Enterprises on January 27, 2006 during a routine inspection of that licensed firearms dealer. The receivers were seized because they were not "secured" under the definition of Penal Code section 12071(a)(20)(G)(ii), as required by Penal Code section 12071(a)(14). Subsequent investigation by the Firearms Division disclosed that the receivers were purchased by your client, Benjamin Cannon, who attempted to sell virtually all of the receivers to other individuals. Mr. Cannon is not licensed to sell firearms as required by federal and state law.

Federal law makes it a crime for anyone who is not a federal firearms licensee to "engage in the business of . . . dealing in firearms." (18 U.S.C. § 922(A)(1)(A).) A "person who devotes time, attention, and labor to dealing in firearms as a regular course of trade or business with the principal objection of livelihood and profit through the repetitive purchase and resale of firearms" is engaged in the business of dealing in firearms. (18 U.S.C. § 921(a)(21)(C).)

Likewise, California law prohibits anyone who is not a licensed firearms dealer from selling firearms, except for the "infrequent sale, lease or transfer of firearms." (Penal Code §§ 12070(a), 12070(b)(4).) Sales of firearms other than handguns are "infrequent" when they are "occasional and without regularity." (Penal Code § 12070(c)(1)(B).)

California law requires an unlicensed individual who wishes to sell a firearm to another unlicensed individual to conduct the transaction through a licensed firearms dealer. (Penal Code §§ 12072(d); 12082(a).) "The seller or transferor . . . shall deliver the firearm to the dealer who shall retain possession of that firearm. The dealer shall then deliver the firearm to the purchaser or transferee . . . if it is not prohibited, in accordance with subdivision (c) of Section 12072." (Penal Code § 12082(a).)

Mr. Davis
February 7, 2007
Page 2

The acquisition of a firearm for the purpose of selling the firearm with the intent of avoiding the Penal Code section 12072(d) requirement that all firearms transaction be conducted through a dealer is punishable by imprisonment in the county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment. (Penal Code §§ 12072(a)(5)(B)(i); 12072(g)(3).) A person convicted of violating subdivision (g) of section 12072 of the Penal Code is prohibited from possessing firearms for a period of ten years after the date of his or her conviction. (Penal Code § 12021(c)(1).)

Our investigation of this matter shows that Mr. Cannon sold hundreds of firearm receivers for a substantial financial profit in violation of both federal and state law. The ATF informed Mr. Cannon on May 2, 2006 (see attached letter), that

you have been involved in firearms sales transactions. Specifically, you advertise for purchasers, and receive full payment for the firearms from the purchasers. You then order the firearm from a supplier, pay the supplier for the firearm and direct the supplier to transfer the firearm to a federally licensed firearms dealer. You then direct the person who ordered the firearm from you to the licensed dealer where they obtain the firearm. . . . By receiving payment for firearms, you are selling firearm even though the firearms are ultimately delivered to another person. Because you are not a federally licensed firearms dealer, you must immediately cease dealing in firearms.

By doing so, Mr. Cannon obviously “engage[d] in the business of . . . dealing in firearms” without a federal firearms license (FFL), in violation of 18 U.S.C. § 922(a)(1)(A).

Mr. Cannon also violated *state* law by selling firearms without a dealer’s license. He purchased the two hundred and twenty-eight (228) receivers from one FFL, Cold War Shooters. He sold the receivers to individual purchasers. He directed the receivers to be shipped from Cold War Shooters to another FFL (RMB Enterprises), on January 1, 2006. Although RMB completed the paperwork and the Dealers Record of Sale (DROS) transactions for Mr. Cannon’s customers, RMB was not the true seller of the firearms. RMB only charged Mr. Cannon’s customers a twenty-five dollar (\$25.00) DROS fee and made no other profit from the sales. Clearly, RMB acted as a “straw dealer” for the true seller of the firearm, Mr. Cannon, while Mr. Cannon conducted the sales directly with private parties in a blatantly illegal manner.

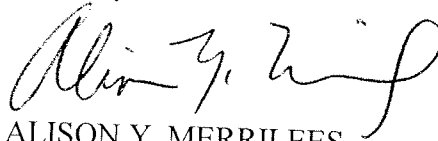
While Mr. Cannon could lawfully have purchased all of the receivers and retained them, he could not lawfully sell the firearms to private parties without being either licensed as a dealer (by both ATF and DOJ), or being listed on the DROS form as the private party transferor (and then, only if the transactions were “occasional and without regularity”). Mr. Cannon clearly conducted the transactions through RMB in order to avoid the requirement that he be licensed as a dealer and/or to avoid the limitation that private parties may only conduct transactions through

Mr. Davis
February 7, 2007
Page 3

a licensed firearms dealer and then only occasionally and without regularity, unless they are properly licensed.

Because the transactions between Mr. Cannon and his customers were illegal, and the receivers are evidence of a crime, the Firearms Division has not returned the receivers to RMB Enterprises. In our opinion, no one lawfully owns the receivers. Mr. Cannon did not submit a DROS form to purchase the receivers, or fill out the paperwork necessary to transfer the receivers to other private parties. At the same time, the DROS paperwork that *was* submitted for the receivers is fraudulent because it fails to accurately reflect the true buyers and sellers of the receivers. If Mr. Cannon wishes to claim the receivers, or would like to discuss an alternative disposition of the receivers, please let me know.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



FAX TRANSMISSION COVER SHEET

IMPORTANT/CONFIDENTIAL: This communication is intended only for the use of the individual or entity to which it is addressed. This message contains information from the State of California, Attorney General's Office, which may be privileged, confidential and exempt from disclosure under applicable law. If the reader of this communications is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited.

DATE: _____ TIME: _____ NO. OF _____
(INCLUDING COVER SHEET) 2

TO: _____

NAME: _____

OFFICE: _____

LOCATION: _____

FAX NO: (562) 216-4445 PHONE NO.: _____

FROM: _____

NAME: Alison Merrilees

OFFICE: Department of Justice, Firearms Division

LOCATION: _____

FAX NO: _____ PHONE NO.: _____

MESSAGE/INSTRUCTIONS

Attachment to Ben Cannon letter -
2/7/07
Sorry.

PLEASE DELIVER AS SOON AS POSSIBLE!
FOR ASSISTANCE WITH THIS FAX, PLEASE CALL THE SENDER

Jun-28-2006 08:21am From-

T-242 P. 002/002 F-300



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and ExplosivesMay 2nd, 2006

www.atf.gov

Dear Mr. Cannon:

Over the past several months, it has come to our attention that you have been involved in firearms sales transactions. Specifically, you advertise for purchasers of firearms on the internet, accept orders for firearms from the purchasers, and receive full payment for the firearms from the purchasers. You then order the firearm from a supplier, pay the supplier for the firearm and direct the supplier to transfer the firearm to a federally licensed firearms dealer. You then direct the person who ordered the firearm from you to the licensed dealer where they obtain the firearm.

Under the federal firearms laws, no person shall engage in the business as a firearms dealer until he has received a license to do so. Title 18, United States Code section 923(a). A "dealer" is, among other things, any person who engages in the business of selling firearms at wholesale or retail. Title 18, United States Code section 921(a)(11). By receiving payment for firearms, you are selling firearms even though the firearms are ultimately delivered by another person.

Because you are not a federally licensed firearms dealer, you must immediately cease dealing in firearms. If you desire to become licensed as a firearms dealer you can obtain an application to do so by contacting the ATF Federal Firearms Licensing Center at 404-417-2750. Remember that the State of California and local jurisdictions also have firearms dealer licensing requirements. If you do not cease unlicensed firearms dealing, we will seek your prosecution in federal court.

If you have any questions, please feel free to call me at (707) 565-5444.

Sincerely yours,

Mike Medlin
Special Agent