

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

WILLIAM AKINS,	)	
	)	
Plaintiff,	)	CIVIL ACTION FILE NO.
	)	
v.	)	_____
	)	
THE UNITED STATES	)	
	)	
Defendant.	)	

**COMPLAINT**

**I. INTRODUCTION**

1. This action seeks just compensation from the United States for property taken from Plaintiff, and a declaratory judgment that a certain decision of the United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (“BATFE”), was arbitrary, capricious, without factual support and contrary to law, together with an appropriate injunction. In the alternative, Plaintiff seeks a declaration that 18 U.S.C. 922(o) is unconstitutional on its face and as applied to Plaintiff, with an appropriate injunction.

**II. JURISDICTION**

2. This Court has jurisdiction because the United States is the Defendant. 28 U.S.C. § 1491.

**III. PARTIES**

- 3 . Plaintiff is a United States citizen and legal resident of Florida.
- 4 . Plaintiff sues in his own right and as successor in interest to Akins Group, Inc., a corporation organized under the laws of the State of Oregon, and which has been dissolved. Unless otherwise indicated, references to “Plaintiff” in this Complaint include Plaintiff as successor to Akins Group, Inc.
- 5 . The Defendant is the United States.

#### **V. FACTUAL BACKGROUND**

- 6 . On or about August 15, 2000, the United States Patent and Trademark Office issued Patent No. 6,101,918, for a device later to be called the “Akins Accelerator” to Plaintiff William Akins. The purpose of the Akins Accelerator was “to increase the cyclic rate at which the trigger of a semi-automatic firearm can be actuated to discharge the weapon.” As used throughout this Complaint, the term “Akins Accelerator” refers both to the subject of the Patent and the device manufactured and distributed by that name.
- 7 . An abstract of the Patent is attached as **Exhibit A**.
- 8 . On or about March 31, 2002, Akins submitted his Patent to the Firearms Technology Branch of the BATFE, for a classification of the Akins Accelerator under the National Firearms Act, 26 U.S.C. § 5801, et. seq. In particular, Akins inquired if the BATFE would consider the Akins Accelerator to be a machine gun as defined by 26 U.S.C. § 5845(b).
- 9 . A copy of Akins’ letter is attached as **Exhibit B**.

10. On or about July 28, 2003, the BATFE wrote Akins requesting a sample of the device (it did not yet have the name "Akins Accelerator").
11. A copy of the July 28 letter (the "First BATFE Letter") is attached as **Exhibit C**.
12. On or about October 20, 2003, the BATFE inexplicably wrote Akins a virtually identical letter to the First BATFE Letter.
13. A copy of the October 20, 2003 letter (the "Second BATFE Letter") is attached as **Exhibit D**.
14. On or about August 21, 2003, the BATFE received a prototype of the Akins Accelerator from Akins' business associate, Thomas Bowers.
15. On or about November 17, 2003, the BATFE wrote Bowers a letter stating that "the submitted stock assembly does not constitute a machinegun as defined in the NFA."
16. A copy of the November 17 letter (the "Third BATFE Letter") is attached as **Exhibit E**.
17. On or about January 21, 2004, Bowers wrote the BATFE requesting clarification of the Third BATFE Letter. In particular, Bowers inquired whether the determination that the device was not a machine gun was because the "crude sample" Bowers sent for examination did not operate as a machine gun, or because the BATFE was able to classify the device based on the intended design and operation.
18. A copy of Bowers letter is attached as **Exhibit F**.

19. On or about January 29, 2004, the BATFE replied to Bowers, stating, “Our classification of the stock assembly was rendered despite the fact that [the device did not function as designed]. The theory of operation was clear even though the rifle/stock assembly did not perform as intended.”
20. A copy of the January 29 letter, (the “Fourth BATFE Letter”) is attached as **Exhibit G**.
21. 18 U.S.C. § 922(o) prohibits manufacture and distribution of machine guns to anyone other than federal, state, or local law enforcement agencies. Because of the provisions of 18 U.S.C. § 922(o), the classification of a device as a machine gun precludes its manufacture for citizen purchase. Conversely, the classification of a device as not a machine gun opens the door to mass production and distribution.
22. Because the Akins Accelerator is a stock assembly to attach to a separate rifle, the Akins Accelerator is not subject to the regulatory jurisdiction of the BATFE at all if the Akins Accelerator is not a machine gun.
23. Based on the BATFE’s classification that the Akins Accelerator is not a machine gun, Akins and Bowers began mass production and distribution of Akins Accelerators through Akins’ predecessor in interest, Akins Group, Inc.
24. On or about November 22, 2006, more than three years after BATFE’s determination that the Akins Accelerator is not a machine gun, the BATFE wrote Bowers, as CEO of Akins Group, Inc., a letter advising him that the BATFE had examined an Akins Accelerator and determined that it is a machine gun. The letter

also stated that the Third and Fourth BATFE Letters “are hereby overruled.” The letter advised Bowers that Akins Group, Inc. either had to register its Akins Accelerators on hand as machine guns in accordance with 26 U.S.C. § 5822 or surrender them.

25. A copy of the November 22 letter (the “Fifth BATFE Letter”) is attached as **Exhibit H**.
26. On or about December 13, 2006, the BATFE issued a generic ruling, ATF Rul. 2006-2, describing the Akins Accelerator and declaring it to be a machine gun.
27. A copy of ATF Rul. 2006-2 is attached as **Exhibit I**.
28. On or about February 6, 2007, counsel for Akins Group, Inc. requested reconsideration of the BATFE’s classification of the Akins Accelerator as a machine gun.
29. A copy of that request is attached as **Exhibit J**.
30. On or about September 24, 2007, the BATFE responded to the request for reconsideration, stating that “the device should remain classified as a machinegun....”
31. A copy of the September 24 letter (the “Sixth BATFE Letter”) is attached as **Exhibit K**.
32. Prior to the BATFE’s issuance of the Fourth BATFE letter, Plaintiff Akins personally acquired four Akins Accelerators.

33. On or about January 19, 2007, BATFE required Akins Group, Inc. to remove recoil springs from all Akins Accelerators in inventory and surrender them to BATFE.
34. On or about January 19, 2007, BATFE required Plaintiff Akins to remove recoil springs from his personal Akins Accelerators and surrender them to BATFE.
35. The Akins Accelerator is non-functional and has no value without the spring that was confiscated by Defendant.
36. On or about February 18, 2008, Akins Group, Inc. assigned all rights and interests in claims it may have against Defendant to Plaintiff.
37. An Akins Accelerator, when intact with springs as designed and manufactured, and when attached to a weapon for which it is intended, does not shoot, is not designed to shoot, and cannot be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger.
38. An Akins Accelerator, when intact with springs as designed and manufactured, and when attached to a weapon for which it was intended, requires a separate function of the trigger for every shot discharged.
39. The Akins Accelerator, when intact with springs as designed and manufactured, is not a machine gun as defined by 18 U.S.C. 921 and 26 U.S.C. § 5845(b).

**Count 1 – Regulatory Takings**

40. By ruling that the Akins Accelerator is a machine gun, after first ruling that it was not, and by applying the provisions of 18 U.S.C. § 922(o) retroactively to Akins Group, Inc. (who produced and distributed Akins Accelerators at a time when they

were not considered to be machine guns), and to Plaintiff Akins personally, Defendant has “taken” Plaintiff’s private property for public use without just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

### **Count 2 – Physical Takings**

41. By confiscating the spring from Plaintiff’s Akins Accelerators, Defendant has taken Plaintiff’s private property for public use without just compensation, in violation of the Fifth Amendment to the Constitution of the United States.

### **Count 3 – Violation of Due Process**

42. By determining that Plaintiff’s property was a machine gun without a hearing, Defendant failed to provide Plaintiffs with the due process of law.

43. In classifying the Akins Accelerator as a machine gun, Defendant acted arbitrarily, capriciously, and without factual basis.

### **Demand for Relief**

Plaintiffs demand the following relief:

1. Damages to compensate Plaintiff for the taking of his property.
2. A declaration that the Akins Accelerator is not a machine gun.
3. An injunction prohibiting Defendant from treating the Akins Accelerator as a machine gun for any purpose.
4. Any other relief the Court deems proper.

Dated \_\_\_\_\_

JOHN R. MONROE, ATTORNEY AT LAW

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John R. Monroe

9640 Coleman Road  
Roswell, GA 30075  
Telephone: (678) 362-7650  
Facsimile: (770) 552-9318

ATTORNEY FOR PLAINTIFF



[54] METHOD AND APPARATUS FOR ACCELERATING THE CYCLIC FIRING RATE OF A SEMI-AUTOMATIC FIREARM

[57] ABSTRACT

[76] Inventor: William Akins, 18807 Tracer Dr., Lutz, Fla. 33549

An accelerating assembly effectively to increase the cyclic rate at which the trigger of a semi-automatic firearm can be actuated to discharge the weapon. The firearm has a supporting device, a receiver housing supported from the supporting device, a trigger and trigger mechanism secured to the receiver housing. The accelerating mechanism incorporates structure that permits the receiver and the trigger to translate rearwardly a predetermined distance with respect to the supporting device in response to the recoil imparted by the discharge of the semi-automatic firearm. A biasing arrangement continuously urges the receiver, and trigger, to translate forwardly with respect to the supporting device substantially that same predetermined distance. A locating stop is mounted on the supporting device. The locating stop is disposed to be engaged by the shooter's finger after the trigger has been actuated to fire the semi-automatic weapon. That engagement of the shooter's trigger finger with the locating stop effectively immobilizing the shooter's trigger finger with respect to the supporting device until the shooter releases the trigger. The method of the present invention operates by depressing the trigger with a shooter's trigger finger in order to discharge the firearm. The shooter's finger is then immobilized in the position it has assumed to discharge the firearm. The trigger is translated away from the immobilized trigger finger to effect a total disengagement therebetween. Sequentially thereafter the trigger is biased into engagement with the immobilized trigger finger to effect successive discharges of the firearm.

[21] Appl. No.: 09/076,548

[22] Filed: May 12, 1998

[51] Int. Cl.<sup>7</sup> ..... F41A 19/00

[52] U.S. Cl. .... 89/129.01; 89/136

[58] Field of Search ..... 89/129.01, 129.02, 89/136, 140, 151

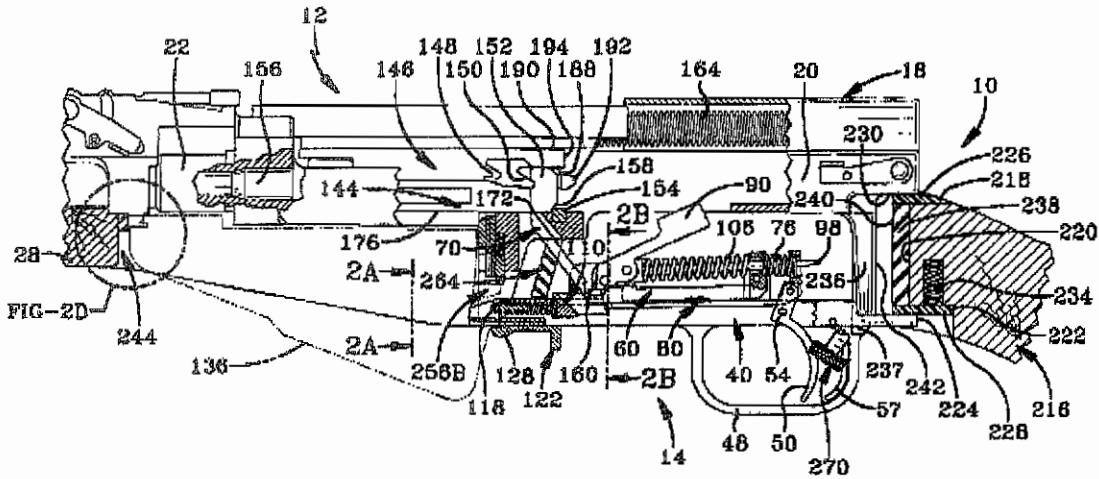
[56] References Cited

U.S. PATENT DOCUMENTS

981,210	1/1911	Monteysne et al.	89/140
1,587,009	6/1926	Kewish	89/140
2,361,985	11/1944	Birkigt	89/152
2,465,487	3/1949	Sampson et al.	89/140
4,553,468	11/1985	Castellano et al.	89/140
4,787,288	11/1988	Miller	89/27.3
5,074,190	12/1991	Troncoso	89/136
5,852,891	12/1998	Onishi et al.	42/69.01

Primary Examiner—Charles T. Jordan  
Assistant Examiner—Jeffrey Howell  
Attorney, Agent, or Firm—Renner, Kenner, Grivic, Bobak, Taylor & Weber

19 Claims, 16 Drawing Sheets



March 31, 2002

William Akins  
18807 Tracer Dr.  
Lutz, Fl. 33549  
813/948-1500


Curtis H. A. Bartlett  
Chief of Firearms, Technical Branch  
BATF Firearms Technology Branch  
650 Massachusetts Av. N.W. Room 6450  
Washington, D.C. 20226  
202/927-7910

Dear Mr. Bartlett,

Please examine my enclosed patent drawings, as I have no prototypes available to send you. My U.S. patent number is 6,101,918 and the date of my patent being issued is Aug 15, 2000. My patent is for an accessory firearms stock and is not a firearm itself. If this accessory stock were to be installed on a semi-automatic firearm's barrel/receiver group action, would B.A.T.F consider the installed combination to be a machine gun according to N.F.A. federal law?

I am enclosing the memorandum of advice from my firearms law attorney. He has assured me that my patent conforms to both my state law and federal N.F.A. laws. I want to be sure that you concur, and I am seeking a letter of approval from your office.

Sincerely,



William Akins

Exhibit B



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS  
WASHINGTON, DC 20226

JUL 28 2002

903050:RLB  
3311/2002-404

Mr. William Akins  
18807 Tracer Drive  
Lutz, Florida 33549

Dear Mr. Akins:

This is in response to your letter dated March 31, 2002, to the Bureau of Alcohol, Tobacco and Firearms (ATF). In your letter you ask about the classification of a device intended to facilitate rapid semiautomatic fire in certain firearms.

As defined in Title 26, United States Code (U.S.C.), Chapter 53, §5845(b), of the National Firearms Act (NFA), the term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

In addition to your letter of request, you have provided certain patent drawings (patent number 6,101,918) along with supporting text for our review. The information you supplied illustrates an accessory firearm stock that is designed and intended to accelerate the rate of fire on certain semiautomatic firearms. The device depicted consists of a modified stock assembly with a cavity or depression at the rear of the unit where it would normally meet the rear portion of the firearm receiver. This cavity permits the entire firearm (receiver and all its firing components) to recoil a short distance within the

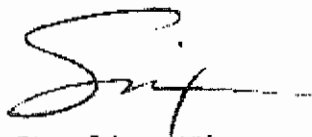
[WWW.ATF.TREAS.GOV](http://WWW.ATF.TREAS.GOV)

Mr. William Akins

stock, when fired. As the firearm moves rearward in the modified stock, a spring located within the modified stock is compressed. Energy from this spring subsequently drives the firearm forward and back into its normal firing position. After the shooter initially activates the trigger, the shooter's finger is held in a fixed position by a stop screw device embedded into the stock that does not move during the firing process. The effect of this is that the trigger mechanism moves rearward and disengages from the shooter's finger as the firearm recoils in the modified stock. After the firearm recoils a sufficient distance, the recoil spring located within the stock drives the firearm forward and the trigger again makes contact with the shooter's stationary finger. This action trips the firearm's trigger and begins the firing cycle once more.

ATF has previously examined a similar device and determined that it failed to function as intended by design. Since this office has not had the opportunity to examine this specific device, it is suggested that a sample be submitted for classification. Upon completion of our examination you will be provided with a letter of classification and the sample will be returned. However, if the submitted sample is found to be a machinegun as defined in Federal law, it cannot be returned to you.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sterling Nixon", with a horizontal line extending to the right.

Sterling Nixon  
Chief, Firearms Technology Branch



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

OCT 20 2003

903050:RLB  
3311/2002-404

Mr. William Akins  
18807 Tracer Drive  
Lutz, Florida 33549

Dear Mr. Akins:

This is in response to your letter dated March 31, 2002, to the Bureau of Alcohol, Tobacco and Firearms (ATF). In your letter you ask about the classification of a device intended to facilitate rapid semiautomatic fire in certain firearms.

As defined in Title 26, United States Code (U.S.C.), Chapter 53, § 5845(b), of the National Firearms Act (NFA), the term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part or combination of parts designed and intended solely and exclusively for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

In addition to your letter of request, you have provided certain patent drawings (patent number 6,101,918), along with supporting text, for our review. The information you supplied illustrates an accessory firearm stock that is designed and intended to accelerate the rate of fire on certain semiautomatic firearms. The device depicted consists of a modified stock assembly with a cavity or depression at the rear of the unit where it would normally meet the rear portion of the firearm receiver. This cavity permits the entire firearm (receiver and all its firing components) to recoil a short distance within the stock, when fired.

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Mr. William Akins

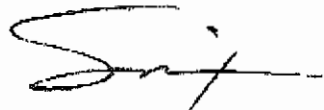
As the firearm moves rearward in the modified stock, a spring located within the modified stock is compressed. Energy from this spring subsequently drives the firearm forward and back into its normal firing position.

In addition, after the shooter initially activates the trigger, the shooter's finger is held in a fixed position by a stop screw device embedded into the stock that does not move during the firing process. As a result, the trigger mechanism moves rearward and disengages from the shooter's finger as the firearm recoils in the modified stock. After the firearm recoils a sufficient distance, the recoil spring located within the stock drives the firearm forward, and the trigger again makes contact with the shooter's stationary finger. This action trips the firearm's trigger and begins the firing cycle once more.

ATF has previously examined a similar device and determined that it failed to function as intended by design. Since this office has not had the opportunity to examine this specific device, it is suggested that a sample be submitted for classification. Upon completion of our examination, you will be provided with a letter of classification, and the sample will be returned. However, if the submitted sample is found to be a *machinegun* as defined in Federal law, it cannot be returned to you.

We thank you for your inquiry and trust that the foregoing has been responsive.

Sincerely yours,



Sterling Nixon  
Chief, Firearms Technology Branch



DEPARTMENT OF THE TREASURY  
BUREAU OF ALCOHOL, TOBACCO AND FIREARMS

NOV 17 2003

903050:RDC  
3311/2004-096

Mr. Thomas Bowers  
Post Office Box 430  
Cornelius, Oregon 97113

Dear Mr. Bowers:

This refers to your recoiling metal stock assembly, designed for use on an SKS type semiautomatic rifle, that was received by the Firearms Technology Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), on August 21, 2003 for the purposes of examination and classification.

Our evaluation indicates that the submitted sample stock assembly measures approximately 36 inches long and approximately 9-7/8 inches at its widest point. It is marked "BOWERS", "CORNELIUS OR", and "AA1". The following is a list of its physical characteristics:

- rectangular channel, approximately 22-5/16 inches long;
- barrel mounting block/spring actuated recoiling mechanism affixed to the forward end of the rectangular channel;
- access cutout in the bottom of the rectangular channel for the trigger group and magazine;
- two adjustable screws affixed to the underside of the rectangular channel; and
- tubular pistol grip/shoulder stock assembly welded to the underside of the rectangular channel.

The proposed theory of operation of this stock involves the application of the movement of the counter recoiling rifle to initiate a rapid succession of semiautomatic fire. The shooter places his trigger finger behind the two adjustable screws and forward of the weapon's trigger. After the weapon is initially fired and the action is moved to the rear (by the recoiling mechanism), the subsequent forward movement of the action is halted

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Mr. Thomas Bowers

by the shooter's trigger finger being held against the adjustable screws. The trigger is then depressed, and a second firing of the weapon commences. The movements of the action within the stock assembly are used to consecutively fire the weapon in lieu of the traditional method of manually pulling the trigger.

The action of a semiautomatic SKS-type 7.62x39mm rifle from our firearms reference collection was placed within the submitted stock. The weapon was then test fired. Both of the adjustable screws fractured, breaking away from the underside of the stock. These fractures occurred on the second test firing. The weapon did not fire more than one shot by a single function of the trigger.

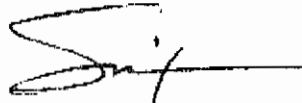
The National Firearms Act (NFA), 26 U.S.C. § 5845(b), defines the term "machinegun" to include the following:

...any weapon that shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. This term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

Our examination has determined that the submitted stock assembly does not constitute a machinegun as defined in the NFA. It is not a part or parts designed and intended for use in converting a weapon into a machinegun.

We thank you for your submitted assembly and trust that the foregoing has been responsive.

Sincerely yours,



Sterling Nixon  
Chief, Firearms Technology Branch





P. O. Box 430  
Cornellus OR 97113

BATFE Technology Branch  
Washington DC  
Attention: Mr. Craze

1/21/04

Request for Letter of Clarification on Prior Examination and Classification # 3311/2004 096

Dear Mr. Craze;

This letter is in response to our earlier phone conversation.

During our conversation, I expressed confusion regarding your letter of November 17, 2003, reference #3311/2004-096.

That letter was issued as an end result in response to a request for classification of a "Method and apparatus for accelerating the cyclic firing rate of a semi-automatic firearm" as covered by the Patent documents sent earlier. Upon viewing the provided patent documentation, Ms. Gillis from BATFE Technology Branch had requested a physical sample of the proposed apparatus before making a determination and classification.

A physical sample was manufactured and sent to Technology Branch in response to this request. It was this crude physical sample which was examined by you and which was referenced in letter #3311/2004-096.

Due to having no instructions on use, you related in our phone call that the apparatus never functioned as intended during two test firings and did in fact break upon the second attempt. However, you related that your examination of the apparatus was sufficient to convey the proposed theory of operation, as you described in #3311/2004-096, in that the application is intended to apply the movement of the counter-recoiling firearm, in relation to the shooter's fixed trigger finger, thereby initiating a rapid succession of semi-automatic shots.

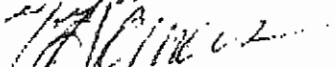
My confusion relating to the above-referenced letter stems from page 2, paragraph 2, sentences 3 and 4, "Both of the adjustable screws fractured, breaking away from the underside of the stock.

These fractures occurred on the second test firing."

The placement of those two sentences referring to the broken screws and second test firing cast ambiguity on the determination, in that the reader can not be certain if the intent of the letter is to approve the broken prototype which did not function as intended, or for the principle in general. In our phone conversation, you informed me that your intent had been to approve the principle in general.

Therefore, I am requesting a letter that more clearly states that an application of the principle of operation would not constitute either a machine gun as defined in the NFA, nor constitute a part or parts designed and intended for use in converting a weapon into a machine gun.

Sincerely,



Tom Bowers

Office: (503) 992-8697

FIVED  
1/21/04  
202-927-7692



Bureau of Alcohol, Tobacco,  
Firearms and Explosives

JAN 29 2004

903050:RDC  
3311/2004-308

[www.atf.gov](http://www.atf.gov)

Mr. Thomas Bowers  
Post Office Box 430  
Cornelius, OR 97113

Dear Mr. Bowers:

This refers to your letter of January 21, 2004, to the Firearms Technology Branch, ATF, in which you request clarification of our previous correspondence (3311/2004-096) regarding the manufacture of a recoiling metal stock assembly that is designed for use on an SKS-type semiautomatic rifle.

As noted previously, the proposed theory of operation of this stock involves the application of the movement of the counter recoiling rifle to initiate a rapid succession of semiautomatic fire. Our examination and subsequent classification revealed that the stock did not constitute a "machinegun" as that term is defined in the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

As indicated, during the course of our examination and testing of the item (SKS barreled action installed into the submitted stock), two set-screws dislodged from the frame. The weapon did not fire more than one shot by a single function of the trigger at any point throughout the testing.

Our classification of the stock assembly was rendered despite the fact that the screws dislodged from the frame. The theory of operation was clear even though the rifle/stock assembly did not perform as intended.

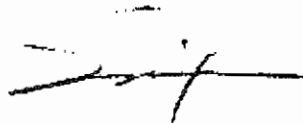
In conclusion, your prototype shoulder stock assembly does not constitute a "machinegun" as defined in the NFA. This evaluation is valid *provided that when the*

Mr. Thomas Bowers

*stock is assembled with an otherwise unmodified SKS semiautomatic rifle, the rifle does not discharge more than one shot by a single function of the trigger.*

We trust the foregoing has been responsive to your follow-up inquiry.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Sterling Nixon", with a long horizontal stroke extending to the right.

Sterling Nixon  
Chief, Firearms Technology Branch



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Martinsburg, WV 25401  
www.atf.gov

903050:MRC  
3311/2006-1060

NOV 22 2006

**BY HAND DELIVERY**

Mr. Thomas Bowers  
President  
Akins Group, Inc.  
935 S. Cherry Street #B  
Cornelius, OR 97113

Dear Mr. Bowers:

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) recently received a request from an individual to examine a device referred to as an "Akins Accelerator." Because your company is manufacturing and distributing the device, we are contacting you to advise you of the results of our examination and classification.

The National Firearms Act (NFA), Title 26 United States Code (U.S.C.) Chapter 53, defines the term "firearm" to include a machinegun. Section 5845(b) of the NFA defines the term "machinegun" as follows:

*...any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.*

Machineguns are also regulated under the Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, which defines the term in the same way as in the NFA. 18 U.S.C. § 921(a)(23). Pursuant to 18 U.S.C. § 922(o), machineguns manufactured on or after May 19, 1986, may only be manufactured for and distributed to Federal, State, and local government agencies for official use.

The Firearms Technology Branch (FTB) examination of the submitted item indicates that the Akins Accelerator is an accessory that is designed and intended to accelerate the rate of fire for Ruger 10/22 semiautomatic firearms. The Akins Accelerator device, which is patented, consists of the following metal block components (also see enclosed photos):

13.

Mr. Thomas Bowers

- Block 1: A metal block that replaces the original manufacturer's V-Block of the 10/22 rifle. The replacement block has two rods attached that are approximately ¼ inch in diameter and approximately 6 inches in length.
- Block 2: A metal block that is approximately 3 inches long, 1-3/8 inches wide, and ¼ of an inch high that has been machined to allow the two guide rods to pass through. Block 2 serves as a support for the guide rods and as an attachment to the stock.

As received, the Akins Accelerator utilizes the following parts and features to facilitate assembly:

- Assembly of Block 1 to Block 2: These blocks are assembled using ¼ inch rods, metal washers, rubber and metal bushings, two collars with set screws, one coiled spring, C-clamps, and a split ring.
- Apertures for Attachment of Stock: Block 2 is drilled and tapped for two 10-24 NC screws. These threaded holes allow the attachment of the Akins device with Ruger 10/22 barreled receiver to the composite stock that is a component part of the Akins device.

The composite stock is designed for a Ruger 10/22 barrel and receiver. This stock permits the entire firearm (receiver and all its firing components) to recoil a short distance within the stock when fired. Rearward pressure on the trigger causes the firearm to discharge, and as the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the accelerator, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this accelerator spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger, so long as the shooter maintains finger pressure against the stock, making the weapon fire again. The Akins device assembled with a Ruger 10/22 is advertised to fire approximately 650 rounds per minute.

For testing purposes, FTB personnel installed a semiautomatic Ruger 10/22 rifle from the National Firearms Collection into the stock, with the Akins device attached. Live-fire testing of the Akins Accelerator demonstrated that a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released, the weapon malfunctions, or the ammunition supply is exhausted.

In order to be regulated as a "machinegun" under Section 5845(b), conversion parts must be designed and intended to convert a weapon into a machinegun, *i.e.*, a weapon that shoots automatically more than one shot, without manual reloading, by a **single function of the trigger**. Legislative history for the National Firearms Act indicates that the drafters equated "single function of the trigger" with "single pull of the trigger." National Firearms Act: Hearings Before the Comm. on Ways and Means, House of Representatives, Second Session on H.R. 9066, 73<sup>rd</sup> Cong., at 40 (1934). Accordingly, it is the position of this agency that conversion parts that are designed and intended to convert a weapon into a machinegun, that is, one that will


Mr. Thomas Bowers

shoot more than one shot, without manual reloading, by a single pull of the trigger, are regulated as machineguns under the National Firearms Act and the Gun Control Act.

We note that by letters dated November 17, 2003, and January 29, 2004, we previously advised you that we were unable to test-fire a prototype of the Akins device that you sent in for examination. However, both letters state that the theory of operation is clear, and because the device is not a part or parts designed and intended for use in converting a weapon into a machinegun, it is not a machinegun as defined under the National Firearms Act. The previous classification was based on a prototype that fractured when this office attempted to test fire it. Nonetheless, the theory of operation of the prototype and the Akins Accelerator is the same. To the extent the determination in this letter is inconsistent with the letters dated November 17, 2003, and January 29, 2004, they are hereby overruled.

Manufacture and distribution of the Akins Accelerator device must comply with all provisions of the NFA and the GCA. Accordingly, any devices you currently possess must be registered in accordance with 26 U.S.C. § 5822 and regulations in Part 27 Code of Federal Regulations (C.F.R.) § 479.103. If you do not wish to register the devices, they should immediately be abandoned to the nearest ATF Office. You may contact the Portland field office at (503) 331-7850 to arrange for abandonment of the weapons. Pursuant to 18 U.S.C. § 922(o), the devices may only be manufactured for and distributed to Federal, State, and local law enforcement agencies. In addition, the devices must be marked in accordance with 18 U.S.C. § 923(i), 26 U.S.C. § 5842, 27 C.F.R. § 478.92, and 27 C.F.R. § 479.102. If you have questions about any of these provisions of law, please contact Acting Assistant Chief Cherie A. Knoblock in the Firearms Programs Division at (202) 927-7770.

Sincerely yours,



Richard Vasquez

Assistant Chief, Firearms Technology Branch

cc: SAC, Seattle Field Division  
DIO, Seattle Field Division  
Division Counsel, Seattle  
Assistant Chief Counsel, San Francisco

Enclosures

15.

**18 U.S.C. 922(o): Transfer or possession of machinegun**

**26 U.S.C. 5845(b): Definition of machinegun**

**18 U.S.C. 921(a)(23): Definition of machinegun**

*The definition of machinegun in the National Firearms Act and the Gun Control Act includes a part or parts that are designed and intended for use in converting a weapon into a machinegun. This language includes a device that, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until the finger is released or the ammunition supply is exhausted.*

**ATF Rul. 2006-2**

The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has been asked by several members of the firearms industry to classify devices that are exclusively designed to increase the rate of fire of a semiautomatic firearm. These devices, when attached to a firearm, result in the firearm discharging more than one shot with a single function of the trigger. ATF has been asked whether these devices fall within the definition of machinegun under the National Firearms Act (NFA) and Gun Control Act of 1968 (GCA). As explained herein, these devices, once activated by a single pull of the trigger, initiate an automatic firing cycle which continues until either the finger is released or the ammunition supply is exhausted. Accordingly, these devices are properly classified as a part “*designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun*” and therefore machineguns under the NFA and GCA.

The National Firearms Act (NFA), 26 U.S.C. Chapter 53, defines the term “firearm” to include a machinegun. Section 5845(b) of the NFA defines “machinegun” as “*any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.*” The Gun Control Act of 1968 (GCA), 18 U.S.C. Chapter 44, defines machinegun identically to the NFA. 18 U.S.C. 921(a)(23). Pursuant to 18 U.S.C. 922(o), machineguns manufactured on or after May 19, 1986, may only be

transferred to or possessed by Federal, State, and local government agencies for official use.

ATF has examined several firearms accessory devices that are designed and intended to accelerate the rate of fire for semiautomatic firearms. One such device consists of the following components: two metal blocks; the first block replaces the original manufacturer's V-Block of a Ruger 10/22 rifle and has attached two rods approximately ¼ inch in diameter and approximately 6 inches in length; the second block, approximately 3 inches long, 1 ⅜ inches wide, and ¾ inch high, has been machined to allow the two guide rods of the first block to pass through. The second block supports the guide rods and attaches to the stock. Using ¼ inch rods, metal washers, rubber and metal bushings, two collars with set screws, one coiled spring, C-clamps, and a split ring, the two blocks are assembled together with the composite stock. As attached to the firearm, the device permits the entire firearm (receiver and all its firing components) to recoil a short distance within the stock when fired. A shooter pulls the trigger which causes the firearm to discharge. As the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger. Provided the shooter maintains finger pressure against the stock, the weapon will fire repeatedly until the ammunition is exhausted or the finger is removed. The assembled device is advertised to fire approximately 650 rounds per minute. Live-fire testing of this device demonstrated that a single pull of the trigger initiates an automatic firing cycle which continues until the finger is released or the ammunition supply is exhausted.

As noted above, a part or parts designed and intended to convert a weapon into a machinegun, *i.e.*, a weapon that will shoot automatically more than one shot, without manual reloading, by a single function of the trigger, is a machinegun under the NFA and GCA. ATF has determined that the device constitutes a machinegun under the NFA and GCA. This determination is consistent with the legislative history of the National Firearms Act in which the drafters equated "single function of the trigger" with "single pull of the trigger." *See, e.g., National Firearms Act: Hearings Before the Comm. on Ways and Means, House of Representatives, Second Session on H.R. 9066, 73<sup>rd</sup> Cong., at 40 (1934).* Accordingly, conversion parts that, when installed in a semiautomatic rifle, result in a weapon that shoots more than one shot, without manual reloading, by a single pull of the trigger, are a machinegun as defined in the National Firearms Act and the Gun Control Act.

*Held*, a device (consisting of a block replacing the original manufacturer's V-Block of a Ruger 10/22 rifle with two attached rods approximately ¼ inch in diameter and approximately 6 inches in length; a second block, approximately 3 inches long, 1 ⅜ inches wide, and ¾ inch high, machined to allow the two guide rods of the first block to pass through; the second block supporting the guide rods and attached to the stock; using ¼ inch rods; metal washers; rubber and metal bushings; two collars with set screws; one coiled spring; C-clamps; a split ring; the two blocks assembled together with the



composite stock) that is designed to attach to a firearm and, when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted, is a machinegun under the National Firearms Act, 26 U.S.C. 5845(b), and the Gun Control Act, 18 U.S.C. 921(a)(23).

*Held further*, manufacture and distribution of any device described in this ruling must comply with all provisions of the NFA and the GCA, including 18 U.S.C. 922(o).

To the extent that previous ATF rulings are inconsistent with this determination, they are hereby overruled.

Date approved: December 13, 2006

Michael J. Sullivan  
Director

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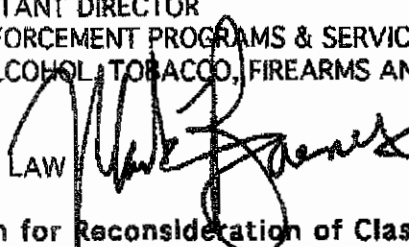
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ROBERT E. SANDERS<sup>†</sup>  
OF COUNSEL  
<sup>†</sup>ALSO ADMITTED IN ILLINOIS

February 6, 2007

## BY ELECTRONIC DELIVERY

MEMORANDUM TO: MS. AUDREY STUCKO  
DEPUTY ASSISTANT DIRECTOR  
OFFICE OF ENFORCEMENT PROGRAMS & SERVICES  
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

FROM: MARK BARNES  
ATTORNEY AT LAW 

SUBJECT: Memorandum for Reconsideration of Classification Ruling  
for Akins Group

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Enclosed please find a memorandum asking your office to reconsider its ruling of December 13, 2006 classifying the Akins Group's (Akins) Akins Accelerator as a machinegun conversion device. We believe this ruling was in error. As the following memorandum will explain, we believe the nature of this device and several previous rulings, including ATF's previous rulings on this device, provide evidence that this device should not be classified as a machinegun conversion device.

We ask the Director, or the appropriate deciding official, to carefully review our arguments and then reconsider ATF's reversal of its past classification of the Akins Accelerator. The facts we present here show that this device is not of the type Congress intended to be classified as a machinegun under the Gun Control Act or the National Firearms Act.

Thank you for taking the time to read this document and reconsider your ruling. Please do not hesitate to contact either of Akins' outside counsels, Steve Halbrook at 703-359-7276 or Mark Barnes at 202-6262-0070, with any questions or concerns. We look forward to receiving your response in the near future.

MB:mg

Attachments

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February 5, 2007

**LEGAL STATUS OF THE AKINS ACCELERATOR**

This is submitted in support of the request by the Akins Group Inc. to ATF for reconsideration of its current position on the legal status of the Akins Accelerator. The following discusses the nature of the device at issue, the statutory definitions, ATF's approval of the device, ATF's reversal, the statutory text and legislative history, and analogous devices. It concludes that the device is not a machinegun and is not regulated under the Gun Control Act or the National Firearms Act.

**The Device at Issue**

The Akins Accelerator is a shoulder stock mechanism into which a particular semiautomatic firearm is installed, thereby facilitating rapid firing. When the trigger is pulled, this single function of the trigger causes the firearm to discharge. The resultant recoil pushes the entire firearm rearward within the stock. This movement of the entire firearm moves the trigger rearward away from the trigger finger (which is held in place against an integral stop built into the stock), allowing the trigger to reset. A compressed spring then pushes the entire firearm including the trigger forward, depressing the moving trigger against the stationary trigger finger. This results in another separate single function of the trigger, causing the firearm to discharge again. The cycle then is repeated. While the trigger finger remains stationary, the trigger itself moves back and forth for each shot fired. In short, only one shot is fired for each single function of the trigger.

The device is described as a "Method and apparatus for accelerating the cyclic firing rate of a semi-automatic firearm," in U.S. Patent 6,101,918, dated Aug. 15, 2000.

**Definitions**

26 U.S.C. § 5845(b) provides:

The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, **by a single function of the trigger**. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person. (Emphasis added.)

Ordinary definitions include: "*single* . . . a) one only; one and no more; individual; b) without another or others; alone; solitary . . ." "*function* . . . an action which is a part of a series leading to a resulting action . . ." Webster's New World Dictionary, 3<sup>rd</sup> College Ed. (1991). As noted, the device at issue entails the functioning of the trigger by moving back and then forward with each shot fired. Section 5845(b) refers to "a single function of the trigger," not a single function of the trigger finger.

#### **ATF Approval of the Akins Accelerator**

ATF examined a proof-of-concept prototype of the Akins Accelerator device and studied its patent, and determined that it is not a machinegun. Sterling Nixon, Chief, ATF Firearms Technology Branch, to Thomas Bowers, Nov. 17, 2003, 903050:RDC, 3311/2004-096. "RDC" refers to Firearms Enforcement Officer Richard Douglas Craze, a long-time expert in the Firearms Technology Branch. ATF described the device as a "recoiling metal stock assembly" designed for use on a semiautomatic rifle. ATF described its function as follows:

The proposed theory of operation of this stock involves the application of the movement of the counter recoiling rifle to initiate a rapid succession of semiautomatic fire. The shooter places his trigger finger behind the adjustable screws and forward of the weapon's trigger. After the weapon is initially fired and the action is moved to the rear (by the recoiling mechanism), the subsequent forward movement of the action is halted by the shooter's trigger finger being held against the adjustable screws. The trigger is then depressed, and a second firing of the weapon commences. The movements of the action within the stock assembly are used to consecutively fire the weapon in lieu of the traditional method of manually pulling the trigger.

The ATF letter noted that on its second test firing, "the adjustable screws fractured, breaking away from the underside of the stock." It further noted: "The weapon did not fire more than one shot by a single function of the trigger." It concluded that the stock assembly is not a machinegun or a machinegun conversion kit.

Mr. Bowers spoke by telephone with Mr. Craze on Dec. 2, 2003. Bowers wanted assurance that the letter was not limited to approval of the broken prototype, but extended to the

principle in general. Craze responded that he was willing to write a letter of clarification that the principle was approved as not being a machinegun.

Bowers wrote to Craze by letter dated Jan. 21, 2004, requesting the clarification. The letter mentions that a copy of the patent had been provided to ATF, and that ATF had requested a physical sample before rendering a determination, which was the device which ATF described above as having been tested.

By letter dated Jan. 29, 2004, Sterling Nixon (the draftsman again being "RDC," Craze) wrote Bowers:

As noted previously, the proposed theory of operation of this stock involves the application of the movement of the counter recoiling rifle to initiate a rapid succession of semiautomatic fire. Our examination and subsequent classification revealed that the stock did not constitute a "machinegun" as that term is defined in the National Firearms Act (NFA), 26 U.S.C. Chapter 53.

As indicated, during the course of our examination and testing of the item (SKS barreled action installed into the submitted stock), two set-screws dislodged from the frame. The weapon did not fire more than one shot by a single function of the trigger at any point throughout the testing.

Our classification of the stock assembly was rendered despite the fact that the screws dislodged from the frame. The theory of operation was clear even though the rifle/stock assembly did not perform as intended.

In conclusion, your prototype shoulder stock assembly does not constitute a "machinegun" as defined in the NFA.<sup>1</sup>

In reliance on the above ATF determinations, the Akins Group Inc. expended large sums to manufacture and market the product.<sup>2</sup> As part of its marketing, the Akins Group Inc. published ATF's determination letters advising that the product is not regulated by the Gun Control Act or the National Firearms Act. Consumers then relied on the same ATF determinations and expended funds to purchase the product.

#### **ATF's Reversal of its Position on the Akins Accelerator**

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<sup>1</sup>Sterling Nixon, Chief, ATF Firearms Technology Branch, to Thomas Bowers, Jan. 29, 2004, 903050:RDC, 3311/2004-308.

<sup>2</sup>While the sample device approved by ATF was designed for use on an SKS rifle and the device actually marketed was designed for use on a .22 cal. Ruger 10/22 rifle, the design principles were identical as to both devices and would be subject to the same legal classification.

In reliance on ATF's above advice, Akins Group Inc. commenced manufacture and marketing of the Akins Accelerator. However, by letter from Richard Vasquez, Assistant Chief, Firearms Technology Branch, dated Nov. 22, 2006, 903050:MRC, 3311/2006-1060, and marked "hand deliver" (though delivered via Certified mail to the Akins Group Inc. on Dec. 8, 2006 at 9:24 a.m.), ATF reversed its position and decided that the device is a machinegun conversion kit.

The letter states that "rearward pressure on the trigger causes the firearm to discharge," the firearm moves rearward and then forward again, which "causes the trigger to contact the shooter's trigger finger, so long as the shooter maintains finger pressure against the stock, making the weapon fire again." *Id.* at 2. That actually suggests that the firearm shoots only once for each single function of the trigger.

However, the letter then states that "a single pull of the trigger initiates an automatic firing cycle that continues until the finger is released . . ." *Id.* Released from what? Not the trigger, because the trigger goes rearward, losing contact with the finger, and then goes forward again, at which point the finger pulls it again. The firearm does *not* continue to fire with the finger on the trigger until the finger is released from the trigger. While the firearm continues to fire until the finger is released from the two protruding stops on the stock, for each shot there is a single function of the trigger.

The ATF letter equates "a single function of the trigger" with "a single pull of the trigger." *Id.* at 2-3. As discussed below, the term "function" is broader than the term "pull." At any rate, operation of the device at issue does entail a single *pull* of the trigger for each shot fired – each time the trigger comes forward, the finger pulls it, and a shot is fired.

Finally, ATF's letter notes that the ATF letters of 2003 and 2004 "state that the theory of operation is clear," and adds that "the theory of operation of the prototype and the Akins Accelerator is the same." It concludes that the two previous letters "are hereby overruled." *Id.* at 3.

ATF's new position was formalized by issuance of ATF Rul. 2006-2, which was signed by the Director on Dec. 13, 2006.<sup>3</sup> It describes operation of the device as follows:

As attached to the firearm, the device permits the entire firearm (receiver and all its firing components) to recoil a short distance within the stock when fired. A shooter pulls the trigger which causes the firearm to discharge. As the firearm moves rearward in the composite stock, the shooter's trigger finger contacts the stock. The trigger mechanically resets, and the device, which has a coiled spring located forward of the firearm receiver, is compressed. Energy from this spring subsequently drives the firearm forward into its normal firing position and, in turn, causes the trigger to contact the shooter's trigger finger. Provided the

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<sup>3</sup>[http://www.atf.gov/alcohol/info/revrule/rules/atfruling\\_2006-2.pdf](http://www.atf.gov/alcohol/info/revrule/rules/atfruling_2006-2.pdf).

shooter maintains finger pressure against the stock, the weapon will fire repeatedly until the ammunition is exhausted or the finger is removed. The assembled device is advertised to fire approximately 650 rounds per minute. Live-fire testing of this device demonstrated that a single pull of the trigger initiates an automatic firing cycle which continues until the finger is released or the ammunition supply is exhausted.

This description again demonstrates that only one shot is fired with each function of the trigger. The person "pulls the trigger which causes the firearm to discharge," the firearm (including the trigger) move rearward while the "trigger finger contacts the stock" – not the trigger, and the firearm moves forward, once again "caus[ing] the trigger to contact the shooter's trigger finger." Firing continues "until the finger is released" *from the stock, not from the trigger* – which functions separately for each shot.

As a result of ATF's change in position, the Akins Group Inc. has now suffered severe economic losses. Moreover, consumers who purchased the product in reliance on ATF's previous determinations have lost the value of their property.

According to ATF, removal of the spring from the device renders the device as no longer being a machinegun conversion kit. ATF published a compliance plan directing persons in possession to remove the spring and send it to ATF, including certification that the spring was removed from the device and an acknowledgment that "replacing the spring on the Akins Accelerator constitutes a violation of law."<sup>4</sup>

#### **"A Single Function of the Trigger": Text and Legislative History**

ATF opines that a "single function of the trigger" means a "single pull of the trigger." ATF Rul. 2006-2. Actually, the Akins Accelerator device entails a single pull of the trigger for every shot fired. Moreover, a "single function of the trigger" is broader than a "single pull of the trigger," for a pull is only one type of function, which also includes, e.g., to push. Compare "*function . . . an action which is a part of a series leading to a resulting action,*" with "*pull . . . to exert force or influence on so as to cause to move toward or after the source of the force.*" Webster's New World Dictionary, 3<sup>rd</sup> College Ed. (1991). The "push" of a trigger is a type of function, just as is a "pull" or "release" of the trigger, and there are firearms that fire upon a push of the trigger, as well as firearms that fire upon release of the trigger. Regardless of the direction of trigger movement required to fire a shot, that movement of the trigger, in a single direction, is accurately described as a single function of the trigger. Further, ATF has previously held that a firearm which fires a single shot upon pull of the trigger and another single shot again upon release of the trigger is still only firing one shot per function of the trigger. Sterling Nixon, Chief, ATF Firearms Technology Branch, Jan. 20, 2004, 903050:CLB, 3311/2004-226.

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<sup>4</sup>[http://www.atf.gov/alcohol/info/revrule/rules/2006-2\\_q\\_and\\_a.pdf](http://www.atf.gov/alcohol/info/revrule/rules/2006-2_q_and_a.pdf).

In opining the Akins Accelerator device to be a machinegun conversion kit, ATF Rul. 2006-2 states:

This determination is consistent with the legislative history of the National Firearms Act in which the drafters equated "single function of the trigger" with "single pull of the trigger." See, e.g., *National Firearms Act: Hearings Before the Comm. on Ways and Means, House of Representatives, Second Session on H.R. 9066, 73<sup>rd</sup> Cong., at 40 (1934).*<sup>5</sup>

As proposed, H.R. 9066 provided: "The term 'machine gun' means any weapon designed to shoot automatically or semiautomatically twelve or more shots without reloading." *Hearings* at 1. In the hearings, witness Karl T. Frederick, President of the National Rifle Association of America, offered the following alternative definition: "A machine gun or submachine gun as used in this act means any firearm by whatever name known, loaded or unloaded, which shoots automatically more than one shot without manual reloading, by a single function of the trigger." *Id.* at 40. He explained:

The distinguishing feature of a machine gun is that by a single pull of the trigger the gun continues to fire as long as there is any ammunition in the belt or in the magazine. Other guns require a separate pull of the trigger for every shot fired, and such guns are not properly designated as machine guns. A gun, however, which is capable of firing more than one shot by a single pull of the trigger, a single function of the trigger, is properly regarded, in my opinion, as a machine gun.

*Id.*

While pulling is the most prominent method of functioning a trigger, the term "function" is not so limited. Representative Hill made this point as follows: "But when you say 'one operation of the trigger' you may be limiting the definition as it is in this bill, as I see it, because *this says nothing about what operation of the trigger is necessary to constitute a machine gun.*" (Emphasis added.) The following exchange ensued:

Mr. Hill. The point I am making is, why include in your definition the phrase, "with one function of the trigger"?

Mr. Frederick. Because that is the essence of a machine gun. Otherwise you have the ordinary repeating rifle.

*Id.* at 41.

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<sup>5</sup>A similar statement is made in ATF's letter dated Nov. 22, 2006



In response to a question by Representative Cochran, Frederick explained why the Colt automatic pistol would not be a machinegun:

Mr. Cochran. Does not the Colt automatic pistol continue to shoot as long as you exert pressure upon the trigger?

Mr. Frederick. No, sir. It requires a separate pull of the trigger for every shot fired.

*Id.* at 41-42.

Nor does the device at issue entail continued exertion of pressure on the trigger. For each shot, the pressure is released as the trigger moves rearward, and when the trigger thereafter moves forward, it is pulled again.

As enacted, the National Firearms Act included the following definition: "The term 'machine gun' means any weapon which shoots, or is designed to shoot, automatically or semiautomatically, more than one shot, without manual reloading, by a single function of the trigger." Public Law 73-474, XLVII Stat. 1236 (1934). While the Congress thereby adopted the relevant part of the definition suggested by NRA President Frederick, that definition and his explanation thereof is consistent with the device at issue not involving the shooting of more than one shot by a single function of the trigger.

The current definitions applicable here, codified in 26 U.S.C. § 5845(b), are as follows:

The term "machinegun" means any weapon which shoots . . . automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include . . . any . . . combination of parts designed and intended, for use in converting a weapon into a machinegun . . . .

Since the device at issue does not shoot more than one shot "by a single function of the trigger," it is not a machinegun.

#### **Analogous Devices, I: The Gatling Gun**

Historically, ATF and its predecessor agency viewed similar hand-operated devices as not being machineguns. Rev. Rul. 55-529, 1955-2 C.B. 482, held:

Any crank-operated gear-driven Gatling gun (produced under 1862 to 1893 patents) employing a cam action to perform the functions of repeatedly cocking and firing the weapon, as well as any such gun actuated by an electric motor in lieu of a hand-operated crank (produced under 1893 and later patents), while being a forerunner of fully automatic machineguns, is not designed to shoot automatically or semiautomatically more than one shot with a single function of

trigger. Such weapons are held *not* to be firearms within the purview of the National Firearms Act (Chapter 53 of the Internal Revenue Code of 1954).

ATF Ruling 2004-5 reaffirmed ATF's historical view that the original, crank-operated Gatling Gun, and replicas thereof, are not machineguns, and decided that the electric-driven Minigun is a machinegun.<sup>6</sup> Citing Rev. Rul. 55-529, it noted:

The original Gatling Gun is a rapid-firing, hand-operated weapon. The rate of fire is regulated by the rapidity of the hand cranking movement, manually controlled by the operator. It is not a "machinegun" as that term is defined in 26 U.S.C. 5845(b) because it is not a weapon that fires automatically.

While noting that the Minigun uses "a basic design concept of the Gatling Gun," ATF Ruling 2004-5 states that the Minigun does not use Gatling components or feed mechanisms. The Ruling continues:

Critically, the Minigun shoots more than one shot, without manual reloading, by a single function of the trigger, as prescribed by 26 U.S.C. 5845(b). *See United States v. Fleischli*, 305 F.3d 643, 655-656 (7th Cir. 2002). *See also Staples v. United States*, 511 U.S. 600, 603 (1994) (automatic refers to a weapon that "once its trigger is depressed, the weapon will automatically continue to fire until its trigger is released or the ammunition is exhausted"); GEORGE C. NONTE, JR., FIREARMS ENCYCLOPEDIA 13 (Harper & Rowe 1973) (the term "automatic" is defined to include "any firearm in which a single pull and continuous pressure upon the trigger (or other firing device) will produce rapid discharge of successive shots so long as ammunition remains in the magazine or feed device in other words, a machinegun"); . . . JOHN QUICK, PH.D., DICTIONARY OF WEAPONS AND MILITARY TERMS 40 (McGraw-Hill 1973) (defining automatic fire as "continuous fire from an automatic gun, lasting until pressure on the trigger is released").

The above authorities refer to "continuous pressure on the trigger" as an element of automatic fire. The Akins Accelerator does not operate in this manner. Instead, the finger pulls the trigger, which moves back – thereby releasing the finger's pressure on the trigger – and then moves forward again, at which point the finger again exerts pressure on the trigger. If the movement of the host semiautomatic firearm within the Akins Accelerator is physically prevented, so that the trigger finger remains in contact with the trigger, only one shot can result until the trigger is released and then pressed again. The device can only work by physically separating the contact between the finger and trigger and providing sufficient time for the host firearm to extract the empty cartridge, feed another cartridge, allow the bolt to close and the trigger to reset to the forward position. If *all* of these events do not occur before initiating

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<sup>6</sup> ATF Ruling 2004-5, <http://www.atf.gov/firearms/rules/2004-5.htm>.

another single function of the trigger to the rear, only one shot can result. In short, only after all these events have occurred will another actuation of the trigger allow another single shot to be fired.

### **Analogous Devices, II: Modern**

Over the years, ATF has rendered letter opinions finding various devices not to be machineguns. A 2004 letter opinion concerning a modification allowing a firearm to fire one shot upon the trigger being pulled and another shot upon the trigger being released found: "A firearm that shoots once upon pulling the trigger and once upon releasing the trigger would not meet the definition of a machinegun as a firearm that shoots 'automatically more than one shot, without manual reloading, by a single function of the trigger.'" Sterling Nixon, Chief, ATF Firearms Technology Branch, Jan. 20, 2004, 903050:CLB, 3311/2004-226.

This opinion clearly indicates that "single function of the trigger" is exactly that, a function in one direction which is intended to result in discharge of the firearm. By this definition, the host firearm installed into an Akins Accelerator (and all other unmodified semi-automatic firearms in current production) are more accurately described as firing one time for every two functions of the trigger.

A 1981 letter opinion concerned the Tri-Burst trigger activator, finding as follows:

Examination of the device indicates that it is a ring shaped lever containing two course cut teeth. The lever is mounted in a plate which replaces the hinged trigger guard of an AR15 type rifle. The plate contains a bent wire lever and a short length of coil spring. The device is intended to provide three rapid shots from a semiautomatic rifle.

Since the lever must be pulled for each shot to be fired, your device is no different than many other external trigger attachments. The "Tri Burst" trigger activator, as submitted, is not subject to any of the provisions of the Gun Control Act or the National Firearms Act.<sup>7</sup>

The Hellfire trigger attachment "is composed of a mounting block which attaches to the trigger guard of a Ruger Mini 14 rifle, and a piece of spring wire which bears on the rear of the weapons trigger. . . . With the device attached, the weapon is capable of firing only one shot with each pull of the trigger."<sup>8</sup> While not described in the ATF letter, with the Hellfire device, a trigger stop and spring are used to vibrate the trigger against the trigger finger. A rhythm and loose grip are required. The device depends on a relatively stationary trigger finger and utilizes

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<sup>7</sup>Edward M. Owen, Jr., Chief, Firearms Technology Branch, June 29, 1981, LE:F:TE:EMO.

<sup>8</sup>Edward M. Owen, Jr., Chief, Firearms Technology Branch, Aug. 3, 1990, LE:F:TE:BMO.

recoil and isometric tension to create movement of the counter recoiling rifle against the trigger finger to initiate a rapid succession of semiautomatic shots.

This technique is known as “bump firing,” as it uses the forward isometric tension of the shooter’s supporting hand to “bump” the trigger into the shooter’s finger again after it recoils from the previous shot. The recoil is countered via isometric tension.

Bump firing can be readily accomplished on most semiautomatic firearms without the use of any device, but requires some skill, in that the shooter’s support arm acts as the spring in countering the recoil of the firearm.

The Akins Accelerator is simply a mechanical means allowing bump firing without requiring any skill. It has the added advantage of only allowing movement of the actual firearm, the barreled action, within the stationary stock. When compared to bump firing using competing devices or no device, using the Akins Accelerator increases accuracy and safety while simultaneously reducing recoil.

A 2003 letter opinion summarized some of ATF’s previous findings about the following, all of which were found *not* to be machineguns:

We previously examined a device known as a *Hellfire* or *A.S. IV* consisting of a metal block that clamps to the trigger guard of a semiautomatic firearm and has a spring that applies pressure to the back of the trigger. The device merely acted as an auxiliary trigger return spring and it did not change the mechanical functioning of the firearm. . . .

We also examined a *Triburst* device that was a lever attached to the trigger guard of a firearm. Manual operation of the lever would cause the trigger to move three times. . . .

We also examined a *BMF Activator* device that mounted to the trigger guard of a firearm. Manual rotation of a crank caused movement of the trigger.<sup>9</sup>

Some of the same devices were mentioned in a letter from Richard Vasquez for Sterling Nixon, Chief, Firearms Technology Branch, and dated Oct. 13, 2006, which also addresses the concept of “bump fire” as follows:

The term “bump-fire” is a vernacular used in the firearms culture and is not defined in either the Gun Control Act of 1968 or the NFA. For present purposes, FTB [Firearms Technology Branch] will regard the term as meaning rapid manual

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<sup>9</sup>Sterling Nixon, Chief, Firearms Technology Branch, Oct. 16, 2003, 903000:CHB, 3311/2003-635.

trigger manipulation to simulate automatic fire. As long as you must consciously pull the trigger for each shot of the "bump-fire" operation, you are simply firing a semiautomatic weapon in a rapid manner and are not violating any Federal firearms laws or regulations.<sup>10</sup>

The Akins Accelerator also operates under the same principle of "bump-fire." Other methods of bump-firing exist,<sup>11</sup> but all entail a single function of the trigger.

The above types of devices have been the subject of ATF testimony in litigation. *United States v. Camp*, 343 F.3d 743, 745 (5<sup>th</sup> Cir. 2003), which held that the term "trigger" could include a switch that starts an electric motor, includes the following discussion:

[A]n ATF Agent testified that "trigger activators" involve using springs that "force the trigger back to the forward position, *meaning that you have to separately pull the trigger each time you want to fire the gun*, but it gives the illusion of functioning as a machinegun". (Emphasis added.) According to the Agent, the ATF understands such trigger activators to be legal, insofar as they do not transform legal firearms into machine guns.

. . . As discussed, those activators described by the ATF Agent require a user to separately pull the activator each time the weapon is fired. Camp's weapon, however, required only one action--pulling the switch he installed--to fire multiple shots. This distinction is expressly contemplated by § 5845(b), which speaks of "shoot[ing] automatically more than one shot ... by a *single* function of the trigger". (Emphasis added.)

The above-quoted witness was Alfred Houde, an ATF firearms enforcement officer, who also testified in the above case:

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<sup>10</sup>Richard Vasquez for Sterling Nixon, Chief, Firearms Technology Branch, Oct. 13, 2006, 903050-MSK, 3111/2006-1088.

<sup>11</sup>"Bump fire," Wikipedia, [http://www.reference.com/browse/wiki/Bump\\_fire](http://www.reference.com/browse/wiki/Bump_fire), explains:

Bump firing is the simulated automatic firing of a semi-automatic rifle. . . .

For example, one method of "bump firing" is to hold the rifle with your off-hand (non trigger hand) and instead of gripping it with the trigger hand, only insert your finger in front of the trigger. In order to achieve the rapid fire succession, the shooter continuously pulls the rifle forward with the off-hand while holding the trigger finger stationary such that the trigger is pulled into your finger. The recoil will pull the rifle backwards as you are pulling it forwards. A new round will be chambered before you pull the rifle back into your stationary trigger finger.

Trigger activators are a commercially-produced firearm accessory known by various trade names as "TAC Trigger," "Autoburst," "Autoburst II," depending on who the manufacturer is. They are in fact a legal device, and what they do is they attach to the trigger of a firearm, and there are various springs involved with this device, and as you pull the trigger and fire the weapon, these devices use a small powerful spring that force the trigger back to the forward position, meaning that you have to separately pull the trigger each time you want to fire the gun, but it gives the illusion of functioning as a machine gun. . . .

The trigger activators that are commercially produced fit over the trigger of a firearm similar to the way this fishing reel hand crank is positioned over the trigger of this particular firearm. The difference is with these TAC triggers or trigger activators, you have to actually manually pull the trigger each time you want to fire the weapon; and as I stated earlier, because of those powerful springs within that TAC trigger, it makes you pull that trigger so fast that it gives the illusion of a machine gun.<sup>10</sup>

Given the above consistent, long-standing agency interpretations, ATF's initial determinations about the Akins Accelerator were correct. ATF's rescission of those determinations suggest a form of selective enforcement of a newly-minted and incorrect rule.

#### Rule of Lenity

Where doubt exists of whether the definition of an NFA firearm applies to a given item, it must be concluded that the definition does not apply. As *United States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517 (1992), held:

We are left with an ambiguous statute. The key to resolving the ambiguity lies in recognizing that although it is a tax statute that we construe now in a civil setting, the NFA has criminal applications that carry no additional requirement of willfulness. . . . Making a firearm without approval may be subject to criminal sanction, as is possession of an unregistered firearm and failure to pay the tax on one, 26 USC §§ 5861, 5871. It is proper, therefore, to apply the rule of lenity and resolve the ambiguity in Thompson/Center's favor.<sup>11</sup>

See also *F. J. Vollmer Co., Inc. v. Higgins*, 23 F.3d 448, 452 (D.C. Cir. 1994) (holding item not to be a machinegun and resolving ambiguity against government as instructed by Supreme Court in *Thompson/Center Arms*), later proceeding, *F.J. Vollmer Co., Inc. v. Magaw*, 102 F.3d 591 (D.C. Cir. 1996) (awarding attorney's fees under Equal Access to Justice Act).

<sup>10</sup>Transcript quoted in Brief of Appellee, *United States v. Camp*, 2003 WL 22853376, \*16-17.

<sup>11</sup>See *id.* at 320 (Scalia, J., concurring) ("the application of the National Firearms Act . . . is sufficiently ambiguous to trigger the rule of lenity").

## **CONCLUSION**

**The Akins Accelerator is not a machinegun as defined in 26 U.S.C. § 5845(b). ATF should reconsider its current position to the contrary and revert to its previous position that the device is not regulated under the Gun Control Act or National Firearms Act.**



U.S. Department of Justice

Bureau of Alcohol, Tobacco,  
Firearms and Explosives

Assistant Director

Washington, DC 20226

24 SEP 2007

Mr. Stephen P. Halbrook  
Attorney at Law  
10560 Main St., Suite 404  
Fairfax, Virginia 22030

Dear Mr. Halbrook:

This response is in reference to your request for reconsideration of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Ruling 2006-2 issued by the Director on December 13, 2006. As you know, this ruling classified a device called the Akins Accelerator as a machinegun. The ruling explains that the Akins device is designed to attach to a firearm and when activated by a single pull of the trigger, initiates an automatic firing cycle that continues until either the finger is released or the ammunition supply is exhausted. ATF classified the device as a machinegun under the National Firearms Act and the Gun Control Act. Under the law, machineguns manufactured on or after May 19, 1986, may only be transferred to or possessed by Federal, State, and local Government agencies for official use.

We have considered your arguments for reconsideration but have determined that the device should remain classified as a machinegun for the reasons stated in the ruling. Should you or your client have any further questions regarding this decision, please do not hesitate to contact us.

Sincerely yours,

Lewis P. Raden  
Assistant Director  
(Enforcement Programs and Services)