



National Shooting Sports Foundation, Inc.

FLINTLOCK RIDGE OFFICE CENTER • 11 MILE HILL ROAD • NEWTOWN, CT 06470-2359
203-426-1320 • FAX: 203-426-1087 • WEB SITE www.nssf.org • EMAIL Ikeane@nssf.org

Lawrence G. Keane
Vice President and
General Counsel

February 21, 2003

Terrence P. Austin
Chief, National Tracing Center
882 T J Jackson Drive
Falling Waters, West Virginia 25419

Dear Mr. Austin:

I have received copies of correspondence between the Bureau of Alcohol, Tobacco & Firearms (ATF, now also referred to as ATFE) and Taurus International Manufacturing International.

In certain litigations filed against members of the firearms industry the allegation has been made that manufacturers should follow up on trace requests they receive from ATF as part of *bona fide* law enforcement investigations to somehow identify and cease distribution to federally licensed firearms dealers with a "disproportionately" high number of trace requests. This allegation has been made despite the fact that ATF has consistently emphasized in its reports pertaining to tracing

that the appearance of a Federal firearm licensee (FFL) or a first unlicensed purchaser of record in association with a crime gun or in association with multiple crime guns in no way suggests that either the FFL or the first purchaser has committed criminal acts. Rather, such information may provide a starting point for further and more detailed investigation" (Youth Crime Gun Interdiction Initiative, ATF document at 17 [Feb. 1999] <<http://www.atf.treas.gov/firearms/ycgii/update1.pdf>>).

Industry is proud of its longstanding cooperative relationship with law enforcement. *Don't Lie for the Other Guy*, our cooperative partnership to educate and train dealers on how to detect and deter illegal straw purchases of firearms, is just one example of industry cooperation with law enforcement. There are, of course, many others, like our Partnership for Progress dealer seminars and the ATF seminars at our trade show. We look forward to discussing with ATF at our next regularly scheduled meeting expanding the *Don't Lie* program as a component of Project Safe Neighborhood to further deter would-be straw purchases through public service announcements.

It has always been and remains the understanding of NSSF, and as far as we are aware it is universally understood in the industry, that law enforcement, particularly ATF,

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does not want untrained civilians to engage in investigations by somehow using the trace requests it receives from ATF to somehow try and identify those individuals or dealers that may be engaged in the illegal trafficking of firearms.

Our understanding that the proper role of industry members is to cooperate with law enforcement by providing timely and accurate information in response to a trace request, which is being made in connection with an investigation, is based on, among other things, statements over the years by ATF officials in meetings with executives from companies in the industry, ATF's own reports, which, as noted above, consistently state that "[a] crime gun trace alone does not mean that an FFL or a firearm purchaser has committed an unlawful act. Crime gun trace information is used in combination with other investigative facts in regulatory and criminal enforcement." Crime Gun Trace Reports (1999), National Report, Youth Crime Gun Interdiction Initiative, November 2000, Introduction at 4, <<http://www.atf.treas.gov/firearms/ycgii/2000/introduction.pdf>>. Our understanding was reinforced by the recent testimony of former Director Steve Higgins. Former director Higgins' testimony, along with the testimony of other law enforcement experts, was relied upon by the New York Court of Appeals in its decision in *Hamilton v. Beretta U.S.A. Corp.*, when it observed that it is neither feasible nor appropriate for the manufacturers on their own to attempt to investigate and identify corrupt dealers involved in illegal gun trafficking because such attempts would disrupt pending criminal investigations and endanger the lives of undercover officers. *See Hamilton* 96 N.Y.2d 222, 238-39, 750 N.E.2d 1055, 1065, 727 N.Y.S.2d 7, 17 (2000). Most recently our understanding was further reinforced by affidavits submitted by ATF officials in connection with the Freedom of Information Act (FIOA) request litigation entitled *Department of the Treasury v. City of Chicago*, currently pending before the United State Supreme Court.

We are unaware of any occasion where ATF or any current law enforcement official has urged members of our industry to undertake to investigate federally licensed dealers by somehow using trace information. Certainly this has never been raised by ATF at any industry – ATF quarterly meeting or during any ATF seminar at our trade show dating back to at least 1981.

Regrettably, attorneys representing plaintiffs in litigations filed against members of the firearm industry have made public statements that the industry's understanding is an industry created "myth" to hide behind. New York Times, September 30, 2002, Late Edition - Final, Section A, Page 17, Column 5. While it may seem unnecessary for ATF to provide such a statement of policy given the past interaction between ATF and industry, a clear and unambiguous statement of ATF policy on this subject would facilitate the administration of justice.

If our understanding, as outlined above, is somehow incorrect, please contact the undersigned at your earliest possible convenience. ATF's guidance and counsel will be needed to develop a joint ATF-NSSF cooperative partnership that would assist ATF in

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informing members of our industry of this policy and how licensees can implement the policy without interfering with ATF's regulatory function and the lawful distribution and sale of firearms and without interfering with on-going law enforcement investigations and without jeopardizing the lives of law enforcement officers and witnesses.

I appreciate your prompt attention to this matter and look forward to hearing from you at your earliest possible convenience.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence G. Keane".

Lawrence G. Keane

LGK/mas