



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, WV 25405

www.atf.gov

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AUG 26 2015

Mr. James Malarkey
President
X Products, LLC
3 Levantino Ln
Hot Springs Village, AR 71909-6719

Dear Mr. Malarkey:

This refers to your recent letter and accompanying sample (see enclosed photos) to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Firearms Technology Industry Services Branch (FTISB), in which you ask for a formal classification of your submitted sample; an accessory which when assembled to an AR-type firearm; is used to launch aluminum cans.

As you may be aware, the Gun Control Act of 1968 (GCA), 18 U.S.C. Section 921(a)(3), defines the term “**firearm**” as follows:

...(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

Further, the GCA, 18 U.S.C 921(a)(5), defines “**shotgun**,” in part, as—

*“...a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of an explosive to fire through **a smooth bore either a number of ball shot or a single projectile** for each single pull of the trigger.”*

The National Firearms Act of 1934 (NFA), 26 U.S.C. § 5845(a), defines “**firearm**” as—

*“... (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) **any other weapon**, as defined in subsection (e); (6) a machinegun; (7) any silencer (as defined in section 921 of title 18, United States Code); and (8) a destructive device. The term 'firearm' shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the ...[Attorney General] ...finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.”*

As you may be aware, the term “**any other weapon**,” as defined in the NFA, 26 U.S.C. § 5845(e), includes a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell.

The FTISB evaluation of the submitted item noted the physical characteristics which are described in detail herein. The device as evaluated by FTISB, is a cup-type device utilizing an AR-type upper assembly, AR-type barrel, a smooth-bore “cup” or tube, incorporating a bore diameter of approximately 2.62 inches and measuring approximately 11-1/8 inches in length. This cup or tube is assembled over the barrel portion to hold or “chamber” an aluminum can and to further assist in containing the propellant gases during firing to generate pressure to expel the subject can from the “cup” or tube.

Our evaluation found the barrel portion is modified with machined holes through the interior of barrel; forward of the chamber. The first machined hole is located approximately 1.05 inches in front of the chamber.

FTISB personnel observed the barrel portion in front of the chamber of the Can Cannon device is not rifled and does not incorporate a gas port or gas block. FTISB personnel further noted the submitted sample is devoid of a gas tube assembly. We found the barrel's chamber is capable of accepting a commercially available .223 Remington caliber ammunition cartridge and is devoid of any design features which would prevent the chambering and firing of a commercially available .223 Remington caliber ammunition cartridge; if assembled to a complete, functioning AR-type weapon receiver.

As a part of this device, we noted the muzzle portion of the barrel is internally threaded and incorporates a metal set screw which is removable. The diameter of the internally threaded hole measures approximately .265 inches in diameter.

Based on the information provided as well as a complete examination of the submitted "Can Cannon"; our Branch has determined the Can Cannon as received, in of itself is not a "firearm" as defined in 18 U.S.C. § 921(a)(3).

However, please be aware, due to the presence of an approximately 1.05 inch smooth-bore barrel, if the submitted Can Cannon were assembled to an AR-type firearm incorporating a shoulder stock or under the control of a person possessing such a receiver, this aggregate of parts would constitute such an aggregation, so that a barrel having a length of less than 18 inches in length; serves no useful purpose except for use in assembling a "firearm" as defined in the NFA, 26 U.S.C. § 5845(a)(1). Also, if the submitted device were assembled to an AR-type pistol receiver, this assembly would constitute the making of an "any other weapon" (AOW) a firearm as defined in the NFA, 26 U.S.C. § 5845(a)(5).

Such an assembly of either of the aforementioned scenarios is unlawful unless first submitting and securing approval of an ATF Form 1, *Application to Make and Register a Firearm*, and pay the applicable \$200 making tax.

To reiterate, an individual making an NFA class firearm prior to registration and tax paid, would be unlawful. Further, an individual making by modifying, an NFA weapon from a registered NFA weapon; would be required to submit an ATF Form 1 and pay the \$200 making tax prior to such making.

In conclusion, correspondence from our Branch is dependent upon the particular facts, designs characteristics or scenarios presented. Please be aware that although other cases may appear to present identical issues, this correspondence pertains to a particular issue or item. We caution against applying the guidance in this correspondence to other cases because complex legal or technical issues may exist that differentiate this scenario or item from others that only appear to be the same.

To facilitate return of your sample, please provide FTISB with the appropriate FedEx account information or prepaid shipping label within 60 days of receipt of this letter.

We trust the foregoing has been responsive to your request. If we can be of any further assistance, please contact our Branch at any time.

Sincerely yours,

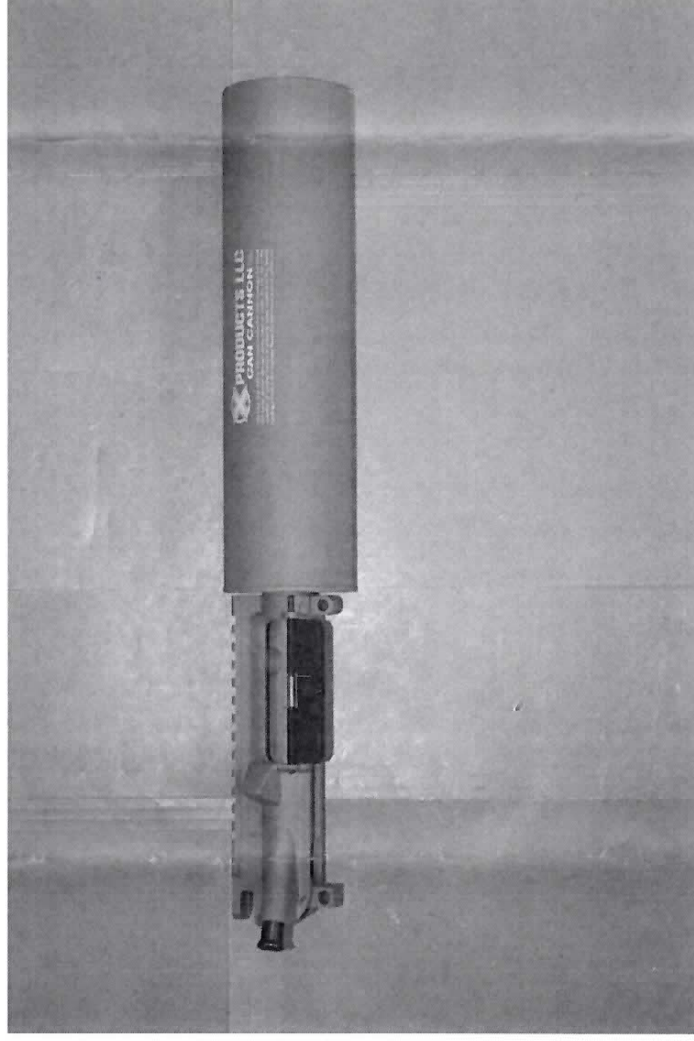


Max Kingery

Acting Chief, Firearms Technology Industry Services Branch

Enclosure

Can Cannon, Submitted by X Products, LLC on 4/6/15





Warning: Use .223 or 5.56 blank ammunition only. Loading a live round will cause serious damage, bodily harm or death. Do not aim in the direction of another person or property. Load muzzle end first, before loading a blank in the chamber. Read the instruction manual before use.



