



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Martinsburg, West Virginia 25405

www.atf.gov

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Mr. Matthew M. Carmel
Constitution Arms
12 Hoffman Street
Maplewood, New Jersey 07040

Dear Mr. Carmel:

This is in response to your correspondence dated December 17, 2007, to the Firearms Technology Branch (FTB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), along with a urethane plastic prototype of a "Palm Pistol" submitted for evaluation.

The prototype (see photo enclosure) consists of an oval gripping surface from which a barrel protrudes at a 90° angle. Although the submitted sample does not include rifling, your previously submitted blueprint indicates that production models will have rifled barrels and be chambered in 9x19mm caliber.

As background, the Gun Control Act of 1968 (GCA), 18 U.S.C. § 921(a)(3), defines the term "**Firearm**" as follows:

...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.

In addition, 27 CFR § 479.11 defines "**Pistol**" as follows:

...A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s).

As the submitted item represents a weapon intended to fire a projectile from one barrel when held in one hand, having a chamber as an integral part of the bore, and having a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore, an actual item having these features would meet the definitions of "firearm" and "pistol" set forth above. Such an item would be subject to all provisions of the GCA.

Mr. Matthew M. Carmel

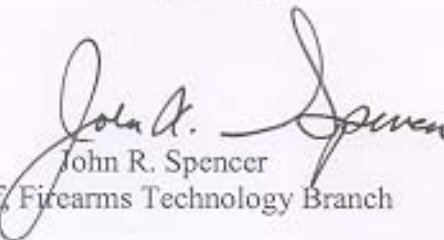
Also, since you have stated that you intend to manufacture these firearms, you should be aware that their manufacture and transfer must be conducted using an appropriate Federal Firearms License. In addition, all marking requirements detailed in 27 CFR § 478.92(a)(1) must be fulfilled.

We caution that ATF has issued a notice of proposed rulemaking to amend the definition of the term "pistol." Should the definition of "pistol" be amended, the classification of the submitted item could be affected.

To facilitate return of this sample, please provide FTB with an appropriate FedEx account number within 60 days of receipt of this letter.

We trust that the foregoing has been responsive to your request for an evaluation.

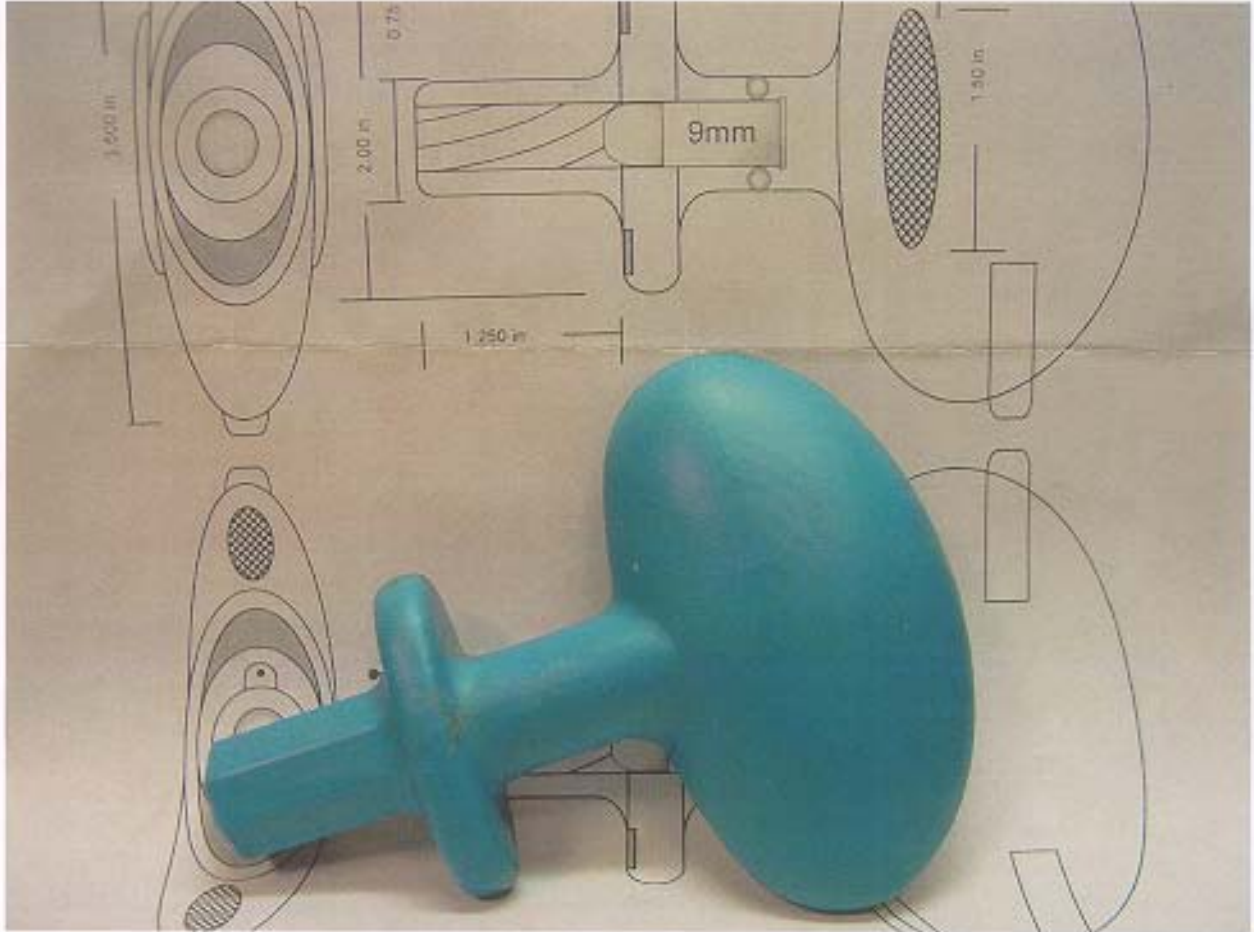
Sincerely yours,


John R. Spencer
Chief, Firearms Technology Branch

Enclosure

Mr. Matthew M. Carmel

Palm Pistol Prototype



November 2, 2007

John R. Spencer, Chief
Firearms Technology Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives
Martinsburg, WV 25401

Re: "Palm Pistol" classification for Matthew Carmel

Dear Mr. Spencer:

I am submitting the following on behalf of my client Matthew Carmel, who is seeking your classification of his design called the "Palm Pistol" as being a "pistol" and not "any other weapon" as defined in the National Firearms Act and regulations. He previously submitted a description of the design together with technical drawings.

By your letter to Mr. Carmel dated October 12, 2007, you stated: "We have reviewed your material, including the drawings; however, FTB will need to see a working sample of each type of firearm you intend to market to the public." Unfortunately, at this point, a working sample is prohibitively expensive. We are hoping that by supplementing Mr. Carmel's previous submission with the following material, you will be able to render a decision on the legal status of the Palm Pistol. We therefore offer the following further discussion.

Statutory Text and Regulations

26 U.S.C. § 5845(e) provides:

The term "any other weapon" means any weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18 inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. *Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.* (Emphasis added.)

27 C.F.R. § 479.11 provides in pertinent part: "*Pistol.* A weapon originally designed, made, and intended to fire a projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s)." This definition was adopted as a final rule in 1988. 53 F.R. 10480, 10508 (March 31,

1988).

As the description and drawings submitted by Mr. Carmel demonstrate, the Palm Pistol is encompassed in the above definition. It fires a projectile (bullet) from one barrel when held in one hand. Its chamber is an integral part of and is permanently aligned with the bore. It has a short stock designed to be gripped by one hand. This stock is at an angle to and extends below the line of the bore.

The stock on the Palm Pistol is at a 90 degree angle to the line of the bore and extends not only below the line of the bore, but also above the line of the bore, 1.75 inches in each direction from the bore's centerline. (By comparison, the North American Arms Mini-Revolver has a grip which extends only about 1.5 inches below the line of the bore.) The thumb instead of the index finger functions the trigger. In full view, the Palm Pistol appears to be a pistol by overall appearance. When held in the hand for use, the protruding barrel clearly indicates that the item is a pistol.

Prior Regulatory Definition and Federal Court Decision

Previously, the definition of "pistol" included not only generic terms from which current § 479.11 is derived, but also a clause excluding certain items: "The term shall not include gadget devices, guns altered or converted to resemble pistols, or small portable guns erroneously referred to as pistols, such as: Nazi belt buckle pistol, glove pistol, or one-hand stock guns firing fixed shotgun or fixed rifle ammunition." 26 C.F.R. § 179.35 ("*Pistol*"), adopted in 20 F.R. 6739, 6741 (Sept. 14, 1955) (effective Nov. 1, 1955).

At that time there was a design known as the "palm protector pistol" which the regulation did not mention. This was a multiple shot, rotary action turret revolver designed to fit the palm of the hand and be operated by a hinged lever mounted to the rear of the circular frame. The barrel protrudes between the fingers, and the chambers are arranged around an internal rotating disk.¹ (By contrast, the Palm Pistol at issue here has more of an ordinary protruding pistol grip rather than a circular grip.)

In a forfeiture action, the U.S. District Court for the Central District of California held that the palm protector pistol is a "pistol" and is not "any other weapon." *United States v. One Minneapolis Palm Protector Pistol*, No. 18450-PH, U.S. District Court – C.D. Ca. (Mar. 31, 1956).² The court rendered the following pertinent Findings of Fact:

¹See further description and pictures in <http://www.nfa.ca/content/view/106/197/>.

²Reprinted in Federal Firearms Act: Hearings before the Subcommittee to Investigate Juvenile Delinquency, Senate Judiciary Committee, 89th Cong., 1st Sess., at 835-37 (1965), and at http://www.cs.cmu.edu/afs/cs.cmu.edu/user/wbardwel/public/nfalist/us_v_one_minn.txt.

IV. That the evidence adduced by the respondent established that said weapons were and are pistols and/or revolvers and that said weapons did not have to be registered under the National Firearms Act or under any other regulation or law of the United States; that said weapons were an exception to taxation under the National Firearms Act and that the amendments to the Code of Federal Regulations effective November 1, 1955, do not alter the status of said weapons for they are pistols and/or revolvers under said amendments.

V. That the United States of America, libelant, has failed to prove that said weapons, either at time of seizure or at any time of the trial, were other than pistols and/or revolvers, and further did not prove that said weapons, or any of them, are a "gadget device," a gun altered or converted to resemble pistols, or was a small portable gun erroneously referred to as pistols.

Accordingly, the court also rendered Conclusions of Law, including the following holding:

That the Minneapolis palm protector pistol and the Chicago palm protector pistol are pistols and/or revolvers as defined in the Code of Federal Regulations, title 26, section 179.35, and section 179.37,³ as well as is so commonly known and considered in the weapon trade and industry; that the said weapons, and each of them, are not required to be registered, nor are they taxable under the provisions of the National Firearms Act; that said weapons are not "gadget devices" but that on the contrary are recognized established pistols and/or revolvers.

After the above decision, the definition of "pistol" in the regulations was amended, but the substance remained the same and no language was included to encompass the Palm Protector Pistol.⁴ The significance of the decision here is that this is the only known federal judicial opinion

³26 C.F.R. § 179.35 ("Pistol"), 179.37 ("Revolver") (1955).

⁴26 C.F.R. § 179.35 was amended to state:

'Pistol' shall mean a weapon originally designed, made, and intended to fire a small projectile (bullet) from one or more barrels when held in one hand, and having (a) a chamber(s) as an integral part(s) of, or permanently aligned with, the bore(s); and (b) a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore(s). The term shall not include any gadget device, any gun altered or converted to resemble a pistol, any gun that fires more than one shot, without manual reloading, by a single function of the trigger, or any small portable gun such as: Nazi belt buckle pistol, glove pistol, or a one-hand stock gun designed to fire fixed shotgun ammunition.

Quoted in *Bryan v. United States*, 373 F.2d 403, 406 n. 4 (5th Cir. 1967). This definition

on the Palm Protector Pistol, and the court held it to be a “pistol.” The Palm Pistol design at issue here has the appearance of being more of a conventional pistol than did the Palm Protector Pistol.

The Legislative History and Judicial Decisions Do Not Apply the “Any Other Weapon” Category to Anything Resembling the Palm Pistol

Over the years, types of items in the “any other weapon” category have been identified in legislative history and judicial decisions, but nothing like the Palm Pistol (or even the traditional Palm Protector Pistol) was mentioned as included. Congress redefined ‘firearm’ in 1960 to include in part “any other weapon, except a pistol or revolver, from which a shot is discharged by an explosive if such weapon is capable of being concealed on the person” P.L. 86-478, 74 Stat. 149, 150 (1960). A committee report explained: “Firearms in the ‘any other weapon’ category included gadget-type and unique weapons, which are often sought after by gun collectors.” Senate Report No. 1303, in U.S. Code Congressional & Administrative News 1960, p. 2113.

The above-quoted decision in *United States v. One Minneapolis Palm Protector Pistol* was discussed and reprinted in the legislative record leading to enactment of the Gun Control Act of 1968, but none of the witnesses from the Department of Treasury mentioned the decision as prompting the need to amend the NFA, or sought to argue that the case was wrongly decided. See Federal Firearms Act: Hearings before the Subcommittee to Investigate Juvenile Delinquency, Senate Judiciary Committee, 89th Cong., 1st Sess., at 65 ff. (1965) (testimony of I.R.S. Commissioner Sheldon S. Cohen); *id.* at 835-37 (reprint of decision).

A section-by-section analysis of the definition of “any other weapon” in the 1968 legislative history mentions “weapons with combination shotgun and rifle barrels inches or more but less than 18 inches in length,” a pistol or revolver with a barrel “with a smooth bore designed or redesigned to fire a fixed shotgun shell,” and a weapon “which may be readily restored to fire.” Report No. 1501, Senate Committee on Judiciary, 90th Cong., 2d Sess., 46 (1968). “Also smooth-bore pistols and revolvers designed to fire shotgun shells, [and] concealable combination rifles and shotguns . . . would be included.” Conference Report for Gun Control Act of 1968, Report No. 1956, 90th Cong., 2d Sess., 34 (1968).

None of the cases decided on the “any other weapon” category have mentioned anything remotely like the Palm Pistol. *E.g.*, *United States v. Fogarty*, 344 F.2d 475, 477 (6th Cir. 1965) (burglar device held AOW); *Bryan v. United States*, 373 F.2d 403 (5th Cir. 1967) (jury issue whether smoothbore shot handgun is AOW); *Davis v. Erdmann*, 607 F.2d 917, 919 (10th Cir. 1979) (firearm with appearance of ordinary pocket knife is AOW); *United States v. Fix*, 4 Fed. Appx. 324 (9th Cir. 2001) (pistol with added foregrip not AOW because, per § 179.11, it was “*originally* designed, made, and intended to fire . . . when held in one hand” and could still do so, and because it had a rifled bore).

remained essentially the same in 36 F.R. 14255, 14258 (Aug. 3, 1971).

Proposed Re-addition in the Regulation of Items Excluded from Definition of “Pistol”

In the final regulations promulgated after passage of the Firearms Owners’ Protection Act of 1986, ATF adopted the current one-sentence definition of “pistol.” 53 F.R. 10480, 10508 (March 31, 1988). It deleted the prior second sentence, a list of exclusions from the definition of pistol, including a gadget device, a gun altered or converted to resemble a pistol, any gun that fires more than one shot, without manual reloading, by a single function of the trigger, or any small portable gun such as: Nazi belt buckle pistol, glove pistol, or a one-hand stock gun designed to fire fixed shotgun ammunition.

A current proposal would revert to a version of the prior definition of “pistol” to include the following: “The term shall not include any weapon disguised to look like an item other than a firearm, such as a pengun, wallet gun, belt buckle gun, pager gun or gadget device, or any gun that fires more than one shot, without manual reloading, by a single function of the trigger.” Notice of Proposed Rulemaking, 70 F.R. 17624, 17626 (April 7, 2005). None of these terms would encompass the Palm Pistol at issue here.

Conclusion

We would appreciate your response to Mr. Carmel’s submission in light of the above further discussion. As noted, the production of a working model would be very expensive. Moreover, a working model should not be necessary to verify that the Palm Pistol is a “pistol” as defined in 27 C.F.R. § 479.11, in that Mr. Carmel’s description and drawings clearly show that it fires a bullet from one barrel when held in one hand, has a chamber as an integral part of, or permanently aligned with the bore; and a short stock designed to be gripped by one hand and at an angle to and extending below the line of the bore.

Please let us know if you need any further information, and thank you for your assistance.

Sincerely,

Stephen P. Halbrook