

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

WILLIAM AKINS,)	
)	
Plaintiff,)	CIVIL ACTION FILE NO.
)	
v.)	8:08CV00988T-26TGW
)	
THE UNITED STATES)	
)	
Defendant.)	

STATEMENT OF DISPUTED FACTS¹

1. The purpose of the Akins Accelerator is to replace the stock of a host firearm, a semiautomatic rifle, and through controlled “bump firing,”² increase the rate of fire

¹ As Noted in Plaintiff’s accompanying Brief, Plaintiff cannot readily tell what facts are disputed because Defendant did not comply with the Court’s Scheduling Order requiring a moving party to confer with opposing counsel re agreement on facts. Likewise, Defendant did not file a separate Statement of Undisputed Facts. Plaintiff has endeavored not to state facts here that were stated somewhere in Defendant’s brief, but there may be some unintentional overlap.

² “Bump firing” is a term used to describe a method of achieving rapid firing of a semiautomatic firearm. The theory behind bump firing is that the recoil of the firearm forces the firearm to move rearward and disengage the trigger from the shooter’s trigger finger (thus resetting the trigger for another shot through the normal operation of the firearm), while forward tension is applied to the barrel or fore end of the firearm (such as by the left hand of a right-handed shooter), resulting in the firearm (and trigger) being forced forward again and causing the trigger to be “pulled” by the tension in the shooter’s finger. If done well, the result is that the firearm achieves firing rates equivalent to those of fully automatic weapons. The crucial aspects of bump firing are 1) the shooter must maintain tension in his trigger finger (so that the forward motion of the firearm and trigger meet the resistance of the finger and cause another shot to fire), and 2) forward pressure on the barrel or fore end of the firearm (such as by the non-dominant hand) to counteract the rearward motion caused by the

- of the semiautomatic rifle while maintaining aiming accuracy. Decl. of William Akins, ¶ 3.
2. Plaintiff was not concerned that the Akins Accelerator “would violate the Gun Control Act.” Plaintiff merely sought classification of the device to confirm his and his attorney’s opinions regarding the device. *Id.*, ¶ 4.
 3. To understand the operation of the Akins Accelerator, one can consider a simple example. Assume a conventional semiautomatic rifle³ weighing about five pounds. The “trigger pull” (the amount of force needed to pull the trigger hard enough to fire the gun) is about two pounds. It is not difficult to imagine that a shooter could load such a rifle, point it at the ground with his finger inside the trigger guard, and “drop” the rifle on his finger, held rigid and motionless. The rifle’s own weight easily exceeds the trigger pull, so that the very act of dropping the rifle on the shooter’s finger would cause the rifle to fire. *Id.*, ¶ 5.
 4. The recoil or “kick” of the rifle would cause the rifle to “jump” off the rigid finger of the shooter while the semiautomatic nature of the gun would ready it for another shot. After the recoil is overcome by gravity, the rifle would fall back down onto the shooter’s finger, causing another shot to fire. This process would result in the rifle “bouncing” on the shooter’s trigger finger and the rifle shooting randomly into the ground. The process would continue until the rifle exhausted its supply of

recoil.

³ A semiautomatic rifle is one that, when the rifle is fired, the spent shell casing ejects from the firing chamber and then a fresh, live round is loaded into the chamber for the next shot. The rifle will not fire a second time unless the trigger is released and pulled again, but no action on the part of the shooter is necessary other than

- ammunition (or the shooter shot himself in the foot). This trivial example prepares the reader for an explanation of the Akins Accelerator. *Id.*, ¶ 6.
5. The Akins Accelerator works on the same principle as the bouncing rifle. The force of gravity is replaced with a spring, however, so that the rifle can be fired in any direction and not just at the ground⁴. In addition, two steel rods along which the rifle mechanism glides constrain the “bouncing” motion to straight line motion, so that the rifle can be aimed at a target rather than fired randomly. Finally, the Akins Accelerator features finger stops against which the finger can apply isometric pressure instead of trying to remain rigid and motionless in the air. The spring and steel rods are located in the stock, and not the unmodified host rifle. The host rifle is unmodified in any way. This overview of the Akins Accelerator should be kept in mind while reading the more detailed description that follows. *Id.*, ¶ 7.
6. The Akins Accelerator is a replacement stock for the host firearm.⁵ The factory stock is removed and the Akins Accelerator put on in its place.⁶ The barrel and firing mechanism of the factory Ruger 10/22 are mounted into the Akins Accelerator. The spring and steel rods described above are internal to the Akins Accelerator. In the finished assembly (Akins and Accelerator and Ruger 10/22 firing components

repeatedly pulling and releasing the trigger. Semiautomatic rifles are quite common and are perfectly legal to purchase and own for people not otherwise prohibited from owning firearms (e.g., convicted felons).

⁴ Remarkably, it is this spring, replacing gravity and allowing a rifle to be aimed at something other than the ground that Defendant has deemed to be a machine gun.

⁵ The production model of the Akins Accelerator was made for a single host firearm: the popular Ruger 10/22 semiautomatic .22 caliber rifle. The theory of operation, however, could be used in a variation adapted for virtually any semiautomatic firearm. For simplicity’s sake, the host firearm will be referred to as a Ruger 10/22.

⁶ The factory stock is a single piece that consists of the fore-end, held by the shooter’s non-dominant hand while shooting, and the butt-end which is placed against the shooter’s shoulder while firing.

together), the replacement stock remains stationary and the Ruger 10/22 portion (barrel, receiver, and trigger group) is allowed to reciprocate along the steel rods. The force of the recoil send the Ruger 10/22 rearward until the spring of the Akins Accelerator forces the Ruger 10/22 forward again. The result is that the Ruger 10/22 “bounces” in a reciprocating motion inside the Akins Accelerator in the same fashion as the factory rifle that “bounced” on the shooter’s finger. The other innovation on the Akins Accelerator is that it has finger stops for the trigger finger. When the assembly is fired, the trigger finger pulls the trigger rearward until the finger encounters the stops located slightly to the rear and on either side of the trigger. Thus, when the assembly is properly adjusted, the trigger finger can move rearward just far enough to fire the rifle before the finger is stopped by the finger stops. Then, as the rifle moves rearward (due to the recoil discussed above), the trigger “disappears” between the finger stops and moves inside a recess in the grip of the Akins Accelerator stock, losing contact with the trigger finger. The shooter thus can maintain tension against the finger stops, which counter the tendency of the finger to follow the trigger rearward. *Id.*, ¶ 8.

7. Finally, as the rifle moves forward again due to the forward tension supplied by the spring, the trigger re-engages the trigger finger. Because the shooter maintains rearward pressure in the trigger finger, the trigger is “pulled” again (actually pushed into the finger), and the rifle fires. To summarize, a properly adjusted assembly (Ruger 10/22 and Akins Accelerator) will bump fire rapidly while achieving higher accuracy than is possible with other means of bump firing. *Id.*, ¶ 9.

8. The Ruger 10/22 reciprocates approximately 5/8 of an inch in an Akins Accelerator. *Id.*, ¶ 10.
9. Plaintiff saw the market value in the Akins Accelerator, even though he knew it was not a machine gun because the trigger must be functioned for each and every shot fired. For his customers' concerns, he wanted to ensure that there was no question regarding its status as not regulated by the federal government. Plaintiff is not licensed to manufacture firearms, including machine guns, and ***had no interest in entering that industry***. Plaintiff obtained an opinion letter from a nationally-recognized firearms attorney that the Akins Accelerator was not a machine gun, or a firearm at all, subject to federal regulation. Having already established that the Akins Accelerator is not a machine gun, in March 2002, he forwarded this letter, along with a copy of his patent, to the Firearms Technology Branch ("FTB") of the U.S. Department of Justice's Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF"), asking for a classification of the device.⁷ *Id.*, ¶ 11.
10. When FTB had not replied to his request 15 months later, Plaintiff sent a second, substantially similar request in June 2003. In July 2003, FTB responded to the first request, asking for a sample to test and inspect. Eleven days later, Plaintiff's business associate, Tom Bowers, sent a sample to FTB. In October 2003, FTB responded to Plaintiff's second request, asking for a sample to test and inspect. Because he already had submitted a sample, Plaintiff did not respond to the October letter. *Id.*, ¶ 12.

11. In November 2003, FTB responded to Mr. Bowers that it had inspected the sample and tested it on a host firearm.⁸ Although FTB said the sample did not operate as intended, FTB nonetheless concluded, “Our examination has determined that the submitted stock assembly does not constitute a machinegun as defined in the NFA [National Firearms Act].” *Id.*, ¶ 13.
12. The November letter left an ambiguity: was the device not a machine gun because it did not function properly, or was it not a machine gun even if it functioned as intended? To resolve all doubts, Mr. Bowers called FTB and later wrote (in January 2004) regarding this issue. FTB responded later that month with, “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.” *Id.*, ¶ 14.
13. Satisfied with legal advice and two letters from Defendant that the Akins Accelerator was not a machine gun, Plaintiff invested his life savings into moulds, manufacturing capabilities, and marketing necessary to go into commercial production and sale.⁹ *Id.*, ¶ 15.

⁷ FTB routinely classifies devices for anyone requesting a classification.

⁸ The sample provided was made for an SKS-type semiautomatic rifle. As noted above, however, the theory of operation can be applied to virtually any semiautomatic host firearm and is not dependent on the specific type of firearm.

⁹ At the time of production, the Akins Accelerator was manufactured and sold by a corporation, Akins Group, Inc. Plaintiff is the successor in interest to this dissolved corporation, so no distinction is made between actions taken by Plaintiff personally or by the corporation.

14. When Plaintiff ultimately entered the market with the Akins Accelerator in 2006, initial response to the product was enthusiastic. On his way to recovering his investment and turning a profit, Plaintiff's success was destined to be short-lived. *Id.*, ¶ 16.
15. On October 31, 2006, ATF lawyer Ficaretta began trying to schedule a meeting "to discuss the classification" of the Akins Accelerator. At some point after this, an undated internal ATF memo says, "***The marketed device was radically different from the prototype*** that was previously submitted. On further review and test fire, FTB determined that the operating principle was that of a machinegun." (Emphasis supplied). Doc. 19-3, p. 58; Doc. 19-4, p. 7.
16. On November 22, 2006, FTB sent Plaintiff a letter advising him that the Akins Accelerator had been classified as a machine gun. Contrary to the recent internal memo, the letter said, "***[T]he theory of operation of the prototype and the Akins Accelerator is the same.***" (Emphasis supplied). In the letter, ATF equated "function of the trigger" with "pull of the trigger." At no time prior to the November 22, 2006 letter, had Defendant given Plaintiff any notice or other indication it was revisiting the classification of the Akins Accelerator. Doc. 19-4, pp. 8-10.
17. On December 13, 2006, ATF issued a rulemaking, ATF Rul. 2006-2, declaring a device exactly meeting the description of the Akins Accelerator to be a machine gun. The rulemaking also equated "function of the trigger" with "pull of the trigger." ATF did not publish a notice of proposed rulemaking or seek comments pursuant to 5 U.S.C. § 553. Doc. 19-4, pp. 17-19.

18. On February 6, 2007, Plaintiff's counsel wrote ATF asking that it reconsider its ruling. The letter informed ATF that it had evidence of errors on ATF's part. Subsequently, Plaintiff's counsel made multiple requests for a hearing on the subject. ATF ultimately denied reconsideration and declined to hold a hearing. Doc. 19-4, pp. 26-39.
19. ATF determined that the spring was the part that made the Akins Accelerator a machine gun. Thus, it required Plaintiff to remove the springs from his inventory of Akins Accelerators, as well as those from his personally-owned Akins Accelerators. Plaintiff likewise was required to provide ATF with a customer list, and ATF required purchasers of Akins Accelerators to remove the springs. All removed springs were seized by ATF. Now classified as machine guns, there no longer is a market for Akins Accelerators. Plaintiff was forced to close down his company and cease production and sales, leaving him in financial ruin. Akins Decl., ¶ 17.
20. In an undated internal memo apparently written after the events described above, FTB Assistant Chief Richard Vasquez distinguished the Akins Accelerator from other devices because the shooter, he said, only has to have a single "initial conscious effort to pull the trigger." (Emphasis in original). He went on to say the "firearm continues to fire without interruption until a second, *conscious* releasing of the trigger stops the firing sequence." (Emphasis supplied). In the same memo, Mr. Vasquez retreated from the public position of the ATF by saying, "[I]t is FTB's opinion that 'function' is the best description and does not limit ATF to a narrow definition such as 'pull only.'" Doc. 19-4, pp. 57-59.

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**JOHN R. MONROE,
TRIAL COUNSEL**

 /s/ John R. Monroe

John R. Monroe
Attorney at Law
9640 Coleman Road
Roswell, GA 30075
Telephone: (678) 362-7650
Facsimile: (770) 552-9318
john.monroe1@earthlink.net

ATTORNEY FOR PLAINTIFF