

Final Notice of Denial of Application, Revocation, Suspension and/or Fine of Firearms License

In the matter of:

- The application for license as a/an _____, filed by:
or
 License Number 3-37-083-01-2K-03898 as a/an dealer in firearms other than destructive devices

_____, issued to:

Name and Address of Applicant or Licensee (*Show number, street, city, state and ZIP Code*)

Top of the Line, LLC d/b/a Outrageous Outdoors
902 South State Street
Jerseyville, Illinois 62052

Notice Is Hereby Given That:

- A request for hearing pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5) was not timely filed. Based on the findings set forth in the attached document, your
- license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
 - 15 calendar days after receipt of this notice, or _____,
 - license is suspended for _____ calendar days, effective _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
 - licensee is fined \$ _____, payment due: _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
- After due consideration following a hearing held pursuant to 18 U.S.C. § 923(f)(2) and/or 922(t)(5), and on the basis of findings set out in the attached copy of the findings and conclusions, the Director or his/her designee concludes that your
- application for license described above is denied, pursuant to 18 U.S.C. 923(d).
 - application for renewal of license described above is denied pursuant to 18 U.S.C. 923(d), effective:
 - 15 calendar days after receipt of this notice, or _____,
 - license described above is revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p), effective:
 - 15 calendar days after receipt of this notice, or upon receipt _____,
 - license is suspended for _____ calendar days, effective _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).
 - licensee is fined \$ _____, payment due: _____, pursuant to 18 U.S.C. § 922(t)(5) or 924(p).

If, after the hearing and receipt of these findings, you are dissatisfied with this action you may, within 60 days after receipt of this notice, file a petition pursuant 18 U.S.C. § 923(f)(3), for judicial review with the U.S. District Court for the district in which you reside or have your principal place of business. If you intend to continue operations after the effective date of this action while you pursue filing for judicial review or otherwise, you must request a stay of the action from the Director of Industry Operations (DIO), Bureau of Alcohol, Tobacco, Firearms and Explosives, at 1251 NW Briarcliff Parkway Suite 600 Kansas City MO 64116, prior to the effective date of the action set forth above. You may not continue licensed operations unless and until a stay is granted by the DIO.

Records prescribed under 27 CFR Part 478 for the license described above shall either be delivered to ATF within 30 days of the date the business is required to be discontinued or shall be documented to reflect delivery to a successor. See 18 U.S.C. 923(g)(4) and 27 CFR § 478.127.

After the effective date of a license denial of renewal, revocation, or suspension, you may not lawfully engage in the business of dealing in firearms. Any disposition of your firearms business inventory must comply with all applicable laws and regulations. Your local ATF office is able to assist you in understanding and implementing the options available to lawfully dispose of your firearms business inventory.

Date	Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official	Signature
05/20/2022	William J. Miller Director, Industry Operations ATF Kansas City Field Division	<i>William J. Miller</i>

I certify that, on the date below, I served the above notice on the person identified below by:

- Certified mail to the address shown below.
Tracking Number: 7620 1290 0001 6240 Or Delivering a copy of the notice to
9698 the address shown below.

Date Notice Served	Title of Person Serving Notice	Print Name and Title of Person Served
5.24.22	Administrative Assistant	(b)(6)
Address Where Notice Served		
902 South State Street, Jerseyville, Illinois 62052		

Note: Previous Edition is Obsolete

Top of the Line LLC d/b/a Outrageous Outdoors
902 South State Street
Jerseyville, IL 62051

RE: FFL # 3-37-083-01-2K-03898

Top of the Line LLC d/b/a Outrageous Outdoors, 902 South State Street, Jerseyville, IL 62051 (“Licensee”) holds a Federal firearms license, under number 3-37-083-01-2K-03898, as a dealer in firearms other than destructive devices, issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) pursuant to the Gun Control Act of 1968 (GCA), as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478.

On December 14, 2021, ATF issued a Notice to Revoke License, ATF Form 4500 (hereinafter “Initial Notice”) based upon violations discovered during an inspection commencing on June 29, 2021. [Gov. Ex. F; *see also* Gov. Ex. G, *Amended Notice used at hearing*]. Licensee timely requested a hearing to review the Initial Notice.

The hearing was held on April 5, 2022, at the ATF St. Louis Field Office located in St. Louis, Missouri. The hearing was conducted by ATF Kansas City Field Division Director, Industry Operations (DIO) William J. Miller. The Government was represented by ATF Senior Attorney (b)(6) ATF Industry Operations Investigator (IOI) (b)(6) provided testimony as to his inspection.

Licensee appeared by and through Licensee’s responsible person, Robert “Bob” Jones, along with attorney (b)(6). The hearing was recorded and transcribed through a court reporting service. The testimony and exhibits provided by both parties at the hearing constitute the administrative record in this proceeding.

Findings and Conclusions

Having considered the entirety of the record in this proceeding, I make the following findings and conclusions:

Licensee obtained a Federal firearms license in 2013. At that time, ATF held a qualification inspection with Licensee and reviewed the pertinent Federal firearms laws and regulations with Bob Jones and Kimberly Jones as the responsible persons for the licensed incorporated business entity, Top of the Line LLC. ATF provided Licensee with resources and reference information regarding the expectations and requirements for a Federal firearms licensee.

Following the 2013 qualification inspection, Bob Jones and Kimberly Jones signed the Acknowledgment of Federal Firearms Regulations Form indicating that ATF explained and reviewed the information listed on the form relating to firearms laws and regulations and answered all questions regarding the information. [Gov. Ex. B]. They further acknowledged

their responsibilities as responsible persons for Licensee to be aware and familiar with all the laws and regulations governing a licensed firearms business. [*Id.*].

Beginning on June 29, 2021, ATF conducted a compliance inspection at Licensee's business premises. The violations found during this inspection were the basis for the Initial Notice and corresponding Appendix, which is incorporated herein, and discussed more as follows:

Violation #1 - Transfer in Violation of Law

On August 18, 2020, Licensee willfully sold or disposed of a firearm to a person who Licensee knew or had reasonable cause to believe was subject to Federal firearms disabilities, in violation of 18 U.S.C. § 922(d) and 27 C.F.R. § 478.99(c).

As reflected in Government's Exhibit 1.1, (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)

(b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)

(b)(3) - 112 Public Law 55 125 Stat 552 Despite these affirmative firearm prohibition responses, Licensee through responsible person Bob Jones, completed the transfer of the firearm on August 18, 2020.

At the hearing Bob Jones testified that he knew (b) (6) as a person that "runs a hunting club that comes to the store frequently." [Hearing Transcript, pgs. 158-59]. Mr. Jones presented other 4473 Forms to demonstrate other transactions in which Licensee sold (b)(6) firearms where the prohibited status questions on each respective form were checked "no." [Lic. Ex. L-2 and L-3]. However, Licensee acknowledged that he "failed to look at" the yes or no answers on the form related to this violation and that the firearm transfer should not have happened, regardless of his familiarity with (b)(6) [See Hearing Transcript, pgs. 172-174].

I find that Licensee should not have transferred the firearm purchased by (b)(6) on August 18, 2020 based upon Transferee's affirmative responses to the firearm prohibition questions on this particular Form 4473. Licensee was aware of this requirement based upon the instructions provided when the license was first issued, as well as instructions detailed on the Form 4473 itself and Mr. Jones' own admissions at the hearing. I further conclude that this violation was willful.

Violations #2 and #3 - Acquisition and Disposition Records

On (b)(3) - 112 occasions, Licensee willfully failed to timely and/or accurately record the acquisition of firearms, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.125(e).

On (b)(3) - 112 occasions¹, Licensee willfully failed to timely and/or accurately record the disposition of firearms, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.125(e).

¹ Although the initial notice of revocation lists (b)(3) - 112 occasions, there are duplicative numbers 148 specified in the Appendix. [Gov. Ex. F]. The Government submitted an amended notice of revocation for purposes of the hearing to correct this scrivener's error and to separate violations 148 and 148B

At the time of the qualification inspection, Licensee was instructed on, and was made aware of, the obligations to timely and correctly record firearms acquisitions and dispositions. Licensee acknowledged knowing this requirement based upon the signed 2013 Acknowledgment of Federal Firearms Regulations [Gov. Ex. B]. At the hearing, Licensee acknowledged they “started falling behind” on documenting acquisition and disposition records and “to catch up with them...after you are there eight to ten hours a day...you really don’t want to spend the time afterwards to try to catch up.” [Hearing Transcript, pg. 160]. As the responsible person for Licensee, Bob Jones acknowledged it was his obligation to keep accurate acquisition and disposition records and he “did not do that.” [*Id.* at 161]. Licensee further showed the ability to properly complete acquisition and disposition records on other occasions.

I find that Licensee willfully failed to record the firearm acquisitions for [REDACTED] firearms located in inventory at the time of the inspection. I also find that Licensee willfully failed to record the dispositions of [REDACTED] firearms, resulting in [REDACTED] firearms not being accounted for in any manner. This violation made it necessary to report these [REDACTED] missing firearms as lost or stolen in the national law enforcement database (known more officially as the National Crime Information Center system).

Violations #4 and #5 - Background Checks

On eight occasions, Licensee willfully transferred a firearm to an unlicensed person without first contacting the National Instant Criminal Background Check System (“NICS”)² and waiting three days before allowing the transfer, in violation of 18 U.S.C. § 922(t) and 27 C.F.R. § 478.102(a).

On five occasions, Licensee willfully transferred a firearm to an unlicensed person after failing to initiate a new NICS after a 30-day lapse of the prior NICS check, in violation of 27 C.F.R. 478.102(c)

Upon reviewing Government’s Exhibits 4.1A to 4.8B and 5.1A to 5.5, along with the testimony provided for these violations, I make the following determinations:

- As to Transferee (b)(6) [REDACTED] a NICS check was not completed prior to the transfer of the firearm by Licensee. [Gov. Ex. 4.1A and 4.1B].
- As to Transferee (b)(6) [REDACTED] a NICS check was not completed prior to the transfer of the firearm. [Gov. Ex. 4.2A and 4.2B].
- As to Transferee (b)(6) [REDACTED] a NICS check was not completed prior to the transfer of the firearm by Licensee. [Gov. Ex. 4.3A and 4.3B].

respectively. [Gov. Ex. G]. The total occasions of disposition violations with this correction would be [REDACTED]

² NICS is operated by the Federal Bureau of Investigation (FBI).

- As to Transferee (b)(6) a NICS check was not completed prior to the transfer of firearm by the Licensee. [Ex. 4.4A, 4.4B and 4.4C]
- As to Transferee (b)(6) a NICS check was not completed prior to the transfer of firearm. [Gov. Ex. 4.5A and 4.5B].
- As to Transferee (b)(6) a NICS check was not completed prior to the transfer of the firearm by Licensee. [Gov. Ex. 4.6A and 4.6B].
- As to Transferee (b)(6) a NICS check was not completed prior to the transfer of firearm by Licensee. [Gov. Ex. 4.7A and 4.7B].
- As to Transferee (b)(6) a NICS check was not completed prior to the transfer of a firearm by Licensee. [Gov. Ex. 4.8A and 4.8B].

During the inspection, Bob Jones explained to IOI (b)(6) that “when they gave the guns back, they didn’t do the 4473 or just misplaced the 4473. And whenever we give consignments back guys complain and say that’s my gun.” [Gov. Ex. E at 1-2 and Hearing Transcript, pg. 83]. (b)(6) admitted that when “I bought them...I know I had to but I just did not” run a NICS check. [*Id.* at 2].

At the hearing, Licensee did not contest that Licensee had returned consignment guns without completing a NICS background check but understood that it should have run the NICS background check prior to either transferring or returning any firearm. [Hearing Transcript, pg. 175]. Therefore, I find that in each of these eight occasions, a NICS background was not conducted prior to the transfer of firearm, as required by the law and regulations.

Regarding the other five NICS violations, all firearms were transferred at least 30 days after the initial NICS check as follows:

- As to Transferee (b)(6) a NICS check with a “proceed” was obtained on June 19, 2020. [Gov. Ex. 5.1A]. The firearm was transferred by Licensee to (b)(6) on July 21, 2020. [*Id.*] Illinois State Police records confirmed a NICS check for (b)(6) was run on June 19, 2020, however no additional NICS check was run to lawfully permit this transfer of firearm. [Gov. Ex. 5.1B].
- As to Transferee (b)(6) a NICS check was originally run on March 21, 2020 and Licensee received a response of “delayed” until March 29, 2020. [Gov. Ex. 5.2A]. The firearm was transferred by Licensee to (b)(6) on September 2, 2020. [*Id.*] Illinois State Police records confirmed a NICS check for (b)(6) was run on March 21, 2020, however no additional NICS check was run to lawfully permit this transfer of firearm. [Gov. Ex. 5.2B].
- As to Transferee (b)(6) a NICS check was originally run on July 8, 2020 and Licensee received a response of “delayed” until July 14, 2020. [Gov. Ex. 5.3A]. The firearm was

transferred by Licensee on August 31, 2020. [*Id.*] Illinois State Police records confirmed a NICS check for (b)(6) was run on July 8, 2020, however no additional NICS check was run to lawfully permit this transfer of firearm. [Gov. Ex. 5.3B].

- As to Transferee (b)(6) a NICS check was originally run on July 22, 2020 and Licensee received a response of “proceed.” [Gov. Ex. 5.4]. Licensee transferred the firearm on September 1, 2020. [*Id.*] There was not any offered Illinois State Police NICS check records for (b)(6) and IOI (b)(6) did not find any evidence to conclude Licensee conducted a new NICS check to lawfully permit transfer of this firearm. [Hearing Transcript, pg. 93].
- As to Transferee (b)(6) a NICS check was originally run on an unknown date³ and Licensee received a response of “proceed” on September 22, 2020. [Gov. Ex. 5.5]. Licensee transferred the firearm on November 4, 2020. [*Id.*] There was not any offered Illinois State Police NICS check records for (b)(6) and IOI (b)(6) did not find any evidence to conclude Licensee conducted a new NICS check to lawfully permit transfer of this firearm. [Hearing Transcript, pg. 95].

During the inspection, Bob Jones explained that the 30-day lapse in the NICS check prior to transfer of the firearms occurred because “we didn’t check and see the 30 days had lapsed. It was a failure to do so and we must do it.” [Gov. Ex. E].

At the hearing, Licensee admitted Licensee knew that Licensee couldn’t transfer a firearm after a 30-day lapse of a NICS check and that they “messed up” in allowing this to happen. [Hearing Transcript, pg. 176].

Therefore, I find that in the three occasions involving (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) a NICS background check had lapsed and a new NICS check was not conducted prior to the transfer of firearm, as required by the law and regulations.

In the two occasions of (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) there were not any offered Illinois State Police Records related to NICS checks conducted on these individuals. Based upon the recorded NICS transaction information in the applicable Form 4473, I give Licensee the benefit of the doubt that a NICS check was originally run. However, even with that, the NICS check had lapsed by at least 30 days based upon the recorded date of the initial NICS check and the date of the transfer of firearm on the Form 4473. Based upon IOI (b)(6) testimony, I find that there were not any records or evidence to believe a new NICS check was run to allow transfer of the firearm on the actual date of transfer, as required by law and regulations.

I find Licensee admitted that Licensee was aware of the requirement to contact NICS prior to the transfer of a firearm, as well as not transferring a firearm after a 30-day lapse from the NICS check. Licensee received such instruction as part of Licensee’s license application and

³ Section 19.a (the date the transferee’s identifying information was transmitted by Licensee to NICS) of the applicable Form 4473 is blank. However, Sections 19.b, 19.c and 19.d all have information written in the boxes to suggest that a NICS check (Transaction number (b)(6)) was actually run with a return of a “delayed” response and a proceed authorized on “9/22/2020.” [Gov. Ex. 5.5].

confirmed knowledge of such instructions on the 2013 Acknowledgement of Federal Firearms Regulations. [Gov. Ex. B]. Licensee has demonstrated on other occasions the ability to properly follow the NICS background requirements. However, Licensee nonetheless failed to comply in these instances as discussed. Therefore, I conclude that each NICS violation was committed and was done willfully.

Violation #6 - Multiple Sales

On (b)(3) - 112 Pub occasions, Licensee willfully failed to timely and/or accurately report the sale or other disposition of two or more pistols and/or revolvers during any five consecutive business days to an unlicensed person, in violation of 18 U.S.C. § 923(g)(3)(A) and 27 C.F.R. § 478.126a.

Upon reviewing Government's Exhibits 6.1 to 6.9, along with the testimony provided for these violations, I make the following determinations:

Multiple sales of handguns and/or revolvers were made to Transferees (b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)
(b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)
(b)(3) - 112 Public Law 55 125 Stat 552, (b)(6) At the time of each of these transfers of two or more pistols and/or revolvers, Licensee did not submit a multiple sales form as required by law. At the direction of IOI (b)(6) during the inspection, multiple sales reports were submitted to document the transfer of two or more pistols in each respective transaction. [Gov. Ex. 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.8 and 6.9].

During the inspection, Bob Jones explained that "we need to check more closely. I forgot to do it right then. I need to walk back and just do it. My memory is just shot. If I don't stop and do it, I won't remember it. I need to double check at the end of the day that we do them." [Gov. Ex. E].

At the hearing, Licensee admitted that it had correctly completed multiple sales previously. [Hearing Transcript, pgs. 176-77]. Licensee further indicated Licensee was aware of the obligation to report multiple sales of firearms and/or revolvers within five days and Licensee wasn't disputing the failure to report the multiple sales on these occasions. [*Id.*].

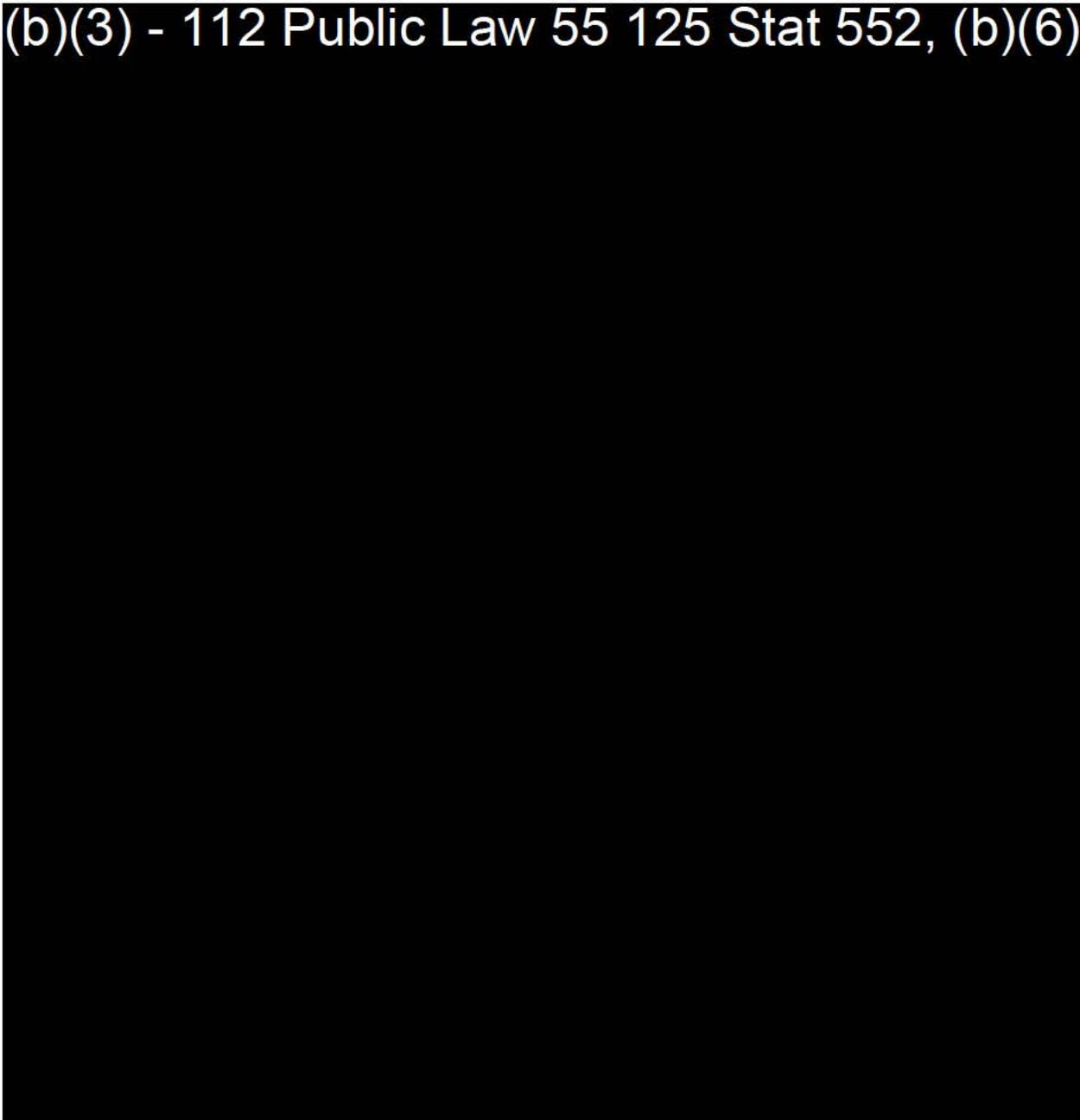
I find that in each of these (b)(3) - 112 Pub occasions, Licensee transferred two or more pistols or revolvers and did not submit a multiple sales report on each occasion within five consecutive business days of the transfer. Licensee admitted that Licensee was aware of this requirement. Licensee received such instruction as part of Licensee's license application and confirmed knowledge of such instructions on the 2013 Acknowledgement of Federal Firearms Regulations. [Gov. Ex. B]. Licensee has demonstrated on other occasions the ability to properly report multiple sales of handguns and revolvers. However, Licensee nonetheless failed to comply in each of these (b)(3) - 112 Public instances as discussed. Therefore, I conclude that each multiple sales violation was committed and was done willfully.

Violation #7 - Failure to Retain Records

On ^{(b)(3) - 112 P.L.} occasions, Licensee willfully failed to retain each Firearms Transaction Record, ATF Form 4473 for a period of not less than 20 years after the date of sale or disposition, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.129(b).

Upon reviewing Government's Exhibits 7.1 to 7.9, along with the testimony provided for these violations, I make the following determinations:

(b)(3) - 112 Public Law 55 125 Stat 552, (b)(6)



At the hearing, Licensee indicated Licensee knew of the obligation to retain Forms 4473 and did not contest that Licensee apparently lost the described forms and thus failed to retain them as required. [Hearing Transcript, pg. 176].

I find that in each of these (b)(3)-112 P occasions, Licensee failed to retain the Form 4473 for 20 years from the date of sale. Licensee admitted that Licensee was aware of this requirement. Licensee received such instruction as part of Licensee's license application and confirmed knowledge of such instructions on the 2013 Acknowledgement of Federal Firearms Regulations. [Gov. Ex. B]. Licensee has demonstrated on numerous occasions the ability to properly retain Forms 4473. However, Licensee nonetheless failed to comply in these instances. Therefore, I conclude that each violation was committed and was done willfully.

Violations #8, #9 and #10 - ATF Form 4473

On (b)(3)-112 P occasions, Licensee willfully sold or otherwise disposed of a firearm to an unlicensed person without recording the transaction on a Firearms Transaction Record, ATF Form 4473, in violation of 18 U.S.C. §§ 922(b)(5); 923(g)(1)(A) and 27 C.F.R. § 478.124(a).

On (b)(3)-112 P occasions⁴, Licensee willfully failed to obtain a complete and/or accurate Firearms Transaction Record, ATF Form 4473, from the transferee prior to making an over-the-counter transfer of a firearm to a non-licensee, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(1).

On (b)(3)-112 P occasions, Licensee willfully transferred a firearm to a non-licensee without recording the date the Licensee contacted NICS, any response provided by the system and/or any identification number provided by the system information on the Firearms Transaction Record, ATF Form 4473, in violation of 18 U.S.C. § 923(g)(1)(A) and 27 C.F.R. § 478.124(c)(3)(iv).

Licensee acknowledged familiarity with the Form 4473 and reading the instructions for the form. Licensee admitted to these errors for each of these cited violations, both during the inspection [Gov. Ex. E] as well as at the hearing. [Hearing Transcript, pg. 166]. Licensee also demonstrated the knowledge and ability to complete, and ensure completion of, in these respective sections of other Forms 4473 reviewed during the inspection. Although such errors were referred to as clerical mistakes by Licensee, each section of the Form 4473 is important, and the required information is on the form for specific reasons to ensure the traceability of firearms and promote public safety.

Therefore, I find that each of these violations occurred based upon my review of the respective ATF Forms 4473 and discussions on these violations at the hearing. Further, I conclude that each of these violations were willfully committed in violation of the law and regulations prescribed.

⁴ At the hearing, the Government requested (b)(3)-112 P occasion of Violation #9, failure to obtain a complete and/or accurate Firearms Transaction Record, ATF Form 4473, from the transferee prior to making an over-the-counter transfer of a firearm to a non-licensee, be stricken from the notice. [Hearing Transcript, pg. 130-131].

Application of Legal Standard

ATF may, after notice and opportunity for a hearing, revoke a Federal firearms license if it has reason to believe a licensee has willfully violated any provision of the GCA or the regulations issued thereunder. See 18 U.S.C. §§ 923(e) and (f)(3); 27 C.F.R. §§ 478.73 and 478.74.

For the Government to prove a willful violation of the Federal firearms statutes, it need only establish that a licensee knew of its legal obligation and “purposefully disregarded or was plainly indifferent” to the legal requirements. See *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492 (7th Cir. 2006) (found willful violation based upon facts establishing Licensee knew of his legal obligation and purposefully disregarded or was plainly indifferent to the record keeping requirements); see also *Borchardt Rifle Corp. v. Cook*, 684 F.3d 1037, 1042-43 (10th Cir. 2012) (holding that plain indifference towards a known legal obligation meets the willfulness requirement and that plain indifference may be shown with circumstantial evidence); see also *Lewin v. Blumenthal*, 590 F.2d 268, 269 (8th Cir. 1979); *On Target Sporting Goods, Inc. v. Attorney General of the United States*, 472 F.3d 572 (8th Cir. 2007) (violations by Federal firearms licensee were deemed willful and justified ATF’s licensing action when the licensee committed violations including the failure to keep proper records on acquisition and disposition of firearms; ATF inspectors had informed the licensee’s owner of the general record-keeping and firearm duties and the owner admitted he had fallen behind in the record-keeping responsibilities); *Trader Vic’s v. O’Neill*, 169 F.Supp.2d 957, 965 (N.D. Ind. 2001) (finding that a licensee has a duty to be cognizant of the rules and regulations issued by ATF and has a duty to follow those mandates in the course of his regulated business activities).

The Government is also not required to show that the violations occurred with any bad purpose. *Lewin*, 590 F.2d at 269; *On Target*, 472 F.3d at 575; *Gonzales*, 441 F.3d at 497. Any single willful violation of the Federal statutes or regulations controlling the firearms industry can be a basis for revoking or denying a license. See *Gun Shop, LLC v. United States Dep’t of Justice*, No. 4:10-CV-1459 (MLM), 2011 WL 2214671, at *6 (E.D. Mo. June 3, 2011) (“By the statute’s plain language, even a single willing violation can trigger ATF’s power of revocation.”), citing *American Arms Int’l v. Herbert*, 563 F.3d 78, 86 (4th Cir. 2009); see also *General Store, Inc. v. Van Loan*, 560 F.3d 920, 924 (9th Cir. 2009); *Armalite, Inc. v. Lambert*, 544 F.3d 644, 647 (6th Cir. 2008); *Article II Gun Shop, Inc. v. Gonzales*, 441 F.3d 492, 498 (7th Cir. 2006).

Furthermore, “[i]mproper recordkeeping is a serious violation.” *Fin & Feather Sport Shop, Inc. v. U. S. Treasury Dept.*, 481 F.Supp. 800, 806 (Neb. 1979) quoting *Huddleston v. United States*, 415 U.S. 814, 824 (1974). “Thus, a firearms dealer, by failing to keep the required records, seriously undermines the effectiveness and purpose of the Act and ultimately endangers society.” *Fin & Feather*, 482 F.Supp at 806. ATF has the right to insist on total compliance with the GCA to retain the privilege of dealing in firearms. *Willingham Sports, Inc. v. ATF*, 348 F.Supp.2d 1299, 1309 n.14 (S.D. Ala. 2004) (“gravity of the policy objectives of the Gun Control Act, from both a law enforcement standpoint and a safety standpoint, strongly militates in favor of allowing the ATF to insist on total compliance as a condition of retaining the privilege of dealing in firearms.”); *Dick’s Sport Center, Inc. v. Alexander*, No. 2:04-CV-74482, 2006 WL 799178, at *5 (E.D. Mich. Mar. 29, 2006) (licensee’s “failure to comply with exacting book keeping regulations may hinder the ATF’s ability to perform its mandated function.”).

It is acknowledged that this was Licensee's first compliance inspection. Although prior warnings can be used to establish willfulness, they are not necessary for such a finding. See *Borchardt*, 684 F.3d at 1043; *Nat'l Lending Grp., LLC v. Holder*, 365 F. App'x 747, 749 (9th Cir. 2010) (unpublished); *Nat'l Lending Group v. Mukasey*, No. CV 07-0024-PHX-PGRET, 2008 WL 5329888, at *8 n.13 (D. Az. Dec. 19, 2008) (no requirement to show there have been prior warnings in order to establish willfulness); *Francis v. ATF*, 2006 WL 1047026, at *4 (E.D. Okla. Apr. 20, 2006) (holding it does not logically follow that repeated violations following warnings are necessary to find willfulness); *Taylor v. Hughes*, 2013 WL 752838, at *3 (M.D.Pa., 2013) ("While it is true that this was the first compliance inspection ever conducted by the ATF upon Taylor, given the scope of the violations in this case, the duration of time in which Taylor failed to record any A&D information in his books, and his failure for years to take any steps prior to inspection to come into compliance demonstrates willful violation.").

Periodic compliance, such as a licensee's occasional adherence to regulatory obligations, can also support a finding of willfulness. *CEW Properties, Inc. v. U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 979 F.3d 1271, 1280 (10th Cir. 2020), citing *Simpson v. Att'y Gen.*, 913 F.3d 110, 115-16 (3d Cir. 2019) (noting that a licensee's "full compliance with [Gun Control Act] requirements in some instances belies his assertion that he did not understand those requirements," and his "inconsistent conduct suggests both that [he] knew of his obligations and was indifferent to complying with them").

In this present matter, the evidence and testimony presented at the hearing revealed that Licensee understood the legal requirements concerning the violations documented in the Initial Notice. In this regard, ATF reviewed the applicable laws and regulations with Licensee during the 2013 qualification inspection. [See Gov. Ex. B]. At that time, ATF provided Licensee with resource materials and informed Licensee of the opportunity to ask any questions.

Further, Licensee acknowledged awareness of the legal requirements and responsibilities to hold a Federal firearms license. Licensee was familiar with the instructions within the ATF Form 4473. Licensee demonstrated on numerous occasions the ability to properly complete and ensure proper completion by the transferee of the required ATF Form 4473, as well as the ability to properly conduct a background check for a firearm transferee and complete a multiple sale form.

The GCA does not require a purposeful bad act to establish willfulness, but instead a purposeful disregard or plain indifference to a known legal obligation is sufficient. The conduct of Licensee also cannot be attributed to only being mistakes. Licensee alluded that one of the reasons the acquisitions and dispositions were not kept as required was due to the volume of workload, as well as the Licensee's assertion of the previously inconvenient location of the computer used for keeping such records. Yet, regardless of these concerns, Licensee continued to conduct firearms transactions for a substantial period of time. This was done without correcting the issues or otherwise properly recording the firearms acquisitions or dispositions as the regulations prescribe.

Licensee's large volume of business transactions and workload backlogs cannot excuse a Licensee's legal obligations or negate willfulness. *Taylor*, 2013 WL 752838, at *3 (Court

recognizes that being “overwhelmed” is not a justifiable excuse for a licensee’s noncompliance with mandated laws and regulations and does not negate a finding of willfulness). Licensee continued to acquire firearms and conduct transactions despite these known deficiencies and problems in complying with the legal requirements. This continued failure to comply with the GCA requirements shows a purposeful disregard or, at a minimum, a plain indifference to the known legal obligations of a Federal firearms licensee.

It is also significant to note Licensee was unable to account for (b)(3) - (1) firearms which remain documented nationally with law enforcement as missing still to this day. These missing firearms, which cannot be successfully traced if used in a crime, are directly attributed to Licensee’s willful disregard of the legal obligations. This failure by Licensee undermines the public safety purposes of the GCA.

It is also important to highlight that on eight occasions Licensee transferred a firearm without running a NICS background check. Equally important, on other five occasions, Licensee transferred a firearm without initiating a new NICS background check after a 30-day lapse of the prior NICS check. In every firearms transaction and transfer, Licensee has a duty to properly comply with a NICS background check prior to the transfer of any firearm. This is a serious duty and fundamental to public safety to assure individuals who cannot lawfully possess firearms do not acquire firearms. There is no excuse that alleviates running a NICS checks by this Licensee. *See Abramski v. U.S.*, 573 U.S. 169, 180 (2104) (Federal gun law establishes an elaborate system of in-person identification and background checks to ensure that guns are kept “out of criminals and others who should not have them...”). It is accordingly imperative that licensees run background checks prior to the transfer of firearms so as to alleviate rendering as meaningless this Congressional goal of “keeping ‘firearms out of the hands of those not legally entitled to possess them’.” *Id.* at 181, *quoting Huddleston*, 415 U.S. at 824.

Although Licensee asserts that it is actively working to ensure the licensed business is now in compliance with regulations, these subsequent actions do not otherwise mitigate or change the fact that the willful violations occurred as documented during the inspection. *Post hoc* remedial efforts have little bearing on a licensee’s willfulness at the time of the violation. *CEW Properties*, 979 F.3d at 1281 n.12 (disregarding licensee’s claim of no willfulness due to subsequent efforts to remedy noncompliance by compiling A&D records into a bound book); *see also Shawano Gun & Loan, LLC v. Hughes*, 650 F.3d 1070, 1079 (7th Cir. 2011) (noting that “workplace changes to ensure compliance with Federal firearms laws” following a revocation notice “come too late,” and that the promise to “do better if given another chance is not an argument that reaches the merits of the case”); *Cucchiara v. Sec’y of Treasury*, 652 F.2d 28, 30 (9th Cir. 1981) (concluding that a licensee’s attempt to “correct his faulty recordkeeping system, after the violations ... is immaterial to the question of willfulness at the time the violations occurred”); *Sturdy v. Bensten*, 129 F.3d 122 (8th Cir.1997) (licensee’s after-the-fact efforts to correct the specific violations cited are irrelevant to the issue of willfulness at the time the errors occurred).

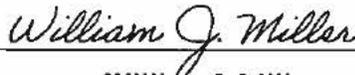
After presiding over the hearing and giving a full review and consideration of all the testimony and exhibits provided in the hearing record, I find and conclude that Licensee willfully violated the provisions of the GCA, and the regulations issued thereunder as documented in the Initial

Notice. Even though Licensee understood the responsibilities under the GCA, the evidence reveals that Licensee was plainly indifferent to, or purposefully disregarded, the firearms laws and regulations as documented and thoroughly discussed and reviewed herein.

Despite the knowledge and awareness of these obligations under its license, Licensee failed to maintain legally compliant records of acquisition and disposition and failed to timely or correctly record firearms in these required acquisition/disposition record. Licensee also failed to retain Forms 4473 and was unable to properly complete the ATF Forms 4473 under the explicit directives and instructions of the form, including not conducting the required NICS checks prior to the transfer of a firearm. At the conclusion of the inspection, Licensee admitted to IOI (b)(6) the cited violations of noncompliance with the regulations. [Gov. Ex. E].

Therefore, as provided under the provisions of as provided by 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, the Federal firearms license held by Licensee Top of the Line d/b/a Outrageous Outdoors, 902 South State Street, Jerseyville, IL 62051, under Federal firearms license number 3-37-083-01-2K-03898, is hereby **REVOKED**.

Dated this 20th day of May 2022.



William J. Miller

Director, Industry Operations - Kansas City Field Division
Bureau of Alcohol, Tobacco, Firearms and Explosives
United States Department of Justice