

PINK ELEPHANT GUN & PAWN INC's FCI
 FCI-23534
 12/18/2022 03:54 PM
 IOI (b)(6), Lexington II (IO) Field Office

LICENSEE INFORMATION

| | | | |
|-----------------------------------------------|-----------------------|-----------------------------------------------|-----------------------------------------|
| Licensee Name PINK ELEPHANT GUN & PAWN INC | RDS Key 4-61-07810 | License/Permit Number 4-61-071-02-1B-07810 | License Type 02 - Pawnbroker License |
|-----------------------------------------------|-----------------------|-----------------------------------------------|-----------------------------------------|

Business Type
Corporation

| | |
|------------------------------------------|-------------------------------------------------------------------------------|
| Premises Ownership Type Leased/Rented | Premises Address 30 COLONELS CT, Unit N/A, PRESTONSBURG, Kentucky 41653 |
|------------------------------------------|-------------------------------------------------------------------------------|

Premises Location Type Required

Address
 30 COLONELS CT
 Unit N/A
 PRESTONSBURG, Kentucky 41653
 FLOYD
 United States

Address
 30 COLONELS CT
 Unit N/A
 PRESTONSBURG, Kentucky 41653
 FLOYD
 United States

| Phone Type | Phone Number | Remarks |
|------------|-----------------|---------|
| Business | +1 606-506-5030 | |
| Fax | +1 606-506-5030 | |

RECOMMENDATIONS

Final Decision Date
 Revocation 09/15/2022

Details

The request to continue operations of the Federal firearms license was granted through September 15, 2022, in order to allow time for the Licensee to make arrangements for the sale of the business or if needed, liquidate its firearms inventory, including pawn transactions. As of September 15, 2022, the Licensee is revoked.

Out of Business Records and Inventory Management

Licensee Records

✔ Submitted to the Federal Licensing Center

Licensee Inventory

✔ Inventory transferred to another licensee/permittee
 Date of Inventory Transfer
 09/15/2022
 Transferee RDS Key
 4-61-10311
 Licensee / Permittee
 PINKY ENTERPRISES LLC
 Business Name
 PINK ELEPHANT UNLIMITED
 Business Premise Address
 30 COLONELS COURT
 PRESTONSBURG, KY 41653

Deputy Assistant Director - Industry Operations Megan Bennett's Recommendation
 Revocation

Details

ii concur with the recommendation of revocation as the licensee transferred firearms to a prohibited person and failed to conduct NICS.

Special Agent in Charge Shawn Morrow's Recommendation

Reviewed. Concur/approve recommendation for revocation. RSM

Division Counsel (b)(6)'s Review

Details

Concur with recommendation for revocation. There is sufficient evidence of willfulness as to numerous violations, to include failure to conduct NICS checks and transfers of firearms

after receiving a NICS delayed denial.

Director of Industry Operations Adam Rogers's Recommendation
Revocation

Details

The licensee entered business in 2017, after a review of federal firearms regulations. A warning letter was issued in 2019, after an inspection and review of federal firearms regulations.

27 CFR 478.99(c) – In [redacted] instances, the Licensee transferred a firearm to a purchaser after receiving a NICS Denied response. In [redacted] instances, initial NICS Delayed responses were provided, prior to receiving a NICS Denied response.

27 CFR 478.102(a) – In four (4) instances, the licensee accepted out of state CCDW permits in lieu of conducting a NICS check. This is a repeat violation with an increase in instances. During a previous compliance inspection in 2019, the Licensee was cited for this same violation on two (2) instances. In 2019, the Licensee stated, “we didn’t know we couldn’t accept out-of-state concealed carry permits” (in lieu of NICS checks), and that they would only accept Kentucky (CCDW) permits in the future.

Lead IOI recommends warning conference. AS recommends revocation. DIO concurs with revocation.

Area Supervisor [redacted] Recommendation
Revocation

Details

Based off the following inspection findings of Pink Elephant Gun & Pawn Inc, AS [redacted] recommends Revocation of the Federal Firearms License:

27 CFR 478.99(c) – In [redacted] instances, the Licensee transferred a firearm to a purchaser after receiving a NICS Denied response.

In response to this finding, the Licensee stated they had no idea “how this happened”. RP, Mr. Fitzer, hypothesized that someone may have filed the Denied ATF Forms 4473 in the wrong place, and an employee did not look at the Denied response prior to transferring the firearm(s).

In [redacted] instances, initial NICS Delayed responses were provided, prior to receiving a NICS Denied response. Thus, the Licensee would have had known prior to the transfer of the firearms, that the persons were prohibited from possessing firearms.

CFR 478.102(a) – In four (4) instances, the licensee accepted out of state CCDW permits in lieu of conducting a NICS check. During a previous compliance inspection in 2019, the Licensee was cited for this same violation on two (2) instances. In 2019, the Licensee stated, “we didn’t know we couldn’t accept out-of-state concealed carry permits” (in lieu of NICS checks), and that they would only accept Kentucky (CCDW) permits in the future. Based off the current inspection findings, the Licensee knew to accept Kentucky CCDW permits only, yet failed to do so.

In both above mentioned violations, the Licensee was knowledgeable of the regulations, yet failed to abide by the regulations.

Industry Operations Investigator [redacted]’s Recommendation
Warning Conference

Details

Industry Operations Investigators (IOIs) [redacted] conducted an onsite recall compliance inspection of Pink Elephant Gun & Pawn Inc. on August 31, 2021 through September 3, 2021. This firearms compliance inspection was assigned as a recall inspection that was conducted between September 25, 2019 and October 10, 2019. That was the first compliance inspection conducted since the original FFL was issued in January 2018.

As a result of the 2019 compliance inspection, the following violations were cited, and IOI [redacted] recommended that a WARNING LETTER be issued:

1. 27 CFR 478.102(a) – 2 instances – Accepting out of state CCDW permits in lieu of conducting a NICS check.
1. 27 CFR 478.126a – [redacted] instance - Failure to report a multiple handgun sale.
1. 27 CFR 478.125(e) – [redacted] instances with [redacted] being reported as missing on a Theft/Loss Report – Failure to timely record acquisition and disposition information.
1. 27 CFR 478.21(a) – [redacted] instances – Failure to complete forms as prescribed.
1. 27 CFR 478.124(c)(1) – [redacted] Instances – Failure to obtain a completed ATF Form 4473.
1. 27 CFR 478.124(c)(3)(i) – [redacted] Instances – Failure to record identification document information on ATF Form 4473.
1. 27 CFR 478.124(c)(3)(iv) – [redacted] instances – Failure to record NICS contact information on ATF Forms 4473.
1. 27 CFR 478.124(c)(4) – [redacted] instances – Failure to record firearm information on ATF Forms 4473.
1. 27 CFR 478.124(c)(5) – [redacted] instances – Failure to sign and date ATF Forms 4473.

During the current compliance inspection, the inspection team conducted a 100 percent inventory verification and complete review of all ATF Forms 4473 on file during the inspection period. In total, the team reviewed [redacted] Forms 4473 for completeness and accuracy. Errors and omissions were found on approximately [redacted] forms, which is an approximate 4 percent error rate. The following violations were cited as a result of the September 2021 compliance inspection:

1. CFR 478.102(a) – 4 instances – Accepting out of state CCDW permits in lieu of conducting a NICS check. (REPEAT VIOLATION)

1. 27 CFR 478.125(e) – [redacted] instances – all discrepancies were reconciled, and no guns were reported as missing. Failure to timely record acquisition and disposition information. (REPEAT VIOLATION)
1. 27 CFR 478.21(a) – [redacted] instances – Failure to complete forms as prescribed. (REPEAT VIOLATION)
1. 27 CFR 478.124(c)(1) – [redacted] instances – Failure to obtain a completed ATF Form 4473. (REPEAT VIOLATION)
1. 27 CFR 478.124(c)(3)(i) – [redacted] instances – Failure to record identification document information on ATF Form 4473. (REPEAT VIOLATION)
1. 27 CFR 478.124(c)(3)(iv) – [redacted] instances – Failure to record NICS contact information on ATF Forms 4473. (REPEAT VIOLATION)
1. 27 CFR 478.124(c)(5) – [redacted] instances – Failure to sign and date ATF Forms 4473. (REPEAT VIOLATION)
1. 27 CFR 478.99(a) – [redacted] instance – Transfer of lower receivers to an out of state resident. (NOT A REPEAT VIOLATION)
1. 27 CFR 478.99(c) – [redacted] instances – Transfer of a firearm to a purchaser after receiving a DENIED response from NICS. (NOT A REPEAT VIOLATION)

Regarding Violation 1 – Mr. Fitzer states that his employees have been trained regarding CCDW permits being accepted in lieu of NICS checks. He doesn't know why these transactions occurred; but he pledged future compliance. He has promoted one of his trusted employees to oversee all firearms transactions, and that employee will conduct a review of all Forms 4473 in the future. Additionally, a more limited number of experienced employees will be allowed to conduct firearms transactions in the future.

Regarding Violations #2-7 – These were repeat violations; however, the numbers of forms with these types of errors decreased significantly (by more than 50 percent overall) since the 2019 inspection. Mr. Fitzer, Responsible Person and President of the corporation, states that since the last inspection, store managers have been required to review all ATF Forms 4473 prior to filing. Therefore, he was very disappointed that there were still errors on forms. He is currently in the process of researching computer software and plans to purchase a software immediately for electronic ATF Forms 4473. Additionally, Mr. Fitzer has promoted a trusted employee to oversee all future firearms transactions.

Violation #8 – Mr. Fitzer states that his employees will be re-educated regarding the transfer of lower receivers to out-of-state residents. He states that he is not sure why this transaction occurred because employees should be aware of this regulation.

Violation #9 – Terry Fitzer was shocked that [redacted] firearms were transferred after denied responses had occurred. It appears that two to three separate employees were involved in the NICS e-check submission, retrieval, and transferring of the firearms transfers in question. Mr. Fitzer still couldn't determine why the transactions took place after the DENIAL was retrieved. The TWO employees who transferred the firearms are NO LONGER WORKING at this FFL. Upon discovery of the denied form for [redacted], the licensee immediately called [redacted] and he returned the firearm to the FFL within an hour. This was witnessed by SI [redacted]. When [redacted] arrived at the premises, he stated that he wasn't a felon, and he didn't realize he actually had [redacted] that caused him to be prohibited. SI [redacted] assured him that his criminal background check revealed that he was prohibited and should not possess firearms or attempt to purchase firearms.

A criminal background check revealed that purchaser [redacted] is no longer prohibited from possessing firearms. At the time he received a firearm on July 17, 2021, [redacted] was under a one-year restriction from purchasing firearms due to [redacted], although that [redacted] was dismissed. His restriction has since expired, and he had no additional charges. Therefore, he was not required to return the firearm.

Mr. Fitzer states that he is immediately implementing new procedures for DELAYED/DENIED responses from NICS to ensure that this never happens again. In addition, strict management oversight will be required in the future regarding delayed/denied NICS responses.

During the closing conference with RP and President Terry Fitzer on September 27, 2021, Senior Investigator [redacted] explained the nine violations cited on the Report of Violations. Although the percentage of Form 4473 errors and A & D record discrepancies had declined significantly since the 2019 inspection, Violations 2 and 8 would typically result in REVOCATION of the firearms license.

Senior Investigator [redacted] is recommending an alternate administrative action of "WARNING CONFERENCE" in lieu of revocation due to the following facts:

- The licensee has taken responsibility for the violations, and he is willing to put forth whatever effort is necessary to correct the problems and prevent them from happening in the future.
- The licensee has only had one previous inspection, and the recommendation was WARNING LETTER. A WARNING CONFERENCE would convey a formal warning to Mr. Fitzer that if any of these violations are repeated, the license would be subject to revocation.
- RP Eric Fitzer, previous store manager and son of Terry Fitzer, passed away suddenly in June 2021. Since that time the store has experienced managerial transitions and overall adjustment to Mr. Fitzer's death. Mr. Fitzer states that he hopes his new manager who will oversee firearms will be able to resolve their error rate.
- RP Terry Fitzer states that he is planning to purchase software for electronic ATF Forms 4473 so that errors can be detected electronically.
- RP Terry Fitzer has promoted a trusted store employee to oversee all firearms transactions and records. The previous two managers were not reviewing forms adequately to ensure that forms were complete and correct.
- The two employees who transferred firearms after a DENIED NICS response was received are no longer employed by this licensee.
- New procedures are currently being implemented to change the DELAYED and DENIED filing box system so that DENIED FORMS are more easily identified. Mr. Fitzer states that he can only assume the denied forms for both [redacted] were filed in the delayed file box, and the employees went to the box and ignored the fact that the NICS responses were DENIED. Mr. Fitzer states that these transfers were a serious oversight by the two employees, and managerial review did not catch these mistakes. Mr. Fitzer states that he would never allow transfers of firearms to persons who were found to be DENIED by NICS, and he will ensure in the future that this never happens again.
- Mr. Fitzer states that a limited number of only experienced employees will be allowed to conduct firearms transactions in the future.
- Licensee states that further training will be conducted with all employees to ensure that they are aware of all regulatory requirements, including accepting ONLY KENTUCKY CONCEALED CARRY PERMITS in lieu of conducting a NICS check.
- Mr. Fitzer states they will continue conducting regular inventories of firearms to ensure that the A & D record is correct and complete.

For all of the reasons listed above, SI (b)(6) recommends a 'WARNING CONFERENCE' as the appropriate administrative action for this compliance inspection.

Please refer to all sections of this Spartan assignment for complete inspection details.

Inspection Findings

Transfer of Firearm

- 3. Transfer of any firearm (including lower receiver) other than Rifle / Shotgun to a resident of another State.
- 4. Transfer of a firearm to a prohibited person while knowing or having reasonable cause to believe that the transferee is a prohibited person.

NICS

- 4. Failure to conduct a NICS check or obtain an alternate permit.

ELIGIBILITY VERIFICATION

Business Information Verification

| Licensee Name | Business Type | Is the business valid? |
|------------------------------|---------------|------------------------|
| PINK ELEPHANT GUN & PAWN INC | Corporation | Yes |

Additional Findings
This corporation is registered, active, and in good standing.

Attachment(s):
Pink Elephant - Secretary of State.pdf

Property Ownership Verification

| Premises Ownership Type | Premises Location Type | Has the property ownership been verified? |
|-------------------------|------------------------|-------------------------------------------|
| Leased/Rented | Store Front | Yes |

Address
30 COLONELS CT
Unit N/A
PRESTONSBURG, Kentucky 41653
FLOYD
United States

Additional Findings
Property is owned by Southeast Rax Development Co. Inc. Terrence Fitzer, RP and President of Pink Elephant Gun & Pawn Inc. is also President of Rax Development Co.

Attachment(s):
Pink Elephant - Property Ownership.pdf

Rental/Lease Verification

Is the proposed business activity permitted by the property owner?
Yes

Additional Findings
Property is owned by Southeast Rax Development Co. Inc. Terrence Fitzer, RP and President of Pink Elephant Gun & Pawn Inc. is also President of Rax Development Co.

Attachment(s):
Pink Elephant - Lease-Property.pdf

Zoning Information Verification

Is the proposed business activity in compliance with zoning?
Yes

Additional Findings
Property is zoned C-4, and according to the County Judge Executive, firearms sales are permitted at this property.

Contact Information

| | |
|---------------------------------------------------------------------------------------|------------------------------|
| Name (b)(6) | Date Contacted 08/25/2021 |
| Organization (b)(6) | |

Job Title
(b)(6)

| Phone Type | Phone Number | Remarks |
|------------|---------------|----------------|
| Business | (b)(6) | business hours |

Attachment(s):

APPOINTMENT DETAILS

Interview Date
08/31/2021

Address
30 COLONELS CT, Unit N/A, PRESTONSBURG, Kentucky 41653

Remarks
Unannounced visit planned.

Responsible Attendee(s)

Non-Responsible Person(s)

TERENCE W FITZER

No Items

ERIC ANDREW FITZER

RESPONSIBLE PERSON(S)

TERENCE W FITZER

| Name | Gender | Race | Ethnicity |
|----------------------|--------|-----------------|----------------------------|
| Mr. TERENCE W FITZER | Male | White | Not Hispanic or Not Latino |
| Date of Birth | SSN | Job Title | |
| (b)(6) | | OWNER/President | |

Physical Identifiers

| Height | Weight | Hair Color | Eyes Color |
|---------------|--------|------------|------------|
| (b)(6) | | | |

Place of Birth

| Country | State | City |
|--------------------------|---------------|------|
| United States Of America | (b)(6) | |

Home Address

(b)(6)

United States

Additional Names

Citizenship

United States

| ID Type | Country | State | ID Number |
|------------------|---------------|----------|---------------|
| Driver's License | United States | Kentucky | (b)(6) |

| Phone Type | Phone Number | Remarks |
|------------|---------------|---------|
| Mobile | (b)(6) | |

| Email Address | Email Remarks |
|---------------|---------------|
| (b)(6) | |

Criminal History Check

Date Criminal History Check Conducted
08/26/2021

Criminal History Check Comments
no hits

ERIC ANDREW FITZER

| Name | Gender | Race | Ethnicity |
|------|--------|------|-----------|
|------|--------|------|-----------|

ERIC ANDREW FITZER

Male

White

Not Hispanic or Not Latino

Date of Birth

SSN

Job Title

MGR

(b)(6)

Physical Identifiers

Height

Weight

Hair Color

Eye Color

(b)(6)

Place of Birth

Country

United States Of America

State

City

(b)(6)

Home Address

(b)(6)

United States

Additional Names

Citizenship

United States

| ID Type | Country | State | ID Number |
|------------------------|---------------|----------|-----------|
| Concealed Carry Permit | United States | Kentucky | (b)(6) |
| Driver's License | United States | Kentucky | (b)(6) |

| Phone Type | Phone Number | Remarks |
|------------|--------------|---------|
| Mobile | (b)(6) | |

| Email Address | Email Remarks |
|---------------|---------------|
| (b)(6) | |

Criminal History Check

Date Criminal History Check Conducted

08/26/2021

Criminal History Check Comments

no prohibiting criminal history found

| Number Type | Agency Label | State |
|-------------|--------------|-------|
| FBI/UCN | (b)(6) | |
| SID | (b)(6) | KY |

INTERVIEW QUESTIONNAIRE

What is the proposed business activity?

Licensee is engaged in the business of pawning and selling various merchandise, including guns, electronics, tools, jewelry, and other miscellaneous items.

Do they need an additional license or permit?

No

Who are their primary suppliers?

(b)(4)

Business Activities

Selected Operational Security Measures

(b)(6)

Pawnbroker

Retail

SECURITY WALKTHROUGH

Inspection Area Description

Premises is a large store-front commercial building (b)(6)

Primary Activity

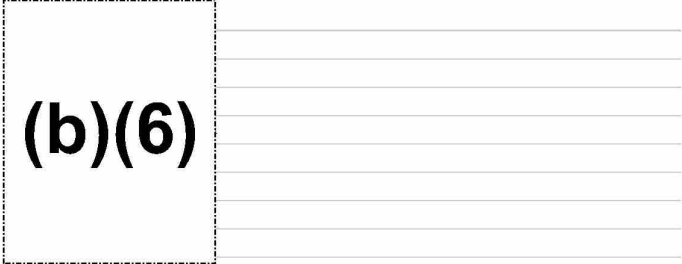
Retail

Selected Physical Security Measures

(b)(6)

GPS Coordinates

Latitude
37.65727
Longitude
-82.78277



ONSITE SUMMARY

Total Number of ATF Form 4473s for Inspection Review Period

Total Number of ATF F 4473 Reviewed

Total Number of Open Dispositions in A & D Record

Total Number of Firearms in Inventory
656

Actual Number of Firearms Verified

Number of Firearms Missing Before Reconciliation

Total Number of Firearms Missing After Reconciliation
0

Total Number of Acquisitions in the Last 12 Months
(b)(4)

Total Number of Dispositions in the Last 12 Months
(b)(4)

Onsite Start Date

Onsite End Date

Number of Reported Lost/Stolen Firearms During Inspection Period

Total Number of Traces During Inspection Review Period

Total Number of Those Traces That Were Unresolved

Inspection Period Start Date

Inspection Period End Date

Number Of Traces Resolved By IOI

[Click Here to See List of Perfected Traces](#)

Additional Comments

ACQUISITION AND DISPOSITION RECORDS:

A & D records are maintained electronically, and the record was found to contain all required information. When the inventory is printed, it can be broken down into INVENTORY, PAWN and LAY AWAY guns, which is beneficial when verifying the physical vs. book inventory. During the inventory verification, dispositions were found to be untimely recorded, however the discrepancy was reconciled and corrected.

ATF FORMS 4473:

Forms are filed chronologically and numerically according to the transaction number. Although store managers are supposed to be reviewing all Forms 4473 for completeness and accuracy, the licensee was still cited for forms errors and omissions. Mr. Fitzer stated that they would be implementing an electronic ATF Form 4473 in the near future to reduce error rates, and he is promoting a trusted store employee to oversee all firearms transactions. He hopes that making these changes will reduce error rates significantly.

INTERNAL CONTROLS:

Licensee has a tagging system in which each firearm is tagged with an inventory number that coincides with the A & D record inventory number. This made it easy to find the inventory entry when reconciling the gun to book inventory verification. The untimely disposition entry violations were due to the firearms being "layaways" and they were not correctly recorded out of the system. Mr. Fitzer states that new procedures are being implemented to prevent this from happening in the future. Because of the errors found on forms and transfers to prohibited persons, SI, (b)(6) stressed to the licensee that there were still many weaknesses in their internal controls. Mr. Fitzer pledged to implement a new electronic 4473 program, new lay away procedures, delay/denial forms filing procedures, and more stringent manager oversight on ALL firearms transactions. He states that his son who was the store manager passed away in June 2021, and things have been difficult since they have two new store co-managers. Additionally, he promoted a trusted store employee to oversee and manage firearms transactions.

TRACE ACTIVITY:

There were no unresolved traces, and findings resulting this licensee's traces.

MULTIPLE SALES:

The licensee's electronic inventory system automatically generates multiple sales. No unreported multiple sales were identified during this inspection. A copy of the Multiple Sale Report is submitted to the Prestonsburg Police Department as is required, and a copy is attached to ATF Forms 4473.

THEFTS/LOSSES

Pink Elephant had a burglary in February 2021. Someone broke into the store overnight, and although the alarm sounded, the suspects got away with 15 firearms. ATF CE in Ashland, KY, responded to the theft and recovered some of the firearms. Licensee correctly recorded the firearms on a Theft/Loss Report and recorded the dispositions as stolen in the A & D Record.

Attachment(s)

Report of Violations.pdf

Report of Violations.pdf

Report of Violations.pdf

Report of Violations.pdf

REPORT OF VIOLATIONS

| Regulation | Corrective Actions | Instance Details |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| <p>1 27 CFR 478.99(a): Unlawful sale or delivery of a handgun to an out of state resident and/or transfer of a long gun in violation of state law</p> <p>ATF Forms 4473: [] Number of Instances: []</p> | <p>Licensee will educate employees regarding selling receivers to only Kentucky residents. Additionally, licensee shall require a store manager to conduct out of state firearms sales transactions.</p> <p>Cease and desist all firearm transfers (including lower receivers) other than a rifle or shotgun, to residents of another state.</p> | <p>(b)(3) (112 Public Law 55 125 Stat 552)</p> |
| <p>2 27 CFR 478.99(c): Unlawful sale or delivery of a firearm to a prohibited person</p> <p>Number of Instances: []</p> | <p>Educate employees about the importance of retrieving the NICS responses on delayed NICS transactions, and to double check the NICS responses prior to transferring a firearm. Also, further management oversight on firearms transactions is imperative to ensure compliance.</p> <p>Cease and desist all firearm transfers to a known prohibited person and/or any person having reasonable cause to believe is prohibited.</p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |
| <p>3 27 CFR 478.125(e): Failure to maintain an accurate/complete/timely acquisition and disposition record of firearms</p> <p>Number of Instances: []</p> | <p>Accurately, completely & timely record all required future firearm disposition information.</p> <p>Amend/Update A&D Record to accurately record all required firearm disposition information.</p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |
| <p>4 27 CFR 478.124(c)(1): Failure to obtain a completed ATF F 4473</p> <p>ATF Forms 4473: [] Number of Instances: []</p> | <p>Ensure that all required ATF Form 4473 Section A items are completed/provided by the transferee/buyer on all future transactions.</p> <p>Ensure that the transferee/buyer provides required signature and date, on ATF Form 4473 Section C, for all transactions taking place on a date different from when Section A was certified.</p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |
| <p>27 CFR 478.21(a): Failure to complete forms as prescribed</p> <p>ATF Forms 4473: [] Number of Instances: []</p> | <p>Complete all forms as prescribed.</p> <p>Correct/Update photocopies of all specified ATF Form 4473 discrepancies, in accordance with form headings and instructions.</p> <p>Ensure that all ATF Form 4473 items, as required by form headings and instructions, are accurately completed on all future transactions.</p> <p>Ensure that all required ATF Form 4473 Section A items are completed/provided by the</p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> <p>(b)(6)/(b)(7)(C)</p> |

| | | |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------|
| 5 | <p>transferee/buyer on all future transactions. Ensure that the transferee/buyer provides required signature and date, on ATF Form 4473 Section C, for all transactions taking place on a date different from when Section A was certified.</p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |
| 6 | <p>27 CFR 478.124(c)(3)(iv): Failure to record NICS contact information on an ATF F 4473</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |
| 7 | <p>27 CFR 478.124(c)(3)(i): Failure to verify or record Identification document on ATF F 4473</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |
| 8 | <p>27 CFR 478.102(a): Failure to complete a NICS/POC background check</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |
| 9 | <p>27 CFR 478.124(c)(5): Failure by transferor to sign and/or date an ATF F 4473</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)</p> |

LICENSEE RESPONSE REPORT

| Regulation | Corrective Actions | Licensee Response | Status Details |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <p>27 CFR 478.99(a): Unlawful sale or delivery of a handgun to an out of state resident and/or transfer of a long gun in violation of state law</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>Licensee will educate employees regarding selling receivers to only Kentucky residents. Additionally, licensee shall require a store manager to conduct out of state firearms sales transactions. Cease and desist all firearm transfers (including lower receivers) other than a rifle or shotgun, to residents of another state.</p> | <p>RP Terrence Fitzer states that his employees have been educated regarding transferring firearms to out-of-state residents. He stated that further management oversight will be required for all out-of-state firearms transactions.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |
| <p>27 CFR 478.99(c): Unlawful sale or delivery of a firearm to a prohibited person</p> <p>Number of Instances: <input type="checkbox"/></p> | <p>Educate employees about the importance of retrieving the NICS responses on delayed NICS transactions, and to double check the NICS responses prior to transferring a firearm. Also, further management oversight on firearms transactions is imperative to ensure compliance.</p> <p>Cease and desist all firearm transfers to a known prohibited person and/or any person having reasonable cause to believe is prohibited.</p> | <p>Mr. Fitzer states that he is shocked that two firearms were transferred after denied responses were received. He states that he has no idea why this happened, but it could have been that someone filed the denied response in the wrong place, and the employee who waited on the customer when they came back after being delayed picked the form up and didn't look at the DENIED RESPONSE. Mr. Fitzer is immediately promoting a trusted employee to oversee all firearms operations, and he is confident that this will not happen again in the future.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |
| <p>27 CFR 478.125(e): Failure to maintain an accurate/complete/timely acquisition and disposition record of firearms</p> <p>Number of Instances: <input type="checkbox"/></p> | <p>Accurately, completely & timely record all required future firearm disposition information.</p> <p>Amend/Update A&D Record to accurately record all required firearm disposition information.</p> | <p>RP Terrence Fitzer states that the untimely dispositions were all related to firearms that had been in lay-away. He stated that new lay-away procedures have been implemented to ensure that these types of dispositions are accurately logged out.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |
| <p>27 CFR 478.124(c)(1): Failure to obtain a completed ATF F 4473</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>Ensure that all required ATF Form 4473 Section A items are completed/provided by the transferee/buyer on all future transactions.</p> <p>Ensure that the transferee/buyer provides required signature and date, on ATF Form 4473 Section C, for all transactions taking place on a date different from when Section A was certified.</p> | <p>RP Fitzer states that he plans to institute the use electronic ATF Forms 4473 to reduce the likelihood of errors on the forms. Additionally, he is assigning a new manager to review all forms prior to the forms being filed.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |
| <p>27 CFR 478.21(a): Failure to complete forms as prescribed</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>Complete all forms as prescribed.</p> <p>Correct/Update photocopies of all specified ATF Form 4473 discrepancies, in accordance with form headings and instructions.</p> <p>Ensure that all ATF Form 4473 items, as required by form headings and instructions, are accurately completed on all future transactions.</p> <p>Ensure that all required ATF Form 4473 Section A items are completed/provided by the transferee/buyer on all future transactions.</p> <p>Ensure that the transferee/buyer provides required signature and date, on ATF Form 4473 Section C, for all transactions taking place on a date different from when Section A was certified.</p> | <p>RP Fitzer states that he plans to institute the use electronic ATF Forms 4473 to reduce the likelihood of errors on the forms. Additionally, he is assigning a new manager to review all forms prior to the forms being filed.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |
| <p>27 CFR 478.124(c)(3)(iv): Failure to record NICS contact information on an ATF F 4473</p> <p>ATF Forms 4473: <input type="checkbox"/> Number of Instances: <input type="checkbox"/></p> | <p>Ensure that all required NICS/POC background check information is obtained and accurately recorded on all future ATF Forms 4473, Section B.</p> | <p>RP Fitzer states that he and his employees would ensure in the future that all NICS information is accurately recorded on Forms 4473. A new manager will be assigned to oversee all firearms transactions to ensure that all information is captured on ATF Forms 4473.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |

| | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------|
| <p>27 CFR 478.124(c)(3)(i): Failure to verify or record Identification document on ATF F 4473</p> <p>ATF Forms 4473: [] Number of Instances: []</p> | <p>Ensure that all required transferee/buyer identification information is obtained and accurately recorded on all future ATF Forms 4473, Section B.</p> | <p>Licensee states that he will ensure that employees are aware of the importance of correctly recording identification information for purchasers. Additionally, Mr. Fitzer hopes that implementing an electronic ATF Form 4473 will reduce errors on forms.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |
| <p>27 CFR 478.102(a): Failure to complete a NICS/POC background check</p> <p>ATF Forms 4473: 4 Number of Instances: 4</p> | <p>Execute a required NICS/POC background check for all future over-the-counter firearm transactions.</p> | <p>RP Fitzer states that he will ensure that all out-of-state firearms transactions are conducted by a manager in the store so that these mistakes do not happen again.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |
| <p>27 CFR 478.124(c)(5): Failure by transferor to sign and/or date an ATF F 4473</p> <p>ATF Forms 4473: [] Number of Instances: []</p> | <p>Ensure that the required transferor/seller signature and date of transfer is obtained, validated and accurately recorded on all future ATF Forms 4473, Section D.</p> | <p>RP Fitzer states that he will ensure that all forms are signed and dated in the "transferor" certification section. A new manager will be assigned to oversee firearms transactions, and they will begin implementing an electronic Form 4473 in the very near future so that forms errors will be reduced.</p> | <p>Status Licensee Notified</p> <p>Verified Method In Person</p> <p>Date Licensee Notified 09/27/2021</p> |

CLOSING CONFERENCE

(9/27/2021)

09/27/2021

Attachment(s)

Attendee(s)

TERENCE W FITZER

EXHIBITS

Inspection

| Category | Attachment Name |
|-----------------------|--------------------------------------------------------|
| PostInspection | Pink Elephant Supplemental to cont.pdf |
| Correspondence | Spartan Notification RE: 4-61-07810 Inspection Results |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
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| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| UpdateLicensingCenter | 2021-11-29 8C Nov - Pink Elephant for signature.pdf |
| Correspondence | |
| Correspondence | DIO Adam Rogers Returned Inspection FCI-23534 |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| Correspondence | Spartan Notification RE: 4-61-07810 Monitored Case |
| UpdateLicensingCenter | 8C Initial - Pink Elephant (new).docx |
| Correspondence | Information Concerning Your Federal License/Permit |
| ReturnedSignedROV | PINK ELEPHANT - SIGNED AMENDED ROV.pdf |
| Correspondence | |

Correspondence
ViolationsPDF
Correspondence
Correspondence
ViolationsPDF
Correspondence
LicenseeResponseToViolationsPDF
ClosingConferenceSummary
Correspondence
Correspondence
ViolationsPDF
ViolationsPDF
PropertyOwnershipVerification
RentalLeaseVerification
BusinessVerification

Information Concerning Your Federal License/Permit
Report of Violations.pdf

Information Concerning Your Federal License/Permit
Report of Violations.pdf
Information Concerning Your Federal License/Permit
Licensee Response to Violations Report.pdf
Acknowledgment of Regulations.pdf

Information Concerning Your Federal License/Permit
Report of Violations.pdf
Report of Violations.pdf
Pink Elephant - Property Ownership.pdf
Pink Elephant - Lease-Property.pdf
Pink Elephant - Secretary of State.pdf

Notice to Revoke or Suspend License and/or Impose a Civil Fine

In the matter of License Number 4-61-071-02-4B-07810, as a/an dealer, including pawnbroker, in firearms other than
destructive devices issued to:

Name and Address of Licensee (*Show number, street, city, State and ZIP Code*)

Pink Elephant Gun & Pawn, Inc.
30 Colonels Ct.
Prestonsburg, KY 41653

Notice Is Hereby Given That:

Pursuant to the statutory provisions and reasons stated in the attached page(s), the Director or his/her designee, Bureau of Alcohol, Tobacco, Firearms and Explosives, intends to take action on the license described above.

- The above identified license may be revoked pursuant to 18 U.S.C. 923(e), 922(t)(5) or 924(p).
- The above identified license may be suspended pursuant to 18 U.S.C. 922(t)(5) or 924(p).
- The above identified licensee may be fined pursuant to 18 U.S.C. 922(t)(5) or 924(p).

Pursuant to U.S.C. 923(f)(2) and/or 922(t)(5), you may file a request with the Director of Industry Operations, Bureau of Alcohol, Tobacco, Firearms and Explosives, at 600 Dr. Martin Luther King Jr. Place, Suite 500, Louisville, KY 40202, in duplicate, for a hearing to review the revocation, suspension and/or fine of your license. The request must be received at the above address within 15 days of your receipt of this notice. Where a timely request for a hearing is made, the license shall remain in effect pending the outcome of the hearing; and if the license is due to expire, the license will remain in effect provided a timely application for renewal is also filed. The hearing will be held as provided in 27 CFR Part 478.

If you do not request a hearing, or your request for a hearing is not received by ATF on time, a final notice of revocation, suspension, and/or imposition of civil fine (ATF Form 5300.13) shall be issued.

- Please see included brochure

| | | |
|------------|--------------------------------------------------------------------------------|-----------|
| Date | Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official | Signature |
| 01/20/2022 | Adam P. Rogers, Director, Industry Operations, Louisville Field Division | (b)(6) |

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

- Certified mail to the address shown below.
Tracking Number: 70203160000180463355 Or Delivering a copy of the notice to
the address shown below.

| | | |
|---------------------------------------|--------------------------------|------------------------------------|
| Date Notice Served | Title of Person Serving Notice | Signature of Person Serving Notice |
| | | |
| Print Name and Title of Person Served | | Signature of Person Served |
| | | |

Address Where Notice Served

Under the provisions of 18 U.S.C. § 923(e) and 27 C.F.R. § 478.73, notice is hereby given that that the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) intends to revoke the Federal firearms license held by Pink Elephant Gun & Pawn, Inc. (“Licensee”). Specifically, the Director, Industry Operations, United States Department of Justice, ATF, Louisville Field Division, has reason to believe that Licensee willfully violated the provisions of the Gun Control Act of 1968, as amended, 18 U.S.C. Chapter 44, and the regulations issued thereunder, 27 C.F.R. Part 478 (collectively, “GCA”) as described herein.

Compliance History

ATF first issued a Federal firearms license to Licensee in 2018 at which time the laws and regulations under the GCA were reviewed as part of an application inspection. Subsequently, ATF conducted a compliance inspection of Licensee in 2019. As a result of the 2019 compliance inspection, Licensee was cited for 9 violations which were reviewed and corrective actions provided. A Warning Letter was issued following the 2019 inspection which advised the Licensee that “any future violations, either repeat or otherwise, could be viewed as willful and may result in revocation of [its] license.”

Current Inspection

On September 25, 2021, ATF began a compliance inspection of Licensee’s premises that revealed the following:

Background Check Violations:

1. On four occasions, Licensee willfully transferred a firearm to an unlicensed person without first contacting the National Instant Criminal Background Check System (“NICS”) and obtaining a unique identification number and/or 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), (d)(1). See Appendix A.
2. On occasion, Licensee knowingly and willfully transferred a firearm to a person not licensed under the GCA after failing to comply with the procedures applicable to conducting a national instant background check in violation of 18 U.S.C. § 922(t)(5) and 27 C.F.R. § 478.102(a). At the time of the proposed transfer the system was operational and such background check would have demonstrated that receipt of the firearm by the transferee would violate either 18 U.S.C. § 922(g) or 18 U.S.C. § 922(n). Per each occasion, Licensee may be revoked, suspended up to 6 months and/or fined up to \$8,831 in accordance with 18 U.S.C. § 922(t)(5) and 27 C.F.R. § 478.73. See Appendix B.

Transfer in Violation of Law

3. On occasions, 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). See Appendix C.

ATF Form 4473 Violations:

4. On occasions, Licensee willfully failed to obtain/execute the Firearms Transaction Record, ATF Form 4473 as indicated by the headings on the Form and the instructions on or pertaining to the Form, in violation of 18 U.S.C. § 922(m) and 27 C.F.R. § 478.21(a). See Appendix D.
5. On occasions, 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). See Appendix E.
6. On 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). See Appendix F.

Appendix

A. **(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)**

B. **(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)**

C. **(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)**

D. **(b)(3) (112 Public Law 55 125 Stat 552),(b)(6)**
 (b)(6)/(b)(7)(C)

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

E.

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

F.

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

Pink Elephant Gun & Pawn, Inc.
FFL 4-61-071-02-4B-07810

ATF Form 5300.4 (4500)

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

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 4-61-071-02-4B-07810 as a/an pawnbroker in firearms other than destructive devices
_____, issued to:

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

Pink Elephant Gun & Pawn, Inc.
30 Colonels Court
Prestonsburg, Kentucky 41653

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 _____,
 - 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 600 Dr. Martin Luther King Jr Place, Suite 500, Louisville KY 40202, 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 05/02/2022 | Name and Title of Bureau of Alcohol, Tobacco, Firearms and Explosives Official Adam P. Rogers, Director, Industry Operations, Louisville Field Division | Signature (b)(6) |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|

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: 70161370000045140672
- Or**
- Delivering a copy of the notice to
 the address shown below.

| | | |
|---------------------------------------|--------------------------------|------------------------------------|
| Date Notice Served | Title of Person Serving Notice | Signature of Person Serving Notice |
| Print Name and Title of Person Served | | Signature of Person Served |

Address Where Notice Served

Note: Previous Edition is Obsolete

UNITED STATES OF AMERICA
DEPARTMENT OF THE JUSTICE

BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES

IN THE MATTER OF THE: *

NOTICE OF REVOCATION OF LICENSE ISSUED TO: *

PINK ELEPHANT GUN & PAWN INC. *

30 COLONELS COURT *

PRESTONSBURG, KENTUCKY 41653 *

LICENSE NO: 4-61-071-02-4B-07810 *

* LOUISVILLE FIELD DIVISION

* DEPARTMENT OF JUSTICE

* BUREAU OF ALCOHOL, TOBACCO,

* FIREARMS & EXPLOSIVES

*

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On January 20, 2022 a Notice to Revoke or Suspend License and/or Impose a Civil Fine, ATF Form 4500 (5300.4) was issued by the Director of Industry Operations (“DIO”), Louisville Field Division, to Pink Elephant Gun & Pawn, Inc. (“Licensee”), 30 Colonels Court, Prestonsburg, Kentucky 41653, Federal firearms license number 4-61-071-02-4B-07810. A request for a hearing was timely received from the Licensee on January 25, 2022. On March 24, 2022 a hearing was conducted with regards to the Notice to Revoke or Suspend License and/or Impose a Civil Fine, ATF Form 4500 (5300.4). The following people were in attendance: ATF Louisville Field Division Director of Industry Operations Adam Rogers, ATF Deputy Associate Chief Counsel (b)(6), ATF Area Supervisor (b)(6), ATF Industry Operations Investigator (b)(6), ATF Industry Operations Investigator (b)(6), ATF Industry Operations Investigator (b)(6), and Mr. Terry Fitzer on behalf of Licensee. The administrative record (AR) in this matter consists of the transcript of the hearing, 12 government exhibits and two Licensee

exhibits introduced at the hearing. The findings and conclusions of the DIO are set forth below:

FINDINGS

The evidence in the AR establishes the following violations were committed by Licensee:

Background Check Violations:

1. On four occasions, Licensee willfully transferred a firearm to an unlicensed person without first contacting the National Instant Criminal Background Check System (“NICS”) and obtaining a unique identification number and/or 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), (d)(1). See Appendix A.
2. On [redacted] occasion, Licensee knowingly and willfully transferred a firearm to a person not licensed under the GCA after failing to comply with the procedures applicable to conducting a national instant background check in violation of 18 U.S.C. § 922(t)(5) and 27 C.F.R. § 478.102(a). At the time of the proposed transfer the system was operational and such background check would have demonstrated that receipt of the firearm by the transferee would violate either 18 U.S.C. § 922(g) or 18 U.S.C. § 922(n). Per each occasion, Licensee may be revoked, suspended up to 6 months and/or fined up to \$8,831 in accordance with 18 U.S.C. § 922(t)(5) and 27 C.F.R. § 478.73. See Appendix B.

The exhibits and testimony at the hearing established these violations. The Licensee admitted to the violations and acknowledged that at two prior inspections Licensee had been educated by ATF IOIs about the requirements for background checks and had been warned in writing following the 2019 compliance inspection about not transferring firearms to purchasers who present out-of-state CCW permits.

Transfer in Violation of Law

3. On [redacted] occasions, 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). See Appendix C.

The exhibits and testimony at the hearing established these violations. On [] occasions, Licensee transferred firearms to persons subject to a Federal firearms disability after those persons were denied by FBI NICS. The Licensee admitted to the violations and acknowledged that at two prior inspections Licensee had been educated by ATF IOIs about the requirements for the transfer of firearms to purchasers.

ATF Form 4473 Violations:

4. On [] occasions, Licensee willfully failed to obtain/execute the Firearms Transaction Record, ATF Form 4473 as indicated by the headings on the Form and the instructions on or pertaining to the Form, in violation of 18 U.S.C. § 922(m) and 27 C.F.R. § 478.21(a). See Appendix D.
5. On [] occasions, 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). See Appendix E.
6. On [] 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). See Appendix F.

The exhibits and testimony at the hearing established these violations. The Licensee admitted to the violations and acknowledged that at two prior inspections Licensee had been educated by ATF IOIs about the requirements for maintaining the ATF Form 4473 and acknowledged being warned about failure to do so in writing in 2019.

CONCLUSIONS

1. The majority of Federal Circuit Courts, including the Sixth Circuit, have held that where a Federal firearms licensee understands his or her legal obligations under the Gun Control Act (“GCA”), yet fails to fulfil those obligations, his or her license can be denied or revoked on the basis that the dealer “willfully” violated the GCA. Appalachian Resources Development Corp. v. McCabe, 387 F.3d 461, 464 (6th Cir. 2004) (citing cases).

2. An FFL may be revoked when a licensee demonstrates knowledge of the legal requirements of the GCA and fails to follow or is indifferent to those requirements. See, Perry v. Dep’t. of Treasury, Bureau of Alcohol, Tobacco & Firearms, 637 F.2d 1332, 1336 (9th Cir. 1981) (“To establish grounds for revocation of a license, the government must demonstrate a willful violation of the Act. That is established when a dealer understands the requirements of the law, but knowingly fails to follow them or was indifferent to them.”) (citing Lewin v. Blumenthal, 590 F.2d 268, 269 (8th Cir. 1979)); Stein’s Inc. v. Blumenthal, 649 F.2d 463, 467 (7th Cir. 1980) (“The [GCA] does not require bad purpose or evil motive before a license may be revoked or a renewal application denied. The Secretary need only prove that the petitioner knew of his legal obligation and purposefully disregarded or was plainly indifferent to the recordkeeping requirements”); Prino v. Simon, 606 F.2d 449, 451 (4th Cir. 1979) (Under the GCA, in a civil context, “[a] conscious, intentional, deliberate, voluntary decision properly is described as willful, regardless of venal motive”).)

3. Licensee did not dispute any elements of the violations. Mr. Fitzer acknowledged as the owner he is responsible for making sure the business maintains compliance with applicable laws and regulations and that Licensee had failed to do so even after being warned following the 2019 compliance inspection. Licensee was educated concerning his record keeping

obligations at the time of his application inspection in 2015. Licensee was subsequently cited for numerous violations in 2019 which resulted in a Warning Letter. A number of those violations were repeated in the 2021 compliance inspection resulting in this action, to include [redacted] transfers for firearms to purchasers who presented out-of-state CCW permits and significant numbers of ATF Forms 4473 with errors and omissions including purchasers responding “YES” to prohibiting questions and “NO” to the question of whether they were the actual purchaser of the firearm. Additionally, firearms were transferred by Licensee to persons with Federal firearms disabilities on [redacted] occasions after those persons were denied by FBI NICS. Licensee acknowledged that he and his employees were thoroughly educated about their record keeping obligations in 2015 and 2019, to include attending a seminar conducted for them by IOI [redacted (b)(6)] after the 2019 compliance inspection. Licensee was well aware of its legal obligations and purposefully disregarded or was plainly indifferent to them.

4. The Director of Industry Operations has reason to believe and does believe that Licensee willfully violated the provisions of Title 18, United States Code, Chapter 44, and the regulations issued thereunder as set forth in the Notice of Revocation of License issued to Licensee on January 20, 2022.

5. Therefore, due to the willful violation of the above listed statutes and regulations, the Federal firearms license issued to Pink Elephant Gun & Pawn, Inc. is hereby revoked pursuant to 18 U.S.C. § 923(e), and Title 27, Code of Federal Regulations, § 478.73.

Adam P. Rogers
Director of Industry Operations
Louisville Field Division

Appendix

A.

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

B.

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

C.

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

D.

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

E.

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

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

F.

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



U.S. Department of Justice

Bureau of Alcohol, Tobacco,
Firearms and Explosives

Washington DC

www.atf.gov

IMPORTANT NOTICE

Selling Firearms AFTER Revocation, Expiration, or Surrender of an FFL

Former Federal Firearms licensees (FFLs) who continue to sell firearms after the revocation, expiration, or surrender of their license are subject to the same rules as persons who have never been licensed in determining whether they are "engaged in the business" of selling firearms without a license in violation of 18 U.S.C. § 922(a)(1)(A). Accordingly, former licensees who wish to dispose of any remaining business inventory must adhere to the following guidance:

Business inventory must be disposed of by the former FFL in a manner that, objectively, does not constitute being engaged in the business of dealing in firearms using the same facts and circumstances test that would apply to persons who have never been licensed.

The preferred manner of disposition is for the former licensee to:

- Arrange for another FFL to purchase the business inventory (and other assets) of the business; or
- Consign the inventory to another FFL to sell on consignment, or at auction.

Should a former FFL decide against those options, he/she should be aware that future sales - whether from his/her personal firearms collection or otherwise - will be evaluated for a potential violation of 18 U.S.C. § 922(a)(1)(A), just as would occur with a person who had never been licensed.

If a former FFL is disposing of business inventory, the fact that no purchases are made after the date of license revocation, expiration, or surrender does not immunize him/her from potential violations of 18 U.S.C. § 922(a)(1)(A). Instead, business inventory acquired through repetitive purchases while licensed are attributed to the former FFL when evaluating whether subsequent sales constitute engaging in the business of dealing in firearms without a license.

ATF remains committed to assisting former licensees in complying with Federal firearms laws. If you have questions, please contact your local ATF office.

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