

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

_____)	
SIG SAUER Inc.)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:14-cv-00147-PB
)	
B. TODD JONES)	
Director,)	
Bureau of Alcohol, Tobacco, Firearms)	
and Explosives)	
)	
Defendant.)	
_____)	

**PARTIES’ JOINT MOTION FOR APPROVAL
OF PROPOSED ORDER TO STAY LITIGATION PENDING
RECONSIDERATION BY THE DEFENDANT OF MUZZLE DEVICE
CLASSIFICATION**

Plaintiff, SIG SAUER Inc. (“Sig Sauer”) and Defendant, B. Todd Jones, Director, Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), by and through undersigned counsel, respectfully request that the Court approve the proposed order to stay the litigation proceedings in this matter. As grounds for this Motion, the Parties state as follows:

1. On or about April 15, 2014, Sig Sauer filed a complaint with this Court, seeking judicial review and declaratory relief regarding a decision by the Firearms Technology Branch of ATF that a product to be manufactured by Sig Sauer is a silencer, not a muzzle brake. The decision was a response to an April 4, 2013, “Request for Classification” by Sig Sauer. Specifically, Sig Sauer submitted a rifle with a muzzle device permanently affixed to the barrel, and requested confirmation by ATF that “the device affixed to the forward end of the barrel is a muzzle brake and is not a silencer” as defined in 18 U.S.C. § 921(a)(24). Ex. A to the complaint.

2. In a letter dated August 26, 2013, ATF responded to the “Request for Classification,” stating in part that the subject muzzle device is “a part intended only for use in the assembly or fabrication of a silencer and, therefore, is a silencer....” Ex. B to the complaint.

3. By letter dated December 6, 2013, Sig Sauer submitted further information and requested reconsideration of ATF’s classification of the device as a silencer. Ex. C to the complaint. By letter dated February 21, 2014, ATF reaffirmed its prior classification, stating that it found “no reason to amend our earlier findings.” Ex. D to the complaint.

4. On April 15, 2014, Sig Sauer filed its complaint, seeking a decision that ATF’s determination was arbitrary and capricious, and not in accordance with law. Additionally, it asked the Court to declare that the muzzle device at issue is not any part intended only for use in the assembly or fabrication of a firearm silencer.

5. ATF’s answer to Sig Sauer’s complaint is due June 16, 2014. In late May, the United States Attorney notified Sig Sauer that ATF had decided to reconsider its decision, subject to reaching agreeable terms on addressing the pending case. ATF requested time to review the matter and issue a new decision.

6. In light of ATF’s willingness to reconsider its decision, the Parties have agreed to a procedure, subject to this Court’s approval, to stay the litigation pending reconsideration, to address certain proceedings in the administrative process, and to provide a procedure if the matter requires judicial review following reconsideration. If the new agency decision is acceptable to Sig Sauer, it will have obtained the relief sought without further litigation. If the new decision is not acceptable to Sig Sauer, it will proceed with its appeal to this Court without the need for further service. In the event ATF issues another decision concluding that Sig Sauer’s device is a silencer, the parties will proceed pursuant to an agreed upon schedule that is

shorter than the process that would occur if a new complaint had to be filed and served upon the United States.

7. Therefore, the Parties have agreed to, and request the Court's approval of, the following terms:

- a. The Court will stay the litigation until September 17, 2014.
- b. On or before fourteen (14) calendar days from the date the Court grants this motion and approves the accompanying order, Sig Sauer will submit to ATF a muzzle device sample identical to that submitted to ATF in April 2013. Sig Sauer will provide ATF with authenticating information concerning the sample and any additional documents or information (beyond that previously submitted), for inclusion in the administrative record as part of ATF's review upon reconsideration. ATF agrees that Sig Sauer may manufacture the muzzle device sample, if necessary, and send it via overnight mail, without further regulatory process or approval by the ATF, to: Earl Griffith, Chief, Firearms Technology Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405.
- c. On or before August 6, 2014, ATF will issue and provide to Sig Sauer a revised decision regarding Sig Sauer's muzzle device.
- d. If Sig Sauer disputes all or part of the new decision on reconsideration, Sig Sauer may file, in its sole discretion, a "Request for Reconsideration," with ATF including additional information and documentation for consideration, within fourteen (14) calendar days of the decision. Alternatively, Sig Sauer may proceed with this court case, as set forth below. If Sig Sauer submits a Request for Reconsideration, ATF will have fourteen (14) calendar days to provide a written response to Sig Sauer's request.

- e. If Sig Sauer determines not to appeal the new decision provided by ATF, Sig Sauer will notify the agency, and the parties voluntarily will submit a Fed. R. Civ. P. 41 stipulation of dismissal within thirty (30) calendar days of the decision.
- f. If Sig Sauer does not file a “Request for Reconsideration” or, in the alternative, disputes the ATF classification, Sig Sauer will have fourteen (14) calendar days to submit an amended complaint to this Court.
- g. ATF will have fourteen (14) calendar days following the submission of Sig Sauer’s amended complaint to file its answer with the Court. At this time, ATF also shall file the administrative record for this case with the Court. The parties agree that the administrative record will consist of: Exhibits A-D of the complaint; any product sample and additional information Sig Sauer provides on reconsideration; any ATF documents, electronic or otherwise, that were reviewed, generated, or relied upon in rendering its decision in connection with Sig Sauer’s classification request; any ATF guidance, policies, or standard operating procedures applicable to the classification request; and such other documents or information as the parties may agree.
- h. Following the submission of ATF’s answer and the administrative record, the case will be placed on the administrative track pursuant to LR 40.1. The parties will also request a conference with the Court to confer about the course of the case.

WHEREFORE, the Parties respectfully request that this Honorable Court:

- (A) Grant this Joint Motion;
- (B) Grant a stay of this case until September 17, 2014;
- (C) Approve the proposed order submitted with this motion; and
- (D) Grant such further relief as may be just, equitable and appropriate.

Respectfully submitted,

SIG SAUER Inc.

By its attorneys,

McLANE, GRAF, RAULERSON & MIDDLETON,
PROFESSIONAL ASSOCIATION

Date: June 9, 2014

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B. TODD JONES, Director

By its attorneys,

UNITED STATES ATTORNEYS OFFICE

Date: June 9, 2014

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DISTRICT OF NEW HAMPSHIRE**

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B. TODD JONES)	
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Defendant.)	
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ORDER

The Court has considered the Parties’ Joint Motion for Approval of Proposed Order to Stay Litigation Pending Reconsideration by the Defendant of Plaintiff’s Application. The Court approves the Stay as set forth in the Motion, with the following stipulations:

1. The Court stays the litigation for a period of ninety (93) calendar days until September 17, 2014.
2. On or before fourteen (14) calendar days from the date the court grants this motion and approves the accompanying order, Sig Sauer will submit to ATF a muzzle device sample, authenticating information concerning the sample, and any additional documents or information (beyond that previously submitted), for inclusion in the administrative record as part of ATF’s review upon reconsideration. ATF agrees that Sig Sauer may manufacture the muzzle device sample, if necessary, and send it via overnight mail, without further regulatory process or approval by the ATF, to: Earl Griffith, Chief, Firearms Technology Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, 244 Needy Road, Martinsburg, WV 25405.

3. On or before August 6, 2014, ATF will issue and provide to Sig Sauer a revised decision regarding the classification request of Sig Sauer's muzzle device.

4. If Sig Sauer disputes all or part of the new decision on reconsideration, Sig Sauer may file, in its sole discretion, a "Request for Reconsideration," including additional information and documentation for consideration, within fourteen (14) calendar days of the decision, or in its discretion may proceed with this court case, as set forth below. If Sig Sauer submits a Request for Reconsideration, ATF will have fourteen (14) calendar days to provide a written response to Sig Sauer's request.

5. If Sig Sauer determines not to appeal the new decision provided by ATF, Sig Sauer will notify the agency and the parties voluntarily will submit a Fed. R. Civ. P. 41 stipulation of dismissal within thirty (30) calendar days of the decision.

6. If Sig Sauer does not file a "Request for Reconsideration" or, in the alternative, disputes the response by ATF to its "Request for Reconsideration," Sig Sauer will have fourteen (14) calendar days to submit an amended complaint to this Court.

7. ATF will have fourteen (14) calendar days following the submission of Sig Sauer's amended complaint to file its answer with the Court. At this time, ATF also shall file the administrative record for this case with the Court. The parties agree that the administrative record will consist of: Exhibits A-D of the complaint; any product sample and additional information Sig Sauer provides on reconsideration; any ATF documents, electronic or otherwise, that were reviewed, generated, or relied upon in rendering its decision in connection with Sig Sauer's classification request; any ATF guidance, policies, or standard operating procedures applicable to the classification request; and such other documents or information as the parties may agree.

8. Following the submission of ATF's answer and the administrative record, the case will be placed on the administrative track pursuant to LR 40.1. The parties will also request a conference with the Court to confer about the course of the case.

Date: _____

SO ORDERED: _____

Paul J. Barbadoro,
United States District Judge