

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

1
2
3 RED'S TRADING POST, INC.,)
4 Petitioner,)
5 v.)
6)
7 RICHARD VAN LOAN, Director)
8 of Industry Operations, Seattle Field)
9 Division, Bureau of Alcohol,)
10 Tobacco, Firearms and Explosives)
11 Respondent.)

No. CV-7-00090- EJL

**AMENDED DECLARATION OF
RICHARD VAN LOAN**

11 I, RICHARD VAN LOAN, declare:

12 1. I have worked for nearly 28 years in the Bureau of Alcohol, Tobacco, Firearms and
13 Explosives (ATF). Prior to January 24, 2003, the Bureau of Alcohol, Tobacco, Firearms and
14 Explosives was known as the Bureau of Alcohol, Tobacco and Firearms of the Department of the
15 Treasury. On November 25, 2002, the President signed into law the Homeland Security Act of
16 2002, Pub. L. 107-296, 116 Stat. 2135 (2002). Under Title XI, Subtitle B of the Act, the
17 "authorities, functions, personnel, and assets" of the Bureau of Alcohol, Tobacco and Firearms,
18 Department of the Treasury, were transferred to the Department of Justice effective January 24,
19 2003, unless they related to the administration and enforcement of certain provisions of the
20 Internal Revenue Code and the Federal Alcohol Administration Act, in which case they were
21 retained by the Department of the Treasury. For purposes of this Declaration, both the Justice
22 and Treasury agencies will be considered as one and referred to as ATF. If called as a witness, I
23 could and would competently testify to the contents of this declaration.

24 2. I am currently working for ATF as the Director of Industry Operations (DIO) for the
25 field division encompassing the states of Alaska, Hawaii, Idaho, Oregon and Washington as well
26 as the Pacific Trust Territories and Guam. The DIO is the deciding official on federal firearms

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1 licensing actions in the field division. As DIO, among other duties, I am responsible for all
2 industry operations in the field division, which amounts to all non-criminal enforcement of laws
3 and regulations concerning federal firearms licensees, such as Red's Trading Post, Inc.

4 3. As DIO, one of my job responsibilities is to serve as the custodian of records for
5 administrative actions to revoke federal firearms licenses, such as the revocation action against
6 the firearms dealer's license of Red's Trading Post. In the Matter of the Notice of Revocation of
7 a Federal Firearms License Under Chapter 44, Title 18 U.S.C., as a Dealer in Firearms, which I
8 issued to Red's Trading Post on February 2, 2006, I have been responsible for maintaining a
9 complete record relating to the instant administrative licensing action.

10 4. I am familiar with the administrative record relating to the revocation of Red's
11 Trading Post because I reviewed it prior to making my decision that Red's Trading Post had
12 willfully violated the provisions of the Gun Control Act of 1968, 18 U.S.C. Chapter 44, and its
13 implementing regulations. I issued the Final Notice of Denial of Application or Revocation of
14 License (ATF Form 4501/5300.13) to Red's Trading Post on December 30, 2006 directing the
15 revocation of Red's Trading Post's federal firearms dealers license effective March 5, 2007.

16 5. By letter dated March 1, 2007, Red's Trading Post, through counsel, sought a
17 postponement of the March 5, 2007 revocation of its license. Exhibit A. On March 2, 2007 I
18 responded to this request by offering to allow Red's Trading Post to continue operating under
19 specific conditions. These conditions were as follows: (1) Red's Trading Post would not be
20 permitted to acquire firearms after March 5, 2007, (2) ATF could conduct a status check on the
21 progress of firearms dispositions every two weeks through the disposition period, and (3) ATF
22 would consider lifting the restriction on acquisitions of firearms during the pendency of the court
23 proceedings only after a showing by Red's Trading Post that its quality control practices have
24 changed in such a way that the violations found in 2000 and 2005 would not recur. Exhibit B.
25 By letter dated March 5, 2007, Ryan Horsley, Manager of Red's Trading Post, responded to my
26 letter by listing a number of remedial measures that he instituted after becoming Manager at

1 Red's; in addition, he indicated that by restricting his business ATF would "limit our business
2 considerably" and asked me to reconsider my position. Exhibit C. On or about March 6, 2007, I
3 called Ryan Horsley and we discussed my position on Red's not acquiring any new firearms
4 during the pendency of litigation, absent a showing of significant improvement in its business
5 practices. By letter dated March 7, 2007, Ryan Horsley indicated that he had begun referring
6 new transfers to other federal firearms licensees and he asked about the impact the licensing
7 action was going to have on the law enforcement community in Twin Falls. Exhibit D.

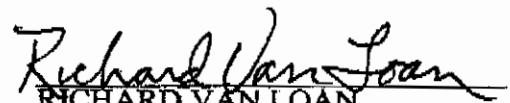
8 6. On March 9, 2007, I responded to the March 5 and March 7, 2007, letters of
9 Mr. Horsley, through his counsel of record Richard Gardiner. Exhibit E. First, the remedial
10 measures referenced in the March 5, 2007 Horsley letter are some of the same remedial measures
11 that were referenced by Ryan and Terry Horsley at the Warning Conference in May of 2000.
12 These remedial measures were either not undertaken in 2000 or even with these measures in
13 place, numerous violations were found during a subsequent inspection in 2005. Second,
14 although there are twenty-eight other federal firearms licensees in the city of Twin Falls that
15 could service the law enforcement community I offered to review any particular department or
16 shipment that might be affected by my decision on a case-by-case basis. I reiterated my
17 willingness to contact any law enforcement agency who was affected by my decision to limit
18 Red's Trading Post to "disposition only" status; the offer was not accepted.

19 7. As DIO, I have the authority pursuant to 27 C.F.R. § 478.78, to stay the effective date
20 of a federal firearms license revocation "when justice so requires" In this matter, I
21 concluded that Red's Trading Post had failed to establish that justice required a stay of the
22 revocation of its firearms dealers license. In doing so, I had in mind that the interest of justice
23 standard relates to the fair and proper administration of law, not just with respect to Red's
24 Trading Post, but across the firearms industry. Red's Trading Post was cited for violations of the
25 Gun Control Act, had a Warning Conference in 2000 in which the violations were explained to it
26 and it was warned that any future violations would be grounds for revocation of its license. In

1 2005 Investigator Caleb Rushing found such violations, even after the "remedial" measures were
2 allegedly in place. More importantly than how this impacts Red's Trading Post, my broader
3 concern is for the safety that proper administration of the federal firearms laws can provide to the
4 public.

5 8. The 2000 inspection initially found 25 unaccounted for firearms from Red's inventory,
6 this number was eventually reduced to 12 with the Twin Falls Police Department being notified
7 of the missing firearms. The explanation given at the time of the Warning Conference for the
8 violations were the lack of periodic inventories and weak internal controls. These same
9 explanations were also given for the failures to accurately and completely record ATF Form
10 4473's and file reports of multiple sales of handguns as required by regulation. The subsequent
11 inspection in 2005 highlighted again the fundamental flaws in the manner in which Red's
12 Trading Post was accounting for the movement of firearms through its inventory; this impacts
13 public safety because the information not being collected could negatively impact on the ability
14 to trace firearms. A Warning Conference had no effect upon achieving compliance over a five
15 year period. Balancing these public safety concerns against the financial harm that Red's
16 Trading Post would incur as a result of the revocation of its federal firearms dealers license due
17 to its continued, widespread, pervasive, willful recordkeeping violations convinced me that
18 justice did not require a stay of the revocation of its firearms dealers license.

19 I declare under penalties of perjury that the foregoing is true and accurate and that I have
20 executed this declaration on April 26, 2007, in Seattle, Washington.

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22 
23 RICHARD VAN LOAN
24 Directory of Industry Operations
25 Seattle Field Division
26 Bureau of Alcohol, Tobacco,
27 Firearms and Explosives
28 United States Department of Justice

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of April, 2007, the **Amended Declaration of Richard Van Loan and Exhibits A-E** were electronically filed with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following person:

Richard E. Gardiner
regardiner@cox.net

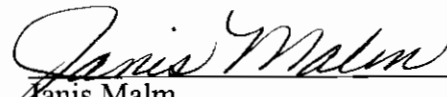
Mark S. Geston
msgeston@stoel.com

J. Walter Sinclair
jwsinclair@stoel.com

And, I hereby certify that the following listed non-registered CM/ECF participants were served by:

- United States Mail, postage prepaid
- Hand-delivery
- Facsimile transmission (fax)

None


Janis Malm
Legal Assistant