

November 22, 2017

VIA ELECTRONIC MAIL AND FEDEX COURIER

Shopify (USA) Inc.
33 New Montgomery St., Suite 750
San Francisco, California, USA
94105

Shopify Inc. - DMCA Complaints
Attn: Joseph Frasca, General Counsel
150 Elgin Street, 800 Suite
Ottawa, ON, Canada
K2P 1L4
Email: abuse@shopify.com

Re: Request to Disable Ghostgunner.net Website

Dear Sir or Madam:

We represent Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”), a non-profit organization comprised of the foremost gun law attorneys in the United States.¹ We are writing to ask that Shopify immediately disable the website it hosts at <https://ghostgunner.net/> (the “Ghostgunner Website”), operated by the firearms component seller Ghost Gunner. This website sells machines, software, and gun components allowing anyone to make and use a semi-automatic handgun or assault weapon -- including those legally barred from buying firearms, and those who would fail the basic background check that licensed gun dealers must conduct.

¹ As described more fully on its website, lawcenter.giffords.org, Giffords Law Center tracks and analyzes firearms legislation, works with lawmakers and advocates to craft and promote legislation that will reduce gun violence and save lives, and participates in critical litigation involving gun laws and firearm industry practices nationwide. Formed after an assault weapons mass shooting at a California law firm 24 years ago, the organization changed its name to Giffords Law Center to Prevent Gun Violence in 2017, following a merger with the gun safety organization founded by former Congresswoman Gabrielle Giffords and her husband, retired NASA astronaut and Navy combat veteran Mark Kelly. In 2011, Gabrielle Giffords was critically injured by a gunshot wound to the head in an assassination attempt at a Safeway supermarket where she was hosting a public meeting with constituents.

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Indeed, Ghost Gunner sells just the sort of do-it-yourself assault rifle parts used in the recent mass shooting in Tehama County, California and other massacres. In Tehama alone, an individual whom prosecutors described as a “deranged, paranoid killer,”² prohibited from owning a gun and charged with multiple crimes, nevertheless engaged in a mass shooting that left six dead and ten injured with two assault-style rifles *he assembled himself* using parts ordered online.³

The danger is real; the urgency is great; and Giffords Law Center asks that Shopify immediately invoke its policies to help stem the tide of this illegal, deadly behavior by disabling Ghost Gunner’s website.

1. Shopify’s Policies Prohibit its Customers from Engaging in Illegal Activities and Allow Shopify to Terminate Customers at Will. As an initial matter, Shopify’s own Terms of Service, <https://www.shopify.com/legal/terms> (“TOS”) and Acceptable Use Policy (“AUP”), <https://www.shopify.com/legal/aup>, prohibit the type of unlawful sales that Ghost Gunner makes on its website. The TOS prohibits Shopify’s customers from using Shopify’s hosting for any unlawful reason, which, as demonstrated below, encompasses Ghost Gunner’s activities. Shopify’s TOS states that “[customer] may not use the Shopify service for any illegal or unauthorized purpose” or to “violate any laws in [its] jurisdiction” (TOS, Par. 3, §4.).

In fact, Shopify’s Terms of Service authorize your company, at will, to terminate the services it provides to customers, stating: “We reserve the right to modify or terminate the Service *for any reason, without notice at any time . . . We reserve the right to refuse service to anyone for any reason at any time.*” (Par. 4., §§1, 2) (emphasis added). Under its TOS, Shopify may remove content and suspend customer accounts for any violation of its AUP (Par. 4., § 3.).

Your company’s AUP likewise bars customers from engaging in unlawful activities, stating: “4. Illegal Activities: You may not offer goods or services, or post or

² Ray Sanchez, Jason Hanna and Phil Gast, *Gunman in Northern California rampage was not supposed to have guns*, CNN, Nov. 15, 2017, at <http://www.cnn.com/2017/11/15/us/california-tehama-county-shootings/index.html>.

³ See Damon Arthur, *Sheriff: Tehama Shooter Built His Own Illegal Guns*, Record Searchlight, Nov. 15, 2017, at <http://www.redding.com/story/news/2017/11/15/tehama-shooter-built-his-own-illegal-guns/868737001/>.

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upload Materials⁴, that contravene or that facilitate or promote activities that contravene, the laws of the jurisdictions in which you operate or do business. . . . 6. Malicious and Deceptive Practices: You may not use the Services for deceptive commercial practices or any other illegal or deceptive activities.” Like the TOS, Shopify’s AUP thus contemplates removal, at any juncture, of materials, or your company’s suspension of any account should any of your customers violate Shopify’s policies, including by engaging in illegal activities.

2. Shopify Should Disable the Ghost Gunner Website, Which Sells Deadly, Unlawful Products.

As explained below, Ghost Gunner’s website engages in, and also facilitates, activities that violate many laws by selling the means for Internet purchasers to make and use guns without undergoing a background check and enabling the manufacture of guns without traceable serial numbers. Ghost Gunner’s customers can purchase online the key components to make semi-automatic AR-type rifles, which are both deadly and unlawful for a civilian to possess in many jurisdictions.⁵ These weapons include various features that make them particularly well-suited for use in combat situations, including pistol grips or forward grips that allow shooters to control the gun while rapidly firing large volumes of ammunition; barrel shrouds, which allow a shooter to grip the barrel of the gun for better control without burning the hand; and barrel threading, which permit attachments like silencers and flash suppressors to be mounted on the gun.

Military-style assault weapons possessing these features, like those that can be manufactured using Ghost Gunner, are especially dangerous because they are specifically designed for use in situations where the user intends to kill many people in a very short time. Thus, the U.S Court of Appeals for the Fourth Circuit has concluded that they are properly classified as “weapons of war” that are “most useful in military service”—and therefore that their ownership and use by civilians is not protected by the Second Amendment.⁶ *But*, it is precisely their military-style design that has made them particularly popular among mass shooters. Indeed, assault rifles have been used in some of the most notorious mass shootings in recent memory, including in Newtown, Connecticut (20 first graders and 6 adults killed), Orlando (49 killed), Las Vegas (59 killed, nearly 500 wounded), and Sutherland Springs, Texas (26 killed).

⁴ Defined in the Acceptable Use Policy as “any photos, images, videos, graphics, written content, audio files, code, information, data or other content uploaded, collected, generated, stored, displayed, distributed, transmitted or exhibited on or in connection with your Account.”

⁵ *See, e.g.*, California Penal Code, § 30605; note 14, *infra* (listing state statutes barring possession of assault rifles).

⁶ *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017).

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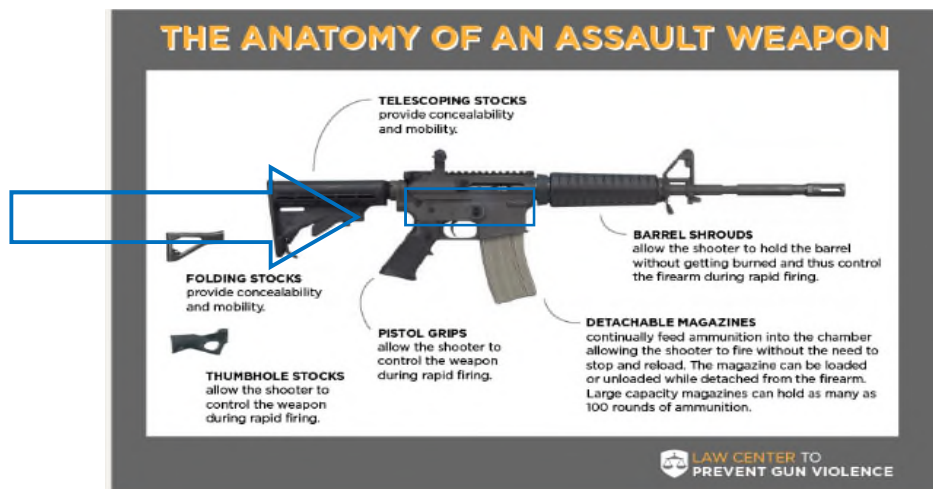
Thus, we call upon Shopify to cut ties with Ghost Gunner and disable its website. Not only is Ghost Gunner engaged in the illegal activities we describe here but, even if its actions were not *per se* illegal, it sells the sort of products that have already caused scores of senseless deaths -- and are likely to cause many more, unless taken off the market. Shopify has the ability to terminate its relationship with Ghost Gunner at will, and we ask that it exercise that ability.

a. *Online Purchases from the Ghost Gunner Website Allows Purchasers to Avoid Requisite Background Checks.* By purchasing component parts on Ghost Gunner's website, its customers avoid even the most basic criminal background checks that the law requires, and that licensed gun dealers must conduct. The clandestine, do-it-yourself nature of Ghost Gunner's component materials thus facilitates and encourages its customers to subvert legal requirements designed to guard against the purchase and use of firearms by those in whose hands they can do the most harm. Thus, Ghost Gunner's sales practices effectively allow criminals or other dangerous people prohibited from owning guns easily to circumvent the law by simply building their own guns rather than buying them from a licensed gun store.

b. *The Ghost Gunner Website Facilitates Assembly of Firearms that Cannot be Traced by Law Enforcement.* Yet another way that Ghost Gunner violates the law is by facilitating the assembly of untraceable pistols and assault weapons. Ghost Gunner sells the basic component that makes an AR-platform rifle able to function as a firearm, and which contains the firing mechanism: the so-called lower receiver, denoted by the arrow and rectangle in the below diagram. Generally, U.S. law requires licensed manufacturers and importers of firearms, including assault weapons, to designate the receiver with a serial number, as well as various other information. The serial number is an important component of any firearm because it allows the firearm to be traced to its source, including in the aftermath of a shooting.

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But, Ghost Gunner markets unfinished (“80 percent”) lower receivers and a machine that allows users easily to convert these unfinished receivers into fully functional receivers for semi-automatic AR-style assault rifles without imprinting any serial number or other identifying information on the receiver, thus producing untraceable guns that do not comply with the serialization requirements in federal law. As a result, when such guns are used in the commission of a crime, they cannot be traced back to their source. Indeed, by facilitating its online customers’ assembly and sale of assault weapons that cannot be traced, Ghost Gunner arguably violates the Gun Control Act of 1968, 18 U.S.C. §§ 921 *et seq.*, whose stated purpose is to “provide support to Federal, State, and local law enforcement officials in their fight against crime and violence”.⁷ Although Ghost Gunner does not sell finished receivers lacking serial numbers, it provides its online customers with the devices and components the sole purpose of which are to make and sell guns lacking serial numbers — and the ability to do so in minutes with the push of a button. Ghost Gunner thus provides its purchasers with a way to thwart law enforcement efforts, including those designed to deter mass shootings and detect the criminals who commit them.

c. *Ghost Gunner’s Activities Violate a Host of State Laws.*

The Ghost Gunner Website violates California law. For example, under Section 30600 of the California Penal Code, “[a]ny person who, within [California], manufactures or causes to be manufactured, distributes, transports, or imports into [California], [or offers for sale] . . . any assault weapon,” including specifically the AR-

⁷ PUBLIC LAW 90-618-OCT. 22, 1968.

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15 rifle that is manufactured using a Ghost Gunner machine, commits a felony punishable by up to eight years imprisonment.⁸ As noted above, with limited exceptions not relevant here, it is unlawful for any person within California even to possess an assault weapon.⁹ Accordingly, to the extent that Ghost Gunner sells any of its machines or AR-15 components (including unfinished receivers) to an individual in California who then uses them to manufacture an AR-15 rifle, Ghost Gunner has aided and abetted that individual in violating these statutes, facilitating and promoting illegal conduct in violation of Shopify's AUP.

Beginning July 1, 2018, the California Penal Code will impose additional requirements that render Ghost Gunner's activities illegal. For example, prior to making or assembling a firearm, an individual will have to apply to the Department of Justice for a unique serial number or other identification, undergoing a background check of sorts that will require a personal firearms eligibility check and affixation of a serial number or other identifying mark on the firearm.¹⁰

In addition to violating California law, Ghost Gunner, either directly or indirectly, also violates the laws of other states and jurisdictions. For example, Connecticut, the District of Columbia, Maryland, Massachusetts, and New York similarly ban assault rifles of the type manufactured using a Ghost Gunner machine.¹¹ New Jersey likewise requires persons seeking to possess, manufacture, transport, sell, or dispose of an assault rifle to apply for a license to do so.¹²

As our letter demonstrates, the Ghost Gunner Website is not simply violating a local regulation or technicality. It is facilitating the sort of mass killings that have become all too common in today's headlines. The website that Shopify hosts sells machines, software and gun components available to criminals who are ineligible to purchase or possess legal firearms, and who resort to do-it-yourself solutions like Ghost Gunner to circumvent the firearm prohibitions.

⁸ Cal. Penal Code §§ 30600; *see also id.* §§ 30510.

⁹ *Id.* § 30605.

¹⁰ *Id.* § 29180.

¹¹ Conn. Gen. Stat. §§ 53-202a, 53-202b, 53-202c.; D.C. Code §§ 7-2501.01(3A)(A), 7-2502.01(a), 7-2502.02(a)(6); *see also id.* § 7-2551.02.; Md. Code Ann., Crim. Law §§ 4-301(b), 4-303(a); Md. Code Ann., Pub. Safety §, 5-101(r)(2).; Mass. Gen. Laws ch. 140, §§121, 131M; *see also id.* §123 (Sixteenth); and N.Y. Penal Law §§ 265.00(22), 265.02(7), 265.10(1)–(3).

¹² N.J. Stat. Ann. §§ 2C:39-1w, 2C:39-5f, 2C:39-9g, 2C:58-12.

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Such was the case in 2013, for example, when a man prevented from buying a gun because of a past record of mental instability instead assembled an assault weapon from parts ordered online and killed five people during a rampage in Santa Monica, California.¹³ As we noted at the outset, the same was true just this month in Tehama County, California, where the killer engaged in a mass shooting using self-made guns. In commenting on this aspect of the tragic shooting, an assistant county sheriff emphasized: “The more restrictive that the laws become for people to purchase (guns), we’re going to see those criminal elements build their own. That’s what they do.”¹⁴ Finally, tools like Ghost Gunner are also attractive to criminal enterprises that traffic illegal guns anonymously, and are creating what the New York Attorney General has characterized as “the new frontier of illegal firearms trafficking.”¹⁵ By disabling the Ghost Gunner Website, Shopify can do its part to stop illegal firearms trafficking.

As we have demonstrated, Ghost Gunner’s activities are unlawful under U.S. federal and state law. Moreover, even if they were not, Shopify should end its contractual relations with Ghost Gunner and disable its site. Shopify’s Terms of Service give it the right “to terminate the Service for any reason, without notice, at any time.” The carnage caused by assault weapons such as those assembled from Ghost Gunner’s products, and the ease with which those prohibited from owning guns can arm themselves using Ghost Gunner’s products, are reason enough for Shopify to act now. It should unilaterally terminate its relationship with Ghost Gunner, or Shopify may find itself hosting the supplier of firearms used in the next mass shooting.

Accordingly, on behalf of Giffords Law Center, we respectfully request that Shopify disable the ghostgunner.net website that Shopify is hosting at the IP address 23.227.38.32. I declare that the information in this letter is accurate to the best of my knowledge and belief, and that I am authorized to act on behalf of Giffords Law Center to Prevent Gun Violence.

¹³ Robert Cavnar, *Santa Monica Shooter Built His Gun From Parts He Bought Online*, Huff Post, June 15, 2013, at https://www.huffingtonpost.com/robert-l-cavnar/santa-monica-shooter-buil_b_3447220.html.

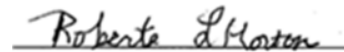
¹⁴ Damon Arthur, *Sheriff: Tehama Shooter Built His Own Illegal Guns*, Record Searchlight, Nov. 15, 2017, at <http://www.redding.com/story/news/2017/11/15/tehama-shooter-built-his-own-illegal-guns/868737001/>.

¹⁵ <https://ag.ny.gov/press-release/ag-schneiderman-announces-thirty-two-count-indictment-two-defendants-charged-illegally>

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Should you require any further information regarding this matter, do not hesitate to contact me directly at Roberta.Horton@apks.com or (202) 942-5161.

Sincerely,



Roberta L. Horton

Enclosures

cc: J. Adam Skaggs, Esq.
Chief Counsel, Giffords Law Center to Prevent Gun Violence