

1 Alan Gura, Calif. Bar No.: 178221
2 Gura & Possessky, PLLC
3 101 N. Columbus St., Suite 405
4 Alexandria, VA 22314
5 703.835.9085/Fax 703.997.7665

6 Donald E.J. Kilmer, Jr., Calif. Bar No.: 179986
7 Law Offices of Donald Kilmer, A.P.C.
8 1645 Willow Street, Suite 150
9 San Jose, CA 95125
10 408.264.8489/Fax 408.264.8487

11 Jason A. Davis, Calif. Bar No.: 224250
12 Davis & Associates
13 27201 Puerta Real, Suite 300
14 Mission Viejo, CA 92691
15 949.310.0817/Fax 949.288.6894

16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18	Ivan Peña, et al.,)	Case No. 2:09-CV-01185-KJM-CKD
19	Plaintiffs,)	
20)	<u>EXHIBIT A</u>
21	v.)	
22)	In Support of Plaintiffs' Motion
23	Stephen Lindley,)	For Summary Judgment
24	Defendant.)	
25	_____)	

26 Respectfully October 24, 2013,

27 Alan Gura, Calif. Bar No.: 178221
28 Gura & Possessky, PLLC
101 N. Columbus St., Suite 405
Alexandria, VA 22314
703.835.9085/Fax 703.997.7665

Jason A. Davis, Calif. Bar No.: 224250
Davis & Associates
27201 Puerta Real, Suite 300
Mission Viejo, CA 92691
949.310.0817/Fax 949.288.6894

Donald E.J. Kilmer, Jr., Calif. Bar No. 179986
Law Offices of Donald Kilmer, A.P.C.
1645 Willow Street, Suite 150
San Jose, CA 95125
408.264.8489/Fax 408.264.8487
Email: Don @DKLawOffice.com

By: /s/ Donald E.J. Kilmer, Jr.
Donald E. J. Kilmer, Jr., Attorney for Plaintiffs



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

February 8, 2007

Mr. Kevin B. Reid, Sr.
Sturm, Ruger & Co, Inc.
Lacey Place
Southport, CT 06890

Re: Ruger P345 (CLI)

Dear Mr. Reid:

I am writing to inform you that the Firearms Division of the California Department of Justice has determined that the Ruger P345 (CLI) does not have a "chamber load indicator as defined in Section 12126" as required by California Penal Code section 12130(d)(1). Only handguns that satisfy the requirements of Penal Code section 12126 are considered "not unsafe" handguns that are eligible for listing on the roster of handguns approved for sale in California. (Penal Code §§ 12126; 12126.)

Penal Code section 12126(c) defines a chamber load indicator as "a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." DOJ regulations further clarify how a chamber load indicator would "indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." (Penal Code §12126(c).)

DOJ regulations require that "[a] functioning chamber load indicator must meet all of the following conditions:

- (A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is/are permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.
- (B) Each letter of explanatory text must have a minimum height of 1/16 inch.
- (C) The explanatory text and/or graphics shall be of a distinct visual contrast to

Mr. Reid
February 8, 2007
Page 2

that of the firearm.

(D) The "loaded" indication, that portion of the chamber load indicator that visually indicates there is a round in the chamber, shall be of a distinct color contrast to the firearm.

(E) Only when there is a round in the chamber, the "loaded" indication is visible on the firearm from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.

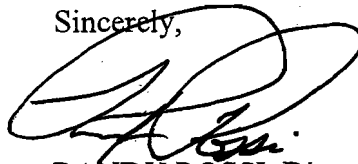
(F) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself. (Cal. Code Regs., tit. 11, § 4060, subd. (d), par. (1).)

In order to determine whether the Ruger P345 (CLI) has "text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself," we randomly selected six employees of the Firearms Division who have varying degrees of familiarity with firearms. We loaded the Ruger P345 (CLI) with an expended metal ammunition casing and asked the six individuals if they were able to determine whether the P345 (CLI) was loaded. Of the six people, none were able to determine whether the P345 (CLI) was loaded.

Under the totality of the circumstances, the purported chamber load indicator of the P345 (CLI) fails to inform a reasonably foreseeable adult user of the firearm that there is a round in the chamber of the firearm. Based upon our examination of the firearm and the fact that none of the individuals who were asked to examine the firearm were able to determine that it was loaded with an expended round out ammunition, it is clear that a reasonable foreseeable user would not be able to determine whether the firearm was loaded without referring to a user's manual or another resource.

Please feel free to contact me if you have any questions, or need any additional information.

Sincerely,



RANDY ROSSI, Director
Firearms Division

For EDMUND G. BROWN JR.
Attorney General



FIREARMS DIVISION
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
Facsimile: (916) 263-0676
(916) 263-0699

February 9, 2007

Mrs. Debra Else
Springfield Armory, Inc.
420 West Main Street
Geneseo, IL 61254

Re: Springfield Armory XD9611, XD9660, and XD9665 (CLI)

Dear Mrs. Else:

I am writing to inform you that the Firearms Division of the California Department of Justice has determined that the Springfield Armory XD9611, XD9660, and XD9665 (CLI's) do not have a "chamber load indicator as defined in Section 12126" as required by California Penal Code section 12130(d)(1). Only handguns that satisfy the requirements of Penal Code section 12126 are considered "not unsafe" handguns that are eligible for listing on the roster of handguns approved for sale in California. (Penal Code §§ 12126; 12126.)

Penal Code section 12126(c) defines a chamber load indicator as "a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." DOJ regulations further clarify how a chamber load indicator would "indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber." (Penal Code §12126(c).)

DOJ regulations require that "[a] functioning chamber load indicator must meet all of the following conditions:

- (A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is/are permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.
- (B) Each letter of explanatory text must have a minimum height of 1/16 inch.
- (C) The explanatory text and/or graphics shall be of a distinct visual contrast to

Mrs. Else
February 9, 2007
Page 2

that of the firearm.

(D) The "loaded" indication, that portion of the chamber load indicator that visually indicates there is a round in the chamber, shall be of a distinct color contrast to the firearm.

(E) Only when there is a round in the chamber, the "loaded" indication is visible on the firearm from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.


(F) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself. (Cal. Code Regs., tit. 11, § 4060, subd. (d), par. (1).)

In order to determine whether the Springfield Armory XD9611, XD9660, and XD9665 (CLI's) have "text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself," we randomly selected six non-sworn employees of the Firearms Division who have varying degrees of familiarity with firearms. We loaded the Springfield Armory XD9611, XD9660, and XD9665 (CLI's) with an expended metal ammunition casing and asked the six individuals if they were able to determine whether the XD9611, XD9660, and XD9665 (CLI's) were loaded. Of the six people, one person was able to determine whether the XD9611, XD9660, and XD9665 (CLI's) were loaded.

Under the totality of the circumstances, the purported chamber load indicator of the XD9611, XD9660, and XD9665 (CLI's) fails to inform a reasonably foreseeable adult user of the firearm that there is a round in the chamber of the firearm. Based upon our examination of the firearms and the fact that only one of the individuals who were asked to examine the firearms were able to determine that it was loaded with an expended round of ammunition, it is clear that a reasonable foreseeable user would not be able to determine whether the firearms were loaded without referring to a user's manual or another resource.

Please feel free to contact me if you have any questions, or need any additional information.

Sincerely,



RANDY ROSSI, Director
Firearms Division

For EDMUND G. BROWN JR.
Attorney General

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



DIVISION OF LAW ENFORCEMENT
P.O. BOX 160487
SACRAMENTO, CA 95816-0487
(916) 263-0699
Facsimile: (916) 263-0676

October 3, 2007

Mrs. Debra Else
Springfield Armory, Inc.
420 West Main Street
Geneseo, IL 61254

Re: Springfield Armory XD9611, XD9660, and XD9665 .

Dear Mrs. Else:

I am writing in response to your request for the Bureau of Firearms to re-evaluate whether the Springfield Armory models XD9611, XD9660, and XD9665 have chamber load indicators. We are unable to comply with your request because none of the models had text that met the minimum text height requirement for text on chamber load indicators when they were submitted to DOJ in 2006, and none of the models have magazine disconnect mechanisms, as now required by California law.

Penal Code section 12130(d)(1) provides that “[c]ommencing January 1, 2006, no center-fire semiautomatic pistol may be submitted for testing pursuant to this chapter if it does not have either a chamber load indicator as defined in subdivision (c) of Section 12126, or a magazine disconnect mechanism as defined in subdivision (d) of Section 12126.” As of January 1, 2007, every center-fire semiautomatic pistols submitted for testing must have *both* a chamber load indicator as defined in subdivision (c) of Section 12126, *and* a magazine disconnect mechanism as defined in subdivision (d) of Section 12126, if the pistol has a detachable magazine.

Penal Code Section 12126(c) defines a chamber load indicator as “a device that plainly indicates that a cartridge is in the firing chamber. A device satisfies this definition if it is readily visible, has incorporated or adjacent explanatory text or graphics, or both, and is designed and intended to indicate to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.” DOJ regulations further clarify how a chamber load indicator “indicate[s] to a reasonably foreseeable adult user of the pistol, without requiring the user to refer to a user's manual or any other resource other than the pistol itself, whether a cartridge is in the firing chamber.” (Pen. Code §12126, subd. (c).)

DOJ regulations require that a “functioning chamber load indicator must meet all of the following conditions:

Mrs. Else
October 3, 2007
Page 2

(A) Explanatory text and/or graphics either incorporated within the chamber load indicator or adjacent to the chamber load indicator is/are permanently displayed by engraving, stamping, etching, molding, casting, or other means of permanent marking.

(B) Each letter of explanatory text must have a minimum height of 1/16 inch.

(C) The explanatory text and/or graphics shall be of a distinct visual contrast to that of the firearm.

(D) The "loaded" indication, that portion of the chamber load indicator that visually indicates there is a round in the chamber, shall be of a distinct color contrast to the firearm.

(E) Only when there is a round in the chamber, the "loaded" indication is visible on the firearm from a distance of at least twenty-four inches. When there is no round in the chamber, the "loaded" indication must not be visible.

(F) The text and/or graphics and the "loaded" indication together inform a reasonably foreseeable adult user of the pistol, that a round is in the chamber, without requiring the user to refer to a user's manual or any other resource other than the pistol itself. (Cal. Code Regs., tit. 11, § 4060, subd. (d), par. (1).)

When they were submitted for testing in 2006, the Springfield Armory XD9611, XD9660, and XD9665 models had explanatory text, but each letter of the text did not have a minimum height of 1/16 inch according to the DOJ-certified testing laboratory that tested the firearms. Because the text did not meet the minimum requirements set forth above, by the terms of DOJ regulations, none of the firearms had a "chamber load indicator" as defined in and required by California law. As of January 1, 2007, all models of semi-automatic pistols with detachable magazines must have magazine disconnect mechanisms, as well as chamber load indicators. Even if DOJ were to determine that the models tested in 2006 have chamber load indicators, DOJ could not approve the models because none of the handguns has a magazine disconnect mechanism. Therefore, we are unable to comply with your request to re-evaluate our decision.

Please feel free to contact me if you have any questions, or need any additional information.

Sincerely,



ALISON Y. MERRILEES
Deputy Attorney General
Bureau of Firearms

For EDMUND G. BROWN JR.
Attorney General