

January 19, 2018

**VIA ELECTRONIC MAIL AND FEDEX COURIER**

Shopify (USA) Inc.  
33 New Montgomery St., Suite 750  
San Francisco, California, USA  
94105  
Email: support@shopify.com

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 80-Lower.com 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.<sup>1</sup> We request that Shopify immediately disable the website it hosts at <https://www.80-lower.com/>, operated by the firearms component seller Tactical Gear Heads, LLC d/b/a 80-Lowers (“80-Lowers”). This website sells all components allowing anyone to make and use an assault weapon -- including those legally barred from buying firearms, and those who would fail the basic background check that licensed gun dealers must conduct. Indeed, 80-Lowers sells just the sort of do-it-yourself assault rifle parts used in recent mass shootings throughout the country.

80-Lowers’ activities violate numerous state laws; it also aids and abets its purchasers in violating the laws banning possession of assault rifles and/or requiring that weapons be serialized. For these reasons, 80-Lowers breaches Shopify’s Terms of Service, <https://www.shopify.com/legal/terms> (“TOS”) and Acceptable Use Policy (“AUP”),

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<sup>1</sup> As described more fully at [lawcenter.giffords.org](http://lawcenter.giffords.org), Giffords Law Center crafts and promotes legislation to reduce gun violence and participates in critical litigation involving gun laws nationwide. Formed after an assault weapons mass shooting 24 years ago, the organization changed its name to Giffords Law Center to Prevent Gun Violence in 2017, after merging with the gun safety organization founded by former Congresswoman Gabrielle Giffords, who was critically injured by a gunshot wound to the head, along with her husband, a former astronaut.

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<https://www.shopify.com/legal/aup>, both of which prohibit Shopify’s customers from engaging in unlawful activities. This thus mandates that Shopify disable 80-Lowers’ website.

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**1. 80-Lowers’ Website Sells Deadly, Unlawful Products.**

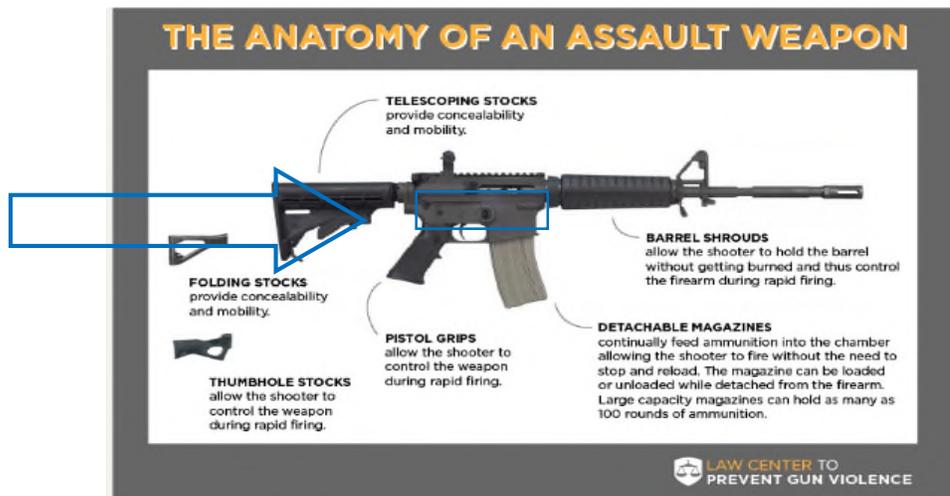
80-Lowers’ website engages in, and also facilitates, activities that violate many laws by selling the components for Internet purchasers to make and use guns without undergoing the background check required when purchasing a weapon at a licensed gun store. 80-Lowers’ customers can purchase online the key components to make semi-automatic AR-15 rifles, which are both deadly and unlawful for a civilian to possess in many jurisdictions.<sup>2</sup> Assault rifles have been used in some of the most notorious mass shootings, 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).

Additionally, 80-Lowers facilitates the assembly of untraceable assault weapons. It sells the basic component that makes an AR-platform rifle able to function as a firearm, and which contains the firing mechanism: the “lower receiver”, denoted by the arrow and rectangle in the below diagram. Generally, U.S. law requires licensed manufacturers of firearms, including assault weapons, to designate the receiver with a serial number that allows the firearm to be traced to its source, including in the aftermath of a shooting.

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<sup>2</sup> See, e.g., <https://www.80-lower.com/products/5-56-freedom-ar15-build-kit-16-barrel-keymod-handguard-with-fire-safe-80-lower> (advertising for sale “5.56 Freedom AR15 Build Kit (16" Barrel & Keymod Handguard) with Fire/Safe 80% Lower” that features “every part needed to build a full complete rifle”).

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But, 80-Lowers markets unfinished (“80 percent”) lower 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, 80-Lowers arguably violates the Gun Control Act of 1968, 18 U.S.C. §§ 921 *et seq.*, whose stated purpose is to support law enforcement officials in fighting crime and violence.

## **2. 80-Lowers’ Activities Violate a Host of State Laws.**

### **a. Applicable State Laws**

80-Lowers’ manufacture and sale of assault weapon components violate numerous state laws, among them, those of California, Connecticut, Maryland, Massachusetts, New York and New Jersey, as well as the laws of the District of Columbia.

In California, for example, “[a]ny person who, within th[e] state, manufactures or causes to be manufactured, distributes, transports, or imports into the state, keeps for sale, or offers or exposes for sale, or who gives or lends any assault weapon ... is guilty of a felony.” Cal. Penal Code § 30600(a); see also *id.* §§ 30510, 30515 (defining “assault weapon” to include any semiautomatic, centerfire rifle with a detachable magazine and a pistol grip, including specifically any variations of the AR-15). And, effective July 1 of this year, California will institute a new law specifically aimed at ensuring that all firearms are serialized. According to that law, “prior to manufacturing or assembling a firearm, a person manufacturing or assembling

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the firearm” must “apply to the Department of Justice for a unique serial number or other mark of identification” pursuant to a rigorous background check and application process, and provide proof that the unique serial number of other mark of identification has been affixed in an appropriate manner to the firearm within 10 days of its manufacture or assemblage. *Id.* §§ 29180(b), 29182.

Connecticut law also clearly prohibits the activities that constitute the core of 80-Lowers’ business. Connecticut not only bans the possession of assault rifles but “*any combination of parts from which an assault weapon ... may be rapidly assembled*”—which tracks precisely the terms 80-Lowers uses to tout its merchandise. Conn. Gen. Stat. § 53-202a (defining “assault weapon” to include any variations of the AR-15 and the parts or combination of parts necessary to assemble that rifle) (emphasis added). In addition, anyone who, within Connecticut, “distributes, transports or imports into the state, keeps for sale, or offers or exposes for sale, or who gives any assault weapon ... shall be guilty of a class C felony.” *Id.* § 53-202b. Finally, with limited exceptions not relevant here, any person possessing an assault weapon in the state shall be guilty of a class D felony. *Id.* § 53-202c.

Likewise, Maryland and Massachusetts statutes expressly ban the sale or offer for sale of assault weapons, and these states, along with New York and the District of Columbia, all ban the possession of assault weapons:

- Md. Code Ann., Crim. Law § 4-303(a) provides “a person may not ... transport an assault weapon into the State ... or ... possess, sell, offer to sell, transfer, purchase, or receive an assault weapon”; Md. Code Ann., Pub. Safety §, 5-101(r)(2) defines “regulated firearm” to include “assault weapons” and, specifically, any AR-15 rifle.
- Mass. Gen. Laws, ch. 140, § 131M provides that “[n]o person shall sell, offer for sale, transfer or possess an assault weapon,” defining “[a]ssault weapon” to include any variations of the AR-15 rifle, ch. 140, §121.
- N.Y. Penal Law § 265.02(7) states “[a] person is guilty of criminal possession of a weapon in the third degree when ... such person possesses an assault weapon”; *id.* §§ 265.10(1)–(3) (“Any person who manufactures or causes to be manufactured [or who transports, ships, or disposes of] any ... assault weapon ... is guilty of a class D felony.”). These penal laws define “assault weapon” to include any semiautomatic rifle with a detachable magazine and a pistol grip”. N.Y. Penal Law § 265.00(22)).
- The District of Columbia not only bans the possession of assault weapons but provides for strict liability in tort to any manufacturer, importer, or dealer of an assault weapon for all direct and consequential damages caused by that assault weapon in the District. D.C. Code §§ 7-2501.01(3A)(A) (defining “assault weapon” to include any variations of the AR-15); § 7-2502.01(a) (“no person or organization in the District shall possess or

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control any firearm, unless the person holds a valid registration certificate for the firearm”), 7-2502.02(a)(6) (“[a] registration certificate shall not be issued for ... an assault weapon”); *id.* § 7-2551.02 (“Any manufacturer, importer, or dealer of an assault weapon ... shall be held strictly liable in tort, without regard to fault or proof of defect, for all direct and consequential damages that arise from bodily injury or death if the bodily injury or death proximately results from the discharge of the assault weapon ... in the District of Columbia.”).

Finally, New Jersey has enacted laws requiring that assault weapons be both registered and serialized, and that the manufacturers of such weapons also be registered and licensed. Specifically, the state renders it illegal to possess an assault weapon without registering the weapon, which requires that the weapon have a serial number. *Id.* § 2C:39-5f (“Any person who knowingly has in his possession an assault firearm is guilty of a crime of the second degree except if the assault firearm is licensed pursuant to N.J.S.2C:58-5; registered pursuant to section 11 of P.L.1990, c.32 (C.2C:58-12); or rendered inoperable pursuant to section 12 of P.L.1990, c.32 (C.2C:58-13).”); *id.* § 2C:58-12 (allowing only the registration of assault firearms that are used for legitimate target-shooting purposes). N.J. Stat. Ann. *id.* § 2C:39-9g renders it unlawful to manufacture or cause to be manufactured an assault weapon without being registered or licensed as a manufacturer (“Any person who manufactures, causes to be manufactured, transports, ships, sells or disposes of an assault firearm<sup>3</sup> without being registered or licensed to do so pursuant to N.J.S.2C:58-1 et seq. is guilty of a crime of the third degree.”).

### **3. 80-Lowers Directly Violates State Law by Offering for Sale and Selling Assault Weapons**

80-Lowers directly violates the many state laws prohibiting the sale or advertising of assault weapons to persons. California and Connecticut law provide that anyone who “keeps for sale, or offers or exposes for sale” an assault weapon commits a felony. Similarly, the Maryland and Massachusetts prohibit anyone from “sell[ing] or offer[ing] to sell” assault weapons. These laws obviously implicate 80-Lowers: 80-Lowers maintains a website at <https://www.80-lower.com/> -- the site that Shopify hosts -- that offers for sale and sells complete kits for assembly of assault weapons. This website is accessible to Internet users in every U.S. state, including those banning the “offer for sale” or “exposure for sale” of such weapons. *It is thus demonstrably true, in the very fact that your customer 80-Lowers is offering for sale do-it-yourself assault weapon kits, that 80-Lowers has directly violated state law.*<sup>4</sup>

<sup>3</sup> See N.J. Stat. Ann. § 2C:39-1w (defining “assault firearm” to include the AR-15).

<sup>4</sup> 80-Lowers also directly violates the New Jersey statute requiring that anyone causing to be manufactured an assault firearm be registered or licensed to do so; our research shows that 80-Lowers does not hold any such license.

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**4. 80-Lowers Also Aids and Abets Its Customers' Violations of State Law by Selling Building Kits for Unserialized Assault Weapons**

The sole use of the products 80-Lowers sells -- and the use trumpeted by 80-Lowers' own website -- constitutes a criminal act in multiple jurisdictions. 80-Lowers aids and abets its customers' possession of assault weapons, which is a crime in states such as Connecticut, Maryland, Massachusetts, New York, and also in the District of Columbia. And, by "causing" its purchasers to manufacture assault weapons, 80-Lowers also aids and abets their crimes in states such as California and New York. Finally, by selling unserialized, untraceable 80% lower receivers for use in assembling assault weapons, 80-Lowers has aided and abetted criminal acts by purchasers in states such as New Jersey.

A person or entity may be liable for aiding and abetting by facilitating a crime without physically or verbally assisting in the commission of a crime. *See, e.g., People v. Belenger*, 222 Cal.App.2d 159, 163 (1963). Liability may adhere as long as a defendant has knowledge of the perpetrator's acts and the defendant "made commission of the crime possible." *Id.* at 166 (defendant liable for aiding and abetting in burglary by providing get-away car; without the car, the court reasoned, the property could not have been taken from the house, so the defendant made the commission of the crime possible). *See also People v. Watson*, 20 N.Y.3d 182, 189 (2012) (defendant held guilty of criminal facilitation in the fourth degree where he provided the "means or opportunity" for the commission of a crime and brought a supposed buyer to the drug dealer, "thereby aiding the commission of that felony"). So too, in advertising and selling kits whose intended and sole purpose is the manufacture of assault weapons, 80-Lowers is aiding and abetting its customers' "manufacturing" and "possession" of such assault weapons in violation of state law. *See State v. Landingham*, 2005 WL 375475 (Ct. App. Ohio 8th Dist. Feb. 17, 2005) (in aiding and abetting analysis, criminal intent may be inferential and supported by circumstantial evidence).

Undoubtedly, 80-Lowers not only makes its customers' crimes possible, but it does so intentionally. 80-Lowers' only business is the manufacture and sale of components with a single purpose: to be converted easily into fully-functioning firearms. It thus must be aware of the bans that many states enact on the advertising, sale and possession of AR-15s and other assault weapons. Under the laws we have outlined, above, there can be no other reason for 80-Lowers to sell complete kits for the assembly of unregistered, unserialized (and therefore untraceable) AR-15 assault weapons, other than to perpetrate criminal offenses.

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Shopify's customer 80-Lowers' very business is unlawful. The products that it advertises and sells through the site <https://www.80-lower.com/> that your company hosts enable its

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purchasers to commit criminal acts in multiple states -- indeed, that is their express purpose. Moreover, by failing to conduct any background checks or otherwise limit the customers to whom it sells, 80-Lowers enables the acquisition of deadly weapons by those who are prohibited by law from possessing guns, and therefore cannot acquire them from licensed dealers who do conduct criminal background checks.

Moreover, even were 80-Lowers' activities not technically illegal, Shopify certainly would not wish to be associated publicly with the mass shootings that 80-Lowers' products facilitate. 80-Lowers' do-it-yourself, unserialized products -- so-called "ghost guns" -- have been used to deadly effect in several cases, including in 2013, when a man prevented from buying a gun because of his 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.<sup>5</sup> The same was true last year in Tehama County, California, where the assistant county sheriff observed regarding the mass shooting using self-made guns: "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."<sup>6</sup> Finally, tools like Ghost Guns 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."<sup>7</sup>

For all of these reasons, Shopify should end its contractual relations with 80-Lowers and disable its site immediately. 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 80-Lowers' products, and the ease with which those prohibited from owning guns can arm themselves using 80-Lowers' products, are reason enough for Shopify to act now. Otherwise, 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 website that Shopify is hosting at the IP address 23.227.38.32. I declare that the

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<sup>5</sup> 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](https://www.huffingtonpost.com/robert-l-cavnar/santa-monica-shooter-buil_b_3447220.html).

<sup>6</sup> 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/>.

<sup>7</sup> <https://ag.ny.gov/press-release/ag-schneiderman-announces-thirty-two-count-indictment-two-defendants-charged-illegally>.

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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.

Should you require any further information regarding this matter, do not hesitate to contact me directly at [Roberta.Horton@apks.com](mailto: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