

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	NAL/Acct. No. 915TP0007
Leslie D. Brewer)	Case No. 98TP412
Tampa, Florida 33617)	

FORFEITURE ORDER

Adopted: March 2, 2000

Released: March 3, 2000

By the Chief, Enforcement Bureau:

1. This order imposes a forfeiture against Leslie D. Brewer, d/b/a/ L.D. Brewer's 2-way Radio (collectively, "Mr. Brewer"), in the amount of \$10,000, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. § 503(b), and Section 1.80 of the Commission's Rules ("the Rules"), 47 C.F.R. § 1.80, for willful violation of Sections 2.803(a)(1), and 15.201(b) of the Rules, 47 C.F.R. §§ 2.803(a)(1), and 15.201(b). These violations are based on the marketing of a transmitter not authorized by the Commission. The transmitter at issue was sold to an undercover agent of the Commission's Tampa, Florida Field Office.

BACKGROUND

2. In early 1997, an agent from the Tampa Field Office visited L.D. Brewer's 2-Way Radio to ask about transmitters that would operate in the FM broadcast band, and was offered a 40-watt FM transmitter by Mr. Brewer. During that visit, Mr. Brewer indicated that he assembles such transmitters daily, and showed the agent a unit he was building at the time. There was no indication that the transmitters assembled by Mr. Brewer were authorized by the Commission, as no FCC identifier number was visible on the transmitter displayed to the agent. In July, 1997, the Tampa Field Office subsequently mailed an official notice to Mr. Brewer, informing him of the requirement to obtain authorization from the Commission before marketing radio frequency devices, and warning him of the possible penalties for marketing transmitters without such authorization. Mr. Brewer's response to the notice denied manufacturing or marketing any products that require FCC type acceptance, certification, or notification.

3. On August, 9, 1998, an agent from the Tampa Field Office, posing as a member of the general public, sent an electronic mail ("e-mail") message to L.D. Brewer's 2-Way Radio requesting information on purchasing a 20-watt transmitter that would operate in the FM broadcast band. That same day, Mr. Brewer responded to the agent's request via e-mail. Mr. Brewer listed a price and provided an address to which payment should be sent. On August 25, 1998, the Tampa Field Office submitted a money order payment for the transmitter to L.D. Brewer's 2-Way Radio.

4. On September 28, 1998, the Tampa Field Office received the fully assembled 20-watt FM broadcast transmitter from L.D. Brewer's 2-Way Radio. The transmitter operated on a frequency of 91.8975 MHz with an output power of 20 watts. There was no indication that the transmitter was authorized by the Commission, and no FCC identifier number was affixed to the transmitter. On August 5, 1999, the Tampa Field Office issued a Notice of Apparent Liability for monetary forfeiture ("NAL") in the amount of \$10,000 to Mr. Brewer.

5. In response to the NAL, Mr. Brewer denies e-mailing anyone from the Commission or delivering to any Commission employee a radio transmitter, and claims that the Commission fails to

present evidence that a device was delivered, shipped, or otherwise made available to the Commission's agents. The response also reiterates his response to the warning letter, contending that he sells radio "kits for educational purposes" and contends that "[k]its not manufactured by L.D. Brewer's 2-Way Radio cannot be construed as items manufactured or marketed by LD Brewer's 2-Way Radio." Mr. Brewer claims that "radio kits," even if assembled, do not require notification, type acceptance or certification. Finally, he argues that the NAL "fails" because: (a) the NAL Account Number listed on the document does not reflect "the original case number TP-0700188"; (b) he requested a meeting in response to the warning letter, but claims the Commission failed to respond to that request; (c) the time period of the investigation is "too lengthy."¹

DISCUSSION

6. Both the Act and the Rules prohibit the sale or offer for sale of radio frequency devices, as well as the shipment or distribution for the purpose of selling such devices, unless the device has first been properly authorized, identified and labeled in accordance with the Commission's Rules. *See* 47 U.S.C. § 302(b), and 47 C.F.R. § 2.803(a)(1). Section 2.801 of the Rules defines a radio frequency device as "any device *which in its operation is capable of emitting radio frequency energy...*" (Emphasis added.) Radio frequency devices subject to the Rules include, among other items, radio communication transmitting devices, and "any part or component thereof which in use emits radiofrequency energy." *See* 47 C.F.R. § 2.801(a) and (d). Although Mr. Brewer claims that the device at issue is "a radio kit, and not a complete transmitter," the device which Mr. Brewer sold and shipped to the Commission's undercover address was a fully constructed FM radio transmitter, capable of transmitting a radio frequency signal once power is supplied and the transmitter is turned on. Such a device unquestionably falls within the scope of this definition. Moreover, section 15.3(p) of the Rules defines a "kit" as "[a]ny number of *electronic parts*, usually provided with a schematic diagram or printed circuit board, *which, when assembled* in accordance with instructions, *results in the a device subject to the regulations in this part*, even if additional parts of any type are required to complete assembly." *See* 47 C.F.R. § 15.3(p) (emphasis added). Section 15.201(b) of the Rules requires intentional radiators, such as the FM transmitter sold to the Tampa Field Office, to be certified by the Commission prior to marketing. *See* 47 C.F.R. § 15.201(b). Thus, who manufactured the device is of no consequence here, because the violation at issue is Mr. Brewer's *sale and shipment* of an FM transmitter that was neither certified by the Commission nor properly identified or labeled. As noted in the NAL, these violations were willful under the Act because they were not caused by accident or mistake.²

7. While Mr. Brewer likely did not realize that he e-mailed anyone at the Commission, the case file in this matter includes e-mail messages sent to the Commission's undercover e-mail address from "ldbrewer@flanet.com (doug)" on May 7, 1998, and by "ldbrewer@ldbrewer.com (Doug)" on August 9, 1998, discussing the price for the transmitter and the address to which payment was to be sent.³

¹ Mr. Brewer also states that he has been the subject of "a lengthy and ongoing history of harassment" by the District Director of the Tampa Field Office, who Mr. Brewer claims "has been too personally interested in [his] affairs and is exceeding his authority, and misusing his official powers." As Mr. Brewer offers no evidence in support of these claims, but states that he has "reams and volumes of 'official' transmittals signed by [the District Director], which will eventually be presented to the Commission in other actions," we do not address these statements here.

² Section 312(f)(1), which also applies to Section 503(b), provides: "the term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act or by a treaty ratified by the United States." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

³ Among the written materials received with the transmitter purchased from L.D. Brewer's 2-Way Radio was a brochure describing other devices, electronic gear, and "pirate radio network collectibles" for sale. On the

The May 7, 1998 message explicitly states that the price for the 20-watt unit “is not negotiable, and the order will have to be prepaid in US funds, *before we build it for you... Freight on this item is \$10.00US [sic] to the CONUS and \$30.00 outside the US.*” (Emphasis added.) This evidence belies Mr. Brewer’s claim that he did not e-mail the Commission employee (albeit he likely was not aware it was a Commission employee), and also undermines his claim, in his response to the warning letter, that completed units are sold “for export only.” Furthermore, the device obtained by the Tampa agents was shipped to an address within the U.S., and is currently being held by the Commission in a secure evidence locker. Thus, the sale of this device to the FCC’s agent was a clear violation of the rules, regardless of whether Mr. Brewer knew an FCC agent was involved.

8. Mr. Brewer’s remaining contentions are equally unavailing. The numbering of the case is of no consequence to the validity of the NAL, as the number is for internal Commission identifying and tracking purposes only. Similarly, the length of the investigation in this matter does not invalidate the NAL. As required by the Act and the Rules, the NAL was issued within one year of the sale and delivery of the uncertified transmitter. *See* 47 U.S.C. § 503(b)(6)(B); 47 C.F.R. § 1.80(c)(3). With regard to Mr. Brewer’s initial request for an interview, the Tampa Field Office reports that counsel for Mr. Brewer did not return calls attempting to set up such a meeting. On July 25, 1997, the Tampa Field Office received Mr. Brewer’s written request for an interview with the FCC, in addition to his written response to the warning letter. The request for an interview asked that Mr. Brewer’s attorney be informed of the time for the interview. The Tampa Field Office called Mr. Brewer’s attorney on at least four occasions, July 29, July 31, August 5, and August 12, 1997, to attempt to arrange a mutually convenient time for the interview. However, neither Mr. Brewer’s counsel nor Mr. Brewer responded to the Tampa Field Office regarding the requested meeting. Subsequently, two years elapsed without further contact from Mr. Brewer or his counsel regarding the request for an interview before the NAL was issued. Mr. Brewer was thus given a reasonable opportunity for an interview, but elected not to take advantage of it. He cannot use his own failure to act on the resolution procedures established in the Act and the Rules to nullify the subsequent issuance of the NAL. His belated attempt to renew his request for an interview, more than two years after failing to follow through on his initial request and after an NAL has issued, is moot with respect to the issue of whether a forfeiture should be assessed.

ORDERING CLAUSES

9. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁴ and sections 0.111, 0.311, and 1.80 of the Rules,⁵ Leslie D. Brewer, d/b/a L.D. Brewer’s 2-Way Radio, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$10,000 for willful violations of Sections 2.803(a)(1) and 15.201(b) of the Rules, requiring authorization from the Commission prior to the marketing of radio frequency devices.

10. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission’s Rules⁶ within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to section 504(a) of the Act.⁷ Payment may be made by credit card through the Commission’s Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order

cover of this brochure, below the name “L.D. Brewer” and the address to which the money orders for the transmitter was sent, appears an e-mail address, ldbrewer@flanet.com, and an Internet URL, <http://www.ldbrewer.com>.

⁴ 47 U.S.C. § 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 504(a).

of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. referenced above. Requests for full payment under an installment plan should be sent to: Chief, Credit and Debt Management Center, 445 12th Street, S.W., Washington, D.C. 20554.⁸

11. **IT IS FURTHER ORDERED** that a copy of this Order shall be sent certified mail, return receipt requested, to Leslie D. Brewer, d/b/a L.D. Brewer's 2-Way Radio, 10740 N. 56th Street, Suite 186, Tampa, Florida 33617.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

⁸ See 47 C.F.R. § 1.1914.