

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

In the Matter of)
Johannus Orgelbouw b.v.) File No. EB-03-TS-089
The Netherlands) NAL/Acct. No. 200432100006
) FRN # 0009-7508-60
)

FORFEITURE ORDER

Adopted: April 23, 2004

Released: April 27, 2004

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order ("Order"), we issue a monetary forfeiture in the amount of five thousand, six hundred dollars (\$5,600) to Johannus Orgelbouw b.v. ("Johannus"), for repeated violation of Section 302(b) of the Communications Act of 1934, as amended ("Act"), and Section 2.803(a) of the Commission's Rules ("Rules"). The noted violations involve Johannus's importing and marketing digital electronic organs that do not comply with the technical requirements set forth in Part 15 of the Rules.

2. On November 6, 2003, the Enforcement Bureau issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of seven thousand dollars (\$7,000) to Johannus. Johannus filed a response to the NAL ("Response") on December 19, 2003.

II. BACKGROUND

3. On March 27, 2003, the Enforcement Bureau received a complaint alleging that Johannus imported digital electronic organs that did not comply with the Commission's rules. The complainant asserted that other digital electronic organ companies suffered competitive harm because Johannus, through its failure to comply with the Commission's rules, was able to produce digital electronic organs less expensively.

4. On June 18, 2003, the Enforcement Bureau issued a letter of inquiry to Johannus ("LOI").

1 47 U.S.C. § 302a(b).

2 47 C.F.R. § 2.803(a).

3 Johannus Orgelbouw b.v., 18 FCC Rcd 23078 (Enf. Bur. 2003).

4 Specifically, the complainant stated that it purchased a Johannus Rembrandt Model 370 organ, tested the device, and concluded that it did not comply with the radiated emissions limits for Class B digital devices.

5 Letter to Johannus Orgelbouw b.v. from Joseph P. Casey, Chief, Technical and Public Safety Division,

In its answer to the LOI, Johannus stated that it imports about 13 organs a month into the U.S. and Canada, and that, after receiving the Commission's letter, it found that some of its organs radiated signals in excess of the radiated emission limits for Class A digital devices⁶ in the Commission's rules. Johannus claimed that the organs only began to radiate such signals after a design change in the CPU board that affected organs manufactured from July to October of 2002. Johannus admitted that it imported and marketed some of those organs into the U.S.

5. On November 6, 2003, the Enforcement Bureau issued an *NAL* to Johannus for importing and marketing in the U.S. digital electronic organs which did not comply with the Commission's radiated emission limits in repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules. We found in the *NAL* that Johannus had apparently imported and marketed organs that did not comply with the radiated emission limits for Class A digital devices. However, based on information found on Johannus's website which clearly indicated that Johannus was marketing its organs for use in a residential environment,⁷ we concluded that Johannus's organs are actually Class B digital devices⁸ and therefore must comply with the more stringent emission limits applicable to such devices. In its response to the *NAL*, Johannus claims that it did not willfully violate the Commission's rules because it was not aware that any of its electronic organs fell under the requirements for Class B digital devices. Johannus also claims in the response that it has a history of overall compliance, that it had already planned to modify its organs to meet the Class B requirements before receiving the *NAL*, and that it stopped importing organs into the U.S. after receiving the *NAL*.

III. DISCUSSION

6. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁹ Section 1.80 of the Rules,¹⁰ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Policy Statement").¹¹ In examining Johannus' response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may

Enforcement Bureau (June 18, 2003).

⁶ Section 15.3(h) of the Rules defines a Class A digital device as "a digital device marketed for use in a commercial, industrial or business environment, exclusive of a device that is marketed for use by the general public or is intended to be used in the home." 47 U.S.C. § 15.3(h).

⁷ As noted in the *NAL*, the Johannus web site states that the Opus series organs "are designed for living room and chapel"; the Monarch series organs "find a place in both living rooms and churches"; the Majestic and Sovereign series organs are "designed for both home practice purposes and church"; and the Chamber organ "has been designed for both small and medium sized churches (and home use)."

⁸ Section 15.3(i) of the Rules defines a Class B digital device as "a digital device marketed for use in a residential environment notwithstanding use in commercial, business and industrial environments." 47 C.F.R. § 15.3(i).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 C.F.R. § 1.80.

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

require.¹²

7. Section 302(b) of the Act states that no one shall import, ship, sell, or offer for sale devices that fail to comply with regulations promulgated pursuant to this section.¹³ Section 2.803(a) of the Rules states that no person shall sell, offer for sale, import, ship, or distribute a device that does not comply with technical, labeling and identification requirements specified in this chapter.¹⁴ It is undisputed that Johannus's organs are digital devices and, therefore, must comply with Part 15 of the Rules, including the radiated emission limits. In its *NAL* response, Johannus argues that its violation was not willful because it mistakenly believed that its organs fell under the technical requirements for Class A digital devices, and a small modification and improvement in the CPU/Voice Board of the organs unintentionally caused the devices to exceed the Class A emission limits.

8. We need not address Johannus's argument that the violation was not willful. The *NAL* cited Johannus for repeated, not willful, violation of Section 302(b) of the Act and Section 2.803(a) of the Rules. In this regard, Section 503(b)(1) of the Act provides that a forfeiture penalty may be imposed if the violation is *either* willful *or* repeated.¹⁵ Johannus previously admitted that, as recently as July 2003, it imported into the U.S. and marketed in the U.S. at least one model of organ (involving more than one organ) that did not comply with the Commission's radiated emission limits.¹⁶ Further, Johannus does not dispute in its response to the *NAL* that the violation was repeated. Accordingly, based on the evidence before us, we conclude that Johannus repeatedly¹⁷ violated Section 302(b) of the Act and Section 2.803(a) of the Rules. In any event, we find Johannus's claim that it mistakenly believed that its organs were Class A digital devices unpersuasive. As noted in the *NAL* and as set forth above, Johannus's website indicated that it was marketing the devices for use in a residential environment. Since Johannus clearly knew that it was marketing its organs for residential use, it knew or should have known that the organs were Class B devices and therefore had to comply with the more stringent technical standards for Class B devices.

9. Johannus also asserts that, before receiving the *NAL* on November 6, 2003, it had already begun planning to modify all of its organs to meet Class B standards. We do not believe that any reduction of the forfeiture amount on this basis is warranted. In this regard, Johannus does not present evidence that it took steps to modify its organs to correct the violation prior to our investigation of this matter.¹⁸ Moreover, while Johannus indicates that it is taking remedial actions, the Commission has

¹² 47 U.S.C. § 503(b)(2)(D).

¹³ See 47 U.S.C. § 302(b).

¹⁴ See 47 U.S.C. § 2.803(a)(2).

¹⁵ 47 U.S.C. § 503(b)(1).

¹⁶ Letter to the Enforcement Bureau, Technical and Public Safety Division, from Gert A. Van de Weerd, President, Johannus Orgelbouw b.v. (July 10, 2003).

¹⁷ As provided by 47 U.S.C. § 312(f)(2), a violation is "repeated" if it occurs more than once or continues for more than one day. The Conference Report for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991).

¹⁸ Cf. *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 (2003) (reducing a forfeiture based on good faith where the licensee took steps to correct the violation *prior* to the FCC inspection).

repeatedly held that remedial actions taken to come into compliance with Commission rules are not mitigating factors warranting reduction of a forfeiture.¹⁹

10. Finally, Johannus requests cancellation or reduction of the forfeiture because it has “sold electronic organs for decades without a violation.” We find that Johannus has a history of overall compliance. Pursuant to Section 1.80(b)(4) of the Rules,²⁰ we reduce the forfeiture amount to \$5,600.

11. We have examined Johannus’s Response pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Johannus repeatedly violated Section 302(b) of the Act and Section 2.803(a) of the Rules. Due to Johannus’s history of overall compliance, we find that a reduction of the forfeiture to the amount indicated above is in order.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED THAT**, pursuant to Section 503(b) of the Act,²¹ and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²² Johannus Orgelbouw, b.v. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand, six hundred dollars (\$5,600) for repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

13. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules²³ 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.²⁴ Payment shall be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) referenced above, and also should note the NAL/Acct. No. 200432100006. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁵

¹⁹ See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVV, Inc.*, 42 FCC 2d 258, 259 (1973).

²⁰ See Section 1.80(b)(4) of the Rules, 47 C.F.R. § 1.80(b)(4).

²¹ 47 U.S.C. § 503(b).

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

²³ 47 C.F.R. § 1.80.

²⁴ 47 U.S.C. § 504(a).

²⁵ See 47 C.F.R. § 1.1914.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to Johannus Orgelbouw b.v., Keplerlann 2, 6717 BS Ede, The Netherlands, and to Johannus's counsel, Lewis H. Goldman, Esq., 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau