

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

In the Matter of)
)
IKUSI-Angel Iglesias, S.A.) File No. EB-03-SE-214
)

ORDER

Adopted: June 8, 2004

Released: June 9, 2004

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Order*, we deny in large part a request for confidential treatment of material submitted by IKUSI-Angel Iglesias, S.A. (“IKUSI”) in response to a letter of inquiry (“LOI”) from the Enforcement Bureau. However, we grant confidential treatment of one specific item in IKUSI’s response.

II. BACKGROUND

2. On March 29, 2004, the Spectrum Enforcement Division of the Enforcement Bureau sent IKUSI an LOI seeking information and documents concerning the compliance of IKUSI’s Remote Crane Transmitter (“RCT”) Model TM60, FCC ID # PVT-TM60, with the requirements of Part 15 of the Commission’s Rules (“Rules”).¹ IKUSI submitted a Response to this LOI on April 26, 2004.² IKUSI’s Response included a Confidentiality Request,³ in which IKUSI seeks confidential treatment of its entire Response. IKUSI asserts that “[t]he Response contains sensitive proprietary commercial information concerning the number of devices shipped by IKUSI for sale in the United States.”⁴ IKUSI asserts that “[t]he Response also contains information relating to IKUSI’s future product development and marketing plans for the U.S.”⁵ IKUSI submits that “[p]ublic release of the Response would result in competitive harm to IKUSI because it would provide competitors with information related to the nature and extent of IKUSI’s relationship with entities purchasing its products, including total product sales data, which could

¹ Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Miguel Portillo, Director, TLC Division, IKUSI-Angel Iglesias, S.A. (March 29, 2004) (“LOI”).

² Letter from Mace J. Rosenstein, Esq. and David L. Martin, Esq., Hogan & Hartson, L.L.P., to Yasin Ozer, Spectrum Enforcement Division, Enforcement Bureau (April 26, 2004) (“Response”).

³ Letter from Mace J. Rosenstein, Esq. and David L. Martin, Esq., Hogan & Hartson, L.L.P., to Yasin Ozer, Spectrum Enforcement Division, Enforcement Bureau (April 26, 2004) (“Confidentiality Request”).

⁴ Confidentiality Request at 1.

⁵ *Id.*

be used to approximate market share data.”⁶ IKUSI also states that “[t]o date there has been no disclosure to the public of the sensitive data contained in the Response.”⁷

III. DISCUSSION

3. Section 0.459 of the Rules establishes a procedure by which parties may request that information or materials that they have submitted to the Commission not be routinely available for public inspection.⁸ This rule requires that a party seeking confidentiality provide a statement of the reasons for withholding the materials in question from public inspection and set forth the specific categories of materials for which such treatment is appropriate.⁹

4. We find that IKUSI’s request for confidential treatment of its Response substantially fails to comply with the standards set forth in Section 0.459 of the Rules. The Commission’s rules make clear that casual requests for confidentiality that do not comply with the requirements of Section 0.459 will not be considered.¹⁰ Further, the LOI issued to IKUSI by the Spectrum Enforcement Division explicitly warned IKUSI that requests for confidential treatment must comply with the requirements of Section 0.459, including the standards of specificity mandated by Section 0.459(b), and that the Bureau will not consider confidentiality requests that do not comply.¹¹ However, IKUSI has failed to provide a statement of reasons for withholding its Response in its entirety. For example, while IKUSI generally asserts that the Response “contains information relating to [its] future product development and marketing plans for the U.S.,” it does not identify the specific “product development and marketing” information for which confidential treatment is sought as required by Section 0.459(b)(1), explain the degree to which such information is commercial or financial or contains a trade secret as required by Section 0.459(b)(3), or explain how disclosure of such information could result in substantial competitive harm as required by Section 0.459(b)(5). Moreover, we find that IKUSI’s request for confidential treatment of its Response is overbroad. In this regard, IKUSI’s Response includes information that is clearly not commercial, financial or trade secret information. For example, IKUSI’s Response references and discusses at length its application for equipment authorization for the RCT Model TM60.¹² We note, however, that this application is publicly available on the FCC Office of Engineering and Technology’s internet site. Accordingly, we conclude that IKUSI has failed to demonstrate by a preponderance of the evidence a

⁶ *Id.*

⁷ *Id.* at 2.

⁸ 47 C.F.R. § 0.459.

⁹ 47 C.F.R. § 0.459(b). Section 0.457 sets forth the categories of records that are not routinely available for public inspection, i.e., accorded confidential treatment, and Section 0.459 sets forth the procedures for submitting requests that material or information be withheld from public inspection. For instance, Section 0.459(b)(3) provides that a request for confidentiality shall, among other things, include an “explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.” 47 C.F.R. § 0.459(b)(3).

¹⁰ *See* 47 C.F.R. § 0.459(c).

¹¹ LOI at 3.

¹² Response at 4-6.

case for nondisclosure of its entire Response. We therefore deny IKUSI's request that we grant confidential treatment of its entire Response.

5. We nevertheless find that IKUSI has demonstrated that one specific item in its Response constitutes commercial or financial information, the disclosure of which could result in substantial competitive harm.¹³ Specifically, we find that IKUSI has demonstrated that disclosure of the number of devices shipped by IKUSI for sale in the United States, as set forth in its response to question (1), could result in substantial competitive harm. Accordingly, we will accord confidential treatment to this information.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED**, pursuant to Sections 0.111, 0.311, 0.459(c) and 0.459(d)(2) of the Rules,¹⁴ that the Confidentiality Request filed on April 26, 2004 by IKUSI-Angel Iglesias, S.A. **IS GRANTED** to the limited extent indicated herein and **IS** otherwise **DENIED**.

7. **IT IS FURTHER ORDERED**, pursuant to Section 0.459(g) of the Rules, that IKUSI-Angel Iglesias, S.A. may file an application for review of this denial with the Commission within five (5) working days of this *Order*.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent via first class mail and certified mail, return receipt requested, to counsel for IKUSI-Angel Iglesias, S.A., Mace J. Rosenstein, Esq. and David L. Martin, Esq., Hogan & Hartson, L.L.P., 555 Thirteenth Street, N.W., Washington, D.C. 20004-1109.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

¹³ See 47 C.F.R. § 0.459(b)(3). See also 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

¹⁴ 47 C.F.R. §§ 0.111, 0.311, 0.459(c) and 0.459(d)(2).