



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

April 8, 2005

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wal-Mart Stores, Inc.
Legal Department
Attn: Houda Nounou, Assistant General Counsel
601 North Walton Blvd.
Bentonville, Arkansas 72716-0710

Re: File No. EB-05-SE-050

Dear Ms. Nounou:

This is an official **CITATION**, issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended ("Communications Act"), 47 U.S.C. § 503(b)(5), for marketing an unauthorized radio frequency device in the United States in violation of Section 302(b) of the Communications Act, 47 U.S.C. § 302a(b), and Section 2.803(a) of the Commission's Rules ("Rules"), 47 C.F.R. § 2.803(a). As explained below, future violations of the Commission's rules in this regard may subject your company to monetary forfeitures.

By letter dated February 24, 2005, the Spectrum Enforcement Division of the Commission's Enforcement Bureau initiated an investigation into whether Wal-Mart Stores, Inc. ("Wal-Mart") is marketing in the United States unauthorized radio frequency devices, specifically, Vortech GPS Antenna Boosters. You responded by letter dated March 16, 2005.¹ In your response, you stated that Wal-Mart began marketing the Vortech GPS Booster Antenna in March 2004, that the device was only available through Walmart.com, and that Wal-Mart has sold 64 units to date.² You identified the manufacturer of the device as San Jose Navigation, Inc., a company headquartered in Taipei, Taiwan, and indicated that you sourced the product domestically from GPS Outfitters, Inc.

You further stated that Wal-Mart recognizes that intentional radiators as well as unintentional radiators are subject to the Commission's regulations. You indicated that for products imported by Wal-Mart, it is the company's policy that products are reviewed for admissibility into the U.S. Customs territory and for compliance with U.S. laws and regulations prior to importation. For domestically sourced products such as the Vortech GPS Antenna Booster, you asserted that Wal-Mart's practice is to rely on the assertions made by the supplier that the product is compliant with all applicable U.S. laws and regulations. In addition, you asserted that it is Wal-Mart's practice to use the service of third parties for an independent review and testing of certain electronic products. You acknowledged that the Vortech GPS Antenna Booster was not certified in accordance with Commission rules. Based on your records,

¹ Letter from Houda Nounou, Assistant General Counsel, Wal-Mart Stores, Inc., to Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau (March 16, 2005).

² You also indicated that Wal-Mart has returned its inventory of 54 units to the supplier and permanently discontinued marketing this product.

you believe that the Vortech GPS Antenna Booster was not evaluated for compliance by Wal-Mart and that you simply relied on the representations made by your supplier.

Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(1) of the Commission’s implementing regulations provides that:

no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labelled as required by § 2.925 and other relevant sections in this chapter.

Pursuant to Section 15.201(b) of the Rules, 47 C.F.R. § 15.201(b), intentional radiators, such as the Vortech GPS Antenna Booster, must be authorized in accordance with the FCC’s certification procedures prior to the initiation of marketing in the United States. Moreover, the Vortech GPS Antenna Booster operates in frequency bands used for GPS, which are within the restricted frequency bands listed in Section 15.205(a) of the Rules, 47 C.F.R. § 15.205(a). Section 15.205(a) allows intentional radiators to transmit only spurious emissions³ in the restricted frequency bands. Thus, the Vortech GPS Antenna Booster apparently cannot comply with the FCC’s technical standards and therefore would not be capable of receiving a grant of equipment certification. Accordingly, it appears that Wal-Mart has violated Section 302(b) of the Act and Section 2.803(a) of the Rules by marketing in the United States unauthorized radio frequency devices.

If, after receipt of this citation, you violate the Communications Act or the Commission’s rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.⁴

You may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission’s Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that you are taking to ensure that you do not violate the Commission’s rules governing the marketing of radio frequency equipment in the future.

The nearest Commission field office appears to be the New Orleans Office in New Orleans, Louisiana. Please call Neal McNeil at 202-418-1160 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Kathryn Berthot
Deputy Chief, Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W., Rm. 7-C802
Washington, D.C. 20554

³ 47 C.F.R. § 2.1 defines spurious emissions as “Emission on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions.”

⁴ See 47 C.F.R. § 1.80(b)(3).

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn Berthot
Deputy Chief, Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission