

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

In the Matter of)	
)	
Gibson Tech Ed, Inc.)	File No. EB-04-SE-123
Orem, Utah)	NAL/Acct. No. 200532100013
)	FRN 0007050479
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: August 30, 2005

Released: September 1, 2005

By the Chief, Spectrum Enforcement Division:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Gibson Tech Ed, Inc. (“Gibson”) apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) for apparent willful and repeated violation of Sections 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).² The noted apparent violations involve Gibson’s marketing of two models of unauthorized FM broadcast transmitters.

II. BACKGROUND

2. On June 30, 2004, the Enforcement Bureau (“Bureau”) issued Gibson a Citation³ for marketing unauthorized FM broadcast transmission equipment manufactured by Veronica Ltd. (“Veronica”), in violation Section 302(b) of the Act and Section 2.803 of the Rules, and for failing to respond to a letter of inquiry (“LOI”).⁴

3. While investigating Gibson’s marketing of Veronica FM transmitters and power amplifiers, Bureau staff observed that Gibson was also marketing FM transmitters identified on Gibson’s website as “Ramsey” equipment.⁵ The Bureau subsequently investigated Gibson’s marketing of Ramsey FM transmitters and determined through internet research on December 2, 2004, and April 18, 2005, that Gibson was offering for sale, on its Hobbytron.com website, fully assembled FM broadcast transmitters

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ Citation issued on June 30, 2004, to Gibson Tech Ed, Inc., by Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau.

⁴ Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Gibson Tech Ed, Inc. (May 14, 2004).

⁵ “Ramsey” refers to Ramsey Electronics, Inc., located in Victor, NY.

designated as R-FM25B-WT and R-FM100B-WT. Gibson's website indicated that both transmitters operate in the FM broadcast band, 88 – 108 MHz, and that the output power of the R-FM100B-WT is adjustable between 25 mW and one watt. The output power of the R-FM25B-WT was not indicated on Gibson's website, but information in Ramsey's catalog indicates that it is adjustable between 5 μ W and 25mW. The FCC's equipment authorization database indicates that neither Gibson nor Ramsey has received a grant of equipment certification⁶ for either the R-FM25B-WT or the R-FM100B-WT.

4. The Hobbytron.com website indicated that customers purchasing the above transmission equipment are required, as a condition of purchase, to sign a form which "protects our company from the end user causing trouble with the FCC." Specifically, the form is captioned "FM Transmitter Certification Form," and states that "[t]his form is used to verify that your purchase of a FM TRANSMITTER product(s) will be used in accordance with appropriate laws regulating intentional radiators." This form requires the purchaser to certify as follows:

I hereby certify that the product(s) will be operated in accordance with applicable laws of the land for the intended destination of operation. If resold, we additionally certify that we will . . . enforce this compliance to the purchaser. I do understand that the product(s) may exceed the legal limits set by the FCC and may not be authorized to be used in the USA. If for any reason I am notified that I am interfering with the signal of anyone else, I agree to terminate my transmission to prevent any further interference.

In any case, Gibson Tech Ed, Inc. or HobbyTron.com will not be responsible for my use of this product and it is my sole responsibility to know and obey the applicable laws. . . . [I] . . . further agree to defend, indemnify, and hold harmless Gibson Tech Ed, Inc. (dba Hobbytron.com) from any claims actions or demands resulting from improper use of this equipment.

5. On March 4, 2005, as part of an investigation of Ramsey's equipment marketing activities, the Bureau sent Ramsey an LOI.⁷ In its response,⁸ Ramsey listed Gibson as one its "retailers/distributors" but asserted that "R-FM25B-WT and R-FM100B-WT are not valid Ramsey product numbers or designations."⁹ Additionally, Ramsey stated that it manufactures the FM100BWT in the United States and claimed that no equipment certification is needed for the FM100BWT because it requires buyers in the United States to provide signed statements that the device will be exported.

⁶ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

⁷ Letter of March 4, 2005, from Kathryn S. Berthot to Michael A. Leo.

⁸ Letter of March 28, 2005, from Michael A. Leo to the Enforcement Bureau, Attention: Thomas Fitz-Gibbon.

⁹ A comparison of information from Hobbytron.com with information from Ramsey's website and catalog indicates that the "R-FM25B-WT" is apparently a fully assembled version of the Ramsey FM25B transmitter kit, while the "R-FM100B-WT" appears to be identical to the Ramsey FM100BWT fully assembled transmitter manufactured by Ramsey.

III. DISCUSSION

6. 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)(2) of the Rules provides that:

Except as provided elsewhere in this section, 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 device¹⁰ unless ... [i]n the case of a device that is subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter [*emphasis added*].

7. The record establishes that Gibson marketed the FM broadcast transmitters designated as R-FM25B-WT and R-FM100B-WT in the United States and that neither Gibson nor Ramsey has received a grant of equipment certification for either the R-FM25B-WT or the R-FM100B-WT. Section 15.201(b) of the Rules¹¹ requires certification (with inapplicable exceptions) of intentional radiators. As intentional radiators, R-FM25B-WT and R-FM100B-WT are, therefore, required to be certified¹² before being marketed in the United States.

8. Gibson’s use of the “FM Transmitter Certification Form” appears to be an attempt to circumvent the prohibition on marketing of unapproved radio frequency devices such as the R-FM25B-WT and R-FM100B-WT by placing responsibility for any problems which may result from their use on the buyer. Although Section 2.807(b) exempts devices “manufactured solely for export” from the prohibition on marketing of unauthorized equipment set forth in Section 2.803(a) of the Rules, this exemption only applies to devices that the manufacturer actually exports¹³ and, thus, is not applicable here. Furthermore, the specific language in Gibson’s “FM Transmitter Certification Form,” in particular the sentence “I do understand that the product(s) may exceed the legal limits set by the FCC and may not be authorized to be used in the USA,” leaves little doubt that Gibson was fully aware that the R-FM25B-WT and R-FM100B-WT have not been authorized for sale in the United States.

9. We find, accordingly, that Gibson apparently marketed two models of uncertified FM broadcast transmitters in the United States, in willful¹⁴ and repeated¹⁵ violation of Section 302(b) of the Act and Section 2.803(a)(2) of the Rules.

¹⁰ 47 C.F.R. § 2.801 defines a radiofrequency device as “any device which in its operation is capable of emitting radiofrequency energy by radiation, conduction, or other means.”

¹¹ 47 C.F.R. § 15.201(b).

¹² Ramsey acknowledges in the “FM100B and FM35 Series FM Transmitter Certification” form provided with its marketing materials that the FM100BWT is an intentional radiator.

¹³ See *New Image Electronics*, 17 FCC Rcd 3594, 3596 (Enf. Bur. 2002).

¹⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... 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

10. Section 1.80(d) of the Rules provides in pertinent part that:

No forfeiture penalty shall be imposed upon any person under this section, if such person does not hold a license, permit, certificate, or other authorization issued by the Commission, and if such person is not an applicant for a license, permit, certificate, or other authorization issued by the Commission, unless, prior to the issuance of the appropriate notice, such person: (1) Is sent a citation reciting the violation charged; (2) is given a reasonable opportunity (usually 30 days) to request a personal interview with a Commission official, at the field office which is nearest to such person's place of residence; and (3) subsequently engages in conduct of the type described in the citation. . . . When the requirements of this paragraph have been satisfied with respect to a particular violation by a particular person, a forfeiture penalty may be imposed upon such person for conduct of the type described in the citation without issuance of an additional citation.

Gibson apparently does not hold a license, permit, certificate, or other authorization issued by the Commission. However, a forfeiture penalty apparently can be imposed against Gibson because the Bureau issued a citation to Gibson on June 30, 2004, for the same type of conduct, namely, marketing unauthorized equipment in violation of Section 302(b) of the Act and Section 2.803 of the Rules.

11. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.¹⁶ In exercising such authority, we are required to 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 require.”¹⁷

12. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”)*¹⁸ and Section 1.80 of the Rules,¹⁹ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. In this case, Gibson marketed two distinct models of unauthorized broadcast transmission equipment. Gibson’s marketing of each of these two unauthorized models is a separate violation. We find that a proposed forfeiture amount of \$7,000 is apparently warranted for each of the two models for a total proposed forfeiture of \$14,000.²⁰ Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Gibson is apparently liable for a \$14,000 forfeiture.

regulation of the Commission authorized by this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹⁵ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ . . . means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

¹⁶ 47 U.S.C. § 503(b).

¹⁷ 47 U.S.C. § 503(b)(2)(D).

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

¹⁹ 47 C.F.R. § 1.80.

²⁰ See *Samson Technologies, Inc.*, 19 FCC Rcd 4221, 4225 (2004).

13. Finally, Gibson is apparently continuing to advertise the unauthorized Ramsey equipment on its Hobbytron.com website. Accordingly, we require, pursuant to Section 403 of the Act,²¹ that Gibson submit a report within 30 days of the date of this *NAL* describing the steps it has taken to come into compliance with the Act and the Rules.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Gibson Tech Ed, Inc., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 403 of the Act, Gibson Tech Ed, Inc. **SHALL SUBMIT** the report described in paragraph 13 within thirty days of the release date of this Notice of Apparent Liability for Forfeiture to: Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division, 445 12th Street, S.W., Washington, D.C. 20054.

16. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Gibson Tech Ed, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

18. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²²

²¹ 47 U.S.C. § 403

²² See 47 C.F.R. § 1.1914.

21. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to Gibson Tech Ed, Inc., 1053 S 1680 W, Orem, UT 84058, and to its attorney, Howard J. Barr, Esq., Womble, Carlyle, Sandridge & Rice, 1401 I Street, N.W., Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division