

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

In the Matter of)	
)	
Bureau D'Electronique Appliquee, Inc.)	File No. EB-04-SE-250
)	NAL/Acct. No. 200532100009
)	FRN # 0009800848
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 9, 2005

Released: February 15, 2005

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Bureau D'Electronique Appliquee, Inc. (“B.E.A.”) apparently liable for a forfeiture in the amount of twenty thousand dollars (\$20,000) for importing and marketing in the United States unauthorized intentional radiating devices,¹ specifically, the Wizard and Falcon microwave motion sensors, in willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),² and Section 2.803(a) of the Commission’s Rules (“Rules”).³

II. BACKGROUND

2. On August 3, 2004, the Enforcement Bureau received an informal complaint alleging that B.E.A. is importing and marketing a substantial number of unauthorized motion sensors in the United States, specifically, the Wizard, Falcon and MS-07. In support of the allegation, the complainant explained that none of the subject motion sensors are listed on the Commission’s Equipment Authorization System database. The complainant also alleged that the Wizard has no label and the Falcon label wrongfully indicates that the device complies with Part 15 of the Rules and is affixed with a nonexistent FCC Identifier, G9BFALCON.⁴

¹ Section 15.3(o) of the Rules, 47 C.F.R. § 15.3(o), defines an intentional radiator as a “device that intentionally generates and emits radio frequency energy by radiation or induction.”

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. § 2.803(a).

⁴ The labeling and FCC Identification issues raised by the complainant are inextricably linked to the Commission’s equipment authorization process. *See, e.g.*, 47 C.F.R. § 2.925(e) (FCC Identifier must be validated by the Commission’s grant of equipment authorization). Thus, these apparent violations are subsumed within the discussions of 47 U.S.C. § 302a(b) and 47 C.F.R. § 2.803(a).

3. On October 12, 2004, the Spectrum Enforcement Division issued a letter of inquiry to B.E.A.⁵ B.E.A. submitted a response to the letter of inquiry on October 26, 2004.⁶ In its response, B.E.A. states that it manufactures the Wizard and Falcon motion sensors in Liege, Belgium; that it began marketing the Wizard and Falcon motion sensors in the United States in April 1999 and March 2001, respectively; and that it has imported and distributed in the United States a substantial number⁷ of Wizard and Falcon motion sensors from July 1999 to present and April 2001 to present, respectively.⁸ B.E.A. alleges that it believed in good faith that it did not need FCC certification for the Wizard or Falcon “because those products had the same transceiver and antenna as the Eagle,” another motion sensor manufactured by B.E.A. which did have an FCC certification.⁹ B.E.A. avers that it created FCC Identifier “G9BFALCON” for the Falcon because it believed that the Falcon was covered by the Eagle’s FCC Identifier.¹⁰ B.E.A. states that in the course of unrelated FCC certification product testing in early 2004, a question arose as to whether the Wizard and Falcon required separate certifications. B.E.A. alleges that on March 31, 2004, it began the application process to answer that question and determined that the Eagle’s certification did not cover the Wizard and Falcon. B.E.A. explains that it worked “as expeditiously as possible” and on July 14, 2004, submitted the purchase order for final testing and certification for these products. On October 25, 2004 – 13 days after the Enforcement Bureau issued the letter of inquiry – the Commission granted an equipment authorization to B.E.A.¹¹

⁵ Letter to Thomas P. Schluep, Vice President, Engineering, B.E.A., Inc., from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 12, 2004).

⁶ Letter from Thomas P. Schluep, Vice President, Engineering, B.E.A., Inc., to Yasin Ozer, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (October 26, 2004) (“Response”).

⁷ Pursuant to Sections 0.457 and 0.459 of the Rules, 47 C.F.R. §§ 0.457 and 0.459, B.E.A. requested confidential treatment of certain information submitted in its response, including the specific number of MS-07, Wizard and Falcon models sold in the United States, asserting that these figures constitute trade secrets and commercial or financial information customarily guarded from competitors. B.E.A. argues that disclosure of these figures would result in substantial competitive harm. We agree and will accord confidential treatment of B.E.A.’s figures. For purposes of this *NAL*, we need not address B.E.A.’s request for confidential treatment of certain other information included in its response.

⁸ B.E.A. states that it marketed the MS-07 sensor in the U.S. from approximately June 1998 to August 1999, when the device was discontinued. *See* Response at 2-3. Under Section 503(b)(6) of the Act, the Commission may only propose forfeitures for apparent violations that accrued within one year of the date of this *NAL*. *See* 47 U.S.C. § 503(b)(6); *see also* 47 C.F.R. § 1.80 (c)(3).

⁹ FCC Identifier G9BEAGLEONE.

¹⁰ Response at 4.

¹¹ FCC Identifier G9B-305015. This authorization is a limited modular approval for the transmitter and antenna utilized in the Wizard and Falcon motion sensors. This modular approval requires B.E.A. to retain control over installation of the device.

III. DISCUSSION

4. 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) 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 device ... unless such device has been authorized by the Commission.

It is undisputed that the Wizard and Falcon are intentional radiating devices, and as discussed below, are subject to the Commission’s certification procedures and related marketing restrictions.

5. Pursuant to Sections 2.803(a) and 15.201(b) of the Rules,¹² intentional radiators operating under the provisions of Part 15 of the Rules must be certificated by the Commission prior to importation and marketing. B.E.A. concedes that it imported and marketed the subject devices in the United States for over five years – from July 1999 to October 24, 2004.¹³ B.E.A. also concedes that was not until early 2004, during the course of unrelated FCC certification product testing, that B.E.A. determined that the Eagle’s certification did not cover the Wizard and Falcon. As previously noted, on October 25, 2004, B.E.A. obtained an equipment authorization from the Commission.

6. In the instant case, we find that B.E.A. apparently willfully¹⁴ and repeatedly¹⁵ violated Section 302(b) of the Act and Section 2.803(a) of the Rules by importing and marketing in the United States intentional radiator devices prior to obtaining Commission equipment authorization.

7. Section 503(b) of the Act and Section 1.80(a) of the Rules¹⁶ authorize 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.¹⁷ In exercising such authority, we are 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.”¹⁸

8. We note that under Section 503(b)(6) of the Act, we may only propose forfeitures for apparent violations that accrued within one year of the date of this *NAL*. Nevertheless, Section 503 does

¹² 47 C.F.R. §§ 2.803(a)(1), 15.201(b).

¹³ Response at 2-3.

¹⁴ The term “willful,” as used in Section 503(b) of the Act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate the Commission’s Rules. 47 U.S.C. § 312(f)(1).

¹⁵ A violation is “repeated” within the meaning of Section 503(b) of the Act if it occurs more than once or continues for more than one day. 47 U.S.C. § 312(f)(2).

¹⁶ 47 C.F.R. § 1.80(a).

¹⁷ 47 U.S.C. § 503(b).

¹⁸ 47 U.S.C. § 503(b)(2)(D).

not prohibit us from assessing whether B.E.A.'s conduct prior to that date apparently violated the Act or Rules, and we may consider B.E.A.'s violations with regard to the Wizard and Falcon prior to that date in determining the appropriate forfeiture amount for those violations within the statute of limitations.¹⁹ B.E.A. imported and marketed the Wizard from July 1999 to present, and the Falcon from April 2001 to present. Therefore, although we find that some of B.E.A.'s apparent violations occurred outside the one-year statute of limitations, we propose forfeitures here only for the violations which occurred within the last year.

9. Pursuant to The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines²⁰ and Section 1.80 of the Rules,²¹ the base forfeiture amount for importation or marketing of unauthorized or non-compliant equipment is \$7,000. In this case, we note that B.E.A. imported and marketed two unauthorized models of intentional radiation devices.²² Having weighed the factors, we find that an upward adjustment of this base forfeiture amount is warranted in light of the substantial number of devices distributed in the United States by B.E.A., the over five-year time span of the violations and B.E.A.'s relative ability to pay a forfeiture.²³ Accordingly, we are proposing a total forfeiture in the amount of \$25,000.

10. We note that B.E.A. made a good faith effort to bring the Wizard and Falcon into compliance with the Rules by identifying the need to obtain separate certification for the devices and submitting a purchase order for final testing and certification prior to the Enforcement Bureau's issuance of the letter of inquiry. Accordingly, we reduce the forfeiture amount from \$25,000 to \$20,000.²⁴

¹⁹ See *Globcom, Inc. d/b/a Globcom Global Communications*, 18 FCC Rcd 19893, 19903 (2003).

²⁰ 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

²¹ 47 C.F.R. § 1.80.

²² See e.g., *Samson Technologies, Inc.*, 19 FCC Rcd 4221, 4225 (2004), *proceeding terminated*, 19 FCC Rcd 24509 (2004).

²³ B.E.A. is listed as a subsidiary of the global Halma Group. See <http://www.beainc.com>. The Halma Group is a major international corporation with nine locations and for the fiscal year ended March 2003 reported sales of \$292 billion. See *Forfeiture Policy Statement*, 12 FCC Rcd at 17098 ¶ 20 (noting that the identity of a violator may be relevant in assessing and adjusting forfeitures, because, for example, a "\$10,000 forfeiture for a particular offense will [not] have the same deterrent effect on a small computer vendor, a moderately-sized radio common carrier, and a \$10 billion per year local telephone company or interexchange carrier"); see also *KASA Radio Hogar, Inc.*, 17 FCC Rcd 6256, 6258-59 ¶¶ 4-5 (2002) (stating that it is appropriate to consider the income derived from its consolidated operations to determine whether a violator "can sustain a forfeiture").

²⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099-101; 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures (discussion of downward adjustment factors); see, e.g., *Radio One Licenses, Inc.*, 18 FCC Rcd 15964, 15965 ¶ 4 (2003), *recon. denied*, 18 FCC Rcd 25481 (2003) (reducing a forfeiture from \$9,200 to \$8,000 for EAS violations because the licensee had identified the problems and had ordered replacement equipment *prior* to the Field Office's on-site inspection).

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act²⁵ and Sections 0.111, 0.311 and 1.80 of the Rules,²⁶ Bureau D'Electronique Appliquee, Inc. **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

12. **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*, Bureau D'Electronique Appliquee, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. 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 Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. Payment by overnight mail may be sent to Bank One/LB 73482, 525 West Monroe, 8th Floor Mailroom, Chicago, IL 60661. Payment by wire transfer may be made to ABA Number 071000013, receiving bank Bank One, and account number 1165259.

14. 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.

15. 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.

16. Requests for payment of the full amount of this *NAL* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.²⁷

²⁵ 47 U.S.C. § 503(b).

²⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80.

²⁷ 47 C.F.R. § 1.1914.

17. **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 Thomas P. Schluep, Vice President, Engineering, B.E.A., Inc., 100 Enterprise Drive – RIDC Park West, Pittsburgh, Pennsylvania 15275.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau