



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 25, 2006

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jeffrey Hill, Sales Manager
Oneida Air Systems, Inc.
1001 W. Fayette Street
Syracuse, New York 13204-2859

Re: File No. EB-06-SE-071

Dear Mr. Hill:

This is an official **CITATION**, issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),¹ for marketing unauthorized radio frequency devices in the United States in 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 As explained below, future violations of the equipment provisions of the Act and Rules may subject Oneida Air Systems, Inc. (“Oneida”) to monetary forfeitures.

By letter of inquiry (“LOI”) dated March 6, 2006,⁴ the Spectrum Enforcement Division of the Commission’s Enforcement Bureau initiated an investigation into whether Oneida marketed dust collection equipment with unauthorized remote control devices.

In its response to the LOI,⁵ Oneida admits that in December of 2005 it began importing units of the remote control device. Oneida states that it “connected” the remote control devices to two models of its dust collection equipment (XGK020105 Super Dust Gorilla 2Hp 1Ph and XGK030105 Super Dust Gorilla 3Hp 1Ph Kits), and also “resold” a small number of the remote

¹ 47 U.S.C. § 503(b)(5).

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. § 2.803(a). Marketing includes “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

⁴ See Letter from Kathryn S. Berthot, Deputy Division, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jeffrey Hill, Oneida Air Systems, Inc. (March 6, 2006).

⁵ See Facsimile from Jeffrey Hill, Oneida Air Systems, Inc. to Kathryn S. Berthot, Deputy Division, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 6, 2006) (“Response”).

control devices “as add-ons for [its] existing systems.”⁶ Oneida also admits that, in December of 2005, it began marketing its “dust collection equipment with remote control” on its website, and paid for advertisements that later appeared in two woodworking trade magazines.⁷ Oneida further admits that it imported 875 units of the remote control device,⁸ sold 343 units of its dust collection equipment with installed remote devices to end-user customers and 20 units (10 each) to two wholesale distributors⁹ -- prior to March 13, 2006, the date the remote control device was granted an equipment certification.¹⁰

Oneida states that on January 27, 2006, it received notice from Commission staff that the marketing of unauthorized radio frequency devices violates Section 2.803(a) of the Rules.¹¹ After receiving such notice, Oneida states that it “immediately” ceased importing and selling the remote devices.¹² Oneida further states it only resumed importing and selling the remote control devices after it learned that the device was certified and consulted with Commission staff.¹³

Finally, Oneida explains that it is a “small manufacturer of dust collection equipment used mostly in the woodworking industry,” that it recently introduced the remote control device to remain competitive, and that it had no prior familiarity with Commission equipment authorization and related requirements.¹⁴ Oneida adds that it took prompt corrective measures by ceasing to import and sell the remote control devices when it learned that the device was not certified. Moreover, Oneida states that after the device was certified, it sent all of its customers FCC ID labels and addendums to their manuals.¹⁵

Section 302(b) of the Act prohibits the marketing of unauthorized radio frequency devices. Specifically, Section 302(b) 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:

[N]o 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 labeled as required by § 2.925 and other relevant sections in this chapter.

⁶ *Id.* at 4. According to Oneida, it purchased and imported the remote control devices from a manufacturer in Taiwan, NHD Industrial Co., Ltd. *Id.* at 3

⁷ Response at 4.

⁸ *Id.* at 6.

⁹ *Id.* at 7.

¹⁰ FCC ID # TZNMS1 (granted: March 13, 2006, grantee: Purplexy Electronics Co., Ltd, Taiwan).

¹¹ *Id.* at 6. *See also* Letter from Ray LaForge, Chief, Audits and Compliance Branch, Office of Engineering and Technology, Federal Communications Commission to Oneida Air Systems, Inc. (January 23, 2006).

¹² Response at 6.

¹³ *Id.*

¹⁴ *Id.* at 12.

¹⁵ *Id.*

Under Section 15.201(b) of the Rules,¹⁶ an intentional radiator, such as the remote control device, must be authorized in accordance with the FCC's certification procedures prior to marketing in the United States. Additionally, an intentional radiator must be labeled as specified in Sections 2.925 and 15.19(a) of the Rules,¹⁷ and the accompanying user or instruction manual must contain the information specified in Section 15.21 of the Rules.¹⁸

Oneida apparently violated the above requirements by marketing dust collection equipment with the installed remote control device, and by selling the add-on remote control device separately -- prior to certification.¹⁹

If, after receipt of this citation, Oneida violates the above equipment requirements set forth in 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.

If Oneida chooses to do so, it 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 its place of business, or (2) a written statement. Oneida's response should specify the actions that it is taking to ensure that it does not violate the Commission's rules governing the marketing of radio frequency equipment in the future.

The nearest Commission Field Office is located in Buffalo, New York. Please call Ava Holly Berland at 202-418-2075 if Oneida wishes to schedule a personal interview. Oneida should schedule any interview to take place within 30 days of the date of this letter. Oneida 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

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

¹⁶ 47 C.F.R. § 15.201(b). Section 15.3(o) of the Rules defines an intentional radiator as "a device that intentionally generates and emits radio frequency energy by radiation or induction." 47 C.F.R. § 15.3(o).

¹⁷ 47 C.F.R. § 15.19(a).

¹⁸ 47 C.F.R. § 15.21.

¹⁹ See 47 C.F.R. § 1.80(b)(3). It should be noted that unfamiliarity with the Act or Rules requirements does excuse past violations. See, e.g., *San Jose Navigation, Inc.*, FCC 06-30 ¶ 16 (rel. March 14, 2006); see also *Profit Enterprises, Inc.*, 8 FCC Rcd 2846, 2846 ¶ 5 (1993). Additionally, corrective measures taken after Commission notification, or initiation of investigation into, does not excuse past violations of the Act or Rules. See, e.g., *ACR Electronics, Inc.*, 19 FCC Rcd 22293, 22303 ¶ 25 (2004), *forfeiture ordered*, FCC 06-37 (rel. March 23, 2006); *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 ¶ 7 (1994).

Oneida is further advised that 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.

We thank Oneida in advance for its anticipated cooperation.

Sincerely,

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