

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

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

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 25, 2006**

**Released: August 29, 2006**

By the Chief, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Memorandum Opinion and Order, we deny a petition for reconsideration filed by Gibson Tech Ed Inc., d/b/a/ Hobbytron.com ("Gibson"), of a *Forfeiture Order*<sup>1</sup> imposing a forfeiture of fourteen thousand dollars (\$14,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended ("Act"),<sup>2</sup> and Section 2.803(a) of the Commission's Rules ("Rules").<sup>3</sup> The violations involved Gibson's marketing of two models (R-FM25B-WT) and (R-FM100B-WT) of unauthorized FM broadcast transmitters.

**II. BACKGROUND**

2. On June 30, 2004, the Enforcement Bureau ("Bureau") issued Gibson a Citation<sup>4</sup> for marketing unauthorized FM broadcast transmission equipment manufactured by Veronica Ltd. ("Veronica"), in violation of Section 302(b) of the Act and Section 2.803(a) of the Rules, and for failing to respond to a letter of inquiry ("LOI").<sup>5</sup>

3. In connection with the investigation of Gibson's sale of Veronica equipment, Bureau staff observed that Gibson was also marketing FM transmitters identified on Gibson's website as "Ramsey" equipment.<sup>6</sup> The Bureau subsequently investigated Gibson's marketing of Ramsey FM transmitters and determined that Gibson was offering for sale, on its Hobbytron.com website, fully assembled FM broadcast transmitters designated as R-FM25B-WT and R-FM100B-WT. The FCC's equipment authorization database indicated that neither Gibson nor Ramsey had received a grant of

<sup>1</sup> *Gibson Tech Ed., Inc., Orem, Utah, Forfeiture Order*, 21 FCC Rcd 2915 (Enf. Bur. 2006).

<sup>2</sup> 47 U.S.C. § 302a(b).

<sup>3</sup> 47 C.F.R. § 2.803(a).

<sup>4</sup> Citation issued on June 30, 2004, to Gibson Tech Ed, Inc., by Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau.

<sup>5</sup> Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Gibson Tech Ed, Inc. (May 14, 2004).

<sup>6</sup> "Ramsey" refers to Ramsey Electronics, Inc., located in Victor, NY.

equipment certification<sup>7</sup> for either the R-FM25B-WT or the R-FM100B-WT.<sup>8</sup> The Bureau issued a *Notice of Apparent Liability*<sup>9</sup> finding that Gibson apparently marketed two Ramsey models of uncertified FM broadcast transmitters in the United States, in willful<sup>10</sup> and repeated<sup>11</sup> violation of Section 302(b) of the Act and Section 2.803(a)(2) of the Rules.

4. On March 21, 2006, believing incorrectly that Gibson had not filed a response to the *NAL*, the Bureau issued the *Forfeiture Order* to Gibson upholding the *NAL*. In response, Gibson filed a petition for reconsideration of the *Forfeiture Order*.<sup>12</sup> In its petition for reconsideration, Gibson argues that, for the reasons discussed in its previous filings,<sup>13</sup> the forfeiture should not have included liability for sale of Veronica items,<sup>14</sup> refers the Commission to Ramsey if Ramsey's equipment is not certified, and in any event, states that Gibson Tech Ed, Inc. did "not have the financial capability to pay any fines" and "will cease operations as of the end of this month [April, 2006]."<sup>15</sup>

### III. DISCUSSION

5. Gibson makes various arguments pertaining to the Commission's observations in the *LOI* that Gibson was in violation of Section 302(b) of the Act for marketing Veronica equipment.<sup>16</sup> Gibson argues that the Commission used an "illegal secret shopper," and that Gibson had a form for purchasers to sign indicating they would be responsible for FCC registration. These arguments are moot, however, because Gibson has not been assessed a violation for its earlier marketing of Veronica equipment. Since Gibson stopped marketing the Veronica equipment upon the first notification by the Commission,<sup>17</sup> it was not assessed a forfeiture for marketing the Veronica equipment.<sup>18</sup> The two violations proposed in the *NAL* and assessed in the *Forfeiture Order* pertain to Gibson's marketing of Ramsey equipment on its web

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<sup>7</sup> 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).

<sup>8</sup> As discussed in the *NAL*, the Bureau conducted a separate investigation of Ramsey's sale of uncertified intentional FM radiators. *Ramsey Electronics, Inc.*, 21 FCC Rcd 458 (Enf. Bur., Spectrum Enf. Div., 2006).

<sup>9</sup> *Gibson Tech Ed, Inc.*, 20 FCC Rcd 14438 (Enf. Bur., Spectrum Enforcement Div., 2005) ("*NAL*").

<sup>10</sup> 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 regulation of the Commission authorized by this Act ...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>11</sup> 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).

<sup>12</sup> Letter to Joseph P. Casey, Chief, Spectrum Enforcement Division, from Tim Gibson, Gibson Tech Ed, Inc., dated April 6, 2006, received April 19, 2006 ("*Petition for Reconsideration*").

<sup>13</sup> Letter to Mr. Brian Butler from Jim Royer, Gibson Tech Ed, Inc., dated June 22, 2004; Letter to Mr. Brian Butler from Jim Royer, Gibson Tech Ed, Inc., dated July 20, 2004; Letter to Joseph P. Casey, Chief, Spectrum Enforcement Division, from Tim Gibson, Gibson Tech Ed, Inc., dated September 22, 2005 ("*Response to NAL*").

<sup>14</sup> The forfeiture was for marketing two uncertified Ramsey transmitters, and did not pertain to Veronica equipment; *see* ¶ 5, *infra*.

<sup>15</sup> *Petition for Reconsideration*, point 5.

<sup>16</sup> *Response to NAL*, *supra*.

<sup>17</sup> *Id.* at fourth unnumbered paragraph.

<sup>18</sup> 47 U.S.C. § 503(b)(5).

site.

6. With respect to marketing Ramsey equipment, Gibson argues that it is selling US-manufactured Ramsey items that also are sold by hundreds of retail outlets nationwide. It states that it does “not understand any issues” with Ramsey equipment in view of Gibson’s requirement that purchasers sign an agreement that they intend to export the transmitters.<sup>19</sup> Gibson suggests the Commission contact Ramsey if we have concerns with its equipment. As discussed in the *NAL*, however, broadcast transmitters (with few exceptions not relevant here) must be certified in order to be marketed in the United States.<sup>20</sup> The exception for sale of broadcast transmitters intended for export is available to the manufacturer of the transmitters, and the manufacturer must in fact export the devices.<sup>21</sup> Gibson sells the devices within the United States, and thus is ineligible for the export exemption.<sup>22</sup> Accordingly, the “export agreement” Gibson asks its customers to sign does not relieve Gibson of liability for marketing unlicensed transmitters.<sup>23</sup> We conclude that Gibson was marketing unauthorized broadcast transmitters, as discussed in the *NAL* and *Forfeiture Order*, in violation of Section 302(b) of the Act.

7. Gibson further states that it will cease operations at the end of April 2006 and lacks the financial resources to pay any fine. It adds that it does not have the financial capability to defend itself, and that it does not have legal counsel.<sup>24</sup> A recent search of Gibson’s Hobbytron.com website, however, shows that the web site is still functioning, and that the web site includes a link to Gibson Tech Ed, Inc., as well, which also has its own web site. Apparently, Gibson Tech Ed, Inc. is not out of business, and thus it remains liable for the assessed forfeiture. Moreover, there is no requirement that those who undertake business within the jurisdiction of the Commission must be represented by counsel before they are held responsible for complying with all the Commission’s rules and regulations.<sup>25</sup> Accordingly, it is irrelevant that Gibson is not represented by legal counsel. Finally, to the extent that Gibson claims inability to pay the forfeiture, it has failed to provide the required proof of its inability to pay in the form of “(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.”<sup>26</sup> Insolvency is not grounds to reduce or cancel a forfeiture if the party claiming a reduction for inability to pay does not provide adequate financial documentation.<sup>27</sup>

#### IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Section

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<sup>19</sup> *Petition for Reconsideration*, second unnumbered paragraph.

<sup>20</sup> 47 C.F.R. § 2.803(a).

<sup>21</sup> See *New Image Electronics*, 17 FCC Rcd 3594, 3596 (Enf. Bur. 2002).

<sup>22</sup> To the extent that Gibson suggests the Commission acquiesced in this attempt to circumvent the Commission’s rules, we note that the Commission is not required to develop corporate plans for Rule compliance by individual retail outlets. It is Gibson’s responsibility to ensure its own compliance with the Rules. See *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 ¶¶ 6-7 (2002); *Roadrunner Electronics, Inc.*, 8 FCC Rcd 6398, 6398 ¶ 6 (Field Op. Bur. 1993).

<sup>23</sup> See also *NAL* at 3, ¶ 8.

<sup>24</sup> *Petition for Reconsideration*, numbered points 2, 5 and 6.

<sup>25</sup> See *Salzer v. FCC*, 778 F 2d 869, 875 n. 27 (D.C. Cir. 1985).

<sup>26</sup> *NAL* at 5, ¶ 19.

<sup>27</sup> *North American Broadcasting Co.*, 19 FCC Rcd 2769, 2770-71 ¶ 6 (Enf. Bur. 2004).

1.106(j) of the Rules,<sup>28</sup> the Petition for Reconsideration filed by Gibson Tech Ed, Inc. d/b/a/Hobbytron.com, **IS DENIED**.

9. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act<sup>29</sup> and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,<sup>30</sup> Gibson Tech Ed, Inc., d/b/a Hobbytron.com, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$14,000 for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>31</sup> Payment may be made by credit card to the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the 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. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>32</sup>

11. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by first class mail and certified mail return receipt requested to Gibson Tech Ed, Inc. d/b/a Hobbytron.com, 1053 South 1675 West, Orem, Utah 84058.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief, Enforcement Bureau

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<sup>28</sup>47 C.F.R. § 1.106(f).

<sup>29</sup>47 U.S.C. § 503(b).

<sup>30</sup>47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

<sup>31</sup>47 U.S.C. § 504(a).

<sup>32</sup>See 47 C.F.R. § 1.1914.