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

In the Matter of	)	File Number EB-05-ST-192
Clegg Industries, Inc.	)	NAL/Acct. No. 200532980002
Torrance, California	)	FRN # 0014417414

FORFEITURE ORDER

Adopted: September 27, 2006 **Released: September 29, 2006**

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("*Order*"), we issue a monetary forfeiture in the amount of seven thousand dollars ($7,000) to Clegg Industries, Inc. ("Clegg") in Torrance, California, for repeatedly violating Section 302(b) of the Commissions Act of 1934, as amended ("Act"),[1] and Section 2.803(a)(2) of the Commission's Rules ("Rules").[2] On December 21, 2005, the Enforcement Bureau's Seattle District Office issued a *Notice of Apparent Liability for Forfeiture* ("*NAL"*) after determining that Clegg had apparently repeatedly imported and marketed non-authorized radio frequency devices. In this *Order*, we consider Clegg's argument that it was unaware that the device in question was in violation of the Commission's Rules, and that it has since ensured its compliance.

II. BACKGROUND

2. On April 10, 2005, a Western Region agent purchased a "Space Needle" FM radio at the Space Needle gift shop in Seattle, Washington. The agent noticed that the radio lacked any labeling as required by Section 15.19(a)(1) of the Rules.[3] The unit was turned over to the Seattle District Office for further investigation.

3. On May 18, 2005, Seattle agents visited the Space Needle gift shop and found a number of the "Space Needle" model radios for sale. The agents interviewed the sales supervisor, and advised her that the Commission required that certain labeling be placed on the devices prior to sale. The sale supervisor had the "Space Needle" model radios removed from the shelves.

4. On June 16, 2005, the Seattle office issued a Letter of Inquiry ("June 16, 2005 LOI") to the Space Needle Corporation requesting information about the "Space Needle" model radio and the radios' importer. On June 24, 2005, the Seattle office received a response from the Space Needle Corporation to the June 16, 2005 LOI. The response stated that the importer of the radios was Clegg Industries, Inc., located in Torrance California and that they had received a shipment of the radios from Clegg on March 29, 2005. The response also indicated that the Space Needle Corporation had ceased offering for sale the "Space Needle" model radios on May 18, 2005, and had returned the radios to Clegg

[1] 47 U.S.C. § 302a(b).

[2] 47 C.F.R. § 2.803(a)(2).

[3] 47 C.F.R. § 15.19(a)(1).

for a refund.

5. On July 15, 2005, the Seattle Office issued a Letter of Inquiry ("July 15, 2005 LOI") to Clegg requesting information about the "Space Needle" model radios. Specifically, the Seattle Office asked when importation of the radios began, how many had been imported, and whether a verification report for the "Space Needle" model existed. On August 8, 2005, the Seattle Office received a response from Clegg to the July 15, 2005 LOI. The response included a copy of the "FCC – Test Report from International Electrical Certification Centre ("IECC") Ltd.," which was performed at the request of the manufacturer, Zonotec Industrial Co. Ltd. and concluded that the "Space Needle" model radio complied with the FCC's Part 15 Rules. The verification report indicated that IECC received a sample radio for testing on July 27, 2005 and conducted the testing on August 2, 2005 The response also indicated that Clegg Industries had issued a credit to the Space Needle Corporation for the subject radios. The response did not indicate when importation of the radios began or how many of the radios had been imported.

6. On December 21, 2005, the Seattle Office issued a *NAL* in the amount of $7,000 to Clegg.[4] In the *NAL*, the Seattle Office, found that Clegg apparently repeatedly violated Section 302(b) of the Commissions Act of 1934, as amended ("Act"),[5] and Section 2.803(a)(2) of the Commission's Rules ("Rules")[6] by importing and marketing non-authorized radio frequency devices. The Seattle Office specifically found that Clegg imported and marketed the "Space Needle" model radios in March 2005, several months prior to their verification, and that the units did not have the required labeling. The Seattle Office required Clegg to file a report with the Acting District Director of the Seattle Office detailing, for each of the models imported and marketed by Clegg, how each model complies with the authorization and verification requirements of Section 2.803 of the Rules, and the labeling requirements of Section 15.19 of the Rules. After receiving an extension of time, Clegg filed on February 21, 2006 ("*Response*"). In its *Response*, Clegg argues that it was not aware that the device was not in compliance with the Rules, that the device has subsequently been tested and received verification, and that Clegg has conducted an audit with the brokerage company which processed the import documentation for that device. Clegg also attached to its response "Certificates of Compliance," including "Declarations of Conformity" and "Verifications," for all of the radios offered for sale in its catalog, along with a copy of its catalog, and states that it has taken efforts to ensure that both its inventory of radios, and its catalog, comply with the Commission's labeling requirements.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,[7] Section 1.80 of the Rules,[8] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.[9] In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of

[4] *Notice of Apparent Liability for Forfeiture,* NAL/Acct. No. 200532980002 (Enf. Bur., Western Region, Seattle District Office, released December 21, 2005).

[5] 47 U.S.C. § 302a(b).

[6] 47 C.F.R. § 2.803(a)(2).

[7] 47 U.S.C. § 503(b).

[8] 47 C.F.R. § 1.80.

[9] 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.[10]

8. 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."[11] Section 2.803(a)(2) of the Rules provides that "[e]xcept 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 … [i]n the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labeling and identification requirements specified in this chapter."[12]

9. Section 15.3(z) of the Rules[13] states that FM Broadcast receivers are unintentional radiators. Section 15.101 of the Rules,[14] requires that unintentional radiators shall be authorized prior to initiation of marketing and in the case of FM Broadcast receivers, the required authorization is verification. Section 15.19(a)(1) of the Rules states that receivers associated with a licensed radio service, in this case, the FM Broadcast service, shall bear the following statement in a conspicuous location on the device:

> "This device complies with part 15 of the FCC Rules. Operation is subject to the condition that this device does not cause harmful interference."[15]

10. The "Space Needle" model radios sold by the Space Needle Corporation, were purchased from the importer Clegg Industries, Inc., in March 2005. As the importer of the devices, Clegg is deemed the responsible party, as defined in Section 2.909 of the Rules and, as such, is required to maintain the records listed in Section 2.955 of the Rules, including the testing information that demonstrates the device's compliance with the verification requirements.[16] Clegg's August 8, 2005 response to the Seattle Office's July 15, 2005 LOI included a copy of a verification report for the "Space Needle" model radio. The verification report indicated that the testing laboratory received a sample radio for testing on July 27, 2005 and conducted the testing on August 2, 2005, indicating that the testing was performed following Clegg's receipt of the July 15, 2005 LOI.

11. Clegg first argues that it was unaware that the "Space Needle" radio was not in compliance with the Rules. As detailed above, Clegg, as the importer of the "Space Needle" radio model, is deemed the responsible party for the model and is therefore required to maintain the testing information that demonstrates the model's compliance with the verification requirements. Clegg's failure to fulfill those duties led directly to its violation of Section 302(b) of the Act and Section 2.803(a)(2) of the Rules. We find that Clegg's lack of knowledge concerning the regulatory requirements attendant to the products

[10] 47 U.S.C. § 503(b)(2)(D).

[11] 47 U.S.C. § 302a(b).

[12] 47 C.F.R. § 2.803(a)(2).

[13] 47 C.F.R. § 15.3(z).

[14] 47 C.F.R. § 15.101(a).

[15] 47 C.F.R. § 15.19(a)(1).

[16] 47 C.F.R. §§ 2.909, 2.955.

it imports and markets does not mitigate its violation in this case.[17]

12. We also find that Clegg's actions subsequent to receiving the LOI from the Seattle Office, including testing the "Space Needle" model radio so that it received verification, conducting an audit with the brokerage company which processes import documentation for its devices, and ensuring that both its inventory of radios, and its catalog, comply with the Commission's labeling requirements were appropriate, but do not mitigate Clegg's violation, or the forfeiture amount proposed. The Commission expects violators to implement corrective action to bring past violations into compliance. Therefore, such actions do not nullify or mitigate past violations.[18]

13. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Clegg repeatedly violated Section 302(b) of the Act, and Section 2.803(a)(2) of the Rules. Considering the entire record and the factors listed above, we find that neither reduction nor cancellation of the proposed $7,000 forfeiture is warranted.

IV. ORDERING CLAUSES

14. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Clegg Industries, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of $7,000 for repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(2) of the Rules.[19]

15. 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.[20] 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. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, Room 1A625, 445 12th Street, S.W., Washington, D.C. 20554.[21]

[17] To the extent Clegg is arguing that it was unaware of its responsibilities under the Rules, the Commission has held that it does not consider ignorance of the law to be a mitigating factor. *Profit Enterprises*, 8 FCC Rcd 2846 (1993). Moreover, we note that the Seattle Office, in the *NAL*, did not find Clegg's violation of Section 2.803 of the Rules to have been willful.

[18] *See AT&T Wireless Services, Inc.,* 17 FCC Rcd 21866, 21875-76 (2002), *Seawest Yacht Brokers,* 9 FCC Rcd 6099, 6099 (1994). We do, however, find that Clegg's submission satisfies the reporting requirement imposed in the *NAL*.

[19] 47 U.S.C. §§ 302a(b), 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 2.803(a)(2).

[20] 47 U.S.C. § 504(a).

[21] *See* 47 C.F.R. § 1.1914.

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Clegg Industries, Inc., at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau