

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

In the Matter of)	
)	
Communications Specialists, Inc.)	File No. EB-06-SE-349
Orange, CA)	NAL/Acct. No. 200732100005
)	FRN 0001520170
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: November 20, 2006

Released: November 22, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Communications Specialists, Inc. (“CSI”) apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for apparent willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).² The noted apparent violations involve CSI’s marketing of radio frequency devices³ in the United States that do not comply with the radiated emission limits set forth in Section 15.209 of the Rules⁴ and the periodic operation limits set forth in Section 15.231 of the Rules.⁵

II. BACKGROUND

2. CSI manufactures and markets the PT-1 “Petlocator” transmitter, which is used to track pets, children and model airplanes. Transmitters and other intentional radiators⁶ and are required by Section 15.201 of the Rules⁷ to be approved prior to marketing through the equipment certification⁸

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ 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.”

⁴ 47 C.F.R. § 15.209.

⁵ 47 C.F.R. § 15.231.

⁶ An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3 (o).

⁷ 47 C.F.R. § 15.201.

⁸ 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).

procedures described in Sections 2.1031 – 2.1060 of the Rules.⁹ CSI holds an equipment certification for the PT-1 under FCC Identifier CFXPT-1.

3. The Commission’s Office of Engineering and Technology Laboratory (“OET Lab”) requested a sample of the PT-1 from CSI pursuant to Section 2.945 of the Rules¹⁰ and tested the sample for compliance with the Rules. The OET Lab found that the PT-1 substantially exceeds the radiated emissions limits for intentional radiators specified in Section 15.209 of the Rules. In addition, the OET Lab determined that the PT-1 transmits continuously and therefore does not comply with the periodic operation limits set forth in Section 15.231 of the Rules. The OET Lab subsequently referred the matter to the Enforcement Bureau for investigation.

4. On September 29, 2006, the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau observed that CSI was offering the PT-1 for sale on its website, www.com-spec.com. The Division sent CSI a letter of inquiry (“LOI”)¹¹ on October 3, 2006. In its October 10, 2006, response, CSI states that it has manufactured and sold the PT-1 in the United States from June 2004 to the present.¹² CSI claims that it did not modify the PT-1 after certification. CSI, however, does not dispute the OET Lab’s findings that the PT-1 is not in compliance with Sections 15.209 and 15.231 of the Rules. The Division’s internet research on November 1, 2006, indicates that CSI is continuing to offer the PT-1 for sale on its website.

III. DISCUSSION

A. Illegal Marketing of Transmitters

5. 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)(1) 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 ... [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.

Section 15.209 of the Rules specifies the radiated emissions limits applicable to intentional radiators. Section 15.231 of the Rules establishes periodic operation limits for radio frequency devices which

⁹ 47 C.F.R. §§ 2.1031 – 2.1060

¹⁰ 47 C.F.R. § 2.945

¹¹ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to Communications Specialists, Inc. (October 3, 2006).

¹² Letter from Albert Spencer, President, Communications Specialists, Inc., to Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (October 10, 2006).

operate in the band 40.66 – 40.70 MHz and above 70 MHz.¹³

6. Furthermore, in accepting the grant of an equipment authorization, CSI warranted that:

each unit of equipment marketed under such grant and bearing the identification specified in the grant will conform to the unit that was measured and that the data (design and rated operational characteristics) filed with the application for certification continues to be representative of the equipment being produced under such grant within the variation that can be expected due to quantity production and testing on a statistical basis.¹⁴

7. CSI admits that it manufactured and marketed the PT-1 from June 2004 to the present. The OET Laboratory's tests demonstrate that PT-1 is not compliant with the radiated emission limits set forth in Section 15.209 of the Rules and the periodic operation limits set forth in Section 15.231. We find, based on a preponderance of the evidence, that CSI apparently willfully¹⁵ and repeatedly¹⁶ violated Section 302(b) of the Act and Section 2.803(a)(1) Rules by marketing¹⁷ equipment that does not comply with Sections 15.209 and 15.231 of the Rules.

B. Proposed Forfeiture

8. 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.¹⁸ 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.”¹⁹

9. 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*”)²⁰ and Section

¹³ The PT-1 transmits in the 216-235 MHz frequency band.

¹⁴ See 47 C.F.R. § 2.931.

¹⁵ 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).

¹⁶ 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).

¹⁷ “Marketing” includes the sale or lease, offer for sale or lease (including advertising for sale or lease), importing, shipping, and/or distribution for the purpose of selling or leasing or offering for sale or lease. 47 C.F.R. § 2.803(e)(4).

¹⁸ 47 U.S.C. § 503(b).

¹⁹ 47 U.S.C. § 503(b)(2)(D).

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

1.80 of the Rules,²¹ the base forfeiture amount for the marketing of unauthorized or non-compliant equipment is \$7,000. Section 503(b)(2)(C) of the Act authorizes the Commission to assess a maximum forfeiture of \$11,000 for each violation, or each day of a continuing violation, up to a statutory maximum forfeiture of \$97,500 for any single continuing violation.²² We have no information that warrants any downward or upward adjustment of the base forfeiture amount. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that CSI is apparently liable for a \$7,000 forfeiture.

10. Finally, CSI is apparently continuing to offer the PT-1 for sale on its website. Accordingly, we direct CSI, pursuant to Section 403 of the Act,²³ to 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

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Communications Specialists, Inc., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 403 of the Act, Communications Specialists, Inc., **SHALL SUBMIT** the report described in paragraph 10 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.

13. **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*, Communications Specialists, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

14. 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 payment of the full amount of the NAL under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room

²¹ 47 C.F.R. § 1.80.

²² 47 U.S.C. § 503(b)(2)(C). The Commission twice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maximum forfeiture amounts, in accordance with the inflation adjustment requirements contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 15 FCC Rcd 18221 (2000) (adjusting the maximum statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500); *Amendment of Section 1.80 of the Commission's Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, 19 FCC Rcd 10945 (2004) (adjusting the maximum statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *see also* 47 C.F.R. § 1.80(c).

²³ 47 U.S.C. § 403

1-A625, Washington, D.C. 20554.²⁴

15. 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.

16. 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 practices; 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.

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 Communications Specialists, Inc., 426 West Taft Avenue, Orange, CA 92865-4296.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁴ See 47 C.F.R. § 1.1914.