

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

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| In the Matter of |) | |
| |) | |
| American Future Technology Corporation |) | File No. EB-06-SE-093 |
| d/b/a iBuypower |) | NAL/Acct. No. 200732100008 |
| |) | FRN # 0015839814 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: December 12, 2006

Released: December 14, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find American Future Technology Corporation d/b/a iBuypower (“iBuypower”) apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000) 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)(2) of the Commission’s Rules (“Rules”).² The noted apparent violations involve iBuypower’s marketing of unauthorized computers to the general public.

II. BACKGROUND

2. By letter dated November 29, 2005, the Commission’s Office of Engineering and Technology (“OET”) notified iBuypower of the apparent improper marketing of its AMD Athlon-64 and Athlon-64 X2 computers.³ Specifically, OET noted that iBuypower was marketing the computers to the general public prior to obtaining a Declaration of Conformity (“DoC”).⁴ OET subsequently referred the matter to the Enforcement Bureau for investigation. On May 22, 2006, the Enforcement Bureau sent iBuypower a letter of inquiry (“LOI”).⁵

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(2).

³ See Letter from Ray LaForge, Chief, Audits and Compliance Branch, Office of Engineering and Technology, dated November 29, 2005.

⁴ A Declaration of Conformity is a procedure where the responsible party makes measurements or takes other necessary steps to ensure that the equipment complies with the appropriate technical standards. 47 C.F.R. § 2.906(a). Under the Declaration of Conformity procedure, the measurements must be made by an FCC-accredited laboratory. 47 C.F.R. § 2.948(a)(3). In addition, a copy of the Declaration of Conformity listing the party responsible for compliance must be included in the literature supplied with the product. 47 C.F.R. § 2.1077.

⁵ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, to iBuypower, Inc. (May 22, 2006).

3. In its response to the LOI, dated June 23, 2006,⁶ iBuypower states that it has manufactured and marketed computer models featuring the AMD Athlon-64 processor since approximately December 2003 and that it has manufactured and marketed computer models featuring the AMD Athlon-64 X2 processor since approximately June 2005. iBuypower acknowledges that it sold approximately 7,500 computers featuring the AMD Athlon-64 processor and approximately 2,400 computers featuring AMD Athlon-64 X2 processor prior to completion of the DoC procedure. However, it asserts that it has endeavored to build the systems from parts which have been tested and are covered by a current DoC. iBuypower states that it believed that systems built from approved components did not themselves require a separate DoC. Finally, iBuypower indicates that it completed a DoC for its computer systems on January 23, 2006, after receipt of OET's initial notification.⁷

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)(2) 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 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.

Pursuant to Section 15.101 of the Rules, a DoC must accompany all Class B personal computers.⁸ Furthermore, Section 15.102(b)(4) requires that computer systems that are assembled from authorized component parts must themselves be authorized under a DoC. iBuypower does not dispute that it marketed its completed computer systems featuring the AMD Athlon-64 and Athlon-64 X2 processors prior to obtaining a DoC. Accordingly, we find that iBuypower apparently willfully⁹ and repeatedly¹⁰

⁶ Letter from Darren Su, Vice President, American Future Technology Corporation dba iBuypower, to Neal McNeil, Federal Communications Commission, Enforcement Bureau.

⁷ If a product must be tested and authorized under a DoC, the responsible party must ensure that all dissimilar models of the product are authorized under a separate DoC. Since iBuypower manufactured and marketed computer systems featuring two different processors, the AMD Athlon-64 and Athlon-64 X2, it was required to authorize each system under a separate DoC. See 47 C.F.R. § 2.1077.

⁸ 47 C.F.R. § 15.101. A Class B digital device is defined as one that is marketed for use in a residential environment, notwithstanding use in commercial, business and industrial environments. See 47 C.F.R. § 15.3(i).

⁹ 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

violated Section 302(b) of the Act and Section 2.803(a)(2) Rules by marketing unauthorized computer systems.

5. 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.¹¹ 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.”¹²

6. 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*”)¹³ and Section 1.80 of the Rules,¹⁴ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. In this case, iBuypower marketed two unauthorized computer systems, one featuring the AMD Athlon-64 processor and one featuring the Athlon-64 X2 processor. iBuypower’s marketing of each unauthorized computer system is a separate violation. We find that a proposed forfeiture amount of \$7,000 is apparently warranted for each violation for a total proposed forfeiture of \$14,000.¹⁵ Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that iBuypower is apparently liable for a \$14,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, iBuypower **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willfully and repeatedly violating Sections 302a(b) and 2.803(a)(2) of the Rules.

8. **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*, iBuypower **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

4387 (1991).

¹⁰ 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).

¹¹ 47 U.S.C. § 503(b).

¹² 47 U.S.C. § 503(b)(2)(D).

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

¹⁴ 47 C.F.R. § 1.80.

¹⁵ See *Samson Technologies, Inc.*, 19 FCC Rcd 4221, 4225 (2004), *consent decree ordered*, 19 FCC Rcd 24542 (2004).

9. 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.

10. 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.

11. 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.

12. 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 1-A625, Washington, D.C. 20554.¹⁶

13. **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 American Future Technology Corporation d/b/a iBuypower, 602 Monterey Pass Road, Monterey Park, California 91754.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

¹⁶ See 47 C.F.R. § 1.1914.