

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

In the Matter of)	
)	File No. EB-04-SE-367
Hawking Technologies, Inc.)	NAL/Acct. No. 200532100010
Irvine, California)	FRN # 0012065009

FORFEITURE ORDER

Adopted: April 13, 2006

Released: April 17, 2006

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of seventeen thousand six hundred dollars (\$17,600) to Hawking Technologies, Inc. (“Hawking”) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803(a) and 15.204(a) of the Commission’s Rules (“Rules”).² The violations involve marketing external radiofrequency power amplifiers in a manner that was inconsistent with the terms of its equipment authorization and the prohibition against the marketing of such devices.

II. BACKGROUND

2. On December 9 and 14, 2004, the Enforcement Bureau (“Bureau”) received complaints alleging that Hawking was illegally marketing the Hawking Model HSB1 (“HSB1”) external radio frequency power amplifier for individual sale.

3. External radio frequency power amplifiers, such as the HSB1, are used to boost the power of radio transmitters. Section 15.204(d)(1) of the Rules³ provides that, if an external radio frequency power amplifier is marketed for individual sale, it “must be of a design such that it can only be connected as part of a system in which it has been previously authorized.” Hawking’s equipment authorization, FCC ID # SOYHSB1, provides that the HSB1 may be used only with wireless access points⁴ authorized under the equipment authorization FCC ID# NDD9572030410.⁵

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a) and 15.204(a).

³ 47 C.F.R. § 15.204(d)(1).

⁴ The term “wireless access point” is not defined in the Rules. However, the Bureau takes official notice that a wireless access point is a transmitter/receiver whose most common use is to connect wireless devices to the internet.

⁵ Granted to Edimax Technology Co., Ltd., for wireless 802.11g access points.

4. The Bureau investigated the complaints about Hawking's marketing of the HSB1. As part of the investigation, Bureau staff purchased a sample of the HSB1 from an internet retailer on December 13, 2004, for \$78.68. The HSB1 was packaged with an antenna and a connector but the package did not include a wireless access point. The packaging states that "The HSB1 is certified by the FCC to work with the Hawking HWBA54G Wireless-G Access Point as a single system (FCC ID: SOYHSB1). More systems will be certified at a later time." Similarly, the user manual ("Quick Installation Guide") included with the sample states "RF Cable and HSB1 are designed to operate only with Hawking HWBA54G as a single system" and that "[a]s of December 1, 2004, the HSB1 has been certified by the FCC to operate as a single system with Hawking's HSBA54G Wireless-G Access Point." However, the Product Information Brochure packaged with the sample states that "... the HSB1 ... attaches to any wireless device (Access Points, Routers, Bridges, Network Adaptors, etc.) with a removable antenna. The HSB1 comes with connector adaptors compatible with all major wireless brands."⁶ The Bureau subsequently observed that retailers which had acquired HSB1 units from Hawking were similarly advertising the device on their websites for use with all major wireless brands.⁷

5. On December 21, 2004, the Bureau conducted internet research concerning the HSB1. As of that date, Hawking's internet site indicated that the HSB1 "works with all major 802.11b and g wireless brands" and "is the ONLY range-boosting product on the market with support for all major wireless brands and networks"; and that "connector adaptors are available for multiple brand support." Only one of the pages observed on Hawking's internet site advertising the HSB1 had a reference to the HSBA54G wireless access point and that page also listed another wireless access point (Hawking Model HWR54G) without indicating which wireless access point was authorized to be used with HSB1.

6. On December 30, 2004, the Bureau issued a *letter of inquiry* ("LOI") to Hawking.⁸ On January 17, 2005, Hawking responded to the LOI.⁹ In its response, Hawking identified the Hawking Model HWBA54G as the only wireless access point authorized under equipment authorization FCC ID # NDD9572030410 and stated that the HSB1 is capable of operating with other wireless access points "if such other access points use the same 'non-standard' connector."¹⁰ Hawking also stated that it imported and distributed in the United States 7,520 units of the HSB1.¹¹ Additionally, Hawking asserted that, after receiving the LOI, it halted the marketing of the HSB1 as an individual unit and began preparation to

⁶ No connector adaptor was actually packaged with the HSB1. However, the Product Information Brochure includes information about the connector adaptors sold by Hawking and how to use them.

⁷ On March 15, 2005, the Bureau observed that Comp USA and PC Mall Sales, Inc., both were advertising the HSB1 on their websites as "the ONLY range boosting product on the market with support for all major wireless brands and networks" and stated on their websites that "connector adaptors are available for multiple brand support." Comp USA's website indicated that its description of the device was "[b]ased on manufacturer's information."

⁸ See Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Hawking Technologies, Inc. (December 30, 2004).

⁹ See Letter from Frank Lin, Chief Executive Officer, Hawking Technologies, Inc. to Thomas Fitz-Gibbon, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (January 17, 2005) ("LOI Response").

¹⁰ LOI Response at 2.

¹¹ *Id.* at 3.

bundle the HSB1 unit with the HWBA54G wireless access point.¹² On June 22, 2005, the Spectrum Enforcement Division issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Hawking in the amount of twenty-two thousand dollars (\$22,000) for apparent willful and repeated violation of Section 302(b) of the Act and Sections 2.803(a) and 15.204(a) of the Rules.¹³ The proposed forfeiture amount included an upward adjustment of \$15,000 for substantial economic gain based on Hawking’s estimated profit from the sale of these devices. In its response to the NAL, Hawking does not contest the violations but seeks reduction or cancellation of the proposed monetary forfeiture. Hawking argues that the upward adjustment proposed in the NAL is excessive, that it promptly remedied the violations and that it has a history of overall compliance.

III. DISCUSSION

7. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),¹⁴ Section 1.80 of the Rules,¹⁵ and the *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.¹⁶ In assessing forfeitures, Section 503(b)(2)(D) of the Act requires that we 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.¹⁷

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.” Section 2.803(a)(1) of the Commission’s implementing regulations 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 device¹⁸ 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 [*emphasis added*].

Section 15.204(a) of the Commission’s implementing regulations provides that:

¹² *Id* at 2.

¹³ *Hawking Technologies, Inc.*, 20 FCC Rcd 10852 (Enf. Bur. 2005).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹⁷ 47 U.S.C. § 503(b)(2)(D).

¹⁸ 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.”

Except as otherwise described in paragraphs (b) and (d) of this section, no person shall use, manufacture, sell or lease, offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for purpose of selling or leasing, any external radio frequency power amplifier or amplifier kit intended for use with a part 15 intentional radiator.¹⁹

Section 15.204(d)(1) of the Rules provides that:

Except as described in this paragraph, an external radio frequency power amplifier or amplifier kit shall be marketed only with the system configuration with which it was approved and not as a separate product.

An external radio frequency power amplifier may be marketed for individual sale provided it is intended for use in conjunction with a transmitter that operates in the 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz bands pursuant to §15.247 of this part or a transmitter that operates in the 5.725–5.825 GHz band pursuant to §15.407 of this part. The amplifier must be of a design such that it can only be connected as part of a system in which it has been previously authorized. (The use of a non-standard connector or a form of electronic system identification is acceptable.) The output power of such an amplifier must not exceed the maximum permitted output power of its associated transmitter.

9. Hawking does not contest the violations alleged in the *NAL*. On the basis of the record, we conclude that Hawking willfully²⁰ and repeatedly²¹ violated Section 302(b) of the Act and Sections 2.803(a)(2) and 15.204(a) of the Rules.

A. Upward Adjustment

1. Background

10. Under the *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules,²² substantial economic gain is an upward adjustment factor for Section 503 forfeitures.²³

2. Discussion

¹⁹ 47 C.F.R. § 15.3(o) defines an intentional radiator as “A device that intentionally generates radio frequency energy by radiation or induction.”

²⁰ 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).

²¹ 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).

²² See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²³ See, e.g., *Behringer USA, Inc.*, 21 FCC Rcd 1820 (2006); and *ASC Telcom, Inc., d/b/a Alternatel*, 17 FCC Rcd 23984 (2002), resolved by *consent decree* 19 FCC Rcd 5160 (2004).

11. Hawking argues, in its response to the *NAL*, that the proposed \$15,000 upward adjustment for substantial economic gain is excessive because Hawking's profit per unit was only \$0.09 per unit rather than the estimated \$2.00 per unit (for approximately 7,500 units) on which the upward adjustment is based. The spread sheet provided with Hawking's response indicates that Hawking made a pretax profit of \$2.84 per unit, which exceeds the \$2.00 per unit estimated in the *NAL*. Hawking's claim that its profit was only \$0.09 per unit is inconsistent with the \$2.84 indicated on its spread sheet. We find, accordingly, that the upward adjustment should remain at \$15,000.

B. Correction of Violations

1. Background

12. The *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules²⁴ permit downward adjustment of forfeitures on the basis of a minor violation, good faith or voluntary disclosure, history of overall compliance or inability to pay as well as other factors within the discretion of the Commission and its staff.

2. Discussion

13. Hawking argues that it promptly corrected the violations. No mitigation is warranted on the basis of Hawking's correction of the violations. As the Commission stated in *Seawest Yacht Brokers*, 9 FCC Rcd 6099, 6099 (1994), "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."²⁵

C. History of Overall Compliance

1. Background

14. Under the *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules,²⁶ history of overall compliance is a downward adjustment factor for Section 503 forfeitures.

2. Discussion

15. Hawking states that it has a history of overall compliance. We find that Hawking does have a history of overall compliance. This warrants a reduction of the forfeiture amount from \$22,000 to \$17,600.

16. We have examined Hawking's response to the *NAL* pursuant to the statutory factors set forth in Paragraph 7, above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that cancellation of the forfeiture is not warranted but the forfeiture amount should be reduced from \$22,000 to \$17,600.

²⁴ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

²⁵ See also *Callais Cablevision, Inc.*, 17 FCC Rcd 22626, 22629 (2002); *Radio Station KGVL, Inc.*, 42 FCC 2d 258, 259 (1973); and *Executive Broadcasting Corp.*, 3 FCC 2d 699, 700 (1966).

²⁶ See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100; 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section II. Adjustment Criteria for Section 503 Forfeitures.

IV. ORDERING CLAUSES

17. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,²⁷ Hawking Technologies, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of seventeen thousand six hundred dollars (\$17,600.00) for willful and repeated violation of Section 302(b) of the Act and Sections 2.803(a) and 15.204(a) of the Rules.

18. 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.²⁸ 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. 20554.²⁹

19. **IT IS FURTHER ORDERED** that a copy of this *Forfeiture Order* shall be sent by first class mail and certified mail return receipt requested to Hawking Technologies, Inc., 15281 A Barranca Pkwy., Irvine, CA 92618.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁷47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

²⁸ 47 U.S.C. § 504(a).

²⁹ See 47 C.F.R. § 1.1914.