

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

In the Matter of

Clear Channel Broadcasting Licenses, Inc.

Licensee of Station WAWS(TV), Jacksonville, Florida

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File Number EB-04-IH-0331
NAL/Acct. No. 200632080152
Facility ID No. 11909
FRN No. 0001587971

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: April 19, 2006

Released: April 20, 2006

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), issued pursuant to section 503(b) of the Communications Act of 1934, as amended (the "Act") and section 1.80 of the Commission's rules, we find that Clear Channel Broadcasting Licenses, Inc. ("Clear Channel"), licensee of Station WAWS(TV), Jacksonville, Florida, failed to conduct its "Win A Hot Rod for Dad" contest (the "Contest") substantially as announced or advertised, in apparent willful violation of section 73.1216 of the Commission's rules. Specifically, it appears that, contrary to the official announced rules of the Contest, at the Contest drawing, Clear Channel excluded multiple entries from consideration, misplaced other legitimate entries, and failed to award all announced prizes. Based upon our review of the facts, we conclude that Clear Channel is apparently liable for a monetary forfeiture in the amount of \$4,000.

II. BACKGROUND

2. On August 2, 2004, the Commission received a complaint from a viewer alleging that Station WAWS(TV) had engaged in a number of improprieties relating to the Contest that it had conducted earlier that year. Among other things, the complainant maintained that, contrary to the official announced rules of the Contest, the station had improperly excluded multiple entries that he had submitted, thereby substantially limiting his chances of winning any of the advertised prizes. The

147 U.S.C. § 503(b), 47 C.F.R. § 1.80.

247 C.F.R. § 73.1216.

3See e-mail from complainant to Enforcement Bureau, Federal Communications Commission, dated August 2, 2004 ("Complaint").

4Id. at 1.

complainant also asserted that the Contest was rigged, and demanded an investigation of the matter by the Commission.⁵

3. By letter of inquiry dated October 25, 2004, the Enforcement Bureau (the “Bureau”) directed Clear Channel to provide information about the Contest.⁶ Clear Channel timely responded on November 23, 2004.⁷ In its Response, Clear Channel explains that the Contest involved one grand prize, a 2004 Dodge automobile, and 15 second-place prizes consisting of tickets to a Florida theme park.⁸ According to Clear Channel, the Contest rules required participants to complete and submit entry forms at any of 15 participating Dodge dealerships in the Jacksonville, Florida, area.⁹ The rules did not limit the number of Contest entries that an individual could submit.¹⁰ They required participants to be present at the June 19, 2004, drawing in order to win, and specified that all announced prizes would be awarded.¹¹

4. Clear Channel concedes that Station WAWS(TV) personnel did not conduct the Contest in accordance with the official rules.¹² It states that, in preparing for the drawing, station personnel incorrectly relied on an outdated, draft version of the rules which contained language limiting to one the number of Contest entries that an individual could submit.¹³ As a consequence, station personnel disposed of all but one of the 21 entries that the complainant had submitted.¹⁴

5. Clear Channel also indicates in its Response that, of the 15 area Dodge dealerships referenced in the Contest rules as locations at which participants could register to win, entries from only nine such dealerships were actually included in the June 19, 2004, drawing.¹⁵ According to Clear Channel, of the remaining six dealerships, one did not sell Dodge automobiles and, thus, decided not to

⁵*Id.*

⁶*See* Letter from William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Clear Channel Broadcasting Licenses, Inc., dated October 25, 2004.

⁷*See* Letter from Andrew W. Levin, Executive Vice President and Chief Legal Officer, Clear Channel Communications, Inc., parent of Clear Channel Broadcasting Licenses, Inc., to Marlene H. Dortch, Esq., Secretary, Federal Communications Commission, dated November 22, 2004 (“Response”). By email dated August 2, 2005, the complainant replied to the Response, indicating that the Contest had been videotaped by the licensee. By a supplemental letter of inquiry dated October 3, 2005, we requested any such tapes from Clear Channel, which provided a raw videotape of the portion of the June 19 drawing awarding the automobile. The complainant, by e-mail dated October 25, 2005, commented on the videotape. Although the videotape depicts the first drawing for the 2004 Dodge automobile, it does not contain probative evidence regarding the issues raised in the Complaint.

⁸*Id.* at 1-3.

⁹*Id.* at 7.

¹⁰*Id.* at 5.

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.* at 7.

participate in the Contest; the entries from two dealerships were apparently lost in transit to the station; one dealership failed to return its entries to the station by the specified deadline; and two dealerships received no entries from members of the public.¹⁶

6. Clear Channel further describes additional problems at the June 19 drawing, which it characterizes as having been sparsely attended.¹⁷ According to Clear Channel, station personnel pulled 15 entries for each of the second-place prizes.¹⁸ However, after concluding that no participant whose entry was drawn was present, station personnel declined to draw any additional entries.¹⁹ As a consequence, none of the announced second-place prizes, the theme park tickets, was awarded at the June 19 drawing.²⁰ Station personnel used a different method, however, with respect to the grand prize drawing, continuing to pull entries until arriving at one for which the participant was in attendance at the drawing.²¹ The new car was awarded on the 13th attempt, to a participant other than the complainant.²²

7. After receiving a number of complaints about the manner in which it had conducted the June 19 drawing, Clear Channel decided to conduct a second drawing, on August 28, 2004, applying the official rules from the first drawing.²³ Clear Channel did not promote or advertise the second drawing.²⁴ All known entries -- including multiple entries and those that had not arrived from dealerships in time for the first drawing -- were included in the second drawing.²⁵ All participants were notified by mail in advance of the second drawing.²⁶ According to Clear Channel, the complainant's name was selected several times at the second drawing, but because he was not present, he was not awarded any prize.²⁷ A second grand prize automobile was awarded, as well as all second-place theme park tickets.²⁸

III. DISCUSSION

8. Section 73.1216 of the Commission's rules provides that "[a] licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description

¹⁶ *Id.*

¹⁷ *Id.* at 5.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 5-6.

²² *Id.*

²³ *Id.* at 7.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 7-8.

²⁸ *Id.*

shall be false, misleading, or deceptive with respect to any material term.”²⁹ Material terms include those factors which define the operation of the contest and which affect participation therein, including, among other things, “how to enter or participate; eligibility restrictions; [and] time and means of selection of winners”³⁰

9. In the instant case, Clear Channel concedes that it failed to conduct the Contest substantially as announced or advertised. By Clear Channel’s admission, contrary to the official rules, its personnel excluded multiple entries from the June 19, 2004 drawing and failed to award any second-place theme park tickets. In addition, entries from several dealerships were not even considered in the drawing, either because they were lost or were untimely submitted to the station. One dealership identified in the official rules as a participating location where one could register did not participate. Although Clear Channel later conducted a second drawing, such remedial action does not absolve it from liability and the proposed forfeiture penalty.

10. We reject Clear Channel’s contention that the Contest’s official rules implicitly barred persons from submitting multiple entries because they contained language allowing the station to disqualify “a person who . . . has gained unfair advantage in participating in the Contest.”³¹ Such language does not provide participants with sufficient information describing actions that might result in an unfair advantage. In any event, since the contest rules allowed multiple entries, the complainant had no specific “unfair advantage” over any other contest participant. Clear Channel does not allege that the complainant was the only—or even the most prolific—person to submit multiple entries.

11. We also reject Clear Channel’s contention that the official rules provided the station with the authority to alter the outcome of the Contest, if the Contest was “affected by human error.”³² Such a reading of the rules would provide the licensee with virtually unlimited discretion to change the Contest rules. Clear Channel cannot, by relying on such a provision, absolve itself of its obligations under the Commission’s rules. It failed to provide participants with the necessary material information identifying the types of possible alterations that could occur, describing how these changes would affect an individual’s participation in the Contest, and specifying the manner in which these alterations would affect the selection of the winners.

12. Section 503(b) of the Act, 47 U.S.C. § 503(b), and section 1.80(a) of the Commission’s rules, 47 C.F.R § 1.80, both state that any person who willfully or repeatedly fails to comply with the provisions of the Act or the rules shall be liable for a forfeiture penalty. For purposes of section 503(b) of the Act, the term “willful” means that the violator knew it was taking the action in question, irrespective of any intent to violate the Commission’s rules.³³ Based on the material before us, it appears that Clear Channel apparently willfully violated section 73.1216 of the Commission’s rules by failing to conduct its “Win A Hot Rod for Dad” Contest on June 19, 2004, substantially as announced or advertised.

²⁹47 C.F.R. § 73.1216.

³⁰*Id.*

³¹*Id.* at 6.

³²*Id.* at 5.

³³See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991).

13. The Commission's *Forfeiture Policy Statement* sets a base forfeiture amount of \$4,000 for contest-related misconduct.³⁴ The *Forfeiture Policy Statement* also specifies that the Commission shall adjust a forfeiture based upon consideration of the factors enumerated in section 503(b)(2)(D) of the Act, 47 U.S.C. § 503(b)(2)(D), such as "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."³⁵ Based on our review of each of these factors, we propose a forfeiture of \$4,000 in this instance. Although Clear Channel apparently violated our rules, it took reasonably prompt remedial action prior to learning of our investigation. As such, the base forfeiture amount for this apparent misconduct is most appropriate.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to section 503(b) of the Communications Act of 1934, as amended,³⁶ and sections 0.111, and 1.80 of the Commission's rules,³⁷ Clear Channel Broadcasting Licenses, Inc., licensee of Station WAWS(TV), Jacksonville, Florida, is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$4,000 for apparently willfully violating section 73.1216 of the Commission's rules.

15. IT IS FURTHER ORDERED that, pursuant to section 1.80 of the rules, within thirty (30) calendar days of the release of this NOTICE OF APPARENT LIABILITY, Clear Channel Broadcasting Licenses, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

16. IT IS FURTHER ORDERED that 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, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

17. IT IS FURTHER ORDERED THAT the response, if any, must be mailed to William H. Davenport, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 4-C330, Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. referenced above.

³⁴See *Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Memorandum Opinion and Order, 12 FCC Rcd 17087, 17113 (1997), *recon. denied* 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"); 47 C.F.R. § 1.80(b).

³⁵*Id.*, 12 FCC Rcd at 17110.

³⁶47 U.S.C. § 503(b).

³⁷47 C.F.R. §§ 0.111 and 1.80.

18. IT IS FURTHER ORDERED THAT requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Associate Managing Director -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.³⁸

19. IT IS FURTHER ORDERED that a copies of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail - Return Receipt Requested to Clear Channel Broadcasting Licenses, Inc., 2625 South Memorial Drive, Suite A, Tulsa, Oklahoma 74129; its counsel, Gregory L. Masters, Esq., Wiley Rein & Fielding LLP, 1776 K Street N.W., Washington, D.C. 20006; and to Robert Hawxhurst, 2890 Emily Lane West, Jacksonville, Florida, 32216.

FEDERAL COMMUNICATIONS COMMISSION

William H. Davenport
Chief, Investigations and Hearings Division
Enforcement Bureau

³⁸ 47 C.F.R. § 1.1914.