

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

In the Matter of)	
)	
Liam Patrick Ryan d/b/a)	File No. EB-07-SE-113
L. P. Ryan / Low Power Radio)	NAL/Acct. No. 200832100006
St. Louis, Missouri)	FRN # 0017105370

FORFEITURE ORDER

Adopted: June 3, 2008

Released: June 5, 2008

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 six hundred ten dollars (\$610) to Liam Patrick Ryan d/b/a L. P. Ryan / Low Power Radio (“Low Power Radio”) for the 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 violation involves Low Power Radio’s marketing of uncertified AM radio transmitters.

II. BACKGROUND

2. On May 30, 2007, the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau issued a Letter of Inquiry (“LOI”) to Low Power Radio in response to information alleging that Low Power Radio was marketing in the United States fully-assembled AM transmitters; specifically, the SSTRAN model AMT3000 AM transmitter (“AMT3000 AM transmitter”).³ In its response to the LOI,⁴ Liam Patrick Ryan, owner and operator of Low Power Radio, stated that he was not aware of any certification authorizing a fully assembled AMT3000 AM transmitter. Mr. Ryan also affirmed that he purchased the transmitters in kit form from a third party and assembled the transmitters in his residence. Additionally, Low Power Radio advertised the assembled transmitters for sale on its website at www.ontheair3.com, and admitted to selling completed units to customers.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to L. P. Ryan, Low Power Radio (May 30, 2007).

⁴ Letter from Liam Patrick Ryan d/b/a L. P. Ryan / Low Power Radio to Jacqueline Johnson, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (received July 2, 2007).

3. On November 13, 2007, the Division released a *Notice of Apparent Liability for Forfeiture* (“NAL”) finding that Low Power Radio marketed uncertified AM radio transmitters in apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.⁵ The NAL proposed a forfeiture amount of seven thousand dollars (\$7,000) for the apparent violation.

4. On January 7, 2008, the Commission received Low Power Radio’s December 10, 2007 response to the NAL.⁶ In response to the NAL, Mr. Ryan does not dispute that Low Power Radio marketed uncertified AM radio transmitters. Instead, Mr. Ryan seeks cancellation of the proposed forfeiture for inability to pay, stating that he lives on a fixed income and is disabled. In support of his claim of inability to pay, on February 19, 2008, Mr. Ryan submitted financial documentation for the years 2007, 2006 and 2005.⁷

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁸ Section 1.80 of the Rules,⁹ and the Commission’s *Forfeiture Policy Statement*.¹⁰ In assessing forfeitures, Section 503(b)(2)(E) 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.¹¹

6. 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 prohibits the sale or lease, offer of sale or lease, importation, or shipment of radio frequency devices, as well as the distribution of such devices for the purpose of selling such devices, unless, in the case of a device subject to certification, the device has first been properly authorized, identified and labeled in accordance with the Rules. Section 2.801 of the Rules defines a radio frequency device as “any device which in its operation is capable of emitting radio frequency energy” Radio frequency devices subject to the Rules include, among other items, radio communication transmitting devices and “[a]ny part or component thereof which in use emits radiofrequency energy....”¹² Section 15.201(b) of the Rules¹³

⁵ *Liam Patrick Ryan d/b/a L.P. Ryan / Low Power Radio*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19783 (Enf. Bur., Spectrum Enf. Div. 2007) (“NAL”).

⁶ Letter dated December 10, 2007 from Liam Patrick Ryan to Office of the Secretary, Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division (January 7, 2008).

⁷ Letter dated February 10, 2008, from Liam Patrick Ryan to Office of the Secretary, Federal Communications Commission, Enforcement Bureau, Spectrum Enforcement Division (February 19, 2008).

⁸ 47 U.S.C. § 503(b).

⁹ 47 C.F.R. § 1.80.

¹⁰ *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Forfeiture Policy Statement*”).

¹¹ 47 U.S.C. § 503(b)(2)(E).

¹² *See* 47 C.F.R. § 2.801.

¹³ *See* 47 C.F.R. § 15.201(b).

requires intentional radiators¹⁴ to be certified by the Commission prior to marketing.

7. We have found that Section 302(b) of the Act and Section 2.803(a)(1) of the Rules prohibit the marketing of an unauthorized device assembled from a kit.¹⁵ We note that in its response to the *NAL*, Low Power Radio does not dispute that it violated Section 302(b) or Section 2.803(a)(1) by marketing unauthorized devices assembled from kits. Therefore, we conclude that Low Power Radio willfully¹⁶ and repeatedly¹⁷ violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

8. Under the *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules, inability to pay is a downward adjustment factor for Section 503 forfeitures.¹⁸ In analyzing economic hardship claims, the Commission generally looks to gross revenues from the three most recent tax years as a reasonable and appropriate yardstick to determine ability to pay assessed forfeitures.¹⁹ Thus 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 petitioners current financial status.

9. We have considered Low Power Radio's response to the *NAL* and its request for cancellation of the forfeiture amount due to inability to pay. Based upon the documentation, we believe that a downward adjustment of the forfeiture amount is appropriate in this case and that the proposed \$7,000 forfeiture would impose a financial hardship on Mr. Ryan. Therefore, we conclude that a reduction of the proposed forfeiture amount to \$610 is warranted.²⁰

¹⁴ Under Section 15.3(o) of the Rules, 47 C.F.R. § 15.3 (o), an intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.”

¹⁵ See *Leslie D. Brewer*, Forfeiture Order, 15 FCC Rcd 9999 (Enf. Bur. 2000) (the sale and shipment of an assembled, unauthorized kit violates Section 302(b) of the Act and Sections 2.803(a)(1) and 15.201(b) of the Rules). See also *Richard Mann d/b/a The Antique Radio Collector*, Forfeiture Order, 22 FCC Rcd 20516 (Enf. Bur., Spectrum Enf. Div. 2007), *recon. denied*, 23 FCC Rcd 6920 (Enf. Bur. 2008); *Ramsey Electronics Inc.*, Notice of Apparent Liability, 21 FCC Rcd 458 (Enf. Bur., Spectrum Enf. Div. 2006); *CB Shack 500 Alabama Highway*, Forfeiture Order, 14 FCC Rcd 7067 (Compl. & Inf. Bur. 1999), *recon. denied*, 15 FCC Rcd 821 (Enf. Bur. 2000).

¹⁶ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

¹⁷ Section 312(f)(1) of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

¹⁸ See 47 C.F.R. § 1.80; 47 U.S.C. § 503.

¹⁹ See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088, 2089 (1992) (“*PJB Communications*”); see also *Forfeiture Policy Statement*, 12 FCC Rcd at 17106-07.

²⁰ See *PJB Communications*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 15 FCC Rcd 24385, 24389 ¶ 11 (2000), *recon. denied*, 16 FCC Rcd 10023, 10025 ¶ 6 (2001) (forfeiture not deemed excessive where it (continued....))

10. Finally, we note that Low Power Radio is apparently continuing to assemble and market uncertified equipment on its website, www.ontheair3.com. Specifically, on May 2, 2008, Division staff observed that Low Power Radio was marketing on its website a completely “Assembled” SSTRAN AMT3000 AM Transmitter Kit for \$159.95. The website notes that the assembled device is “for use outside of North America.” Section 2.807(b) exempts devices “manufactured solely for export” from the prohibition on marketing of unauthorized equipment set forth in Section 2.803(a) of the Rules;²¹ however, this exemption only applies to devices that the manufacturer actually exports.²² Thus, Low Power Radio cannot simply rely upon the purchaser to export the device.²³ To the extent that Low Power Radio is not directly exporting the “Assembled” SSTRAN AMT3000 AM Transmitter Kit (i.e., shipping the device to an address outside of the United States), we caution it that its continued marketing of such uncertified devices is a violation that will lead to additional forfeiture penalties. Additionally, Division staff observed that Low Power Radio also was marketing on its website a “Simplified” SSTRAN AMT3000 AM Transmitter Kit for \$149.95. The website indicates that when purchasing a simplified device, “you need just a small screwdriver to install the knobs and screws. That’s it. The rest is done for you. No other skills or special tools required!” Thus, it appears that Low Power Radio is attempting to circumvent the prohibition on the marketing of uncertified equipment in the United States by fully assembling the “kit,” except for the final step of installing “the knobs and screws.” The “Simplified Kit” which merely requires installation of “the knobs and screws” is not a “kit” within the meaning of Section 15.3(p) of the Rules,²⁴ and we caution Low Power Radio that its continued marketing of such uncertified devices is a violation that will lead to additional forfeiture penalties. In addition, we direct Low Power Radio to submit a report within 30 days of the release of this Order certifying that it has ceased all marketing of the AMT3000 AM “Assembled” and “Simplified” transmitter kits, except to the extent that it is directly exporting these devices.

IV. ORDERING CLAUSES

11. 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,²⁵ Liam Patrick Ryan d/b/a L.P. Ryan / Low Power Radio **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of six hundred ten dollars (\$610) for willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

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represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 14 FCC Rcd 3356 (CIB 1999), *recon. denied*, 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues). A \$610 forfeiture represents a percentage of gross income that falls within the range that has been found acceptable in these prior cases.

²¹ 47 CFR 2.807(b).

²² See *Gibson Tech Ed, Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14438, 14440 (Enf. Bur., Spectrum Enf. Div. 2005); *forfeiture ordered*, 21 FCC Rcd 2915 (Enf. Bur., Spectrum Enf. Div. 2006); *recon. denied*, 21 FCC Rcd 9642 (Enf. Bur., Spectrum Enf. Div. 2006).

²³ *Id.*

²⁴ See 47 C.F.R. § 15.3(p). Section 15.3(p) of the Rules defines a “kit” as “[a]ny number of electronic parts, usually provided with a schematic diagram or printed circuit board, which, when assembled in accordance with instructions, results in a device subject to the regulations in this part, even if additional parts of any type are required to complete assembly.”

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

12. 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/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Liam Patrick Ryan d/b/a L. P. Ryan / Low Power Radio will also send electronic notification on the date said payment is made to Jacqueline Johnson at Jacqui.Johnson@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

13. **IT IS ALSO ORDERED** that Liam Patrick Ryan d/b/a L.P. Ryan / Low Power Radio **IS** hereby **DIRECTED** to submit the report described in paragraph 10 within 30 days of the release of this Order.

14. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Liam Patrick Ryan d/b/a L.P. Ryan / Low Power Radio, 3448 Evergreen Lane, St. Louis, Missouri 63125.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau