

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

In the Matter of)	File No. EB-07-SE-022
)	
ViewSonic Corporation)	Acct. No. 200832100083
)	
)	FRN No. 0006636484

ORDER

Adopted: September 11, 2008

Released: September 12, 2008

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and ViewSonic Corporation (“ViewSonic”). The Consent Decree terminates an investigation by the Bureau against ViewSonic for possible violation of sections 15.117(i)(1)(ii) and (iii) of the Commission’s Rules (“Rules”)¹ regarding the importation and interstate shipment of broadcast television receivers without digital television reception capability after applicable dates set forth in the Rules.

2. The Bureau and ViewSonic have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether ViewSonic possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

5. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended,² and sections 0.111 and 0.311 of the Commission’s Rules,³ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

¹ 47 C.F.R. § 15.117(i)(1)(ii); 47 C.F.R. § 15.117(i)(1)(iii).

² 47 U.S.C. § 154(i).

³ 47 C.F.R. §§ 0.111, 0.311.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Mr. James Chu, CEO, ViewSonic Corporation, 381 Brea Canyon Road, Walnut, CA and Tom W. Davidson, Esq., Akin Gump Strauss Hauer & Feld LLP, 1333 New Hampshire Avenue, N.W., Washington, D.C. 20036-1564.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and ViewSonic Corporation (“ViewSonic” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether ViewSonic violated sections 15.117(i)(1)(ii) and (iii) of the Commission’s Rules (“Rules”),¹ regarding the importation and interstate shipment of broadcast television receivers without digital television reception capability after applicable dates set forth in the Rules.

I. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
 - (a) “Act” means the Communications Act of 1934, as amended U.S.C. § 151 *et seq.*
 - (b) “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
 - (d) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) “Compliance Plan” means the program described in this Consent Decree at paragraph 7.
 - (f) “DTV Tuner” means “the capability of receiving the signals of DTV broadcast stations over-the-air” including “[reception of the digital signal], an MPEG decoder/formatter, and associated processing capability and memory.”²
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (h) “Investigation” means the investigation commenced by the Bureau’s February 1, 2007 letter of inquiry (“LOI”)³ and continued in the Bureau’s April 26, 2007 LOI⁴

¹ 47 C.F.R. § 15.117(i)(1)(ii); 47 C.F.R. § 15.117(i)(1)(iii).

² See *Requirements for Digital Television Receiving Capability*, Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11196 and n. 2 (2005) (“*DTV Tuner Report and Order*”).

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Mr. James Chu, CEO, ViewSonic Corporation (February 1, 2007) (“February 1, 2007 LOI”).

regarding whether ViewSonic violated section 15.117(i)(1) of the Commission's Rules ("Rules") by importing and/or shipping interstate TV Broadcast Receivers without DTV Tuners after applicable dates set forth in the Rules.

- (i) "Parties" means ViewSonic and the Bureau.
- (j) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.
- (k) "Television broadcast receiver" or "TV broadcast receiver" means a "device designed to receive television pictures that are broadcast simultaneously with sound on the television channels authorized under part 73" of the Rules.⁵
- (l) "ViewSonic" means ViewSonic Corporation and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Section 15.117(i)(1) of the Commission's Rules requires that all new TV broadcast receivers imported into the United States or shipped interstate be equipped with a DTV tuner according to the following schedule: (i) screen sizes 36" and above – effective July 1, 2005; (ii) screen sizes 25" to 35" – effective March 1, 2006; and (iii) screen sizes less than 25" – effective March 1, 2007.⁶ On February 1, 2007, the Bureau issued an LOI to ViewSonic regarding its compliance with the DTV Tuner requirements.⁷ ViewSonic responded to the February 1, 2007 LOI on March 15, 2007.⁸ On April 26, 2007, the Bureau issued a follow-up LOI.⁹ ViewSonic submitted responses to the April 26, 2007 LOI on May 16, 2007, May 31, 2007, and June 29, 2007.¹⁰

III. TERMS OF AGREEMENT

3. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

4. **Jurisdiction.** ViewSonic agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

⁴ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Mr. James Chu, CEO, ViewSonic Corporation (April 26, 2007) ("April 26, 2007 LOI").

⁵ 47 C.F.R. § 15.3(w).

⁶ 47 C.F.R. § 15.117(i)(1).

⁷ See February 1, 2007 LOI.

⁸ See Letter from Tom W. Davidson, Esq., to Ms. Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (March 15, 2007) ("March LOI Response").

⁹ See April 26, 2007 LOI.

¹⁰ Letter from Tom W. Davidson, Esq., to Ms. Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (May 16, 2007) ("May 16, 2007 LOI Response"); Letter from Tom W. Davidson, Esq., to Ms. Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (May 31, 2007) ("May 31, 2007 LOI Response"); Letter from Tom W. Davidson, Esq., to Ms. Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau (June 29, 2007) ("June 29, 2007 LOI Response").

5. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

6. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate its investigation. In consideration for the termination of said investigation, ViewSonic agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that in the absence of new material evidence, the Bureau will not use the facts developed in this investigation through the Effective Date of the Consent Decree, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against ViewSonic concerning the matters that were the subject of the investigation. The Bureau also agrees that it will not use the facts developed in this investigation through the Effective Date of this Consent Decree, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against ViewSonic with respect to ViewSonic's basic qualifications, including its character qualifications, to hold Commission authorizations.

7. **Compliance Plan.** For purposes of settling the matters set forth herein, ViewSonic agrees to create within 30 days a Compliance Plan related to future compliance with the Act, the Commission's Rules and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** ViewSonic will designate a compliance officer ("Compliance Officer") who will be responsible for administering the Compliance Plan.
- (b) **Compliance Measures.** ViewSonic has a corporate compliance program to insure compliance with Section 15.117 of the Rules. Following its internal investigation after receiving the April 26, 2007 LOI, ViewSonic quarantined all television receivers returned from Canada to its asset recovery team in Walnut, California and either shipped these units to other countries or retained the units as warranty replacements and for replacement parts. Concurrently therewith, ViewSonic changed its policy with its third-party service provider in Canada, and engaged the services of APL Logistics, Canada, who now is responsible for handling all future returns to Walnut, California of products imported into Canada, and who verifies that no products imported into Canada without tuners are ever shipped back into the United States. All future returns of products without tuners, previously imported into Canada are processed in Canada by ViewSonic's third-party service provider and, if re-sold, are re-sold in countries other than the United States.
- (c) **Employee Training.** ViewSonic has trained its asset recovery team in Walnut, California concerning the requirements set forth at Section 15.117 of the Rules and will ensure that any new employees who are involved in the asset recovery process will be trained within 120 days of being hired.
- (d) **Compliance Reports.** ViewSonic will file compliance reports with the Commission ninety days after the Effective Date and twelve months after the Effective Date. Each compliance report shall include a compliance certificate

from an officer, as an agent of ViewSonic, stating that the officer has personal knowledge that ViewSonic has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. All reports shall also be submitted electronically to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov.

- (e) **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire twelve months after the Effective Date.¹¹

8. **Voluntary Contribution.** ViewSonic agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$25,350. The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and FRN Number referenced in the caption to the Adopting Order. 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 Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). ViewSonic will also send electronic notification on the date said payment is made to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov.

9. **Waivers.** ViewSonic waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Bureau issues an Adopting Order adopting the Consent Decree without change, addition, modification, or deletion. ViewSonic shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Adopting Order, neither ViewSonic nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and ViewSonic shall waive any statutory right to a trial *de novo*. ViewSonic hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

10. **Severability.** The Parties agree that if any of the provisions of the Adopting Order or the Consent Decree shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Adopting Order or Consent Decree, but rather the entire Adopting Order or Consent Decree shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly. In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

11. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order

¹¹ A one year Consent Decree term is appropriate in this case, because ViewSonic did not initially directly import the television receivers that were the subject of the investigation into the United States and no longer manufactures them.

specifically intended to revise the terms of this Consent Decree to which ViewSonic does not expressly consent) that provision will be superseded by such Commission rule or Order.

12. **Successors and Assigns.** ViewSonic agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

13. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance with the requirements of the Act or the Commission's Rules and Orders.

14. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

15. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

16. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

17. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Kris Anne Monteith
Chief
Enforcement Bureau

Date

Theodore R. Sanders
CFO
ViewSonic Corporation

Date