

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

In the Matter of)	
)	File No. EB-06-SE-418
DBK Concepts, Inc.)	NAL/Acct. No. 200832100018
)	FRN No. 0017488107

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 27, 2008

Released: February 29, 2008

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find DBK Concepts, Inc. (“DBK”) apparently liable for a forfeiture in the amount of fifteen thousand dollars (\$15,000) for willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”).² The noted apparent violations involve DBK’s marketing of noncompliant portable data terminals (“PDTs”).³

II. BACKGROUND

2. The Enforcement Bureau’s Spectrum Enforcement Division (“Division”) received a complaint alleging that DBK had modified PDTs manufactured by Symbol Technologies, Inc. (“Symbol”) by replacing their two megabytes per second (“mbps”) radio assemblies with 11 mbps radio assemblies without authorization from Symbol. The complaint also asserted that the PDTs’ original labels were affixed to the modified PDTs and that those labels included information relating to the radio assemblies originally installed in the PDTs rather than to the replacement radio assemblies.

3. The PDTs involved in this matter are equipped with internal radio assemblies which transmit the data collected by the PDTs. Symbol holds the grants of equipment certification covering the radio assemblies⁴ originally installed in the PDTs involved in this matter. Symbol also holds grants of equipment certification for the replacement radio assemblies.⁵ The radio assemblies at issue are designated by Symbol as the LA3021-500, which has a data transmission rate of two mbps, and the LA4121, which has a data transmission rate of 11 mbps.

4. After its receipt of the complaint, the Division began an investigation. In pursuance of the investigation, the Division directed letters of inquiry (“LOIs”) to DBK on March 27, August 15, and

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ PDTs are hand held devices that collect data. They are primarily used to take inventory.

⁴ FCC IDs H9P3840, H9P3110, H9P3140, H9P6810, H9P24005AZL, H9PLA3021-500, H9PLA4121, and H9PWWC1049.

⁵ FCC ID H9PLA3021-500 and FCC ID H9PLA4121.

December 18, 2007, and February 1, 2008.⁶ DBK filed responses on May 8, September 17, and December 20, 2007, and February 11, 2008, respectively.⁷ DBK is a privately owned company located in Miami, Florida, and is in the business of repairing and refurbishing PDTs manufactured by Symbol.⁸

5. DBK's responses indicate that between July 2004 and April 2007, it replaced the internal radio assemblies of the following Symbol PDTs with radio assemblies having different FCC ID numbers: LRT3840, PDT 3110, PDT3140, PDT6810, PDT6840, PDT6842, PDT6846, PPT2842, VRC6940, VRC6946, WWC1040 and WSS1060.⁹ DBK replaced the internal radio assemblies of the PDT6810, PDT6842, PPT2842, VRC6940, and WCC1040 with the LA4121 radio assembly and replaced the internal radio assembly of the VRC6946 with the LA3021-500 radio assembly.¹⁰ Replacements of the internal radio assemblies for the PDT6840, PDT6842, and WSS1060 were carried out during the period between March and April 2007.¹¹ For the remaining nine devices, the replacements were carried out between July 2004 and February 2007.¹²

6. DBK contends that original equipment certifications granted to Symbol cover the PDTs that DBK has refurbished by replacing their radio assemblies but does not point to any specific information in the Commission's equipment authorization data base to support this claim.¹³ The Division's review of the equipment authorization data base finds no authorization for the installation of the LA4121 radio assembly in the Symbol PDT6810, PDT6842, PPT2842, VRC6940, or WCC1040. Review of the equipment authorization data base also finds no authorization for the installation of the LA3021-500 radio assembly in the Symbol VRC6946. With regard to the other devices modified by DBK – the LRT3840, PDT 3110, PDT3140, PDT6840, PDT6846, and WSS1060 – the Division's review of the equipment authorization data base finds either that the installation of the replacement radio assembly was authorized or that there is insufficient information in the equipment authorization data base to determine whether the installation of the replacement radio assembly was authorized.

⁶ See Letters from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to DBK, Inc. (March 27, 2007) ("First LOI") and Mitchell F. Brecher, Counsel for DBK (August 15, and December 18, 2007, and February 1, 2008) ("Second, Third and Fourth LOIs," respectively).

⁷ Letters from Mitchell F. Brecher., Counsel for DBK, Inc., to Thomas D. Fitz-Gibbon, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 8, 2007) ("First LOI Response") and Marlene H. Dortch, Secretary, Federal Communications Commission, (September 17, and December 20, 2007, and February 11, 2008) ("Second, Third and Fourth LOI Responses," respectively).

⁸ First LOI Response at 1.

⁹ See First LOI at 4-5, Second LOI Response at 4-5 and Fourth LOI Response at 2-3. After modification DBK designated the LRT3840 as the "LRT3800"; the PDT3140 as the "PDT3110"; the PDT6810 as the "PDT6840" or "PDT6846"; the PDT6840 as the "PDT6842" or "PDT6846"; the PDT6842 as the "PDT6840" or "PDT6846"; the PDT6846 as the "PDT6840" or "PDT6842"; the PPT2842 as the "PPT2846"; the VRC6940 as the "VRC6946"; the VRC6946 as the "VRC6940"; the WWC1040 as the "WSS1060"; and the WSS1060 as the "WWS1040". The post-modification designation of the PDT3110 is unclear because of an apparent typographical error. Fourth LOI Response at 2-3.

¹⁰ *Id.* at 2-3.

¹¹ *Id.* at 3.

¹² *Id.* at 2-3.

¹³ First LOI Response at 5, Second LOI Response at 3.

7. DBK admits that Symbol did not authorize it to modify Symbol PDTs.¹⁴ DBK also admits that “all PDTs included in [the data submitted by DBK] were sold the same month as the repairs and refurbishments [including radio assembly replacements] were made.”¹⁵

8. DBK asserts that it did not affix labels “to any devices following repair or refurbishment”¹⁶ with the exception of labels that “only indicate the current model number and DBK serial number for tracking purposes of the refurbished model.”¹⁷ Photos provided by the complainant indicate that DBK pasted new labels showing the model and serial number on top of the original Symbol labels (obscuring the original model and serial numbers). DBK states that these photos accurately represent the labels of devices refurbished by DBK.¹⁸ Question (4) of the First LOI directed DBK to provide, for each modified PDT, a reproduction or facsimile of both the original label and any new label affixed after modification.¹⁹ In response, DBK provides five photocopies of Symbol labels, all of which appear to be original Symbol labels.²⁰

III. DISCUSSION

A. Marketing of Unauthorized and Improperly Labeled Devices

9. 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 in pertinent part 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 radiofrequency device²¹ 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....

10. DBK installed the LA4121 radio assembly as a replacement radio assembly in the Symbol PDT6810, PDT6842, VRC6940, WWC1040 and PPT2842 and installed the LA3021-500 radio assembly in the VRC6946. Although the LA3021-500 and LA4121 radio assemblies are certified, the Division’s review of the equipment authorization data base indicates that there is apparently no authorization for the installation of the LA3021-500 radio assembly in the VRC6946 or for the installation of the LA4121 radio assembly in the other five devices. We conclude, therefore, that the modified Symbol PDT6810, PDT6842, VRC6940, VRC6946, WWC1040 and PPT2842 are apparently unauthorized devices and, consequently, noncompliant.

¹⁴ Third LOI Response at 2.

¹⁵ *Id.* at 3-4.

¹⁶ First LOI Response at 3.

¹⁷ Second LOI Response at 5.

¹⁸ Third LOI Response at 3.

¹⁹ First LOI at 5.

²⁰ *See* Second LOI Response, Attachment 2.

²¹ 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.”

11. Section 2.909(a) of the Rules²² provides in pertinent part:

If the radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to Sec. 2.929(b), the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this chapter.

12. DBK modified twelve Symbol PDT models²³ by replacing their radio assemblies. Because DBK is not the grantee of the equipment certifications for the devices at issue and was not working under the authorization of the grantee, we find that, under Section 2.909(a) of the Rules, when DBK modified the Symbol PDTs, it became the party responsible for the compliance of those PDTs with the applicable technical and administrative provisions, including the labeling requirements of Sections 2.909(d) and 2.925(a)(1) of the Rules²⁴ as well as Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. .

13. Section 2.909(d) of the Rules provides:

If, because of modifications performed subsequent to authorization, a new party becomes responsible for ensuring that a product complies with the technical standards and the new party does not obtain a new equipment authorization, the equipment shall be labeled, following the specifications in §2.925(d), with the following: ‘This product has been modified by [insert name, address and telephone number of the party performing the modifications].’

Since DBK did not obtain its own certifications to cover the modified PDTs, it was required to label the devices as specified in Section 2.909(d). DBK admits that it did not affix any labels to refurbished PDTs except for labels indicating new model and serial numbers. We find, accordingly, that DBK did not label the twelve modified PDT models as specified by Section 2.909(d) and that the devices are, therefore, noncompliant.

14. Section 2.925(a)(1) of the Rules provides:

Each equipment covered in an application for equipment authorization shall bear a nameplate or label listing the following: (1) FCC Identifier consisting of the two elements in the exact order specified in §2.926. The FCC Identifier shall be preceded by the term *FCC ID* in capital letters on a single line, and shall be of a type size large enough to be legible without the aid of magnification.

DBK admits that, except for labels indicating new model and serial numbers, it did not affix any labels to the refurbished PDTs. It is, therefore, clear that the labels on the modified PDTs do not contain the correct FCC ID number.²⁵ We find, accordingly, that DBK did not label the twelve modified PDT models as specified by Section 2.925(a)(1) and that the devices are, therefore, noncompliant.

²² 47 C.F.R. § 2.909(a).

²³ These models are set forth in note 10, above.

²⁴ 47 C.F.R. §§ 2.909(d) and 2.25(a)(1).

²⁵ The correct FCC ID number is the FCC ID number of the replacement internal radio assembly *See Unlicensed Modular Transmitter Approval*, Public Notice, 15 FCC Rcd 25415 (OET 2000).

15. In sum, twelve PDT models that DBK modified were noncompliant because they were not labeled as specified by Sections 2.909(d) and 2.925(a)(1) of the Rules and six of these models were also noncompliant because they were unauthorized.

16. DBK admits that it sold the PDTs that it modified by replacing their radio assemblies. We find, on the basis of the foregoing, that DBK apparently marketed twelve models of noncompliant radio frequency devices, in willful²⁶ and repeated²⁷ violation of Section 302(b) of the Act and Section 2.803(a) of the Rules.

B. Proposed Forfeiture

17. Section 503(b) of the Act²⁸ 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. 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.”²⁹

18. Section 503(b)(6) of the Act³⁰ bars the Commission from proposing a forfeiture for violations that occurred more than a year prior to the issuance of an *NAL*. Section 503(b)(6) does not, however, bar the Commission from assessing whether DBK’s conduct prior to that time period apparently violated the provisions of the Act and Rules and from considering such conduct in determining the appropriate forfeiture amount for violations that occurred within the one-year statutory period.³¹ Thus, while we may consider the fact that DBK’s conduct has continued over a period that began during 2004, the forfeiture amount we propose herein relates only to DBK’s apparent violations that have occurred within the past year.

19. Under *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“*Forfeiture Policy Statement*”)³² and Section 1.80 of

²⁶ 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.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991).

²⁷ 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).

²⁸ 47 U.S.C. § 503(b).

²⁹ 47 U.S.C. § 503(b)(2)(E).

³⁰ 47 U.S.C. § 503(b)(6).

³¹ See 47 U.S.C. § 503(b)(2)(D), 47 C.F.R. § 1.80(b)(4); see also *Behringer USA, Inc.*, Notice of Apparent Liability, 21 FCC Rcd 1820, 1825(2006), *forfeiture ordered*, Forfeiture Order, 22 FCC Rcd. 1051 (2007); *Globcom, Inc. d/b/a Globcom Global Communications*, Notice of Apparent Liability, 18 FCC Rcd 19893, 19903 (2003), *forfeiture ordered*, Forfeiture Order, 21 FCC Rcd 4710 (2006); *Roadrunner Transportation, Inc.*, Forfeiture Order, 15 FCC Rcd 9669, 9671-71 (2000); *Cate Communications Corp.*, Memorandum Opinion and Order, 60 RR 2d 1386, 1388 (1986); *Eastern Broadcasting Corp.*, Memorandum Opinion and Order, 10 FCC 2d 37 (1967), *recon. den.*, 11 FCC 2d 193 (1967); *Bureau D’Electronique Appliquee, Inc.*, Notice of Apparent Liability, 20 FCC Rcd 3445, 3447-48 (Enf. Bur., Spectrum Enf. Div. 2005), *forfeiture ordered*, Forfeiture Order, 20 FCC Rcd 17893 (Enf. Bur., Spectrum Enf. Div. 2005) (“*Bureau D’Electronique Appliquee*”).

³² 12 FCC Rcd 17087, 17113 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

the Rules,³³ the base forfeiture amount for the marketing of unauthorized equipment is \$7,000. In this case, within the past year, DBK marketed two PDT models that were improperly labeled, the modified Symbol PDT6840 and Symbol WSS1060,³⁴ and one PDT model that was both unauthorized and improperly labeled, the modified Symbol PDT6842.³⁵ DBK's marketing of each of these models is a separate violation. We find that the base forfeiture amount of \$7,000 is apparently warranted for each of the three models for a total of \$21,000.³⁶ The base forfeiture amount is typically imposed for marketing devices that are not in compliance with applicable technical requirements or are not authorized by an equipment authorization. In this case, however, two models were not properly labeled as required by Sections 2.909(d) and 2.925(a)(1) of the Rules. Because marketing an improperly labeled device is not as significant a violation as marketing an unauthorized or technically non-compliant device, we find that a downward adjustment of the base forfeiture amount from \$7,000 to \$4,000 is warranted for each of the two violations that involve only the marketing of improperly labeled devices.³⁷ The full \$7,000 base forfeiture amount is warranted for the violation involving the marketing of the Symbol PDT6842, which was both unauthorized and improperly labeled. Thus, we propose a total forfeiture amount of \$15,000.

20. DBK also marketed four other improperly labeled PDT models -- the modified Symbol LRT3840, PDT3110, PDT3140, and PDT6846 -- and five other PDT models that were both unauthorized and improperly labeled -- the modified Symbol PDT6810, PPT2842, VRC6940, VRC6946 and WWC1040. Although we believe that a forfeiture would be warranted for these violations, we note that the statute of limitations for proposing a forfeiture for these violations is one year from the date of violations³⁸ and has expired. Accordingly, we will not propose a forfeiture for marketing these models. We find, however, that an admonishment is warranted for these violations.

IV. ORDERING CLAUSES

21. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,³⁹ DBK Concepts, Inc., **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fifteen thousand dollars (\$15,000) for marketing two PDT models that were improperly labeled and one PDT model that was both unauthorized and improperly labeled, in willful and repeated violation of Section 302(a) of the Act and Section 2.803(a) of the of the Rules.

22. **IT IS FURTHER ORDERED** that DBK **IS ADMONISHED** for marketing four PDT models that were improperly labeled and five PDT models that were both improperly labeled and unauthorized, in violation of Section 302(a) of the Act and Section 2.803(a) of the of the Rules.

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

³³ 47 C.F.R. § 1.80.

³⁴ DBK designated these devices after modification, respectively, as the PDT6842 or PDT6846; and the WWS1040.

³⁵ DBK designated this device after modification as the PDT6846.

³⁶ See *Samson Technologies, Inc.*, Notice of Apparent Liability, 19 FCC Rcd 4221, 4225 (2004).

³⁷ See *Ryzex, Inc.*, Notice of Apparent Liability, DA 08-167 (Enf. Bur., Spectrum Enf. Div., rel. January 29, 2008).

³⁸ See 47 U.S.C. § 503(b)(6); 47 C.F.R. § 1.80(c)(3).

³⁹ 47 C.F.R. § 0.111, 0.311 and 1.80.

24. 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.

25. 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.

26. 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.

27. **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 DBK Concepts, Inc., 12905 S.W. 129th Avenue, Miami, FL 33186, and to its attorney, Mitchell F. Brecher, Greenberg Traurig LLP, 2101 L Street Avenue, NW, Suite 1000, Washington, DC 20037.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau