



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 15, 2008

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
AND FACSIMILE AT (801) 437-1714

Mr. James Royer
President
Absolute Toy Marketing, Inc.,
d/b/a HobbyTron.com
1053 South 1675 West
Orem, UT 84058

Re: File No. EB-07-SE-250

Dear Mr. Royer:

This is an official **CITATION**, issued pursuant to section 503(b)(5) of the Communications Act of 1934, as amended (“Act”), 47 U.S.C. § 503(b)(5), for marketing unauthorized radio frequency devices¹ in the United States in violation of section 302(b) of the Act, 47 U.S.C. § 302a(b), and section 2.803 of the Commission’s rules (“rules”), 47 C.F.R. § 2.803. In addition, you have failed to respond to directives of the Enforcement Bureau to provide certain information and documents. As explained below, future violations of these rules may subject Absolute Toy Marketing, Inc. to monetary forfeitures.

After receiving a complaint, the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau began an investigation to determine whether HobbyTron.com was marketing unauthorized FM transmitters in the United States. On October 12, 2007, and again on October 18, 2007, Division personnel observed that the HobbyTron.com website advertised the sale of assembled FM broadcast transmitters, including models identified on the website as R-FM30B-WT, R-FM100B-WT, and UX-150, which did not appear to hold grants of equipment authorization from the Commission. As part of the investigation, the Division sent a letter of inquiry (“LOI”) to HobbyTron.com on October 22, 2007, requesting, *inter alia*, a copy of the grant of equipment authorization corresponding to each model of FM transmitter marketed by HobbyTron.com.² This LOI also made note of the Notice of Apparent Liability for Forfeiture that had previously been issued against Gibson Tech Ed Inc., d/b/a HobbyTron.com for willful and repeated violation of this same marketing rule.³

¹ A “radiofrequency device” is defined as “any device which in its operation is capable of emitting radio frequency energy by radiation, conduction, or other means.” 47 C.F.R. § 2.801.

² See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Monique Gibson, Registered Agent, HobbyTron.com (October 22, 2007) (“LOI”).

³ See *Gibson Tech Ed., Inc.*, Notice of Apparent Liability for Forfeiture, 20 FCC Rcd 14438 (Enf. Bur., Spectrum Enf. Div., 2005) (finding Gibson Tech Ed, Inc., d/b/a HobbyTron.com apparently liable for marketing unauthorized FM broadcast transmitters in violation of 47 C.F.R. § 2.803(a)), *forfeiture ordered*, 21 FCC Rcd 2915 (Enf. Bur., Spectrum Enf. Div., 2006), *recon. denied*, 21 FCC Rcd 9642 (Enf. Bur. 2006) (“*Gibson Tech*”).

On November 15, 2007, you responded to our LOI as President of Absolute Toy Marketing, Inc., d/b/a HobbyTron.com (“Absolute”).⁴ Your response was not supported by an affidavit or declaration under penalty of perjury, as directed by our LOI. You advised that Absolute became the owner of the website HobbyTron.com at a public auction in April 2006.⁵ You stated that Absolute sells electronic kits made in Canada by CanaKit Corporation and transmitters made in the United States by Ramsey Electronics, Inc.⁶ You stated that some kits sold on your website have been assembled for export, and you asserted your belief that these items may be lawfully marketed because your customers are required to fill out a form on which they state that they will export the device.⁷ You stated that this export form had previously been “provided to the FCC with no reply.”⁸ You expressed your assumption that the form was therefore acceptable.⁹ You chose not to answer several questions that addressed the core of this investigation. Instead, you asked that we address a new letter to you if your response did not answer our initial questions.¹⁰

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.”¹¹ Section 2.803(a)(1) of the rules provides:

[N]o 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 device unless ... [i]n the case of a device 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.¹²

⁴ See Letter from Jim Royer, President, Absolute Toy Marketing, Inc., d/b/a HobbyTron.com, to Kevin M. Pittman, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (November 15, 2007) (“Letter from Jim Royer, November 15, 2007”). Though this letter is undated, the envelope shows a November 15, 2007 postmark.

⁵ See *id.* Previously Gibson Tech Ed., Inc., d/b/a HobbyTron.com owned and operated the HobbyTron.com website.

⁶ See *id.*; see also *Ramsey Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 458 (Enf. Bur. 2006) (issuing a Notice of Apparent Liability against the manufacturer for its marketing of unauthorized FM transmitter models FM35WT and FM100BWT).

⁷ See Letter from Jim Royer, November 15, 2007.

⁸ *Id.* A sample of the form to which you refer was first obtained by Division personnel during the 2004 investigation of Gibson Tech Ed., Inc., d/b/a HobbyTron.com for the identical violation of 47 C.F.R. § 2.803(a). In fact, on two occasions during the 2004 enforcement action, the Commission expressly stated the effect of this form on the company’s liability. See *Gibson Tech*, 21 FCC Rcd at 9644 (“Accordingly, the ‘export agreement’ Gibson asks its customers to sign does not relieve Gibson of liability for marketing unlicensed transmitters.”); 20 FCC Rcd at 14440 ¶ 8 (“Gibson’s use of the ‘FM Transmitter Certification Form’ appears to be an attempt to circumvent the prohibition on marketing of unapproved radio frequency devices such as the R-FM25B-WT and R-FM100B-WT.”).

⁹ See Letter from Jim Royer, November 15, 2007. The Commission also previously addressed your assumption. See *Gibson Tech*, 21 FCC Rcd at 9644 n.22 (“To the extent that Gibson suggests the Commission acquiesced in this attempt to circumvent the Commission’s rules, we note that the Commission is not required to develop corporate plans for Rule compliance by individual retail outlets.”) (citations omitted). Our records indicate your familiarity with the 2004 investigation of Gibson Tech Ed., Inc. due to your involvement on their behalf. See Letter from Jim Royer to Brian Butler, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (June 22, 2004).

¹⁰ See Letter from Jim Royer, November 15, 2007.

¹¹ 47 U.S.C. § 302a(b).

¹² 47 C.F.R. § 2.803(a)(1).

Section 15.201(b) of the rules provides that radio frequency devices, such as the FM transmitters at issue, are subject to certification. Specifically, this rule provides, “intentional radiators operating under the provisions of this part shall be certificated by the Commission...prior to the initiation of marketing.”¹³

Absolute acknowledged that it has controlled the Hobbytron.com website since April 2006. Our investigation confirmed that Absolute has marketed several FM broadcast transmitters, including models identified on its HobbyTron.com website as R-FM30B-WT, R-FM100B-WT, and UX-150, which have not been certificated and thus are not authorized by the Commission. Accordingly, it appears that Absolute has violated section 302(b) of the Act and section 2.803(a) of the rules by marketing unauthorized radiofrequency devices in the United States. Furthermore, Absolute apparently violated Commission orders by failing to answer material questions of the LOI and failing to support its response with an affidavit or declaration, signed under penalty of perjury, which responds to Enforcement Bureau directives to provide certain information and documents.

A party may not ignore the directives in a Bureau inquiry letter.¹⁴ You are again ordered, pursuant to Sections 4(i), 4(j), and 403 of the Act, to provide the information sought by our October 22, 2007 LOI. You must provide this information in the manner indicated therein within 20 days of the date of this citation.

If, after receipt of this citation, Absolute violates the Communications Act or the Commission’s rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$11,000 for each such violation or each day of a continuing violation.¹⁵

If you choose to do so, you may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission’s Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that Absolute is taking to ensure that it does not violate the Commission’s rules governing the marketing and importation of radiofrequency devices in the future.

The nearest Commission field office is the Denver Field Office. Please call Kevin M. Pittman at 202-418-1427 if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission
445-12th Street, S.W., Rm. 3-C366
Washington, D.C. 20554

Under the Privacy Act of 1974, 5 U.S.C. § 552(a)(e)(3), we are informing you that the Commission’s staff will use all relevant material information before it, including information that you

¹³ 47 C.F.R. § 15.201(b).

¹⁴ See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591 (2002). In *SBC Communications, Inc.*, the Commission imposed a \$100,000 forfeiture against a carrier for its willful refusal to supply a sworn declaration in response to an Enforcement Bureau letter of inquiry. The Commission stated, “[T]he order here was squarely within the Commission’s authority and, in any event, parties are required to comply with Commission orders even if they believe them to be outside the Commission’s authority.” *Id.* at 7591.

¹⁵ See 47 C.F.R. § 1.80(b)(3).

disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment under 18 U.S.C. § 1001.

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Enclosure