

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

In the Matter of)	
)	
Richard Mann d/b/a)	File No. EB-06-SE-388
The Antique Radio Collector)	NAL/Acct. No. 200732100016
Toledo, Ohio)	FRN No.: 0016215626
)	

MEMORANDUM OPINION AND ORDER

Adopted: April 28, 2008

Released: April 30, 2008

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we deny a Petition for Reconsideration¹ filed by Richard Mann d/b/a The Antique Radio Collector (“Antique Radio Collector”). Antique Radio Collector seeks reconsideration of a *Forfeiture Order*² issued by the Spectrum Enforcement Division (“Division”) of the Enforcement Bureau on November 27, 2007, in the amount of seven thousand dollars (\$7,000) for willful and repeated violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),³ and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).⁴ The noted violations involved Antique Radio Collector’s marketing of uncertified AM radio transmitters.

II. BACKGROUND

2. On November 15, 2006, the Division sent a letter of inquiry (“LOI”)⁵ to Antique Radio Collector in response to a complaint alleging that Antique Radio Collector was marketing in the United States fully assembled uncertified AM transmitters, specifically the SSTRAN model AMT3000 AM transmitters (“AMT3000 AM transmitters”). In its LOI Response,⁶ Antique Radio Collector indicated that it was not aware of a Commission issued certification authorizing a fully assembled AMT3000 AM transmitter. The LOI Response indicated that Mr. Mann, the owner of Antique Radio Collector, purchased AMT3000 AM transmitter kits from a third party, assembled the transmitters at his residence, and advertised the assembled transmitters for sale online at the web site,

¹ On December 27, 2007, Richard Mann d/b/a The Antique Radio Collector filed a pleading captioned “Appeal of Forfeiture Order.” Pursuant to Section 1.106 of the Rules, 47 C.F.R. § 1.106, we are treating this pleading as a petition for reconsideration.

² *Richard Mann d/b/a The Antique Radio Collector*, Forfeiture Order, 22 FCC Rcd 20516 (Enf. Bur., Spectrum Enf. Div. 2007) (“*Forfeiture Order*”).

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. § 2.803(a)(1).

⁵ Letter from Kathryn Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Richard Mann, Antique Radio Collector (November 15, 2006).

⁶ Letter from Richard Mann d/b/a The Antique Radio Collector to Neal McNeil, Spectrum Enforcement Division, Enforcement Bureau (November 25, 2006) (“LOI Response”).

www.oldtimeradioprograms.com. The LOI Response further indicated that Antique Radio Collector had sold a number of completed AMT3000 AM transmitters to end users since December 2003.

3. On March 15, 2007, the Division issued a *Notice of Apparent Liability for Forfeiture* (“NAL”)⁷ to Antique Radio Collector proposing a forfeiture in the amount of seven (\$7,000) for marketing uncertified fully assembled AMT3000 AM transmitters in apparent willful and repeated violation of Section 302(b) of the Act and 2.803(a) of the Rules. In Response to the NAL,⁸ Antique Radio Collector sought cancellation of the proposed forfeiture amount contending that Antique Radio Collector did not possess or offer “fully assembled transmitters for sale.” Rather, Antique Radio Collector argued that it offered only a service to assemble AM transmitter kits made available by the manufacturer, and therefore, had not violated the Rules or the Act.

4. On November 27, 2007, the Division issued a *Forfeiture Order* which affirmed the NAL, and assessed a \$7,000 forfeiture to Antique Radio Collector for willful and repeated violations of the subject sections of the Act and the Rules. The *Forfeiture Order* found no merit to Antique Radio Collector’s claim that it sold only an assembly service of a product manufactured by a third party noting that “the sale and shipment of an unauthorized device assembled from a kit violates Section 302(b) of the Act and Section 2.803(a) (1) of the Rules, regardless of the identity of the kit manufacturer.”⁹

5. On December 27, 2007, Antique Radio Collector filed a Petition for Reconsideration¹⁰ seeking cancellation or reduction of the forfeiture. In its Petition for Reconsideration, Mr. Mann submits that his review and interpretation of the Rules led him to believe that offering his services to complete an un-built Part 15 compliant transmitter “kit” was not in violation of the Rules so long as the operation complies with the Rules.¹¹ Antique Radio Collector requests the same consideration given in cases where a citation is issued and no forfeiture is assessed,¹² or alternatively a reduction in the forfeiture. In this respect, Antique Radio Collector states that the forfeiture assessed on Antique Radio Collector, an “individual” engaged in a casual source of income, is excessive when compared to the forfeiture assessed on a business entity regularly engaged in the manufacture of electronic equipment.¹³

III. DISCUSSION

6. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),¹⁴ Section 1.80 of the Rules,¹⁵ and the Commission’s *Forfeiture Policy Statement*.¹⁶ In examining Antique Radio Collector’s petition, Section 503(b) of the

⁷ *Richard Mann d/b/a The Antique Radio Collector*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4956 (Spectrum Enf. Div., Enf. Bur., 2007) (“NAL”).

⁸ Response to NAL from Richard Mann d/b/a The Antique Radio Collector (April 13, 2007).

⁹ *Forfeiture Order*, 22 FCC Rcd at 20518.

¹⁰ See *supra*. note 1.

¹¹ Petition for Reconsideration at 2.

¹² *Id.*, citing *Basic Home Shopping*, Citation, 22 FCC Rcd 19162 (Spectrum Enf. Div., Enf. Bur. 2007).

¹³ *Id.*, citing *Ramsey Electronics, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 458 (Spectrum Enf. Div., Enf. Bur. 2006).

¹⁴ 47 U.S.C. § 503(b).

¹⁵ 47 C.F.R. § 1.80.

¹⁶ *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*”).

Act requires that the Commission 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.¹⁷ As discussed below, we conclude that the \$7,000 forfeiture was fully consistent with these statutory provisions and the Commission's precedent; accordingly, we deny Antique Radio Collector's petition for reconsideration.

7. At the outset, we observe that Antique Radio Collector again does not dispute that it assembled the AMT3000 AM transmitters and marketed its fully assembled AMT3000 AM transmitters on its website. Rather, Antique Radio Collector's argument in support of reconsideration is based on its belief that its assembly service did not violate the Rules. It is, however, a well established and long-standing principle that mistaken belief or ignorance of the law is not a mitigating factor and does not warrant a downward adjustment of an assessed forfeiture.¹⁸

8. Further, we find that Antique Radio Collector's reliance on cases where a citation was issued is misplaced. Unlike those cases, Antique Radio Collector assembled the AMT3000 AM transmitter and, consequently, was responsible for ensuring that its equipment complied with the Commission's technical standards and was certificated prior to marketing.¹⁹ Because Antique Radio Collector was engaging in an activity for which a certification was required, i.e., the assembly and marketing of intentional radiators, the Commission was not required under Section 503(b)(5) of the Act²⁰ to issue it a citation prior to issuance of an NAL.

9. We also disagree with Antique Radio Collector that the forfeiture assessed in this case is excessive. As stated in the *Forfeiture Order*, \$7,000 is the base forfeiture amount for marketing unauthorized equipment set forth in the *Forfeiture Policy Statement* and Section 1.80 of the Rules.²¹ In this case, Antique Radio Collector marketed one model of uncertified AM transmitting equipment, the AMT3000 AM transmitter. The assessed forfeiture of \$7,000 is therefore appropriate and consistent with precedent for violations involving the marketing of unauthorized equipment.²² Moreover, to the extent that Antique Radio Collector asserts that it is an "individual" engaged in a casual source of income, rather than a business entity regularly engaged in the manufacture of electronic equipment, it has failed to provide any financial documentation supporting an inability to pay the forfeiture amount. As explicitly stated in the *NAL*, we 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

¹⁷ 47 U.S.C. § 503(b)(2)(D).

¹⁸ See *Profit Enterprises, Inc.*, Forfeiture Order, 8 FCC Rcd 2846 (1993) (denying the mitigation claim of a manufacturer/distributor who thought that the equipment certification and marketing requirements were inapplicable, stating that its "prior knowledge or understanding of the law is unnecessary to a determination of whether a violation existed ... ignorance of the law is [not] a mitigating factor"); see also *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387-88 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*").

¹⁹ See 47 C.F.R. § 2.909(a).

²⁰ See 47 U.S.C. § 503(b)(5) (stating that "[t]he provisions of this paragraph shall not apply, however, if the person involved in engaging in activities for which a license, permit, or other authorization is required.>").

²¹ See *Forfeiture Policy Statement* 12 FCC Rcd at 17113; 47 C.F.R. § 1.80(b)(4), Note to Paragraph (b)(4): *Section I. Base Amounts for Section 503 Forfeitures*.

²² See e.g., *Liam Patrick Ryan d/b/a L. P. Ryan*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 19783, 19785 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a \$7,000 forfeiture for marketing one model of uncertified equipment); *Microwave Radio Communications LLC*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 18871, 18873 (Enf. Bur., Spectrum Enf. Div. 2007) (proposing a \$7,000 forfeiture for marketing one model of uncertified equipment).

(3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status.²³

10. Finally, we note that Antique Radio Collector is apparently continuing to assemble uncertified equipment and market this equipment on its website, www.oldtimeradioprograms.com. Specifically, on February 13, 2008, Bureau staff observed that Antique Radio Collector was marketing on its website an SSTRAN AMT3000 AM "Enhanced" Transmitter Kit for \$175.95. The website indicates that "[y]ou only need to install the integrated circuits (no tools required) and the circuit board itself into the included plastic case to build a legal FCC Part 15 compliant AM transmitter." Thus, it appears that Antique Radio Collector is attempting to circumvent the prohibition on marketing of uncertified equipment by fully assembling the "kit," except for the final step of installing the integrated circuits and circuit board into the transmitter case. A device which simply requires installation of the integrated circuits and circuit board in a plastic case is not a "kit" within the meaning of Section 15.3(p) of the Rules.²⁴ We caution Antique Radio Collector that its continued marketing of the SSTRAN AMT3000 AM "Enhanced" Transmitter Kit is a violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules and may subject Antique Radio Collector to additional forfeiture penalties. We accordingly direct Antique Radio Collector to submit a report within 30 days of the release of this Order confirming that it has ceased all marketing of the SSTRAN AMT3000 AM "Enhanced" Transmitter Kit.

11. We have examined Antique Radio Collector's petition for reconsideration pursuant to the statutory factors prescribed by Section 503(b)(2)(E) of the Act²⁵ and Section 1.80 of the Rules,²⁶ and in conjunction with the *Forfeiture Policy Statement*. As a result of our reconsideration, we find that neither cancellation nor reduction of the forfeiture is warranted and that the *Forfeiture Order* should be affirmed.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 405(b) of the Act,²⁷ and Section 1.106(f) of the Rules,²⁸ the Petition for Reconsideration of the *Forfeiture Order* filed by Richard Mann d/b/a The Antique Radio Collector **IS DENIED**.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 403 of the Act, Richard Mann d/b/a The Antique Radio Collector **IS DIRECTED** to submit the report required by paragraph 10 of this Order within 30 days of the release of this Order.

14. 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

²³ See *NAL*, 22 FCC Rcd at 4958.

²⁴ See 47 C.F.R. § 15.3(p).

²⁵ 47 U.S.C. § 503(b)(2)(E).

²⁶ 47 C.F.R. § 1.80.

²⁷ 47 U.S.C. § 405.

²⁸ 47 C.F.R. § 1.106(f).

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.

15. **IT IS FURTHER ORDERED** that a copy of this *Memorandum Opinion and Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Richard Mann d/b/a The Antique Radio Collector, 4231 Willys Parkway, Toledo, Ohio 43612.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau