

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

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| In the Matter of |) | File No. EB-08-SE-1095 |
| |) | |
| |) | Acct. No. 200932100068 |
| Technogym S.p.A. |) | |
| |) | FRN No. 0018710319 |

ORDER

Adopted: July 8, 2009

Released: July 10, 2009

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and Technogym S.p.A. ("Technogym"). The Consent Decree terminates an investigation by the Bureau against Technogym for possible violations of Section 15.117(i)(1)(iii) of the Commission's Rules ("Rules"), 47 C.F.R. § 15.117(i)(1)(iii), 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 Technogym have negotiated the terms of the Consent Decree that resolves 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 Technogym 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,¹ and sections 0.111 and 0.311 of the Rules,² the Consent Decree attached to this Order **IS ADOPTED**.

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

¹ 47 U.S.C. § 154(i).

² 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 Technogym S.p.A., c/o Technogym USA, 830 Fourth Avenue South, Suite 300, Seattle, WA 98134 and counsel for Technogym S.p.A., Delbert D. Smith, Esq., Jones Day, 51 Louisiana Ave., NW, Washington, DC 20001 and Stefan M. Lopatkiewicz, Esq., Dorsey & Whitney LLP, 1050 Connecticut Avenue NW, Suite 1250, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Technogym S.p.A. (“Technogym” or the “Company”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Technogym violated section 15.117(i)(1)(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 47 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) “Parties” means Technogym and the Bureau.

¹ 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*”).

- (i) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (j) “Technogym” means Technogym S.p.A. and its subsidiaries, predecessors-in-interest and successors-in-interest.
- (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.³

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, 2007.⁴ The Commission subsequently amended its rule to make it applicable to screen sizes less than 13” effective January 30, 2008.⁵ Technogym is an Italian manufacturer of physical fitness training equipment. On October 8, 2008, Technogym voluntarily disclosed to the Bureau that it had imported into the United States after March 1, 2007 physical training equipment which incorporated television receivers lacking the requisite DTV tuners with 15” and 12” screen sizes. On November 13, 2008, Technogym provided a written report to the Bureau of the number of 15” television receivers it had imported since March 1, 2007 and the number of 12” television receivers it had imported since January 30, 2008.

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.** Technogym 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.

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, Technogym 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

³ 47 C.F.R. § 15.3(w).

⁴ 47 C.F.R. § 15.117(i)(1).

⁵ See *Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion of Digital Television*, Report and Order, 23 FCC Rcd 2994, 3081 ¶ 190 (“*Third Report and Order*”).

motion, any new proceeding, formal or informal, or take any action on its own motion against Technogym 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 Technogym with respect to Technogym's basic qualifications, including its character qualifications, to hold Commission authorizations.

7. **Compliance Plan.** For purposes of settling the matters set forth herein, Technogym agrees to create within 60 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.** Technogym has designated its Director of R&D Development as the compliance officer ("Compliance Officer") who will be responsible for administering the Compliance Plan.
- (b) **Compliance Measures.** Technogym has adopted a corporate compliance program to insure compliance with Section 15.117 of the Rules. After learning that the Commission's DTV tuner requirements apply to television receivers incorporated into fitness equipment, Technogym accelerated its efforts to secure licensing rights to technology required to comply with these rules. By September 11, 2008, it had voluntarily ceased importing non-DTV compliant television receivers. In consultation with in-house counsel – who is taking advice from U.S. communications counsel – the following key employees have received training in the Commission's DTV compliance requirements: the Director of Laboratory Test and Product Certification, the Electronics Manager, the Television Products Leader, the Director of Product Marketing, and the Director of Operations.
- (c) **Employee Training.** Technogym will ensure that any new or additional employees who are involved in the development of products incorporating television receivers for export to the United States will be trained regarding the requirements of Section 15.117 of the Rules within 120 days of being hired or otherwise becoming involved in such product development.
- (d) **Compliance Reports.** Technogym will file compliance reports with the Commission 90 days after the Effective Date, 12 months after the Effective Date, and 24 months after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of Technogym, stating that the officer has personal knowledge that Technogym 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 24 months after the Effective Date.

8. **Voluntary Contribution.** Technogym agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$30,000. 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 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). Technogym will also send electronic notification on the date said payment is made to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov.

9. **Waivers.** Technogym 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. Technogym 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 Technogym nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Technogym shall waive any statutory right to a trial *de novo*. Technogym 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. **Invalidity.** 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 specifically intended to revise the terms of this Consent Decree to which Technogym does not expressly consent) that provision will be superseded by such Commission rule or Order

12. **Successors and Assigns.** Technogym 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

Riccardo Losappio
General Manager
Technogym S.p.A.

Date