



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

July 31, 2009

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert O'Harvey, President
The Spy Store, Inc.
12128 N. Division St., Suite 155
Spokane, WA 99218

Re: File No. EB-08-SE-602

Dear Mr. O'Harvey:

This is an official **CITATION**, issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended ("Act"),¹ to The Spy Store, Inc. ("Spy Store") for marketing in the United States unauthorized radio frequency devices in violation of Section 302(b) of the Act,² and Sections 2.803 and 15.205(a) of the Commission's Rules ("Rules"),³ and importing radio frequency devices without filing FCC Form 740 (or the electronic equivalent) with the United States Customs and Border Patrol in violation of Section 2.1203 of the Rules.⁴ As explained below, future violations of the Commission's rules in this regard may subject your company to monetary forfeitures.

By letter of inquiry of inquiry ("LOI") dated February 13, 2009, the Spectrum Enforcement Division of the Commission's Enforcement Bureau ("Division") initiated an investigation into whether Spy Store is marketing in the United States an unauthorized radio frequency jamming device listed as the "GPS-JM2 GPS Jammer."⁵ The Division observed an advertisement for the GPS-JM2 GPS Jammer on Spy Store's website, www.thespystore.com, on September 4, 2008.

In your response to the LOI,⁶ you admit that you began marketing the GPS-JM2 GPS Jammer on or about July 31, 2007, have sold 69 units to date, and all sales were retail with no sales to retailers or distributors. You state that you are not the manufacturer of the GPS-JM2 GPS Jammer, and that the device is imported from an import/export company in China. You admit that you began importing the

¹ 47 U.S.C. § 503(b)(5).

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. §§ 2.803 and 15.205(a).

⁴ 47 C.F.R. § 2.1203.

⁵ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Robert O'Harvey, President, The Spy Store, Inc. (February 13, 2009).

⁶ See Letter from Robert O'Harvey, President, The Spy Store, Inc. to Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 2, 2009) ("LOI Response").

GPS-JM2 GPS Jammer on June 24, 2007, with subsequent importations on November 23, 2007, March 3, 2008, March 19, 2008, and February 12, 2009, importing a total of 90 units. Your response also states that “the importation of GPS-JM2 was discontinued once [you] became aware that the units were unlawful in the USA.” Though you imported the device on several occasions, you also admit that you did not file FCC Form 740 when doing so. You admit that the device has not been certified in accordance with the Rules, but state that the China supplier advised you that it was lawful to offer this unit for sale and as such, you took no further efforts to determine if the device complied with the Rules.

In the LOI Response, you also explain that you “would not have offered, marketed, or sold the GPS-JM2 GPS Jammer had [you] known it was an unlawful device.” Finally, you state that you do not offer or market any other jamming devices, ceased all marketing and sales of the GPS-JM2 GPS Jammer, and disposed of all remaining units. On May 14, 2009, the Division observed that the GPS-JM2 GPS Jammer was no longer being offered for sale on your website.

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 that:

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 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.

Additionally, Section 2.803(g) of the Rules provides in pertinent part that:

[R]adio frequency devices that could not be authorized or legally operated under the current rules ... shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.⁷

Pursuant to Section 15.201(b) of the Rules,⁸ intentional radiators⁹ must be authorized in accordance with the Commission’s certification procedures prior to the initiation of marketing¹⁰ in the U.S. It does not, however, appear that the above-cited jammer is capable of receiving a grant of certification. In this regard, the main purpose of the jammer is to block or interfere with radio communications. Such use is clearly prohibited by Section 333 of the Act,¹¹ which states that “[n]o person shall willfully or maliciously interfere with or cause interference to any radio communications of any station licensed or authorized by or under this Act or operated by the United States Government.” Moreover, the GPS-JM2 GPS Jammer operates within restricted frequency bands listed in Section

⁷ 47 C.F.R. § 2.803(g).

⁸ 47 C.F.R. § 15.201(b).

⁹ Section 15.3(o) of the Rules defines an “intentional radiator” as a “device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3(o).

¹⁰ Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering to sale or lease, including advertising for sale or lease, or importation, shipment or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

¹¹ 47 U.S.C. § 333.

15.205(a) of the Rules.¹² Thus, this device cannot comply with the FCC's technical standards and therefore cannot be certified or marketed.

Under Section 2.1203 of the Rules,¹³ no radio frequency device may be imported into the Customs territory of the United States unless the importer declares that the device meets one of the conditions for entry set forth in Section 2.1204 of the Rules.¹⁴ Pursuant to Section 2.1205,¹⁵ this declaration must be filed electronically, where electronic filing with Customs is available, or using FCC Form 740, where electronic filing with Customs has not been implemented. Spy Store admits that it imported units of the GPS-JM2 GPS Jammer without making the required import declaration either electronically or on FCC Form 740.

Accordingly, it appears that Spy Store has violated Section 302(b) of the Act and Sections 2.803 and 15.205(a) of the Rules by marketing in the United States a radio frequency device not eligible for certification. It also appears that Spy Store violated Section 2.1203 of the Rules by importing the GPS-JM2 GPS Jammer without making the required import declaration.

If, after receipt of this citation, you violate the Communications Act or the Commission's Rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation.¹⁶

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 Spy Store is taking to ensure that it does not violate the Commission's rules governing the marketing of radio frequency jamming devices in the future.

The nearest Commission field office is the Seattle, Washington office. Please call Celia Lewis at 202-418-7456, 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

¹² Section 15.205(a) allows intentional radiators to transmit only spurious emissions in the restricted frequency bands. 47 C.F.R. § 2.1 defines spurious emissions as "[e]missions on a frequency or frequencies which are outside the necessary bandwidth and the level of which may be reduced without affecting the corresponding transmission of information. Spurious emissions include harmonic emissions, parasitic emissions, intermodulation products and frequency conversion products, but exclude out-of-band emissions." The GPS-JM2 GPS Jammer (which operates in the 1450 MHz to 1600 MHz bands) intentionally transmits radio frequency energy on restricted frequencies.

¹³ 47 C.F.R. § 2.1203.

¹⁴ 47 C.F.R. § 2.1204.

¹⁵ 47 C.F.R. § 2.1205.

¹⁶ See 47 C.F.R. § 1.80(b)(3).

Under the Privacy Act of 1974,¹⁷ we are informing you that the Commission's staff will use all relevant material information before it, including information that you 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.¹⁸

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

¹⁷ 5 U.S.C. § 552(a)(e)(3).

¹⁸ *See* 18 U.S.C. § 1001.