

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

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| In the Matter of |) | |
| |) | File No. EB-09-SE-083 |
| Richfield Electronics (China) Ltd. |) | NAL/Acct. No. 201032100002 |
| |) | FRN 0019245927 |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: October 27, 2009

Released: October 29, 2009

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. By this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Richfield Electronics (China) Ltd. (“Richfield”) apparently liable for a forfeiture in the amount of eighteen thousand dollars (\$18,000) for willfully and repeatedly violating Section 302(b) of the Communications Act of 1934, as amended (“Act”)¹ and Section 2.803(a)(1) of the Commission’s Rules (“Rules”).² The noted violations involve Richfield’s marketing³ of equipment that did not comply with the emission limit of Section 15.239(b) of the Rules and the labeling requirements Section 2.925(a)(1) of the Rules.⁴

II. BACKGROUND

2. In March 2008, the Commission’s Enforcement Bureau received a complaint alleging that the Whole House FM Transmitter (“WH Transmitter”) exceeded the emission limit of Section 15.239(b) of the Rules. Based on that complaint, the Bureau’s Spectrum Enforcement Division initiated an investigation. As part of that investigation, the Commission’s Office of Engineering and Technology (“OET”) tested the WH Transmitter. OET’s tests confirmed that the WH Transmitter substantially exceeded the emission limit specified in Section 15.239(b). OET also observed that the WH Transmitter was not labeled with an FCC Identification number. Based on OET’s test results, the Division investigated TAW-Global, LLC (“TAW”), a U.S. distributor of the WH Transmitter. That investigation culminated in the issuance of a Citation⁵ against TAW for marketing the non-compliant and unlabeled WH Transmitter, and yielded Richfield as the manufacturer of the device.⁶ The Division thereafter issued

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. § 2.803(a)(1).

³ The term “marketing” is broadly defined 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).

⁴ 47 C.F.R. §§ 15.239(b) and 2.925(a).

⁵ See *Thomas Allen Webb, CEO*, 24 FCC Rcd 2404 (2009).

⁶ See *id.* at 2404.

Richfield a Letter of Inquiry (“LOI”) on April 17, 2009,⁷ and a Further LOI on July 7, 2009.⁸

3. In its LOI Response,⁹ Richfield stated that it manufactured the WH Transmitter in China, and that it shipped the device to TAW for distribution in the United States.¹⁰ Richfield did not state when it began shipping the WH Transmitter to TAW or specify the total number of units it manufactured and shipped to TAW, but TAW previously indicated that it began importing the device in May 2004 and that it imported a total of 18,371 units and distributed a total of 11,689 units in the U.S.¹¹ Richfield indicated that the device has been certificated in accordance with the Commission’s equipment authorization procedures.¹² In its Further LOI Response,¹³ Richfield admitted that after the device was certificated it modified the device’s antenna to improve “sound quality.”¹⁴ Specifically, Richfield explained that the antenna modification involved a “flexible copper,” 1.5 meters in length.¹⁵ According to Richfield, it did not realize that the antenna, as modified, would cause increased field strength emission levels.¹⁶ Richfield claimed that it began modifying the antenna in December 2008 and that only the final 2,500 units shipped to TAW in February 2009 had the modified antenna.¹⁷ We note, however, that the sample WH Transmitter tested and found to be non-compliant by OET was purchased and tested in May 2008 – approximately seven months *prior* to December 2008. Finally, Richfield stated that it began labeling the WH Transmitter with the FCC ID on December 17, 2008, at the request of TAW.¹⁸

III. DISCUSSION

A. Richfield marketed non-compliant and unlabeled equipment

4. 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 Rules provides that:

⁷ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mr. Z.T. Yun, Director, Richfield Electronics (China) Ltd. (April 7, 2009) (“LOI”).

⁸ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission to Mr. Z.T. Yun, Director, Richfield Electronics (China) Ltd. (July 7, 2009) (“Further LOI”).

⁹ See Letter from Flora Cho, Operations Manager, Richfield Electronics (China) Ltd. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (May 15, 2009) (“LOI Response”).

¹⁰ *Id.* at 1.

¹¹ 24 FCC Rcd at 2404.

¹² See FCC ID QKQRF-2001 (granted: November 5, 2002; grantee: Richfield Electronics (China) Ltd.).

¹³ See Letter from Flora Cho, Operations Manager, Richfield Electronics (China) Ltd. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 6, 2009) (“Further LOI Response”).

¹⁴ *Id.* at 1.

¹⁵ *Id.*

¹⁶ See *id.*

¹⁷ See *id.*

¹⁸ See LOI Response at 1.

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 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.

As an intentional radiator,¹⁹ the WH Transmitter is required by Section 15.201 of the Rules²⁰ to be approved prior to marketing in accordance with the equipment certification²¹ procedures described in Sections 2.1031 – 2.1060 of the Rules.²² In addition, because the WH Transmitter operates in the 106.7-107.9 MHz frequency band, it is subject to the emission limit specified in Section 15.239(b) of the Rules, which provides:

The field strength of any emissions within the permitted 200 kHz band shall not exceed 250 microvolts/meter at 3 meters. The emission limit in this paragraph is based on measurement instrumentation employing an average detector

5. Richfield acknowledged in its LOI Response that it manufactured the WH Transmitter and that it shipped the device to TAW for distribution in the United States. As noted above, OET tested the WH Transmitter and determined that the device substantially exceeded the emission limit set forth in Section 15.239(b). Although Richfield claimed that it began modifying the antenna for the WH Transmitter in December 2008, the sample tested by OET was purchased and tested approximately seven months earlier, in May 2008. Based on the record before us, including the information contained in the complaint and the test conducted by OET, we find that the WH Transmitter apparently failed to comply with the emission limit set forth in Section 15.239(b) at some point prior to December 2008, when Richfield purportedly began modifying the device's antenna. Accordingly, we find that Richfield manufactured and distributed WH Transmitters that were not compliant with the emission limit set forth in Section 15.239(b) in apparent willful²³ and repeated²⁴ violation of Section 302(b) of the Act and

¹⁹ An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” 47 C.F.R. § 15.3(o).

²⁰ 47 C.F.R. § 15.201.

²¹ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. *See* 47 C.F.R. § 2.907(a).

²² 47 C.F.R. §§ 2.1031 – 2.1060.

²³ Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act, H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) (“*Southern California*”).

²⁴ Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) 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). *See Callais Cablevision, Inc.*, Notice of Apparent Liability for Forfeiture, 16 FCC Rcd 1359, 1362-63 ¶¶ 10-14 (2001); *Southern California*, 6 FCC Rcd at 4388 ¶ 5.

Section 2.803(a)(1) of the Rules.²⁵

6. We also find that the WH Transmitter did not comply with the Commission's applicable labeling requirements of Section 2.925(a)(1) of the Rules. Section 2.925(a)(1) requires that each device covered under an equipment certification "bear a nameplate or label listing" the "FCC Identifier," which consists of two elements, the grantee code and the equipment code and is preceded by the term FCC ID.²⁶ Richfield acknowledged that, prior to December 2008, it did not label the WH Transmitter with the FCC ID and thus did not comply with Section 2.925(a)(1) of the Rules. Accordingly, we find that Richfield apparently willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules by marketing equipment that was not labeled in accordance with Section 2.925(a)(1) of the Rules.²⁷

B. Proposed Forfeiture

7. Section 503(b)(1)(B) of the Act and Section 1.80(a)(1) of the Rules provide that any person who is determined by the Commission to have willfully or repeatedly failed to comply with any term or condition of a Commission license, permit, certificate or other authorization or any provision of the Act, or Commission rule, regulation, or order, shall be liable to the United States for a forfeiture penalty.²⁸ To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.²⁹ The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated provision(s) of the Act, Rules or authorizations.³⁰ Based on the record before us, we conclude that Richfield is apparently liable for forfeiture for its apparent willful and repeated violations of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules for marketing equipment that was non-compliant and unlabeled.

8. Section 503(b)(2)(D) of the Act authorizes the Commission to assess a maximum forfeiture of \$16,000 for each violation, or each day of a continuing violation, not to exceed \$112,500 for any single act or failure to act, by an entity, such as Richfield, that is not a broadcast licensee, a cable operator or a common carrier.³¹ Section 1.80(b)(4) establishes a base forfeiture amount of \$7,000 for

²⁵ See *Power 7 Technology Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1660, 1662-64 ¶¶ 6-12 (Spectrum Enf. Div., Enf. Bur. 2009) (proposing a \$25,000 forfeiture against a manufacturer for marketing an FM transmitter that was not certificated in accordance with the Commission's equipment authorization procedures and was not compliant with the emission limit of Section 15.239(b) of the Rules) ("*Power 7*"); see also *Proxim Wireless Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1145, 1146-49 ¶¶ 5-12 (Spectrum Enf. Div., Enf. Bur. 2009) (proposing a \$7,000 forfeiture against manufacturer for marketing a wireless access point that OET tests confirmed did not comply with radar detection requirement of Section 15.407(h)(2) of the Rules) ("*Proxim*"); *Ikusi-Angel Iglesias, S.A.*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 15560, 15561-63 ¶¶ 4-10 (Spectrum Enf. Div., Enf. Bur. 2004) (proposing a \$7,000 forfeiture against a manufacturer for marketing a remote control transmitter that OET tests determined, and the manufacturer acknowledged, did not comply with the timing requirement of Section 15.231(a) of the Rules, 47 C.F.R. § 15.231(a)).

²⁶ See also 47 C.F.R. § 2.926 (detailing the grantee code and the equipment product code elements).

²⁷ See *Proxim*, 24 FCC Rcd at 1147-49 ¶¶ 8-12 (proposing a \$4,000 forfeiture against a manufacturer for failing to properly label its wireless access point).

²⁸ 47 U.S.C. § 503(b)(1)(B); 47 C.F.R. § 1.80(a)(1).

²⁹ 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

³⁰ See, e.g., *SBC Communications, Inc.*, 17 FCC Rcd 7589, 7591, ¶ 4 (2002).

³¹ 47 U.S.C. § 503(b)(2)(D). The Commission thrice amended Section 1.80(b)(3) of the Rules, 47 C.F.R. § 1.80(b)(3), to increase the maxima forfeiture amounts, in accordance with the inflation adjustment requirements (continued....)

marketing unauthorized or non-compliant equipment.³²

9. In assessing forfeiture liability, Section 503(b)(2)(E) of the Act directs the Commission 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.”³³ As explained below, having considered the statutory factors and the circumstances presented, we find that an aggregate proposed \$18,000 forfeiture is warranted.

10. We have taken into account the duration and extent of Richfield’s violations, and find it appropriate to upwardly adjust the \$7,000 base forfeiture amount established for equipment violations to \$14,000. In this regard, we have considered the recent decision in *Power 7* that proposed an upwardly adjusted \$25,000 forfeiture against a manufacturer/importer that marketed an FM transmitter which was uncertified and exceeded the field strength emission limit of Section 15.239(b) of the Rules.³⁴ The \$25,000 proposed forfeiture was based on the duration of the violations and the large volume of the unauthorized, non-compliant units that it manufactured and shipped.³⁵ Richfield’s violations apparently involved a significantly smaller number of manufactured and shipped units. Accordingly, we find that the \$14,000 proposed forfeiture amount reflects both the duration and extent of Richfield’s violations.³⁶

11. In addition to the \$14,000 forfeiture proposed for Richfield’s marketing of non-compliant and unauthorized equipment, we propose a \$4,000 forfeiture for Richfield’s violation of the labeling requirements of Section 2.925(a)(1) of the Rules. We find that the marketing of non-labeled equipment is not as significant as the marketing of non-complaint equipment, and thus believe a downward adjustment of the \$7,000 base forfeiture to \$4,000 is warranted.³⁷ Accordingly, the aggregate base forfeiture proposed against Richfield is \$18,000.

IV. CONCLUSION

12. In sum, we propose a forfeiture amount of \$18,000 for Richfield’s marketing of non-compliant and unlabeled equipment in apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections

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contained in the Debt Collection Improvement Act of 1996, 28 U.S.C. § 2461. *See Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 23 FCC Rcd 9845 (2008) (adjusting the maxima statutory amounts from to \$11,000/\$97,500 to \$16,000/\$112,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 19 FCC Rcd 10945 (2004) (adjusting the maxima statutory amounts from \$11,000/\$87,500 to \$11,000/\$97,500); *Amendment of Section 1.80 of the Commission’s Rules and Adjustment of Forfeiture Maxima to Reflect Inflation*, Order, 15 FCC Rcd 18221 (2000) (adjusting the maxima statutory amounts from \$10,000/\$75,000 to \$11,000/\$87,500).

³² 47 C.F.R. § 1.80(b)(4).

³³ 47 U.S.C. § 503(b)(2)(E).

³⁴ 24 FCC Rcd at 1661-62 ¶¶ 4-8.

³⁵ *See id.* at 1662-64 ¶¶ 6-12.

³⁶ *See supra* note 11 and accompanying text.

³⁷ *See Proxim*, 24 FCC Rcd at 1149 ¶ 12.

0.111, 0.311 and 1.80 of the Commission's Rules,³⁸ Richfield Electronics (China) Ltd. is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of eighteen thousand dollars (\$18,000) for its willful and repeated violations of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.³⁹

14. **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, Richfield Electronics (China) Ltd. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

15. 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. Richfield Electronics (China) Ltd. will also send electronic notification on the date said payment is made to Kathy Berthot at Kathy.Berthot@fcc.gov and to Ava Holly Berland at Holly.Berland@fcc.gov.

16. 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.

17. 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.

³⁸ 47 C.F.R. §§ 0.111, 0.311, 1.80.

³⁹ 47 U.S.C. § 302a(b) and 47 C.F.R. § 208(a)(1).

18. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail return receipt requested to Flora Cho, Operations Manager, Richfield Electronics (China) Ltd., 7/F, Unit 14 & 16, Shing Yip Ind. Bldg., 19-21 Shing Yip St., Kwun Tong, Kowloon, Hong Kong, SAR.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau