



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

December 1, 2009

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Andrew Roshberg, Corporate Officer  
Creative Audio, Inc.  
1579 Victoria Isle Way  
Weston, Florida 33327

Re: File No. EB-08-SE-099

Dear Mr. Roshberg:

This is an official **CITATION**, issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> to Creativewirelessav.com d/b/a/ Creative Audio, Inc. (“Creative Audio”) for marketing in the United States radiofrequency devices that operate on restricted frequencies, in violation of Section 302(b) of the Act,<sup>2</sup> and Sections 2.803 and 15.205(a) of the Commission’s Rules (“Rules”).<sup>3</sup> 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 August 22, 2008, the Spectrum Enforcement Division of the Commission’s Enforcement Bureau (“Division”) initiated an investigation into whether Creative Audio was marketing in the United States six uncertified video transmitters.<sup>4</sup> The Division observed advertisements for the video transmitters on Creative Audio’s website, www.creativewirelessav.com, on February 25, 2008.

In your response to the LOI,<sup>5</sup> you state that you began marketing the listed video transmitters on or about January 23, 2008, and listed 3 additional transmitters that you sold.<sup>6</sup> In the aggregate, you sold a total of 91 units as of the LOI Response date.<sup>7</sup> You state that to the best of your knowledge, all sales were

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<sup>1</sup> 47 U.S.C. § 503(b)(5).

<sup>2</sup> 47 U.S.C. § 302a(b).

<sup>3</sup> 47 C.F.R. §§ 2.803 and 15.205(a).

<sup>4</sup> See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Andrew E. Roshberg, President, Creativewirelessav.com d/b/a/ Creative Audio, Inc. (August 22, 2008). The transmitter models are : 1) 1.2 GHz 1 watt 4 Channel AV Transmitter and Receiver Set; 2) 1.2 GHz 1.5 watt 4 Channel AV Transmitter and Receiver Set; 3) 1.2 GHz 2 watt 4 Channel AV Transmitter and Receiver Set; 4) 1.2 GHz 1.5 watt 8 Channel AV Transmitter and Receiver Set; 5) 1.2 GHz 2.5 watt 8 Channel AV Transmitter and Receiver Set; and 6) 1.2 GHz 4 Channel Receiver with Antenna.

<sup>5</sup> See Letter from Andrew Roshberg, Creative Audio, Inc. to Susan Stickley, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (September 19, 2008) (“LOI Response”).

<sup>6</sup> LOI Response at 1. The three additional transmitters identified by Creative Audio are: 1) 2.4 GHz 4 Channel 2 watt set; 2) 1.2 GHz 15 Channel 1 watt set, and 3) 1.2 GHz 4 Channel 5 watt set. *Id.*

<sup>7</sup> *Id.*

retail with no sales to retailers or distributors.<sup>8</sup> You further state that you are not the manufacturer of any of the video transmitters, and that the devices are imported from import/export companies in China and Hong Kong.<sup>9</sup> You indicate that you imported the specified devices between December 19, 2007 and June 8, 2008, and imported a total of 124 units.<sup>10</sup> Additionally, you indicate that the frequency bands on which the 1.2 GHz transmitters operate are 0.9 GHz/1.2 GHz/1.3 GHz and that the frequency bands on which the 2.4 GHz transmitters operate are 2.2 GHz/2.3 GHz/2.4 GHz.<sup>11</sup> Your response also states that “[you] have immediately ceased all sales of the products in question. The website has been dismantled and the domain name will be relinquished.”<sup>12</sup> You admit that the devices have not been certified in accordance with the Rules, and state that you based your belief regarding the salability of the devices on other retailers selling “products almost exactly as the ones [you] were planning to sell.”<sup>13</sup>

In the LOI Response, you also explain that not until after inquiry into the rules and regulations of the FCC presented in the LOI did you realize the gravity of your actions in marketing these products, and that you wish that you had researched this prior to marketing the devices.<sup>14</sup> On August 10, 2009, the Division observed that the website is no longer active.

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 in pertinent part that:

[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....<sup>15</sup>

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.<sup>16</sup>

Pursuant to Section 15.201(b) of the Rules,<sup>17</sup> intentional radiators<sup>18</sup> such as audio/video transmitters must be authorized in accordance with the Commission’s certification procedures described

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<sup>8</sup> *Id.* at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 4. Restricted frequency bands listed in Section 15.205(a) of the Rules include: 960-1240 MHz, 1300-1427 MHz, 2200-2300 MHz, 2310-2390 MHz and 2483.5-2500 MHz.

<sup>12</sup> *Id.* at 1.

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 1.

<sup>15</sup> 47 C.F.R. § 2.803(a)(1).

<sup>16</sup> 47 C.F.R. § 2.803(g).

<sup>17</sup> 47 C.F.R. § 15.201(b).

<sup>18</sup> 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).

in Sections 2.1031 – 2.1060 of the Rules<sup>19</sup> prior to the initiation of marketing<sup>20</sup> in the U.S. It does not appear, however, that the above-cited devices are capable of receiving a grant of certification. In your LOI response, you indicate that the video transmitters operate within restricted frequency bands listed in Section 15.205(a) of the Rules.<sup>21</sup> Thus, because these devices are capable of operating on restricted frequencies listed in Section 15.205(a) of the Rules, these devices cannot comply with the FCC's technical standards and therefore cannot be certified or marketed.

Accordingly, it appears that Creative Audio 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 video transmitter devices not eligible for certification.

**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.**<sup>22</sup>

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 Creative Audio 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 Miami, Florida office. Please call Susan Stickley at 202-418-0871, 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 12<sup>th</sup> Street, S.W., Rm. 3-C366  
Washington, D.C. 20554

Under the Privacy Act of 1974,<sup>23</sup> 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.

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<sup>19</sup> 47 C.F.R. §§ 2.1031 – 2.1060.

<sup>20</sup> 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).

<sup>21</sup> 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 listed video transmitters intentionally transmit radio frequency energy on restricted frequencies. See n. 11 *supra* and accompanying text.

<sup>22</sup> See 47 C.F.R. § 1.80(b)(3).

<sup>23</sup> 5 U.S.C. § 552(a)(e)(3).

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.<sup>24</sup>

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn S. Berthot  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>24</sup> See 18 U.S.C. § 1001.