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

In the Matter of	)	
	)	File No. EB-10-SE-001
Cellphone-Mate Inc.	)	NAL/Acct. No. 201032100032
	)	FRN 0010188936

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: July 2, 2010 **Released: July 6, 2010**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* ("*NAL*"), we find Cellphone-Mate Inc. ("Cellphone-Mate") apparently liable for a forfeiture in the amount of four thousand dollars ($4,000) for willful and repeated violation of 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 apparent violation involves Cellphone-Mate's marketing[3] of radio frequency devices that are not labeled in accordance with Section 2.925(a)(1) of the Rules.[4]

II. BACKGROUND

2. The Enforcement Bureau received a complaint alleging that Cellphone-Mate's SureCall™ Model CM2000-WL dual band cellular/PCS signal amplifier ("amplifier)[5] was labeled with FCC Identification number RSNDUAL-62UNDER, an FCC ID number which is not found in the FCC's Equipment Authorization Database. Subsequently, the Enforcement Bureau's Spectrum Enforcement Division ("Division") began an investigation. The Division issued a letter of inquiry ("LOI") to Cellphone-Mate on January 29, 2010.[6] Cellphone-Mate responded to the LOI on March 1, 2010.[7] In its LOI Response, Cellphone-Mate admitted that it marketed the amplifier with a label specifying the FCC

[1] 47 U.S.C. § 302a(b).

[2] 47 C.F.R. § 2.803(a)(1).

[3] Marketing, as defined in 47 C.F.R. § 2.803(e)(4), "includes sale or lease, or offering for 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."

[4] 47 C.F.R. § 2.925(a)(1).

[5] We note that the Wireless Telecommunications Bureau has a pending proceeding in WT Docket No. 10-4 regarding the proper use of signal boosters on frequencies licensed under Parts 22, 24, 27, and 90 of the Rules. *See Wireless Telecommunications Bureau Seeks Comment on Petitions Regarding Use of Signal Boosters and Other Signal Amplification Techniques Used With Wireless Services,* Public Notice, 26 FCC Rcd 68 (WTB, 2010). This *NAL* does not purport to address any issues raised in that pending proceeding.

[6] *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Hongtao Zhan, CEO, Cellphone-Mate Inc. (January 29, 2010).

[7] *See* Letter from Hongtao Zhan, CEO, Cellphone-Mate Inc. to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (March 1, 2010) ("LOI Response").

ID number as RSNDUAL-62UNDER.[8] Cellphone-Mate explained that it made a typo on the label and that the actual FCC ID number for the amplifier is FCC ID number RSNDUAL-60UNDER, which was granted on August 28, 2009.[9] Cellphone-Mate stated that it began marketing the amplifier in September 2009.[10]

III. DISCUSSION

A. Cellphone-Mate Apparently Marketed Improperly Labeled Devices

3. 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."[11] Section 2.803(a)(1) of the Rules provides in pertinent part that:

> 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 radiofrequency device unless … [i]n the case of a device [that is] 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.…[12]

Additionally, Section 2.925(a)(1) of the Rules provides:

> Each equipment covered in an application for equipment authorization shall bear a nameplate or label listing the following: (1) FCC Identifier consisting of the two elements in the exact order specified in §2.926. The FCC Identifier shall be preceded by the term *FCC ID* in capital letters on a single line, and shall be of a type size large enough to be legible without the aid of magnification.[13]

The FCC Identification label enables the FCC and potential users to readily determine whether a particular device has been properly authorized and to obtain additional information about the device from the FCC's publicly-accessible Equipment Authorization Database. Cellphone-Mate admitted in its LOI response that it marketed units of the amplifier that do not include the correct FCC ID number.[14] Therefore, these devices are not labeled as specified by Section 2.925(a)(1) of the Rules.[15] We

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[8] *Id.* at 1.

[9] *Id.*

[10] *Id.* Cellphone-Mate requested confidential treatment of the number of units of the amplifier imported and marketed in the United States pursuant to Section 0.459 of the Rules, 47 C.F.R. § 0.459. *Id.* at 6. We need not disclose this information in the context of this particular NAL, and consequently, we will defer action on the confidentiality request. *See* 47 C.F.R. § 0.459(d)(3).

[11] 47 U.S.C. § 302a(b).

[12] 47 C.F.R. § 2.803(a)(1).

[13] 47 C.F.R. § 2.925(a)(1).

[14] LOI Response at 1.

[15] On June 24, 2010, Cellphone-Mate obtained a grant of certification pursuant to Section 2.933 of the Rules authorizing a change in the identification for the amplifier to FCC ID RSNDUAL-62UNDER. *See* 47 C.F.R. § 2.933 (stating that a new application for equipment authorization will be filed whenever there is a change in the FCC Identifier for the equipment). We note that this grant applies to amplifiers manufactured and marketed by (continued….)

accordingly find that Cellphone-Mate's marketing of these improperly labeled devices apparently willfully[16] and repeatedly[17] violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

B. Proposed Forfeiture

4. Section 503(b) of the Act[18] authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act. In exercising such authority, we are required 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."[19]

5. Under the *Forfeiture Policy Statement*[20] and Section 1.80 of the Rules,[21] the base forfeiture amount for the marketing of unauthorized equipment is $7,000 per model. We note that the $7,000 base forfeiture amount is typically imposed for marketing devices that are not in compliance with applicable technical requirements or are not authorized by an equipment authorization. Because adherence to the Commission's authorization procedures ensures that devices meet required technical standards, we have previously found that a downward adjustment of the base forfeiture amount from $7,000 to $4,000 is warranted for the marketing of devices that are authorized but improperly labeled.[22] Consistent with this precedent, we propose a forfeiture of $4,000 against Cellphone-Mate for its marketing of improperly labeled amplifiers in apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

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Cellphone-Mate beginning June 24, 2010 and does not negate any labeling violations by Cellphone-Mate prior to that date.

[16] Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', … means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act …." *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991); *see also Telrite Corporation*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7231, 7237 (2008); *Regent USA*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10520, 10523 (2007); *San Jose Navigation, Inc.*, Forfeiture Order 22 FCC Rcd 1040, 1042 (2007).

[17] Section 312(f)(2) 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, e.g., Callais Cablevision, Inc., Grand Isle, Louisiana*, Notice of Apparent Liability for Monetary Forfeiture, 16 FCC Rcd 1359, 1362 (2001) ("*Callais Cablevision*") (issuing a Notice of Apparent Liability for, *inter alia*, a cable television operator's repeated signal leakage).

[18] 47 U.S.C. § 503(b).

[19] 47 U.S.C. § 503(b)(2)(E).

[20] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17113 (1997) ("*Forfeiture Policy Statement*"), *recon. denied,* 15 FCC Rcd 303 (1999).

[21] 47 C.F.R. § 1.80.

[22] *See Proxim Wireless Corporation*, Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 1145, 1149 (Enf. Bur., Spectrum Enf. Div. 2009) (forfeiture paid); *Ryzex Inc.,* Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 878, 884 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*; *DBK Concepts, Inc.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2870, 2875 (Enf. Bur., Spectrum Enf. Div. 2008), *response pending*.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80 of the Rules,[23] Cellphone-Mate **IS NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of four thousand dollars ($4,000) for marketing radio frequency devices that are not labeled in accordance with Section 2.925(a)(1) of the Rules, in willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.

7. **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, Cellphone-Mate **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

8. 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. Cellphone-Mate will also send electronic notification on the date said payment is made to Neal McNeil at Neal.McNeil@fcc.gov and Kathy Berthot at Kathy.Berthot@fcc.gov.

9. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement 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. The statement should also be emailed to Neal McNeil at Neal.McNeil@fcc.gov and Kathy Berthot at Kathy.Berthot@fcc.gov.

10. 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.

[23] 47 C.F.R. § 0.111, 0.311 and 1.80.

11. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail return receipt requested to Hongtao Zhan, CEO, Cellphone-Mate Inc., 48820 Kato Rd., Suite 300B, Fremont, CA 94539.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau