

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

In the Matter of)	File No. EB-09-SE-122
)	
Kannad SAS)	Acct. No. 201032100038
)	
)	FRN No. 0016726580

ORDER

Adopted: August 26, 2010

Released: August 27, 2010

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Kannad SAS (“Kannad”). The Consent Decree terminates an investigation by the Bureau against Kannad for possible violations of Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Section 2.803(a) of the Commission’s Rules (“Rules”),² regarding Kannad’s marketing of 406.0-406.1 MHz emergency locator transmitters (“406 MHz ELTs”) that were not labeled in accordance with Section 87.199(f) the Rules.³

2. The Bureau and Kannad have negotiated the terms of the Consent Decree that resolve 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 Kannad 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 Act,⁴ and Sections 0.111 and 0.311 of the Rules,⁵ 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. § 302a(b).

² 47 C.F.R. § 2.803(a).

³ 47 C.F.R. § 87.199(f).

⁴ 47 U.S.C. § 154(i).

⁵ 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 counsel for Kannad, Daniel Brenner, Esq., Hogan Lovells US LLP, Columbia Square, 555 Thirteenth Street, NW, Washington, DC 20004.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Kannad SAS (“Kannad”) by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s Investigation into whether Kannad violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),⁶ and Section 2.803(a) of the Commission’s Rules (“Rules”),⁷ regarding Kannad’s marketing of 406.0–406.1 MHz emergency locator transmitters (“406 MHz ELTs”) that were not labeled in accordance with Section 87.199(f) of the Commission’s Rules.⁸

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 8.
 - (f) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (g) “Investigation” means the investigation commenced by the Bureau’s September 29, 2009 Letter of Inquiry⁹ regarding Kannad’s marketing of 406 MHz ELTs that were not labeled in accordance with Section 87.199(f) of the Rules.

⁶ 47 U.S.C. § 302a(b).

⁷ 47 C.F.R. § 2.803(a).

⁸ 47 C.F.R. § 87.199(f).

⁹ Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Jean-Pierre Bardon, CEO, Kannad (Sept. 29, 2009) (“Sept. 29, 2009 LOI”).

- (h) “Kannad” means Kannad SAS and its predecessors-in-interest and successors-in-interest.
- (i) “Parties” means Kannad and the Bureau, and each a “Party”.
- (j) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act and Section 2.803(a) of the Rules, radio frequency devices may not be marketed in the United States unless such devices comply with the applicable technical and administrative provisions of the Rules. Section 87.199(f) of the Rules requires that, in addition to bearing the label required by the Commission’s equipment certification rules in Sections 2.925 and 2.926,¹⁰ each 406 MHz ELT must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: “The owner of this 406.0-406.1 MHz ELT must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA), whose address is: NOAA/SARSAT Beacon Registration, E/SP3, Federal Building 4, Room 3320, 5200 Auth Road, Suitland, MD 20746-4304.”¹¹

3. On September 29, 2009, the Bureau’s Spectrum Enforcement Division (“Division”) issued a Letter of Inquiry (“LOI”) to Kannad.¹² The LOI directed Kannad, among other things, to submit a sworn written response to a series of questions relating to whether Kannad was marketing 406 MHz ELTs that were not labeled in accordance with the Commission’s Rules. Kannad responded to the LOI on October 23, 2009.¹³ On March 18, 2010, the Division sent, via email, additional questions seeking clarification of statements Kannad made in its LOI Response.¹⁴ On April 6, 2010, Kannad responded to those questions.¹⁵

III. TERMS OF AGREEMENT

4. **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.

5. **Jurisdiction.** Kannad 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.

6. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the

¹⁰ 47 C.F.R. §§ 2.925, 2.926.

¹¹ 47 C.F.R. § 87.199(f).

¹² See Sept. 29, 2009 LOI.

¹³ See Letter from Daniel L. Brenner, Esq., Hogan & Hartson, counsel for Kannad, to Marlene H. Dortch, Secretary, Federal Communications Commission (Oct. 23, 2009) (“LOI Response”).

¹⁴ Email from Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Daniel L. Brenner, Esq., Hogan & Hartson, counsel for Kannad (March 18, 2010).

¹⁵ Email from Daniel L. Brenner, Esq., Hogan & Hartson, counsel for Kannad, to Jennifer Burton, Esq., Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (April 6, 2010).

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.

7. **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 the Investigation. In consideration for the termination of said Investigation, Kannad 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, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Kannad concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, 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 Kannad with respect to Kannad's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission authorizations.

8. **Compliance Plan.** In response to the Bureau's Investigation, Kannad initiated certain remedial measures and, for purposes of settling the matters herein, agrees to implement a Compliance Plan related to future compliance with the Act, the Rules, and the Commission's Orders. The Compliance Plan will include, but will not be limited to, the following components:

(a) **Compliance Officer.** Within thirty (30) days of the Effective Date, Kannad will designate a Compliance Officer who will be responsible for administering the Compliance Plan.

(b) **Identification and Labeling of Noncompliant ELTs.** Beginning in October 2009, Kannad took steps to bring noncompliant labeled 406 MHz ELTs into compliance with Commission Rules. These steps included issuing a Service Bulletin and providing proper labels and instructions for affixing the missing labels to qualified Kannad service stations, where authorized agents of Kannad conduct annual reviews and repair or conduct mandatory inspections every six years (whichever comes first). Kannad also contacted all distributors of noncompliant 406 MHz ELTs to ascertain the end-user purchasers, and through its efforts to contact many of these purchasers about the need to affix the missing labels, has brought some purchased units into compliance. Kannad will continue its ongoing efforts to bring the remaining noncompliant Kannad 406 MHz ELTs that were sold in the United States into compliance by sending the Service Bulletin, proper labels, instructions for affixing the missing labels and a letter of explanation to known purchasers of these units. In addition, Kannad will re-send the Service Bulletin to all qualified Kannad service stations in the United States within 30 days of the Effective Date and again every twelve (12) months thereafter for the next twenty-four (24) months. The Service Bulletin will also indicate that additional labels are available if a service station needs additional labels.

(c) **Training.** Kannad will provide training and materials concerning the labeling requirements for 406 MHz ELTs as provided for under Part 87 of the Commission's rules and the requirements of the Consent Decree to all of its employees who are involved directly or indirectly in the manufacturing and labeling of 406 MHz ELTs sold by Kannad. Further, within ninety (90) days of hire, Kannad will similarly provide training to all new employees involved directly or indirectly in the manufacturing and labeling of 406 MHz ELTs sold by Kannad.

(d) **Compliance Reports.** Kannad will file Compliance Reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, and twenty-four (24) months after the Effective Date. Each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Kannad, stating that the Compliance Officer has personal knowledge (i) that Kannad has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, and with Sections 2.803(a) and 87.199(f) of the Rules, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) that Kannad has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) that Kannad is not aware of any instances of non-compliance. The certification must comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein. If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Kannad, shall provide the Commission with a detailed explanation of: (i) any instances of non-compliance with this Consent Decree and the Rules, and (ii) the steps that Kannad has taken or will take to remedy each instance of non-compliance and ensure future compliance, and the schedule on which proposed remedial actions will be taken. All Compliance Reports shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554, with a copy submitted electronically to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

(e) **Termination Date.** Unless stated otherwise, the requirements of this Paragraph 8 of the Consent Decree will expire twenty-four (24) months from the Effective Date.

9. **Voluntary Contribution.** Kannad agrees that it will make a voluntary contribution to the United States Treasury in the amount of seven thousand two hundred dollars (\$7,200). The payment will be made within thirty (30) days after the Effective Date. 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 and FRN 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). Kannad shall also send electronic notification to Jennifer Burton at Jennifer.Burton@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov on the date said payment is made.

10. **Waivers.** Kannad 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. Kannad 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 Kannad nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Kannad shall waive any statutory right to a trial de novo. Kannad 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.

11. **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.

12. **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 Kannad does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** Kannad agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

14. **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.

15. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

16. **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.

17. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

18. **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.

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Jean Pierre Bardon
Chief Executive Officer
Kannad SAS

Date