

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

In the Matter of)	File No. EB-10-SE-015
)	
Callaway Golf Company)	Acct. No. 201132100001
)	
)	FRN No. 0019509942

ORDER

Adopted: October 4, 2010

Released: October 4, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and Callaway Golf Company (“Callaway”). The Consent Decree terminates an investigation by the Bureau into whether Callaway violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),¹ and Sections 2.803, 15.19, 15.31(j), and 15.107(a) of the Commission’s rules (“Rules”),² regarding the marketing of computer peripheral devices and a battery charger.

2. The Bureau and Callaway 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 there are no substantial or material questions of fact as to whether Callaway 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,³ and Sections 0.111 and 0.311 of the Rules⁴ 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, 15.19, 15.31(j), 15.107(a).

³ 47 U. S. C. §154(i)

⁴ 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 Callaway Golf Company, Terry Mahn and Robert J. Ungar, Fish & Richardson P.C., 1425 K Street, N.W., 11th floor, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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Callaway Golf Company)	Acct. No. 201132100001
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)	FRN No. 0019509942

CONSENT DECREE

The Enforcement Bureau (“Bureau”) and Callaway Golf Company (“Callaway”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Callaway violated Section 302(b) of the Communications Act of 1934, as amended (“Act”),⁵ and Sections 2.803, 15.19, 15.31(j), and 15.107(a) of the Commission’s Rules,⁶ regarding the marketing of computer peripheral devices and a battery charger.

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) “Callaway” means Callaway Golf Company and its subsidiaries and their predecessors-in-interest and successors-in-interest.
 - (e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph eight (8).
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (h) “Investigation” means the matter initiated by the Bureau in File Number EB-10-SE-015, based on information disclosed to the Bureau by Callaway regarding possible violations of Section 302(b) of the Act and Sections 2.803(a), 15.19, 15.31(j), and 15.107(a) of the Rules.

⁵ 47 U. S. C. § 302a(b).

⁶ 47 C.F.R. §§ 2.803(a), 15.19, 15.31(j), 15.107(a).

- (i) "Parties" means Callaway and the Bureau.
- (j) "Rules" means the Commission's regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Radio frequency devices that are subject to Section 2.803(a)(2) of the Commission's rules must comply with the applicable technical and administrative provisions of the Rules prior to being marketed within the United States. In addition, Section 15.19 of the Rules specifies labeling requirements for radio frequency devices. Section 15.31(j) of the Rules provides that when the equipment under test for technical compliance consists of a central control unit and a peripheral, and the peripheral or central control unit would normally be marketed or used with equipment from a different entity, the testing of the peripheral or central control unit must be performed using the specific combination of equipment which is intended to be marketed or used together. Finally, Section 15.107(a) of the Rules prescribes conducted emission limits for unintentional radiators.

3. On January 5, 2010, in a meeting with the staff of the Bureau, and on January 22, 2010, in a letter following that meeting, Callaway voluntarily disclosed to the Bureau that two models of its uPro hand-held range finding devices had not been tested by the methodology prescribed for devices subject to a Declaration of Conformity⁷ as required by Section 15.31(j). In addition, Callaway disclosed that the battery charger for one model did not meet the Commission's conducted field strength limits as required by Section 15.107(a).

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.** Callaway 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 date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the 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, Callaway 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 of the Consent Decree, 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 Callaway

⁷ A "Declaration of Conformity is a procedure where the responsible party . . . makes measurements or takes other necessary steps to ensure that the equipment complies with the appropriate technical standards." 47 C.F.R. § 2.906.

concerning the matters that were the subject of the Investigation. The Bureau also agrees that it will not use the facts developed in this Investigation through the Effective Date of this Consent Decree, 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 Callaway with respect to Callaway's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Callaway agrees to implement a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

(a) Replacement of Old Devices. Callaway represents that it has replaced most of the non-compliant battery chargers for the uPro sold between April 8, 2008 and October 9, 2009, and will continue to replace any such remaining chargers registered in 2010. Through contact information supplied by customers during the initial registration of the uPro software, Callaway will arrange to provide each such customer with a compliant battery charger.

(b) Compliance Officer. Callaway will designate a Director of Quality Assurance and Regulatory Compliance, who will serve as the compliance officer responsible for administering the compliance plan.

(c) Training. Within ninety (90) days, Callaway will provide training and materials concerning Parts 2 and 15 of the Rules and the requirements of the Consent Decree to all of its employees who are involved directly or indirectly in the design, engineering, or quality assurance of devices subject to Commission regulation. Callaway will similarly provide training to all new employees who are involved directly or indirectly in the design, engineering, or quality assurance of devices subject to Commission regulation within ninety (90) days of their employment.

(d) Compliance Report. Callaway 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 Callaway, stating that the Compliance Officer has personal knowledge that Callaway (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree and the Rules, together with an accompanying statement explaining the basis for the Compliance Officer's certification; (ii) has been utilizing those procedures since the previous Compliance Report was submitted; and (iii) 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 Callaway, 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 Callaway 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 JoAnn Lucanik at

JoAnn.Lucanik @ fcc.gov, Kevin Pittman at Kevin.Pittman@fcc.gov, and Kathryn Berthot at Kathy.Berthot@fcc.gov.

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

9. **Voluntary Contribution.** Callaway agrees that it will make a voluntary contribution to the United States Treasury in the amount of ten thousand dollars (\$10,000). The payment will be made within 30 calendar 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). Callaway will also send electronic notification to JoAnn.Lucanik@fcc.gov, Kevin.Pittman@fcc.gov, and Kathy.Berthot@fcc.gov on the date said payment is made.

10. **Waivers.** Callaway 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. Callaway 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 Callaway nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Callaway shall waive any statutory right to a trial de novo. Callaway 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 Callaway does not expressly consent) that provision will be superseded by such Commission Rule or Order.

13. **Successors and Assigns.** Callaway 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. The Parties agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Callaway does not admit or deny noncompliance, violation, or liability for violating

the Act, Commission's Rules or Orders in connection with the matters that are the subject of this Consent Decree.

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

David A. Laverty
Senior Vice President, Global Operations
Callaway Golf Company

Date