

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

In the Matter of)	File No. EB-08-SE-1045
)	
VisionTek Products, LLC)	Acct. No. 201132100003
)	
)	FRN No. 0019165612

ORDER

Adopted: October 14, 2010

Released: October 14, 2010

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) and VisionTek Products, LLC (“VisionTek”). The Consent Decree terminates an investigation by the Bureau against VisionTek for possible violations of section 330(c) of the Communications Act of 1934, as amended, (the “Act”),¹ and section 15.120(d)(2) of the Commission’s Rules (“Rules”),² regarding the interstate shipment, after January 30, 2008, of personal computer digital television tuners that do not comply with V-Chip technology requirements.

2. The Bureau and VisionTek 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 which terminates 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 VisionTek 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 Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that all third-party complaints against VisionTek before the Bureau related to the above-captioned-investigation as of the date of this Consent Decree **ARE DISMISSED**.

¹ 47 U.S.C. § 330(c).

² 47 C.F.R. § 15.120(d)(2).

³ 47 U.S.C. § 154(i).

⁴ 47 C.F.R. §§ 0.111, 0.311.

8. **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 Michael Innes, Executive Vice President and Chief Operating Officer, VisionTek Products, LLC, 1610 Colonial Parkway, Inverness, IL 60067 and to counsel for VisionTek Products, LLC, Henry Goldberg, Esq., Goldberg, Godles, Wiener & Wright, 1229 19th Street, NW, Washington, DC 20036.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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)	File No. EB-08-SE-1045
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CONSENT DECREE

The Enforcement Bureau (“Bureau”) and VisionTek Products, LLC (“VisionTek”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether VisionTek violated section 330(c) of the Communications Act of 1934, as amended (the “Act”),¹ and section 15.120(d)(2) of the Commission’s rules,² regarding the interstate shipment, after January 30, 2008, of personal computer digital television tuners (“PCTV tuners”) that do not comply with the V-Chip technology requirements because they lack the ability to block programs from viewing based on ratings or to adapt to new rating systems.

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) “Complaints” means third-party complaints that may have been received by, or are in the possession of, the Commission or Bureau alleging violations of the V-Chip technology requirements.
 - (f) “Compliance Plan” means the program described in this Consent Decree at paragraph 8.
 - (g) “Effective Date” means the date on which the Bureau releases the Adopting Order.
 - (h) “Investigation” means the investigation commenced by the Bureau’s November 18, 2008 Letter of Inquiry (“LOI”)³ regarding whether VisionTek violated section 330(c) of the Act, and section 15.120(d)(2) of the Rules, by shipping interstate PCTV tuners

¹ 47 U.S.C. § 330(c).

² 47 C.F.R. § 15.120(d)(2).

³ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Michael Innes, VisionTek Products, LLC (November 18, 2008).

that do not comply with the V-Chip technology requirements because they lack the ability to block programs from viewing based on ratings or to adapt to new rating systems.⁴

- (i) “Parties” means VisionTek and the Bureau, and each a “Party”.
- (j) “Personal computer digital television tuners” or “PCTV tuners” means devices, sold without associated display screens, that are designed to receive digital television signals for viewing on personal computers.
- (k) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (l) “VisionTek” means VisionTek Products, LLC and its predecessors-in-interest and successors-in-interest.

II. BACKGROUND

2. Section 330(c) of the Act provides that no person shall ship in interstate commerce or manufacture in the United States television receivers that do not comply with program blocking (“V-Chip”) requirements prescribed by the Commission pursuant to its authority under section 303(x) of the Act.⁵ In 1998, the Commission adopted V-Chip requirements for both analog and digital television (“DTV”) receivers.⁶ In 2004, the Commission adopted specific technical standards to implement V-Chip functionality for DTV receivers.⁷ In addition, the Commission applied the program blocking requirements to DTV tuners sold without associated display screens,⁸ effective January 30, 2008.⁹

3. On November 18, 2008, the Bureau issued an LOI to VisionTek.¹⁰ The LOI directed VisionTek, among other things, to submit a sworn written response to a series of questions relating to the interstate shipment of PCTV tuners with the brand name “TV Wonder” in potential violation of the requirement of section 15.120(d)(2) of the Commission’s Rules. The rule requires such devices to allow blocking of the display of programming based on its content and to respond to changes in the content advisory rating system. VisionTek responded to the LOI on January 9, 2009.¹¹ VisionTek’s response

⁴ 47 U.S.C. § 330(c); 47 C.F.R. § 15.201(d)(2).

⁵ 47 U.S.C. § 303(x).

⁶ Technical Requirements to Enable Blocking of Video Programming Based on Program Rating, Implementation of Sections 551(c), (d), and (e) of the Telecommunications Act of 1996, Report and Order, 13 FCC Rcd 11248 (1998).

⁷ Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, Report and Order, 19 FCC Rcd 18279 (2004).

⁸ *Id.* at 18348 ¶ 158.

⁹ See Rules and Regulations, Federal Communications Commission, Parts 15, 73 and 76, Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, 73 Fed. Reg. 5634, 5682 (Jan. 30, 2008).

¹⁰ See Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau to Michael Innes, VisionTek Products, LLC (November 18, 2008).

¹¹ See Letter from Henry Goldberg and Laura Stefani, to Marlene Dortch, Secretary, Federal Communications Commission (January 9, 2009). VisionTek was granted an extension of time, until January 9, 2009, by which to respond.

indicated the interstate shipment of a number of potentially non-compliant units. VisionTek additionally informed the Bureau that it had ceased shipping the potentially non-compliant PCTV tuners in interstate commerce for distribution to the public and had taken other steps to address the FCC's concerns.

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.** VisionTek 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 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 its Investigation and dismiss the Complaint. In consideration for the termination of said Investigation and dismissal of the Complaint, VisionTek 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 VisionTek 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 VisionTek with respect to VisionTek's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, VisionTek agrees to create, within 30 days of the Effective Date, a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Plan will include, at a minimum, the following components:

- (a) **Compliance Officer.** Within 30 days of the Effective Date, VisionTek will designate a Compliance Officer who will be responsible for implementing and administering the remedial measures.
- (b) **Remedial Measures.** Within 10 days of the Effective Date, VisionTek will provide a consumer notice on its website of how to use Microsoft Windows Media Center software to effect V-chip functionality of the TV Wonder products. VisionTek also will make available to all interested past purchasers of its TV Wonder products, free of charge, software that will allow for parental control functionality so that the products are in full compliance with the V-chip technology requirements. For any and all instances in which VisionTek has access to the address of registered past purchasers, VisionTek will contact all such past purchasers to inform them of the availability of the software and how to obtain it. To further inform past purchasers of the availability of the software, VisionTek will also post a live download

request form on its website and on all applicable TV Wonder product pages. VisionTek will make the software available for twenty-four (24) months from the Effective Date of this Consent Decree.

- (c) **Compliance Reports.** VisionTek 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 VisionTek, stating that the Compliance Officer has personal knowledge that VisionTek (i) has established operating procedures intended to ensure compliance with the terms and conditions of this Consent Decree, 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 VisionTek, 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 VisionTek 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. All reports shall also be submitted electronically to Jackie Ellington at Jackie.Ellington@fcc.gov and to Kathy Berthot at Kathy.Berthot@fcc.gov.
- (d) **Termination Date.** Unless stated otherwise, the requirements of this Paragraph 8 of the Consent Decree will expire twenty-four (24) months after the Effective Date.

9. **Voluntary Contribution.** VisionTek agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$15,000 (Fifteen Thousand Dollars). The payment will be made within 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 the 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). VisionTek will also send electronic notification to Jackie Ellington at Jackie.Ellington@fcc.gov and Kathy Berthot at Kathy.Berthot@fcc.gov within forty-eight (48) hours of the date said payment is made.

10. **Waivers.** VisionTek 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 Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. VisionTek 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 VisionTek nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and VisionTek shall waive any statutory right to a trial *de novo*. VisionTek 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 VisionTek does not expressly consent) that provision will be superseded by such Commission rule or Order.

13. **Successors and Assigns.** VisionTek 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 Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Date

Tony Graffia
Principal Owner
VisionTek Products, LLC

Date