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

	)	File No. EB-09-SE-065
In the Matter of	)	
	)	Acct. No. 201032100025
Airspan Networks (Israel), Ltd.	)	
	)	FRN No. 0009320326

ORDER

Adopted: April 14, 2010 **Released: April 15, 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 Airspan Networks (Israel), Ltd. ("Airspan"). The Consent Decree terminates an investigation by the Bureau against Airspan for possible violations of Section 302(b) of the Communications Act of 1934, as amended ("Act"),[1] and Sections 2.803, 2.925, and 15. 407(h)(2) of the Commission's Rules ("Rules")[2] regarding the marketing and selling of unlicensed National Information Infrastructure ("U-NII") devices.

2. The Bureau and Airspan 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 Airspan 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 Communications Act of 1934, as amended,[3] and sections 0.111 and 0.311 of the Commission's Rules,[4] the Consent Decree attached to this Order **IS ADOPTED**.

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

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[1] 47 U.S.C. § 302a(b).

[2] 47 C.F.R. §§ 2.803, 2.925, 15.407(h)(2).

[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 Eric D. Stonestrom, CEO, President and Executive Director, Airspan Networks (Israel) Ltd., 777 Yamato Road, Suite 310, Boca Raton, FL 33431, and counsel for Airspan, Michael R. Bennet, Esq., Bennet & Bennet, PLLC, 4350 East West Highway, Suite 201, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

Before the
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Washington, D.C. 20554

In the Matter of	)	File No. EB-09-SE-065
	)	Acct. No. 201032100025
Airspan Networks (Israel), Ltd.	)	
	)	FRN No. 0009320326

CONSENT DECREE

1. The Enforcement Bureau ("Bureau") and Airspan Networks (Israel), Ltd. ("Airspan"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau's investigation of Airspan for possible violations of Section 302(b) of the Communications Act of 1934, as amended ("Act"),[1] and Sections 2.803, 2.925, and 15.407(h)(2) of the Commission's Rules ("Rules")[2] regarding the marketing and selling of unlicensed National Information Infrastructure ("U-NII") devices.

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) "Airspan" means Airspan Networks (Israel), Ltd., and its subsidiaries and its predecessors-in-interest and successors-in-interest.

(d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.

(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 8.

(g) "Effective Date" means the date on which the Bureau releases the Adopting Order.

[1] 47 U.S.C. § 302a(b).

[2] 47 C.F.R. §§ 2.803, 2.925, 15.407(h)(2).

(h) "Investigation" means the investigation commenced by the Bureau's April 20, 2009 letter of inquiry ("LOI")[3] to Airspan regarding possible violations of Section 302(b) of the Act and Sections 2.803, 2.925, and 15.407(h)(2) of the Rules.

(i) "Parties" mean Airspan and the Bureau.

(j) "Rules" mean 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 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 and are labeled as required by Section 2.925. In accordance with Section 15.407(h)(2), U-NII devices operating in the 5.25-5.35 GHz and 5.47-5.725 GHz bands shall employ a Dynamic Frequency Selection ("DFS") radar detection mechanism to avoid co-channel interference with licensed radar systems.

3. On April 20, 2009, the Bureau issued a letter of inquiry (LOI) to Airspan.[4] The LOI directed Airspan, among other things, to submit a sworn written response to a series of questions relating to the marketing and selling of various U-NII devices. Airspan responded to the LOI on June 2, 2009.[5]

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.** Airspan 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 its investigation. In consideration for the termination of said investigation, Airspan agrees to

[3] *See* Letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Eric D. Stonestrom, CEO, President and Executive Director, Airspan Networks (Israel), Ltd. (April 20, 2009) ("LOI").

[4] *See* LOI.

[5] *See* Letter from Michael R. Bennet, Counsel for Airspan, to Kathy S. Berthot, Chief, and Linda Nagel, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (June 3, 2009) ("LOI Response").

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 Airspan 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 Airspan with respect to Airspan'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, Airspan 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 Commission's Rules, and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

(a) **Compliance Officer**. Within 90 days of the Effective Date, Airspan will designate a senior corporate officer ("Compliance Officer") who is responsible for administering the Compliance Plan.

(b) **Remedial Measures.** Airspan has developed and distributed to its United States MicroMAX customers a software upgrade for its MicroMAX device that prevents users from disabling the DFS radar detection mechanism and varying any other operating parameters of the device. In addition, Airspan asserts that it has contacted all of its MicroMAX customers and verified that the software was received by all such customers, and Airspan agrees to provide telephone support and direction to any customer requiring assistance in installing or operating the software. Finally, Airspan has distributed labels that comply with FCC rules to its customers for the MicroMAX and ProST 5.4 GHz TDD devices that were shipped to the United States without labels.

(c) **Training**. Within 90 days of the Effective Date, and annually thereafter, Airspan will provide training concerning compliance with Parts 2 and 15 of the Rules to all of its employees who are involved directly or indirectly in the marketing and distribution of radio frequency products imported, marketed and sold by Airspan in the United States. Furthermore, within 90 days of hire, Airspan will similarly provide training to all new employees involved directly or indirectly in the marketing and distribution of radio frequency products imported, marketed, and sold by Airspan.

(d) **Compliance Reports**. Airspan will file compliance reports with the Commission 90 days after the Effective Date, 12 months after the Effective Date, and 24 months after the Effective Date. Each report shall include a compliance certificate from the Compliance Officer stating that the Compliance Officer has personal knowledge that Airspan has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the Compliance Officer's compliance certification. All compliance reports shall be submitted to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W. Washington, D.C. 20554. All compliance reports shall also be submitted electronically to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov.

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

9. **Voluntary Contribution.** Airspan 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 days after the Effective Date of the Adopting Order. 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). Airspan will also send electronic notification to Linda.Nagel@fcc.gov and Kathy.Berthot@fcc.gov on the date said payment is made.

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

13. **Successors and Assigns.** Airspan 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

_____
David Brant
Chief Financial Officer
Airspan Networks Inc.

_____
Date