



FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 7, 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matthew J. Wolf, President
MALÅ GeoScience USA, Inc.
2040 Savage Road
Charleston, SC 29416

Re: File No. EB-09-SE-087

Dear Mr. Wolf:

This is an official **CITATION**, issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (“Act”),¹ to MALÅ GeoScience USA, Inc. (“MALÅ”) for marketing in the United States an unauthorized radio frequency device in violation of Section 302(b) of the Act (“Act”),² and Section 2.803(a) of the Commission’s Rules (“Rules”),³ and for importing a radio frequency device without filing FCC Form 740 (or the electronic equivalent) with the United States Customs and Border Patrol in violation of Section 2.1203 of the Rules.⁴ As explained below, future violations of the Commission’s rules in this regard may subject your company to monetary forfeitures.

In April of 2009, the Enforcement Bureau’s Spectrum Enforcement Division (“Division”) received a complaint alleging that in February of 2009, MALÅ had been an exhibitor at a trade show and had displayed promotional materials that featured two uncertified devices, the Movement and Surveying Radar 200 (“MSR 200”) and/or the Movement and Surveying Radar 300 (“MSR 300”), without including a marketing disclaimer advising that the devices had not yet been certified by the Federal Communications Commission as is required by Section 2.803(c) of the Rules.⁵ By letter of inquiry (“LOI”) dated July 15, 2009, the Division initiated an investigation into whether MALÅ had marketed unauthorized radio frequency devices in the United States.⁶

In your response to the LOI, you state that you are an American company that markets

¹ 47 U.S.C. § 503(b)(5).

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. § 2.803(a).

⁴ 47 C.F.R. § 2.1203.

⁵ 47 C.F.R. § 2.803(c).

⁶ See letter from Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to MALÅ GeoScience USA, Inc. (July 15, 2009) (“LOI”).

geophysical and geo-industry related products in North and South America.⁷ You state that you are the American representative of Reutech Mining (“Reutech”), which is the South African manufacturer of the MSR 200 and the MSR 300.⁸

In the LOI Response, you also explain that you have never sold or leased either the MSR 200 or the MSR 300 in the United States.⁹ However, you concede that you did market the MSR 300 surveying device at three trade shows that took place in the United States in February and June of 2009, and in three advertisements in a professional publication that was distributed in the United State in 2009, without having obtained the required FCC authorization for that device, or satisfying the disclaimer notice requirements of Section 2.803(c) of the Rules.¹⁰ In addition, you admit that in July of 2009, you imported one unit of the MSR 300 into the United States for the purpose of certification testing, but failed to file a Federal Communications Commission Form 740 (or the electronic equivalent) with the United States Customs and Border Patrol for that device.¹¹

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.”¹² Section 2.803(a)(1) of the Rules provides in pertinent part that:

[N]o 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 radio frequency 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....¹³

Transmitters that are utilized for operation under Part 90 of the Rules, such as the MSR 200 and/or MSR 300,¹⁴ are generally required by Section 90.203¹⁵ to be approved prior to marketing through the equipment certification¹⁶ procedures described in Sections 2.1031-2.1060 of the Rules.¹⁷

⁷ See letter from Mitchell Lazarus, Counsel for MALÅ GeoScience USA, Inc., to Kathryn S. Berthot, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (August 14, 2009) (“LOI Response”) at 2.

⁸ *Id.* at 3. There is no common ownership between MALÅ and Reutech Mining. *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.* at 4 and Exhibit C.

¹¹ *Id.* at 3-4.

¹² 47 U.S.C. § 302a(b).

¹³ 47 C.F.R. § 2.803(a)(1).

¹⁴ In its LOI Response, MALÅ requested that the frequency and power information relating to the MSR 200 and MSR 300 be subject to confidential treatment, pursuant to Section 0.459 of the Rules. 47 C.F.R. § 0.459. Based on MALÅ’s submissions, it appears that the MSR 200 and MSR 300 devices would be subject to regulation under Part 90 of the Rules. 47 C.F.R. § 90.01 *et seq.*

¹⁵ 47 C.F.R. § 90.203.

¹⁶ A certification is an equipment authorization issued by the Commission, based on representations and test data submitted by the applicant. See 47 C.F.R. § 2.907(a).

Under Section 2.803(c) of the Rules, a party is allowed, in limited circumstances, to market devices prior to receiving equipment authorization from the Commission. Specifically, devices may be

Advertised or displayed, *e.g.*, at a trade show or exhibition, prior to equipment authorization . . . *provided* that the advertising contains, and the display is accompanied by, a conspicuous [disclaimer] notice worded as follows: This device has not been authorized as required by the Rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.¹⁸

In your LOI response, you admit that on at least three occasions within the past year you marketed one radio frequency device, the MSR 300, in the United States without prior certification,¹⁹ and without accompanying the marketing materials for that device with a disclaimer that satisfied the requirements of Rule 2.803(c).²⁰

Under Section 2.1203 of the Rules,²¹ no radio frequency device may be imported into the Customs territory of the United States unless the importer declares that the device meets one of the conditions for entry set forth in Section 2.1204 of the Rules.²² Pursuant to Section 2.1205 of the Rules,²³ this declaration must be filed electronically, where electronic filing with Customs is available, or using FCC Form 740, where electronic filing with Customs has not been implemented.

In your LOI Response, you admit that you imported one unit of the MSR 300 into the United States without properly filing a FCC Form 740 (or the electronic equivalent) with the United States Customs and Border Patrol.²⁴

Accordingly, it appears that MALÅ has violated Section 302(b) of the Act and Section 2.803(a) of the Rules by marketing an unauthorized radio frequency device in the United States, and violated Section 2.1203 of the Rules by importing a radio frequency device into the United States without filing a Federal Communications Commission Form 740 (or the electronic equivalent).

If, after receipt of this citation, you violate the Communications Act or the Commission's Rules in any manner described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation.²⁵

¹⁷ 47 C.F.R. §§ 2.1031-2.1060.

¹⁸ 47 C.F.R. § 2.803(c).

¹⁹ We note that Reutech obtained a grant of certification for the MSR 300 on September 24, 2009. *See* FCC ID XOP-5840-SL-3000.

²⁰ *See* LOI Response at 4 and Exhibit C. Our investigation did not uncover similar evidence with respect to the marketing of the MSR 200.

²¹ 47 C.F.R. § 2.1203.

²² 47 C.F.R. § 2.1204.

²³ 47 C.F.R. § 2.1205.

²⁴ *See* LOI Response at 3-4.

²⁵ *See* 47 C.F.R. § 1.80(b)(3).

If you choose to do so, you may respond to this citation within 30 days from the date of this letter either through (1) a personal interview at the Commission's Field Office nearest to your place of business, or (2) a written statement. Your response should specify the actions that MALÅ is taking to ensure that it does not violate the Commission's rules governing the marketing and importation of unauthorized radio frequency devices in the future.

The nearest Commission field office is the Atlanta, Georgia office. Please call Deborah Broderson at 202-418-0652, if you wish to schedule a personal interview. You should schedule any interview to take place within 30 days of the date of this letter. You should send any written statement within 30 days of the date of this letter to:

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W., Rm. 3-C366
Washington, D.C. 20554

Under the Privacy Act of 1974,²⁶ we are informing you that the Commission's staff will use all relevant material information before it, including information that you disclose in your interview or written statement, to determine what, if any, enforcement action is required to ensure your compliance with the Communications Act and the Commission's rules.

The knowing and willful making of any false statement, or the concealment of any material fact, in reply to this citation is punishable by fine or imprisonment.²⁷

Thank you in advance for your anticipated cooperation.

Sincerely,

Kathryn S. Berthot
Chief, Spectrum Enforcement Division
Enforcement Bureau

²⁶ 5 U.S.C. § 552(a)(e)(3).

²⁷ See 18 U.S.C. § 1001.