

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

In the Matter of)	File No.: EB-06-SE-199
)	
)	Acct. No.: 200732100022
Hawking Technologies, Inc.)	
)	FRN: 0012065009

ORDER

Adopted: January 12, 2012

Released: January 13, 2012

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau (“Bureau”) of the Federal Communications Commission (“Commission”) and Hawking Technologies, Inc. (“Hawking”). The Consent Decree settles an enforcement proceeding against Hawking regarding Hawking’s compliance with section 302(b) of the Communications Act of 1934, as amended (the “Act”),¹ and sections 2.803(a) and 15.204(d) of the Commission’s rules² in connection with its marketing of certain external radio frequency power amplifiers.

2. The Bureau and Hawking have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein 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 settling the enforcement proceeding.

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 Hawking 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 sections 4(i) and 503(b) of the Act,³ and sections 0.111 and 0.311 of the rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

¹ 47 U.S.C. § 302a(b).

² 47 C.F.R. §§ 2.803(a), 15.204(d).

³ 47 U.S.C. §§ 154(i), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

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

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 Frank Lin, President, Hawking Technologies, Inc., 36 Hammond, Suite 150, Irvine, CA 92618, and Lewis H. Goldman, Esq., Counsel for Hawking Technologies, Inc., Lewis H. Goldman, P.C., 45 Dudley Court, Bethesda, MD 20814.

FEDERAL COMMUNICATIONS COMMISSION

P. Michele Ellison
Chief, Enforcement Bureau

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

In the Matter of)	File No. EB-06-SE-199
)	
)	Acct. No. 200732100022
Hawking Technologies, Inc.)	
Irvine, California)	FRN No. 0012065009

CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Hawking Technologies, Inc., by their authorized representatives, hereby enter into this Consent Decree for the purpose of settling the Commission's enforcement proceeding regarding Hawking's compliance with section 302(b) of the Communications Act of 1934, as amended,¹ and sections 2.803(a) and 15.204(d) of the Commission's rules,² in connection with its marketing of the Hawking Model HSB2 amplifier.

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) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Hawking is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (f) "Compliance Plan" means the compliance obligations and compliance program described in this Consent Decree at paragraph 8.
 - (g) "Covered Employee" means all employees and agents of Hawking who perform duties, or supervise, oversee, or manage the performance of duties, that relate to Hawking's responsibilities under the Equipment Marketing Rules.
 - (h) "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(a) and 15.204(d).

- (i) “Enforcement Proceeding” means the Bureau’s Investigation, culminating in the issuance of the Notice of Apparent Liability for Forfeiture and the Forfeiture Order.
- (j) “Equipment Marketing Rules” means section 302(b) of the Act and sections 2.803, 2.925, and 15.204(d) of the Rules and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (k) “Forfeiture Order” means *Hawking Technologies, Inc.*, 24 FCC Rcd 4252 (2009).
- (l) “Hawking” means Hawking Technologies, Inc. and its predecessors-in-interest and successors-in-interest.
- (m) “Investigation” means the investigation commenced by the Bureau’s June 26, 2006 letter of inquiry³ regarding whether Hawking violated the Equipment Marketing Rules in connection with its marketing of the Hawking Model HSB2 amplifier.
- (n) “Notice of Apparent Liability for Forfeiture” or “NAL” means *Hawking Technologies, Inc.*, 22 FCC Rcd 7140 (2007).
- (o) “Parties” means Hawking and the Bureau, each of which is a “Party.”
- (p) “Petition for Reconsideration” means the Petition for Reconsideration of the Forfeiture Order filed by Hawking on April 30, 2009 seeking cancellation or reduction of the forfeiture.
- (q) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. In 2006, Hawking marketed the Hawking Model HSB2 external radio frequency power amplifier for individual sale.⁴ External radio frequency power amplifiers are often used to boost the power of radio transmitters such as wireless access points. Pursuant to section 302(b)⁵ of the Act and section 2.803(a) of the Rules,⁶ radio frequency devices may not be marketed⁷ in the United States unless the devices comply with the applicable technical standards as well as the administrative requirements relating to equipment labeling and consumer disclosure. In general, an amplifier can be marketed only with the system with which it has been

³ Letter from Kathryn S. Berthot, Deputy Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, to Hawking Technologies, Inc. (June 26, 2006).

⁴ See *Hawking Technologies, Inc.*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 7140, 7143-44, paras. 7-10 (April 2, 2007).

⁵ 47 U.S.C. § 302a(b).

⁶ 47 C.F.R. § 2.803(a).

⁷ Section 2.803(e)(4) of the Rules defines “marketing” as the “sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.” 47 C.F.R. § 2.803(e)(4).

approved, and not as a separate product.⁸ An exception to this requirement provides that an amplifier may be marketed for individual sale if the amplifier is intended for use with certain Part 15 intentional radiators.⁹ Under the exception, an amplifier marketed for individual sale must be designed so that it can only be connected to a system with which it has been previously authorized.¹⁰ Moreover, when an amplifier is marketed for individual sale (for connection with a previously authorized system), the Rules require that the outside packaging and user manual include a notice (i) stating that the amplifier can be used only with a previously authorized system, and (ii) identifying the previously authorized system by FCC Identifier.¹¹

3. On June 26, 2006, the Bureau issued the letter of inquiry (“LOI”) to Hawking, directing the company to submit a sworn written response to a series of questions relating to whether Hawking was marketing unauthorized and non-compliant external radio frequency power amplifiers, including for individual sale, in contravention of the Rules.¹² Hawking responded to the LOI on July 11, 2006 (“LOI Response”).¹³ In the LOI Response, Hawking stated that it discontinued importing and marketing the amplifier products upon receipt of the LOI.¹⁴ However, the Commission found that the marketing of the unauthorized devices continued after that date, and on April 2, 2007 issued the NAL in the amount of \$50,000 to Hawking.¹⁵ Hawking did not file a response to the NAL. As a result, the Commission issued the Forfeiture Order on March 31, 2009.¹⁶ On April 30, 2009, Hawking filed the Petition for Reconsideration of the Forfeiture Order seeking cancellation or reduction of the forfeiture and arguing that the employee who received the NAL did not share it with senior management.¹⁷

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.

5. **Jurisdiction.** Hawking agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree, and that the Bureau 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 as defined herein. As of the Effective Date, the Adopting Order and this Consent Decree

⁸ 47 C.F.R. § 15.204(d).

⁹ 47 C.F.R. § 15.204(d)(1).

¹⁰ *Id.*

¹¹ 47 C.F.R. § 15.204(d)(2). Of course, amplifiers must also comply with all applicable identification and labeling requirements prior to marketing. 47 C.F.R. § 2.925.

¹² *See supra* n. 3.

¹³ Letter from Frank Lin, Chief Executive Officer, Hawking Technologies, Inc., to Thomas Fitz-Gibbon, Attorney, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission (July 11, 2006).

¹⁴ *Id.* at 3.

¹⁵ NAL, *supra* note 4.

¹⁶ *Hawking Technologies, Inc.*, Forfeiture Order, 24 FCC Rcd 4252 (2009).

¹⁷ Petition for Reconsideration of *Forfeiture Order* from Hawking Technologies, Inc. (April 30, 2009).

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. **Settlement of Enforcement Proceeding.** In express reliance on the covenants and representations in this Consent Decree, including the payment of the voluntary contribution, and to avoid further expenditure of public resources, the Bureau agrees to settle the Enforcement Proceeding. In consideration for the settlement of the Enforcement Proceeding, Hawking 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 Enforcement Proceeding 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 Hawking concerning the matters that were the subject of the Enforcement Proceeding. The Bureau also agrees that it will not use the facts developed in the Enforcement Proceeding 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 Hawking with respect to Hawking's basic qualifications, including its character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

8. **Compliance Plan.** For purposes of settling the matters set forth herein, Hawking shall within sixty (60) calendar days after the Effective Date develop and implement a Compliance Plan related to future compliance with the Communications Laws, including the Equipment Marketing Rules, and with the terms and conditions of this Consent Decree. The Compliance Plan shall include, without limitation, the following components:

- (a) **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Hawking shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Hawking complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his/her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing Rules prior to assuming his/her duties.
- (b) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, Hawking shall establish Operating Procedures that all Covered Employees must follow to help ensure Hawking's compliance with the Equipment Marketing Rules. Hawking's Operating Procedures shall include internal procedures and policies specifically designed to ensure that all radio frequency devices marketed by Hawking comply with applicable technical standards, have been properly authorized (via the certification, verification, or declaration of conformity procedures, as applicable), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure.
- (c) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Equipment Marketing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure

Hawking's compliance with the Equipment Marketing Rules. Hawking shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and complete. Hawking shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.

- (d) **Compliance Training.** Within sixty (60) calendar days after the Effective Date, Hawking shall establish and implement a Compliance Training Program on compliance with the Equipment Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Hawking's obligation to report any non-compliance with the Equipment Marketing Rules under paragraph 9 of this Consent Decree and shall be instructed on how to disclose non-compliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the Effective Date shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Hawking shall repeat the compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.
- (e) **Termination Date.** Unless otherwise stated, the requirements of this paragraph 8 of the Consent Decree shall expire thirty-six (36) months after the Effective Date.

9. **Reporting Non-Compliance.** Hawking shall report any non-compliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such non-compliance. Such reports shall include a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Hawking has taken or will take to remedy such non-compliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Hawking has taken or will take to prevent the recurrence of any such non-compliance. All reports of non-compliance 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 Katherine Power at Katherine.Power@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov. The reporting obligations set forth in this paragraph 9 shall expire thirty-six (36) months after the Effective Date.

10. **Compliance Reports.** Hawking shall file compliance reports with the Commission ninety (90) days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each compliance report shall include a detailed description of Hawking's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Hawking, stating that the Compliance Officer has personal knowledge that Hawking (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of non-compliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 9 hereof.

- (b) The certification shall be accompanied by a statement explaining the basis for the Compliance Officer's certification, and 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.
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Hawking, shall provide the Commission with a detailed explanation of (i) each instance of non-compliance; (ii) the steps that Hawking has taken or will take to remedy such non-compliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Hawking has taken or will take to prevent the recurrence of any such non-compliance, including the schedule on which such preventive action will be taken.
- (d) 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 Katherine Power at Katherine.Power@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov.

11. **Voluntary Contribution.** Hawking agrees that it will make a voluntary contribution to the United States Treasury in the amount of Fifty Thousand Dollars (\$50,000) ("Voluntary Contribution"), such Voluntary Contribution to be made in twenty (20) consecutive monthly payments (each an "Installment Payment") of Two Thousand Five Hundred Dollars (\$2,500) payable on the first day of each month beginning with the first month following the Effective Date. The final payment is due on the first day of the twentieth month following the Effective Date ("Maturity Date"). Hawking acknowledges and agrees that upon execution of this Consent Decree the Voluntary Contribution and each Installment Payment shall become a "Claim" or "Debt" as defined in 31 U.S.C. §3701(b)(1).¹⁸ Upon an Event of Default, all procedures for collection as permitted by law may, at the Bureau's discretion, be initiated. In addition, Hawking agrees that it will make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Installment Payments must be made by check or similar instrument, payable in United States Dollars to the order of the Federal Communications Commission. The payments must include the Account Number and FRN referenced in the caption to the Adopting Order. Payments by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payments by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payments by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. For payments 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). Hawking shall also send electronic notification to Katherine Power at Katherine.Power@fcc.gov and Ricardo Durham at Ricardo.Durham@fcc.gov on the date each payment is made.

12. **Event of Default.** Hawking agrees that an Event of Default shall occur upon the failure by Hawking to pay the full amount of any Installment Payment on or before the due date specified in this Consent Decree.

¹⁸ Debt Collection Improvement Act of 1996, Pub. L. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

13. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Voluntary Contribution shall accrue interest, computed using the rate of the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75 percent, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Voluntary Contribution, together with interest, as aforesaid, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charge(s), plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by Hawking.

14. **Waivers.** Hawking also 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 as defined herein. Hawking 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 Hawking nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Hawking shall waive any statutory right to a trial *de novo*. Hawking hereby agrees to waive any claims it may 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.

15. **Withdrawal of Pending Petition for Reconsideration.** Hawking shall withdraw its Petition for Reconsideration of the Forfeiture Order within five (5) business days after the Effective Date.

16. **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.

17. **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 Hawking does not expressly consent) that provision will be superseded by such Rule or Commission order.

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

19. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Enforcement Proceeding. 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 Communications Laws.

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

21. **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.

22. **Authorized Representative.** The individual signing this Consent Decree on behalf of Hawking represents and warrants that he is authorized by Hawking to execute this Consent Decree and to bind Hawking to the obligations set forth herein. The FCC signatory represents that she is signing this Consent Decree in her official capacity and that she is authorized to execute this Consent Decree.

23. **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.

P. Michele Ellison
Chief
Enforcement Bureau
Federal Communications Commission

Date

Frank Lin
President
Hawking Technologies, Inc.

Date