

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

In the Matter of)	
)	
Richard Mann d/b/a)	File No.: EB-06-SE-388
The Antique Radio Collector)	Acct. No.: 200732100016
Toledo, Ohio)	FRN: 0016215626
)	
)	

ORDER

Adopted: April 13, 2012

Released: April 13, 2012

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) of the Federal Communications Commission (Commission) and Richard Mann d/b/a The Antique Radio Collector (Mr. Mann). The Consent Decree settles an enforcement proceeding regarding Mr. Mann’s willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Section 2.803(a)(1) of the Commission’s rules (Rules)² in connection with the marketing in the United States of uncertified AM radio transmitters assembled from kits.

2. The Bureau and Mr. Mann 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 Mr. Mann 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)(1).

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 Richard Mann d/b/a The Antique Radio Collector, 4231 Willys Parkway, Toledo, OH 43612.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse
Chief
Spectrum Enforcement Division
Enforcement Bureau

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Richard Mann d/b/a The Antique Radio Collector, by their respective authorized representatives, hereby enter into this Consent Decree for the purpose of settling the Commission's enforcement proceeding regarding Mr. Mann's willful and repeated violation of Section 302(b) of the Communications Act of 1934, as amended,⁵ and Section 2.803(a)(1) of the Commission's rules,⁶ in connection with the marketing in the United States of uncertified AM radio transmitters assembled from kits.

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) "Application for Review" means the Application for Review of the Reconsideration Order⁷ filed by Mr. Mann on June 2, 2008 seeking cancellation or reduction of the forfeiture.
 - (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) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Mr. Mann may be subject by virtue of his business activities, including but not limited to, the Equipment Marketing Rules.

⁵ 47 U.S.C. § 302a(b).

⁶ 47 C.F.R. § 2.803(a)(1).

⁷ Application for Review of Reconsideration Order, filed by Richard Mann d/b/a The Antique Radio Collector (June 2, 2008).

- (g) “Compliance Plan” means the compliance obligations, programs, and procedures that Mr. Mann may be required to implement pursuant to paragraph 10.
- (h) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (i) “Equipment Marketing Rules” means Section 302(b) of the Act⁸ and Section 2.803 of the Rules⁹ and other Communications Laws governing the marketing¹⁰ of radio frequency devices¹¹ within the United States and its territories.
- (j) “Enforcement Proceeding” means the Bureau’s Investigation, culminating in the issuance of the NAL, the Forfeiture Order, and the Reconsideration Order.
- (k) “Forfeiture Order” means *Richard Mann d/b/a The Antique Radio Collector*, Forfeiture Order, 22 FCC Rcd 20516 (Enf. Bur., Spectrum Enf. Div. 2007).
- (l) “Investigation” means the investigation commenced by the Bureau’s November 15, 2006 letter of inquiry¹² regarding whether Mr. Mann violated the Equipment Marketing Rules in connection with his marketing in the United States of uncertified AM radio transmitters that he assembled from kits.
- (m) “Mr. Mann” means Richard Mann d/b/a The Antique Radio Collector.
- (n) “Notice of Apparent Liability for Forfeiture” or “NAL” means *Richard Mann d/b/a The Antique Radio Collector*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4956 (Enf. Bur., Spectrum Enf. Div. 2007).
- (o) “Petition for Reconsideration” means the Petition for Reconsideration of the Forfeiture Order¹³ filed by Mr. Mann on December 27, 2007 seeking cancellation or reduction of the forfeiture.

⁸ 47 U.S.C. § 302a(b).

⁹ 47 C.F.R. § 2.803.

¹⁰ 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).

¹¹ Section 2.801 of the Rules defines “radio frequency device” as “any device which in its operation is capable of emitting radio-frequency energy by radiation, conduction, or other means.” 47 C.F.R. § 2.801.

¹² Letter from Kathryn Berthot, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Richard Mann, Antique Radio Collector (Nov. 15, 2006).

¹³ Appeal of Forfeiture Order, filed by Richard Mann d/b/a The Antique Radio Collector (Dec. 27, 2007). In the Appeal of Forfeiture Order, Mr. Mann requested that the Commission reconsider its findings in the Forfeiture Order based on arguments not previously presented to the Bureau in the NAL Response. Under Section 1.115(c) of the Rules, the Commission is barred from considering such arguments on appeal unless they have previously been presented to the Bureau for consideration. See 47 C.F.R. § 1.115(c) (“[n]o application for review will be granted if it relies on questions or fact or law upon which the designated authority has been afforded no opportunity to pass.”). As such, the Bureau in the Reconsideration Order treated Mr. Mann’s Appeal of Forfeiture Order as a petition for reconsideration rather than as an application for review so as to have the opportunity to consider these arguments.

- (p) “Parties” means Mr. Mann and the Bureau, each of which is a “Party”.
- (q) “Reconsideration Order” means *Richard Mann d/b/a The Antique Radio Collector*, Memorandum Opinion and Order, 23 FCC Rcd 6920 (Enf. Bur. 2008).
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. 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.”¹⁴ Under Section 2.803(a) of the Rules,¹⁵ the Commission prohibits the marketing of radio frequency devices in the United States unless the devices are authorized under the appropriate equipment authorization procedure and comply with the applicable technical standards as well as the administrative requirements relating to equipment labeling and consumer disclosure. Under Section 15.201(b) of the Rules,¹⁶ intentional radiators, such as AM transmitters, must be certified in accordance with the procedures set forth in Sections 2.1031 through 2.1060 of the Rules.¹⁷ “Kits,” as defined in Section 15.3(p) of the Rules,¹⁸ however, generally do not require authorization.

3. On November 15, 2006, the Bureau’s Spectrum Enforcement Division (Division) issued the letter of inquiry (LOI)¹⁹ to Mr. Mann in response to a complaint²⁰ alleging that Mr. Mann was assembling SSTRAN model AMT3000 AM transmitters (AMT3000 transmitters) from kits and then marketing the uncertified, assembled AMT3000 transmitters in the United States to end users in violation of the Equipment Marketing Rules. Mr. Mann responded to the LOI on November 25, 2006 (LOI Response).²¹ In his LOI Response, Mr. Mann stated that he did not know if the Commission had ever issued a certification authorizing a fully assembled AMT3000 transmitter.²² He also stated that he had ordered un-built AMT3000 hobby kits from the manufacturer, used his website (www.oldtimeradioprograms.com) to solicit orders for the purchase and assembly of the AMT3000 hobby kits, and then shipped fully assembled AMT3000 transmitters to his customers.²³ Mr. Mann also

See Richard Mann d/b/a The Antique Radio Collector, Memorandum Opinion and Order, 23 FCC Rcd 6920, 6920 n.1 (Enf. Bur. 2008).

¹⁴ 47 U.S.C. § 302a(b).

¹⁵ 47 C.F.R. § 2.803(a).

¹⁶ *Id.* § 15.201(b).

¹⁷ *Id.* §§ 2.1031–2.1060.

¹⁸ *Id.* § 15.3(p) (defining “kit” as “[a]ny number of electronic parts, usually provided with a schematic diagram or printed circuit board, which, when assembled in accordance with instructions, results in a device subject to the regulations in this part, even if additional parts of any type are required to complete assembly.”).

¹⁹ *See supra* note 8.

²⁰ The complaint was filed by a seller of a certified AM part 15 transmitter.

²¹ Letter from Richard Mann d/b/a The Antique Radio Collector, to Neal McNeil, Assistant Division Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 25, 2006).

²² *Id.* at 1.

²³ *Id.*

reported that he had shipped 46 of these assembled AMT3000 transmitters to end users in the United States.²⁴

4. On March 15, 2007, the Division issued the Notice of Apparent Liability for Forfeiture against Mr. Mann, which proposed a forfeiture in the amount of \$7,000 for Mr. Mann's apparent marketing in the United States of fully assembled, uncertified AMT3000 transmitters in apparent willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.²⁵ On April 13, 2007, Mr. Mann responded to the NAL.²⁶ On November 27, 2007, the Division issued the Forfeiture Order against Mr. Mann, which assessed a forfeiture in the amount of \$7,000 for Mr. Mann's willful and repeated violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules.²⁷

5. On December 27, 2007, Mr. Mann filed a Petition for Reconsideration of the Forfeiture Order²⁸ in which he sought cancellation or reduction of the forfeiture. On April 30, 2008, the Bureau released the Reconsideration Order,²⁹ which affirmed the Forfeiture Order and denied Mr. Mann's Petition for Reconsideration. The Reconsideration Order also ordered Mr. Mann to file a report with the Commission confirming that he had ceased marketing the AMT3000 "Enhanced" Transmitter Kit in the United States.³⁰ On June 2, 2008, Mr. Mann filed an Application for Review of the Reconsideration Order.³¹ On June 3, 2008, Mr. Mann filed the report³² ordered by the Reconsideration Order, stating that he had "ceased offering the AMT3000 transmitter in any form."³³ On December 21, 2011, the Bureau and Mr. Mann entered into a tolling agreement to toll the applicable statute of limitations.³⁴

III. TERMS OF AGREEMENT

6. **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.

7. **Jurisdiction.** Mr. Mann agrees that the Bureau has jurisdiction over him and the matters contained in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

²⁴ *Id.*

²⁵ *Richard Mann d/b/a The Antique Radio Collector*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 4956 (Enf. Bur., Spectrum Enf. Div. 2007).

²⁶ Response to NAL, filed by Richard Mann d/b/a The Antique Radio Collector (Apr. 13, 2007) (NAL Response).

²⁷ *Richard Mann d/b/a The Antique Radio Collector*, Forfeiture Order, 22 FCC Rcd 20516 (Enf. Bur., Spectrum Enf. Div. 2007).

²⁸ *See supra* note 9.

²⁹ *Richard Mann d/b/a The Antique Radio Collector*, Memorandum Opinion and Order, 23 FCC Rcd 6920 (Enf. Bur. 2008).

³⁰ *Id.* at 6923 ¶ 10.

³¹ *See supra* note 3.

³² Report to the Commission as Directed in "Memorandum Opinion and Order" and Request for Reconsideration of the NAL, filed by Richard Mann d/b/a The Antique Radio Collector (May 20, 2008).

³³ *Id.* at 1.

³⁴ Tolling Agreement, EB-06-SE-388, by and between John D. Poutasse, Acting Chief, Spectrum Enforcement Bureau, Enforcement Bureau, Federal Communications Commission, and Richard Mann d/b/a The Antique Radio Collector (Dec. 21, 2011).

8. **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 shall have the same force and effect as any other order of the Commission. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order.

9. **Settlement of Enforcement Proceeding.** In express reliance on the covenants and representations in this Consent Decree, 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, Mr. Mann 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 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 Mr. Mann 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 Mr. Mann with respect to Mr. Mann's basic qualifications, including his character qualifications, to be a Commission licensee or hold Commission licenses or authorizations.

10. **Marketing Notification and Compliance Plan.** By executing this Consent Decree, Mr. Mann acknowledges that the marketing³⁵ of radio frequency devices³⁶ assembled from kits, as defined in section 15.3(p) of the Rules,³⁷ without prior authorization is prohibited by the Equipment Marketing Rules, and represents and warrants that he is not now marketing in the United States any radio frequency devices, including radio frequency devices assembled from kits, that are subject to the Equipment Marketing Rules. Mr. Mann further agrees not to commence the marketing of any such devices without first providing written notice to the Bureau at least six (6) months prior to the date such marketing commences so as to permit the Bureau and Mr. Mann to negotiate, and Mr. Mann to implement, a Compliance Plan designed to ensure Mr. Mann's future compliance with the Communications Laws. In the event Mr. Mann notifies the Bureau of his intention to commence marketing in the United States any radio frequency devices, including radio frequency devices assembled from kits, that are subject to the Equipment Marketing Rules, Mr. Mann further agrees to develop and implement a Compliance Plan, mutually agreed upon by the Bureau and Mr. Mann, that is designed to ensure Mr. Mann's future compliance with the Equipment Marketing Rules. The Compliance Plan shall be memorialized in an amendment to this Consent Decree and shall be in effect for a period of not more than twenty-four (24) months. Mr. Mann further agrees that he shall not commence marketing in the United States any radio frequency devices, including radio frequency devices assembled from kits, that are subject to the Equipment Marketing Rules unless and until the Compliance Plan has been implemented. Any such written notice shall be submitted to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, S.W., Room 3-C366, Washington, D.C. 20554, with a copy submitted electronically to Nissa Laughner at Nissa.Laughner@fcc.gov and to Ricardo Durham at Ricardo.Durham@fcc.gov. Unless stated otherwise, Mr. Mann's obligations under this paragraph 10 shall expire twenty-four (24) months after the Effective Date.

11. **Voluntary Contribution.** Mr. Mann agrees to make a voluntary contribution to the United States Treasury in the amount of one hundred thirty dollars (\$130), which is reduced from the

³⁵ See *supra* note 6.

³⁶ See *supra* note 7.

³⁷ See *supra* note 14.

amount assessed in the Forfeiture Order based on Mr. Mann's demonstrated inability to pay.³⁸ The payment must be made within thirty (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 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). Mr. Mann must also send electronic notification to Nissa Laughner at Nissa.Laughner@fcc.gov, Ricardo Durham at Ricardo.Durham@fcc.gov and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made.

12. **Waivers.** Mr. Mann waives any and all rights he 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. Mr. Mann 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 Mr. Mann nor the Commission shall contest the validity of the Consent Decree or of the Adopting Order, and Mr. Mann shall waive any statutory right to a trial *de novo*. Mr. Mann hereby agrees to waive any claims he 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.

13. **Withdrawal of Pending Application for Review.** Mr. Mann agrees that he will file with the Commission a motion to withdraw his Application for Review within five (5) calendar days after the Effective Date. The Bureau agrees that within thirty (30) calendar days after the Effective Date, the Bureau will issue an Order granting Mr. Mann's motion to withdraw the Application for Review.

14. **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.

15. **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 Mr. Mann does not expressly consent), that provision will be superseded by such rule or Commission order.

16. **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.

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

18. **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.

³⁸ See *supra* note 23.

19. **Authorized Representatives.** Mr. Mann represents and warrants that he is authorized to execute this Consent Decree on behalf of himself and The Antique Radio Collector. The FCC signatory represents that he is signing this Consent Decree in his official capacity and that he is authorized to execute this Consent Decree.

20. **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.

John D. Poutasse
Chief
Spectrum Enforcement Division
Enforcement Bureau

Date

Richard Mann
d/b/a The Antique Radio Collector

Date