

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

In the Matter of)	
)	
The Enterprise Group, Inc.)	File No.: EB-FIELDSCR-13-00008481
d/b/a ePowerAmps;)	Citation No.: C201332560001
www.epoweramps.com,)	
)	
Omaha, Nebraska)	
)	

CITATION AND ORDER

Illegal Marketing of Unauthorized Radio Frequency Devices

Adopted: June 6, 2013

Released: June 6, 2013

By the District Director, Kansas City Office, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. This is an official **CITATION AND ORDER** (Citation) issued pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Communications Act or Act),¹ to The Enterprise Group, Inc. d/b/a ePowerAmps (ePowerAmps). Specifically, ePowerAmps is being cited for marketing² to consumers in the United States and its territories (United States) through its online website, www.ePowerAmps.com, unauthorized radio frequency devices in violation of Section 302(b) of the Act,³ and Sections 2.803, 2.815(b), and 15.201(b) of the Commission’s rules (Rules).⁴

2. Notice of Duty to Comply With Laws: ePowerAmps should immediately remove all unauthorized radio frequency devices, specifically modified Citizens Band (CB) radios and non-certified radio frequency (RF) amplifiers for use in the 10-12 meter bands, from display (including online display); cease marketing (including the advertisement and/or sale of) such devices in the United States; and take steps to avoid any recurrence of the misconduct described herein. ePowerAmps is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of Section 302(b) of the Act or Sections 2.803, 2.815(b), and 15.201(b) of the Rules, it may be subject to civil and criminal penalties, including but not limited to substantial monetary fines (forfeitures) and seizure of equipment. Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.⁵

¹ 47 U.S.C. § 503(b)(5).

² The term “marketing,” as applied in this case, is defined in paragraph 9, *infra*.

³ 47 U.S.C. § 302a(b).

⁴ 47 C.F.R. §§ 2.803, 2.815(b), 15.201(b).

⁵ See 47 U.S.C § 503(b)(5). See also S. Rep. No. 95-580, 95th Cong., 1st Sess. at 9 (1977) (If a person or entity that has been issued a citation by the Commission thereafter engages in the conduct for which the citation of violation

(continued....)

3. **Your Response Required:** Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,⁶ we also direct ePowerAmps to confirm in writing, within thirty (30) calendar days after the release date of this Citation, and signed under penalty of perjury, that it has ceased marketing unauthorized radio frequency devices on its online website, www.ePowerAmps.com.

II. BACKGROUND

4. ePowerAmps is an online retailer of CB and Amateur radios, linear amplifiers, and radio accessories, which specializes in the “customization of radios.”⁷ On April 8, 11, and 26, 2013, in response to a complaint that unauthorized devices were being sold on the website, an agent with the Enforcement Bureau’s Kansas City Office (Kansas City Office) visited the online store of ePowerAmps, www.ePowerAmps.com, and observed illegally modified CB radios being offered for sale in the United States.⁸ Specifically, the agent observed ePowerAmps market “custom” options or upgrades for 35 different makes and models of certified CB radios. The standard “Peak-N-Power Tune” option increases the “transmit and overall performance” for a given CB radio beyond authorized levels and costs \$30, while the upgraded “Peak-N-Power Tune” option with a replacement transistor component costs \$50.⁹ ePowerAmps also offers an option to replace a CB radio’s original amplifier with a higher powered replacement amplifier for \$99.95 or more, depending on the model of the replacement amplifier.¹⁰ The “Channel Expansion” option, priced at \$50 per radio, expands the authorized frequency range of a given CB radio to include the “26 MHz range and the upper 27 MHz range.”¹¹ Some CB radio models have an additional upgraded option of installing an 80-channel expansion board for \$80.¹²

5. In addition to the modified CB radios, on April 8, 11, and 26, 2013, an agent from the Kansas City Office observed over 50 makes and models of non-certified RF power amplifiers for use on “10-12 meters,”¹³ also known as linears, being offered for sale on the ePowerAmps webpage.¹⁴ These linears varied in size between 120 Watts and 8200 Watts and ranged in price between \$139.95 and \$2,599.99, depending on the make and model chosen.¹⁵ None of the 50 linears offered for sale have FCC Identification numbers to confirm that the model has been granted an FCC certification.

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was sent, the subsequent notice of apparent liability “*would attach not only for the conduct occurring subsequently but also for the conduct for which the citation was originally sent.*” (emphasis added).

⁶ 47 U.S.C. §§ 154(i), 154(j), 403.

⁷ See http://www.epoweramps.com/psc/about_us (last visited May 9, 2013).

⁸ When an item is placed in the shopping cart, to receive an estimate on shipping charges, the default entry for choice of country is the United States. See https://epoweramps.com/psc/index.php?p=shipping_quote (last visited May 9, 2013).

⁹ See, e.g., http://epoweramps.com/psc/cb_radios/cobra_25_nw_cb_radio/ (last visited June 5, 2013).

¹⁰ See http://epoweramps.com/psc/options_upgrades/ (last visited June 5, 2013).

¹¹ *Id.*

¹² See, e.g., http://epoweramps.com/psc/cb_radios/cobra_25_nw_cb_radio/ (last visited June 5, 2013).

¹³ The 12 meter band is 24.89-24.99 MHz and the 10 meter band is 28.0-29.7 MHz. See 47 C.F.R. § 97.301.

¹⁴ See http://epoweramps.com/psc/linear_amplifiers/ (last visited June 5, 2013).

¹⁵ Examples of the non-certified RF amplifiers include Midnight Special MS500, TNT T100, and xForce x-40.

6. The agent from the Kansas City Office also observed on April 11 and 26, 2013, that ePowerAmps listed links on their Facebook page to many of the same customizations and linears advertised on their website.¹⁶

III. APPLICABLE LAW AND VIOLATIONS

7. Federal law requires that radio frequency devices must be certified in accordance with the Commission's technical standards before they can be marketed in the United States.¹⁷ 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."¹⁸

8. The applicable implementing regulations for Section 302(b) are set forth in Sections 2.803, 15.201, and 15.3(o) of the Rules.¹⁹ Specifically, Section 2.803(a) of the Rules provides, in relevant part, that:

no 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 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.²⁰

Additionally, Section 2.803(g) of the Rules provides in relevant part that:

[R]adio frequency devices that could not be authorized or legally operated under the current rules . . . shall not be operated, advertised, displayed, offered for sale or lease, sold or leased, or otherwise marketed absent a license issued under part 5 of this chapter or a special temporary authorization issued by the Commission.²¹

9. Pursuant to Section 15.201(b) of the Rules,²² intentional radiators²³ (like CB transmitters) cannot be marketed in the United States or its territories unless they have first been authorized in accordance with the Commission's certification procedures. 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."²⁴ In addition, Section 95.409(b) of the Rules states: "You must not make, or have made, any internal

¹⁶ See www.facebook.com/ePowerCommunications.

¹⁷ See, e.g., *Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices*, Report and Order, 12 FCC Rcd 4533 (1997).

¹⁸ 47 U.S.C. § 302a(b).

¹⁹ 47 C.F.R. §§ 2.803, 15.201, 15.3(o).

²⁰ 47 C.F.R. § 2.803(a)(1).

²¹ 47 C.F.R. § 2.803(g).

²² 47 C.F.R. § 15.201(b).

²³ An "intentional radiator" is a "device that intentionally generates and emits radio frequency energy by radiation or induction." 47 C.F.R. § 15.3(o).

²⁴ 47 C.F.R. § 2.803(e)(4).

modification to a certificated CB transmitter. . . . Any internal modification to a certificated CB transmitter cancels the certification²⁵

10. Pursuant to Section 2.815(b) of the Rules, external radio frequency power amplifiers capable of operation on frequencies below 144 MHz may not be offered for sale unless they have first been authorized in accordance with the Commission's certification procedures.²⁶

11. The record in this case shows that, on April 8, 11, and 26, 2013, ePowerAmps offered for sale on the Internet, to customers in the United States, internal modifications or customizations to add more power and/or frequencies to many makes and models of certificated CB transmitters, which would void the CB transmitters' certifications. Accordingly, ePowerAmps offered for sale many non-certificated radio frequency devices (i.e., CB transmitters). In addition, on April 8, 11, and 26, 2013, ePowerAmps offered for sale on the Internet several makes and models of external RF power amplifiers that operate on frequencies in the "10-12 Meter" bands, 28.0-29.7 MHz and 24.89-24.99 MHz, respectively, and that have not been FCC certified. Based on the foregoing evidence, we find that ePowerAmps violated Section 302(b) of the Communications Act and Sections 2.803, 2.815(b), and 15.201(b) of the Rules by marketing and offering for sale in the United States unauthorized radio frequency devices that do not have valid FCC certifications.²⁷

IV. REQUEST FOR INFORMATION

12. Pursuant to Sections 4(i), 4(j), and 403 of the Communications Act,²⁸ ePowerAmps is directed to confirm in writing that it has ceased marketing unauthorized radio frequency devices on its online website (which may include the actions taken to remove these devices from its webpages to ensure that it does not market the unlawful devices in the United States) and provide the information requested in the non-public Appendix A within thirty (30) calendar days after the release date of this Citation. The request for information concerns ePowerAmps' external RF power amplifier suppliers and sales, as well as the disposition of its illegal inventory. A failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject ePowerAmps to additional sanctions.²⁹

V. RESPONDING TO THIS CITATION

13. In addition to the required written information described in paragraphs 3 and 12, above, ePowerAmps may, if it so chooses, respond to this Citation—challenging the factual and legal findings

²⁵ 47 C.F.R. § 95.409(b).

²⁶ 47 C.F.R. § 2.815(b).

²⁷ 47 U.S.C. § 302a(b); 47 C.F.R. §§ 2.803, 2.814(b), 15.201(b).

²⁸ 47 U.S.C. §§ 154(i), 154(j), 403.

²⁹ See, e.g., *SBC Communications, Inc., Apparent Liability for Forfeiture*, Forfeiture Order, 17 FCC Rcd 7589, 7599–7600, ¶¶ 23–28 (2002) (imposing \$100,000 forfeiture for egregious and intentional misconduct, i.e., refusing to attest to truthfulness and accuracy of responses to a Letter Inquiry (LOI)); *Connect Paging, Inc. d/b/a Get A Phone*, Forfeiture Order, 22 FCC Rcd 15146 (Enf. Bur. 2007) (imposing \$4,000 forfeiture for failure to respond to an LOI); *BigZoo.Com Corporation*, Order of Forfeiture, 20 FCC Rcd 3954 (Enf. Bur. 2005) (imposing \$20,000 forfeiture for failure to respond to a USF LOI); *Donald W. Kaminski, Jr.*, Forfeiture Order, 18 FCC Rcd 26065 (Enf. Bur. 2003) (imposing \$4,000 forfeiture for failure to respond to an LOI). See also *World Communications Satellite Systems, Inc.*, Notice of Apparent Liability for Forfeiture, 18 FCC Rcd 18545 (Enf. Bur. 2003) (proposing \$10,000 forfeiture for a non-responsive reply to an LOI); *Digital Antenna, Inc., Sunrise, Florida*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 7600 (Enf. Bur. 2007) (proposing \$11,000 forfeiture for failure to provide complete responses to an LOI).

herein—within thirty (30) calendar days from the release date of this Citation either through (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to your place of business.

14. If you would like to arrange a teleconference or personal interview, please contact Ronald D. Ramage at (816) 246-3303. The nearest Commission Field Office is located in Lee's Summit, Missouri. Such teleconference or interview must take place within thirty (30) calendar days of the date of this Citation. If you would like to submit a written response, including any supporting documentation, you must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in paragraph 15, below.

15. All written communications, including the information requested in paragraphs 3 and 12, above, should be provided to the address below.

Ronald Ramage
Federal Communications Commission
Kansas City Office
520 Colbern Rd.
Lee's Summit, MO 64086
Re: **EB-FIELDSCR-13-00008481**

16. Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, and include as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five (5) business days advance notice; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to fcc504@fcc.gov or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:
202-418-0530 (voice), 202-418-0432 (tty);

For accessible format materials (braille, large print, electronic files, and audio format):
202-418-0531 (voice), 202-418-7365 (tty).

17. Please be advised that it is a violation of Section 1.17 of the Commission's rules (47 C.F.R. § 1.17) for any person or a staff member of that person to make any false or misleading written or oral statement of fact. Specifically, no person shall:

(1) In any written or oral statement of fact, intentionally provide material factual information that is incorrect or intentionally omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading; and

(2) In any written statement of fact, provide material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading.³⁰

³⁰ 47 C.F.R. § 1.17.

18. Further, 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 under 18 U.S.C. § 1001.

19. If you violate Section 1.17 of the Commission's rules or the criminal statute referenced above, you may be subject to further legal action, including monetary fines pursuant to Section 503 of the Communications Act.³¹

20. Under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(3), 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.

VI. FUTURE VIOLATIONS

21. If, after receipt of this Citation, ePowerAmps again violates Section 302(b) of the Act or Sections 2.803, 2.815(b), and 15.201(b) of the Rules by engaging in conduct of the type described herein, the Commission may impose monetary forfeitures not to exceed \$16,000 for each such violation or each day of a continuing violation, and up to \$112,500 for any single act or failure to act.³² For instance, the Commission could impose separate forfeitures for each modified CB radio or non-certified RF amplifier for use in the 10-12 meter bands sold or for each day on which such a device is advertised or otherwise offered for sale. Further, as discussed above, such forfeitures may be based on both the conduct that led to the Citation and the conduct following it.³³ In addition, violations of the Communications Act or the Rules also can result in seizure of equipment through *in rem* forfeiture actions,³⁴ as well as criminal sanctions, including imprisonment.³⁵

VI. ORDERING CLAUSES

22. **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Communications Act, The Enterprise Group, Inc. d/b/a ePowerAmps must provide the written information requested in paragraphs 3 and 12, above, and in the non-public Appendix. The response to the request for information must be provided in writing, signed under penalty of perjury by an authorized official at The Enterprise Group, Inc. d/b/a ePowerAmps with personal knowledge of the information and representations provided in the written response, and must be received by the FCC within thirty (30) calendar days after the release date of this Citation and Order.

³¹ 47 U.S.C. § 503.

³² See 47 U.S.C. §§ 401, 501, 503; 47 C.F.R. § 1.80(b)(7). This amount is subject to further adjustment for inflation (see 47 C.F.R. § 1.80(b)(9)), and the forfeiture amount applicable to any violation will be determined based on the statutory amount designated at the time of the violation.

³³ See paragraph 2, *supra*.

³⁴ See 47 U.S.C. § 510.

³⁵ See 47 U.S.C. §§ 401, 501.

23. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to The Enterprise Group, Inc. d/b/a ePowerAmps at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ronald D. Ramage
District Director
South Central Region
Enforcement Bureau