

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

In the Matter of)	
)	
Fabrice Polynice)	File No.: EB-FIELDSCR-12-00004798
)	NAL/Acct. No.: 201332600001
North Miami, Florida)	FRN: 0022240279
)	

FORFEITURE ORDER

Adopted: April 4, 2013

Released: April 4, 2013

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (Order), we issue a monetary forfeiture in the amount of twenty-five thousand dollars (\$25,000) to Fabrice Polynice for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (Act).¹ The noted violations involved Mr. Polynice's operation of an unlicensed radio station on the frequency 90.1 MHz in North Miami, Florida.

II. BACKGROUND

2. On December 5, 2012, the Enforcement Bureau's Miami Office (Miami Office) issued a Notice of Apparent Liability for Forfeiture (NAL) in the amount of \$25,000 to Mr. Polynice for violating Section 301 of the Act.² As reflected in the NAL, on six different days during March to July 2012, agents from the Miami Office determined that an unlicensed radio station was operating on the frequency 90.1 MHz from three different locations in North Miami, Florida. Among other things, the agents heard a DJ identify himself as "DJ Paz"; refer to the station as "Touche Douce" (a name associated with Mr. Polynice's business) on the air; and announce Mr. Polynice's personal telephone number as the station's telephone number. In all, the Bureau found that the record evidence established that Mr. Polynice was DJ "Paz" and that it was Mr. Polynice who operated the unlicensed radio station. In response to the NAL, Mr. Polynice denies that he operated an unlicensed station and, therefore, requests cancellation of the forfeiture.³ While Mr. Polynice admits that he developed the brand name "Touche Douce" and is "DJ Paz," he states that his brand is "widely known, copied, imitated, and infringed upon."⁴ He claims that, as such, someone else may have used his name or rebroadcast one of his Internet shows without his permission.⁵ He also reiterates that

¹ 47 U.S.C. § 301.

² *Fabrice Polynice*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 15079 (Enf. Bur. 2012) (NAL). A comprehensive recitation of the facts and history of this case can be found in the NAL and is incorporated herein by reference.

³ See Letter from Ovide Val, Attorney for Fabrice Polynice, to Miami Office, South Central Region, Enforcement Bureau, at 1 (Jan. 4, 2013) (on file in EB-FIELDSCR-12-00004798) (NAL Response).

⁴ *Id.*

⁵ *Id.*

he is a DJ; and that he operates a legitimate internet radio station, but not an illegal unlicensed broadcast radio station.⁶

III. DISCUSSION

3. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Commission's rules (Rules),⁸ and the *Forfeiture Policy Statement*.⁹ In examining Mr. Polynice's response, Section 503(b)(2)(E) of the Act requires that the Commission take into account the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁰

4. We affirm the *NAL*'s finding that Mr. Polynice violated Section 301 of the Act by operating an unlicensed radio station on the frequency 90.1 MHz on six different days during March to July 2012 from three different locations in North Miami.¹¹ Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States, except under and in accordance with the Act and with a license granted under the provisions of the Act.¹² While Mr. Polynice admits that he is DJ Paz and that he created the brand "Touche Douce," he alleges that "after he discontinued operating the underground station, other individuals . . . have begun operating on the same dial (radio frequency) using that name but with different shows," and that they may have rebroadcast his DJ Paz show from the Internet without permission.¹³ Mr. Polynice, however, did not submit any evidence to support his allegations. We find that the available record evidence instead supports our conclusion that Mr. Polynice did, in fact, operate an unlicensed broadcast radio station on 90.1 FM. In this regard, Mr. Polynice has acknowledged the unlicensed radio station on 90.1 FM on his webpages. There are multiple webpages that contain posts from DJ Paz that he is "live on the air" on station 90.1 FM, and the posts also reference Mr. Polynice's personal phone number.¹⁴ If Mr. Polynice only operated an Internet radio station, it is unlikely that he would encourage listeners of his Internet program to tune in "live" to an unlicensed radio station on 90.1 FM operated (supposedly) by others; nor would the Internet site he controls mention the unlicensed FM station. Given the foregoing, we find Mr. Polynice's claim that someone else operated the unlicensed broadcast radio station unconvincing and, therefore, deny his request for forfeiture

⁶ *Id.* at 2.

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recons. denied*, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ *See NAL*, *supra* note 2.

¹² 47 U.S.C. § 301.

¹³ *NAL Response* at 1.

¹⁴ *See, e.g.*, Facebook page at www.facebook.com/RadioToucheDouce (last visited Oct. 12, 2012) ("Touche Douce does it all. Our radio station and wireless store is located at [address redacted], Miami, FL 33161 . . . Make sure listen to the radio show on 90.1 . . . DJ Paz Official Birthday Bash . . . [phone number redacted]."); Myspace page at www.myspace.com/radiotouchedouce (last visited Oct. 12, 2012) ("Touche Douce 90.1 FM . . . For more information call [phone number redacted] . . ."); Twitter page at <http://twitter.com/#!/touchedouce/> (last visited Oct. 12, 2012) ("tweet" from "touchedouce" states "Dj Paz live on Toucedouce 901fm"). Recent posts also indicate that Mr. Polynice a/k/a DJ Paz is still broadcasting on 90.1 FM. *See* Facebook page "Touchedouce Paz" at <https://www.facebook.com/paz.touchedouce?fref=ts> (last visited Feb. 21, 2013) ("Ur director DJ Paz is Live on the Air" . . . "Tune in 901FM [phone number redacted]").

cancellation.¹⁵ We conclude that Mr. Polynice willfully and repeatedly violated Section 301 of the Act by operating radio transmission equipment without the required Commission authorization, and that the \$25,000 forfeiture is warranted.¹⁶

IV. ORDERING CLAUSES

5. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.204, 0.311, 0.314, and 1.80(f)(4) of the Commission's rules, Fabrice Polynice **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty-five thousand dollars (\$25,000) for violations of Section 301 of the Act.¹⁷

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Forfeiture Order.¹⁸ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁹ Fabrice Polynice shall send electronic notification of payment to SCR-Response@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ 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). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

7. Any request for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-

¹⁵ A review of the Commission's records also confirms that no license or authorization was issued to anyone to operate a radio station on 90.1 MHz at any of the three locations in North Miami.

¹⁶ We note that Mr. Polynice, in his response to the *NAL*, did not allege an inability to pay a \$25,000 forfeiture.

¹⁷ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80(f)(4).

¹⁸ 47 C.F.R. § 1.80.

¹⁹ 47 U.S.C. § 504(a).

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

A625, Washington, D.C. 20554.²¹ If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

8. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by both First Class Mail and Certified Mail, Return Receipt Requested, to Fabrice Polynice at his address of record and to his counsel, Ovide Val, at 1031 Ives Dairy Rd, Suite 228, Aventura, FL 33179.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau

²¹ See 47 C.F.R. § 1.1914.