

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)	File No.: EB-SED-13-00009439 ¹
)	
Peavey Electronics Corporation)	Acct. No.: 201432100010
)	
)	FRN: 0001739556
)	

ORDER

Adopted: April 15, 2014

Released: April 15, 2014

By the Deputy Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission (Commission) has settled its investigation into alleged violations by Peavey Electronics Corporation (Peavey) related to the marketing of digital frequency devices, such as amplifiers, preamplifiers, and mixers. The investigation centered on Peavey’s obligations under the FCC’s rules that require that marketed audio equipment complies with specific technical standards, as well as labeling and disclosure obligations. In response to the Commission’s investigation, Peavey acknowledged that it had not labeled or provided disclosures for a number of devices it marketed. The company agreed to implement a three-year plan to ensure future compliance and pay a voluntary contribution of \$225,000.

2. In this Order, we adopt the attached Consent Decree entered into between the Bureau and Peavey. The Consent Decree resolves and terminates the Bureau’s investigation into Peavey’s compliance with Section 302(b) of the Communications Act of 1934, as amended,² and Sections 2.803, 15.19, and 15.105 of the Commission’s rules (Rules)³ pertaining to the marketing of digital radio frequency devices, such as amplifiers, preamplifiers, and mixers.

3. The Bureau and Peavey have negotiated the Consent Decree that resolves this matter. A copy of the Consent Decree is attached hereto and incorporated herein by reference.

4. 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 terminating the investigation.

5. 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 Peavey possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ The investigation initiated under File No. EB-10-SE-028 was subsequently assigned File No. EB-SED-13-00009439. Any future correspondence with the FCC concerning this matter should reference the new case number, File No. EB-SED-13-00009439.

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. §§ 2.803, 15.19, 15.105.

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,⁴ and Sections 0.111 and 0.311 of the Rules,⁵ the Consent Decree attached to this Order **IS ADOPTED**.

7. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED**.

8. **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 Courtland Grey, COO, Peavey Electronics Corporation, 5022 Hartley Peavey Drive, Meridian, MS 39305.

FEDERAL COMMUNICATIONS COMMISSION

David Kolker
Deputy Chief, Enforcement Bureau

⁴ 47 U.S.C. §§ 154(i), 154(j), 503(b).

⁵ 47 C.F.R. §§ 0.111, 0.311.

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CONSENT DECREE

The Enforcement Bureau of the Federal Communications Commission and Peavey Electronics Corporation, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into possible violations of Section 302(b) of the Communications Act of 1934, as amended,² and Sections 2.803, 15.19, and 15.105 of the Commission's rules³ pertaining to the marketing of digital radio frequency devices, such as amplifiers, preamplifiers, and mixers.

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 Peavey is subject by virtue of its business activities, including but not limited to, the Equipment Marketing Rules.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 10.

¹ The investigation initiated under File No. EB-10-SE-028 was subsequently assigned File No. EB-SED-13-00009439. Any future correspondence with the FCC concerning this matter should reference the new case number, File No. EB-SED-13-00009439.

² 47 U.S.C. § 302a(b).

³ 47 C.F.R. §§ 2.803, 15.19, 15.105.

- (g) “Covered Employees” means all employees and agents of Peavey who perform, or supervise, oversee, or manage the performance of, duties that relate to Peavey’s responsibilities under the Equipment Marketing Rules.
- (h) “Digital Device” means an unintentional radiator (device or system) as defined in Section 15.3(k) of the Rules.⁴
- (i) “Effective Date” means the date on which the Bureau releases the Adopting Order.
- (j) “Equipment Marketing Rules” means Section 302(b) of the Act;⁵ Sections 2.803, 15.19, and 15.105 of the Rules;⁶ and other Communications Laws governing the marketing of radio frequency devices within the United States and its territories.
- (k) “Investigation” means the investigation commenced by the Bureau’s July 6, 2011 letter of inquiry⁷ regarding whether the marketing of certain Digital Devices by Peavey complies with the Equipment Marketing Rules.
- (l) “Peavey” means Peavey Electronics Corporation and its predecessors-in-interest and successors-in-interest.
- (m) “Operating Procedures” means the standard, internal operating procedures and compliance policies established by Peavey to implement the Compliance Plan.
- (n) “Parties” means Peavey and the Bureau, each of which is a “Party.”
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

2. Pursuant to Section 302(b) of the Act⁸ and Sections 2.803, 15.19, and 15.105 of the Rules,⁹ certain Digital Devices may not be marketed 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. Section 2.803(a) 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.”¹⁰

3. Peavey manufactures and markets Digital Devices, including professional audio and live sound products, such as amplifiers, compressors, equalizers, and mixers. These Digital Devices are

⁴ *Id.* § 15.3(k).

⁵ 47 U.S.C. § 302a(b).

⁶ 47 C.F.R. §§ 2.803, 15.19, 15.105.

⁷ *See* Letter from John D. Poutasse, Acting Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Courtland Grey, Chief Operating Officer, Peavey Electronics Corporation (July 6, 2011) (on file in EB-SED-13-00009439).

⁸ 47 U.S.C. § 302a(b).

⁹ 47 C.F.R. §§ 2.803, 15.19, 15.105.

¹⁰ *Id.* § 2.803(a).

unintentional radiators subject to authorization prior to marketing, via either the Commission's equipment verification or declaration of conformity procedures.¹¹

4. On July 6, 2011, the Bureau's Spectrum Enforcement Division (Division) issued a letter of inquiry (LOI) to Peavey, directing Peavey to submit a sworn written response to a series of questions relating to its manufacture and marketing of certain Digital Devices.¹² Peavey responded to the LOI on October 17, 2011.¹³ In its LOI Response, Peavey submitted information and documentation relating to the Digital Devices at issue.¹⁴ In addition, Peavey acknowledged that some of its Digital Devices had not been properly labeled and that certain Digital Device user manuals were missing the required consumer disclosure statements.¹⁵ On June 8, 2012, the Division issued Peavey a second letter of inquiry,¹⁶ to which Peavey responded on June 22, 2012.¹⁷ In its Second LOI Response, Peavey submitted additional information and documentation relating to the Digital Devices at issue.¹⁸ The Bureau and Peavey entered into tolling agreements to toll the statute of limitations.¹⁹

III. TERMS OF AGREEMENT

5. **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.

6. **Jurisdiction.** Peavey 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.

7. **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.

¹¹ See *id.* § 15.101.

¹² See *supra* note 7.

¹³ See Letter from Courtland Grey, Chief Operating Officer, Peavey Electronics Corporation, to John D. Poutasse, Acting Chief, Federal Communications Commission (Oct. 17, 2011) (on file in EB-SED-13-00009439) (LOI Response).

¹⁴ See *id.* at 1–11.

¹⁵ See *id.* at 4–11, Attachment 1.

¹⁶ See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Courtland Grey, Chief Operating Officer, Peavey Electronics Corporation (June 8, 2012) (on file in EB-SED-13-00009439).

¹⁷ See Letter from Courtland Grey, Chief Operating Officer, Peavey Electronics Corporation, to John D. Poutasse, Acting Chief, Federal Communications Commission (June 22, 2012) (on file in EB-SED-13-00009439) (Second LOI Response).

¹⁸ See *id.* at Attachments 1 & 2.

¹⁹ See, e.g., Tolling Agreement Extension, executed by and between John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, and Brent Davis, Esq., Bienstock & Michael, Counsel for Peavey Electronics Corporation (July 30, 2013) (on file in EB-SED-13-00009439).

8. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Peavey 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 Investigation 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 Peavey concerning the matters that were the subject of the Investigation. The Bureau also agrees that in the absence of new material evidence it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Peavey with respect to Peavey's basic qualifications, including its character qualifications, to be a Commission licensee or to hold Commission licenses or authorizations.

9. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Peavey 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 Peavey complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to 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.

10. **Compliance Plan.** For purposes of settling the matters set forth herein, Peavey agrees that it shall within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Equipment Marketing Rules, Peavey shall implement the following procedures:

- (a) **Operating Procedures on Equipment Marketing.** Within sixty (60) calendar days after the Effective Date, Peavey shall establish Operating Procedures that all Covered Employees must follow to help ensure Peavey's compliance with the Equipment Marketing Rules. Peavey's Operating Procedures shall include internal procedures and policies specifically designed to ensure that prior to the initiation of marketing (as such term is defined in Section 2.803 of the Rules²⁰), all Digital Devices and other radio frequency devices to be marketed by Peavey 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.²¹
- (b) **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, including the obligations to secure an equipment authorization from the FCC prior to marketing a Digital Device and to comply with the applicable administrative requirements relating to equipment labeling and consumer disclosure, and set forth the Operating Procedures that Covered Employees shall follow to help ensure Peavey's compliance with the Equipment

²⁰ See *supra* note 10 and accompanying text.

²¹ See 47 C.F.R. §§ 2.803, 15.19, 15.105.

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

- (c) **Compliance Training Program.** Peavey 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 Peavey's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 11 of this Consent Decree and shall be instructed on how to disclose noncompliance 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. Peavey 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.

11. **Reporting Noncompliance.** Peavey shall report any noncompliance with the Equipment Marketing Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of (i) each instance of noncompliance; (ii) the steps that Peavey has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that Peavey has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted on paper to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

12. **Compliance Reports.** Peavey shall file Compliance Reports with the Commission ninety (90) calendar 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 Peavey'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 Peavey, stating that the Compliance Officer has personal knowledge that Peavey (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 noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 11 hereof.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such 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.²²

²² See *id.* § 1.16.

- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Peavey, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully (i) each instance of noncompliance; (ii) the steps that Peavey has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Peavey has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted on paper to the Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, Room 3-C366, 445 12th Street, S.W., Washington, DC 20554, with a copy submitted electronically to Josh Zeldis at Josh.Zeldis@fcc.gov and to JoAnn Lucanik at JoAnn.Lucanik@fcc.gov.

13. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 9 through 12 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

14. **Voluntary Contribution.** Peavey agrees that it will make a voluntary contribution to the United States Treasury in the amount of two hundred twenty-five thousand dollars (\$225,000) (Voluntary Contribution); such Voluntary Contribution to be made in four equal installments of fifty-six thousand two hundred and fifty dollars (\$56,250) (each, an Installment Payment). The first Installment Payment is due within thirty (30) calendar days after the Effective Date. The second Installment Payment is due on or before July 15, 2014. The third Installment Payment is due on or before October 15, 2014. The fourth and final Installment Payment is due on or before February 13, 2015. Peavey shall make the first and all subsequent Installment Payments in United States Dollars without further demand or notice by the dates specified above. Peavey 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). Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Peavey shall also send electronic notification of each Installment Payment to Josh Zeldis at Josh.Zeldis@fcc.gov, JoAnn Lucanik at JoAnn.Lucanik@fcc.gov, and Samantha Peoples at Sam.Peoples@fcc.gov on the date said payment is made. Each Installment 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.²³ 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 that Peavey should follow based on the form of payment it selects:

- 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.

²³ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- 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.

If Peavey has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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

16. **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 interest and penalties permitted under 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 Peavey.

17. **Waivers.** Peavey 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. Peavey 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 Peavey nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Peavey shall waive any statutory right to a trial *de novo*. Peavey hereby agrees to waive any claims it may have under the Equal Access to Justice Act²⁴ relating to the matters addressed in this Consent Decree.

18. **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.

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

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

21. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further

²⁴ Equal Access to Justice Act, Pub L. No. 96-481, 94 Stat. 2325 (1980) (codified at 5 U.S.C. § 504); *see also* 47 C.F.R. §§ 1.1501-1.1530.

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.

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

23. **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.

24. **Authorized Representative.** The individual signing this Consent Decree on behalf of Peavey represents and warrants that he is authorized by Peavey to execute this Consent Decree and to bind Peavey to the obligations set forth herein. 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.

25. **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

Courtland Gray
Chief Operating Officer
Peavey Electronics Corporation

Date