

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
HobbyKing USA LLC) File No.: EB-SED-16-00020557

CITATION AND ORDER

ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES

Adopted: November 17, 2016

Released: November 17, 2016

By the Acting Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This **CITATION AND ORDER** (Citation) notifies HobbyKing USA LLC (HobbyKing) that it marketed radio frequency (RF) devices in the United States in violation of the Commission's equipment authorization and labeling requirements. The Commission's equipment authorization and labeling rules ensure that devices that emit RF comply with the Commission's technical requirements and do not interfere with authorized communications. Marketers must ensure that RF devices are properly authorized and comply with all applicable labeling and identification requirements prior to being offered for sale in the United States. We therefore direct HobbyKing to take immediate steps to comply with the Commission's equipment authorization and labeling requirements and cease any marketing of unauthorized RF devices in the United States. If HobbyKing fails to comply with these laws, it may be liable for significant fines of up to \$18,936 per day and other sanctions.

2. **Notice of Duty to Comply with the Law:** We issue this Citation pursuant to Section 503(b)(5) of the Communications Act of 1934, as amended (Act), which states that the Commission may not impose monetary forfeitures against non-regulatees who violate Commission rules or the Act unless and until: (a) the Commission issues a citation to the violator; (b) the Commission provides the violator a reasonable opportunity to respond; and (c) the violator subsequently engages in conduct described in the citation.¹ Accordingly, HobbyKing is hereby on notice that it must comply with Section 302(b) of the Act and Sections 2.803 and 2.925 of the Commission's rules (Rules).² If HobbyKing subsequently engages in any conduct of the type this Citation describes – and specifically any violation of Section 302(b) of the Act and Sections 2.803 and 2.925 of the Rules – it may be subject to civil penalties, including but not limited to, substantial monetary forfeitures and/or seizures of equipment. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.³

II. BACKGROUND

3. The Enforcement Bureau's Spectrum Enforcement Division (Division) received complaints alleging that HobbyKing marketed RF transmitters and receivers in violation of the Commission's equipment authorization and labeling requirements. Specifically, the Division received complaints regarding HobbyKing's marketing of the OrangeRX DSMX/DSM2 Compatible 2.4 GHz Transmitter Module (JR/Turnigy compatible) and the OrangeRX T-Six 2.4 GHz DSM2 Compatible 6CH

¹ See 47 U.S.C § 503(b)(5).

² 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925.

³ See 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 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).

Transmitter with 10 Model Memory and 3-Pos Switch (Mode 1) (collectively, the OrangeRX Transmitters).

4. On January 20, 2016, the Division issued a letter of inquiry (LOI) to HobbyKing directing the company to provide information and documents related to the allegations.⁴ In response, HobbyKing's owner stated that HobbyKing is a small company that purportedly would "soon be ceasing operations entirely."⁵ HobbyKing's owner subsequently told the Division that the company ceased selling the OrangeRX Transmitters and no longer stocks these devices in the United States.⁶ HobbyKing also provided requested documents regarding the OrangeRX Transmitters.

III. APPLICABLE LAW AND VIOLATIONS

5. Section 302 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 [Commission] regulations."⁷ For devices requiring Commission certification, Section 2.803(b)(1) of the Rules prohibits marketing devices unless they have been authorized in accordance with the Commission's technical standards and properly identified and labeled.⁸ Section 2.925 of the Rules sets forth the identification and labeling requirements for devices requiring Commission certification.⁹

6. After examining the documentation HobbyKing provided in response to the LOI, the Division determined that the OrangeRX Transmitters were neither properly certified nor labeled with the required FCC identifier. Accordingly, based upon the information before us, we find that HobbyKing violated Section 302(b) of the Act and Sections 2.803(b)(1) and Section 2.925 of the Rules.

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

7. HobbyKing may respond to this Citation within 30 calendar days from the release date of this Citation by any of the following methods: (1) a written statement, (2) a teleconference interview, or (3) a personal interview at the Commission Field Office nearest to HobbyKing's place of business.

8. If HobbyKing requests a teleconference or personal interview, contact Karen Mercer at (202) 418-2647. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If HobbyKing prefers to submit a written response with supporting documentation, it must send the response within 30 calendar days of the release date of this Citation to the contact and address provided in the paragraph below.

9. All written communications should be sent to the address below.

Neal McNeil, Chief Engineer
Spectrum Enforcement Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW

⁴ Letter from Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Anthony Hand, HobbyKing USA LLC (Jan. 20, 2016) (on file in EB-SED-16-00020557).

⁵ Email from Anthony Hand, HobbyKing USA LLC, to Karen Mercer, et al., Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 22, 2016, 19:34 EST) (on file in EB-SED-16-00020557).

⁶ Email from Anthony Hand, HobbyKing USA LLC, to Karen Mercer, Spectrum Enforcement Division, FCC Enforcement Bureau (March 19, 2016, 12:16 EST) (on file in EB-SED-16-00020557); Email from Anthony Hand, HobbyKing USA LLC, to Karen Mercer, Spectrum Enforcement Division, FCC Enforcement Bureau (May 16, 2016, 10:20 EST) (on file in EB-SED-16-00020557).

⁷ 47 U.S.C. § 302a(b).

⁸ 47 CFR § 2.803(b)(1).

⁹ 47 CFR § 2.925.

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10. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, HobbyKing should provide a description of the accommodation required, and include as much detail as possible, and also provide a telephone number and other contact information. HobbyKing should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. HobbyKing should 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).

11. We advise HobbyKing that it is a violation of Section 1.17 of the Rules¹⁰ for any person to make any false or misleading written or oral statement of fact to the Commission. 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.

12. 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.¹¹

13. Violations of Section 1.17 of the Rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to Section 503 of the Act.¹²

14. Finally, we warn HobbyKing that, under the Privacy Act of 1974,¹³ Commission staff will use all relevant material information before it, including information disclosed in interviews or written statements, to determine what, if any, enforcement action is required to ensure HobbyKing's compliance with the Act and Rules.

V. FUTURE VIOLATIONS

15. If, after receipt of this Citation, HobbyKing again violates Section 302(b) of the Act and/or Sections 2.803 and 2.925 of the Rules by engaging in conduct of the type described herein, the Commission may impose sanctions for each such violation. For example, the Commission may impose monetary forfeitures against HobbyKing of up to \$18,936 for each such violation or each day of a continuing violation, and up to \$142,021 for any single act or failure to act.¹⁴ The Commission may

¹⁰ 47 CFR § 1.17.

¹¹ 18 U.S.C. § 1001.

¹² 47 U.S.C. § 503.

¹³ 5 U.S.C. § 552a(e)(3).

¹⁴ See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(D) (\$10,000 per violation or per day of a continuing violation and \$75,000 per any

further adjust the forfeiture reflecting enumerated statutory factors, which include 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.¹⁵ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.¹⁶

VI. ORDERING CLAUSES

16. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 4(j) of the Act,¹⁷ HobbyKing must cease and desist from marketing RF transmitters and receivers in the United States, including the OrangeRX Transmitters, in violation of Section 302(b) of the Act and Sections 2.803 and 2.925 of the Rules.¹⁸

17. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Anthony Hand, Owner, HobbyKing USA LLC, 10011 Bridgeport Way SW, Suite 1500, Lakewood, WA 98499, and by email to [REDACTED]

FEDERAL COMMUNICATIONS COMMISSION

Aspasia A. Paroutsas
Acting Chief
Spectrum Enforcement Division
Enforcement Bureau

single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2016. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 31 FCC Rcd 6793 (EB 2016) (ordering inflation adjustments for penalties assessed after July 1, 2016). The base forfeiture for marketing unauthorized equipment is \$7,000. 47 CFR § 1.80.

¹⁵ *See* 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

¹⁶ *See supra* para. 2.

¹⁷ 47 U.S.C. §§ 154(i), 154(j).

¹⁸ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925.