

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

AFX, Inc.

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File No.: EB-SED-16-00021127
Acct. No.: 201732100004
FRN: 0026514349

ORDER

Adopted: May 23, 2017

Released: May 23, 2017

By the Acting Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether AFX, Inc. (AFX or Company) marketed radio frequency devices that were unauthorized under the Commission’s rules and caused interference with AM/FM radio reception. These regulations ensure that radio transmitters and other electronic devices meet certain standards and comply with the Commission’s technical requirements in order to prevent harmful interference from occurring once devices are marketed to the public. To settle this matter, AFX will implement a compliance plan to ensure that it adheres to the Commission’s rules and will pay a \$90,000 civil penalty.

2. 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 referenced investigation regarding AFX’s marketing of unauthorized radio frequency devices, and compliance with Section 302(b) of the Communications Act of 1934, as amended (Act),¹ and Sections 2.803(b)(2), 15.107(a), and 15.109(a) of the Commission’s rules (Rules).²

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of AFX’s basic qualifications to hold or obtain any Commission license or authorization.³

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Act⁴ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED**.

¹ 47 U.S.C. § 302a(b).

² 47 CFR §§ 2.803(b)(2), 15.107(a), 15.109(a).

³ See 47 CFR § 1.93(b).

⁴ 47 U.S.C. § 154(i).

⁵ 47 CFR §§ 0.111, 0.311.

6. **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 Tim Tevyaw, President, AFX, Inc., 2345 Ernie Krueger Circle, Waukegan, Illinois 60087, and to Stephen E. Coran, Esq., Lerman Senter, PLLC, 2001 L Street, N.W., Suite 400, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Michael S. Carowitz
Acting Chief
Enforcement Bureau

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CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and AFX, Inc. (AFX or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau’s investigation into whether AFX violated Section 302(b) of the Communications Act of 1934, as amended,¹ and Sections 2.803(b)(2), 15.107(a), and 15.109(a) of the Commission’s rules² in connection with the Company’s marketing of unauthorized radio frequency devices.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) “Act” means the Communications Act of 1934, as amended.³
 - (b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) “AFX” or “Company” means AFX, Inc. and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (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 AFX is subject by virtue of its business activities, including but not limited to the Equipment Authorization and Marketing Rules.
 - (g) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
 - (h) “Covered Employees” means all employees and agents of AFX who perform, or supervise, oversee, or manage the performance of, duties that relate to AFX’s responsibilities under the Communications Laws, including the Equipment Authorization and Marketing Rules.

¹ 47 U.S.C. § 302a(b).

² 47 CFR §§ 2.803(b)(2), 15.107(a), 15.109(a).

³ 47 U.S.C. § 151 *et seq.*

- (i) “Effective Date” means the date by which both the Bureau and AFX have signed the Consent Decree.
- (j) “Equipment Authorization and Marketing Rules” means Section 302(b) the Act;⁴ Sections 2.803, 2.925, and 15.101 of the Commission’s rules;⁵ and other provisions of the Act, the Rules, and Commission orders related to the authorization of radio frequency devices and the marketing of such devices.
- (k) “Investigation” means the investigation commenced by the Bureau’s June 29, 2016 Letter of Inquiry regarding whether the marketing of certain radio frequency devices by AFX complied with the Equipment Authorization and Marketing Rules.⁶
- (l) “Operating Procedures” means the standard internal operating procedures and compliance policies established by AFX to implement the Compliance Plan.
- (m) “Parties” means AFX and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.

II. BACKGROUND

3. Section 302 of the Act authorizes the Commission to promulgate reasonable regulations to minimize harmful interference by equipment that emits radio frequency energy.⁷ Specifically, 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.”⁸ The purpose of Section 302 of the Act is to ensure that radio transmitters and other electronic devices meet certain standards to control interference before they reach the market.

4. The Commission carries out its responsibilities under Section 302 of the Act in two ways. First, the Commission establishes technical requirements for transmitters and other equipment to minimize their potential for causing interference to authorized radio services. Second, the Commission administers an equipment authorization program to ensure that equipment reaching the market in the United States complies with the technical and administrative requirements set forth in the Commission’s rules. The equipment authorization program requires, among other things, that radio frequency devices must be tested for compliance with the applicable technical requirements in accordance with one of three authorization procedures—i.e., certification, Declaration of Conformity, or verification—prior to marketing.⁹ In that regard, Section 2.803(b) of the Rules prohibits the marketing of radio frequency devices unless the device has first been properly authorized, identified, and labeled in accordance with the Rules, with limited exceptions.¹⁰

⁴ 47 U.S.C. § 302a(b).

⁵ 47 CFR §§ 2.803, 2.925, 15.101.

⁶ See Letter from Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Tim Tevyaw, President, AFX, Inc. (June 29, 2016) (on file in EB-SED-16-00021127).

⁷ 47 U.S.C. § 302a.

⁸ *Id.* § 302a(b).

⁹ “Marketing” includes 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 CFR § 2.803(a).

¹⁰ See *id.* § 2.803(b), (c).

5. AFX is a privately-held company that manufactures and distributes lighting fixtures that are used in residential and commercial properties. AFX's "NLL Series" under-cabinet LED light fixtures were reportedly causing interference to AM/FM radio transmissions. Subsequently, on June 29, 2016, the Bureau's Spectrum Enforcement Division issued a Letter of Inquiry (LOI) to AFX, directing it to submit a sworn written response to a series of questions relating to AFX's marketing of its LED lighting fixtures in the United States.¹¹ Under the Commission's rules, these light fixtures are considered unintentional radiators and must comply with the Commission's equipment authorization procedures and the relevant technical rules.¹² During the course of the investigation, the evidence revealed that prior to AFX's receipt of the LOI, the LED light fixtures were not tested and authorized under the Commission's equipment authorization rules prior to marketing.¹³ Further, AFX continued to market the light fixtures at issue for certain times during an approximately five-month period after receipt of the LOI. AFX did so to minimize financial and reputational harm to the Company.¹⁴ AFX subsequently resolved all matters relating to its apparent noncompliance with the Commission's equipment marketing rules.¹⁵

6. The Bureau and AFX negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided herein.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** AFX agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **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 Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **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, AFX agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the 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 AFX 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 the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the

¹¹ See *supra* note 6. The investigation began in response to a complaint alleging that AFX light fixtures caused interference with AM/FM radio reception at a residence.

¹² 47 CFR §§ 15.107, 15.109, 2.803.

¹³ 47 U.S.C. § 302a(b); 47 CFR § 2.803.

¹⁴ See Letter from Tim Tevyaw, President, AFX, Inc., to Aspasia Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 9, 2016) *referencing* Letter from Tim Tevyaw, President, AFX, Inc., to Bruce D. Jacobs, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Oct. 7, 2016) (on file in EB-SED-16-00021127).

¹⁵ 47 CFR § 2.803.

question of AFX's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹⁶

11. **Admission.** AFX admits for the purpose of this Consent Decree and for the Commission's civil enforcement purposes that it engaged in the actions described in paragraph 5 herein.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, AFX shall designate a corporate officer/principal with the requisite corporate and organizational authority to serve as a 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 AFX complies with the terms and conditions of the Compliance Plan and this Consent Decree.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, AFX 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 Authorization and Marketing Rules, AFX will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, AFX shall establish Operating Procedures that all Covered Employees must follow to help ensure AFX's compliance with the Equipment Authorization and Marketing Rules. AFX'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 Commission's rules¹⁷), all radio frequency devices to be marketed by AFX comply with applicable technical standards, have been properly authorized (via the certification, verification, or Declaration of Conformity procedures, as appropriate), and comply with the applicable administrative requirements relating to equipment labeling and consumer disclosures.¹⁸
- (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 Authorization and Marketing Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure AFX's compliance with those Rules.
- (c) **Compliance Training Program.** AFX shall establish and implement a Compliance Training Program to ensure compliance with the Equipment Authorization and Marketing Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of AFX's obligation to report any noncompliance with the Equipment Authorization and Marketing Rules under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer.

14. **Reporting Noncompliance.** AFX shall report any noncompliance with the Equipment Authorization and 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 an explanation of: (i) each instance of noncompliance; (ii) the steps that AFX has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the

¹⁶ See 47 CFR 1.93(b).

¹⁷ See *supra* note 9 and accompanying text.

¹⁸ See 47 CFR §§ 2.803, 2.925, 15.19, 15.105.

steps that AFX has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 4C-224, Washington, DC 20554, with copies submitted electronically to Paul Noone at Paul.Noone@fcc.gov and Leslie Barnes at Leslie.Barnes@fcc.gov.

15. **Compliance Reports.** AFX 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 AFX's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Equipment Authorization and Marketing Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of AFX, stating that the Compliance Officer has personal knowledge that AFX: (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 14 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining that his/her personal knowledge is the basis for such certification and shall 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.¹⁹
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of AFX, shall provide the Commission with an explanation of the reason(s) why and describe: (i) each instance of noncompliance; (ii) the steps that AFX 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 AFX 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 to Aspasia A. Paroutsas, Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Rm. 4C-224, Washington, DC 20554, with copies submitted electronically to Paul Noone at Paul.Noone@fcc.gov and Leslie Barnes at Leslie.Barnes@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** AFX will pay a civil penalty to the United States Treasury in the amount of ninety thousand dollars (\$90,000). Such payment shall be made in five installments (each an Installment Payment). The first Installment Payment in the amount of ten thousand dollars (\$10,000) is due on or before thirty (30) calendar days after the Effective Date. The second Installment Payment in the amount of twenty thousand dollars (\$20,000) is due on or before sixty (60) calendar days after the Effective Date. The third Installment Payment in the amount of twenty thousand dollars (\$20,000) is due on or before one hundred eighty (180) calendar days after the Effective Date. The fourth Installment

¹⁹ 47 CFR § 1.16.

Payment in the amount of twenty thousand dollars (\$20,000) is due on or before two hundred seventy (270) calendar days after the Effective Date. The fifth Installment Payment in the amount of twenty thousand dollars (\$20,000) is due on or before three hundred sixty (360) calendar days after the Effective Date. AFX acknowledges and agrees that upon execution of this Consent Decree, the civil penalty and each Installment Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).²⁰ Upon an Event of Default (as defined below), all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. AFX shall send electronic notification of payment to Paul.Noone@fcc.gov, Leslie Barnes at Leslie.Barnes@fcc.gov, and Samantha Peoples at Samantha.Peoples@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 Account Number and FRN referenced in the caption of the Adopting Order. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²¹ 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 should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the Federal Communications Commission. Such payments (along with the completed FCC 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 FCC 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 to authorize the credit card payment. The completed FCC 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.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

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

19. **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 civil penalty shall accrue interest, computed using 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 civil penalty, together with interest, any penalties permitted and/or required by law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection,

²⁰ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

²¹ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

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 AFX.

20. **Waivers.** As of the Effective Date, AFX 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. AFX 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 Consent Decree or the Adopting Order, neither AFX nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and AFX shall waive any statutory right to a trial *de novo*. AFX hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²² relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

22. **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.

23. **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 AFX does not expressly consent) that provision will be superseded by such Rule or Order.

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

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

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

27. **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.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

²² See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Michael S. Carowitz
Acting Chief
Enforcement Bureau

Date

William Solomon
CEO
AFX, Inc.

Date