

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
ABC Fulfillment Services LLC d/b/a HobbyKing) File No.: EB-SED-17-000223762
USA LLC and HobbyKing.com; and Indubitably,)
Inc. d/b/a HobbyKing Corp., HobbyKing USA)
LLC, HobbyKing, and HobbyKing.com)

CITATION AND ORDER

FAILURE TO COMPLY WITH AN FCC ORDER

Adopted: September 27, 2017

Released: September 27, 2017

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com; and Indubitably, Inc. d/b/a HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com (collectively, HobbyKing or Company) that the Company has violated federal law by failing to comply with an order to produce documents and answers to a Federal Communications Commission (Commission or FCC) Letter of Inquiry. We therefore direct HobbyKing to take immediate steps to comply by submitting all outstanding responses and responsive documents as required by the Letter of Inquiry sent to the Company on April 17, 2017 (LOI). If HobbyKing fails to comply with these laws, it may be liable for significant fines, 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 the FCC’s order to produce responses and documents as required by the terms of the Letter of Inquiry sent to the Company on April 17, 2017.2 If HobbyKing subsequently engages in any conduct of the type this Citation describes—failing to comply with FCC orders, including Letters of Inquiry—HobbyKing may be subject to civil penalties, including but not limited to, substantial monetary forfeitures or other penalties. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.3

1 See 47 U.S.C § 503(b)(5).

2 47 U.S.C. §§ 154(i), 154(j), 403; Letter from Aspa A. Paroutsas, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Mr. Anthony Hand, Owner, ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com; and HobbyKing Corp. d/b/a HobbyKing and HobbyKing.com (Apr. 17, 2017) (LOI) (on file in EB-SED-17-000223762).

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); see also Dialing Servs., LLC, Forfeiture Order, 32 FCC Rcd 6192, 6205, para. 35 (2017) (“There is no question that the Commission may take into account violations that

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3. **Notice of Duty to Provide Information:** Pursuant to Sections 4(i), 4(j), and 403 of the Act,⁴ we direct HobbyKing to respond in writing, within 30 calendar days after the release date of this Citation, to the questions and requests for documents set out in paragraph 9, below.

II. BACKGROUND

4. The Enforcement Bureau's (Bureau) Spectrum Enforcement Division (Division) is investigating the Company for potential violations of Section 302(b) of the Communications Act of 1934, as amended (Act), and Parts 2, 15, and 97 of the Commission's rules related to audio/visual transmitters for sale on HobbyKing's website that are apparently intended for use with unmanned aircraft and other devices and operate on a number of different restricted frequencies and at higher power levels than allowed (AV transmitters).⁵ On April 17, 2017, the Bureau sent a LOI by certified mail and e-mail to HobbyKing initiating its investigation.⁶ On April 18, 2017, the Division received an e-mail "read receipt" indicating that Mr. Anthony Hand of HobbyKing read the LOI e-mail.⁷ On May 16, 2017, Rachel Larson, attorney for HobbyKing, acknowledged receipt of the LOI and requested an extension of time of one week to respond to the LOI.⁸ The Division granted the extension.

5. On May 24, 2017, HobbyKing filed its purported response to the LOI (LOI Response).⁹ The next day, HobbyKing sent an additional declaration in support of its LOI Response.¹⁰ The LOI

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occurred before a citation was issued when the cited person or entity thereafter engages in the same unlawful conduct.").

⁴ 47 U.S.C. §§ 154(i), 154(j), 403.

⁵ See e.g., 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.5, 15.19, 15.21, 15.201, 15.205, 15.247, 97.215(c). Although HobbyKing identifies the AV transmitters as operating on amateur frequencies, the equipment is also apparently able to operate outside of the amateur frequencies and, in some cases, at higher power levels than allowed, making the equipment non-compliant under the Act and Commission's rules. See e.g., HobbyKing, 1.2GHz MG-500mW 8ch A/V Wireless Transmitter Module, <https://hobbyking.com/en-us/1-2ghz-mg-500mw-8ch-a-v-wireless-transmitter-module.html> (last visited September 15, 2017) (advertised as operating on 1080, 1120, 1160, 1200, 1010, and 1040 MHz); see also *New Generation Hobbies*, Citation, 26 FCC Rcd 9468, 9471 n.23 (EB SED 2011) ("while amateur radio service equipment is exempt from the FCC's equipment certification requirement, it is a violation of the Commission's regulations to market in the United States a transmitter that is designed or intended to operate on frequencies outside of the authorized amateur radio service bands if such equipment has not been issued a grant of equipment certification"); 47 CFR § 97.215. No one should purchase or use such equipment if it can operate outside of the amateur bands, and anyone using compliant amateur equipment must have an amateur license. See 97 CFR § 97.5. HobbyKing was previously issued a citation for violations of Section 302 of the Act and Sections 2.803 and 2.925 of the Commission's rules for illegally marketing two noncompliant AV Transmitters. See *HobbyKing USA LLC*, Citation and Order, 31 FCC Rcd 12581 (EB SED 2016). HobbyKing's continued marketing of noncompliant devices is subject to a monetary forfeiture. See e.g., *Presidential Who's Who, Inc.*, Forfeiture Order, 29 FCC Rcd 3451 (2014) (monetary forfeiture is appropriate after a target engages in similar violative conduct after receiving a Citation).

⁶ See *supra* note 2.

⁷ E-mail from Anthony Hand, to Linda Nagel, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (April 18, 2017, 2:06 EDT) (on file in EB-SED-17-000223762). The Division also received return receipts from the U.S. Postal Service indicating the LOI had been delivered via certified mail to HobbyKing.

⁸ E-mail from Rebecca Larson, Esq., Davies Pearson, P.C., attorney for HobbyKing, to Jason Koslofsky and Leslie Barnes, Spectrum Enforcement Division, FCC Enforcement Bureau (May 16, 2017, 20:26 EDT) (on file in EB-SED-17-000223762).

⁹ Letter and attachments from Rebecca Larson, Esq., Davies Pearson, P.C., attorney for HobbyKing, to Jason Koslofsky, Spectrum Enforcement Division, FCC Enforcement Bureau (May 24, 2017) (LOI Response) (on file in EB-SED-17-000223762).

Response, however, did not fully answer every question, including Inquiries 13, 14, and 15.¹¹ Division staff spoke with Ms. Larson on June 12, 2017, and requested a complete response to the LOI by June 23, 2017. On June 23, 2017, Ms. Larson submitted a letter to the Division that stated HobbyKing refused to provide a further response.¹² The Division e-mailed Ms. Larson on June 27, 2017, and requested a complete response by June 30, 2017,¹³ but received no further communications from Ms. Larson or HobbyKing. As of the release of this Citation, the Company has not provided all of the documents and responses required by the LOI.

III. APPLICABLE LAW AND VIOLATIONS

6. Sections 4(i), 4(j), and 403 of the Communications Act¹⁴ afford the Commission broad authority to investigate potential violations of the Act. Section 4(i) authorizes the Commission to “issue such orders, not inconsistent with this [Act], as may be necessary in the execution of its functions.”¹⁵ Section 4(j) states that “[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.”¹⁶ Section 403 grants the Commission “full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which complaint is authorized to be made, to or before the Commission by any provision of this [Act], or concerning which any question may arise under any of the provisions of this [Act], or relating to the enforcement of any of the provisions of this [Act].”¹⁷ Further, Section 403 gives “[t]he Commission ... the power to make and enforce any order or orders” relating to its inquiries into compliance with the Act.¹⁸ An LOI issued by the Bureau constitutes an order of the Commission.¹⁹ Section 503(b)(1)(B) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”²⁰

7. As described above, the Bureau issued an LOI to HobbyKing pursuant to its delegated authority. The LOI directed the Company to provide certain information and documents in connection with the Division’s investigation into the Company’s compliance with Section 302(b) of the Act, and Parts 2, 15, and 97 of the Commission’s rules.²¹ The Company has failed to produce all information and

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¹⁰ E-mail and attachment from Rebecca Larson, Esq., Davies Pearson, P.C., attorney for HobbyKing, to Jason Koslofsky, Spectrum Enforcement Division, FCC Enforcement Bureau (May 25, 2017, 12:10 EDT) (on file in EB-SED-17-000223762).

¹¹ Inquiries 13, 14, and 15 required HobbyKing to produce various spreadsheets containing information pertinent to the investigation concerning various AV transmitter models that it markets in the United States.

¹² Letter and attachments from Rebecca Larson, Esq., Davies Pearson, P.C., attorney for HobbyKing, to Jason Koslofsky, Spectrum Enforcement Division, FCC Enforcement Bureau (June 23, 2017) (on file in EB-SED-17-000223762).

¹³ E-mail from Jason Koslofsky, Spectrum Enforcement Division, FCC Enforcement Bureau, to Rebecca Larson, Esq., Davies Pearson, P.C., attorney for HobbyKing (June 27, 2017, 13:18 EDT) (on file in EB-SED-17-000223762).

¹⁴ 47 U.S.C. §§ 154(i), 154(j), 403.

¹⁵ 47 U.S.C. § 154(i).

¹⁶ 47 U.S.C. § 154(j).

¹⁷ 47 U.S.C. § 403.

¹⁸ *Id.*

¹⁹ 47 U.S.C. § 155(c)(3).

²⁰ 47 U.S.C. § 503(b)(1)(B).

²¹ *See e.g.*, 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.5, 15.19, 15.21, 15.201, 15.205, 15.247, 97.215(c).

documents required under the LOI. A party may not ignore the directives in a Commission order issued by the Bureau pursuant to delegated authority in an LOI.²² HobbyKing's violation is particularly egregious for two reasons. First, because "[m]isconduct of this type exhibits contempt for the Commission's authority and threatens to compromise the Commission's ability to adequately investigate violations of its rules."²³ Second, because of the multiple extensions of time the Division gave the Company to respond.²⁴

8. Accordingly, we find that HobbyKing has violated a Commission order by failing to provide the information and documents required by the LOI by the extended filing date of June 30, 2017.

IV. REQUEST FOR INFORMATION

9. We direct HobbyKing to respond to the following inquiries and provide the requested documents within 30 days from the release date of this Citation:

- i. Provide all information and documents requested in the Bureau's April 17, 2017 LOI that have not already been produced, including complete responses to Inquiries 13, 14, and 15.
- ii. Provide an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of the Company with personal knowledge of the representations verifying the truth and accuracy of the information therein and that all of the information and documents requested by the LOI that are in the Company's possession, custody, control or knowledge have been produced.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

10. 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 Headquarters or Field Office nearest to HobbyKing's place of business. The Commission Field Office nearest HobbyKing is located in Portland, Oregon.

11. If HobbyKing requests a teleconference or personal interview, contact Jason Koslofsky at (202) 418-0640. 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 paragraph below.

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

Jason Koslofsky, Attorney Advisor
Spectrum Enforcement Division
Federal Communications Commission
445 12th Street, SW, Rm. 4-C220
Washington, DC 20554
Re: EB-SED-17-000223762

²² See 47 U.S.C. § 503(b)(1)(B); see also *Net One Int'l, Net One, LLC, Farrahtel Int'l, LLC*, Forfeiture Order, 29 FCC Rcd. 264, 267, para. 9 (EB 2014); *Conexions, LLC d/b/a Conexion Wireless*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 15318, 15325, para. 22 (2013); *Technical Commc'n Network, LLC*, Notice of Apparent Liability for Forfeiture and Order, 28 FCC Rcd 1018, 1020, para. 8 (EB 2013) (*TCN NAL*); *SBC Commc'ns, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7600, para. 28 (2002).

²³ See *TCN NAL*, 28 FCC Rcd at 1020, para. 7 (quoting *Fox Television Stations, Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074, 7081, para. 15 (EB 2010) (*Fox Television Stations*)).

²⁴ See *supra* paras. 4-5; see also *Fox Television Stations*, 25 FCC Rcd at 7081, para. 15 ("Prompt and full responses to Bureau inquiry letters are essential to the Commission's enforcement function.").

13. 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).

14. We advise HobbyKing that it is a violation of Section 1.17 of the Rules²⁵ 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.

15. 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.²⁶

16. 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.

17. Finally, we warn HobbyKing that, under the Privacy Act of 1974,²⁷ 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.

VI. FUTURE VIOLATIONS

18. If, after receipt of this Citation, HobbyKing again violates the Act 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 of up to \$19,246 for each such violation or each day of a continuing violation, up to a statutory maximum of \$144,344 for any single continuing violation.²⁸ The Commission may 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

²⁵ 47 CFR § 1.17.

²⁶ 18 U.S.C. § 1001.

²⁷ 5 U.S.C. § 552a(e)(3).

²⁸ See 47 U.S.C. § 503; 47 CFR § 1.80(b). This amount is subject to further adjustment for inflation. See 47 CFR § 1.80(b)(9).

justice may require.²⁹ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.³⁰

VII. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Act,³¹ ABC Fulfillment Services LLC d/b/a HobbyKing USA LLC and HobbyKing.com, and Indubitably, Inc. d/b/a HobbyKing Corp., HobbyKing USA LLC, HobbyKing, and HobbyKing.com must comply with Commission orders to provide information and documents as required by the Commission's Letters of Inquiry.

20. **IT IS FURTHER ORDERED** that, pursuant to Sections 4(i), 4(j), and 403 of the Act,³² ABC Fulfillment Services LLC and Indubitably, Inc. must provide the written information requested in paragraph 9, above. ABC Fulfillment Services LLC and Indubitably, Inc. must support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of ABC Fulfillment Services LLC and Indubitably, Inc. with personal knowledge of the representations provided in the response, verifying the truth and accuracy of the information therein and that all of the information requested has been produced. All such declarations provided must comply with Section 1.16 of the Rules and be substantially in the form set forth therein.³³ The FCC must receive the response within 30 calendar days of the release date of this Citation and Order.

21. **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 Mr. Anthony Hand, Owner and Director, ABC Fulfillment Services LLC, via registered agent Davies Pearson, P.C., 920 Fawcett Ave, Tacoma, WA 98401-1657; and Mr. Anthony Hand, Owner and Director, Indubitably, Inc. via Corporation Service Company, Registered Agent, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808-1645; and Rebecca Larson, Esq., Davies Pearson, P.C., attorney for ABC Fulfillment Services LLC and Indubitably, Inc., 920 Fawcett Avenue, P.O. Box 1657, Tacoma, Washington 98401-1657.

FEDERAL COMMUNICATIONS COMMISSION

Aspasia A. Paroutsas
Chief
Spectrum Enforcement Division
Enforcement Bureau

²⁹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

³⁰ See *supra* para. 2.

³¹ 47 U.S.C. §§ 154(i), 154(j), 403.

³² 47 U.S.C. §§ 154(i), 154(j), 403.

³³ 47 CFR § 1.16.