

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of
Vista Outdoor, Inc. and its wholly owned subsidiary Bushnell Holdings, Inc.
File No.: EB-SED-20-00030435
CD Acct. No.: 202132100007
FRN: 0014792774

ORDER

Adopted: December 28, 2020

Released: December 28, 2020

By the Deputy Chief, Enforcement Bureau:

1. The Commission’s equipment authorization rules ensure that devices that emit radio frequency radiation comply with the Commission’s technical requirements and do not interfere with authorized communications. In furtherance of those objectives, the Enforcement Bureau of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Vista Outdoor, Inc. and its wholly owned subsidiary Bushnell Holdings, Inc. (collectively, Company) marketed wireless hunting decoy models under the brand Primos (a/k/a Primos Hunting) without the required equipment authorization and in noncompliance with authorized field strength emissions limits. Company admits that it marketed six models exceeding authorized emissions limits. To settle this matter, Company will implement a compliance plan and will pay a \$55,000 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 Company’s compliance with section 302 of the Communications Act of 1934, as amended (Act)1, and sections 2.803 and 15.231 of the Commission’s rules.2

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Company’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 Commission’s 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, 15.231.
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 e-mail to Dylan Ramsey, General Counsel, Vista Outdoor, Inc., and its wholly owned subsidiary Bushnell Holdings, Inc., and to Sam Cullari, Esq., Counsel for Primos, Reed Smith LLP.

FEDERAL COMMUNICATIONS COMMISSION

Christopher L. Killion
Deputy Chief
Enforcement Bureau

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CONSENT DECREE

1. The Commission’s rules require that radio frequency (RF) devices comply with equipment marketing requirements to ensure devices operate without causing harmful interference to authorized communications. In furtherance of these objectives, the Commission’s Enforcement Bureau and Vista Outdoor, Inc. and its wholly owned subsidiary Bushnell Holdings, Inc. (collectively, Company), by its authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation into whether Company violated sections 2.803 and 15.231 of the Commission’s rules in connection with six radio frequency models that exceeded field strength emissions limits. To settle this matter, Company admits liability, will implement a compliance plan to ensure future compliance, and will pay a \$55,000 civil penalty.

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.¹
 - (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) “CD Acct No.” means account number 202132100007, associated with payment obligations described in paragraph 18 of this Consent Decree.
 - (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 Company is subject by virtue of its business activities, including but not limited to the Equipment Marketing Rules.
 - (g) “Company” means Vista Outdoor, Inc. and its wholly owned subsidiary Bushnell Holdings, Inc., and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
 - (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.
 - (i) “Covered Employees” means all employees and agents of Company who perform, supervise, oversee, or manage the performance of Company’s compliance

¹ 47 U.S.C. § 151 *et seq.*

responsibilities under the Communications Laws, including the Equipment Marketing Rules.

- (j) “Effective Date” means the date by which both the Bureau and Company have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “Equipment Marketing Rules” means section 302(b) of the Act,² sections 2.803 and 15.231 of the Commission’s rules,³ 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.
- (l) “Investigation” means the investigation commenced by the Bureau in EB-SED-20-00030435 regarding whether Company violated the Equipment Marketing Rules.
- (m) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Company to implement the Compliance Plan.
- (n) “Parties” means Company 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

3. Section 302 of the Act authorizes the Commission to promulgate reasonable regulations to minimize harmful interference by equipment that emits radio frequency energy.⁴ 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.”⁵ 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 harmful interference to authorized radio services. *Second*, the Commission administers an equipment authorization program to ensure that equipment reaching the United States market 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 prior to marketing.⁶ In that regard, section 2.803(b) of the Commission’s 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.⁷

5. Company, under the brand Primos (a/k/a Primos Hunting), markets recreational hunting accessories including wireless decoys and game calls. As a result of a routine audit by a Telecommunication Certification Body (TCB), the Commission’s Office of Engineering and Technology

² 47 U.S.C. § 302a(b).

³ 47 CFR §§ 2.803, 15.231.

⁴ 47 U.S.C. § 302a.

⁵ *Id.* § 302a(b).

⁶ The term “marketing” is defined in the Rules and 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).

⁷ *See id.* §§ 2.803(b), (c).

(OET) identified a noncompliant wireless decoy model on October 4, 2019. The audit revealed that the model could exceed the radiated emissions limits set forth in section 15.231 of the Commission's rules.

6. On January 9, 2020, the Bureau's Spectrum Enforcement Division issued a Letter of Inquiry (LOI) to Company, directing it to submit a sworn written response to a series of questions relating to its marketing of the wireless decoy model and a similar model.⁸ On February 10, 2020, Company responded to the LOI.⁹ In its response, Company acknowledged that it had marketed one non-compliant model and that the model was capable of operating at unauthorized parameters as identified in a post-marketing audit test requested by a TCB laboratory. On January 16, 2020, Company issued a voluntary recall of the model and shortly thereafter recalled a similar wireless decoy model manufactured by the same company. A subsequent test report confirmed that the similar model was also capable of operating at unauthorized parameters.¹⁰ During the investigation, Company conducted an independent review of other models manufactured by the same company. On May 4, 2020, Company self-reported the noncompliance of four additional models and produced test reports confirming that the models were all capable of operating at unauthorized parameters.¹¹ Company issued a voluntary recall of the four models.¹²

7. Company and the Bureau subsequently engaged in settlement negotiations. To settle this matter, Company and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

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

9. **Jurisdiction.** Company 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.

10. **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.

11. **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, Company 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 any new proceeding on its own motion against Company concerning the matters that were the subject of the Investigation, or to set for hearing the question of Company's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.¹³

⁸ See Letter of Inquiry (LOI) from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, Enforcement Bureau to Jason Harris, Vice President (Jan. 9, 2020) (on file in EB-SED-20-00030435).

⁹ See Response to LOI, from Samuel F. Cullari, Esq., Counsel, Reed Smith LLP, to Elizabeth Y. Mumaw, Chief, FCC (Feb. 10, 2020) (on file in EB-SED-20-00030435) (Response).

¹⁰ See Supplemental Response to LOI (Mar. 17, 2020) (on file in EB-SED-20-00030435) (Supplemental Response).

¹¹ See Email from Samuel F. Cullari, Esq., Counsel, Reed Smith LLP, to Daniela A. Arregui, Attorney Advisor, FCC (May 4, 2020) (on file in EB-SED-20-00030435) (Self-Reporting Noncompliance).

¹² Primos Hunting, Recall Notice, <https://www.primos.com/primos-about-us/primos-recalls-page.html> (last visited Dec. 22, 2020).

¹³ See 47 CFR § 1.93(b).

12. **Admission of Liability.** Company admits for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 11 herein, that six of its devices were capable of exceeding applicable radiated emissions limits or the power level identified in its certification violating the Equipment Marketing Rules, as described in paragraph 6.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Company shall designate a senior corporate manager 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 Company complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Equipment Marketing Rules prior to assuming his/her duties.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, Company 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, Company will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Company shall establish Operating Procedures that all Covered Employees must follow to help ensure Company's compliance with the Equipment Marketing Rules. Company's Operating Procedures shall include internal procedures and policies specifically designed to ensure that all radio frequency devices to be marketed by Company are properly authorized and compliant with the applicable technical and administrative standards and requirements prior to the initiation of marketing and that they remain in compliance as updates to equipment are deployed. Additionally, Company will establish a procedure for retaining documentation supporting device compliance prior to the initiation of marketing.¹⁴ Company shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Equipment Marketing Rules.
- (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 and set forth the Operating Procedures that Covered Employees shall follow to help ensure Company's compliance with the Equipment Marketing Rules. Company shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Company shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Company 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 Company's obligation to report any noncompliance with the Equipment Marketing Rules under paragraph 15 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 initial Compliance Training Program shall be trained within thirty (30) calendar

¹⁴ See 47 CFR § 2.938.

days after the date such person becomes a Covered Employee. Company shall repeat 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.

15. **Reporting Noncompliance.** Company 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 Company 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 Company has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted electronically to Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, EB-SED-Response@fcc.gov, with a copy submitted electronically to Daniela.Arregui@fcc.gov.

16. **Compliance Reports.** Company 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 Company'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 Company, stating that the Compliance Officer has personal knowledge that Company: (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 15 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining 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.¹⁵
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Company, 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 Company 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 Company 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 Chief, Spectrum Enforcement Division, Enforcement Bureau, Federal Communications Commission, EB-SED-Response@fcc.gov, with a copy submitted electronically to Daniela.Arregui@fcc.gov.

17. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **Civil Penalty.** Company will pay a civil penalty to the United States Treasury in the amount of fifty-five thousand dollars (\$55,000) within thirty (30) calendar days of the Effective Date.

¹⁵ 47 CFR § 1.16.

Company acknowledges and agrees that upon execution of this Consent Decree, the Civil Penalty shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).¹⁶ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. Company shall send electronic notification of payment to Daniela Arregui at Daniela.Arregui@fcc.gov and to the Spectrum Enforcement Division’s mailbox at EB-SED-Response@fcc.gov on the date said payment is made. Payment of the Civil Penalty must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission’s Fee Filer (the Commission’s online payment system),¹⁷ or by wire transfer. The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:¹⁸

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).¹⁹ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded – and then choose the “Pay by Credit Card” option. IMPORTANT NOTE: there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu and then select the bill number associated with the CD Acct. No. – the bill number is the CD Acct. No. with the first two digits excluded (e.g., NAL 1912345678 = FCC bill Number 12345678) – and choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

19. **Event of Default.** Company agrees that an Event of Default shall occur upon the failure by Company to pay the full amount of the Civil Penalty on or before the due date specified in this Consent Decree.

20. **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%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then

¹⁶ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

¹⁷ Payments made using the Commission’s Fee Filer system do not require the submission of an FCC Form 159.

¹⁸ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

¹⁹ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

unpaid amount of the Civil Penalty, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, 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 Company.

21. **Waivers.** As of the Effective Date, Company 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. Company 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 Company nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Company shall waive any statutory right to a trial *de novo*. Company hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act²⁰ relating to the matters addressed in this Consent Decree.

22. **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.

23. **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.

24. **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 Company does not expressly consent) that provision will be superseded by such Rule or order.

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

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

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

28. **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.

29. **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.

²⁰ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

30. **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.

Christopher L. Killion
Deputy Chief
Enforcement Bureau

Date

Dylan Ramsey
General Counsel
Vista Outdoor, Inc. and its wholly owned
subsidiary Bushnell Holdings, Inc.

Date