

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of )
)
W.W. Grainger, Inc. ) File No.: EB-SED-19-00029062
d/b/a Grainger )

CITATION AND ORDER

ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES

Adopted: December 29, 2020

Released: December 29, 2020

By the Chief, Spectrum Enforcement Division:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies W.W. Grainger, Inc. d/b/a Grainger ("Grainger" or "Company") that it unlawfully marketed a radio frequency device that was capable of operating outside the scope of its equipment authorization. Specifically, Grainger marketed a device, model AP224, that operated on restricted frequencies in violation of section 302(b) of the Communications Act, as amended (Act), and sections 2.803(b) and 15.205(a) of the Commission's rules. We therefore direct Grainger to take immediate steps to comply with the Commission's equipment authorization and marketing rules and to cease marketing any unauthorized radio frequency devices in the United States. If the Company fails to comply with these laws, it may be liable for significant fines up to \$20,489 per day for each unauthorized model marketed, as well as other sanctions.

2. Notice of Duty to Comply with the Law: We issue this Citation pursuant to section 503(b)(5) of the 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. Accordingly, Grainger is hereby on notice that it must comply with section 302(b) of the Act and sections 2.803(b) and 15.205(a) of the Commission's rules. If Grainger subsequently engages in any conduct of the type this Citation describes — specifically any violation of section 302(b) of the Act and sections 2.803(b) and 15.205(a) of the Commission's rules — Grainger may be subject to civil penalties, including but not limited to, substantial

1 Restricted frequencies are frequencies in which only spurious emissions are permitted from unlicensed devices with limited exceptions detailed in section 15.205 of the Commission's rules. See 47 CFR § 15.205.

2 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 15.205(a).

3 See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7). The forfeiture amounts stated here, which became effective upon publication in the Federal Register, reflect the current annual inflation adjustments to the forfeiture amounts originally specified in section 503(b)(2) of the Act. Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 34 FCC Rcd 12824 (EB 2019) (2020 Inflation Order); FCC Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 85 Fed. Reg. 2318 (Jan. 15, 2020). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase[.]" See Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015) (2015 Inflation Adjustment Act).

4 See 47 U.S.C § 503(b)(5).

5 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 15.205(a).

monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.<sup>6</sup> Grainger should take immediate steps to ensure that all radio frequency equipment in its inventory that is marketed to U.S. consumers is authorized for sale in the United States and compliant with all applicable rules.

## II. BACKGROUND

3. To best accommodate the diversity of radio communication needs, the Commission partitions radio frequency spectrum, and creates different radio services, each with different operating parameters. The Commission also implements a certification process designed to ensure that radio frequency devices that intentionally emit radio waves meet various operating requirements, including power levels, frequency band limits, and channel bandwidth. Unlicensed radio frequency devices must operate within the technical parameters established in the Commission's rules because they can easily cause interference to federal government and licensed communications systems. For example, unlicensed radio frequency devices are restricted from operating in specific frequency bands because they could cause harmful interference to authorized services—including public safety services—in those bands.

4. Grainger is a corporation based in Illinois that markets maintenance, repair, and operating (MRO) supplies, and other related products and services as a business-to-business distributor. The Spectrum Enforcement Division (Division) received a complaint alleging that certain wireless devices were capable of transmitting in the Satellite Digital Audio Radio Service (SDARS) band, and in some cases, causing interference with services in that band. One such device mentioned in the complaint was the AP224 wireless access point marketed by Grainger.

5. In response to this complaint, the Division issued an initial letter of inquiry (LOI) to Grainger on August 9, 2019.<sup>7</sup> The LOI directed the Company to state whether the AP224 wireless access point had been properly tested and certified under the Commission's rules and whether it operated within the technical parameters of its respective certification. The LOI also inquired whether the model included the proper labels and user information disclosures. Grainger provided incomplete statements in its LOI response.<sup>8</sup> Ultimately, the Division found it necessary to issue a series of further inquiries in order to obtain information needed to resolve the investigation.<sup>9</sup> While Grainger provided information about the compliance of the AP224 in its initial response, it provided incomplete information on models capable of operating within the frequency range of 2.3-2.7 GHz.<sup>10</sup> Grainger ultimately corrected the incomplete information in subsequent responses.<sup>11</sup>

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<sup>6</sup> 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).

<sup>7</sup> Letter from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Donald G. Macpherson, Chief Executive Office, Grainger (Aug. 9, 2019) (LOI).

<sup>8</sup> See Response to Letter of Inquiry, from John E. Logan, Counsel to W.W. Grainger, Inc. d/b/a Grainger, to Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Sept. 6, 2019) (LOI Response).

<sup>9</sup> E-mail from Jane Kelly, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to John E. Logan, Counsel to W.W. Grainger, Inc. d/b/a Grainger (Oct. 21, 2019, 17:35 EDT); Letter from Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to John E. Logan, Counsel to W.W. Grainger, Inc. d/b/a Grainger (Mar. 10, 2020) (Follow-up LOI) (all on file in EB-SED-19-00029062).

<sup>10</sup> LOI Response at 4, 10-12, 26-41, Response to Questions 6-8; Supplemental Response to Letter of Inquiry, from John E. Logan, Counsel to W.W. Grainger, Inc. d/b/a Grainger, to Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Nov. 8, 2019) (Supplemental Response to Initial LOI).

<sup>11</sup> Supplemental Response to Initial LOI; Response to Follow-up Letter of Inquiry, from John E. Logan, Counsel to W.W. Grainger, Inc. d/b/a Grainger, to Elizabeth Y. Mumaw, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 19, 2020) (Follow-up Response) (all on file in EB-SED-19-00029062).

6. Grainger acknowledged that it marketed the AP224 identified in the LOI.<sup>12</sup> Specifically, it began marketing the AP224 wireless access point on October 11, 2017.<sup>13</sup> Grainger also acknowledged no sales of the model and ceased marketing the AP224 on August 19, 2019 (after receipt of the LOI).<sup>14</sup> The Company supplied a valid FCC Identifier (FCC ID) and accompanying equipment authorization documentation for the AP224, indicating that it had been certified as a Part 15 Subpart C intentional radiator.<sup>15</sup>

7. After receipt of the initial LOI, Grainger began taking steps to come into compliance with the Commission's rules. The Company ceased marketing the AP224 on August 19, 2019, and reviewed existing inventory operating within the frequency range of 2.3-2.7 GHz for compliance with the Commission's rules.<sup>16</sup>

### III. APPLICABLE LAW AND VIOLATIONS

8. The Communications Act and the Commission's rules require that most radio frequency devices be properly authorized, identified, and labeled before they can be marketed in the United States. Section 302(b) of the Act states 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."<sup>17</sup> Section 2.803(b) of the Commission's rules provides that:

No person may market a radio frequency device unless . . . [f]or devices subject to authorization under certification, the device has been authorized in accordance with the rules in subpart J of this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter.<sup>18</sup>

9. Unlicensed RF equipment capable of operating within the restricted bands listed under section 15.205(a) of the Commission's rules (other than spurious emissions)<sup>19</sup> cannot be legally operated, marketed, or sold in the United States.<sup>20</sup> Operation of such devices is prohibited because they have the potential to interfere with the operation of authorized radio services,<sup>21</sup> including safety-of-life services.<sup>22</sup>

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<sup>12</sup> LOI Response at 10-11, 18-19, Response to Question 6.

<sup>13</sup> LOI Response at 11, 18-19, Response to Question 7.

<sup>14</sup> LOI Response at 10-11, Response to Question 6.

<sup>15</sup> LOI Response at 10-11, 18-19, 26-41, Response to Questions 6-7.

<sup>16</sup> E-mail from John E. Logan, Counsel to W.W. Grainger, Inc. d/b/a Grainger, to Jane Kelly, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Aug. 19, 2019, 14:44 EDT). *See* LOI Response at 10-11, Response to Question 6.

<sup>17</sup> 47 U.S.C. § 302a(b).

<sup>18</sup> 47 CFR § 2.803(b).

<sup>19</sup> Some intentional radiators are exempt from the requirements under section 15.205(a) of the Commission's rules. *See* 47 CFR § 15.205(d).

<sup>20</sup> Unlicensed radio frequency devices can operate anywhere outside of these restricted frequencies if they adhere to the general conducted and radiated emission limits set forth in sections 15.207 and 15.209 of the Commission's rules or the band-specific operating conditions outlined in the remainder of Subpart C of Part 15. *Id.* §§ 15.207, 209. *See also* 47 CFR Part 15, Subpart C (intentional radiators).

<sup>21</sup> Certain sensitive radio services solely use restricted frequencies. For example, the Satellite Digital Audio Radio Service (SDARS) band (2320-2345 MHz) falls under the 2310-2390 MHz restricted frequency band listed under section 15.205(a).

<sup>22</sup> Unlicensed devices are restricted from use in frequency bands allocated for public safety services. *See* 47 CFR § 90.20 (spectrum allocations for communications needs of police, firefighters, emergency medical services, and state and local government). *See generally* 47 CFR pt. 15 (rules governing operation of unlicensed devices). *See id.* §§ 15.217-257 (providing alternatives for intentional radiators operating in specified frequency bands).

10. Intentional radiators, such as the model at issue here, must be approved through the equipment certification procedures prior to marketing.<sup>23</sup> Section 15.201 of the Commission's rules provides the equipment authorization requirements for intentional radiators. As a Digital Transmission System (DTS), the AP224 must comply with Part 15 of the Commission's rules.<sup>24</sup> Operation is subject to two conditions.<sup>25</sup> First, the device may not cause harmful interference. Second, the device must accept any interference received, including interference that may cause undesired operation.

11. After examining the information and documents Grainger provided in response to the letters of inquiry, the Division determined that the Company marketed the AP224 in violation of section 302(b) of the Act and sections 2.803(b), and 15.205(a) of the Commission's rules.<sup>26</sup>

12. The Division's investigation revealed that the wireless access point was capable of transmitting on restricted frequencies in the Satellite Digital Audio Radio Service band despite having a certification to operate only in 2412-2462 MHz.<sup>27</sup> Grainger acknowledged marketing the AP224 and removed the model from its inventory upon receipt of the LOI.<sup>28</sup> The Company therefore marketed a device that was capable of operating outside of its equipment authorization.

13. Grainger is therefore in violation of section 302(b) of the Act and sections 2.803 and 15.205(a) of the Commission's rules for marketing a device that was capable of operating on restricted frequencies.<sup>29</sup> The Company ceased marketing this model in August 2019.<sup>30</sup>

#### IV. OPPORTUNITY TO RESPOND TO THIS CITATION

14. Grainger 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 Grainger's place of business. The Commission Field Office nearest to Grainger is located in Chicago, Illinois.

15. If Grainger requests a teleconference or personal interview, contact Daniela Arregui at 202-418-2535 or [daniela.arregui@fcc.gov](mailto:daniela.arregui@fcc.gov) and [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov). We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If Grainger 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.

16. All written communications should be sent via e-mail to [daniela.arregui@fcc.gov](mailto:daniela.arregui@fcc.gov) and to [EB-SED-Response@fcc.gov](mailto:EB-SED-Response@fcc.gov), and the subject line of the e-mail should specify the Company name and its investigation File Number, **EB-SED-19-00029062**. Due to network file size restrictions, the Company should partition the response into separate e-mails of less than 10 MB, including attachments. The

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<sup>23</sup> 47 CFR § 15.201(b). Intentional radiators are a category of unlicensed devices that must undergo such testing; in fact, one aspect of testing is to verify the devices do not operate in restricted bands. An intentional radiator is a device that contains a transmitter, i.e., it intentionally generates and emits radio frequency energy by radiation or induction. See 47 CFR § 15.3(o).

<sup>24</sup> *Id.* at § 15.201 (equipment authorization requirements).

<sup>25</sup> See *id.* at § 15.5(b) (general conditions of operation); see also *id.* at § 15.19 (conditions of operations included in labeling requirements).

<sup>26</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 15.205(a).

<sup>27</sup> See 47 CFR § 15.205(a). See Grant of Equipment Authorization, [https://apps.fcc.gov/oetcf/tcb/reports/Tcb731GrantForm.cfm?mode=COPY&RequestTimeout=500&tcb\\_code=&application\\_id=JI09IWEPi5e6mvAtfvgBwg%3D%3D&fcc\\_id=2AS9JSPECOAP24](https://apps.fcc.gov/oetcf/tcb/reports/Tcb731GrantForm.cfm?mode=COPY&RequestTimeout=500&tcb_code=&application_id=JI09IWEPi5e6mvAtfvgBwg%3D%3D&fcc_id=2AS9JSPECOAP24) (last visited Dec. 4, 2020).

<sup>28</sup> LOI Response at 10-11, Response to Question 6.

<sup>29</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 15.205(a).

<sup>30</sup> LOI Response at 10-11, Response to Question 6.

Company should seek guidance in sufficient advance of the response deadline if it requires an alternative method of delivery.

17. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Grainger 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. Grainger should allow at least five business days advance notice; last minute requests will be accepted but may be impossible to fill. Grainger should send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the FCC's Consumer & Governmental Affairs Bureau:

For sign language interpreters, CART, and other reasonable accommodations:  
202-418-530 (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).

18. We advise Grainger that it is a violation of section 1.17 of the Commission's rules<sup>31</sup> 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.

19. 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.<sup>32</sup>

20. Violations of section 1.17 of the Commission's rules or the criminal statute referenced above may result in further legal action, including monetary forfeitures pursuant to section 503 of the Act.

21. Finally, we warn Grainger that, under the Privacy Act of 1974,<sup>33</sup> 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 Grainger's compliance with the Act and the Commission's rules.<sup>34</sup>

## V. FUTURE VIOLATIONS

22. If, after receipt of this Citation, Grainger again violates section 302 of the Act and/or sections 2.803(b) and/or 15.205(a) of the Commission's 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 not to exceed \$20,489 for each such violation or each day

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<sup>31</sup> 47 CFR § 1.17.

<sup>32</sup> 18 U.S.C. § 1001.

<sup>33</sup> 5 U.S.C. § 552a(e)(3).

<sup>34</sup> Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

of a continuing violation, and up to \$153,669 for any single act or failure to act.<sup>35</sup> 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 justice may require.<sup>36</sup> Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.<sup>37</sup>

## VI. ORDERING CLAUSES

23. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,<sup>38</sup> Grainger must cease and desist from marketing noncompliant radio frequency devices in violation of section 302(b) of the Communications Act and sections 2.803(b) and 15.205(a) of the Commission's rules.<sup>39</sup>

24. **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 John E. Logan, Counsel for W.W. Grainger, Inc. d/b/a Grainger, 1717 K Street NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth Y. Mumaw  
Chief  
Spectrum Enforcement Division  
Enforcement Bureau

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<sup>35</sup> 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).

<sup>36</sup> See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

<sup>37</sup> See *supra* paragraph 2.

<sup>38</sup> 47 U.S.C. §§ 154(i), 154(j).

<sup>39</sup> 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 15.205(a).