

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Neymar Candy Grocery Corp.

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File No.: EB-FIELDNER-18-00027991

CITATION AND ORDER**Surveillance Device Causing Harmful Interference to LTE Communications****Adopted: March 31, 2020****Released: March 31, 2020**

By the Regional Director, Region One, Enforcement Bureau:

I. NOTICE OF CITATION

1. Today the Federal Communications Commission's Enforcement Bureau (Bureau) takes another step in the Commission's ongoing effort to end harmful interference to licensed radio operations. This **CITATION AND ORDER** (Citation), notifies Neymar Candy Grocery Corp. (Neymar) that it is operating a device that is causing harmful interference to T-Mobile USA, Inc. (T-Mobile).¹ We therefore direct Neymar to take immediate steps to comply with federal rules and regulations related to radio frequency devices and eliminate the harmful interference caused to T-Mobile USA by the operation of its surveillance cameras. If Neymar fails to comply with these laws, it may be liable for significant fines up to \$19,639 per day.

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.² Accordingly, Neymar is hereby on notice that it must comply with sections 15(b) and 15(c) of the Commission's rules.³ If Neymar subsequently engages in any conduct described in this Citation—and specifically any violation of sections 15(b) and 15(c) of the Commission's rules—Neymar may be subject to civil penalties, including but not limited to, substantial monetary forfeitures. In assessing such forfeitures, the Commission may consider both the conduct that led to this Citation and the conduct following it.⁴ Neymar should take immediate steps to come into compliance with the Commission's rules, including eliminating the interference. Neymar is hereby on notice that if it subsequently engages in any conduct of the type described in this Citation, including any violation of sections 15.5(b) and

¹ 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.

² See 47 U.S.C. § 503(b)(5).

³ 47 CFR §§ 15.5(b)-(c).

⁴ 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).

15.5(c) of the Commission's rules,⁵ it may be subject to civil and criminal penalties, including but not limited to substantial monetary fines (forfeitures). Such forfeitures may be based on both the conduct that led to this Citation and the conduct following it.⁶

3. **Notice of Duty to Provide Information:** Pursuant to sections 4(i), 4(j), and 403 of the Act,⁷ we direct Neymar to respond in writing, within thirty (30) calendar days after the release date of this Citation, to the information and document requests set forth in paragraph twelve below.

II. BACKGROUND

4. The Commission is charged with protecting licensed radio operations from harmful interference. Harmful interference to Commercial Mobile Radio Service providers such as T-Mobile is particularly problematic in that it can interfere with 911 service. On October 12, 2018, T-Mobile USA, Inc. (T-Mobile) filed a complaint with the Commission⁸ concerning interference to its cellular communication system that operates in the 700 MHz band in Bronx, New York. T-Mobile noted that the interference appeared to correspond with the surveillance cameras located at the Neymar Candy and Grocery store at 1175 Vyse Avenue, Bronx, New York. T-Mobile contacted the FCC when the Neymar failed to take corrective action after first being contacted by T-Mobile. T-Mobile uses the 700 MHz band to provide LTE service to business and residential consumers.

5. On November 16, 2018, in response to T-Mobile's complaint, agents from the Commission's New York Field Office (New York Office) conducted an on-scene investigation. Direction finding techniques supported the allegation that the surveillance cameras located at Neymar were the source of the interference.

6. On November 16, 2018, the New York Office issued an on-scene warning notice (Warning) to Neymar, informing Neymar that it was operating a radio frequency radiating device which was causing harmful interference to radio communications. The letter stated that the RF energy emanating from the device was detected in the 700 MHz band, frequencies reserved for cellular operation. Furthermore, the Warning provided citations to applicable Commission rules and regulations, with which Neymar was advised that it must comply. The New York Office agent gave the Warning to the cashier at Neymar.

7. On March 28, 2019, the Enforcement Bureau sent, via First Class Mail and Certified Mail, return receipt requested, a Notice of Harmful Interference (Second Warning) to Neymar. As with the prior Warning, the Second Warning advised, *inter alia*, that the surveillance cameras was generating harmful interference on frequencies assigned to T-Mobile's cellular network. The Second Warning also instructed Neymar not to resume operation of the surveillance cameras until the conditions causing the harmful interference had been corrected, and outlined the potential penalties for such a violation, including equipment seizure, fines, and imprisonment.⁹

8. On June 26, 2019, in response to T-Mobile's continuing complaints that the interference had not been resolved, New York Office agents conducted another on-scene investigation. Direction

⁵ *Supra* note 2.

⁶ See 47 U.S.C. § 503(b)(5); see also 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).

⁷ 47 U.S.C. §§ 154(i)-(j), 403.

⁸ *Cellular Tel. Interference Report*, Reference CTIX-1539372163. See Case No. EB-FIELDNER-18-00027991.

⁹ See *Neymar Candy and Grocery*, Notification of Harmful Interference (Mar. 28, 2019) (on file in EB-FIELDNER-18-00027991).

finding techniques again supported the allegation that the surveillance cameras located at Neymar were the source of the interference.

9. On June 26, 2019, the New York Office issued Neymar an on-scene verbal and written warning (Third Warning) to Neymar. The Third Warning indicated that Neymar had ten (10) days to respond. Neymar did not respond to the Third Warning.

III. APPLICABLE LAW AND VIOLATIONS

10. Section 15.5(b) of the Commission's rules requires that "operation of an intentional, unintentional, or incidental radiator is subject to the conditions that no harmful interference is caused" ¹⁰ Similarly, section 15.5(c) of the Commission's rules states that the "operator of a radio frequency device shall be required to cease operating the device upon notification by a Commission representative that the device is causing harmful interference. Operation shall not resume until the condition causing the harmful interference has been corrected." ¹¹ Section 15.3(m)'s definition of harmful interference includes any emission, radiation or induction that " . . . obstructs or repeatedly interrupts a radiocommunications service operating in accordance with this chapter." ¹²

11. We find that Neymar violated sections 15.5(b) and (c) of the Commission's rules by operating devices causing harmful interference to a wireless provider's licensed operations and failing to promptly eliminate the interference upon notification by a Commission representative. ¹³

IV. REQUEST FOR INFORMATION

12. Pursuant to sections 4(i), 4(j), and 403 of the Act, ¹⁴ we direct Neymar to confirm in writing, within thirty (30) days of the release of this Citation, that he has taken the corrective measures to eliminate the harmful interference, as well as provide a timeline for any pending corrective actions. Failure to respond in writing, or the provision of an inadequate, incomplete, or misleading response, may subject Neymar to additional sanctions.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

13. Neymar may respond to this Citation within thirty (30) calendar days from its release through 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 his place of business. The Commission Field Office nearest Neymar is located in New York City.

14. If Neymar requests a teleconference or personal interview, please contact David C. Dombrowski, by telephone at: (301) 725-1996. We note that such teleconference or interview must take place within thirty (30) calendar days of the release date of this Citation. If Neymar prefers to submit a written response, with supporting documentation, Neymar must send the response within thirty (30) calendar days of the date of this Citation to the contact and address provided in the paragraph below.

15. All written communications, including the information requested in paragraph twelve, above, should be sent to the addresses below:

¹⁰ 47 CFR § 15.5(b).

¹¹ 47 CFR § 15.5(c).

¹² 47 CFR § 15.3(m).

¹³ 47 CFR §§ 15.5(b)-(c).

¹⁴ 47 U.S.C. §§ 154(i)-(j), 403.

Federal Communications Commission
EB Columbia Regional Office
Attn: David C. Dombrowski
9050 Junction Drive
Annapolis Junction, Maryland 220701
FIELD@FCC.GOV
Re: EB-FIELDNER-18-00027991

16. Upon request, the Commission will make reasonable accommodations for persons with disabilities. If applicable, Neymar 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. Neymar should allow at least five business days advance notice; last minute requests will be accepted, but may be impossible to fill. Neymar 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).

17. We advise Neymar that it is a violation of section 1.17 of the Commission's rules¹⁵ 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.

18. 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.¹⁶

19. 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.

20. Finally, we warn Neymar that, under the Privacy Act of 1974,¹⁷ 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 Neymar's compliance with the Act and Rules.

VI. FUTURE VIOLATIONS

21. If, after receipt of this Citation, Neymar again violates section 15.5(b) or 15.5(c) 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

¹⁵ 47 CFR § 1.17.

¹⁶ 18 U.S.C. § 1001.

¹⁷ 5 U.S.C. § 552a(e)(3).

exceed \$16,000 for each such violation, or each day of a continuing violation, and up to \$147,290 for any single act or failure to act.¹⁸ 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.¹⁹ Further, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.²⁰ In addition, future violations may subject Neymar to seizure of equipment through *in rem* forfeiture actions,²¹ as well as criminal sanctions, including imprisonment.²²

VII. ORDERING CLAUSES

22. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,²³ Neymar must cease and desist from causing harmful interference, in violation of sections 15(b) and 15(c) of the Commission's rules.²⁴

23. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,²⁵ Neymar must provide the written information requested in paragraph 12, above. Neymar must support its responses with an affidavit or declaration made under penalty of perjury, signed and dated by Neymar, attesting personal knowledge of the representations provided in the response, and 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 Commission's rules and be substantially in the form set forth therein.²⁶ The Commission must receive the response within thirty (30) calendar days of the release date of this Citation and Order.

24. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent both by First Class U.S. Mail and Certified Mail, Return Receipt Requested, to Neymar Candy Grocery Corp, 1175 Vyse Avenue, Bronx, New York 10459.

FEDERAL COMMUNICATIONS COMMISSION

David C. Dombrowski
Regional Director, Region One
Enforcement Bureau

¹⁸ See 47 U.S.C. § 503; 47 CFR § 1.80(b).

¹⁹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

²⁰ See *supra* note 5.

²¹ See 47 U.S.C. § 510.

²² See 47 U.S.C. §§ 401, 501.

²³ 47 U.S.C. §§ 154(i)-(j).

²⁴ See 47 CFR §§ 15.5(b)-(c).

²⁵ 47 U.S.C. §§ 154(i)-(j), 403.

²⁶ 47 C.F.R. § 1.16.