

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
B&H Foto & Electronics Corporation) File No.: EB-SED-20-00031344
)

CITATION AND ORDER

ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES

Adopted: December 7, 2022

Released: December 7, 2022

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies B&H Foto & Electronics Corporation ("B&H" or "Company") that it unlawfully marketed¹ seven radio frequency devices that: (i) did not use a permanently attached antenna or an antenna that uses a unique connector; (ii) lacked an equipment authorization; (iii) lacked the appropriate labeling and user manual disclosures; (iv) operated in bands not authorized by the device's certifications; and/or (iv) were capable of operating outside of the FM frequency band. Specifically, B&H marketed the Rolls HR70 FM Broadcast Transmitter (HR70), Scosche BTFreq Handsfree Car Kit with FM Transmitter, Scosche Universal Bluetooth Hands-Free Car Kit with FM Transmitter, Scosche Bluetooth Hands-Free Car Kit with FM Transmitter & USB Charging Port, Scosche BTFreq Pro Bluetooth FM Transmitter with Power Delivery, HyperGear IntelliCast FM Transmitter and Car Charger, and Aluratek Universal Bluetooth Audio Receiver and FM Transmitter in violation of section 302(b) of the Communications Act of 1934, as amended (Act) and/or sections 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239 of the Commission's rules.² We therefore direct B&H 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 of up to \$22,021 per day for each unauthorized model marketed, as well as other sanctions.³

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.⁴ Accordingly, B&H is hereby on notice that it must comply with of the section 302(b) of the Act and sections 2.803, 2.925, 15.19, 15.21,

¹ 47 CFR § 2.803(a) (defining marketing as the "sale or lease, or offering for sale of 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.").

² 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239.

³ See 47 U.S.C. § 503(b)(2)(D); 47 CFR 1.80(b)(9). These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(D) of the Act (\$10,000 per violation or per day of a continuing violation and a statutory maximum of \$75,000 for a single act or failure to act). See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, DA 21-1631 (EB 2021); see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation, 87 Fed. Reg. 396 (Jan. 5, 2022) (setting January 5, 2022, as the effective date of the increases).

⁴ See 47 U.S.C § 503(b)(5).

15.201, 15.203, and 15.239 of the Commission's rules.⁵ If B&H subsequently engages in any conduct of the type this Citation describes, including specifically any violation of section 302(b) of the Act or section(s) 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, or 15.239 of the Commission's rules, B&H 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.⁶ B&H must take immediate steps to ensure that any and 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 Commission equipment marketing rules.⁷

II. BACKGROUND

3. Legal Background. To best accommodate the diversity of radio communication needs, the Commission allocates radio frequency spectrum, and creates different radio services, each with different operating parameters. Under the Commission's rules, radio frequency devices marketed in the United States must operate within certain technical parameters, otherwise they may interfere with other authorized communications systems. Consistent with these rules, the Commission has established an equipment authorization program, which generally requires that radio frequency devices undergo testing to verify that they comply with FCC-prescribed technical requirements before such devices can be marketed in the United States.⁸ The Commission's equipment authorization and labeling rules ensure that radio frequency devices meet the Commission's technical requirements.⁹ As such, marketers must ensure that radio frequency devices are properly authorized and comply with all applicable technical, labeling, and identification requirements prior to being offered for sale in the United States.

4. Section 15.201 of the Commission's rules requires an authorization termed a certification for the devices at issue in this Citation.¹⁰ Section 2.925(a) of the Commission's rules requires labeling of the device with the FCC Identifier.¹¹ Section 15.19(a)(3) requires labeling of the device "in a conspicuous location on the device" with the following statement "[t]his device complies with part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation."¹²

5. Under part 15, "[t]he users manual or instruction manual for an intentional or unintentional radiator shall caution the user that changes or modifications not expressly approved by the party responsible for compliance could void the user's authority to operate the equipment."¹³ The Commission's rules for intentional radiators under part 15 state that "[a]n intentional radiator shall be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device. The use of a permanently attached antenna or of an antenna that uses a unique coupling to the

⁵ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239.

⁶ 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).

⁷ 47 U.S.C. § 302a(b); 47 CFR § 2.803; see also parts 2, 15, and 18 of the Commission's rules as applicable, 47 CFR parts 2, 15, and 18.

⁸ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), (c), 15.201.

⁹ 47 CFR §§ 2.925, 15.19(a)(3)-(5).

¹⁰ 47 CFR § 15.201.

¹¹ 47 CFR § 2.925(a).

¹² 47 CFR 15.19(a)(3).

¹³ 47 CFR § 15.21.

intentional radiator shall be considered sufficient to comply with the provisions of this section.”¹⁴ Under section 15.239(a) of the Commission’s rules, emissions from intentional radiators that operate within the 88-108 MHz band must be “confined within a band 200 kHz wide . . . and lie wholly within the frequency range of 88-108 MHz.”¹⁵

6. Factual Background. B&H is a privately held New York corporation, incorporated in 1973.¹⁶ The Spectrum Enforcement Division (Division) received a referral indicating that the Rolls HR70 FM Broadcast Transmitter (HR70), marketed by B&H, operated outside of the FM frequency band (88 to 108 MHz) in the United States and did not use a permanently attached antenna or an antenna that uses a unique connector. The Division subsequently sent a letter of inquiry (LOI) to B&H on December 2, 2020, and issued follow-up questions on April 2, 2021.¹⁷ B&H timely responded to each of the Division’s inquiries.¹⁸

7. B&H acknowledged that it marketed the HR70, identified in the LOI.¹⁹ B&H stated that according to the manufacturer of the HR70, Rolls Corporation (Rolls), testing and an authorization was not necessary for the HR70.²⁰ In the LOI response, B&H also said that the manufacturer of the HR70 said the device was capable of operating outside of the FM frequency band, and that a few units of the model did not use a permanently attached antenna or an antenna that uses a unique connector.²¹ B&H ceased marketing the HR70 on January 27, 2021, after receiving the LOI.²²

8. B&H also disclosed that it marketed six additional models of FM Transmitters that were capable of operating outside of the FM frequency band.²³ These models are the: (i) Hypergear Intellicast FM Transmitter and Car Charger; (ii) Aluratek Universal Bluetooth Audio Receiver and FM Transmitter; (iii) Scosche BTFreq Handsfree Car Kit with FM Transmitter; (iv) Scosche Universal Bluetooth Hands-Free Car Kit with FM Transmitter; (v) Scosche Bluetooth Hands-Free Car Kit with FM Transmitter & USB Charging Port; and (vi) Scosche BTFreq Pro Bluetooth FM Transmitter with Power Delivery.²⁴

9. With respect to the (i) Scosche BTFreq Handsfree Car Kit with FM Transmitter; (ii) Scosche Universal Bluetooth Hands-Free Car Kit with FM Transmitter; (iii) Scosche Bluetooth Hands-Free Car Kit with FM Transmitter & USB Charging Port; and (iv) Scosche BTFreq Pro Bluetooth FM Transmitter with Power Delivery models (the Scosche models), the Company supplied valid FCC

¹⁴ 47 CFR § 15.203.

¹⁵ 47 CFR § 15.239(a).

¹⁶ See Response to Letter of Inquiry, from Ryan Marcus, Associate Legal Counsel, B&H Foto & Electronics Corporation, to JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, at 1, Response to Inquiry 1 (Feb. 1, 2021) (on file in EB-SED-20-00031344) (LOI Response).

¹⁷ Letter of Inquiry from JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Ryan Marcus, Associate Legal Counsel, B&H Foto & Electronics Corporation (Dec. 2, 2020) (LOI); E-mail from Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Ryan Marcus, Associate Legal Counsel, B&H Foto & Electronics Corporation, (Apr. 2, 2021 18:27 EDT) (both on file in EB-SED-20-00031344).

¹⁸ See LOI Response; Response from Sholom J. Prager, Associate Legal Counsel, B&H Foto & Electronics Corporation, to Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Apr. 23, 2021) (both on file in EB-SED-20-00031344) (Follow-up Response).

¹⁹ LOI Response at Exhibit D, Response to Question 7.

²⁰ LOI Response at Exhibit D, Response to Question 8.a.

²¹ LOI Response at Exhibit D, Response to Questions 13 and 14.

²² LOI Response at Exhibit D, Response to Question 8.f.

²³ LOI Response at Exhibit D, Response to Question 13.

²⁴ *Id.*

Identifiers (FCC IDs) and accompanying equipment authorization documentation for each model, indicating that it had been certified as a Part 15 Subpart C intentional radiator, and certified to operate in 88.1 – 107.9 MHz and in 2402.0 – 2480.0 MHz.²⁵ However, B&H stated that the Scosche models were capable of operating outside of the FM frequency band.²⁶ B&H continues to market the Scosche models.

10. B&H acknowledged that, after submitting its LOI Response, it followed-up with Hypergear, the manufacturer of the Hypergear Intellicast FM Transmitter and Car Charger, and that Hypergear indicated that the device was not authorized.²⁷ B&H also followed-up with, but did not receive a response from, the manufacturer of the Aluratek Universal Bluetooth Audio Receiver and FM Transmitter, regarding an FCC ID for the model; however B&H reported that Aluratek claimed the model complies with the Commission’s rules.²⁸ After receipt of the LOI, B&H ceased marketing the Hypergear Intellicast FM Transmitter and Car Charger and Aluratek Universal Bluetooth Audio Receiver and FM Transmitter.²⁹

III. APPLICABLE LAW AND VIOLATIONS

11. Section 302 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 [Commission] regulations.”³⁰ For devices requiring Commission authorization, section 2.803(b)(1) of the Commission’s rules prohibits marketing devices unless they have been authorized in accordance with the Commission’s technical standards and properly identified and labeled.³¹ Sections 2.925, 15.19, and 15.21 of the Commission’s rules set forth the identification, labeling, and user manual requirements for devices requiring Commission authorization.³² Section 15.201 of the Commission’s rules requires a certification for the devices at issue in this Citation.³³ The Commission’s rules for intentional radiators under section 15.203 state that “[a]n intentional radiator shall be designed to ensure that no antenna other than that furnished by the responsible party shall be used with the device. The use of a permanently attached antenna or of an antenna that uses a unique coupling to the intentional radiator shall be considered sufficient to comply with the provisions of this section.”³⁴ Under section 15.239(a) of the Commission’s rules, emissions from intentional radiators that operate within the 88-108 MHz band must be “confined within a band 200 kHz wide . . . and lie wholly within the frequency range of 88-108 MHz.”³⁵

12. Intentional radiators, such as the devices at issue here, must be properly authorized and labeled in accordance with the Commission’s equipment certification process.³⁶ No intentional radiator

²⁵ Follow-up Response at 1 and Exhibit A, Response to Question 1.

²⁶ LOI Response at Exhibit D, Response to Question 13.

²⁷ Follow-up Response at 1, Response to Question 1.

²⁸ *Id.* at 2, Response to Question 1.

²⁹ Follow-up Response at 2, Response to Question 2.

³⁰ 47 U.S.C § 302a(b).

³¹ 47 CFR § 2.803(b)(1).

³² 47 CFR §§ 2.925, 15.19, 15.21.

³³ 47 CFR § 15.201.

³⁴ 47 CFR § 15.203.

³⁵ 47 CFR § 15.239(a).

³⁶ *See* 47 CFR § 15.201(b). An intentional radiator is “[a] device that intentionally generates and emits radio frequency energy by radiation or induction.” *Id.* § 15.3(o). A certification is an equipment authorization issued by the Commission or issued by a Telecommunication Certification Body (TCB) and authorized under the authority of (continued....)

may be marketed unless and until the device has been properly authorized and is properly labeled.³⁷ The Commission's rules for intentional radiators requires the "use of a permanently attached antenna or of an antenna that uses a unique coupling to the intentional radiator."³⁸ Emissions from intentional radiators that operate within the 88-108 MHz band must be "confined within a band 200 kHz wide . . . and lie wholly within the frequency range of 88-108 MHz."³⁹

13. The record reflects that B&H marketed the HR70 that lacked the required equipment authorization, was capable of operating outside of the FM frequency band, and did not use a permanently attached antenna or an antenna that uses a unique connector. 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."⁴⁰ Section 2.803(b) of the Commission's rules prohibits marketing devices unless they have been authorized in accordance with the Commission's technical standards and properly identified and labeled.⁴¹ Pursuant to section 15.201(b) of the Commission's rules, intentional radiators, such as the HR70, must be authorized in accordance with the Commission's certification procedures before marketing is initiated in the United States.⁴² Moreover, section 2.925(a) of the Commission's rules requires labeling of the device with the FCC Identifier and "[a]ny other statements or labeling requirements imposed by the rules governing the operation of the specific class of equipment, except that such statement(s) of compliance may appear on a separate label at the option of the applicant/grantee."⁴³ Section 15.19(a)(3) requires devices such as the HR70 to be labeled "in a conspicuous location on the device" with the following statement "[t]his device complies with part 15 of the FCC Rules. Operation is subject to the following two conditions: (1) This device may not cause harmful interference, and (2) this device must accept any interference received, including interference that may cause undesired operation."⁴⁴ Under section 15.21 of the Commission's rules, the user's manual "shall caution the user that changes or modifications not expressly approved by the party responsible for compliance could void the user's authority to operate the equipment."⁴⁵

14. The Company confirmed with the model's manufacturer, Rolls, that the device was capable of operating outside of the FM frequency band, that a few units of the model did not use a permanently attached antenna or an antenna that uses a unique connector, and lacked the required labeling.⁴⁶ B&H therefore marketed a device that lacked the required equipment authorization, operated outside of the FM frequency band, and did not use a permanently attached antenna or an antenna that uses a unique connector.

15. We find that B&H violated section 302(b) of the Act and sections 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239 of the Commission's rules, by marketing the HR70 device that was capable of operating outside of the FM frequency band (88 to 108 MHz), a few units of the device did not

the Commission, based on representations and test data submitted by the applicant. *Id.* § 2.907(a). The equipment certification procedures can be found in 47 CFR §§ 2.1031-2.1060.

³⁷ See 47 CFR §§ 2.803, 15.19.

³⁸ 47 CFR § 15.203.

³⁹ 47 CFR § 15.239(a).

⁴⁰ 47 U.S.C. § 302a(b).

⁴¹ 47 CFR § 2.803(b).

⁴² 47 CFR § 15.201(b).

⁴³ 47 CFR § 2.925(a).

⁴⁴ 47 CFR 15.19(a)(3).

⁴⁵ 47 CFR § 15.21.

⁴⁶ LOI Response at Exhibit D, Response to Questions 11, 13 and 14.

use a permanently attached antenna or an antenna that uses a unique connector, lacked an equipment authorization, and lacked the appropriate labeling and user manual disclosures.⁴⁷

16. B&H admitted that it marketed the (i) Scosche BTFreq Handsfree Car Kit with FM Transmitter; (ii) Scosche Universal Bluetooth Hands-Free Car Kit with FM Transmitter; (ii) Scosche Bluetooth Hands-Free Car Kit with FM Transmitter & USB Charging Port; and (iv) Scosche BTFreq Pro Bluetooth FM Transmitter with Power Delivery models that were capable of operating outside of the FM frequency band, despite having certifications to operate only in 88.1 – 107.9 MHz and in 2402.0 – 2480.0 MHz.⁴⁸ B&H therefore violated section 302(b) of the Act and sections 2.803(b) and 15.239 of the Commission's rules by marketing a device that was capable of operating outside of its equipment authorization.⁴⁹

17. B&H also marketed the Hypergear Intellicast FM Transmitter and Car Charger that lacked the required equipment authorization and was capable of operating outside of the FM frequency band.⁵⁰ Although B&H does not acknowledge that it violated sections 2.803(b) and 15.201 by marketing a device without prior authorization, we observe that the Hypergear Intellicast FM Transmitter and Car Charger could not have been authorized because it operated in a manner that did not comply with the Commission's rules and, in fact, is not authorized. The Company thus violated section 302(b) of the Act and sections 2.803, 2.925, 15.19, 15.21, 15.201, and 15.239 of the Commission's rules, by marketing a device that was capable of operating outside of the FM frequency band (88 to 108 MHz), lacked an equipment authorization, and lacked the appropriate labeling and user manual disclosures.⁵¹

18. Finally, the Division's investigation revealed that B&H marketed the Aluratek Universal Bluetooth Audio Receiver and FM Transmitter, which was capable of operating outside of the FM frequency band.⁵² The Aluratek Universal Bluetooth Audio Receiver and FM Transmitter could not have been authorized, however, because it operated in a manner that did not comply with the Commission's rules. The Company thus violated section 302(b) of the Act and sections 2.803, 2.925, 15.19, 15.21, 15.201, and 15.239 of the Commission's rules, by marketing a device that was capable of operating outside of the FM frequency band (88 to 108 MHz), lacked an equipment authorization, and lacked the appropriate labeling and user manual disclosures.⁵³

IV. REQUEST FOR INFORMATION

19. We direct B&H to respond to the following inquiry within 30 days from the release date of this Citation:

- i. Confirm in writing that B&H has ceased marketing the (i) Scosche BTFreq Handsfree Car Kit with FM Transmitter; (ii) Scosche Universal Bluetooth Hands-Free Car Kit with FM Transmitter; (ii) Scosche Bluetooth Hands-Free Car Kit with FM Transmitter & USB Charging Port; and (iv) Scosche BTFreq Pro Bluetooth FM Transmitter with Power Delivery models that were capable of operating below 88.1 MHz, despite having certifications to operate only in 88.1 –

⁴⁷ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239.

⁴⁸ A listing for the Scosche BTFreq Pro Bluetooth FM Transmitter with Power Delivery model on B&H's website indicates that the device is capable of operating at 87.5 MHz. *See* https://www.bhphotovideo.com/c/product/1548097-REG/scosche_btfdmp3sr_sp_btfdreq_pro_bluetooth_fm.html/specs (last visited Sept. 26, 2022).

⁴⁹ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803 and 15.239.

⁵⁰ Follow-up Response at 1, Response to Question 1; LOI Response at Exhibit D, Response to Question 13.

⁵¹ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.21, 15.201, and 15.239.

⁵² LOI Response at Exhibit D, Response to Question 13.

⁵³ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.21, 15.201, and 15.239.

107.9 MHz and in 2402.0 – 2480.0 MHz. If B&H has not ceased marketing these models, explain why not.

- ii. Confirm in writing whether B&H has resumed marketing the Aluratek Universal Bluetooth Audio Receiver and FM transmitter. If so, provide an FCC ID for the model, and the date on which B&H resumed marketing the model.

V. OPPORTUNITY TO RESPOND TO THIS CITATION

20. B&H 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 B&H's place of business. The Commission Field Office nearest B&H is located in New York, New York.

21. If B&H requests a teleconference or personal interview, it must contact Kathy Harvey at kathy.harvey@fcc.gov or 202-418-7514. We note that such teleconference or interview must take place within 30 calendar days of the release date of this Citation. If B&H 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.

22. All written communications should be sent via e-mail to kathy.harvey@fcc.gov and to EB-SED-Response@fcc.gov, and the subject of the e-mail should specify the Company name and its investigation File Number, **EB-SED-20-00031344**. Due to network file size restrictions, the Company should partition the response into separate e-mails of less than 10 MB, including attachments. The Company should seek guidance in sufficient advance of the response deadline if it requires an alternative method of delivery.

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

24. We advise B&H that it is a violation of section 1.17 of the Commission's rules⁵⁴ 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.

⁵⁴ 47 CFR § 1.17.

25. 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.⁵⁵

26. 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.

27. Finally, we warn B&H that, under the Privacy Act of 1974,⁵⁶ 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 B&H's compliance with the Act and the Commission's rules.⁵⁷

VI. FUTURE VIOLATIONS

28. If, after receipt of this Citation, B&H again violates section 302 of the Act or section(s) 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, or 15.239 of the Commission's rules, or any of the Commission's equipment marketing 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 \$22,021 for each such violation or each day of a continuing violation, and up to \$165,159 for any single act or failure to act.⁵⁸ 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.⁵⁹ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.⁶⁰

VII. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,⁶¹ B&H must cease and desist from marketing noncompliant radio frequency devices in violation of section 302 of the Communications Act and sections 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239 of the Commission's rules.⁶²

30. **IT IS FURTHER ORDERED** that, pursuant to sections 4(i), 4(j), and 403 of the Act,⁶³ B&H must provide the written information requested in paragraph 19, above. B&H must support its responses with an affidavit or declaration under penalty of perjury, signed and dated by an authorized officer of B&H 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 Commission's rules and be

⁵⁵ 18 U.S.C. § 1001.

⁵⁶ 5 U.S.C. § 552a(e)(3).

⁵⁷ 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.

⁵⁸ 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).

⁵⁹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

⁶⁰ See *supra* paragraph 2.

⁶¹ 47 U.S.C. § 154(i), (j).

⁶² 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239.

⁶³ 47 U.S.C. §§ 154(i),(j), 403.

substantially in the form set forth therein.⁶⁴ The FCC must receive the response within 30 calendar days of the release date of this Citation and Order.

31. **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 Sholom J. Prager, Associate Counsel for B&H Foto & Electronics Corporation, 420 Ninth Avenue, New York, New York 10001.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth Y. Mumaw
Chief
Spectrum Enforcement Division
Enforcement Bureau

⁶⁴ 47 CFR § 1.16.