

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

In the Matter of)
)
Broadcast Supply Worldwide, Inc.) File No.: EB-SED-20-00031633
)

CITATION AND ORDER

ILLEGAL MARKETING OF UNAUTHORIZED RADIO FREQUENCY DEVICES

Adopted: December 28, 2022

Released: December 28, 2022

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

I. NOTICE OF CITATION

1. This CITATION AND ORDER (Citation), notifies Broadcast Supply Worldwide, Inc. (BSW or Company) that it unlawfully marketed... (i) one radio frequency device that was capable of operating outside of the FM frequency band (88 to 108 MHz), did not 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; and (ii) three additional radio frequency devices that lacked the appropriate labeling and user manual disclosures. Specifically, BSW marketed the Rolls HR70 FM Broadcast Transmitter (HR70), the Decade MS-100, MS-100M, and MS-100S in violation of section 302(b) of the Communications Act of 1934, as amended (Act) and sections 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and 15.239 of the Commission’s rules. We therefore direct BSW 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.

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, BSW is hereby on notice that it must comply with of the section 302(b) of the Act and the Commission’s equipment authorization and marketing rules, including sections 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, and

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 (now made annually) 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).

5 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.

15.239 of the Commission's rules.⁶ If BSW subsequently engages in any conduct of the type this Citation describes, including specifically any violation of section 302(b) of the Act or sections 2.803, 2.925, 15.19, 15.21, 15.201, 15.203, or 15.239 of the Commission's rules, BSW 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.⁷ BSW 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.

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 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

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

⁷ 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).

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.

¹⁴ 47 CFR § 15.203.

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. BSW is a privately held Washington state corporation, incorporated in 1978.¹⁶ The Spectrum Enforcement Division (Division) received a referral indicating that the Rolls HR70 FM Broadcast Transmitter (HR70), marketed by BSW, 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 BSW on December 1, 2020, and issued follow-up questions on March 4, 2021, and April 2, 2021.¹⁷ BSW timely responded to each of the Division’s inquiries.¹⁸

7. BSW admitted that it marketed the HR70, identified in the LOI.¹⁹ The HR70 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. The HR70 also could not have been authorized when BSW marketed the device because the manufacturer of the HR 70, Rolls Corporation, obtained an authorized for the model on May 24, 2021, well after BSW ceased marketing the HR70 on December 2, 2020 (and after BSW received the LOI).²⁰

8. BSW admitted it also marketed three additional models of FM Transmitters (Decade MS-100, Decade MS-100M, and Decade MS-100S) (the Decade models) which lacked the appropriate labeling and user manual disclosures.²¹ The photos of the labels for the Decade models submitted with BSW’s April 2021 Response did not display labels compliant with sections 2.925 and 15.19 of the Commission’s rules; there is no label with an FCC identifier and a statement about operation required by the rules.²² The user manual for the Decade models do not include the language required by section 15.21 of the Commission’s rules. BSW stated that it does not have a copy of the user manual, and that the user manual is available from the manufacturer’s website.²³ The user manual displayed on the manufacturer’s

¹⁵ 47 CFR § 15.239(a).

¹⁶ See Response to Letter of Inquiry, from Russell A. Knight, Esq., Smith Alling PS, Counsel to Broadcast Supply Worldwide, Inc., to JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, at 1, Response to Inquiry 1 (Jan. 22, 2021) (on file in EB-SED-20-00031633) (LOI Response).

¹⁷ Letter of Inquiry from JoAnn Lucanik, Deputy Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Tim Schwieger, President and Chief Executive Officer, Broadcast Supply Worldwide, Inc. (Dec. 1, 2020) (LOI); E-mail from Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Russell A. Knight Esq., Smith Alling PS, Counsel to Broadcast Supply Worldwide, Inc. (Mar. 4, 2021 09:30 EDT); E-mail from Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau, to Russell A. Knight Esq., Smith Alling PS, Counsel to Broadcast Supply Worldwide, Inc. (Apr. 2, 2021 13:07 EDT); (all on file in EB-SED-20-00031344).

¹⁸ See LOI Response; Response from Russell A. Knight Esq., Smith Alling PS, Counsel to Broadcast Supply Worldwide, Inc., to Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Mar. 12, 2021) (March 2021 Response); E-mail from Russell A. Knight Esq., Smith Alling PS, Counsel to Broadcast Supply Worldwide, Inc., to Kathy Harvey, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Apr. 5, 2021 18:31) (April 2021 Response) (all on file in EB-SED-20-00031344).

¹⁹ LOI Response at 2, Response to Question 7.

²⁰ LOI Response at Excel file, Response to Question 8.f.

²¹ LOI Response at 2, Response to Question 7; April 2021 Response.

²² April 2021 Response & Exhibits.

²³ April 2021 Response.

website does not include the language required by section 15.21 of the Commission's rules.²⁴ After receipt of the LOI, BSW ceased marketing the Decade models.²⁵

III. APPLICABLE LAW AND VIOLATIONS

9. 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.”²⁶ 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.²⁷ 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.²⁸ Section 15.201 of the Commission's rules requires a certification for the devices at issue in this Citation.²⁹ 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 intentional radiator shall be considered sufficient to comply with the provisions of this section.”³⁰ 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.”³¹

10. Intentional radiators, such as the devices at issue here, must be properly authorized and labeled in accordance with the Commission's equipment certification process.³² No intentional radiator may be marketed unless and until the device has been properly authorized and is properly labeled.³³ 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.”³⁴ 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

11. The record reflects that BSW 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

²⁴ <https://www.decadetransmitters.com/en/transmitters/ms-series> (last visited on Dec. 5, 2022).

²⁵ March 2021 Response at 2, Response to Question 2.

²⁶ 47 U.S.C § 302a(b).

²⁷ 47 CFR § 2.803(b)(1).

²⁸ 47 CFR §§ 2.925, 15.19, 15.21.

²⁹ 47 CFR § 15.201.

³⁰ 47 CFR § 15.203.

³¹ 47 CFR § 15.239(a).

³² 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 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.

³³ See 47 CFR §§ 2.803, 15.19.

³⁴ 47 CFR § 15.203.

³⁵ 47 CFR § 15.239(a).

systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.³⁶ 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.³⁷ 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.³⁸ 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."³⁹ 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."⁴⁰ 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."⁴¹

12. The record reflects that BSW marketed the HR70 prior to obtaining 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. On May 24, 2021, Rolls obtained an authorization for the model. BSW ceased marketing the HR70 on December 2, 2020, after receiving the LOI, and before the device was authorized, properly labeled, and contained appropriate user manual disclosures.⁴² BSW therefore marketed a device that lacked the required equipment authorization, labeling, user manual disclosures, operated outside of the FM frequency band, and did not use a permanently attached antenna or an antenna that uses a unique connector.

13. We find that BSW 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 a device, the HR70, that was capable of operating outside of the FM frequency band (88 to 108 MHz), did not 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.⁴³

14. BSW also marketed the Decade models that and lacked the appropriate labeling and user manual disclosures. The photos of the labels submitted with BSW's April 2021 Response do not display labels compliant with sections 2.925 and 15.19 of the Commission's rules.⁴⁴ The user manual does not include the language required by section 15.21 of the Commission's rules. BSW is therefore in violation of section 302(b) of the Act and sections 302(b) of the Act and sections 2.803(b), 2.925, 15.19, and 15.21 of the Commission's rules.⁴⁵

³⁶ 47 U.S.C. § 302a(b).

³⁷ 47 CFR § 2.803(b).

³⁸ 47 CFR § 15.201(b).

³⁹ 47 CFR § 2.925(a).

⁴⁰ 47 CFR 15.19(a)(3).

⁴¹ 47 CFR § 15.21.

⁴² LOI Response at Excel file, Response to Question 8.f. On May 24, 2021, Rolls Corporation obtained an equipment authorization for the device.

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

⁴⁴ April 2021 Response & Exhibits.

⁴⁵ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803, 2.925, 15.19, 15.21

IV. OPPORTUNITY TO RESPOND TO THIS CITATION

15. BSW 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 BSW's place of business. The Commission Field Office nearest BSW is located in Portland, Oregon.

16. If BSW 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 BSW 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.

17. 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-20-00031633**. 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.

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

19. We advise BSW that it is a violation of section 1.17 of the Commission's rules⁴⁶ 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.

20. 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.⁴⁷

21. 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.

⁴⁶ 47 CFR § 1.17.

⁴⁷ 18 U.S.C. § 1001.

22. Finally, we warn BSW that, under the Privacy Act of 1974,⁴⁸ 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 BSW's compliance with the Act and the Commission's rules.⁴⁹

V. FUTURE VIOLATIONS

23. If, after receipt of this Citation, BSW again violates section 302 of the Act or section(s) 2.803(b), 2.925, 15.19, or 15.21 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.⁵⁰ 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.⁵¹ Further, as discussed above, the Commission may assess forfeitures on both the conduct that led to this Citation and the conduct following it.⁵²

VI. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that, pursuant to sections 4(i) and 4(j) of the Act,⁵³ BSW must cease and desist from marketing noncompliant radio frequency devices in violation of section 302 of the Communications and sections 2.803(b), 2.925, 15.19, and 15.21 of the Commission's rules.⁵⁴

25. **IT IS FURTHER ORDERED** that a copy of this Citation and Order shall be sent by first class mail and certified mail, return receipt requested, to Mr. Tim Schwieger, President and Chief Executive Officer, Broadcast Supply Worldwide, 2237 South 19th Street, Tacoma, Washington 98405, Russell A. Knight, Esq., Smith Alling PS, 1501 Dock Street, Tacoma, Washington, 98402.

FEDERAL COMMUNICATIONS COMMISSION

Elizabeth Y. Mumaw
Chief
Spectrum Enforcement Division
Enforcement Bureau

⁴⁸ 5 U.S.C. § 552a(e)(3).

⁴⁹ 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.

⁵⁰ 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).

⁵¹ See 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(8).

⁵² See *supra* paragraph 2.

⁵³ 47 U.S.C. § 154(i), (j).

⁵⁴ 47 U.S.C. § 302a(b); 47 CFR §§ 2.803(b), 2.925, 15.19, 15.21.