

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

In the Matter of	)	
	)	
Samson Technologies, Inc.	)	File No. EB-02-TS-607
	)	NAL/Acct. No. 200432100008
	)	FRN 0009-9962-73
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: February 25, 2004**

**Released: March 3, 2004**

By the Commission:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Samson Technologies, Inc. (“Samson”) apparently liable for a forfeiture in the amount of thirty-five thousand dollars (\$35,000) for willful and repeated apparent violation of Section 302(b) of the Communications Act of 1934, as amended (“Act”),<sup>1</sup> and Section 2.803(a) of the Commission’s Rules (“Rules”).<sup>2</sup> The noted apparent violations involve Samson’s importing and marketing of five models of multi-track music recording devices that do not comply with the radiated emission limits set forth in Part 15 of the Rules.

**II. BACKGROUND**

2. Zoom Corporation (“Zoom”), a Japanese company, manufactured the recording equipment involved in this case and Samson imported that equipment and marketed it in the United States. The recording devices involved in this case are classified as digital devices.<sup>3</sup> Digital devices such as those involved in this case are classified as either Class A or Class B digital devices. A Class A digital device is defined as “[a] digital device that is marketed for use in a commercial, industrial or business environment, exclusive of a device which is marketed for use by the general public or is intended to be used in the home.”<sup>4</sup> A Class B digital device is defined as “[a] digital device that is marketed for use in a

<sup>1</sup> 47 U.S.C. § 302a(b).

<sup>2</sup> 47 C.F.R. § 2.803(a).

<sup>3</sup> Section 15.3(k) of the Rules, 47 C.F.R. § 15.3(k), defines a digital device as “[a]n unintentional radiator (device or system) that generates and uses timing signals or pulses at a rate in excess of 9,000 pulses (cycles) per second and uses digital techniques; inclusive of telephone equipment that uses digital techniques or any device or system that generates and uses radio frequency energy for the purpose of performing data processing functions, such as electronic computations, operations, transformations, recording, filing, sorting, storage, retrieval, or transfer.”

<sup>4</sup> 47 C.F.R. § 15.3(h).

residential environment notwithstanding use in commercial, business and industrial environments.”<sup>5</sup> Class A digital devices must comply with the radiated emission limits specified by Section 15.109(b) of the Rules.<sup>6</sup> Class B digital devices are required to comply with the more stringent radiated emission limits specified by Section 15.109(a) of the Rules.<sup>7</sup>

3. During February 2002, the Commission’s Office of Engineering and Technology (“OET”) received a complaint about recording equipment manufactured by Zoom and designated as the Model MRS-1044 Zoom MultiTrak Recording Studio (“MRS-1044”).<sup>8</sup> The complaint alleges that the MRS-1044 was being marketed in the United States but did not comply with the radiated emission limits prescribed by Section 15.109(a) of the Rules for Class B digital devices. In October 2002, OET referred the complaint against Zoom to the Enforcement Bureau (“EB”). On January 15, 2003, EB sent Samson a letter of inquiry (“LOI”).<sup>9</sup> In its response, submitted February 13, 2003, Samson states that Zoom had replaced the MRS-1044 and MRS-1044CD (a version of the MRS-1044 which includes a built-in compact disc recorder) with new models designated as MRS-1266 and MRS-1266CD and that Samson was importing and marketing those models.<sup>10</sup>

4. On July 7, 2003, EB sent Samson an additional LOI.<sup>11</sup> In its responses, submitted July 28 and August 6, 2003, Samson states that, in addition to the MRS-1266 and the MRS-1266CD, it was importing and marketing similar recording devices designated as the MRS-802, MRS-802CD and MRS-4.<sup>12</sup> Samson also states that it is the sole importer of the MRS-1266, MRS-1266CD, MRS-802, MRS-802CD and MRS-4. Additionally, Samson reports that, as of July 28, 2003, it had acquired 3,180 MRS-1266 and MRS-1266CD units for sale and sold 2,596 and had acquired 1,250 MRS-802 and MRS-802CD units for sale and sold 1,092; and that, as of August 6, 2003, it had acquired for sale 10,030 MRS-4 units and sold 8,330. With respect to each of the five models of Zoom recording devices, Samson states that the devices “are not Class B digital devices and therefore do not comply with radiated limits of Section 15.109(a).” According to Samson, these devices are Class A digital devices and, as such, comply with the less stringent radiated emission limits of Section 15.109(b) of the Rules. Samson further indicates that the Zoom recording devices were authorized for marketing<sup>13</sup> in the United States through the

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<sup>5</sup> 47 C.F.R. § 15.3(i).

<sup>6</sup> 47 C.F.R. § 15.109(b).

<sup>7</sup> 47 C.F.R. § 15.109(a).

<sup>8</sup> Letter from Sharon A. Hoffman, Timco Engineering, Inc., to Raymond LaForge, Chief Measurements and Calibration Branch, Office of Engineering and Technology (February 28, 2002).

<sup>9</sup> Letter from Dan S. Emrick, Spectrum Enforcement Division, Enforcement Bureau, to Samson Technologies, Inc. (January 15, 2003).

<sup>10</sup> Letter from Robert J. Ungar, Esq., to Dan S. Emrick, Spectrum Enforcement Division, Enforcement Bureau (February 13, 2003).

<sup>11</sup> Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Robert J. Ungar, Esq. (July 7, 2003).

<sup>12</sup> Letters from Robert J. Ungar, Esq., to Thomas Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (July 28 and August 6, 2003).

“verification” procedure.<sup>14</sup> Samson provides copies of the verification test reports for the MRS-1266 and MRS-4, which indicate that these devices comply with the radiated emission limits prescribed for Class A digital devices but not with the limits prescribed for Class B digital devices.<sup>15</sup>

5. On September 4, 2003, EB sent Samson a third LOI.<sup>16</sup> In its response, received September 24, 2003, Samson concedes that the MRS-1266, MRS-1266CD, MRS-802, MRS-802CD and MRS-4 were being marketed to the general public for residential use and were, therefore, Class B digital devices.<sup>17</sup> Samson states that it has taken the following steps to address the marketing issue: notifying retailers that they should not sell the MRS-1266, MRS-1266CD, MRS-802, MRS-802CD and MRS-4 for residential use; discontinuing importation of these devices; repacking its inventory of these devices for shipment back to the manufacturer; and replacing the Zoom recording devices with new models that comply with the Class B radiated emission limits.<sup>18</sup> Samson also states that it will no longer import or market any Class A digital devices. Rather, it will only import and market devices that comply with the Class B technical standards.

### III. DISCUSSION

6. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.” Section 2.803(a)(2) of the Rules provides that:

Except as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship, or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device that is not required to have a grant of equipment authorization issued by the Commission, but which must comply with the specified technical standards prior to use, such device also

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<sup>13</sup> Section 15.101(a) of the Rules, 47 C.F.R. § 15.101(a), requires that unintentional radiators, such as the Zoom recording devices, be authorized by the Commission prior to the initiation of marketing in the United States.

<sup>14</sup> Verification is a self-authorization procedure where the manufacturer or the importer, in the case of imported equipment, makes measurements or takes the necessary steps to insure that the equipment complies with the appropriate technical standards. See 47 C.F.R. §§ 2.902 and 2.909(b).

<sup>15</sup> The verification test reports provided by Samson for the MRS-802CD only included tests of the conducted emission limits (prescribed by 47 C.F.R. § 15.107), not the radiated emission limits.

<sup>16</sup> Letter from Joseph P. Casey, Chief, Spectrum Enforcement Division, Enforcement Bureau, to Robert J. Ungar, Esq. (September 4, 2003).

<sup>17</sup> Letter from Robert J. Ungar, Esq., to Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau (September 24, 2003).

<sup>18</sup> On December 4, 2003, EB received a report from Samson indicating that it has begun marketing replacement models for the MRS-802 and MRS-802CD and that the replacement models comply with the Class B radiated emission limits. Letter from Terry G. Mann, Esq., and Robert J. Ungar, Esq., to Joseph P. Casey, Kathryn Berthot and Thomas D. Fitz-Gibbon, Spectrum Enforcement Division, Enforcement Bureau, and Bruce Romano, Office of Engineering and Technology (December 4, 2003).

complies with all applicable administrative (including verification of the equipment or authorization under a Declaration of Conformity, where required), technical, labelling and identification requirements specified in this chapter.

7. Samson admits that it imported and marketed the MRS-4, MRS-802, MRS-802CD, MRS-1266 and MRS-1266CD. These devices are subject to self-verification pursuant to our Rules.<sup>19</sup> Thus, as the importer and seller, Samson is the party responsible under Section 2.909(b) of the Rules<sup>20</sup> for the compliance of these devices with the applicable technical standards. Samson now admits that the MRS-4, MRS-802, MRS-802CD, MRS-1266 and MRS-1266CD were marketed for use in residential environments and are, therefore, Class B digital devices, which must comply with the radiated emission limits set forth in Section 15.109(a) of the Rules. This is consistent with the record evidence. Language in Samson's marketing materials clearly indicates that these devices were marketed for home use. For example, Samson advertised the MRS-802 as "the most affordable complete home recording studio ever" and the MRS-802CD as "everything you need to make incredible sound recordings at home" and bringing "professional grade recording tools to your living room, bedroom, garage or where ever inspiration might strike." Samson also admits that the MRS-1266, MRS-1266CD, MRS-802, MRS-802CD and MRS-4 do not comply with the Class B radiated emission limits. We conclude that, by importing and marketing noncompliant devices, Samson apparently violated Section 302(b) of the Act and Section 2.803(a)(2) of the Rules willfully<sup>21</sup> and repeatedly.<sup>22</sup>

8. Section 503(b) of the Act authorizes the Commission to assess a forfeiture for each willful or repeated violation of the Act or of any rule, regulation, or order issued by the Commission under the Act.<sup>23</sup> In exercising such authority, we are required to take into account "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 such other matters as justice may require."<sup>24</sup>

9. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines ("Forfeiture Policy Statement")*<sup>25</sup> and Section 1.80 of the Rules,<sup>26</sup> the base forfeiture amount for the importation or marketing of noncompliant

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<sup>19</sup> 47 C.F.R. § 15.101(a).

<sup>20</sup> 47 C.F.R. § 2.909(b).

<sup>21</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act ...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>22</sup> Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>23</sup> 47 U.S.C. § 503(b).

<sup>24</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>25</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>26</sup> 47 C.F.R. § 1.80.

equipment is \$7,000. In this case, Samson imported and sold five distinct models. We find that a forfeiture amount of \$7,000 is apparently warranted for each model. Accordingly, applying the *Forfeiture Policy Statement* and statutory factors to the instant case, we conclude that Samson is apparently liable for a \$35,000 forfeiture.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to pursuant to Section 503(b) of the Act and Section 1.80 of the Rules, Samson Products, Inc. d/b/a Samson Manufacturing, Ltd., **IS** hereby **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of thirty-five thousand dollars (\$35,000) for willfully and repeatedly violating Section 302(b) of the Act and Section 2.803(a) of the Rules.

11. **IT IS FURTHER ORDERED THAT**, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Samson Technologies, Inc., **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number (FRN) and the NAL/Acct. No. referenced in the caption.

13. The response, if any, must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554, ATTN: Enforcement Bureau – Spectrum Enforcement Division, and must include the NAL/Acct. No. referenced in the caption.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for payment of the full amount of this *Notice of Apparent Liability for Forfeiture* under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>27</sup>

16. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Enforcement Bureau – Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one

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<sup>27</sup> See 47 C.F.R. § 1.1914.

of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

17. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by first class mail and certified mail return receipt requested to counsel for Samson Technologies, Inc., Robert J. Ungar, Esq., Fish & Richardson, PC, 1445 K Street, N.W., 11<sup>th</sup> Floor, Washington, D.C. 20005.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

Attachment A

## FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

<b>(1) Small Organization</b>	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
<b>(2) Small Governmental Jurisdiction</b>	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
<b>(3) Small Business</b>	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
<b>Industry Type</b>	<b>Description of Small Business Size Standards</b>
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – <b>Small Cable Company</b> has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

**Note:** With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
<i>Mass Media Services</i>	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years	
<i>Wireless and Commercial Mobile Services</i>	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	



Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard -
900 MHz Specialized Mobile Radio	<b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	
Fixed Microwave Services	1,500 Employees or Fewer
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years
39 GHz Service	<b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for

	the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
<b><i>Miscellaneous</i></b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)